

How America Can Put Teeth in Its Blockade

di Eugene Kontorovich

Rival blockades have deadlocked the U.S. confrontation with Iran. The U.S. can gain some leverage in the stalemate by reviving the law of prize, which governs ships seized during war, and by authorizing privateers to attack enemy shipping. Both measures would tighten the blockade while showing Tehran that the U.S. is playing for keeps.

The U.S. has [intercepted or diverted](#) at least three Iran-linked ships in the past month. In late April the U.S. seized the Iranian-flagged M.V. *Touska* after firing on the cargo ship when it tried to break the blockade. Declaring a captured vessel a prize of war—already provided for in the U.S. Code—would allow the government to take ownership and sell the oil, with proceeds going to the Treasury.

For hundreds of years, international law has allowed belligerent powers to seize civilian enemy vessels, and even ships of neutral third parties if they engaged in prohibited activities such as carrying contraband or breaking a blockade. Under prize law, the vessels and cargo become the property of the captor and would be auctioned for profit. This practice stood in contrast to the prohibition against plundering civilian property on land because of the recognition of the integral relationship between maritime commerce and war.

U.S. vessels took prizes starting in the Revolutionary War. Dealing with prizes was one of the few powers given to Congress under the Articles of Confederation. Prize law provided rules to govern the practice and to protect against abuse. Before the captor could take title to a vessel, he would have to bring the ship into port and have it condemned before a prize court, which would determine the lawfulness of the capture. Prize cases long ago filled the U.S. courts, with the Supreme Court ruling in a prize appeal during the Civil War that the practice didn't require a declared war, only an actual one. The federal statutes authorizing prize jurisdiction for district courts remain

on the books. Prize law's vitality as part of international law was reaffirmed in 2012 when Israel seized the *Estelle*, a Finnish-flagged ship that was part of a flotilla seeking to break the blockade of Gaza. A Haifa court held that international law still authorized prize-taking, but Israel had waited too long to bring the condemnation proceeding.

The taking of prizes fell off globally in the 20th century, largely due to the changing nature of shipping and naval warfare, including the decline in the use of blockades. A battered midsize cargo ship may not be worth the trouble of bringing to port for adjudication, but that isn't the case with tankers loaded with Iranian crude. In 2023, in a rare enforcement procedure, the U.S. Justice Department [seized](#) the *Suez Rajan*, a tanker carrying almost a million barrels of Iranian oil, for violating U.S. sanctions. The cargo was sold in Galveston, Texas, for [\\$83.4 million](#).

Given America's naval supremacy over Iran established in the war, a ship could be brought to port in the U.S. without significant risk of recapture. U.S. prize law allows for establishing prize courts in the ports of co-belligerents. Seized vessels could be brought to Dubai or Eilat, Israel, further cementing regional alliances.

Prize-taking has practical advantages. It would allow for condemnation of vessels not on any sanctions list, as well as neutral vessels trying to break the blockade. It would also show that the U.S. is serious about its belligerent rights as a blockader, which can extend to sinking blockade runners anywhere in their journey. Even a ship that got through the Navy's gauntlet in the Gulf would know it isn't safe.

Reviving prize law could be complemented by Congress's issuing letters of marque and reprisal. These are licenses for private parties, known as privateers, to capture prizes at sea. Letters of marque are endorsed in the Constitution, though the U.S. hasn't used them in 200 years. An 1856 treaty purported to ban privateering, but the U.S. refused to sign.

The private security forces that some shippers engage today to prevent piracy could do the work of privateers. Boarding slow-moving tankers is relatively straightforward, and can be done from a fast boat or helicopter. Authorization of privateering would allow the capture of Iranian vessels now being turned back or disabled. It would also signal an intent to maintain the blockade. Letters of marque regulate against abuses; privateers are paid only if they honor all the restrictions on their activities.

Licensing privateers would demonstrate the primacy of the Constitution over international-law norms that America rejects. Recent articles in the Naval Institute's [Proceedings](#) argue that letters of marque would be essential in alleviating the vast numerical asymmetry between the U.S. and Chinese fleets in the event of a war. The conflict with Iran could be a useful test of these legal tools.

Mr. Kontorovich is a professor at George Mason University Scalia Law School and a senior legal fellow at Advancing American Freedom's Meese Institute for the Rule of Law.