

**Association Internationale
de
Droit des Assurances**

**AIDA Europe
Student/Academic Sub-Committee**

**Zürich Conference
(October 22-23, 2009)**

Maritime Insurance & Piracy



A Comprehensive Presentation Summary

by
Stella Sakellaridou

Student at the
University of Athens - Greece
School of Legal, Economic & Political Sciences
Faculty of Law

Marine Insurance through the ages

From 'Lex Mercatoria'
to the
Specialist Policy
and the
'War Risk' Coverage

'War Risks' Policy

This type of marine insurance covers (at an additional premium) the risk of loss or damage that may occur when a vessel passes by a war zone.

It also includes loss due to *piracy*.

Piracy - Definition

In the Article 101 of the **1982 UN Convention on the Law of the Sea (UNCLOS)** and its supplemental **1988 SUA Convention**, piracy is defined as:

- ❖ any illegal acts of violence or detention, or any act of depredation, committed for *private ends* by the crew or the passengers of a private ship or a private aircraft, and directed either on the high seas or in a place outside the jurisdiction of any State...
- ❖ any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- ❖ any act inciting or of intentionally facilitating an act described above

Main Factors that seem to 'feed' Piracy

- The enormous volume of sea-moving commercial freight;
- The selected ship routes that the ships need to follow for economic and time-saving reasons;
- The downgrading of marine surveillance subsequently leading to the downgrading of monitoring the territorial waters;
- The lack of necessary infrastructure to the security and enforcement authorities in some countries (by means of personnel and/or financial resources) in order to prosecute pirates.

Piracy Impact on Marine Insurance

- Piracy affects marine insurance markets, in terms of underwriting considerations, insurance cover and premiums payable by the ship owners, thus, placing 'extra insurance costs'.
- It is estimated that the ransom payments to pirates have pushed up substantially the cost of claims.

Piracy - Facts

- According to a recent IMB report, the number of piracy incidents up to end September 2009 has surpassed the respective peak-number recorded for 2008.
- Piracy is economically driven and affects us all.
- Piracy could possibly cause a major environmental catastrophe.

According to the International Maritime Organization (IMO), the piracy incidents are more or less under-reported, because of:

- The time-consuming procedure of reporting a pirate-attack that could lead to a delay of several days and subsequent high costs.
- The subsequent increase in insurance premiums that seemingly outweighs the value of the claim of smaller attacks.

Is Piracy linked with Terrorism?

An issue for an on-going debate among maritime experts.

For the majority of them, Piracy and Terrorism seem to overlap in two grounds:

A) LEGAL

- Both Piracy and Terrorism are executed by non-state actors
- Both aim at civilians
- Both involve acts of homicide and destruction 'for private ends'.

B) FINANCIAL

- There is speculation that piracy in Somalia is the funding source of terrorist organizations.

Combating Piracy: Legal Complications

Due to:

- the existing complexities of the International maritime law;
- the National penal laws (and the vast variety of conditions to stand for its qualification) being the weakest point in the international anti-piracy network.

There is a need to adopt:

- a NEW legal definition of Piracy acknowledging the piracy-terrorism link and implementing a link with surveillance issues and a cooperation among security, safety and border control authorities –indispensable in the maritime domain.

Insurance aspects

Piracy affects:

- The crews, the shipping companies or the ship owners;
 - The parties with an interest on the goods carried;
 - The insurers.
-
- ✓ Specialist policy gives no specific definition of piracy.
 - ✓ For insurance law (unlike the penal law), there is no territorial or national limitation for piracy. It is sufficient for the act to be at or on the sea.
 - ✓ Unless piracy is insured as a separate peril, the associated hull loss will be recorded as the grounds of indemnification, regardless of the cause.

Lines of business affected

The losses attributable to piracy primarily affect:

- marine hull;
- marine cargo; and
- protection & indemnity insurance.

As regards the **ransom payments** the real issue is whether, under certain circumstances, such coverage will be excluded from the hull insurance and will fall on war risks.

New business offered

- 'Kidnap and ransom' insurance. It is suggested that it should also include cover for consultant and negotiator costs and medical care.

Offered for individual transits or on an annual basis for further reduction of the cost.

- Security guards escorting vessels sailing the Gulf of Aden.

Due to the existing legal restrictions, only 10% of business is currently providing fire arms on board.

Measures and mechanisms for combating piracy

- Initiatives and laws at international level with the support of the governments and the judicial system.
- Effective Surveillance: From onboard defense systems to naval deployments and regional anti-piracy patrols.

The EU NAVFOR 'Atalanta' Operation

- Launched in December 2008 and extended up to December 2010 it is the European Union's first ever military operation set to deal with the increased acts of piracy along the Somali coast.
- Consists of 13 Warships and 3 maritime patrol air surveillance aircrafts.
- Furthermore, the EU plans to train Somali security forces by sending a team the region.

The new security measures; will they be effective?

- The effectiveness of the security measures depends on the implementation and the enforcement of the relevant provisions.

Thus, the matter is in the hands of the Governments and the shipping industry.

Besides the UN Security Council, the Governments and the State Organizations, various non-governmental associations have turned their attention to this matter, like:

- The International Maritime Bureau (IMB)
- P & I Insurers
- The Baltic and International Maritime Council (BIMCO)

BIMCO interventions

- Emphasis on initiatives on land of Somalia rather than on the seas;
- Against the 'general' employment of armed guards on merchant ships;
- Fears the potential 'copycats' of Somalis by other national gangs.

Issues that need to be addressed

P & I Clubs are asked to:

- Remove the 'War Risk' exclusion

- Specify, in detail:

1. The distinction between piracy and terrorism;

2. The conditions under which piracy is *not* covered;

3. The acknowledgement of the ransom payments so that paying ship owners could be hedged;

4. The adjustment of cover, in cases where there has been an employment of armed guards and/or existence of contracts with security companies.

What has to be done

It is important that legislative steps are taken in order to:

- Endorse the specific coverage into that of war risks; and
- Provide for the obligation of a separate insurance premium to cover the risk of terrorism.

(continued)

Furthermore, the maritime industry must adhere to basic security protocols such as:

- The avoidance of dangerous routes
- The maintenance of constant anti-piracy patrols in dangerous (ambush-prone) areas
- A close contact keeping of the vessels with others sailing nearby, as well as with the international patrol units
- The maneuvering at speed when attack happens.

The implementation of the above should be pursued through the offer of lower insurance premiums, or, in the case of non-compliance, through the threat of imposing higher ones.

Conclusion

It has become clear that in the continuing struggle against piracy:

- The co-operation between the security, safety and border-control authorities based on the statutory regulations is essential.
- Surveillance will be more efficient through the use of modern risk-management principles and the implementation of the measures and mechanisms suggested above.

Thank you all for your attention.