

CLIENT ALERT

Boarding of the *Grace 1* Exposes "British" Tankers to Action by Iran

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The reaction of the Iranian government to the boarding of the *Grace 1* off Gibraltar has been swift and direct reciprocal action has been threatened against "British" ships. Whether that is British flagged as opposed to British managed or operated ships, is unclear. But in the light of the recent attacks on tankers in the Straits of Hormuz and off Fujairah by Iranian forces that threat must be taken seriously. At the moment the threat is conditional on release but recent action in the U.S. Courts to seize a vessel involved in alleged sanction busting trades may yet see the *Grace 1* subject to forfeiture action in the U.S. This latest case has parallels with the U.S. backed detention of the North Korean vessel the *Wise Honest* in May 2019 in Indonesia which saw the first seizure of a vessel under the U.S. civil asset forfeiture procedure more normally aimed at financial assets.

As always these sorts of actions give rise to media interest and speculation. Facts are hard to come by but it seems that the operation was led by the Gibraltar police which would make sense given the new law in Gibraltar that became effective only the day before (see below). They in turn sought support from the U.K. government and the logistical military force to back up the police was the Royal Marines. There is speculation that the U.S. had been pushing for this and once the vessel entered into EU waters then there was an excuse to act. Gibraltar has confirmed that the vessel was carrying crude oil.

While it is probably right that since it withdrew from the Joint Comprehensive Plan of Action in May 2018 the U.S. has been more zealous in its pursuit of Iran, this vessel seizure was carried out on the basis of contravention of the EU Syrian Sanctions (Council Regulation (EU) No. 36/2012) and against this background it would have been difficult for the U.K. to refuse to act. The justification for the boarding is that the vessel was carrying Iranian crude oil to Syria and in particular to the Baniyas Oil Refinery which was listed by the EU in July 2014 pursuant to Regulation (EU) No. 36/2012 and is subject to restrictive measures. Provision of "economic resources" of any kind to a listed person or entity is prohibited.

Perhaps what is most interesting about this seizure is that it was carried out pursuant to the 'Sanctions Regulations 2019' enacted by Gibraltar on 3 July, just one day before the seizure. Those Regulations give the Chief Minister of Gibraltar powers to designate a vessel as a "Specified Ship" if he "has reasonable grounds to suspect that the ship ... has been, or is likely to be, involved in a breach of the EU Regulation". The EU Regulation in question is Regulation (EU) No. 36/2012 and a "Specified Ship Notice" was issued in Gibraltar on 3 July 2019 naming the *Grace 1*. Under the Sanctions Regulations 2019 a Specified Ship "must be detained if it is in BGTW (British Gibraltar Territorial Waters);" and "may not leave BGTW unless permitted to do so by an order of the court or where the notice designating the ship as a Specified Ship has been revoked".

HM Government of Gibraltar has confirmed that the vessel was well inside Gibraltar territorial waters when boarded and she remains detained under an Order of the Chief Justice of the Supreme Court of Gibraltar. As a Specified Ship the *Grace 1* can only be detained for a period not exceeding 90 days unless an application is made for its forfeiture or proceedings are instituted against any person for an offence with which the Specified Ship or the cargo carried by the Specified Ship is connected. If such an application is made or proceedings instituted then the Specified Ship may not be released until any proceedings pursuant to that application or the proceedings for the offence have been concluded. The Supreme Court of Gibraltar has been given broad

powers and may order the forfeiture of the Specified Ship; the cargo carried; or both the Specified Ship and the cargo carried if “the presence in Gibraltar of the Specified Ship or the cargo carried ...constitutes a breach of the EU regulation and its forfeiture would be in the interests of justice, international peace and security or pursuant to any other law.”

Boarding of vessels by Royal Marines in support of law enforcement is not unusual. There have been high profile cases of interdiction of vessels in the English Channel and more recently where illegal immigrants were thought to have taken over a vessel. Some have suggested that such action is a type of piracy. It was the same charge levelled at the Israeli government when they seized the *Mavi Marmara* (in May 2010) using lethal force where a number of people on board were killed. The international definition of “piracy” provides that an attack must be for “private ends”. It means that an act by a state cannot be an act of piracy. It is understandable that the U.K. government has roundly dismissed the suggestion that it has acted wrongly. The vessel is said to have been flagged in Panama who would ordinarily have been informed of the operation before it took place. Indeed their permission should have been sought. However, Panama seems to be suggesting that the vessel’s registration was cancelled in May this year because the vessel was implicated in illegal activity. That begs the question as to whether it had any flag at all. That too exposes it to seizure in any event.

The suggestion by the Iranian government is that they will carry out a similar boarding and seizure of a British vessel if the *Grace 1* is not released. At the moment there will be a police led enquiry to ascertain what was loaded and when. Cargo documents and the ship’s computer will be scrutinised. The Indian and Pakistani crew will no doubt be co-operative. It maybe that the master will face some form of administrative offence under Gibraltar law depending on documentary discrepancies on board. The crew is unlikely to know anything of the financial payments in respect of the cargo. Under the Sanctions Regulation an application must be made to the Court if the vessel is held longer than 72 hours so it is probable that the detention has already been subjected to some kind of judicial review.

However, if the evidence is there of an attempt to breach sanctions then the release of the vessel could be taken out of Gibraltar/U.K. hands. The U.S. government may well seek to use the civil asset forfeiture procedure to seize the vessel. The U.S. government recently took similar action against the *Wise Honest* a sanction busting North Korean vessel detained by the Indonesian port authorities in May 2019.

The *Wise Honest* was seized by the Indonesian port authorities for “a major deficiency” under SOLAS and the master was charged under local law for fraud. The vessel was transporting a cargo of coal bound for North Korea contrary to the U.S. sanctions laws. In that case, payments in respect of the cargo had been made in U.S. dollars giving the U.S. court jurisdiction. The U.S. government then applied for forfeiture under the civil asset forfeiture procedure. This was the first time it had been used against a ship and led to speculation at the time that it would be used in other cases. An argument was made under the U.S. International Emergency Economic Powers Act which gives wide ranging discretion to the U.S. Court to issue a warrant of forfeiture. It seems reasonable to assume that the U.S. could look to use the same powers in relation to *Grace 1*. This will require an application before the same court in New York. If permission is given then the vessel would be forfeited to the U.S. and the crew would be repatriated. That threat requires a breach of the U.S. law and in any event may recede if the vessel is forfeited to Gibraltar.

Both the U.K. and U.S. seem to have been tracking *Grace 1* for some time, particularly as it was routed laboriously around South Africa rather than through Suez where often oil is discharged at one end and piped to the other and can be more closely monitored. Perhaps the matter was part of the recent discussions between Mrs. May and President Trump. In which case the

U.K. may have obtained reassurances that the U.S. would not intervene further. However, if the vessel is forfeited by a warrant of the U.S. Court then the concern will be the extent to which Iran will continue to blame the U.K. A threat in the volatile Straits of Hormuz will be a viable one and will increase the risk to U.K. operated tankers. In which case there will be some serious questions raised as how to protect such tonnage from boarding either by sea or air. There is very little a crew can do to resist such a boarding. Private armed guards cannot be deployed on British Shipping other than in the High Risk Area off Somalia and whilst that could be reviewed, private maritime security guards will be very circumspect in opening fire on military forces determined to seize a vessel for political point scoring. U.K. military Vessel Protection Detachments come with their own logistical problems but maybe something that U.K. shipping interests will insist on. They may prove a viable deterrent against action by Iran but they may well also serve as an additional trigger point in a very sensitive area.

Whatever happens to *Grace 1* the seizure has clearly increased tensions in the already strained international relationship with Iran. It will be a situation watched with some concern by owners and operators and by the war risk insurance market.

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