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Adding Fuel to the Fire?

Takeaways from Recent Tanker Seizures by European States

Whenever incidents surrounding naval operations, particularly naval warfare, come up in recent discussions, their lack of impact on legal development tends to be almost lamented. In this regard, the early months of 2026 did not disappoint with their onslaught of new cases to be explored. While US operations in the Caribbean are worth their own blog posts (and have been discussed here, here, and here), this piece addresses the detention of tankers belonging to Russia's "shadow fleet" by European states.

On 22 January 2026, French forces seized the Russian shadow fleet tanker *Grinch* in the Mediterranean Sea and directed it into France's territorial waters. After sentencing the company owning the vessel to pay a penalty worth "several million euros", the vessel has been released on 17 February. More recently, on 28 February 2026, Belgium announced that its forces, with support from the French navy, G7 states and NATO, seized the tanker *Ethera* in Belgium's exclusive economic zone (EEZ). These incidents mark an increased effort by European states to enforce sanctions that they implemented on Russia's oil trade.

Russia's administration claimed that these actions constituted piracy. Additionally, it warned that naval assets might be moved in position to prevent further seizures of shadow fleet vessels, loosely threatening violent reactions to future seizures. Because of the use of such terminology alongside the call by the coastal states of the Baltic Sea and the North Sea for the international maritime community to "strictly comply with […] international law", this post seeks to provide an outlook on what can be learned from recent events. To that end, it will briefly address the concept of inter-state piracy before analysing whether the seizure of tankers amounts to an armed attack, addressing questions of victimhood if that were the case. It is ultimately advanced that the line between peace and war is becoming increasingly blurry, which might cast some light on the legal handling of the shadow fleet.

International Piracy

Allegations of international piracy warrant a consultation of the provisions in the United Nations Convention on the Law of the Sea (UNCLOS). Art. 101 UNCLOS, which reflects customary international law (see here, p. 26), defines piracy as "any illegal acts of violence or detention […] committed for private ends by the crew or the passengers of a private ship […] and directed: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft […]". The Russian allegations of piracy are unfounded in two regards: First, the interception and seizure were performed by state forces. Thus, the private ship or aircraft criterion is not fulfilled. Furthermore, piracy is committed "*for private ends*", an aspect that is especially relevant since privateering has been abolished in the 1856 Paris Declaration, thus outlawing the employment of private actors to influence inter-state conflicts. Douglas Guilfoyle therefore argues convincingly that private acts are such that lack state sanction. This is reinforced by the object and purpose of the legal system governing piracy, which is to maintain maritime safety and navigational security (see Crockett, p. 88). If state-sanctioned actions amounted to piracy, the legal

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consequence would be the establishment of universal jurisdiction, possibly encouraging non-injured third states to forcefully intervene, ultimately imperilling the very purpose of anti-piracy regulations, namely the promotion of safety on the High Seas (C.H. Crockett argued this in the context of the *Mayaguez* incident 1975, see here, p. 97).

Claims of international piracy seem, therefore, to rather be political statements lacking deeper legal reflection that intend to put a name tag on tanker seizures. This might be understood as means to convey strong condemnation and provide a label for those operations to the legal layman. In this regard, this is all the more reason to provide legal analysis since maritime law is more relevant than it has been in a long time (see also the very recent Hormuz crisis) and is not spoken about enough, as argued by Martin Fink.

Seizing Oil Tankers: Who is the Victim?

The seizures of shadow fleet tankers very clearly do not constitute piracy. On the contrary, they rather constitute law enforcement measures on the basis of Art. 110 UNCLOS (see e.g. here, here, here). In case of a vessel flying an invalid flag or no flag at all, warships and other duly authorized ships on the High Seas have a right to board them in order to assess the situation and possible legal consequences. Categorizing such measures as plainly illegal armed attacks would circumvent the mechanism set in place by Art. 110(3) UNCLOS, according to which measures taken erroneously and thus illegally, result in claims of compensation for the boarded vessel. According to Russia's President Putin, however, the seizures of shadow fleet tankers cannot be based on any legal grounds and the actors involved must be destroyed. Could Russia base this destruction on the right to self-defence to forcefully protect their shadow fleet, as they seem to have threatened?

Though reports tend to speak of "Russian" tankers, the legal reality is more differentiated. It would thus be rash to assume that Russia is the victim of an armed attack. If, *arguendo*, the enforcement operations constituted armed attacks, it is here advanced that the victim of such an attack is the flag state. According to Art. 91(1) UNCLOS, "Ships have the respective nationality of the State whose flag they are entitled to fly". Granting this right lies in the discretion of each state, though there are limitations to this, for example in Art. 92 UNCLOS, according to which a vessel may only sail under one flag and not switch flags for convenience. The *Grinch* allegedly used a flag that it was not entitled to fly, at the time of writing flying the Comorian one, while the *Ethera* sailed under the flag of Guinea. The International Court of Justice had the opportunity to address the flag state principle in its 2003 *Oil Platforms* judgement. In the context of alleged attacks by Iran against merchant vessels, the Court observed that "the [vessel], whatever its ownership, was not flying a United States flag, so that an attack on the vessel is not in itself to be equated with an attack on that State" (para. 64). The Court appears to hold that to determine victimhood, the flag is the relevant criterion to observe.

This strict adherence to the flag state principle might be outdated in modern times, where flags of convenience, meaning flags that are chosen for economic reasons rather than a link to that state, are common practice in maritime trade. Emerging voices suggest that instead of observing solely the flag under which the ship is sailing, one should "look behind the flag" to identify for example the

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victim of an attack against a merchant vessel (see for example Eduardo Cavalcanti de Mello Filho and Himanil Raina). Especially the idea to consider the nationality of the vessel's owner is an approach that was not only advanced by judge Ndiaye in the ITLOS' *Saiga (No. 2)* case (here, para. 89) but also seems to stay on top of developments in state practice. The interesting related question whether the seizure of a merchant vessel violates the political independence of a state in the sense of Art. 2(4) of the UN Charter since its flag represents its economic sovereignty goes beyond this blogpost and must be elaborated elsewhere (for an analysis see Himanil Raina's article, p. 738).

Looking behind the flag blurs the lines between the Law of the Sea and the Law of Naval Warfare (LONW), a distinction that must be observed carefully due to the differing underlying aims and policy, as pointed out by James Kraska (here, p. 134). If one were to venture down the slippery slope in an attempt to harmonize the Law of the Sea and the LONW, one would inevitably encounter the San Remo Manual, which is recognized as codifying customary international law (for example by Wolff Heintschel von Heinegg, p. 284). The San Remo Manual observes registration, ownership, charter or other criteria to determine a vessel's enemy character (Rule 117). It furthermore provides that states may visit and search merchant vessels flying a neutral flag and, in case of reasonable suspicion that the neutral vessel is of enemy character, seize the vessel for adjudication (Rules 116, 118). Its applicability, however, is tied to the existence of an armed conflict, which in Russia's view is as of now an unlikely scenario. A vessel registered in Guyana or under any other flag could, if such a conflict existed and the circumstances provided for it, be viewed as a neutral vessel supporting the enemy, thus justifying the seizure (on this categorization see also Heintschel von Heinegg's analysis of Ukrainian attacks against Gambian-flagged vessels). Currently, there are valid arguments for and against such a blending of *jus ad bellum* and *jus in bello*, which could create legal grounds to effectively determine which state is actually affected by the seizure of a vessel. While this might lead to dissonance due to differing underlying goals and policies, it could likewise provide more clarity when assessing situations on the High Seas.

Determining in detail whether seizing an oil tanker, notably a far less intense measure than destroying it, constitutes an armed attack would go beyond the scope of this blog post. Even if the nationality of the vessel was unproblematic, the question arises whether striking one merchant vessel could trigger a right to self-defence. In *Oil Platforms*, the ICJ held that a single strike against a vessel does "not seem to the Court to constitute an armed attack […] of the kind that the Court […] qualified as a "most grave" form of the use of force" (para. 64). Ultimately, the Court had its doubts also due to inconclusive evidence. Still, there seems to be little motivation to establish a low threshold for the assumption of an armed attack. This is further reinforced by UN General Assembly Resolution 3314 on the Definition of Aggression, which, in Art. 3(d), categorizes an attack by a state's armed forces against the marine fleets of another state as an act of aggression. This resolution must be taken into consideration when interpreting Art. 51 UN-Charter (see here, p. 284, citing Greenwood). The wording suggests that more than one fleet can exist for one state, e.g. a merchant fleet and a navy, thus indicating that striking a merchant vessel can sufficiently affect a state. Following the wording of "fleets", however, a strike must affect more than one vessel to be "most

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grave". In this regard, an armed attack cannot be assumed because of singular seizures of crude oil tankers.

Concluding Thoughts

The seizure of vessels by European states remains shrouded in some uncertainty. Current state practice demonstrates the need for legal perspectives to consider new approaches. Looking behind the flag might be a valid solution to counter attempts to hide behind flags of convenience and ultimately financing illegal wars. At the same time this practice could lead to global powers like Russia justifying their use of force in defence of vessels that under traditional understanding are not "their own". Claims of international piracy are unreasonable under the current Law of the Sea and there is insufficient reason to assume that Russia is the direct victim of European enforcement operations against shadow fleet tankers. It remains to be seen whether the international community can find a way forward from this self-inflicted confusion of flag states, flags of convenience and fleets cast in shadow.

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