

From the Gulf of Aden to the Gulf of Guinea: Lessons Learned and Best Practices to be Employed by the Insurance Industry

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Acts of piracy at sea were first documented in the 14th century BC in the form of the exploits of the so-called Sea Peoples who threatened the Aegean and Mediterranean¹. More recently, and for a period of almost 200 years, from the early nineteenth until almost the end of the twentieth century, piracy² was considered almost *vieux jeu* within the global shipping community³. However, over the last 20 years, the maritime sector has witnessed the revival of a modern phenomenon of piracy and armed robbery at sea more aggressive⁴ than its historical counterpart and one that has proven increasingly challenging to control and regulate.

Contemporary piracy emerged in Southeast Asia⁵ and East Africa, with Somalia and the Gulf of Aden experiencing an explosive number of pirate incidents. The international community reacted by adopting a variety of measures and statistics now testify to a decline in pirate attacks in those regions.

As rates emanating from Somalia's coast drop, international attention is now shifting towards the waters off Africa's West Coast, and, in particular, to the Gulf of Guinea⁶, which is currently faced with a sharp rise in the number of maritime piracy incidents. The implications of this situation, not unlike piracy off the coast of Somalia earlier, can be notable and far-reaching. The Gulf of Guinea serves as both an economic lifeline to both coastal and landlocked countries⁷ in West Africa and as a strategic location for worldwide trade⁸.



Initiatives and Measures Taken in East Africa

Piracy emanating from the Gulf of Aden and Somalia has dominated maritime concerns of ship and cargo owners, charterers, insurers, policy-makers and international maritime organizations over the last six years.

New types of insurance (such as war risk, kidnap and ransom, loss of hire) were devised by the insurance industry in order to provide cover to shipowners (and, to a lesser extent, charterers) who had to deal with their vessel hijacking, often for prolonged periods of time. In addition, the implementation of Best Management Practices (BMP), a set of guidelines drawn up by international maritime industry associations, navies and other stakeholders, helped to provide ship-owners and seafarers with advice regarding self-protection and preventative measures against potential pirate attacks⁹.

In a further effort to deter and disrupt pirate activity in the Gulf of Aden, the United Nations Security Council passed two resolutions¹⁰, which resulted in the increased presence of international naval patrols (and other military forces) in the area. Successful patrols were also set up unilaterally by warships from the Coalition establishing the Internationally Recognized Transit Corridor (IRTC).

One of the most successful weapons developed in the war against piracy has proven to be the employment of private armed guards. Although the initial introduction of this measure was met with reluctance by the shipping and insurance communities and flag states alike, the actual practice and effects of their employment is today highly praised¹¹.

How Does the West Africa Experience Differ?

One could argue that a West Africa pirate attack is a different attack altogether from those in the Gulf of Aden. Pirate attacks in the Gulf of Guinea, unlike the ransom targeted attacks off the coast of Somalia¹², primarily fall under two categories: armed robbery and cargo theft.



Armed robbery appears to be opportunistic and is becoming increasingly violent. It usually occurs near the coast, notably when vessels are approaching, drifting or anchored off ports. Its main objective is for the pirates to take valuables, such as IT equipment and personal effects¹³.

Cargo theft usually takes place on board product and chemical tankers whereby cargo (particularly petroleum products¹⁴) from the hijacked vessel is transferred, over a number of days, to smaller vessels. These attacks tend to be well organized and sophisticated and appear to involve a criminal element with other commercial interests ashore – “Attacks in West Africa point towards well-coordinated and executed, intelligence-led planning... Gulf of Guinea pirates have organized syndicates that have access to technical knowledge about ships and equipment that shows ship movements. Attacks are often made by high-powered speedboats, in one case launched from a mothership, and usually they take place in territorial waters of the coastal states”¹⁵.

In this regard, it is the cargo, equipment and personal effects on board the vessels that represent the “value” as opposed to the crew, as was the case with Somalia. This aspect, combined with the sea area where the attacks take place, demands disparate measures to combat piracy in West Africa.

From a political and governance aspect, West African countries differ considerably from East African ones as they have, in the vast majority, established rule of law, developed and functioning state institutions and an overall satisfactory governance¹⁶. This does not however make up for the current lack of effective prosecution and establishment of clear legal frameworks and law enforcement agencies on land, similar to the situation in Somalia, which thus render potential prosecution of pirates a troublesome goal¹⁷.

Moreover, the Gulf of Guinea lacks water policing and reporting, in comparison with the East Africa region. At present there is no centralized ship movement reporting procedure¹⁸ in place nor is the area subject to any established policing mechanism by international navies¹⁹.



A further complicating factor for the Gulf of Guinea is that many incidents take place within its territorial waters²⁰, which may be a police matter, but in most West African countries the coast guard is not well-equipped to deal with such situations. This reality is problematic from a legal standpoint as well; under Article 101 of the United Nations Convention on the Law of the Sea (UNCLOS), piracy is only legally possible on the high seas (i.e. outside the 12-mile range) while any acts committed within a country's territorial waters are classified as armed robbery against ships, rather than piracy. This implies that action that can be undertaken by naval or coastal forces is not comprehensive, nor wide-ranging; it is instead confined to certain measures that can be taken on the basis of the legal definitions of the various criminal activities.

The greatest obstacle to combat piracy appears to be the problems that arise vis-à-vis the potential employment of armed guards. This is due to a plethora of legal, security, administrative and control interests in the region further exacerbated by the lack of legally binding international guidelines²¹ or regulation by policy-makers, another lesson learned from the East African experience. The situation is even more limiting in the Gulf of Guinea as privately contracted armed guards are not currently permitted to operate within its territorial waters.

What can the Maritime Industry do for West Africa: Lessons Learned

In view of these developments, efforts have been made and initiatives have been taken by policy-makers and relevant organizations worldwide.

The roundtable of international shipping associations²² has already developed a set of interim guidelines for owners, operators and masters for protection against piracy and armed robbery in the Gulf of Guinea²³, which should be read in conjunction with BMP4. These efforts aim at the adoption of preventative measures (in the form of self-protection) and information sharing between stakeholders - lessons learned from the East African experience.

The United Nations Security Council adopted Resolutions 2018²⁴ and 2039²⁵ urging Gulf of Guinea countries to develop and implement maritime safety strategies, establish legal



frameworks and co-operate in order to prosecute piracy²⁶. In late 2013, the IMO adopted a Resolution on the Gulf of Guinea²⁷.

In March 2014, the EU released its strategy for the Gulf of Guinea taking an integrated approach linking security, governance and development challenges offshore and onshore, and drawing from lessons learned in the Horn of Africa. The EU is additionally reinforcing both regional and international initiatives against piracy and armed robbery at sea in the Gulf of Guinea²⁸. In this context, local regional organizations have adopted policies and launched specific actions²⁹. However, it has already been observed that in order for the EU Strategy to be effective, the particular nature of this African region has to be fully understood³⁰.

Individual countries in the Gulf of Guinea have also increased resources and developed partnerships in order to address the problem of piracy, such as joint patrols notably Operation Prosperity.

Despite all of the above-mentioned actions at the international, regional and national levels aiming, among others, at international but primarily regional capacity building, there still appears the need for much more to be done in order to be able to combat piracy in the region. Such initiatives will have an impact, albeit arguably limited. As regards maritime security issues, meaningful co-operation between all relevant stakeholders³¹ has proven to be of vital importance. However, any coordinated action among them has thus far proven elusive in West Africa³². The East Africa experience has also aided in highlighting both the importance and the difficulty of states to collect evidence; this is another area that West African countries should focus upon achieving.

From the point of view of the insurance industry, the greatest hurdles that have to be overcome are the ability to use armed guards, the need to help regional governments put in place institutions, rules and resources to combat piracy, and finally the lack of uniformity on an international level.

A stumbling block of utmost importance is the ineffective and outdated definition of both piracy and armed robbery at sea, which in turn leads to the more general problem faced by

every single nation that has ever come face to face with the re-emergence of piracy: that it appears almost impossible to prosecute pirates in any country of the world under the existing rule of law/judiciary system, or indeed to set up ad hoc or other tribunals dedicated to the prosecution of this type of crime. As a result of this absence of a complete legal framework, the maritime insurance industry has not only suffered great losses but has, at various times, proven ineffective in its role of providing cover for its global ship-owning members. To identify a few of such instances: the first relates to insurance against damage, death or injury caused by armed guards on board a vessel, while the second relates to compliance with the insurance contracts, which cover both the vessel and its cargo.

In this regard, it is proposed that all players, organizations, parties and stakeholders within the international shipping and insurance communities come together and address these root issues, which should run in parallel to the more operational and practical aspects of combat. In most situations, successful prosecution is a successful deterrent against crimes. In the context of maritime piracy and robbery at sea, no such prosecution exists, hence no deterrent.

Whatever lessons have been learned from the Gulf of Aden and Southeast Asia experiences, will not be enough individually, to eliminate the modern, sophisticated and interest-controlled phenomenon of piracy. The substantive laws, legal enforcement and prosecution process will have to be re-thought and re-designed before individual states and indeed the shipping community as a whole is able to celebrate a victory against pirates of any origin. Piracy should be re-thought as an international concern that calls for international responsibility, international legislation, global best management practices and protection measures, co-operation between all countries and states worldwide, and international prosecution of anyone committing a criminal (or other piratical) act at sea, be it in a country's territorial waters or on the high seas; a demanding and challenging task.

Endnotes

¹ Kraska, J., Contemporary Maritime Piracy: International Law, Strategy and Diplomacy at Sea (2011, Praeger), at p.7

² For the purposes of this paper, the term "piracy" is used as per the definition under Article 101 of the United Nations Convention on the Law of the Sea (UNCLOS) 1982.

³ Todd, P. *Maritime Fraud and Piracy* (2nd edn, 2010, Lloyd's List), at p.1

⁴ "In the past decade, the incidence of maritime piracy has exploded. The first three months of 2011 were the worst ever, with 18 ships hijacked, 344 crew taken hostage, and 7 crew members murdered.", Kraska, J., *Contemporary Maritime Piracy: International Law, Strategy and Diplomacy at Sea* (2011, Praeger), at p.3

⁵ Young, A.J., *Contemporary Maritime Piracy in Southeast Asia: History, Causes and Remedies* (2007, Institute of Southeast Asian Studies, Singapore), at p.24.

⁶ The coastal zone stretching from Senegal to Angola. The region around Benin, Togo and Nigeria, including part of the Nigerian and Beninese Exclusive Economic Zones is highlighted by insurers as a high risk area for shipping. In these countries, hijackings comprise 63% of all recent attacks.

⁷ Anyimadu, A., "Maritime Security in the Gulf of Guinea: Lessons Learned from the Indian Ocean", Africa 2013/02, Chatham House, London, July 2013

⁸ Particularly when considering that Nigeria and Angola are among the world's top 10 biggest crude oil exporters. For more information on the economic importance of the Gulf of Guinea, see Ukeje, C. and Mvomo Ela, W., "African Approaches to Maritime Security – The Gulf of Guinea" (December 2013, Friedrich-Ebert-Stiftung)

⁹ The latest version of these guidelines, BMP4, was published in August 2011.

¹⁰ Piracy and armed robbery off the coast of Somalia – UN Security Council Resolutions 1816 (2008) and 1838 (2008).

¹¹ Knops, R., "The Challenge of Piracy: International Response and NATO's Role", NATO Parliamentary Assembly, Sub-Committee on Future Security and Defence Capabilities, November 2012

¹² Somali piracy involved a high percentage of kidnappings with a view of acquiring the highest ransom possible.

¹³ The International Maritime Bureau reported 35 incidents of property theft in 2012, resulting in a value of between USD350,000 and USD525,000 in stolen property; a total estimated value of stolen goods of between USD34million and USD101million.

¹⁴ Refer to the hijackings of the *Valle di Cordoba* and the *Duzgit Venture* that took place in 2010. The value of stolen petroleum in 2012 is estimated to have been between USD14million and USD42million. For more information and statistical analysis of the economic impacts of West African Piracy, see Hurlburt, K., Seyle, D.C., et al., "The Human Cost of Maritime Piracy 2012" (Working Paper) available at: http://oceansbeyondpiracy.org/sites/default/files/attachments/View%20Full%20Report_1.pdf

In June 2013, Professor Joseph Vincent Ntuda of the Yandoue-II University in Cameroon reported that "Gulf of Guinea countries lost USD2bn annually to piracy".

¹⁵ By Girija Shettar, FAIRPLAY, 17 January 2013, at pp.32-33.

¹⁶ Anyimadu, A., "Maritime Security in the Gulf of Guinea: Lessons Learned from the Indian Ocean", Africa 2013/02, Chatham House, London, July 2013, at p.7

¹⁷ As at December 2012, there had not been a single prosecution of a pirate operating in the Gulf of Guinea – IRIN, A Service of the UN Office for the Coordination of Humanitarian Affairs, "West Africa: Defining Piracy in the Gulf of Guinea", IrinNews (December 10, 2012)

¹⁸ Although individual flag states could well have their own individual national ship movement reporting procedures.

¹⁹ Examples include the UKMTO and the MSCHOA.

²⁰ I.e. within 12 nautical miles of the countries coasts.

²¹ For example, regarding the legality and use of private maritime security companies (PMSCs). Given the high level of violence involved in attacks in the Gulf of Guinea, concerns have been raised that use of PMSCs in the area might lead to "unmanaged violence".

²² Including BIMCO, ICS, INTERCARGO and INTERTANKO.

²³ Interim Guidelines for Owners, Operators and Masters for protection against piracy in the Gulf of Area Region, August 2013

²⁴ UN Security Council, *Security Council resolution 2018(2011) [on acts of piracy and armed robbery at sea off the coast of the States of the Gulf of Guinea]*, 31 October 2011, S/RES/2018 (2011)

²⁵ UN Security Council, *Security Council resolution 2039 (2012) [on acts of piracy and armed robbery at sea off the coast of the States of the Gulf of Guinea]*, 24 May 2012, S/RES/2039 (2012)

²⁶ Knops, R., "Report: The Challenge of Piracy: International Response and NATO's Role", NATO Parliamentary Assembly, Sub-Committee on Future Security and Defence Capabilities, November 2012

²⁷ Resolution A.1069(28), on the Prevention and Suppression of Piracy, Armed Robbery against ships and Illicit Maritime Activity in the Gulf of Guinea, December 2013.

²⁸ Please refer to the EU Strategy on the Gulf of Guinea, Foreign Affairs Council meeting, Brussels, 17 March 2014, at pp.5-6.

²⁹ ECOWAS has developed, among others, an Integrated Maritime Strategy (EIMS), a Counter Terrorism Strategy and Implementation Plan while ECCAS has set up a Regional Centre for Maritime Security in Central Africa (CRESMAC).

³⁰ President Hassan Sheikh Mohamoud, Speech to the Contact Group For Piracy Off The Coast of Somalia, 1 May 2013

³¹ That is, the navy, coastguard, police, judiciary and private industry.

³² “Maritime Security in the Gulf of Guinea”, Report of the conference held at Chatham House, London, 6 December 2012 (March 2013), at p. 20.

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