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

Fink, M.D.

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<th>Vessel name</th>
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<td>Al Feddah</td>
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<td>Asama Maru</td>
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<td></td>
<td>diverted to Italy</td>
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<td>Turkey</td>
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<tr>
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<td>US</td>
<td></td>
<td>diverted after boarding</td>
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<td>1929</td>
<td>Canada</td>
<td>-</td>
<td></td>
<td>intentionally sunk by US coastguard</td>
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<td>1966</td>
<td>Greece</td>
<td>UK</td>
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<td>refused to divert after boarding</td>
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<td>Belize</td>
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<td></td>
<td>turned back to North Korea</td>
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<td>Lotus</td>
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<td>France</td>
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<tr>
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<tr>
<td>Mavi Marmara</td>
<td>2010</td>
<td>Comoros</td>
<td>Israel</td>
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<td>captured vessels</td>
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<tr>
<td>Morning Glory</td>
<td>2014</td>
<td>Stateless</td>
<td>US</td>
<td></td>
<td>stopped and returned to Libya</td>
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<tr>
<td>Ponant</td>
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<td>France</td>
<td>Somali pirates</td>
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<td>pirates captured on land</td>
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<td>1961</td>
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<td>Denmark</td>
<td></td>
<td>fired upon by Niels Ebbesen</td>
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<tr>
<td>Saiga</td>
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<td>St. Vincent &amp; Grenadines</td>
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<td></td>
<td>vessel and crew</td>
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<td>Samanyolu</td>
<td>2009</td>
<td>Netherlands Antilles</td>
<td>Denmark</td>
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<tr>
<td>Name</td>
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<td>Original Country</td>
<td>New Country</td>
<td>Event</td>
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<tr>
<td>Santa Catharina</td>
<td>1603</td>
<td>Portuguese</td>
<td>The Netherlands</td>
<td>captured vessel and cargo</td>
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<td>-</td>
<td>damaged by missile attack</td>
<td></td>
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<tr>
<td>So San</td>
<td>2001</td>
<td>Cambodia</td>
<td>Spain,</td>
<td>US released after inspection</td>
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<tr>
<td>Taipan</td>
<td>2010</td>
<td>Germany</td>
<td>The Netherlands</td>
<td>pirates detained, tried in Germany</td>
<td></td>
</tr>
<tr>
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<td>US</td>
<td>-</td>
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<td>-</td>
<td>struck by mines</td>
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<tr>
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<td>France</td>
<td>detained vessel and persons</td>
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</table>
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 _Achillo 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 facilty from the *Women on Waves* organization that aimed at undertaking abortions, was not allowed into Portuguese territorial waters. Warships were send 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 originated 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. It 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 *Ebbessen* than 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

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<tr>
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<td>1990</td>
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<td>1993-1996</td>
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