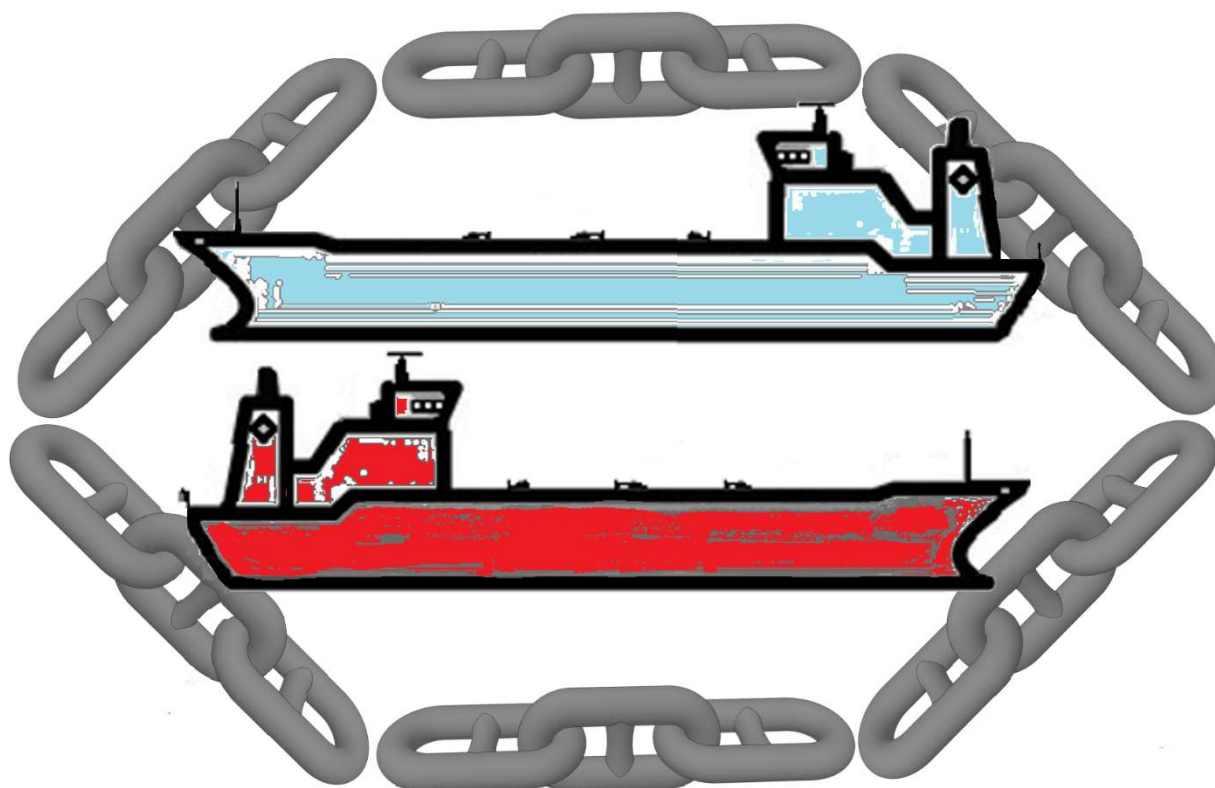


A Tale of Two Tankers



By Neil Watts



Abstract

The Panamanian-flagged tanker *Grace 1* was seized on 4 July 2019 by the Government of Gibraltar, in a military operation involving commandos from Great Britain. The Singaporean-owned tanker was alleged to be carrying a shipment of crude oil from Iran to a Syrian refinery. Gibraltar claimed the action was in compliance with European Union sanctions since the Syrian refinery is sanctioned by restrictive European Union measures. In retaliation, Iran seized the United Kingdom-flagged tanker *Stena Impero* in the same type of military operation two weeks later in the Strait of Hormuz. This study of two interlinked cases involving the seizure of two tankers in 2019 is a very recent example of International Law in action, involving multiple member states of the United Nations, with both Syria and Iran subject to restrictions imposed by international law instruments of the United Nations and European Union. At first glance, the two cases involving the same actions - in the same manner, involving military forces in the form of indirect conflict between sovereign states, appears relatively simple, open-and-shut cases since both tankers were released. Was it a case of realpolitik and leadership at play, or was it an example where international law tempered responses in what would have been regarded as an act of war in the past and thereby prevented war through legal instruments wielded by diplomats and courts adjudicating on the basis of international law? Understanding the role of international law which may have shaped the discourse toward resolution of the conflict (with tremendous potential for escalation), requires analyses and a critical review of whether the claimed justifications were indeed legitimate or simply a pretext for political expediency in a game of chess within the narrow confines of self-interest.

Keywords

Grace 1, Stena Impero, Banyas Oil Refinery Company, Joint Comprehensive Plan of Action (JCPOA), UN resolution 2231 (2015), International Maritime Organization (IMO), United Nations Convention on the Law of the Sea (UNCLOS), International Law, European Union Regulation 36/2012.

Introduction

“In an increasingly complex and interdependent world, negotiation, adoption, and implementation of international agreements is a major component of the foreign policy activity of every state.”¹ This paper, an extract from an international law academic research paper, is intended to examine, explain and create an understanding of the nature, complexity and impact of international law on global affairs, particularly with respect to the United Nations and the international maritime framework, and related issues and conflicts of interest between sovereign states. The two case studies will be examined to determine matters subject to International law, its application, and then comparisons of nature and outcome in relation to each other and other similar cases.

Case 1: Seizure of the Tanker Grace 1

The *Grace 1*, a Panamanian-flagged supertanker, a very large crude carrier (VLCC) tanker, was detained on 4 July 2019 by Gibraltar. It was en route to deliver Iranian crude oil to a Syrian port. Royal Marines from Britain, and Royal Gibraltar Police and customs agents boarded and stopped the tanker.² From an official statement from Gibraltar: “we have reason to believe that the *Grace 1* was carrying its shipment of crude oil to the Banyas Refinery in Syria.” “The phrase “reasonable grounds to believe” is typical language for UN sanctions and EU sanctions-related regulations, meaning that a legal threshold has been met. In addition, that they would “not allow Gibraltar to be used or to be knowingly or unknowingly complicit in the breach of EU or other international sanctions or for any of the matters which our laws prohibit.”³ The next day, the Gibraltar Supreme Court issued an order for the vessel’s detention for another 14 days - required “for the purposes of compliance with the EU Regulation 36/2012 on sanctions on Syria.”⁴ Reportedly, Spain indicated that the action was at the behest of the United States.⁵

¹ Chayes and Chayes. “On Compliance.” International Organization, 1993. Page 175.

² Al Jazeera. “Tanker carrying Iranian oil stopped off Spain’s coast.” 2019.

³ HM Government of Gibraltar. “Chief Minister’s Statement to Parliament Regarding Grace 1- 529/2019.” Press release, 12 July 2019.

⁴ Nugent. “What to Know About the British-Flagged Oil Tanker Seized by Iran Amid Escalating Tensions.” 2019.

⁵ Al Jazeera. “Tanker carrying Iranian oil stopped off Spain’s coast.” 2019.

At the time of the boarding, the *Grace 1*'s position was inside the British Gibraltar Territorial Waters (BGTW), as can be seen by the tracking screenshot on page 11.

The British ambassador was summoned by Iran's Foreign Ministry to lodge "its very strong objection to the illegal and unacceptable seizure" of its tanker. This diplomatic response removed any doubt over Iran's ownership of the *Grace 1*, which had been sailing under a Panama flag and registered as owned by a Singapore company. Iran's claim and demand for the release of the vessel then would thus seem curious, since one would expect a response from



Panama or Singapore – also revealing that the vessel is sailing under a 'flag of convenience' and owned by an Iranian front company, both suggesting deception tactics on the part of Iran. Later the government of Gibraltar confirmed that the tanker's cargo was the property of the state-owned National Iranian Oil Company.⁶

In its response, Iran declared the seizure of the *Grace 1* a hostile act, stating that it was ready to dispatch its naval fleet to escort the tanker if necessary. "The era of hit and run is over ... if top authorities ask the navy, we are ready to escort out tanker Adrian," Iran's navy commander, Rear Admiral Hossein Khanzadi, was quoted as saying by Mehr news agency."⁷

Gibraltar refused to release the vessel to the United States following an appeal for its seizure on the basis of the cargo belonging to a designated terrorist organization, the Iranian Revolutionary Guard (IRGC). The *Grace 1* was released, despite objections from

⁶ Ingber. "Gibraltar Releases Iranian Tanker U.S. Tried to Seize." KPBS, 2019.

⁷ France24.com/ Reuters 19 August 2019.

the United States and a warrant for its seizure, on 15 August 2019 by the Gibraltar Supreme Court - on the basis that Iran had given a written assurance that the cargo of crude oil would not be delivered to Syria.⁸ The supertanker was reflagged to Iran and changed its name to the *Adrian Darya 1* and took on a new crew before sailing. However, after meandering in the Mediterranean, the tanker delivered its cargo by means of ship-to-ship transfers to smaller vessels, which delivered it to Syria in the end, making a farce of the written assurance.⁹ Reportedly, one of the vessels, the *Jasmine*, delivered the crude oil via a submarine pipeline, which connected to the Baniyas refinery. A front company operated the *Jasmine* on behalf of a network directed by the IRGC.¹⁰

Case 2: Seizure of the Tanker *Stena Impero*

The initial impounding of the *Grace 1* sparked a diplomatic row that escalated when Tehran seized a British-flagged oil tanker the *Stena Impero* in the Gulf two weeks later on 19 July 2019. Iran's Revolutionary Guard boarded the *Stena Impero* in the same manner as the Royal marines boarded the *Grace 1* in Gibraltar's territorial waters. The IRGC stopped the *Stena Impero* in Oman's territorial waters, within the Strait of Hormuz, and moved it to the port of Bandar Abbas, where it was kept under guard in Iranian territorial waters, under the pretext of being "under investigation for its alleged transgression against navigation regulations in the Strait of Hormuz."¹¹

Iran claimed the *Stena Impero*, which was en route to a port in Saudi Arabia, was "violating international maritime



⁸ HM Government of Gibraltar. "Chief Minister's Statement on the release of The Grace 1 - 595/2019." Press release, 15 August 2019

⁹ Faucon and Paris. "Iranian Tanker Prepares to Offload Oil to Syria-Bound Ships." WSJ, 2019.

¹⁰ Szakola "Revealed: how Grace 1's illicit Iranian oil cargo got to Syria." The National. 2019.

¹¹Serdy, Andrew. "Iran: what the law of the sea says about detaining foreign ships in transit." The Conversation 2019.

rules.”¹² Rhetoric from Iran’s ruling Guardian Council implied that the seizure was made in retaliation for Britain’s role in the seizure of the *Grace 1*. Iran’s Fars agency news broadcast quoted a Guardian Council spokesman as stating: “[The] rule of reciprocal action is well-known in international law.”¹³

The vessel had a multi-national crew of 23, consisted of Indian, Latvian, Filipino, and Russian nationals, who were now held hostage. *Stena Impero* is owned by a Swedish company that requested access to the crew but was denied by Iran. To the company, Iran officially declared that the ship was “being held as part of an investigation into a collision with a fishing vessel,” however, Stena Bulk denied “that there is any evidence of a collision.”¹⁴

The seizure of the vessel caused Britain to deploy a second warship to the region to “provide additional security for British-flagged ships,” and the Royal Navy also began escorting vessels through the narrow Strait of Hormuz, thereby ratcheting up tensions in the narrow waterway which is crucial for international oil supplies, where about 20 percent of the world’s total oil supply is transported by sea - nearly 17.4 million barrels every day. Global crude prices jumped by more than 2% when Iran seized the *Stena Impero*.¹⁵

Constitution of the Oceans - Maritime law

According to the International Maritime Organization (IMO), is a specialized agency of the United Nations responsible for improving the security and safety of international shipping worldwide. The IMO’s primary purpose is to provide “a regulatory framework for the shipping industry that is fair and effective, universally adopted and universally implemented.”¹⁶ When a government accepts an IMO policy as a signatory, it becomes a national law that becomes the member States’ responsibility to enforce. The IMO was established by means of a convention adopted in Geneva in 1948 (in force 1958). More than eighty per cent of global trade is transported by international shipping. This global

¹² Al Jazeera Breaking News, 19 July 2019 at 23:01GMT. See at <https://www.youtube.com/watch?v=ogOd8ImkTvQ>

¹³ Nugent. “What to Know About the British-Flagged Oil Tanker Seized by Iran Amid Escalating Tensions.” 2019.

¹⁴ Schuler. “Stena Impero Crew Have Spoken with Families Back Home, Stena Bulk Says.” 2019.

¹⁵ Al Jazeera. “Tanker carrying Iranian oil stopped off Spain’s coast.” 2019.

¹⁶ The International Maritime Organization, retrieved from <http://www.imo.org/>

industry requires a safe and secure environment provided by the internationally recognized regulatory framework developed and maintained by the IMO, in particular, the United Nations Convention on the Law of the Sea (UNCLOS) of 10 December 1982.¹⁷ This is a treaty, a codification of customary international law of the sea is considered as the “constitution of the oceans,”¹⁸ and has been ratified by 168 member states as of December 2019. Notably, the United Kingdom has ratified the UNCLOS, whereas Iran has signed but not ratified it yet.¹⁹

United Nations Sanctions

Iran, a central role player in the seizure of both tankers, has been and continues to be subject to international sanctions since 1979. In exchange for relief from economic sanctions, Iran committed to an agreement known as the Joint Comprehensive Plan of Action (JCPOA), or UN resolution 2231 (2015), in July 2015. This agreement involved the five permanent members of the UN Security Council (China, France, Russia, the United Kingdom, and the United States) and Germany - the P5+1. Under the agreement, Iran undertook to dismantle most of its nuclear program and to also give international inspectors of the UN nuclear watchdog, the International Atomic Energy Agency (IAEA), access to its nuclear-related facilities. Following “Implementation Day” on 16 January 2016 - the United States, European Union, and the United Nations all agreed to suspend or repeal their respective sanctions.²⁰ However, the nuclear agreement with Iran started unraveling following the withdrawal of the United States on the basis that the JCPOA failed to rein-in Iran’s ballistic missile program or its proxy warfare in the region because Iran violated the international agreement by frequently testing ballistic missiles and proliferated ballistic missile technology to actors in the region. Tensions keep on escalating not only as Iran began accelerating its nuclear program again, but also of its proxy involvement in conflict within the Persian Gulf.²¹

¹⁷ Full UNCLOS text available from https://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm

¹⁸ First by Tommy T.B. Koh, of Singapore, President of the Third United Nations Conference on the Law of the Sea on 6 December 1982 and most recently by Foreign Affairs Secretary of Republic of the Philippines. Teodoro L. Locsin Jr. Available at https://www.un.org/Depts/los/convention_agreements/texts/koh_english.pdf.

¹⁹ The International Maritime Organization, UNCLOS Status, retrieved from https://www.un.org/Depts/los/reference_files/status2019.pdf on 2 December 2019.

²⁰ Davenport. “The Joint Comprehensive Plan of Action (JCPOA) at a Glance.” Arms Control Association, 2018.

²¹ Laub. “What Is the Status of the Iran Nuclear Agreement?” Council on Foreign Relations, 2019.

The United States, renouncing the JCPOA in May 2018, reinstated restrictions on Iran's exports of oil as part of a 'Maximum Pressure' campaign to curb Iran's ballistic missile programs - "This decision is intended to bring Iran's oil exports to zero, denying the regime its principal source of revenue."²² This thrust was integral to events driving the seizure of the two tankers, *Grace 1* and *Stena Imperio*. The other central character in the drama is Syria, which is itself subject to sanctions, an important recipient of Iranian oil and specifically that which was carried on board the *Grace 1*.

The three European signatories to the JCPOA, Great Britain, France, and Germany, have tried to keep the JCPOA afloat. In this respect, secondary sanctions imposed by the United States are a significant challenge for the European Union's foreign policy and autonomy, given its trade interdependence. Many international groups and organizations, including the G77 and the Asian, African Legal Consultative Organization (AALCO), regard the imposition of such secondary sanctions as contrary to International Law. In addition, they are invariably controversial in nature since they could be construed as an illegal, extraterritorial application of domestic laws, intended for coercion.²³ The EU, claiming that this practice violated international law, has responded to the challenge of secondary sanctions, particularly those aimed at Iran, by amending the EU Blocking Regulation of 1996 which was originally aimed at countering US secondary sanctions related to Cuba ("Helms-Burton Act"). The Blocking Regulation provides protection to EU persons, companies, and entities against compliance to the laws and jurisdiction imposed by another country.²⁴ This Blocking Statute was a factor in the decision by the Gibraltar Supreme court to release the tanker *Grace 1*, in particular, Article 5, which prohibits affected Parties from complying with US legislation.

Concerning the oil carried on board the *Grace 1*, subsequent to the implementation of the Vienna nuclear agreement (JCPOA), all European sanctions relating to oil from Iran have been lifted – so this excludes the cargo. Also, in this vein, seizing a Panamanian (a non-

²² Singh. "A Better Iran Deal Is Within Reach." Council on Foreign Relations, 2019.

²³ Tirkey. "US Secondary Sanctions: Framing an Appropriate Response for India. ORF, 2019. Page 2.

²⁴ "The 'New' Iran E.O. and the 'New' EU Blocking Statute." Gibson, Dunn & Crutcher, 9 August 2018.

EU member) ship carrying crude oil from Iran would **not** be in accordance with EU regulations. Furthermore, the EU has rejected the concept concerning secondary, or extraterritorial sanctions, which is being enforced by the United States.

European Union Restrictive Measures

Gibraltar outlined in an official statement that the “action arose from information giving [...] reasonable grounds to believe that the vessel, the *Grace I*, was acting in breach of European Union sanctions against Syria.” And it added: “We have reason to believe that the *Grace I* was carrying its shipment of crude oil to the Banyas Refinery in Syria.” One day later, the Gibraltar Supreme Court issued an order confirming that the detention of the *Grace I* for another 14 days was required “for the purposes of compliance with the EU Regulation 36/2012 on sanctions on Syria.”²⁵ The European Union, since 2011, has banned oil shipments to Syria but is yet to seize a tanker at sea in this regard.²⁶

The official press of the Government of Gibraltar did not to mention innocent passage in the case of the *Grace 1*, meaning that it believed it does not apply to vessels violating EU restrictions, most likely since allowing ships to pass through Gibraltar's (claimed) territorial waters would violate the EU sanctions and therefore the matter is considered "prejudicial to Gibraltar or the United Kingdom."²⁷ The detention of the *Grace 1* relates to the suspected destination of the cargo, the Banyas refinery in Syria, which is owned by a company, the Banyas Oil Refinery Company, where it would discharge and provide its 2.1m barrels of crude oil to the Assad regime. This company is the subject of European Union sanctions under EU Regulation 36/2012, so it provides legal grounds for Gibraltar to act.²⁸

It is also relevant that in Chapter V, regarding the “Freezing of Funds and Economic Resources.”, Article 14/1:

²⁵ Nicoullaud “The Strange Case of The *Grace I*’s Detention.” 2019.

²⁶ Saul and Hafezi. “Tehran fumes as Britain seizes Iranian oil tanker over Syria sanctions.” Reuters 2019.

²⁷ HM Government of Gibraltar. “*Grace 1* Confirmed to be Carrying Full Load of Crude Oil” Press release, 2019.

²⁸ European Union. “Restrictive measures in view of the situation in Syria.” No 36/2012, 2012.

All funds and economic resources belonging to, owned, held or controlled by the natural or legal persons, entities and bodies listed in Annex II and IIa shall be frozen.

Since Annex II lists several oil companies and refineries, including the **Banyas Oil Refinery Company** as a designated Syrian entity - which Gibraltar claimed as the alleged destination of the crude oil on board the *Grace 1*, it could, therefore, be construed as an economic resource of the entity (to be frozen/seized).²⁹ Interestingly, an official government statement from Gibraltar was, “the provenance and origin of the cargo aboard the *Grace 1* has not been relevant at all to Gibraltar’s actions.”³⁰ This would presuppose that it was all about the designated Syrian entity, Banyas Oil Refinery Company. But a Gibraltar press release of 15 August 2019 stated it was a “contravention of Article 14 of the EU Regulation on Sanctions on Syria.”³¹

Also listed in Annex II, is the IRGC Qods Force (The Qods (or Quds) Force is a specialist arm of the Iranian Islamic Revolutionary Guard Corps (IRGC)) is also designated, so if there is evidence as alleged by the United States in their warrant - that the oil has been exported to Syria by IRGC, it would be legal grounds to seize the vessel. However, Gibraltar stated it was unable to comply with the United States’ request since it was bound by European Union law.³²

Jurisdiction

The earliest attempt at producing international law of the sea, especially jurisdiction of coastal states, grew with the general acceptance of the “cannon-shot rule,” postulated by the Dutch jurist, Cornelius van Bynkershoek in the seventeenth-century (*De Dominio Maris*), which stated: “the power of the land properly ends where the force of arms ends.” Also, at this time, considered the first and most celebrated jurist of public international law, Hugo Grotius’s doctrine proclaimed the “*mare liberum*” or “freedom of the sea” for all

²⁹ Nicoullaud “The Strange Case of The Grace I’s Detention.” 2019.

³⁰ HM Government of Gibraltar. “Chief Minister’s Statement to Parliament Regarding Grace 1- 529/2019.” Press release, 12 July 2019.

³¹ HM Government of Gibraltar. “Chief Minister’s Statement on the release of The Grace 1 - 595/2019.” Press release, 15 August 2019

³² France 24. “Iranian tanker held in Gibraltar delivered oil to Syria, says US.” 13 September 2019.

vessels. By the 18th century, the concept of the three-mile wide sovereign territorial sea emerged, which was eventually adopted by most countries as the basis of maritime jurisdiction, until the UN Convention on the Law of the Sea 1982 (UNCLOS), in force by 1995, established a new standard of 12 nautical miles.³³ Most countries, including the members of the European Union, are signatories to the Convention, as is Gibraltar. Britain has declared 3 miles. Gibraltar has not yet extended its legal jurisdiction from 3 to 12 miles, so part of the waters to the South East remain international waters (high seas), Gibraltar is entitled to annex the waters between 3 to 12 miles to expand its jurisdiction under the UNCLOS, although Spain may in all likelihood object.

Gibraltar and the Treaty of Utrecht

Gibraltar, a territory of six square kilometers, also known as “the Rock of Gibraltar,” is itself also subject to historical territorial and jurisdictional disputes between Spain and Great Britain – especially when it comes to Spanish fishing vessels.

The Treaty of Utrecht of 1713 established Great Britain’s (the Kingdom of) sovereignty over Gibraltar.³⁴ According to the treaty: “the town, castle, and fortifications were to be held and enjoyed forever without any exception or impediment whatsoever.” It was reconfirmed by the Treaty of Paris in 1763, and again by the Treaty of Versailles in 1783. Spain’s counter-claims are that it did not relinquish sovereignty in the Treaty.³⁵ In two referendums held in 1968 and 2002, the people of Gibraltar voted overwhelmingly to remain with Britain. It must be noted, however, that the Treaty of Utrecht was concluded centuries before the modern international legal concept of territorial waters had been developed.³⁶

According to Spain, however, the United Nations General Assembly, referring to resolution 1514 (1960),³⁷ Spain claims a right to territorial integrity and demands that Gibraltar is returned. This dispute very much in the spotlight today between Spain and

³³ Trinidad. “The disputed waters around Gibraltar.” 2017, Page 107.

³⁴ Lincoln. “The Legal Status of Gibraltar: Whose Rock is it Anyway.” 1994, pages 286-287

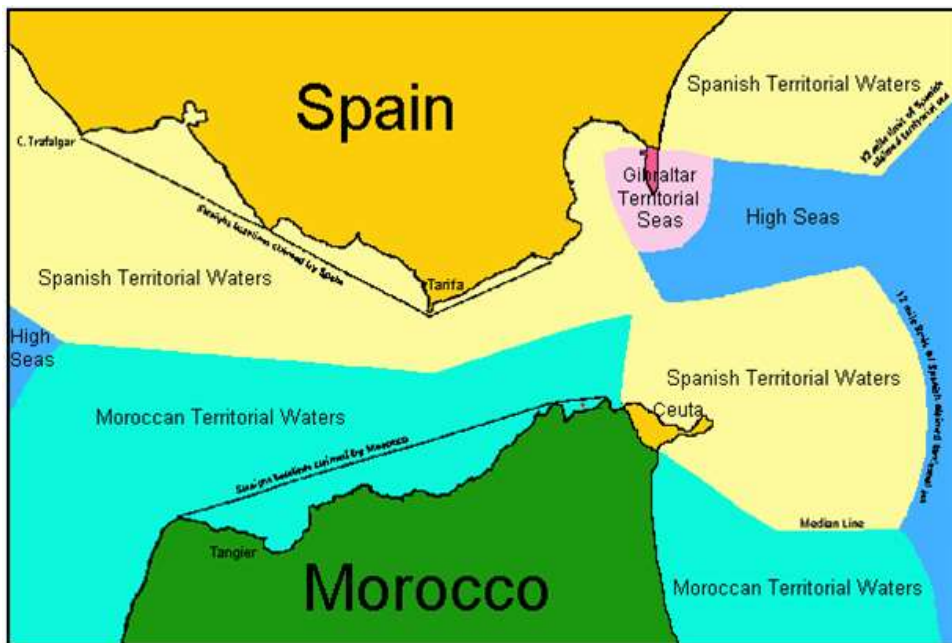
³⁵ Johnson, Ben. “The History of Gibraltar.”

³⁶ Trinidad. “The disputed waters around Gibraltar.” 2017, Page 107.

³⁷ UN General Assembly. “Declaration on the Granting of Independence to Colonial Countries and Peoples.” Resolution 1514 (XV), 14 December 1960

Great Britain is whether Gibraltar and the waters surrounding are, as a matter of international law, separable.³⁸ Territorially, Great Britain claims three nautical miles (nm) of territorial sea around Gibraltar - British Gibraltar Territorial Waters' (BGTW), while Spain's position is that Gibraltar is not legally entitled to *any* waters beyond the internal waters of its port since none were included in Article X of the Treaty of Utrecht.³⁹

The Government of Great Britain, as the administering authority of Gibraltar, has extended the United Kingdom's accession to the UNCLOS 1982 convention and ratification of the Agreement to Gibraltar. The Great Britain therefore rejects the Spanish declaration as unfounded. Its position is that Spanish maritime incursions into the BGTW are a "violation of Britain's sovereignty, not a threat to it." Spain contends that it is "exercising jurisdiction and control over waters" considered to be Spanish waters. In terms of jurisdiction, it must also be borne in mind that Gibraltar is not a separate country and, therefore, a member of the United Nations – it is a colony of Great Britain, which is both a member of the UN and EU. The map below illustrates the complexity of the territorial claims between countries in the region.



Source: <http://www.gibnet.com/>

³⁸ Trinidad. "The disputed waters around Gibraltar." 2017, Page 102.

³⁹ Ibid, Page 107.

Historically, the military and diplomatic dimensions of the disputed claims have evolved in parallel with the international legal rules covering the rights of coastal states to a territorial sea. The dispute between Spain and Great Britain over Gibraltar, therefore, provides a lens to observe critical developments in the law of the sea over the past 300 years, from the “emergence of cannon-shot jurisdiction to the adoption of the United Nations Convention on the Law of the Sea (UNCLOS).”⁴⁰

According to UNCLOS, every coastal state has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, which measured from baselines determined in accordance with this Convention.⁴¹ The outer limit of the territorial sea is drawn from the nearest point of the baseline equal to the breadth of the territorial sea.⁴² The Gibraltar government claims to have detained the tanker inside its own (claimed) territorial waters (BGTW), rather than in what they recognize as international waters in the Straights. In terms of the European Union restrictive measures on Iran, Gibraltar has the jurisdiction in which the measures can be enforced - on page 16/3, paragraph (q), that “‘territory of the Union’ ‘means the territories of the Member States to which the Treaty is applicable, under the conditions laid down in the Treaty.’”⁴³

In an official statement, the Government of Gibraltar reported that the tanker *Grace 1* had been detained “after having passed through the international waters of the Straits of Gibraltar... when it was **freely transiting** British Gibraltar Territorial Waters to a point two miles off the Eastside of Gibraltar, and on a pre-arranged call to take on provisions and spare parts”(emphasis added).⁴⁴ It released the vessel tracking image below to show the *Grace 1* (red track) entering its territorial waters (in blue).

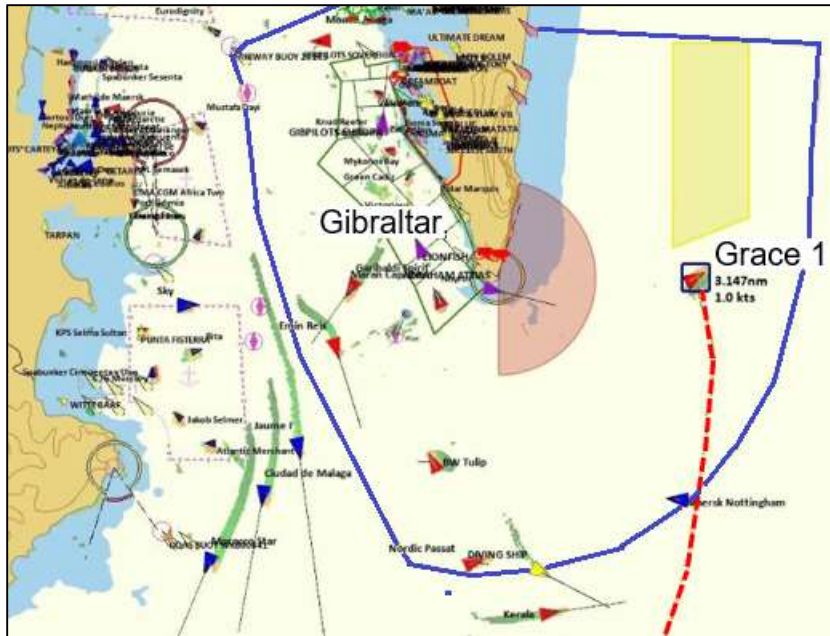
⁴⁰ Trinidad. “The disputed waters around Gibraltar.” 2017, Page 103.

⁴¹ UNCLOS, Section 2. Limits of the Territorial Sea, Article 3

⁴² UNCLOS, Section 2. Limits of the Territorial Sea, Articles 4-7

⁴³ European Union. “Restrictive measures in view of the situation in Syria.” No 36/2012, 2012.

⁴⁴ HM Government of Gibraltar. “Grace 1 Confirmed to be Carrying Full Load of Crude Oil” Press release, 2019.



Source: HM Government of Gibraltar.⁴⁵

The United States claimed that both the *Wise Honest* and *Grace 1* should be forfeited to the United States government under U.S. forfeiture laws for U.S. sanctions violations and fraud. The United States asserts that the *Grace 1* is ultimately owned by Iran's Revolutionary Guard Corps (IRGC), which the United States declared a foreign terrorist organization in April 2019. The European Union has not similarly deemed the IRGC a terrorist organization.

Under the law of the sea, the United States does not have the authority in peacetime to seize a vessel on the high seas or in the waters of another country. Countries may only enforce their laws within their waters, with the exception of vessels flying their flag, which they have authority over anywhere in the world. The United States must either wait until the vessel enters United States' waters, which would likely never happen, or convince another country to recognize and enforce the warrant.

⁴⁵ HM Government of Gibraltar. "Grace 1 Confirmed to be Carrying Full Load of Crude Oil" Press release, 2019.

Flag States

Under international law, there are five general doctrines which authorize legitimate jurisdiction⁴⁶ A vessel takes on the nationality of the country whose flag it is entitled to fly under so-called “the law of the flag” - referred to as the flag state. The UN Convention on the Law of the Sea (UNCLOS) and customary international law determine that (with some exceptions), the flag state has exclusive jurisdiction over its vessels upon the high seas. States exercise prescriptive jurisdiction under international law if they satisfy the requirements of one of five accepted doctrines, namely: (1) the nationality principle, (2) the territorial principle, (3) the protective principle, (4) the passive personality principle, and (5) the universality principle. The first four require a nexus between the state and the conduct to be regulated. Most importantly, the last principle empowers states to punish "certain offenses recognized by the community of nations as of universal concern, such as piracy. . . war crimes, and even certain acts of terrorism."⁴⁷

Notably, under customary and treaty international law, only the flag state may extend diplomatic protection on a vessel's behalf, which makes Iran’s actions concerning the *Grace 1* problematic - according to international law, it had no grounds to claim jurisdiction, protection of the vessel, nor the right of innocent passage – the right of which Panama could have had – if it was still the flag state on the day it was stopped on 4 July 2019. Since stateless vessels are not entitled to the protection of any state, some countries and scholars assert that any state therefore has the right to assert their jurisdiction over them. Utilizing this ‘statelessness’ concept as grounds for prescriptive jurisdiction may well be controversial, but there is support for it within customary and treaty international law.⁴⁸

When the *Grace 1* was detained by detained on 4 July 2019 by Gibraltar, it was flying a Panama flag. However, Panama’s Maritime Authority stated that the *Grace 1* was no

⁴⁶ Bennet. “That Sinking Feeling: Stateless Ships, Universal Jurisdiction, and the Drug Trafficking Vessel Interdiction Act.” 2012. page 435-438

⁴⁷ Ibid

⁴⁸ Bennet. “That Sinking Feeling: Stateless Ships, Universal Jurisdiction, and the Drug Trafficking Vessel Interdiction Act.” 2012. page 443.

longer listed in Panama's international boat registry as of 29 May 2019.⁴⁹ The implications of this is that the *Grace 1* was under a false flag and de facto stateless – without the protection of any state and therefore under the jurisdiction of all states. This is why, upon the tanker's release by Gibraltar Supreme Court, it was reflagged to Iran and renamed the *Adrian Darya-1* was, therefore, a deliberate move to enable Iran's jurisdiction over and extend its protection over the tanker. It also re-engaged the right of innocent passage, which is afforded to flag states.

Despite the *Grace 1* being stateless from 29 May 2019 onwards, the tanker was released by Gibraltar after having received a note verbale from Iran 5th August giving "written assurance" that the tanker take its cargo of crude oil to Syria. Gibraltar's Chief Minister stated that "in light of the assurances we have received, there are no longer any reasonable grounds for the continued legal detention of the *Grace 1* in order to ensure compliance with the EU Sanctions Regulation."⁵⁰

Right of Innocent Passage

*"Subject to this Convention, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea."*⁵¹

The United Nations Convention has enshrined the common law concept of innocent passage through a coastal state's territorial sea in International Law. The passage of a vessel is considered innocent so long as it is not prejudicial to the peace, good order or security of the coastal state affected. A vessel undertaking an innocent passage (transit) may traverse the coastal state's territorial sea continuously and expeditiously. The passage includes the vessel stopping and anchoring, but only in so far as it is incidental to ordinary navigation or rendered necessary by force majeure or distress or to render assistance to persons, ships in danger or distress. But may not stop or anchor except in force majeure situations.

⁴⁹ HM Government of Gibraltar. "Chief Minister's Statement to Parliament Regarding Grace 1- 529/2019." Press release, 12 July 2019.

⁵⁰ HM Government of Gibraltar. "Chief Minister's Statement on the release of The Grace 1 - 595/2019." Press release, 15 August 2019.

⁵¹ UNCLOS, Section 3. Subsection A. Rules Applicable to All Ships, Article17.

There are some restrictions that coastal states can impose on ships, but none of them relate to carrying cargoes in violation of sanctions.⁵² As far as its application to the *Grace 1*, once it calls into port to take on provisions and spares, it would cease to be a passage, regardless of whether the vessel is transiting through territorial waters where innocent passage would typically apply. If a vessel chooses to call into a country's port, the vessel is then placing itself under its jurisdiction.

Regarding the *Stena Imperio*, transiting the straits of Hormuz, straits that are referred to in UNCLOS article 37, it is clear that *all* ships enjoy the right of transit passage, which shall not be impeded.

Right to seize

In an effort to stop the tanker *Grace 1* from continuing its voyage to Syria, the US Department of Justice submitted a seizure warrant and forfeiture complaint to Gibraltar.⁵³ This was lodged by the United States District Court for the District of Columbia, which alleged that the Oil Tanker “Grace 1,” and all petroleum carried onboard and a sum of \$995,000 was subject to forfeiture. It was based on violations of the International Emergency Economic Powers Act (IEEPA), a bank fraud statute, and anti-money laundering statute, in addition to a separate the terrorism forfeiture statute (against the Iranian Revolutionary Guard (IRGC)). The warrant alleged that it was part of a scheme to unlawfully access the US financial system in order to support illicit shipments from Iran to Syria by the IRGC, which has been designated a foreign terrorist organization. The document details that the scheme involved multiple parties that are affiliated with the IRGC and furthered by the deceptive voyages of the *Grace 1* (such as the current one to Syria). The network of front companies is accused of laundering millions of dollars in support of such oil shipments.

⁵² UNCLOS, Part II, Section 3, page 26.

⁵³ US Dept. of Justice “Unsealed Warrant and Forfeiture Complaint Seek Seizure of Oil Tanker “Grace 1”. 2019.

Case Precedent

This approach to vessel seizure was used successfully for the 17,000-ton vessel North Korean-flagged *Wise Honest*, which had been seized by Indonesia in April 2018 for carrying an illicit North Korean coal shipment, and for delivering heavy machinery to North Korea. The *Wise Honest* falsely declared itself to be under the Sierra Leone flag. Both these types of shipments were in violation of UN Security Council resolutions. Indonesia, with the vessel in the territorial water, detained the vessel under international law for “serious Port State Control deficiencies” - in this matter, international law recognizes that a port state can apply its national laws to visiting vessels. Also, according to International law, the authority of the port state (Indonesia *and Gibraltar*) is superior to that of the vessel’s flag state when a vessel has entered the port.⁵⁴ Agreements between states are also governed by regional Memorandums of Understandings (MOU) between states – in the case of the *Wise Honest* it is the Tokyo MOU, in the case of the *Grace 1* - the Paris MOU, and for the *Stena Impero* in the Gulf Region, the Riyadh MOU. A federal court in New York’s Southern District filed a civil forfeiture action to seize the vessel in July 2018. The *Wise Honest* was turned over to the United States by Indonesia on the basis of a treaty, the “Mutual Legal Assistance Agreement” (MLAA), and towed to Pago Pago, American Samoa, which placed the vessel within the jurisdiction of the United States.⁵⁵

Notably, the parents of deceased U.S. student Otto Warmbier, voluntarily withdrew their claim of the vessel to hasten its forfeiture. Their claim related to the death of their son after he was detained by North Korea and died shortly after being released. Then in July 2019, the Warmbiers were awarded the right to sell the North Korean vessel *Wise Honest* to cover the \$500 million judgment against North Korea.

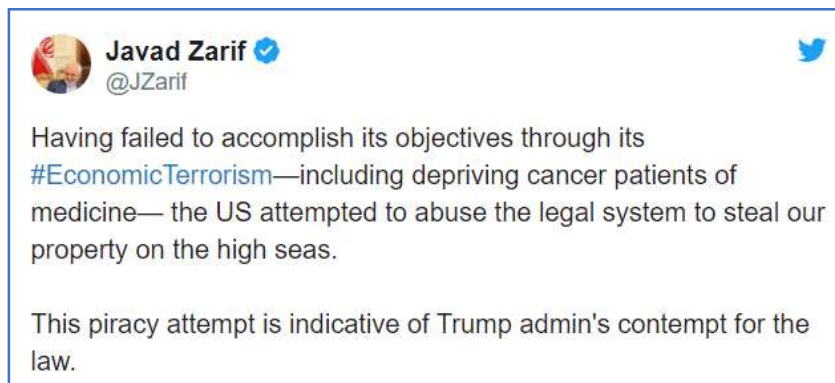
Following a court decision to release the *Grace 1*, Gibraltar did not agree to assist the United States in enforcing the warrant for its seizure. There is strong speculation that the *Grace 1* was released in return for the release of the *Stena Impero*, which was being held by Iran.

⁵⁴ McDorman. “Regional Port State Control Agreements: Some Issues of International Law.” 2000. Pages 210-211.

⁵⁵ US Dept. of State. “Treaties and Agreements, <https://2009-2017.state.gov/j/inl/rls/nrcrpt/2012/vol2/184110.htm>.

Piracy

When the tanker Grace 1 was seized, Iran summoned the British ambassador in Tehran to protest against as an act of “piracy.”⁵⁶ Then later, Mohammad Javad Zarif, Iran's foreign minister, on Twitter after the release:



Since pirates are considered the “enemies of all mankind,” international law historically has maintained an exception to the rule, which authorizes all states to board, search, and detain pirate ships and pirates.⁵⁷

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) provides the framework for the repression of piracy under international law, in particular in its articles 100 to 107 and 110. The definition of piracy in Article 101(c)³⁰ includes “any act of inciting or of intentionally facilitating an act described” as piracy. And Article 103 states that a “ship is considered a pirate ship if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101.”⁵⁸ The UN Security Council has repeatedly reaffirmed “that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 (‘The Convention’), sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities” (UN Security Council resolution 1897 (2009), as adopted on 30 November 2009). Further, Article 100 of UNCLOS provides that “all States shall cooperate to the fullest possible extent in the repression of piracy on the

⁵⁶ England and Bozorgmehr “Gibraltar to rule on detention of Iran tanker.” Financial Times 2019.

⁵⁷ Roach. “Countering Piracy off Somalia: International Law and International Institutions.” 2010. Page 400.

⁵⁸ Ibid, page 402.

high seas or in any other place outside the jurisdiction of any State.” The customary and conventional international law of piracy, therefore, implies that piracy can only occur upon the high seas and not in areas subject to state sovereignty. There are questions as to whether Iran is bound by the treaty since, although Iran signed the UNCLOS treaty, it did not, however, ratify it - unlike the United Kingdom.⁵⁹ Since the tanker *Grace 1* was in British Gibraltar Territorial Waters, within its jurisdiction - in terms of International Law, neither Britain nor Gibraltar were committing piracy as claimed by Iran.

The geographic limitation of the law of piracy to the high seas (including the Exclusive Economic Zone - EEZ), does not apply to other criminal acts that may be committed at the same time - such as those addressed by the UNCLOS, regarding the Suppression of Unlawful Acts Against the Safety of Maritime Navigation of 1988 (the SUA Convention) - but it is covered by the term “armed robbery against ships.”⁶⁰ The legitimacy of multinational warships acting against pirates in Somali waters is established by the Transitional Federated Government (TFG) of Somalia, whose permission had been reported to the UN secretary-general, then acting under Chapter VII of the UN Charter.⁶¹ This leaves the only situation where a warship (or military helicopter) can commit an act of piracy is if the crew mutinied and took the vessel for financial gain.⁶² According to the head of the UK Chamber of Shipping, Iran seizure of the British flagged tanker *Stena Imperio* was in “clear violation of international law” because it was in Omani waters when it was boarded.⁶³ The tanker, which was seized on 19 July 2019 by military force, was taken into Iran’s waters to claim jurisdiction. However, since the tanker was exercising its “right of innocent passage” in Oman waters, it would undoubtedly be illegal in this case. Given the similarity with actions taken by Somali pirates, conceptually, without the permission of Oman, it could thus be claimed that Iran committed an act of “armed robbery

⁵⁹ Serdy, Andrew. “Iran: what the law of the sea says about detaining foreign ships in transit.” The Conversation 2019.

⁶⁰ Roach. “Countering Piracy off Somalia: International Law and International Institutions.” 2010. Page 399.

⁶¹ Ibid, page 400.

⁶² Serdy, Andrew. “Iran: what the law of the sea says about detaining foreign ships in transit.” The Conversation 2019.

⁶³ Saul. “Seizure of British-flagged tanker 'clear violation of international law': UK Chamber of Shipping.” 2019.

against ships” rather than piracy – congruent also to its accusation that Britain committed an act of piracy by seizing the *Grace 1* within Gibraltar’s territorial waters.

Conclusion

In their introductory chapter on compliance with international treaty obligations, Abram and Antonia Handler Chayes echo Carter and Trimble’s *International Law*, that “in an increasingly complex and interdependent world, negotiation, adoption, and implementation of international agreements is a major component of the foreign policy activity of every state.” This research concerning the two 2019 interlinked cases, a stand-off involving multiple international actors over the seizure of two tankers, definitively demonstrates this observation. This recent case study illustrates international law in action, involving multiple United Nations’ member states employing or invoking international laws and instruments that regulate the behavior, jurisdiction, and rights of maritime states and the vessels that ply the seas between them. It was not a simple case of one party violating international law and another hiding behind or justified by it. Secondly, the study also reaffirms their belief that “when nations enter into an international agreement, they alter their behavior, their relationships, and their expectations of one another over time in accordance with its terms.” The seizure of either one of the tankers could have led to war, but in the end, the states involved reevaluated their behavior, realized that their initial expectations were not supported by international law and, not wanting to damage existing agreements, allowed diplomacy to prevail - both tankers were released, and bruised egos were the only casualties. Lastly, the research also concurs that noncompliance by states is a deviant rather than an expected behavior, that the choice of whether to escalate (or deescalate) the international compliance or enforcement effort, particularly that of sanctions or coercive secondary sanctions, is very much a political decision. I conclude by borrowing from Mark Twain, “the reports of *the death of international law* have been greatly exaggerated.”

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