



## **GETTING TO YES IN REOPENING HORMUZ**

**BY CHARLES E. MORRISON**

*Charles E. Morrison ([Charles.E.Morrison@EastWestCenter.org](mailto:Charles.E.Morrison@EastWestCenter.org)) is part-time Senior Fellow at the East-West Center in Honolulu, Hawaii. He served as East-West Center president from 1998-2016.*

Iran's response to the latest US peace proposal and President Donald Trump's fulsome rejection of it is another setback for the cumbersome, indirect Iran-US negotiations being conducted through Pakistan. One clearly unacceptable point was Iran's insistence of its sovereignty in the Strait of Hormuz.

The status of Hormuz is a by-product of the war rather than its cause. It is not an item that Iran and US can negotiate and settle bilaterally, because free transit is an international right of all maritime countries. The most logical way to address this issue is to de-link and treat it separately since the restoration of unconditional transit is necessary to recover from the most serious petroleum supply disruption in history and to ensure free navigation through Hormuz after most US military presence is gone. In the meantime, the resulting energy crisis has raised the costs of petroleum, fertilizers, and other products around the world, and price increases will grow as supplies dwindle each day that shipping is blocked. Diplomacy to fully reopen Hormuz remains critical.

### **The international straits regime**

Like several other chokepoints around the world including Gibraltar, Malacca, and the Bab-el-Mandeb at the southern end of the Red Sea, Hormuz is so narrow that the 12-mile territorial seas of coastal states Iran and Oman adjoin. To ensure free navigation through such straits connecting two international bodies of water, the 168-nation, 1994 UN Convention on the Law of the Sea (UNCLOS) provides that transit passage must not be inhibited by coastal states or suspended. They cannot charge tolls or discriminate between users. The US has not ratified UNCLOS but adheres to this and many other provisions as codification of centuries-old customary sea law.

This legal regime prevailed in Hormuz before the war. Restoring full compatibility with UNCLOS must be a fundamental international objective because if tolls are charged in one strait, coastal states elsewhere may want to do the same, adding enormously to the costs of goods. Already an Indonesian finance minister has mused about what revenues a toll booth in the Malacca Straits would net his country. Trade from Asia to Europe or the Middle East to East Asia could theoretically go through three or even four such chokepoints.

### **Status of negotiations**

After the Israeli and American attacks, Iran declared the central navigation channel through Omani territorial waters to be dangerous, presumably mined, forcing transit to the Iranian side where it could be more easily controlled and taxed. The US blockade, enforced weeks later in mid-April, was the logical response.

Each side appears to believe its blockage gives it leverage and the upper hand, that time favors it, and the other will be forced to accept its terms. But Iran's insistence on a new Hormuz regime and its sovereignty is contrary to internationally accepted sea law. The US in the meantime has linked its blockade not just to a full reopening of Hormuz, but to the outcome of other issues under negotiation.

In the weeks since the opposing blockages, each side has shown that it can continue its block against testing by the other. The net is a wash, with transit down to a tiny trickle. A large group of countries with French and British leadership appears ready to provide a symbolic presence to protect freedom of navigation, but only when the war is settled. What can be done now to get from here to there?

### **A Hormuz solution?**

A temporary opening by agreement of the belligerents, if using channels hugging the Iranian and Omani coast while de-mining the central channel, would help remove ships and seamen trapped in the Gulf. This could be a result of a ceasefire extension, or, like the 2022 agreement on Ukrainian grain, a humanitarian corridor. But this is not a permanent solution.

A problem is that two countries are squabbling over an international right. So far individual countries, including China, have demanded opening, but not altogether. What could be helpful is a powerful, collective diplomatic initiative by a large international group of UNCLOS parties to insist on restoration of the UNCLOS regime immediately. The group must include some countries influential with Iran and some influential with the US. The leadership in putting it together would most logically come from smaller and middle-sized countries in Asia, those most dependent on Hormuz, but it should include China, India, and the European countries. The effort would be entirely diplomatic and would not involve taking sides, merely insisting on compliance with existing international law.

Would the belligerents pay attention? Perhaps they would welcome a face-saving way out of a mutual dilemma—a getting to yes. The UNCLOS solution preserves Iranian (and Omani) sovereignty over their islands and territorial waters in Hormuz, but as is the case of Morocco, Spain, and the UK for Gibraltar or Indonesia and Malaysia for Malacca, in conformity with universal sea law. Iran's insistence on its control may be just a bargaining point, but it truly needs to accept that no special exception can be made for Hormuz, unlike all other straits.

Neither side loses leverage in accepting the multilateral demarche as each has already proven its military ability to block the Strait irrespective of whether that block is exercised. Both sides gain economically and politically from reopening.

It also frees the negotiators to focus on the original main point of contention: Iran's enriched uranium. This is a complex, important negotiation requiring specialized expertise. But as President Trump has indicated, it is less immediately urgent because the enriched uranium is so deeply buried and closely monitored. The two parties should be able to agree to the main goal: Iran's full compliance with the 1968 Treaty on the Non-Proliferation of Nuclear Weapons within a time certain.

In the end, the Iranian-US negotiations might be a tentative but catalytic next step toward a transformational change in the regional order in the Middle East. The first such step took place in the late 1970s in Israel's relations with Egypt and Jordan. To extend that arduous process to Iran seems perhaps even more far-fetched today than Egyptian-Israeli reconciliation after the 1973 Yom Kippur War. But if pursued patiently and consistently, it would truly distinguish current diplomacy from all previous efforts.

*The Pilot commentaries and responses represent the views of the respective authors. Alternative viewpoints are always welcomed and encouraged. Please write to [rob@pacforum.org](mailto:rob@pacforum.org) for more information on how to contribute.*