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Maritime interception and the law of naval operations

A study of legal bases and legal regimes in maritime interception operations, in particular conducted outside the sovereign waters of a State and in the context of international peace and security

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ANNEX A: List of vessels

Vessel name	Date	Flag State	Boarded by	Action
-Achille Lauro	1985	Italy	PLO	sailed to Egypt
-Al Feddah	2010	unknown	The Netherlands	pirates detained & tried
-Arctic Sunrise	2013	The Netherlands	Russia	vessel and persons detained
-Asama Maru	1940	Japan	UK	21 German nationals taken off board
-Barber Perseus	1986	UK	Iran	released after inspection
-BBC China	2003	Germany	-	diverted to Italy
-BBC Togo	2009	Antigua & Barbados	pirates	pirates released after capture
-Borndiep	2004	The Netherlands	-	denied access to Portugal territorial sea
-Bozkourt	1926	Turkey	-	collided with ss Lotus
-Caroline	1834	United States	UK/Canada	burned vessel, killed 2
-Estelle	2012	Finland	Israel	Captured, brought before prize court
-Francop	2009	Antigua and Barbado	Israel	detained vessel and cargo
-Heng Chung Hai	1990	China	US	released after inspection
-Ibn Khaldoon	1991	Iraq	US	diverted after boarding
-I'm Alone	1929	Canada	-	intentionally sunk by US coastguard
-Joanna V	1966	Greece	UK	refused to divert after boarding
-Kater I Rades	1997	Albania	Italy	Sunk after collision with Italian vessel
-Klos C	2014	Panama	Israel	Captured, brought into Israeli port
-Lido II	1994	Malta	The Netherlands	diverted to Brindisi, Italy,
-Light	2011	Belize	-	turned back to North Korea
-Limburg	2000	France	-	attacked by small boat
-Lotus	1926	France	-	collided with Bozkourt
-Karine-A	2002	Tonga	Israel	detained vessel and cargo
-Maersk Alabama	2009	US	US	pirate detained, tried in US
-Mavi Marmara	2010	Comoros	Israel	captured vessels
-Morning Glory	2014	Stateless	US	stopped and returned to Libya
-Ponant	2007	France	Somali pirates	pirates captured on land
-Red Crusader	1961	British	Denmark	fired upon by <i>Niels Ebbesen</i>
-Saiga	1997	St. Vincent & Grenadines	Guinea	vessel and crew detained
-Samanyolu	2009	Netherlands Antilles	Denmark	detained pirates, tried in NLD

-Santa Catharina	1603	Portuguese	The Netherlands	captured vessel and cargo
-Sea Isle City	1987	US reflagged	-	damaged by missile attack
-So San	2001	Cambodia	Spain,	US released after inspection
-Taipan	2010	Germany	The Netherlands	pirates detained, tried in Germany
-USS Cole	2000	US	-	small boat attack
-USS Samuel B. Roberts	1988	US	-	struck by mines
-Winner	2002	Cambodia	France	detained vessel and persons

ANNEX B: List of incidents

For ease of reference, this annex contains an alphabetical (by ship's name) list of most important incidents used throughout the book with a short description of the incident.

Achille Lauro

In October 1985, the Italian flagged *Achille Lauro* was hijacked by Palestinians off the coast of Egypt, demanding the release of 50 Palestine prisoners. The hijackers were given safe passage in Egypt and were allowed to board an airplane to fly to Tunisia. US fighters then forced the plane to land in Italy. The case prompted discussion on the legal possibilities to intervene on foreign flagged vessels in case of terrorist actions on board the vessel. As a result, the SUA-Convention was drafted.

Al Feddah

In 2009, Netherlands Royal Marines from *Hr.Ms. Tromp* in a rhib got fired upon when approaching a dhow that also held Iranian hostages. Their reaction led to the death of two hostage takers and the capture of pirates that were subsequently tried and sentenced in the Netherlands. The case went all the way up to the Supreme Court of the Netherlands (Hoge Raad der Nederlanden), which in 2015 judged that the commander of the warship *Hr.Ms. Tromp* had a legal ground to arrest the pirates and the Netherlands did not breach Article 5 ECHR.

Arctic Sunrise

In 2013, The Netherlands flagged vessel *Arctic Sunrise* was used by Greenpeace as a mothership, which sent its rhibs to demonstrate on the Russian oil platform Prirazlomnaya, in the Russian EEZ. The ship was captured by the Russian authorities and taken with its crew to Russia to stand trial. The Netherlands argued before the ITLOS and the PCA that the boarding of the vessel was unlawful. The PCA considered that the boarding was indeed unlawful as the boarding did not comply to all the elements of an hot pursuit.

Barber Perseus

In January 1986, during the Iran-Iraq War, the UK flagged vessel *Barber Perseus* was boarded by Iranian warships some miles outside the Iranian territorial waters. It caused a discussion in the UK parliament on the right of self-defence and the belligerent right of visit.

BBC China

In 2003, The German flagged vessel *BBC China* carried centrifuge parts for the Libyan nuclear program. The vessel was ordered by Germany to divert to the Italian port Taranto in Southern Italy, where U.S. agents boarded the vessel for a search.

BBC Togo

In 2009, the Netherlands warship *Hr. Ms. Evertsen* during participation in operation *Atalanta* captured 13 pirate-suspects who were held on board the warship. They were suspected of attacking the Antigua and Barbados flagged *BBC Togo* and a Yemeni dhow and were captured some 150 nautical miles from the coast of Oman. The Dutch prosecuting office decided not to prosecute because of a lack of Dutch interests, after which the EU took over the efforts to find a State that would prosecute. Ultimately, after about two weeks in which several States were approached, the persons were released as no State was willing to take up prosecution in a national court.

Borndiep

In 2004, the Netherlands flagged *Borndiep*, a floating medical facility from the *Women on Waves* organization that aimed at undertaking abortions, was not allowed into Portuguese territorial waters. Warships were sent to obstruct the passage into the territorial waters of Portugal. The issue came before the ECHR.

C.E. Thornton

In 2000 Suriname threatened to use force by means of two gunboats of the Suriname Navy to expel the vessel *C.E. Thornton* which was in service of Guyana from the disputed area. (Guyana vs. Suriname, Award of the Arbitral tribunal constituted pursuant to article 287, and in accordance with annex vii, of the United Nations Convention on the Law of the Sea, 17 September 2007.)

Estelle

In 2012, the Finnish vessel *Estelle* tried to run the Gaza-blockade established by Israel. It was captured by Israel and was brought before an Israeli prize court.

Francop

On 3 November 2009, Israel boarded the *MV Francop*, which sailed under the flag of Antigua and Barbuda. It found more than 300 tons of weapons on board, according to Israel said to be meant for Hezbollah. The vessel was directed to Ashdod Port for further examination. The weapons shipment was said to originate from Iran. In a letter to the UNSG Israel stated that the shipment constituted a breach of SC-Res. 1747 and because of: "The intended route of the *Francop* - coupled with the types of weaponry found on board - raise serious concerns that this incident also constitutes a violation of UN Security Council Resolution 1701 and 1373."

Ibn Khaldoon

The *Ibn Khaldoon* was a merchant vessel, dubbed the "peace-ship", that sailed in 1990 from Algeria to Iraq, enroute to Basra, during the MIF-period. The *Khaldoon*, similar as the *Mavi Marmara*, had protestors, congressmen and women on

board and purposely attracted a lot of media attention. After helicopter insertion of the US boarding team passive resistance occurred by the passengers to try to stop the boarding team to take control of the vessel. The boarding team used smoke grenades to control the vessel. After the boarding team discovered prohibited items on board a port needed to be found to offload the prohibited cargo. Ultimately the cargo was offloaded in Oman.

I'm Alone

The Canadian flagged vessel *I'm Alone* was sunk in March 1929 in hot pursuit on the high seas in the Gulf of Mexico, by the US coast guard cutter Dexter, whilst it was engaged in prohibited liquor trafficking.

Joanna V

The Greek tanker *Joanna V* was boarded by the UK warship *H.M.S. Berwick* on 4 April 1966, after which it refused to divert from the port of Beira, without the UK being able to do something about it. After the incident the UNSC took measures that involved the authority to arrest the *Joanna V* upon departure and to stop vessels breaching the embargo going into Beira.

Karina-A

In 2002, the Israeli Defense Force boarded the Tonga flagged vessel *Karine-A* in the Red Sea. The vessel carried 50 tons of weapons, suspected to be for the Palestine authority.

Kater-I-rader

The Albanian flagged *Kater I rader* was carrying Albanian refugees when it was pursued by the Italian warship *Sibilia*. The ships collided and caused the Albanian vessel to sink. Its case was put before the ECtHR was considered to be inadmissible.

Klos-C

In March 2014, Israel boarded the Panama-flagged *Klos-C* on suspicion of carrying a large bulk of weapons (surface-to-surface rockets) in the Red Sea on its way to Sudan, ultimately destined for the Gaza in an operation codenamed operation *Full Disclosure*. According to the foreign minister of Israel, it had obtained permission from Panama to board the vessel. The vessel was diverted to Eilat and the crew members, according to an Israeli spokesman, who were probably not aware of the cargo were released.

Lido II

In 1994, the Maltese flagged vessel *Lido II* left Tunisia to sail for Croatia, with mainly petroleum products as its cargo. After a first inspection by NATO/WEU forces while entering the Adriatic, it proceeded on its way to Croatia. The *Lido II* however changed course to the Albanian port of Durazzo, while repeating re-

quests for assistance as the vessel started to take water into the engine room. The master then changed course again towards Montenegro, which was off limits under the SC-Res. 820 mandate. Dutch forces were inserted by helicopter to take over the vessel before it entered the territorial waters of Montenegro. The *Lido II* was towed to Brindisi, Italy, to be dealt with by the Italian authorities.

MV Light

The Belize flagged vessel *MV Light* from North-Korea on its way to Myanmar and suspected of carrying missile parts was forced to turn back by the US who dispatched the *USS McCampbell* to intercept the *MV Light*. Although authority to board was given by Belize, based on the US-Belize shipboarding agreement the master refused. Instead it finally turned back to North Korea.

SS Lotus (Bozkourt)

The Turkish vessel *Bozkourt* and the French flagged mail boat *SS Lotus* collided on 2 August 1926 on the high seas. Eight persons on board the *Bozkourt* died because of the collision. The Turkish Government prosecuted the French first officer Demons of the *Lotus* for his share in the incident. The question whether Turkey could have jurisdiction over Demons was put before the PICJ. The Court ruled that there was no rule in international law that prohibited Turkey from prosecuting the French lieutenant.

MV Maersk Alabama

In April 2009, the United States boarded the US flagged vessel *Mearsk Alabama*. The vessel was hijacked by pirates. The pirates were tried in the US. The story of the captain (Philips) of the *Maersk Alabama* was made into a movie.

Mavi Marmara

In May 2010, Israel boarded the *Mavi Marmara* and six other vessel who were part of the so called *Freedom Flotilla*, who attempted to breach the blockade off the coast of the Gaza. The IDF boarded the vessels. The boarding turned into an opposed boarding situation and the subsequent fight between the boarding party and the attackers resulted in nine dead persons and a number of wounded. The vessels and persons on board were taken to Israel, after which, ultimately, the persons were released. The incident led to several national and international committees to examine the incident.

Morning Glory

On 17 March 2014, US Navy Seals operating from *USS Roosevelt* stopped and boarded the *Morning Glory* in international waters in the vicinity of Cyprus. The vessel was said to be stateless and tried to sell crude oil with a tanker that was stolen earlier. The vessel was escorted back by *USS Stout* to the Libyan port of Es Sidra.

Ponant

In 2007, the French flagged vessel *Ponant* was hijacked by Somali pirates. The French authorities pursued and arrested the pirates on Somali territory. The incident came before the ECtHR (*Samatar vs France* 2014).

Red Crusader

In 1961 the Danish fisheries inspection vessel *Niels Ebbesen* boarded the British flagged vessel *Red Crusader* and arrested the crew on suspicion of fishing with a prohibited area. After initially cooperating to follow the *Niels Ebbesen* to the Faroe Islands, it stopped cooperating to follow the *Ebbesen* and secluded the Danish officers that were still on board. The *Ebbesen* then first fired warning shots upon the *Red Crusader*, hailed it to stop and then proceeded to fire for effect at the *Red Crusader*. The commission of inquiry concluded that firing upon the *Red Crusader* was not justified and that other means should have been sought to pursue arrest. (Permanent Court of Arbitration (PCA), 23 March 1962.)

MV Saiga

The oil tanker *MV Saiga* was attacked and boarded by Guinean officials in 1997. The vessel and persons were brought to Conakry and placed under arrest. The ITOs found that Guinea under the specific circumstances of the case used excessive force against the *MV Saiga*, which was fully loaded with fuel, was unarmed and travelling at a speed of 10 knots. *MV Saiga* no. 2 (*Saint Vincent and the Grenadines vs. Guinea*, ITLOS Judgment 1 July 1999).

Samanyolu

In January 2009, The Netherlands-Antilles flagged *Samanyulo* was hijacked by pirates. The Danish warship *Absalon* boarded and freed the vessel. The pirates were ultimately handed over to the Netherlands and were tried before the district court of Rotterdam, The Netherlands.

So San

In December 2002, the vessel *So San* was suspected of carrying scud-missiles from North Korea to Yemen. After the boarding by Spanish forces from the Spanish warship *Navarra* upon request of the US this suspicion proved to be true. The name *So San* was freshly painted on the stern while no name was registered under that name in North Korea. According to Roach after being queried, the master of the vessel replied that it was registered in Cambodia. The Cambodian authorities appeared to have confirmed that a vessel meeting the description was registered in Cambodia, but under the name of *Pan Hope* instead of *So San*. No legal ground was, however, found to seize the scuds. Nothing prohibited North Korea to ship scuds to Yemen. The *So San* was released to proceed to Yemen with its original cargo still aboard.

Taipan

On 19 October 2012, the district court in Hamburg sentenced ten Somali pirates that had hijacked the German flagged vessel *Taipan*. The pirates were detained

after a Netherlands boarding team from *Hr. Ms. Tromp* boarded the vessel by fast-roping from a helicopter in 2010 and detained the pirates.

Winner

In early June 2002, the French authorities requested Cambodia to intercept the Cambodian flagged vessel *Winner* that was suspected of carrying large quantities of drugs. France requested and got the authority via a diplomatic note exchange. Between France and Cambodia. The French warship *Lieutenant de vaisseau Le Henaff* was instructed to intercept the *Winner* and intercepted the *Winner* near the Cape Verde Islands.

ANNEX C: List of naval operations

<u>Name</u>	<u>Date</u>	<u>State/Org</u>	<u>Legal basis</u>
Active Endeavour	2001-present	NATO	Self-defence
Allied Force	1999	NATO	Humanitarian interv.
Allied protector I (Provider)	2008	NATO	UN-mandate/UNCLOS
Allied Protector II	2009	NATO	UN-mandate/UNCLOS
Atalanta (EUNAVFOR)	2009-present	EU	UN-mandate/UNCLOS
Beira Patrol	1966-1975	UK	UN-mandate
Cast Lead	2009-present	Israel	Self-defence
Change of Direction	2006	Israel	Self-defence
Desert Shield	1990	Coalition	UN-Mandate
Desert Storm	1990	Coalition	UN-mandate
Enduring Freedom	2001-present	Coalition	Self-defence
Full disclosure	2014	Israel	(ad hoc) consent
Iraqi Freedom	2003	Coalition	UN-mandate (disputed)
Maritime Interception Force	1990-2003	Coalition	UN-Mandate
Maritime Guard	1992-1993	NATO	(NAC-decision)
Maritime Monitor	1992	NATO	(NAC-decision)
Maritime Taskforce UNIFIL	2006-present	UN	UN-mandate
Ocean Shield	2009-present	NATO	UN-mandate/UNCLOS
Oddysee Dawn	2011	Coalition	UN-mandate
Sharp Fence	1992-1993	WEU	-
Sharp Guard	1993-1996	NATO/WEU	UN-mandate
Sharp Vigilance	1992-1992	WEU	-
Unified Protector	2011	NATO	UN-mandate
United Nations Korea	1950-1953	Coalition	UN-mandate

ANNEX D: Table of UN-mandated maritime embargo operations

	Conflict	Operation alias	Duration of operation	Organization	Resolutions
1	Southern-Rhodesia	Operation London (Beira Patrol)	1966 - 1975	UK	217 (1965) 221 (1966) 232 (1966)
2	Iraq	Multinational interception Force (MIF)	25 August 1990 – 2003	Coalition	661 (1990) 665 (1990)
3	Former-Yugoslavia	Maritime Monitor	16 July – 22 November 1992	NATO	713 (1991) 757 (1992)
		Maritime Guard	22 November 1992 – 15 June 1993	NATO	787 (1992)
		Sharp Guard	15 June 1993 - 1 October 1996	NATO / WEU	787 (1992) 820 (1993)
		Sharp Vigilance	July 1992 - November 1992	WEU	713 (1991) 757 (1992)
		Sharp Fence	November 1992 – June 1993	WEU	787 (1992)
4	Lebanon	Maritime Task-force UNIFIL	August 2006-present	UN	1701(2006)
5	Haiti	Restore / uphold democracy	1995- 1995	(US-led) coalition	875 (1993) 940 (1994)
6	Sierra Leone	-	October 1997-2010	ECOMOG	1132 (1997)
7	Libya	-Unified Protector (OUP)	March 2011 – October 2011	NATO	1970 (2011) 1973 (2011) 2009 (2011)
		- No alias	March 2014 - present	UN-Member States	2146 (2014)

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