

Escalation of west African piracy causing concern

Brett Hosking, of The Standard Club, provides an update on west African maritime security

The Gulf of Guinea region remains an important trading area for international shipping. However, trading in this area is not without its challenges, more specifically the threat of piracy and kidnap. The root causes of these issues are varied and complex and likely include poverty, unemployment, corruption and a general disregard of laws due to the inability of local authorities to enforce them. That threat has escalated especially in the past two years.

The scourge of piracy and kidnap is now rife across the region with incidents reported westwards and south-eastwards from the historical piracy heartland of the region, the Niger Delta. Piracy attacks have been reported in the waters off at least nine countries outside Nigeria including Benin, Cameroon, Ivory Coast, the Democratic Republic of Congo, Equatorial Guinea, Gabon, Ghana, Sao Tomé and Príncipe and Togo.

The International Chamber of Commerce's International Maritime Bureau (IMB) regularly publishes statistics on piracy and armed robbery against ships. In the first quarter of 2021 the IMB noted that the Gulf of Guinea region accounted for the most incidents, including all 40 kidnapped crew as well as the sad fatality of a crew member on board one ship.

The latest data also shows that various vessel types continue to be targeted in the Gulf of Guinea. While historically tankers were targeted, primarily for their oil cargoes, recent pirate activities tends to show a move away from so-called "petro-piracy" towards a focus on crew kidnapping. These attacks are also occurring further away from shore. During July 2020, a vessel was attacked approximately 244 nm offshore Benin, while in March 2021, pirates kidnapped 15 crew from a tanker some 212 nm also offshore Benin.

1. Regional activities

The plight of shipowners and their crew has not gone unnoticed by politicians in the region. There have been various attempts made to try to adopt regional measures to tackle the threat of piracy and kidnap. In 2013 the Yaoundé Code of Conduct encouraged states to enact domestic measures to combat piracy and armed robbery in the Gulf of Guinea, including to criminalise these activities and prosecute the perpetrators. In 2016, regional leaders met in Togo with the aim of building on the momentum generated by the Yaoundé Code, as well as Africa's Integrated Maritime Strategy, and progress a common continental agenda. However, the Lome Charter that emerged was not legally-binding and some commentators have suggested that it reads more like a wish list of responsibilities.

2. Nigeria taking a stand

Under the Lome Charter, the signatory states have several obligations, including improving the socio-economic environment to prevent crimes at sea as well as investment in equipment, operations and training all with the aim of improving maritime security.

The Nigerian government has committed to a range of measures to better control its territorial waters and exclusive economic zone within the Gulf of Guinea. This includes the security programme called the "Deep Blue Project" initiated in early 2019 to try and deal with insecurity and criminality in Nigeria's territorial waters and exclusive economic zone. It has been reported that around US\$195 million in funding has been earmarked for the various initiatives under the Deep Blue Project. It is understood that most of the necessary procurements have arrived and taken delivery by Nigerian Maritime Administration and Safety Agency (NIMASA), however implementation has been slower than expected partly as a result of Covid-19 delays.

New legislation

In June 2019 a new Nigerian act to tackle piracy received assent: the Suppression of Piracy and other Maritime Offences Act 2019 (SPOMO). The new act was hailed as a success of initiatives such as the Yaoundé Code of Conduct with Nigeria becoming the first nation in the region to ratify a law to specifically combat piracy.

The purpose of the SPOMO is to prevent and curb piracy, armed robbery and other unlawful acts against a ship. The Act has widespread application whereby it applies to any person on board a ship or aircraft navigating in, on or above the territorial and internal waters of Nigeria or, on or above international waters.

The Act has been lauded for its definition of piracy that is in line with the United Nations Convention on the Law of the Sea 1982 and the inclusion of specific maritime offences and unlawful acts at sea, which include armed robbery and acts other than piracy committed within Nigerian waters. However, the Act has been criticised for being standalone, in that the Act does not complement existing domestic laws on related issues such as money laundering and corruption. While the Act grants powers to seize vessels or aircraft used for maritime crimes, there is some uncertainty as to who may be considered the relevant authority to carry out such actions.

The effectiveness of the new Act was tested in August 2020 when the Federal High Court in Port Harcourt convicted three of the nine accused of hijacking a passenger/ro-ro ship off the Equatorial Guinea coast. This was the first conviction under the SPOMO with the judge ordering each of the convicted parties to pay quite significant fines.

New arrangements

In January 2021, the previous Secure Anchorage Area off Lagos was officially ended. This used to be a restricted area where vessels were able to obtain protection against attacks provided by a private maritime security company (PMSC) in cooperation with the Nigerian Navy. Instead the Nigerian Navy has partnered with several PMSCs by way of memorandums of understanding, allowing the latter to arrange security escorts for commercial vessels in Nigerian waters. Typically, the escort vessels must carry a team of local naval armed guards. Foreign armed guards are

prohibited but some of the escort vessels can be accompanied by a liaison officer from the PMSC.

These new arrangements are not without their problems. The head of the Nigerian Navy, Rear Admiral Zubairu Gambo, has warned against any navy personnel colluding with criminals including drug traffickers and kidnappers. He has pledged to strengthen policies to identify and sanction any individuals involved and adopted a new zero-tolerance approach for indiscipline and criminal activities.

Endemic problems

It remains to be seen whether such measures as those set out above will be enough to reduce the threat of piracy and kidnap activities. It has been argued that Nigeria must go beyond the current measures and address the sociological and environmental factors that drive piracy. In the meantime, it is taking steps to fight corruption, including the recent launch of the Nigerian Ports Process Manual. Its aim is to improve operations, service timelines, efficiency and accountability in the port sector. Meanwhile, industry bodies such as the Maritime Anti-Corruption Network continue to work on improving the operating environment in Nigerian ports and terminals including the implementation of a mechanism for reporting disputes relating to corrupt demands.

3. Industry developments

The recent spate of attacks on vessels has prompted several calls by shipping bodies and leading shipping companies for more assertive action in the fight against piracy in the Gulf of Guinea. As at May 2021, some of these activities include the following.

- The European Union launched its Coordinated Maritime Presences pilot in early 2021. It will allow member states present in the region to share awareness, analysis and information. Meanwhile, Denmark has committed to send a frigate on a five-month antipiracy patrol in the Gulf of Guinea from November 2021. Italy already has a naval presence in the region and it has on more than one occasion disrupted pirate attacks. Other EU countries including France, Spain and Belgium have announced an interest in contributing to maritime security in the region.
- Nigeria and the Interregional Coordination Centre for the Implementation of Regional Strategy for Maritime Safety and Security in Central and West Africa has formed a Maritime Collaboration Forum to provide shared awareness and deconfliction of activities in the Gulf of Guinea.
- The Maritime Domain Awareness for Trade – Gulf of Guinea (MDAT-GoG) is a cooperation centre between the Royal Navy and the French Navy. The centre has been in operation since June 2016. Its aim is to collate and share information on maritime security incidents.
- BIMCO is currently developing a new standard contract for hiring the services of security escort vessels. This follows the success of BIMCO's GUARDCON and its suggested amendments for use in the Gulf of Guinea. The author of this article is on the drafting committee for this new contract.

4. The costs of piracy

With rampant piracy and kidnap occurring in the Gulf of Guinea, many shipowners are faced with an increasingly challenging security prospect if they wish to trade in the region. Any vessel

trading in this area is strongly encouraged to comply fully with all the recommended best management practice (BMP) planning, voyage and reporting procedures. The BMP are kept under review and version 5 reflects practical lessons learned by the industry and by the military regarding effective methods to deter and defend against piracy. Guidance is also available specifically in relation to West Africa following the publication of BMP West Africa. The fundamental principles set out in this guidance include:

- Understanding the threat by obtaining current threat information.
- Conducting risk assessments.
- Implementing ship protection measures.
- Registering and reporting with MDAT-GoG.
- Cooperating with local naval and military forces

The decision to adopt various anti-piracy measures can add significantly to the cost of a single voyage. The question is often asked as to who bears the cost of such measures under chartering arrangements with additional costs including crew bonuses and insurances, such as additional war risk premiums and kidnap and ransom insurance. While BIMCO's Piracy Clause for Time Charter Parties (2009 and 2013) and CONWARTIME 1993, 2004 and 2013 are commonly incorporated into charterparties and set out fairly detailed regimes in relation to time, hire and expenses, there has still been litigation in relation to these issues. To minimise the potential for dispute, contracting parties should take particular care to ensure that the wording used in their charters reflects their intentions. Recent judgments from the English High Court including *Eleni Shipping Ltd Transgrain Shipping BV (The Eleni P)* [2019] 2 Lloyd's Rep 265 have highlighted the importance of having unambiguous wording with regard to off-hire and piracy, as well as the allocation of risk generally.

5. Conclusion

The danger of pirate attack and kidnap in the Gulf of Guinea is at an unprecedented level. Actions to combat these threats have been largely unsuccessful to date. However, given the international attention to these issues, it is hoped that some progress can be achieved in the near future. It will undoubtedly take the collective effort of various stakeholders such as industry bodies, shipowners, maritime organisations and supranational organisations to resolve the ongoing crisis of piracy and kidnap in the region. In the meantime, shipowners trading in this region should continue to take all necessary precautions following thorough voyage risk assessments. These may include following the guidance in the BMP and BMP West Africa as well as ensuring they have the relevant insurances in place and clarity on their contractual arrangements. **MRI**



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