

Notes

Retaliatory or Lawful?: How Iran's Seizure of the *Stena Impero* in the Strait of Hormuz Violated International Law

On July 19, 2019, the Iranian Revolutionary Guard Corps detained the Stena Impero oil tanker in the Strait of Hormuz. At the point it was intercepted and boarded, the Stena Impero was navigating through the entrance to the Strait within Omani territorial waters. For two months, Iran held the ship and its crew, using them as leverage to spark negotiations over the Iran Nuclear Deal and force the United Kingdom to release an Iranian oil tanker that it had detained in early July that same year. The parties involved in this conflict constantly invoked overlapping areas of international law to justify their actions and accuse each other of unlawful behavior. In doing so, they raised questions about the legality of Iran's actions, the rights of oil tankers in the Strait, and the potential recourse, if any, for the ship and its crew.

This Note analyzes the specific accusations made by the parties involved and the justifications provided by Iran in particular. Part I of this Note provides an overview of the Strait of Hormuz and relevant governing laws. Part II discusses the broader context of the 2019 Gulf Crisis and how this context presents a new legal dilemma. Part III then analyzes the legality of Iran's seizure of the Stena Impero and argues that Iran's actions were retaliatory and in violation of multiple international laws. The Note concludes with a discussion of potential avenues for holding Iran accountable and preventing repeat violations as tensions in the Strait persist.

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INTRODUCTION

On July 19, 2019, Iran shocked the world when its Revolutionary Guard Corps (IRGC) detained a British-flagged oil tanker, the *Stena Impero*, as it was entering the Strait of Hormuz.¹ In a series of radio exchanges between an Iranian vessel and a British warship further out in the Strait that were released a few days later, it appeared that the Iranian vessel told the *Stena Impero* to alter its course to remain safe.² The British warship responded to the Iranian orders,

1. *Iran Seizes British Tanker in Strait of Hormuz*, BBC NEWS (July 20, 2019), [bbc.com/news/uk-49053383](https://perma.cc/BZ3Y-MXJR) [<https://perma.cc/BZ3Y-MXJR>].

2. *Radio Exchanges Reveal Iran-UK Confrontation as Ship Seized*, BBC NEWS (July 21, 2019), <https://www.bbc.com/news/av/world-middle-east-49061737/radio-exchanges-reveal-iran-uk-confrontation-as-ship-seized> [<https://perma.cc/HGX4-S3QM>].

reminding them of the ship's transit passage rights and demanding that the Iranian vessel comply with international law.³ However, the Iranian vessels continued on track toward the *Stena Impero*, stating that they wanted to inspect it for "security reasons."⁴ Shortly thereafter, four IRGC vessels and a helicopter intercepted, surrounded, and boarded the *Stena Impero*.⁵ At the point it was intercepted, the *Stena Impero* was navigating through the entrance to the Strait from the Gulf of Oman in Omani territorial waters—not Iranian waters.⁶ The ship was then transported to the Iranian port of Bandar Abbas, where the ship and its crew were detained.⁷ Following the seizure of the *Stena Impero*, Iran made multiple press releases and sent a letter to the UN Security Council justifying its actions as a law enforcement matter. Iran claimed that the *Stena Impero* "violat[ed] rules governing international navigation, including safety and security of navigation, and disregard[ed] the warnings by the traffic control authorities."⁸ In support of this claim, Iran first stated that the ship used the wrong sea lane to enter the Strait of Hormuz from the Gulf of Oman.⁹ Iran then claimed that the *Stena Impero* had collided with a fishing vessel and did not respond to distress calls in violation of international maritime regulations.¹⁰

In the immediate aftermath of the interception, Stena Bulk, the Swedish company that owns the *Stena Impero*, issued a press release directly refuting the Iranian allegations. Stena Bulk stated that "[t]he vessel was in full compliance with all navigation and international

3. *Id.*

4. *Id.*

5. Chargé d'affaires a.i. of the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland, Letter dated July 20, 2019 from the Chargé d'affaires a.i. of the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council 1, U.N. Doc. S/2019/589 (July 22, 2019).

6. *Id.*

7. *Iran Tanker Seizure: May Chairs Cobra Meeting on Crisis*, BBC NEWS (July 22, 2019), <https://www.bbc.com/news/uk-49067166> [<https://perma.cc/CC2W-AUDV>].

8. Chargé d'affaires a.i. of the Permanent Mission of the Islamic Republic of Iran, Letter dated 23 July 2019 from the Chargé d'affaires a.i. of the Permanent Mission of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General and the President of the Security Council 1, U.N. Doc. S/2019/593 (July 23, 2019).

9. *Id.*

10. *Id.*; see also *Any Aggression Will Be Faced with Destruction, Seizure: Iran's Military Chief*, TEHRAN TIMES (Sept. 24, 2019, 9:52 PM), <https://www.tehrantimes.com/news/440473/Any-aggression-will-be-faced-with-destruction-seizure-Iran-s> [<https://perma.cc/VJF2-2SA2>].

regulations.”¹¹ Because the ship was a British-flagged tanker, and an average of two to three British-flagged ships pass through the Strait of Hormuz on a daily basis, the United Kingdom also responded to Iran’s claims.¹² The United Kingdom asserted that the *Stena Impero*’s Automatic Identification System (AIS) was switched on and publicly available and verifiable.¹³ The United Kingdom also claimed there was no evidence to support Iran’s allegations that the *Stena Impero* violated international maritime regulations or national laws regulating the sea lanes.¹⁴ In its own letter to the UN Security Council, the United Kingdom further stated that, even if the *Stena Impero* had violated international law, as Iran claimed, “the ship’s location within Omani territorial waters mean[t] that Iran would not have been permitted to intercept the *Stena Impero*.”¹⁵ And, on July 22, the United Kingdom’s Foreign Secretary, Jeremy Hunt, delivered an address to Parliament in which he discussed the seizure of the *Stena Impero* and Iran’s motivations.¹⁶ During this address, Foreign Secretary Hunt highlighted how Iran “tried to present this [seizure] as a tit-for-tat incident following” the seizure of the *Grace I* in Gibraltar and called Iran’s actions “an act of state piracy.”¹⁷ Indeed, Iran’s Secretary of the Expediency Council and former Chief of the IRGC, Mohsen Rezaee, actually used the seizure of the *Stena Impero* as an example of Iran’s “tit-for-tat” response to “aggression” throughout the summer of 2019.¹⁸ In an interview with Iranian state TV, Rezaee said that Iran was “carrying out an active resistance,” “respond[ing] to the enemy,” and striking back in cases of aggression, such as the seizure of the *Grace I*.¹⁹

In the weeks following the seizure of the *Stena Impero*, Iran continued to detain both the ship and its multinational crew in Bandar

11. *Company Statement - Stena Impero - 2345BST*, N. MARINE GRP. (July 19, 2019), <https://www.nmg-stena.com/news/company-statement-stena-impero/> [<https://perma.cc/5PME-BZEF>].

12. Jeremy Hunt, Foreign Sec’y, U.K., Oral Statement to Parliament: Situation in the Gulf (July 22, 2019), <https://www.gov.uk/government/speeches/situation-in-the-gulf-foreign-secretary-statement> [<https://perma.cc/LW9C-NRRT>].

13. Chargé d’affaires a.i. of the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland, *supra* note 5, at 1.

14. *Id.*

15. *Id.*

16. Hunt, *supra* note 12.

17. *Id.*

18. *Iran to Adopt Tit-for-Tat in the Case of Aggression: Ex-IRGC Chief*, TEHRAN TIMES (Aug. 2, 2019, 9:30 PM), <https://www.tehrantimes.com/news/438839/Iran-to-adopt-tit-for-tat-in-case-of-aggression-ex-IRGC-chief> [<https://perma.cc/Y8EX-KVR7>].

19. *Id.*

Abbas.²⁰ Throughout this time, the United Kingdom, Sweden (on behalf of Stena Bulk), and Oman called on Iran to agree to negotiations and to release the ship.²¹ Even though none of the crewmembers were British nationals, Foreign Secretary Hunt made clear that it was the United Kingdom's responsibility to protect ships flying its flag.²² Given the number of British-flagged ships navigating through the Strait of Hormuz every day, Foreign Secretary Hunt believed that de-escalating tensions and ensuring freedom of navigation was paramount.²³ Top officials in the Omani government even flew to Tehran to urge Iran to release the ship and stop seizing and attacking oil tankers in the Gulf of Oman and the Strait of Hormuz.²⁴ While the parties continued to argue over why Iran seized the oil tanker, or whether Iran was going to bring charges against the *Stena Impero* and its crew, all of the parties involved agreed that the *Stena Impero* was in the traffic separation scheme at the entrance to the Strait, in Omani territorial waters, when she was intercepted and seized by Iran.²⁵ Nevertheless, Iran refused to release the tanker, citing its alleged law enforcement reasons

20. *Stena Impero: Seized British Tanker Leaves Iran's Waters*, BBC NEWS (Sept. 27, 2019), <https://www.bbc.com/news/world-middle-east-49849718> [<https://perma.cc/NH79-LT5D>].

21. *Sultanate Issues Statement on Navigation in Strait of Hormuz*, OMAN DAILY OBSERVER (July 21, 2019), <https://www.omanobserver.om/sultanate-issues-statement-on-navigation-in-strait-of-hormuz/> [<https://perma.cc/Z8NE-YCW6>]; Reuters Staff, *Oman Urges Iran to Release Seized Tanker*, REUTERS (July 21, 2019, 3:58 AM), <https://uk.reuters.com/article/uk-mideast-tanker-oman/oman-urges-iran-to-release-seized-tanker-idUKKCN1UG06X> [<https://perma.cc/7XDA-33C2>]; AFP, *Oman Calls for Release of British-Flagged Ship Seized by Iran*, TIMES ISR. (July 21, 2019, 2:29 PM), <https://www.timesofisrael.com/oman-calls-for-release-of-british-flagged-ship-seized-by-iran/> [<https://perma.cc/6YDX-UWAH>].

22. Hunt, *supra* note 12. Hunt also noted that the United Kingdom was planning to increase its efforts to protect foreign-flagged ships that had British crews. *Id.*

23. *Id.*

24. *Oman May Mediate Between Iran and UK over Tanker Crisis*, DW (July 26, 2019), <https://www.dw.com/en/oman-may-mediate-between-iran-and-uk-over-tanker-crisis/a-49761892> [<https://perma.cc/7MZ3-UCCN>]; *Iran to Oman: Neighbouring States Have Made Talks Impossible amid Tanker Crisis*, MIDDLE E. EYE (July 27, 2019, 7:49 PM), <https://www.middleeasteye.net/news/iran-oman-neighbouring-states-have-made-talks-impossible-amid-tanker-crisis> [<https://perma.cc/4BQQ-P57B>].

25. See Chargé d'affaires a.i. of the Permanent Mission of the Islamic Republic of Iran, *supra* note 8, at 1 (stating that the tanker "was entering the Strait of Hormuz in the traffic separation scheme lane," located in Omani waters, when it allegedly violated international law); Chargé d'affaires a.i. of the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland, *supra* note 5, at 1.

for the continued detention of the ship.²⁶ The ship and crew were held in the Port of Bandar Abbas until September 27, 2019.²⁷

Negotiations over the release of the ship were challenging because of rising tensions between Iran and the West, beginning in May 2019. When analyzed within the broader context of what became known as the 2019 Gulf Crisis, it follows that the IRGC was not carrying out a routine law enforcement matter. Rather, this Note argues that the seizure of the *Stena Impero* was a calculated act of retaliation for the seizure of an Iranian oil tanker in Gibraltar by the British on July 4.²⁸ As such, Iran's detention of the *Stena Impero* was meant to force the British to the negotiating table. In the two months leading up to the seizure, tensions were rising between Iran and the West over oil tankers in the Strait of Hormuz and in Gibraltar. Numerous oil tankers were attacked in the Gulf of Oman.²⁹ The United States and Saudi Arabia believe Iran was behind the attacks.³⁰ In July, the United Kingdom and Gibraltar detained an Iranian oil tanker bound for Syria in the Strait of Gibraltar.³¹ Consequently, Iran threatened to seize British oil tankers in the Strait of Hormuz or one of the adjacent gulfs in response.³² And then, one week before the *Stena Impero* seizure, the IRGC attempted to intercept and detain a different British oil tanker.³³ The only reason the IRGC failed in this prior attempt was because the targeted tanker was protected by a British naval escort.³⁴

Throughout this crisis, both Iran and the United Kingdom, as well as other states involved in the conflict, accused each other of violating the international law of the sea, international maritime safety regulations, national laws promulgated in accordance with the law of the sea, and customary international law in general. Indeed, in the lead-up to the seizure of the *Stena Impero*, Iran accused the United

26. Chargé d'affaires a.i. of the Permanent Mission of the Islamic Republic of Iran, *supra* note 8.

27. *Stena Impero: Seized British Tanker Leaves Iran's Waters*, *supra* note 20.

28. *Iranian Official Threatens to Seize British Oil Tanker*, BBC NEWS (July 5, 2019), <https://www.bbc.com/news/uk-48882455> [<https://perma.cc/YXR5-94TB>].

29. *Gulf of Oman Tanker Attacks: What We Know*, BBC NEWS (June 18, 2019), <https://www.bbc.com/news/world-middle-east-48627014> [<https://perma.cc/TTQ9-UTKX>].

30. *Id.*

31. *Oil Tanker Bound for Syria Detained in Gibraltar*, BBC NEWS (July 4, 2019), <https://www.bbc.com/news/uk-48865030> [<https://perma.cc/C2JW-JJ2F>].

32. *Iranian Official Threatens to Seize British Oil Tanker*, *supra* note 28.

33. *Strait of Hormuz: Iranian Boats 'Tried to Intercept British Tanker'*, BBC NEWS (July 11, 2019), <https://www.bbc.com/news/uk-48946051> [<https://perma.cc/39VU-4TKZ>].

34. *Id.*

Kingdom and Gibraltar of committing “acts of piracy” when they seized the *Grace I*, also known as the *Adrian Daria*, in the Port of Gibraltar on July 4, and of committing these acts at the behest of the United States.³⁵ Likewise, the United States accused Iran of unlawful uses of force for attacking oil tankers in May and June.³⁶ Later, the United Arab Emirates, Saudi Arabia, and Norway reported to the UN Security Council that their investigation into the May tanker attacks established that the attacks were conducted by a state-like actor.³⁷ Although the official briefing document did not accuse Iran of being the state actor involved in these attacks, a Saudi Arabian diplomat did not hesitate to blame Iran for the tanker attacks during his address to the UN.³⁸ The United States, the United Kingdom, and other European nations responded to Iran’s actions by creating a coalition of naval warships to protect commercial ships passing through the gulfs and the Strait of Hormuz.³⁹ These accusations and responses highlight a trend: parties on both sides of the conflict used alleged violations of international laws and regulations to justify their actions to the international community. Therefore, understanding how the international law of the sea, international maritime safety regulations, and customary international law apply to this conflict and the Strait of Hormuz are crucial to evaluating and understanding the actions taken by the different parties to this conflict.

Even though Iran released the *Stena Impero* in September 2019, numerous incidents—including statements made by Iranian military and foreign officials throughout September and October,⁴⁰ the

35. *Iranian Official Threatens to Seize British Oil Tanker*, *supra* note 28.

36. *See Secretary of State Michael R. Pompeo Remarks to the Press*, U.S. DEP’T STATE (June 13, 2019), <https://www.state.gov/secretary-of-state-michael-r-pompeo-remarks-to-the-press/> [<https://perma.cc/E82C-UAUK>].

37. *Inquiry into Oil Tanker Attacks Stops Short of Blaming Iran*, GUARDIAN (June 7, 2019, 7:12 AM), <https://www.theguardian.com/world/2019/jun/07/uae-tanker-attacks-un-iran-norway-saudi-arabia> [<https://perma.cc/Z2SE-CGMT>]; Catherine Koppel, *UAE Says ‘Sophisticated’ Tanker Attacks Likely the Work of a State Actor*, REUTERS (June 6, 2019, 5:30 AM), <https://www.reuters.com/article/us-emirates-tanker-probe-un/uae-says-sophisticated-tanker-attacks-likely-the-work-of-a-state-actor-idUSKCN1T712L> [<https://perma.cc/2GT2-DQ5H>].

38. *UAE Says ‘Sophisticated’ Tanker Attacks Likely the Work of a State Actor*, *supra* note 37.

39. *UK to Join US-Led Taskforce in Gulf to Protect Merchant Ships*, BBC NEWS (Aug. 5, 2019), <https://www.bbc.com/news/uk-49240867> [<https://perma.cc/VQK5-NH52>].

40. *Any Aggression Will Be Faced with Destruction, Seizure: Iran’s Military Chief*, *supra* note 10; *IRGC General: Iran Has Turned from a Deterrent Power to a Retaliatory One*, TEHRAN TIMES (Oct. 5, 2019, 7:52 PM), <https://www.tehrantimes.com/news/440822/IRGC->

continued seizures of vessels in the Gulf of Oman and the Strait of Hormuz well into September,⁴¹ the announcement of Iran's Hormuz Peace Endeavor to "provide security" in the region, the underlying conflict over the Iran Nuclear Deal, and the conflict between the United States and Iran in the New Year⁴²—show that control over the Strait of Hormuz and navigation through these waterways will continue to be a pressing issue. When the seizure of the *Stena Impero* and the claims about the seizure made by Iran are situated within the context of the 2019 Gulf Crisis, it becomes clear that this single act of retaliation is emblematic of a pattern of retaliatory tactics employed by Iran both in the Strait of Hormuz and the Gulf Region more broadly. Given these heightened tensions and increasing opportunities for clashes in the region, specifically over navigation through the Strait, it is important to evaluate whether Iran's repeated attacks on and seizures of oil tankers are violations of international law and what options are available to prevent repeated violations. Moreover, this episode is ripe for analysis because it invokes multiple overlapping areas of customary international law, international conventions, and national laws in a region that is continuously a hotbed for conflict. Analyzing this seizure and the appeals to international law used to justify the parties' actions provides a framework for resolving disputes over actions taken in the Strait of Hormuz and potential recourse for affected parties.

General-Iran-has-turned-from-a-deterrent-power-to-a-retaliatory [https://perma.cc/QP42-LGWP].

41. *Iran Seizes 'Fuel-Smuggling' Tanker in Gulf*, BBC NEWS (July 18, 2019), <https://www.bbc.com/news/world-middle-east-49029053> [https://perma.cc/AMB8-CVBY]; *Iran 'Seizes Iraqi Tanker in Gulf for Smuggling Fuel'*, BBC NEWS (Aug. 5, 2019), <https://www.bbc.com/news/world-middle-east-49225916> [https://perma.cc/7LLL-8VTA]; *IRGC Seizes Foreign Tanker Smuggling Fuel*, TEHRAN TIMES (Aug. 4, 2019, 3:20 PM), <https://www.tehrantimes.com/news/438915/IRGC-seizes-foreign-tanker-smuggling-fuel> [https://perma.cc/7J9V-WYPD]; *Iran Seizes Philippine Ship for Fuel Smuggling*, TEHRAN TIMES (Sept. 7, 2019, 7:34 PM), <https://www.tehrantimes.com/news/440048/Iran-seizes-Philippine-ship-for-fuel-smuggling> [https://perma.cc/YZ4B-SXLM].

42. For a timeline of the events of December 2019 and January 2020, see Elena Moore & Roberta Rampton, *Timeline: How the U.S. Came to Strike and Kill a Top Iranian General*, NPR (Jan. 4, 2020, 7:00 AM), <https://www.npr.org/2020/01/04/793364307/timeline-how-the-u-s-came-to-strike-and-kill-a-top-iranian-general> [https://perma.cc/KP3U-VQN8].

Part I of this Note provides an overview of the Strait of Hormuz and the laws governing it, including the relevant law of the sea, customary international law, and international humanitarian law. It includes an explanation of related conventions, rights of ships navigating the Strait of Hormuz, and the rights and obligations of Iran and Oman as coastal states. Part II analyzes the broader context of the 2019 Gulf Crisis, including the underlying tensions between Iran and the West over the 2015 Nuclear Deal and sanctions imposed by the United States, and discusses how this context presents a new legal dilemma. Part III analyzes each of the potential violations Iran committed when it seized the *Stena Impero*, and argues that Iran violated multiple international laws and that its pattern of seizing and attacking oil tankers is inconsistent with international law. It then discusses potential avenues for settlement for the affected parties and offers potential ways to deter Iran from seizing oil tankers in the future.

Figure 1: The Strait of Hormuz and its Vicinity



I. THE STRAIT OF HORMUZ AND THE GOVERNING INTERNATIONAL LAWS

The Strait of Hormuz, one of the world's most important commercial and strategic waterways, connects the Persian Gulf to the Gulf of Oman. In 2018, one-fifth of the world's oil, roughly twenty-one million barrels a day, was shipped through the Strait.⁴³ Because the Strait is the only point of egress to and from the Persian Gulf, and the only sea route for transporting oil out of the Gulf, it is considered a "global chokepoint"⁴⁴—a site of frequent tension and conflict between the coastal states and maritime powers involved in the region. The Strait, which extends 104 nautical miles along its median and is twenty-one nautical miles wide, is entirely within the jurisdiction of Oman and Iran.⁴⁵ (See *Figure 1*).⁴⁶ Because the Strait of Hormuz is an international strait, there are overlapping areas of international and national law that govern passage for local and international ships and seafaring activities, such as fishing, drilling, and scientific experiments. Passage through the Strait is governed by the Traffic Separation Schemes created by Iran, Oman, and the International Maritime Organization (IMO); the UN Convention on the Law of the Sea; customary international law of the sea; customary international law on countermeasures; and Iranian and Omani laws regulating passage through their territorial waters and entrance to their ports.

The rights and obligations of ships sailing through international straits such as the Strait of Hormuz are established by both customary international law and relevant multilateral conventions. Though historically, Iran's recognition of these established principles of international maritime law has been spotty, the country claims to at least respect them in part and has signed the two major conventions addressing the law of the sea: the UN 1958 Territorial Seas Convention (1958 Convention) and the UN Convention on the Law of the Seas

43. *Iran Tanker Seizure: What Is the Strait of Hormuz?*, BBC NEWS (July 29, 2019), <https://www.bbc.com/news/world-middle-east-49070882> [<https://perma.cc/DYE7-DVWK>].

44. See William M. Fraser III, *UNCLOS Codifies Rights of Navigation*, HAMPTON ROADS INT'L SEC. Q., Jul. 2012, at 43, 43; James Kraska, *Legal Vortex in the Strait of Hormuz*, 54 VA. J. INT'L L. 323, 332 (2014); Stefan Kirchner & Birutė M. Salinaitė, *The Iranian Threat to Close the Strait of Hormuz: A Violation of International Law?*, 20 JURIS. 549, 549 (2013).

45. Jon M. Van Dyke, *Legal and Practical Problems Governing International Straits*, 12 OCEAN Y.B. 109, 116 (1996).

46. U.S. Cent. Intel. Agency, *Strait of Hormuz and Vicinity*, LIBR. CONG. www.loc.gov/item/87693887/ [<https://perma.cc/NKJ6-ZWQ8>]. This map is from a digital collection of non-copyrighted images.

III (UNCLOS).⁴⁷ These conventions set out the legal regimes governing the rights and obligations of ships navigating through international straits, the rights and obligations of the coastal states, and other laws related to passage through international straits.⁴⁸

A. Passage Through International Straits and Territorial Seas

Under the framework established by the UNCLOS, there are two related legal regimes that define the rights of passage for commercial and merchant ships in international law: innocent passage and transit passage. While these rights and their accompanying legal frameworks are similar, they apply to different bodies of water and in different circumstances.⁴⁹ Innocent passage is defined as a right of ships to freely navigate through territorial seas.⁵⁰ The right of innocent passage for all ships is considered a right grounded in customary international law.⁵¹ Under the regime of innocent passage, “passage” is defined as “navigation through the territorial sea for the purpose of: (a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or (b) proceeding to or from internal waters or a call at such roadstead or port facility.”⁵² Such passage must be “continuous and expeditious,” but can include stopping and anchoring incidental to ordinary navigation or due to distress.⁵³ Innocent passage is passage that is “not prejudicial to the peace, good order or security of the coastal State.”⁵⁴

47. United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS]. The online Depository record includes all of the signing statements and declarations of each party. Iran’s signing statement can be found on page 20. Oman’s signing statement can be found on page 26.

48. Convention on the Territorial Sea and the Contiguous Zone, Apr. 29, 1958, 15 U.S.T. 1606, 516 U.N.T.S. 205.

49. HUGO CAMINOS & VINCENT P. COGLIATI-BANTZ, *THE LEGAL REGIME OF STRAITS: CONTEMPORARY CHALLENGES AND SOLUTIONS* 39 (2014).

50. UNCLOS, *supra* note 47, art. 18.

51. BING BING JIA, *THE REGIME OF STRAITS IN INTERNATIONAL LAW* 78 (1998). *See* Corfu Channel Case (U.K. v. Alb.), Judgment, 1949 I.C.J. 28 (Apr. 9) (declaring that it is “generally recognized and in accordance with international custom that States in time of peace have a right to send their warships through straits . . . without the previous authorization of a coastal State, provided that the passage is *innocent*” and that “[u]nless otherwise prescribed in an international convention, there is no right for a coastal State to prohibit such passage through straits in time of peace”).

52. UNCLOS, *supra* note 47, art. 18.

53. *Id.*

54. *Id.* art. 19.

Under the regime of innocent passage, ships passing through the territorial sea of a coastal state must also comply with its laws and regulations, provided these laws and regulations do not violate the right of innocent passage or the scope and limits established by the UNCLOS.⁵⁵ Breaching the customs or laws of the coastal state as they relate to passage, mooring, pollution, safety, and others allowed under Article 19, can render such passage “non-innocent” or “prejudicial.”⁵⁶ Passage can also become prejudicial if it does not conform with international laws and regulations, or if the vessel engages in any of the prohibited actions listed in Article 19(2)(a)–(l).⁵⁷ Though states can place some regulations on a ship passing through its territorial waters under the regime of innocent passage, this ability is limited to regulations regarding, *inter alia*, safety, fishing, pollution, and the establishment of sea lanes and traffic separation schemes.⁵⁸

While the regime of transit passage employs a similar definition of passage, there are a few crucial differences between the rights of innocent and transit passage. First and foremost, the regime of transit passage does not apply to straits through territorial sea; rather, it only applies to straits that are used for international navigation.⁵⁹ As such, this right of transit passage is defined as:

the exercise in accordance with this Part [of the UNCLOS] of the freedom of navigation and overflight

55. See discussion *infra* Part I.A.2.

56. UNCLOS, *supra* note 47, art. 19.

57. *Id.* According to Article 19, the Prohibited Activities include:

Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities: (a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations; (b) any exercise or practice with weapons of any kind; (c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State; (d) any act of propaganda aimed at affecting the defence or security of the coastal State; (e) the launching, landing or taking on board of any aircraft; (f) the launching, landing or taking on board of any military device; (g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State; (h) any act of willful[sic] and serious pollution contrary to this Convention; (i) any fishing activities; (j) the carrying out of research or survey activities; (k) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State; (l) any other activity not having a direct bearing on passage.

Id.

58. *Id.* arts. 21–23.

59. *Id.* art. 37 (“This section applies to straits which are used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone.”).

solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone.⁶⁰

Second, the responsibilities and obligations of ships navigating under transit passage are different than those navigating under innocent passage. Submarines and underwater ships are not required to surface when exercising the right of transit passage.⁶¹ The right of transit passage does not shift or change if the ship is a commercial vessel, a government vessel, or a warship.⁶² Finally, unlike the regime of innocent passage, in which coastal states can temporarily suspend the right of passage or limit the areas in which ships can travel, coastal states can *never* suspend the right of transit passage.⁶³ Particularly relevant here, transit passage cannot be prevented on account of non-innocent activities, and it is never subject to prior authorization.⁶⁴ However, it should be noted that coastal states may still place some regulations on ships exercising the right of transit passage, such as requirements to follow traffic separation schemes, rules for reducing pollution, and safety regulations.⁶⁵

1. The Regime of Transit Passage Governs the Strait of Hormuz

Since the Strait of Hormuz is an international strait used for navigation that connects “one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic

60. *Id.* art. 38.

61. *See id.* art. 20. This requirement is only found under the articles pertaining to innocent passage.

62. *See id.* arts. 20, 27–32. Again, these requirements are only found in the articles under the regime of innocent passage, they are not also listed under Part III on transit passage.

63. *Id.* art. 44; *cf. id.* art. 25.

64. *See JIA, supra* note 51, at 150–51 (discussing the difference between innocent and transit passage). Under the regime of innocent passage, the coastal state can require prior authorization for certain types of vessels—i.e. warships of another state, large oil tankers, anything carrying radioactive material—whereas “the *travaux préparatoires* concerning Article 38 confirm that the condition of prior authorization is out of the question for the exercise of the right of transit passage.” *Id.* at 150. *See also* CAMINOS & COGLIATI-BANTZ, *supra* note 49, at 217–24 (analyzing the differences between the regimes of innocent and transit passage and the ambiguity of the articles governing coastal states’ powers under the regime of transit passage).

65. UNCLOS, *supra* note 47, arts. 40–42.

zone,” it falls within the scope of Article 37 of the UNCLOS.⁶⁶ However, Iran is not party to or bound by the UNCLOS—it has signed, but not ratified, the convention. Therefore, for the right of transit passage as established in the UNCLOS to govern the Strait of Hormuz and to bind both Iran and Oman, the right of transit passage must be considered to have achieved customary international law status.⁶⁷ When a right or norm is considered to have achieved this status as custom, it is binding on all nations.⁶⁸

There is some debate as to whether the right of transit passage has achieved status as customary international law and is, therefore, binding on all nations, regardless of whether they are a party to the UNCLOS.⁶⁹ The right of transit passage was developed in response to the extension of the breadth of the territorial sea in straits in the aftermath of the 1958 Convention and the resulting tensions between free navigation and sovereignty created by this extension.⁷⁰ As a result, in 1982 the right of transit passage and the surrounding legal framework was codified in Part III of the UNCLOS.⁷¹ At the time that it signed the UNCLOS, Iran questioned the status of the regime of transit passage as representing custom.⁷² Indeed, in its signing statement, Iran called the establishment of some of the provisions in the UNCLOS, including the regime of transit passage as “merely product of *quid pro quo* which do not necessarily purport to codify the existing customs or established usage (practice) regarded as having an obligatory character.”⁷³

Despite Iran’s earlier protestations and the academic debate over the status of transit passage rights, state practice over the past forty years and decisions from the International Court of Justice (ICJ)

66. *Id.* art 37. Transit passage also applies to the Strait of Hormuz as there were no pre-existing agreements for the governance and control of the Strait prior to the ratification of the UNCLOS. *See id.* art. 35(c).

67. Int’l L. Comm’n, Rep. on the Work of Its Seventieth Session, U.N. Doc. A/73/10, at 119–22 (2018) (detailing the acts required to establish the existence of customary international law).

68. *Id.* at 122–56.

69. *See* CAMINOS & COGLIATI-BANTZ, *supra* note 49, at 452–71; JIA, *supra* note 51, at 168–201 (analyzing whether transit passage has achieved status as customary international law in state practice, *opinion juris*, and writings of publicists).

70. *See* JIA, *supra* note 51, at 129–37, 153–59 (detailing the history of drafts and negotiations for the Convention).

71. *See id.*; UNCLOS, *supra* note 47, Part III.

72. UNCLOS, *supra* note 47. The online Depositary record includes all of the signing statements and declarations of each party; Iran’s signing statement can be found on page 20.

73. *Id.*

have shown that transit passage rights are now and should be considered customary international law. As of 2019, there were 168 parties to the Convention, which was reflective of widespread state practice.⁷⁴ Additionally, the United States, which is not a party, has consistently maintained that the UNCLOS, with the exclusion of the provisions on deep-sea mining, reflects and “generally confirm[s] existing maritime law and practice and fairly balance[s] the interests of all states.”⁷⁵ Moreover, the provisions governing transit passage are now considered customary international law by the ICJ, the international community, scholars, and many domestic courts.⁷⁶

And, most importantly in relation to the Strait of Hormuz, the signing statements and decrees of both Oman and Iran—despite its critiques of the legal regime—highlight that both states generally recognize transit passage rights in the Strait of Hormuz. In signing the UNCLOS, Iran included an “understanding” concerning the right of transit passage and when it would obey that right:

74. *Id.*

75. PRESIDENT RONALD REAGAN, STATEMENT ON U.S. OCEANS POLICY ACCOMPANYING PROCLAMATION 5030 (1983), <http://extwprlegs1.fao.org/docs/pdf/usa2642.pdf>. See also Letter from President William Jefferson Clinton to the U.S. Senate (Oct. 7, 1994), reprinted in 34 INT’L LEGAL MATERIALS 1393, 1407 (1995) (“The United States has consistently made clear throughout its history that it is not prepared to secure these rights through bilateral arrangements. The continuing U.S. position is that these rights must form an explicit part of the law of the sea. Part III of the Convention guarantees these rights.”). For a more recent pronouncement of this policy, see, e.g., *The Law of the Sea Convention (Treaty Doc. 103-39): The U.S. National Security and Strategic Imperatives for Ratification: Hearing Before the S. Comm. on Foreign Rels.*, 112th Cong. 7 (2012) (statement of Hillary Rodham Clinton, Sec’y, U.S. Dep’t State) (“Now as a nonparty to the Convention, we have to rely on what is called customary international law as a legal basis for invoking and enforcing these norms.”); *The Law of the Sea Convention (Treaty Doc. 103-39): The U.S. National Security and Strategic Imperatives for Ratification: Hearing Before the S. Comm. on Foreign Rels.*, 112th Cong. 20 (2012) (statement of Leon Panetta, Sec’y, U.S. Dep’t Def.); *The Law of the Sea Convention (Treaty Doc. 103-39): The U.S. National Security and Strategic Imperatives for Ratification: Hearing Before the S. Comm. on Foreign Relations*, 112th Cong. 22 (2012) (statement of Martin E. Dempsey, Chairman, U.S. Joint Chiefs Staff). These statements and others from the congressional debate over whether to ratify the UNCLOS show that, although the U.S. Senate has not yet provided advice and consent on the treaty, the United States still maintains Reagan’s policy that the UNCLOS reflects binding customary international law.

76. The provisions relevant to this incident will be discussed in more detail below. For general discussion of customary international law of the sea, see generally Said Mahmoudi, *Customary International Law and Transit Passage*, 20 OCEAN DEV. & INT’L L. 157 (1989). See also JIA, *supra* note 51, at 168–208 (discussing transit passage as custom). But see, J. Ashley Roach, *Today’s Customary International Law of the Sea*, 45 OCEAN DEV. & INT’L L. 239 (2014) (analyzing the mixed reviews from some scholars in this field and arguing that the regime of transit passage has yet to become customary international law).

It is . . . the understanding of the Islamic Republic of Iran that:

1) Notwithstanding the intended character of the Convention being one of general application and of law making nature, certain of its provisions are merely product of *quid pro quo* which do not necessarily purport to codify the existing customs or established usage (practice) regarded as having an obligatory character. Therefore, it seems natural and in harmony with article 34 of the 1969 Vienna Convention on the Law of Treaties, that only state parties to the Law of the Sea Convention shall be entitled to benefit from the contractual rights created therein.

The above considerations pertain specifically (but not exclusively) to the following:

—The right of Transit passage through straits used for international navigation (Part III, Section 2, article 38).⁷⁷

In making this statement, Iran made clear that it considers transit passage a contractual right only available to ships sailing under the flag of a state that is party to the UNCLOS.⁷⁸ Over the past forty years, Iran has remained steadfast in its position.⁷⁹ Iran's main challenges to recognizing the right of transit passage over the past forty years have been to the United States' assertion that transit passage rights apply to U.S. naval ships.⁸⁰

On the other side of the Strait, Oman recognized and agreed to the establishment of the right of transit passage in full when it signed the UNCLOS:

It is the understanding of the Government of the Sultanate of Oman that the application of the provisions of articles 19, 25, 34, 38 and 45 of the Convention does not preclude a coastal State from taking such appropriate measures as are necessary to protect its interest of peace and security.⁸¹

77. UNCLOS, *supra* note 47. The online Depository record includes all of the signing statements and declarations of each party. Iran's signing statement can be found on page 20.

78. Kraska, *supra* note 44, at 327–28.

79. *Id.*

80. *Id.*

81. UNCLOS, *supra* note 47. The online Depository record includes all of the signing statements and declarations of each party. Oman's signing statement can be found on page 26.

This signing statement means that in the portion of the Strait that lies within Omani territorial waters, all ships navigating through the entrance and exit of the Strait in the Gulf of Oman will enjoy the right of transit passage, subject to potential regulations on the basis of peace and security.

In light of this history of recognition and widespread state practice, it seems clear that the regime of transit passage governs the Strait of Hormuz, at least for ships sailing under the flag of a state that is party to the UNCLOS. With this understanding of transit passage in mind, this Note will now turn to the specific rights, duties, and obligations for ships navigating through straits and the territorial waters of coastal states nearby.

2. Rights and Obligations Under the Regime of Transit Passage

Under the regime of transit passage, ships exercising the right of transit passage and coastal states have certain duties and obligations under Articles 38 through 44 of the UNCLOS. Ships exercising their right of transit passage must proceed through the Strait without delay, refrain from threat or use of force against the sovereignty of coastal states or in violation of the UN Charter,⁸² and “comply with generally accepted international regulations, procedures and practices for safety at sea.”⁸³ They must also comply with traffic separation schemes or sea lanes designated by the coastal states and with any national laws of the coastal states promulgated in accordance with the UNCLOS.⁸⁴ Designations of traffic separation schemes and sea lanes are especially important when the navigable parts of waterways are narrow and

82. *Id.* art. 39.

83. *Id.* art. 39(2)(a).

Duties of ships and aircraft during transit passage

1. Ships and aircraft, while exercising the right of transit passage, shall: (a) proceed without delay through or over the strait; (b) refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of States bordering the strait, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations; (c) refrain from any activities other than those incident to their normal modes of continuous and expeditious transit unless rendered necessary by *force majeure* or by distress; (d) comply with other relevant provisions of this Part.

2. Ships in transit passage shall: (a) comply with generally accepted international regulations, procedures and practices for safety at sea, including the International Regulations for Preventing Collisions at Sea; (b) comply with generally accepted international regulations, procedures and practices for the prevention, reduction and control of pollution from ships.”

Id.

84. *Id.* art. 42(4).

heavily trafficked, as they promote safe passage. In addition to the coastal states involved, the International Maritime Organization (IMO) plays a crucial role in creating and adopting the traffic separation schemes.⁸⁵

In accordance with Article 41 of the UNCLOS, Oman and Iran have designated traffic separation schemes and sea lanes that ships must follow when navigating through the Strait of Hormuz. There are two traffic separation schemes governing the path of navigation through the Strait of Hormuz.⁸⁶ The first scheme, which is entirely within Omani territorial waters, delineates the entrance and exit paths for ships traveling between the Sea of Oman and the Strait of Hormuz.⁸⁷ The second scheme, which is entirely within Iranian territorial waters,⁸⁸ delineates the entrance and exit paths for ships sailing between the Persian Gulf and the Strait of Hormuz.

In addition to designating and regulating traffic schemes through the Strait, coastal states maintain their sovereign rights over these waters to varying degrees.⁸⁹ As mentioned above, the right of transit passage can be regulated by coastal states, so long as the national laws and regulations are promulgated in accordance with the law of the sea. Article 42 of the UNCLOS lays out the rights and obligations coastal states have with regard to ships passing through their waters and in ensuring the safety and security of their waters.⁹⁰ Coastal states may adopt laws and regulations relating to transit passage in areas such as navigational safety, maritime traffic, prevention and control of pollution, and fishing.⁹¹ Coastal states may also require ships in transit passage to follow their national customs, including fiscal,

85. See CAMINOS & COGLIATI-BANTZ, *supra* note 49, at 235–42. See also JIA, *supra* note 51, at 154 (discussing the debate over article 39(2) as it relates to IMO conventions and whether violation of 39(2)(b) by breaching the IMO conventions deprives a ship of the right of transit passage).

86. Hugh F. Lynch, *Freedom of Navigation in the Persian Gulf and the Strait of Hormuz*, in SECURITY FLASHPOINTS: OIL, ISLANDS, SEA ACCESS AND MILITARY CONFRONTATION 315, 317 (Myron H. Nordquist & John Norton Moore eds., 1998).

87. *Id.*

88. *Id.* It should be noted that the second traffic separation scheme, known as the West Traffic Separation Scheme, which serves as the entrance and exit to the Persian Gulf, lies partially in disputed waters between the UAE and Iran and partially in Iranian territorial waters. However, this debate does not impact this Note's analysis as the *Stena Impero* was intercepted while passing through the Traffic Separation Scheme in Omani waters.

89. Tullio Treves, *Coastal States' Rights in the Maritime Areas Under UNCLOS*, 12 REVISTA DE DIREITO INTERNACIONAL [BRAZ. J. INT'L L.] 39, 41 (2015).

90. UNCLOS, *supra* note 47, art. 42.

91. *Id.*

immigration, or sanitary laws and regulations.⁹² However, when promulgating such regulations or laws, coastal states must not hamper or suspend the right of transit passage, and must also meet certain notice requirements regarding known dangers to navigation or changes in their relevant laws and regulations.⁹³

B. Responsibilities of States for Internationally Wrongful Acts

Iran attempted to justify its seizure of the *Stena Impero* as a routine law enforcement action in response to the ship's alleged breach of international regulations and Omani national laws governing the traffic separation scheme.⁹⁴ Meanwhile, the United Kingdom contends that Iran's seizure of the *Stena Impero* was actually an act of retaliation for the seizure of the *Grace I*. Specifically, the United Kingdom asserts that Iran "tried to present this as a tit-for-tat incident."⁹⁵ Given that Iran claimed that the British seizure of the *Grace I* in Gibraltar was in violation of international law and an act of piracy, the United Kingdom's argument seems the more plausible.⁹⁶ However, in order to evaluate Iran's actions and their justifications, this Note must turn to the laws relating to responsibility for internationally wrongful acts and the use of countermeasures.

In general, the use of force is not allowed under international law.⁹⁷ The UN Charter specifically requires that all Member States "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."⁹⁸ In certain circumstances, however, the use of force and the invocation of self-defense and collective defense is permissible.⁹⁹ For example, chapter VII of the UN Charter provides for actions that can be taken in response to threats to peace or acts of aggression.¹⁰⁰

92. *Id.*

93. *Id.* art. 44.

94. Chargé d'affaires a.i. of the Permanent Mission of the Islamic Republic of Iran, *supra* note 8, at 1.

95. Hunt, *supra* note 13.

96. *Iranian Official Threatens to Seize British Oil Tanker*, *supra* note 28.

97. U.N. Charter art. 2, ¶ 4.

98. *Id.*

99. *Id.* ch. VII.

100. *Id.*

The same chapter also preserves the right of individual states to self-defense.¹⁰¹

Another self-help remedy that is allowed under customary international law is the right to use force, within certain limits and conditions, to respond to internationally wrongful acts that take place outside the context of armed conflict.¹⁰² This form of self-help, termed “countermeasures,” allows states to take certain measures to “vindicate their rights” when they have been wronged and “procure cessation and reparation” from the responsible state.¹⁰³ Given the legal limits on the use of countermeasures, countermeasures are distinct from reprisals or retaliatory acts, as used colloquially.¹⁰⁴ In 2001, the International Law Commission (ILC) put together draft articles of the customary international law of state responsibility for internationally wrongful acts that govern the use of countermeasures, when they can be used, how long they can last for, and other restrictions.¹⁰⁵ Since then, these articles have achieved widespread approval in state practice and in ICJ decisions.¹⁰⁶

Under the customary international law on countermeasures, an injured state may only use countermeasures against a state that is (1) responsible for (2) an internationally wrongful act (3) in order to induce the responsible state to comply with its international obligations in relation to that specific wrong or incident.¹⁰⁷ At the outset, a state is responsible for every internationally wrongful act that is attributable to it.¹⁰⁸ Therefore, we must first look to the definition of an

101. *Id.* art. 51 (“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.”).

102. Int’l L. Comm’n, Rep. on the Work of its Fifty-Third Session, U.N. Doc. A/56/10, at 128, (2001).

103. *Id.*

104. *Id.* at 128 (“As to terminology, traditionally the term ‘reprisals’ was used to cover otherwise unlawful action, taken by way of self-help in response to a breach. More recently, the term ‘reprisals’ has been limited to action taken in time of international armed conflict; i.e. it has been taken as equivalent to belligerent reprisals.”) (internal citations omitted).

105. James Crawford, *Articles on Responsibility of States for Internationally Wrongful Acts*, U.N. AUDIOVISUAL LIBR. INT’L L. 1, 8, https://legal.un.org/avl/pdf/ha/rsiwa/rsiwa_e.pdf.

106. *Id.* at 2.

107. Int’l L. Comm’n, Rep. on the Work of its Fifty-Third Session, *supra* note 102, at 129.

108. *Id.* at 32 (“Every internationally wrongful act of a State entails the international responsibility of the state.”).

internationally wrongful act that is attributable to the state.¹⁰⁹ For conduct to be considered an internationally wrongful act, it must: (a) be “attributable to the state under international law; and (b) constitute[] a breach of an international obligation of the state.”¹¹⁰ To be attributable to the state under international law, the conduct must involve an action or omission taken by an entity, organization, or persons acting as agents or representatives of the state.¹¹¹ Notably, regardless of domestic law, international law imputes “the conduct of certain institutions performing public functions and exercising public powers (e.g. the police)” to the state.¹¹² Importantly, however, the conduct of private persons or private entities is *not* attributable to the state at the international level.¹¹³

Next, a breach of an international obligation occurs “when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.”¹¹⁴ This second aspect of attribution, breaches of international obligations, is sometimes couched in terms of “non-execution of international obligations,” “acts incompatible with international obligations,” “violation of an international obligation,” or “breach of an engagement.”¹¹⁵ It includes violations of obligations created under treaties, as well as customary international law.¹¹⁶ If the target state is responsible for an internationally wrongful act as outlined above, then the injured state can take countermeasures to induce the responsible state to comply with the international obligations or to stop the wrongful act from continuing.¹¹⁷

However, an injured state’s right to take countermeasures is not without limits. First—unless urgently necessary to preserve its rights—an injured state may not undertake countermeasures without first notifying the responsible state of its intent to take countermeasures and offering to negotiate.¹¹⁸ Next, an injured state cannot take

109. *Id.*

110. *Id.* at 34.

111. *Id.* at 35; *see also id.* at 38 (“The general rule is that the only conduct attributed to the State at the international level is that of its organs of government or of others who have acted under the direction, instigation or control of those organs, i.e., as agents of the State.”).

112. *Id.* at 39.

113. *Id.* at 38.

114. *Id.* at 54.

115. *Id.* at 35.

116. *Id.* at 55 (“Obligations may arise for a State by a treaty and by a rule of customary international law or by a treaty and a unilateral act.”).

117. *Id.* at 129.

118. *Id.* at 134–35.

countermeasures—or must stop them if already under way—“(a) if the internationally wrongful act has ceased; and (b) the dispute is pending before a court or tribunal which has the authority to make decisions binding on the parties.”¹¹⁹ Finally, countermeasures must be proportional—that is, “commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question.”¹²⁰ In determining whether a countermeasure is proportional, international courts look to the injury suffered, the importance of the principle of international law involved, and the necessity of the countermeasure to induce compliance with international law.¹²¹

Customary international law also allows a state other than the injured state to take lawful countermeasures in response to an international wrong.¹²² “Any State other than an injured State is entitled to invoke the responsibility of another State” for an internationally wrongful act if one of two conditions is met: “(a) the obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group; or (b) the obligation breached is owed to the international community as a whole.”¹²³ If one of these conditions is met, a state can employ countermeasures just as an injured state would.¹²⁴

Throughout the broader context of the 2019 Gulf Crisis, Iran, Sweden, Oman, and the United Kingdom invoked the various rights and duties from overlapping frameworks of international law when discussing Iran’s seizure of the *Stena Impero*. This includes how Iran justified its actions, how the negotiations over the ship and the release of its crew unfolded, and how evidence was gathered to support or refute claims. Therefore, to evaluate these claims and potential avenues for settlement, this Note next seeks to provide an understanding of the surrounding political conflict.

119. *Id.* at 135; *see also id.* at 137 (“Countermeasures shall be terminated as soon as the responsible State has complied with its obligations under Part Two in relations to the internationally wrongful act.”).

120. *Id.* at 134.

121. *Id.* at 135.

122. *Id.* at 137.

123. *Id.* at 126.

124. *Id.* at 137.

II. UNCHARTED WATERS—NEW LEGAL ISSUES PRESENTED BY THE 2019 GULF CRISIS

Generally speaking, Iran and the West—specifically, the United States—have been in conflict, on and off, since the 1980s.¹²⁵ However, the roots of the 2019 Gulf Crisis and the seizure of the *Stena Impero* in particular can be traced back to the conflict between the United States and Iran over the Iran Nuclear Deal.

In October 2017, President Trump announced that he would not renew certain certifications related to Iran’s compliance under the deal.¹²⁶ Then in January 2018, the President again declined to certify Iran’s compliance with the provisions of the agreement.¹²⁷ While these actions were in contravention of the United States’ obligations under the agreement, they did not automatically terminate U.S. participation in the agreement—though the President stated he may do so in the future.¹²⁸ Indeed, a few months later in May 2018, the United States officially announced its withdrawal from the Iran Nuclear Deal and re-imposed sanctions that had been conditionally lifted.¹²⁹ Because it implemented the deal through an executive agreement and political commitment, the United States has maintained that it was not bound by the Iran Nuclear Deal, and therefore, its withdrawal from the agreement was lawful.¹³⁰ However, Iran and the European parties to the deal have argued that the Security Council Resolution implementing the deal and

125. The United States and Iran have a long history of conflict since the middle of the twentieth century, which includes violations of international law by both states. This history involves the U.S. installation of the Shah of Iran, the Iranian Hostage Crisis, the above-mentioned Tanker War, and heightened tensions in the Gulf Region with references to Iran’s nuclear program. See S.H. Amin, *The Regime of International Straits: Legal Implications for the Strait of Hormuz*, 12 J. MAR. L. & COM. 387, 392–97 (1981) (discussing the history of international and regional conflict in the Strait of Hormuz); see generally Kirchner & Salinaité, *supra* note 44.

126. See STEPHEN P. MULLIGAN, CONG. RSCH. SERV., R44761, WITHDRAWAL FROM INTERNATIONAL AGREEMENTS: LEGAL FRAMEWORK, THE PARIS AGREEMENT, AND THE IRAN NUCLEAR AGREEMENT 20 (2018).

127. *Id.*

128. *Id.*

129. *President Donald J. Trump Is Ending United States Participation in an Unacceptable Iran Deal*, WHITE HOUSE (May 8, 2018), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-ending-united-states-participation-unacceptable-iran-deal/> [<https://perma.cc/KBZ5-E6UJ>].

130. See MULLIGAN, *supra* note 126, at 21; see also Sassan Seyrafi & Amir-Hossein Ranjbarian, *The US’ Withdrawal from the Iran Nuclear Agreement: A Legal Analysis with Special Reference to the Denuclearization of the Korean Peninsula*, 11 J.E. ASIA & INT’L L. 267, 279 (2018).

lifting Security Council sanctions—UN Security Council Resolution 2231—made the agreement legally binding on all UN member states, including the United States.¹³¹

And, indeed, there are strong arguments that the United States not only breached its obligations under international law by violating the Security Council Resolution, but that it also violated the principle of good faith by “reneg[ing] on its commitments under the agreement after Iran implemented its side of the bargain.”¹³² This is supported by the fact that the United States withdrew from the deal and re-imposed sanctions without following the relevant dispute settlement procedures.¹³³ These new sanctions specifically targeted “critical sectors of Iran’s economy,” like its oil industry.¹³⁴ The United States also demanded that all nations end imports of Iranian oil by November 2018.¹³⁵ Iran responded to the U.S. withdrawal and subsequent sanctions by accusing the United States of violating the agreement and calling on European powers to help mitigate the effects of the sanctions.¹³⁶ In the immediate aftermath of U.S. withdrawal, Iran announced that it would work with the remaining parties to keep the agreement intact.¹³⁷

However, over the course of 2018 and the beginning of 2019, the United States continued to increase and expand sanctions against Iran.¹³⁸ In response to American calls for sanctions over the summer, Iran threatened to stop complying with the International Atomic

131. See KENNETH KATZMAN ET AL., CONG. RSCH. SERV., R44942, U.S. DECISION TO CEASE IMPLEMENTING THE IRAN NUCLEAR AGREEMENT 3 (2018); see also *World Leaders React to US Withdrawal from Iranian Nuclear Deal*, AL JAZEERA (May 9, 2018), <https://www.aljazeera.com/news/2018/5/9/world-leaders-react-to-us-withdrawal-from-iranian-nuclear-deal> [<https://perma.cc/LDM3-SM2F>].

132. Seyrafi & Ranjbarian, *supra* note 130, at 280–81.

133. *Id.* at 281.

134. *President Donald J. Trump Is Ending United States Participation in an Unacceptable Iran Deal*, *supra* note 129.

135. Saeed Kamali Dehghan, *Iran Threatens to Block Strait of Hormuz over US Oil Sanctions*, GUARDIAN (July 5, 2018, 1:12 PM), <https://www.theguardian.com/world/2018/jul/05/iran-retaliate-us-oil-threats-eu-visit-hassan-rouhani-trump> [<https://perma.cc/YT4J-NK3R>].

136. *Iran and the Crisis in the Gulf Explained*, BBC NEWS (Aug. 19, 2019), <https://www.bbc.com/news/world-middle-east-49069083> [<https://perma.cc/34GH-F5US>].

137. See KATZMAN ET AL., *supra* note 131, at 3–4.

138. See Reimposing Certain Sanctions with Respect to Iran, 83 Fed. Reg. 38,939 (Aug. 7, 2018); Imposing Sanctions with Respect to the Iron, Steel, Aluminum, and Copper Sectors of Iran, 84 Fed. Reg. 20,761 (May 10, 2019); Imposing Sanctions With Respect to Iran, 84 Fed. Reg. 30,573 (June 26, 2019).

Energy Agency (IAEA) and to disrupt regional oil shipments.¹³⁹ On this point, the IRGC Commander Mohammad Ali Jafri brought the Strait of Hormuz into the center of the conflict surrounding the sanctions, stating that Iran “will make the enemy understand that either everyone can use the Strait of Hormuz or no one.”¹⁴⁰

A. *The Timeline of the 2019 Gulf Crisis*

The 2019 Gulf Crisis began in the spring of 2019, when tensions between Iran and the West rose to new levels in the Gulf Region. On May 8, 2019, President Trump issued an Executive Order imposing more sanctions on Iran as a part of his administration’s policy to deny Iran “all paths” to obtaining a nuclear weapon and to counter its influence in the Middle East.¹⁴¹ On May 12, 2019, four oil tankers were attacked in the Gulf of Oman.¹⁴² The UN representative for Saudi Arabia and then-U.S. National Security Advisor John Bolton both accused Iran of carrying out the attacks.¹⁴³ Iran denied the allegations.¹⁴⁴ A month later, on June 13, two more oil tankers were attacked in international waters in the Gulf of Oman.¹⁴⁵ The two tankers were nineteen and twenty-one nautical miles off the coast of Iran, respectively, and within Omani territorial waters when they were attacked.¹⁴⁶ Again, the United States accused Iran of committing the attacks.¹⁴⁷ Then, on June 20, the IRGC shot down an American drone over the Strait of Hormuz.¹⁴⁸ Iran claimed the drone violated Iranian airspace, while the United States claimed the drone was flying over international

139. Dehghan, *supra* note 135.

140. *Id.*

141. Imposing Sanctions with Respect to the Iron, Steel, Aluminum, and Copper Sectors of Iran, 84 Fed. Reg. 20,761.

142. *Gulf of Oman Tanker Attacks: What We Know*, *supra* note 29. Two of the tankers were Saudi Arabian-flagged vessels, one was Norway-flagged, and the last was sailing under the flag of the United Arab Emirates.

143. *Id.*

144. *Iranian Official Threatens to Seize British Oil Tanker*, *supra* note 28.

145. *Gulf of Oman Tanker Attacks: What We Know*, *supra* note 29. One of the vessels was sailing under the flag of the Marshall Islands, the other under Panama’s.

146. *Id.*

147. *Secretary of State Michael R. Pompeo Remarks to the Press*, U.S. DEP’T STATE (June 13, 2019), <https://www.state.gov/secretary-of-state-michael-r-pompeo-remarks-to-the-press/> [<https://perma.cc/E4QP-JVNX>].

148. *Strait of Hormuz: US Confirms Drone Shot Down by Iran*, BBC NEWS (June 20, 2019), <https://www.bbc.com/news/world-middle-east-48700965> [<https://perma.cc/7TVS-H2EU>].

waters.¹⁴⁹ In the days following this incident, the United States imposed more sanctions against Iran.¹⁵⁰ Specifically, on July 24, 2019, the United States imposed sanctions on “the Supreme Leader of Iran and the Worst Elements of the Iranian Regime” because Iran had “escalated its aggression toward the United States in recent days,” which, to the United States, included each of the preceding attacks in the Strait of Hormuz.¹⁵¹

Just over a week later, on July 4, port authorities and British Marines stationed in Gibraltar detained an Iranian oil tanker bound for Syria. The United Kingdom and Gibraltar claimed that the seized Iranian tanker, the *Grace I*, was transporting oil to a Syrian refinery that was subject to EU sanctions.¹⁵² The Iranian Foreign Ministry called the seizure in Gibraltar a “form of piracy” and an “illegal seizure.”¹⁵³ The next day, Iran threatened to seize a British tanker as retaliation if the British did not release the *Grace I*.¹⁵⁴ Iran also breached another commitment under the Iran Nuclear Deal by beginning to enrich uranium to higher-than-allowed levels under the deal and again called on European nations to step in and help Iran against U.S. sanctions.¹⁵⁵

On July 11, the IRGC attempted to intercept and seize the British-flagged *British Heritage* tanker as it navigated from the Persian Gulf into the Strait of Hormuz.¹⁵⁶ The IRGC only abandoned the chase

149. *Id.*

150. *President Donald J. Trump Is Imposing Sanctions on the Supreme Leader of Iran and the Worst Elements of the Iranian Regime*, WHITE HOUSE (June 24, 2019), <https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-imposing-sanctions-supreme-leader-iran-worst-elements-iranian-regime/> [<https://perma.cc/FGB6-7PY7>].

151. *Id.*; see also *Treasury Targets Senior IRGC Commanders Behind Iran’s Destructive and Destabilizing Activities*, U.S. DEP’T TREASURY (June 24, 2019), <http://home.treasury.gov/news/press-releases/sm716> [<https://perma.cc/HX56-9M5V>] (“‘The United States is targeting those responsible for effectuating the Iranian regime’s destructive influence in the Middle East. IRGC commanders are responsible for the Iranian regime’s provocative attacks orchestrated in internationally recognized waters and airspace, as well as Iran’s malign activities in Syria,’ said Treasury Secretary Steven T. Mnuchin.”).

152. *Oil Tanker Bound for Syria Detained in Gibraltar*, *supra* note 31.

153. *Iranian Official Threatens to Seize British Oil Tanker*, *supra* note 28.

154. *Id.* (“Mr Rezaei—a member of a council that advises the Supreme Leader, Ayatollah Khamenei—said, in a tweet: ‘If Britain does not release the Iranian oil tanker, it is the authorities’ duty to seize a British oil tanker.’”).

155. *Iran Nuclear Deal: Government Announces Enrichment Breach*, BBC NEWS (July 7, 2019), <https://www.bbc.com/news/world-middle-east-48899243> [<https://perma.cc/EL3D-MWZ7>].

156. *Threat Level Raised to ‘Critical’ for UK Ships in Iranian Waters*, BBC NEWS (July 11, 2019), <https://www.bbc.com/news/uk-48956547> [<https://perma.cc/F424-Y8AN>].

after a British warship that was trailing the oil tanker moved between the three IRGC boats and the tanker.¹⁵⁷ Then, on July 19, the IRGC made good on its threat of retaliation by seizing the *Stena Impero*.¹⁵⁸ Following the seizure of the *Stena Impero*, Iran brought the Iran Nuclear Deal to the forefront of the Tanker Crisis by forcing the United Kingdom to the negotiating table in Vienna—both to secure the release of the *Grace I* and to help re-negotiate the Iran Nuclear Deal.¹⁵⁹ Despite attempts at negotiations, tensions ran high in the region, with the status of the *Stena Impero* and the *Grace I* unchanged.¹⁶⁰ In August, the United Kingdom joined the United States' coalition to protect shipping in the Strait.¹⁶¹ Shortly thereafter, Iran seized another oil tanker in the Persian Gulf, this time an Iraqi-flagged ship, and again justified its actions as a routine law enforcement matter.¹⁶²

Over the next two weeks, negotiations related to the release of the *Stena Impero* continued between Iran, the United Kingdom, Sweden, and Oman. Then, on August 15, the Supreme Court of Gibraltar ordered the release of the *Grace I*.¹⁶³ Though the *Grace I* was released, the Iranians continued to detain the *Stena Impero* and its crew.¹⁶⁴ Iran held the ship and crew in Bandar Abbas until early September, when it released seven non-essential members of the crew on humanitarian grounds.¹⁶⁵ Finally, two weeks later on September 27, after more negotiations and Iran's seizure of yet another oil tanker in

157. *Id.*

158. *Iran Tanker Seizure: May Chairs Cobra Meeting on Crisis*, *supra* note 7.

159. Steven Erlanger, *Iran Links British Seizure of Oil Tanker to Ailing Nuclear Deal*, N.Y. TIMES (July 28, 2019), <https://www.nytimes.com/2019/07/28/world/europe/iran-tanker-britain-nuclear.html> [<https://perma.cc/635Z-RLCK>]. On July 28, following the Vienna discussions related to the seized tankers, Iran's deputy foreign minister stated that “[s]ince Iran is entitled to export its oil according to the J.C.P.O.A., any impediment in the way of Iran's export of oil is actually against the J.C.P.O.A.” *Id.*

160. *Id.*

161. Benjamin Mueller, *U.K. Joins U.S.-Led Coalition Effort to Protect Ships*, N.Y. TIMES (Aug. 5, 2019), <https://www.nytimes.com/2019/08/05/world/middleeast/britain-iran-strait-of-hormuz.html> [<https://perma.cc/9H5J-MTQM>].

162. *Iran 'Seizes Iraqi Tanker in Gulf for Smuggling Fuel'*, *supra* note 41.

163. Sara Mazloumsaki et al., *Gibraltar Defies US and Releases Seized Iranian Tanker Grace I*, CNN (Aug. 16, 2019), <https://www.cnn.com/2019/08/15/middleeast/gibraltar-grace-1-oil-tanker-gbr-intl/index.html> [<https://perma.cc/PUD3-HUAS>]. The following day, the Court also denied the U.S. request to extend the detention of the ship and declined to act upon the U.S. warrant to detain the ship further.

164. *Stena Impero: Iran to Free Seven Crew of Seized British Tanker*, BBC NEWS (Sept. 4, 2019), <https://www.bbc.com/news/world-middle-east-49577650> [<https://perma.cc/288L-DQFT>].

165. *Id.*

the Persian Gulf, Iran released the *Stena Impero* and its remaining crew.¹⁶⁶ As demonstrated, the full context of the 2019 Gulf Crisis helps clarify the motivations for Iran's actions here. The seizure of the *Stena Impero* and the pattern of targeting oil tankers is linked to the broader conflict between Iran and the West, as well as the negotiations over the Iran Nuclear Deal.

B. New Legal and Political Questions

It is precisely because of this broader political context that the 2019 Gulf Crisis and the seizure of the *Stena Impero* present legal and political questions that differ from those of past conflicts between Iran and the West in the Strait of Hormuz. Iran has employed this strategy of targeting oil tankers in the Strait or adjacent gulfs to retaliate against enemies or gain leverage in negotiations before. Indeed, Iran first targeted oil tankers in the Strait and threatened to close it to shipping nearly forty years ago during the Iran-Iraq War.¹⁶⁷ Between 1984 and 1988 and within the context of the Iran-Iraq War, Iran, Iraq, and later the United States were involved in what became known as the Tanker War, a naval conflict within the broader Iran-Iraq War.¹⁶⁸ During this Tanker War, both Iran and Iraq breached the laws of naval warfare and of armed conflict by targeting, seizing, and intentionally destroying neutral oil tankers in the Persian Gulf.¹⁶⁹ The resulting UN Security Council resolutions forced the international community to grapple with the overlapping humanitarian laws and laws of the sea governing navigation, shipping, and naval warfare in the Strait.¹⁷⁰

While it may seem that history is repeating itself, these attacks, and specifically the seizure of the *Stena Impero*, present new and complicated legal issues. First, the political and diplomatic context surrounding the seizure of the *Stena Impero* and the 2019 Gulf Crisis is quite different from the Tanker War and related diplomatic disputes in the 1980s. While there were multiple attacks on tankers during the 2019 Gulf Crisis, as well as an attack on Saudi oil fields,¹⁷¹ the 2019 Gulf Crisis did not occur within the broader context of a war.

166. *Stena Impero: Seized British Tanker Leaves Iran's Waters*, *supra* note 20.

167. Boleslaw Adam Boczek, *The Law of Maritime Warfare and Neutrality in the Gulf War*, in *THE PERSIAN GULF WAR: LESSONS FOR STRATEGY, LAW, AND DIPLOMACY* 173, 173–74 (Christopher C. Joyner ed., 1990). The Iran-Iraq War lasted from 1980 to 1988.

168. *Id.* at 174–75.

169. *Id.* at 183–85.

170. *See generally* S.C. Res. 540 (Oct. 10, 1983); S.C. Res. 552 (June 1, 1984).

171. *See supra* Section II.A.

Although political and diplomatic relations were strained and tensions were high between Iran and the West, 2019 was still peacetime. As such, the laws of naval warfare, neutrality, and reprisals that were invoked during the Tanker War are not directly applicable in the current conflict.¹⁷²

Additionally, the laws of the sea and of countermeasures have evolved since the Tanker War. At the time of the Tanker War, the UNCLOS had not yet entered into force.¹⁷³ As a result, the incident did not involve an evaluation of transit passage rights.¹⁷⁴ Decades later, the UNCLOS, and specifically the regime of transit passage, provides a new framework for evaluating conflicts and seizures of oil tankers in the Strait of Hormuz. With the ILC's promulgation and acceptance of the customary international law of countermeasures,¹⁷⁵ there is also a new framework to consider the appropriateness of countermeasures taken outside the context of war. The combination of the evolution of the laws governing navigation and activities in the Strait and the new legal issues presented by the political and diplomatic context surrounding the 2019 Gulf Crisis highlight the importance of evaluating the legality of Iran's seizure of the *Stena Impero* and the different recourses available to hold Iran accountable or to prevent repeat action.

Having situated the seizure of the *Stena Impero* and the 2019 Gulf Crisis within this broader historical context, this Note will next evaluate Iran's actions and justifications therefor under the regime of transit passage and the laws on state responsibility for internationally wrongful acts. This Note will argue: (1) that Iran violated the *Stena Impero*'s right to transit passage; and (2) that Iran cannot credibly claim that seizing the *Stena Impero* and her crew was a legitimate countermeasure. This Note will concede, however, that prospects for effectively holding Iran accountable, by either the United Kingdom or Sweden, are limited.

172. See generally S.C. Res. 540, *supra* note 170; S.C. Res. 552, *supra* note 170. See also Int'l L. Comm'n, Rep. on the Work of its Fifty-Third Session, *supra* note 102, at 128 ("More recently, the term 'reprisals' has been limited to action taken in time of international armed conflict; i.e. it has been taken as equivalent to belligerent reprisals.").

173. UNCLOS, *supra* note 47. The Depositary record includes the date the Convention entered into force.

174. See generally JIA, *supra* note 51, at 129–37, 153–59 (detailing the history of drafts and negotiations).

175. Crawford, *supra* note 105.

III. IRAN'S SEIZURE OF THE *STENA IMPERO* WAS RETALIATORY AND VIOLATED INTERNATIONAL LAW

Iran unjustifiably violated the *Stena Impero*'s right to transit passage when it surrounded and seized the ship. The actions taken by Iran and the IRGC were not in response to a violation of international maritime regulations or violations of the IMO and Omani transit separation scheme, as Iran claimed. Nor can Iran's actions in seizing the ship be justified as a lawful use of countermeasures, as neither the Royal Marines' seizure of the *Grace I* nor the *Stena Impero*'s alleged violations constituted an internationally wrongful act that could be attributed to the United Kingdom. And, even if either did, Iran did not follow the requisite procedural requirements to permissibly employ a countermeasure and did not respond in a proportional manner. Rather, Iran's seizure of the *Stena Impero* was an unlawful act of retaliation in response to the British seizure of the Iranian oil tanker, the *Grace I*, in Gibraltar.

A. Iran's Actions Violated the *Stena Impero*'s Right to Transit Passage

When the *Stena Impero* was intercepted by IRGC vessels, it was entering the Strait of Hormuz, navigating through sea lanes connecting the Gulf of Oman and the Strait.¹⁷⁶ As mentioned above, because the *Stena Impero* is a British-flagged ship, she was entitled to benefit from the right of transit passage while navigating through the Strait of Hormuz, whether she was passing through Iranian or Omani territorial waters.¹⁷⁷ Therefore, the *Stena Impero* was entitled to unimpeded passage throughout the Strait so long as it complied with international regulations and Omani and Iranian national laws promulgated in accordance with the UNCLOS.¹⁷⁸

Because the IRGC intercepted the *Stena Impero* as it was navigating through the first traffic separation scheme, within Omani waters, the ship was subject to Omani regulations and national laws at the

176. See Chargé d'affaires a.i. of the Permanent Mission of the Islamic Republic of Iran, *supra* note 8, at 1; Chargé d'affaires a.i. of the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland, *supra* note 5, at 1.

177. See discussion of Transit Passage, *supra* Part I.

178. UNCLOS, *supra* note 47, art. 39.

time.¹⁷⁹ Had the *Stena Impero* actually violated maritime safety regulations or entered the Strait through the designated “exit,” Oman would have had jurisdiction to intercept the *Stena Impero* and handle any violations.¹⁸⁰ Oman claims full sovereign jurisdiction over its half of the Strait,¹⁸¹ and as such Iran’s actions violated Omani territorial sovereignty.

However, even assuming Iran had jurisdiction to stop the *Stena Impero*, its claims are meritless. The first set of violations alleged by Iran was that the ship: (1) used the wrong sea lane to enter the Strait, (2) was not responding to messages or warnings and had its Automatic Identification System (AIS) turned off, and (3) collided with a fishing vessel.¹⁸² Iran also claimed that the alleged collision led to injuries and “polluted and damaged the marine environment in the Hormuz Strait.”¹⁸³ To support its claims, Iran submitted a report that was created by its own Ports and Maritime Organization that allegedly ordered the seizure.¹⁸⁴ In an attempt to provide further proof that this seizure was merely a “routine policing matter,” Iran cited its July 14 seizure of another oil tanker, the Panamanian-flagged *MT Riah*, in the Strait.¹⁸⁵ There, Iran specifically used the term “policing matter” to describe its actions.¹⁸⁶

These allegations were quickly refuted by the company that owns the *Stena Impero* and the British representatives to the UN, who stated that there was evidence that the ship’s AIS was switched on, publicly available, and verifiable.¹⁸⁷ In a press release issued on July 23, the *Stena Bulk* reiterated this point:

179. *Iran Seizes British Tanker in Strait of Hormuz*, *supra* note 1; Chargé d’affaires a.i. of the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland, *supra* note 5, at 1; Lynch, *supra* note 86, at 317.

180. Lynch, *supra* note 86, at 317.

181. UNCLOS, *supra* note 47. According to its signing statement, Oman “exercises full sovereignty over its territorial sea.” *Id.*

182. Chargé d’affaires a.i. of the Permanent Mission of the Islamic Republic of Iran, *supra* note 8, at 1; *see also Any Aggression Will Be Faced with Destruction, Seizure: Iran’s Military Chief*, *supra* note 10.

183. Chargé d’affaires a.i. of the Permanent Mission of the Islamic Republic of Iran, *supra* note 8, at 1.

184. *Id.*

185. *Id.* at 2.

186. *Id.*

187. Chargé d’affaires a.i. of the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland, *supra* note 5, at 1.

Stena Bulk and managers, Northern Marine Management, would like to emphasise that all necessary notifications to relevant authorities and organisations were made for the *Stena Impero*'s transit of the Strait of Hormuz, which was carried out in full compliance with all international maritime regulations.

At the time of the seizure, the vessel was within the inbound traffic separation scheme and out-with Iranian territorial waters with all required navigational equipment, including transponders, fully functioning, in compliance with maritime regulations.

We can confirm that we are not aware of, and nor is there any evidence of a collision involving the *Stena Impero*.¹⁸⁸

Moreover, Iran's comparison of this seizure to its seizure of the Panamanian-flagged *MT Riah* on July 14 actually detracts from its "evidence" of the *Stena Impero*'s alleged violation. The *MT Riah* seizure was allegedly the result of an Iranian response to distress calls, after which four IRGC ships determined the ship was actually smuggling Iranian oil into the United Arab Emirates.¹⁸⁹ However, the British and Stena Bulk question whether the *Stena Impero* seizure truly was a routine policing matter, as it came on the heels of Iran's threats to seize oil tankers in the Strait and an IRGC attempt to intercept and board a British tanker, the *British Heritage*.¹⁹⁰ Most importantly, there was no evidence supporting Iran's claims that the earlier *MT Riah* seizure actually involved a distress call—according to UAE officials, the *MT Riah* did not issue any distress calls.¹⁹¹ This fact undermines Iran's claim that the seizure of the *MT Riah* was a mere policing matter.

Instead, comparisons to the *MT Riah* seizure actually support the contention that the detention of the *Stena Impero* was unlawful. The IRGC employed nearly identical tactics in seizing both the *Stena*

188. *Statement - Stena Impero - 1600BST 23 July*, N. MARINE GRP. (July 23, 2019), <https://www.nmg-stena.com/news/company-statement-stena-impero/> [<https://perma.cc/X8BG-6Y5M>].

189. Chargé d'affaires a.i. of the Permanent Mission of the Islamic Republic of Iran, *supra* note 8; *see also* Erin Cunningham, *UAE-Based Oil Tanker Disappears in Iranian Waters in the Strait of Hormuz*, WASH. POST (July 16, 2019, 4:25 PM), https://www.washingtonpost.com/world/middle_east/uae-oil-tanker-disappears-in-persian-gulf-in-iranian-waters/2019/07/16/6a0463e2-a7b8-11e9-86dd-d7f0e60391e9_story.html [<https://perma.cc/G5MJ-XQL9>].

190. *See generally* Chargé d'affaires a.i. of the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland, *supra* note 5, at 1.

191. Cunningham, *supra* note 189.

Impero and the *MT Riah*. In both instances, the IRGC surrounded the tankers with three to four boats, claimed that distress calls had been issued when they had not, and diverted the ships into Iranian waters immediately after they encountered the IRGC.¹⁹²

The similarities between the seizure of the *MT Riah*, the *Stena Impero*, and other seized oil tankers,¹⁹³ together with the lack of evidence supporting a lawful purpose for the taking of these ships, undermine Iran's claims that the *Stena Impero* violated any international regulations or national laws relating to safety and navigation. Rather, this pattern shows that the Iranian use of the term "police action" is merely a pretext for or cover-up of its violation of transit passage rights. When the seizure of the *Stena Impero* is situated within this broader context, it shows a clear trend of Iran hampering the right to transit passage for oil tankers in the Gulf of Oman and the Strait of Hormuz, in contravention of international law.

B. Iran's Actions Amount to an Unlawful Countermeasure

Because Iran violated the *Stena Impero's* right to transit passage, its actions would have to be considered a permissible countermeasure in order to be legal. Though Iran did not claim its actions constituted a permissible countermeasure, it is worth analyzing the argument, as Iran did invoke similar language, such as "international wrongs," in order to justify its actions.¹⁹⁴ As a threshold matter, for Iran to invoke the ability to use a countermeasure, it must first prove that there was an internationally wrongful act that a *state* is responsible for.¹⁹⁵ Here, the two events that might be classified as internationally wrongful acts would be (1) the British seizure of the *Grace I* in Gibraltar or (2) the *Stena Impero's* alleged violations of international law.

However, neither of these events meets the requirements of an internationally wrongful act justifying permissible countermeasures. Admittedly, the seizure of the *Grace I* is attributable to the United

192. *Id.* See also *Radio Exchanges Reveal Iran-UK Confrontation as Ship Seized*, *supra* note 2.

193. See the discussion regarding the timeline of the 2019 Gulf Crisis, *supra* Section II.A.

194. *Iranian Official Threatens to Seize British Oil Tanker*, *supra* note 28; see also Chargé d'affaires a.i. of the Permanent Mission of the Islamic Republic of Iran, *supra* note 8, at 1; *Any Aggression Will Be Faced with Destruction, Seizure: Iran's Military Chief*, *supra* note 10.

195. Int'l L. Comm'n, Rep. on the Work of its Fifty-Third Session, *supra* note 102, at 34 (providing two requirements for identifying an internationally wrongful act: (1) the act or omission is attributable to the State under international law, and (2) constitutes a breach of an international obligation of the State).

Kingdom because it was conducted by the Royal Marines and the Gibraltar port and law enforcement agencies.¹⁹⁶ However, the act itself did not constitute a breach of international obligations.¹⁹⁷ Iran contends that the British seizure of the *Grace I* was an act of piracy and a violation of international law;¹⁹⁸ it was not. In 2011, the Council of the European Union (EU) decided on a series of restrictive measures against the Syrian Regime after the outbreak of the Syrian Civil War.¹⁹⁹ These measures included various sanctions targeting specific individuals and entities on the sanctions list, as well as sectoral restrictions, such as an oil embargo.²⁰⁰

In seizing the *Grace I*, the Gibraltar port and law enforcement agencies and the Royal Marines were enforcing EU sanctions against the Syria Regime.²⁰¹ In his statement on the seizure of the *Grace I*, the Chief Minister of Gibraltar stated that “[t]his action arose from information giving the Gibraltar Government reasonable grounds to believe that the vessel, the *Grace I*, was acting in breach of European Union sanctions against Syria.”²⁰² Specifically, after carrying out an investigation, Gibraltar authorities believed that the *Grace I* was carrying crude oil to the Baniyas Refinery in Syria, an entity on the EU Sanctions list.²⁰³ In compliance with EU Council Regulation No.

196. *Oil Tanker Bound for Syria Detained in Gibraltar*, *supra* note 31.

197. Int’l L. Comm’n, Rep. on the Work of its Fifty-Third Session, *supra* note 102, at 34 (detailing the two requirements for a wrongful act).

198. *Piracy in Gibraltar*, TEHRAN TIMES (July 5, 2019), <https://www.tehrantimes.com/news/437763/Piracy-in-Gibraltar> [<https://perma.cc/7PMV-28V5>].

199. *Factsheet—EU Sanctions on the Situation in Syria*, DELEGATION EUR. UNION SYRIA (May 28, 2020), https://eeas.europa.eu/delegations/syria/80009/factsheet-eu-sanctions-situation-syria_en [<https://perma.cc/GJ55-FS5Y>]. These sanctions were renewed in May 2019 and then again in May 2020. *See also* Press Release, Eur. Council, Syria: EU Renews Sanctions Against the Regime by One Year (May 17, 2019), <https://www.consilium.europa.eu/en/press/press-releases/2019/05/17/syria-eu-renews-sanctions-against-the-regime-by-one-year/> [<https://perma.cc/48AZ-B9W2>]; Press Release, Eur. Council, Syria: Sanctions Against the Regime Extended by One Year (May 28, 2020), <https://www.consilium.europa.eu/en/press/press-releases/2020/05/28/syria-sanctions-against-the-regime-extended-by-one-year/> [<https://perma.cc/9SL9-XGSS>].

200. *Factsheet—EU Sanctions on the Situation in Syria*, *supra* note 199; *see also* Council Regulation 36/2012 of Jan. 18, 2012, Concerning Restrictive Measures in View of the Situation in Syria and Repealing Regulation 442/2011, 2012 O.J. (L 16) (EU).

201. Chief Minister, Gibraltar, Detention of Super Tanker ‘The Grace 1’ – 506/2019 (July 4, 2019), <https://www.gibraltar.gov.gi/press-releases/detention-of-super-tanker-the-grace-1-5062019-5095> [<https://perma.cc/ZXE9-HFNZ>].

202. *Id.*

203. *Id.* *See also* Chief Minister, Gibraltar, Chief Minister’s Statement on the Release of the Grace 1 – 595/2019 (Aug. 15, 2019), <https://www.gibraltar.gov.gi/press-releases/chief->

36/2012, the Gibraltar authorities “published Regulations and a Notice to enforce those sanctions against this vessel and its cargo,” and subsequently notified the Presidents of the European Commission and Council.²⁰⁴ Moreover, the day after the *Grace I* was seized, the Gibraltar Supreme Court issued a detention order, and then granted an extension on July 19.²⁰⁵ Although the Gibraltar Supreme Court ordered that the ship be released on August 15,²⁰⁶ this was not because the initial seizure was unlawful. Rather, the Gibraltar Supreme Court approved the release of the *Grace I* after Iran assured the Chief Minister of Gibraltar that “the destination of *Grace I* would not be an entity that is subject to European Union sanctions.”²⁰⁷ With these assurances from Iran, the Chief Minister stated that there were “no longer any reasonable grounds for the continued legal detention of the *Grace I* in order to ensure compliance with the EU Sanctions Regulation.”²⁰⁸

Despite the court’s determination that the initial seizure was lawful, Iran continued to claim that the seizure was an illegal “act of piracy” and that the United Kingdom did not have the authority to enforce EU sanctions in international waters, where Iran alleges the ship was anchored.²⁰⁹ However, the seizure was not an act of “piracy” or piracy attempt. Seizing a ship for violating sanctions²¹⁰ does not constitute an act of piracy. Under the UNCLOS, piracy is defined as consisting of any of the following acts:

- (a) any illegal acts of violence or detention . . . committed for private ends by the crew of the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft or against persons or property on board such ship or aircraft, or

ministers-statement-on-the-release-of-the-grace-1-5952019-5187 [https://perma.cc/J4FH-SWGB].

204. Chief Minister, Gibraltar, *supra* note 201. See also Council Regulation 36/2012, *supra* note 200, art. 30, 33–34.

205. Guy Faulconbridge, *Gibraltar Extends Detention of Iranian Tanker for a Month*, REUTERS (July 19, 2019), <https://www.reuters.com/article/us-mideast-crisis-tanker-gibraltar/gibraltar-extends-detention-of-iranian-tanker-for-a-month-idUSKCN1UE16I> [https://perma.cc/R7YZ-X9D6].

206. Chief Minister, Gibraltar, *supra* note 203.

207. *Id.*

208. *Id.*

209. *Piracy in Gibraltar*, *supra* note 198.

210. Chief Minister, Gibraltar, *supra* note 201.

- (ii) against a ship . . . in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship . . . with the knowledge of facts making it a pirate ship . . . ;
- (c) any act of inviting or of internationally facilitating an act described in subparagraph (a) or (b).²¹¹

The Royal Marines and Gibraltar Port Authority's actions off the coast of Gibraltar: (1) were not the action of a private crew or ship; (2) did not occur on the high seas, given that the *Grace I* was anchored off the coast of Gibraltar in its territorial waters;²¹² and (3) were not outside of the jurisdiction of Gibraltar or the United Kingdom.²¹³ Therefore, the seizure of the *Grace I* was neither an unlawful seizure nor an act of piracy. As such, Gibraltar's detention of the ship did not constitute a breach of international obligations.

However, even if Iran could claim that seizing the *Grace I* for sanctions violations constituted a breach of the United Kingdom's international obligations, Iran's countermeasures were not permissible under international law because a "dispute [was] pending before a court or tribunal which has the authority to make decisions binding on the parties."²¹⁴ On July 5, 2019, Gibraltar's Supreme Court granted a fourteen-day detention for the *Grace I*.²¹⁵ On July 19, 2019, the Gibraltar Supreme Court extended the detention order for thirty days and set another hearing date.²¹⁶ Therefore, when Iran seized the *Stena Impero* on July 19, there was pending litigation in this matter in a court that was binding on the Royal Marines, the Gibraltar Port Authority, and the *Grace I*.²¹⁷

Lastly, even if an international tribunal were to find that Iranian countermeasures were permissible in this instance, Iran failed to comply with the procedural notice requirements that are a necessary antecedent to the use of countermeasures.²¹⁸ Arguably, Iran called on the

211. UNCLOS, *supra* note 47, art. 101.

212. Chief Minister, Gibraltar, *supra* note 203.

213. *Oil Tanker Bound for Syria Detained in Gibraltar*, *supra* note 31.

214. Int'l L. Comm'n, Rep. on the Work of its Fifty-Third Session, *supra* note 102, at 135–36.

215. Faulconbridge, *supra* note 205.

216. *Id.*

217. *Id.*

218. Int'l L. Comm'n, Rep. on the Work of its Fifty-Third Session, *supra* note 102, at 135.

United Kingdom to release the *Grace I* and to stop what it saw as a violation of international law.²¹⁹ However, Iran did not “notify the responsible State of any decision to take countermeasures and offer to negotiate with that State.”²²⁰ In fact, it threatened retaliation—not permissible countermeasures—if the British did not release the tanker.²²¹

In light of all this, it is unlikely that an international court would find Iran’s supposed countermeasures to be permissible. The tribunal would likely find that the United Kingdom was not responsible for an internationally wrongful act. And even assuming such a court did find that the United Kingdom committed an internationally wrongful act, the court would likely find that Iran’s actions were unlawful not only because an action was pending in the Courts in Gibraltar, but also because Iran failed to comply with the procedural notice requirements. Therefore, Iran’s actions cannot be justified as a permissible countermeasure in response to the Royal Marines’ seizure of the *Grace I* in Gibraltar.

The second alleged internationally wrongful act, the *Stena Impero*’s alleged violations of international law, is even harder for Iran to prove. First, because the alleged violations occurred in Oman’s territorial waters,²²² Iran would either have to show that it had been wronged or that it was taking action on behalf of another state pursuant to the draft articles.²²³ As before, Iran would have to demonstrate that the *Stena Impero*’s violations were (1) attributable to a state under international law and (2) that the alleged violations constituted a breach of international obligations.²²⁴ As stated above, under the regime of transit passage, flag states “shall bear international responsibility for any loss or damage which results to States bordering straits.”²²⁵ Assuming Iran’s allegations of damage and pollution to the marine environment in the Strait of Hormuz are true, and assuming that the *Stena Impero* did not comply with the required international regulations or the traffic separation scheme, as Iran alleged, under the regime of transit passage, the United Kingdom could be responsible for any loss

219. Iran summoned the British Ambassador in Tehran over the incident. *Oil Tanker Bound for Syria Detained in Gibraltar*, *supra* note 31.

220. Int’l L. Comm’n, Rep. on the Work of its Fifty-Third Session, *supra* note 102, at 135.

221. *Iranian Official Threatens to Seize British Oil Tanker*, *supra* note 28.

222. Chargé d’affaires a.i. of the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland, *supra* note 5, at 1.

223. Int’l L. Comm’n, Rep. on the Work of its Fifty-Third Session, *supra* note 102, at 117, 126.

224. *Id.* at 34.

225. UNCLOS, *supra* note 47, art. 42(5).

or damage caused by the *Stena Impero*.²²⁶ However, while the United Kingdom could be responsible for any loss or damage and therefore potentially responsible for a breach of international obligations, the acts of a private person, or in this case a privately-owned ship, are not attributable under international law to a State.²²⁷ Therefore, Iran's "justification" for seizing the *Stena Impero* is insufficient.

Even if Iran could establish that this alleged wrong was attributable to the United Kingdom, issues of procedure and proportionality remain. With respect to the latter, if the *Stena Impero* violated international maritime regulations by going through the wrong traffic separation scheme or by violating certain safety regulations, seizing the ship and crew for over two months and selling its cargo is not proportional to the alleged wrongs. Moreover, even if the ship had caused damage or collided with a small fishing vessel, Iran's response was still disproportionate to the alleged wrong.²²⁸ Additionally, there is no evidence that the IRGC or any Iranian officials attempted to notify the United Kingdom, or any of its nearby naval ships, that one of their oil tankers was violating international regulations or Omani national laws regulating transit through the entrance to the Strait.

Furthermore, Iran would be unable to prove that the alleged wrong was ongoing when the IRGC acted against the *Stena Impero*. Even if Iran could prove that the oil tanker had committed the alleged violations, the internationally wrongful act would have ceased when Iran seized and detained the ship. Therefore, Iran cannot argue that the alleged harm justifying detention was ongoing for two months. And, based on the disputed evidence as to the ship's location and AIS system, as well as the lack of evidence of the existence of the alleged fishing vessel, with which the *Stena Impero* supposedly collided, it is unlikely that any international wrong actually occurred. Therefore, Iran would not be able to prove the elements necessary to justify its seizure of the *Stena Impero* as a lawful countermeasure.

C. The Seizure of the *Stena Impero* was a Retaliatory Act

When Iran's violation of the *Stena Impero*'s right to transit passage and the resulting unlawful seizure are situated within the broader

226. *Id.*

227. Int'l L. Comm'n, Rep. on the Work of its Fifty-Third Session, *supra* note 102, at 38.

228. *Iran Has Released Seven Crew Members of Seized Tanker Stena Impero: Sweden Foreign Minister*, REUTERS (Sept. 4, 2019), <https://www.reuters.com/article/us-iran-tanker-stena/iran-has-released-seven-crew-members-of-seized-tanker-stena-impero-sweden-foreign-minister-idUSKCN1VP2SD> [<https://perma.cc/3NXG-APHU>].

context of the 2019 Gulf Crisis, it becomes clear that Iran's seizure of the *Stena Impero* was an unlawful act of retaliation. In the weeks leading up to the seizure of the *Stena Impero*, tensions between Iran and the West, specifically the United Kingdom and the United States, were at an all-time high. Tensions were rising as a result of the United States' arguably unlawful withdrawal from the Iran Nuclear Deal, the United States' imposition of further sanctions, and Iran's own actions in contravention of the deal.²²⁹ These tensions played out in the Strait of Hormuz, with numerous clashes and close calls between the United States and Iran, along with attacks on oil tankers throughout May and June. As mentioned above, tensions came to a peak when the United Kingdom and the United States seized the Iranian oil tanker *Grace 1* in Gibraltar.²³⁰

Given Iran's threats against the British and their oil tankers in the region the day following the seizure of the *Grace 1* and the attempted seizure of another British tanker on July 12, the United Kingdom accused Iran of seizing the *Stena Impero* in an act of retaliation.²³¹ Because Iran's actions were unjustified under the regime of transit passage and constituted an unlawful countermeasure in response to the alleged violations, the only way for Iran's actions to be legal would be if the seizure of the *Stena Impero* was a countermeasure in response to the United Kingdom's seizure of the *Grace 1*. However, as explained above, this argument would fail due to the lack of proportionality and lack of a continued international wrong—as the British and Gibraltar released the *Grace 1* in mid-August and Iran continued to detain the *Stena Impero* for another month.²³²

Iran's explanations for its seizure of the *Stena Impero* also attempt to paint the tanker as a war vessel and a threat to Iranian security—an apparent effort to justify Iran's actions not only as responsive to a violation of international regulations, but to more pointedly justify them as countermeasures. However, this justification also fails. Through the summer and fall of 2019, numerous Iranian spokespersons highlighted and even praised the seizure of the *Stena Impero* as justified retaliation. One spokesperson stated: “The English committed robbery, and they got what they deserved.”²³³ Another argued that

229. *Iran and the Crisis in the Gulf Explained*, *supra* note 136.

230. See discussion regarding the timeline of the 2019 Gulf Crisis, *supra* Section II.A.

231. Chargé d'affaires a.i. of the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland, *supra* note 5, at 1.

232. *Stena Impero: Seized British Tanker Leaves Iran's Waters*, *supra* note 20.

233. *Following Iran's Seizure of British Oil Tanker, Senior Iranian Officials Again Declare: The Persian Gulf Is Iranian Territory; Iran's Armed Forces Are Responsible for Security in It, in Strait of Hormuz, Gulf of Oman*, MEMRI (Aug. 2, 2019) <https://>

Iran had a right to detain the *Stena Impero* whether or not it actually violated international law as Iran alleged: “In fact, the British tanker’s detention was our country’s reciprocal response and retaliation, in light of [Britain’s] illegal detention of the Iranian tanker in Gibraltar.”²³⁴ Even the former chief of the IRGC, Mohsen Rezaee, specifically highlighted the seizure of the *Stena Impero* as a prime example of Iran’s ability to “strike back,” “respond to the enemy,” and to engage in “tit-for-tat” responses to perceived acts of aggression.²³⁵ “Therefore, even if the British tanker had fully obeyed every international maritime law, word for word, the IRGC Navy would still have had to detain it.”²³⁶ Many others echoed the same sentiments.²³⁷

In the fall of 2019, these sentiments were again repeated by top Iranian officials. These officials suggested that the actions of the *Stena Impero*, along with the American and British naval ships in the region, were acts of aggression against Iran.²³⁸ Iran’s Armed Forces Chief of Staff General Baqeri announced Iran would stand decisively against such “aggressions” and threatened that the same actions would also be taken toward any other “aggressor.”²³⁹ He further warned “the result of aggression against Iran is destruction and seizure,”²⁴⁰ highlighting Iran’s commitment to hampering the right of transit passage through the Strait of Hormuz for any acts it determined as aggression. In October 2019, IRGC Deputy Commander for Political Affairs Yadollah Javani echoed similar sentiments, stating that “Iran has no doubt about defending its security” and highlighting Iran’s power to retaliate when the United States and other European countries undermine its security in the region.²⁴¹ Again, the Iranian official characterized the seizure of the *Stena Impero* as an example of Iran’s “power to retaliate.”²⁴² In doing so, these Iranian officials make clear that Iran’s claims that the

www.memri.org/reports/following-irans-seizure-british-oil-tanker-senior-iranian-officials-again-declare-persian [<https://perma.cc/3BXJ-XJJB>].

234. *Id.*

235. *Iran to Adopt Tit-for-Tat in the Case of Aggression: Ex-IRGC Chief*, *supra* note 18.

236. *Following Iran’s Seizure of British Oil Tanker, Senior Iranian Officials Again Declare: The Persian Gulf Is Iranian Territory; Iran’s Armed Forces Are Responsible for Security in It, in Strait of Hormuz, Gulf of Oman*, *supra* note 233.

237. *Id.*

238. *Any Aggression Will Be Faced with Destruction, Seizure: Iran’s Military Chief*, *supra* note 10.

239. *Id.*

240. *Id.*

241. *IRGC General: Iran Has Turned from a Deterrent Power to a Retaliatory One*, *supra* note 40.

242. *Id.*

Stena Impero violated international maritime regulations and Omani national laws designating sea lanes was truly an unfounded pretext and an attempt to justify its own act of retaliation and violations of international law.

IV. HOLDING IRAN ACCOUNTABLE

Although Iran's seizure of the *Stena Impero* violated the law of the sea and the law of countermeasures, the victims' path forward for holding Iran accountable and ensuring an end to this pattern of retaliatory actions is unclear. In its signing statement to the UNCLOS, Iran stated that it "fully endors[es] the Concept of settlement of all international disputes by peaceful means, and recogniz[es] the necessity and desirability of settling, in an atmosphere of mutual understanding and cooperation, issues relating to the interpretation and application of the Convention on the Law of the Sea," but did not select a forum or set of procedures to settle any disputes Iran might become entangled in.²⁴³ Furthermore, Iran is not party to any bilateral treaties with Oman, Sweden, or the United Kingdom that provide a forum for settling disputes.²⁴⁴ As such, there are no automatic or binding dispute settlement procedures or forums available to bring claims arising from Iran's actions with respect to the *Stena Impero*.

Additionally, although the ICJ decides matters related to customary international law, such as the law on countermeasures, the ICJ must have jurisdiction based on one of four grounds to hear a dispute.²⁴⁵ Under the ICJ Statute, parties may consent to the court's jurisdiction (1) through a joint referral from the Security Council known as a *compris*, (2) through *forum prorogatum* in which the respondent state consents to jurisdiction solely over the instant case, (3) by a treaty or convention provision that grants ICJ jurisdiction over disputes arising under the treaty, or (4) by a declaration accepting compulsory

243. UNCLOS, *supra* note 47. The online Depository record includes all of the signing statements and declarations of each party. Iran's signing statement can be found on page 20.

244. In maritime delimitation agreements and the continental shelf agreement, Iran and Oman agree to peacefully settle all disputes, but do not provide a forum or jurisdiction to any specific court. Agreement on the Delimitation of the Maritime Boundary in the Sea of Oman Between the Islamic Republic of Iran and the Sultanate of Oman, Iran-Oman, May 26, 2015, Reg. No. 54173. *See also* Agreement Concerning Delimitation of the Continental Shelf Between Iran and Oman, Iran-Oman, July 25, 1974, 972 U.N.T.S. 265.

245. Statute of the International Court of Justice art. 36, June 26, 1945, 59 Stat. 1031, 33 U.N.T.S. 993.

jurisdiction under Article 36(2) of the Statute.²⁴⁶ While the United Kingdom and Sweden have accepted compulsory jurisdiction under Article 36 of the ICJ Statute,²⁴⁷ Oman and Iran have not.²⁴⁸ Since there are no treaties between these parties designating jurisdiction for dispute settlement, Iran would have to consent to a joint referral or jurisdiction based on *forum prorogatum*.

In December 2019, Iran reiterated its desire to “peacefully settle disputes” in its announcement to the UN of the details of the Hormuz Peace Endeavor, an initiative in which Iran and the Gulf States take on the responsibility of protecting the Strait and ships in the Strait.²⁴⁹ But given the heightened tensions between Iran and the West, and the fact that Iran has not always followed its agreement to peacefully settle disputes, it is unlikely Iran would consent to a joint referral or jurisdiction based on *forum prorogatum*. One potential way to entice Iran to accept either of these options would be for the United Kingdom to make ICJ jurisdiction over this dispute a requirement to restarting negotiations on the Iran Nuclear Deal. Throughout this crisis, Iran has continuously reacted to attempts to negotiate conflicts over the Iran Nuclear Deal.²⁵⁰ Therefore, the reinstatement of talks could be the only leverage the United Kingdom has. Even so, it will be very difficult to hold Iran accountable in a judicial setting. Moreover, because Iran maintains that its actions were justified, it is unlikely that it would attempt to negotiate a settlement for Stena Bulk or the crew who were held captive on the ship.

Therefore, to hold Iran accountable and to try and prevent this from happening to more ships navigating through the Strait of Hormuz, the United Kingdom and other nations who have had their ships seized may have to resort to diplomatic solutions. However, two common solutions that are already in place, instituting economic sanctions and a multinational coalition of naval escorts, do not seem to have mitigated much of the tension. In fact, the increase in American and

246. *Id.*

247. *Declarations Recognizing the Jurisdiction of the Court as Compulsory: Sweden*, I.C.J. (Apr. 6, 1957), <https://www.icj-cij.org/en/declarations/se> [<https://perma.cc/TSZ6-8E9G>]; *Declarations Recognizing the Jurisdiction of the Court as Compulsory: United Kingdom of Great Britain and Northern Ireland*, ICJ (Feb. 22, 2017), <https://www.icj-cij.org/en/declarations/gb> [<https://perma.cc/7T9N-B9V4>].

248. *States Entitled to Appear Before the Court*, ICJ, <https://www.icj-cij.org/en/states-entitled-to-appear> [<https://perma.cc/JX8E-A2P9>].

249. *At UN, Iran Proposes ‘Coalition for Hope’ to Pull Gulf Region from ‘Edge of Collapse’*, UN NEWS (Sept. 25, 2019), <https://news.un.org/en/story/2019/09/1047472> [<https://perma.cc/DES3-LRWW>].

250. Erlanger, *supra* note 159.

British warships in the region, as well as the introduction of Israeli warships, as part of a coalition to protect international shipping has only heightened tensions with Iran.²⁵¹ Given the airstrikes and uptick in the conflict between the United States and Iran at the beginning of 2020,²⁵² it is unlikely that sending even more naval escorts to protect ships would deter Iran from attempting to employ its seize-and-destroy strategy again.²⁵³ Other potential recourses could be to restrict Iran's ability to flag and register ships or to restrict its ability to patrol and police its territorial waters within the Strait. However, these options would surely cause more tension and conflict, much like the imposition of sanctions, and therefore, may be more of a last resort measure.

Given how often Iran has tied its actions and willingness to negotiate over the release of the *Stena Impero* to requests to engage with the European powers regarding the Iran Nuclear Deal, it seems that the only potential mechanism to hold Iran accountable or to deter Iran's use of force in the Strait of Hormuz would be to have the European powers—or even Oman as part of the Hormuz Peace Endeavor—require that Iran make reparations, restitution, and compensation to the company and the crew as a prerequisite to joining negotiations. However, it should be noted that with the United Kingdom's decision to leave the European Union, its leverage here may dwindle, and it may be up to France and/or Germany to put pressure on Iran. To deter future seizures and attacks on oil tankers, the European powers could make any subsequent attempts to seize or destroy oil tankers in the Hormuz Strait grounds to end any such negotiations or talks. However, given the tenuous situation in the Strait, finding the solution to hold Iran accountable for this violation of international law and prevent future violations of the same nature may need to be left for future discussion and unanswered for the time being.

251. *No Need to Foreign Forces for Persian Gulf Security, Rouhani Says*, TEHRAN TIMES (Aug. 14, 2019), <https://www.tehrantimes.com/news/439250/No-need-to-foreign-forces-for-Persian-Gulf-security-Rouhani> [<https://perma.cc/5JTC-BXM6>]; *Iranian Navy Chief Warns Extra-Regional Forces to Leave Region or Face Humiliating Retreat*, TEHRAN TIMES (Aug. 16, 2019), <https://www.tehrantimes.com/news/439304/Iranian-Navy-chief-warns-extra-regional-forces-to-leave-region> [<https://perma.cc/M6TP-DGY9>]; Hunt, *supra* note 12.

252. See Moore & Rampton, *supra* note 42.

253. *Any Aggression Will Be Faced with Destruction, Seizure: Iran's Military Chief*, *supra* note 10 (discussing the Iranian General warning that aggression will be met with destruction and seizure, as in the case of the U.S. drone and the *Stena Impero*).

CONCLUSION

Though the 2019 Gulf Crisis has ended, tensions remained high in the region well into the beginning of 2020. Given the history of conflict between Iran and the West and the lack of any deal regarding Iran's nuclear capabilities, it is likely that tensions will not subside in the near future. Holding Iran accountable for seizing the *Stena Impero* and deterring repeat attacks on oil tankers navigating through the Strait of Hormuz is essential not only for regional stability but also for the many nations that rely on the oil that passes through the Strait. Ensuring that Iran does not resort to similar violations of international law when the next inevitable conflict or period of heightened tensions occurs is crucial. This Note suggests a few options for dispute settlement in this situation and provides a framework for analysis should Iran ever resume its pattern of seizing and attacking tankers in the Strait of Hormuz. However, until there are sufficient incentives to bring Iran to the ICJ, an arbitration panel, or some forum for dispute settlement, it is unlikely that the crew of the *Stena Impero* or *Stena Bulk* will receive any reparations.

Looking forward, Iran has suggested that it plans to take on a more active role in ensuring peace and stability in the region via the Hormuz Peace Endeavor Plan. However, only time will tell whether this initiative is a real step toward peace and security in the Strait or if it will lead to more clashes between the IRGC and Western navies sailing through the Strait and adjacent gulfs or more attacks on oil tankers.

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* 2021 Juris Doctor Candidate, Columbia Law School. Thank you to Professor Lori F. Damrosch for her guidance throughout the note writing process. Thank you to the staff and editors, especially Robert Casty, Andrew Elliott, and Tara Hofbauer, on the *Columbia Journal of Transnational Law* for your invaluable feedback on various drafts of my Note. I would also like to thank Professor Vera Candiani of the Department of History at Princeton University for introducing me to the fascinating and tempestuous history of the law of the sea and piracy. Lastly, I thank my parents for taking the time to help me brainstorm this great topic while we were supposed to be on vacation and for instilling in me a love of the sea and adventure.