



## The Threat of Piracy

Shipowners, cargo owners, charterers and their insurers are all affected by modern piracy and share in the consequences of the crime. An excellent resource providing insight into the severity of today's piracy issues is a brochure published by Munich Re, entitled 'Piracy – The threat at sea takes on a new dimension'. Below are some of the publication's most compelling details affecting those involved in trade and transportation, including an outline of piracy insurance options. To read the article in its entirety, visit [www.munichre.com](http://www.munichre.com) and go to the publications menu and select marine. Excerpts from Munich Re's 'Piracy – The threat at sea takes on a new dimension':

### **The Current Risk Situation**

Pirate attacks have taken on a whole new dimension since 2008 – especially off the coast of Somalia and in the Gulf of Aden. Their frequency and brutality are particularly worrying. The new "business model" has seen ransom demands soaring to tens of millions.

Acts of violence by pirates have been steadily on the rise since 2006. Every year, the number of attacks reported to the International Maritime Bureau (IMB) is 10 percent higher than in the previous year. In 2006, 239 were recorded; by 2008 the number had risen to as many as 293. Of these 293 attacks in 2008, no fewer than 189 took place off the coast of Africa.

For the first six months of 2009, 240 attacks were recorded worldwide, more than half of these off the coast of Somalia and in the Gulf of Aden. The region has now overtaken the Strait of Malacca in terms of the number of attacks, becoming the most dangerous waters in the world today.

The IMB recorded 111 attacks there in 2008. A total of 815 crew were taken hostage and 42 vessels hijacked.

Kidnapping and ransom is today's big business. While 292 crew members were taken hostage worldwide in 2007, the number soared to 889 in 2008.

### **Somalia is Not the Only Hot Spot**

The Gulf of Aden and the coastal waters off Somalia are the regions with the highest piracy risk at present, but other regions should not be disregarded. For example, while 40 attacks were registered by the IMB in Nigerian waters in 2008, between 150 and 200 attacks per year would probably be a more realistic figure. The majority of pirate attacks are simply not reported. The situation in the Gulf of Guinea is by all means comparable to that in the Gulf of Aden.

[Other]...developments are currently on the rise in other regions, such as off the east coast of Latin America.

### **Insurance Aspects**

Million dollar ransom demands, vessels being detained for months and claims for compensation from shipowners by released crew members put pressure on vessel and cargo owners, as well as charterers and ultimately the insurance industry. In response, there is an ongoing debate about the necessity for clear definitions as to what is being covered under which policy, and about the need for new coverage concepts.

Due to the multitude of diverse interests affected by a pirate attack on a ship (owners, crews, charterers, cargo shippers), there can be no single, all-encompassing insurance product covering losses or damage incurred by the various parties in consequence of such an attack. The diverse marine-related interests are currently insurable under hull, cargo, P&I, loss of hire and kidnap & ransom (K&R) insurances can be combined to create an encompassing coverage concept.

### **Ransom Demands Have Gone Up Dramatically**

Of course, topping the list of concerns is the well-being of the kidnapped crew and their swift release. In most cases, so far, this has involved payment of a negotiated sum of ransom money. Generally speaking, the amount paid remains undisclosed because its publication might encourage copycat attacks and help create an "unofficial tariff".

### **Should the Vessel Owner Pay Ransom?**

Much discussion has concerned the prudence and legality of paying a ransom to the kidnapers in the first place. While paying a ransom in order to free ship and crew may appear to be the only solution for the shipowner, such payment automatically endorses

a successful business model for the pirates. If the payment of a ransom is considered illegal in the applicable jurisdiction, owners may even have difficulty in recovering the expenditure from P&I or from hull and cargo insurers under General Average (GA). On the other hand, there seem to have been no problems so far in recovering insured amounts from K&R insurers, despite an existing legal ban on ransom payments.

### **Who Contributes?**

With increasing ransom amounts, the question of sharing the burden between all interests concerned has naturally been raised, especially where there was no bespoke K&R policy in place. Initially, the release of a hijacked vessel was seen as the owner's problem alone, with cargo interests kept in the background until the matter was resolved by the owner, possibly with discretionary P&I assistance, and until the vessel could continue the scheduled voyage after its release.

Throughout 2008, owners increasingly began to declare GA and to claim hull and cargo contribution. While the academic debate over the legitimacy of a GA declaration in the case of hijacking was still ongoing in mid-2009, due to the absence of established case law, hull and cargo insurers have themselves begun to raise the question of a regular P&I contribution if GA is accepted, or a ransom payment is shared on an as-if GA basis.

### **Overview of Piracy Covers**

#### **Kidnap & Ransom Insurance**

Covers ransom money paid for insured crew and provides extensive loss prevention consultancy, plus a service package after a kidnapping. Shift in consumer perception from sleep-easy cover to a genuine service product.

#### **Hull/Hull War Insurance**

Covers the insured ship for hull damage or total loss. Depending on market practice, policies are either on a named-perils or an All Risk basis. Piracy is insured either as a war peril or as a regular hull peril, also depending on local market practice. The current version of the widely used London market clauses (Institute Time Clauses Hulls) provides an option to cover piracy under hull or war policies.

#### **Protection and Indemnity (P&I)**

Covers a shipowner's or charterer's third party liability and a variety of other interests, including workers' compensation for the crew on board. A major issue for P&I insurers in 2008 was the growing demand for discretionary reimbursement of otherwise uninsured ransom payments. Marine hull and cargo insurers also suggested that P&I clubs share in the payment of ransom under GA type settlements.

#### **Cargo Insurance**

Covers cargo in transit against physical loss or damage. Most marine cargo markets provide optional named perils and All Risk policies. Piracy is predominantly covered as a regular marine peril. Recent attempts to introduce a special cancellation clause for piracy have not been very successful so far.

#### **Loss of Hire (LoH)**

Covers a shipowner's or charterer's loss of income due to physical damage to the ship, caused by machinery breakdown or a collision. The trigger is usually an insured loss under the hull policy. New LoH insurance products launched in 2008 also cover loss of income or obligation to pay charter hire without a physical damage trigger if the vessel is held by pirates.

It should be noted that the above coverage descriptions are for example purposes only. It is important to refer to your own policy and to consult with your insurance provider to determine your actual terms, conditions and exclusions.

As for the ongoing piracy dilemma, most experts and governments seem to agree that it can only be solved by political means, and that solutions must be long term. Let us all try to generate awareness of the issue in the hope that it will contribute to improving the situation.

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