

Countering the Shadow Fleet

The International Legal Framework for Maritime Enforcement

False flags | MARPOL enforcement | Protection of underwater infrastructure



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Agenda

01

The strategic challenge

Why Belgium, NATO and the EU must be able to act against the shadow fleet

02

National legal basis

Powers of the Belgian Armed Forces under the Belgian Shipping Code

03

International legal framework

UNCLOS, the 1884 Cable Convention, SUA, and related treaties

04

Countering false flags & substandard shipping

The statelessness doctrine and flag-state accountability

05

MARPOL as an enforcement tool

Acting against pollution risks outside territorial waters

06

Protecting underwater infrastructure

Cables, pipelines and regional cooperation in the North Sea

07

Case studies

VEZHEN (Sweden) and MT Ethera (Belgium, Operation Blue Intruder)



The Strategic Challenge

A coordinated response — NATO, the EU and Belgium — requires the ability to identify, control and act against vessels that put the North Sea's security and environment at risk.



Control

Ability to identify and inspect vessels operating in Belgian maritime areas, including those hiding their true flag or ownership.



Prevent

Ability to act preventively — before cables, pipelines or the marine environment are damaged.



Respond

Ability to act reactively — boarding, inspecting and, where needed, detaining vessels after an incident.

Underlying question: can this be done in accordance with international law — and if so, on what legal basis?



National Legal Basis

Article 4.2.4.7, Belgian Shipping Code (BSW) — in force since 2019

In Belgian maritime areas, and in accordance with international law, Defence personnel may exercise a range of powers, including **the control of a vessel and its contents** — without prejudice to the powers of police and other authorities.

- **Other powers**

- Gathering evidence
- Questioning
- Arrest
- Seizure

- **In case of refusal**

- Order to change course, out of Belgian waters or toward a port, enforced with coercive measures if necessary



PART TWO

International Legal Framework



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UNCLOS: The Starting Point

United Nations Convention on the Law of the Sea (UNCLOS III, 1982)

Freedom of navigation

Vessels are, in principle, free to navigate the high seas and exclusive economic zones (EEZ) without interference.

Sovereignty of the flag state

Articles 87 and 94 UNCLOS — the flag state holds jurisdiction over a vessel on the high seas and in the EEZ.

Generally accepted principle

- The flag state has jurisdiction over the vessel on the high seas and in the EEZ
- A coastal state may only inspect a foreign vessel with the flag state's consent

This is the baseline every enforcement argument must work around.



A Modern Reading of the Rules

The legal quest: a modern interpretation of the rules, adapted to today's threats, so that action remains possible.

Right to lay — and protect — cables and pipelines

Multiple UNCLOS articles grant the right to lay submarine cables and pipelines (Arts. 58, 73, 79, 87, 112–115, 192, 221). This right implies the right to keep them operational — i.e. to monitor and take additional measures (Arts. 87(1)(c) and 112).

Art. 58

Art. 79

Art. 87

Art. 112

Art. 113

Art. 114

Art. 115

Art. 192

Art. 221

Implication: the right to monitor

- The obligation to monitor and intervene to protect the marine environment — including against threats to cables or pipelines
- Art. 56 UNCLOS, confirmed in *Nicaragua v. Colombia* (2022): environmental protection extends into the EEZ



A Shared International Vision

UN General Assembly, 23 November 2023 — "Oceans and the Law of the Sea"

Paragraph 125 recognises the crucial role of international cooperation — global, regional and bilateral — in combating threats to maritime security, including piracy, armed robbery and terrorist acts against shipping, offshore installations, and submarine cables and pipelines. It calls for monitoring, prevention and response mechanisms, enhanced information-sharing, and the prosecution of offenders.

This UN resolution, together with NATO and EU policy, forms the political backbone for the legal arguments that follow.

Article 221 UNCLOS: Enforcement Beyond National Jurisdiction

Coastal states may take enforcement action against vessels outside their jurisdiction (Areas Beyond National Jurisdiction — ABNJ) where there is damage, or a threat of damage, to submarine cables or pipelines, provided that:

1

Maritime casualty

The act is considered a maritime casualty — such as a navigational incident or another event causing, or threatening, significant damage.

2

Reasonably severe harm

The damage may reasonably be expected to have serious, negative consequences.

3

Proportionate response

Measures are reasonable, necessary and proportionate to protect the coastline or related interests (e.g. fisheries) against pollution.



Enforcement Measures — and Their Limits

Preventive & enforcement measures

- Preventive measures protect a state's legally recognised rights and interests in the relevant maritime space (Arctic Sunrise Arbitration, para. 306)
- Enforcement measures prevent or respond to damage to submarine cables and pipelines, and ensure compliance with national law
- Both may include: (1) boarding and inspecting vessels, and (2) detaining vessels or persons on board ("interdiction")
- Other necessary, reasonable and proportionate measures are permitted, short of a prohibited use of force

Limitations

- Only government or naval vessels may carry out inspections
- Not applicable against naval vessels, government ships, submarines or underwater vehicles
- Only coastal states may take preventive and enforcement measures
- Use of force must be avoided wherever possible and, if unavoidable, must remain reasonable, proportionate and necessary



Older Treaties, Still in Force

1884 Cable Convention — Article X

Allows naval vessels to board foreign ships suspected of intentionally or negligently damaging a cable, and requires the captain to produce documentation of the ship's nationality and report to the flag state.

UNCLOS did not incorporate this article, but preserves it for the 41 states that remain party to the 1884 Convention.

Piracy — Arts. 101, 103, 105, 110

Right to board a ship and make arrests in cases of unlawful violence, detention or plunder for private ends, committed by the crew or passengers of a private ship, against another ship or persons/property outside the jurisdiction of any state.

- Can apply outside national jurisdiction
- Must be directed against property
- For private ends only — not "state operated" acts



Complementary Treaties

SUA Convention (1988) & 2005 Protocol

Suppression of Unlawful Acts at Sea

- Crimes where the ship itself is used as a weapon
- Crimes directed against offshore infrastructure
- Terrorism-related offences at sea
- **Boarding requires flag-state consent**

Terrorist Bombing Convention (1997)

- "Infrastructure facility" covers public or private facilities providing services such as water, energy, fuel or communications — can include infrastructure outside territorial waters
- Applies where destruction is intended to cause major economic loss (Art. 2)
- Jurisdiction extends to offences against a state's facilities abroad (Art. 6)
- "Bombing" is interpreted broadly, not limited to the use of explosives



PART THREE

Countering False Flags & Substandard Shipping



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The Shadow Fleet Phenomenon



- Most of the shadow fleet is in very poor condition, or very old
- Frequently uninsured
- A return of single-hulled tankers
- Dubious registries ("black flags"): Djibouti, Gabon, Mauritania and others

49 years

average age of vessels registered under the Gabonese flag



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False Flags: A Legal Opening for Interdiction

A vessel is not entitled to freedom of navigation if it is illegally stateless or sails under a false flag. Falsifying nationality removes the protection UNCLOS would otherwise grant.

Registration & insurance controls

- EU Vessel Traffic Monitoring Directive 2002/59/EC — reporting obligations tightened
- 2025 amendment (Directive 2025/811) requires proof of insurance from all vessels entering reporting zones, including those transiting near Member States' coasts without calling at a port
- Strengthens oversight of uninsured or unsafe vessels amid rising geopolitical instability

The flag-state obligation (IMO)

- Non-compliance with MARPOL or mandatory pre-notification can lead to removal from the flag's register
- A vessel without a valid flag becomes stateless
- **A stateless vessel can be boarded and arrested by any coastal state**



Tanker Kiwala — false Djibouti flag, arrested by Estonia in its EEZ, 11 April; redirected to territorial waters



MARPOL: A Key Tool for Inspection

International Convention for the Prevention of Pollution from Ships, 1978

Purpose: protect the marine environment against pollution from oil, noxious liquids, sewage, air emissions and other ship-generated waste.

Outside territorial waters

In principle, the coastal state has no inspection authority



Unless...

...there is a possible serious threat to the environment



Combined with Art. 221 UNCLOS

This is the most commonly used legal basis to justify inspection beyond territorial waters



PART FOUR

Protecting Underwater Infrastructure: case study



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Case Study: VEZHEN



- 26 January — the vessel likely strikes a cable in Sweden's exclusive economic zone
- Senior Prosecutor Mats Ljungqvist declares the ship a "crime scene"
- The coast guard boards the vessel and directs it into territorial waters
- Investigation on board; the ship remains in detention
- Cause: severe weather and poor seamanship
- **The captain and the shipping company face prosecution**



Case Study: MT Ethera



Belgian patrol vessel of the type deployed during the interception (illustrative)

- 28 February 2026 — Ethera, an EU-sanctioned tanker linked to Russia's shadow fleet, enters Belgium's EEZ off Ostend flying a false Guinean flag
- Belgian armed forces, supported by French Navy helicopters, board the tanker overnight ("Operation Blue Intruder")
- The operation is coordinated through Belgium's Maritime Information Crossroads in Zeebrugge
- Escorted by patrol vessel BNS Pollux to the port of Zeebrugge for inspection

Legal basis invoked

"Sailing under a false flag or without a flag is illegal under international law" — a vessel doing so is not entitled to free passage. Combined with EU sanctions listing and forged documentation, Belgium ordered the boarding.

45 violations identified, incl. fraudulent documentation · Criminal investigation opened · €10.02M surety imposed before release



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From Military Posture to Judicial Follow-Through

Shared vision — NATO, the EU, Belgium

- Most relevant provisions concern criminal offences and are punishable (cf. Belgium's Espionage Act)
- Inspections, controls, evidence-gathering and arrests must take place within an enforcement — not purely military — framework
- **Moving beyond a purely military approach, toward genuine prosecution: Defence acts in a supporting role to justice and law enforcement**

Recommendation

Continue conducting inspections and detecting suspicious vessels ("showing the flag"); train commanders and boarding teams in the legal framework, evidence-gathering and interview techniques; and expand the powers of judicial police officers and Designated Authorized Officers on board.



Yes — Belgium Can Act

1

False flags and statelessness strip a vessel of UNCLOS protection, opening the door to boarding and arrest

2

MARPOL, read together with Art. 221 UNCLOS, remains the most reliable basis for inspecting vessels outside territorial waters

3

The right to lay cables and pipelines carries an implied duty to monitor and protect them, reinforced by regional cooperation

4

Belgium's Article 4.2.4.7 BSW, exercised through Operation Blue Intruder against MT Ethera, shows this framework working in practice

