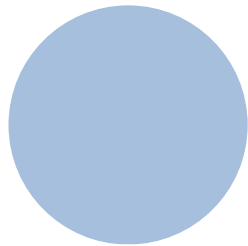


THE THREATS OF DARK SHIPS TO THE MARINE ENVIRONMENT: POSSIBLE ACTIONS BY COASTAL STATES

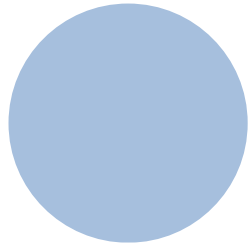
Dr. Nguyen Thanh Trung
Research Fellow, CIL

The 3rd Regional Maritime Security Symposium
Bali, Indonesia, 10-14 February 2025.

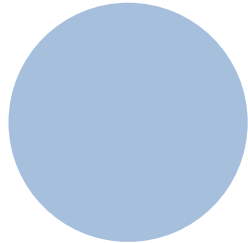
OUTLINE



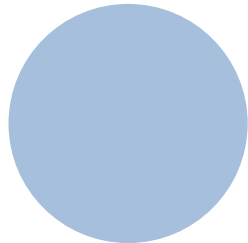
Issues: The environmental threats of the “Dark fleet”



Rules: IMO rules and UNCLOS



Applications: Is the current rules sufficient to address the dark fleet?

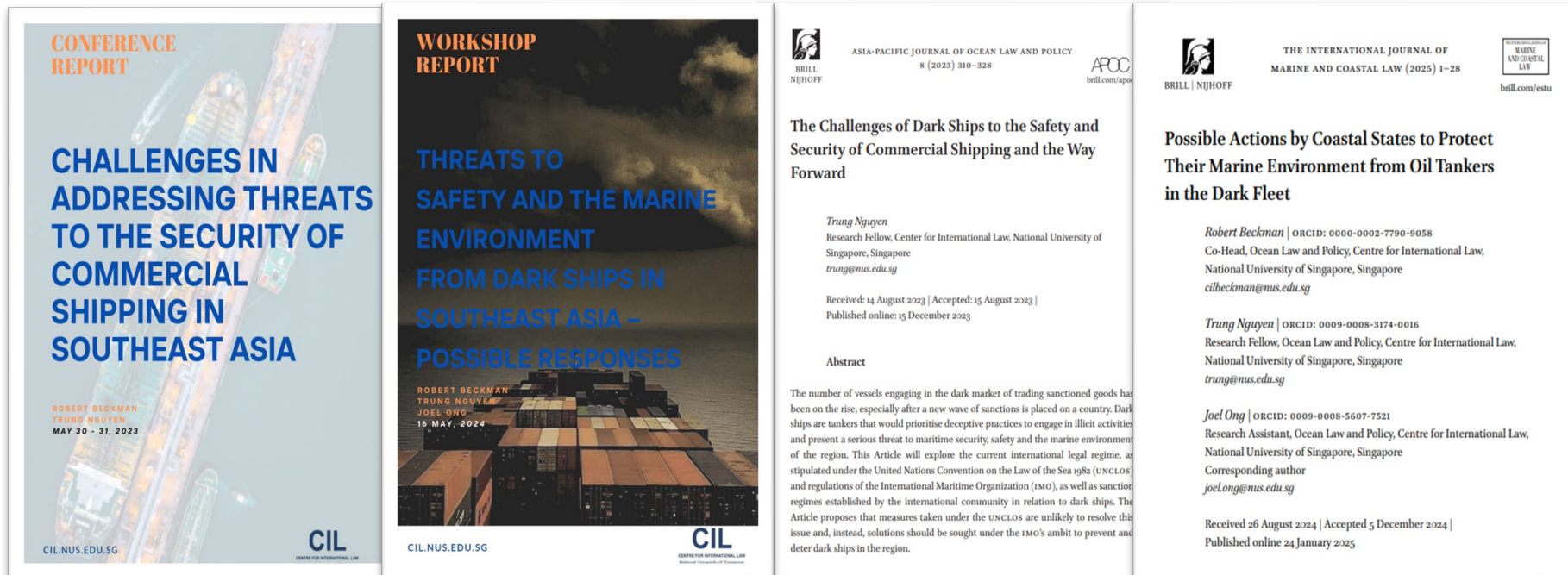


Conclusions: Practical solutions for SEA coastal States

CIL'S WORK ON DARK SHIPS

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CENTRE FOR INTERNATIONAL LAW
National University of Singapore



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Threat of the Dark Fleet to the Marine Environment

Dark ships present a major environment threat

- Dark ships are **vintage tankers** (over 20 years old)
- Dark ships engaged in **Ship-to-Ship transfer** to mask oil's origin
- Dark ships are **not inspected** to comply with safety standards
- Dark ships are **uninsured** by reputable P&I clubs
- Dark ships are **fraudulently registered**
- Dark ship owners are **untraceable**

In case of an oil spill or collision, coastal States **cannot claim compensation**

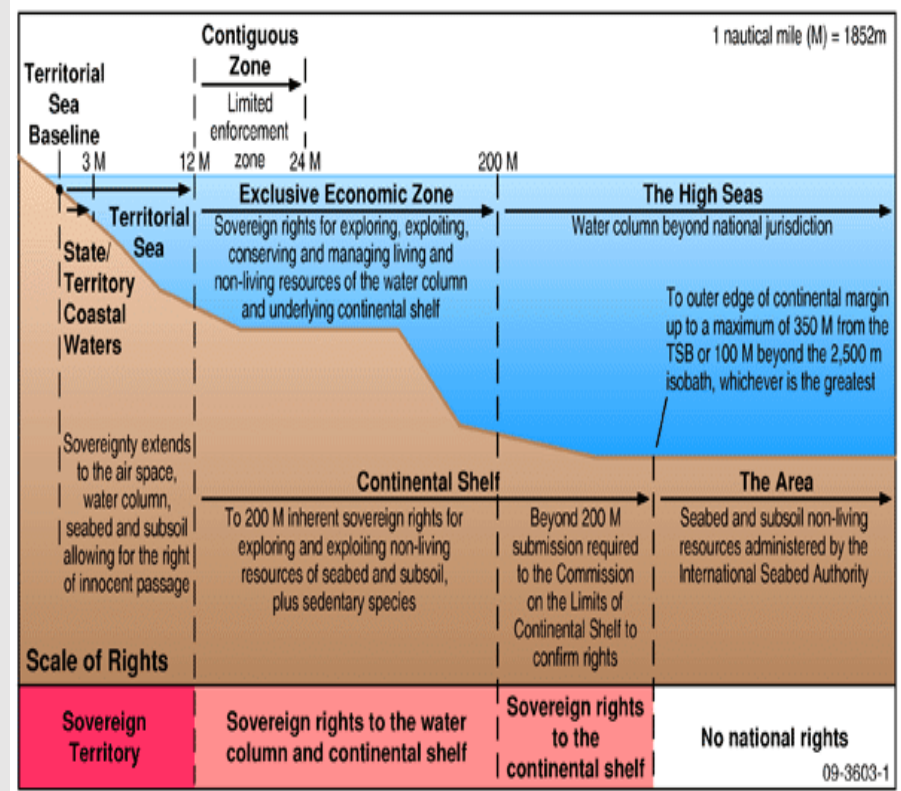
Dark ships that exploded in the sea (PABLO and CERES I)



- **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**

UNCLOS and the Regulation of Shipping

- UNCLOS divides the sea areas into **different zones** (TS, AW, EEZ, and the HS)
- In **port waters**, the CS has full sovereignty over ships.
- In **TS**, ships enjoy innocent passage (Art. 17)
- In the **AW, EEZ and the HS**, ships enjoy freedom of the high seas (Art. 87)
- **Flag States have exclusive jurisdiction of ships** flying their flag when they exercising the freedom of the high seas (Art. 92)



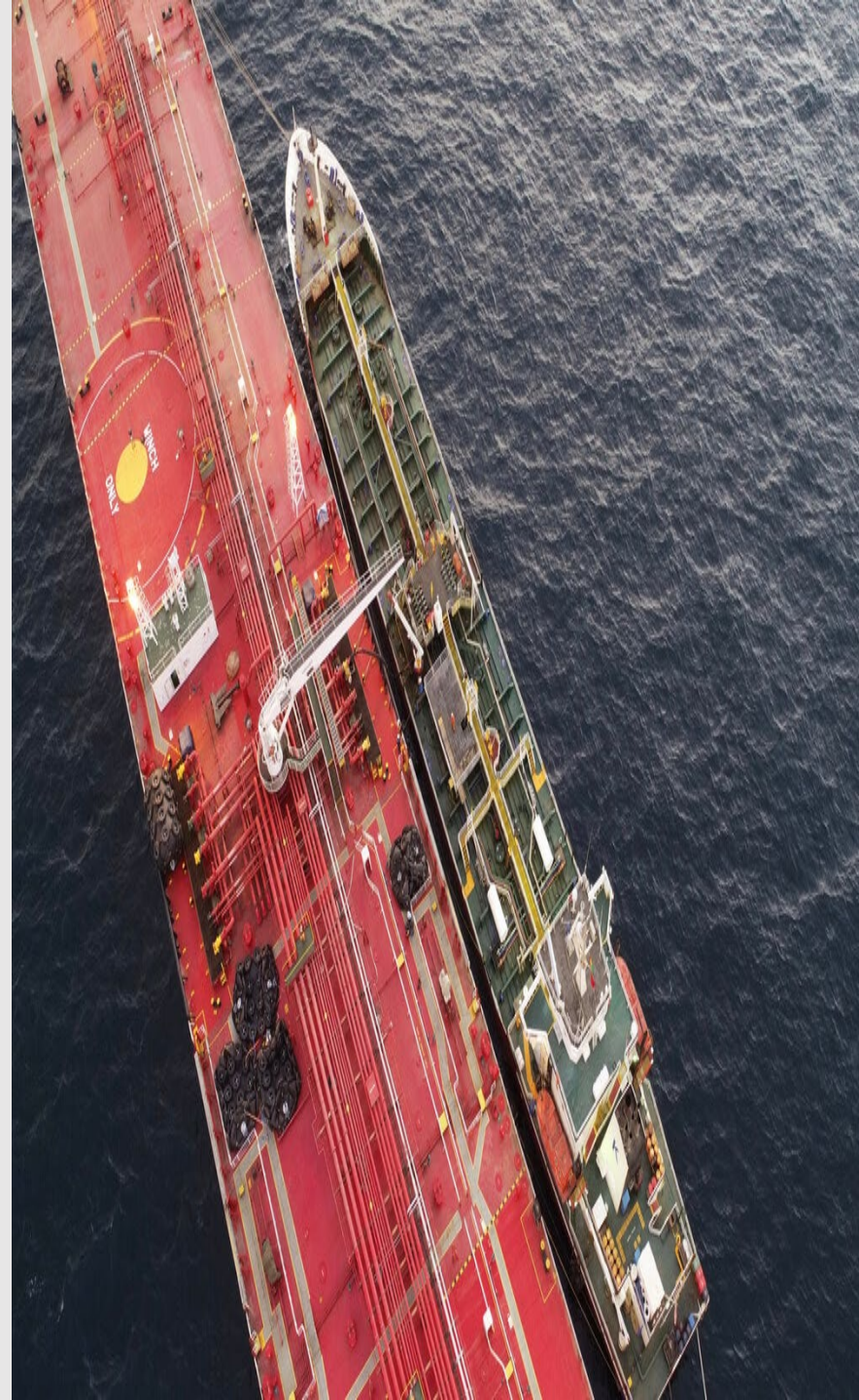
IMO rules and the Regulation of Shipping

- **IMO** is the **competent international organization** for shipping
- **SOLAS**: All vessels must have their **AIS switched on** and be inspected to ensure safety
- **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).
- **CLC & Fund**: All vessels must have **adequate insurance** and carry papers on-board



Summary of the Problem

- UNCLOS and IMO Conventions place the primary obligation to regulate shipping activities on the flag States and port States, **assuming that** States exercise their jurisdiction **effectively** and all ships eventually **come into ports**.
- Dark ships usually fly flags of countries that **have no interests nor capacity** to monitor their ships and **do not come into ports**



The Legal Basis for Coastal States to protect Their Marine Environment under UNCLOS

UNCLOS (Part III and Part XII)

- **UNCLOS does not allow:**

- Coastal States to physically inspect, institute proceedings or detain the vessel in the TS and EEZ **unless** there is a violation resulting in a substantial discharge causing or threatening significant pollution of the marine environment.
- Littoral States to **suspend transit passages**.

- **UNCLOS allow:**

- **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) and Art. 233:** Coastal and littoral 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**

MARPOL: STS Transfer Plan and notify coastal States 48 hrs before the operation

SOLAS: AIS turned on and vessels be inspected by ROs

CLC& FUND: Must carry insurance on-board

IMO Res 1192(33) adopted on 6 December 2023
ENCOURAGES coastal States to (i) take **appropriate actions** in cases of non-compliance and (ii) **collaborate to improve monitoring** of these practices and operations;

RECOMMENDATIONS FOR COASTAL STATES

- Have a list of suspected dark ships and actively track them through ship tracking services or TSS.
- Develop “STS-permitted zones” in its TS and EEZ.
- Require bunkers and chandlers service to report dark ships’ activities (US “Magic pipe case”).
- Report and arrest vessels that are fraudulently registered (“false flag”).
- Enforcement on dark ships’ STS in the TS and EEZ:
 - Approach suspected dark ship conducting without notification in its EEZ and request the captain to give STS Operation Plan and CLC Insurance Certificate.
 - If the flag State and ship captain refuse, the coastal State could report to the flag State and record their information
 - When inside port: detain the ship for investigation.



Using the UNCLOS Dispute Settlement Mechanism

- The UNCLOS has a compulsory dispute settlement mechanism under Chapter XV of the Convention.
- Coastal States who are affected by dark ships could bring flag States that have not exercised “effective jurisdiction and control” in accordance with Art. 94 UNCLOS to the Annex VII Arbitral Tribunal
- It is very likely that the flag States of dark ships will change their practices when they have to hire lawyers and being brought into an international tribunal



SUMMARY AND RECAP

- Dark ships have evolved from economic loss to **a security and environmental threat** for coastal States
- The current rules emphasize on **flag and port State's enforcement** to prevent infringement of FON of vessels in international water
- **Outside port waters**, coastal States' jurisdiction over vessels is limited.
- The UNCLOS provides coastal States the means to **protect their marine environment**:
 - Cooperate with other States in the region to monitor and detain dark ships when they are in ports.
 - Adopt laws and regulations to regulate shipping activity and protect their marine environment.
 - Challenge flag States that have no interests nor capacity in regulating their fleet.



Thank You

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