

Iran: Maritime Measures below the Threshold of War

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The option of operating in the naval theater allows improved deterrence and attack capability vis-à-vis Iran and makes it possible to impose crippling sanctions. And indeed, one of the options examined in recent years for dealing with Iran – ostensibly under the threshold of war – is a naval blockade that, inter alia, would prevent goods, including petroleum and petroleum products, from entering and leaving Iranian ports. The goal would be to persuade Iran to change its policy, with an emphasis on stopping its nuclear development. Supporters of these measures argue that such steps would be sufficient to cause critical damage to Iran and force it to change its policy, without the use of military force. This article will examine various aspects of maritime enforcement and prevention methods in the context of Iran, first and foremost a naval blockade, for the purpose of stepping up pressure to thwart proliferation of non-conventional weapons. In addition, it will discuss the ramifications of these enforcement and prevention measures and the relevant alternatives available to the international community.

A Naval Blockade

In principle, maritime law is seen under the rubric of the laws of peace of international law, that is, the laws that govern relations between countries that are not in a state of armed conflict. There are three fundamental principles in this system of law: the principle of flag-state sovereignty (which is beyond the scope of this article); the principle of freedom of navigation on the high seas, which stipulates that ships enjoy complete freedom of movement in international waters; and the principle of

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territorial waters, which stipulates that in contrast to what is applicable to international waters, in territorial waters there is no freedom of movement, and barring unusual situations, movement is contingent on the approval of the coastal state.

These fundamental rules have several exceptions; the most notable concerns a state of armed conflict, under which the laws of naval warfare allow the parties to the conflict to impose restrictions, both on vessels of the other party to the conflict and on neutral vessels. In other words, in a state of armed conflict at sea, some of the basic rights conferred by peacetime maritime laws are eclipsed by the rights conferred on the parties to an armed conflict (belligerent rights).

The laws of naval warfare have not been regulated through a binding international treaty (in contrast to the laws of land warfare). However, the customary rules that are binding on states in armed conflicts at sea are anchored in several basic documents; especially noteworthy are the “London Declaration concerning the Laws of Naval Warfare” (1909) and the “San Remo Manual on International Law Applicable to Armed Conflict at Sea” (1995). Under these rules, there are several measures that can be taken, such as visit, search, and seizure of ships; restriction of naval activity in the area of the military operation; and declaration of a combat zone.

The meaning of freedom of navigation on the high seas is that ships of all nations have an equal right to make use of the high seas in every way possible. As a result, in peacetime, ships flying the flag of one country may not interfere with the passage of ships flying the flag of another country. The prohibition on interference with freedom of navigation on the high seas also applies to warships that in peacetime seek to interfere with the ships flying state flags different from the warship’s flag. There are several exceptions: piracy, the slave trade, hot pursuit, a ship that hits underwater cables, and if sanctions are imposed by the UN Security Council on navigation on the high seas by a particular state.

The most significant measure under the laws of naval warfare is a declaration of a naval blockade. This serves as a means for the parties to an armed conflict, under the laws of naval warfare, to prevent ships from entering ports or coasts under enemy control and from departing from them to the open sea. The purpose of this measure is to prevent passage of cargo and people by sea to and from a territory under enemy control. Naval blockades were imposed during the Korean War, the Cuban missile

crisis, the Vietnam War, and the war in the Falklands. Examples from recent years include naval sanctions against Iraq (1990-2003), the naval blockade imposed by Israel on Lebanon during the Second Lebanon War (2006), and the naval blockade imposed on the Gaza Strip at the start of the ground invasion in Operation Cast Lead (2009).¹

Regarding Iran, several senior US² and Israeli³ officials have declared their support for imposing a naval blockade in order to step up the pressure while avoiding a costly military confrontation. Israel has insisted that the sanctions imposed on Iran are too soft and insufficient to stop the Iranian nuclear program. Therefore, what might be needed is to back them up with a US naval blockade that would exert heavy pressure on the Iranian regime and prove that the United States and other Western countries are serious about preventing Iran's nuclearization.⁴

The binding customary rules for imposing a naval blockade so that it is considered legal and valid are:

- a. *Declaration*: The party imposing a blockade must clearly bring it to the attention of all those likely to be affected, including of course neutral states; the declaration should include the date the blockade will begin, its boundaries, and perhaps how long it will last.
- b. *Effectiveness*: The state that declared the blockade must enforce it actively and effectively.
- c. *Non-discrimination*: The blockade must be enforced fully and in a non-discriminatory manner against all vessels (including those of the state imposing the blockade).
- d. *Access to the coasts of neutral states*: Blockades should not block access to ports and coasts of neutral states.

In the San Remo Manual, there are two further conditions, although it is doubtful that they have customary status. The first is a prohibition on blockades intended to starve the local population or deprive it of measures essential to its survival. The second condition is proportionality; in other words, the imposition of the blockade will be illegal if the collateral damage it causes to the civilian population is excessive in comparison to the military advantage it produces.⁵

Once a naval blockade is declared, any attempt by ships to enter, exit, or pass through the area of the blockade is considered a violation and will give the party imposing the blockade the authority to seize the vessel (even in international waters, if it is clear that the purpose of the vessel is to violate

the blockade). If the vessel in question resists, force may be used against it (as long as advance warning is provided). This is clearly an action under the laws of armed conflict at sea.

UN Security Council Resolution 3314 (1974) defines the term “aggression” that was adopted by the state signatories to the Rome Declaration (and is expected to enter into force in 2015). In the resolution, the use of a naval blockade is explicitly defined as an act of aggression that can establish the right to self-defense by the party being attacked and can even lead to intervention by the UN Security Council. For example, there is no doubt that the declaration of a naval blockade on the coasts of Iran by the United States would be considered an act of war and would establish the right to self-defense by Iran against the “aggression” of the United States. A declaration of a naval blockade of this sort can be established in one of two ways:

- a. A Security Council resolution imposing a naval blockade under chapter 7. This is the alternative preferred by the United States (if indeed it sees fit to impose a naval blockade on the coasts of Iran). In fact, several resolutions in this spirit have already been passed against Iran in light of its obstinacy and continued development of its nuclear project, but they have not reached the point of imposing a naval blockade. Such a resolution by the Security Council would be entirely legal and would not create any legal difficulty. However, there is significant political difficulty in passing it because of the expected opposition of key countries, including Russia and China, which might possibly even veto it.
- b. A format that does not involve Security Council authorization (for example, due to the possibility of a veto by Russia, China, or both). In that case, the justification for the act of war by the United States – imposition of a naval blockade – so that it would not be considered a prohibited aggressive action could be based solely on the claim of anticipatory self-defense. This would be on the basis of the call by another state for American assistance (for example, Israel or the Arab Gulf states) given the “aggression” of Iran, its development of a capability to strike Israel, and its declared threat to destroy Israel.

These threats by Iran establish the possibility for Israel to claim anticipatory self-defense and seek military aid from the United States, which can include the act of war of imposition of a naval blockade on

the coasts of Iran. However, this claim is complex and raises some real legal questions, and there is no certainty that it would earn international legitimacy. First, there is still no smoking gun proving that Iran intends to develop nuclear weapons. (At the same time, some contend that the findings of the International Atomic Energy Commission report of November 2011 and the construction of the facility carved into the mountainside near the city of Qom indicate that Iran intends to develop military nuclear capability. Security Council resolutions on the Iranian issue also provide a basis for the assumption that illegal activity is taking place with their demand for Iran to suspend uranium enrichment.) Second, the claim of preventive self-defense is always complex, and it is doubtful that the international community would accept it, especially after the principal attempts through the Security Council were unsuccessful. Furthermore, Israel's attack on the Iraqi nuclear reactor on similar grounds did not get backing from the international community and was seen as an act of aggression by Israel against Iraq, prompting a resolution by the Security Council condemning Israel. Consequently, it is doubtful that the United States will wish to engage in a clear act of war such as a naval blockade without legal backup and without legitimacy from the international community (even though in some of the examples of a naval blockade cited above there was no such legitimacy).

Security Council Resolutions

In April 2004, the Security Council unanimously approved Resolution 1540 (under Chapter 7 of the UN Charter) calling upon states to prevent the proliferation of nonconventional weapons; to refrain from assisting any actor in the process of manufacturing and transporting nonconventional weapons; and to monitor the distribution of materials necessary for their manufacture. The resolution also established a Security Council committee to monitor its implementation. This was the first time that the Security Council issued a comprehensive resolution that included not only declarative clauses, but also operative requirements of the member states concerning clear and defined moves designed to fight proliferation of nonconventional weapons, while mentioning nonconventional terrorism and the connection between it and the non-state organizations as a "threat to international peace and security."⁶

UN Security Council Resolutions 1803 (March 2008) and 1929 (June 2010) provide a foundation for increasing oversight of cargoes entering and exiting Iran. Resolution 1803 calls upon states “to inspect the cargoes to and from Iran, of aircraft and vessels, at their airports and seaports,” to ensure that they are not carrying prohibited goods. Resolution 1929 (the fourth in a round of sanctions on Iran) constitutes a further measure, setting out the framework for inspecting suspicious cargo on ships or aircraft for the purpose of preventing smuggling by Iran. However, there are several possible problems in the implementation of the guidelines of some of the clauses. For example, the state’s ability to detain ships that have suspicious cargo is weakened if the flag state must give its agreement to the inspection, although there are countries like the United States that claim that the agreement of the captain is sufficient. The agreement of the flag state provides a more solid legal basis, but there is no way to ensure that it will be given, certainly not in the time required.⁷ Naturally, there are liable to be difficulties in cases in which the flag belongs to a state that is not prepared to cooperate with the provisions of the sanctions. In any case, Iran considered these resolutions a violation of its fundamental rights and threatened to respond “appropriately” if cargoes of Iranian vessels were inspected.⁸

Preventing Proliferation of Nonconventional Weapons

The international community has additional tools that can serve as a basis for increasing pressure on Iran, especially in light of the difficulty of enlisting international forums, particularly the Security Council. One of the most notable tools is the Proliferation Security Initiative (PSI), an attempt to stop shipments of nonconventional weapons and related equipment to terrorists and to states of proliferation concern, through active cooperation at sea, on land, and in the air. The initiative, which reflects the preferred US active model (with emphasis on thwarting and preventing proliferation) was publicly announced by President George W. Bush in May 2003. The initiative provides a set of tools, to be used on a voluntary basis, with no formal umbrella organization, secretariat, or founding treaty. As of July 2012, 100 states have taken part in the initiative in one way or another, including states belonging to the original founding group (the United States, Britain, Australia, France, Italy, Spain, Portugal, Holland, Germany, Japan, and Poland). The initiative is based on an understanding that the

existing nonproliferation regime is not sufficient for preventing the spread of nonconventional weapons and that complementary measures must be taken.

The initiative's most notable success was the seizure of the *BBC China* (in October 2003), a German-owned ship carrying a cargo of centrifuges from Malaysia (as part of the distribution network of A. Q. Khan) through Dubai to Libya. The event was a major factor in Libya's subsequent announcement that it was giving up its nonconventional capabilities. In this case, following a request from the United States, the ship's owners directed the ship to the port of a member state, Italy, where it was searched and its banned cargo was confiscated.

Over the years, many naval and aerial exercises were held intended to consolidate joint working methods. Activity connected with the initiative has remained almost completely secret, but over two dozen interceptions are attributed to PSI activity, including the interception of shipments to Iran.⁹ This is likely only the tip of the iceberg, given the large scope of maritime activity to and from Iran, but it is sufficient to deter potential rogue actors from transporting goods in this way. In its overall legal infrastructure, the initiative is in compliance with the UN Convention on the Law of the Sea and UN Security Council Resolution 1504. Indeed, Resolution 1504 was to a large extent passed in the spirit of the initiative (though because of pressure from China, the resolution does not mention the PSI), and it grants the initiative a retroactive legal imprimatur. In addition to claiming that the initiative actually harms the nonproliferation regime by its very existence, several states, particularly China and North Korea, have criticized it, believing it was directed mainly at them.

One of the problems faced by members of the initiative is establishing intelligence-operational cooperation with: a) coastal states that serve as a place to anchor for ships carrying cargoes; b) flag states under whose national flag the ships are registered (the registration provides the vessels the legal protection of that state); c) countries through which the forbidden cargoes pass. In addition, there is an apparent basic contradiction between the initiative and the principle of free trade. Thus far, the United States has signed agreements with Liberia, Panama, Malta, Belize, Cyprus, the Bahamas, Mongolia, Croatia, and the Marshall Islands, which allow an immediate search by most merchant marines in the world. These

agreements allow the United States to conduct inspections on a ship bearing the flag of these states at short notice.¹⁰

The US government has apparently seen that informal action allows flexibility and is much more effective than a formal institution, which is liable to be unwieldy and tainted by political interests. It appears that for now, it has stopped previous programs that were intended to institutionalize the initiative in one way or another. Moreover, although there is no institutionalized organizational infrastructure, a system of coordination has developed among states supporting the initiative; a group of experts in operations discusses suspicions about proliferation and plans training exercises to stop those transporting the equipment and materials related to weapons of mass destruction. This group includes experts from the military, law enforcement, intelligence, law, and diplomacy from twenty-one of the states that are partners to the initiative.¹¹

The ability to use the PSI platform to impose a naval blockade is limited, both because of the labor pains of the initiative and because the initiative is intended to foil the proliferation of nonconventional weapons. However, in light of the precedent in which the *Monchegorsk*, an Iranian merchant ship, was forced to dock and unload its cargo in a third state, it appears that there is greater international willingness to make use of this tool in order to increase the pressure on Iran, and over time, the initiative is likely to receive greater legitimacy. Increased legitimacy is also likely to expand the initiative, from a focus on preventing shipments at sea to preventing shipments in the air and on the ground, and from preventing shipments of nonconventional weapons to preventing shipments of conventional weapons. It is important that key states in the Iranian context have joined the initiative in recent years, including the UAE, Turkey, and South Korea. However, it is also important to include prominent countries such as China, Indonesia, and Malaysia, which have thus far remained outside the initiative, and may embrace a problematic policy concerning unauthorized proliferation.

Discussion

The naval theater makes it possible to take advantage of Iran's vulnerability and pressure it to change its nuclear policy, and the West must do more than it has thus far in order to prevent Iranian access to maritime trade. Thus, for example, shipping companies that do business with Iran should

be barred from docking at ports in Europe and the United States (especially worth mentioning in this context is the Tidewater company, which handles 90 percent of Iranian maritime cargo). Most of Iran's revenues come from export of crude oil by sea. Iran's dependence on the import of raw materials that are not crude oil, such as refined petroleum products and consumer goods, is also extremely significant. It is possible to cause Iran tremendous damage by harming its ability to export oil or preventing the supply of refined oil, because some one-half of its fuel products are imported. The same holds true for food, industrial machinery, and electronic consumer goods – preventing them from being shipped to Iran would severely damage the Iranian economy. Disruption of traffic to and from Iran through the Strait of Hormuz could have significant economic and even political consequences for Iran, because of the regime's overwhelming dependence on export of crude oil (anticipated revenues of some \$100 billion in 2012). The ports along the Persian Gulf coast have paramount strategic importance for Iran because they are the only channel for exporting Iranian oil and importing the goods required for the Iranian economy: some 90 percent of the imports to Iran and 99 percent of its exports go by sea, the large majority through the Strait of Hormuz.¹² Because of its dependence on export of oil through the Strait of Hormuz and its vulnerability to any interruption to free shipping in the Gulf, it has been reported that Iran intends to establish its first oil terminal outside the Strait of Hormuz.¹³ When the new oil port is operational (which depends on laying the oil pipeline), Iran can export a significant portion of its oil without fear that the Strait of Hormuz will be blocked.

In the past, the US Congress discussed a bill that would prevent refined petroleum products from entering Iran by imposing a naval blockade. This bill has been put on hold, apparently because of the high cost associated with enforcing its provisions. However, it is reasonable to assume that in preparing the options for the "day after" the failure of the dialogue with Iran, the US Fifth Fleet is holding war games and discussing ways to increase the pressure on Iran, such as increased monitoring of banned goods entering and exiting the country. The PSI provides the initial tools for handling prohibited shipments to and from Iran in the naval arena. In the past, Iran received a significant number of shipments by sea from the Khan network (Pakistan-Dubai-Bandar Abbas). Interception of such shipments will require regular patrols in the Arabian Sea on the way to

the Strait of Hormuz by PSI members, and cooperation by the states in the ports close to Iran, especially the UAE, which is a critical transit station in Iranian maritime commerce. The operational foundation for the Iranian theater is stable. Thus, for example, in the heart of the Gulf, in Bahrain, there is a base of the US Fifth Fleet, and several international naval task forces have been operating very effectively for years in the Persian Gulf and the Gulf of Oman, such as CTF-150. All that is missing is the political will.

Security Council resolutions on the issue of Iran provide a legal infrastructure for increased monitoring of the country. In addition, the failure of the talks with Iran about its nuclear future could contribute to the willingness of the West to take further, more serious steps against it, particularly in light of the fact that the economic sanctions imposed thus far have not changed its nuclear policy. The PSI initiative is limited in its ability to intercept “soft proliferation” (capital, information, and so on), and its relevance is decreasing as Iran overcomes its dependence on the import of sensitive materials for its nuclear project. In addition, the initiative does not provide a full response to interception of sensitive shipments in the air and on land, but it is likely to be a platform for steps intended to restrict Iran’s moves and increase pressure on the regime, a kind of partial naval blockade.

In contrast, a total naval blockade is a clear act under the laws of armed conflict at sea, which is considered an act of war and will establish an Iranian right to self-defense. In addition, blocking the entry of refined petroleum products to Iran and Iranian exports of crude oil would be serious from the Iranian point of view because the country is dependent on them, to the point that it would threaten the stability of the regime. In general, it is impossible to be certain that the pressure and the sanctions will cause the Iranian regime to change its policy on the nuclear issue, yet in order to avoid a military confrontation with Iran, an attempt should be made to prevent it from continuing its current policy by stepping up the pressure, under the threshold of war, in the naval arena as well.

Appendix: Thwarting Iranian Arms Shipments

For more than ten years, a war has been taking place far from Israel’s coasts, against the smuggling of weapons from Iran, for example, the seizure of the Iranian ship *Karine A* near Sharm el-Sheikh in January 2002. Efforts to foil smuggling, stepped up after the Second Lebanon War, are ongoing

and involve cooperation with friendly states in the region. To a large extent the effort to stop prohibited arms shipments received legal and political legitimacy after Operation Cast Lead, and is also based on UN Security Council resolutions on Iran's nuclear program. At the end of Cast Lead, Israel and the United States signed a memorandum of understanding on the battle against smuggling of weapons from Iran to Hamas. As part of the agreement, a working group of several Western states was established to handle intelligence information toward prevention of weapons smuggling from Iran by sea to the Gaza Strip.¹⁴

In recent years the media has reported on many incidents of seizure of weapons shipments sent by sea from Iran to its proxies in the region. The attempt to vary the smuggling methods, the "high signature" of weapons shipments on land and in the air, and the ability to move especially large quantities of arms by sea have led the Iranians to increase their use of the naval medium.¹⁵ Iran's arms shipments are in contravention of several UN Security Council resolutions, including Resolution 1747, which prohibits Iran from exporting weapons. Thus Iran's use of international shipping companies and European ports for moving arms is a systematic and gross violation of the laws of international shipping, and causes a substantial risk to civilian ships and ports involved in those shipments.

Following sanctions imposed (though not by the UN) on the large Iranian shipping companies, IRISL and HDS, Iran began to make use of European and international shipping companies as well, while concealing information from them regarding the contents of the cargoes.¹⁶ To this end, Iran makes extensive use of front companies and false documents attesting to the innocence of the cargoes. Thus far, the Security Council has warned its members to be aware of possible violations of the sanctions by IRISL, but has not gone beyond this.¹⁷ A published Security Council report charts the extent of Iranian arms smuggling and the use for this purpose of an IRISL subsidiary, which continues to operate ships whose chief destination is Syria. Thus, for example, in March 2008, an IRISL merchant ship left Iran for the port of Latakia in Syria, carrying a cargo with hundreds of tons of weapons for Syria. A NATO force that was in the area questioned the captain of the ship when it left the Suez Canal, and later even sought to carry out an inspection. After tactics of evasion, deception, and concealment, the ship succeeded in reaching its target without being inspected.¹⁸

In recent years, the Israeli Navy has managed to thwart several Iranian attempts at weapons smuggling. In March 2011, the navy seized the *Victoria*, a German-owned ship flying the flag of Liberia that was carrying weapons apparently intended for terrorist organizations in Gaza. Among the items found on the ship were six C-704 missiles ready for launching, two launchers, and two radar systems. In November 2009, the *Francop*, which carried a large shipment of weapons from Iran to Hizbollah, was seized. One month prior to that, the Maltese authorities, at the request of the United States, confiscated the cargo of the *Hansa India*, a German-owned merchant ship that was also transporting weapons from Iran to Syria. In August 2010, another shipment of arms from Iran to Syria, apparently intended for Hizbollah, was discovered. The shipment left a port in Iran disguised as a cargo of powdered milk. When the ship stopped in Italy, the container aroused suspicion, and in the course of an inspection carried out by the Italian police, a cargo of seven tons of explosives for missile and rocket warheads was discovered.

The foreign media have reported that since 2009, Israel intercepted convoys of weapons and ships transporting weapons to and from Sudan. The cargoes were transported on the Iran-Sudan axis through Oman and Saudi Arabia, and on the Syria-Sudan axis through Jordan and Egypt. In recent years, relations between Iran and states in the Horn of Africa have grown closer; Iran has sought in this way to establish a military presence along the shipping lanes in the area. Thus, for example, Iran established a naval port on the coast of Eritrea in the port city of Assab for the use of Revolutionary Guards personnel. In general, the Iranians have encountered difficulties in transferring shipments of weapons to Hamas through the Red Sea and Sudan, and from there, to the Gaza Strip through the Sinai. This is because of increased international monitoring of the movement of ships from Iran. It is little surprise, therefore, that in October 2010 the Nigerian security forces announced that during an inspection of the cargo of a ship from Iran that had docked in a Nigerian port, several tons of weapons were discovered, disguised as a shipment of building materials. In January 2009, authorities in Cyprus confiscated weapons and equipment for manufacturing weapons originating with the Iranian military industry, sent on the Russian ship *Monchegorsk*. Previously, ships from the US Fifth Fleet had stopped the *Monchegorsk* on the Red Sea,

but since it was registered in Cyprus, they did not conduct searches and asked the Cypriot authorities to do so.

In April 2012, the German-owned ship *Atlantic Cruiser* was stopped in the Mediterranean Sea. Large quantities of arms were found on the ship, which was apparently headed for the port of Tartus in Syria. The ship ultimately docked in Turkey.¹⁹ Moreover, even the government of Yemen claims that Iran is making use of the naval medium in order to transfer ammunition to the Shiite rebels in northwest Yemen. The fighting in this region has expanded in recent years and includes direct military operations by Saudi Arabia – including at sea – through a partial naval blockade, whose purpose is to prevent weapons shipments from reaching the rebels.²⁰ These interceptions appear impressive, but the common assessment is that this is the tip of the iceberg of the Iranian activity. Yet even if these seizures cannot significantly change the next battle, they can embarrass Iran and reveal its intentions. However, the effort does not always produce results. Thus, for example, in April 2012, the Israeli Navy stopped the merchant ship *Beethoven*, which was flying the flag of Liberia. The forces boarded the ship at a distance of 300 kilometers from Israel's coasts, when it was on its way south in the direction of the Gaza Strip, but they discovered that there were no weapons on it.²¹

Notes

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