Introduction
The threat of piracy has been a major concern for shipowners over recent years. Piracy is not a new phenomenon but heightened activity in the Gulf of Aden and wider Indian Ocean between 2009 and 2011 brought the problem to the world’s attention.

Since then, there has been a marked decline in the incidence of piracy and armed robbery against ships worldwide. According to the latest annual report issued by the International Maritime Bureau (covering the period from 1 January 2017 to 31 December 2017), there were 180 reported incidents in 2017, the lowest since 1995. This figure is comprised of 136 ships being boarded, 22 attempted attacks, 16 ships being fired upon and six hijacked.

Recent trends
However, the overall decline in piracy and armed robbery masks regional variances.

West Africa
In Africa, the focus has shifted from the East to the West where in 2017 there were 36 reported incidents with no ships hijacked, and 10 incidents of kidnapping involving 65 crew. Seven of the 16 ships fired upon worldwide were off West Africa. Piracy off West Africa tends to consist of violent theft and kidnapping, rather than hijack for ransom as has been the Somali model in recent years.

East Africa
There were nine incidents off Somalia in 2017 with three ships hijacked, confirming Somali pirates retain the capability and capacity to mount successful attacks. On a more positive note, there have been reports of pirates being captured and successfully prosecuted.

Southeast Asia
Here the picture has been mixed, with a decrease in recorded incidents in Indonesia (43 in 2017) thought to be attributable to Indonesian Marine Police patrols. However, there was a marked increase in incidents in the Philippines (doubling from 10 in 2016 to 22 in 2017), although most were low-level attacks on ships at anchor.

The rest of the world
2017 also saw attacks off Venezuela and Libya, highlighting the need for vigilance in parts of the world other than the usual piracy hotspots.

Does the club cover piracy?
The club’s rules contain no definition of or exclusion for piracy. Therefore, the third-party liabilities insured by the club remain covered when they arise out of incidents of piracy.

These liabilities are likely to include:
- 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, wreck removal and potentially cargo liabilities/general average in the case of a shipowner’s contributory fault or negligence.

Such liabilities are, however, excluded from cover if caused by the use/engagement of certain ‘weapons of war’ that are specifically named in the club’s rules or any ‘other similar weapons of war’. Also, whilst P&I liabilities arising from acts of piracy are not excluded risks, those arising from terrorism are excluded and would fall under the shipowner’s P&I war risks cover.

It is important to also note that, where a war risks policy includes piracy as a specific named peril, there may be overlap between P&I liabilities covered by the war risk P&I underwriters and those covered by the club.

Are ransom payments covered by the club?
As stated above, the third-party P&I liabilities arising out of incidents of piracy will, provided the ‘weapons of war’ or terrorism exclusions are not triggered, be covered by the club. Ransom is not a risk which is expressly covered under a member’s P&I entry. However, the club does offer a bespoke kidnap and ransom cover to shipowners who have an existing entry in the club. The cover is provided in conjunction with Hiscox and responds to the ransom itself, the delivery of the ransom and the risk of loss in transit, crew liabilities, and associated fees and expenses. Cover for loss of hire can also be provided. Specialist responders are available to assist members in ransom negotiations, providing support and expertise under difficult circumstances.
Should ships carry guards?

There is no cover restriction or prohibition regarding the engagement of armed or unarmed private maritime security contractors (PMSCs) or the use of convoy escort protection. Appropriately trained and competent PMSCs may enhance on-board security and assist in the response to a piracy incident. The decision as to whether to engage PMSCs is an operational one for members, which should be based on a voyage-specific risk assessment. The club expects its members to exercise due diligence in the selection of a PMSC, including following the latest version of the IMO’s guidelines. The club also recommends that members obtain positive confirmation that the chosen PMSC holds the applicable international standard—ISO/PAS 28007—and that it also complies with the IMO’s guidelines.

Are there any contractual issues with the use of security companies?

There are a variety of different contractual arrangements in use by PMSCs and by states that provide naval or military personnel. These arrangements may contain assumptions of responsibility to indemnify/hold harmless in respect of loss or damage. Liabilities assumed by members may not be covered by the club if they would not have arisen but for the terms agreed which the club had not approved in advance. The club strongly recommends the use of BIMCO GUARDCON. Its use has considerably improved the terms upon which providers of maritime security have been engaged and it has simplified the process as to the approval of PMSC contracts. It has also ensured that minimum levels of insurance cover are held by providers of maritime security. Another 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 ship, but members should not voluntarily contract on terms where decisions as to the discharge of live rounds are referred to the master, whose experience and training may not have prepared him for combat decisions.

Where can members find the best guidance to avoid being attacked?

The club has made available to members the Best Management Practices (BMP) developed by the industry and first published in February 2009 (now in version 5) in response to the situation in the Red Sea/Gulf of Aden/Indian Ocean and Arabian Sea. 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 in relation to West Africa.

Global Counter Piracy Guidance for Companies, Masters and Seafarers, first published in June 2018, also contains guidance on piracy and armed robbery-related issues. The guidance includes information about threat and risk assessment, and planning for voyages transiting areas where the threat of attack by pirates and armed robbers exists.

Other organisations which provide invaluable assistance and information are the MSCHOA, UKMTO, the EU Naval Task Force (EUNAVFOR) and the International Maritime Bureau. Their contact details appear in BMP.

The NATO Shipping Centre website provides comprehensive and timely information about pirate activity around the Horn of Africa. Owners with ships transiting this high-risk area (as defined in 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.

The Maritime Global Security website provides comprehensive maritime security guidance to shipowners. This website also includes links to other useful maritime and military security resources.

Lastly, the club’s website and the International Group’s website also provide useful information.

Recommendations

Despite the apparent reduction in the number of piracy incidents, a risk still remains and the club continues to recommend to members that they exercise caution when trading to areas that may be at risk from piracy. Members are strongly encouraged to comply with the latest version of BMP and other related guidance.

The Standard Club is always on hand to assist. If members have any questions in relation to this publication they should not hesitate to contact the authors or their usual club contact.

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