

Chapter 1 : Shipping Interdiction and the Law of the Sea | Douglas Guilfoyle | download

Interdiction raises important questions of jurisdiction, including: how permission to board a foreign vessel is obtained; whether boarding State or flag State law applies during the interdiction (or whether both apply); and which State has jurisdiction to prosecute any crimes discovered.

Convention would subject U. Negro ponte and Gordon England. Suppose the United States seizes a vessel it suspects of shipping dual-use items that might be utilized to build weapons of mass destruction or other tools of terrorism. Under the Proliferation Security Initiative, the United States has since secured proliferation-related high-seas interdiction agreements with countries such as Belize and Panama, which provide registration for much international shipping. If the United States ratifies the Convention on the Law of the Sea, the legality of such seizures will, depending on the circumstances, be left to the decision of one of two international tribunals. Some members of the Hamburg tribunal come from countries naturally suspicious of American power, such as China and Russia. Others are not allied with the United States. Even judges from Europe and South America do not always see things the way U. The second institution is a five-person international arbitration panel. The United States and the flag state of the seized ship would have input into the selection of some of these arbitrators. They must choose from a list of "experts" to which every state party to the convention -- not just China and Russia but other unfriendly nations such as Cuba and Burma -- can contribute. An attack on an oil tanker, for example, could do vast environmental damage and have a sizable impact on international oil markets. Seaborne shipping may be used to transport missiles and other weapons components not easily sneaked through airports. Currently, the United States does not claim the right to stop any and all ships on the high seas, merely on general suspicion. Since , the United States has encouraged other nations, under the American-led Security Proliferation Initiative SPI , to sign agreements authorizing American naval patrols to inspect merchant ships flying their flags when there is reason to fear the ships are engaged in illicit activities. While more than half the ships engaged in international commerce are covered by these agreements, many are not. American policy implicitly acknowledges that stopping other ships on the high seas would usually be improper. But special circumstances might justify exceptional measures. The only important category of dispute where one party can force another to answer before ITLOS is when a ship has been detained on the high seas and the complaining party seeks its immediate release. Seizing a ship on the high seas without the consent of its home government would inevitably trigger a diplomatic confrontation. But in the right circumstances, the United States or its allies might feel obliged to act first and try to handle the diplomatic protests later. If intelligence gives reasonably firm indications of an imminent terror attack to be launched from a particular ship, the U. Alternatively, the United States might claim that a ship operated by terrorists was so closely analogous to a pirate ship that intervention could be justified under the UNCLOS exemption for piracy. In still another variant, the United States might interpret a bilateral agreement with the flag state as covering a particular intervention, while the flag state insisted on a different interpretation. This raises a practical, not a hypothetical, problem for maritime security. Moreover, UNCLOS Article requires coalition forces to break off hot pursuit of a vessel engaged in piracy on the high seas when that vessel enters the territorial sea of its own state or of a third state. The enforcement regime established in both UNSCRs and , which ban most arms transfers to and from North Korea, is based on exclusive flag state jurisdiction. Although UNSCR contains an enhanced maritime cargo inspection regime, it is still dependent on flag state consent Operative Paragraph It is highly unlikely that Iran or North Korea will give consent to a foreign warship to board one of its vessels at sea. May 29, 22 that China and Pakistan are also opposed to the initiative. These agreements may strengthen U. But the PSI agreements do not make clear when or whether ships or crews may be subject to long-term detention, and all the agreements stipulate that they do not supersede accepted standards of international law. That tribunal has asserted its right to hear claims for "prompt release" when filed by owners or operators of a ship, even when the nominal flag state takes no role in the proceedings. In past cases, ITLOS has ruled that ships cannot be detained, even when claimants refuse to supply full information about how the ship was acquired and on whose behalf. So while we have jealously

reserved the right to detain terror suspects captured on land, we will, if we ratify this treaty, give up our right to decide when we can hold terror suspects seized at sea. Law of the Sea would subject U. Are they prisoners of war, covered by the Geneva Convention on this subject? The Bush administration has sought, in various ways, to mollify critics of its detention policy. Congress and the Supreme Court have insisted on certain legal safeguards and may ultimately demand more. But would we like the matter to be settled for us, all at once, by an international tribunal? That is exactly what the Law of the Sea treaty would do: As a treaty, LOST is binding international law on the parties, whereas PSI is only an informal arrangement between certain nations, and carries no force as international law. As a result, unless one or more of the Treaty-approved circumstances for an at-sea intercept applies, LOST member states could be precluded from participating in such an action even when there might be compelling evidence that nuclear or other WMD or their delivery systems were on board. They can be expected to seek mandatory dispute resolution of the matter should the United States become a state party. This US-led multinational program of high seas interdiction and vessel boarding is barred by the Law of the Sea Treaty yet it is our overriding national security interest to execute. Ratification of the Treaty would effectively gut our ability to intercept the vessels of terrorists or hostile foreign governments even if they were transporting nuclear weapons. We must ensure that we not binding the government of the United States to a legal regime that makes us more vulnerable and trades the lives of our innocent citizens for the sake of participating in yet another unnecessary Treaty.

Chapter 2 : Download Shipping Interdiction And The Law Of The Sea

'Shipping Interdiction and the Law of the Sea by Douglas Guilfoyle is the most comprehensive volume of contemporary theory and state practice available on the subject.

Douglas Guilfoyle is a Lecturer at University College London, where he teaches public law and public international law. Comparative law is increasingly used as a tool in the making of law at national, regional and international levels. Studies of particular institutions or problems are equally welcome, as are translations of the best work published in other languages. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press. ISBN hardback 1. Seizure of vessels and cargoes. Jurisdiction over ships at sea. Interdiction and maritime policing 21 3 General introduction to Part II 23 4 Piracy and the slave trade 26 1 Piracy 26 1. Italy, Spain and Malta 2. The general law of interdiction 10 Interdiction: Status of Forces agreements 4. This is true of many of the issues addressed so adeptly by Douglas Guilfoyle in his work on interdiction of foreign ships at sea. We have piracy still with us, a subject dealt with in more detail by the Law of the Sea Convention than maritime delimitation. We have the old law of hot pursuit adapted to expanded maritime zones. That jurisdiction may be distributed among different states. This book both assembles and organises the now extensive legal materials but explains them in a balanced and informed way. The discussion of piracy off Somalia, however, was updated to cover the numerous developments to 31 December In quoted material some spellings may have been regularised for consistency with the general text. In such cases the original text is presented in the footnote. The case study on Somali piracy in section 4. All website addresses were accurate as at 14 August This book began as a doctoral dissertation at Cambridge, where I was enormously fortunate in the support I received over three years of study. First and particular thanks are due to my supervisor, Professor James Crawford, whose commitment to students is exemplary. I must also thank those practitioners and academics who were kind enough to speak to me about my research, some several times, or to offer comments on earlier drafts of certain chapters. Nothing in this book should be taken, however, as representing the views of others or the organisations for which they work. Their thorough, challenging and helpful comments greatly improved the present work. Ultimate responsibility for the present text and any errors in it, of course, remains with me. I owe the Trinity Hall community a great debt: Similarly, among law research students, the Cherry Blossoms were and continue to be fabulously generous colleagues and friends. Particular thanks must go to those who read parts of this work in draft, especially Isabelle Van Damme, Kimberley Trapp and Alex Mills. Final and heartfelt thanks are due for the support of my family throughout: Le Temps de Paix, 3 vols. Volume I, Peace, 8th edn London: Longman, Oppenheim, R. Volume I, Peace, 9th edn Harlow: Paul, Relations Law Minn.: A Commentary, 5 vols. The Hague, Martinus Nijhoff, â€”

Chapter 3 : Maritime Interdiction Operations | calendrierdelascience.com

Shipping Interdiction and the Law of the Sea Douglas Guilfoyle In this comparative study of shipping interdiction, Douglas Guilfoyle considers the State action of stopping, searching and arresting foreign flag vessels and crew on the high seas in cases such as piracy, slavery, drug smuggling, fisheries management, migrant smuggling, the.

As a nonparty, the United States is allowed to search any ship that enters our exclusive economic zone to determine whether it could harm the United States or pollute the marine environment. Under the Convention, the U. Coast Guard or others would not be able to search any ship until the United Nations is notified and approves the right to search the ship. Under applicable treaty law—the conventions on the law of the sea—as well as customary international law, no nation has the right arbitrarily to search any ship that enters its exclusive economic zone EEZ to determine whether it could harm that nation or pollute its marine environment. It makes no change in our existing ability or authority to search ships entering the American EEZ with regard to security or protection of the environment. One final and very important point is that under the Convention the UN has absolutely no role in U. An attack on an oil tanker, for example, could do vast environmental damage and have a sizable impact on international oil markets. Seaborne shipping may be used to transport missiles and other weapons components not easily sneaked through airports. Currently, the United States does not claim the right to stop any and all ships on the high seas, merely on general suspicion. Since , the United States has encouraged other nations, under the American-led Security Proliferation Initiative SPI , to sign agreements authorizing American naval patrols to inspect merchant ships flying their flags when there is reason to fear the ships are engaged in illicit activities. While more than half the ships engaged in international commerce are covered by these agreements, many are not. American policy implicitly acknowledges that stopping other ships on the high seas would usually be improper. But special circumstances might justify exceptional measures. The only important category of dispute where one party can force another to answer before ITLOS is when a ship has been detained on the high seas and the complaining party seeks its immediate release. Seizing a ship on the high seas without the consent of its home government would inevitably trigger a diplomatic confrontation. But in the right circumstances, the United States or its allies might feel obliged to act first and try to handle the diplomatic protests later. If intelligence gives reasonably firm indications of an imminent terror attack to be launched from a particular ship, the U. Alternatively, the United States might claim that a ship operated by terrorists was so closely analogous to a pirate ship that intervention could be justified under the UNCLOS exemption for piracy. In still another variant, the United States might interpret a bilateral agreement with the flag state as covering a particular intervention, while the flag state insisted on a different interpretation. The enforcement regime established in both UNSCRs and , which ban most arms transfers to and from North Korea, is based on exclusive flag state jurisdiction. Although UNSCR contains an enhanced maritime cargo inspection regime, it is still dependent on flag state consent Operative Paragraph It is highly unlikely that Iran or North Korea will give consent to a foreign warship to board one of its vessels at sea. The opposite is true. Signing the Convention helps stop proliferation. Opponents contend that because the Convention protects freedom of the seas and freedom of already passage in territorial waters, signing would prohibit the U. Navy from stopping suspect shipments. But these constraints on U. Freedom of the seas and the right of innocent passage are codified in the treaties the United States passed in and subsequently recognized as customary international law. If the United States ever had a right to stop shipments without regard for freedom or the seas and the right of innocent passage, that right is long gone. Under the Convention, the UN has no role in deciding when and where a foreign ship may be boarded. Under applicable treaty law—the conventions on the law of the sea—as well as customary international law, no nation has the right to arbitrarily search any ship that enters its EEZ to determine whether it could harm that national or pollute its marine environment. The Convention makes no change in our existing ability or authority to search ships entering our EEZ with regard to security or protection of the environment. These agreements may strengthen U. But the PSI agreements do not make clear when or whether ships or crews may be subject to long-term detention, and all the agreements stipulate that they do not supersede

accepted standards of international law. That tribunal has asserted its right to hear claims for "prompt release" when filed by owners or operators of a ship, even when the nominal flag state takes no role in the proceedings. In past cases, ITLOS has ruled that ships cannot be detained, even when claimants refuse to supply full information about how the ship was acquired and on whose behalf. So while we have jealously reserved the right to detain terror suspects captured on land, we will, if we ratify this treaty, give up our right to decide when we can hold terror suspects seized at sea. US ratification of UNCLOS would strengthen and preserve our authority for conducting maritime interdiction operations. Will accession hamper our ability to conduct maritime interdiction operations, outside the piracy realm? The answer here is no, as well. We rely on a broad range of legal authorities to conduct such operations, including the Convention, U. Security Council Resolutions, other treaties, port state control measures, flag state authorities, and if necessary, the inherent right of self-defense. Accession would strengthen our ability to conduct such operations by eliminating any question of our right to avail ourselves of the legal authorities contained in the Convention and by ensuring that we share the same international legal authorities as our partners and allies. In fiscal year , the Coast Guard maritime interdiction operations occurring on international waters resulted in the seizure of over , pounds of cocaine, 56 vessels, and arrests. In keeping with our aggressive international crime control strategy, most of these seizures took place on distant maritime transit routes far from our shores. However, during bi-lateral negotiations, several nations have, in the past, questioned our authority to contest certain of their excessive maritime claims simply because we have yet to ratify the treaty. Becoming a party to the Convention will enhance our ability to conduct such interdiction operations and to refute excessive maritime claims. Rather than only basing our law enforcement operations on customary international law, the United States should become a conspicuous and leading party to the treaty that codifies these important navigational rights.

Chapter 4 : Maritime Interdiction and the Law of the Sea by Douglas Guilfoyle on Prezi

Shipping Interdiction and the Law of the Sea In this comparative study of shipping interdiction, Douglas Guilfoyle considers the state action of stopping, searching.

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Chapter 6 : Argument: U.S. ability to conduct maritime interdiction operations would be curtailed by UNCLOS

Cambridge University Press - *Shipping Interdiction and the Law of the Sea* Douglas Guilfoyle Frontmatter More information *Shipping Interdiction and the Law of the Sea* In this comparative study of shipping interdiction, Douglas Guilfoyle considers the state action of stopping, searching and arresting foreign flag vessels and crew on the high seas in cases such as piracy.

Chapter 7 : calendrierdelascience.com | Cambridge Studies in International and Comparative Law | Douglas Guilfoyle

Shipping Interdiction and the Law of the Sea In this comparative study of shipping interdiction, Douglas Guilfoyle considers the State action of stopping, searching and arresting foreign flag vessels and crew on the high seas in cases such as piracy, slavery, drug smuggling, fisheries management, migrant smuggling, the proliferation of weapons.

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Pirates, archetypically, are the pariahs of the international system. Having been identified as 'the enemy of all mankind - hostis humanis generis ' in Judge Mo.