

Völkerrechtsblog

Der Blog des Arbeitskreises junger Völkerrechtswissenschaftler*innen

BLOG

SERVICE

COMMUNITY

ABOUT



CURRENT DEVELOPMENTS

The C-Star's Odyssey and the International Law of the Sea

ARRON N. HONNIBALL — VALENTIN J. SCHATZ — 21 August, 2017



Print



In Homer's epic poem, "The Odyssey", the Greek hero Odysseus, having left his home Ithaca to help bring Helena back from Troy, faced manifold hardships on his return across the Mediterranean Sea. In July 2017, European citizens set sail in a self-prescribed mission not to bring someone home, but to prevent others from calling Europe home. The loosely affiliated Generation Identity, consisting mostly of activists from Austria, France, Germany and Italy, launched their campaign Defend Europe. The declared aims are (1) "to monitor NGOs accused of being accomplices of the smugglers and the trafficking of human beings", (2) "to destroy empty smuggling boats so they are not recovered and reused by the smuggler mafias", and (3) "if necessary, to save migrants in danger of drowning and making sure they get to the nearest non-European safe port".

To put this plan into action, Generation Identity started a crowd-funding campaign and used these funds to charter the C-Star. This post provides an overview of the mishaps already faced during the C-Star's own Odyssey, followed by a brief review of legal issues that have arisen from the perspective of the international law of the sea. We will conclude with the potential future challenges which might lie

upon the C-Star's path.

The C-Star's Voyage

From its very beginning, the C-Star's voyage has experienced multiple setbacks, with no end in sight. The C-Star was docked in the port of Djibouti when it was chartered by Generation Identity. On the 7th of July, it left port but did not get far. The vessel was stopped by Egyptian authorities for inspection of papers, before being allowed to proceed through the Suez canal. Already at its next port of call, the (Turkish) Cypriot port of Famagusta, the C-Star was detained, this time (ironically) for alleged people-smuggling. This occurred after a group of about 20 Sri Lankans had been found aboard, some of whom subsequently requested asylum. The Sri Lankans were reportedly deported, while the vessel and remaining crew were ejected from Cyprus. Soon after, the C-Star was informed that it was unwelcome at its original destination, the Italian port of Catania, where it had planned to pick up further activists (see further, pending national level responses to parliamentary interpellations in Italy: 03/03159, 03/03178, 03/03179). This led the C-Star to change course towards Crete, where the activists boarded the C-Star off-shore.

Subsequently, the C-Star sailed to the Libyan coast, where it tracked the search and rescue (SAR) vessel Aquarius, which is operated by the NGOs SOS Méditerranée and Médecins Sans Frontières. Soon after, on the 6th of August, fishermen protested any C-Star entry into the Tunisian port of Zarzis and the Tunisian authorities denied access to any port of the country as the C-Star headed towards Sfax. Briefly stranded off the Tunisian coastline, 10-11th of August, and refusing distress assistance from one of the very humanitarian vessels they wished to disrupt, the C-Star and (some) humanitarian vessels now continue their respective private citizen actions, fueled by perceived failings of State responses.



C-Star Location. Source: [VesselFinder](#)

Legal issues and the allocation of jurisdiction

As explained in a [previous post](#), the jurisdictional framework provided by the international law of the sea is complex. For present purposes, its primary sources are the [1982 United Nations Convention on the Law of the Sea \(UNCLOS\)](#) and customary international law. The conduct of the C-Star and its humanitarian vessel counterparts has raised a variety of potentially applicable jurisdictions, namely, (1) flag State jurisdiction, (2) coastal State jurisdiction, (3) universal jurisdiction, (4) active nationality jurisdiction, and (5) port State jurisdiction. Let us look to the application of each in turn.

Compliance with Mongolian law

So far, it appears to be Defend Europe's stated intention to rescue migrants in distress it encounters and to comply with international rules and standards in general. Somewhat surprisingly, however, Generation Identity did not charter a European flagged vessel. Originally, the C-Star was registered in Djibouti, but was soon

reflagged to Mongolia. For example, if the C-Star and its crew should decide not to rescue migrants in distress or be involved in illegal activity, Mongolia, as the C-Star's flag State, has prescriptive jurisdiction and, in principle, exclusive enforcement jurisdiction (Article 92(1) UNCLOS). Thus, conduct aboard the C-Star will be subject to Mongolian law. As the duty to render assistance to "any person" in distress (Articles 98(1), 58(2) UNCLOS), which undoubtedly extends to distressed asylum-seekers/migrants in overcrowded and unseaworthy vessels (Guilfoyle, Article 98, in: Proelss, United Nations Convention on the Law of the Sea: A Commentary, 2017, para. 8), is a duty of States, the C-Star's compliance with rescue obligations depends upon whether Mongolia has complied with its obligation to enact legislation including such obligations.

However, as an entirely landlocked country, Mongolia's maritime interests (and governance capacities over a Singapore based registry) are limited. Unsurprisingly, then, Mongolia is widely considered to be a so-called "flag of non-compliance". Until Mongolia takes action as a flag State for any violations that may occur, or consents to non-flag State enforcement, the best option for other States (and the general public) would be to apply international pressure to compel the Mongolian authorities (see Maritime Administration Mongolia and Ministry of Road and Transport Development) to strike the C-Star off its registry.

Acts of piracy

Apparently, a Spanish NGO has reported Generation Identity to the Spanish authorities for being involved in "a criminal organization, piracy and boarding for political ends". Indeed, Defend Europe claimed that it is under investigation by Spanish authorities for piracy (here and here). As a matter of public international law, piracy consists of "any illegal acts of violence and detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship [...] and directed [...] against another ship [...] or against persons or property on board such ship" (Article 101 UNCLOS). On the high seas and in the exclusive economic zone of coastal States (Article 58(2) UNCLOS), "every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the

persons and seize the property on board” (Article 105 UNCLOS).

Two requirements warrant further discussion. First, the C-Star would have to be involved in an act of violence against, for example, an NGO or migrant vessel (or the persons and property onboard such vessels). It is true that provocative conduct bordering violence is not unknown to Defend Europe. Members reportedly used a small boat to shoot flares at the Aquarius in the port of Catania ([here](#) and [here](#)). There are also unconfirmed allegations that the C-Star may be carrying armed security personnel and harassing vessels on emergency radio frequencies. Defend Europe's stated goals, however, offer little reason to expect such an incident. At points, “intervention” is included within the mission, but this is not elaborated upon other than *not* including the blocking of vessels or rescue attempts. Were it to be otherwise, coercive or dangerous maneuvers that eventually could lead to collisions and cause injuries, loss of life, or damage to property would certainly qualify as acts of violence (although, see Article 97 UNCLOS).

The second question, which has been a focus of literature considering violent environmental activism by Sea Shepherd Conservation Society, is whether political violence at sea is “for private ends”. According to one view in the literature, as well as some national courts, any conduct not sanctioned by a State is “for private ends”. An equally strong view in the literature would exclude political ends, although in this case the strong link between conduct and fundraising may mean Defend Europe are still acting for “financial gain”. The dangers a more extremist variant of Defend Europe would pose to shipping, human life and trade within the heavily utilized Mediterranean Sea demonstrates, yet again, the undesirability of international law providing an exception for private immigration law enforcers on the sole basis that their aims are “political” (in any case, see Article 6(2) SUA Convention).

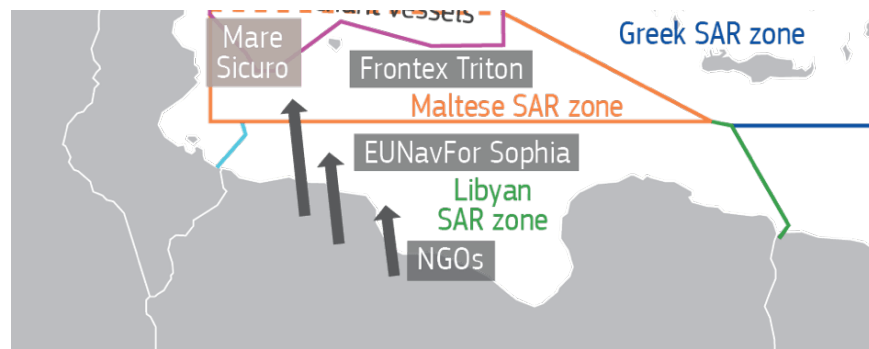
Activities within Mediterranean States' territorial seas

Given the many port access denials suffered by the C-Star, off-shore activities and coastal State jurisdiction will continue to play a significant role. The C-Star will have to comply with the applicable domestic law(s) when conducting such operations. This is because within their respective territorial seas (up to 12 nautical miles),

Mediterranean States enjoy sovereignty, which includes prescriptive and enforcement jurisdiction (Article 2(1) UNCLOS). The coastal State has jurisdiction over off-shore bunkering, supply, and boarding, as well as immigration matters in the territorial sea. The territorial sea may also be followed by a contiguous zone (up to 24 nautical miles from the baselines), where coastal States may exercise functional enforcement jurisdiction, including in respect to immigration (Article 33(1) UNCLOS).

In a related development, it seems Generation Identity are not alone in their enforcement concerns, nor in their criticism of NGO operations off Libya's coast. Libya recently announced that it invited Italian warships to assist in law enforcement operations in its territorial sea. While supported by the UN special envoy for Libya, opposition from the competing Tobruk based Libyan government remains strong. Soon after, Libya reportedly closed off its territorial sea and its SAR zone (which extends far beyond its territorial sea) to SAR vessels of NGOs without the express permission of the Libyan authorities. In the territorial sea, all vessels have a right of innocent passage (Article 17 UNCLOS). That passage must be continuous and expeditious, but expressly includes a right to stop and anchor when necessary for the purpose of rendering assistance to persons or ships in danger or distress (Article 18(2) UNCLOS). The question under which circumstances unwanted SAR operations would be non-innocent (cf. Article 19(2)(g) UNCLOS) certainly warrants further analysis, but the legality of a complete ban followed by potentially violent enforcement measures seems doubtful at best. With regard to Libya's announced interference with NGO activities in the high seas parts of its SAR zone, however, the legal situation is more clear. In the absence of a legal basis (cf. Part VII of UNCLOS), an interference of Libya with foreign flagged vessels constitutes a violation of the freedom of navigation and the exclusive jurisdiction of their flag States under customary international law (Libya only being signatory to UNCLOS).





Source: [European Political Strategy Centre](#)

Offences committed by the C-Star crew

If, for example, German crew members of the C-Star engaged in some of the conduct described above, and if that conduct is subject to criminal sanctions in Mongolia, they could, for example, be prosecuted for disrupting rescue operations (Sec. 323c II German Criminal Code (StGB)) or even for dangerous disruption of ship traffic (Sec. 315 StGB) upon arrival back home. German criminal law is applicable to the conduct of German nationals abroad, if that conduct is a criminal offence under the law of the (flag) State which has jurisdiction or if no other State has criminal jurisdiction (Sec. 7 II Nr. 1 StGB). This is because Mongolia and the States of nationality of the C-Star's crew (Austria, France, Germany and Italy) retain concurrent prescriptive jurisdiction (and in some cases, are obliged to use it, cf. Article 6(1)(c) SUA Convention).

Denial of port entry or the seizure of vessels in port

Finally, the case of the C-Star demonstrates the scope of port States to adopt measures against foreign vessels under customary law, ranging from enforcement measures for territorial offences (subsequently dropped immigration violations, Northern Cyprus), to the denial of access or port services upon the suspicion of wrongful conduct, or simply being an unwanted visitor (Italy, Tunisia). Indeed, the vessel and crew were ejected from Famagusta, despite the lack of evidence to establish a crime was committed – granting port privileges being a right of domestic jurisdiction, to be withheld or withdrawn at a State's discretion (subject to international obligations, e.g. Article 11(4) PSMA).

With no right of access to foreign ports (bar the very limited and inapplicable distress or *force majeure* exception when necessary to preserve human life), the C-Star and Mongolia have no legal basis on which to challenge these denials of entry.

As a further twist, port State jurisdiction has also been utilized to regulate foreign flagged humanitarian vessels assisting those in distress. In an apparent effort to stimulate European reform, Italy threatened to close all ports to foreign flagged humanitarian vessels in June. The Golfo Azzurro, a humanitarian vessel that has had run ins with the C-Star, was earlier this month denied entry by Italy for breaching, or not signing, the new Code of Conduct for Search and Rescue NGOs, and by Malta as a case for Italy to deal with.

The vessel has since been granted entry by Italy, but the case raised interesting jurisdictional issues. As a right of States within the very limited concept of domestic jurisdiction, a port State may deny entry upon wholly extraterritorial conduct (such as the Code of Conduct requirements), giving its law extraterritorial “effect”, without the need to justify its conditions as a matter of prescriptive jurisdiction within international law, nor violating the exclusive flag state jurisdiction (*contra both*, ASGI). Overwhelming port State practice incorporating extraterritorial conduct into entry requirements demonstrates this, much like the entry of aliens. However, if enforced through enforcement measures beyond the denial of port privileges, this would not fall within the limits of domestic jurisdiction and must thus be premised on validly prescribed law (e.g., the Juventa case could be based upon objective territorial or protective jurisdiction). In this context, it would be doubtful Italy has jurisdiction to enforce the Code of Conduct against foreign vessels approaching port beyond denial of entry or services.

Concluding Remarks

Both the C-Star's activities and those of humanitarian NGOs in the Mediterranean Sea illustrate a global trend towards private actors filling perceived gaps in maritime governance. Whatever the reader's political opinion on the positive or negative contributions private citizen initiatives can have for the current situation in the

Mediterranean Sea, awareness of States' prescriptive and enforcement powers under the law of the sea and customary international law is of paramount importance, both for governments and private actors, in finding consistent and coherent solutions which should respect the rule of law. This post has sought to demonstrate the multitude of potentially applicable jurisdictions which may govern the conduct of the C-Star, its crew and the NGO vessels respectively. It has also shown that States may, at times, choose to pursue their political goals in the Mediterranean Sea through means whose compliance with jurisdictional principles is doubtful. Where European private actors decline to align their conduct with the expectations of State actors, they may find that Europe no longer permits their vessel calling its ports home.

Valentin J. Schatz is a Ph.D. Candidate and Research Associate at the Chair of Public Law, in particular Public International Law and European Law (Professor Alexander Proelss) of the University of Trier, Germany.

Arron N. Honniball is a Ph.D. Candidate at Utrecht University, the Netherlands, and a member of the Netherlands Institute for the Law of the Sea (NILOS) and the Utrecht Centre for Water, Oceans and Sustainability Law (UCWOSL).

Acknowledgements:

The authors would like to express their gratitude for comments on an earlier draft of this post by:

Nelson F. Coelho, Ph.D. Candidate at Utrecht University, the Netherlands, and member of the Netherlands Institute for the Law of the Sea (NILOS).

Marco Fantinato, Helicopter Squadron Commander, Italian Ministry of Economy and Finance and Ph.D. Candidate in International Law and Human Rights at University of Rome "La Sapienza".

Alexander Proelss, Professor of Public Law, in particular Public International Law and European Law, University of Trier, Germany.

Cite as: Valentin J Schatz and Arron N Honniball, "The C-Star's Odyssey

and the International Law of the Sea”, *Völkerrechtsblog*, 21 August 2017, doi: [10.17176/20170822-131414](https://doi.org/10.17176/20170822-131414).

ISSN 2510-2567

Tags: *Law of the Sea*, *Refugee law*, *UNCLOS*



Related

| | | |
|---|--|--|
| TTIP and the WTO: Anatomy of a murder story and the future of the world trading system 29 February, 2016 In "Discussion" | On 'cyber trafficking' and the protection of its victims 26 July, 2017 In "Discussion" | Responsibility-sharing for refugees (1) 7 September, 2016 In "Current Developments" |
|---|--|--|

PREVIOUS POST



On book reviews: Why,
when and how to write
them

NEXT POST

This is the most recent
story.

1 Comment



A.N. HONNIBALL

21 August, 2017 at 11:12 – Reply

Update: After concluding its 'first' mission, the C-Star has been reportedly refused services and the transfer of a crew member by Malta on the 19 August 2017. Although it has not made a formal request to enter port, a Maltese governmental spokesman reportedly stated that, unless an emergency situation arose, “[t]he ship is not welcome to our shores because of all that it stands for”.

<https://www.timesofmalta.com/articles/view/20170819/local/denied-cooperation-anti-migrant-ship-lashes-out-at-malta.655976>

Leave a reply

Your email address will not be published. Required fields are marked *



Notify me of follow-up comments by email.

Notify me of new posts by email.