

Legal Framework for Military Operations in the Strait of Hormuz

Law of the Sea, Environmental Liability, Island Sovereignty, and Demilitarisation Models

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Overview

This report examines four interconnected legal dimensions of the Hormuz crisis: (1) the law of the sea governing transit through international straits; (2) the legal consequences of attacks on energy infrastructure causing oil pollution; (3) the UAE-Iran dispute over Abu Musa, Greater Tunb, and Lesser Tunb; and (4) international models for demilitarisation and condominium status that could be applied to Gulf islands as part of a settlement.

Part 1: The Law of the Sea and Transit Passage

The Peacetime Legal Framework

The Strait of Hormuz is an international strait under Part III of the United Nations Convention on the Law of the Sea (UNCLOS, 1982). Article 37 defines international straits as those “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.” The Strait of Hormuz clearly meets this definition (Nevitt, 2026).

The key legal regime is **transit passage** (UNCLOS Articles 38–44), which provides that:

“All ships and aircraft enjoy the right of transit passage, which shall not be impeded.” (Article 38)

“There shall be no suspension of transit passage.” (Article 44)

This is a stronger right than innocent passage — it cannot be suspended even in wartime, and it applies to warships and submarines (which may transit submerged) as well as merchant vessels (Nevitt, 2026; United Nations, 1982).

The Non-Party Complication

A critical legal complication is that Iran, the United States, and Israel are all non-parties to UNCLOS (Lott, 2026). This raises the question of whether they can invoke or are bound by the transit passage regime.

The scholarly consensus, as articulated by Mark Nevitt of Emory University Law School (a retired Navy JAG officer), is that the transit passage regime is “widely regarded as customary international law and binding on all States” (Nevitt, 2026). This view is supported by the International Court of Justice’s reasoning in the Corfu Channel case (1949), which established that states are required to ensure safe passage through international straits for neutral ships — a principle that predates UNCLOS and applies to all states regardless of treaty membership (Lott, 2026).

However, Iran disputes this. As Alexander Lott explains in EJIL Talk, “Iran considers that the regime of transit passage is not part of customary international law and only States Parties to UNCLOS are entitled to benefit from it” (Lott, 2026). Iran’s position is that only the more restrictive regime of innocent passage applies — which can be suspended for security reasons.

Iran’s Legal Arguments

Iran has advanced several legal arguments for closing the Strait:

1. **Self-defence (UN Charter Article 51):** Iran argues the closure is a lawful response to armed attack by the US and Israel (United Nations, 1945).
2. **Belligerent rights:** Under the law of naval warfare, belligerents have historically claimed the right to control maritime zones.
3. **Reprisal:** A Chinese academic analysis from ICAS argues that Iran’s closure could be characterised as a lawful reprisal to the US-Israeli joint attack (Institute for China–America Studies, 2026).
4. **Innocent passage only:** Iran argues that transit passage applies only to UNCLOS parties, and that even innocent passage can be suspended for security.

The Counter-Arguments

The weight of international legal opinion is against Iran:

1. **Customary international law:** Transit passage is binding on all states, not just UNCLOS parties (Hill Dickinson, 2026; Nevitt, 2026).
2. **Corfu Channel precedent:** Even under pre-UNCLOS law, states cannot close international straits to neutral shipping (Lott, 2026).
3. **San Remo Manual (1994):** Rule 27 provides that “transit passage through international straits... shall not be impeded unless safe and convenient alternative routes are provided.” Rule 32 provides that neutral vessels may exercise the right of non-suspendable innocent passage through belligerent international straits (Lott, 2026).
4. **Proportionality:** Closing the Strait to all shipping — including neutral states with no involvement in the conflict — is disproportionate under any legal theory.
5. **Hill Dickinson (maritime law firm):** “Under international law and UNCLOS, Iran cannot legally hamper transit passage through an international strait” (Hill Dickinson, 2026).

What Changes in Wartime

War does not erase all peacetime navigation rights, but it radically alters the operational risk and the lawfulness analysis of particular acts. Belligerents may act in self-defence and may target lawful military objectives. They may not, however, simply treat neutral merchant shipping as targetable because it is present in the strait. The more Tehran moves from warning and coercion to attacks on neutral commercial shipping, the easier it becomes for affected states to invoke collective self-defence, request Security Council action, and justify convoying or minesweeping operations (Nevitt, 2026; United Nations, 1945).

The Legal Basis for Escort Operations

Escorted navigation is legally easier to defend than offensive strikes. Minesweeping, route clearance, escort, and defensive air cover can all be framed as protection of neutral commerce and seafarers. Once escorts begin conducting strikes ashore, however, the legal basis must move from mere protection of navigation toward self-defence, collective self-defence, UNSC authority, or some combination of the three. This distinction — between “reopening shipping” and “war against Iran” — is legally critical and operationally significant (Nevitt, 2026).

Bahrain has reportedly circulated a draft UNSC resolution seeking authorisation to protect Hormuz shipping (Reuters, 2026). If adopted, this would provide the strongest possible legal basis for escort operations. Even without a resolution (which Russia and China would likely veto), the customary law right to protect neutral commerce and the collective self-defence provisions of the UN Charter provide a robust legal foundation.

Mining and the Hague Convention

The use of mines to deny transit passage raises additional legal issues. Hague Convention VIII (1907) “explicitly prohibits the use of mines to deny transit passage of international straits” and requires that “every possible precaution must be taken for the security of peaceful shipping” (Nevitt, 2026). Iran’s reported mining of the Strait approaches violates this convention.

The IMO Response

The IMO Council issued a statement on March 19, 2026 “strongly condemning Iran’s attacks and purported closure of the Strait of Hormuz” and calling for a safe-passage framework (International Maritime Organization, 2026). While IMO resolutions are not legally binding in the same way as Security Council resolutions, they carry significant weight in maritime law and insurance markets (UAE Ministry of Foreign Affairs, 2026).

Part 2: Environmental Liability from Energy Infrastructure Attacks

The Risk

The Persian Gulf is a semi-enclosed sea (UNCLOS Part IX) with special environmental obligations. It is also one of the most environmentally fragile marine environments in the world — shallow, warm, with limited water exchange, and home to coral reefs, mangroves, and endangered species.

The risk of catastrophic oil pollution arises from three scenarios:

<i>Scenario</i>	<i>Scale of Risk</i>	<i>Precedent</i>
Bombing of oil terminals and refineries (e.g., Kharg Island)	Could dwarf the 1991 Gulf War spill (4–8 million barrels)	1991 Gulf War oil spill — largest deliberate spill in history
Attacks on tankers	A VLCC carries up to 2 million barrels of crude	Tanker War 1984–88 — 451 ships attacked
Damage to offshore platforms	Sustained leaks from thousands of platforms	Deepwater Horizon (2010) — 4.9 million barrels over 87 days

The Legal Framework for Environmental Damage

<i>Legal Instrument</i>	<i>Relevance</i>	<i>Key Provision</i>
UNCLOS Part XII	Protection of the marine environment	States must “protect and preserve the marine environment” (Art. 192)
UNCLOS Part IX	Semi-enclosed seas	Bordering states must cooperate on environmental protection
Rome Statute Art. 8(2)(b)(iv)	War crime	“Intentionally launching an attack in the knowledge that such attack will cause... widespread, long-term and severe damage to the natural environment”
MARPOL Convention	Oil pollution prevention	Applies to all vessels; special area provisions for the Gulf
1990 Oil Pollution Preparedness Convention	Emergency response	States must maintain oil spill response capability
Additional Protocol I, Art. 55	Environmental protection in armed conflict	“Care shall be taken in warfare to protect the natural environment

<i>Legal Instrument</i>	<i>Relevance</i>	<i>Key Provision</i>
ENMOD Convention	Environmental modification	against widespread, long-term and severe damage” Prohibits deliberate environmental destruction as a weapon

The Ecocide Gap

A critical gap exists in international law: there is currently no international crime of ecocide. While the ICC could theoretically prosecute environmental destruction as a war crime under the Rome Statute, the threshold is high (“widespread, long-term and severe”) and enforcement is uncertain (Le Monde, 2026). Amnesty International has called on “Israel, the US and the Islamic Republic of Iran [to] immediately cease or refrain from unlawful attacks on energy infrastructure” (Amnesty International, 2026). The UN High Commissioner for Human Rights, Volker Türk, warned that “attacks targeting civilian objects or infrastructure indispensable to the civilian population constitute serious violations of international humanitarian law” (OHCHR, 2026).

Liability for Harm to Third Countries

If oil pollution from the conflict damages the coastlines, fisheries, or desalination plants of non-belligerent states (Oman, Qatar, Kuwait, Bahrain), those states would have claims under:

1. **Customary international law:** The *Trail Smelter* principle (1941) — states must not allow their territory to be used to cause environmental harm to other states.
2. **State responsibility:** The ILC Articles on State Responsibility provide that states are liable for internationally wrongful acts, including environmental damage.
3. **UNCLOS dispute resolution:** Part XV provides for compulsory dispute settlement, including before the International Tribunal for the Law of the Sea (ITLOS).

The practical difficulty is enforcement. Neither Iran nor the US is likely to submit to international jurisdiction voluntarily. However, the threat of environmental prosecution may serve as a deterrent — but only if credibly communicated.

Part 3: The UAE-Iran Island Dispute

Historical Background

The dispute concerns three islands in the Persian Gulf: **Abu Musa**, **Greater Tunb**, and **Lesser Tunb**. All three are strategically located near the approaches to the Strait of Hormuz.

<i>Island</i>	<i>Area</i>	<i>Pre-1971 Status</i>	<i>1971 Events</i>	<i>Current Status</i>
Abu Musa	12.8 km ²	Administered by Sharjah (now UAE)	Iran and Sharjah signed MoU for shared sovereignty (Nov 30, 1971)	Iran has systematically violated MoU terms; full military occupation
Greater Tunb	10.3 km ²	Administered by Ras al-Khaimah (now UAE)	Seized by Iranian forces by military force (Nov 30, 1971)	Full Iranian military occupation
Lesser Tunb	1.3 km ²	Administered by Ras al-Khaimah (now UAE)	Seized by Iranian forces by military force (Nov 30, 1971)	Full Iranian military occupation; largely uninhabited

The seizure occurred two days before the UAE's independence on December 2, 1971, as British forces withdrew from the Gulf. The timing was deliberate — Iran moved in as the protecting power departed (Dawn, 2026).

Legal Positions

UAE's position: The islands belong to the UAE (specifically to the emirates of Sharjah and Ras al-Khaimah). Iran's seizure of Greater and Lesser Tunb was an act of aggression violating the UN Charter. Iran has violated the 1971 Abu Musa MoU by militarising the island and restricting UAE access. The UAE has repeatedly called for ICJ referral or direct negotiations (UAE Embassy, Washington DC, 2021; UN News, 2011). The GCC has consistently backed the UAE's position, and the EU backed the UAE's claim in October 2025 (IranWire, 2025).

Iran's position: The islands are historically Iranian, with documentation dating to the Qajar era. Iran's sovereignty is non-negotiable. Iran refuses ICJ referral or any form of international arbitration. The March 21, 2026 military statement warned: "if any further aggression originates from [UAE] territory against the Iranian islands of Abu Musa and Greater Tunb... Iran's powerful armed forces will subject Ras Al Khaimah in the UAE to heavy strikes" (Dawn, 2026).

The Current Military Dimension

The islands have acquired new military significance in the current war. Iran has used them as platforms for monitoring all maritime traffic entering and exiting the Gulf. Military infrastructure on the islands allows comprehensive electronic and visual monitoring of the entire waterway. Anti-ship missile batteries on the islands threaten any vessel transiting the Strait.

How the Dispute Could Be Progressed

The island dispute is the most productive diplomatic lever available. It offers a concrete, geographically defined issue that can be resolved through established international legal mechanisms and that connects directly to the military situation in the Strait.

As part of an overall settlement:

International arbitration — submission to the ICJ or a specially constituted tribunal — is the UAE's preferred option and has strong international support. Iran has historically refused, but a comprehensive settlement could include this as a condition. Alternatively, demilitarisation under international supervision (discussed in Part 4 below) could preserve the sovereignty question for later resolution while removing the immediate military threat.

As leverage: If the coalition seizes the islands during military operations (as recommended in the main report), they become a powerful bargaining chip. Returning them to Iran in exchange for concessions (nuclear limits, Strait guarantees, proxy withdrawal) would be a concrete, verifiable quid pro quo. Alternatively, international recognition of UAE sovereignty — backed by a Security Council resolution — could be offered as part of a package that also addresses Iran's security concerns.

The obstacle: Iran's March 2026 rhetoric treats the islands as non-negotiable. However, the islands' military value to Iran is contingent on Iran's ability to project power in the Gulf — which is rapidly diminishing. If Iran's navy is destroyed and its coastal batteries neutralised, the islands become isolated outposts with no strategic value. At that point, Iran may calculate that trading sovereignty claims for sanctions relief and security guarantees is rational.

Part 4: Demilitarisation and Condominium Models for Gulf Islands

The Case for a New Approach

The traditional framing of the island dispute — “who has sovereignty?” — has produced five decades of deadlock. Neither Iran nor the UAE will voluntarily concede sovereignty. A more productive approach draws on international precedents where sovereignty was separated from demilitarisation, where cultural and linguistic rights were guaranteed regardless of the sovereign, and where commercial access was internationalised. Two models are particularly instructive: the Åland Islands and Svalbard.

The Åland Islands Model (Finland/Sweden)

The Åland Islands lie between Finland and Sweden in the Baltic Sea. Their status was settled by the League of Nations in 1921 after Finland and Sweden came close to war over them — a dispute triggered, like the Gulf island dispute, by the withdrawal of an imperial

power (Russia) and competing historical claims (Finnish Ministry for Foreign Affairs, 2022).

The solution combined several elements that are directly relevant to the Gulf:

Sovereignty with demilitarisation. Finland was granted sovereignty, but the islands were completely demilitarised — no military forces, no fortifications. This demilitarisation, first imposed after the Crimean War in 1856, was confirmed by the League of Nations in 1921 and again in the 1947 Paris Peace Treaty. The islands are also neutralised, meaning they must be kept outside the threat of war in case of conflict (Finnish Ministry for Foreign Affairs, 2022).

Language and cultural protection. Although Åland is part of Finnish-speaking Finland, Swedish is the only official language on the islands. All government business, education, and communication with Finnish authorities must be conducted in Swedish. This was the core guarantee that persuaded the Swedish-speaking population to accept Finnish sovereignty (Finnish Ministry for Foreign Affairs, 2022).

Autonomy. Åland has its own parliament (30 members), its own government, and legislative powers over education, health, environment, transport, policing, and local government. Finnish state law applies only in areas where the Åland Parliament does not have jurisdiction (foreign affairs, criminal law, courts, customs, state taxation) (Finnish Ministry for Foreign Affairs, 2022).

Property and business restrictions. Only those with “right of domicile” (acquired by birth or after five years’ residence plus Finnish citizenship and adequate Swedish) may vote, own real estate, or conduct business. This prevents demographic transformation of the islands (Finnish Ministry for Foreign Affairs, 2022).

Partial free trade zone. Within the EU, Åland is treated as a “third territory” for indirect taxation, enabling tax-free sales — effectively a partial free trade zone that has become economically significant (Finnish Ministry for Foreign Affairs, 2022).

The Åland model has survived for over 100 years, through two world wars and the Cold War. Finland actively promotes it as the “Åland Example” for resolving other territorial disputes.

The Svalbard Model (Norway/46 Signatories)

The Svalbard archipelago in the Arctic provides a different but complementary model. The 1920 Svalbard Treaty granted Norway “full and absolute sovereignty” while simultaneously granting all 46 signatory states equal rights to engage in commercial activities — fishing, mining, and other enterprises — on the islands (Koivurova, 2017).

Article 9 of the Treaty restricts military use: no naval bases may be established, no fortifications constructed, and the islands may not be used for “warlike purposes.” However, Svalbard is not fully demilitarised — Norway maintains a Coast Guard presence for law enforcement (Koivurova, 2017).

The Svalbard model demonstrates that sovereignty and international commercial access can coexist. Citizens of all signatory states may live and work on the islands. However, the model also reveals limitations: ongoing disputes over continental shelf and EEZ rights have created friction, and Russia and China have tested Norway’s enforcement capacity in recent years.

Comparison of Models

<i>Feature</i>	<i>Åland Islands</i>	<i>Svalbard</i>	<i>Proposed Gulf Application</i>
Sovereignty	Finland (settled by League of Nations)	Norway (by treaty)	To be determined (ICJ or negotiated)
Demilitarisation	Complete — no military, no fortifications	Partial — no bases, no fortifications, but coast guard permitted	Complete demilitarisation required
Neutralisation	Yes — must be kept outside threat of war	Not formally neutralised	Desirable — neutral zone around Strait
Language/culture	Swedish only (minority protection)	Norwegian dominant, others permitted	Arabic and Farsi rights guaranteed
Population	~30,000	~2,700	Small (Abu Musa ~2,000; Tunbs minimal)
Commercial access	Restricted (right of domicile)	Open to all 46 signatories	Free trade zone possible
Property rights	Restricted to domicile holders	Open to signatories	To be negotiated
Guarantor	League of Nations → international treaty	46 signatory states	UN/GCC/guarantor states
Duration	100+ years	100+ years	New arrangement

A Proposed Gulf Islands Framework

Drawing on both models, a realistic framework for the Gulf islands could include the following elements:

Demilitarisation and neutralisation. All three islands (Abu Musa, Greater Tunb, Lesser Tunb) would be completely demilitarised and neutralised, with no military forces, no fortifications, and no weapons systems. An international monitoring force — modelled on the Sinai MFO or a UN observer mission — would verify compliance. This addresses the immediate security concern (Iranian missile batteries threatening shipping) without requiring resolution of the sovereignty question.

Sovereignty deferred. The sovereignty question would be referred to the ICJ or a specially constituted arbitral tribunal, with both parties agreeing in advance to accept the ruling. Alternatively, sovereignty could be placed in abeyance for a defined period (e.g., 25 years) while the demilitarisation regime proves itself — similar to how the Åland question was settled provisionally before the League of Nations made its final ruling.

Cultural and linguistic rights. Both Arabic-speaking and Farsi-speaking communities on Abu Musa (the only island with a significant population) would have guaranteed language and cultural rights, regardless of which state ultimately holds sovereignty. This draws directly on the Åland model, where the Swedish-speaking minority's rights are constitutionally protected under Finnish sovereignty.

Free trade zones. The islands could be designated as free trade zones, open to commercial activity by nationals of all Gulf states and potentially wider. This would give the islands economic value beyond their military significance and create stakeholders in the demilitarisation regime. The Åland “third territory” tax model and the Svalbard equal-access principle both provide precedents.

Navigation safety zone. A defined maritime zone around the islands would be designated as an international navigation safety zone, with agreed traffic separation schemes, monitoring by an international maritime authority, and prohibition of military activity. This would directly serve the goal of ensuring safe passage through the Strait.

Extension to other Gulf islands. The framework need not be limited to the three disputed islands. Other strategically located islands in the Persian Gulf — including Qeshm, Larak, Hengam, and Sirri — could be included in a broader demilitarisation zone if a comprehensive Gulf security agreement is reached. This would be more ambitious but would address the fundamental problem: that Iran's ability to threaten shipping depends on military infrastructure distributed across multiple islands and coastal positions.

Obstacles and Realism

The principal obstacle is that Iran currently views the islands as non-negotiable sovereign territory. However, several factors may shift this calculation:

The islands' military value is contingent on Iran's ability to project power — which is being systematically degraded. If the coalition seizes the islands during military operations, the question becomes not whether Iran will negotiate but on what terms it will accept their return. The Åland precedent is directly relevant: Finland did not want to accept the League of Nations ruling either, but did so because the alternative (continued conflict with Sweden) was worse.

The free trade zone concept offers Iran an economic incentive. Iranian merchants and fishermen have historically used the islands; a FTZ arrangement would preserve and enhance these economic ties while removing the military dimension.

The language and cultural rights guarantee addresses a genuine Iranian concern — that the islands' Farsi-speaking residents would be marginalised under UAE sovereignty. The Åland model shows this concern can be addressed constitutionally.

Conclusions

1. **Iran's closure of the Strait is illegal** under customary international law, UNCLOS, the Corfu Channel precedent, and the San Remo Manual. The legal case is overwhelming, but law without enforcement is merely aspiration.
2. **Escort operations have a strong legal basis** in the protection of neutral commerce, collective self-defence, and potentially UNSC authorisation. The legal distinction between “reopening shipping” and “war against Iran” must be carefully maintained.
3. **Environmental catastrophe is a real risk** if either side escalates to targeting energy infrastructure. The legal framework exists to assign liability, but the practical barriers to enforcement are formidable. The threat of environmental prosecution may serve as a deterrent — but only if credibly communicated.
4. **The island dispute is the most productive diplomatic lever** available. It offers a concrete, geographically defined issue that can be resolved through established international legal mechanisms and that connects directly to the military situation in the Strait.
5. **Demilitarisation models exist and have proven durable.** The Åland Islands (100+ years) and Svalbard (100+ years) demonstrate that sovereignty disputes can be managed through demilitarisation, cultural guarantees, and internationalised commercial access. A Gulf islands framework drawing on both models — complete demilitarisation, deferred sovereignty, bilingual cultural rights, free trade zones, and an international navigation safety zone — offers the most realistic path to a durable settlement.
6. **The legal situation would change dramatically** if oil refineries or tankers are bombed and cause massive pollution. Third-party states would have strong legal claims against the responsible party, creating a powerful incentive for restraint — but the IRGC's rhetoric suggests this restraint may not hold.

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