

Spain denies docking to arms-laden ship bound for Israel: Implications and international legal framework

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Recently, Spain denied docking permission to a Denmark-flagged cargo ship, Marianne Danica, with explosive material sailing from Chennai to the port of Haifa in Israel. This is the first time that a ship carrying a shipment of arms to Israel has been detained at a Spanish port, the reason cited is that the Middle East [...]

Recently, Spain denied docking permission to a Denmark-flagged cargo ship, Marianne Danica, with explosive material sailing from Chennai to the port of Haifa in Israel. This is the first time that a ship carrying a shipment of arms to Israel has been detained at a Spanish port, the reason cited is that the Middle East needs more peace and not weapons. In this context, the authors talk about the international law surrounding the control of supply of weapons of mass destruction and its financial aspect, the role of Financial Action Task Force (FATF) and the possible way forward.

The discussion regarding such laws has become significant given the increased ability of illegitimate actors to obtain such means through globalized black market channels. In simple terms, the international law on the arrest of the ship is governed by international treaty law and customary international law. On 12th March 1999, the United Nations/International Maritime Organization Diplomatic Conference (hereinafter “UN/IMO Diplomatic Conference”) unanimously adopted the International Convention on Arrest of Ships, 1999 (hereinafter “the 1999 Arrest Convention”) in which the representatives from around 100 nations as well as about 20 intergovernmental and non-governmental organizations participated at the UN/IMO Diplomatic Conference, which was held in Geneva under the auspices of the United Nations Conference on Trade and Development (UNCTAD).

The 1999 Arrest Convention entered into force on 14 September 2011 upon ratification/accession by ten States. The aim of the 1999 Arrest Convention is to provide a more modern successor to the 1952 Brussels Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships (hereinafter “1952 Convention”). The main objective of the 1952 Convention was to establish an international legal instrument that would reconcile the different legal systems, avoiding the arrest of a ship for claims unrelated to its operation, protecting the interests of the relevant parties. At that time, the Convention

succeeded in reconciling the differences between civil law and common law systems and striking a balance between the different interests involved.

Historically, the counter-proliferation measures have centered around export controls but with time the focus has shifted to financial control requirements for both the governmental and private sector actors on issues ranging from aggression and conflict to international terrorism and now the proliferation of weapons of mass destruction.

The implementation of such measures increased in the 1990s to address global security threats without using force as mandated under Article 41 of the UN Charter. Under this article, the Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations

What needs to be understood are the broad purposes for which these measures are being utilized including but are not limited to investigative and intelligence gathering, identifying co-conspirators, facilitators, and supporters to punish and confiscate such individuals and their properties.

It is in this context that the role of the FATF assumes significance which is an international body that is responsible for setting international standards on money laundering and terrorism finance. In 2012, a significant step was taken by it regarding the issue of proliferation finance under New Recommendation 7 titled "Targeted Financial sanctions related to proliferation". As per this recommendation, the Countries should implement targeted financial sanctions to comply to comply with United Nations Security Council resolutions relating to the prevention, suppression, and disruption of the proliferation of weapons of mass destruction and its financing.

However, the implementation of such measures is surrounded by implementation difficulties ranging from lack of awareness, commercial concerns, and lack of coordination to the neglect of guidance and outreach to the private sector. Furthermore, the proliferating networks operate multiple production facilities, countries, intermediaries, and breaking procurement down to parts and small amounts, which are difficult to detect or trace.

The need of the hour is to adopt a strategic approach that includes outreach and partnership with the private sector as well as the academic community and ensure that data on the global flows of finance are collected, tracked, analyzed, and matched to identify irregular and suspicious activities, to prosecute serious financial misconduct and networks.

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