

RUSSIA'S SHADOW FLEET IN EUROPEAN WATERS: LEGAL RESPONSE

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Acronyms

The following acronyms refer to the legal instruments, international institutions, maritime zones, and navigational systems used in this report.

AP I – Additional Protocol I to the 1949 Geneva Conventions
 ARSIWA – Articles on Responsibility of States for Internationally Wrongful Acts
 EEZ – exclusive economic zone
 EUNAVFOR – European Union Naval Force
 FAL – Facilitation Committee of the IMO
 G7 – Group of Seven
 GRU – Russian military intelligence agency
 ICJ – International Court of Justice
 ICRC – International Committee of the Red Cross
 ILC – International Law Commission
 IMO – International Maritime Organization
 ITLOS – International Tribunal for the Law of the Sea
 LEG – Legal Committee of the IMO
 LNG – liquefied natural gas
 MARPOL – International Convention for the Prevention of Pollution from Ships
 MEPC – Marine Environment Protection Committee of the IMO
 MSC – Maritime Safety Committee of the IMO
 NATO – North Atlantic Treaty Organization
 NAVTEX – navigational telex
 NM – nautical mile
 P&I – protection and indemnity
 SBU – Security Service of Ukraine
 SOLAS – International Convention for the Safety of Life at Sea
 SUA – Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
 SWOT – strengths, weaknesses, opportunities, and threats
 TCC – Technical Cooperation Committee of the IMO
 TSS – traffic separation scheme
 UNCLOS – 1982 United Nations Convention on the Law of the Sea
 UNSC – United Nations Security Council
 VCLT – Vienna Convention on the Law of Treaties

Executive Summary

Russia's shadow fleet has become an increasingly important challenge for European maritime security, extending well beyond the circumvention of sanctions on Russian oil exports. The use of aging or inadequately insured vessels, opaque ownership and registration structures, and in some cases uncertain nationality raises concerns about maritime safety and environmental protection, while suspected involvement of shadow-fleet vessels in damage to critical offshore infrastructure has exposed gaps in existing enforcement frameworks. Russia's war against Ukraine adds a further dimension, raising questions about the status of these vessels under the law of naval warfare and the circumstances in which merchant ships may lose the protections ordinarily afforded to civilian objects.

This report examines the legal options available to states in responding to these challenges and finds that there is no single legal basis for restricting the shadow fleet, but rather a range of complementary avenues whose applicability depends on the circumstances of each case. It considers maritime law-enforcement powers against suspected stateless vessels, in international straits, and following damage to critical infrastructure; the implications of international environmental obligations; countermeasures in response to breaches of flag-state obligations and other internationally wrongful acts; and the treatment of shadow-fleet vessels under the law of naval warfare. Taken together, the analysis shows that existing international law provides greater scope for action than is sometimes assumed, but that the permissible response depends critically on factors including a vessel's nationality and conduct, its location and applicable passage regime, the conduct of its flag state, and, during armed conflict, whether the vessel qualifies as a military objective.

- **Several concrete avenues for stronger maritime law enforcement against the shadow fleet exist, particularly where vessels lack a valid nationality.** Under Article 110(1)(d) of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), states may board vessels on the high seas or in the exclusive economic zone (EEZ) where there are reasonable grounds for suspecting that they are stateless in order to verify their nationality. Recent interdictions by Estonia and France demonstrate the practical relevance of this legal basis. Statelessness is particularly significant because it disrupts the ordinary allocation of jurisdiction and responsibility to a flag state, including where a vessel's claimed registration cannot be verified. The report therefore recommends more systematic use of Article 110 to board vessels where their claimed nationality cannot be affirmatively confirmed by the flag state. Once a vessel's nationality is established, however, the powers available to other states become more constrained under the applicable legal framework and generally require an additional jurisdictional basis.
- **International straits present important—but highly location-specific—opportunities for coastal states to strengthen enforcement against shadow-fleet vessels.** The applicable powers depend on whether a strait is governed by innocent passage, non-suspendable innocent passage, or transit passage. The report argues that the Danish Straits are governed by the special regime of non-suspendable innocent passage under the 1857 Copenhagen Convention, leaving Denmark greater scope to act against vessels engaged in non-innocent passage, including because of the characteristics of the vessel or its conduct before or during passage. On this interpretation, the Convention's prohibition on the general stoppage of traffic does not preclude individual civil arrests, potentially allowing enforcement against specific shadow-fleet vessels. Abolishing the EEZ corridor in the Viro Strait could strengthen Estonia's and Finland's ability to protect critical underwater infrastructure, but would entail significant trade-offs by expanding transit-passage rights for foreign ships and aircraft across much of the Gulf of Finland. In the Strait of Dover, Article 233 of UNCLOS provides a potential basis for enforcement where violations of applicable rules cause or threaten major environmental damage, although restrictions there could simply divert shadow-fleet traffic around the British Isles.

- **Threats to critical offshore infrastructure and the environmental risks posed by substandard vessels expose important gaps in the existing legal framework, but also create additional grounds for state action.** Outside the territorial sea, the protection of submarine cables and pipelines relies on a patchwork of jurisdictional bases, and the report explores a dynamic interpretation of the piracy provisions of UNCLOS under which deliberate damage to seabed infrastructure could constitute piracy for “private ends”, potentially providing universal jurisdiction to interdict and arrest vessels regardless of flag. The report also proposes preemptive diplomatic coordination to establish this interpretation as a response to hybrid threats and reduce the scope for piracy allegations to be used as a counter-accusation. The report further identifies Article 113 of UNCLOS, necessity under the law of state responsibility, and the Suppression of Unlawful Acts (SUA) Convention as complementary legal bases that may support action to protect submarine cables and pipelines. More broadly, environmental obligations should inform the interpretation and exercise of navigational rights. The customary duty of prevention and the associated due-diligence standard require states not merely to adopt safety and environmental rules, but to ensure their effective implementation and enforcement. These obligations may also provide a basis for affected coastal states to limit access by shadow tankers where they pose heightened risks of serious environmental damage, while systematic enforcement measures can themselves contribute to fulfilling coastal states’ environmental obligations. Unilateral restrictions adopted by coastal states following the Prestige disaster provide a precedent for national measures addressing serious environmental risks that subsequently contributed to stronger international standards. Coastal states could similarly consider restrictions based on defined safety, insurance, and environmental standards while seeking their incorporation into international rules through the International Maritime Organization (IMO).
- **Systematic failures by flag states to fulfill their international obligations may open an additional avenue through the law of countermeasures.** Flag states are required under UNCLOS to exercise effective jurisdiction and control over their vessels and to enforce applicable safety and environmental requirements. Persistent failures to meet these obligations could justify temporary restrictions on passage, provided that the substantive and procedural requirements governing countermeasures are met, including proportionality, reversibility, prior notification, and an opportunity for the responsible state to comply. The report proposes identifying the relevant breaches, notifying the flag states concerned through bilateral and IMO channels, and establishing clear conditions under which restrictions would cease and passage rights would be restored. Russia presents an additional case because it increasingly serves directly as a flag state for shadow-fleet vessels. Alongside countermeasures based on breaches of its flag-state obligations, the report examines the prohibition of aggression as a separate basis for measures against Russia. The report also proposes increasing institutional pressure on Russia through the IMO, including by seeking the suspension of its participation or voting rights in the IMO Assembly and relevant committees.
- **Membership of the shadow fleet does not by itself make a merchant vessel a military objective, while the broader concept of “war-sustaining objects” remains contested.** The report first examines Russian attacks and threats against neutral merchant vessels in the Black Sea, concluding that the law of blockade did not provide a legal basis for Russia’s conduct and that its 2023 threat to treat vessels bound for Ukrainian ports as military targets was inconsistent with the law of naval warfare. Although some states consider civilian objects that generate revenue supporting a belligerent’s war effort capable of becoming military objectives, this position is not generally accepted. Against this background, the report notes that Ukraine’s attacks on shadow-fleet tankers may signal support for the war-sustaining doctrine, under which tankers exporting Russian oil could be treated as military objectives, while recognizing that this interpretation remains contested and that any such attacks must give due regard to the protection of the marine environment. Irrespective of whether that doctrine is

accepted, individual merchant vessels may become military objectives through their direct participation in military action—for example, by sailing in convoy with enemy warships or military aircraft, actively resisting visit or capture, contributing to intelligence collection, carrying troops or military material, transporting oil for direct military use, or operating under the control of the enemy government.

- **Environmental considerations continue to constrain measures against shadow-fleet vessels during armed conflict and reinforce the need for a differentiated rather than uniform response.** Even where an individual vessel qualifies as a military objective, attacks remain subject to applicable rules protecting civilian objects and the marine environment, including requirements relating to precautions, proportionality, and due regard for environmental damage. The report notes that Ukraine's reported attacks targeted until spring 2026 only tankers on their way to Russian oil export terminals, which were therefore presumably empty—a significant factor in limiting the risk of marine pollution. The report also proposes considering protected zones in particularly sensitive semi-enclosed seas, including the Baltic and Mediterranean, to reduce the risks associated with attacks on merchant shipping. Taken together, the available legal avenues point toward measures tailored to the vessel, location, and conduct concerned: interdiction of suspected stateless ships, enforcement in particular straits, responses to infrastructure damage and environmental risks, countermeasures against responsible flag states, and, in armed conflict, measures against individual vessels that meet the requirements for military-objective status.

The report is structured around four complementary areas of international law before translating the analysis into concrete courses of action. It first examines maritime law enforcement, followed by environmental protection and the law of state responsibility and countermeasures. It then turns to the law of naval warfare, including the circumstances in which shadow-fleet vessels may become military objectives and the environmental constraints on attacks. The final chapter brings these strands together and sets out actionable steps for coastal states, the sanctions coalition, and Ukraine.

The report is partly based on three research articles: Alexander Lott, 'Attacks on Merchant Vessels Under the Law of Economic Naval Warfare and Protection of the Marine Environment: Lessons from the Russia-Ukraine War and the U.S.-Iran War' (2026) 108 *International Law Studies* 519–565; Alexander Lott and Annichen Printz Kiernan, 'The Right of Interdiction of Environmentally Dangerous and Stateless Vessels' *Ocean Development & International Law* (forthcoming); Alexander Lott, 'Conventional Jurisdictional Approaches to Protecting Submarine Cables and Pipelines' (2025) 74 *International and Comparative Law Quarterly* 63–84.

Context: The Russian Shadow Fleet

Russia's shadow fleet emerged in response to the oil sanctions imposed following the full-scale invasion of Ukraine, and in particular the G7+ oil price caps introduced from December 2022 onward. The price cap sought to reconcile two objectives: reducing Russia's oil revenues while keeping Russian oil on the global market. It restricts the provision of maritime services from the coalition—including vessel ownership, management, registration, and insurance—to shipments of Russian oil sold below the applicable price threshold. Russia responded by developing alternative shipping capacity outside the coalition's maritime-services ecosystem.¹ KSE Institute classifies a tanker as part of the shadow fleet when it transports Russian oil without service relationships with G7+ jurisdictions.

The shadow fleet has become a central part of Russia's oil-export infrastructure and has remained resilient despite an expanding vessel-designation campaign. During the first eight months of 2026, shadow-fleet tankers accounted for 57% of Russia's seaborne oil export volumes.² At the same time, the United States, EU, United Kingdom, Canada, Australia, and New Zealand have collectively sanctioned 687 unique oil tankers. These measures have significantly reduced the activity of sanctioned vessels, but have not removed them from Russian oil exports altogether.³ Sanctioned tankers continue to operate, albeit generally at lower levels of activity than before their designation.

Shadow-fleet vessels differ from the mainstream tanker fleet in ways that create particular regulatory, safety, and environmental concerns. The fleet is overwhelmingly composed of older vessels, with the vast majority of tankers more than 15 years old. Many vessels also operate without protection and indemnity (P&I) insurance from the established International Group of P&I Clubs, raising concerns about the transparency, capitalization, and reliability of alternative insurance arrangements and their ability to provide compensation following a major oil spill.⁴ These risks are compounded by the use of weaker flag registries and practices such as frequent reflagging and opaque ownership and management structures. Enforcement measures have changed some of these patterns, with false or unknown flags largely disappearing from Russian shadow-fleet shipments through the Baltic and the Russian flag assuming a much larger role.⁵

The environmental and safety risks are particularly relevant for European coastal states because large volumes of Russian oil continue to transit European waters. Russia's export infrastructure leaves it dependent on routes through the Baltic and Black Seas, bringing tankers through narrow and heavily trafficked waterways such as the Gulf of Finland, Danish Straits, and Strait of Dover. Several serious incidents involving shadow tankers have already occurred, including collisions and engine failures in or near the Danish Straits. A major accident or oil spill could cause extensive damage to coastlines and marine ecosystems, while imposing substantial costs on coastal communities through cleanup efforts and disruption to fisheries and other economic activity.

The shadow fleet is therefore no longer solely a sanctions-circumvention issue. Its growth has created a broader set of challenges involving vessel nationality and flag-state responsibility, the adequacy of insurance and compensation arrangements, maritime and environmental safety, and the ability of coastal states to respond to potentially dangerous vessels. These challenges are closely interconnected, as the characteristics that allow vessels to operate outside the coalition's maritime-services ecosystem can also complicate regulatory oversight, enforcement, and the allocation of responsibility when incidents occur. They provide the context for the legal questions examined in this report.

¹ KSE Institute, [Establishing Shadow-Free Zones](#), October 2024

² KSE Institute, [Russia Chartbook](#), September 2026

³ KSE Institute, [The Impact of Shadow Tanker Designations](#), May 2026

⁴ KSE Institute, [Establishing Shadow-Free Zones](#), October 2024; [Oil Spill Insurance and the Shadow Fleet](#), February 2025

⁵ KSE Institute, [The Role of the Russian Flag in Shadow Fleet Operations](#), May 2026

1. Maritime Law Enforcement

Maritime law enforcement provides several avenues for responding to the shadow fleet, but the scope for action depends heavily on the status of the vessel, its location, and the applicable navigational regime. UNCLOS does not comprehensively regulate maritime law enforcement,¹ leaving important questions to customary international law and creating legal uncertainties that can be exploited in the context of hybrid warfare and lawfare.² These uncertainties are particularly important where the boundary between ordinary law enforcement and naval warfare becomes blurred, making it difficult to determine which legal framework governs the use of force or other coercive measures at sea. Recent incidents involving damage to underwater infrastructure have further highlighted these challenges³ and prompted states to expand maritime law-enforcement measures in their EEZs.

Suspected stateless vessels present one of the clearest cases: where there are reasonable grounds for suspecting that a ship lacks nationality, Article 110(1)(d) of UNCLOS permits boarding on the high seas or in the EEZ to verify its nationality. Recent interdictions by France demonstrate the practical relevance of this legal basis. Coastal-state powers are more complex in international straits, where the applicable passage regime determines the scope for enforcement. The analysis concludes that the Danish Straits are governed by a special regime of non-suspendable innocent passage rather than transit passage, leaving Denmark greater scope to act against ships engaged in non-innocent passage, including conduct threatening its security or involving serious pollution. By contrast, abolishing the EEZ corridor in the Viro Strait could strengthen Estonia's and Finland's legal basis for protecting critical infrastructure but would also open much of the Gulf of Finland to transit passage by foreign warships and military aircraft. In the Strait of Dover, Article 233 of UNCLOS provides a potential basis for enforcement against vessels whose violations cause or threaten major environmental damage, although interdiction could merely divert shadow-fleet traffic around the British Isles.

Finally, the protection of submarine cables and pipelines outside the territorial sea remains fragmented: existing law provides a patchwork of grounds for interdiction, while a dynamic interpretation of the piracy provisions could provide an additional basis for action against ships deliberately damaging seabed infrastructure. Overall, the analysis suggests that the legal regime of straits, together with the powers available against suspected stateless vessels, provides some of the most significant opportunities for stronger maritime law enforcement against the shadow fleet under the existing legal framework.

1.1. The Right of Interdiction of Stateless Ships

Recent interdictions by Estonia, Belgium, France, Sweden, the United Kingdom, and the European Union Naval Force (EUNAVFOR) illustrate the use of Article 110(1)(d) of UNCLOS against suspected stateless ships belonging to the Russian shadow fleet. Reasonable grounds for suspecting that a vessel has no nationality justify boarding it on the high seas or in the EEZ to verify its nationality. The following analysis considers the determination of nationality, the broader jurisdiction asserted over stateless vessels, and the implications of Russian military escorts.

¹ United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982, in force 16 November 1994) 1833 UNTS 396.

² Charles J. Dunlap Jr, 'Lawfare Today' (2008) *Yale Journal of International Affairs* 146; Stuart Casey-Maslen, *Hybrid Warfare under International Law* (Bloomsbury 2024); Stuart Casey-Maslen, Arne Willy Dahl, Sofia Galani, and Alexander Lott, 'Towards a Definition of Hybrid Warfare', in Alexander Lott (ed), *Maritime Security Law in Hybrid Warfare* (De Gruyter Brill 2024) 7–26.

³ In 2025, Finland charged the master and senior officers of the Eagle S in connection with the December 2024 severing of the EstLink 2 power cable and telecommunications cables in the Gulf of Finland, and Taiwan prosecuted the Chinese master of the Hongtai for damaging a submarine cable off its coast. See 'Finland Charges Eagle S Tanker Captain, Officers Over Cable Cuts' *Insurance Journal* (12 August 2025), <<https://www.insurancejournal.com/news/international/2025/08/12/835374.htm>>; 'Taiwan Charges Captain of China-Linked Ship with Damaging Subsea Cable' *Al Jazeera* (11 April 2025), <<https://www.aljazeera.com/news/2025/4/11/taiwan-charges-captain-of-china-linked-ship-with-damaging-subsea-cable>>.

Increasingly, threats to maritime security in the Baltic Sea and the North Sea have been associated with ships belonging to the Russian shadow fleet.⁴ Furthermore, recent incidents in European waters have indicated that some ships belonging to the Russian shadow fleet are treated as stateless ships. In April 2025, Estonia instructed the suspected stateless ship *Kiwala* to enter the Estonian territorial sea while the ship was on its way to Russian ports via the narrow EEZ corridor in the Gulf of Finland. Just like the *Eagle S*, which was suspected of causing the Christmas Day 2024 cable cuts in the Gulf of Finland and subsequently arrested by Finland, *Kiwala* complied with Estonia's order and was boarded by the Estonian authorities in its territorial sea. During the inspections, the Estonian authorities identified 40 deficiencies concerning the EU-sanctioned and uninsured *Kiwala*, and it was confirmed that its inclusion in the flag-state registry had been suspended.⁵

Importantly, on 27 January 2026, Belgium, Denmark, Estonia, Finland, France, Germany, Iceland, Latvia, Lithuania, the Netherlands, Norway, Poland, Sweden, and the United Kingdom jointly warned that shadow-fleet tankers could no longer operate freely in the Baltic. The declaration states that ships without valid flags, insurance, or safety documentation would be treated as stateless vessels under international maritime law. Tankers that change flags, disable transponders, or lack proper documentation would be considered stateless and could be detained.⁶

The US Commander's Handbook on the Law of Naval Operations takes the view that a ship could be treated as one without nationality if "[t]he claim of registry or the vessel's display of registry is either denied or not affirmatively and unequivocally confirmed by the State whose registry is claimed".⁷ Notably, in *MV "Saiga" (No 2)*, the International Tribunal for the Law of the Sea (ITLOS) concluded that "[d]etermination of the criteria and establishment of the procedures for granting and withdrawing nationality to ships are matters within the exclusive jurisdiction of the flag State".⁸ In the *Enrica Lexie Incident*, the Annex VII arbitral tribunal found:

[T]he test under the Convention for establishing a jurisdictional link between a vessel and a State is whether a vessel possesses the nationality of that State, as opposed to whether or not it is found in a public register or flies a flag. A flag may thus be regarded as "visual evidence" or "a symbol" of nationality, but is not determinative for that vessel's nationality.⁹

The Estonian Transport Administration treated *Kiwala* as a vessel without nationality and referred to Article 110(1)(d) of UNCLOS as the legal basis for its enforcement measures.¹⁰ *Kiwala* was released two weeks later by the Estonian authorities once the deficiencies had been corrected.¹¹ The same ship (though renamed as the *Boracay*) was intercepted five months later by France in its EEZ and investigated by the authorities off Saint-Nazaire for less than a week. The French armed forces boarded the ship as a suspected stateless

⁴ For an explanation of the 'shadow fleet', see Iva Parlov and Ulf Sverdrup, 'The Emerging "Shadow Fleet" as a Maritime Security and Ocean Governance Challenge', in Lott, *Maritime Security Law in Hybrid Warfare* 228; Eduardo Cavalcanti de Mello Filho, 'From "Flags of Convenience" to "Flags of Deceit": The Future of the Law Governing the Nationality of Ships' (2025) 74 *International & Comparative Law Quarterly* 121, 122.

⁵ Estonian Transport Administration, 'Estonia is Inspecting the Sanctioned Vessel *Kiwala*' (Press Release, 11 April 2025), <<https://www.transpordiamet.ee/en/news/estonia-inspecting-sanctioned-vessel-kiwala>>.

⁶ Joint declaration of 27 January 2026 by Belgium, Denmark, Estonia, Finland, France, Germany, Iceland, Latvia, Lithuania, the Netherlands, Norway, Poland, Sweden, and the United Kingdom. See 'European Nations Issue Warning to Russia-Linked Shadow Fleet' *Insurance Journal* (27 January 2026), <<https://www.insurancejournal.com/news/international/2026/01/27/855788.htm>>; 'Europe Says Shadow Fleet Tankers under Multiple Flags Can Be Seized as Stateless Vessels' *The Washington Times* (28 January 2026), <<https://www.washingtontimes.com/news/2026/jan/28/europe-says-shadow-fleet-tankers-multiple-flags-seized-stateless/>>.

⁷ *The Commander's Handbook on the Law of Naval Operations* (US Navy, US Marine Corps, and US Coast Guard 2022) 3-13. On the other hand, in the *MV "Saiga" (No 2)* case, Saint Vincent and the Grenadines argued that a ship retains its flag until it is deleted from the registry. See D Stephens, 'The Role of Courts and Tribunals', in R Warner and S Kaye (eds), *Routledge Handbook of Maritime Regulation and Enforcement* (Routledge 2018) 128.

⁸ *MV "Saiga" (No 2) (Saint Vincent and the Grenadines v Guinea)* (1999) 38 ILM 1323, para 66.

⁹ *The Enrica Lexie Incident (Italy v India)* (Award, 21 May 2020) UNCLOS Annex VII Tribunal, para 1029.

¹⁰ Estonian Transport Administration.

¹¹ Marko Tooming and Andrew Whyte, 'Russian "shadow fleet" Tanker *Kiwala* Cleared to Leave Estonian Waters' *ERR News* (26 April 2025), <<https://news.err.ee/1609676453/russian-shadow-fleet-tanker-kiwala-cleared-to-leave-estonian-waters>>.

vessel, and the captain was charged with refusing to comply with the orders of the French armed forces.¹² The Russian president accused France of “piracy” in international waters (Article 101 of UNCLOS),¹³ despite the fact that the interdiction was conducted by the armed forces of a state and it was supported by a legal basis (Article 110(1)(d) of UNCLOS). In March 2026, the Brest court sentenced the Boracay’s Chinese captain in absentia to a year of imprisonment, and he was required to pay a fine of 150,000 euros.¹⁴

In May 2025, Estonia interdicted another sanctioned and suspected stateless tanker reportedly belonging to the Russian shadow fleet, the Jaguar, as it approached the submarine power cable EstLink 1 that interlinks Estonia and Finland in the EEZ corridor of the Gulf of Finland (the more powerful EstLink 2 power cable was cut allegedly by the anchor of the Eagle S on Christmas Day in 2024). The Estonian prime minister and minister of defense referred to Article 110(1)(d) of UNCLOS as the legal basis for the maritime interdiction.¹⁵ This time, however, the ship did not comply with the Estonian warship’s order to enter the Estonian territorial sea. Estonia decided not to board the ship from its warships, nor from its helicopter and aircraft that were all involved in the operation, and instead escorted the Jaguar until it left the EEZ and entered the Russian territorial sea.¹⁶

In these three incidents, the coastal state seems to have had reasonable grounds for suspecting that a foreign ship was without nationality. Many boardings of suspected stateless vessels followed the Estonian practice. On 22 January 2026, the French Navy boarded and detained another sanctioned and suspected stateless tanker, the Grinch, which was believed to form part of the Russian shadow fleet.¹⁷ The Grinch was boarded in the Alboran Sea, relatively close to the Strait of Gibraltar. France released the vessel after reaching a settlement with its owning company that paid a fine of several million euros.¹⁸ A similar settlement was reached after the French Navy boarded another suspected stateless sanctioned oil tanker, the Deyna, on 20 March 2026.¹⁹

On 1 March 2026, Belgium boarded the Ethern, relying on national legislation on environmental compliance, in addition to the international law of the sea.²⁰ On 6 March 2026, the Swedish Coast Guard and Police boarded and detained a suspected stateless ship, Caffa, after the ship had entered the Swedish territorial sea, since Sweden argued that a stateless ship is *ipso jure* in non-innocent passage because there is no state responsible for the safety and seaworthiness of the ship.²¹ The latter argument bears particular significance from the perspective of the legal regime of straits. As examined below, the argument of non-innocent passage of the Russian shadow-fleet vessels can also be put forward in relation to the Danish Straits (see Section 1.2.3).

¹² Richard Meade, ‘France investigating shadow fleet tanker linked to Danish drone attacks’ *Lloyd’s List* (30 September 2025), <<https://www.lloydslist.com/LL1154977/France-investigating-shadow-fleet-tanker-linked-to-Danish-drone-attacks>>.

¹³ Dan Sabbagh, ‘French military detain two after boarding Russia-linked oil tanker suspected of launching drones’ *The Guardian* (1 October 2025), <<https://www.theguardian.com/world/2025/oct/01/france-oil-tanker-russia-drone-denmark>>.

¹⁴ ‘France sentences Chinese captain of suspected Russian “shadow fleet” tanker to one year in jail’ *Le Monde* (30 March 2026), <https://www.lemonde.fr/en/france/article/2026/03/30/france-court-sentences-chinese-captain-of-suspected-russian-shadow-fleet-tanker-to-one-year-in-jail_6751941_7.html> (accessed 14 October 2026).

¹⁵ Valter Väino, ‘Michal: Eestil oli õiguslik alus lipuriigita tankeri kinnipidamiseks’ *ERR Uudised* (21 May 2025), <<https://www.err.ee/1609700751/michal-eestil-oli-oiguslik-alus-lipuriigita-tankeri-kinnipidamiseks>>.

¹⁶ Mari Peegel and Helen Wright, ‘Navy Escorts Suspected “Shadow Fleet” Tanker out of Estonian Waters’ *ERR News* (14 May 2025), <<https://news.err.ee/1609694456/navy-escorts-suspected-shadow-fleet-tanker-out-of-estonian-waters>>.

¹⁷ Jason Burke, ‘French navy intercepts suspected Russian “shadow fleet” tanker in Mediterranean’ *The Guardian* (22 January 2026), <<https://www.theguardian.com/world/2026/jan/22/french-navy-intercepts-suspected-russian-shadow-fleet-tanker-mediterranean>> (accessed 14 October 2026).

¹⁸ ‘France releases Russian oil tanker intercepted near Marseille’ *Le Monde* (17 February 2026), <https://www.lemonde.fr/en/france/article/2026/02/17/france-lifts-detention-of-russian-oil-tanker-intercepted-near-marseille_6750574_7.html> (accessed 14 October 2026).

¹⁹ ‘French navy seizes oil tanker sailing from Russia accused of flying false flag in Mediterranean’ *France 24* (20 March 2026), <<https://www.france24.com/en/france/20260320-french-navy-seizes-oil-tanker-sailing-from-russia-accused-of-flying-false-flag-in-mediterranean>> (accessed 14 October 2026).

²⁰ Belgian Maritime Code (adopted 4 April 2019, in force 8 May 2019).

²¹ ‘Sweden Arrests Crewmember After Boarding and Detaining Stateless Cargo Ship’ *The Maritime Executive* (8 March 2026), <<https://maritime-executive.com/article/swedish-coast-guard-boards-and-detains-suspected-stateless-cargo-ship>> (accessed 14 October 2026).

In addition, on 12 March 2026, Sweden boarded and detained the suspected stateless and EU-sanctioned ship Sea Owl 1 in the Swedish territorial sea south of the Øresund.²² The Russian captain of the ship was detained by Sweden on suspicion of using forged documents.²³ On 3 May 2026, Swedish authorities boarded another vessel suspected of being stateless. The Jin Hui was detained after it was found to be sailing under a Syrian flag that Swedish authorities considered to be false.²⁴

On 31 May 2026, the French Navy, with the support of the UK and others, boarded and detained a suspected stateless tanker Tagor on the high seas. France detained the ship and imposed an exclusion zone around it south of Brest, while also briefly detaining the Russian captain on charges related to failing to comply with the orders of the French Navy and for presenting false information to the French Navy.²⁵

The UK boarded the stateless tanker Smyrtos in the English Channel on 14 June 2026. The vessel was sanctioned by the EU and the UK and had been deregistered by Cameroon's ship registry, leaving it flagless. Smyrtos had loaded more than 100,000 tons of oil at Ust-Luga and was on its way to India. The operation was the UK's first direct action against a shadow-fleet vessel since UK Prime Minister Keir Starmer in March 2026 announced plans to intensify sanctions enforcement against the Russian shadow fleet.²⁶ On 23 June 2026, France interdicted and boarded the Russian shadow-fleet vessel Deliver off Sicily. The operation was supported by EUNAVFOR. The ship was then detained at Fos-sur-Mer port close to Marseille.²⁷

In July and August 2026, EUNAVFOR boarded in the Mediterranean suspected stateless ships, including the MV South Start, Toa Pavoh, and MV Sun. These boardings took place under Article 110(1)(d) in the EEZ, south of Sicily. In all three cases, the ships were inspected and permitted to proceed immediately.²⁸ By contrast, in October 2026, France boarded, inspected, and seized a Russian shadow-fleet vessel in the Indian Ocean.²⁹ President Macron noted that the operation was launched under Article 110 of UNCLOS.³⁰

Notably, Denmark has not yet interdicted any stateless vessels. The interdiction operations of Belgium, Estonia, France, Sweden, the UK, and EUNAVFOR in 2025–2026 show that the suspected stateless vessels navigating through the Danish Straits can be interdicted both in the territorial sea and in the EEZ of the Danish maritime area. The right of innocent passage is afforded to “ships of all States” under Article 17 of UNCLOS. As stateless vessels are not ships of any state, they do not enjoy this right. If a ship is not entitled to fly any flag, then that implies that no state is responsible for its innocent passage through the territory of another state. For this reason alone, Denmark is allowed to take measures in its territorial sea against suspected stateless vessels in the Danish Straits where the right of non-suspendable innocent passage applies (see Section 1.2.3 below).

²² ‘Rootsi hõivas juba teise varilaevastiku laeva’ *ERR Uudised* (13 March 2026), <<https://www.err.ee/1609966367/rootsi-hoivas-juba-teise-varilaevastiku-laeva>> (accessed 14 October 2026).

²³ Aleks Phillips, ‘Sweden detains captain of Russian shadow fleet ship’ *BBC News* (15 March 2026), <<https://www.bbc.com/news/articles/cpqwg0yej04o>> (accessed 14 October 2026).

²⁴ ‘Sweden Boards and Detains Falsely-Flagged Tanker off Trelleborg’ *The Maritime Executive* (3 May 2026), <<https://maritime-executive.com/article/sweden-boards-and-detains-falsely-flagged-tanker-off-trelleborg>>.

²⁵ ‘France Releases Captain of Shadow Fleet Tanker After 24-Hour Detention’ *The Maritime Executive* (4 June 2026), <<https://maritime-executive.com/article/france-releases-captain-of-shadow-fleet-tanker-after-24-hour-detention>> (accessed 14 October 2026).

²⁶ ‘UK seizes shadow fleet tanker expelled from Cameroon registry’ *Lloyd’s List* (14 June 2026), <<https://www.lloydlist.com/LL1157457/UK-seizes-shadow-fleet-tanker-expelled-from-Cameroon-registry>> (accessed 14 October 2026).

²⁷ Dzirhan Mahadzir, ‘France Seizes 5th Russian Shadow Fleet Tanker’ *USNI News* (26 June 2026), <<https://news.usni.org/2026/06/26/french-seizes-5th-russian-shadow-fleet-tanker>> (accessed 14 October 2026).

²⁸ ‘EU forces board suspected Russian shadow fleet tanker in Mediterranean’ *Safety4Sea* (1 September 2026), <<https://safety4sea.com/eu-forces-board-suspected-russian-shadow-fleet-tanker-in-mediterranean>> (accessed 14 October 2026).

²⁹ ‘La marine française arraisonne un pétrolier au sud de La Réunion, soupçonné d’appartenir à la flotte fantôme russe’ *Le Monde* (13 October 2026), <https://www.lemonde.fr/international/article/2026/10/13/la-marine-francaise-arraisonne-un-petrolier-au-sud-de-la-reunion-soupconne-d-appartenir-a-la-flotte-fantome-russe_6792875_3210.html> (accessed 14 October 2026).

³⁰ *Ibid.*

In the Heroic Idun judgment, the ITLOS Special Chamber found that “the universal right of seizure of a foreign-flagged vessel on the high seas may only be exercised on grounds of piracy”.³¹ It also held that the right of visit is less intrusive and permitted in other defined circumstances. But if a visit confirms that a vessel is flagless, may any state exercise jurisdiction over it as freedom of navigation belongs to ships of states, not stateless vessels?

In such circumstances, a foreign warship is justified in boarding the vessel on the high seas or in the EEZ (Articles 110(1)(d) and 58(2) of UNCLOS). Rob McLaughlin has concluded in relation to stateless ships that a boarding state is authorized to “[b]oard, search, detain, and divert for the purposes of confirming nationality” of the ship and that “it is arguable that the full suite of boarding state jurisdiction is available to be asserted over the vessel and those in it”.³² The US Commander’s Handbook asserts in relation to ships without nationality:

They are not entitled to fly the flag of any State and, because they are not entitled to the protection of any State, they are subject to the jurisdiction of all States. U.S. law expressly provides for jurisdiction over vessels without nationality or a vessel assimilated to be a vessel without nationality. (See 46 U.S.C., § 70502). Stateless vessels may be boarded upon being encountered in international waters by a warship or other government vessel and subjected to all appropriate law enforcement actions.³³

Gudev and Ofitserov-Belsky caution that any navigational restrictions used by the coastal states in the Baltic Sea context could be applied also in other regions, for example, by China or Iran.³⁴ In principle, that would be a welcome development in respect of stateless vessels. Any coastal state is legally entitled to interdict suspected stateless and uninsured ships. These ships pose a fundamental challenge to ocean governance as they operate in a legal vacuum where the ordinary line of responsibility over such ships is disrupted because of the missing nationality and insurance of the ship.

However, in the aftermath of the chasing of the Jaguar by Estonia, Russia has decided to allocate its fighter jets and warships to escort its shadow fleet.³⁵ On the one hand, this could be seen as a potential breach of international law from the perspective of Russia preventing another state from exercising its jurisdiction over suspected stateless vessels. On the other hand, warships and military aircraft are permitted in and over the EEZ and the high seas under the high-seas freedom of navigation and overflight (Articles 58(1) and 87(1)(a)–(b) of UNCLOS) to escort commercial ships. Should the escorting warship notice that the commercial ship has accidentally dropped its anchor, then it needs to duly inform the crew of the ship, thereby potentially preventing damage to submarine cables and pipelines. Military convoys are examined from the perspective of the law of naval warfare below under “Sailing in Convoy with Enemy Warships or Military Aircraft” in Section 4.1.5.

1.2. The Right of Interdiction under the Legal Regime of Straits

The measures available against the shadow fleet in the Baltic Sea and the North Sea depend significantly on the applicable passage regime. The exceptions to transit passage in the Baltic Straits preserve important

³¹ Special Chamber of the International Tribunal for the Law of the Sea, 27 May 2026 judgment in the M/T “Heroic Idun” (No 2) Case (Marshall Islands v Equatorial Guinea), para 299.

³² Rob McLaughlin, ‘Article 110 of the Law of the Sea Convention 1982 and Jurisdiction over Vessels without Nationality’ (2019) 51 *George Washington International Law Review* 373, 403–404.

³³ The Commander’s Handbook on the Law of Naval Operations 3-13. Cf Robin Churchill, Vaughan Lowe, and Amy Sander, *The Law of the Sea* (4th edn, Manchester University Press 2022) 404–405; Richard Barnes, ‘Flag States’, in Donald R. Rothwell, Alex G. Oude Elferink, Karen N. Scott, and Tim Stephens (eds), *The Oxford Handbook of the Law of the Sea* (Oxford University Press 2015) 304, 315.

³⁴ Pavel Gudev and Dmitry Ofitserov-Belsky, ‘Protection and militarization of undersea infrastructure in the Baltic Sea: problem discourse, legal aspects, and practical steps’ (2025) 68 *Pathways to Peace and Security* 100, 101.

³⁵ See also the comments of the Polish foreign minister, Mr. Radosław Sikorski: Helen Wright, ‘Polish Foreign Minister “Shocked” by Shadow Fleet Vessels Sailing without Flags’ *ERR News* (16 May 2025), <<https://news.err.ee/1609696521/polish-foreign-minister-shocked-by-shadow-fleet-vessels-sailing-without-flags>>.

coastal-state powers, whereas enforcement against ships in transit passage is more limited. This section distinguishes these regimes and examines their implications for the Danish Straits, the Viro Strait, and the Strait of Dover. The Baltic Sea and the North Sea include several international straits that are used by tankers belonging to the Russian shadow fleet (see Map 1). These straits are subject to different legal regimes.

In addition, the Russian shadow fleet transits through the EEZ of the North Sea and the Baltic Sea. In the Baltic Sea and North Sea, ship-to-ship oil transfer operations are conducted in the EEZ. Therefore, the straits regime and the legal framework of the EEZ raise the question of what potential measures coastal states might adopt to respond to environmental threats stemming from the Russian shadow fleet.

In the straits of the North Sea and the Baltic Sea, the following passage regimes apply:

- i. the right of transit passage (the Strait of Dover) – Article 37 of UNCLOS,
- ii. non-suspendable innocent passage (the Pentland Firth) – Article 38(1) of UNCLOS,
- iii. freedom of navigation and overflight (the Femern Belt, Kattegat, Bornholmsgat, Viro Strait in the Gulf of Finland) – Article 36 of UNCLOS,
- iv. a specific passage regime subject to a historic treaty (the Danish Straits, Åland Strait) – Article 35(c) of UNCLOS,
- v. a specific passage regime subject to a more recent treaty (potentially, the Baltiysk Strait) – Article 311(2) of UNCLOS, or
- vi. a permit-based passage (potentially, the Estonian Sea of Straits/Väinameri, the Swedish Kalmarsund, and the Finnish Archipelago Sea straits) – Article 35(a) of UNCLOS.³⁶

1.2.1. Navigational Regimes in International Straits

Unlike general innocent passage, transit passage and non-suspendable innocent passage cannot be temporarily suspended for the protection of the coastal state's security. However, they differ significantly in respect of the normal mode of navigation, submerged passage, and overflight. These distinctions also affect coastal-state enforcement powers, including the exceptional measures available under Article 233 of UNCLOS where violations cause or threaten major damage to the marine environment of a strait.

UNCLOS recognizes various navigational regimes, including the freedom of navigation and overflight, transit passage, archipelagic sea lanes passage, suspendable and non-suspendable innocent passage, special passage regimes, and passage subject to the coastal state's authorization. Nearly half of them are such passage regimes that only apply in straits: the regimes of transit passage, non-suspendable innocent passage, and special passage regimes that have been drafted under treaties that regulate navigation through specific straits. In addition, the legal categories of straits also rely on general navigational regimes, including the freedom of navigation and overflight (Article 36 of UNCLOS) as well as archipelagic sea lanes passage (Article 54 of UNCLOS) and permit-based passage (Article 35(a) of UNCLOS).

The right of innocent passage forms one of the cornerstones of the legal framework on navigation. It has implications for global trade, transport, and security, as well as the marine and coastal environment. The general right of innocent passage and strait regimes of transit passage and non-suspendable innocent passage have been clearly distinguished in UNCLOS. Distinct from the right of general (suspendable) innocent passage that can potentially be exercised throughout the territorial sea and internal waters, the legal regimes of transit passage and non-suspendable innocent passage are only applicable in straits. Unlike the general (suspendable) innocent passage, the strait state cannot temporarily suspend transit

³⁶ For the differences between the right of transit passage and non-suspendable innocent passage, see Alexander Lott, *The Estonian Straits: Exceptions to the Strait Regime of Innocent or Transit Passage* (Brill 2018) 7–11.

passage or non-suspendable innocent passage in straits for the protection of its security or due to, *inter alia*, military exercises. However, on the basis of customary international law, this does not exclude the possibility of adopting immediate, proportionate, and necessary measures against foreign ships or aircraft exercising the right of non-suspendable innocent or transit passage to counter a foreign state's attack.³⁷

Safeguards with respect to international straits are stipulated in Article 233 of UNCLOS. It provides that strait state(s) may take appropriate enforcement measures by giving effect to applicable international regulations regarding the discharge of noxious substances (e.g., oil, oily wastes) if a violation of the laws and regulations on the safety of navigation, the regulation of maritime traffic, or the prevention, reduction, and control of pollution in the strait is causing or threatening major damage to the marine environment of the strait. Yet in practice, states have the right to adopt such measures only in exceptional cases.³⁸

Ships, including submarines, may transit a strait in their normal mode under the right of transit passage.³⁹ This means that submarines, for example, enjoy the right of submerged continuous and expeditious passage in a strait. By contrast, in suspendable as well as in non-suspendable innocent passage, submarines and other underwater vehicles are required, pursuant to Article 20 of UNCLOS, to navigate on the surface and to show their flag.⁴⁰ In addition, foreign aircraft enjoy the freedom of overflight in transit passage, which, by comparison, is not applicable to aircraft under the framework of suspendable or non-suspendable innocent passage. Maritime states also safeguard their right to launch and land aircraft or use formation steaming in transit passage.⁴¹

Distinct from the extensive requirements applicable to suspendable and non-suspendable innocent passage under Article 21 of UNCLOS, ships and aircraft in transit passage need to follow only a few conditions. Of those, the primary requirement stems from Article 39 of UNCLOS, which provides that transit passage needs to be continuous and expeditious while ships and aircraft need to refrain from any activities other than those incidental to their normal mode of continuous and expeditious transit, unless rendered necessary by *force majeure* or by distress. It is also prohibited to carry out any research or survey activities without the prior authorization of strait states in transit passage (Article 40 of UNCLOS).⁴²

1.2.2. Non-Innocent Passage

The right of innocent passage does not prevent a coastal state from taking action against passage prejudicial to its peace, good order, or security. The following analysis examines the activities that render passage non-innocent, the applicable navigational requirements, and the coastal state's criminal and civil jurisdiction. Enforcement measures remain subject to proportionality, necessity, and the relevant safeguards under UNCLOS.

Innocent passage is applicable to navigation in the territorial sea. It also applies in internal waters under Article 8(2) of UNCLOS. According to Article 18(1) of UNCLOS, passage means navigation through the territorial sea for the purpose of traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters or proceeding to or from internal waters or a call at such roadstead

³⁷ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, Judgment, I.C.J. Reports 1986, p. 14, paras 194–195; *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226, para 41.

³⁸ Jon M. Van Dyke, 'Rights and Responsibilities of Straits States', in David D. Caron and Nilufer Oral (eds), *Navigating Straits: Challenges for International Law* (Martinus Nijhoff 2014) 40–41.

³⁹ This also applies under Articles 53(3), 54, and 39(1)(c) of UNCLOS to ships transiting straits under the right of archipelagic sea lanes passage.

⁴⁰ During the Third United Nations Conference on the Law of the Sea, many strait states sought to establish in the draft UNCLOS that submarines have to navigate on the surface also while in transit passage, but as a result of the negotiations, such proposals were withdrawn by 1977. See David D. Caron, 'The Great Straits Debate: The Conflict, Debate, and Compromise that Shaped the Straits Articles of the 1982 United Nations Convention on the Law of the Sea', in Caron and Oral (eds), *Navigating Straits* 26.

⁴¹ Bernard H. Oxman, 'Transit of Straits and Archipelagic Waters by Military Aircraft' (2000) 4 *Singapore Journal of International & Comparative Law* 403–404.

⁴² At the same time, it is argued that the use of radar and sonar during transit passage is permitted. Natalie Klein, *Maritime Security and the Law of the Sea* (Oxford University Press 2011) 34.

or port facility. Article 18(2) of UNCLOS stipulates that passage has to be continuous and expeditious. This was particularly stressed at the Third UN Conference on the Law of the Sea in order to exclude the possibility of foreign warships stopping in the territorial sea of the coastal state.⁴³ Stopping and anchoring are permitted under Article 18(2) of UNCLOS insofar as the same are incidental to ordinary navigation or are rendered necessary by *force majeure* or distress or for the purpose of rendering assistance to persons, ships, or aircraft in danger or distress.

Under Article 24(1) of UNCLOS, the coastal state is required to guarantee the right of innocent passage of foreign ships and not hamper it in violation of UNCLOS. Thus, pursuant to Article 26, the coastal state cannot levy any charge upon foreign ships by reason only of their passage through the territorial sea, except for payments only for specific services rendered to the ship, e.g., pilotage in sea lanes, which the IMO has classified as particularly dangerous or environmentally sensitive. In accordance with UNCLOS, the coastal state also cannot deny innocent passage through its territorial waters *inter alia* to foreign warships, tankers, nuclear-powered ships, and ships carrying nuclear or other inherently dangerous or noxious substances or materials (see Articles 22(2) and 23).

Yet distinct from the right of transit passage, the regime of innocent passage *expressis verbis* enables the coastal state to take action in its territorial sea to prevent passage which is not innocent (Article 25(1) of UNCLOS). Article 19(1) of UNCLOS provides that passage is innocent so long as it is not prejudicial to the peace, good order, or security of the coastal state. This means above all that foreign ships in innocent passage must refrain from engaging in activities listed in Article 19(2) of UNCLOS:

- (a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
- (b) any exercise or practice with weapons of any kind;
- (c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State;
- (d) any act of propaganda aimed at affecting the defence or security of the coastal State;
- (e) the launching, landing or taking on board of any aircraft;
- (f) launching, landing or taking on board of any military device;
- (g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;
- (h) any act of wilful and serious pollution contrary to this Convention;
- (i) any fishing activities;
- (j) the carrying out of research or survey activities;
- (k) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State;
- (l) any other activity not having a direct bearing on passage.

⁴³ Satya N. Nandan and Shabtai Rosenne (eds), *United Nations Convention on the Law of the Sea 1982: A Commentary*, vol. II (Martinus Nijhoff 2003) 162–163.

Following the 1923 Lausanne Convention,⁴⁴ Article 20 of UNCLOS stipulates that submarines and other underwater vehicles are in the territorial sea required to navigate on the surface and to show their flag.⁴⁵ This requirement is also commonplace in the domestic legislation of the northern Baltic Sea coastal states. Section 13(6) of the State Border Act of Estonia stipulates that a foreign submarine or another underwater vehicle has to pass through the Estonian territorial sea above the water surface and hoist its flag. Also, pursuant to Section 2 subparagraph 9 of the Finnish Territorial Surveillance Act,⁴⁶ a government vessel refers *inter alia* to a military vessel, and Section 8 provides that a submarine or other underwater vehicle of a foreign state must navigate on the surface in Finnish territorial waters (unless it has been granted permission to dive) and must indicate its nationality by displaying its national flag (Section 11).

A ship that does not comply with rules adopted for the safety of navigation and the regulation of maritime traffic, including relevant rules relating to sea lanes and traffic separation schemes (TSS), would be in non-innocent passage (Articles 21(1) and 22(1) of UNCLOS). In relation to the Estonian maritime area, it is noteworthy that the IMO, as the competent organization, has adopted the traffic separation scheme also in respect of the EEZ in the Gulf of Finland, where the freedom of navigation applies.⁴⁷ In this regard, the IMO is considered the only competent international organization according to the International Convention for the Safety of Life at Sea (SOLAS).⁴⁸ Since the TSS for the Gulf of Finland was adopted by the IMO, it may be considered as “generally accepted” in terms of Articles 39(2)(a) and 41(7) of UNCLOS and necessary for the safety of navigation as required under both of the aforementioned provisions.⁴⁹ In effect, non-state-owned ships are required to comply with the TSS also in the EEZs of Estonia and Finland in the Gulf of Finland. However, the TSS does not apply to aircraft (Articles 39(3) and 41 of UNCLOS).⁵⁰

Article 25(1) of UNCLOS is deliberately left ambiguous in order to grant the coastal states necessary discretion in applying proportional measures on a case-by-case basis. Pursuant to the principle of proportionality, the coastal state has to inform the ship of the reason why it questions the innocence of the passage, and provide the ship an opportunity to clarify its intentions or correct its conduct in a reasonably short period of time.⁵¹ If a foreign ship does not conform with the rules applicable to innocent passage and breaches the laws of the coastal state in a manner prejudicial to the security of the coastal state, the coastal state may also arrest the ship if it is not entitled to immunity. The exceptions to the prohibition of the coastal state to exercise its criminal or civil jurisdiction against a foreign ship, which is exercising its right of innocent passage, are provided in Articles 27, 28, and 32 of UNCLOS.

Special Regime for Enforcing the Coastal State's Laws against Vessel-Source Pollution and Violations of Fisheries Regulations

UNCLOS provides graduated enforcement measures against vessel-source pollution, ranging from requests for information to physical inspection, detention, and judicial proceedings. Their availability

⁴⁴ Treaty of Peace with Turkey. The Convention Respecting the Regime of the Straits and other Instruments (Lausanne, 24 July 1923, in force 6 August 1924).

⁴⁵ For a comparison with the legal framework applicable to the Turkish straits of Bosphorus and Dardanelles under the 1923 Lausanne Convention, see Erik Brüel, *International Straits. A Treatise on International Law, vol. II. Straits Comprised by Positive Regulations* (Sweet & Maxwell 1947) 369–379.

⁴⁶ Territorial Surveillance Act (adopted 18 August 2000, in force 1 January 2001), <<https://www.finlex.fi/en/laki/kaannokset/2000/en20000755.pdf>>.

⁴⁷ See the TSS as shown on the IMO's map in Traffic Separation Schemes (TSS) and Mandatory Ship Reporting Area in the Baltic (Gulf of Finland). NAV 48/3/1, 28 March 2002, p. 4 of Annex 1, <<http://www.sjofartsverket.se/upload/5471/48-3-1.pdf>>.

⁴⁸ International Convention for the Safety of Life at Sea (London, 1 November 1974, in force 25 May 1980). Nandan and Rosenne 202. See also Anna Mihneva-Natova, *The Relationship between United Nations Convention on the Law of the Sea and the IMO Conventions* (United Nations 2005) 12,

<http://www.un.org/depts/los/nippon/unnnff_programme_home/fellows_pages/fellows_papers/natova_0506_bulgaria.pdf>.

⁴⁹ See Nandan and Rosenne 344. See also Hugo Caminos and Vincent P. Cogliati-Bantz, *The Legal Regime of Straits: Contemporary Challenges and Solutions* (Cambridge University Press 2014) 311–313.

⁵⁰ See further Caminos and Cogliati-Bantz 317–321. See also Oxman 410–411.

⁵¹ Joint Statement by the United States of America and the Union of Soviet Socialist Republics: Uniform Interpretation of Rules of International Law Governing Innocent Passage, Jackson Hole 23 September 1989, 4, <http://www.un.org/depts/los/doalos_publications/LOSBulletins/bulletinpdf/bule14.pdf>.

depends on the location of the violation, the evidence, and the severity of the pollution or threat. The wider jurisdiction of the coastal state in its territorial sea is distinguished from its more limited powers in the EEZ, subject to necessity, proportionality, and applicable release requirements.

Special provisions of UNCLOS provide for the coastal state's increased jurisdiction against foreign ships that have entered its territorial sea while having previously been responsible for vessel-source pollution and violations of fisheries regulations in areas outside national jurisdiction. These exceptions to the coastal state's general prescriptive and enforcement jurisdiction in its territorial sea that is spatially limited to areas under national jurisdiction are briefly explained next.

Article 220(2) of UNCLOS provides that where there are clear grounds for believing that a vessel navigating in the territorial sea of a state has, during its passage therein, violated laws and regulations of that state adopted in accordance with UNCLOS or applicable international rules and standards for the prevention, reduction, and control of pollution from vessels, that state, without prejudice to the application of the relevant provisions of Part II, section 3, on innocent passage in the territorial sea, may undertake physical inspection of the vessel relating to the violation. On such grounds, the coastal state also may, where the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws (subject to the provisions of section 7 of Part XII of UNCLOS).

Furthermore, in accordance with Article 220(3) of UNCLOS, a coastal state may require a vessel to give information regarding its identity and port of registry, its last and its next port of call, and other relevant information required to establish whether a violation has occurred where there are clear grounds for believing that the vessel navigating in the EEZ or the territorial sea of a state has, in the EEZ, committed a violation of applicable international rules and standards for the prevention, reduction, and control of pollution from vessels or laws and regulations of that state conforming and giving effect to such rules and standards. Article 220(5) of UNCLOS specifies that where there are clear grounds for believing that such a violation has resulted in a substantial discharge causing or threatening significant pollution of the marine environment, the coastal state may undertake physical inspection of the vessel for matters relating to the violation if the vessel has refused to give information or if the information supplied by the vessel is manifestly at variance with the evident factual situation and if the circumstances of the case justify such inspection. Furthermore, Article 220(6) of UNCLOS enables a coastal state to employ additional measures in responding to the above-referred incidents where there is clear objective evidence that the vessel-source pollution results in a discharge causing major damage or threat of major damage to the coastline or related interests of the coastal state, or to any resources of its territorial sea or EEZ. In such a scenario, that coastal state may, subject to section 7 of Part XII of UNCLOS, provided that the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws. But whenever appropriate procedures have been established, either through the competent international organization or as otherwise agreed, whereby compliance with requirements for bonding or other appropriate financial security has been assured, the coastal state, if bound by such procedures, shall allow the vessel to proceed (Article 220(7) of UNCLOS). For example, the arrested vessels and their crews would need to be promptly released upon the posting of reasonable bond or other security.

The range of measures that a coastal state can adopt to enforce its laws in the territorial sea in respect of ships not entitled to sovereign immunity is flexible (similar to its enforcement jurisdiction in its EEZ under Article 73 of UNCLOS) and, in essence, is limited to what may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with UNCLOS. Thus, the main limits to the coastal state's powers when enforcing its criminal and civil jurisdiction against foreign ships and crew are set by the principles of proportionality and necessity. The measures that a coastal state can use for enforcing its laws in its territorial sea include, for example, boarding, inspection, arrest, and judicial proceedings.

Distinct from an EEZ where the coastal state's enforcement jurisdiction is more limited (covering instances related to fisheries and marine pollution), its scope of prescriptive and enforcement jurisdiction in the territorial sea is wide-ranging. Articles 27–28 of UNCLOS stipulate the coastal state's criminal and civil jurisdiction on board and in relation to foreign ships. The main exceptions to the coastal state's relevant enforcement jurisdiction in its territorial sea stem from the legal regime of straits, as discussed next.

1.2.3. The Danish Straits

The suspected use of commercial ships to launch drones near Copenhagen Airport illustrates the security implications of passage through the Danish Straits. Whether Denmark and Sweden may interdict such ships, and the extent of their enforcement powers, depend on the applicable legal regime of passage and overflight.

The drone incursions of September 2025 into Danish airspace illustrate the relevance of the legal regime of straits, given that the Copenhagen Airport runway is located just meters away from the Øresund. This makes the airport vulnerable to any sudden launches of drones by ships navigating this busy strait. As confirmed by the Danish police, Denmark suspected three commercial ships linked to Russia of potential involvement in the drone incursion over Copenhagen Airport.⁵²

Is it possible for Denmark and Sweden to interdict foreign ships that are suspected of breaching their security during their passage in the Danish Straits? If so, then to what extent are the two strait states allowed to interdict ships that are suspected of, for example, launching or landing drones? This is dependent on the legal regime of passage and overflight in the Danish Straits, as explained next.

This report argues that the Danish Straits are governed by a special regime of non-suspendable innocent passage rather than transit passage. The 1857 Copenhagen Convention, state practice, and the rules on innocent passage leave room for enforcement against ships that threaten coastal-state security or engage in willful and serious pollution. Extending this reasoning to the enforcement of EU sanctions ultimately depends on the interpretation of the Copenhagen Convention.

Although scholarship exists supporting the approach that the transit passage regime applies in the Danish Straits, as will be demonstrated below, the Danish Straits are in fact governed by a special regime of non-suspendable innocent passage.

Denmark and Sweden have restricted the passage of foreign warships and the overflight of foreign military aircraft in and over the Belts and the Øresund.⁵³ The practice of user states seems to comply with these restrictions.⁵⁴ Previously, the United States was deemed to hold the position that the right of transit passage applies to its warships in the Danish Straits.⁵⁵ Yet, currently, the United States protests only against “the current three warship notice requirement as notice requirements for warship innocent passage are inconsistent with international law regardless of the number of warships to which they apply.”⁵⁶ This does not amount to a claim of the applicability of the right of transit passage in the Danish Straits. Instead,

⁵² Sebastian Seibt, ‘Drones au-dessus du Danemark: tous les chemins maritimes mènent à la Russie?’ *France 24* (25 September 2025), <<https://www.france24.com/fr/europe/20250925-drone-danemark-aeroport-russie-navire-mer-baltique-guerre-hybride-astrol-pushpa-oslo-carrier>>; The Maritime Executive, ‘Denmark Thinks Russia-Linked Ships Launched Copenhagen Airport Drone Raid’ (23 September 2025), <<https://maritime-executive.com/article/denmark-thinks-russia-linked-ships-launched-copenhagen-airport-drone-raid>>.

⁵³ See the Ordinance Governing the Admission of Foreign Warships and Military Aircraft to Danish Territory in Time of Peace (Copenhagen, 16 April 1999, in force 1 May 1999). See further Caminos and Cogliati-Bantz 92–94.

⁵⁴ Said Mahmoudi, ‘The Baltic Straits’, in Caron and Oral (eds), *Navigating Straits* 131.

⁵⁵ See *ibid* 129.

⁵⁶ US Navy Judge Advocate General's Corps, ‘Denmark. Summary of Claims, April 2025’, 1, <<https://www.jag.navy.mil/about/organization/ojag/code-01/code-10/mcrm>>. Similarly, the United States no longer upholds its protest in its Navy's collection of coastal states' claims in respect of Finland and Sweden that apply the Article 35(c) exception to the Åland Strait. *Ibid* ‘Finland. Summary of Claims, November 2017’. By contrast, in 1992, the United States declared that it “has never recognized this international strait as falling within the Article 35(c) exception.” Robert W. Smith and J. Ashley Roach, *Limits in the Seas, No. 112: United States Responses to Excessive National Maritime Claims* (US Department of State 1992) 67.

the United States protests the Danish prior notification requirement in respect of the innocent passage of warships in the Belts and the Øresund.

By contrast, Denmark and Sweden have so far been cautious about enforcing their domestic laws against foreign commercial ships in the Danish Straits.⁵⁷ Hypothetically, if the right of transit passage did indeed apply in the Danish Straits, then this would explain such reluctance. Interestingly, Siig and Kilpatrick have recently concluded that the applicable navigational regime in the Danish Straits is that of the right of transit passage.⁵⁸ In this context, Oude Elferink has found that “it is not clear whether passage [in the Belts and Øresund] amounts to, e.g. (non-suspendable) innocent passage or transit passage and in what instances a ship is no longer in passage and what implications this has for the enforcement of regulations by the coastal state.”⁵⁹

Significant challenges to Danish maritime security would follow if the right of transit passage applied in the Danish Straits. Under the right of transit passage, foreign ships would be entitled to the freedom of navigation, which entails the launching and landing of aircraft as part of the normal mode of passage. Hence, for Denmark and Sweden, it would be difficult to challenge ships suspected of serving as launching pads for drones in the area. Aircraft, including Russian fighter jets, would enjoy the freedom of overflight (subject to conditions stipulated under Articles 38–39 of UNCLOS) over the Danish Straits from coast to coast. That would pose significant challenges to the coastal states for the same reasons as those discussed in Section 1.2.4 below in the context of the legal regime of the Viro Strait.

When signing UNCLOS, Denmark declared that the right of transit passage is not applicable in and over the Belts and Øresund under Article 35(c) of UNCLOS, and Sweden declared the same in relation to its part of the Øresund.⁶⁰ According to Article 35(c) of UNCLOS, the legal regime of straits as stipulated under Part III of UNCLOS does not affect the legal regime in straits in which passage is regulated in whole or in part by long-standing international conventions in force specifically relating to such straits. Lagoni notes that “the very purpose of Art. 35(c) is to preclude any (including a temporary) application of the right of transit passage on these straits, for which this provision was adopted.”⁶¹

The special passage regime of the Danish Straits is dependent on Article I(1) of the 1857 Copenhagen Convention, which stipulates: “No ship for the future shall under any pretext whatsoever be seized or subjected to any stoppage on its way through the Sound and the Belts.”⁶² There is no unanimous agreement on the exact interpretation of Article I(1) in the present-day context.

In the *Great Belt* case, Finland did not claim that the right of transit passage applies in the Danish Straits, though it maintained that a right of free passage broadly corresponding, but not equal, to the emerging customary law right of transit passage exists in the Danish Straits.⁶³ As Jia puts it, “Finland claimed that they had the right of passage under whatsoever regime governed the straits.”⁶⁴

⁵⁷ Alex Oude Elferink, ‘The Regime of Passage Through the Danish Straits’ (2000) 15(4) *The International Journal of Marine and Coastal Law* 566.

⁵⁸ Kristina Siig and Richard L. Kilpatrick, Jr., ‘Why Denmark Can’t “Block” Dark Tankers’ *EJIL: Talk!* (14 December 2023), <<https://www.ejiltalk.org/why-denmark-cant-block-dark-tankers>>.

⁵⁹ Oude Elferink 565.

⁶⁰ UN Treaty Collection, ‘Denmark’s declaration upon the ratification of the UNCLOS on 16 November 2004’; ‘Sweden’s declaration upon signing the UNCLOS on 10 December 1982 and ratifying it on 25 June 1996’, both available at <https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en#EndDec>; see also Martti Koskenniemi, ‘Case Concerning Passage Through the Great Belt’ (1996) 27 *Ocean Development & International Law* 263.

⁶¹ Rainer Lagoni, ‘Straits Used for International Navigation: Environmental Protection and Maritime Safety in the Danish Straits’, in Bayram Öztürk and Resat Özkan (eds), *The Proceedings of the Symposium on the Straits Used for International Navigation* (Turkish Marine Research Foundation 2002) 172.

⁶² Treaty between Great Britain, Austria, Belgium, France, Hanover, Mecklenburg-Schwerin, Oldenburg, Netherlands, Prussia, Russia, Sweden and Norway, and the Hanse Towns, on the one part, and Denmark, on the other part, for the Redemption of the Sound Dues (Copenhagen, 14 March 1857, in force 31 March 1857).

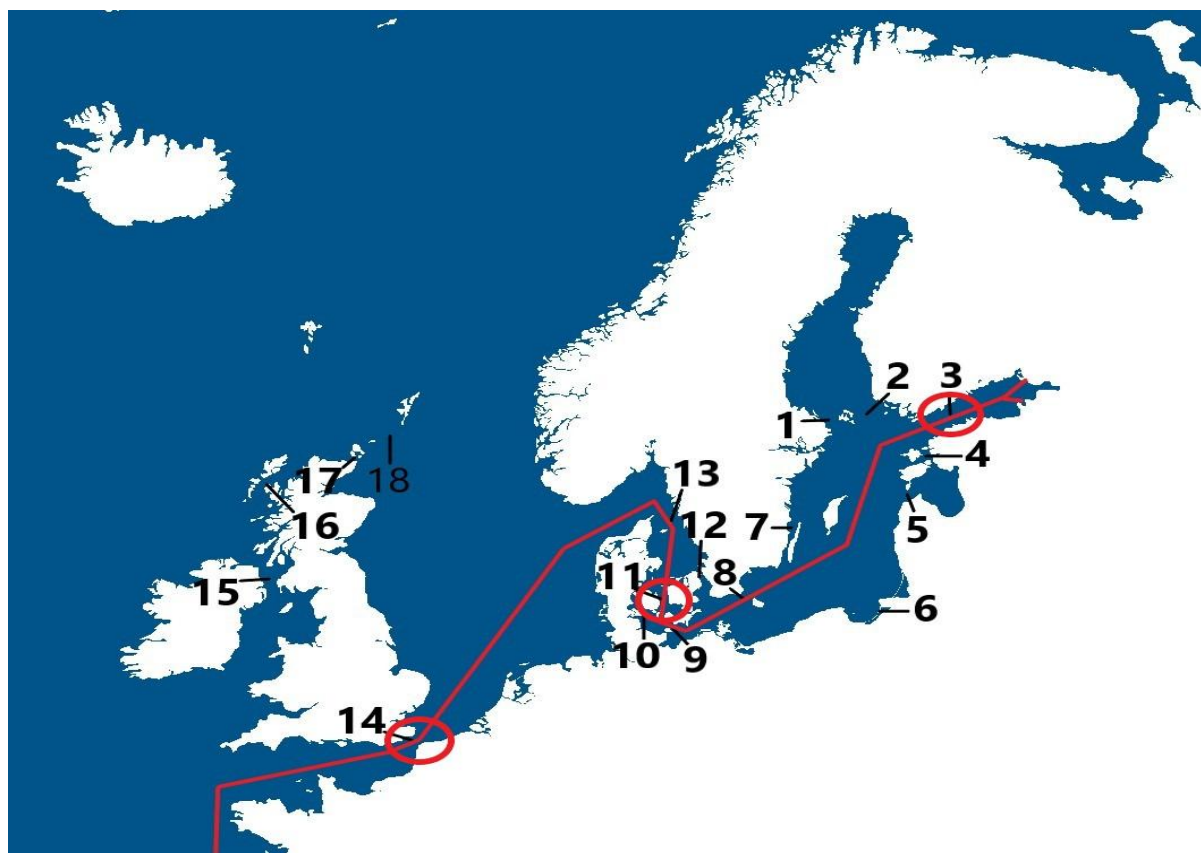
⁶³ Koskenniemi 262–263; Christine Gray, ‘Passage through the Great Belt (Finland v. Denmark), Provisional Measures, Order of 29 July 1991’ (1993) 42 *International & Comparative Law Quarterly* 706.

⁶⁴ Bing Bing Jia, *The Regime of Straits in International Law* (Clarendon Press 1998) 119.

Caminos and Cogliati-Bantz find that “all the rules invoked by Denmark coalesce into a right of non-suspendable innocent passage.”⁶⁵ In the *Great Belt* case, Denmark explicitly held the position that “the Danish straits are international straits governed by a long history, certain specific treaty provisions and customary rules of international law resulting in a right of innocent passage through these straits.”⁶⁶ Based on this, it seems that foreign ships crossing the Belts and the Øresund can make use of the right of non-suspendable innocent passage.⁶⁷

The coastal state has a significant level of control over ships that are exercising their right of innocent passage. For example, according to Article 19(2)(e) and (f) of UNCLOS, a foreign ship is explicitly prohibited from launching, landing, or taking on board any aircraft or any military device during innocent passage. In addition, the same applies in respect of any act aimed at collecting information to the prejudice of the defense or security of the coastal state, or at interfering with any systems of communication or any other facilities or installations, or any other activity not having a direct bearing on passage (Article 19(2)(k) of UNCLOS).

Map 1. The shadow fleet’s route through Northern European waters



Source: Base map – *Marineregions.org*, 2010. The route, straits, and their locations are identified by the author of this analysis.

Notably, in the immediate aftermath of the 2025 drone incursions, the Danish government announced that environmental inspectors would increase their inspections of ships anchored in one of the busiest anchorage areas in Northern Europe (the Skagen Red in the northern Kattegat).⁶⁸ Furthermore, Denmark measured until

⁶⁵ Caminos and Cogliati-Bantz 95; see also Mahmoudi 130.

⁶⁶ Denmark’s 1992 Counter-Memorial in *Passage through the Great Belt (Finland v Denmark)*, 3, <<https://www.icj-cij.org/sites/default/files/case-related/86/6893.pdf>>.

⁶⁷ Art 16(4) of the Convention on the Territorial Sea and the Contiguous Zone (Geneva, 29 April 1958, in force 10 September 1964) 516 UNTS 205; *Corfu Channel Case (United Kingdom v Albania)*, Judgment, I.C.J. Reports 1949, p. 28; see also Art 45(2) of UNCLOS.

⁶⁸ The Maritime Executive, ‘Denmark Increases Inspections of Shadow Fleet’s “Old and Worthless” Ships’, <<https://maritime-executive.com/article/denmark-increases-inspections-of-shadow-fleet-s-old-and-worthless-ships>>.

the end of 2025 the sulfur content in the fuel of ships navigating through the Great Belt (via a so-called sniffer that is installed on the Great Belt Bridge) to assess their compliance with the environmental regulations.⁶⁹

Could Denmark interdict ships that do not comply with environmental regulations? Owing to the exception to the right of transit passage in the Danish Straits, there is some room for an argument that Denmark is entitled to exercise its enforcement jurisdiction against such delinquent foreign vessels. The potential legal basis of such measures is Article 19(2)(h) in combination with Article 220 of UNCLOS, according to which the passage of a foreign ship is considered to be prejudicial to the peace, good order, or security of the coastal state if in the territorial sea it engages in any act of willful and serious pollution. Article 220(2) of UNCLOS stipulates:

Where there are clear grounds for believing that a vessel navigating in the territorial sea of a State has, during its passage therein, violated laws and regulations of that State adopted in accordance with this Convention or applicable international rules and standards for the prevention, reduction and control of pollution from vessels, that State, without prejudice to the application of the relevant provisions of Part II, section 3, may undertake physical inspection of the vessel relating to the violation and may, where the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws, subject to the provisions of section 7.

In 2000, Oude Elferink pointed out that even though information about the Danish enforcement measures in the Belts and the Øresund is not readily available, it seems that “Danish authorities generally do not resort to enforcement against ships, but use guidance instead.”⁷⁰ Nowadays, the profound challenges posed by the Russian shadow fleet to Baltic maritime security and its particularly sensitive sea area call this approach into question.

Clearly, Article I(1) of the 1857 Copenhagen Convention can be easily interpreted in a way that excludes Danish or Swedish enforcement jurisdiction against foreign ships in the Danish Straits.⁷¹ However, based on his seminal study of the legal regime of the Danish Straits before the Second World War, Erik Brüel did not agree with such a restrictive reading of Article I(1). He found that “it seems illogical to say that it prevents Denmark carrying out civil arrests”.⁷² Brüel explained:

What the treaty prevents are measures which force *all* vessels to stop, especially those which have no connection whatever with the land but are merely passing by. The right to make arrests, even apart from the fact that the question will hardly arise in one out of 10,000 ships, affords no opportunity for evading the provisions of the treaty: It therefore seems compatible with the principle of the freedom of passage which is laid down in the treaty.⁷³

In Brüel’s view, “Denmark should be recognised as possessing a right to make civil arrests on board vessels which are passing through”.⁷⁴ In this context, the Copenhagen Convention seems not to exclude Danish enforcement measures against ships that violate Article 19 of UNCLOS and are in non-innocent passage in the Belts or Øresund.⁷⁵ If enforcement measures, including the arrest of ships, are allowed in the Danish Straits based on civil law claims, then a similar right of the strait state should exist in relation to commercial ships that breach the peace, good order, or security of the coastal state within the meaning of Article 19(1) of UNCLOS.

⁶⁹ Ministry of the Environment and Equality, ‘Regeringen styrker miljøtilsyn med tankskibe ved Skagen Red’, <<https://mim.dk/nyheder/pressemeddelelser/2025/oktober/regeringen-styrker-miljoetilsyn-med-tankskibe-ved-skagen-red>>.

⁷⁰ Oude Elferink 562.

⁷¹ See, e.g., *ibid*; Caminos and Cogliati-Bantz 96.

⁷² Brüel 44.

⁷³ *Ibid* 44–45.

⁷⁴ *Ibid* 45.

⁷⁵ See Alexander Lott, ‘The Baltic Sea Cable-Cuts and Ship Interdiction: The C-Lion1 Incident’ *Articles of War* (26 November 2024), <<https://lieber.westpoint.edu/baltic-sea-cable-cuts-ship-interdiction-c-lion1-incident>>; see also Henrik Ringbom, ‘New Threats—Old Rules: Law of the Sea Issues Raised by Suspected Attacks on Submarine Infrastructure in the Baltic Sea’ (2025) 56(3) *Ocean Development & International Law* 413.

It is hard to imagine that Denmark would not take any measures against a foreign ship if its passage were prejudicial to the peace, good order, or security of Denmark. If this is correct, then Denmark could enforce the EU sanctions regime against the Russian oil tankers in the Danish Straits.

Where commercial ships transport Russian crude oil and other petroleum products through an EU member state's territorial sea to non-EU states in violation of the EU sanctions, it can be argued that they are in non-innocent passage, since such navigation could be considered prejudicial to the peace, good order, or security of the EU member state within the meaning of Article 19(1) of UNCLOS. Ultimately, any enforcement measures pursuant to this line of argumentation would depend on the interpretation of the 1857 Copenhagen Convention in the context of the progressive development of the international law of the sea, including the regime of straits in the 20th century.

1.2.4. The Viro Strait

The EEZ corridor in the Viro Strait excludes transit passage and limits the freedom of navigation and overflight to that corridor. Abolishing it could provide Estonia and Finland with a clearer legal basis for protecting offshore infrastructure, but would open much of the Gulf of Finland to the transit of foreign warships and military aircraft. The following analysis weighs this trade-off, including the implications for maritime security, aviation safety, and potential mandatory pilotage.

For Russian oil shipments, the Gulf of Finland bears particular significance. Its busy shipping lanes connect Russia's maritime area with the Baltic Sea proper. Ship traffic heading to and from Russian ports via the Gulf of Finland is one of the busiest in the world, exceeding that of any other strait in the Baltic Sea. This is largely due to the fact that the Gulf of Finland is the main export route for Russian oil.

The southern Baltic coastal states Denmark, Sweden, and Germany have established EEZ corridors artificially, so to speak, by way of limiting under their domestic laws the outer extent of their territorial sea as measured from the baselines, in respect of, for example, the Kattegat and Femern straits and Bornholmsgat. Those straits would otherwise be located entirely within the limits of the territorial sea or internal waters.

Under a 1994 bilateral treaty,⁷⁶ Finland and Estonia voluntarily established the EEZ corridor in the Viro Strait by way of limiting the outer extent of their territorial sea (see Map 2).⁷⁷ Consequently, the right of transit passage does not apply in and over the Viro Strait even though this chokepoint of international navigation connects two parts of the EEZ (Articles 37ff of UNCLOS).

Instead, the spatial extent of the freedom of overflight in the Viro Strait is limited to the international airspace above the six-nautical-mile-wide EEZ corridor (Article 58(1) of UNCLOS). By contrast, foreign aircraft do not enjoy the freedom of overflight in the airspace over the Estonian and Finnish territorial sea, where the coastal states retain a permit-based overflight regime (see Map 2). In this area, the potential use of force by either state against the Russian fighter jets that have unlawfully entered their sovereign airspace above the territorial sea is theoretically possible.⁷⁸ Notably, in and around the Kadet and Femern straits, Bornholmsgat, and the Kattegat, the strait states Denmark, Germany, and Sweden have voluntarily established EEZ

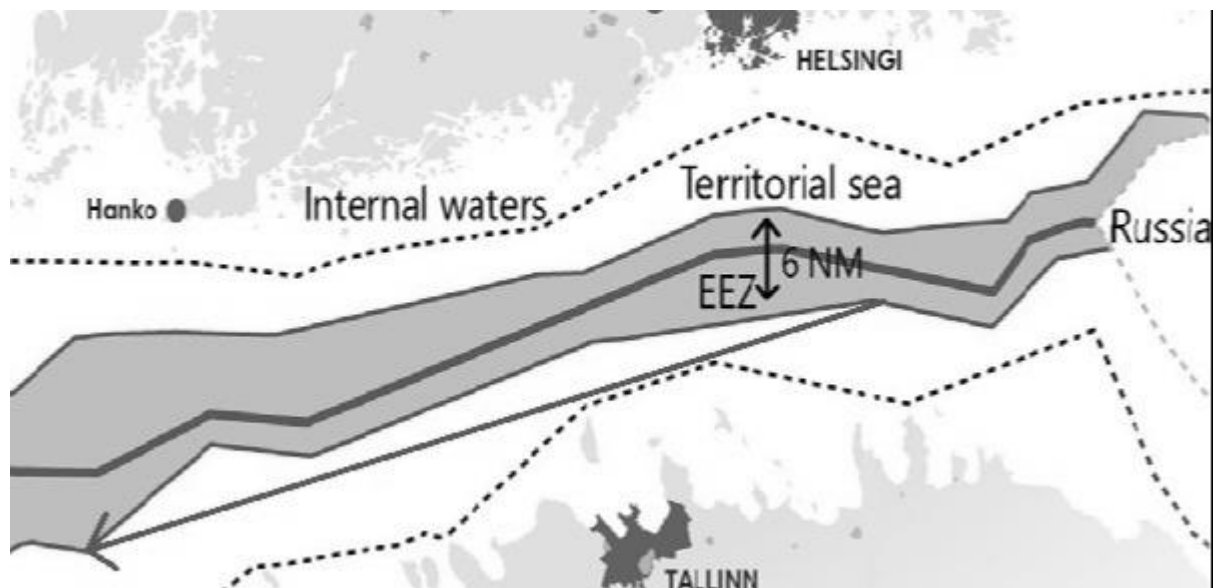
⁷⁶ Exchange of Notes Constituting an Agreement on the Procedure to be followed in the Modification of the Limits of the Territorial Waters in the Gulf of Finland (Tallinn/Helsinki, 4 May 1994, in force 31 July 1995), <<https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/EST-FIN1994GF.pdf>>.

⁷⁷ See further Alexander Lott, 'Maritime Security in the Baltic and Japanese Straits From the Perspective of EEZ Corridors' (2023) 54(3) *Ocean Development & International Law* 329–332.

⁷⁸ Reportedly, the UK, French, and German envoys made such a warning to Russian diplomats in Moscow in the wake of Russian fighter jets' recent Estonian airspace violations over the Viro Strait. As demonstrated by Schmitt, the NATO member states' potential use of force against the incursions of Russian drones and fighter jets would be justified under the inherent right of self-defense, including the necessity and proportionality criteria (Art 51 of the UN Charter). Michael N. Schmitt, 'Legally Available Options in Response to Russia's Penetrations of NATO Airspace' *Just Security* (29 September 2025), <<https://www.justsecurity.org/121527/russia-nato-airspace>>; Reuters, 'Kremlin won't discuss reported threat to shoot down Russian military planes that violate European airspace' (26 September 2025), <<https://www.reuters.com/business/aerospace-defense/kremlin-wont-discuss-reported-threat-shoot-down-russian-military-planes-that-2025-09-26>>.

corridors analogous to the one established by Estonia and Finland in the Viro Strait to exclude the right of transit passage, which is based on the freedom of navigation and overflight (see Map 3).⁷⁹

Map 2. The flight path of three Russian fighter jets (depicted as an arrow in the Estonian territorial sea) close to Tallinn and next to the EEZ corridor (in gray color) of the Gulf of Finland (Viro Strait) where the freedoms of navigation and overflight apply



Source: Base map created by the newspaper Postimees and the author of this analysis and on the basis of the map added to the 1996 Maritime Boundary Treaty between Finland and Estonia.⁸⁰

In the hope of countering threats from the Russian shadow fleet, there have been calls to abolish the EEZ corridor in the Viro Strait. This would imply a trade-off, as a result of which Estonia and Finland would risk losing, in essence, their functional sovereignty over their territorial sea and in the airspace above the Gulf of Finland. Without the EEZ corridor, foreign aircraft would be entitled to the freedom of overflight over the Estonian and Finnish territorial sea to continuously and expeditiously transit the Viro Strait from the Russian EEZ in the Gulf of Finland to the areas over the EEZs in the Baltic Sea proper (Article 38(2) of UNCLOS).

The right of transit passage would grant the freedom of overflight to Russian aircraft almost throughout the entire limits of the airspace between Tallinn and Helsinki. In effect, Russian aircraft would be legally entitled to follow the same flight path close to Tallinn that was used by Russian fighter jets in September 2025 and that triggered the NATO and UN Security Council consultations. Contrary to the current overflight regime, any use of force against their expeditious overflight in the sovereign airspace would then be unlawful under Article 2(4) of the UN Charter and Article 44 of UNCLOS due to the freedom of overflight afforded to the aircraft under the legal regime of straits (Article 38(2) of UNCLOS).

Similarly, if the EEZ corridor were abolished, then all ships, including foreign warships, would be entitled under the right of transit passage to the freedom of navigation in the Viro Strait from coast to coast.⁸¹ On the one hand, in the case of merchant ships, this risk can be minimized by maintaining the current TSS, which functions similarly to car traffic management on the road. Article 41(7) of UNCLOS stipulates: "Ships in transit passage shall respect applicable sea lanes and traffic separation schemes established in accordance with this article." On the other hand, one must bear in mind the possibility that the TSS may not apply to ships entitled to sovereign immunity. Diplomats Satya Nandan and David Anderson, who were among the drafters of Part III of UNCLOS on the legal framework of straits, have found that a coastal state

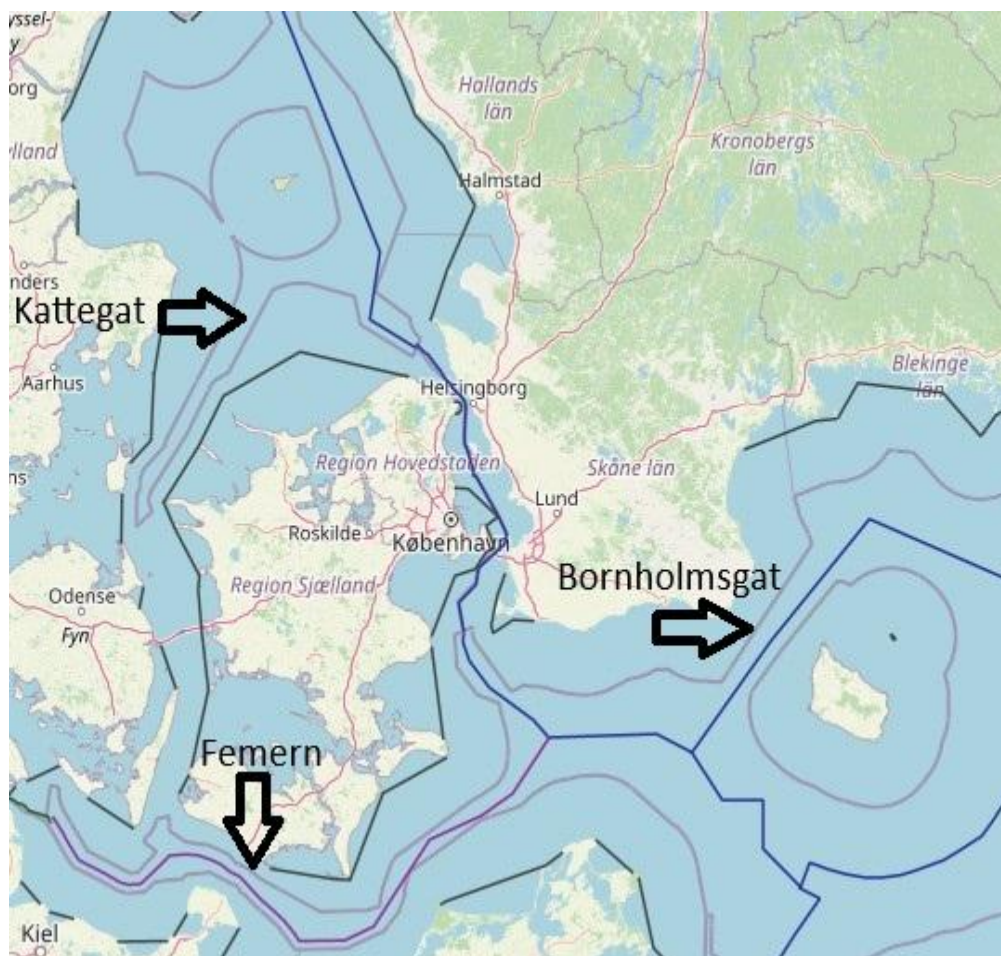
⁷⁹ Lott, 'Maritime Security in the Baltic and Japanese Straits' 332–333.

⁸⁰ Agreement between the Republic of Finland and the Republic of Estonia on the Boundary of the Maritime Zones in the Gulf of Finland and the Northern Baltic Sea (Helsinki, 18 October 1996, in force 7 January 1997) 1964 UNTS 375.

⁸¹ The Commander's Handbook 2-9.

may apply its domestic laws regarding the safety of navigation to all foreign ships, whereas, for example, the United States has consistently maintained that the observance of TSS by warships and other government-operated vessels is in practice only good practice, not a legal obligation.⁸²

Map 3. EEZ corridors of the southern Baltic Straits



Source: Base map via Marineregions.org.

It is questionable whether Russian warships can be expected to follow such good practice in tense geopolitical circumstances. Rather, there is a risk that, if the EEZ corridor is abolished, Russian warships, including submarines, and military aircraft would demand freedom of navigation and overflight in the entire Gulf of Finland, from Tallinn to Helsinki, similar to the aforementioned position of the United States, even if merely as a demonstrative protest against the decision of Estonia and Finland to abolish the EEZ corridor in the Gulf of Finland.

Furthermore, maritime powers safeguard their right to launch and land aircraft in transit passage as part of the normal mode of passage of ships. Therefore, Russian warships could even lawfully enter maritime areas just next to Tallinn and Helsinki and launch military drones.

To summarize the above in a simplified way: the Estonian and Finnish maritime area in the Gulf of Finland, both within the territorial sea and to a significant extent within the internal waters (excluding skerries and bays), would be open to ships and aircraft entitled to sovereign immunity if the EEZ corridor were abolished. The measures of Estonia and Finland against ships and aircraft that have violated the right of transit passage would be limited. The right of transit passage is inherently intended to guarantee freedom

⁸² Satya N. Nandan and David H. Anderson, 'Straits Used for International Navigation: A Commentary on Part III of the United Nations Convention on the Law of the Sea 1982' (1989) 60 *The British Yearbook of International Law* 191; The Commander's Handbook 2-9.

of navigation and overflight in and above straits. Therefore, any measures by the coastal state involving the use of force are inherently contradictory.

In conclusion, the possible abolishment of the EEZ corridor in the Gulf of Finland presents significant strengths and weaknesses as well as broader opportunities and threats (SWOT).

Strengths

- To protect the marine environment, Estonian and Finnish officials could board and detain a foreign-flagged vessel if it threatens to cause marine pollution. This clearer legal basis (Article 233 of UNCLOS) also allows them to board a foreign vessel caught dragging anchor, search it, and, if necessary, seize the vessel if it threatens to disrupt, for example, the Balticconnector pipeline. There is no clear time limit set in Article 233 of UNCLOS for preventive action. Thus, it is possible to potentially react in good time, thereby also avoiding the rupture of cables in the Gulf of Finland.
- This allows the coastal state to rely on a clearer legal basis in international law than at present to apply its more extensive prescriptive and enforcement jurisdiction to foreign ships for the protection of its critical offshore infrastructure in the area which currently falls within the limits of the current EEZ corridor.

Weaknesses

- While foreign (war-)ships and aircraft are currently confined to the narrow EEZ corridor of the Gulf of Finland, abolishing the EEZ corridor would open up almost the entire sea area for maritime and air navigation. The current TSS can be maintained in respect of commercial ships, but according to what appears to be the dominant position, warships and aircraft do not have to follow it.
- By relying on the right of transit passage, foreign sovereign-immune ships and aircraft could rely on freedom of navigation and overflight with few restrictions in the Viro Strait nearly from coast to coast.
- The coastal state would essentially lose its control over its territorial sea from a maritime security perspective. This would also have an adverse impact on aviation safety.

Opportunities

- Hypothetically, if the EEZ corridor were abolished, then by establishing controversial mandatory pilotage in the Viro Strait, following the example of the Torres Strait, it would potentially be possible to prevent ship collisions and damage to offshore infrastructure caused by anchor-dragging. However, it is unlikely that mandatory pilotage in the Gulf of Finland would ever be approved by the IMO.

Threats

- With the support of NATO allies, Estonia and Finland have already begun to fill the gaps in the protection of maritime infrastructure in the EEZ corridor, both in terms of maritime situational awareness and the applicable legal framework. If the EEZ corridor is abolished, then Estonia and Finland will create opportunities for new types of hybrid conflicts in and above the Gulf of Finland.
- Almost the entire Gulf of Finland would be open to Russian warships and military aircraft if the EEZ corridor were to be abolished. These are ships and aircraft with sovereign immunity. Thus, the rights of the coastal state to take measures against their unlawful actions are largely limited to submitting a diplomatic protest. Any unilateral steps to restrict the substantive and geographical scope of transit passage would presumably be in conflict with the strategic interests of Estonia's and Finland's key allies.

1.2.5. The Strait of Dover and the Strait of Gibraltar

Article 233 of UNCLOS potentially enables enforcement against substandard oil tankers in transit passage through the Strait of Dover where violations cause or threaten major environmental damage, without requiring an oil spill to have occurred. This section considers this legal basis alongside the Grace 1 incident that took place in the Strait of Gibraltar. However, interdiction in the Strait of Dover has its limits, since it prompts the shadow fleet to take the longer route around Scotland and Ireland rather than preventing its oil shipments.

If Denmark considers that potential stronger enforcement action in the Danish Straits is not in accordance with Article I(1) of the 1857 Copenhagen Convention, then the question arises as to whether a right of interdiction exists in relation to environmentally dangerous oil tankers in the Strait of Dover (see Map 4). According to Article 233 of UNCLOS, it is not a precondition for taking enforcement measures against a foreign oil tanker in transit passage that an oil spill has occurred. Article 233 of UNCLOS provides that if a foreign commercial ship has committed a violation of the laws and regulations of the coastal state relating to the safety of navigation or the regulation of maritime traffic in the strait, causing or threatening major damage to the marine environment of the strait, then the strait states may take appropriate enforcement measures. Van Dyke has argued that, in practice, states have the right to adopt such measures only in exceptional cases.⁸³

However, most authorities (Virginia Commentaries,⁸⁴ Proelss' commentaries,⁸⁵ Hugo Caminos⁸⁶) agree that the wording of Article 233 of UNCLOS enables the coastal state to take enforcement measures against a ship in response to a threat of major environmental damage.

If a ship carrying sanctioned Russian oil to a third state does not meet the industry standards and is not able to prove its insurance according to the terms of the 1992 Civil Liability Convention, then it might be argued that it has breached the coastal state's regulations on the safety of navigation and maritime traffic in the strait, threatening major damage to the marine environment of the strait. Consequently, the ship could be boarded, inspected, and, if necessary, arrested by the British coastal authorities pursuant to Article 233 of UNCLOS.

Here, relatively recent state practice of the UK in relation to sanctions-busting oil tankers is also potentially relevant. In July 2019, the British Overseas Territory of Gibraltar's 3-NM-wide territorial sea was the site of a UK enforcement operation that involved the boarding by the UK Royal Marines and Gibraltar law-enforcement officials of the Panama-flagged Iranian oil tanker Grace 1. The Grace 1 had made an eastward journey from the Atlantic Ocean to the Mediterranean Sea and entered Gibraltar's territorial sea. It was boarded by the UK authorities approx. 2.1 NM off Gibraltar's coast as it was slowing down in a designated area to take on board fresh supplies that were shipped from Gibraltar.⁸⁷

A brief stop in Gibraltar's territorial sea does not preclude the applicability of the right of transit passage at the time of its boarding and detention. Article 38(2) of UNCLOS stipulates that "the requirement of continuous and expeditious transit does not preclude passage through the strait for the purpose of entering, leaving or returning from a State bordering the strait, subject to the conditions of entry to that State." This is known as the Singapore clause, which was drafted by the UK delegation at the treaty negotiations, and according to Caminos and Cogliati-Bantz implies that "a ship or aircraft need not navigate all the way through the strait to benefit from the right of transit."⁸⁸ Under Article 38(2) of UNCLOS, the Singapore clause applies only in straits that are bordered by at least two states. The Strait of Gibraltar is bordered by Spain, Morocco, and the UK.

⁸³ Van Dyke 40–41.

⁸⁴ Myron H. Nordquist, Neal R. Grandy, Shabtai Rosenne, and Alexander Yankov (eds), *United Nations Convention on the Law of the Sea, 1982: A Commentary*, vol. IV: Articles 192 to 278, *Final Act, Annex VI* (Brill 1990) 390–391.

⁸⁵ Vasco Becker-Weinberg, 'Article 233', in Alexander Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (C.H. Beck/Hart/Nomos 2017) 1565–1566.

⁸⁶ Caminos and Cogliati-Bantz 286–287.

⁸⁷ 'Iran demands "immediate release" of tanker held in Gibraltar, summons UK envoy' *The Times of Israel* (5 July 2019), <<https://www.timesofisrael.com/iran-demands-immediate-release-of-tanker-held-in-gibraltar-summons-uk-envoy/>>.

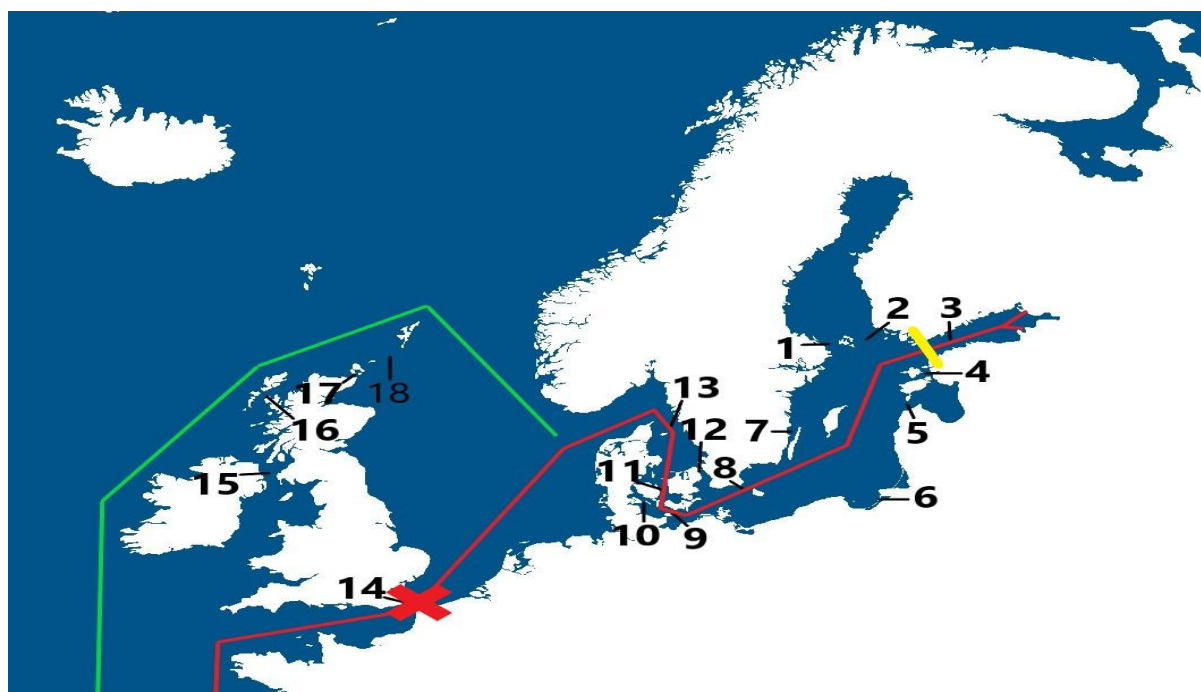
⁸⁸ Caminos and Cogliati-Bantz 210.

The Singapore clause seems to apply to the Grace 1 incident, since at the time of the interdiction, Grace 1 was proceeding from one EEZ in the Atlantic Ocean to the Mediterranean, but had not yet reached any EEZ in the Mediterranean. Reportedly, the ship was boarded by the Royal Marines when it was reducing its speed for a layover in Gibraltar's territorial sea to take fresh supplies on board and then continue its transit passage eastward to the EEZs in the Mediterranean.

However, one might alternatively argue that by the time Grace 1 entered Gibraltar's territorial sea, it could no longer have benefited from the right of transit passage and the Singapore clause (Article 38(2) of UNCLOS). Such an argument could be made based on the simple fact that the vessel could have avoided entering Gibraltar's territorial sea and instead enjoyed the freedom of navigation in a corridor next to Gibraltar's territorial sea in accordance with Article 36 of UNCLOS for exiting the strait.⁸⁹ Notably, in such a scenario, Grace 1 was subject to the right of innocent passage as soon as it entered Gibraltar's territorial sea. Thus, pursuant to this alternative line of reasoning, the UK would have exercised a similar level of jurisdiction over Grace 1 to that enjoyed by Denmark over foreign ships in the Sound and Great Belt. Similar to the UK in respect of Gibraltar, Denmark asserts the applicability of the regime of (non-suspendable) innocent passage in the Danish Straits, which implies a significant degree of jurisdiction over the Russian shadow fleet that relies on these gateways of the Baltic Sea.

The tanker Grace 1 carried approximately 2 million barrels of Iranian oil to Syria in breach of the sanctions. It was detained in the Strait of Gibraltar, which, like the Strait of Dover, is subject to the regime of transit passage. Gibraltar's law-enforcement authorities launched investigations that confirmed that at the time of its detention the Grace 1 was carrying oil to Syria. This was regarded as a violation of the EU sanctions on Syria and, from the UK perspective, might have amounted to a breach of the right of innocent passage or transit passage. Grace 1 was released over a month later, in August 2019, on the condition that she would not travel to Syria, which both the captain of the ship and the flag state confirmed.

Map 4. Focus on the Strait of Dover and the EEZ corridors



Source: Base map – Marineregions.org, 2010. The route, straits, and their locations are identified by the author of this analysis.

The regime of transit passage applies to navigation in and over the Strait of Gibraltar, including in the territorial sea of Gibraltar. Even if the Grace 1 was on course to enter Gibraltar's port or make a stop in its

⁸⁹ Matthias Hartwig, 'Tanker Games – The Law Behind the Action' *EJIL: Talk!* (20 August 2019), <<https://www.ejiltalk.org/tanker-games-the-law-behind-the-action>>.

territorial sea in need of technical repairs, this would not preclude the applicability of the right of transit passage at the time of its boarding and detention. Article 38(2) of UNCLOS stipulates that “the requirement of continuous and expeditious transit does not preclude passage through the strait for the purpose of entering, leaving or returning from a State bordering the strait, subject to the conditions of entry to that State.” States bordering straits are required not to hamper the right of transit passage (Article 44 of UNCLOS) and are allowed to exercise their jurisdiction only to a very limited extent over ships and aircraft entitled to the right of transit passage (see Article 42 of UNCLOS).

This year, the UK interdicted another sanctions-busting shadow-fleet ship, the *Smyrtos*, in a maritime chokepoint. The *Smyrtos* was boarded and seized in the UK territorial sea in the English Channel on 14 June 2026.⁹⁰ Following this interdiction, tankers belonging to the Russian shadow fleet increasingly change their course after crossing the Skagerrak. Instead of heading to the Strait of Dover, they take the roundabout route off Scotland and Ireland. Ireland’s defense minister has signaled potential willingness to interdict the environmentally dangerous tankers in the Irish EEZ,⁹¹ but there is no indication that Ireland would systematically start interdicting Russian shadow-fleet ships. Measured from the Skagerrak to close to the northern tip of Galicia, the roundabout route is approximately 800 km longer than the shortcut via the Strait of Dover. This demonstrates that Russian shadow-fleet vessels can continue their business as usual, unless Denmark enforces its laws against non-innocent passage in the Great Belt and Øresund.

1.2.6. Conclusion

The UNCLOS provisions relating to marine environmental protection in the EEZ seem to fall just short of having a meaningful effect on the dangerous operations and sanctions-busting of the Russian shadow fleet. If the Baltic Sea and North Sea coastal states are determined to take effective measures against this phenomenon of increasing public concern based on the current legal framework, then the key lies in the legal regime of straits. Coastal states may consider taking enforcement measures against non-innocent passage in the Danish Straits and against violations of the transit passage regime in the Strait of Dover.

The common denominator of the Baltic Straits is that strait states have applied exceptions to the right of transit passage to strengthen their maritime security. The strait states’ method for excluding the right of transit passage in these areas is the establishment of EEZ corridors (in respect of the Viro Strait, the Kadet and Femern straits, Bornholmsgat, and the Kattegat) and the use of the 1857 Copenhagen Convention in respect of the Belts and the Øresund under Article 35(c) of UNCLOS. This report rejects the claim that the navigational regime in the Danish Straits is governed by the right of transit passage or the freedom of navigation and overflight.

Another common denominator of the Baltic Straits is that the right of innocent passage applies in the territorial sea of the Belts, the Øresund, the Viro Strait, the Kadet and Femern straits, Bornholmsgat, and the Kattegat. The coastal state is explicitly entitled to interdict ships that are exercising their right of innocent passage but violate its conditions. As opposed to the right of transit passage, which is founded on the freedom of navigation and overflight, the coastal state can take extensive measures to enforce its laws against the non-innocent passage of ships that threaten its peace, good order, or security, including those ships that launch or land drones or any other military device.

In the Danish Straits and the Viro Strait, the legal regime of permit-based overflight applies in the airspace above the strait states’ territorial sea. The strait states are entitled to use their enforcement jurisdiction

⁹⁰ ‘UK seizes shadow fleet tanker expelled from Cameroon registry’ *Lloyd’s List* (14 June 2026), <<https://www.lloydslist.com/LL1157457/UK-seizes-shadow-fleet-tanker-expelled-from-Cameroon-registry>>.

⁹¹ ‘Defence Forces monitor west coast as shadow fleet ships enter EEZ’ *RTE* (16 December 2025), <<https://www.rte.ie/news/primetime/2025/1216/1549344-defence-forces-monitor-west-coast-as-shadow-fleet-ships-enter-eez>>; Niall O’Connor, ‘Irish Defence Minister says Ireland considering boarding and inspecting Russian Shadow Fleet ships’ *The Journal* (15 February 2026), <<https://www.thejournal.ie/munich-security-forum-day-two-helen-mcentee-shadow-fleet-maritime-security-strategy-6957232-Feb2026>>.

against foreign aircraft that violate their sovereign airspace, owing to the fact that the relevant coastal states have excluded the right of transit passage in the Baltic Straits. Thus, foreign aircraft do not enjoy the freedom of overflight over the territorial sea in these straits. In principle, this enables the coastal state to use force against foreign military aircraft, including drones and fighter jets, that aggressively enter its sovereign airspace without permission above the territorial sea in the Danish Straits and the Viro Strait.

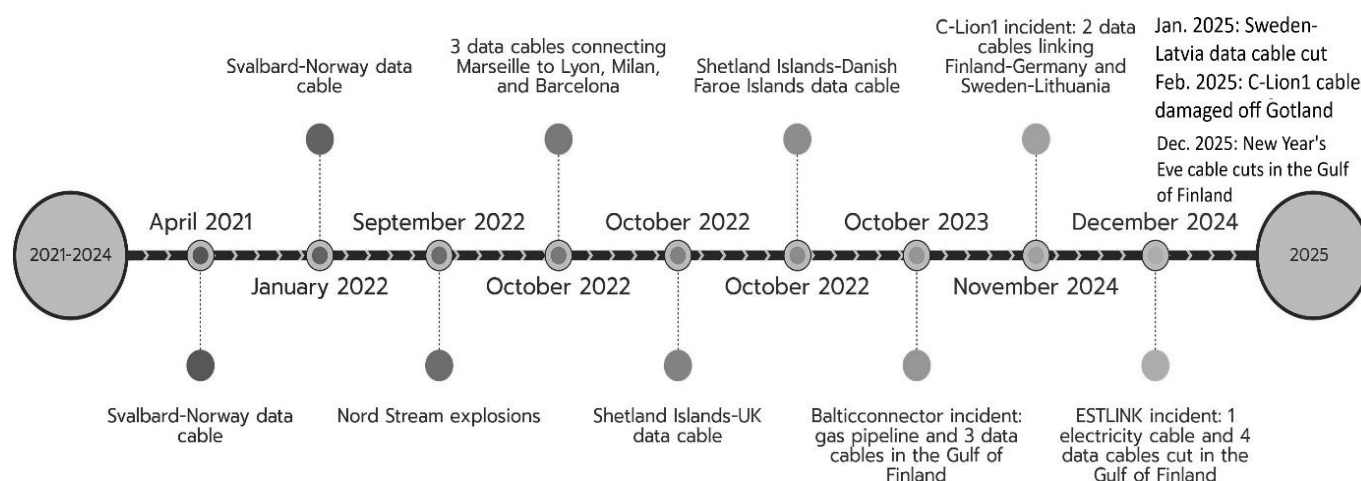
1.3. The Right of Interdiction of Ships that Damage Maritime Infrastructure

The protection of critical offshore infrastructure outside the territorial sea depends on a patchwork of legal bases that differs between installations, pipelines, and cross-border cables. Recent anchor-dragging incidents demonstrate the need to identify a legal basis for timely interdiction. This section examines the available grounds for enforcement and the potential use of the piracy provisions to stop further damage to submarine cables.

1.3.1. Legal Bases for Interdiction outside the Territorial Seas

The coastal state's enforcement powers beyond the territorial sea vary according to the category of offshore infrastructure and the circumstances of the incident. Table 1 brings together the principal and complementary legal bases, including their spatial limits. Recent damage in the Baltic Sea illustrates both the practical urgency of interdiction and the continuing uncertainty over the legal framework for boarding and seizing suspected ships in the EEZ.

Figure 1. Timeline of cable cuts and damage to pipelines in Europe 2021–2025



Source: Author's own, based on Infografix software.

Overall, the legal resilience of cross-border submarine cables and pipelines outside the limits of the territorial sea relies on a patchwork of various legal bases under UNCLOS, other treaties, and customary international law.

As a result of the complex, incoherent, and incomplete legal framework, coastal states are too often unaware of their rights to enforce their laws at sea for the protection of submarine cables. When a particular cable-cut incident unfolds, the coastal state's authorities may need guidance to speedily identify the relevant legal basis and determine the potential action plan for solving a particular time-critical situation.

In less than 14 months, submarine telecommunications cables connecting Estonia, Finland, Germany, Lithuania, Russia, and Sweden were cut nine times by three anchor-dragging ships in the Baltic Sea (see Figure 1). In addition, an underwater electricity cable and a gas pipeline were cut by a ship anchor. Even after Finland's decisive response to the Christmas Day 2024 cable cuts, the question remains whether the coastal state can board and seize a commercial ship in the EEZ if it damages the coastal state's critical offshore infrastructure. In that incident, the *Eagle S* cooperated with the coastal state's authorities and entered the Finnish territorial sea. However, the next ship might not comply with the orders, which is why

the coastal states need more legal clarity over whether they can interdict a ship that would otherwise continue its destruction of underwater infrastructure.

The example of cable cuts and pipeline damage due to anchoring serves to demonstrate that there are significant differences between the legal regimes of distinct categories of offshore infrastructure. The coastal state's enforcement jurisdiction in respect of the protection of critical offshore infrastructure is summarized in Table 1 based on the following three categories of offshore infrastructure:

- i. Artificial islands, installations, and structures, including platforms, wind farms, and tunnels, as well as cables and pipelines connecting them to the mainland.
- ii. Cross-border submarine pipelines.
- iii. Cross-border submarine data and power cables.

Table 1 demonstrates that the legal protection of submarine cables and pipelines outside the limits of the territorial sea relies on a patchwork of various legal bases for taking enforcement measures against ships suspected of damaging submarine cables, pipelines, and other objects of vital importance for the coastal state. Despite the incoherent and incomplete legal framework, legal scholars and practitioners are increasingly aware of the coastal state's right to enforce its laws at sea, particularly those states in the Baltic Sea region given the high number of recent incidents, and especially in respect of new challenges brought about by hybrid warfare at sea.

Map 5. Cable cuts in the Gulf of Finland: October 2023 (NewNew Polar Bear) / Christmas Day 2024 (Eagle S) / New Year's Eve 2025 (Fitburg)



Source: Based on the [Submarine Cable Map](#) and [Marine Traffic](#) data.

For example, Estonia has eight submarine data cables to Sweden and Finland. In addition, nine land data cables connect the Baltic states to continental Europe via the strategic Suwalki corridor. As a result of three incidents in the Gulf of Finland in October 2023 (the NewNew Polar Bear case), Christmas Day 2024 (the Eagle S case), and New Year's Eve 2025 (the Fitburg case), six out of eight of Estonia's submarine data cables, one out of two of Estonia's submarine power cables (EstLink), and its only gas pipeline (Balticconnector) have been cut by primitive anchor-dragging (see Map 5). This is worrying from the perspective of an armed conflict paradigm and, more specifically, a naval blockade.

Table 1. Legal basis for protective measures and enforcement jurisdiction with regard to offshore infrastructure beyond the outer limits of the territorial sea⁹²

Protective measures	Installations and structures	Cross-border submarine pipelines	Cross-border submarine cables
Main legal basis	Article 60(4)–(5) + Article 111 of UNCLOS	Articles 79(2) and 221 + Article 111(2) of UNCLOS if damage causes or threatens environmental pollution. Article 113 of UNCLOS if the pipeline is damaged by a national of the coastal state or a ship flying its flag.	Article 113 of UNCLOS if the cable is damaged by a national of the coastal state or a ship flying its flag. Article 10 of the Paris Convention.
Complementary legal bases	Depending on the circumstances, the main legal basis may be complemented with: i. the plea of necessity (Article 25 of the International Law Commission (ILC) Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA)⁹³);⁹⁴ ii. piracy clauses (Article 101(a)(ii) of UNCLOS);⁹⁵ iii. terrorism (SUA Protocol;⁹⁶ Convention for the Suppression of Terrorist Bombings⁹⁷); iv. flag state/captain's consent;⁹⁸ v. and/or ship without nationality (Article 110(1)(d) of UNCLOS).⁹⁹		
Spatial limit	The coastal state should send the signal to stop to the foreign ship while that ship is still in the safety zone.	The coastal state may commence hot pursuit while the ship is in its EEZ. Article 113 of UNCLOS also applies on the high seas.	The coastal state may commence hot pursuit within an unspecified, but reasonable, time.
	The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own state or of a third state (Article 111(3) of UNCLOS).		

1.3.2. Interdiction under the Law of Piracy

A dynamic interpretation of Article 101 of UNCLOS could provide a basis for interdicting ships suspected of damaging submarine cables outside the territorial sea.¹⁰⁰ This approach encounters questions concerning the requirement of private ends, intentionality, and the degree of suspicion. Its immediate purpose would be to stop anchor-dragging and prevent further damage, even where a subsequent inspection does not confirm piracy.

⁹² For unconventional legal approaches on this matter, see Alexander Lott, 'Unconventional Legal Approaches to Protecting Underwater Infrastructure' (The Hague Centre for Strategic Studies 2025).

⁹³ ILC, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries', UNYBILC vol II (2001) UN Doc A/CN.4/SER.A/2001/Add.1.

⁹⁴ Henrik Ringbom and Alexander Lott, 'Sabotage of Critical Offshore Infrastructure: A Case Study of the Balticconnector Incident', in Lott, *Maritime Security Law in Hybrid Warfare* 186; International Law Association (ILA), 'Submarine Cables and Pipelines under International Law: Interim Report' (2024) 20, <<https://www.ila-hq.org/en/documents/ilathi-1>>.

⁹⁵ Douglas Guilfoyle, Tamsin P. Paige, and Rob McLaughlin, 'The Final Frontier of Cyberspace: The Seabed Beyond National Jurisdiction and The Protection of Submarine Cables' (2022) 71 *International & Comparative Law Quarterly* 657, 671–672; House of Lords, House of Commons, 'Subsea telecommunications cables: resilience and crisis preparedness' (HC 723 / HL Paper 179, 2025) 38–40.

⁹⁶ Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (adopted 10 March 1988, in force 1 March 1992) 1678 UNTS 222; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (adopted 14 October 2005, in force 28 July 2010) 1678 UNTS 304.

⁹⁷ Convention for the Suppression of Terrorist Bombings (adopted 15 December 1997, in force 23 May 2001) 2149 UNTS 256. See also ILA 2024, 52.

⁹⁸ *The Commander's Handbook* 4–7. Notably, though, there are "[d]ifferent national legal and policy positions on the right to visit on the basis of master's consent". Dennis Mandsager et al., 'Newport Rules of Engagement (ROE) Handbook' (2022) 98 *International Law Studies* 26; Martin Fink, 'The Right of Visit for Warships: Some Challenges in Applying the Law of Maritime Interdiction on the High Seas' (2010) 49 *The Military Law and the Law of War Review* 8, 34–35.

⁹⁹ *The Commander's Handbook* 3–13.

¹⁰⁰ Guilfoyle, Paige, and McLaughlin 671–672.

The legal concept of piracy is relevant in the context of the legal protection of cross-border submarine cables. On the one hand, the Annex VII arbitral tribunal found in the *Arctic Sunrise* case that “[a]n essential requirement of Article 101 is that the act of piracy be directed ‘against another ship’”.¹⁰¹ On the other hand, Article 101(a)(ii) of UNCLOS still clearly stipulates that piracy consists of acts against property in a place outside the jurisdiction of any state. Submarine cables meet the definition of property, and they are mostly located outside the jurisdiction of any state. Thus, the concept of piracy could, in principle, be interpreted dynamically. It would grant any state universal jurisdiction to interdict and arrest a suspected pirate ship for causing damage to private property on the seabed outside the territorial sea.

However, the provision also stipulates that piracy needs to include the following elements: “any illegal acts of violence or detention, or any act of depredation, committed for private ends”. It might be more difficult to meet these criteria. But it could be overcome if the criterion of “private ends” is interpreted to stand for anything opposed to “public ends”.¹⁰²

A key component of piracy is intentionality and the degree of suspicion that is required for interdicting a ship and a related geographical scope. In the *Arctic Sunrise Arbitration*, the Annex VII arbitral tribunal adopted the standard of reasonable belief that the vessel may be involved in a terrorist attack on an installation or structure of the coastal state that might justify some form of preventive action against a suspected terrorist vessel or—for present purposes—a pirate ship.¹⁰³

Arguably, for the victim state of suspicious cable cuts, so to speak, the main objective is not to prosecute the suspects and (from the interested private persons’ perspective) claim compensation for the damage to underwater infrastructure. Instead, the main objective is to interdict the ship to compel it to stop its anchor-dragging. Under Article 101 of UNCLOS, the coastal state has such a right if it suspects an act of piracy. Hence, the coastal state can board an anchor-dragging commercial ship based on suspicion of piracy to verify its suspicion. If the boarding of the ship shows that the crew of the ship damaged the cable by accident, then the ship may proceed with its voyage after raising its anchor. Viewed from this perspective, it is immaterial whether the suspicion of piracy (and intentionality) is confirmed or not.

Further damage can be avoided by any coastal state’s vessels that are closest to the suspected crime scene. After all, cross-border cables often are thousands of kilometers long, and the states directly connected to them (via a landfall) might be far away from the actual location of the incident. This is particularly relevant in areas outside small and semi-enclosed seas, such as the Baltic Sea. Nonetheless, state practice and the legal literature are inconclusive about this approach.¹⁰⁴

¹⁰¹ Annex VII Arbitral Tribunal, *Arctic Sunrise Arbitration (the Netherlands v the Russian Federation)*, Award of 14 August 2015, para 238.

¹⁰² Jacques Hartmann, ‘Piracy and Undersea Cables: An Overlooked Interpretation of UNCLOS?’ *EJIL: Talk!* (6 March 2025).

¹⁰³ *Arctic Sunrise Arbitration Award* para 314.

¹⁰⁴ ILA, ‘Submarine Cables and Pipelines under International Law: Final Report’ (2026) 29–30, 37; Mehmet Odabaşı and Saraçyakupoğlu Gökey, ‘The Overlooked Type of Piracy: An Assessment of UNCLOS Article 101(a)(ii) and Its Contemporary Applicability’ (2026) *Ocean Development & International Law* 1–26; House of Lords, House of Commons 39–40.

2. Long-Term Environmental Risks and Legal Responses

Environmental protection obligations provide an additional basis for addressing the risks posed by aging and substandard shadow-fleet tankers and should be considered together with the navigational rights protected by UNCLOS. Recent International Court of Justice (ICJ) and ITLOS jurisprudence supports interpreting UNCLOS as a living instrument, meaning that its navigational provisions should be read in light of the subsequent development of international environmental law. The principles of good faith and treaty interpretation reinforce this approach: freedom of navigation cannot be considered in isolation from obligations to protect and preserve the marine environment, particularly where technically compromised or inadequately insured vessels create serious environmental risks. Earlier treaty rights may likewise be interpreted alongside environmental obligations that developed subsequently, as illustrated by the *Iron Rhine* arbitration.¹⁰⁵

State practice following the Prestige disaster further demonstrates that coastal states have previously adopted unilateral restrictions against environmentally hazardous vessels even where their compatibility with existing navigational freedoms was contested. Specifically, although the actions invoked by France and Spain went far beyond what was permitted under Article 220(6) of UNCLOS, these measures subsequently contributed to stronger international standards. Finally, the customary duty of prevention and the associated due-diligence standard require states not merely to adopt environmental and safety rules but also to ensure their effective implementation and enforcement. Applied to the shadow fleet, this places particular responsibility on flag states to exercise effective supervision over vessels flying their flags, including their structural integrity, insurance, and compliance with applicable environmental standards.

2.1. Environmental Obligations under UNCLOS

Navigational rights must be considered together with the environmental obligations applicable to their exercise, including customary obligations of prevention and due diligence, and the advisory jurisprudence of the ICJ and ITLOS.

ITLOS confirmed in its advisory opinion on climate change that UNCLOS must be interpreted as a “living instrument” capable of addressing contemporary environmental challenges. Drafted in 1982, UNCLOS was designed as a framework convention, and its continued efficacy relies on its capacity to adapt to unforeseen global challenges without necessitating formal textual amendment. ITLOS explicitly noted that coordination and harmonization between UNCLOS and external legal regimes are vital to informing the meaning of the Convention and ensuring its status as a living instrument.¹⁰⁶

The interpretation of UNCLOS is not limited to reading its provisions on navigation in isolation. Article 31 of the Vienna Convention on the Law of Treaties (VCLT) provides the framework for considering the ordinary meaning of the relevant provisions, their context, the object and purpose of the Convention, and other applicable rules of international law. These elements are relevant to assessing the relationship between navigational rights and environmental obligations.¹⁰⁷ Furthermore, the preamble of UNCLOS provides “that matters not regulated by this Convention continue to be governed by the rules and principles of general international law”.¹⁰⁸

¹⁰⁵ *Iron Rhine* (‘IJzeren Rijn’) Railway (Belgium/Netherlands) (Award of 24 May 2005) PCA, (2005) XXVII RIAA 35.

¹⁰⁶ *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law* (Advisory Opinion) ITLOS Case No 31 (21 May 2024), para 130 (ITLOS Advisory Opinion).

¹⁰⁷ Vienna Convention on the Law of Treaties (adopted 23 May 1969, in force 27 January 1980) 1155 UNTS 331 (VCLT) art 31; see also Oliver Dörr, ‘Article 31. General Rule of Interpretation’, in Oliver Dörr and Kirsten Schmalenbach (eds), *Vienna Convention on the Law of Treaties: A Commentary* (Springer 2012) 521.

¹⁰⁸ UNCLOS preamble, recital 8.

2.2. Good Faith and Environmental Protection

Article 31(1) of the VCLT requires that a treaty “be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”.¹⁰⁹ Good faith is relevant to the reasonableness of an interpretation and the exercise of the rights that follow from it.¹¹⁰

The argument based on good faith concerns the use of navigational rights to avoid obligations that form part of the same legal framework. Protection and preservation of the marine environment is an express concern of UNCLOS, particularly Part XII.¹¹¹ Where a technically compromised or inadequately insured vessel is operated in deliberate disregard of applicable safety and environmental requirements, reliance on freedom of navigation raises a question of good faith and abuse of rights. On this interpretation, the navigational right and the environmental obligations must be assessed together, rather than treating the former as an unconditional protection against any enforcement action.

2.3. Transit Rights and Subsequent Environmental Obligations

In the *Arbitration regarding the Iron Rhine (IJzeren Rijn) Railway (Belgium/Netherlands)*, the tribunal considered Belgium’s transit rights through the Netherlands under an 1839 treaty.¹¹² Article 31(3)(c) of the VCLT formed part of the tribunal’s consideration of modern European and international environmental law within that treaty framework.¹¹³

The tribunal explained that developments since the 1972 Stockholm Conference required environmental measures to be integrated into the design and implementation of economic development activities.¹¹⁴ It described environmental protection and development as “mutually reinforcing, integral concepts” and identified a duty to prevent or mitigate significant environmental harm arising from economic activity.¹¹⁵

Importantly, the tribunal addressed the exercise of a right under international law within another state’s territory.¹¹⁶ It stated that “where a state exercises a right under international law within the territory of another state, considerations of environmental protection also apply ... The reactivation of the Iron Rhine railway cannot be viewed in isolation from the environmental protection measures necessitated by the intended use ... These measures are to be fully integrated into the project and its costs”.¹¹⁷ This has particular relevance to the context where the Russian shadow-fleet ships exercise their right of (non-suspendable) innocent passage through the coastal state’s territorial sea, such as in the Great Belt or in the Øresund.

ITLOS confirmed in the Advisory Opinion on Climate Change that Article 217(1) of UNCLOS imposes upon states the obligation to ensure that vessels flying their flag or of their registry comply with applicable international rules and standards and their laws and regulations.¹¹⁸ This is a duty of due diligence, which, according to the ITLOS Advisory Opinion on Activities in the Area, is a standard of conduct, and it varies with the risk involved.¹¹⁹ In addition, in its 2015 Advisory Opinion, ITLOS concluded that due diligence means that

¹⁰⁹ VCLT art 31(1).

¹¹⁰ On good faith as an element of treaty interpretation, see Dörr 523.

¹¹¹ UNCLOS Part XII (arts 192–237).

¹¹² Belgium’s transit right derives from the 1839 Treaty of Separation and the 1873 Iron Rhine Convention between Belgium and the Netherlands.

¹¹³ *Iron Rhine* paras 58–59.

¹¹⁴ *Iron Rhine* para 59.

¹¹⁵ *Iron Rhine* paras 58–59.

¹¹⁶ *Iron Rhine* para 59.

¹¹⁷ *Iron Rhine* para 223.

¹¹⁸ ITLOS Advisory Opinion, para 288.

¹¹⁹ Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 10, para 117.

the flag state must investigate reports of non-compliance and is required “to take all necessary measures to ensure compliance” in relation to ships flying its flag.¹²⁰

Increasingly, previously stateless vessels have been registered under the Russian flag.¹²¹ This development means that Russia, as a flag state, is now increasingly responsible for the substandard ships that form part of its shadow fleet. It is proposed here that permissive flag states that turn a blind eye to the unsatisfactory technical state of the aging shadow tankers create environmental risks and potential costs to coastal states. Consequently, such flag states exercise their navigational rights while breaching applicable environmental obligations.

2.4. Unilateral Coastal-State Measures

The measures adopted by Spain and France following the Prestige disaster are relevant to the relationship between navigational freedoms and environmental protection. The tanker sank off the coast of Galicia, Spain, in November 2002. The subsequent response provides an example of coastal states taking unilateral measures against vessels considered environmentally hazardous, including measures whose compatibility with the existing law of the sea was contested.¹²²

The Prestige was an aging, heavily loaded, single-hulled tanker that suffered structural failure during a severe winter storm.¹²³ After being refused refuge in coastal ports, it broke apart and sank, releasing more than 60,000 tons of heavy fuel oil.¹²⁴ The spill caused extensive damage to coastlines, fisheries, and marine ecosystems, with consequences for Spain, France, and Portugal and economic losses exceeding one billion euros.¹²⁵

Since Spain and France found the international framework then in force insufficient to protect their coastal interests,¹²⁶ they issued a joint declaration introducing restrictions on single-hulled vessels more than 15 years old carrying heavy fuel oil or tar.¹²⁷ The measures effectively excluded these vessels from the two states’ EEZs.¹²⁸ Between November and December 2002, French and Spanish naval and coast guard forces intercepted and expelled approximately ten tankers, including vessels flagged to Malta, Greece, and the Bahamas.¹²⁹

The significance of this practice must be distinguished from a conclusion that the measures were already authorized by UNCLOS. Their unilateral character raised a *prima facie* conflict with freedom of navigation.¹³⁰ Under a strict reading of the Convention, a coastal state could not deny passage through its EEZ solely on the basis of a vessel’s age or hull design in the absence of a violation of an applicable international standard.¹³¹ Importantly, this measure triggered rather restrained protests from the affected

¹²⁰ Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, Case No 21, ITLOS Reports 2015, p. 4, para 129.

¹²¹ Isaac Levi and Luke Wickenden, ‘Russian flag refuge: 107 vessels join the Russian flag registry since January 2025’ *The Centre for Research on Energy and Clean Air* (2025), <<https://energyandcleanair.org/publication/russian-flag-refuge-107-vessels-join-the-russian-flag-registry-since-january-2025>> (accessed 14 October 2026).

¹²² José Juste Ruiz and Valentín Bou Franch, ‘After the Prestige Oil Spill: Measures Taken by Spain in an Evolving Legal Framework’ (2004) 10 *Spanish Yearbook of International Law* 1.

¹²³ Juste and Bou 3; Cedre, ‘Prestige’ (Incident information sheet), <<https://cedre.fr/en/resources/incident-information-sheets/prestige>> (built in 1976; single-hulled; carrying 77,000 tons of heavy fuel oil).

¹²⁴ Juste and Bou 3–4, 33; ITOFF, ‘PRESTIGE, Spain/France, 2002’ (Case study), <<https://itopf.org/in-action/case-studies/prestige-spain-france-2002>>; IOPC Funds, ‘Twenty Years since the Prestige Incident’ (News, 15 November 2022), <<https://iopcfunds.org/news/twenty-years-since-the-prestige-incident/>>.

¹²⁵ Ricardo Pereira, ‘On the Legality of the Ship-Source Pollution 2005/35/EC Directive – The Intertanko Case and Selected Others’ (2008) 17(6) *European Energy and Environmental Law Review* 372, 2; ITOFF; Juste and Bou 28, 37; IOPC Funds, ‘Recent Developments in the Prestige Incident – November 2017 Judgment’ (News, 20 November 2017), <<https://iopcfunds.org/news/recent-developments-in-the-prestige-incident-november-2017-judgment/>>.

¹²⁶ Juste and Bou 6, 8–9.

¹²⁷ Juste and Bou 6–7.

¹²⁸ Juste and Bou 7–9.

¹²⁹ Juste and Bou 9–10.

¹³⁰ Juste and Bou 8–9; on the *prima facie* conflict with freedom of navigation, see also Pereira 10, and Case C-308/06 *Intertanko and Others v Secretary of State for Transport* [2008] ECR I-4057, para 58.

¹³¹ Pereira 12–13, 26.

flag states, of which only Greece filed an official diplomatic protest, and environmental considerations raised by Spain and France were later embraced by the international community.¹³²

Moreover, the position of France and Spain formed part of the developments leading to the accelerated phase-out of single-hulled tankers under the International Convention for the Prevention of Pollution from Ships (MARPOL).¹³³

The European Commission further addressed the issue in its Communication. It observed that it was increasingly difficult to accept the economic and environmental costs of disasters such as the Erika and the Prestige in the name of freedom of the seas.¹³⁴ The Commission called for reconsideration of the balance between navigational freedoms and the legitimate interests of coastal states, describing the existing framework as weighted toward free navigation.¹³⁵ This response is relevant as evidence of demands for a different balance between maritime and environmental interests.

The right of coastal states to enforce domestic legislation on pollution prevention and control in the EEZ is regulated in Articles 220(3), (5), and (6) of UNCLOS. Article 220(6) of UNCLOS requires “clear objective evidence” that the violation resulted in “a discharge causing major damage or threat of major damage” for the coastal state to institute proceedings and detain the vessel. This sets a high threshold for coastal states to implement efficient and meaningful measures under Article 220(6) of UNCLOS.

Measures available to coastal states in response to these violations are limited. The coastal state may adopt effective measures, such as the inspection and detention of a foreign ship, only in cases where the ship has caused substantial or major damage or such a threat to the marine environment because of the violation (see Article 220(5)–(6) of UNCLOS). If a tanker belonging to the Russian shadow fleet in the EEZ does not cause a discharge of oil or a threat of significant pollution, then it likely does not meet the threshold for the coastal state to take any meaningful enforcement measures under Article 220(5)–(6) of UNCLOS. In most cases, an old substandard tanker simply traversing the EEZ would not meet this threshold. However, the practice of France and Spain (later joined by Portugal, Italy, and Germany) in the wake of the environmental disasters caused by the old single-hulled oil tankers Erika (in 1999) and Prestige (in 2002) indicates that when states consider that they are acting in “unavoidable necessity”, then the strict limits set by Article 220(5)–(6) of UNCLOS do not serve as an obstacle to taking preventive measures in their EEZ in respect of dangerous oil tankers.¹³⁶

2.5. The Customary Duty of Prevention

The *Trail Smelter Arbitration (United States v Canada)* is a foundational authority on transboundary environmental harm.¹³⁷ The dispute concerned sulfur dioxide emissions from a smelting operation in British Columbia that damaged agricultural and timber lands in the neighboring state of Washington.¹³⁸

The tribunal’s reasoning reflects the principle *sic utere tuo ut alienum non laedas*, namely that one’s property should not be used in a manner that injures another.¹³⁹ It held that “no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another

¹³² Juste and Bou 10, 12–19, 36.

¹³³ Amendments to the Annex of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships 1973 (Revised Regulation 13G of Annex I), IMO Res MEPC.111(50) (adopted 4 December 2003), <<https://www.imo.org/en/OurWork/Safety/Pages/OilTankers.aspx>>.

¹³⁴ European Commission, ‘Communication from the Commission to the European Parliament and the Council on Improving Safety at Sea in Response to the Prestige Accident’ COM(2002) 681 final (3 December 2002), pt II, s 6, <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52002DC0681>>; see also Juste and Bou 15–16.

¹³⁵ European Commission COM(2002) 681 final, pt II, s 6.

¹³⁶ Juste and Bou 6–11.

¹³⁷ *Trail Smelter Arbitration (United States v Canada)* (1938 and 1941) 3 RIAA 1905, 1965.

¹³⁸ *Trail Smelter* 1913, 1917, 1924–1926.

¹³⁹ *Trail Smelter* 1963–1965.

or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence".¹⁴⁰

The principle articulated in *Trail Smelter* has since been consolidated as the customary duty of prevention, under which a state must exercise due diligence to prevent activities within its jurisdiction or control from causing significant harm to the environment of other states.¹⁴¹ The application of the customary duty of prevention to shipping concerns a flag state's jurisdiction and supervision powers over vessels flying its flag. By analogy, the issue is whether a flag state has permitted activities under its jurisdiction that create a foreseeable risk of serious pollution affecting another state's coast.¹⁴² Registration and continued operation of vessels without adequate inspection, insurance, or maintenance clearly create a serious risk of transboundary environmental harm. Similarly, the duty of prevention may apply to coastal states and obligate them to take a stronger stance on shadow tankers to prevent serious long-term environmental harm.

2.6. Due Diligence and Effective Enforcement

In *Pulp Mills on the River Uruguay (Argentina v Uruguay)*, the ICJ elaborated on the customary principle of prevention and the due diligence required in its implementation.¹⁴³

The Court stated that a state must "use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State".¹⁴⁴ It characterized prevention as an obligation of due diligence.¹⁴⁵ This requires not only a regulatory framework, but also vigilance in enforcement and administrative control over private operators.¹⁴⁶

In 2024, ITLOS delivered an advisory opinion concerning the obligations of UNCLOS parties in relation to climate change and the protection of the marine environment.¹⁴⁷ The opinion is relevant to the interpretation of the Convention's environmental provisions, particularly the nature of the obligations imposed on states.

Article 192 of UNCLOS imposes an obligation to protect and preserve the marine environment. In considering the effects of climate change and ocean acidification, ITLOS addressed the due diligence required to give effect to that obligation.¹⁴⁸ The Tribunal referred to measures "as far-reaching and efficacious as possible" and a stringent standard of due diligence in view of the risks of serious and irreversible harm.¹⁴⁹

For flag states, the relevant question is whether supervision of registered vessels satisfies the applicable due-diligence standard. Structural integrity, valid P&I insurance, and compliance with MARPOL are among the matters a flag state is supposed to verify. Failures to verify or enforce applicable requirements therefore engage flag-state responsibility.

¹⁴⁰ *Trail Smelter* 1965.

¹⁴¹ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226, para 29; *Pulp Mills on the River Uruguay (Argentina v Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, para 101.

¹⁴² *Trail Smelter* 1963, 1965–1966.

¹⁴³ *Pulp Mills on the River Uruguay (Argentina v Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14.

¹⁴⁴ *Pulp Mills* para 101.

¹⁴⁵ *Pulp Mills* para 101.

¹⁴⁶ *Pulp Mills* para 197.

¹⁴⁷ ITLOS Advisory Opinion.

¹⁴⁸ ITLOS Advisory Opinion, paras 391, 396–397.

¹⁴⁹ ITLOS Advisory Opinion, para 399.

3. State Responsibility and Countermeasures

Countermeasures provide a potential legal basis for coastal states to restrict the passage of shadow-fleet vessels in response to internationally wrongful conduct by their flag states. Flag states have obligations under UNCLOS to exercise effective jurisdiction and control over their vessels and to enforce applicable safety and environmental requirements; systematic failures to fulfill these obligations may therefore engage state responsibility. Any countermeasures taken in response must meet substantive and procedural requirements, including that they are non-forcible, directed against the responsible state, proportionate, temporary, and, as far as possible, reversible. On this basis, this chapter proposes a process of identifying breaches by flag states, formally notifying them, and specifying the conditions under which restrictions on passage would be lifted. Russia presents an additional case: where Russia itself acts as the flag state, countermeasures may be considered in response to breaches of its UNCLOS obligations, while this chapter also examines Russia's aggression against Ukraine as a separate basis for countermeasures, including temporary restrictions on maritime navigation rights.

3.1. Countermeasures and Flag-State Responsibility

A breach of an international obligation may entitle an injured state to take countermeasures to induce compliance by the responsible state. Article 22 of ARSIWA addresses the preclusion of wrongfulness where conduct constitutes a countermeasure. It provides, in relevant part, that “[t]he wrongfulness of an act of a State not in conformity with an international obligation towards another State is precluded if and to the extent that the act constitutes a countermeasure taken against the latter State”.¹⁵⁰ The substantive and procedural requirements for reliance on countermeasures are considered in Section 3.1.2.

Countermeasures are a form of self-help within the decentralized system of international law.¹⁵¹ As explained by the ILC, they are a means by which injured states may seek to vindicate their rights and restore the legal relationship affected by an internationally wrongful act.¹⁵² Their usual purpose is cessation of an ongoing breach. They may also serve to secure reparation, subject to the applicable conditions.¹⁵³ Accordingly, they operate both as a means of implementing state responsibility and as a justification for conduct that would otherwise be inconsistent with an international obligation.

The issue considered here is whether a coastal state exposed to environmental harm or risks associated with alleged sabotage involving shadow tankers may invoke countermeasures against a responsible flag state. This requires identification of the flag state's breach, the coastal state's entitlement to invoke responsibility, and the obligations affected by the proposed response.

3.1.1. Flag-State Obligations under UNCLOS

It is the flag states that are primarily responsible for ensuring the vessels' safety and seaworthiness. Article 94 of UNCLOS requires a flag state to exercise effective jurisdiction and control over ships flying its flag. The obligation extends to administrative, technical, and social matters. Further, the flag state must take measures necessary to ensure safety at sea, including in relation to the construction, equipment, and

¹⁵⁰ ARSIWA art 22.

¹⁵¹ International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries' 75: "In the literature concerning countermeasures, reference is sometimes made to the application of a 'sanction', or to a 'reaction' to a prior internationally wrongful act; historically the more usual terminology was that of 'legitimate reprisals' or, more generally, measures of 'self-protection' or 'self-help'. The term 'sanctions' has been used for measures taken in accordance with the constituent instrument of some international organization, in particular under Chapter VII of the Charter of the United Nations—despite the fact that the Charter uses the term 'measures', not 'sanctions'. The term 'reprisals' is now no longer widely used in the present context, because of its association with the law of belligerent reprisals involving the use of force. At least since the Air Service Agreement arbitration, the term 'countermeasures' has been preferred, and it has been adopted for the purposes of the present articles."

¹⁵² ILC, ARSIWA Commentaries 128.

¹⁵³ ILC, ARSIWA Commentaries 131.

seaworthiness of ships; the use of signals; the maintenance of communications; and the prevention of collisions. Furthermore, Article 217 obligates flag states to enforce those rules against their ships wherever a violation occurs: prohibit sailing until requirements are met, investigate violations, institute proceedings, and provide penalties adequate to discourage violations. These are explicit treaty obligations owed to the other state parties to the Convention; therefore, such state parties are entitled to invoke countermeasures against the flag states that systematically violate UNCLOS.

3.1.2. Requirements for Lawful Countermeasures

The legality of countermeasures depends on their purpose, target, effects, and manner of implementation. The ILC commentary identifies five principal requirements, reflected in Articles 49 to 53 of ARSIWA. *First*, countermeasures must be non-forcible. *Second*, they must be directed against the responsible state, rather than third parties. *Third*, they must be temporary and, as far as possible, reversible in their effects, so that performance of the relevant obligations may resume. This reflects their purpose of inducing cessation and reparation, rather than imposing punishment. *Fourth*, countermeasures must be proportionate. *Fifth*, they must not depart from the obligations protected by Article 50(1), including obligations arising under peremptory norms of general international law. Under Article 52(1)(a) and (b), a state considering countermeasures must call upon the responsible state to fulfill its obligations, notify it of the decision to take countermeasures, and offer to negotiate.

3.1.3. Implementing Countermeasures against Flag States

The proposal examined here would use temporary restrictions on passage, including expulsion from territorial waters, in response to identified breaches by flag states. In order to rely on the doctrine of countermeasures, this report proposes the following course of action to the coastal states concerned:

1. **Identification of the responsible flag states and the relevant breaches.** The assessment would concern non-compliance with Articles 94 and 217 of UNCLOS, including registration and continued operation of substandard tankers and failures to address unlawful disabling of communications and identification equipment.
2. **Notice to the flag states concerned.** The communication would identify the alleged breaches, call for compliance, give notice of the contemplated countermeasures, and offer negotiations in accordance with the procedural requirements discussed above.
3. **Clear articulation of the list of conditions that would lead to cessation of countermeasures and restoration of passage rights.**
4. **Communication through bilateral and multilateral channels.** The notices and conditions could be communicated through bilateral diplomatic channels and within the IMO framework.

3.2. Countermeasures against Russia as a Flag State

The number of Russian-flagged shadow tankers has risen considerably in recent months. Therefore, Russia assumes direct responsibility for ensuring compliance with flag-state obligations under UNCLOS and relevant UN conventions. This removes the ambiguity associated with permissive third-country registries and creates clearer legal grounds for countermeasures against Russia under two distinct grounds: (i) violation of obligations owed to the state parties under UNCLOS; and (ii) countermeasures in response to the violation of the prohibition of aggression under the UN Charter.

The first ground applies to Russia as to any other shadow-fleet flag state and has been discussed above. The second ground is briefly described below. Generally, international law lacks enforcement mechanisms similar to those of national systems. The only quasi law-enforcement authority is the UN Security Council (UNSC), which is blocked by Russia's veto. Therefore, countermeasures become one of the few available

non-military options to enforce against a violating state such as Russia. The drafting history of ARSIWA indicates that countermeasures in general as well as third-party countermeasures were designed to provide redress in situations when the UNSC is blocked for political reasons.¹⁵⁴

By invading Ukraine first in 2014 and continuing its aggression from 2022 onward, Russia violated a number of peremptory norms of international law, such as the prohibition of aggression; the prohibition of crimes against humanity; the basic rules of international humanitarian law; and the prohibition of torture.¹⁵⁵ According to the ILC, “[p]eremptory norms of general international law (*jus cogens*) reflect and protect fundamental values of the international community. They are universally applicable and are hierarchically superior to other rules of international law.”¹⁵⁶ Further, the ILC states that *jus cogens* norms give rise to obligations owed to the international community as a whole (obligations *erga omnes*), in relation to which all states have a legal interest.¹⁵⁷

Article 2(4) of the UN Charter stipulates that “[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” Use of force is allowed only upon authorization by the UN Security Council or for the purpose of self-defense.¹⁵⁸ Further, as articulated by the ICJ in *Congo v Uganda*, “the prohibition against the use of force is a cornerstone of the United Nations Charter.”¹⁵⁹ The Nuremberg tribunal also stated that aggression is the “supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole.”¹⁶⁰

Russia’s violation of peremptory norms of international law was repeatedly confirmed by the UN General Assembly. On 2 March 2022, the UN General Assembly overwhelmingly adopted Resolution ES-11/1, whereby the General Assembly deplored “in the strongest terms the aggression by the Russian Federation against Ukraine in violation of Article 2(4) of the [UN] Charter”.¹⁶¹ On 14 November 2022, the UN General Assembly adopted Resolution ES-11/5, in which, in remarkably strong terms, the General Assembly stated that “the Russian Federation must be held to account for any violations of international law in or against Ukraine, including its aggression in violation of the Charter of the United Nations ... and that it must bear the legal consequences of all of its internationally wrongful acts, including making reparation for the injury, including any damage, caused by such acts”.¹⁶² Finally, in its resolution of 23 February 2023, the UN General Assembly called upon member states to redouble support for achieving a comprehensive, just, and lasting peace in Ukraine, consistent with the Charter.¹⁶³

Therefore, such a temporary countermeasure as limitation of maritime navigation rights is in compliance with UN General Assembly resolutions and meets procedural and substantive requirements for a lawful countermeasure.

Additionally, it should be noted that denial of maritime navigation was employed in support of international sanctions, but it was done only in the context of the UN Security Council regime. Specifically, sanctions

¹⁵⁴ ILC member Alain Pellet maintained that third-party countermeasures were “one of the essential consequences” of serious breaches of obligations *erga omnes* without which states would be “powerless” to deal with such breaches given that the UN Security Council frequently failed to do so because of political disagreements; for detail, see Martin Dawidowicz, *Third-Party Countermeasures in International Law* (Cambridge University Press 2017) 97.

¹⁵⁵ Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), Conclusion 23, Annex, <https://legal.un.org/ilc/texts/instruments/english/draft_articles/1_14_2022.pdf>.

¹⁵⁶ Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), Conclusion 2.

¹⁵⁷ Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), Conclusion 17(1).

¹⁵⁸ UN Charter, Chapter VII, arts 42 and 51.

¹⁵⁹ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)*, Judgment, I.C.J. Reports 2005, p. 168, para 148.

¹⁶⁰ Trial of the Major War Criminals Before the International Military Tribunal, Nuremberg, 14 November 1945–1 October 1946, vol. 1, 1947, p. 186.

¹⁶¹ UNGA Res ES-11/1 (2 March 2022) UN Doc A/RES/ES-11/1, para 2.

¹⁶² UNGA Res ES-11/5 (14 November 2022) UN Doc A/RES/ES-11/5, para 2.

¹⁶³ UNGA Res ES-11/6 (23 February 2023) UN Doc A/RES/ES-11/6, para 3.

on Iraq and the former Yugoslavia were accompanied by authorization to states to halt inward and outward shipping to inspect and verify cargoes.¹⁶⁴ Therefore, it is possible to argue that restrictions on maritime navigation used in support of sanctions are in line with international law; however, they are not available because of Russia's veto powers at the UN Security Council.

The analysis above supports a concrete way forward, anchored in the customary rules on state responsibility codified in ARSIWA. As regards the first ground, a coastal state whose coastline, fisheries, or offshore infrastructure is particularly exposed to substandard Russian-flagged tankers can be regarded as "specially affected" by Russia's breach of Articles 94 and 217 of UNCLOS and, therefore, as an injured state under Article 42(b)(i) of ARSIWA. The ILC itself gives the example of coastal states affected by pollution in breach of Article 194 of UNCLOS, which "should be considered as injured by the breach".¹⁶⁵ Such a state is entitled to take countermeasures against Russia under Article 49 of ARSIWA.

As regards the second ground, every state may invoke Russia's responsibility for the breach of the prohibition of aggression under Article 48(1)(b) of ARSIWA, but the right of non-injured states to take countermeasures is preserved only by the saving clause in Article 54, which the ILC left open in 2001 because state practice was then "sparse".¹⁶⁶ The injured-state route should therefore serve as the primary legal basis, with the aggression ground as a complementary justification.

Accordingly, it is recommended that the coastal states concerned act in a coordinated manner and:

- (i) formally call upon Russia to cease its breaches and to fulfill its obligations of cessation and reparation, notify it of the intended countermeasures, and offer to negotiate, as required by Article 52(1) of ARSIWA, while reserving the right to take urgent countermeasures necessary to preserve their rights under Article 52(2);
- (ii) confine the countermeasure to a temporary denial of passage through their territorial seas for Russian-flagged tankers that cannot demonstrate valid P&I insurance, recognized classification, and compliance with MARPOL and SOLAS, so that the measure is directed solely against Russia as the responsible state and remains reversible (Article 49(1)–(3));
- (iii) calibrate the measure to the gravity of the breaches and the environmental risks at stake (Article 51) and ensure that it involves no threat or use of force and respects obligations for the protection of fundamental human rights, including the safety of crews (Article 50(1)(a)–(b)); and
- (iv) terminate the measure as soon as/ if ever Russia has complied with its obligations (Article 53). Should a dispute concerning the measures be submitted to a court or tribunal under Part XV of UNCLOS, the countermeasures would not have to be suspended for as long as Russia's wrongful conduct continues, since Article 52(3) requires suspension only where the wrongful act has also ceased.

¹⁶⁴ UNSC Res 665 (25 August 1990) UN Doc S/RES/665, para 1; UNSC Res 787 (16 November 1992) UN Doc S/RES/787, para 12.

¹⁶⁵ ILC, ARSIWA Commentaries 119, commentary to art 42, para (12).

¹⁶⁶ ILC, ARSIWA Commentaries 139, commentary to art 54, para (6).

4. The Law of Naval Warfare

The law of naval warfare provides potential grounds for treating individual shadow-fleet vessels as military objectives, but the broader proposition that tankers may be targeted because they sustain Russia's war effort remains contested. This chapter first examines Russian and Ukrainian practice, including Russian attacks and threats against neutral merchant vessels in the Black Sea in 2022–2023, and concludes that the law of blockade did not provide a legal basis for this conduct. It then considers the concept of “war-sustaining objects”, under which tankers generating revenue for a belligerent could potentially qualify as military objectives, but notes that this approach is supported by only a limited number of states. Irrespective of this disputed concept, particular shadow-fleet vessels may become military objectives through their direct participation in military action, including by sailing in convoy with military vessels or aircraft, actively resisting visit or capture, contributing to intelligence gathering, carrying troops or military material, or operating under government control. Any attack must also comply with the rules protecting the marine environment. Environmental considerations do not in themselves prohibit attacks on oil tankers, but belligerents must have due regard to potential environmental damage and comply with the applicable rules on distinction, proportionality, and precautions. Given the particular vulnerability of semi-enclosed seas such as the Baltic and Mediterranean, this chapter also proposes considering protected zones in particularly sensitive marine areas where attacks against neutral merchant vessels would be excluded.

4.1. Merchant Vessels as Military Objectives

Russian attacks and threats against neutral merchant vessels, together with reported Ukrainian attacks against the shadow fleet, raise questions about state practice under the law of naval warfare. The following analysis considers the law of blockade, the concept of war-sustaining objects as military objectives, and complementary grounds arising from a merchant vessel's participation in military action.

4.1.1. Russia's Attacks on Neutral Merchant Vessels in 2022

In 2022, Russia repeatedly attacked neutral merchant vessels without any warning. A day before the launch of the Russian full-scale invasion of Ukraine, on 23 February 2022, the Yasa Jupiter, a large cargo ship owned by a Turkish company but flying the Marshall Islands flag, was hit by an explosion while *en route* to Romanian waters in the Black Sea. No state claimed responsibility for the explosion. The crew escaped the attack unharmed. On 25 February, the Moldovan-flagged tanker Millennial Spirit, owned by a Ukrainian company, was attacked with a missile. The Russian crew escaped the ship with only life jackets, as other life-saving equipment had been destroyed in a fire on board. On the same day, a missile hit the Panamanian-flagged cargo ship Namura Queen at the port of Odesa.¹⁶⁷

On 1 March 2022, the Russian Navy seized the cargo ship Helt, owned by an Estonian company, which was then used by the Russian Navy as a so-called defensive shield on the Ukrainian naval minefields off Odesa in the wake of the anticipated Russian amphibious landing. On 2 March 2022, a Russian naval missile reportedly hit the Bangladeshi-flagged ship Banglar Samriddhi in the port of Olvia, Ukraine, killing one crew member.¹⁶⁸

The Helt sank on 3 March 2022 near Odesa due to a suspected mine strike. The ship's crew members were rescued.¹⁶⁹ On the face of it, it appears that this was an unlawful attack on a Panama-flagged neutral merchant vessel. On the one hand, under the law of naval warfare, a merchant vessel flying the flag of a neutral state is only *prima facie* assumed to be a neutral ship, and the commander needs to decide

¹⁶⁷ Declan Bush, 'Ships hit by missiles as Ukraine forces defend Odessa and Mariupol' *Lloyd's List* (25 February 2022), <<https://www.lloydslist.com/LL1139981/Ships-hit-by-missiles-as-Ukraine-forces-defend-Odessa-and-Mariupol>>.

¹⁶⁸ Jonathan Saul and Ruma Paul, 'Two cargo ships hit by blasts around Ukraine, one seafarer killed' *Reuters* (3 March 2022), <<https://www.reuters.com/world/bangladesh-cargo-ship-hit-by-missile-crew-member-killed-bangladesh-official-2022-03-03>>.

¹⁶⁹ Karl Kivil, 'Odessa lähedal läks põhja Eesti firmale kuuluv kaubalaev' *ERR Uudised* (3 March 2022), <<https://www.err.ee/1608519365/odessa-lahedal-laks-pohja-eesti-firmale-kuuluv-kaubalaev>>.

whether the ship has neutral status based on information received from his superior officers. On the other hand, there is no basis to suggest that the Helt would have provided any military advantage to the Ukrainian military, as a consequence of which it could have lost its protection as a neutral merchant vessel. Unlike the previous attacks on neutral merchant vessels in the Black Sea, the Helt's crew seems to have been used as a human shield for mapping a safe sea route through the minefields for the anticipated Odesa landing, in clear violation of the law of naval warfare.

It is unclear from national practice and case law whether an attack on a merchant vessel can exceed the threshold of self-defense under Article 51 of the UN Charter. Between 2019 and 2022, this gray area of law was exploited in the Israeli-Iranian confrontation at sea, in the course of which the targets were primarily merchant vessels associated with either state, and in the 2019 mine attacks on tankers sailing in the Strait of Hormuz.¹⁷⁰

The question of whether an attack on a merchant vessel constitutes a right to armed self-defense was at the heart of a 2003 ruling by the ICJ in a dispute between the United States and Iran. In that case, the US argued that the 1987 attack on the Sea Isle City, a tanker flying its flag, during the Iran-Iraq War, constituted an armed attack that gave rise to its right of self-defense, while Iran contested it.

The ICJ did not take a clear position on this issue, but it did find that the US had failed to convincingly prove Iran's responsibility for the attack on the cargo ship and that the missile was directed at a specific ship (not programmed to simply hit a target in the same region).¹⁷¹ In the case of the 2022 attacks against neutral merchant vessels in the Black Sea, there is not sufficient evidence to demonstrate, by the standard set by the ICJ in its 2003 judgment, that the attacks were specifically directed against these ships. The exception is the attack on the Helt, since it was allegedly specifically boarded and targeted by the Russian soldiers. The 2003 ICJ judgment thus imposes restrictive conditions on the exercise of the right of armed self-defense in response to attacks on merchant vessels.

4.1.2. Russia's Blockade of the Ukrainian Coast

Russia's restrictions on navigation and control of access to the Ukrainian coast in 2022 raise the question of whether an effective blockade existed despite the absence of a formal declaration. Treating these measures merely as a *de facto* blockade undermines the humanitarian objectives of the law of naval warfare. This section therefore argues for a more dynamic interpretation, or relaxation, of the formal criteria of declaration and notification.

Officially, Russia did not take responsibility for its reported 2022 attacks against neutral merchant vessels. Russia had established a blockade in all but its name against Ukraine in the Black Sea and the Sea of Azov.¹⁷²

Blockade is a navigational restriction whose purpose is the effective prevention of access of all vessels and/or aircraft to and from specific coastal areas that are part of or under the control of an enemy state. Blockades must be effective and applied impartially to the vessels of all states (Rules 95 and 100 of the San Remo Manual). Rule 93 of the San Remo Manual provides: "A blockade shall be declared and notified to all belligerents and neutral States." According to Rule 94, "[t]he declaration shall specify the commencement, duration, location, and extent of the blockade and the period within which vessels of neutral States may leave the blockaded coastline."

¹⁷⁰ Alexander Lott, *Hybrid Threats and the Law of the Sea: Use of Force and Discriminatory Navigational Restrictions in Straits* (Brill Nijhoff 2022) 131ff.

¹⁷¹ *Oil Platforms (Islamic Republic of Iran v United States of America)*, Judgment, I.C.J. Reports 2003, p. 161, para 64.

¹⁷² Alexander Lott, 'Concluding Observations', in Lott, *Maritime Security Law in Hybrid Warfare* 382–385.

The declaration and notification of a blockade were introduced into customary law with the adoption of the 1909 London Declaration,¹⁷³ which stipulates detailed requirements on the communication of the establishment of a blockade in Articles 8–16. However, that marked an era where declared wars of aggression were still the *modus operandi* of international affairs and, in principle, lawful acts under international law. In these historical circumstances, the pompous notification and declaration of the establishment of a blockade was practical. By contrast, for the current customary international law on this matter, there seems to be no moral or practical imperative to honor this procedure. The current law of armed conflict is concerned with the protection of civilian objects from attacks. In this context, the requirements of notification and declaration of a blockade need to be interpreted more dynamically to promote the humanitarian causes of the law of naval warfare.

In an era of unlawful wars of aggression and undeclared armed conflicts, interpreting the criteria of declaration and notification of a blockade dynamically is necessary to ensure the relevance and viability of the rules of blockade to contemporary armed conflicts. Therefore, the expert manuals on the law of naval warfare should consider returning to the legal criteria of a blockade as stipulated under the 1856 Paris Declaration,¹⁷⁴ which did not make any reference to criteria of declaration and notification of a blockade.

Alternatively, it would be possible to relax the criteria of notification and declaration by simply stating that a blockade shall be notified to all belligerents and neutral states (Rule 93 of the San Remo Manual) and that the notification shall specify the commencement, duration, location, and extent of the blockade (Rule 94). Thus, the requirement of notification would be retained in the relevant rules. By contrast, references to the declaration of a blockade could be deleted (Rules 93, 94, and 101–102 of the San Remo Manual¹⁷⁵).

For example, in the Iran-Iraq armed conflict (tanker war) in 1980–1988, both belligerents imposed an undeclared blockade against each other. In more recent state practice, a clear declaration of a blockade would have been incompatible with Russia's official position that it is not at war with Ukraine and instead had launched a "special military operation". In this context, from the aggressor state's perspective, the declaration of a blockade would have been rather nonsensical as it would have, *ipso jure*, implied the existence of an international armed conflict.

Based on its complete control over the Kerch Strait, Russia was able, in spring and early summer of 2022, to cut off the Sea of Azov and Ukraine's port city Mariupol from the rest of the world. In the same period, Russia's blockade of the southwestern part of Ukraine's coastline, including Odesa, was also effective. The Russian Federal Agency for Maritime and River Transport internationally communicated its announcement of 24 February 2022: "Due to a warning received from the Russian Defense Ministry's Black Sea Fleet, amid the beginning of antiterrorist operations at 4 a.m. on February 24th, navigation in the Sea of Azov was suspended until further notice."¹⁷⁶

The next day, on 25 February 2022, the Navigational Warning Service of the Russian Department of Navigation and Oceanography (affiliated with the Russian Ministry of Defence) declared via navigational telex (NAVTEX) that the northwestern part of the Black Sea north of parallel 45°21'N is "prohibited for navigation

¹⁷³ Declaration concerning the Laws of Naval War (London, 26 February 1909), <<https://ihl-databases.icrc.org/assets/treaties/255-IHL-31-EN.pdf>>.

¹⁷⁴ Declaration Respecting Maritime Law (Paris, 16 April 1856), <<https://ihl-databases.icrc.org/en/ihl-treaties/paris-decl-1856>>.

¹⁷⁵ In parallel, the requirement of the period of grace could be introduced in Rule 95 of the San Remo Manual, for example, along the following lines: "A blockade must be effective. The question whether a blockade is effective is a question of fact. The blockading belligerent shall allow the vessels of neutral States to leave the blockaded coastline in a reasonable time."

¹⁷⁶ 'Rosmorrechflot confirms suspended navigation in Sea of Azov' *Interfax* (24 February 2022), <<https://interfax.com/newsroom/top-stories/73960/>>.

due to counterterrorist operations carried out by Russian Navy. Ships and vessels in this area will be regarded as a terrorist threat".¹⁷⁷

Russia repeatedly launched missile strikes against neutral merchant vessels in the northwestern part of the Black Sea, and its forces captured at least one neutral merchant vessel (Helt) in the area. In legal scholarship, the dominant view is that Russia's blockade did not satisfy the legal requirements of declaration and notification.¹⁷⁸ The majority view seems to hold that Russia's actions in the Black Sea amounted to a *de facto* blockade.

Commander Fink concludes in relation to the situation in the Sea of Azov: "[A]lthough different factors have effectively minimized maritime traffic into and from the Ukrainian ports in the Sea of Azov, Russia has not established a naval blockade in the Sea of Azov. ... Apart from an unspecified announcement of suspension, nothing more indicates that Russia has established a blockade that might give Russian naval and air forces enforcement powers against merchant vessels." In support of this argument, Commander Fink refers to the press announcement of the Russian Federal Agency for Maritime and River Transport of 24 February 2022. According to this announcement: "Navigation in the Kerch Strait can take place; it was not suspended; however, traffic is minimal there because vessels have nowhere to go after navigation in the Sea of Azov was temporarily suspended."¹⁷⁹ Yet the announcement made it clear that Russia only permitted the marginal cross-strait navigation between the Kerch Strait's two coasts on Crimea and the Russian mainland coast.¹⁸⁰ Thus, that announcement did not concern passage between the Sea of Azov and the Black Sea, which was suspended.

In addition, even if Russia allowed some commercial ships to leave—but not to enter—the Sea of Azov at the end of February, this did not have a real impact on the overall effectiveness of the months-long blockade against the Ukrainian coast on the Sea of Azov. This rather followed the normal practice by which the blockading force provides a short period of grace for neutral ships to leave the blockaded area. Furthermore, if Russia, hypothetically, later allowed some ships to enter or leave its ports in the Sea of Azov and navigate through the Kerch Strait, this would not render the blockade against Ukraine's coast on the Sea of Azov ineffective. It is doubtful that any ships from the Ukrainian ports of Berdyansk or Mariupol left the Sea of Azov as the war progressed. But even if such exceptional instances occurred, they would not render the blockade ineffective. The occurrence of some isolated breaches does not amount to lifting a blockade. To some extent, vessel traffic in the Sea of Azov resumed only in late June 2022 (see Map 6).

The *de facto* blockade did not stop Russia from systematically attacking neutral merchant vessels as if they had breached the blockade. In fact, the rise of the concept of *de facto* blockade has no legal implications. It is a similar concept to military exclusion zones in naval warfare, since they do not legally adversely affect the legitimate uses of defined areas of the sea, and the same body of law applies both inside and outside the zone (Rules 105–106 of the San Remo Manual).

In private talks, some state representatives have rejected the legal classification of Russia's actions in the Black Sea as a blockade for the reason that this would grant Russia the right to attack ships that attempt to breach a blockade. However, the situation in the Black Sea in the winter and spring of 2022 (in fact, since the first days of the Russian full-scale invasion on 24 February 2022) illustrates that the question of the legal existence of a

¹⁷⁷ Correspondence uploaded by GCaptain.com at <<https://gcaptain.com/wp-content/uploads/2022/03/Russian-gmdss-warning.jpg>>, cited in Raul Pedrozo, 'Maritime Exclusion Zones in Armed Conflicts' *Articles of War* (12 April 2022).

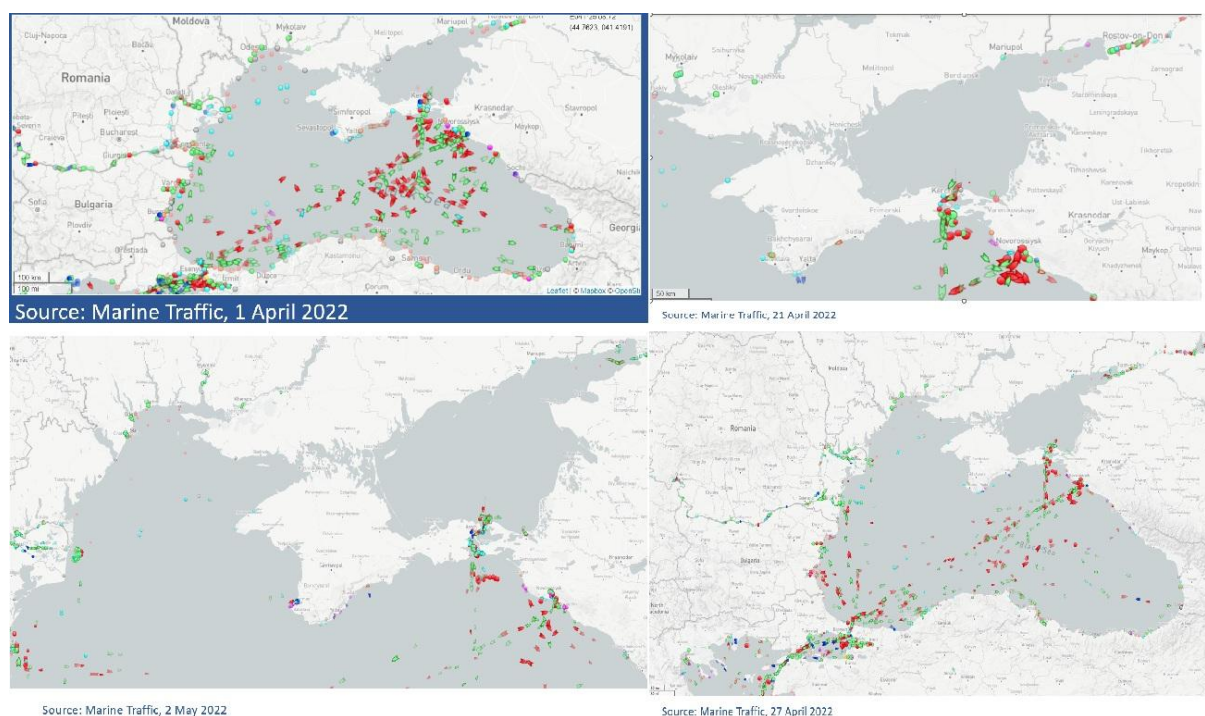
¹⁷⁸ Dariusz Rafał Bugajski, 'Naval Blockade of Ukraine's Black Sea Ports in the Light of International Law', in Lott, *Maritime Security Law in Hybrid Warfare* 300ff; Raul Pedrozo, 'Russia-Ukraine War at Sea: Naval Blockades, Visit and Search, and Targeting War-Sustaining Objects' *Articles of War* (25 August 2023); Shani Friedman, 'To Blockade or not to Blockade? The Legal Status of Russia's Suspension of Shipping in the Sea of Azov' (2024) *Israel Law Review* 262–263; Martin Fink, 'The War at Sea: Is there a Naval Blockade in the Sea of Azov?' *Articles of War* (24 March 2022).

¹⁷⁹ 'Navigation in Kerch Strait not suspended – Russian agency' *Interfax* (24 February 2022), <<https://interfax.com/newsroom/top-stories/74036>>.

¹⁸⁰ *Ibid.*

blockade is irrelevant in the context of whether it prevented attacks against neutral merchant vessels. In 2022, unwarned and unlawful attacks against neutral merchant vessels were widespread in the Black Sea.

**Map 6. International navigation in the Black Sea and Sea of Azov
on (clockwise) 1 April, 23 April, 27 April, and 2 May 2022**



Source: Marine Traffic (retrieved by the author).

The recognition of the concept of a *de facto* blockade paves the way for the belligerent to attack civilian objects in the area. The adoption of the *de facto* blockade concept benefits the blockading power, whereas it adversely impacts civilians both in the blockaded area at sea and on the coast. The *de facto* blockade does not entitle, for example, the International Committee of the Red Cross (ICRC) to organize shipments of humanitarian supplies to the blockaded conflict zone (e.g., Mariupol in spring 2022), which is explicitly permitted under the rules of blockade (Rules 103–104 of the San Remo Manual).

In essence, the concept of a *de facto* blockade is an unwelcome development in state practice from the perspective of the humanitarian objectives of the law of naval warfare. The law has mostly adapted to the reality of undeclared wars by determining the existence of an armed conflict based on objective facts. Should not the same approach be adopted for determining the existence of a blockade?

4.1.3. Russia's 2023 Threats against Merchant Vessels

Russia's July 2023 threat to treat all ships heading to Ukrainian ports as potential carriers of military cargo could not be justified by the law of blockade. Even where a blockade exists, attacks against neutral merchant vessels are subject to requirements concerning reasonable grounds, prior warning, and intentional refusal to stop or resistance to visit, search, or capture. These conditions were not satisfied in the reported 2022 attacks or the 2023 threat.

In July 2023, Russia's Ministry of Defence issued a statement, according to which "from 00.00 Moscow time on 20 July 2023, all vessels sailing in the waters of the Black Sea to Ukrainian ports will be regarded as potential carriers of military cargo."¹⁸¹ Russia clarified that "the countries of such vessels will be

¹⁸¹ The Embassy of the Russian Federation in the Republic of India, 'Russian Defence Ministry statement in connection with the end of the Black Sea Grain Initiative' Press Statement (19 July 2023), https://india.mid.ru/en/news/russian_defence_ministry_statement_in_connection_with_the_end_of_the_black_sea_grain_initiative/.

considered to be involved in the Ukrainian conflict on the side of the Kiev regime.”¹⁸² Based on the above analysis of the law of blockade in the context of naval warfare in the Black Sea, was Russia entitled to launch the reported attacks against neutral merchant vessels in 2022 and threaten to attack merchant vessels in 2023 under the law of armed conflict at sea?

In response to the Russian declaration, Ukraine stated:

Norms of international humanitarian law prohibit any attacks against vessels of neutral states if they do not engage in belligerent acts or do not support military efforts. ... Russia’s actions cannot be justified by any norms of international law, including the belligerent’s right to blockade. Russia’s declaration has no legitimate direct military objective. Instead, it is intended to intimidate neutral states. Russia’s declaration covers the entire Black Sea, not just an area immediately around Ukrainian ports, and, moreover, does not make exceptions for medical and other humanitarian considerations, as is required by the laws of naval warfare.¹⁸³

Even if states recognized the existence of a blockade in the Black Sea at the time, the law of blockade could not have justified Russia’s attacks against neutral merchant vessels in 2022 and threats of force in July 2023. First, under Rule 94 of the San Remo Manual, a blockading power is required to provide a period of grace for ships to leave the blockaded ports and coastline, such as Odesa, where the merchant vessels were attacked in the wake of the Russian invasion in February and March 2022.

Second, under Rule 67(a) of the San Remo Manual, neutral merchant vessels could be attacked only if they have been believed on reasonable grounds to be carrying contraband or breaching a blockade, but even then a prior warning must be issued in relation to which the ships intentionally and clearly had refused to stop, or intentionally and clearly resisted a visit, search, or capture.¹⁸⁴ In the above-described cases of attacks against neutral merchant vessels in 2022 and Russia’s threat to resume its attacks in 2023, these conditions for the Russian attacks against neutral merchant vessels were not satisfied. Therefore, the law of blockade could not have granted Russia the right to conduct such attacks or to issue the threat of force in 2023.

4.1.4. Shadow-Fleet Tankers as War-Sustaining Objects

Could tankers belonging to the Russian shadow fleet serve as military objectives in the context of the armed conflict between Russia and Ukraine? Legally, can they be categorized as civilian objects that contribute to a belligerent state’s war-sustaining effort from the perspective of the ongoing international armed conflict in Europe? According to Article 52(2) of Additional Protocol I¹⁸⁵ (AP I) and Rule 40 of the San Remo Manual on International Law Applicable to Armed Conflicts at Sea, military objectives are “those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage”.

Tankers belonging to the Russian shadow fleet directly contribute to Russia’s war effort because of Russia’s revenues from the sale of oil to the global market. Thus, it is possible that tankers belonging to the Russian shadow fleet could be categorized as civilian objects that contribute to a belligerent state’s war-sustaining effort, thereby potentially making them legitimate military objectives. The Newport Manual states: “In this view, enemy export of certain goods, like crude oil, renders a vessel a military objective because the enemy

¹⁸² Ibid.

¹⁸³ Ministry of Foreign Affairs of Ukraine, ‘Statement on the declaration of the Ministry of Defense of the Russian Federation regarding the potential use of force against merchant vessels in the Black Sea’ Press Statement (20 July 2023), <<https://norway.mfa.gov.ua/en/news/statement-mfa-ukraine-declaration-ministry-defense-russian-federation-regarding-potential-use-force-against-merchant-vessels-black-sea>>.

¹⁸⁴ For the United States’ similar perspective on this, see Pedrozo, ‘Russia-Ukraine War at Sea’.

¹⁸⁵ Art 52(2) of the Additional Protocol I to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (Geneva, adopted 8 June 1977, in force 7 December 1978).

earns revenue that contributes to its war-fighting effort.”¹⁸⁶ In this context, a tanker that otherwise flies a neutral state’s flag could become a military objective solely due to exporting a belligerent state’s crude oil.

The foregoing holds true also in respect of enemy merchant vessels. The January 2026 *Marinera/Bella 1* incident in the North Atlantic and the boardings of suspected stateless vessels by Estonia, France, Belgium, Sweden, the United Kingdom, and EUNAVFOR show that ships forming part of Russia’s shadow fleet have now increasingly openly started to fly a Russian flag. The suspected stateless tanker was boarded by the United States’ Maritime Security Response Team with the support of the United Kingdom even though the crew had painted a Russian flag on the ship, and it was reportedly escorted by a Russian submarine.¹⁸⁷ From the perspective of the law of naval warfare, the incorporation of shadow-fleet ships into Russia’s registry makes it easier for a belligerent to identify potential enemy merchant vessels.

However, most states do not subscribe to the view that military objectives include civilian objects contributing to a belligerent state’s war-sustaining effort. The Newport Manual clarifies that besides the United States, India is the only other main example of a state that supports the concept of war-sustaining objects.¹⁸⁸ But it seems that Ukraine’s attacks against the tankers belonging to the Russian shadow fleet (and other objects of Russia’s infrastructure for the export of oil, such as ports) signal Ukraine’s potential support for the United States’ long-held position on war-sustaining objects as military objectives.¹⁸⁹

Notably, Ukraine’s President Zelenskyy stated in February 2026: “We do not have to choose—whether we strike a military target or energy . . . it’s the same thing . . . We either build weapons and strike their weapons. Or we strike the source where their money is generated and multiplied. And that source is their energy sector . . . All of this is a legitimate target for us.”¹⁹⁰ President Zelenskyy’s statement seems to support the hypothesis that Ukraine has adopted the position on war-sustaining objects advanced by the United States but also shared by India. This is further reinforced by a comment made by a representative of the Security Service of Ukraine (SBU) in December 2025 on the attack against the oil tanker *Qendil* in the Mediterranean Sea, according to which: “Russia used this tanker to circumvent sanctions and earn money that went to the war against Ukraine . . . Therefore, from the point of view of international law and the laws and customs of war, this is an absolutely legitimate target for the SBU.”¹⁹¹ However, the United States and possibly India could potentially be seen as persistent objectors to the customary rule that mere war-sustaining efforts do not render an object a military objective. Should this be the case, then for Ukraine, it would be more difficult to demonstrate that it can rely on persistent objector status on this specific matter.

In July 2026, Ukraine launched Operation MoLoChKa in the Sea of Azov and Black Sea, which is being run by the SBU and the Unmanned Systems Forces of Ukraine. By September 2026, three hundred Russian merchant/shadow-fleet ships had been attacked, most of them oil tankers that were carrying oil to Crimea to relieve its state of emergency that was declared due to fuel shortage.¹⁹² In addition, at the end of July, Ukraine

¹⁸⁶ Newport Manual 2025 150–151.

¹⁸⁷ Charles J. Dunlap Jr, ‘Prof Pete Pedrozo on “Maritime Enforcement Measures Against Sanctioned Tankers and Cargo in Peace and War” (Part I)’ *Lawfire* (15 January 2026), <<https://sites.duke.edu/lawfire/2026/01/15/prof-pete-pedrozo-on-maritime-enforcement-measures-against-sanctioned-tankers-and-cargo-in-peace-and-war-part-i/>>.

¹⁸⁸ Newport Manual 2025 150.

¹⁸⁹ Wolff Heintschel von Heinegg, ‘The Ukrainian Attacks against Gambian-Flagged Oil Tankers in the Black Sea’ *Articles of War* (8 December 2025), <<https://lieber.westpoint.edu/ukrainian-attacks-against-gambian-flagged-oil-tankers-black-sea>>. For an opposing view, see Himanil Raina, ‘Targeting Third-State Merchant Vessels: Military Objectives and War-Sustaining Objects in the Russo-Ukrainian Armed Conflict’ *EJIL: Talk!* (12 December 2025), <<https://www.ejiltalk.org/targeting-third-state-merchant-vessels-military-objectives-and-war-sustaining-objects-in-the-russo-ukrainian-armed-conflict>>.

¹⁹⁰ ‘Ukraine War Briefing: Zelenskyy Says Russian Energy Sites Are Legitimate Targets’ *The Guardian* (9 February 2026), <<https://www.theguardian.com/world/2026/feb/09/ukraine-war-briefing-zelenskyy-says-russian-energy-sites-are-legitimate-targets>>.

¹⁹¹ Tucker Reals and Haley Ott, ‘Putin Says Ukraine Not Ready for Peace, as Kyiv Claims First Strike on “Shadow Fleet” Tanker in Mediterranean’ *CBS News* (19 December 2025), <<https://www.cbsnews.com/news/russia-putin-ukraine-war-kyiv-claims-strike-shadow-fleet-tanker-mediterranean>>.

¹⁹² ‘Ukraine’s Drone Forces Hit 300 Russian Shadow Fleet Tankers in 3 Months’ *Kyiv Post* (22 September 2026), <<https://www.kyivpost.com/post/85121>>.

attacked ships in the Caspian Sea that, according to President Zelenskyy, were transporting military cargo between Russia and Iran.¹⁹³ Also at the end of July, the United States asked Ukraine to stop attacking oil tankers.¹⁹⁴ In the middle of August, Ukraine proposed to Russia that both states would stop attacking ships in the Black Sea.¹⁹⁵ But the two states did not reach an agreement and the attacks continued. By September, not only exports from the Russian-held Sea of Azov area, but also from the Ukrainian Black Sea ports had nearly halted due to the attacks leading to an expected 10 percent increase in global food prices.¹⁹⁶ Based on the practice of Russia in its war of aggression against Ukraine, in particular its fatal and repeated attacks against neutral merchant vessels in the Black Sea in the spring of 2022, and against the Ukrainian ports and grain warehouses in 2023, it seems that even Russia's attacks on merchant vessels could only find their legal basis in the concept of war-sustaining objects as military objectives.¹⁹⁷ However, unlike Ukraine, there are no political declarations by Russian leaders or high-level officials to support such an interpretation of law. So far, traditionally, Russia and Ukraine have not been considered as such states that support the US position of war-sustaining objects.

Based on Russia's reported attacks and explicit threats against neutral merchant vessels in 2022 and 2023, as well as Ukraine's reported attacks against tankers forming part of Russia's shadow fleet, it appears that both Russia and Ukraine have intentionally targeted such civilian objects that contribute to a belligerent state's war-sustaining effort. However, the concept of war-sustaining objects had a limited relevance for Russia in 2022, since the attacked vessels were mostly not carrying Ukrainian cargo, and the ships had mostly not entered or planned to visit Ukrainian ports. Arguably, the opposite is true in relation to the 2026 Russian attacks on Ukrainian port infrastructure and ships carrying Ukrainian agricultural exports. By August 2026, the Black Sea Grain Corridor was effectively closed due to systematic Russian attacks on merchant vessels and port infrastructure, whereas Ukrainian strikes had halted also Russia's grain and wheat export through the Sea of Azov and the Black Sea.¹⁹⁸

If indeed Ukraine has adopted the United States-favored concept of war-sustaining objects as forming part of military objectives, then the lawfulness of the attacks against the shadow-fleet tankers should be assessed, *inter alia*, from the perspective of whether they give due regard to the protection of the marine environment. This is assessed in Section 4.2 below.

Next, the potential complementary legal bases for Ukraine's reported attacks against Russian shadow-fleet ships are assessed irrespective of whether the ships can be treated as military objectives based on the concept of war-sustaining objects.

4.1.5. Shadow-Fleet Vessels as Military Objectives

Furthermore, in accordance with the law of armed conflict at sea, merchant vessels may become military objectives based on their participation in military action. Rule 60 of the San Remo Manual stipulates: "The following activities may render enemy merchant vessels military objectives:

¹⁹³ Edward Wong, 'Ukraine's Strike on Iranian Ship Shows How Two Wars Could Spiral' *The New York Times* (6 October 2026), <<https://www.nytimes.com/2026/07/31/us/politics/iran-ukraine-war.html>>; Emil Avdaliani, 'Ukraine War Bleeds into the Caspian' *CEPA* (14 August 2026), <<https://cepa.org/article/ukraine-war-bleeds-into-the-caspian>>.

¹⁹⁴ Christopher Miller, 'JD Vance Asked Ukraine to Halt Strikes on Tankers Using Russian Port' *Financial Times* (12 August 2026), <<https://www.ft.com/content/725b4d15-bd8d-4083-a04e-db016338af2e>>.

¹⁹⁵ Luke Harding and Andrew Roth, 'Ukraine "Offering Russia Deal to Halt Attacks on Civilian Ships in Black Sea"' *The Guardian* (13 August 2026), <<https://www.theguardian.com/world/2026/aug/13/ukraine-proposes-deal-with-russia-to-halt-attacks-on-civilian-ships-in-black-sea>>.

¹⁹⁶ James C. Reynolds, 'The Crippling Effect We're All Feeling From the Deadlock in Ukraine's War with Russia' *Independent* (5 October 2026), <<https://www.independent.co.uk/news/world/europe/ukraine-war-food-prices-russia-uk-b3061368.html>>.

¹⁹⁷ *Newport Manual* 2025 151 n 574.

¹⁹⁸ 'Ukrainian Strikes Halt Most Russian Grain Exports in the Black Sea' *Moscow Times* (17 August 2026), <<https://www.themoscowtimes.com/2026/08/17/ukrainian-strikes-halt-most-russian-grain-exports-in-the-black-sea-a93517>>; Olena Harmash, 'Ukraine's Farmers Despair as Russia's Black Sea Blockade Traps Their Harvest' *Reuters* (13 August 2026), <<https://www.reuters.com/world/ukraines-farmers-despair-russias-black-sea-blockade-traps-their-harvest-2026-08-13>>.

- (a) engaging in belligerent acts on behalf of the enemy, e.g., laying mines, minesweeping, cutting undersea cables and pipelines, engaging in visit and search of neutral merchant vessels or attacking other merchant vessels;
- (b) acting as an auxiliary to an enemy's armed forces, e.g., carrying troops or replenishing warships;
- (c) being incorporated into or assisting the enemy's intelligence gathering system, e.g., engaging in reconnaissance, early warning, surveillance, or command, control and communications missions;
- (d) sailing under convoy of enemy warships or military aircraft;
- (e) refusing an order to stop or actively resisting visit, search or capture;
- (f) being armed to an extent that they could inflict damage to a warship; this excludes light individual weapons for the defence of personnel, e.g., against pirates, and purely deflective systems such as chaff; or
- (g) otherwise making an effective contribution to military action, e.g., carrying military materials."

In respect of such instances, Wolff Heintschel von Heinegg has concluded: "Without prejudice to the principles applicable in the law of armed conflict at sea enemy merchant ships are military objectives and may be attacked at any time without warning".¹⁹⁹ The San Remo Manual clarifies that any attack on these vessels is subject to the basic rules set out in its Rules 38–46. Von Heinegg clarifies that attacking and sinking such a commercial vessel turned military objective is, in principle, lawful if it "offers a definite military advantage and there are no other means available."²⁰⁰ For this to happen, the ship must have lost its status as a merchant ship within the meaning of the 1936 London Protocol.²⁰¹

Sailing in Convoy with Enemy Warships or Military Aircraft

Sailing in convoy with enemy warships or military aircraft may render an enemy merchant vessel a military objective under Rule 60(d) of the San Remo Manual. The reported escorts of the Jaguar and the Marinera, together with Russian statements about protecting shadow-fleet ships, illustrate the potential implications for Ukraine if such vessels begin sailing in convoy with Russian forces.

In response to Estonia's maritime interdiction operation against the suspected stateless ship Jaguar in May 2025 (see Section 1.1 above), Russia dispatched a fighter jet to the area, which breached Estonia's airspace. In response, the NATO Baltic Air Policing Mission scrambled Portuguese F-16 fighter jets that were stationed in Estonia to shadow the Russian aircraft.²⁰² In the aftermath of the incident, the chairman of Russia's Maritime Collegium, Mr. Nikolai Patrushev,²⁰³ announced that the Russian president supported proposals to start escorting ships belonging to the Russian shadow fleet in the Baltic Sea, and in particular the Gulf of Finland, to the area of operation of NATO's Baltic Sentry mission for the protection of submarine cables and pipelines.²⁰⁴

Thus far, Russia escorting its shadow-fleet ships with its warships or military aircraft is a rare occurrence. The main exceptions are the Jaguar, which was escorted by a Russian fighter jet in the Gulf of Finland in May 2025, and the Marinera, which was reportedly escorted by a Russian submarine off the UK in January

¹⁹⁹ Wolff Heintschel von Heinegg, 'The Law of Armed Conflict at Sea', in Dieter Fleck (ed), *The Handbook of International Humanitarian Law* (2nd edn, Oxford University Press 2009) 502.

²⁰⁰ Ibid 502–503.

²⁰¹ Procès-verbal, London 6 November 1936, <<https://ihl-databases.icrc.org/en/ihl-treaties/submarine-warfare-rules-pv-1936/proces-verbal>>.

²⁰² Joseph Ataman, 'Russian Fighter Jet Protects "Shadow Fleet" Vessel in First Such Move by Moscow, Officials Say' *CNN* (21 May 2025), <<https://edition.cnn.com/2025/05/20/europe/russian-fighter-jet-shadow-fleet-intl-cmd>>; Helen Wright, 'Russian Fighter Jet Breaches Estonia's Airspace' *ERR News* (14 May 2025), <<https://news.err.ee/1609694252/russian-fighter-jet-breaches-estonia-s-airspace>>.

²⁰³ Mr. Patrushev is an advisor to the Russian president and former secretary of the Security Council of Russia and director of the Russian Federal Security Service.

²⁰⁴ 'Putin Backs Proposals to Respond to Baltic Shipping Restrictions' *TASS* (26 May 2025), <<https://tass.ru/politika/24049135>>; Vahur Lauri, 'Experts: Russia Lacks Resources to Escort All of Its Shadow Fleet Vessels' *ERR News* (28 May 2025), <<https://news.err.ee/1609707090/experts-russia-lacks-resources-to-escort-all-of-its-shadow-fleet-vessels>>.

2026. However, Russia's ambassador to the United Kingdom, Mr. Andrei Kelin, stated in January 2026 that Russian government-operated ships may start to escort merchant vessels belonging to the shadow fleet.²⁰⁵ Should this imply that some ships belonging to Russia's shadow fleet will start sailing in convoy with Russia's warships or military aircraft, then they would become military objectives for Ukraine in accordance with Rule 60(d) of the San Remo Manual.

Refusing an Order to Stop or Actively Resisting Visit, Search, or Capture

Refusing an order to stop or actively resisting visit, search, or capture can render a merchant vessel a military objective in accordance with Rule 60(e) of the San Remo Manual. In this context, mere passive resistance to visit, search, and capture does not suffice. Von Heinegg explains that for the belligerent to target such a ship, the resistance must be active.²⁰⁶

If private military or security personnel, active-duty soldiers, or members of the crew of a ship forming part of the Russian shadow fleet actively resist a Ukrainian operation to board, search, and possibly capture the ship, then Ukraine is entitled to attack and, if necessary, sink the vessel.

Shadow-Fleet Ships Forming Part of the Enemy's Intelligence Collection System

In specific cases, it might be possible for Ukraine to treat some ships that belong to the Russian shadow fleet as part of the enemy's intelligence collection system or contributing to its objectives within the meaning of Rule 60(c) of the San Remo Manual. Reportedly, some merchant ships belonging to the Russian shadow fleet have been carrying significant amounts of spying equipment.²⁰⁷ If such ships enter the Black Sea, then they could potentially be used to monitor Ukrainian forces.

Furthermore, on some occasions, ships belonging to the Russian shadow fleet have allegedly been carrying Russia's high-level intelligence officers. For example, according to media reports, the head of Russia's military intelligence agency's (GRU) Department of Special Tasks on hybrid warfare unit and operations in Africa was killed by a Ukrainian drone strike against the Qendil off the Libyan coast.²⁰⁸ This attack can also be assessed from the perspective of a belligerent's troop deployment (see the discussion below under "Ships Carrying Troops and Material to the Military or Being under the Orders or Control of an Agent Placed on Board by the Enemy Government").

In the ongoing armed conflict, certain ships that contribute to Russia's intelligence collection system can be considered by Ukraine as military objectives even if ships belonging to the Russian shadow fleet are not otherwise treated as war-sustaining objects and thereby military objectives. Potentially, such ships can be attacked without prior warning, but the attack needs to be supported by a concrete prior political decision to that effect.²⁰⁹

Ships Carrying Troops and Material to the Military or Being under the Orders or Control of an Agent Placed on Board by the Enemy Government

There are reports of some tankers belonging to the Russian shadow fleet being crewed by one or two soldiers wearing a camouflage uniform and speaking Russian. Russia might use such a precautionary measure to protect certain tankers from the interdiction operations. For example, the coastal state's

²⁰⁵ 'Russia Warns UK Not to Interfere With Shadow Fleet Tankers' *The Maritime Executive* (19 January 2026).

²⁰⁶ Von Heinegg, 'The Law of Armed Conflict at Sea' 504.

²⁰⁷ Michelle Wiese Bockman, 'Russia-linked cable-cutting tanker seized by Finland "was loaded with spying equipment"' *Lloyd's List* (27 December 2024), <<https://www.lloydslist.com/LL1151955/Russia-linked-cable-cutting-tanker-seized-by-Finland-was-loaded-with-spying-equipment>>.

²⁰⁸ Mark Law Hitchings, 'Reports say Ukrainian forces killed Russian general' *Salisbury Journal* (30 December 2025), <<https://www.salisburyjournal.co.uk/news/25730757.reports-say-ukrainian-forces-killed-russian-general>>; Peter Beaumont and Pjotr Sauer, 'Ukraine attacks Russian "shadow" tanker off Libyan coast' *The Guardian* (19 December 2025), <<https://www.theguardian.com/world/2025/dec/19/ukraine-attacks-russian-shadow-tanker-off-libyan-coast>>.

²⁰⁹ Von Heinegg, 'The Law of Armed Conflict at Sea' 503–504.

interdiction might be due to the suspicion that the ship is stateless or that the ship has damaged critical offshore infrastructure by dragging its anchor along the seafloor.

Pursuant to Rule 60(b) of the San Remo Manual, if Russia protects tankers belonging to its shadow fleet in the European maritime area with armed guards belonging to the Russian army or other state security services, then such specific ships might be potentially perceived by Ukraine as military objectives. Furthermore, if a merchant vessel is under the orders or control of an agent placed on board by the Russian government or in its exclusive employment, then such a merchant vessel can be considered as a military objective.²¹⁰ However, if the guards on board a merchant vessel are not soldiers of the Russian army, and instead are private military or security personnel, then the ship is not used to transport troops. In addition, the Russian government maintains plausible deniability over its potential command over the ship, since it is difficult to prove that the mercenaries are acting under the instructions of the Russian state.

According to recent reports, Danish pilots have spotted presumed mercenaries wearing military uniforms on board some of the merchant ships forming part of the Russian shadow fleet. The Danish pilots have gained the impression that these (possibly private) soldiers have greater authority on the ship than its captain. Reportedly, camouflaged soldiers were found on board the Boracay by French soldiers during their operation against the suspected stateless ship in October 2025.

In addition, pursuant to Article 52(2) of AP I, Ukraine can target tankers that transport oil to (not from) Russia for this oil to be used by the Russian army to support its invasion of Ukraine. Clearly, Ukraine can target tankers that are used by Russia to import oil that will be used by Russian military vehicles and for other military purposes. Legally, such “import tankers” are treated differently, and they can be categorized as military objectives within the meaning of Rule 60(b) of the San Remo Manual. Thus, such “import tankers” are treated differently from “export tankers” that transport Russian oil to the global market, unless one adopts the United States-based concept of war-sustaining objects, as discussed above.

4.2. Attacks on Oil Tankers and Protection of the Marine Environment

States have a duty to protect and preserve the marine environment in peacetime under Article 192 of UNCLOS. But does this obligation apply in an armed conflict? If yes, then to what extent does it apply? Is the operative standard that of “due regard”? And if so, should it be assessed from an objective *ex post* perspective or from the commander’s perspective at the time of decision-making? Is it possible to treat a part of the natural environment itself as a military objective?

The relevant state practice is difficult to distill, *inter alia*, from the different approaches adopted in various states’ military manuals. Furthermore, several maritime powers are not parties to AP I. Worse still, one of the main dividing lines between the law of naval warfare expert manuals is the standard of protection afforded to the natural environment. The 1994 San Remo Manual purports to reflect customary international law on this matter, but the 2025 Newport Manual openly challenges this ambition.

4.2.1. The Marine Environment as a Civilian Object

The natural environment is generally treated as a civilian object, although specific parts may become military objectives by reason of their use or purpose. This section distinguishes such cases from prohibited reprisals, weaponization of the environment, and deliberate damage not justified by military necessity. It also examines the high threshold of widespread, long-term, and severe environmental damage and the assessment made by the attacking commander at the time of decision-making.

²¹⁰ Art 46(2)–(3) of the 1909 London Declaration.

As reflected by the inclusion of Article 55(1) of AP I in its chapter on “Civilian Objects” and as clearly stated in the ICRC 2020 Guidelines, the natural environment is a civilian object.²¹¹ The San Remo Manual was drafted on the premise of an “emerging rule” that the marine environment cannot be an object of attack.²¹²

By contrast, the French military manual and Yoram Dinstein note that a part of the natural environment can become a military objective whose total or partial destruction offers a specific military advantage.²¹³ In its 2022 Draft Principles, the ILC adopted the same position.²¹⁴ Dinstein illustrates this with a mountain pass from a logistical perspective and with a forest that can be used for concealment.

Specific parts of the marine environment may serve as military objectives due to their use or purpose. This is relevant where they function much like human-made bridges or airfields, such as causeways (a narrow strip of land) or ice that can be destroyed to obstruct enemy landing. Similarly, straits, canals, ports, and fairways can be blocked for surface and submarine navigation by intentionally sinking a bridge or a ship. The military advantage of such operations is illustrated by the entrapment of several Ukrainian warships by Russia during the invasion of Crimea in 2014 by way of scuttling two ships in the fairway of a narrow gulf.²¹⁵ The six-day-long obstruction of the Suez Canal in 2021 is equally relevant.²¹⁶

By contrast, reprisals against or the weaponization of the natural environment are outright prohibited.²¹⁷ This is also clearly stated in Principles 15 and 17 of the ILC 2022 Draft Principles. The same applies to deliberate damage to or destruction of the natural environment not justified by military necessity in the case of both international and non-international armed conflicts.²¹⁸

In addition, it is prohibited to cause widespread, long-term, and severe damage to the environment. This follows from Article 35(3) of AP I, which, however, does not specify the perspective from which the scale of collateral damage to the environment needs to be assessed. Both the UK military manual and the Newport Manual find that this is subject to the *ex ante* assessment by the attacking commander as opposed to the *ex post* objective assessment.²¹⁹ This flexible approach is warranted given that even the ILC 2022 Draft Principle 13(2)(a) significantly relaxes the threshold of Article 35(3) of AP I by using the operative standard “care shall be taken” (“to protect the environment against widespread, long-term, and severe damage”).

The UK interprets Article 35(3) of AP I rather cautiously. Damage to the environment needs to last for decades to be categorized as “long-term” under AP I. Therefore, damage inflicted on, for example, the natural environment in France during World War I does not meet this high threshold.²²⁰ According to the German position, the damage needs to “significantly exceed normal combat damage”.²²¹

²¹¹ ICRC, Guidelines on the Protection of the Natural Environment in Armed Conflict: Rules and Recommendations relating to the Protection of the Natural Environment under International Humanitarian Law, with Commentary (Geneva 2020) 28.

²¹² Wolff Heintschel von Heinegg et al., ‘Explanation of Rule 44’, in Louise Doswald-Beck (ed), San Remo Manual on International Law Applicable to Armed Conflicts at Sea (Cambridge University Press 1995) 119.

²¹³ Ministry of the Armed Forces of France, *Manuel de droit des opérations militaires* (2022) para 4.4.2.1, <https://www.defense.gouv.fr/sites/default/files/sga/Manuel%20de%20droit%20des%20op%C3%A9rations%20militaires_%C3%A9dition%202022.pdf>; Yoram Dinstein, ‘Protection of the Environment in International Armed Conflict’, in Jochen A. Frowein and Rüdiger Wolfrum (eds), *Max Planck Yearbook of United Nations Law* (Kluwer 2001) 533.

²¹⁴ ILC, Draft Principles on Protection of the Environment in relation to Armed Conflicts, with Commentaries (United Nations 2022), Principle 13(3), <https://legal.un.org/ilc/texts/instruments/english/commentaries/8_7_2022.pdf>.

²¹⁵ Christopher J. Miller, ‘In military rout, Russia seizes 51 Ukrainian ships in Crimea’ *Kyiv Post* (26 March 2014), <<https://archive.kyivpost.com/article/content/ukraine-politics/russia-reportedly-seizes-51-ukrainian-ships-in-crimea-340929.html>>.

²¹⁶ Ruth Michaelson, ‘Ever Given released from Suez canal after compensation agreed’ *The Guardian* (7 July 2021), <<https://www.theguardian.com/world/2021/jul/07/ever-given-released-from-suez-canal-after-compensation-agreed>>.

²¹⁷ Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (New York, 10 December 1976, in force 5 October 1978).

²¹⁸ ILC Draft Principles on Protection of the Environment in relation to Armed Conflicts, Preamble and commentary to Principle 1, 100.

²¹⁹ UK Chiefs of Staff, *The Joint Service Manual of the Law of Armed Conflict* (2004) Joint Service Publication 383, 5.29.3, <<https://assets.publishing.service.gov.uk/media/5a7952bfe5274a2acd18bda5/JSP3832004Edition.pdf>>; Newport Manual 2025 167.

²²⁰ UK LOAC Manual para 5.29.2.

²²¹ Federal Ministry of Defence of Germany, Law of Armed Conflict Manual (2013) Joint Service Regulation (ZDv) 15/2, para 435, <<https://www.bmvg.de/resource/blob/93610/ae27428ce99dfa6bbd8897c269e7d214/b-02-02-10-download-manual-law-of-armed-conflict-data.pdf>>.

4.2.2. Environmental Constraints on Attacks against Tankers

Attacks against oil tankers are not automatically unlawful on environmental grounds, but their assessment depends on the circumstances, including the cargo and the characteristics of the marine area. The reported Ukrainian attacks from late 2025 to spring 2026 against almost exclusively empty tankers are significant in this respect. The due regard requirement in Rule 44 of the San Remo Manual appears to be supported by case law, state practice, and treaty law.

The UK position is that nuclear attacks and attacks against nuclear submarines or supertankers would not automatically violate the prohibition of causing “widespread” and “severe” damage to the natural environment.²²² But what about systematic attacks against oil tankers in semi-enclosed seas, such as the Baltic Sea? In this context, environmental and other factors play a crucial role. For example, the circulation time for the Baltic Sea water mass is over 30 years.

The Baltic Sea accounts for the majority of Russia’s maritime crude oil exports. Leaving aside the above-discussed question of whether tankers as civilian objects that contribute to a war-sustaining effort are military objectives, would a belligerent target its enemy’s economic artery at the expense of causing an environmental disaster to its own and neutral waters? In practice, it seems that it might, as shown by the “tanker war” between Iran and Iraq in the 1980s. Furthermore, the reported Ukrainian attacks in late 2025 and early 2026 have targeted only tankers forming part of Russia’s shadow fleet that are on their way to the Russian oil export terminals. This implies that those tankers that were targeted by Ukraine until spring 2026 were not carrying oil. For example, in May 2026, a presumably empty tanker at Russia’s Taganrog Port was set ablaze by Ukraine’s drone attack.²²³ The day before, Ukraine reportedly attacked three empty Russian shadow-fleet tankers eighty kilometers from Türkiye’s Black Sea coast.²²⁴ Hence, the expected environmental impact of Ukrainian attacks against oil tankers from late 2025 to June 2026 was rather similar to the Russian 2022–2023 attacks against bulk carriers in the Black Sea.

However, the Ukrainian practice changed in the summer of 2026 when a significant number of laden oil tankers were attacked. Even before the summer, there were attacks on laden oil or gas tankers. In March 2026, Ukraine reportedly attacked a sanctioned tanker, *Arctic Metagaz*, that was carrying 61,000 tons of liquefied natural gas (LNG).²²⁵ But unlike oil, LNG evaporates when it enters the marine environment and leaves no toxic residues. On 26 March 2026, the Sierra Leone-flagged oil tanker *Altura* was attacked, reportedly by an unmanned underwater drone in Türkiye’s EEZ right before its entry into Türkiye’s territorial sea. At the time of the attack, the *Altura* was carrying 140,000 tons of crude oil. No oil spill was reported due to the attack; the perpetrator remains unknown.²²⁶

Since the launch of Operation MoLoChKa in July 2026, Ukraine has openly systematically attacked also laden oil tankers in the Sea of Azov and the Black Sea, as discussed above. Did these alleged Ukrainian attacks violate Articles 35(3) and 55(1) of AP I? On the one hand, in 2001, Dinstein stated that there was “no doubt” that Articles 35(3) and 55(1) of AP I constituted an innovation and that they are not part of customary international law.²²⁷ The Newport Manual comes to the same conclusion and states that the

²²² UK LOAC Manual paras 5.29.3–4.

²²³ Ivan Diakonov, ‘Drones Attack Port in Russia’s Taganrog, Setting Tanker and Fuel Tank on Fire’ *Ukrainska Pravda* (30 May 2026), <<https://www.pravda.com.ua/eng/news/2026/05/30/8037017>>.

²²⁴ ‘Three Tankers Reportedly Attacked by Drones in Black Sea, Shipping Agency Says’ *Reuters* (28 May 2026), <<https://www.reuters.com/world/three-tankers-reportedly-attacked-by-drones-black-sea-shipping-agency-says-2026-05-28>>.

²²⁵ Jonathan Saul et al., ‘Russian-flagged Sanctioned LNG Tanker on Fire in the Mediterranean, Sources Say, Crew Located in Lifeboat Off Libya’ *Reuters* (3 March 2026), <<https://www.reuters.com/business/energy/russian-flagged-sanctioned-lng-tanker-fire-mediterranean-crew-fate-unknown-2026-03-03>>.

²²⁶ ‘Tanker Carrying Russian Oil Hit By Drone Attack in Black Sea’ *Maritime Executive* (25 March 2026), <<https://maritime-executive.com/article/tanker-carrying-russian-oil-hit-by-drone-attack-in-black-sea>>.

²²⁷ Dinstein 534.

rule stipulated therein binds only states parties to AP I and not the United States.²²⁸ This is also echoed in the ILC 2022 Draft Principles.²²⁹

On the other hand, naval warfare inherently involves the risk of collateral damage to the marine environment. Based on the ICJ's advisory opinion in the *Nuclear Weapons* case, the belligerent needs to take environmental considerations into account in the pursuit of legitimate military objectives.²³⁰ It seems that state practice does not support a high threshold of this requirement under the principle of proportionality. For example, the Baltic Sea is particularly prone to mine warfare since it includes an unprecedented number of international straits. Such large-scale mine warfare has a detrimental effect on marine life. Nonetheless, it is unlikely that anyone would consider such a method of warfare unlawful solely on environmental grounds.

Rule 44 of the San Remo Manual stipulates the “due regard” requirement and provides: “Damage to or destruction of the natural environment not justified by military necessity and carried out wantonly is prohibited.” The Newport Manual laconically disagrees with this statement and finds that these rules are “aspirational and do not reflect treaty or customary international law.”²³¹

Nonetheless, Rule 44 of the San Remo Manual seems to be supported by case law,²³² state practice as reflected in the military manuals of, for example, the UK,²³³ France,²³⁴ Germany,²³⁵ Australia,²³⁶ Canada,²³⁷ Denmark,²³⁸ Norway,²³⁹ New Zealand,²⁴⁰ and treaty law, in particular Articles 35(3) and 55(1) of AP I. In addition, the ICRC has concluded that the following rule is supported by state practice and has formed “a norm of customary international law applicable in international, and arguably also in non-international, armed conflicts”:

Methods and means of warfare must be employed with due regard to the protection and preservation of the natural environment. In the conduct of military operations, all feasible precautions must be taken to avoid, and in any event to minimize, incidental damage to the environment. Lack of scientific certainty as to the effects on the environment of certain military operations does not absolve a party to the conflict from taking such precautions.²⁴¹

By contrast, the US Law of War Manual states: “The United States has not accepted these provisions and has repeatedly expressed the view that these provisions are ‘overly broad and ambiguous and “not a part of customary law.”’”²⁴² However, this objection seems to be due to a cautious approach to interpretational ambiguities. The San Remo Manual's explanation of Rule 44 should alleviate these fears. It states that the “due regard” formula, widely used in UNCLOS, “left flexibility for an assessment of the conflicting interests

²²⁸ Newport Manual 2025 167.

²²⁹ ILC Draft Principles on Protection of the Environment in relation to Armed Conflicts, Commentary to Principle 13, 141–142.

²³⁰ Nuclear Weapons para 30.

²³¹ Newport Manual 2025 111.

²³² Nuclear Weapons para 30.

²³³ UK LOAC Manual para 12.24.

²³⁴ French LOAC Manual para 4.4.5.

²³⁵ German LOAC Manual para 434.

²³⁶ Australian Department of Defence, *The Manual of the Law of Armed Conflict* (2006) Australian Defence Doctrine Publication 06.4, para 5.50, <<https://www.onlinelibrary.iihl.org/wp-content/uploads/2021/05/AUS-Manual-Law-of-Armed-Conflict.pdf>>.

²³⁷ Office of the Judge Advocate General of Canada, *The Law of Armed Conflict at the Operational and Tactical Levels* (2001) Joint Doctrine Manual of National Defence of Canada, B-GJ-005-104/FP-021, para 4-13, <https://usnwc.libguides.com/ld.php?content_id=2998098>.

²³⁸ Danish Ministry of Defence, *Military Manual on International Law Relevant to Danish Armed Forces in International Operations* (2016, updated 2020), para 4.6, <<https://www.forsvaret.dk/globalassets/fko---forsvaret/dokumenter/publikationer/-military-manual-updated-2020-2.pdf>>.

²³⁹ Norwegian Defence University College/Norwegian Defence Command and Staff College, *Manual of the Law of Armed Conflict* (2013) The Chief of Defence, paras 7.40–41, <https://usnwc.libguides.com/ld.php?content_id=47416967>.

²⁴⁰ New Zealand Defence Force, *Manual of Armed Forces Law, vol. 4: Law of Armed Conflict* (2017) DM 69 (2nd edn), paras 7.2.17–19, <https://usnwc.libguides.com/ld.php?content_id=47364407>.

²⁴¹ ICRC, ‘International Humanitarian Law Databases – Rule 44’, <<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule44>>.

²⁴² US Department of Defense, *Law of War Manual* (2023) 387, <<https://media.defense.gov/2023/Jul/31/2003271432/-1/-1/0/DOD-LAW-OF-WAR-MANUAL-JUNE-2015-UPDATED-JULY%202023.PDF>>.

in each particular case.”²⁴³ Proposals to place a higher burden on the belligerents via the use of the operative standard of “respect” for the marine environment were outvoted.²⁴⁴ By comparison, in this context, the ILC 2022 Draft Principle 13 adopted the term “respect”.²⁴⁵

4.2.3. Protected Zones for the Marine Environment

The designation of marine protected zones in armed conflict remains an aspirational measure rather than a rule of customary international law. Nonetheless, the San Remo Manual and the ILC Draft Principles support agreements to protect particular areas, while the interaction with peacetime environmental treaties remains complex. In this context, belligerents should consider exempting particularly sensitive sea areas of the Baltic Sea and the North-Western Mediterranean from attacks against neutral merchant vessels.

The Newport Manual correctly states that Rule 11 of the San Remo Manual is aspirational. Rule 11 itself is drafted using aspirational language, as it “encourages” belligerents “to agree” that certain marine areas are not used as a theater of operations. The San Remo Manual’s explanation of Rule 11 states that it is a “soft-law guideline”.²⁴⁶ Hence, Rule 11 clearly does not have the ambition to be reflective of customary law.

The call to designate such protected zones is included in Principles 4 and 17 of the ILC Draft Principles. Arguably, the establishment of protected zones in naval warfare would be especially justified in such instances where a particular maritime area is protected under relevant environmental treaties.

According to the French position, “[t]reaties protecting the environment in peacetime may continue to apply during an armed conflict.”²⁴⁷ The current version of the San Remo Manual is explicitly open to this prospect, as Rule 44 on environmental protection requires belligerents to “take into account the relevant rules of international law”. Inherently, they include environmental rules. For example, according to the ICRC database, a summary of practice on Rule 44 of the San Remo Manual shows that the precautionary approach is also relevant in an armed conflict. At the same time, such regime interaction is one of the legally most challenging aspects of the protection of the marine environment in naval warfare. According to the ICRC, determining the extent to which environmental treaties, such as the Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area²⁴⁸ and the Bucharest Convention on the Protection of the Black Sea Against Pollution,²⁴⁹ apply in parallel to international humanitarian law is a “complex question”.²⁵⁰

Finally, the requirement of due regard is included in Rules 34 and 35 of the San Remo Manual. The Newport Manual states that these requirements “are a scholarly attempt to progressively develop the law.”²⁵¹ However, these rules have particular significance to the legal protection of the marine environment and private property. It follows from these rules that if neutral merchant vessels are attacked in a neutral state’s EEZ or on its continental shelf, then precautions need to be taken to ensure due regard for the protection and preservation of the marine environment.²⁵² For example, the alleged Ukrainian attacks in the Black Sea

²⁴³ Explanation of Rule 44 of the San Remo Manual 121.

²⁴⁴ Ibid.

²⁴⁵ ILC Draft Principles on Protection of the Environment in relation to Armed Conflicts, Commentary to Principle 13, 141.

²⁴⁶ Explanation of Rule 11 of the San Remo Manual 83.

²⁴⁷ French LOAC Manual 132; ILC Draft Principles on Protection of the Environment in relation to Armed Conflicts, Commentary to Principle 13, 141.

²⁴⁸ Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki, 9 February 1992, in force 17 January 2000).

²⁴⁹ Convention on the Protection of the Black Sea Against Pollution (Bucharest, 21 April 1992, in force 15 January 1994).

²⁵⁰ ICRC Guidelines on the Protection of the Natural Environment in Armed Conflict 21.

²⁵¹ Newport Manual 2025 83.

²⁵² In principle, the same legal requirements, in particular the need to take precautions, apply in relation to attacks against submarine pipelines that might be considered war-sustaining objects by some belligerents. In the context of the Ukraine-Russia war, the Nord Stream pipelines (Russia-Germany) in the Baltic Sea and the Blue Stream and the TurkStream pipelines (Russia-Turkey) in the Black Sea serve as an example. Both the San Remo Manual and Rule 68 of the Oslo Manual demonstrate the significance of the principles of distinction and proportionality and the need for precautions if attacking belligerent submarine

have been conducted in the Turkish EEZ only against tankers that have been on their way to the Russian oil export terminals.²⁵³ In December 2025, Ukraine attacked the empty tanker Qendil off Libya in the Mediterranean.²⁵⁴ Thus, Ukraine has only attacked empty oil tankers, which is significant from the perspective of protection of the marine environment.²⁵⁵ Similarly, it has not been stated that the ships that Russia reportedly attacked in the Black Sea in 2022 would have carried, at the time of the attacks, any environmentally dangerous cargo.

The Baltic Sea was designated by the IMO as a particularly sensitive sea area in 2005, and in 2023 the IMO adopted the same decision in relation to the North-Western Mediterranean Sea.²⁵⁶ This report therefore proposes that, in the spirit of Rule 11 of the San Remo Manual and the ILC 2022 Draft Principles, belligerent states should consider designating the particularly sensitive sea areas of these semi-enclosed seas as protected zones that are exempt from attacks against neutral merchant vessels in an armed conflict at sea.

pipelines (see Art 51(5)(b) of AP I). Notably, though, Rule 68 concerns submarine cables and pipelines that exclusively serve belligerents. For example, the Nord Stream pipelines transported gas from belligerent Russia to non-belligerent Germany.

²⁵³ Indrek Kiisler, 'Estonian FM: It would not be wise for Ukraine to attack Russian vessels in the Baltic Sea' *ERR News* (1 December 2025), <<https://news.err.ee/1609872891/estonian-fm-it-would-not-be-wise-for-ukraine-to-attack-russian-vessels-in-the-baltic-sea>>; Tayfun Ozberk, 'Ukraine Hits Another Shadow Fleet Tanker Off Turkish Coast' *Naval News* (8 January 2026), <<https://www.navalnews.com/naval-news/2026/01/ukraine-hits-another-shadow-fleet-tanker-off-turkish-coast/>>.

²⁵⁴ Beaumont and Sauer.

²⁵⁵ Maria-Ann Rohemäe, 'Ukraina püüab varilaevastiku tankereid rünnates vältida naftareostuse teket' *ERR Uudised* (12 December 2025), <<https://www.err.ee/1609884094/ukraina-puuab-varilaevastiku-tankereid-runnates-valtida-naftareostuse-teket>>.

²⁵⁶ IMO, 'List of adopted PSSAs', <<https://www.imo.org/en/ourwork/environment/pages/pssas.aspx>>.

5. Actionable Steps on Restricting the Shadow Fleet

The report identifies a range of legal measures that states could consider to restrict the activities of Russia's shadow fleet, drawing on maritime law enforcement, environmental law, state responsibility, and the law of naval warfare. Coastal states can strengthen enforcement against suspected stateless vessels and vessels involved in damage to critical offshore infrastructure, while the legal regimes governing international straits provide additional—but geographically and legally distinct—possibilities for intervention. Environmental obligations offer a further basis for measures targeting vessels that fail to meet defined safety, insurance, and environmental standards, potentially combined with efforts to develop corresponding international standards through the IMO. Countermeasures provide another possible avenue, including restrictions on navigational rights in response to systematic breaches of flag-state obligations under UNCLOS; in the case of Russia, this chapter also proposes measures based on the prohibition of aggression. Finally, the law of naval warfare provides potential grounds for Ukraine to treat particular shadow-fleet vessels as military objectives where they directly participate in military action; the broader concept of targeting tankers as war-sustaining objects remains contested, and any attack must take account of applicable protections for the marine environment.

5.1. Maritime Law-Enforcement Measures

Based on the maritime law-enforcement framework, it is possible for coastal states to consider adopting, among others, the following legal approaches in respect of ships belonging to the Russian shadow fleet:

- Following the practice of Belgium, Estonia, France, Sweden, the UK, and EUNAVFOR in 2025–2026, any coastal state is legally entitled under Article 110(1)(d) of UNCLOS to interdict suspected stateless and uninsured ships, which pose a fundamental challenge to ocean governance as they operate in a legal vacuum where the ordinary line of responsibility over such ships is disrupted because of the missing nationality and insurance of the ship.
- The legal protection of submarine cables and pipelines outside the limits of the territorial sea relies on a patchwork of various legal bases for taking enforcement measures against suspected ships (see Table 1). Despite the incoherent and incomplete legal framework, the coastal state should be encouraged to board and seize a commercial ship belonging to the Russian shadow fleet if it damages the coastal state's critical offshore infrastructure in the EEZ.
- Arguably, to close the legal gaps in the protection of cross-border submarine cables and pipelines, the concept of piracy under Article 101 of UNCLOS can potentially be interpreted dynamically to the effect that it would grant any state universal jurisdiction to interdict and arrest a suspected pirate ship for causing damage to private property on the seabed outside the territorial sea. Nonetheless, state practice and the legal literature are inconclusive about this approach.
- In the hope of countering threats from the Russian shadow fleet, there have been calls to abolish the EEZ corridor in the Viro Strait (Gulf of Finland). This would imply a trade-off, as a result of which Estonia and Finland would increase the legal protection of their critical underwater infrastructure, but would risk losing, in essence, much of their functional sovereignty over their territorial sea and in the airspace above the Gulf of Finland in respect of sovereign-immune vessels and aircraft of third states. The hypothetical abolishment of the EEZ corridor in the Gulf of Finland would pose a complex set of strengths, weaknesses, opportunities, and threats.
- The claim that the navigational regime in the Danish Straits is governed by the right of transit passage or the freedom of navigation and overflight needs to be explicitly rejected. Similar to its position before the ICJ in the *Great Belt* case, Denmark should reassert its control over the Danish Straits under the 1857 Copenhagen Convention and the right of non-suspendable innocent passage in respect of those ships

belonging to the Russian shadow fleet that are in non-innocent passage because of the characteristics of the vessel or its conduct either before or during its passage through the Belts or the Øresund. To date, Denmark has not interdicted even stateless vessels that are navigating through its territorial sea.

- Coastal states may consider taking enforcement measures against violations of the transit passage regime in the Strait of Dover. However, following the interdiction by the UK of the *Smyrtos* in the English Channel, tankers belonging to the Russian shadow fleet increasingly change their course after crossing the Skagerrak. Instead of heading to the Strait of Dover, they take the roundabout route off Scotland and Ireland. Measured from the Skagerrak to close to the northern tip of Galicia, the roundabout route is approximately 800 km longer than the shortcut via the Strait of Dover. This demonstrates that Russian shadow-fleet vessels can continue their business as usual, unless Denmark enforces its laws against non-innocent passage in the Great Belt and Øresund.

5.2. Environmental Protection Measures

Based on environmental protection law, the affected coastal states can adopt the following measure:

- Announce navigational restrictions on vessels that fail to meet defined ecological and safety standards, such as an age threshold, valid P&I insurance, verifiable classification, and hull and equipment certification. Simultaneously advocate at the IMO for the same requirements to be embedded in IMO instruments, so that what begins as national practice matures into generally accepted international rules and standards.

5.3. Countermeasures against Flag States

Based on the doctrine of countermeasures, coastal states could consider the following measures:

- Demand suspension of Russia's participation/voting rights at the IMO Assembly, the IMO Maritime Safety Committee (MSC), the IMO Marine Environment Protection Committee (MEPC), the IMO Legal Committee (LEG), the IMO Facilitation Committee (FAL), and the IMO Technical Cooperation Committee (TCC).
- Invoke countermeasures in the form of denying access to certain waterways against certain flag states for their systematic violation of UNCLOS obligations.
- Invoke countermeasures in the form of denying access to certain waterways against Russia as a flag state for (i) the systematic violation of UNCLOS obligations; and (ii) the gross violation of the prohibition of aggression under the UN Charter.

5.4. Measures under the Law of Naval Warfare

Based on the law of naval warfare, it is possible for Ukraine to consider adopting, among others, the following legal approaches in respect of ships belonging to the enemy's shadow fleet:

- The most effective measure is to attack tankers belonging to the shadow fleet. Legally, this is a controversial measure. Internationally, the United States and India support the concept of war-sustaining objects, which potentially provides the legal basis to conduct attacks against the shadow fleet, whereas other states generally consider neutral merchant vessels as civilian objects that are exempt from attacks. Nonetheless, the practice of Russia clearly shows that it has not respected the neutrality of merchant vessels in the ongoing armed conflict. In 2022, Russia appears to have repeatedly and unlawfully attacked neutral merchant vessels in the Black Sea. In 2023, Russia unlawfully threatened to attack all merchant vessels heading to Ukraine's ports. Even if states recognized the existence of a blockade in the Black Sea at the time, the law of blockade could not have

justified Russia's attacks against neutral merchant vessels in 2022 and threats of force in July 2023. Russia has continued its systematic attacks on merchant vessels heading to Ukrainian ports. By August 2026, the Black Sea Grain Corridor was effectively closed due to systematic Russian attacks on merchant vessels and port infrastructure.

- In addition, even if Ukraine's practice conforms to the position of the majority of European states and it respects the neutrality of merchant vessels in the future, it could still potentially attack specific merchant vessels that sail in the Russian shadow fleet. Merchant vessels belonging to the Russian shadow fleet may become military objectives based on their participation in military action. In particular, the following legal bases exist for targeting enemy merchant vessels:
 - Sailing in convoy with enemy warships or military aircraft. Thus far, Russia has not started escorting its shadow-fleet ships with its warships or military aircraft. The main exceptions are the *Jaguar*, which was escorted by a Russian fighter jet in the Gulf of Finland in May 2025, and the *Marinera*, which was reportedly escorted by a Russian submarine off the UK in January 2026. However, Russia stated in January 2026 that its government-operated ships may start to escort merchant vessels belonging to its shadow fleet. If ships belonging to Russia's shadow fleet start sailing in convoy with Russia's warships or military aircraft, they would become military objectives for Ukraine in accordance with Rule 60(d) of the San Remo Manual.
 - Refusing an order to stop or actively resisting visit, search, or capture. If private military or security personnel, active-duty soldiers, or members of the crew of a ship forming part of the Russian shadow fleet actively resist a Ukrainian operation to board, search, and possibly capture the ship, then Ukraine is entitled to attack and, if necessary, sink the vessel.
 - Forming part of the enemy's intelligence collection system. Reportedly, some merchant ships belonging to the Russian shadow fleet have been carrying significant amounts of spying equipment. If such ships enter the Black Sea, then they could potentially be used to monitor Ukrainian forces. Furthermore, on some occasions, ships belonging to the Russian shadow fleet have allegedly been carrying Russia's high-level intelligence officers. Potentially, such ships can be attacked without prior warning, but the attack needs to be supported by a concrete prior political decision to that effect.
 - Carrying troops and material to the military or being under the orders or control of an agent placed on board by the enemy government. There are reports of some tankers belonging to the Russian shadow fleet being crewed by a couple of soldiers wearing a camouflage uniform and speaking Russian. Russia might use such a precautionary measure to protect certain tankers from the interdiction operations. Pursuant to Rule 60(b) of the San Remo Manual, if Russia protects tankers belonging to its shadow fleet in the European maritime area with armed guards belonging to the Russian army or other state security services, then such specific ships might be potentially perceived by Ukraine as military objectives. Furthermore, if a merchant vessel is under the orders or control of an agent placed on board by the Russian government or in its exclusive employment, then such a merchant vessel can be considered as a military objective. However, if the guards on board a merchant vessel are not soldiers of the Russian army, and instead are private military or security personnel, then the ship is not used to transport troops. In addition, the Russian government maintains plausible deniability over its potential command over the ship, since it is difficult to prove that the mercenaries are acting under the instructions of the Russian state. In addition, Ukraine can target tankers that transport oil to Russia for this oil to be used by the Russian army to support its invasion of Ukraine.

- Attacks against oil tankers are not, in principle, in violation of the law of armed conflict at sea on environmental grounds. The reported Ukrainian attacks in late 2025 and early 2026 targeted only tankers forming part of Russia's shadow fleet that were on their way to the Russian oil export terminals. This implies that those tankers that were targeted by Ukraine from late 2025 until spring 2026 were not carrying oil. Hence, the expected environmental impact of Ukrainian attacks against oil tankers from late 2025 until spring 2026 was rather similar to the Russian 2022–2023 attacks against bulk carriers in the Black Sea. However, since the launch of Operation MoLoChKa in July 2026, Ukraine has openly systematically attacked also laden oil tankers in the Sea of Azov and the Black Sea. Naval warfare inherently involves the risk of collateral damage to the marine environment. Rule 44 of the San Remo Manual stipulates the “due regard” requirement and provides: “Damage to or destruction of the natural environment not justified by military necessity and carried out wantonly is prohibited.” This rule seems to be supported by case law, state practice as reflected in various military manuals, and treaty law, in particular Articles 35(3) and 55(1) of AP I.
- The legality of attacks against merchant vessels is context-specific. For example, the Baltic Sea was designated by the IMO as a particularly sensitive sea area in 2005, and in 2023 the IMO adopted the same decision in relation to the North-Western Mediterranean Sea. This report therefore proposes that, in the spirit of Rule 11 of the San Remo Manual and the ILC 2022 Draft Principles, belligerent states should consider designating the particularly sensitive sea areas of these semi-enclosed seas as protected zones that are exempt from attacks against neutral merchant vessels in an armed conflict at sea.