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13 September 2024

**Sanctions Busting at Sea:
The Environmental Risks of the
Global Shadow Fleet -
Options for Coastal States**

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Outline of Presentation



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Part 1

Tankers in the Shadow Fleet

Dark Fleet of Oil Tankers Threatens Existing IMO Regime

- To avoid **economic sanctions** imposed by the US, UK and EU, a “dark fleet” or “shadow fleet” of oil tankers has developed to carry oil from Iran, Venezuela and Russian Federation
- Most of these tankers are more than 15 years old and do not comply with safety and pollution standards set out in IMO Conventions
- **No regulation by Flag States:** Most are either fraudulently registered or registered in States that are either unable or unwilling to ensure they comply with IMO Conventions
- **No Port State Control:** do not enter ports where they may be inspected under “port State control” regimes

Lloyd's List Article – Characteristics of Tankers in the Dark Fleet

- Tankers are flagged in **high-risk open registries**, based on the most recently published Grey List and Black List compiled by the Paris MoU on Port State Control
- Flags on the **black and grey list** used by dark fleet ships include the international registries of Cameroon, Togo, Comoros, Tanzania, Belize, Sierra Leone, Cook Islands, St Kitts and Nevis, and Palau.

Tankers in Dark Fleet threaten existing IMO Regime

- The dark fleet of tankers pose a serious threat to the marine environment of coastal States
- They anchor outside territorial sea limits to receive food, water, fuel and spare parts
- The conduct ship-to-ship (STS) operations outside the territorial sea limits of coastal States, which poses a serious risk of an oil spill
- Most do not have liability insurance for an oil spill as required by the **1992 Civil Liability Convention**
- They also create a risk to navigational safety because they turn off their AIS or use “spoofing techniques” to hide their location or identity

Example: Pablo Incident - 1 May 2023

- Unladen Tanker exploded on 1 May 2023 in EEZ of Malaysia
- Three crew members died in the explosion
- The tanker was built in 1997 and its name was *Mockingbird*
- It was de-flagged by Panama in 2021 for suspected ties to Iran
- It was then reflagged with Cameroon, Cook Islands and Tanzania
- In March 2023, its name was change to *Pablo* and it was reflagged in Gabon
- Its registered owner was then changed to Marshall Islands-based Pablo Union Shipping
- Its beneficial owner is unknown
- The explosion cause no major spill because had no oil cargo
- It likely had no insurance for oil spill damage or wreck removal

Part 2

STS Operations in the EEZ by Shadow Fleet

IMO Assembly Resolution A.1192(33) of 11 Dec 2023

6. CALLS UPON **coastal States to monitor STS operations in their territorial sea and exclusive economic zone,**
 - **notified** in accordance with regulation 42 of Annex I of MARPOL, including monitoring the provision of the notifications required pursuant to regulation 42 of Annex I of MARPOL,
 - **and take appropriate actions in cases identified as not complying with the maritime safety and prevention of marine pollution regulations;**
7. ENCOURAGES **coastal States to collaborate** to improve monitoring of these practices and operations;

IMO Resolution MEPC.186(59) adopted on 17 July 2009

- Addition of a **new chapter 8 to MARPOL Annex I** and consequential amendments to the Supplement to the IOPP Certificate Form B
- Applies to oil tankers engaged in the transfer of oil cargo between tankers at sea (STS operations) conducted after 1 April 2012
- **Regulation 41:** Tanker engaged in STS operations must carry on board an STS operations plan developed taking into account best practice guidelines and approved by administration of flag State

IMO Resolution MEPC.186(59) adopted on 17 July 2009

Regulation 42 - Notification to the coastal State

- Each tanker that plans STS operations within the territorial sea or Exclusive Economic Zone of a Party shall notify that Party not less than 48 hours in advance of the scheduled STS operations.
- The Notification to the coastal State must include:
 1. name, flag, call sign, IMO Number and estimated arrival time of the tankers involved in the STS operations
 2. date, time and geographic location at the commencement of the planned STS operations
 7. Confirmation that the oil tanker has on board an STS operations Plan meeting the requirement of regulation 41

Coastal State Regulation of STS Operations

- IMO Regulations generally do not give authority to coastal States to enforce IMO regulations – they rely on flag States and port States
- **Jurisdiction** of coastal States over ship-source pollution in its EEZ is not governed by IMO Conventions – it is governed by the provisions in Part XII of the 1982 UN Convention on the Law of the Sea (LOSC)

LOSC Article 211. Pollution from Vessels

Article 211(5)

- **Coastal States, for the purpose of enforcement** as provided for in section 6,
- may in respect of their **exclusive economic zones** adopt laws and regulations for the prevention, reduction and control of **pollution from vessels**
- **conforming to and giving effect to** *generally accepted international rules and standards established through the competent international organization or general diplomatic conference.*
- *This provisions allows coastal States to regulate STS operations in accordance with* **MARPOL Chp 8, Regulation 42**

Article 211. Pollution from Vessels

Article 211(7)

7. The international rules and standards referred to in this article should include *inter alia* those relating to **prompt notification to coastal States,** whose coastline or related interests may be affected **by incidents,** including maritime casualties, **which involve discharges or probability of discharges**

Recommendations to Coastal States

1. Coastal States should cooperate with each other to identify and monitor tankers in the shadow fleet
2. Coastal States should adopt national legislation on STS operations in their EEZ as authorized by the LOSC
3. Coastal States should be prepared to approach tankers loitering in their EEZ to request the STS operations plan and the CLC certificate
4. If tanker cannot comply, and tanker is likely a in the shadow fleet, the coastal State should escort it into port
5. The flag State of tankers in the shadow fleet are not likely to legally challenge the actions of the coastal State

Part 3

Possible Responses by Coastal States

CIL Guide to Identifying and Tracking Tankers in the Dark Fleet

- IMO Assembly Resolution of Dec 2023 “ENCOURAGES **coastal States to collaborate** to improve monitoring of these practices and operations”;
- Information on the websites of the IMO is useful but limited
 - IMO’s GISIS portal allows all vessels issued with an IMO number to be tracked — a useful feature as the IMO number stays with the vessel even if it is re-registered under multiple flags or names.
 - While the GISIS is not public, it is free to access for all IMO member states and their maritime administrations via an IMO web account

CIL Guide to Identifying and Tracking Tankers in the Dark Fleet

- CIL Student Research Assistants are currently preparing a **Guide to Dark Fleet Tankers**
- Its objective is to give **Maritime Administrations of coastal States** an overview of the open-source online research tools available to enable them to identify the scope of the threat to their marine environment from dark fleet tankers (Vessel Finder, MarineTraffic, Equasis, IGP&I)
- The Guide explains the potential use of open-source information as well as vessel-tracking services that required a paid subscription (e.g. Lloyds List Intelligence “SeaSearcher”)
- It also explains the potential use of satellite data

Coastal States Can Legally Challenge Flag States of Tankers under LOSC

- Flag States have an obligation under **Article 94** to **effectively exercise jurisdiction and control** over ships flying its flag
- Flag States are required to take measures on the safety of navigation and the prevention of pollution that conform to the “**generally accepted international regulations, procedures and practices**” on the safety of life at sea, the maintenance of radio communications, and the prevention, reduction and control of marine pollution
- A State which has clear grounds to believe that a flag State is not exercising proper jurisdiction and control ***may report the facts to the flag State, which must investigate and remedy the situation***

Coastal States Can Challenge Flag States of Tankers under UNCLOS

- If flag States of tankers in dark fleet fail to comply with a request to investigate, the coastal States could invoke the dispute settlement procedures in Part XV and institute proceedings
- The States of Registration of most tankers in the dark fleet are unlikely to go to dispute settlement
- The ruling of a court or tribunal in such a case is likely to have a very positive impact on the registration of ships by States that are unable or unwilling to exercise effective jurisdiction and control

Coastal States can propose new IMO Regulations on Passage of Tankers

- Article 21 of the LOSC stipulates that coastal States may adopt laws and regulations for the safety of navigation and the prevention, reduction and control of vessel pollution that **give effect to GAIRS** of the IMO.
- Coastal States should propose that the IMO adopt laws and regulations requiring that all oil tankers that intend to exercise the right of innocent passage in their territorial sea provide the coastal State with **advance notice of the time of its intended passage, together with a copy of the insurance certificate required under the 1992 CLC.**
- New Regs could also require oil tankers to carry other certificates required under SOLAS 1974 and MARPOL 73/78.

Could coastal States deny passage to tankers that fail to comply?

- Coastal States could then consider denying passage rights to oil tankers that fail to provide a copy of such certificates
 - **Denial of innocent passage is legally questionable**, and subject to the dispute settlement procedures in LOSC
 - However, most flag States of shadow fleet are unlikely to challenge legality of denial of passage by coastal State

Regulation of Transit Passage and Archipelagic Sea Lanes Passage

- A more complex issue is whether littoral States bordering **straits used for international navigation** and archipelagic States can deny or restrict the passage of tankers through their waters.
- Littoral States and archipelagic States may only adopt laws and regulations relating to transit passage or archipelagic sea lanes passage *which give effect to the rules and regulations in the IMO conventions*
- Littoral States and archipelagic States can impose *ships' routing* and *ship reporting systems* on ships exercising transit passage **if such measures are approved by and adopted by the IMO.**

Regulation of Transit Passage and Archipelagic Sea Lanes Passage

- States bordering straits used for international navigation could propose to the IMO that the **mandatory ship reporting** regulation of the IMO for ships transiting a strait used for international navigation be amended to require that oil tankers intending to transit a strait include a copy of their **1992 CLC Insurance Certificate** and a copy of their **MARPOL 73/78 STS Operations Plan**, if any, in their report to the coastal authorities.
- This information would enable the States bordering international straits and archipelagic State to track and monitor ships in the shadow fleet that pose a risk to their marine environment.

Possible Action by Coastal States of Questionable Legality

- **Deny right of transit passage** to tankers in shadow fleet that are fraudulently registered or registered in States that are either unable or unwilling to ensure that ships flying their flag comply with IMO Regulations
- Most flag States registering tankers in the shadow fleet are unlikely to challenge the legality of the denial of passage
- Denial of transit passage by coastal States would be strongly opposed by major maritime powers and States relying on passage regimes

IMO Regulations are “Disaster Driven”

- A major oil spill from a tanker in the shadow fleet in waters off the coast of a developed country may be necessary to trigger action by the IMO on the shadow fleet
 - **1969 CLC** and **1971 Fund** followed the *Torrey Canyon* oil spill off the coasts of the UK and France in 1967
 - **1992 CLC** and **1992 Fund** followed *Exxon Valdez* oil spill off the coast of Alaska in 1989
 - IMO regulations on security of ships and ports followed the attack on the *World Trade Center* on 9/11 (Sep 11, 2001)

Thanks for Your Attention !

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