

# TO ARM OR NOT TO ARM, THAT IS THE QUESTION



James Bean: Syndicate Claims Director  
Telephone: +44 20 3320 8811  
E-mail: james.bean@ctplc.com

Whilst naval forces of different countries are deployed in the Gulf of Aden (GoA) and Indian Ocean region to protect trade routes, with only limited resources at their disposal to police such a large area, the level of piracy activity shows no sign of abating.

A number of high-profile hijackings in recent months have left shipowners looking for ways to combat the problem themselves, over and above following the Best Management Practice. The club has seen a large increase in enquiries from members who are considering using armed guards, whether military or private, in an attempt to protect the crew, ship and cargo from harm and to avoid the financial losses that a hijacking causes.

Once a controversial subject, there has been growing acceptance within the shipping industry that employing armed guards on ships in the GoA Indian Ocean region is an effective short-term solution for countering pirate attacks. To date, no ships with armed guards on board have been hijacked by pirates. The International Chamber of Shipping now accepts that operators must be able to defend their ships against rising pirate attacks through the use of private armed guards. However, critics are concerned by the capability of the armed guards offering their services, the legality of their use and the possibility that there will be an escalation of violence against crew.

Following the escalation of pirate attacks the IG and the Standard Club have now adopted a neutral position on the use of armed guards.

## CLUB COVER

There is no cover restriction or prohibition on the deployment of on-board security personnel, provided their use is acceptable to the flag state and other relevant authorities. However, it is important that the use of armed guards is discussed with the club, as well as other insurers, and we would always ask that members forward a copy of the security contract to us for review.

## THE SECURITY CONTRACT

In general terms, a member should not assume responsibility, under contract or otherwise, for liabilities arising or loss resulting from any act or omission for which they would not otherwise be liable, or they would otherwise be entitled to exclude or limit liability.

The provision of armed guards is under a contract for services to the ship. For liabilities to be covered, and to be poolable, members are obliged to use best endeavours to ensure that the security contract provides, as a minimum, reciprocal indemnities for liabilities arising from negligence or is on terms no less favourable to the shipowner than knock-for-knock.

## DUE DILIGENCE

In addition to considering the contractual issues, the club recommends that members carry out due diligence to ensure that reputable companies are used that subscribe to an international code of conduct and employ properly trained personnel who work in accordance with clear standard operating procedures and rules of engagement. In this regard, members should ensure that the master retains control at all times and has responsibility for the safety and security of the ship whilst armed guards are on board.

The security companies should also have appropriate insurance in place that will not only respond to liabilities arising under the contract with the shipowner but liabilities of their own staff, including medical expenses and kidnap and ransom cover.

## WEAPONS OF WAR

The type of weapons being brought on board by the armed guards should be considered. The weapons of choice tend to be bolt-action rifles, shotguns and handguns. For the pirates, these are AK47s and RPGs, which are cheap, readily available and reliable. None of these weapons are considered 'weapons of war' for the purposes of the club cover exclusion at rule 4.3. However, it is important to note that where heavier armaments are used, this could trigger the 'weapons of war' exclusion, and members would need to seek guidance from their war risk underwriters.

## CONCLUSION

The IG and Standard Club recognise the need for shipowners to protect their ships from pirate attack. Should a shipowner choose to employ private armed guards as part of their protection strategy, the club is familiar with the service contracts used and can offer advice to the shipowner. Please direct any queries to your usual club contact or the author, who will be happy to assist.