RESURGENT SEA-PIRACY: RISK MANAGEMENT AND INSURANCE

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Abstract

A resurgence of piracy at sea has captured media attention around the world. Pirates operating off the coast of Somalia are outrageously bold in attacking and boarding a variety of ships. Modern pirates have the cunning and daring of the old swashbucklers such as in the 17th century, but they also have fearful modern weapons and GSP technology, and a financial chain along which they easily dispose of the ransom money which is the aim of these attacks rather than stealing ship or cargo.

Piracy has been a modern scourge for decades, but elsewhere, and attracted attention only sporadically. The International Chamber of Commerce, through its subsidiary the IMB Piracy Reporting Centre is the major international body combating this evil business. Insurers used to consider it a minor issue in the scale of marine losses. Now, the United Nations Organisation intervenes, and navies of several countries are engaged on patrol and rescue missions, including the use of firearms and helicopters. Insurers now take a greater interest in risk management advice as well as adjusting rates and launching new types of cover.

This article reviews the sudden emergence of this threat off Africa, setting it within the context of ongoing piracy. It considers the four principal risk management efforts: ships' self-defence, action on land in the pirates' home ports, arresting and prosecuting pirates, and interrupting the laundering of ransom money It also examines the effects of piracy on insurance, the dangers of having armed guards on ships, the problems of definitions, and policy cover. The huge increase in piracy in the Gulf has produced a massive attempt to bring it under control, as joint efforts by Indonesia, Malaysia, Singapore, and Thailand succeeded in doing so in the former piracy hot-spot of the Malacca Straits.

Piracy Resurgent in 2008

Although there had been small-scale piracy in East African waters, suddenly in 2008, the sea around the Gulf of Aden became a very dangerous place for most types of ship. Fishing vessels, tugboats, yachts, cruise ships, oil tankers, containerships, bulk cargo carriers, were attacked and often seized by armed robbers in small craft. In 2008, there were 134 attacks and 49 ships were captured. These pirates are indiscriminate in what type of ship and from which nation. On one day, 16 December 2008, Somali pirates seized four ships, an Indonesian tugboat, a Turkish cargo ship, a Chinese fishing vessel, and a yacht. The pirate's purpose is not to capture and sell ships and cargoes but to hold them and the crew to ransom. This marks a significant change from earlier piracy practice when cargo and ships simply disappeared (Lawrence, 2003). Gunmen have earned millions in ransom money, foreign navies have rushed to the area, the United Nations intervened, and insurance rates have increased. This area is a vital busy sea lane linking Asia, Africa and Europe.

There are so many other examples. Along with its 28 crew, a Thai fishing vessel, the MV *Thor Star*, was seized by Somali pirates on 12 August 2008 in the Gulf of Aden. The ship was owned by Thailand's biggest shipping company. The pirates released the undamaged ship and unharmed crew on 18 October 2008. On the same day, a South Korean bulk carrier, MV *Bright Ruby*, was also released with its 22 crew. There were no announcements of any ransom money being paid for these two ships. But if not, why were they captured and then returned intact?

Somalia, East Africa, has been suffering from the anarchy of a failed State since 1991 when warlords overthrew a dictator. The warlords fight each other. Thus, Somalia has no means of controlling the pirates' onshore bases or of bringing the pirates to justice, much less being able to patrol its coasts and seas. An insurgent Islamist Somalian leader, based in nearby Eritrea, leader of the Alliance for the Re-Liberation of Somalia, called on the pirates to release ships, but they do this in their own time. The leader's Islamic Courts Union ruled much of Somalia for six months in 2006 before being ousted by an invasion by Ethiopia. Piracy surged in 2007 and rapidly escalated in 2008, and in the second quarter it accounted for more than one third of global piracy attacks. The Ethiopians withdrew in 2009, leaving a radical Islamic militia in charge of some of the country. There was a dramatic increase in attacks in the first quarter of 2009, and the Gulf of Aden now has the world's most dangerous waters. This area has rapidly become notorious for the number of attacks, the extent of violence, the number of hostages, and the level of ransoms (Ng, 2008). The pirates have shifted their attacks to larger ships.

An attempt was made in 2008 by six Somali pirates in two small vessels, skiffs, to seize a USA cruise liner MS *Nautica* with 656 passengers and 399 crew. The ship was sailing

in a protected maritime corridor patrolled by an international naval coalition. Shots were fired from the skiffs, but the liner managed to escape, with no damage or casualties.

A Chinese ship MV *Yandanghai* was attacked by a pirate skiff in February 2009, but a Danish naval warship was alerted by a distress signal, and raced to the location. Meanwhile the crew of the *Yandanghai* fought the attackers with fire hoses. The Danish sailors boarded the skiff, and found many weapons, including a rocket-propelled grenade, four AK-47 assault rifles and two grenades. A Japanese ship *Stolt Strength* and its 23 Filipino crew were released in April 2009, five months after capture.

An arms ship from Ukraine, MV *Faina*, with tanks and other weapons on board, was seized in September 2008 on its way to Mombasa in Kenya. The ship and its 28 crew were released in February 2009 after a ransom of US$3.5 million had been paid to pirates whose base was the port of Harardhere, who had held the ship offshore. The ransom was a negotiated one, the original offer being US$1 million and the original demand US$35 million, and was handled by a Ukrainian 'special services' team. The money was flown from Nairobi in a capsule and dropped by parachute. The pirates had electronic money counters, and it took them only 15 minutes to confirm that the full ransom was in the capsule. The pirates speak openly to the press. During the long negotiations, the pirates' spokesman, Sugule Ali, had threatened that if they were to be attacked by NATO forces, the crew would be killed (Ng, 2008). It had been feared that the armaments on board would have been sold to terrorists, as the US State Department says that Somali insurgents are linked to al-Qaida.

No ship is safe. Ironically a ship carrying UN relief food for Somalia and Uganda from Djibouti to Mombasa was seized. Unusually the capture was 300 miles from the coast, in the Indian Ocean. The freighter, *Maersk Alabama*, was owned by the Danish subsidiary of Maersk Line (the world's biggest container shipper) and carried a USA crew of 20. The ship was retaken, but four pirates held the captain hostage on a lifeboat. It was the sixth pirate seizure in five days. In 2008, 111 ships were attacked and 42 seized, attacks peaking in September and November. The worldwide total was 49 ships, demonstrating the scale of the Somali pirates.

The area menaced by these pirates is one of the world's busiest shipping lanes. Ships from the Suez Canal exit the Red Sea, to go either East to India and beyond or South down the East coast of Africa. Some ships have been diverted by their owners, away from the Suez Canal and instead round the Cape of Good Hope, South Africa (the long route used before the Suez Canal was cut). This adds a minimum of 20 days to the journey, and increases costs. Maersk Line announced that it was rerouting its 50 oil tankers, to go via The Cape (Jones, 2009).

The Piracy Reporting Centre of the IMB

The International Maritime Bureau (a specialised department of the International Chamber of Commerce) is a non-profit organisation established in 1981 in London as a focal point in the fight against maritime crime and malpractice. The IMB is endorsed by the UN International Maritime Organisation, and has observer status with Interpol. Its investigative reports, listing threats and offering risk reduction advice, are communicated to members. It also runs training courses, and offers consultancy services, on security (IMB website, 2009).

Before 1992, ships' owners and operators had nowhere to go to when their ships were attacked, robbed, or hijacked. Local law enforcement pretended not to know or ignored these serious acts of piracy. Because of the escalation of piracy, the IMB decided to make it one of its major concerns by creating the IMB Piracy Reporting Centre in 1992, based in Malaysia (close to the Malacca Straits), which maintains a constant watch on shipping lanes, reports pirate attacks, issues warnings about piracy hot-spots and regular piracy reports on internet (Wikipedia, 2009).

The Piracy Reporting Centre is supported by voluntary contributions from many organizations including shipowners, insurers, P & I Clubs, and governments. Its services are free to users (Lawrence, 2003). Threats are made against the officials running the Piracy Reporting Centre: these are accepted as an occupational hazard and as a measure of the PRC effectiveness against pirates and their backers (Yeow, 2008).

The International Maritime Bureau advises that ships not due to call at Somalian ports should keep as far away as possible from Somalia, preferably more than 600 nautical miles until east of Seychelles. It has also issued Best Management Practices guidelines for ships, practical risk management advice (icc-ccs website, 2009).

Also involved in the Somali piracy situation is the East African Seafarers' Assistance Programme, an independent organization founded in 1996 for the welfare of seafarers and to monitor piracy in the Indian Ocean off the coast of Africa. It is based in Kenya. Through its head, it has been actively and publicly involved in the Somali crisis.

International Patrols & United Nations Resolutions

In December 2008, China sent a navy squadron of two multi-role missile destroyers and a supply ship to patrol the troubled waters, its major task being to protect Chinese ships and crew as well as ships carrying humanitarian relief, and to cooperate with convoy warships of other nations. This is the first time that China has sent its navy abroad for

armed operations. It is yet another sign of China's economic and military importance, and it has significant commercial interests in Africa. 20% of 1,265 Chinese-linked commercial ships in the Gulf had been attacked in the first eleven months of 2008 (Railpage, 2009).

Also in December 2008, the European Union sent a naval task force under British command, involving six warships and aircraft from several nations. USA's Fifth Fleet sent a naval force in January 2009, consisting of Combined Task Force 151, with three ships and two aircraft, specially created for anti-piracy operations. USA is part of a 20-nation Combined Maritime Forces, and works in liaison with the EU task force. In 2009, South Korea joined the international fight against piracy off Somalia, sending a destroyer equipped with heavy artillery, two helicopters, three high-speed boats, and 300 crew. 460 South Korean ships a year pass through these waters, and several have been hijacked, the crews captured, and ransoms demanded. India, Russia, and Saudi Arabia, and other countries, have also sent ships. Necessary and welcome though this naval presence is, from so many countries, it is logistically very difficult to patrol a million square miles of ocean effectively.

The pirates are increasingly using mother ships. These are larger ships carrying personnel, equipment, and smaller assault craft, which enable pirate attacks to be made long distances from the shore. The IMB has also called for action against these ships, claiming that their location and descriptions are well known (Ng, 2008).

A resolution in the 15-nation United Nations Security Council on 16 December 2008 said that States may undertake all necessary measures in Somalia, including its airspace, to stop the pirates. Land action is needed as well as navy patrols, and the United Nations later agreed to land pursuit. The resolution was sponsored by USA, and its Secretary of State called for two other types of action, by shipowners to improve self-defence, and for stronger legal sanction to prosecute pirates. The four typer of action are:

Ships' Self Defence

Ships need to train crew in crisis management, and to start evasive action quickly when threatened. Security personnel on board can help, so that the crew do not have to use lethal weapons (Bonnissent, 2008). Water cannon can be placed near vulnerable parts of a ship, barbed wire can be strung and handrails electrified. Placing guards on merchant ships is debatable, because of the illegality of carrying weapons when in certain ports, and restrictions by their ship Registry ('flag') on carrying small arms. Armed guards could cause an escalation of violence if pirates come to expect such resistance. Ship owners are now more willing to employ private security firms to provide onboard security. One such firm announced that it was arming a helicopter to escort ships through

danger areas (Jones, 2009).

The importance of Self-defence has been recognized for many years. In 1999 a satellite tracking system (SHIPLOC) was introduced. It is capable of instantly locating a vessel through a tiny transmitter on the ship which sends a discreet alert from ship to shore. It is contained in a small waterproof unit which contains an Argos transmitter, a GPS receiver, and a flat antenna (ICC Annual Report, 2002). Shiploc has been involved in many pirate attacks as it provides the IMB Piracy Reporting Centre with precise positions which it passes on to other ships, warships, and land authorities.

The International Maritime Organisation (IMO), set up by the United Nations in 1959, issues regulations for Safety of Life at Sea (SOLAS Regulations). The IMO Regulation SOLAS XI-2/6 which became effective in 2004, requires all ships over 500 gross tonnage to be equipped with a Ship Safety Alert System (SSAS). The *Shiploc* system meets the SOLAS XI-2/6 criteria. However, the actual enforcement of Regulations is the responsibility of Governments, and some are less willing or able than others (Lawrence. 2003). Another SOLAS Regulation, based on a proposal from China and Hong Kong, requires that ships have a unique number embossed on the hull, which identifies the origins of the ship, so that anyone in illegal possession cannot hide the ship's true identity (ICC website).

The IMB recommends *Secure-Ship* for self-defence. It is a non-lethal 9,000-volt electrifying fence surrounding the whole ship, which delivers a painful electric shock. Also, when triggered, it activates floodlights and a very loud siren. Because of the possibility of sparks, it cannot be used on tankers or other ships with inflammable cargoes (www.secure-ship.com).

Legal Ability to Prosecute Pirates

The legal ability to prosecute pirates has been a long-standing issue, and is enmeshed in definitions of sovereignty, territorial waters, and high seas. The UNODC (UN Office on Drugs and Crime) has experience of legal sanctions and offers practical advice on the pirate issue. Ideally pirates should be tried in the country where they came from, or where the shipowner is based. But the Somali judicial system has collapsed, and many countries where these ships are registered such as Liberia and Panama do not want to get involved. Many of these registries are known as 'flags of convenience' and have a poor reputation with most insurers and port authorities for their lax attitude to ship safety and post-incident investigation.

An option is for the trial to take place in the country whose ship captured the pirates, probably the European Union, India, or USA. But that is also unlikely as there are strict

international standards concerning human rights. A third option is for them to be tried in the region after arrest by local police stationed on warships especially for that purpose. The countries could involve Djibouti, Kenya, Tanzania, or Yemen. This system has been used in the Caribbean against drug traffickers. UNODC is helping these countries to implement the United Nations Convention Against Transnational Organised Crime (Railpage, 2009).

Pirates have indeed been arrested. The Indian Navy arrested 23 pirates in December 2008, having seized two pirate vessels, a dhow and a skiff, and detained 12 Somalis and 11 Yemenis. The navy was on anti-piracy patrol escorting ships, and received a distress call from MV *Gibe* (registered in Ethiopia) which was returning fire, 13 miles off Mysore. An armed navy helicopter was sent, and marine commandos boarded the two pirate vessels. They found a substantial cache of arms and a GPS Receiver. The French navy arrested 29 pirates in 2008, some of whom are in France awaiting trial. The French have been very active against pirates here, as part of the EU force. In February 2009, a Russian nuclear-powered heavy missile cruiser arrested 10 pirates. The same month, a USA warship arrested 7 Somali pirates in one incident, and another 9 the next day in another incident.

Kenya holds most of the arrested pirates, in a top-security prison in the port of Mombasa, and seems to be used as a dumping ground for pirates being picked up by the international navies. The pirates will appear in court, under the terms of a secret agreement between UK and Kenya in December 2008, later agreed to also by USA and EU (Howden, 2009). It is an experiment in international law, but the choice of Kenya is unfortunate as its judicial system does not have a good reputation. The application of the agreement to Kenyan Courts is to be challenged by the pirates' defence lawyer who argues that there is no legal basis. Although Kenya has ratified the UN Convention on the Law of the Seas, it has not passed relevant domestic laws. However, the Kenyan courts did convict a group of Somalis in 2008 after they had been handed over by the US navy. In September 2008 a Danish ship captured 10 pirates, but realizing that they could not prosecute them landed them in Somalia. British and German navies have also admitted releasing pirates (Howden, 2009)

Action on Land and Ransoms

The pirates' coastal bases in Somalia and their support networks have to be destroyed. The main ports used by the pirates in Somalia are Eyl and Haradhene. The reward for local administrators who enforce this destruction could be development aid and the creation of job alternatives. UNODC asks insurers to help with this, to prevent attacks, rather than simply pay ransoms (Railpage,2009).

UNODC also wants to pursue the ransom money, to recover it. Increasingly these modern pirates work through financial intermediaries in financial centres. It has been reported that investigators have discovered that crime syndicates operating in the Middle East are laundering the ransom money, that the ransom amounts are far higher than admitted, that the godfathers include businessmen from that region, and that some of the money has gone to militants (Sengupta and Howden, 2009). The investigators include a security company *Idarat Maritime* hired by Lloyds' underwriters, and one of its directors says that the evidence is that syndicates around the Gulf region play a significant role in Somali piracy, with huge amounts of money involved, which gives the syndicates access to modern technology for the hijackings and sophisticated means of moving money. Pirate gangs are exploiting information available to the shipping industry, with front organizations subscribing to *Lloyds' List* ship movement database, and *Jane's Intelligence* to discover the protection measures being used; and they monitor radio traffic. Shipowners do not acknowledge that some ransom money finds its way to Islamic terrorists because current laws make it illegal to make payments which fund terrorism (Sengupta and Howden, 2009).

The ICC, parent of the International Maritime Bureau, has another specialised unit called the Financial Investigation Bureau (IFB), which conducts enquiries into money laundering, including transaction pattern analysis, and financial tracking (ICC website, 2009, accessed 23 April).

Summarising its position, UNODC said that piracy is an organized crime. Gunboats are not sufficient. Pirates should be defeated in the courts, the banks, the ports, and on the high seas, using weapons of international law and multilateral cooperation (Railpage, 2009).

A Previous Successful Reduction in Pirate Attacks

It used to be the case that the world's worst piracy hotspot was the area containing the Malacca Straits and Indonesia. 50,000 ships a year, carrying a third of the world's commerce and half the world's oil, pass through these narrow Straits (ICC Report, 2002).

In July 2004, Indonesia, Malaysia, and Singapore began joint navy patrols along the 900km of the Malacca Straits to tackle this unacceptable piracy, after being encouraged by USA which had warned of piracy turning into terrorism if an oil tanker were to be blown up or a ship turned into a floating bomb. International trade would be crippled. In 2005, air patrols were added. Also established was a Singapore-Indonesia surveillance monitoring system of ships in the sea lanes leading into the Straits. The IMC said that in 2005 pirates had struck 12 times, down from 35 in 2004, and down again in 2006 to 11,

a remarkable reduction and good example of international risk management. Later, Japan and Thailand joined the action, and the first joint Thailand-Japan-Malaysia exercises were held in 2007, including marine commandos and marine police. Japan, so reliant on its oil imports coming through the Straits from the Middle East, had previously offered to become involved, but Malaysia resisted this as not necessary. The four Southeast Asian neighbours involved, despite being members of ASEAN, are not particularly enamoured of each other, for different reasons, so this effective cooperation is even more remarkable, and demonstrates what can be done. The number of incidents had dropped to 2 in 2008. In 2009, USA praised this effective international cooperation for not only tackling piracy but enhancing regional security generally (Ashayagachat, 2009).

The total incidence of piracy worldwide was down by 9.5%, to 114 cases, in the first half of 2008, the rise in Somali piracy more than offset by reductions in other piracy hotspots around the world (Ng, 2008). Other hotspots are: Bangladesh, Indonesia, Philippines, Vietnam, Ghana, Nigeria, Tanzania, and Brazil (icc-ccs website, 2009).

The Piracy Reporting Centre provides maps on its websites showing pirate incidents around the world. A comparison of its 2009 map with that of 2005 reveals how the previous worst place, Malacca Straits-Indonesia has significantly reduced, while East Africa looks like an aggressive cancer (icc-ccs.org, Piracy Reports, accessed 23 April). In April 2009, the Live Piracy Report of the IMB listed 19 incidents around the world which had been reported in the last 10 days, of which 14 occurred in the Gulf of Aden / East Africa (icc-ccs website, accessed 23 April).

The Effects on Insurance

Piracy is an insured 'peril on the sea'. Piracy insurance spreads the financial risks so that a trader will not be financially crippled by a successful pirate attack; and thus it facilitates maritime trade because without insurance many potential traders could not afford to trade in the face of such a risk (Lawrence, 2003). When piracy is at a low level, governments usually ignore it, and insurers are not unduly bothered. But where the risk reaches a higher level then insurers usually put pressure on governments to do something. "Insurers have always been important in their efforts to secure government action against pirates, both indirectly through increases in rates that led shippers and ship owners to protest, and directly through representation to government" (Peterson, 1989, p43). In a marine policy, piracy used to be an additional peril, treated almost as a war risk, to be asked for and paid for. However, the Institute of London Underwriters modern classification clauses which came into effect in 1980 for both hull and cargo reversed this, and piracy (but not terrorism) is now included as a standard peril (Ignarski, 1989). Ma-

rine insurers in many countries follow the London wording.

An insured shipowner can obviously make the usual claims for loss of or damage to the ship, under relevant hull and war policy clauses. They can also buy cover for ransom money, or recover this under the 'sue and labour' clause whereby an Insured is entitled to be reimbursed for action taken to prevent a greater loss (Jones, 2009).

Only available in December 2008, is a separate insurance policy offered by the large broker Aon for business interruption (formerly called 'consequential loss'), covering the financial loss caused by a captured ship which can thus no longer earn freight income, or caused by delays to cargo. The new policy is available to charterers, shipowners, and cargo owners. A charterer must continue to pay the shipowner for charterers hire even though control of the ship has been lost. Some seized ships are held for months. The Aon policy is triggered from the day of attack, with no deductible. Transmarine is another broker offering this type of cover, indemnifying a charter's liability after an attack to pay hire to a shipowner, a sum which could be several hundred thousand or even millions of dollars (Jones, 2009).

Ransom cover (and kidnap cover) has been available for some years, in response to companies' need for financial protection because of kidnapped executives, celebrities, and/or their families. SSIL launched a new policy in 2008 to cover potential ransom demands for captured crew members. It covers the cost of paying a ransom to release kidnapped crews and ensures that the ransom reaches the right people (some security companies charging US$ 1.7 mn just for this task). The cover includes individual ships or a fleet, for up to US$3.4 mn. 12.5% to 25% of the premium is refunded if no claim is made (Jones, 2009).

Marine liability insurance is usually covered by P & I Clubs, mutual indemnity societies formed by shipowners when insurers in the 19th century refused to give liability cover. Some shipowners are avoiding the area, but some cruise liners continue to operate there, the original itinerary often being the selling point. However, should there be a pirate attack, these lines risk litigation from aggrieved passengers, and if the case is tried in USA with its obscene jury decisions and awards, the sums could be huge (Lawrence, 2006). An Italian cruise ship, Melody, was fired on by pirates off the East African coast on 26 April 2009. Some of the crew were issued with guns, and fired as the pirates attempted to climb up the side on a ladder with hooks. Firehoses were also used. Firing went on for twenty minutes, and the ship escaped. The pirates lamented their failure, as it would have set a new hijacking landmark. The East African Seafarers Association condemned the use of guns by the crew, saying that it endangered passengers' lives and should only be used by military ships. If sued, the liability insurers could pay the award and costs, but policy conditions could be used to deny the claim, as it could be argued

that the presence of armed guards escalates the threat, with greater probability of an incident leading to a claim. The IMB also warns against using guns.

Insurers are used to risky situations: that is their business. Insurance rates for hull and cargo for ships in transit through the Gulf area came under pressure, and then rose sharply after the capture of the giant oil tanker *Sirius Star* carrying 2 mn barrels of oil valued at US$100 mn. Some rates are quoted as having risen tenfold (A week in the market, 12 Oct 2008). BGN Risk estimates that Somali piracy could cost businesses worldwide an extra US$453 mn a year in insurance costs, plus ransom demands, the special insurance levy per ship, per voyage, having risen from US$500 in 2008 to US$20,000 in 2009. At least one insurer is offering a discount if the ship is protected by maritime security specialists (Jones, 2009).

The French navy made shipowners willing to have guards on board sign contracts releasing the military from almost all potential liabilities. However, this French facility has now been withdrawn in favour of combined EU naval action. Insured ship owners, like all Insured, are still responsible for their actions, including making a risk assessment of what to do in any given situation.

War risks are also covered by special P & I Clubs, and the presence on a ship of official military guards has serious insurance implications. Some countries with ship registries ('flag states') forbid weapons being carried on a ship. A ship owner could argue he was acting responsibly, prudently, but a P & I Club could argue to the contrary. War cover includes crew members killed or injured in pirate incidents; but armed guards are not considered to be crew.

Putting EU armed guards on ships could also pose a liability risk (Railpage, 2009). This would not automatically invalidate insurance cover, but the owner could be considered to be acting imprudently, the argument being that their presence increases the likely firepower of pirates with consequently more damage and injury.

Insurers pay ransoms, as a lesser evil. UNODC says that this should stop. Paying a ransom only encourages the continuance of piracy-for-ransom. UNODC ask that the individual shipowner and his insurers consider the longer-term common good. That is difficult to do when nobody else will contribute to the loss if the ship is destroyed or sunk and crew murdered. The principle and practice of marine 'average' is just such a scheme whereby the sacrifice of one owner is shared by all those who thus avoid loss to themselves. It predates insurance, is separate from insurance, yet virtually all insurance policies will indemnify the cost of such shared sacrifice, because in the long-term it is fair, sensible, and humane. The application of 'average' is a demonstration of how people can co-operate for the greater common good, it is humanity at its best. But 'average'

does not apply to loss following an unpaid ransom, even though for the greater good.

Definitions of Piracy

Definitions of piracy have been many and varied, based on who is using the word and for what purpose (Hyslop, 1989). The meaning understood by the media and the public is very wide, but legal definitions, nationally, internationally, and for insurance are more precise through being determined in legal contexts, but they are different from each other and can lead to confusion. Traditionally, piracy took place on the high seas, beyond territorial jurisdiction. Territorial waters then extended only three miles beyond low tide. The League of Nations failed in its 1929 attempt to codify international law on piracy, but in 1958 the United Nations Organisation succeeded in establishing the UN High Seas Convention, articles 14-21 dealing with piracy. The wording is repeated in the United Nations 1982 Convention on the Law of the Sea, articles 100-107. To summarise, these international laws state that for an incident to be classified as piracy there must be a pirate ship, a victim ship, and happen on the high seas. The Conventions give States the authority to combat piracy and punish offenders, even when arrested on the high seas (beyond normal territorial jurisdiction). Another UN Convention, the 1988 Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation, repeated the right for States to prosecute within their territorial waters.

The international conventions have to be ratified by each nation and domestic laws altered to extend jurisdiction beyond territorial waters.. Not all States have done this, which means that they have not incorporated into their legal system the rights conferred by the United Nations Conventions. The criterion about location can be confusing - high seas or territorial waters. Much piracy happens within territorial waters, as in the Malacca Straits and East Africa. This confusion used to affect insurance cover, but as will be described later, it was clarified by a legal decision in 1978.

The IMB, for statistical purposes, defines piracy and armed robbery as: "An act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in the furtherance of the act" (ICC Weekly :Piracy Report, 19-25 March 2002). This definition thus covers actual or attempted attacks whether the ship is berthed, anchored, or at sea.

For insurers, there is a special definition of piracy, the result of an amicable legal case involving the Andreas *Lemos*. The judge's decision, [Andreas *Lemos* 1978, 2 Lloyds Rep 483], drew a distinction between piracy described by international law and piracy in the context of a marine insurance policy. The judgment was that piracy has to take place at sea (a wider definition than 'high seas'), but if an attack on a ship could be

described as '*a maritime affair*' then a policy would cover the attack. The judge justified his wide interpretation of piracy for insurance purposes by referring to Rule 8 of the 1st schedule to the Marine Insurance Act of 1906 which has a broad definition of pirates (even including as pirates those passengers who mutiny and rioters who attack a ship from the shore). Thus a criminal lawyer's piracy is different from a marine lawyer's piracy: the latter being wider, allowing a wider range of insurance claims based on this policy peril (Ignarski, 1989).

Conclusion

The scale of action by the international community in the Gulf of Aden is staggering, and it is easy to attribute this not only to Somali piracy but to the threat it carries of turning into deadly organized terrorism. The response by the insurance industry is also commendable. Piracy, wherever, cannot be eliminated by insurers, just as they cannot stop drunken car drivers. Such dangers need political action. Somalia needs to be stabilised, and that needs international action. The very successful international cooperation by five nations in drastically reducing pirate attacks in the Straits of Malacca is a worthy example, but did not involve failed States. An earlier international antipiracy programme was put into force in the 1980s to control piracy against Vietnamese boat refugees in the South China Seas, to assist Thailand's humanitarian efforts in protecting them (Hyslop, 1989). However, the eclectic mixture of nations now patrolling the Gulf of Aden consists of competitors in an international economic struggle, and the United Nations Organisation is not the trustworthy institution it used to be. This makes the outstanding work of the IMB's Piracy Reporting Centre even more praiseworthy.

Limited though the insurers' scope for action is in the field of piracy risk reduction and insurance, they continue to prove how essential their service is, economically, commercially, and financially, to individuals, organizations, and nations.

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UNODC: United Nations Office on Drugs and Crime: www.unodc.org

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