

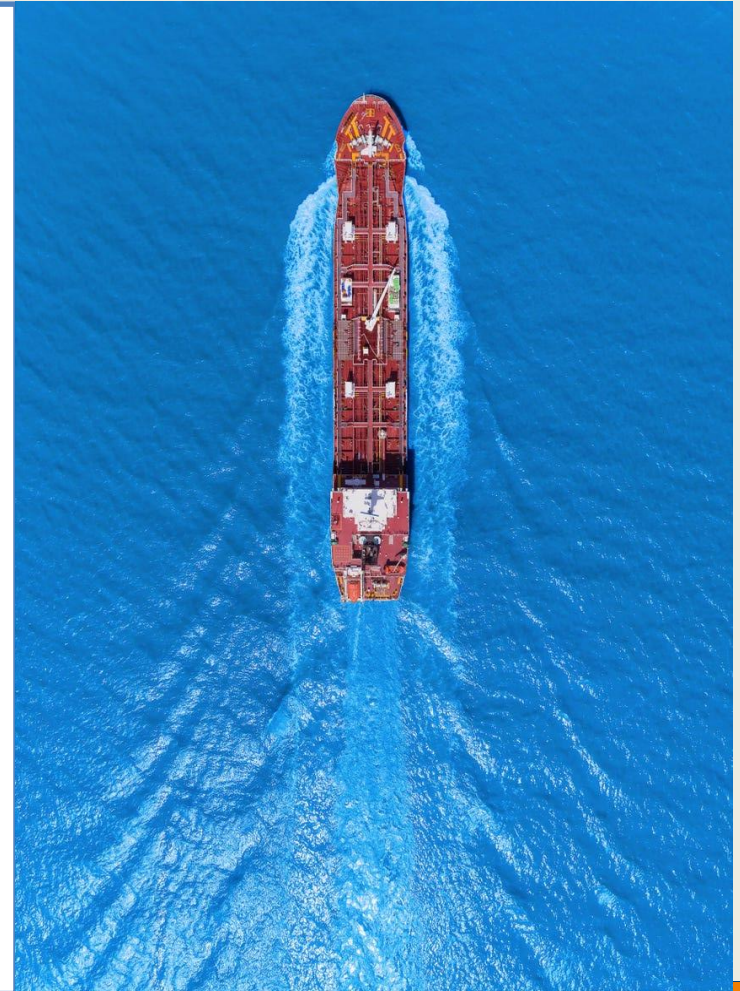
# THREATS OF THE DARK FLEET TO THE MARITIME SAFETY AND SECURITY: WHAT CAN COASTAL STATES DO?

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# OUTLINE

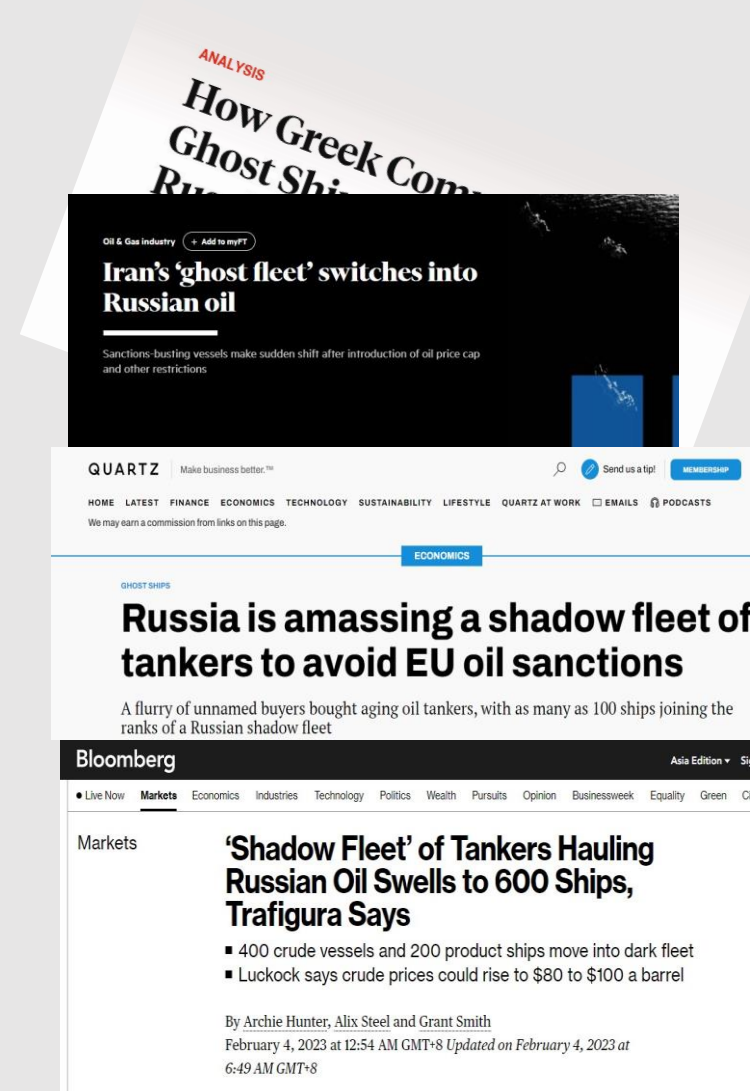
- Threats of dark ships to safety and marine environment
- The legal regime for coastal States to protect their environment from pollution from vessels
- Zoom in: What could SOMS littoral States do to regulate the dark fleet?



# DARK FLEET: A DISASTER WAITING TO HAPPEN

## IMO Resolution A.1192(33) adopted on 6 December 2023

- DECIDES that [...] **"dark fleet" or "shadow fleet"** means ships that are engaged in illegal operations for the purposes of **circumventing sanctions, evading compliance with safety or environmental regulations, avoiding insurance costs or engaging in other illegal activities**, which may include:
  - 1 carrying out **unsafe operations** which do not adhere to international regulations
  - 2 **intentionally avoiding** flag State and port State control inspections;
  - 3 not maintaining adequate **liability insurance** or other financial security;
  - 4 intentionally avoiding **commercial screenings** or inspections;
  - 5 **not operating** under a transparent corporate governance policy that assures the [...] the **protection of the marine environment**; or
  - 6 **intentionally** taking measures to avoid ship detection such as **switching off their AIS or LRIT transmissions** or concealing the ship's actual identity



# WHY DOES IT MATTER?

Dark ships present a major safety threat

- Dark ships are **vintage tankers** (over 15 years old)
- Dark ships are **not inspected** by reputable RO to comply with safety standards
- Dark ships are **uninsured** by reputable P&I clubs
- Dark ships owners are **untraceable**
- In case of oil spill or collisions, coastal States **cannot claim for compensation**

## Dark Ships That Exploded in the Sea (PABLO and CERES I)



- **20+ years-old** oil tankers
- Flying **flag of convenience**
- History of trading **sanctioned oil**
- Happened in **Malaysia's EEZ**
- Flag state **not responding**
- Beneficial owner is **unknown**
- Insurance is **unknown**

# WHY IS IT HARD TO REGULATE DARK SHIPS?

## Theoretical Aspects

- Outside of the territorial sea (12nm), coastal States' jurisdiction over foreign ships is **extremely limited**.
- The UNCLOS relies on **flag States** to enforce its rules over their ships on the high seas (Exclusive jurisdiction)
- IMO Conventions (SOLAS, MARPOL, CLC) emphasize on **port States** in enforcing their rules and regulations (Port state control)

## Practical Aspects

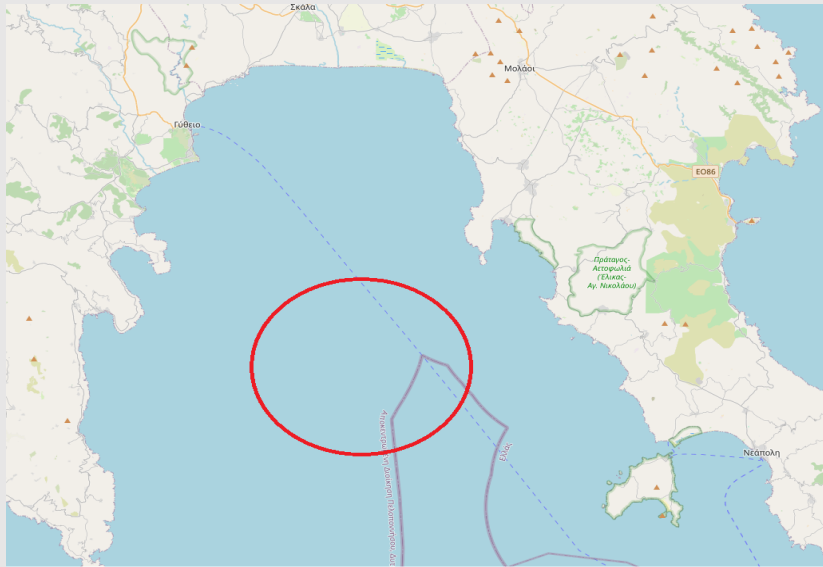
- Dark ships usually fly flags of **open registries** that don't have the capacity or have no interests in regulating their activities (Gabon, Mongolia, Eswatini, etc.)
- Dark ships **do not come into ports** and rely on STS in the EEZ of coastal States to transport the oils to their buyers.
- Dark ships **turn off/spoofing their AIS** making it harder to spot.

An aerial photograph showing a large number of oil tankers scattered across a vast expanse of blue ocean. The ships are seen from above, showing their hulls and superstructures. The water is a deep blue, and the sky is a lighter blue, suggesting a clear day. The ships are of various sizes and colors, including red, white, and yellow. The image is partially obscured by a white, torn-edge graphic on the right side.

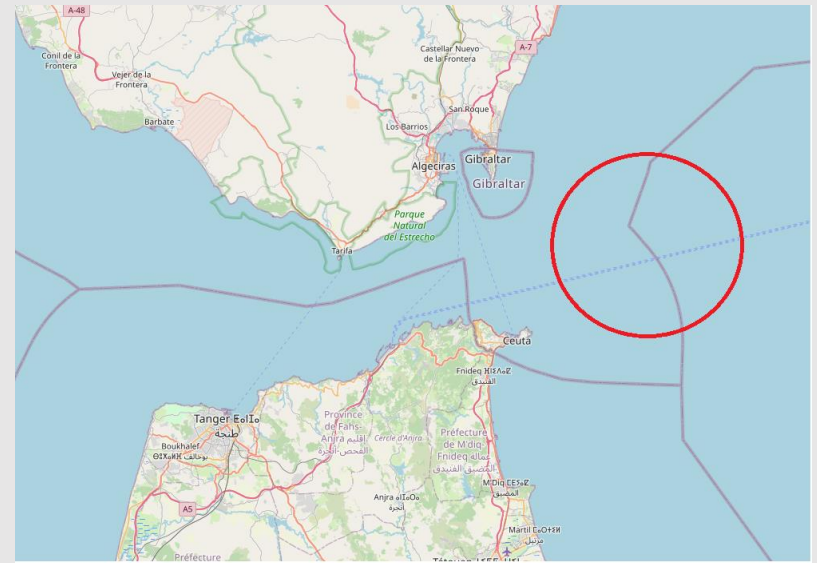
# WHY DARK SHIPS WANT TO DO STS?

- It could be **more economical and convenient** to do STS at EEZ and high sea instead of coming into ports.
- Most ports **would not allow** dark ships to come into ports.
- The need to **mask the oil origins** to dodge the G7 price cap.
- Some importer countries are **not a party to the Fund Convention**: *If an oil spill happens inside their EEZ, they cannot claim from the Fund.*

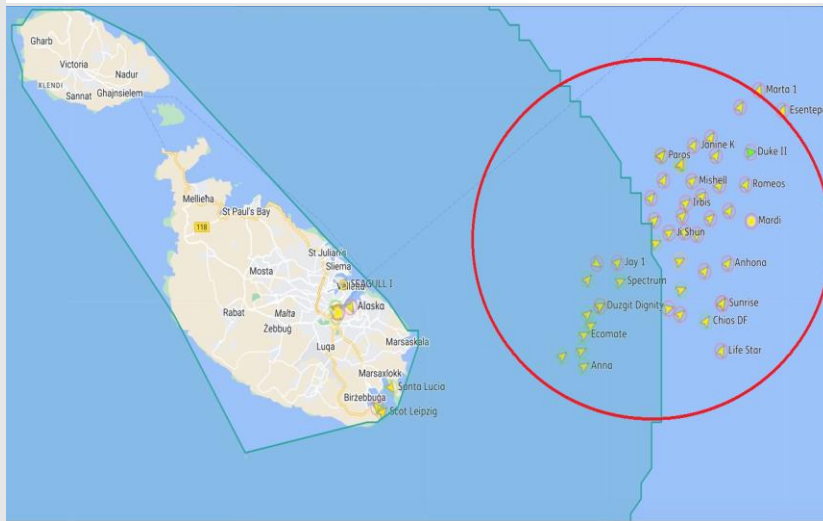
# SHIP TO SHIP TRANSFER HOT SPOTS



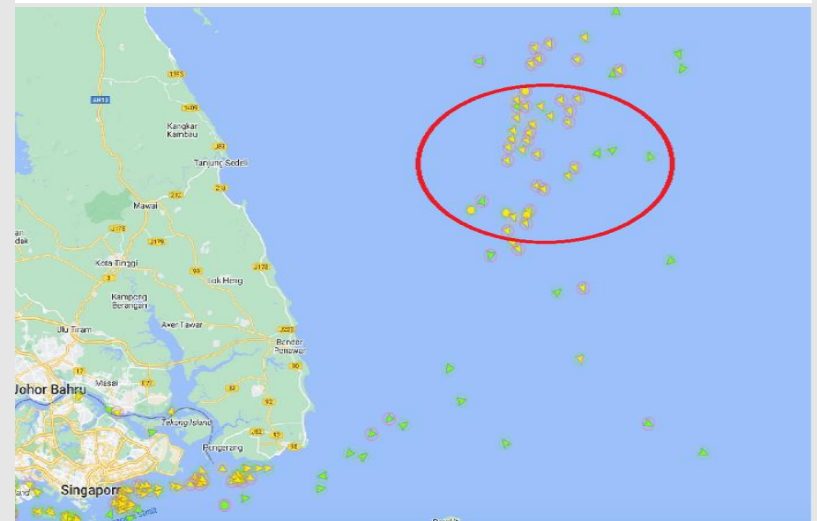
**Gulf of Laconia (Greece)**



**Strait of Gibraltar**



**Malta's Exclusive Economic Zone**



**Malaysia's Exclusive Economic Zone**

# SHIP TO SHIP TRANSFER IN MALAYSIA'S EEZ

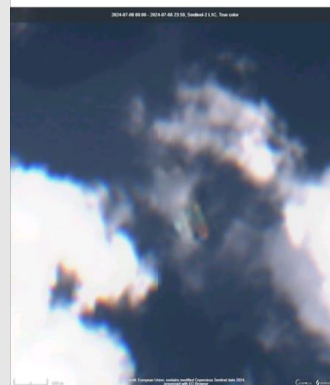
18 JUL: Sentinel-2, StS-03, 2024-293



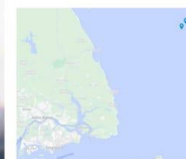
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Daily StS #	StS-03
Event Serial #	2024-293
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IMO	
Link	
TankerTrackers	
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Name	
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OFAC	-



8 JUL: Sentinel-2, StS-02, 2024-266



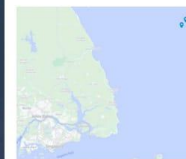
Date	8 JUL 2024
Daily StS #	StS-02
Event Serial #	2024-266
Posit	2.09794 N, 104.74505 E
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IMO	
Link	
TankerTrackers	
OFAC	-
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IMO	
Link	
TankerTrackers	
OFAC	-



8 JUL: Sentinel-2, StS-03, 2024-267



Date	8 JUL 2024
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Event Serial #	2024-267
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Link	
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IMO	
Link	
TankerTrackers	
OFAC	-



Source: Charlie Brown



# THE LEGAL BASIS FOR LITTORAL STATES TO PROTECT ITS MARINE ENVIRONMENT

## IMO Conventions and Resolutions

- **MARPOL:** The tanker **must notify coastal States 48 hours in advance** of its **STS Operation Plan** when inside the TS or EEZ (Reg. 42 Annex I).
- **SOLAS:** All vessels must have their **AIS switched on** and be inspected to ensure safety
- **CLC:** All vessels must have **adequate insurance** and carry papers on-board
- **IMO Res 1192(33):** ENCOURAGES coastal States to (i) **take appropriate actions** in cases of non-compliance and (ii) **collaborate to improve monitoring** of these practices and operations;

## UNCLOS (Part III and Part XII)

- **Art. 42:** Littoral States **may adopt laws and regulations for transit passage** for the prevention, reduction and control of pollution, by giving effect to IMO rules
- **Art. 211(5):** Coastal States may **in respect of their EEZ adopt laws and regulations** for the prevention, reduction and control of pollution from vessels conforming to and giving effect to [IMO rules]
- **Art. 220(3):** Where there are **clear grounds** for believing that a vessel has, in the EEZ, committed a violation of IMO rules on ship-source pollution the State may **require the vessel to give information**
- **Art. 233:** If a foreign ship has committed a violation of the laws and regulations referred to in article 42, **causing or threatening major damage to the marine environment of the straits**, the States bordering the straits may **take appropriate enforcement measures** and if so shall respect *mutatis mutandis* the provisions of this section

# RECOMMENDATIONS FOR SOMS LITTORAL STATES

- **Malaysia**, **Indonesia** and **Singapore** can have a list of suspected dark ships and actively track them through ship tracking services or TSS.
- **Malaysia** and **Indonesia** can develop “STS-permitted zones” in its TS and EEZ.
- **Singapore** could require bunkers and chandlers service to report dark ships’ activities (US “Magic pipe case”).
- **Malaysia** and **Indonesia** could pass laws and regulations on dark ships’ STS in their EEZ:
  - Approach suspected dark ship conducting without notification in its EEZ and request the flag State and the captain to give STS Operation Plan and CLC Insurance Certificate.
  - If the flag State and ship captain refuse, coastal State could escort the vessel to its nearest port.
  - When inside port: (i) detain the ship for investigation or (ii) authorize a safe STS

## Pollution Whistleblowers Can Earn Outsize Rewards



The alleged “magic pipe” discharge line found aboard the chemical tanker Green Sky (file image courtesy USCG)



# ARMAN 114 MV: EXAMPLE OF COLLABORATION

- MT Arman 114 (Iran-flagged) and MT S Tinos (Cameroon-flagged) spotted doing STS near North Natuna Sea.
- **Red flags:**
  - Spoofed AIS to show in Red Sea
  - Did not have STS Operation Plan
  - Refused to communicate
  - Tried to escape
- MT Arman was impounded by Indonesia authorities in Malaysia EEZ with the help of MMEA (*under the MSP?*)
- The captain of the ship is being prosecuted in Batam, Indonesia (*now is missing?*)



# SUMMARY AND RECAP

- Dark ships have evolved from economic loss to **a security and safety threat** for coastal States
- UNCLOS and IMO rules emphasize on **flag and port State's enforcement** to prevent infringement of FON of vessels in international water
- **Outside the territorial sea**, coastal States' jurisdiction over vessels is limited.
- The case for **'pushing the envelope'** in case of dark ships:
  - Dark ships deliberately violate the obligation to follow international rules and standards
  - The risk of an oil spill or collisions from oil tanker is catastrophic for coastal States (Exxon Valdez, Erika, Prestige)
  - Coastal States have rights to protect their marine environment so long as the measures **are not abusive and proportional**



Thank You