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"WAR GAMES: THE IRANIAN RESPONSE"

The oil tanker "Stena Impero" was built in 2018 having a deadweight of 29,579 tons and a cargo capacity of 49,683 tons. The Tanker had the British flag and is or was registered in the name of a company known as "Stena Bulk XIII Cyprus Ltd.

According to "The Guardian", on Friday 19.7.19 a few hours after the High Court in Gibraltar extended the arrest of the tanker, the "Grace 1" which was boarded by a British commando unit on the grounds of enforcement of the European sanctions preventing trade with Syria (see: "Maritime War Games", 9.7.19). The Iranian "Revolutionary Guard captured the tanker" Stena Impero on its passage through the Straits of Hormuz en route to Saudi Arabia Communication with the vessel was lost and the vessel together with its crew were being held by the Iranian "Revolutionary Guard" at Bandar Abbas.

The Iranian news agency, Fars published on Saturday (20.7.19), two items relating to the capture and arrest. In the first it was stated that the tanker was involved in a collision with a fishing boat and that after the tanker ignored signals made by the fishing boat, the latter contacted the Iranian Ports and Shipping Authority whose Director ordered the "Revolutionary Guard" to detain the tanker, the explanation being that the British tanker had been detained under law in order to "investigate" the tanker and other matters relating to its collision with the fishing boat. This information was published as an official statement by the Director of the Iranian Shipping Authority, Mr. Allah Morad Afipour.

In an additional, statement made later on the same day, the above Director issued a further statement saying that the tanker had been arrested at his request after "performing dangerous maneuvers" causing the danger of a collision and an accident. It was also stated by "Iranian sources" that the tanker was arrested because it had unlawfully "shut down its identification and tracking devices (to the extent that these exist) which action does not normally create a right for the arrest or detention of a vessel.

Under Chapter v of the SOLAS Convention for the "Safety of Life at Sea" (which has its origins in a convention of 1914 following the sinking of the "Titanic"), there is an obligation for vessels to have an AIS systems (Automatic Ship Identification Systems). However, this is not an absolute obligation, for example, war ships or government ships are exempted and also small craft (such as fishing boats) (Article 3, Chapter v, above). This is because, notwithstanding the importance of the means of transmission (to which the Iranian alluded in their versions) which assist in determining the location of vessels and exchange of information, they constitute additional sources and are not a substitute for other tracking and identification devices, such as radar ("radar target tracker") and "VTS" ("vessel tracking service"), a marine traffic monitoring system used by harbour and port authorities based on radar and other devices, Article 40.1 of annex 17 to Chapter v, above) (how could the Iranian helicopter and a number of attack launches "capture" the tanker if the latter had not transmitted it's locality).

If we add to what has been stated above, one of the basic rules of International Maritime Law (UNCLOS), is the right of "innocent passage" under which every State has the right to the territorial waters of a maritime state (Article 17) and the fact that each such State allows "visitation rights" for such a vessel and that the right of "Hot pursuit" is granted by UNCLOS, mainly for Piracy (Articles 110,111), it is apparent that the Iranian Authorities had no legal right to "capture" the British tanker during its passage through a recognized international waterway, the Straits of Hormuz which is even not under Iran's jurisdiction. The strait is between 55 km – 95 km wide bounded Iran in the north and by the United Arab Emirates in the south.

Accordingly the only reason for the "capture" of the "Stena Impero" was in "retribution" for the detention by the British of the Grace 1, which vessel is registered in the name of a company from Dubai and effectively is an Iranian owned and controlled ship.

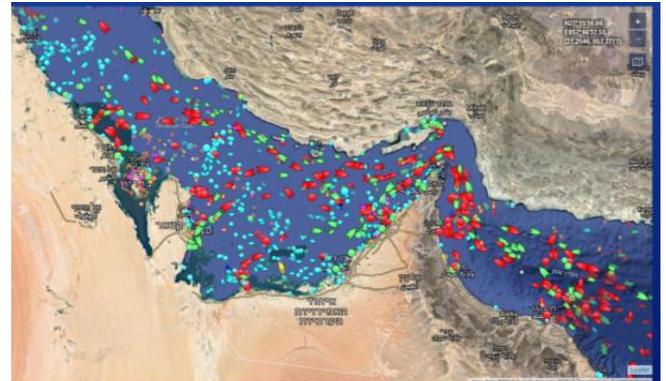
However, as we stated in our article "Maritime War Games" (published in "The Cargo" on 9.7.19) whilst the detention by the British of the "Grace 1" had a judicial basis – the sanctions of the European Union upon the Syrian oil refinery, "The Baniyas Oil Refinery", the Iranians apparently do not need a legal justification to effect "retributory measures" and it is doubted if the Iranian action will be subject to any judicial oversight, for example, the High Court of Gibraltar, as was the case with the Grace 1.

The Straits of Hormuz are, on the one hand, a highly navigated international waterway and on the other hand they are contingent with a significant part of Iran. In this way passing ships are easy "prey" for the Iranian Revolutionary Guard, thereby rendering meaningless vessels right of free innocent passage through the Straits.

Additionally, Iran had already demonstrated its willingness to deny free and innocent passage, when on 28.4.15 by threats and gunfire it detained the vessel, the "Maersk Tigris" whilst this vessel was transverse the Straits. The alleged grounds for this detention was to enforce an Iranian judgement which

decreed that the above vessels owners, "Maersk", had to pay US\$ 163,000 which was increased to US\$ 3.6 million, on appeal.

Ship movements in the Straits of Hormuz, from "Marine Traffic.com"



The Maersk Tigris is registered Marshall Is who have an agreement with the U.S.A under which the latter is responsible for former's security. Notwithstanding this agreement, ostensibly the USA did not take any action regarding the Maersk Tigris. The vessel was released on 7.5.2015 and it is not known whether the Iran received any payment for its unlawful action.

In view of the above, it is not clear what the British anticipated when arresting the "Grace 1" and whether they were surprised by the retributory action of the Iranians.

It is an open question whether the British or the Americans have decided to "live with" the unlawful actions of the Iranians, thereby tacitly accepting the "capture" in the future, of vessels transverse the international waters known as the Straits of Hormuz, in apparently the same manner as was the case of the Maersk Tigris a few years previously.

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Contents of the article are only for general information and do not constitute a legal opinion.

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