

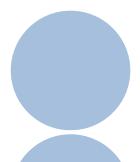
THE THREATS OF DARK SHIPS TO THE MARINE ENVIRONMENT: POSSIBLE ACTIONS BY COASTAL STATES

Dr. Nguyen Thanh Trung Research Fellow, CIL

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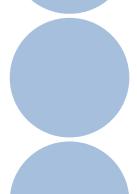
OUTLINE





Issues: The environmental threats of the "Dark fleet"



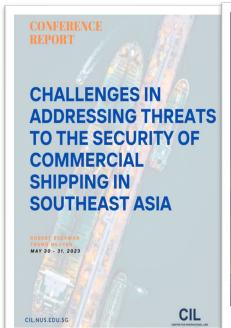


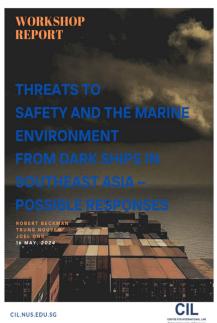
Applications: Is the current rules sufficient to address the dark fleet?

Conclusions: Practical solutions for SEA coastal States

CIL'S WORK ON DARK SHIPS









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The Challenges of Dark Ships to the Safety and Security of Commercial Shipping and the Way Forward

Trung Nguyen

Research Fellow, Center for International Law, National University of Singapore, Singapore

trung@nus.edu.sg

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Abstract

The number of vessels engaging in the dark market of trading sanctioned goods has been on the rise, especially after a new wave of sanctions is placed on a country. Dark ships are tankers that would prioritise deceptive practices to engage in Illicit activities and present a serious threat to maritime security, safety and the marine environment of the region. This Article will explore the current international legal regime, as stipulated under the United Nations Convention on the Law of the Sea 1982 (UNCLOS) and regulations of the International Maritime Organization (1MO), as well as sanction regimes established by the international community in relation to dark ships. The Article proposes that measures taken under the UNCLOS are unlikely to resolve this issue and, instead, solutions should be sought under the IMO's ambit to prevent and deter dark ships in the region.

Possible Actions by Coastal States to Protect Their Marine Environment from Oil Tankers in the Dark Fleet

Robert Beckman | ORCID: 0000-0002-7790-9058 Co-Head, Ocean Law and Policy, Centre for International Law, National University of Singapore, Singapore cilbeckman@nus.edu.sq

Trung Nguyen | ORCID: 0009-0008-3174-0016 Research Fellow, Ocean Law and Policy, Centre for International Law, National University of Singapore, Singapore trung@nus.edu.sg

Joel Ong | ORCID: 0009-0008-5607-7521

Research Assistant, Ocean Law and Policy, Centre for International Law,
National University of Singapore, Singapore
Corresponding author

joel.ong@mix.edu.sg

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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

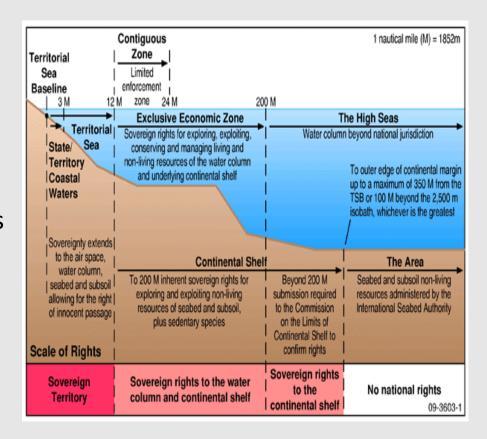
Dark ships that exploded in the sea (PABLO and CERES I)



- 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



Civil Liability Convention

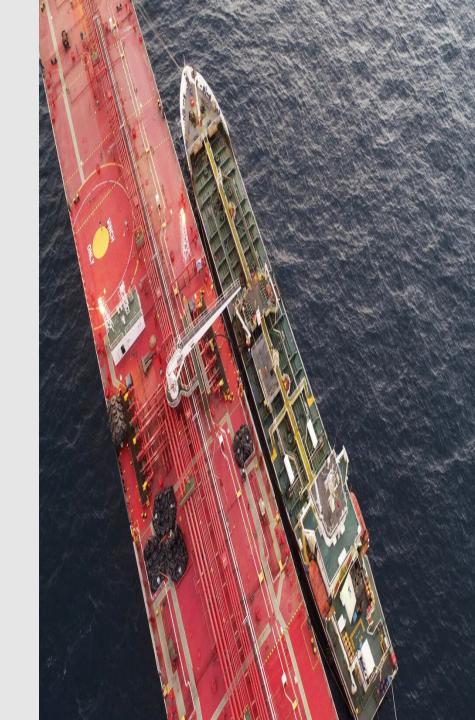
The International Convention on Civil Liability for Oil Pollution Damage, 1992 (1992 CLC)

COMPENSATION FOR DAMAGE CAUSED BY SPILLS OF PERSISTENT OIL CARGOES



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

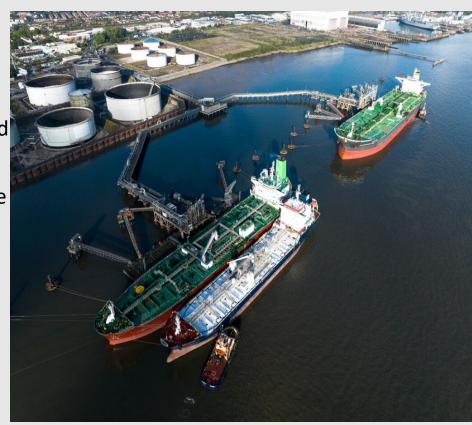
CLC& FUND: Must carry insurance on-board

IMO Res 1192(33) adopted on 6 December 2023

ENCOURAGES <u>coastal States</u> 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.





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