

## Piracy and Marine insurance

Shipowners and shippers have always feared piracy, but the risk is covered by traditional marine insurance policies. The phenomenon observed in the last few years, especially in the Gulf of Aden and now also in the Gulf of Guinea, in the territorial waters of the countries in the region, has highlighted the impact in terms of the number of episodes, as well as the significant **financial exposure** due to ransom demands for the release of ships and cargo (Gulf of Aden) or to the theft of cargo (Gulf of Guinea). Conventional insurance covers the interests concerned, with some exceptions and limitations. The position of the crews of merchant ships attacked by pirates is a particularly delicate issue. The use of specific physical and organisational preventive measures to defend ships seems to be the best way to counter the threat.

### Piracy in history

Piracy is a very old phenomenon. The long-accepted conventional definition of piracy *is an act of robbery or criminal violence at sea for private gain*. Similarly, insurance cover for property subject to the risk of attack by pirates (ships and their cargo) traces its roots back many centuries.

In modern contractual models (since the end of the XVIII



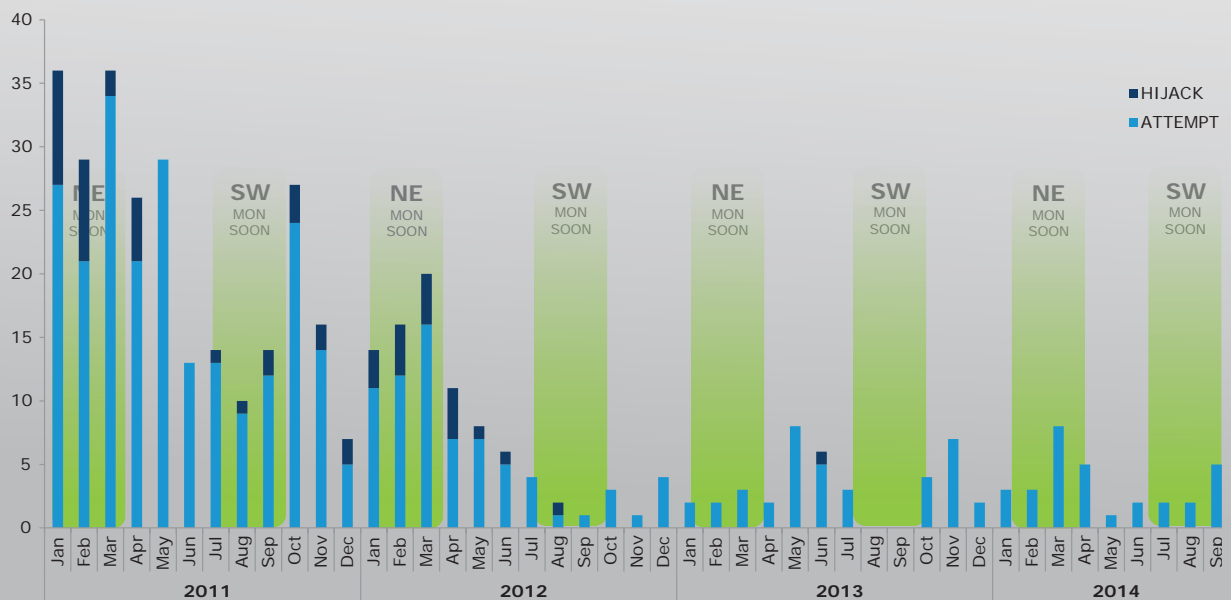
century), **piracy risk** is equated with **socio-political** risks. Since 1983, and a major review of international marine insurance contract specifications, piracy has been included under so-called “ordinary” clauses, in other words, not under war and socio-political risks.

In the area of ordinary marine hull insurance and marine cargo insurance, policies cover material and direct losses incurred by shipowners and shippers, that is, damage caused by pirates during violent attacks at sea in order to gain control of the property for their own gain.

Until now, piracy as described above has been considered a “classic” risk, and envisaged and valued as such by marine insurers & reinsurers.

### Piracy today

A characteristic of “modern” piracy is the use of **extortion** for the precise purpose of obtaining payment of a ransom in return for the release of the ship and its cargo. These acts, observed in a specific geographical area (Gulf of Aden), have developed within a far-reaching criminal network with ramifications and logistic/financial support in a number of countries in the region.



Successful & Attempted Hijacks - January, 1<sup>st</sup>, 2011 – September, 29<sup>th</sup>, 2014 - Total: 417

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Another area that, since 2011, has been particularly affected by seizure of property is the Gulf of Guinea, but in the territorial waters of the Gulf countries – and therefore not in the same category as “classic” piracy – where tankers and their cargo (refined products) are the most frequent targets. The International Maritime Bureau (IMB), which periodically updates the international maritime trade observatory, recently also reported an upsurge in piracy in the Strait of Malacca, off the coast of Indonesia.

## Somalia

As noted above, the aim of modern pirate attacks observed in the three years 2009-2011 in the Gulf of Aden was to obtain a ransom after the seizure of a ship, in exchange for the release of the vessel and cargo, and, incidentally, of the crew.

An analysis of the episodes in the Gulf of Aden and their consequences, including legal consequences, must consider the socio-political situation in a geographical area where modern pirates seem to find their greatest base of support: Somalia. In recent years, Somalia has experienced sweeping domestic political disintegration, with a gradual crumbling of the state of law. In the three-year period 2009-2011, conditions inside the country, which have

since returned to normal, unquestionably favoured the development of movements and bands that practiced modern piracy.



It is worth noting that, as in the past, many observers equated these groups of attackers with **terrorist organisations** active in the area, with the direct consequence of the possibility of lawsuits for compensation of losses after claims were presented and for the correct attribution of the nature of the events themselves (acts of piracy or terrorism?).

With regard to the payment of ransoms and their economic and insurance characterisation, mention should be made of the estimated average sum demanded by pirates, **approximately 5 million USD per ship** – in the last five years, the total cost of ransoms paid amounts to 215 million USD in the Gulf of Aden alone – and of overall management of claims.

As noted, in the majority of episodes in the Gulf of Aden, the ship and its cargo as such are not the primary objective of the expected gain, but simply the means to obtain it. In this sense, insurance covers may contribute to compensation for the amounts demanded as a contribution to prevent or diminish a probable loss (e.g., after the deliberate sinking of the ship by the pirates).

The **most critical aspect** of ransom payments, especially from a legal viewpoint, arises when one of the “means” targeted by the pirates, often under the direct threat of arms, is the ship’s crew. As noted, the pirates almost always consider the crew cynically as an “accessory” compared to the greater interest in terms of value (the ship and its cargo) and the threatened risk (e.g., the sinking of a fully loaded oil tanker).

Unfortunately, episodes have occurred where the crew has been kidnapped (in some cases for more than 30 months) and used as a **hostage** and means to obtain payment of the ransom. In this case, unresolvable **legal difficulties** arise, since many legal systems, including our own, forbid not only the payment of ransoms to secure the release of hostages, but also the



stipulation of insurance policies in countries where such prohibitions apply. It is in fact illegal, in Italy, for either an Italian shipowner or his national insurer to take part in activities for the procurement and supply of funds to pay ransoms for the release of crews.

Other non-Italian legal systems and insurance markets (e.g., London) contemplate payment of ransoms for the release of crews and stipulation of specific kidnap & ransom policies.

In this complicated situation, two different underwriting approaches can be observed on the international marine insurance market:



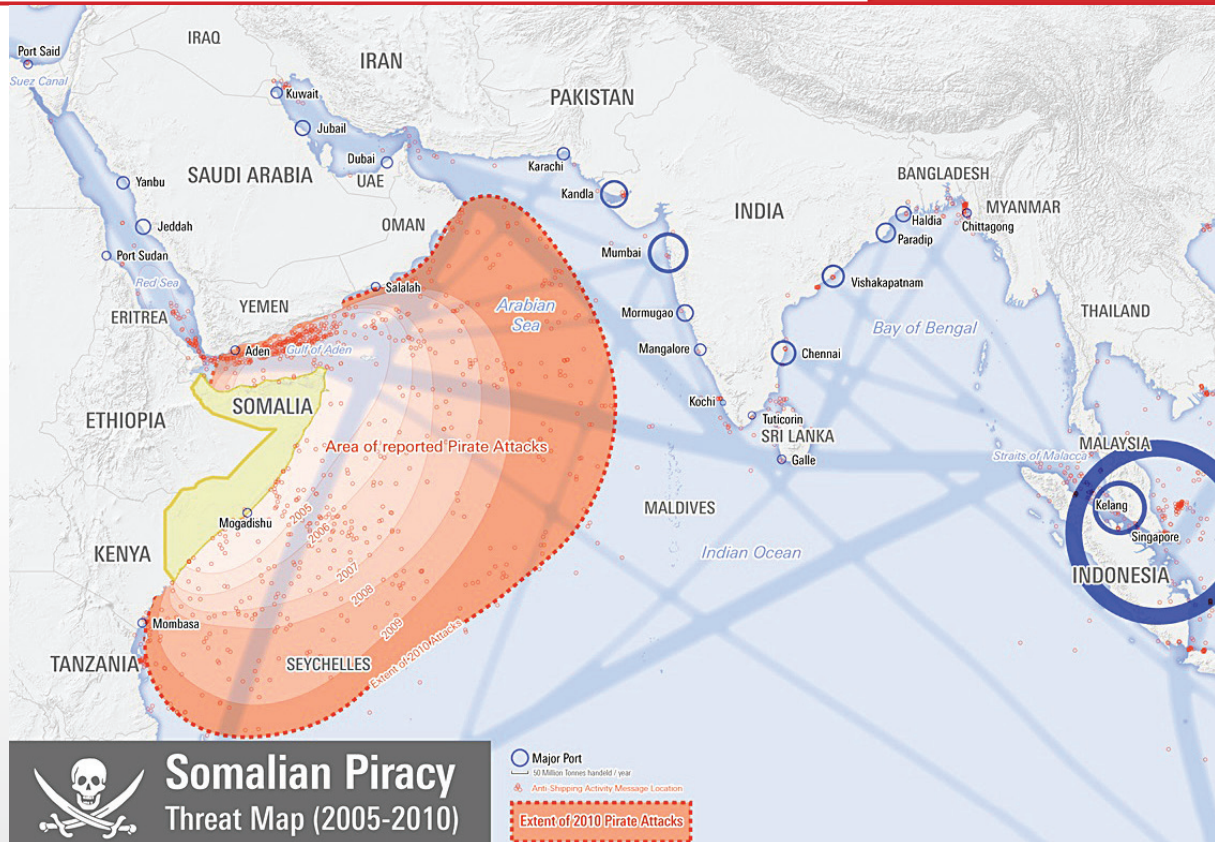
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- the approach of **marine hull** insurers and reinsurers, on the front line in claims management, is to include piracy risk coverage under the separate categories of **“war” and socio-political guarantees**. Within these guarantee categories, assessments and quotes for piracy-related material and direct losses are established today on a case-by-case basis in relation to the shipping operations provided by the shipowner with regard to cargo, trade routes and the preventive measures taken to defend the ship, of which more later;
- the approach of **marine cargo** insurers and reinsurers, at the moment, is to keep piracy risk covers in the category of **“ordinary” all-risks guarantees**, since it is more difficult for cargo owners to identify and quantify, on an annual basis, the volumes of cargo transported on one ship or another, and shipped worldwide on a variety of sea routes, which may be more or less vulnerable to attack.



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To conclude the section on Somalia, the latest updates from the IMB observers indicate a significant **reduction** in episodes in the Gulf of Aden, thanks to the introduction of specific **preventive measures**, of which more later.



## The “Niger Delta” (Gulf of Guinea)

In partial contrast to the episodes in the Gulf of Aden, those in the Niger Delta, which have increased sharply since 2011 in the waters of Ghana, Togo, Benin, Nigeria, Cameroon and Gabon, aim more specifically to **gain possession of the cargo** (largely refined oil products), which is then traded through illegal channels by powerful criminal organisations. These criminal groups are extremely well organised and violent: they wait for the ships (usually oil tankers) at the roadstead, attack them, remove the cargo and quickly take off again. The estimated damage to the economy, especially the oil economy, including indirect business impacts, is highly significant. These acts are **maritime armed robberies**, not in the open sea but in the territorial waters of countries with full sovereignty over the waters concerned. Consequently, for legal and insurance purposes they cannot be classified as “classic” acts of piracy as defined above, but as ordinary shipping events. Compared with the episodes in the Gulf of Aden, the attacks are resolved much faster and insurers and reinsurers regularly pay compensation for material and direct losses to cargo. Involvement or general requests for ransom payments to release ships, cargo and crews are less frequent.

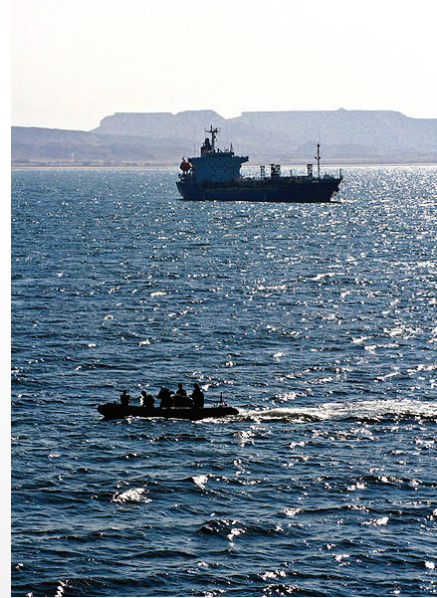
## Preventive measures

To flank insurance cover, shipowners have been asked to employ equipment and organisational measures to safeguard ships as they cross the international waters in the Gulf of Aden. For insurance purposes, too, these measures are considered as loss prevention warranties. These are the so-called **Self-Protection Measures and Best Management Practices**, that is, practices involving compliance with a number of basic recommendations, to be followed by shipowners, in agreement with the trade associations of the shipping companies, the international union of maritime workers, insurance companies, chambers of commerce and the international military authorities who provide patrol services under resolutions issued by the United Nations in support of other resolutions of the International Maritime Organisation, a UN agency responsible for issuing standards governing safety at sea. The most important recommendations and rules shipowners are required to follow are:

- ensure hermetic sealing of doors and windows leading to the bridge and the engine room
- maintain a constant radio and satellite link
- remain in the vicinity of other ships as far as possible
- implement an internal security plan
- keep the ship on the security course where escorts or military patrols are routinely in operation
- if necessary, employ armed personnel (military and/or private security guards) for additional on-board security.

If these measures are followed efficiently, they can be the best defence strategy. Many countries have joined the convoy defence plan by deploying their navies to patrol the Gulf of Aden.

The personnel and preventive measures deployed have been a significant factor in reducing the number of successful attacks. Clearly, implementation of these defence strategies, regarded as “warranties” by insurers, has



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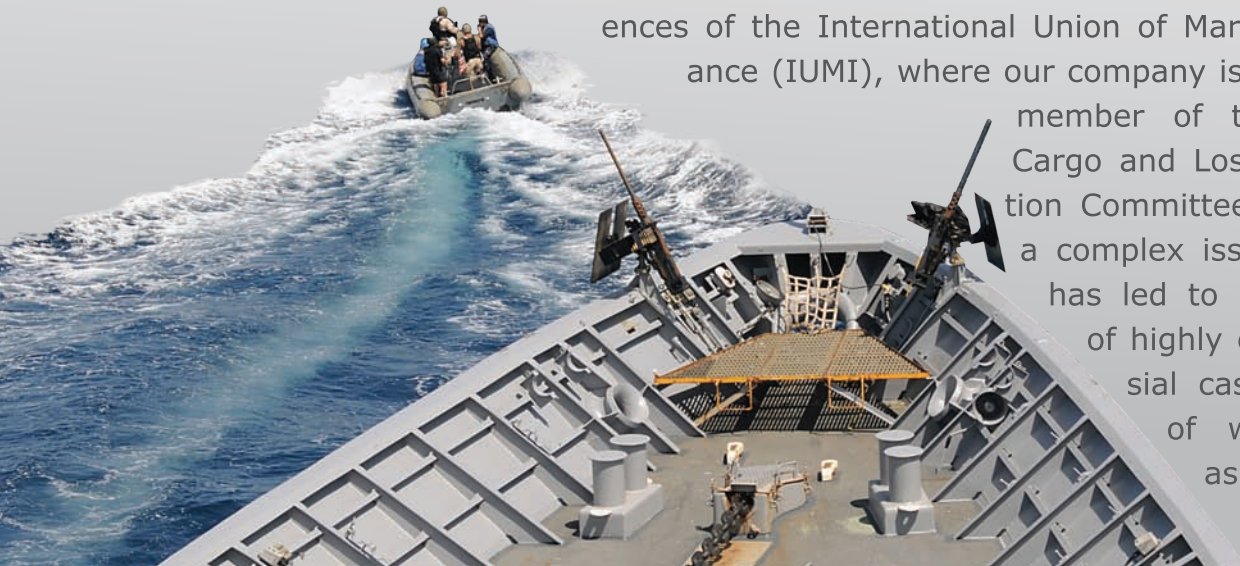


**very high organisational and monetary costs.** In view of these significant costs, the current economic crisis and the difficulty of sourcing military personnel who can be relocated from other crisis areas, a number of laws have been enacted envisaging use of non-military personnel when military resources are not available, on merchant ships crossing the Gulf of Aden.

With regard to measures to prevent attacks in the territorial waters of the Gulf of Guinea States, crisis management and territorial patrolling on both land and sea is the responsibility of the **authorities of the countries concerned**. Unfortunately, these countries are often handicapped by a chronic lack of internal organisation or by the inability of their maritime authorities to guarantee surveillance even of their own coasts. It is also proving difficult to organise **unified coordination** for all the countries involved and draw up a common defence policy for the waters in question. Only a few joint measures by the navies of a small number of countries (e.g., Benin-Nigeria) have generated successful preventive action, while the use of armed personnel or foreign military escorts in the territorial waters of this or that country has proved extremely complicated, if not impossible, due to local laws banning such action. The formulation of **future cooperation policies** among the countries concerned is considered the only way to combat episodes of piracy.

The use of armed personnel and the risks involved in the use of force has been widely debated on many occasions, including the annual international conferences of the International Union of Marine Insurance (IUMI), where our company is an active

member of the Hulls, Cargo and Loss Prevention Committees. This is a complex issue, which has led to a number of highly controversial cases, some of which are as yet unresolved.



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## Critical elements and insurance support

The revenues from the criminal activities described above appear to go to powerful criminal organisations, whose activities then focus on other “sectors” (arms, drugs and human trafficking) and strategies (terrorism). This is the probable evolution of the socio-political phenomena in Africa and the Middle East.

In this connection, the owners of freight in inland transit in the areas concerned and their insurers have already been alerted. Recently (August 2014), our company too received requests to provide cover for goods being transported by land across the Turkish-Iraqi border, which might be targeted by the new groups fighting in Iraq.

As was necessary in other critical situations (the conflict in former Yugoslavia, or during and after the first and second Gulf Wars, etc.), through our network we are constantly monitoring developments in the various socio-political situations around the world, and are able to activate rapidly an effective insurance cover and loss prevention service for our clients.

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