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## IS AMERICAN MILITARY FORCE A LEGAL RESPONSE IF IRAN CLOSES THE STRAIT OF HORMUZ?

MATTHEW O. WILLIAMS<sup>†</sup>

Iranian lawmakers have threatened to close the Strait of Hormuz in response to European and American sanctions designed to curb Iranian oil exportation.<sup>1</sup> One-fifth of the world's oil supply—mostly from other Arab nations—passes through the Strait every day, making the Strait's maintenance vital to Western economies.<sup>2</sup> On Monday, January 23, those sanctions, which aim to destabilize the Iranian economy in order to force Iran to negotiate the cessation of its nuclear weapons program, became a reality.<sup>3</sup>

Iran cannot legally close the Strait of Hormuz. According to the United Nations Convention on the Law of the Sea (UNCLOS), “[s]tates boarding straits shall not hamper transit passage.”<sup>4</sup> Read in context, the treaty completely denies any right to block straits used for international passage, limiting bordering states to defining shipping channels and enforcing safety regulations.<sup>5</sup> UNCLOS is customary international law, making compliance obligatory for all states.<sup>6</sup> Thus, even though Iran has not ratified the Convention, it is subject to it; furthermore, the shipping channels are within the territorial Sea of Oman.<sup>7</sup>

The United States, chief among those insisting on the Strait remaining open, is not a party to UNCLOS, though American courts and one President have recognized UNCLOS's status as customary international law.<sup>8</sup> The use of American military

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<sup>1</sup> *Times Topics: Iran's Nuclear Program*, N.Y. Times, available at [http://topics.nytimes.com/top/news/international/countriesandterritories/iran/nuclear\\_program/index.html](http://topics.nytimes.com/top/news/international/countriesandterritories/iran/nuclear_program/index.html) (last updated Feb. 24, 2012).

<sup>2</sup> See Robert Hutton, *Strait of Hormuz Will Stay Open, U.S. NATO Ambassador Says*, Businessweek (Jan. 23, 2012, 11:23 AM), <http://www.businessweek.com/news/2012-01-23/strait-of-hormuz-will-stay-open-u-s-nato-ambassador-says.html>.

<sup>3</sup> See *id.*

<sup>4</sup> U.N. Convention on the Law of the Sea (UNCLOS) arts. 44-45, Oct. 7, 1982, 1833 U.N.T.S. 397.

<sup>5</sup> See *id.* Section III.

<sup>6</sup> See Raul Pedrozo, *Is It Time for the United States to Join the Law of the Sea Convention?*, 41 J. Mar. L. & Com. 151, 156-57 (2010).

<sup>7</sup> See Susan Simpson, *Is the Strait of Hormuz Governed by Treaty or by Customary International Law*, The View From LL2 (January 7, 2012, 6:00 PM), <http://viewfromll2.com/2012/01/07/is-the-strait-of-hormuz-governed-by-treaty-or-by-customary-international-law/>.

<sup>8</sup> *United States v. McPhee*, 336 F.3d 1269, 1273 (11th Cir. 2003) (citing *United States Ocean Policy*, statement by President Reagan, 22 I.L.M. 464 (Mar. 10, 1983)).

strength to enforce the terms of a document we refuse to sign is ironic at the very least.

UNCLOS, however, may hinder military action against Iranian attempts to close the Strait because it “impedes maritime interception in the territorial sea, where the coastal state enjoys sovereignty,”<sup>9</sup> denying a right of action against threatening vessels that seek safety within the Iranian territorial sea.

Furthermore, UNCLOS requires parties—including most of Europe, and thus, presumably, NATO—to settle disputes concerning the treaty’s enforcement peaceably.<sup>10</sup> Our recognition of the Treaty as customary international law, if not our signature, may also limit our unilateral military response capabilities. This is especially true considering that UNCLOS is the justification for denying Iran the right to close the Strait. The rule of law loses much of its sheen if we enforce a treaty by breaking it.

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<sup>9</sup> Pedrozo, *supra* note 6, at 157.

<sup>10</sup> See UNCLOS, *supra* note 6, art. 279.