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Legal flaws hinder piracy fight, warn lawyers

By Michael Peel and Robert Wright in London

Flaws in anti-piracy laws and their enforcement are hampering the fight against ship hijacks that have claimed 40 vessels off the Somali coast this year, maritime lawyers and officials have warned.

The complex blend of international agreements and domestic rules governing piracy has triggered disagreements about when and how other ships can intervene and what to do with suspects once arrested.

Governments and international bodies such as the United Nations are urgently reviewing how to combat piracy after last month's seizure of the Sirius Star oil tanker highlighted the sharp rise in hijacks in the Gulf of Aden, the gateway to the key Suez Canal.

James Gosling, a maritime specialist at law firm Holman Fenwick Willan, said the lack of clear legal approach against pirates was dangerous in an increasingly febrile kidnap situation that could turn into a disaster if "someone, somewhere" did "something stupid".

"Three hundred years ago, navies just wouldn't have stood for this. But I think that their hands are seriously tied by both domestic and international legislation," he added.

Efthimios Mitropoulos, secretary-general of the UN's International Maritime Organisation, has called for clarification of the legal position on piracy, even though he believes existing rules are strong enough if understood and applied correctly.

Clearer laws could be crucial in helping navies impose the cordon along Somalia's coast that a number of international shipping organisations would now like to see set up to control pirates' access to the open sea.

Lawyers say navies operating in the seas around Somalia are often reluctant to intervene because they see legal problems stemming from the main international agreements designed to maintain maritime security.

Some countries feel that they do not have the authority to allow their ships to intervene under the 26-year-old UN Convention on the Law of the Sea, the framework for international maritime rules.

The convention authorises "repression of piracy", but only on the high seas rather than in

national territorial waters. It also threatens states with financial penalties if they seize ships “without adequate grounds”.

A further perceived obstacle is that the 1988 convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation – introduced in the wake of the 1985 hijacking of the Achille Lauro cruise liner – grants intervention powers to deal with terrorism rather than piracy.

A third problem is that many nations do not have laws adequate for prosecuting pirates, leaving them with the unattractive option of sending suspects back to lawless home states where they may well not face trial.

Even countries with relatively strong domestic anti-piracy laws, such as France, have turned some suspects over to Somalia, while other countries, such as Britain, have sent men captured at sea to Kenya.

Stephen Askins, partner at Ince & Co, a London-based law firm, said the failure to overcome the legal difficulties around piracy was particularly egregious because similar questions arose during a previous spate of attacks on ships off Somalia in late 2005.

Mr Askins said: “We have not done anything in the intervening years. We were on notice that this could happen.”

Britain is among those countries now scrambling to revise their laws with a view to making it easier to – in the words of its Department for Transport – “board, seize, detain and arrest” suspected pirates in international waters.

Another temporary legal fix being explored is the extension and expansion of a UN resolution, due to expire early next month, which gives international militaries the authority to combat piracy in Somali territorial seas.

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