



Welcome

Welcome to the Seacurus Monthly in which we look back on the latest developments affecting piracy and related insurance and legal issues.

It has been a busy month and as the year heads to a close the debates which have rumbled on all year are finally coming to some form of conclusion.

There has been much talk of the end of piracy, and the break up of the very business model which underpins such dreadful serious and organised crime. It would seem, however, that such triumphal crowing is extremely premature and perhaps even a little dangerous. Let's be under no illusion, the root causes of piracy have not be tackled, and while there are successes against pirates out at sea, and some wins ashore – the fact remains that poverty, desperation and a lack of alternatives makes piracy the only option for so many young Somalis.

Though of course this is not simply an East African issue. Add to that the rise of piracy and crime off West Africa, and the bubbling of attacks in Asia (Malacca Straits and South China Sea), and well – far from the business model of piracy being broken, it is thriving on a global scale.



Captain Thomas Brown
Managing Director –
Seacurus Limited

We hope you enjoy this edition of Seacurus Monthly, and please do feel free to forward to any colleagues who may also be interested.

Content

United and Joined Up –

the discussion around PMSC regulation rumbles on

Security Survey – a look at the results of the latest Lloyds List security survey

Scare Mongers – who will foot the liability bill if the armed guarding goes wrong?

Legal Clarity – is it or is it not self defence? That is the question...!

New Guidance – a look at Steve Jones' latest literary foray into ship's security

New P&I FAQs – the latest updated advice from the IG on their position on the piracy issue

Monthly Round-up – November 2012

United and Joined Up

It's been especially busy over in the United Nations, and its specialised agencies. In New York the Security Council has been rolling its sleeves up and tackling piracy, while in London the IMO's Maritime Safety Committee (MSC) met for its 91st session from 26 to 30 November 2012 where armed guards was high on the agenda.

At the MSC discussions centred on matters related to piracy and armed robbery against ships. Following the work done by MSC 90 to develop guidelines for private maritime security companies using armed security personnel, MSC 91 received an update on the progress made by the International Organisation for Standardisation (ISO) as it has sought to develop international minimum standards for the deployment of such personnel, for use by flag States.

It has been a complex business getting clarity on what such standards should include, and also the mechanisms through which they can be assessed, checked and managed.

The privately contracted armed security personnel standard has been a thorny issue for ISO to grasp, and with pressure from shipping and also the maritime security industry, it has seemingly been hard pressed to push forward to the IMO schedule – but it seems that progress has indeed been made.

The maritime security standard, ISO PAS 28007 was knocked into shape during a series of meetings, and with the standardisation experts within the ISO – and gradually it has begun to take on a useable format. There have, however, been some areas of contention – and it seems insurance cover for private maritime security companies (PMSCs) is one such sticking point.

IMO MSC91 was, in essence, able to rubber stamp the progress, and the publicly available standard will now pass through a form of “road testing” – which will see auditors assessing companies to the new standard. Which could sound like the end of the story – however, it seems there are some twists and turns still ahead.



One of the major sticking points at the moment is of who will certify to the standard – the most commonly held view is that the Classification Societies will take the reins and press on with it. But..will this be the reality?

In order for Class to make decisions on how to audit against a standard, they understandably need to have a fairly compelling business case for doing so. They need to train people, organise their internal structures, etc, etc – there is a lot of work to be done before they can simply roll up to a PMSCs office and begin the checks.

The fact is that with only around 200 PMSCs globally, is this a sufficiently attractive business opportunity for Classification Societies to pursue? It is questionable as to whether it is.

Also, it is true that this new standard does not exist in isolation – and there are other demands on Class – not least the work load they are now taking on with the Maritime Labour Convention (MLC2006). This is currently the focus for Class – and they are wrestling with the demands of training personnel and being able to interpret the MLC rules for their shipowner clients. Lloyd's Register for instance is throwing considerable weight behind its MLC role – this is something the organisation is committed too, and which it seemingly wants to embrace.

Its not just MLC, Det Norske Veritable (DNV) has been looking at new roles of late – and has thrown significant resources at the world of dynamic positioning (DP). There is only so much work Class can do, even more so if the business returns aren't right.

To switch any focus on a small potential market may not be a natural next step for them, it seems that such answers will be found in the coming weeks, but the clock is ticking and armed guards need to be checked. It is perhaps likely that some kind of "Gentleman's agreement" may be reached, and one Society becomes the "go-to" for private security.

The only one to have put its head above the parapet pre-ISO was Bureau Veritas (BV), so perhaps they may again look to lead. It will be extremely interesting to see how this plays out.

All the collective shipping, maritime security and even insurance industries can seemingly ask is that it is tackled positively, correctly and with a clear conclusion reached.

The whole PMSC certification debate has rolled on for long enough – there have been some good pragmatic solutions in the interim, from self-regulation, through to owners rolling their sleeves up and performing audits. However, there is a clear need for one globalised, unified and applicable standard which can be understood and hopefully respected. Now we just need to check against it.

While the IMO wrestled with its own security dilemmas, over in New York at UN HQ things were rather more straight forward, but nonetheless serious.

The UN Security Council gathered and condemned the continued piracy off the coast of Somalia and called for greater legislative mechanisms to repress the criminal activity.

In a resolution that was unanimously adopted, the 15-member council “reiterated that it condemns and deplores all acts of piracy and armed robbery against vessels in the waters off the coast of Somalia.”

The Council urged for more legislative actions to fight Somali piracy underlining the primary responsibility of Somali authorities in the fight against piracy.

The Security Council continues to be “gravely concerned” by the threat of piracy and armed robbery at sea off the coast of Somalia, and as such was able to renew for another year the authorisations, first agreed in 2008, for international action to fight piracy.

Through the unanimous adoption of resolution 2077 (2012) under the Charter’s Chapter VII, the Council also renewed its call upon States and regional organisations to fight ongoing sea crimes by deploying naval vessels, arms and military aircraft and through seizures and disposition of boats, vessels, weapons used in the commission of those crimes.

There was also demands made of the Somali authorities, and they have been “requested” to pass a complete set of counter-piracy laws without further delay and to declare an Exclusive Economic Zone in accordance the United Nations Convention on the Law of the Sea.

The UN has also called on all Member States to criminalise piracy under their domestic laws and to assist Somalia in strengthening its capacity to bring to justice those involved in piracy, including those who planned or facilitated the crimes, and to cooperate in investigations of all incidents, stressing that all such measures must be consistent with international law.

There has been much talk of whether Somali piracy is still a threat – but it is clear that while there has been some excellent progress made, the root causes of piracy remain and run very deep.

The efforts of the UN are clear, and in creating legal systems, encouraging military intervention and by creating a system to govern private security, then a fully joined up process is being created. This united approach can perhaps begin to build into a tangible long term solution.

Security Survey

According to a new maritime security survey, there is general agreement that armed guards have had a positive effect on piracy. However, doubts still remain as to legality, insurances, standards and certification. However low number of responses perhaps suggests that ambivalence is the actual overriding sentiment. The newly released results indicate a mixed view of the effectiveness of rules and regulation and disagree on the value-for-money equation.

Lloyd's List launched a survey of maritime security issues in October that received 170 responses.

(Click here to view the results of the survey).

Lloyd's List

Of these, some 57% cited deployment of PMSCs as the main reason that successful pirate attacks have decreased. A similar percentage called for more detailed rules on the use of force.

The respondents proved to be unexpectedly ambivalent about Guardcon, BIMCO's standard contract for armed guards that is well-known for settling Gulf of Aden and Indian Ocean transits.

Only 41% of respondents believed that Guardcon was an effective document and a further 9% called it ineffective; the remaining 50% were unsure. It is clear that uncertainty is the overriding feeling – until the lawyers wrestle with issues surrounding PMSCs, then clarity is still a long way off.

Over two thirds of respondents agreed or strongly agreed that an international set of standards would solve the problems surrounding regulation. However, 14% disagreed or strongly disagreed and 18% sat on the fence, perhaps indicating a lack of confidence that such a standard could be enforced. Such sentiment echoes the problems of the IMO and ISO in creating the right structure and mechanism, and does perhaps hint at some apathy.

Also, it is perhaps interesting to note that in shipping such standards have been rather more of a lowest common denominator than an indicator of excellence. Rather depressingly, it may be seen again that jumping through the hoops of standards becomes a business focus, rather than actually delivering real quality.

More than half agreed that PMSCs delivered value for money, although 16% disagreed and a third were ambivalent. The concept of value is interesting – and quite hard to quantify. What represents value? Is it simply the protection of the vessel? Which given the much vaunted 100% success rate of armed guards does suggest some form of value. Or is it imperative that security delivers more than just men with guns.

A slim majority sensibly said they disagreed with the proposition that cost is the most important differentiator when choosing a maritime security company.

All told, the survey reflected a general feeling that much remains to be done to reduce risk and assure best practice when hiring armed guards.

Scare Mongers

The biggest question which hangs over those using armed guards remains the issue of what if something goes wrong and it transpires that an owner had not carried out proper due diligence on the guard company including checking the licences.

According to P&I experts, it seems that due to the lack of precedent, it is difficult to cost out who would pay what in certain circumstances. Though lawyers have also warned that misuse of lethal force could see the individual guard, the PMSC and the shipowner sued by the dead third party's estate in a civil and criminal claim.

At the moment the concept of armed guarding rests very much on the concept of self defence – but lawyers are even beginning to get a little twitchy about this. Naturally where there is such complex confusion there is some doubt as to whether insurers will actually pay out. Lawyers stress that there may be express exclusion of piracy in P&I policies, and there are questions of whether exclusion of cover because of presence of weapons of war or an exclusion of cover because liabilities could arise from terrorism.



At the moment there are so many grey areas because issues have not been tested. Even BIMCO's Guardcon could hide some future concerns for shipowners, according to Lloyd's List.

There is a growing feeling that cargo owners may look to pursue claims against PMSCs and, more likely, against owners if things go wrong.

The use of armed guards on ships does work to protect the vessels, and does deter pirates – but it seems it does come with some risks attached. Using weapons onboard commercial vessels is at once staggeringly simple, but exquisitely complicated.

Guess no one will know until the courts get their teeth into things. However, it seems to be concerning that a number of maritime journalists are sniffing the air for contention, and seem intent of scare mongering and in finding problems at the earliest possible opportunity.

In constantly asking experts for the doom laden, worst case scenario pronouncements, then of course the answers are going to be negative. The negative anti-security agenda is becoming problematic.

The use of armed guards has categorically led to a drop in piracy hijackings – that should be the positive which underpins the necessary fixes to make the solution a better fit for shipping. Instead, the Cassandra's are espousing their views through the negative questions they ask – and then are in danger of creating self-fulfilling prophesies.

It is clear that the use of guns onboard merchant vessels is a complex, difficult and at times frightening prospect – but it is nothing to the pain, misery, terror and destruction which can be wrought when a ship is hijacked.

There are not yet the legal precedence in place, there have not been the test cases or the clear guidelines, but in trying to use security positively the industry should be able to look to the positives and find the right ways of safeguarding people and businesses without journalists seeking to unfairly, and in many cases wrongly trying to destabilise the process.

Legal Clarity

In questioning the role of journalistic interpretation and tabloid sensibilities, we should not forget that there are still serious issues to address. However, such areas can perhaps be viewed with a more positive view of finding solutions, not simply guessing at more problems.

One such area which has needed some serious examination is whether armed guards shooting pirates really can be argued to be in self-defence. The use of weapons on ships has fundamentally rested on this concept – but now lawyers are rolling their dandily cuff-linked sleeves up to tackle the most complex and difficult of questions.

Naturally for those who squeeze the triggers as the pirates bullets fly and the RPG shells crash about them, it perhaps feels like it should be. However, Courts can be contrary and there hasn't really been much in the way of legal clarity until now as there has finally been a set of maritime Rules for the Use of Force (RUF) launched.

The rules have been developed by some of the leading legal minds, it should hopefully provide a little more confidence when the worst happens and pirates do attack. According to the author of the 100 Series Rules there is legal certainty underpinning the issue of self defence within the advanced draft of the "100 Series Rules for the use of force", despite what others in the industry might fear.



Quadrant Chambers 3rd Six barrister David Hammond has said that he had submitted an agreed RUF framework document on behalf of representative industry stakeholders following a RUF Conference in London. This was undertaken with broad consensus and was subsequently accepted by the International Organization for Standardization (ISO) last month.

"I understand that the framework document has now been taken forward as a work item by ISO, though it will require further detailed and co-ordinated work across the industry to refine the Rules for eventual acceptance by the frontline users in close co-ordination with the comprehensive guidance provided within the likes of GUARDCON. There is, however, much which has been left unsaid in relation to the legal scrutiny that the draft 100 Series Rules went through and of which, industry commentators not involved in the most recent drafting, may not be aware," he said.

In particular, legal review and due diligence was extensively applied, Mr Hammond explained. "This comprised a criminal law review on the issue of self-defence at the international level by 9 Bedford Row International Chambers barristers Steven Kay QC and Peter Glenser. Further, experienced international criminal counsel, Gillian Higgins, attended the RUF conference held at Quadrant Chambers on 15th October and provided detailed advice of the law on self-defence as found internationally. There is legal certainty on this point and it has been deliberately reflected in the language used within the Rules, despite what others may say."

While the RUF are yet to be published, Mr Hammond, with the permission of Steven Kay QC and Peter Glenser, sent Lloyd's List their accompanying RUF legal advice which states: "Self-defence is a universal concept of law and an inherent right that permits a person to protect himself or to intervene to protect another.

"A person acts in lawful self-defence of himself or another when he has an honest belief that he or another person is under attack or imminently to be attacked so that it is necessary to defend himself or the other person by using no more force than is reasonably necessary to repel the attack or threatened attack."

The advice said the use of force must be proportionate to the degree of danger faced.

"Once the attack or imminent threat of attack has been repelled, the use of force in self defence must cease," the document said. "If a person exceeds the amount of force reasonably necessary to stop or prevent an attack they will be exposed to criminal responsibility for their conduct. Their superiors may also be at risk of being held criminally responsible for any failures in their supervision."

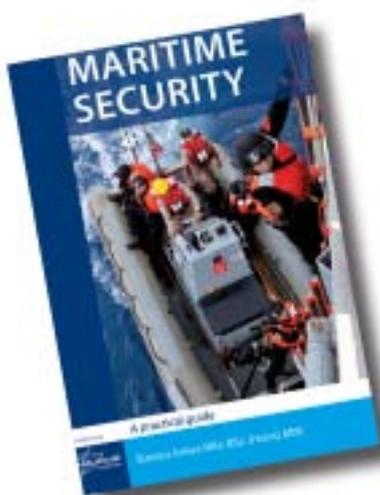
The issue of use of force and jurisdiction has been a problematic one, not least shown in the legal wrangling following the shooting of two Indian fishermen by two Italian marines guarding the "Enrica Lexie".

"If a crime is committed on board a ship, flag State laws apply but if the crime is within the jurisdiction of the coastal state the criminal jurisdiction of the coastal state may prevail," the advice document explains.

"If a pirate is killed in the territorial waters of a state or port, the perpetrator of the killing may become subject to the criminal laws of the coastal state. This emphasises the need to ensure all acts and conduct that fall within the scope of the RUF comply with the 100 Series Rules that have as their aim the objective to ensure at all times, lawfulness."

Mr Hammond welcomed full industry engagement in further development of his work for the eventual benefit of the wider maritime industry, though he acknowledged that "not all parties would necessarily agree with such an approach to codification of RUF". However, Mr Hammond emphasised the responsibilities of the wider maritime community to embrace the use of RUF so as to safeguard their potential liabilities. To this end, an industry training conference is planned with the international criminal lawyers of 9 Bedford Row in conjunction with the Security Association for the Maritime Industry (SAMI), to ensure the correct standards in the discharge of security contracts through the correct use of RUF legal principles are made available to all.

New Guidance



The Nautical Institute has launched "Maritime Security – A Practical Guide" aimed at providing a comprehensive and practical guide to making vessels truly secure and creating a real security culture that works both onboard and ashore.

Since the International Ship and Port Facility Security (ISPS) Code came into force in 2004 there have been significant developments in the training, information and products and services available to Masters and to company and ship security officers. Security has become part of life on board ship. During the same time, the number and sophistication of the threats to security have also increased.

The author, our good friend Steven Jones, who advises us here at Seacurus on security matters, explained that there is no room for complacency. Those responsible for vessel crews, cargoes and the ships themselves must continue to develop a security management system that actually works on board. "People are the key to security and this new guide looks to develop the ways and means of creating a security management system which has the human element at its core. It explores not simply the rules and lists of requirements but also the implications of failure and the steps to developing successful maritime security techniques."

Publication of this guide is in line with The Nautical Institute's Strategic Plan for 2011-2015, which identified maritime security as a continuing and major concern for the industry and particularly those serving at sea.

The primary focus for Jones is to bring security techniques and effective management to the attention of crews of merchant vessels, office personnel and ship operators. "Whether fighting pirates, stowaways or countering terrorism, true security begins when the Master and crew work within a system they respect, understand and appreciate," he said.

In addition to a decade of onboard experience as a navigation officer, including a pirate attack, he has advised numerous shipping companies on security planning and has worked for insurers, publishers and professional bodies.

The book examines the threats to maritime trade, and to specific ship types, before discussing in detail how the ISPS Code came into being and its underpinning principles and requirements. Subsequent chapters focus on the practicalities of security planning, shipboard procedures and equipment, and how to make security work – including the use of armed guards.

In his Foreword, Efthimios Mitropoulos Secretary General Emeritus of the International Maritime Organization, commended the "dedication and commitment" of companies and sea staff and the "tremendous efforts" made to secure port facilities across the world to meet the requirements of the ISPS Code. He pointed out that "as seafarers are in the front line of maritime security" and shoulder the burden of responsibility for maritime security onboard, it is up to those working ashore to support them.

The book was launched at the Seatrade Middle East Maritime event in Dubai and will be followed by a suite of handbooks on specific security problems, such as piracy, stowaways and maritime crime. The Nautical Institute believes that all of these will support the development of a security culture that is based on excellence rather than merely some form of compliance.

Maritime Security – a practical guide is available from The Nautical Institute price: £40;
ISBN: 978 1 906915 45 2 www.nautinst.org/pubs

Owners Take The Hit

London's Commercial Court has ruled in favour of charterers against shipowners who claim that both parties should share in losses incurred when pirates seize ships, reports New York's Maritime Advocate.

The judge held that a clause inserted into a charter-owner contract should be construed in accordance with its "plain and obvious meaning" that piracy was an "off-hire event" and therefore on the owner's account but not the charterer's.

At issue was the exact wording of the clause, which said: "Should the vessel put back whilst on voyage by reason of any accident or breakdown, or in the event of loss of time either in port or at sea or deviation upon the course of the voyage caused by sickness of or accident to the crew or any person onboard the vessel or by reason of the refusal of the master or crew to perform their duties, or oil pollution, even if alleged, or capture/seizure, or detention or threatened detention by any authority including arrest, the hire shall be suspended from the time of the inefficiency until the vessel is again efficient in the same or equidistant position in charterers' option, and voyage resumed there from. All extra directly related expenses incurred including bunker consumed during period of suspended hire shall be for owners' account."

The phrase, "capture/seizure, or detention or threatened detention by any authority" was the point of contention.

Owners said that any "capture/seizure" had to be by an "authority" before it was an "off-hire" event, whereas charterers successfully argued that capture/seizure was an "off-hire" event distinct from "detention or threatened detention by any authority", and that acts of piracy clearly fell within the meaning of "capture/seizure".

The finding was in contrast to the earlier and differently worded clause in the case of *Cosco Bulk Carrier Co Ltd vs Team-Up Owning Co Ltd* in the matter of the ship *Saldanha* in 2009 in which the court ruled the clause in that earlier case was similar, but sufficiently different, to warrant a ruling that the vessel was "on-hire" for the duration of its detention by pirates.

According to experts, "The case serves to underline the importance of using clear words to allocate the risk in piratical events, to avoid the risk of subsequent disputes."

New P&I FAQs



International Group of P&I Clubs

Last month saw the International Group issue a new, revised and updated list of Frequently Asked Questions (FAQs) related to piracy and P&I Club cover as follows:

1. Do clubs cover piracy?

Club rules contain no definition or exclusion of piracy. The usual liabilities insured by the clubs remain covered when arising out of incidents of piracy. These liabilities are potentially most likely to involve loss of life/personal injury/illness, trauma/stress treatment and counselling, crew substitution and repatriation, and crew/passenger loss of effects. Liabilities could also extend to pollution, possible wreck removal, and potentially cargo liabilities/General Average (GA) in the case of a shipowner's contributory fault or negligence. In relation to strict liability claims under International Conventions, the "intentional act" defence may provide some protection where/if applicable. Such liabilities are however excluded from cover if caused by the use/engagement of certain "weapons of war" specifically named in the club rules or "other similar weapons of war" to those specifically named. Also, whereas P&I liabilities arising from acts of piracy are not an excluded risk, those arising from terrorism are excluded (and would fall under the shipowner's war risk cover). Furthermore, where primary war risk P&I underwriters include piracy as a specific named peril, there may be overlap between P&I liabilities arising from piracy covered by the war risk P&I underwriters and those covered by the Group clubs.

2. What does "similar weapons of war" mean?

"Weapons of war" are identified as being mines, torpedoes, bombs, rockets, shells and explosives. While Club rules have no definition of "similar weapons of war", the specifically identified weapons of war indicate that something more than guns/rifles/ conventional ammunition would be needed to trigger the operation of the exclusion. The arms typically used by pirates to date (hand guns, rifles, AK47s, and RPGs) have generally been treated by Group clubs as not triggering the exclusion. However, the increased use of armed guards on ships could result in pirates resorting to heavier weapons of a type that triggers the exclusion. In this event, the liabilities will usually be covered by the owner's war risks P&I policy.

3. What do hull underwriters cover and what do war risk underwriters cover?

Depending on the shipowners' particular insurance arrangements, hull and machinery (H&M) underwriters and war risk underwriters will between them provide property cover (H&M/GA/Salvage etc.) and war risk P&I cover. If a piracy incident triggers the club war exclusion (by virtue of the weapons of war provision), the consequent liabilities are likely to be covered by war risk underwriters. Also, as stated in FAQ 1 above, some primary P&I war risk underwriters also cover piracy as a specific named peril.

4. Should shipowners carry guards?

There is no cover restriction or prohibition per se on the deployment of convoy escort protection or on-board security personnel and appropriately trained and competent personnel may well assist in enhancing on board security procedures and response. In each case, it is an operational decision for shipowners, which should be based on a specific voyage risk assessment, whether to carry guards, unarmed or armed. If on-board security is deployed, proper care and diligence should be exercised in relation to the selection of the appointed security company. Consideration should be given to the appropriate number of guards required. BIMCO's GUARDCON provides for a minimum team of four persons. This is thought to be a good starting point for most vessels but the minimum number is best determined through a risk assessment that takes into account the relevant characteristics of the vessel (speed, freeboard, hull length, any areas vulnerable to boarding, etc.) as well as local factors in the High Risk Area to be transited (history of recent attacks, reports of suspicious vessels, anticipated weather conditions, etc.). Whilst failure to use a prescribed or recommended minimum number of guards will not automatically result in any restriction on cover, this could depending upon specific circumstances and causation potentially impact on cover. There are some private and State sponsored initiatives to develop systems for accreditation of private security providers which initiatives are being monitored and, to the extent appropriate, supported by the industry, including the Group. However, as far as the Group is aware, no such initiative is yet sufficiently developed for accreditation to be of much help to shipowners in the task of choosing competent, safe and professional security providers. The deployment of armed or unarmed security should not be a substitute for, but in appropriate cases, a supplement to effective compliance with the latest version of the joint industry Best Management Practices (BMP). A key part of compliance with the BMP is the liaison with naval forces, who can provide valuable intelligence and in some cases physical help to ships whose owners have followed the BMP procedures to make contact with MSCHOA (Maritime Security Centre Horn of Africa) and with UKMTO (UK Maritime Trade Office Dubai) before entering the High Risk Area. Contact details are easy to find in the BMP and where armed guards are to be carried shipowners should make this known to MSCHOA and UKMTO.

5. Should guards be armed?

It remains the firm view of States and industry associations that crew should not be armed. The previous strong opposition of industry associations to the use of armed guards has softened in the light of increasing levels of piracy activity in areas distant from naval protection and against a

background of increasing aggression against crews. There has been a shift from general opposition to more neutrality, and in high risk cases, positive support for the deployment of armed personnel. The underlying reasons against arming security personnel remain the risks inherent in use of arms by untrained/improperly trained persons, the enhanced risk of loss of life/injury through armed engagement, and the risk of encouraging the escalation of armed engagement and the use of more potent and warlike weaponry. Flag State and Port State restrictions, and licensing requirements or prohibitions on placing and transporting security personnel and arms on board vessels, must also be carefully considered in any decision relating to the deployment of armed personnel on board vessels. It is important to ensure that armed guards are able to demonstrate that their weapons have been purchased, stored, exported, and transferred in accordance with the laws of all relevant State(s) supported by contemporaneous documentation in each case clearly identifying the relevant issuing authority. The Group is advised that the International Chamber of Shipping (ICS) is maintaining a table of "Flag State Rules and Requirements on arms and private armed guards on board vessels" which may be considered helpful in this regard. Where armed guards are used, if there is a choice between Vessel Protection Detachments (VPDs) made up of serving members of a military force, or privately contracted armed security personnel (PCASPs), the former should be preferred other things being equal. A thorough voyage risk assessment should be carried out in deciding whether to deploy armed security personnel on board. In the event that the decision is to deploy armed security personnel, shipowners should have regard to the IMO's "Interim Guidance to Shipowners, Ship Operators, and Shipmasters on the use of privately contracted armed security personnel on board ships in the High Risk Area", which was based upon industry guidelines and was issued by IMO as Circular 1405 on 23 May 2011. Circular 1405 was subsequently revised in September 2011 and May 2012. A copy can be downloaded from the Group's website (www.igpandi.org).

6. Is cover prejudiced by the use of unarmed/armed guards?

The extent of any prejudice to cover is likely to be dependent on loss/causation on a case-by-case basis. It is unlikely that cover would be prejudiced by the use/actions of unarmed guards, but intervention by armed guards, whether on board or forming part of a privately contracted convoy escort detachment, could result in prejudice to cover if their use is in breach of Flag State, Port State or other applicable legal prohibition. Shipowners should also ensure that the embarkation of additional security personnel does not place them in breach of SOLAS safety equipment and certificate requirements.

7. Are there any contractual/insurance issues with the use of security companies?

There are a variety of different forms of contractual arrangements in use by on-board security providers and by States which may provide naval or military personnel on board. These arrangements may contain assumptions of responsibility to indemnify/hold harmless in respect of consequential losses and damages. The consequential liabilities assumed by shipowners may not be fully covered by their clubs and may be excluded if they would not have arisen but for the terms agreed and the club had not approved those terms in advance. As a minimum there would be an expectation that the terms

would contain reciprocal indemnities (and if limitation amounts are included, reciprocal limitation amounts) for liabilities arising from negligence or would be no less favourable to the shipowner than knock for knock. It is essential that the PMSC has in place insurance to support its obligations and possible exposure under the contract (including public and employers' liability insurance cover for itself and its personnel/subcontracted personnel). The insurance should be GUARDCON compliant. Shipowners are strongly encouraged to check that cover is in place. Another potentially important contractual issue is the treatment of the Master's responsibility and authority in relation to the use of arms. Contracts should recognise the Master's responsibility for the overall safety of the vessel, but shipowners are strongly advised against contracting on terms where every decision as to the use of live rounds is referred to the Master whose experience and training may not have prepared him for combat decisions. These issues can be addressed by agreed Rules for the Use of Force, setting out in advance a framework for actions that may be necessary when no consultation is possible. A number of Flag States have prepared detailed guidance on what such rules might reasonably include. Shipowners are encouraged to consult fully with their clubs before entering into such contracts, so that contractual shortcomings can be remedied. Given the risk of the "weapons of war" exclusion being triggered (in which case there would then be no P&I cover), shipowners should also consult with their war risk underwriters on the proposed terms of security company contracts. The International Group participated in the drafting of BIMCO's GUARDCON standard contract for the employment of security guards on vessels. In turn, the standard insurance and liability provisions of GUARDCON conform with the requirements of club cover. It is stressed that the use of GUARDCON is in no way intended to be a substitute for the proper exercise of due diligence by shipowners in ensuring full compliance with the BMP and in the selection of a security company to provide unarmed or armed guards for a vessel. In the meantime, it has been reported by BIMCO that there has already been very significant take-up on the GUARDCON form by both shipowners and PMSCs. Hopefully as GUARDCON'S adoption becomes more widespread, this will reduce the burden on shipowners and clubs of checking individual PMSC contract wordings. GUARDCON is accompanied by guidance on Rules for the Use of Force (RUF) to assist shipowners and PMSCs.

8. Where can shipowners find best guidance to avoid being attacked?

Clubs have made available to shipowners the BMP developed by the industry and first published in February 2009 (now in version 4 published in August 2011 and likely to be updated in autumn 2012) in response to the Somalia/Gulf of Aden situation. The BMP are kept under review and Version 4 reflects practical lessons learned by the industry and by the military as to effective methods to deter and defend against piracy. Industry associations such as OCIMF, ICS, BIMCO and Intertanko have also published general piracy guidance for shipowners which is available. Club websites as well as the Group's website also provide useful information/ updates/links. Other organisations which are providing invaluable assistance and information specific to the Somalia/Gulf of Aden situation are the MSCHOA, UKMTO, the EU Naval Task Force (EUNAVFOR) and the International Maritime Bureau (IMB). Their contact details appear in the BMP. The new, improved NATO Shipping Centre (NSC) website provides comprehensive and timely information about pirate activity around the Horn of Africa for the

shipping community. Shipowners with vessels transiting the High Risk Area (as defined in the BMP) are strongly encouraged to comply fully with all the recommended BMP planning, voyage and reporting procedures. Shipowners should pay particular attention to the defined limits of the High Risk Area which has greatly expanded since the problem first began. EUNAVFOR has reported that in many cases shipowners were only partially complying with the recommended procedures, resulting in successful attacks which could otherwise have been avoided. The critical importance of fully complying with the BMP, the implementation of which has been shown to be effective in protecting vessels and crews, cannot be understated. For vessels which have security personnel on board, unarmed or armed, confirmation of this should be provided with the usual reporting information prescribed under the BMP to UKMTO and to MSCHOA. In the case of a successful hijack, a causative failure to comply with the BMP could prejudice a shipowner's right of recovery particularly in cases where cover is provided on a discretionary basis. Cover could also be potentially affected by failure to comply with the BMP in the case of a small minority of Flag States that have made compliance with the BMP mandatory.

9. Who do shipowners/masters turn to help if their vessel is attacked?

Shipowners/masters should follow the procedures set out in the BMP and should coordinate with UKMTO, MSCHOA and IMB as directed therein. They should also follow any designated Flag State procedures. An up-to-date list of contacts and company/ ship specific procedures should be readily available, particularly on the Bridge, radio station, command centre and/or citadel as appropriate.

10. What type of help do shipowners/masters need?

Shipowners/masters should be provided with, and ensure compliance with the BMP in advance of entering into and during passage through piracy risk areas. If a vessel is attacked the master and the crew should follow the recommended notification and response procedures. Prompt notification will assist in early coordination of naval support to a vessel under attack.

11. If shipowners have to pay a ransom, who can they ask to contribute?

Although details are kept confidential, currently it appears that ransom payments are being funded by K&R (Kidnap and Ransom) insurers where engaged and by war or property insurers (H&M/Cargo).

12. Are ransom payments covered by the clubs?

As stated in FAQ 1 above, the usual P&I liabilities arising out of incidents of piracy will, provided the "weapons of war" exclusion is not triggered, be covered by clubs. Ransom is not a risk which is expressly covered and one club has an express exclusion of liability for ransom payments. It is possible that ransom might be recoverable from clubs at the discretion of boards under sue and labour or omnibus provisions if this is not recoverable under any other insurance and cannot be recovered from other sources.

13. If there is an attack, can shipowners declare GA?

Shipowners can declare GA in response to the common peril to ship and cargo interests for the purposes of recovering contributions towards expenditure incurred. It has been traditionally accepted adjusting practice and upheld by the English courts that a ransom payment made to obtain the release of a hijacked vessel/cargo is a GA expense for which shipowners are entitled to recover contributions. Contributors in GA will include those with a financial interest in the adventure, typically shipowners, cargo owners and potentially charterers. P&I insurers may become liable to cover cargo's contribution in GA where this is irrecoverable due to the shipowners' breach of the contract of carriage.

14. Are shipowners obliged under their charterparty to transit the Gulf of Aden or can they refuse the charterer's orders to do so?

Shipowners' rights and obligations in relation to charterers' orders to transit the Gulf of Aden/HoA region will depend upon the nature of the charterparty (voyage charter or timecharter) and the relevant charterparty terms. Intertanko and BIMCO have developed piracy clause wordings which seek to preserve owners' rights to either refuse orders to proceed to piracy risk areas or to seek alternative orders in appropriate cases. In each case it will be necessary to examine the relevant contract(s) to determine the extent of the shipowners' rights and obligations and to negotiate an agreed allocation of risk between shipowners and charterers.

15. What if the charterer pays the war risks AP?

Most of the piracy clauses expressly stipulate for charterers to pay additional insurances (amongst other expenses) resulting from charterers directing the vessel to proceed to an area of piracy risk, though this obligation to pay for additional insurance does not derogate from contractual rights. The shipowner may have to refuse orders or seek alternative orders. Issues may arise regarding the recoverability of additional insurance (and other) costs if the vessel does not proceed into a piracy risk area.

Monthly Seacurus News Round-up - November

Malaysian Hijack

Vietnamese authorities have arrested 11 suspected pirates aboard a chemical tanker after the first such hijacking in the waters around Malaysia in years, the International Maritime Bureau said Friday. The Malaysian-owned vessel lost communication on Saturday while on its way from Johor state to Borneo. Vietnamese marine authorities managed to intercept the tanker on Thursday, arresting 11 suspects.

<http://goo.gl/gj64b>

New View

Leading maritime academics have set about viewing Somali piracy, and state that in order to achieve greater and more sustainable maritime security, it is important to look at maritime insecurity in a different way. Ioannis Chapsos and James A. Malcolm of Coventry University believe that the causal factors of maritime insecurity also include favourable geography and weak or compliant states that provide safe havens and sanctuaries.

<http://goo.gl/O5e04>

Social Experiment

Somali hijacks may be down in recent months, but the interest of social scientists and economists in the country is undiminished. Piracy negotiations are also of interest, not least how two parties bargain when neither has good information available. Negotiations between shipowners and Somali pirates fit that description well. Economists have been interested in the free-market ways of pirates for a while.

<http://goo.gl/qP4Tp>

Pre-departure Awareness

The Maritime Piracy Humanitarian Response Programme ("MPHRP") has launched a Pre-Departure Piracy Awareness Training film. MPHRP is a pan-industry alliance of ship owners, managers, manning agents, insurers and welfare associations working together with one aim, namely - "to assist seafarers and their families with the humanitarian aspects of a traumatic incident caused by a piracy attack, armed robbery or being taken hostage."

<http://goo.gl/xkvKd>



Hunted Down

Warships hunt down pirate skiff off the coast of Somalia, take 9 suspected pirates into custody and sink their boat. Romanian frigate ROS Regele Ferdinand, under command of the EU Naval Force (EU NAVFOR) worked in close co-operation with Turkish warship TCG Gemlik of Combined Task Force 151 (CTF-151) to apprehended nine suspected pirates at sea off the coast of Somalia. In the early hours of the morning, Swedish EU NAVFOR Maritime Patrol Aircraft located the suspicious skiff at sea 420 nautical miles east of Mogadishu.

<http://goo.gl/1rV2a>

Still Held

The Somali pirates who hijacked "Asphalt Venture", continue to hold in captivity seven crew saying they will not be released until their own men have been released from Indian jails. The 1991-built 3884-dwt tanker flying Panama flag employed a total of 15-crew. Eight of them were released in April 2011 following payment of ransom. The release of seven others has been withheld pending the release of convicted pirates held in India.

<http://goo.gl/oJXj1>

Monsoon Measurement

Indian monsoon forecasting is facing a major problem due to the alarming presence of Somalia pirates in the Indian Ocean. Dr M. Ravichandran, a senior scientist with the Indian National Centre for Ocean Information Services pointed out that since the western Indian Ocean is a piracy High Risk area, "we are not in a position to conduct crucial experiments in that zone". This lack of access to data has adversely impacted information and data analysis.

<http://goo.gl/vXijl>

Illegal Dumping

A vessel dumping 5 thousand metric tons of cement 13 nautical miles east of the Bossaso shore was captured by Puntland Maritime Police Force (PMPF) on Friday. Chief of the PMPF Col. Abdirasak Diriye Farah said that they had received intelligence that the vessel was dumping some sort of toxic in Puntland waters. "We had received intelligence that the vessel was parked in Puntland state waters for a few days...and our troops apprehended the vessel."

<http://goo.gl/MPJv6>

Piracy Rise

Global piracy has increased 52% to 26 attacks in October compared to September due to deteriorating situations in the Gulf of Guinea off West Africa and Indonesia, according security contractors. Though Somali piracy stayed low with reporting of three attacks, there was an incident of a pirate group opening fire on a naval warship. More attacks were, however, seen in West African waters, resulting in two tankers being hijacked and 7 being held.

<http://goo.gl/fwjBU>

War Declared

The Nigerian Navy has declared war on oil bunkering, sea robbery, piracy and other criminal activities that take place within the maritime domain of the nation's waterways. The Chief of Training and Operations (CTOPs), Naval Headquarters said the quest was a result of the mandate of President Goodluck Jonathan, to stamp out illegalities in the nation's maritime domain. The announcement came as a fleet exercise began.

<http://goo.gl/GKEbu>

Arms Race

A suspect Nigerian arms smuggler has revealed how his syndicate that specialises in trafficking arms and hijacking ships and cargos, hired a vessel to perpetrate their crime. According to the source, the group chartered "MV Naomi Corlet" in Cameroun for a period of six months to enable his gang to have enough time to maximize its use for their nefarious operation. The vessel was then used in both hijacking and arms trafficking.

<http://goo.gl/wAm08>

UN Extension

The UN Security Council extended an African Union peacekeeping force in Somalia for four months on Wednesday as it mulls lifting an arms embargo and Uganda threatens to pull out troops over claims it is aiding rebels in Democratic Republic of Congo. The situation in Somalia is changing rapidly, there is a more legitimate political leadership but violent attacks are still the norm, and there are 17,600 U.N.-mandated peacekeeper in place

<http://goo.gl/15FpW>

Ship ID

Seafarers are being taught to identify dhows or fishing boats that have been taken over by Somali pirates, as the raiders adopt a new strategy. The NATO Shipping Centre has issued an advisory on how to avoid being hijacked. The guidance provides seafarers with the means to recognise hijacked vessels and report them to naval forces operating in the area. It allows them to stay ahead of the constant evolution of the pirate threat.

<http://goo.gl/KZqVH>

Fun of Piracy

The Supreme Court of the Seychelles recently found 15 Somalis guilty of piracy and jailed them for up to 18 years. Judge Mohan Burhan rejected their defence that they were "fishing and having fun" as they fired rockets at a tanker in the Arabian Sea and that weapons – including assault rifles – which they dumped at sea when a surveillance helicopter appeared were only for their own protection, reports the 'Seychelles Nation'.

<http://goo.gl/pv02t>

Malacca Success

The Malaysian Maritime Enforcement Agency (MMEA) has succeeded in reducing piracy in the Straits of Malacca since it was set up in 2005. A government spokesman said the menace of pirates had seen steady decline with frequent checks and patrols by the agency. "There were 38 piracy cases reported in 2004, and the number went down to 10 cases after MMEA was established in 2005".

<http://goo.gl/rOP36>

Asian Focus

Two recent hijackings have put south-east Asia back on the map of piracy hot spots, but most of the crime committed here is not reported as piracy and it is debatable whether these attacks share similarities with the model in the Gulf of Guinea. The hijack of "Arowana" in October off Malaysia and that of "Scorpio" in the Singapore Strait in September differed from what has become the more common "snatch and grab" form of robbery in south-east Asia.

<http://goo.gl/K8I3j>

Nice Earner

A vessel hijacker has revealed the amount he makes after each operation carried out on the sea. With pride ringing in his voice, Nubers Blessing declared that piracy will not be an easy crime for security agents to put a stop to because of the money criminals used to realise when they attack ships. According to him, he made as much as US\$63K on just a single operation. He was arrested by the Nigerian Joint Task Force team.

<http://goo.gl/X861M>

Business Model

An innovative anti-piracy initiative has been launched by One Earth Future in Colorado, USA, to foster job creation and economic growth in Somalia and Somaliland. The program, called Shuraako (Somali for 'partnerships'), seeks to create jobs in Somalia through supporting business development and social entrepreneurship in one of the most challenging regions of the world. This in turn will hopefully stabilise the nation and mitigate security risks.

<http://goo.gl/I1u5W>