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Prize or Piracy – The Capture of Vessels During Geo-Political Conflicts

By John & Yoav Harris

An Iranian oil tanker was arrested on 4 July 2019 off the coast of Gibraltar on suspicion of transporting oil to Syria in violation of European Union sanctions and was later released. A British oil tanker was arrested on 19 July 2019 for violating maritime law in the Strait of Hormuz and was later released.

In addition, an Iranian oil tanker experienced two explosions in its cargo tanks 60 miles from the Saudi Arabian port city of Jeddah in October 2019, while another Iranian tanker experienced an ingress of water into its engine. Meanwhile, a Marshall Island tanker and a Panamanian tanker also experienced explosions in June 2019.

So far this year we have had 1:1 in tankers which were arrested and released and 2:2 in tankers which were damaged. These are the interim results of the “maritime war” between Iran and the rest of the world.

The maritime industry is almost as old as warfare itself, which means there is plenty of precedent and a specific protocol to follow at times of maritime war. In this article, we address some of

the most pertinent questions such as what legal grounds, if any governmental officials have for taking over vessels, as well as the unique new way in which countries are exercising strength and force.

Traditional Law Relating to Warfare at Sea

The concept of neutrality during war was acknowledged for the first time in the year 1164, where during a war between Pisa and Genoa, Pisa captured a Saracen ship that was allegedly carrying goods belonging to a citizen of Genoa. The Sultan of Egypt complained of the capture arguing that the goods belonged to one of his subjects. Pisa, after determining the Saracen ownership, released the ship.¹

However, it seems that the beginning of traditional law of naval warfare can be ascribed to the date of Paris Declaration of 1856 and the “London Declaration” of 1909. Almost a century later, the San Remo Manual was introduced in 1994 to provide a contemporary restatement of international law applicable to armed conflicts at sea.



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According to the traditional law relating to the warfare at sea, all merchant ships – whether enemy or neutral – may be stopped, visited and searched. An enemy cargo merchant ship can always be captured and seized as prize. Neutral cargo on board an enemy merchant vessel can be seized if it is contraband, or if the vessel is a blockade runner or actively resists visit and search.

A decision as to whether enemy's property – vessel or goods – is liable to capture is determined by a prize court. Although the act of capture itself takes place at sea it should be upheld by a judgement of a prize court where the owners and the cargo interests can bring their allegations before a specialised hearing. The prize court does not only rule on the validity of the capture itself but also gives orders in relation to the management of the Vessel, its crew and cargo, according to the principle that the property of private persons must not be converted without due process of law.²

The Law of Prize After World War II

After World War II there was a rare use of the traditional law of prize. One of the countries that seized another country's vessel was Egypt, which following King Farouk's decree of 6 February 1950, ordering the cargos and manifests of vessels could be inspected in order to make sure that no arms, ammunition or other goods constituting contraband for Israel are on board and referring prize court's decisions made during World War II, begun, since 1951 to intercept ships destined to Israel either at the gulf of Aqaba or when seeking to pass through the Suez Canal. Although the Security Council in September 1951 characterised the Egyptian practice as an "abuse of the right of visit, search and seizure", Egypt maintained this practice until the peace treaty with Israel concluded in 1979.³

In 1982, the UNCLOS ("United Nations Convention on the Law of the Sea") was concluded in 1982. The convention followed the international conventions of 1956 and 1960, known as "UNCLOS 1" and "UNCLOS 2".

UNCLOS sets out, inter alia, the freedom of navigation in the seas (Article 87 (1) (a)) and the right of innocent passage through a coastal state's territorial sea (Article 17). The UNCLOS also provides the rights of boarding ("visit") and of a hot pursuit of a foreign ship when competent authorities of the coastal state have good reason to believe that the ship has violated the laws and regulations of the state (Articles 110,111).

The Blockade Running of the M/V Estelle

Since 2001, thousands of rockets and mortars have been fired into Israel in ever growing numbers from the Gaza strip while the shipping conditions have been increasingly fraught since the takeover of Hamas in 2007. This led to a naval blockade being imposed by Israel on the Gaza Shore since January 2009 under the purpose of preventing weapons, terrorists and financial resources from entering the Gaza strip by sea. Following examination by a tribunal nominated on behalf of the Security Council, the Blockade Running of the M/V Estelle set sail on a voyage from Finland towards Gaza in 2012 in an attempt to break the naval blockade.

Prior to the M/V Estelle's attempt to break the naval blockade during 2009-2010 a number of attempts were made by various other vessels. On two occasions, after having been warned by the Israeli Navy, the vessels withdrew and turned back (the vessels "Iran Shhed" and "Spirit of Humanity"). On two other occasions where vessels did not pay attention to the Israeli Navy's warnings the vessels were taken over by force, brought to Ashdod Port and released to their owners.⁵

In May 2010, the attempt of a flotilla of six vessels – one of which was the "Mavi Marmara" – also resulted in Israeli officials taking the vessels over by force before releasing the vessels to their owners at Ashdod ports, respectively. During the arrest, Israeli officers were confronted with a significant, organised and violent resistance which led to nine passengers losing their lives and more passengers and soldiers sustaining injuries.