

Investigating crime at sea – whose jurisdiction?



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The shipping industry has come under a lot of criticism over recent years for failing to deal with serious crimes on board its vessels. For many owners, such criticism is unwarranted; nothing could be further from the truth. Many owners have developed systems to react swiftly on the essential preservation of crime scenes and evidence, collection of forensic evidence (including the use of rape kits) and taking suspects into custody. The main problem centres not on the handling of the situation on board the vessel, but in finding or persuading the appropriate authority to take charge of the situation and investigate. The real issue appears to be that suspects of serious crimes avoid prosecution despite the efficient and professional actions of the master, his officers and the vessel's owners/charterers.

Where an offence occurs in international waters, the authorities in the next port face legal and practical limitations regarding jurisdiction to board a vessel and investigate offences committed in international waters, and further difficulties in relation to the ability to prosecute alleged perpetrators of crimes at sea. Article 27 of the United Nations Conference on the Law of the Sea provides that the criminal jurisdiction of a coastal state should not be exercised to arrest any person or conduct any investigation in connection with any crime committed on a foreign ship passing through its territorial sea, except in relation to cases outlined in the Article and which relate to that jurisdiction. For example, possession of drugs or pornography on board is often easier to deal with in the next port rather than offences against the person or theft.

A report will be made to the flag state by the owner, which may well not have the resources or capabilities to board the vessel at a foreign port and conduct an investigation. The police in the flag state territory itself will also have limited resources. The issue is further complicated by the fact that the victim may be from a country unconnected to the flag state or the next port of call, and the alleged perpetrator from yet another jurisdiction.



Justice

Other factors, such as geography and time zones, can also play a significant role in all of this alongside the commercial drive for vessels to arrive and depart within given time scales. The industry has its emergency contingency planning for dealing with the situation on board, but masters are not lawyers and it is difficult for them to judge who exactly should be informed of an incident and/or whether the vessel should deviate to a port that will assume jurisdiction.

Aviation context

Aviation does not suffer with this problem: wherever a plane lands is where the crime will be dealt with. Whilst maritime legislation is understandably diverse, a similar process can be considered for incidents at sea, making a receiving port competent to deal with crime as if it had been committed within its jurisdiction. There are, however, a number of issues with this. There are certain crimes that can be prosecuted by the police wherever committed in the world and regardless of the flag. These include crimes committed by citizens of particular countries in the UK; for example, the police have powers to prosecute offences under such laws as the s72 Sexual Offences Act/ s72 and the Criminal Justice and Immigration Act, but they do not have jurisdiction to carry out an investigation on board a foreign flag vessel outside the jurisdiction.



Crime

UK

In the UK, the Association of Chief Police Officers (ACPO) Maritime Planning and Operations have been lobbying to try and create common standards, certainly for ships visiting the UK.

Its work includes:

- encouraging the industry to adopt the ACPO Crime Manual (parts of which have already been adopted by the IMO);
- lobbying for a change in legislation;
- lobbying for a requirement that currently does not exist in the law of England and Wales to allow an investigation wherever the victim is British; and
- ensuring there are English-speaking police available to discuss the case 'live time' and to know what their response would be to certain crimes (for example experience has shown that some countries may not respond quickly to rapes).

ACPO is now lobbying the European Commission for an EU initiative for dealing with crimes in international waters.

US

In the United States, the Cruise Vessel Security and Safety Act 2010 was passed in order to deal with the jurisdictional dilemma. Crimes against and disappearances of US citizens are now reported to the FBI and the US Coast Guard for vessels operating to and from US ports. The legislation also calls for video surveillance technology. In the UK and Europe, much depends on the willingness or capacity of a sovereign state to investigate a crime that has been reported to the local authorities. Clarity is needed to ensure that investigations are initiated quickly, that evidence is preserved in a timely and professional manner, and is then passed on to the relevant investigating authority, enabling prosecutions to be brought.

IMO

The IMO is to develop guidelines to assist in the collation and preservation of evidence, following the allegation of a serious crime taking place on a ship or following a report of a missing person from a ship, and in the pastoral and medical care of alleged victims of serious crimes. An initial proposal for guidelines, prepared by the UK and Philippines' Governments and the Cruise Lines International Association (CLIA), has now been published.

Conclusion

It is important that the shipping industry has, as part of its general contingency planning, procedures agreed with flag states and police that are to be adopted if a crime is reported to them, and furthermore that similar procedures are in place to ensure that vital information and instructions are given to the local police in the relevant port of call.