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Living with risk

Hugh Martin of Hart Security reports on a new solution aimed at tackling the problem of piracy in the Gulf of Aden

Ever since people first put to sea to engage in trade, maritime piracy has been an unwelcome cost of doing business. From the earliest documented records of piracy in the 13th century BC to the present day, the consequences remain unchanged – robbery at sea and, all too frequently, serious injury or loss of life for those in the way.

Recently, there has been a major increase in piracy in the waters off Somalia and especially within the Gulf of Aden. According to the **International Maritime Bureau (IMB)**, between January and September 2008 there were 26 vessels hijacked, 20 attempted armed attacks and 532 crew members taken hostage in the Gulf of Aden.

Positioned between Yemen to the north, Somalia to the south and with the Red Sea and Suez Canal to the northwest, the Gulf of Aden is a vital artery for world trade. Some 16,000 vessels pass through these waters annually, with many ships *en route* to the Suez Canal, through which 10% of global seaborne trade passed in 2007.

With the absence of a credible government in Somalia, piracy in the region continues largely unhindered. Using mother ships, the pirates can operate for sustained periods far from the coast. Their lucrative work normally involves taking hostage valuable ships and their cargoes, with increasing use of violence. The captured vessels and crews are held in small ports along the Somali coast until they are released, upon payment of ever-increasing ransom demands. Unfortunately, as long as Somalia remains devoid of proper central government, little is likely to be done to address the problem of piracy. To date, the international community has shown a limited appetite to intervene, despite much rhetoric from some quarters.

In the absence of effective action to address the rising incidences of piracy in the Gulf of Aden, and the likelihood that the problem will escalate further, shipowners must either learn to live

with the situation or route their vessels around the Cape of Good Hope, at a significant additional cost. In reality, the only practical option for shipowners and charterers is to use the Suez Canal and transit the Gulf of Aden. Consequently, careful attention needs to be paid to ship security and marine insurance cover.

Devil in the detail

The London insurance market has traditionally provided cover for the risk of piracy within the Hull rather than War Clauses. This somewhat unique stance reflects the use of the 'Institute Clauses', developed in the 19th century by **Lloyd's** and the **Institute of London Underwriters**. The position has remained unchanged following the redrafting of the Institute Clauses in 1983. Since 2005, however, policy wordings have become available for use that allow the risk of Piracy, and also Violent Theft and Barratry to be excluded from the Hull cover and instead included within the War risk cover.

In the current circumstances, where piracy is endemic within the Gulf of Aden, it is therefore highly advisable that shipowners ensure that the risks of Piracy, Violent Theft & Barratry are moved to their War policies. Should there then be a need to make a claim, this avoids War Underwriters claiming the applicable peril is Piracy (thereby directing the claim to the Hull policy), and Hull Underwriters claiming that the applicable peril is Terrorism (so directing the claim to the War policy).

Naturally, in each instance of piracy, any payment due to the shipowner will have to acknowledge the facts. However, if an owner is in the unenviable position of having competing perils sitting within different policies, there may well be a considerable delay in payment under the policy – at least until the position is clarified. The shipowner will also remain out of pocket for any ransom and associated payments which may have been made to the pirates.

Shipowners face another important consideration, namely their Duty of

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Care towards crews. Owners will be expected to have taken all reasonable steps to ensure crew safety. If transits protected by security personnel are available and an owner elects, perhaps on grounds of cost, not to purchase such protection, then there is a risk the owner will face claims of negligence in the event of a vessel being seized by pirates.

Protected transits

With a clear need to address both the security and insurance implications of piracy in the Gulf of Aden, ship-owners are now able to benefit from an integrated solution to the management of piracy risk in this region. Lloyd's broker **Swinglehurst** and maritime security experts **Hart** have joined forces to offer owners, either directly or through their brokers, War Risk Insurance, including

the risks of Piracy, Violent Theft and Barratry.

The insurance cover is placed 100% at **Lloyd's of London**, providing up to \$75 million of cover for both hull values and for increased value and/or War Protection and Indemnity (P&I), with no deductibles applicable. Additionally, Loss of Hire can be included, usually on the basis of a maximum of 60 days cover, in excess of 14 days (i.e. Assureds would bear the first 14 days for their own account and days lost thereafter in excess of 14 days are recoverable under policy up to maximum of 60 days).

As all vessels covered by this integrated solution are protected by experienced Hart personnel, the insurance cost is heavily discounted. Hart's services are also included at preferential market rates. The overall cost of Protected Transits

clearly depends on the nature of the vessel, its speed and route; however, it is insignificant in relation to the value of merchant vessels and their cargoes, and a tiny fraction of recent ransom demands (for example, the \$20 million demanded by Somali pirates for the release of the Ukrainian vessel *MV Faina* and her 20-man crew).

Peace of mind

At a time of increasing piracy in the Gulf of Aden, with no effective response from governments in prospect, the physical and financial cover afforded by Hart and Swinglehurst's Protected Transits provides shipowners and crews with much-needed peace of mind. This innovative solution is one tangible way of keeping open this vital trade route between East and West.



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