

**NAVIES AND THE ‘USE OF FORCE’  
ANALYSING AN ENCOUNTER BETWEEN THE US NAVY AND SEAGOING  
FORCES OF THE ISLAMIC REVOLUTIONARY GUARD CORPS  
PART 1**

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The following paragraphs constitute the first of a two-part article that seeks to analyse the sea-going forces of the Islamic Revolutionary Guard Corps (IRGC), considered by some to a legitimate, albeit parallel, ‘navy’ of the Islamic Republic of Iran, and by others, particularly by Government of the USA, as nothing more than a ‘foreign terrorist organisation (FTO)’. Whatever be the merits and demerits of these points of view, the ‘navy’ of the IRGC has frequently been found engaged in skirmishes with the US Navy within the Persian Gulf and the Strait of Hormuz. These skirmishes and the accompanying vitriolic polemics between the estranged governments of Iran and the USA are manifestations of brinkmanship which not only has very serious and significant operational maritime consequences but raise a host of legal questions as well. The latter are of particular interest as their reverberations can be felt 6,500 nautical miles (12,000 kilometres) away in the South China Sea. This is yet another example of the impracticality of trying to keep maritime issues (especially legal ones) in separate ‘silos’ determined by entirely artificial boundaries such as those between the INDOPACOM and the CENTCOM.

On the 28<sup>th</sup> of July in 2020, Iranian armed forces conducted large scale drills in the Strait of Hormuz which included attacks against a mock aircraft carrier modelled roughly on the US Navy’s *Nimitz* Class aircraft carrier. Expectedly, the US pilloried Iran for the drills, characterising them as reckless and threatening to the safety of shipping in the strategically important Strait.<sup>1</sup> While the drills saw participation of multiple branches of the Iranian military, at the vanguard was the Islamic Revolutionary Guards Corps in general, and its Navy in particular. The Islamic Revolutionary Guard Corps (IRGC), which is internally referred-to as *Pasdaran*<sup>2</sup> has, been frequently been given one or another pejorative label by the USA and its allies and partners. However, the one that perhaps merits serious discussion is that of its being designated a ‘Foreign Terrorist Organisation’ by the US Department of State.<sup>3</sup> Moreover, while

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<sup>1</sup> Reuters Staff, “Iran holds annual Gulf drill amid rising tensions with U.S.” *Reuters*, 28 July 2020, <https://in.reuters.com/article/iran-military-drill/update-2-iran-holds-annual-gulf-drill-amid-rising-tensions-with-u-s-idINL5N2EZ658>

<sup>2</sup> The IRGC is called the *Pasdaran* which means ‘Guard’. It was created, not as an entity that would be absorbed into the structures of the State, but rather, as a force that would guard and protect the clerical regime that seized power in the months of November and December of 1979. It may be very roughly equated to the Praetorian Guard that existed in the Roman Empire.

<sup>3</sup> “Statement from the President on the Designation of the Islamic Revolutionary Guard Corps as a Foreign Terrorist Organization”, *The White House*, 8 April 2019.

the IRGC comprises several branches, it is its Navy that remains one of its more visible arms in the Persian Gulf. The IRGC is distinct from the regular Iranian military or *Artesh*<sup>4</sup> and its position in the Iranian system is a complicated one. Moreover, the IRGC has a history of skirmishes with several other State forces of the Persian Gulf region, albeit with the US Navy more than with any others. One such incident occurred in April of this year, an analysis of which provides an opportunity to address a few pertinent questions relating to the Law of the Sea, and these are take-up subsequently in Part-2 of this article.

The first major engagement between the US Navy and the IRGC occurred when the United States became embroiled in what was called the ‘Tanker War’, following the opening of a maritime front in the closing years of a long drawn out bloody war of attrition between the Islamic Republic and Iraq.<sup>5</sup> Since then, the IRGC Navy has usually garnered attention for brief but intense skirmishes with the US Navy in the Persian Gulf. The intensity and frequency of these incidents in the Gulf have varied in tandem with the broader developments in Iran-US relations. However, at times even significant rapprochement between Iran and USA, has not prevented encounters between US Naval forces and the IRGCN. An example is the brief capture of US sailors by the IRGCN in 2016, when the former entered Iranian territorial waters near Farsi Island.<sup>6</sup> This was despite a ‘high’ in US-Iran ties during the Obama administration, which also ensured the initial success of the Joint Comprehensive Plan of Action.<sup>7</sup> On the other hand, when the JCPOA itself became the heart of a fresh dispute between the Trump administration and Iran, these incidents became more prominent, and continue to occur sporadically in the Gulf and the Strait.

However, the IRGCN’s *modus operandi* has remained typical. It usually engages in swarms to harass US ships, with provocative manoeuvres, and avoids direct engagement or deployment of any weapons.<sup>8</sup> A recent incident that is characteristic of this came about in April 2020 when the IRGCN was accused by the US Navy of “*dangerous and provocative actions*” against its vessels, which were involved in a joint military exercise with US Army Apache attack helicopters, in international waters. Eleven vessels of the IRGCN repeatedly approached US ships at “extremely close range and high speeds” with one passing within nine metres of a US Coast Guard cutter.<sup>9</sup> Besides stating that such actions were inconsistent with international maritime conventions or customs, the US Navy issued a notice in April that included the warning that- “*Armed vessels approaching within 100 meters of a US naval vessel may be interpreted as a threat...*” Failure

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<sup>4</sup> The *Artesh* is the name given to the Army of the Islamic Republic of Iran which is an entity that existed under the monarchy of Raza Shah Pahlavi and continued into the regime. It is a conventional military organ of the state and is distinct from the IRGC.

<sup>5</sup> Martin S Navias, “Oil and Water: The Tanker Wars”, History Today, Volume 69 Issue 8, August 2019, <https://www.historytoday.com/archive/feature/oil-and-water-tanker-wars>

<sup>6</sup> Phil Stewart and Parisa Hafezi, “Iran holds 10 American sailors; U.S. expects their prompt return”, *Reuters*, 13 January 2016, <https://www.reuters.com/article/us-usa-iran-boats-idUSKCN0UQ2I920160113>

<sup>7</sup> Kelsey Davenport, “The Joint Comprehensive Plan of Action (JCPOA) at a Glance”, Arms Control Association, <https://www.armscontrol.org/factsheets/JCPOA-at-a-glance>

<sup>8</sup> Fariborz Haghsheenas, “Iran’s Asymmetric Naval Warfare”, Policy Focus # 87, Washington Institute for Near East, September 2008, <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus87.pdf>

<sup>9</sup> “Iran warns US Navy over Gulf Incident”, *BBC News*, 19 April 2020, <https://www.bbc.com/news/world-middle-east-52348099>

to obey this, would invite “*lawful defensive measures*” by the US Navy.<sup>10</sup> Although the notice was a generic one and issued without specifically naming Iran, there can be little doubt that Iran was the principal target of the warning. It is however, more subtle in nature and precise in language than a far more blunt tweet by the then US President Donald Trump, in which he directed the US Navy to “*shoot down and destroy*” Iranian gunboats that harass American ships.<sup>11</sup>

In this light, three questions in particular are explored: **(1)** Do IRGCN gunboats classify as warships? **(2)** Do their harassment-actions constitute a level of ‘use of force’ that triggers the right of self-defence of US warships? **(3)** Is the ‘100-metre rule’ valid in terms of international law?

Prior to delving into these questions, it must be noted that despite a precarious deterioration of relations following the US withdrawal from the JCPOA, Iran and the USA are not in a classic state of armed conflict. Moreover, the use of armed force has not occurred in the main incident in question. Therefore, it may be reasonably concluded that the provisions of international humanitarian law do not operate, at least not just yet.<sup>12</sup>

A string of attacks, in the months of June and July of 2019, against oil tankers belonging to various nations, have once again brought the general insecurity concerning shipping in the Persian Gulf to a head. These tankers suffered multiple explosions under their waterline, allegedly due to limpet mines. The United States openly blamed the IRGCN, while the United Arab Emirates (whose ship was one among the victims of the attack) stated that its investigation pointed at the involvement of a “*State actor*”.<sup>13</sup> While no international impartial investigation was conducted into the attacks on oil tankers, there was enough reason, political and otherwise, to direct suspicion towards the IRGCN. Consequently, the US led an initiative to protect shipping in the region, termed the “International Maritime Security Construct” and comprising ten nations —Albania, Australia, Bahrain, Estonia, Lithuania, the Kingdom of Saudi Arabia, the United Arab Emirates, the United Kingdom, and the United States — at the present juncture (November 2020).<sup>14</sup> Partly in response and partly to cement its claim that the IRGCN was not involved in the mine attacks, Iran launched its own maritime security regime named HOPE.<sup>15</sup> Whether or not IRGCN personnel can be held to have breached Article 3(d) of the SUA Convention, by the victim States, is a matter that is highly moot. The foremost aspect to be understood, however, is the position of the IRGC in the Iranian state.

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<sup>10</sup> Phil Stewart and Idrees Ali, “Exclusive: In veiled warning to Iran, U.S. tells Gulf mariners to stay clear of its warships”, 20 May 2020, <https://in.reuters.com/article/usa-iran-military-exclusive/exclusive-in-veiled-warning-to-iran-u-s-tells-gulf-mariners-to-stay-clear-of-its-warships-idINKBN22W063>

<sup>11</sup> Tweet by President Donald Trump on 22 April 2020, which said- “I have instructed the United States Navy to shoot down and destroy any and all Iranian gunboats if they harass our ships at sea.”

<sup>12</sup> Rule 1 of the San Remo Manual on International Law Applicable to Armed Conflicts at Sea, 12 June 1994, states that- “*The parties to an armed conflict at sea are bound by the principles and rules of international humanitarian law from the moment armed force is used.*”

<sup>13</sup> “UAE tanker attacks blamed on ‘state actor’”, *BBC News*, 7 June 2019, <https://www.bbc.com/news/world-middle-east-48551125>

<sup>14</sup> Mike Schuler, “Naval Coalition Celebrates One Year Protecting Shipping in Strait of Hormuz and Bab el-Mandeb Strait”, 10 November 2020, <https://gcaptain.com/naval-coalition-celebrates-one-year-protecting-shipping-in-strait-of-hormuz-and-bab-el-mandeb-strait/>

<sup>15</sup> “Iran says three countries have accepted to join Hormuz peace initiative”, *Tehran Times*, 25 November 2019, [shorturl.at/dhzF8](https://shorturl.at/dhzF8)

## Who is the IRGC? State or Non-State?

The Islamic Revolutionary Guard Corps (*Sepah-e-Pasdarān-e-Engelabe Eslami*) traces its provenance to the very foundation of the Islamic Republic of Iran, in 1979. Born out of the insecurity that frequently defines the relationship between nascent post-revolutionary regimes and the existing militaries of States — as fear of a military-led *coup d'état* remains high — the IRGC was set-up as a parallel force — albeit a ‘militia’ to protect the government of religious clerics that came to power in Iran. Specifically, however, it was designed as a steadfast and ideologically firm constituency that the supreme clerical and political authority in Iran, could rely on for political and military support. Therefore, the IRGC is an organisation that remains at the forefront of the support base for the Supreme Leader of Iran. Over the decades, the Guards’ role has evolved, with the organisation emerging out of a strict combat role that it had sculpted for itself in the formative years of the Iran-Iraq War — which propelled the creation of the IRGC Navy — and donning the role of a multi-faceted and complex organisation that exercises significant economic, political, cultural and military control within the Iranian State. Although there remains a dearth of reliable accounts that cover the IRGC comprehensively, the few that exist, are insightful.

*“In the IRGC, Khomeini’s ideological and religious authority was fused with the effective organization of armed force and coercion. This, perhaps more than any other factor, enabled Khomeini to dominate his opponents and establish a regime in his image.”<sup>16</sup>*

*“The IRGC is neither a corrupt gang nor is it a firebrand revolutionary vanguard with the aim of exporting Iran’s revolution across the region. Rather, its vested and increasing interests in the country’s economy make it an increasingly conservative force rather than a radical one.”<sup>17</sup>*

The first quote relates to the IRGC’s position in the foundational years of the new regime while the second serves to reflect its contemporary ‘evolved’ and complex role. There is, quite clearly, a great deal that is needed to be understood about the behemoth that is the IRGC, which has spread its arms over most if not all aspects of Iranian society. However, the foregoing brief description suffices in the context of this article. While the IRGC might appear to be an overbearing force within Iran, it has traditionally, without exception, aligned itself with the Supreme Leader and focused on its role of guarding against threats in all forms to Iran’s clerical regime.

It has often been argued that the IRGC is a non-state militia working in parallel to State forces, but nothing could be farther from the truth. In actuality, the IRGC is an entity that does not quite fit withing the conventional State-Non-state framework. However, in strictly legal and technical terms, it is very much a State actor and draws authority from a document no lesser than the Constitution of Iran and reports to an authority no lesser than Ayatollah Khamenei, who is

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<sup>16</sup> Afshon Ostovar, *Vanguard of the Imam- Religion, Politics, and Iran’s Revolutionary Guards* (New York: Oxford University Press, 2016), 41.

<sup>17</sup> Frederic Wehrey et al, *The Rise of the Pasdaran- Assessing the Domestic Roles of Iran’s Islamic Revolutionary Guards Corps*, (Santa Monica: RAND Corporation, 2009), 93.

vested with the power to appoint or dismiss the Commander of the Guards.<sup>18</sup> The IRGC retains much autonomy in terms of executing its missions but these in no manner transgress the authority of the Supreme Leader.

The Navy of the IRGC is generally associated with the use of fast-attack craft, a preference for swarm tactics, to overwhelm larger ships, and asymmetric warfare. Amongst others, the patrol and coastal combatant fleet of the IRGCN is primarily composed of *Bavar* (*Peykaap* II), *Ghaem*, *Kashdom* II, and *Zulfiqar* Classes of patrol vessels. A comprehensive list of surface craft operated by the IRGCN was published by the International Institute of Strategic Studies in February of this year.<sup>19</sup> However, in May, it was reported that the IRGCN was adding a staggering one hundred new missile boats to its fleet, which would include vessels of *Ashura*, *Tariq* and *Zulfiqar* classes.<sup>20</sup>

In its early years, the IRGCN and the Islamic Republic of Iran Navy (IRIN) had some overlap in their areas of responsibility. However, following a 2007 restructuring, the IRGCN remains solely responsible for the Persian Gulf, while the IRIN, with its more conventional fleet and command of Iran's sub-surface assets, is responsible for the Caspian Sea and Gulf of Oman.

The vital chokepoint of the Strait of Hormuz continues to be an overlapping area of responsibility for both, the IRGCN and IRIN.<sup>21</sup> US naval assets in the Gulf and the Strait are usually part of the Bahrain-based US Navy's 5<sup>th</sup> Fleet, itself under the United States Military's Central Command (CENTCOM).

### **The Terrorist Designation**

On the 8<sup>th</sup> of April 2020, the White House officially released a statement from the President, which designated the Islamic Revolutionary Guard Corps as a 'Foreign Terrorist Organization' (FTO), under Section 219 of the Immigration and Nationality Act, of the United States. While this act was unprecedented in that it designated a State actor as an FTO for the first time, the designation of IRGC-linked entities as such, was not. Earlier, the Treasury Department had sanctioned multiple businesses linked to the IRGC's *Khatam al Anbiya* company.<sup>22</sup> Additionally, the 'Quds Force' of the IRGC and several of its top commanders have also seen multiple designations by the Treasury Department since 2007.<sup>23</sup> That said, it must be noted that the listing of the IRGC (as a whole) as an FTO does have some obvious uniqueness. Even as the White House terms the IRGC to be an active participant in acts of terrorism, just as it did in earlier instances categorising other groups as FTOs, it included the IRGC in the same list of

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<sup>18</sup> See Articles 110(6)(e), 150, 172 and 176 of the Constitution of the Islamic Republic of Iran. In addition to the points stated in the main text of this article, the Constitution also states that the highest ranking IRGC officials are to have a seat at the Supreme National Security Council of Iran.

<sup>19</sup> International Institute for Strategic Studies (IISS), *The Military Balance 2020*, (Routledge, 2020), 350.

<sup>20</sup> "IRGC adds 100 missile boats to its navy fleet", *Iran Press*, 15 August 2020, <https://iranpress.com/content/22320>

<sup>21</sup> Office of Naval Intelligence (US Navy), *Iranian Naval Forces- A Tale of Two Navies* (2017), 11.

<sup>22</sup> U.S. Department of the Treasury Press Center, 8 March 2012, <https://www.treasury.gov/press-center/press-releases/Pages/tg1509.aspx>

<sup>23</sup> U.S. Department of the Treasury Press Center, 25 October 2007, <https://www.treasury.gov/press-center/press-releases/Pages/hp644.aspx>

FTOs published by the Department of State, even though all the others are non-State actors. Of the 69 entities currently listed, the IRGC remains the only State actor.<sup>24</sup> Consequently, it also means that the only hostile State force that the US Navy could reasonably expect to encounter in the Persian Gulf, is one which is, according to the United States, a terrorist organisation. Against this backdrop, it would be prudent to examine what exactly the status of IRGCN vessels is, vis-a-vis established international law (UNCLOS) — specifically, whether they qualify as warships of the Islamic Republic of Iran (*Jomhuri-ye Eslami-ye Iran*).

With the context having been set, the second and concluding segment of this two-part article will address the three important legal questions that have been identified.

### ***About the Author***

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<sup>24</sup> List of Foreign Terrorist Organisations published by the Bureau of Counterterrorism of the U.S. Department of State, <https://www.state.gov/foreign-terrorist-organizations/>