Part II

Problems of Exercise of Jurisdiction in International Waters, including Human Rights Considerations and Conflicting Uses of the EEZ and Residual High Sea Freedoms
Chapter Four

Jurisdictional Problems Relating to Non-Flag State Boarding of Suspect Ships in International Waters: A Practitioner’s Observations

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Introduction

For naval legal practitioners, advice to maritime commanders on the conduct by warships of visit and search, otherwise known as boarding operations or, in recent years, maritime interdiction operations (‘MIOPS’), against foreign flagged vessels in international waters requires in every case the development of clear advice in relation to the following key questions: which vessels may be interdicted? Where may they be interdicted? What may be done in relation to suspect personnel or equipment found? What degree of force may be used? While mission directives also reflect political intent and operational considerations, central to interdiction missions across the full spectrum of naval operations – from the exercise of belligerent rights in international armed conflict to the support of domestic law enforcement authorities such as customs and police – is consideration of the critical question of jurisdiction. While the exercise of belligerent rights against enemy and neutral merchant vessels under the law of armed conflict at sea was recently claimed by Israel in relation to the enforcement of their blockade of Gaza, and before that contemplated by certain of the coalition maritime forces participating in the 2003 invasion of Iraq,¹ this is a specialist part of international humanitarian law; and is outside the scope of this short paper, which instead will set out examples of the key jurisdictional challenges faced by maritime commanders across the spectrum of maritime security operations (‘MSO’).

* The views expressed in this paper do not necessarily represent the view of the Royal Navy, the Ministry of Defence of the United Kingdom of Great Britain and Northern Ireland, or Her Majesty’s Government.