

Maritime Demarcation in the Gulf after 2003

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Abstract

This paper uses the Iranian detention of twelve British naval and marine personnel in the Northern Gulf in March 2007 as a prompt to examine the place of the 2003 invasion of Iraq within the continuities and ruptures of the international legal imagination, including that of critical international lawyers.

Key words

maritime boundaries; Persian Gulf; colonialism; territorial waters; multinational force; Iraq war

On 24 March 2007, the Security Council via Resolution 1747 strengthened the sanctions against Iran in an effort to curtail the development of Iranian nuclear power.¹ The day prior, 23 March 2007, an international incident unfolded in the Northern Gulf.² Two dinghies with UK naval and marine personnel described as conducting anti-smuggling activities were apprehended and detained by the Iranian Revolutionary Guard Corp Navy. The seizure of fifteen Royal Navy soldiers and marines by the Iranian officials raised a number of legal questions with regard to the freedom of passage and the maritime boundaries. However, the episode ended before any significant international legal questions could be answered, as the UK nationals were all released on 4 April 2007. The Iranian government described this as an ‘Easter gift to the British people’.³ Subsequently, the UK government produced an inquiry into the incident (‘the UK Inquiry’) and then a report on the foreign policy dimensions (‘the

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¹ UNSC 1747 (24 March 2007) UN Doc S/RES/1747.

² The Arabian Gulf is also referred to as the Persian Gulf from within Iran. I use the term ‘Northern Gulf’ to denote the specific maritime regime that is adjacent to Iran and Iraq. To avoid using the preference for one terminology (Arabian) over the other (Persian) and to simultaneously narrow the scope of the analysis given the many other international incidents that have happened between the river mouth of the Shatt-Al-Arab and the Strait of Hormuz.

³ Nasser Karimi, ‘Iran Frees 15 Captured Sailors as “gift to British people”’ *Deseret News*, Associated Press (5 April 2007) <<https://www.deseretnews.com/article/660209178/Iran-frees-15-captured-sailors-as-gift-to-the-British-people.html>> accessed 20 September 2021.

UK Report’), the latter after numerous British naval personnel had sold their stories to the UK press.⁴

The location of the midline between Iran’s territorial waters and the additional littoral states in the Gulf is established via a series of bilateral agreements, including the Algiers Accord with Iraq.⁵ The latter established a process—never completed—for Iran and Iraq to agree the midline between the two coastlines. The changing geography of the Northern Gulf shoreline and late twentieth century armed conflicts in the region have left the exact placement of the midline uncertain and reliant on Iranian coastal mapping. That the UK deploys its naval regiments into the region and that the UK asserts a right to map the maritime region is due to the 2003 invasion of Iraq, and the longer presence of the UK in the Northern Gulf, which, the UK asserted at the time, was part of its larger security agenda to apprehend terrorists.⁶

In this paper the 2003 use of military force on the territory of Iraq by the United Kingdom, the United States and their allies is examined through a practising of ‘historical inflected jurisprudence’ to ‘embrace a consciously interventionist history-writing’.⁷ I intervene in the narrative arc that centres the invasion in 2003 and use the 2007 maritime incident as an axis for acknowledging a longer imperial history and series of knowledge forming practices that situate 2003 as part of a sequence of interventions that are not only military in nature but also mechanisms for shaping the contours of international law and legal knowledge. I scrutinise military manoeuvrings and knowledge-forming practices by the United Kingdom in the Northern Gulf in 2007 to examine the larger narrative within which the 2003 Iraq invasion by

⁴ UK Government, *Inquiry into the Apprehension of 15 RN/RM Personnel from HMS Cornwall by Iranians 23rd March 2007 – Operation Deacon*, 16th May 2007, D/CDS 3/6/1, redacted version <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/482260/20151120-Report_Redacted-FINAL_Redacted.pdf> accessed 20 September 2021, henceforth the ‘UK Inquiry’; Foreign Affairs Committee, *Foreign Policy Aspects of the Detention of Naval Personnel by the Islamic Republic of Iran*, (UK Government Publishing 22 July 2007) <<https://publications.parliament.uk/pa/cm200607/cmselect/cmcaff/880/880.pdf>> accessed 20 September 2021, henceforth the ‘UK Report’. An additional report on the media purchase of military personnel stories was undertaken by Tony Hall (referred to as ‘the Hall Report’) published 19 June 2007 and a report to the House of Commons was submitted in December 2007: ‘House of Commons Defence Committee, *The Iran Hostages Incident: the lessons learned*’, (UK Government Publishing Service 14 December 2007) <<https://publications.parliament.uk/pa/cm200708/cmselect/cmdfence/181/181.pdf>> accessed 20 September 2021.

⁵ Treaty Relating to the State Boundary and Good Neighbourliness between Iran and Iraq, June 1975, known as the ‘Algiers Agreement’ agreed *on the principles* for defining the boundary (established previously at a meeting in Algiers in March 1975) and for the placement of the boundary on the Al-Shatt River.

⁶ UK Inquiry 3, para 12.

⁷ On ‘history inflected jurisprudence’ see: Sundhya Pahuja and Cait Storr, ‘Rethinking Iran and International Law: The *Ango-Iranian Oil Company Case* Revisited’ in James Crawford, Abdul Koroma, Said Mahmoudi and Alain Pellet, *The International Legal Order: Current Needs and Possible Responses* (Brill, 2017) 53-74; on ‘consciously interventionist history-writing’, see: Jean D’Aspremont, ‘Critical Histories of International Law and the Repression of Disciplinary Imagination’ (2019) 7 (1) *London Review of International Law* 89–115

allied forces sits. I demonstrate a legacy found in the range of British incursions and interventions in the region, in Iraq, in Iran and in the Gulf region, at sea and on land, as well as the UK failures to perceive the regional dynamics,⁸ the failure to examine and understand alternative knowledge formations⁹ or the dialectal nature of sovereignty.¹⁰ The latter claim, drawn from the work of Adib-Moghaddam, identifies the thin and monolithic version of Iranian statehood constructed within international law that ignores how ‘Iran’s significant “others” are now entirely subsumed in the meaning of Iran’.¹¹ Adib-Moghaddam’s extensive account of the production of nationalisms and identity in Iran offers an insightful and adjunct argument to my larger study of imperialism, knowledge making and the Eurocentrism of international law through the 2007 maritime incident in the Northern Gulf, alerting the reader to a one dimensional version of Iran that is produced and mobilised within international law and international relations.¹² While Adib-Moghaddam engages the construction of a global Iran, that analyses ‘Iran as an open parenthesis; Iran as a global idea and Iran in the middle of the crossroads of identities, a central focal point in a common human experience’,¹³ I argue that UK framing of the legal questions surrounding the Iranian seizure of British naval and marine personnel in the Northern Gulf in 2007 obscures the knowledge-forming structures that propel the shift between scales and geographies within international law and depend on a very specific, narrow account of Iran as nation state and rogue citizen within global affairs.¹⁴ The continued production of Iran as rogue state (and Iraq as a vulnerable and disorderly state) makes amenable the prolonged reliance on UK knowledge, even when—as the UK Report into the 2007 maritime incident demonstrates—that knowledge has significant gaps.¹⁵ Ultimately the UK refers back to the Security Council authorisation of its mission in Iraq as the basis for its presence and security initiatives. This is a move reminiscent of the implied justification of the authorisation used in 2003.¹⁶ I examine this not only as a series of continuities within international law, from colonial histories to maritime incidents, but also as

⁸ F Gregory Gause, *The International Relations of the Persian Gulf* (Cambridge University Press 2009).

⁹ See, for example, Hassan S. Khalileh, *Islamic Law of the Sea: Freedom of Navigation and Passage Rights in Islamic Thought*, (Cambridge University Press 2019).

¹⁰ Arshin Adib-Moghaddam, *The International Politics of the Persian Gulf: a cultural geography* (Cambridge University Press 2006).

¹¹ Arshin Adib-Moghaddam, *Psycho-nationalism: Global Thoughts, Iranian Imaginations* (Cambridge University Press 2017), 146.

¹² *ibid*, 153-154.

¹³ *ibid*, 155

¹⁴ Note also, over the period of writing, relations in the wider Gulf flared between the United States and Iran, see further: Steven Simon (2018) ‘Iran and President Trump: What Is the Endgame?’ (2018) 60 (4) *Survival* 7-20.

¹⁵ UK Report, 18, para. 32.

¹⁶ For discussion, see: Gina Heathcote, *The Law on the Use of Force: a Feminist Analysis* (Routledge 2012) 56-57.

indicative of the reproduction of a specific knowledge frame that relies, and insists, on Anglo-European histories as the knowledge which forms the global.

In attending to maritime spaces, I acknowledge the land-sea border as, in a sense, illusory, involving the inclusion of territorial waters in global political maps, as well as contiguous and Exclusive Economics Zones—all of which offer significant insight into the advance of states into the ocean,¹⁷ or, in the words of Oxman the ‘territorial temptation at sea’.¹⁸ Any study of the political contingencies, legal outcomes and shifting alliances resulting from the use of force in Iraq in 2003 might thus be wise to also recognise the extent of territories across land and sea. The 2007 maritime incident ultimately demonstrates the continued role of the UK in assuming the capacity to represent Iraq, to direct military manoeuvres otherwise ambiguously authorised by the Security Council, and simultaneously to assert its knowledge-forming practices as the dominant way of knowing and representing the world and deny its own colonial incursions as central to that knowledge formation.

The article proceeds as follows. In the next section I analyse the UK assertions of its location in the Northern Gulf at the time its personnel were seized and the UK’s reliance on UK hydrographic charts as exemplifying a flow of knowledge that is unidirectional. In section three I analyse the legal issues raised in the UK Inquiry and the UK Report to examine the contingency of legal analysis that requires a pre-existing frame to identify facts and law. In the fourth section, I analyse the role of international legal histories in the reproduction of partial perspectives before examining the manner that UK produced political and legal geographies are used to obscure the partial perspectives embedded within international law. The article concludes with reflection on what is left out of international law, not only in terms of voices and perspectives but, as I argue throughout, the defined parameters for engagement and knowledge. Throughout my interest is not centred on which state was in the wrong or acting illegally. It is credible to question Iran’s choice of method of enforcement (seizure, arguably a form of self-help) and treatment of UK personnel,¹⁹ and to question the accuracy of British claims as to their location, as the UK Report does.²⁰ Indeed, both states seem to

¹⁷ See further: Brian Russell Roberts, *Borderwaters: Amid the Archipelagic States of America* (Duke University Press 2021); also see: Brian Russell Roberts and Michelle Ann Stephens, *Archipelagic American Studies* (Duke University Press 2017).

¹⁸ Bernard H Oxman, ‘Territorial Temptation: a Siren Song at Sea’ (2006) 100 *American Journal of International Law* 830.

¹⁹ UK Report, 3, para 4.

²⁰ *ibid*, para 3; 18, para 32.

have made errors and yet—reminiscent of the Iraq invasion in 2003—some justifications skirt illegality without significant repercussions.

Mapping the Gulf

The International Hydrographic Office (IHO, originally the International Hydrographic Bureau) was established in 1921. The IHO includes membership of the majority of coastal states, although importantly for this analysis, Iraq is the only Gulf state that is not a member of the IHO. The IHO functions as the authoritative worldwide hydrographic body, with its purpose being to co-ordinate the work of national hydrographic bodies and to underscore the importance of national coastal and hydrographic mapping. Even now, the UK Hydrographic Office, rather than the state of Iraq, provides the maps for Iraq's coastal regions. The role of the UK Hydrographic Office as the source of the official cartographies of Iraqi territorial waters reflects the long history of British control in the Gulf, as well as a legacy of the 2003 use of military force. British control of Basra, in the south of Iraq and including the adjacent territorial waters in the Northern Gulf, continued until December 2007, although the presence of British naval vessels in Iraqi territorial waters continued under the guise of the UK-Iraq Training and Maritime Support Agreement until 2011.²¹

External interference in the maritime demarcations in the Gulf emerge in different periods, although significantly in the period from 1971, after the departure of the British from the region, and prior to the entry of the US into the region in 1981, relative agreement with respect to adjacent territorial waters was achieved.²² Mojtahed-Zadeh and Zarei describe this agreement as achieved through 'Iranian domination of affairs in the region', and note 'it was during that period that territorial and boundary disputes were peacefully dealt with'.²³ The disproportionate share of coastline that is Iranian influenced the Iranian proactive resolution and agreement with the various Gulf states, such that, by the mid-70s agreements were in place between Iran for each of the adjacent territorial waters, including Iraq. The 1975 Algiers Accord agreed the border between the two states on the Shatt-Al-Arab river which opens into the Northern Gulf, including a formula for establishing the median line between the territorial waters of Iran and Iraq.²⁴ The Algiers Accord remains legally binding on both

²¹ Geraint Hughes, 'Iraqnophobia; the Dangers of Forgetting Operation TELIC' (2012) 157(6) *The RUSI Journal* 54-60.

²² Pirouz Mojtahed-Zadeh and Bahador Zarei, 'Maritime Boundary Delimitations in the Persian Gulf' (2017) 14(2) *International Studies Journal* 49, 51.

²³ *ibid.*

²⁴ Alizera Najafinejad and Saeid Bahrami, 'Origins of Conflicts Between Iran and Iraq' in Mansoureh Ebrahimi, Masoumeh Rad Goudarzi and Kamaruzaman Yusoff K (eds) *The Dynamics of Iranian Borders* (Springer 2019).

states, despite the Iraqi sense of ‘capitulation’ in the negotiations and the subsequent attempt to unilaterally withdraw (triggering the Iran-Iraq conflict in 1980).²⁵ However, the requirement for a ten year review to adjust the median line and account for geographical change to the baselines has not occurred.

In 2007, the UK asserted the location of its navy and marine personnel through a simplified version of the UK hydrographic maps. One of the UK’s justifications for not accepting the Iranian demarcation of the maritime border was that Iraq had not, in 2007, engaged in legal dialogue on the matter of the meridian line with its neighbour since 1990. The period from 1990 until 2007 is a period of international interventions, involving both sanctions and force, an occupation and a multinational force that impacted the nature of Iraqi international relations and its capacity to enter into relations with other states. In March 2007, the UK was patrolling the Northern Gulf at the behest of the Iraqi government, as a consequence of the use of military force by the US and the UK in 2003. The changing land boundary, caused in part by the proximity of the Shatt-al-Arab river mouth to the area under dispute, rendered the UK hydrographic records out of date. To avoid scrutiny of this, the UK Inquiry focuses on the median line and the marine co-ordinates established on the older maps.²⁶ The subsequent UK Report indicates the necessity to establish, first, the land boundary (baseline) and then the maritime boundary to ensure the changing coastal geography of Iran is considered.²⁷

In the next section I examine the UK’s understanding of the incident in the Northern Gulf in 2007. The key document I rely on, alongside academic analysis, is the UK government’s internal memo that provides an inquiry into the incident (the UK Inquiry).²⁸ This document, released in redacted form, signals various issues relevant to the UK understanding and historicisation of the 2007 seizure of its personnel by Iranian state officials. The UK Inquiry was led by Lieutenant General Sir Rob Fulton, at the time Governor of Gibraltar, and considered the circumstances in which the British personnel were seized. The Inquiry was originally intended to be confidential, but a redacted copy is available from the UK publishing service.²⁹ I also draw on the longer House of Commons, Foreign Affairs

²⁵ Rob Johnson, ‘Mustatazafin and Taghetti: Iran and the war, 1980-1988’ in Nigel Ashton and Bryan Gibson (eds), *The Iran-Iraq War: New International Perspectives* (Taylor and Francis 2012), 59. On the Iran–Iraq conflict see: Christopher C Joyner (ed), *The Persian Gulf War, Lessons for Strategy, Law and Diplomacy* (Greenwood Press 1990); N el-Sayed el-Shazly, *The Gulf Tanker War; Iran and Iraq’s Maritime Swordplay* (MacMillan Press 1998); Efaim Karsh, *The Iran-Iraq War: Impact and Implications* (Osprey 2002).

²⁶ UK Inquiry, 5, para 20.

²⁷ UK Report, 15, para 27.

²⁸ UK Inquiry.

²⁹ *ibid*, Appendix Two (Terms of Reference).

Committee Report (the UK Report).³⁰ Importantly, the redacted section of the UK Inquiry includes the UK map demonstrating the location of their personnel which, the UK Inquiry asserts numerous times, was inside Iraqi territorial waters. The subsequent UK Report includes two maps. The first map was supplied by the UK Ministry of Defence. The second map was supplied by the International Boundaries Research Unit at Durham University and combined UK Hydrographic sources and the Ministry Defence co-ordinates of the location of the UK personnel on 23 March 2007. In the UK Report significant questions are raised with respect to the UK reliance on old maps and a failure to acknowledge the changing geography, in particular the location of the Iranian baseline, indeed the IBRU map locates the UK co-ordinates as positioning the UK personnel on land rather than in the Gulf.³¹ I argue this account of the Shatt-Al-Arab and the Northern Gulf illuminates the need for international lawyers to engage more fully with the complex forms of regionalism and nationalism in the Northern Gulf that open to different legal encounters.³² This permits a foregrounding of what knowledge is elevated to the international plane to examine the displacement of both local and regional understandings so as to entrench the Anglo-European history of international law, producing limited space to assert an Islamic law of the sea or the histories of nationalism and belonging across the Gulf region.

In their study of the *Anglo-Iranian Oil Company Case*, Pahuja and Storr, argue for an approach to international law that engages history attuned to ‘seeing and describing practices which both authorize conduct, and which claim authority to speak the law, as well as the historical (and political-economic) contexts in which those practices take place.’³³ As a mechanism for articulating alternative legal histories and, ultimately, challenging legal forms and their exclusionary practices, Pahuja and Storr ‘write-in’ the perspectives and approaches to international law via the traversing of twentieth century encounters between Britain and Iran. Pahuja and Storr thus capture and further what D’Apresmont refers to as the ‘historisation’ of international law through the ‘process of writing and re-writing of historical narratives’.³⁴ D’Apresmont makes the further claim that there is a need for critical histories of international law to engage in larger practices of disruption so as to produce a radical historical critique.³⁵ For Pahuja and Storr this is more than ‘re-writing’ and is as much an

³⁰ UK Report.

³¹ *ibid*, 14-16.

³² Adib-Moghaddam (n 11) 131

³³ *Anglo-Iranian Oil Company Case* (United Kingdom v Iran), *ICJ Reports 1952*; Pahuja and Storr (n 7) 54.

³⁴ D’Apresmont (n 7) 97.

³⁵ *ibid*.

analysis of how each act of writing solidifies and holds perspectives as given or settled. Drawing on this approach, in the following section I examine local knowledge of the Gulf with the UK analysis and perception of the events in March 2007. I compare this to the maritime boundary setting in the Gulf, and Iran's role in that development, as well as the perception of nationalisms understood from within the region and the longer history of Islamic law of the sea, to demonstrate how the Anglo-European imagination of owning and naming the ocean reflects the history of colonialism to reproduce the legal forms that displace alternative frames for engaging international law.

International Law of the Sea in the Gulf

The legal questions that emerged from the 2007 incident were summarised in the UK Inquiry and include: the demarcation of territorial waters and the larger mapping of land and sea territories in the Gulf, the application of the rules on innocent passage, the responsibilities of states when a vessel fails to concur with the rules on innocent passage and the scope of Security Council authorisations on maritime law.³⁶ I draw in and examine these legal questions in this section. This functions as the backdrop to examine the mechanisms through which critical histories of international law might engage with Britain's continuities in the Gulf region, or a genealogy that 'unveils the canopy of facts masquerading as fixed reality'.³⁷ The UK government in its relegation of some questions to fact (eg the location of the maritime boundary) and others to questions of law (eg the nature of UK presence in the Gulf) delineates the frames of knowledge and the conditions for production of international law.

The legal questions flowing from the incident are arranged by the UK government to make a series of spatial moves that dictate and cohere with the existing knowledge frames through which international legal encounters are produced.³⁸ Riles studies the mechanisms that early twentieth century international lawyers use to shift concerns toward and away from the international plane and concludes: 'we find that the global is *both* perspective and place'.³⁹ The means through which international lawyers, and by extension states, construct the frames for what is a matter and what matters under international law thus challenges 'the power of perspectivism as a tool for reimagining a new and truly postcolonial law or politics'.⁴⁰ Riles's

³⁶ Also see: Tian Shichen, 'On China's Regulation of Foreign Military Ships in Its Territorial Seas: Reflections on the Incident of Iran's Seizure of British Navy Soldiers' (2007) *China Oceans Law Review* 247.

³⁷ Adib-Moghaddam (n 11) 7.

³⁸ Annelise Riles 'The View from the International Plane: Perspective and Scale in the Architecture of Colonial Law' (1995) 6(1) *Law and Critique* 39.

³⁹ *ibid* 54 (italics in original).

⁴⁰ *ibid*.

study is an inquiry into the attempt to re-imagine the legal landscape through a critical lens, where local acts are hoisted up as international issues. The 2007 incident in the Gulf and the legal questions surrounding it illustrate the additional shifting between regional and global frames, as well as local and global frames. The historical and contemporary interstate relations between Gulf states are superseded via the location of the issue as an international, as well as regional, security issue. However, the central dispute—the position of UK personnel in relation to the location of the Iran-Iraq maritime border—is rendered a local rather than an international legal question. This is despite the UK understanding that, according to the subsequent UK Report, the maritime boundary ‘was less clear than it ought to have been’.⁴¹

Craven’s account of international legal histories as legal methods asks a similar range of questions about the role of critique in ‘finding’ or envisaging something new, or perhaps bolder, in the critical legal history project to argue, instead, ‘[i]f the history of international law today is unavoidably a history of the present, one task may be to understand the patterns of deployment and consumption, attending to the blind-spots and biases in contemporary accounts’.⁴² In their separate analyses, Riles and Craven each ask about the nexus between critique and the production of international legal histories, space, geographies and, as I add in this analysis, the shape of knowledge itself. In framing an article on the legacy of the 2003 Iraq invasion on an event that took place four years later, exploration of which histories, geographies and knowledge are permitted into the legal domain becomes apparent. Although the 2003 use of military force was articulated by the UK as a response to the failures of the Hussein regime to comply with Security Council resolutions, the status quo of Iraq-UK relations in 2007—and since—as a means to access and patrol the Northern Gulf is an important adjunct outcome of the invasion and a continuation of the histories of colonial interference across the region. The role of Security Council sanctions against Iran also under consideration at the time of the seizure highlight the shadow of the 2003 invasion in Iraq. The ‘missing’ weapons of mass destruction, as well as the shift—by 2007—to frame UK presence in Iraq as linked to the so-called ‘Global War on Terror’, is drawn into the UK’s justification for the activities of its personnel in the Northern Gulf.⁴³ A critical legal method that frames

⁴¹ UK Report, 16, para. 3.

⁴² Matthew Craven, ‘Theorizing the Turn to History in International Law’ in Anne Orford and Florian Hoffman (eds), *The Oxford Handbook of International Legal Theories* (Oxford University Press 2016).

⁴³ UK Report, 13.

2003 as the rupture thus potentially risks hoisting one set of encounters into the international while ignoring the repetition of legal forms that produce the conditions for doing so.

The 2007 incident between the UK and Iran provides three sets of unanswered questions that further illustrate the ways in which scale and geographies underpin the production of the global and the local within international law. The first unanswered question regarding the location of UK personnel was framed by the UK as a question of fact, the second concerned the nature of innocent passage under the law of the sea and the third on the nature of Security Council Chapter VII resolutions. In the end, the release of the UK personnel by Iran left the questions raised by the incident unadjudicated by either an international court or tribunal, although in response to UK lobbying the Security Council released a statement requesting the release of UK personnel on 29 March 2007.⁴⁴ Each of the questions is examined here to explore the underlying knowledge frames and assumptions that inform the discipline of international law and the role the 2003 invasion of Iraq by the US, the UK and their allies contributes to a longer history of the Northern Gulf that prioritises the maps—intellectual and cartographic—that emerge from outside of the region

(a) Where were they?

The demarcation of territorial waters in the Northern Gulf is the obvious space to start analysis of the disagreement between the UK and Iran in 2007. After the seizure of its personnel and property, the UK asserted that the illegality of Iran's acts pertained to an Iranian error in the claim that the UK navy and marine personnel were in Iranian territorial waters. Unspoken in the UK account of maritime maps is the 'uncertain territorial limits inherited from a turbulent colonial past'.⁴⁵ Although the International Hydrographic Organisation (IHO) oversees coastal mapping, the reliance on charts registered and prepared in the UK was deemed appropriate. Throughout the incident, the UK indicated that the seized personnel were in Iraqi territorial waters. The Iranian position remained steadfast that these were, in fact, the territorial waters of Iran. An analysis of the UK's own subsequent documentation, alongside the recent history of incursions and attacks into Iran territorial waters, the Iran-Iraq agreement on demarcation of the maritime boundaries in the Algiers Accord, and the changing geographical structures raise considerable doubt over the UK's

⁴⁴ *ibid*, 13.

⁴⁵ Daniel-Erasmus Khan, 'At the Edge of an "Inadvertent War" – The 2007 British-Iranian Incident in the Shatt-al-Arab' in Andreas Fischer-Lescano, Hans-Peter Gasser, Thilo Marauhn and Natalino Ronzitti (eds), *Peace in Liberty* (Dike Publishers 2008) 155–168.

claim. The UK Report collated evidence that Iranian policy was to agree the midline with an independent Iraq.⁴⁶

There remains in force an agreement between Iran and Iraq as to the delimitation of the territorial waters in the Gulf between the two states. The Algiers Accord of 1975 between Iran and Iraq establishes a middle line on the Shatt-Al-Arab waterway (known as the Arvand Rud in Iran). The Algiers Accord established the Iranian mapping of the Gulf as the agreed delineation, alongside a commitment from the Iranian state to cease support for Kurdish communities in Iraq, although Iraq's dissatisfaction with the terms of the agreement led to not only the attempt to unilaterally withdraw from the Accord but contributed to the commencement of the Iran-Iraq conflict.⁴⁷ The agreement was the subject of renewed diplomatic exchange between the two respective Heads of State in 1990 and the incorporation of a provision in the Accord for a ten-year review to account for accretion and geological changes has not occurred. As such, this document remains ambiguous, at best, in affirming or assessing the location of the end of one territorial water and the commencement of the other, although it does establish that the maritime boundary is at the median line between the two land territories. The 1990 amendment acknowledges the need for an assessment of the land territory to accommodate the shifting nature of the median line. Furthermore, the 1990 exchange coming at the end of the Iran-Iraq conflict, and as the Iraq-Kuwait conflict and the subsequent, multiple international military activities on the territory of Iraq occurred, highlights the failure of Iraqi compliance with the 1990 amendment is connected to the political intransigence produced through successive international military operations. Each of these conflicts have had their own relation to access to the Northern Gulf and, in particular, centred on access to the Shatt-Al-Arab waterway, the adjunct Noa Peninsula, Iraqi oil platforms and link to a history of maritime and land disputes in the region. In 2007, a combination of disputed GPS readings, the ambiguities regarding the application of the Algiers Accord and the impact of the movement of the riverhead due to the accretion of silt, makes locating and confirming the placement of the dinghies and their crew on 23 March subject to a series of factual disagreements between the UK and Iran that are not easily resolved by the UK hydrographic evidence.

In addition, the Algiers Accord and the history of disputes between Iran and Iraq with regard to access to the Northern Gulf via the Shatt-Al-Arab focus on navigation along the waterway

⁴⁶ UK Report 18, para 31.

⁴⁷ Ashton and Gibson (n 25).

and/ or access that extends into the Northern Gulf at the mouth of the river only. The 2007 seizure of British personnel was further from the coastline and as the UK subsequently acknowledged, '[a]t no stage has agreement reached beyond the mouth of the Shatt-Al-Arab'.⁴⁸ This account of interstate relations amongst the littoral states in the Gulf is continually asserted and yet unsubstantiated in the UK Inquiry. In the subsequent House of Commons Report the decision in the original UK Inquiry to mark the maritime boundary and not the land boundary (from which the maritime boundary must be measured) is conceded as:

It was not intended to undermine the formal status of the land boundary which applies in this part of the Gulf, nor to imply that there is a de jure maritime boundary. It was unfortunate, however, that this annotation was placed against an area of the Gulf where the land boundary applies.⁴⁹

The UK acknowledges this is rendered more complex due to the Iran use of a straight baseline for calculating its territorial sea and the impact of changing coastal geographies on the capacity to draw a median line between the two coastlines with any degree of certainty. The UK position is that it was reasonable to infer a median line between the two baselines without Iranian evidence of the actual location of the land boundary. Although Iran is not a party to the UN Convention on the Law of Sea, the customary law status of this provision of the treaty applies. In the absence of an agreement between the two states it is difficult to see how the UK could play a role in ascertaining and dictating where the divide between the two territorial waters should sit: the UK Inquiry states, 'the delineation of the Iraq territorial waters is murky'.⁵⁰ The subsequent UK Report records:

We conclude that there is evidence to suggest that the map of the Shatt al-Arab waterway provided by the Government was less clear than it ought to have been. The Government was fortunate that it was not in Iran's interests to contest the accuracy of the map. We recommend that, in its response to this Report, the Government state why it chose to mark the boundary as a purely 'territorial water boundary' rather than including aspects of the 'land boundary' agreed to in 1975.⁵¹

However, from a legal point of view, the Algiers Accord does establish the formula for establishing the maritime boundary and the absence of the ten-year review after the 1990

⁴⁸ UK Inquiry 5, para 20.

⁴⁹ UK Report 3, para 4.

⁵⁰ UK Inquiry 17-18, para 78.

⁵¹ UK Report 3, para 3.

codicil does not change the legal status. The UK reliance on old cartographic tools allows this legal certainty to be rendered uncertain through the factual location of the (old) maritime boundary and permitting the UK hydrographic maps as source of fact.

(b) Innocent passage?

The subsequent UK Report acknowledges the UK Inquiry's focus on the maritime boundary as obscuring the need for identification of the land boundary to identify the maritime boundary. However, if the Iranian assessment of the location of Iranian territorial waters is accurate, the question shifts to one of law rather than fact and becomes focused on the application of the rules on innocent passage and the responsibilities of states when a vessel fails to concur with the rules on innocent passage.⁵²

All reports from the UK indicate that the navy and marine personnel were conducting anti-smuggling tasks. The UK Inquiry into the incident identifies the economic security associated with the oil platforms in the North Gulf under the control of Iraq as significant. Despite the uncertainty of the status of the waters beyond the river mouth of Shatt-Al-Arab, a finding that the UK vessels were in Iranian waters does not necessarily give sufficient answers to whether the Iranian seizure was within the law. In one of the few legal accounts of the incident, Shichen applies the rules on innocent passage, military vessels and the international law of the sea to the incident.⁵³ A coastal state, under Article 25 of the Convention on the Law of the Sea, can take 'necessary steps in its territorial sea to prevent passage which is not innocent', although this is to be read alongside Article 30 which establishes, 'the coastal State may require it to leave the territorial sea immediately'.⁵⁴ Ultimately the convention does not sufficiently establish the relationship between these two eventualities, for example, whether a request to leave is required prior to 'necessary steps' being taken.

Given Iran is not a party to the Convention on the Law of the Sea this is, ultimately a customary international law matter and state practice may offer some insight. Shichen argues that state practice leans towards a reading of custom that permits the suspension of the immunities and rights of warships if the requirements of innocent passage are not fulfilled.⁵⁵ Further, the coastal state can revoke rights to innocent passage through a failure to comply with the innocent passage requirement that entry into coastal waters should be continuous and

⁵² Shichen (n 36) 258.

⁵³ *ibid.*

⁵⁴ UNCLOS arts 25, 30,

⁵⁵ Shichen (n 36) 258.

expeditious. The anti-smuggling activities of the UK may permit Iran to rely on Article 25 and take ‘necessary steps’ should foreign military vessels be found in its territorial waters.⁵⁶ However, to arrive at this question—of law—the preceding question of fact as to the location of the UK personnel and their vessels needs to establish the position of the Royal Naval and Marine personnel as within the territorial waters of Iran; a question the UK avoids through a refusal to accept Iranian mapping as accurate while simultaneously asserting this as a local problem for Iraq.

(c) SC Resolution 1723

The third question focuses on the status and impact of Security Council Resolution 1723 on the legality of the actions of UK personnel.⁵⁷ Security Council Resolution 1723 picks up at the conclusion of the authorised military force established under Security Council Resolution 1546 (8 June 2004) and marks the end of the UNAMI, the UN-led administration of the Iraqi state after the previous occupation by the UK, the US and their allies in 2003.⁵⁸ Resolution 1723 recognises the new Iraqi government while extending the mandate for the multinational force established in Resolution 1546.⁵⁹ In the UK analysis of the incident, to avoid scrutiny of the factual question over the location of the naval and marine personnel, the UK ultimately asserted that the anti-smuggling activities in the Northern Gulf in 2007 were connected to the land and sea operations authorised by the Security Council, while also co-opting and asserting the narrative of the Global War on Terrorism.⁶⁰ The UK government asserted the binding nature of Security Council Resolution 1723 as *carte blanche* permission for UK military presence in the region and requiring Iranian compliance with a binding Security Council Resolution. An alternative approach is to acknowledge that Resolution 1723 authorises activities on the territory of Iraq, so that activity in adjacent territories would constitute a breach of the Resolution. Nevertheless, there is, throughout the UK report, an aligning of the Iranian state with rogue practices connected to the security issues in the Northern Gulf, although it is clear that the Security Council authorisation and the Global War on Terrorism (as the UK frames its action at the time) are not actually connected to Iran-UK or Iran-Iraq relations.

⁵⁶ *ibid*, 259.

⁵⁷ UNSC Res 1723 (28 November 2006) UN Doc. S/RES/1723.

⁵⁸ UNSC Res 1546 (8 June 2004) UN Doc S/RES/1546.

⁵⁹ UNSC Res 1723 (28 November 2006) UN Doc S/RES/1723, para 1.

⁶⁰ UK Inquiry, 3, para 12.

Drawing in Security Council Resolution 1723 and the Global War on Terrorism thus functions as an organising device to grant the UK powers in patrolling and securing the Northern Gulf, including privileging their own demarcation of the median line, that overrules and overruns any Iranian (or even Iraqi) capacity to do so. I discuss this further, in the following section, to place the incident in the context of how different states orientate and place themselves in relation to international law and in terms of knowledge-forming practices and histories.

Saltwater Histories of International Law

For Craven, ‘historical knowledge is insistently contemporary and ideologically laden, capable of producing insight and critique, but nevertheless posing always the problem of how to grasp itself in its own historical conditions’.⁶¹ Craven traces the manner in which the ‘turn’ to history is always a turn to making sense of the current political moment, such that an international legal history finds:

the problem may not be that of getting the history straight so much as understanding the conditions under which certain kinds of history appear to make themselves available in contemporary settings. The past, it might be said, only answers the questions we pose of it, but the kinds of questions we might ask, or the styles of analysis we might deploy, are not themselves limitless.⁶²

If the past is only able to answer the questions we ask of it, Riles’s understanding of the mechanisms through which issues become ‘internationalised’ is part of the question I wish to ask of the UK’s continued role in the Northern Gulf and, relatedly, how Western perceptions of the Northern Gulf contribute to impoverished understandings of the region in terms of the histories of knowledge and cross-state relations. Craven identifies the European knowledge frames that stubbornly refuse to be dislodged from the ‘field of practice whose meaning and significance is constantly organized around and through the medium of, a discourse that links present to past’.⁶³ The process of invoking international law, on the part of states, thus holds a history, a methodology and a theory of international law that maintains and polices the knowledge that is afforded value. In the following two sub-sections I examine, first, questions that might be asked about the histories buried and built through the incident in the Northern

⁶¹ Craven (n 42).

⁶² *ibid* 32.

⁶³ *ibid* 31.

Gulf in 2007 and, second, the consequences of dislodging the local to claim the crisis of the Global War on Terror and post-occupation Iraq as the framing of new histories that deviate little from the orientalist, colonial frames preferred across the twentieth century.

(a) Locating knowledge of the ocean

Turning back to the events in the Northern Gulf in 2007, the UK counterarguments to Iran's action place two pieces of knowledge as dictating their perception of events. First, the steadfast and constant assertion that the UK naval and marine personnel were in Iraqi domestic waters. This relocates the problem as domestic, identifies Iran as a rogue state and simultaneously fulfils wider goals of the UK and the US and their allies in 2007 in relation to the imposition of sanctions on Iran. Second, the invocation of the Security Council authorisation contained in Resolution 1723, which makes no reference to maritime matters or maritime security, alongside the naming of the Global War on Terrorism as the international parameters within which the act must be understood, shifts the incident away from a long history of UK interference on land and in the maritime territories of the region. In doing so, the UK elevates the incident to the international plane in a specific manner, where the law of the sea is subsumed under the characterisation of an extension of the crisis on land—four years after the invasion of Iraq.

It is worth discussing the context in which the UK asserts its position as victim state through an unqualified, and unevidenced, claim to being in the right location—Iraqi waters—at all times. This can be framed as a story of the events on 23 March 2007 and the subsequent UK communications or as a story of the long history of UK claim of a right to be present in the Northern Gulf and its adjacent states; ignoring the period after British withdrawal in 1971 during which Iran brokered the Algiers Accord with Iraq that included settlement of the maritime boundaries. The assumption here is not only with regard to the superiority of UK mapping and knowledge of the maritime environment but an unequivocal assertion of the knowledge frames through which the UK speaks as being aligned with international legal forms, rather than histories of Islamic legal forms or understandings of cross-state relations within the Gulf.

It is fairly well established within international legal scholarship that the contemporary law of the sea traces its intellectual legacy to the writing of Hugo Grotius and European traditions. Alternative legal histories of the international law of the sea become unnecessary as this statement is rendered as unequivocal for international lawyers. Khaliliel's account of Islamic

legal traditions and jurisprudence across the oceans, including the legal status of the high seas and the location of territorial seas, offers a much longer history of interstate relations on maritime matters, in the Indian Ocean, the Gulf and into the Mediterranean. Khaliliel dislodges the ‘story’ of Grotius’s patriarchal status (‘the father of international law’) to show alternative traditions and geographies for the tracing of legal traditions. The blinkers on Western European knowledge frames found in the accepted histories of international law are then played out in the Gulf where a Persian, or Islamic, approach to the land-sea border and demarcation of maritime borders is simply assumed not to exist. This, then, is more than a plea for a recognition of the colonial history and its knowledge forming practices within international law: the incident in the Gulf can be used to ask about the methodological techniques available to decolonise international law and construct the trajectories of knowledge that see what is missing but also what is already there. Given the late Twentieth Century and early Twenty-first history of military manoeuvres in the Northern Gulf, including the Iraqi state’s use of the Northern Gulf to attack Iran during the Iraq-Iran conflict, and the construction of Iran as a rogue state by the US post-2001, the paranoia of Iran and its patrolling and mapping of its territorial waters are not surprising. This is not to presume Iran’s innocence in 2007, but rather to trace behind the production of a rogue state to engage the means through which an expected history of international law reproduces itself through small and large incidents.

For Craven, international legal histories illuminate the assumptions and structures of the present, such that the ‘the specification of its origins must always be treated as an act of intervention rather than one of discovery’.⁶⁴ As the UK asserts its map as evidence for the unproblematic nature of its anti-smuggling activities in the Northern Gulf (a map redacted in the released report) this is also an assertion of a method and knowledge frame for international law that emerges from Britain’s own histories of maritime conquest and occupation. The UK, thus, describes the Iranian preference to construct a straight baseline due to the changing geological formations and the Iranian understanding of their own territorial waters as part of the problem, while simultaneously finding that the land-based preoccupations of the UK in the region (the 2003 occupation and its effects) as the reason why detailed understanding of ‘the Gulf slipped to the margin’.⁶⁵ The significant influence of Islamic jurisprudence in the contours of the international law of the sea, as well as the

⁶⁴ Craven (n 42) 30.

⁶⁵ UK Inquiry, 4, para 16.

regional agreements between Iran and littoral states in the Gulf, are rendered traditional, religious, cultural or local sites of knowledge and not sufficiently elevated into the scope of international legal knowledge frames.

A handful of further comments from the UK Inquiry into the incident further underscore the knowledge frames that lend toward one reading while dismissing Iranian understanding as outside of the realm of international legal inquiry. In paragraph 19 of the UK Inquiry, the UK acknowledges that ‘the 1975 navigable channel has clearly moved South, which if examined, would support an argument for the boundary to be moved toward Iraq’, nevertheless the conclusion drawn is ‘by operating with impunity in Iraqi waters, whilst the Iraqis themselves do not, Iran establish a strong position for any future resolution of law’.⁶⁶ The rejection of Iran being able to map and demarcate its territorial waters is juxtaposed with the inability of the Iraqis, a silent yet poignant invocation of the various interventions on the territory, land and maritime, of Iraq since 1990. Exploration and understanding of maritime traditions that extend from Iran, into the Gulf, the Indian Ocean and beyond have been significantly neglected within international legal scholarship.⁶⁷ Consequently, the mechanisms and structures that inform international law in—quite literally—placing the British in the Gulf denies the capacity of states on the periphery to inform the practice of international law while underscoring the superiority and centrality of Anglo-European frames of knowledge.

Ultimately, in the UK Inquiry into the events of 23 March 2007, the British government asserts numerous times that its personnel were in Iraqi territorial waters, while also acknowledging the geological and political uncertainty that surrounds the median line between the Iranian and Iraqi territorial waters in the Northern Gulf. The UK is only able to do so if the approach to international law is one where assertions made from the UK can override the local understandings of either the political or geographical terrain. To do so is an assertion of confidence in not just international law, but in an international law sprung from a history that aligns with British perceptions and understandings of incidents and encounters.

(b) Rogue states and the international plane

The UK assertions are not only made with regard to an unfailing belief in the accuracy of their technologies and understanding of the Northern Gulf. The secondary argument where the UK relies on Security Council Resolution 1723 and the invoking of the Global War on

⁶⁶ *ibid*, 4, para 19 and 3, para. 13.

⁶⁷ Khalilieh (n 9); Liam Campling and Alejandro Colas, *Capitalism and the Sea* (Verso 2021).

Terror also deploys the nexus between international legal histories and British perceptions of the need for its presence in the Northern Gulf. A combination of Resolution 1723, Iraqi invitation to conduct operations on its behalf, and the Global War on Terror in the UK claim ultimately make the dispute between Iraqi and Iranian territorial waters and their demarcation unnecessary in assessing the authority with which British naval and marine personnel are in the Northern Gulf. This approach relies on a history of international law which Iran joins and succumbs to, or acts outside of—but one in which it never plays a role in framing international law's normative contours. Further, this framing imagines Iran as a lone actor in the Middle East with little understanding of West Asian geographies and their reach over land and maritime territories.

For the UK, the question of law is ultimately directed back to the Security Council and Resolution 1723—invoking the global scale of crisis to legitimate the actions of fifteen naval and marine personnel in the Gulf. At the same time, the absence of a clear delineation of the boundary between the territorial waters of Iraq and Iran is rendered a local problem framed as a combination of the sneakiness of the Iranian Revolutionary Guard, keen to score a point against the UK, and the inability of the Iraqi state to organise and agree its own maritime limits. Riles reflects:

What contributed, then, to this sense of distance between an 'international plane' and national activity? One central element was the way international lawyers treated certain events what at 'close up' might have loomed large, as receding from view.⁶⁸

While the Iranian account of the incident starts with the violation of their territorial waters and thus immediately 'looms large' in international law, as a question of the nature of innocent passage and the nature of immunities and privileges for warships, the UK account shifts perspective on precisely this point. First, the reiteration that the location of the UK dinghies in Iraqi waters as a fact moves this aspect of the incident to the local and outside of the international plane. Second, the reliance on Security Council Resolution 1723 provides the UK with an international dimension that functions as a 'detached view from above' so that, following Riles, 'the international lawyer's task is not simply to view the world in global or local terms but also to contribute to the architecture of the global space'.⁶⁹ These 'strategic shifts from one scale to another' offers one place, the international, as a place of certainty,

⁶⁸ Riles (n 38) 45.

⁶⁹ *ibid*, 48, 49.

and the other, local, messy, unresolved, particularised. Maritime engagements offer a useful mechanism for what Campling and Colas describe as ‘a distinctive potential for a saltwater cosmopolitanism’ that challenges both the specificity of knowledge frames and the assumptions of Anglo-European knowledge frames as universal.⁷⁰ A decolonised international law of the sea offers a unique platform for articulating the relevance of Islamic jurisprudence, regional patterns of legal relationships, and the contextual nature of sovereignty that disintegrates the Western land / sea border preoccupation to see territory as extending over land and sea and legal knowledge as plural. To examine, then, a short-lived incident in the Northern Gulf from 2007 is therefore a tale of perspective, scale, and the god-trick of international law, in producing an international perspective that looks down on sovereign subjects and shapes their conditions for engagement; this is equally a history that frames who is on the peripheries and who shapes the normative contours of international law.

It perhaps matters less whether we centre our account on March 2003, when the UK and the US invaded Iraq with their allies, toppling the Hussain regime and forcing the Security Council authorisation of UNAMI and the subsequent extended presence of a multilateral force, or on the seizure of the UK navy and marine personnel from their dinghies by Iran in March 2007, what remains constant is the knowledge that shapes the parameters for engagement, leaving Iran as rogue state, localised in the effect of its histories, knowledge and encounters. Pahuja and Storr make similar claims in relation to the history of UK and Iranian relations leading toward the *Anglo-Iranian Oil Company Case* in 1952.⁷¹ Pahuja and Storr conclude:

what looks from the vantage point of today like a routine procedural dispute about interim measures and jurisdiction, warranting only a footnote in most texts, looks from the historical milieu of the case itself like a battle about the proper role and function of the international court in a radically changing world.⁷²

Pahuja and Storr’s re-reading of the *Anglo-Iranian Oil Company Case* with the perspective of Iranian international lawyers placed on the same plane as their foreign counterparts, identifies a deeply out of kilter international legal history. The neglect of Iranian international legal expertise in 2007 is replaced, *ad infinitum*, with political characterisations of the state, already framed as rogue and outside of international law, such that the international law of

⁷⁰ Campling and Colas (n 67) 318.

⁷¹ Pahuja and Storr (n 7).

⁷² *ibid*, 66.

the future is already determined as the international law of the past. The contours, the questions, the critiques have already determined that there are no other imaginings of the ocean and the maritime environment or, rather, any alternative framing is already hopelessly local in scale given the contours of knowledge that frame the possibilities of the macro and the global are already determined in our question and research design. Mojtahed-Zadeh's account of the peaceful settlement of maritime boundaries between 1971 and 1981 is not incorporated into the international legal canon; the UK's analysis of the 2007 incident, just as with the spurious claim to implied authorisation in 2003, remains.

Technologies of Now

Throughout this account I have referred to the river that opens into the Northern Gulf as Shatt-Al-Arab. In Iran the Farsi name for the river is Arvand Rud. I have also avoided the additional naming issue preferring the 'Northern Gulf' to either naming the Persian or Arabian Gulf as the location of the incident between Iran and the UK in March 2007. The UK articulates the delimitation of Iraqi territorial waters in the UK Inquiry into the incident:

Any concern at the erosion of her (*sic*) territorial waters is an issue for Iraq rather than the coalition, but the intent of Iran to establish her (*sic*) presence South and West of the original boundary seems credible.⁷³

In this statement the UK government identifies any dispute as to the location of the maritime boundary, changeable due to the shifting land boundary since 1975, as a problem for Iraq, while simultaneously asserting the validity of Iranian claims to assess the location of its land boundary. The UK regards the land boundary as a local issue and the maritime boundary as 'murky', preferring its own identification of where the median line lies. At the same time the UK identifies the international legal problem, instead, as a question of global security authorising UK action via Security Council Resolution 1723 or under the wider US/UK articulation of justified force as elements of the Global War against Terrorism. However, the latter relies on the UK personnel being in Iraqi waters and two different larger knowledge paradigms need to be kept out of view. First, the Iranian largely peaceful and continuous record of its own land and maritime boundaries, as well as Iran agreements throughout the Gulf.⁷⁴ Second, the presence of the UK in Iraq after Operation

⁷³ UK Inquiry, 18, para 78.

⁷⁴ Note, the separate dispute between Iran and Oman with regard to island territories (see further: Shahla Seraji; Morteza Mahmoudi Lamooki, 'A Survey of the Strategic Importance of the Strait of Hormuz in the Middle East, with an Emphasis on Iran's Role in Maintaining its Security' (2018) 8(3) *International Journal of Political*

Iraqi Freedom, later authorised by the UN Security Council and renamed Operation Telic, including control of Basra, limited Iraqi capacity to return to the Algiers Accord and assess the impact of the changing land boundary. In addition, Khalilieh's study of Islamic law of the sea dislodges the settled positioning of Grotius and European understandings of the sea as the source of oceanic legal geographies that assert the importance of Islamic histories and knowledge paradigms in the management and governance of ocean territories. Recognition of alternative knowledge formations in the structures of international law is an important reminder of the continued influence of 'liberal but not illiberal' traditions globally.⁷⁵

These knowledge frames then produce the conditions for the invocation of three different assumptions about the Gulf region in the UK Report and UK Inquiry. First, the demarcation of the Iraq territorial waters as the concern of Iraq, despite recognition elsewhere in the UK Report of the failure of Iraq to undertake this work since 1990, demonstrates how the international interference on land thus flows into the sea, although the local implications are not, it seems, an international matter. This reading is underscored by work on land-sea territorial expanses that seek to dislodge the hidden nature of state claims to significant reach into the ocean and arguing for the need to 'see' sea borders as the extent of sovereignty rather than land borders.⁷⁶ In the context of British occupation of Iraq and the control of the southern province of Basra, the 2007 incident exposes the British assumption of its right to Iraqi territorial waters via Operation Telic (the mission that succeeded Operation Iraqi Freedom).⁷⁷ Second, the assertion elsewhere in the UK Report that 'there is no doubt that the incident on 23rd March 2007 took place inside Iraqi territorial waters' is an account that can be only based on British understandings, and mappings, of the Gulf, articulated from a position of nowhere and imagined as unequivocal knowledge that does not compel further inquiry. The tension between acknowledging Iranian credibility with respect to the maritime zone and the British misperception of their location seems unremarkable to the UK Report's authors.

Science 71-78) and the actions of Iran in relation to the international transit passage between Oman and Iran (Jennifer El-Fakir, 'Retaliatory Or Lawful?: How Iran's Seizure of the Stena Impero in the Strait of Hormuz Violated International Law' (2020) 59 *Columbia Journal Transnational Law* 425).

⁷⁵ See, generally, Ratna Kapur, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* (Edward Elgar Publishing 2018).

⁷⁶ Roberts (2021) (n 17).

⁷⁷ On Operation Telic, see; Geraint Hughes, *From the Jebel to the Palace: British Military Involvement in the Persian Gulf, 1957-2011*, March 2012, Corbett Paper No 10, Corbett Centre for Maritime Policy Studies; Lawrence Freedman, 'War in Iraq: Selling the Threat' (2004) 46 *Survival* 7; Daniel Marston, "'Smug and Complacent?'" Operation Telic: the Need for Critical Analysis' (2009) VI (3) *Australian Army Journal* 165.

Third, the nature of the risk of Iran establishing ‘her presence’ in waters adjacent to the Iranian coastline is not elaborated, as it is assumed that this is, in and of itself, a justification for continued British action. The extension of sovereignty into territorial water is an international legal right and, in the Gulf, the Iranian coastline far exceeds that of any other littoral state.

The perspective on both questions, of facts and of law, are thus written into the British production of knowledge as a space of nowhere that is able ultimately to adhere to existing understanding of the geopolitical and legal in relation to the Gulf. Moghaddam’s analysis of Iranian nationalism provides a useful counterbalance to dominant global political cultures, arguing ‘. . . representations of “self” and “other” are entirely interdependent even when they are geared towards antagonistic politics’.⁷⁸ He elaborates;

If national narratives are characterised by their ‘in-between-ness’ within global structures, as I have claimed, if the true meaning of Iran transcends its historical narration, then there should be an equally interesting shift in the gendered discourse about the country towards, perhaps, a ‘trans-sexual’ understanding of Iranian-ness, that is neither entirely male, nor female. Such future research probes the possibilities of this transsexual constitution of the national subject in Iran as an exercise in negating the patriarchal masculinity of Iranian psycho-nationalism.⁷⁹

Moghaddam’s analysis exposes the tiredness of nationalist narratives that predicate a patriarchal posturing and denial of alternative spaces of knowledge or what Moghaddam describes as, *insaniyat*—the process of becoming. The uniform production of Iran as a singular version of aggressive nationalism is undone in Moghaddam’s interrogation of the political cultures that inscribe the diversity of Persian knowledge traditions and now.⁸⁰

The day after the seizure of the UK navy and marine personnel in the Northern Gulf saw the Security Council issue a Chapter VII Resolution in relation to Iranian nuclear proliferation, as such the unspoken international context in 2007 is the increasing sanctions and weapons inspections regimes being imposed on Iran.⁸¹ Attention to actions on land over the same

⁷⁸ Adib-Moghaddam (n 11) 145.

⁷⁹ *ibid*, 148

⁸⁰ See also: Ziba Mir-Hosseini, *Islam and Gender: The Religious Debate in Contemporary Iran* (IB Tauris 2000).

⁸¹ The UK Report also acknowledges the separate detention of Iranian citizens in Iraq by the US and Iraq that immediately precedes the 2007 incident, as well as the release of one of these actors prior to the release of the UK personnel, UK Report, 6-7.

period, that is the fear of Iranian nuclear technologies, helps to illustrate the role UK monitoring of the Northern Gulf plays in a larger set of strategic operations. These later recede as the Joint Comprehensive Plan of Action (JCPOA) is agreed in 2015 and the nuclear sanctions against Iran are lifted.⁸² In 2019, as the Trump Administration in the US withdrew its support for the JCPOA the assertion of Iranian ‘might’ in the Gulf recommences, with apprehension of larger vessels in the Strait of Hormuz, a return to the twin ‘problems of pride and prestige’ regarding the (masculine) assertion of control over the region.⁸³ Shahshahani’s argument that the continued acceptance of non-nuclear proliferation as an issue to be pursued and controlled by nuclear powers, fails to ‘[dispell] the notion that the conflict over Iran's nuclear development is a battle between peace-lovers and rogue proliferators’.⁸⁴ That is, the pursuit of non-proliferation in Iran by nuclear powers ignores and deflects from the need for a prohibition on nuclear weapons in all states. The incident in the Gulf of 23 March 2007 is thus a small incident in a much larger sequence of events that constructs the Iranian state as always rogue, localised and outside of the space where the normative design of international law happens. The incident underscores the way small acts of perspective define and reinforce the history of the discipline and the knowledge frames permitted to construct that history and the law.

Following Craven’s and Riles’s approach to international legal histories is to see perspective and scale as essential to the production of the discipline itself and part of the origins that disguise the knowledge frames of international law. Pivoting around the seizure of UK navy and marine personnel in the Northern Gulf in 2007 provides a useful aperture to zoom in—and out—of what is constructed as local and which knowledge frames inform the international. Maritime incidents provide a particularly important tool for understanding knowledge formations and colonial histories within international law, as scholarship increasingly evidences alternative histories of oceanic governance and non-Western understandings of demarcation of saltwater territories that unravel contemporary assumptions within the law of the sea.

⁸² For an introduction to the JCPOA, see: Gabrielle Vianna, ‘Securing Iran: Opportunities Presented with the Joint Comprehensive Plan of Action (2015) 6(4) *Global Security Studies* 1; for a less optimistic view, see: Sven-Eric Fikenscher, ‘Will Iran Cheat: The Reliability of the Joint Comprehensive Plan of Action’ (2016) 11 *Yale Journal of International Affairs* 9.

⁸³ Sepehr Shahshahani, ‘Politics under the Cover of Law: Can International Law Help Resolve the Iran Nuclear Crisis’ (2007) 25 *Boston University International Law Journal* 369, 371.

⁸⁴ *ibid* 369.

Perhaps it is not surprising that it is just at a time when international legal sanctions were being imposed on Iran that a (small) assertion of territorial rights in the Gulf also occurs. Iran's small act of retaliation against a system that has already constituted it as a rogue state, outside of international law and outside of the knowledge frames that inform the contours for debate and for law, is precisely the type of international act required in a system that maps inter-state relations through expressions of might, through assertion of property/ territorial rights, and through an assumption of the capacity to map the world.