

Knowledge series

Piracy – Threat at sea

A risk analysis



Münchener Rück
Munich Re Group



Knowledge series

Piracy – Threat at sea
A risk analysis



Piracy – Threat at sea

In the latter part of the last century, governments, shipping companies, and marine insurers witnessed a steep rise in the number of pirate attacks on merchant vessels. There is a clear connection between mounting prosperity and increasing international trade in one part of the world and political instability, wars, and growing poverty in others. The main hot spots are the coastal waters off Southeast Asia, West Africa, Somalia, South America, the Caribbean islands, and some countries in the eastern Mediterranean.

Since the hijacking of the passenger ship *Achille Lauro* in 1985, a further danger that is related to piracy, terrorism at sea, has moved into the focus of international attention. As a rule, this has less to do with committing robbery and murder for pecuniary gain than with causing harm to the economic and other interests of certain states.

Every year, hundreds of ships are attacked and hostages taken, hundreds of sailors are injured, traumatised, or killed, and there are losses totalling billions of dollars and the danger of environmental disasters when oil tankers, for example, are captured – reason enough for marine insurers and reinsurers to be very concerned and to think about control and prevention measures.

This latest work in Munich Re's knowledge series has been written as a contribution towards the international debate on this topical issue. *Piracy – Threat at sea* provides a risk analysis of the danger emanating from piracy and marine terrorism and explains the legal position at national and international levels. It highlights underwriting aspects and describes ways of minimising the risk.

Global commitment in the fight against piracy is growing. The intention of this brochure is to give it vigorous support.

Christian Kluge
Member of the Munich Re Board of Management
22 September 2006



Combat piracy through active involvement

Piracy is a crime which often affects foreign seamen on board a foreign ship carrying a foreign cargo which just happens to be passing through national waters. It does not automatically feature high on the national law enforcement agenda. Without the active involvement of governments and their law enforcement agencies we cannot combat piracy. Like all crime, deterring piracy requires the arrest and prosecution of pirates.

Information on piracy is vital to getting policy makers in governments understand the nature of this crime and help push it up the list of law enforcement priorities. With this will come a better allocation of resources – vessels, staff and equipment – and hence a more meaningful, energised response. In the past fifteen years, it has become evident that when governments respond to piracy with determination, the attacks come down almost immediately.

Shipping and underwriting businesses also need to understand the restrictions in dealing with piracy and the options available. A crime which often transcends territorial waters, involves a potential risk to the environment and of injury and death to crew members in countries where maritime law enforcement is weak, poses special challenges.

Ships trade from one part of the world to another. Attacks against ships in the current hotspots in Southeast Asia, Somalia, Bangladesh, and West Africa, all have their own unique features, driven largely by local political and economic conditions. Solutions have to be tailored to these specific circumstances, against the backdrop of international conventions and standards.

Towards these objectives, this publication fulfils a vital need. It is a comprehensive study of modern piracy. It looks at the types of attacks, the statistics, the high risk areas, how underwriters look at piracy, the legal framework, and issues of response.

The IMB is delighted to assist in launching this publication on its 25th Anniversary. I recommend it to all those seeking answers to this scourge. We may never eliminate it, but with relevant, timely information determining the right strategies, we can keep it down to acceptable levels.

Cpt. Pottengal Mukundan
Director
ICC international Maritime Bureau
22 September 2006

Contents



Introduction

[Page 7](#)

History of piracy

[Page 10](#)

Piracy today

[Page 14](#)

Antiquity and the
Roman Empire

[Page 10](#)

The Victual Brothers

[Page 11](#)

16th to 19th centuries

[Page 11](#)

Forms of modern piracy

[Page 14](#)

New trends

[Page 15](#)

Facts and figures

[Page 17](#)



Legal situation

[Page 24](#)

United Nations Convention on the Law of the Sea of 1982 (1982 Convention)

[Page 24](#)

Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation of 1988 (SUA Convention)

[Page 27](#)

National jurisdiction

[Page 28](#)

Definition of piracy by the IMB

[Page 30](#)

Insurance aspects

[Page 34](#)

New risk assessment for particularly high-risk regions

[Page 34](#)

Marginal chances of obtaining recourse

[Page 34](#)

Lines of business affected

[Page 34](#)

Financial burden for the insurance sector

[Page 37](#)

Measures in the fight against piracy

[Page 40](#)

Greater international cooperation

[Page 40](#)

Technical developments

[Page 41](#)

Codes of conduct

[Page 43](#)

Service and training offered by the IMB

[Page 43](#)

Risk management: An important tool against piracy

[Page 44](#)

Measures for a safe future at sea

[Page 45](#)

Annex

[Page 48](#)



Introduction

Pirates – the very word conjures up visions of rogues with peg legs and eye patches, swinging cutlasses under a black skull-and-crossbones flag, red corsairs heading a brave crew in the battle against evil, and all those famous heroes from adventure novels and films. But these only played brief minor roles in the long history of piracy. Armed robbery against ships is as old as maritime navigation itself and – like commerce, transport, and political conditions – has evolved and developed over the centuries. Even today, the risk of pirate attack remains ever-present for shipping companies, crews, cargo owners, and marine insurers.

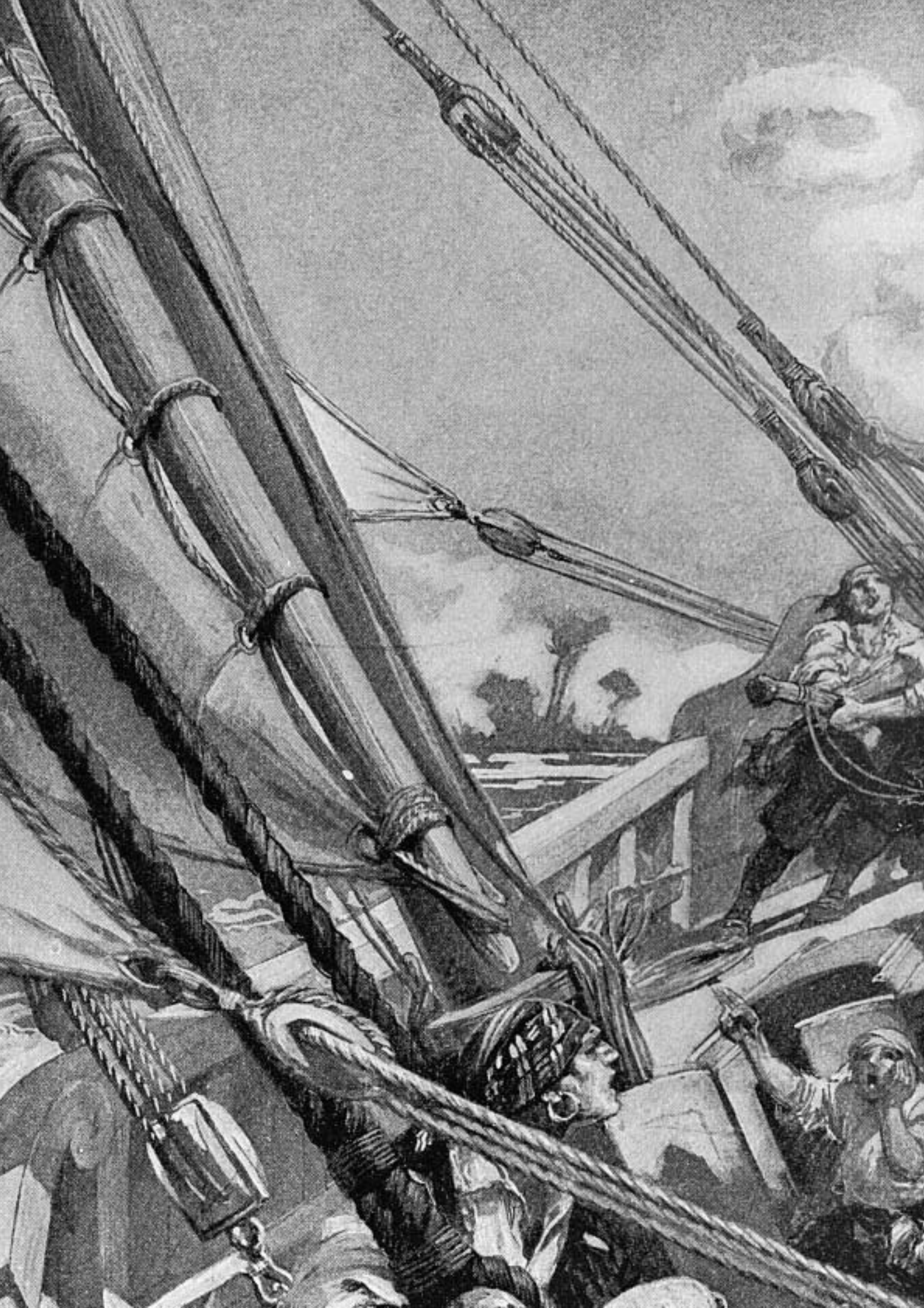
The act of piracy ranges from simple armed attack through internationally organised crime to acts of terrorism. Hundreds of such crimes are committed worldwide every year – yet it remains difficult to prevent or solve them and to adjust the associated losses. The most common reason lies in the legal situation, which differs from one country to the next. An international consensus in the fight against crime is only slowly being established.

Munich Re not only gathers information on every possible risk aspect related to shipping: as a marine reinsurer with a worldwide network of operations, we are often directly affected by losses from acts of piracy. Although these losses are relatively small in relation to the total volume of ocean transports, international world trade – which is growing at a rate of roughly 8% per year and mostly takes place at sea – requires the same effective security and protection as civil aviation.

For example, a new Airbus A 380 has an insured hull value of between US\$ 250m and 300m. Add to that the personal injuries and possible losses on the ground if such an aircraft were to be involved in an accident. A container vessel of the latest generation, by comparison, has a hull value of around US\$ 150m while the cargo is worth between roughly US\$ 800m and 1bn. This figure similarly does not include the possible claims for damages by members of the crew and the possible losses caused by a ship with the bridge left unmanned after an attack.

The shipowners and cargo owners themselves are usually insured against pirate attacks. It is far more difficult for the insurers to reduce the incurred loss. Efforts to combat and punish piracy as a crime are frequently nipped in the bud by legal loopholes, inadequate cross-border cooperation, and the lack of political will in some places. Action is still urgently needed, although the situation is improving noticeably.

This brochure outlines the current threat to shipping from piracy and explores the reasons that make it so difficult to prosecute this crime. For insurers, it contains a comprehensive presentation of the risk situation and a catalogue of measures with which they can avert modern piracy and combat it more effectively.



1880: Pirates attack a merchant vessel.

"I need know no navigation:
war, trade and piracy –
an inseparable trinity."

Mephistopheles in Goethe's "Faust"



History of piracy

Piracy is as old as the history of seafaring itself and is still a serious risk both for shipping and for ocean marine insurers today.

Antiquity and the Roman Empire

In Greek mythology, piracy was considered a profession like hunting and fishing and was closely linked with the slave trade, for serfs were particularly coveted as booty in addition to the usual merchandise. Then as now, those states which engaged in maritime trade sought to protect their ships against pirate attack and signed treaties with their neighbours, for example. The only really successful option, however, was to deploy their naval forces. Such was also the case in ancient Rome 70 BC: pirates had seized control of important sea routes supplying the Roman Empire. Famine threatened Rome, and a military confrontation appeared to be its last chance. An armada of 500 warships destroyed more than 1,700 pirate ships. The supply of provisions and “pax maritima” (maritime peace) were restored.



Ancient Greek mosaic: Dionysos turns pirates into dolphins.

Julius Caesar kidnapped by pirates

Julius Caesar was kidnapped by pirates during a journey in 74 and 75 BC. Plutarch wrote: “They demanded a ransom of 20 talents from him, but he laughed at them, saying they had no idea whom they had kidnapped, and promised to pay 50 instead.” Caesar ordered his men to bring the ransom money. When the 50 talents had been paid, Caesar was taken ashore and released. He lost no time in punishing his kidnappers and personally crucified them.



Copper engraving from 1820: Even when taken captive by pirates, Julius Caesar continues to issue orders.

The Victual Brothers

Sweden and Denmark were at war from 1389 until 1392. Noblemen from Mecklenburg fought on the side of Sweden and seized ships for them. During wars at sea, privateering was in those days a right of capture at sea, legitimated by the sovereign. The men from Mecklenburg hired a group of freebooters known as the Victual Brothers to assist them. Even after the war was over and peace had been signed, they continued their raids and were widely feared as pirates with their slogan “God’s friends and the whole world’s enemies”. It was several decades before they were conquered by the Hanseatic League. One of the best known leaders of the Victual Brothers was Klaus Störtebeker, who was captured and executed by Hanseatic forces in 1401.

16th to 19th centuries

Piracy experienced another great era during the age of discovery and conquest, as Portugal, Spain, and England extended their territories to other continents. Maritime trade flourished on the world’s oceans and the pirates scented rich booty. They did not always act on their own behalf, however, for the feudal powers legalised their raids in order to capture their own share of the New World’s riches and to protect their own ships against attack.

The Barbary pirates or corsairs wrote another important chapter in the history of piracy. They operated out of the Barbary coast of Northwest Africa and were known as the “scourge of all merchant ships in the Mediterranean”. They were authorised by their states and waged a fierce pirate war on all Mediterranean countries from the 16th century until well into the 19th century. Many countries were defenceless against their violence and paid protection money. The success of the Barbary pirates is a prime example of the obstacles encountered in combating piracy even today: for a long time, conflicting interests of the countries concerned made it impossible to launch a joint offensive against the threat from Africa. It was not until 1830 that the French finally conquered Algiers and closed the chapter of the Barbary pirates.

Although piracy lost its official legitimisation when the Paris Declaration on Maritime Rights put an end to state-authorised privateering in 1856 and the Brussels Act finally abolished slavery in 1890, it has nevertheless survived, as a criminal act, right up to the present day.

Klaus Störtebeker – a legendary pirate

October 1401. A merchant fleet sails from Hamburg – stocked with weapons instead of merchandise. Their intention was to eliminate the biggest enemy of merchant shipping on the North Sea coast: Klaus Störtebeker. He has established a base on Helgoland, setting sail when the tide is high, assailing merchant ships in the Elbe estuary, and returning to the safe haven of his island before the tide has ebbed. But his luck runs out today: the merchants stop the pirate just off Helgoland. Battle rages almost the whole day, but the merchant fleet proves stronger and Störtebeker is forced to surrender. Even as he is about to be executed, this “Robin Hood of the Seas” continues to fight for his men, demanding the release of all those he can walk past after being beheaded. According to legend, his body walked past eleven men before being tripped up by the executioner.



Illustration: Klaus Störtebeker’s execution in Hamburg.



Pirates in the South China Sea

Equipped with the latest weaponry rather than cutlasses, they comb coastal waters in fast-attack boats. Their trump card: the element of surprise.



Piracy today

469 merchant ships were assailed in 2000 – five times as many as in 1994. Although the number of incidents declined for a short time in the wake of 11 September 2001 and the tsunami disaster in December 2004, the threat remains. Kidnapping at sea, for example, is increasing continuously, as is global terrorism.

The 21st century. Today's pirates use state-of-the-art weapons instead of cutlasses and canons. They comb coastal waters in high-speed boats and operate on the high seas from motherships. Surprise is the most important element in their raids. In many cases, they come aboard disguised as coast guards or harbour police. Modern pirates operate both in ports and on the open sea. Their crimes range from simple theft to stealing entire ships and murder.

Forms of modern piracy

The International Chamber of Shipping (ICS) classifies pirate attacks into three basic categories:

1. Low-Level Armed Robbery (LLAR)

An attack with the intention of stealing, usually under cover of darkness. The culprits take whatever they can carry from the deck and the hold. Violence only occurs when the crew tries to stop them.

2. Medium-Level Armed Assault and Robbery (MLAAR)

Armed assault with violence or threats of violence. The pirates usually come on board unnoticed and force the crew to hand over their cash and valuables. Cargo is also stolen if possible. Each raid is over in less than an hour. The financial loss is usually in the order of between US\$ 10,000 and 20,000.

3. Major Criminal Hijack (MCHJ)

Carefully planned theft of the entire cargo. The pirates know every detail of the cargo and the ship's stowage plan. While some of the attackers hold the crew captive below deck, others transfer the cargo to another ship. When the raid is over, the ship drifts in the ocean with the bridge unmanned. This type of attack usually results in a double-digit million dollar loss.



Indonesian pirates use bamboo sticks to make boathooks.

Somalia – Horn of Africa

In the political chaos prevailing in Somalia, local clans decide what is right and what is wrong. Like a state within the state, they have their own laws, claim their own sovereign rights for their sea territories and divide the coastal region among themselves. In groups of five to seven, heavily armed clan members ride far out to sea in small open boats in search of booty, usually seizing ships

and demanding ransoms. The sea off the Somali coast should therefore be avoided without fail. A safe distance of at least two hundred nautical miles is recommended. Yet there is also hope of improvement: the new international military presence and the possible inclusion of clan leaders in the struggle against terrorism could soon put an end to piracy off the coast of Somalia.

In the worst case, the entire ship is hijacked along with its cargo, with organised gangs operating “to order” in some cases. The crew is marooned at sea or killed and the cargo transferred to another vessel or discharged illegally in a port other than the original destination. The ship is re-registered in a foreign port, given a new name, a new flag, and a new coat of paint. It is then supplied with false papers and loaded with goods which will never reach their original port of destination. These so-called phantom ships have been a familiar phenomenon since the 1980s, especially in Southeast Asia. Organised crime operates hand-in-hand with corrupt officials in local authorities: without bribery, it would be almost impossible to obtain false papers and sell the cargo.

ISPS Code (International Ships and Port Facility Security Code)

High hopes of successfully combating this organised crime are placed in the ISPS Code, which was developed in the fight against terrorism. Until now, it has been relatively easy to operate a phantom ship with false papers and certificates and to sail into ports unrecognised. However, the regulations and requirements of the ISPS Code make it extremely difficult for a phantom ship to remain unnoticed. It is not enough simply to have false ISPS papers and certificates on board, as the ISPS certification is additionally registered in databases like Seasearcher or Equasis. This entry is based on information provided by the issuing authority and theoretically cannot be changed. The ISPS Code also requires the vessel to have its IMO number visibly marked on the hull, making it more difficult for the vessel to assume a false name. The ISPS Code should prove to be an almost insurmountable hurdle even for well-organised criminals.

New trends

Attacks on barges and barge trains are becoming more frequent. Such combinations yield two major advantages for the attackers: they are quickly repainted and outwardly altered, and they usually carry goods that sell fast, such as palm oil or sugar.

Hijacking a ship and demanding ransom for the vessel or the kidnapped crew is another variety of modern piracy. The Somali coast is considered a particularly dangerous area at present. One spectacular case made headline news in June 2005, when pirates captured the MV *Semlow* carrying 850 tonnes of rice from the international food aid programme for victims of the tsunami disaster. Months later, the ship and crew were released in return for a ransom. Somalia has been without a central government and without a functioning legal system since 1992. Ships are therefore generally advised to give the Somali coast a wide berth. Hijacking of vessels is also common in coastal waters of Southeast Asia. Further hotspots include the waters off Indonesia, Malaysia, and the Philippines.

Attacks on yachts

Pirates have also been known to attack private yachts in certain coastal regions far from the usual commercial shipping routes. Traditionally high-risk regions include the Caribbean, Philippines, the China Sea, the Somali coast, and the Gulf of Aden. Elsewhere too, as poverty increases in some coastal regions, there is a growing readiness to assure survival by illegal means, with the result that attacks have also been reported off the coasts of South America, Morocco, Mauretania, and Albania in recent years.

It is difficult to estimate the precise number of attacks every year. Although the International Maritime Bureau (IMB) includes sailing yachts and motor yachts in its statistics, other sources such as the Yacht Piracy Information Centre for Blue Water Sailors cite much higher numbers. Experts estimate that the number of unknown cases could be twice as high as the number of reported cases.

Terrorism at sea

Of late, piracy has increasingly been linked with terrorist attacks at sea. 80% of the world's cargo is carried by sea. In most cases, it has to pass through a narrow body of water, such as the Straits of Malacca or the Suez Canal, at least once during its journey. Even a partial blockage of these passages would have a serious impact on world trade and give rise to additional costs in the order of billions of euros. It is argued that terrorists could adopt the same methods as pirates to seize a ship or utilise their knowledge to achieve their ends. The distinction between acts of terrorism and piracy is relevant from a legal point of view, particularly with regard to rights of pursuit and the possibility of penal sanctions and will therefore be discussed in more detail in the sections devoted to the legal situation. The attackers' motives are ultimately of no concern to the victims. And the insurers must indemnify the loss in either case, insofar as corresponding covers have been agreed.

Present danger – Terrorism

The Malacca Straits are 500 nautical miles long, just nine nautical miles wide at their narrowest point, and only 30 metres deep in some places. It is one of the most highly frequented waterways in the world. A vessel transits the Straits every ten minutes, including many oil tankers carrying 40% of the worldwide output. Almost the entire Far East's oil supply depends on whether or not this waterway can be transited. Any blockage due to terrorist attack would have a devastating effect on the world economy.

Terrorists specifically exploit the western economies' dependence on oil prices. This is clear from such recent incidents as the attacks on oil wells in Basra. Following the attack on the French tanker *Limburg* in October 2002, for instance, Osama bin Laden announced further attacks on the economic interests of the western industrialised nations and particularly their supply of oil.

According to the Institute for Southeast Asian Studies (ISEAS), al-Qaeda's intention is to disrupt maritime trade as the backbone of the modern global economy. If a primitive nuclear bomb or radioactive substances were to fall into the hands of this terrorist network, according to the Institute, it would use this weapon in a major port or ocean strait.

According to a western intelligence source, al-Qaeda has its own naval manual with entries showing which points to target on a vessel, how to attach limpet mines, how to fire rockets from a motorboat travelling at high speed and how to transform gas tankers into floating bombs. Terrorists are allegedly also trained to use high-speed boats, trawlers, and similar vessels packed with explosives to destroy larger vessels or oil and gas depots in ports. Apparently, the possibility of terrorists coordinating their attacks with pirates in Southeast Asia cannot be excluded.

If the Straits of Malacca were to be blocked by a terrorist attack, ships would have to make a detour of roughly 1,000 miles, leading to higher freight rates and consequently also to higher commodity prices. Considering that 80% of Japan's oil is imported from the Middle East, for example, such an attack would clearly have a significant impact on the world economy.

Facts and figures

As with the attacks on private yachts, there are no precise figures available on the losses in commercial shipping due to piracy. Many of these attacks are not reported, as shipping companies fear their customers will lose confidence in them or because they know their country's representatives cannot help anyway. It is not uncommon for diplomatic offices to lack both the personnel and the know-how needed to provide professional support. Political reasons may also prevent them from helping and mobilising the local authorities.

There have also been cases in which victims reported the attacks and then became involved in other legal imbroglios in the course of investigations or were even declared to be offenders themselves. The investigations may be very lengthy. The associated costly loss of time similarly deters many shipping companies from reporting an attack. It is therefore difficult to state any precise figures as to the number of attacks. The IMB Piracy Reporting Centre assumes that 50% remain unreported.

When victims become offenders

A container ship sailing under German flag was raided in Port Harcourt (Nigeria). The pirates boarded the ship under cover of darkness as it was being unloaded. They broke into a 40-foot container on deck with spare parts for commercial vehicles and stole most of the shipment. When the crew noticed what was happening and raised the alarm, the robbers made off in their boats and disappeared in the nearby mangrove swamps. The ship's officers reported the attack to the local authorities. After checking the papers, the authorities charged the officers with having imported undeclared and uncustomed goods – an offence for which a large fine was imposed. The local authorities appeared not to display any interest in the reported robbery. So far as is known, they did not follow up the crew's information, no-one was arrested, and the stolen goods were never found.

Heavily armed Somali security personnel guard a shipment of relief goods against attacks by pirates.



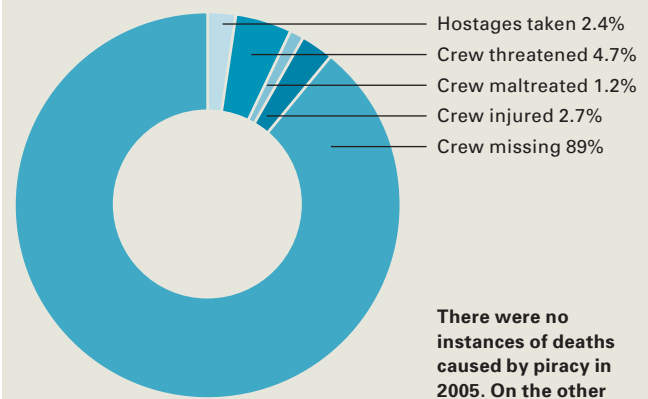
Number of incidents

Between 1991 and 1994, the number remained fairly constant at around 100 cases per year, but then the figure increased dramatically. The IMB lists 469 cases in 2000. The increase is no doubt partly due to the fact that the IMB, which had only been set up in 1981, was now known to more and more shipowners and management companies, with the result that more cases were being reported. Yet there is also a clear trend here: the figure is almost five times as high as in previous years – the momentary peak in a sad development. After 2000, the number of attacks temporarily declined, but there is no cause to sit back. In all probability, the temporary respite was attributable to US military presence worldwide, the effects of the tsunami in December 2004, and the increased number of patrols in the Straits of Malacca.

Personal injury

The number of hijackings is rising steadily. More people were taken hostage in 2005 than ever before: 453 as compared with 243 in 2004. Twelve hostages were still missing at the end of 2005. The number of cases of bodily injury, brutality, and murder similarly rose considerably: from 10 cases in 1994 to 103 in 2004. Although the figure declined to 30 in 2005, there is no sign of a lasting turn-around. Apart from 2005, the incidence of violence has steadily increased over the last ten years.

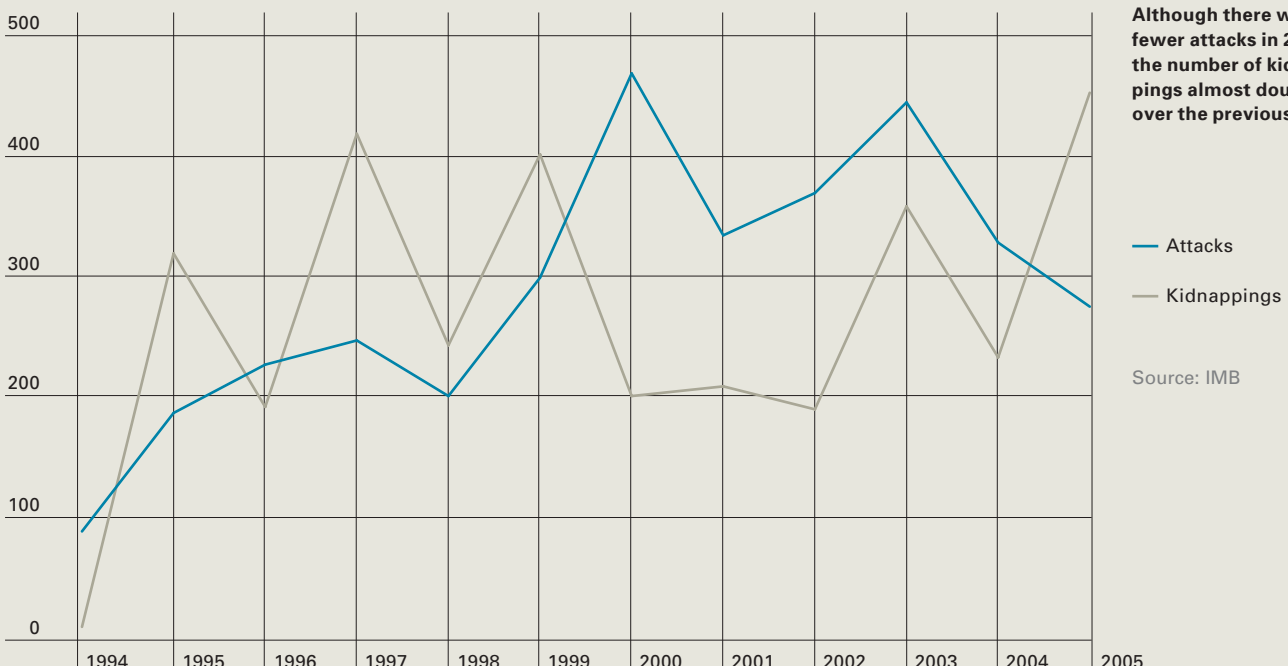
Attacks registered in 2005



There were no instances of deaths caused by piracy in 2005. On the other hand, there was a dramatic increase in the number of kidnappings.

Source: IMB

Attacks and kidnappings: 1994–2005



Although there were fewer attacks in 2005, the number of kidnappings almost doubled over the previous year.

Source: IMB

After the tsunami: The return of the pirates

3 March 2005. For the first time since the tsunami on 26 December 2004 in Southeast Asia, pirates assailed a ship in the Malacca Straits. Firing machine gun rounds, they stopped a freighter carrying coal on its way to Lumut in northern Malaysia and took two hostages. Maritime experts had presumed that the tsunami had also destroyed the freebooters' infrastructure.

Under cover of darkness, the pirates approached the freighter High Line 26, drawing up alongside unnoticed in their high-speed boat. Suddenly the attackers opened fire and shot the freighter's chief engineer in the leg. 50 nautical miles southwest of the Malaysian island Penang, the unarmed seamen finally decided to give up and stopped the engines. The pirates boarded the freighter in a flash. Captain and First Officer were taken hostage, and several hours passed before the other seven crew could be rescued by a naval ship. The trade world was shocked by this first pirate attack after the tsunami tragedy.

"We had hoped that the flood wave had also destroyed the pirates' equipment, such as boats and weapons, yet here they are again", says Noel Choong, head of the international shipping office in Kuala Lumpur. "The method used is very similar to that of earlier attacks off the coast of Sumatra. It seems that some pirate gangs have resumed their activities."

Source: Peter O. Walter, www.esys.org

Financial losses

The loss suffered by national economies as a result of piracy is difficult to estimate. The estimates presented by different observers are too far apart to allow a serious statement. Besides, the basis underlying the figures is very rarely cited. We do not wish to share or add to such speculation and will therefore abstain from giving an estimate of our own here. At first glance, the overall loss attributable to piracy appears slight in relation to the total value of goods transported by sea. If we take a closer look at individual cases, however, we will see that the losses involved certainly constitute a considerable financial risk. In 1998, for example, the reputed average loss per reported attack was in the order of €50,000. This figure also includes opportunistic spontaneous attacks. If the cargo or even the entire vessel disappears, the loss can easily reach tens or hundreds of millions of dollars. The direct losses due to robbery and ransom payments are aggravated by indirect losses, such as loss of hire, contractual penalties due to delayed delivery, additional pay for sailors, higher insurance premiums, or costs incurred in the fight against piracy. In addition, pirate attacks also entail the risk of environmental disaster, such as if an oil tanker is left to steam on at full speed with the bridge unmanned after a pirate attack and then collides with another vessel or runs aground.

Regional distribution

80% of all registered attacks occur inside territorial waters, i.e. in coastal waters. In recent years, more than two-thirds occurred in the following high-risk regions: Southeast Asia, around the Indian subcontinent, in the Red Sea and Gulf of Aden region, and in the region between the Ivory Coast and Gulf of Guinea. Most of the remaining attacks are concentrated in the waters of Latin America and East Africa.

Africa

On Africa's west coast, there were 27 registered attacks altogether in 2005, including 16 in Nigeria. On the east coast, Somalia stands out in particular, with 35 out of 42 attacks in 2005 alone compared to two reported attacks in 2004.

India and Bangladesh

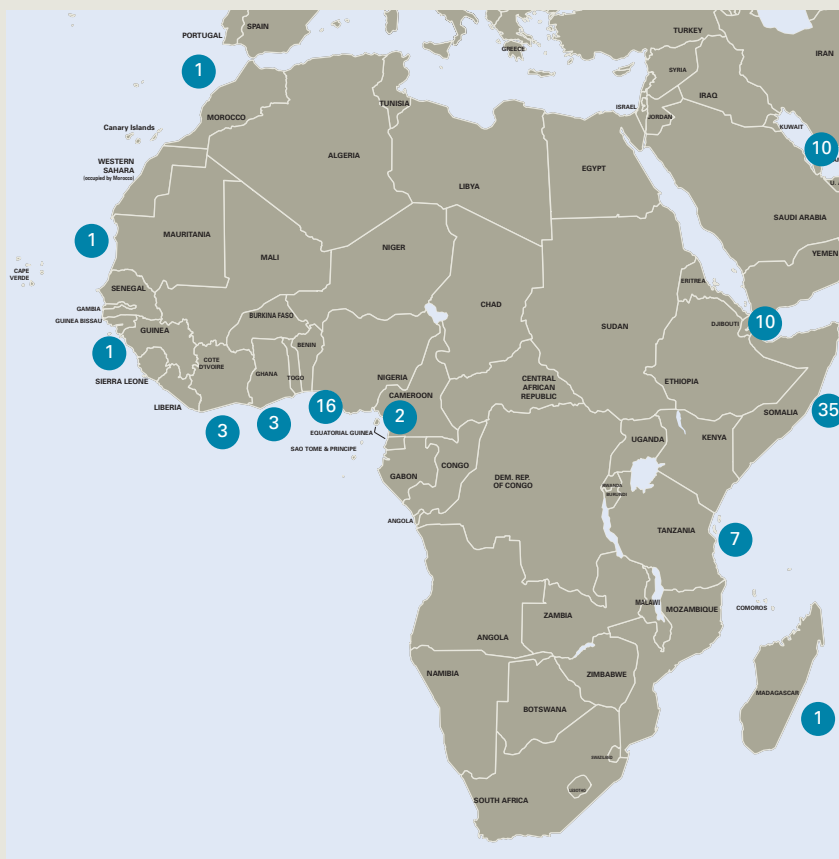
A growing number of attacks have been reported in India and Bangladesh in recent years. Following the dramatic rise to 55 acts of violence in Bangladesh and 35 in India in 2000, the IMB has called on the authorities to take action in Bangladesh. Increased coast guard and navy patrols were promised, but the situation has hardly changed. In 2005, the highest number of attacks inside a port area anywhere in the world was recorded off Chittagong, the largest sea port in Bangladesh, with the sad trend continuing in the first six months of 2006.

Indonesia

With almost one-third of all incidents, Indonesia continues to head the list of attacks worldwide.¹ The reasons essentially lie in the geographical conditions and tense political and economic situation. Pirates can easily let smaller barges and vessels disappear in the myriad of Indonesian islands and sell the stolen goods without undue risk on local markets.

¹ ICC-IMB, Piracy and armed robbery against ships. Annual report for 2005

Pirate attacks in Africa in 2005



More pirate attacks are registered off Somalia than anywhere else in the coastal waters of Africa.

Source: IMB

Straits of Malacca

The potential risk remains high in the Straits of Malacca, although the number of attacks has declined appreciably since Indonesia and Malaysia stepped up their coast guard patrols in this narrow body of water. “Gurita 2005”, a large-scale exercise by the Indonesian navy with pin-pointed airborne surveillance in July 2005, also had a positive side-effect, with the number of raids declining from 38 in 2004 to 12 in 2005.

South China

China’s immense demand for raw materials and consumer goods made the country’s southern part an ideal location in the 1990s, especially for phantom ships. Corrupt local officials aided the sale of stolen goods. However, the phantom ships have been more or less without a chance since China’s central government launched its major initiative to contain corruption.

Reasons for the regional increase in piracy

Where piracy is concerned, regional growth trends are always directly related to economic crises and inadequate legal and security systems. Somalia is one recent example. When the Barre regime was deposed in the early 1990s, the state lost control of its own coastal waters. Trawlers from other countries were able to fish in Somali waters unhindered, jeopardising the livelihood of local fishermen and leading to violent disputes. The local fishermen were more or less defenceless against the large foreign trawlers and increasingly turned to piracy to safeguard their own survival. This battle still continues, accompanied by the power struggle between the warlords, which has now been extended to the sea. The warlords are using the power vacuum in Somalia for their own private attacks on ships, above all with the intention of demanding ransoms.

Pirate attacks in Asia in 2005



Indonesia still has the highest rate of attacks not only in Asia but throughout the world.

Source: IMB

Hijacked, destroyed by fire, sunk

The hijacking of the *Achille Lauro* in 1985 leads to the SUA Convention, which is signed in Rome on 10 March 1988. In 1994, the vessel catches fire and sinks in the Indian Ocean.





Legal situation

Case example: A vessel flying a Panamanian flag is carrying a shipment from Japan. The cargo is insured in Germany, the crew comes from the Philippines and the Netherlands. The vessel has been boarded on the high seas by Indonesian pirates. Which law applies?

The complexity of an individual case often makes criminal prosecution and loss adjustment difficult. What kind of piracy is involved? Where did the attack occur? Which country is investigating the case? Which law applies? Time and time again, numerous ambiguities create legal vacuums which let the pirates get away scot-free. The insurance company which has to indemnify the loss often faces the problem of asserting rights of recourse. It is therefore in the best interests of the insurance sector to combat and prosecute cases of piracy. The first step towards this end is to clarify the legal situation. In piracy cases, a distinction is made between international law, national penal law, and civil law; in addition, every legal system has its own definition of the act of piracy.

United Nations Convention on the Law of the Sea of 1982 (1982 Convention)

The term “piracy” was defined by the Geneva Convention on the High Seas in 1958. This definition was adopted by the 1982 Convention. By 31 January 2005, the Convention had been signed by 157 states and ratified by 148.

Definition of piracy according to the 1982 Convention

For acts of violence against ships, persons, or property on board to be classified as piracy in accordance with Articles 101 and 102 of the 1982 Convention, the following conditions must all be met simultaneously:

The act of violence must be

- committed by the crew or passengers of another vessel,
- illegal and serve private purposes,
- and it must be committed on the high seas or at a place not subject to state sovereignty.

Article 101 of the 1982 Convention defines the act of piracy very narrowly. Politically motivated acts, such as terrorist attacks, are not included according to the 1982 Convention.

The definition is unclear on the meaning of the word “illegal”. It is left to the courts of the prosecuting countries to decide whether the act is to be designated “illegal” according to international law or according to the national law of the prosecuting countries.

Right of intervention against piracy

When an act of piracy has been established, the next step is to clarify the action to which the countries concerned are entitled. This is governed by the principle of “freedom of navigation as a basic element of maritime law”. According to this principle, which has applied in maritime law for a long time, all states are entitled to allow ships to sail the high seas under their flag. Article 92 of the 1982 Convention specifies that the state whose colours are being flown, i.e. the flag state, also exercises exclusive sovereignty over its vessels, and only that state has the power to impose and enforce laws. The possibility of intervention by third parties is excluded as a matter of principle, although exceptions are possible:

- Exception permitted by Article 110 of the 1982 Convention
This exception grants warships the right to stop other vessels for the purpose of verifying their right to fly a flag. However, this is not a general right. It must be based on certain reasons, such as the suspicion of piracy, slave trading, or statelessness. The warship may send a so-called boarding team on board the stopped vessel in order to verify its right to fly the flag. The vessel may be searched if the suspicion is confirmed after inspecting the ship’s papers (Article 110, paragraph 2, 1982 Convention). When exercising this right, however, the commanding officers must remember that, if the suspicion proves to be unfounded, Article 110, paragraph 3 of the 1982 Convention stipulates that the shipping company be reimbursed for all losses incurred.

– Exception permitted by Article 105 of the 1982 Convention

According to the first sentence of Article 105 of the 1982 Convention, every state may take action against pirates (arrest and seizure) at any time in international waters (= high seas and waters not controlled by any state). The second sentence of Article 105 states that the courts of the state which has seized the vessel (i.e. whose colours are being flown) can also decide on the penalties to be imposed and on the action to be taken with regard to the vessel or property. The decisive point is that all states are entitled to take action against pirates, and not only those in which the acts of violence take place. This makes it clear that pirates are considered to be enemies regardless of their nationality and that all enforcement mechanisms are based on the so-called principle of universality. At the same time, Article 105 of the 1982 Convention specifies that a pirate ship cannot be pursued further once it has reached national waters.

Article 107 of the 1982 Convention, however, restricts the right of such intervention in international waters to warships or “other ships which are clearly marked and identifiable as being on government service and are authorized to that effect”.

– Exception: “consent of the flag state”

Normally, the unauthorised intervention of a foreign state violates the sovereignty of the flag state, but this violation can be negated with the consent of the state concerned, provided that the act was committed on the high seas or at a place not under state sovereignty. However, this also means that there is no legal foundation for taking action against piracy other than on the high seas.

Indonesian naval officers hand over suspected pirates to the authorities in the port of Jakarta.



Article 38 of the 1982 Convention guarantees all states the right of transit passage in narrow bodies of water or straits. When exercising this right, the vessels must “refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of a state bordering the strait” (Article 39, paragraph 1b, 1982 Convention). This means that a foreign warship cannot take action against pirates in coastal waters without the consent of the coastal state. Any intervention depends on the existence of corresponding bilateral or multilateral treaties.

Criminal prosecution

Although a pirate attack constitutes a crime according to normal understanding, it cannot simply be prosecuted by the community of states. A specific legal basis is needed in order to exercise criminal jurisdiction. Such a basis could arise from Articles 100 to 107 of the 1982 Convention. However, they only authorise the community of states to take police action at sea. Article 105 of the 1982 Convention allows offenders to be punished, but only grants this right to the state “which seized the vessel [...]” and not to the community of states as such. One major disadvantage of the 1982 Convention is that it does not give rise to any direct penal sanctions. Article 100 merely empowers the states to issue the required penal standards, with the result that the punishability of a crime depends solely on whether or not a corresponding national legal standard exists. Munich Re believes that this defective legal situation should be made the subject of discussion on an international level.

Summary

Articles 100 to 107 of the 1982 Convention merely allow the community of states to take police action at sea but not to prosecute offences. On the high seas, this right is reserved for the individual states and based on their national law.

The 1982 Convention in itself is not sufficient to ensure adequate protection against piracy. Since the offence is restricted to the high seas, many cases do not qualify as piracy, for some 80% of all attacks occur in territorial waters and in ports. A further shortcoming of the 1982 Convention is that an attack only qualifies as piracy according to the Convention’s own definition if it is committed for “private purposes”. The rights of intervention granted by the 1982 Convention therefore do not encompass the growing number of terrorist acts.

Furthermore, Article 100 of the 1982 Convention obliges the states to work together in the fight against piracy. That, however, does not mean that the states are under any obligation to incorporate standards penalising piracy in their legal systems.



Malaysian police boats are constantly on patrol in the Straits of Malacca.

Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation of 1988 (SUA Convention)

The purpose of the SUA Convention was to fill the loopholes of the 1982 Convention. The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation was signed in Rome on 10 March 1988 and was prompted by the *Achille Lauro* incident in 1985. Members of the Palestine Liberation Organisation had seized the Italian liner and held the passengers hostage. One passenger was killed. At this moment it became clear that the international rulings in force were not sufficient.

It is interesting to note that the Convention is based on an initiative by Austria, Egypt, and Italy, none of which can be considered a leader in maritime navigation. By 30 April 2006, 135 states had acceded to the SUA Convention, including China, India, Japan, Korea, Vietnam, and Nigeria. Important coastal states, such as Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Somalia are still missing, however.

Definition of piracy according to the SUA Convention

While the first two Articles of the SUA Convention are devoted to the scope and definition of a “vessel”, Article 3 and the following articles are concerned with the definition and response to illegal actions against maritime navigation. Among other things, illegal actions include the unlawful seizure of vessels, the attachment of materials to or installation of materials in vessels which could lead to damage or destruction of the vessel in question, and the killing of persons on board. Consequently, the SUA Convention, unlike the 1982 Convention, mainly relates to politically motivated terrorist acts. But it can also be applied to acts of piracy.

In addition, it covers a significantly larger geographical territory than the 1982 Convention. According to Article 4 of the SUA Convention, the vessel can be at sea anywhere at the time of the illegal act – on the high seas, in the exclusive economic zone, in coastal waters – and also on inland waterways. However, the vessel must be in international transit at the time of the illegal act, i.e. it must have come from a foreign territory or from the high seas or it must be passing through or heading for such areas at the time of the illegal act. A loophole arises if the vessels only transit the territorial waters of one state – but that loophole could be filled by national laws.

Right of intervention permitted by the SUA Convention

Unlike the 1982 Convention, the SUA Convention does not grant any powers to take action against pirates and avert pirate attacks. Only the flag state (under the so-called flag state principle) and the state whose coastal waters are being transited by foreign vessels (territoriality principle) or whose citizens commit the offence (personality principle) have the right to take such action. According to Article 9 of the SUA Convention, however, rulings in international law remain unaffected, with the result that police action by foreign states can be based on these rulings if an act of piracy as defined by Article 105 of the 1982 Convention has been committed. This means that the SUA Convention, like the 1982 Convention, does not provide states with any right to pursue offenders in the territorial waters of other states.

Criminal prosecution

Unlike the 1982 Convention, however, the SUA Convention does provide a legal foundation for the prosecution of pirates. Article 7, paragraph 1, SUA Convention obliges the treaty states to detain suspected persons in their territory or to take other measures to prevent their escape. This applies until criminal proceedings or extradition proceedings are instituted. In addition, Article 7, paragraph 2, SUA Convention requires that a provisional investigation be made immediately to establish the facts. Article 10 of the SUA Convention obliges the member states to extradite and prosecute the offenders. The specific details and prosecution procedure, however, remain a matter for the national law of the country concerned. Whether or not offenders receive due punishment therefore remains an open question.

Summary

Although not all the loopholes of the 1982 Convention have been filled, the SUA Convention does constitute a further step towards repressing violence at sea. It compels states to make more efficient use of national legal standards. The signatories must exercise jurisdiction against all suspected offenders or extradite them. Unfortunately, however, this still does not mean that the offenders will also be punished.

National jurisdiction

National law ultimately plays an important supplementary part in the fight against piracy, for it is

- the only statutory basis for vessels which have been attacked and which only transit the territorial waters of one state, and
- the only statutory basis for criminal prosecution when international law does not permit criminal prosecution (1982 Convention) or international law refers to national law (SUA Convention).

Points of contact for international prosecution

Since piracy is usually an incident extending beyond national borders, it is not always clear exactly which national legal system should be applied. For example: a vessel flying a Panamanian flag is carrying a shipment from Japan. The cargo is insured in Germany, the crew comes from the Philippines and the Netherlands. The vessel has been boarded on the high seas by Indonesian pirates. Which law applies?

Territoriality principle

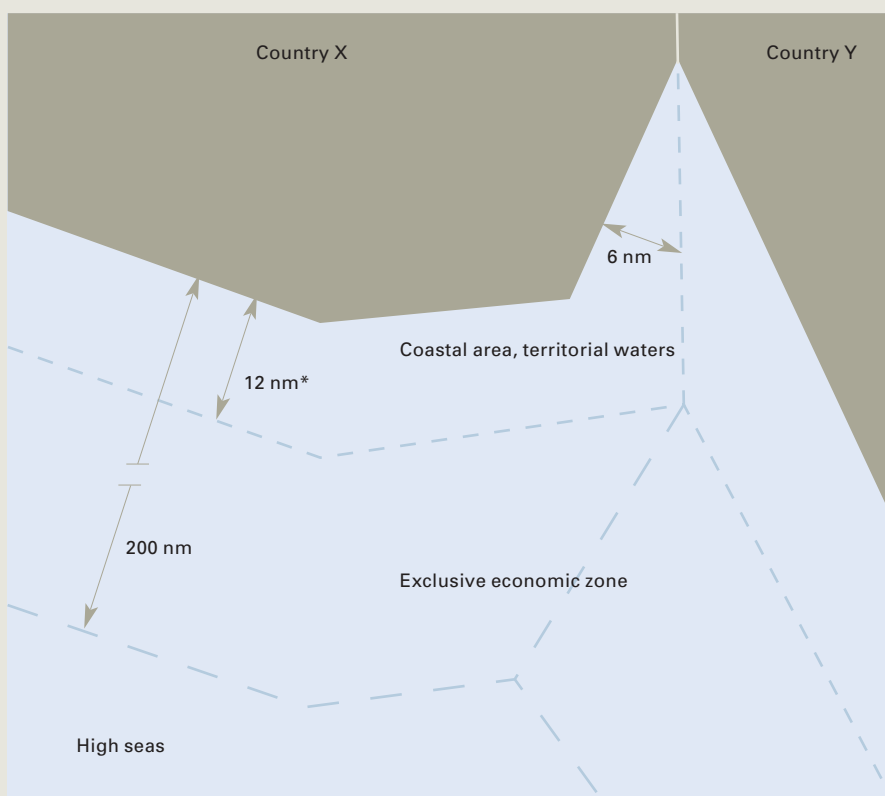
Points of contact are sought in international penal law in order to determine which national law applies here. The territoriality principle is the most important point of contact. According to this principle, a state can judge all offences which are committed in the country according to its own domestic penal law regardless of the nationality of the offender or victim.

In terms of maritime law, the country includes its inland waterways, coastal and archipelagic waters, the continental shelf, and, for economic purposes, the exclusive economic zone (EEZ). If there is a collision between different legal systems, the place at which the act was committed (scene of the offence) and not the place where the damage occurred (place of damage) is decisive for the territorial allocation.

Flag state principle

According to the flag state principle, all acts committed on board a ship are subject to the penal law of the country whose flag is flown by the vessel concerned. This meets the demand for security on board. If the vessel is in foreign territorial waters, the criminal jurisdiction of the state concerned ranks alongside that of the flag state, with priority normally being given to the territoriality principle.

Diagram of international maritime boundaries based on a fictive coastal region.



Coastal area, territorial waters, and exclusive economic zone (EEZ). When territorial waters overlap in border areas, they belong to each of the neighbouring countries in equal shares.

Source: Munich Re

* 1 nautical mile (nm) = 1.852 km

Active personality principle

This principle applies when a state also prosecutes actions committed by its citizens in other countries. It consequently encompasses all actions by seamen, regardless of whether they are committed on board vessels flying foreign colours, on the high seas, or in foreign waters. This makes it impossible for offenders to evade prosecution by fleeing to their home country.

Passive personality principle

Action according to the passive personality principle means that a state prosecutes acts committed against its citizens in another country. The principle has long been disputed, especially in Anglo-American law, but is recognised by German penal law. According to current court rulings, the territoriality principle and the active personality principle take precedence in cases involving collisions at sea.

Principle of vicarious criminal justice

The principle of vicarious criminal justice means that the domestic power of sentence must be applied wherever legal or factual reasons prevent the foreign criminal justice which should actually apply from enforcing its right to punish. Many international conventions against particularly dangerous crimes are based on this principle. It ensures that criminals cannot escape criminal liability by moving to another country.

Universality principle

The universality principle or principle of worldwide uniform law, as it is also known, protects legal interests of common international importance. It is based on the original right of every state to prosecute certain crimes which are equally dangerous for all states. However, this principle only applies if none of the other principles outlined above can be applied. In most cases, it concerns rights which are recognised by international conventions or common international law, such as the 1982 Convention.

Answer to our case example

In the case outlined above, the ship was boarded on the high seas. The territoriality principle therefore does not apply, as the act was not committed in territorial waters. According to the flag state principle, Panamanian law would apply, as the ship is flying Panamanian colours. However, the active personality principle takes precedence over the flag state principle. Since the pirates are Indonesian citizens, Indonesian law must be applied. The crew's Philippine and Dutch citizenship is irrelevant, as it merely determines the law which would apply according to the passive personality principle, but that is subordinate to the active personality principle. Indonesian law consequently applies on the basis of the active personality principle.

No punishment despite definition of the law

Even if national law applies, this does not mean that the offence will also be punished. Indeed, this is the greatest shortcoming in the international network of laws to combat piracy. National penal laws are exceedingly diverse. Some penal codes demand that a whole variety of conditions be met for an offence to qualify as an act of piracy. Others do not even mention piracy. In the latter case, such offences as robbery, bodily injury, or murder must be applied. Such "substantive" shortcomings are often supplemented by "procedural" shortcomings, with the result that offenders cannot be arrested, extradited, or taken to court even if the constituent elements have been met as defined. Lack of interest in criminal prosecution is not uncommonly the reason behind such shortcomings. In addition, the security and enforcement authorities lack the necessary personnel and financial resources in some countries. Offenders exploit these circumstances by operating in the territory of such states or by escaping to such states after the offence (hit-rob-run tactics).

Legal situation at a glance

	On the high seas	National waters, international transit	National waters, national transit
Prosecution	1982 Convention, Art. 105, 107, 110	National law	National law
Judicial punishment	National law/SUA Convention The SUA Convention obliges the treaty states to take judicial action in accordance with national law.	National law/SUA Convention The SUA Convention obliges the treaty states to take judicial action in accordance with national law.	National law

Definition of piracy by the IMB

When the IMB began compiling statistics in 1991, it was clear that the only definition of piracy then, Art. 101 of the 1982 Convention, did not reflect the types of attacks against vessels, particularly the majority of attacks which took place in territorial waters. For the purpose of compiling the statistics, the IMB formulated its own definition of piracy as given below. This loophole in defining attacks against vessels was formally closed when the IMO in 2000, in its circular MSC/Circ. 984 art. 2.2. (the Code of Practice), defined “Armed Robbery against Ships”, also given below.

Now the phrase “Piracy and armed robbery against ships” covers the range of attacks which take place today and is in line with the IMB definition of piracy, against which statistics have been compiled since 1991.

Piracy (IMB definition)

“An act of boarding any vessel with the intent to commit theft or any other crime and with the intent or capability to use force in the furtherance of that act.”

Armed robbery (IMO* definition)

“Any unlawful act of violence or detention or any act of depredation, threat thereof, other than an act of ‘piracy’, directed against a ship or against persons or property on board such ships, within a state’s jurisdiction over such offences.”

* IMO (International Maritime Organisation): Specialised UN agency responsible for safety and security at sea and the prevention of marine pollution from ships.

The IMB’s objectives in drawing up this definition are highly pragmatic, for it is not primarily concerned with a formal legal definition, but – quite rightly – with ways and means of effectively registering and combating modern acts of piracy.

Civil-law definition of piracy in insurance law

According to specialist literature, there is no separate definition of piracy in insurance law. Instead, reference is made to both the IMB definition and the definition in the 1982 Convention or corresponding national regulations.

However, piracy has a much larger geographical scope in terms of insurance law than in terms of penal law. It is sufficient for the act to be at or on the sea. There is no territorial or national limitation. Consequently, an attack in a port or an inland waterway can also qualify as an act of piracy according to insurance law.

The only criteria to be met are the use and/or threat of force before or during the act. In addition to that, the pirate’s motives must be of a private nature, as specified in the 1982 Convention. From the insurers’ viewpoint, therefore, terrorist acts of violence do not qualify as piracy.

Port attack – Insurer must pay

Ruling of the Singapore High Court in *Bayswater Carriers Pte Ltd vs. QBE Insurance (International) Pte. Ltd*, 2005:

A tug was attacked and subsequently abducted in an Indonesian port. The insurer refused to indemnify the loss, claiming that, according to the letter of the law, piracy is only possible on the high seas and not in a port. The court found in favour of the policyholder: it is not essential for the attack to take place on the high seas in order to qualify as piracy. Attacks in port are also covered by piracy insurance.



Singapore’s Police Coast Guard has recently begun patrolling the coast in new hi-tech boats.

Conclusion and solutions

The various conventions are an attempt to find the “golden mean”: they prescribe a universal administration of justice without at the same time obliging the individual states to adapt their own legislation. This was accepted by the states, because they view piracy as a general threat and because pirates do not act on behalf of any state which could then be held liable for its actions.

The current debate is doubtlessly important, but we must not lose sight of the primary objective, namely the active fight against piracy. For both victims and insurers, it is irrelevant whether the attack occurred in territorial waters or on the high seas and whether it was motivated by private or terrorist reasons. In the event, both are primarily interested in effective means for restitution.

Littoral states must cooperate more closely, if piracy is to be fought effectively. For instance, the attacked state could resort to the Law of Nations and demand from its neighbours that they prosecute the crime jointly.

Unfortunately, it is still a sad fact that some states tolerate piracy and the sale of stolen vessels or are even directly involved in such transactions. These states must be called to account for their actions. Shipping companies transiting such waters could additionally seek diplomatic protection from their home countries. Neither this right nor the right to support from coastal states has been adequately exercised or called upon to date.


A successful battle against piracy on an international level can only be based on the multinational development of a uniform legal model. A draft has been prepared by the Comité Maritime International:

Model International Law concerning Piracy and Acts of Maritime Violence (2001)

The commitment to fight piracy on a multinational level means that legal systems must be amended on the national level. Unfortunately, only a handful of states have amended their laws to date. For this reason, the Comité Maritime International (CMI) and relevant interest groups have drafted a model anti-piracy law. Once perceived as a universally accepted “model law”, it is intended to provide the individual states with a basis for adapting their national legislation. In addition to “piracy”, the proposal also refers to a new type of crime: “maritime violence”, which includes terrorist attacks at sea. Its aim is to fill the loopholes left by the 1982 Convention and to allow all forms of maritime violence to be prosecuted and punished by one or more states. We wholeheartedly support such proposals, for it is on the national level that we see the greatest need for action.

The Trilateral Coordinated Patrol was launched by top military officials of Indonesia, Singapore, and Malaysia with the goal of patrolling the Straits of Malacca.





Lloyds of London, Underwriting Room

The international insurance industry is responding to the increasing risk of piracy with new coverage concepts and is actively involved in the prevention and prosecution of pirate attacks.



Insurance aspects

The growing number of pirate attacks leads to higher insurance premiums – especially for marine business in high-risk regions. For this reason, the insurance sector responds to different risk situations with adequately adapted or new covers – and actively supports loss prevention and legislative anti-piracy measures.

Victims and claimants in acts of piracy are the crew, the shipping company and owners of the vessel, the parties with an interest in the goods carried, and the insurers. For the shipping companies, shipowners, and parties with an interest in the goods carried, the loss appears slight at first glance for they are indemnified by the insurers. If such incidents become more frequent, however, the insurance premiums will inevitably increase.

New risk assessment for particularly high-risk regions

A number of insurance markets have just recently reassessed the aggravated risk situation in some problematical regions. At the prompting of the London market in response to recent events, a number of regions including the Malacca Straits were reclassified in summer 2005 as enhanced risk areas. This risk assessment makes it possible for hull war insurers to exclude transits through particularly high-risk regions from the standard hull war cover and to provide cover for these particular transits only in return for higher premiums. In order to counter this additional burden, the strong lobby of affected shipping companies turned to the littoral states, demanding better control and an improvement in the risk situation. The strategy is bearing fruit in the form of more frequent patrols and closer cooperation between neighbouring countries.

As a consequence, the Malacca Straits have shown an improvement with only three attacks in the first six months of 2006 compared with eight for the same period in 2005. In view of this development, some insurance markets, such as Lloyds of London, announced in August 2006 that they would reverse their previous decision and delete the Malacca Straits from the list of enhanced risk areas. For shipowners, this means that they will no longer have to pay enhanced risk premiums for transits through these waters.

Marginal chances of obtaining recourse

To return to the victims. As already mentioned, the loss suffered by the shipping company and the parties with an interest in the goods carried is transferred to their insurers. To minimise that loss, the insurers will seek to recover the lost cargo and, where possible, bring the offenders to court. In most cases, however, these efforts will be nipped in the bud by the frequently unclear legal basis for prosecuting criminal acts and by the associated cost. Seeking compensation from sentenced offenders by way of recourse is often a hopeless undertaking too. In such a situation, the insurance sector stands little chance of minimising the incurred loss – and therefore pays up.

Lines of business affected

The losses attributable to piracy primarily affect marine hull, marine cargo, and protection & indemnity (P&I) insurance. Losses may also be indemnified under loss-of-hire (LoH) insurance. Most recently, special kidnap and ransom covers have also been offered to shipowners.

Although the coverage concepts are essentially the same in the various insurance markets, the definition of the insured perils and the design of the terms and conditions vary considerably, depending on the country and type of policy concerned. For this reason, we will concentrate on the English terms and conditions of marine insurance when describing the lines of business affected. The English marine insurance market – especially the Lloyd's market – plays a leading role worldwide: the majority of national and local marine insurance conditions are very strongly based on English marine insurance law.

Marine hull insurance

Claims may arise from the total loss of a vessel due to theft or scuttling or damage incurred during an attack or in pursuit of the seized vessel.

Until 1937, piracy was one of the named insured perils in the combined Lloyd's hull and cargo policy (Lloyd's SG Policy). As a result of numerous indemnifiable events during the Spanish Civil War, however, it was excluded from standard policies and allocated to the special terms of insurance for war perils. Since 1983, piracy has once again been one of the regular insured perils under the standard hull cover (Institute Time Clauses Hulls 1/10/83 in combination with the Marine Policy Form). It was hoped that this would make it unnecessary to differentiate between piracy and theft, as the losses attributable to both were covered by a single policy.

In view of the large number of pirate attacks in crisis regions and the associated debate over state-tolerated piracy, as well as over the possible link between piracy and global terrorist networks, a number of new clauses were published by the relevant committee of the London market on 17 October 2005. According to these clauses, such perils as piracy, robbery, and embezzlement by crew members can

be deleted from the list of insured perils in the hull wordings. These perils are now listed once again under the special war and SRCC clauses, which also include the risk of terrorism. For insurers, this means that they can now use the same facultative risk assessment criteria for piracy as for the perils of war or terrorism. Instead of providing innocent cover, insurers can now assess the individual risk on the basis of the insured vessel's actual trading area. The complete range of action is thus at their disposal from charging an individual additional premium to restricting or totally excluding individual trading areas from the cover for war perils. For the policyholder, this does not change the fundamental insurability of piracy as a peril. However, in those insurance markets where risk carriers specialise in marine hull business and war and SRCC risks covers, the hull and piracy risk may now have to be placed with two different insurers.

Marine cargo insurance

Claims for damages are based on loss due to robbery or damage of the insured goods, e.g. through combat during an attack or through unprofessional or rough handling during illegal transshipment or storage.

In 1999, pirates hijack the *Alondra Rainbow*. Some time later, the vessel reappears under the name of *Mega Rama* in the Indian Ocean, where it is captured by the Indian Navy and towed to Mumbai.



Prior to the introduction of all risks cover in accordance with Institute Cargo Clauses (A) of 1 January 1982, known as ICC (A) for short, the situation was similar to that in marine hull insurance. Marine cargo insurance was also written on the basis of the Lloyd's SG Policy, with the result that piracy was sometimes covered under regular marine perils and sometimes under war perils. ICC (A) brought a return to the former ruling, according to which piracy was treated as part of the regular marine cargo cover by explicitly exempting it from the war perils exclusion pursuant to item 6.2. Piracy and comparable robbery offences are not included in the ICC [B] and ICC [C] named perils covers.

Regarding the ICC (A), it remains to be seen whether the English marine cargo clauses committee will follow the example of the hull war clauses committee and transfer the piracy peril back to the war cover. However, the mechanism for steering premium income directly by charging additional premium for the enhanced risk attributed to a given transit route is not so readily available to insurers. Practically all major open policies are based on annual turnover. The war risks premium is either included in the overall turnover rate or adjusted on the basis of a lump-sum declaration for individual geographical transport relations. On that basis, it is no longer possible for the marine cargo insurer to identify single transits through enhanced risk areas for which an increased war or piracy risks premium might be charged.

Protection and Indemnity insurance

P&I insurance is primarily a liability cover for shipowners and operators. It thus serves to protect the assured from unjustified third-party claims and indemnifies legitimate claims. In general, the law of the seas and relevant conventions do not attribute any liability to the owner or operator if any third-party loss or damage inflicted by or attributable to their vessel was caused by the wilful misconduct of outside third parties, such as pirates. In some cases, however, owners or operators cannot obtain total exemption from liability, for instance if the cause of the loss is not completely clear or if they bear a share of the blame. Workers' compensation insurance is also included in the P&I cover and comes into play, for example, if a member of the crew is injured or killed in the pirates' attack and the shipping company must bear the costs of treatment or pay a pension for surviving dependents.

In principle, P&I insurance covers the costs for which a shipping company is legally liable. It also covers some of the expenses incurred in conjunction with regaining possession of the assailed vessel, insofar as these are not covered by marine hull insurance. Even if it is difficult to obtain precise figures here, it can be said that any ransom paid by the owners or operators of the vessel is not included in the standard P&I cover. However, the shipping company can apply for indemnification of these expenses at the Club's discretion, within the framework of the so-called Omnibus Rule. According to this rule, the directors of the P&I Club decide whether indemnity is to be paid in an individual instance, such as when this would avert a possible claim under workers' compensation insurance (e.g. if a member of the crew were injured or killed).

Loss-of-hire insurance (LoH)

A vessel cannot earn income as long as it remains under the control of pirates or while it is being repaired after it has been recovered. Claims for loss-of-hire can be made on the basis of an indemnifiable marine hull loss or because piracy is explicitly included in the list of named perils under the LoH policy.

Cover is for a defined maximum number of days and the daily indemnity is fixed and agreed at inception. Alternatively, the sum insured is subject to a proven loss.

Kidnap and ransom insurance

This cover indemnifies a ransom paid up to the amount of the sum insured. In the majority of cases, it is effected for major industrialists or for the top management of leading corporations. Buying cover in case a vessel is hijacked or individual crew members are kidnapped is a tightrope act between the need to cover potential financial losses and an incitement for pirates to engage in further and possibly even more extensive kidnapping.

At first glance, kidnap and ransom insurance entitles shipowners or operators to claim the agreed policy indemnity so that they are no longer dependent on the discretionary decision of their P&I directors on whether or not to approve indemnification of a ransom under the Omnibus Rule. If employed correctly, however, it can also become one of the measures in a comprehensive risk management programme. The insurance cover should include access to a hotline in addition to individual risk counselling with specific loss prevention measures tailored to the insured vessels. If a loss occurs, a specially trained crisis management team advises the shipping company and possibly even takes over negotiations with the kidnappers.

Financial burden for the insurance sector

No article on insurance without statistics – yet piracy is an exception to the rule. The number of attacked vessels is known from the IMB's statistics, insofar as the incidents were reported. The reported number of crew members injured or killed is similarly known. But there are no reliable figures documenting the economic consequences. No-one keeps account of these. Besides, only an estimated 50% of all losses are actually reported. From the point of view of hull insurance, the insured losses have fortunately remained manageable to date, apart from the occasional total loss of a vessel. Most quick raids merely cause damage below the shipowners' deductible threshold. In the majority of cases, robbery or damage to insured cargoes by pirates is statistically recorded in the same way as the claims expenditure for all other robbery losses at sea and on land. Losses due to piracy are rarely recorded in separate statistics. The same also applies with regard to loss-of-hire insurance. Unless piracy is insured as a separate named peril, the associated hull loss will be recorded as the reason for indemnification regardless of the actual cause. For reasons of confidentiality, nothing is known with regard to the amount expended by kidnap and ransom insurers or the P&I clubs at the discretion of their directors.

The only possibility of obtaining meaningful data in future will be for insurers to record piracy losses separately and to publish their figures in the annual statistics of the International Union of Marine Insurers (IUMI).

Notwithstanding the historical claims experience, a worst-case scenario must naturally also be considered. Since pirates have more than once left an almost unmanned vessel running at full speed after locking up the regular crew on board, there is a real risk of a fully laden ship hitting an obstacle, running aground, or colliding with another vessel. If a gas tanker were to explode or an oil tanker were to run aground, the resultant loss could run into the billions. The environmental damage caused by the two most expensive tanker accidents to date, namely the *Exxon Valdez* in 1989 and the *Prestige* in 2002, totalled US\$ 9.5bn and US\$ 1.2bn respectively. Although the actual indemnity paid was considerably less on account of limitations permitted under applicable liability conventions, these two incidents nevertheless dealt a severe blow to the insurance industry, for the estimated worldwide premium income for P&I is currently only around US\$ 2.2bn per year.

In addition to the purely financial aspects, however, the magnitude of these crimes on a human level should not be disregarded. Pirate attacks on Vietnamese boat people in the 1980s resulted in thousands of rape victims as well as several hundred people abducted and killed. The number of people injured and murdered at sea and the associated suffering are cause enough for decisive action to be taken.



Royal Malaysian Customs boat

Greater international cooperation, new technological developments, and integrated risk management help to minimise the risk of a pirate attack. The most important lever in the struggle against piracy is clear jurisdiction.



Measures in the fight against piracy

Numerous laws, proposals and plans of action have been launched in recent years, including international initiatives and laws, as well as technical developments and facilities designed to prevent attacks by pirates.

Greater international cooperation

After the growing number of attacks on private yachts in the Caribbean and innumerable acts of violence in the Gulf of Thailand and the South China Sea, the United Nations turned its attention to the increasing violence at sea for the first time in the 1980s. In 1981, the UN General Assembly called upon the member states to step up their efforts against piracy and protect those seeking asylum. From 1982 onwards, the Maritime Navigation Committee in UNCTAD devoted its attention to all aspects of maritime fraud and piracy. The Maritime Safety Committee (MSC) subsequently prompted the IMO to call upon member states to report pirate attacks and to publish regular reports on cases of piracy.

Military support in the fight against piracy as illustrated by the case of Somalia

Foreign warships stationed in the region did not intervene as long as the attacks off the Somali coast were confined to territorial waters. Since the pirates' first attempt to assail a cruise liner, the *Seabourn Spirit*, some 100 nautical miles off the coast and the pirates' subsequent advance into international waters, however, members of the international naval forces have taken an active part in the pursuit of pirates.

As the US Navy's intervention in January 2006 (see box) clearly shows, the fight against piracy can only prove successful if that struggle is viewed as a joint task by the community of states. Not all states take military action against pirates. The German navy, for example, is prohibited from intervening in criminal acts by Germany's Basic Constitutional Law.

Pirates threw weapons into sea, witness says

Wednesday, 15 February, MOMBASA, Kenya (AP) – Ten Somali pirates who hijacked an India-based vessel threw their most lethal weapons into the sea when they spotted a U.S. Navy ship, a witness told a Kenyan court Wednesday.

Akbar Ali Suleiman, master of the *Safina Al Bisaarat*, said the pirates hid other weapons in one of their boats that they used in the raid, but U.S. sailors who intervened to end the hijacking found them.

Suleiman's ship was seized by pirates two days after leaving the Somali port of Kismayo en route to Dubai, United Arab Emirates.

"They were also shooting (rocket-propelled grenades) at our vessel which was loaded with charcoal and there was a risk of it exploding since the charcoal was flammable", he told the Mombasa Senior Principal Magistrate Beatrice

Jaden. "I was also not able to send out any distress signal because although our vessel was in motion, the generator had been switched off and it had to be in operation if any of us wanted to communicate", he said.

The suspected pirates were detained by the U.S. sailors who boarded the vessel on January 22 in response to a report from the International Maritime Bureau in Kuala Lumpur two days earlier that pirates had fired on the MV *Delta Ranger*, a Bahamian-flagged bulk carrier that was 200 nautical miles off the central eastern coast of Somalia.

Suleiman said he and his crew hid under their cargo of charcoal when the U.S. frigate began firing warning shots. Eventually the pirates stopped the ship, and U.S. forces boarded the vessel. The U.S. Navy handed the suspects over to Kenyan authorities on 29 January.

Support by non-governmental organisations

Various non-governmental organisations and associations have also turned their attention to this subject in the meantime, in addition to the state organisations. Those involved include in particular the IMB, BIMCO, P&I insurers, the International Transport Workers' Federation (ITF), shipping company associations, and the Comité Maritime International.

Security measures at the international level

A number of measures have been taken in recent years in the multinational fight against piracy and terrorism. The following are merely a few examples:

- Since 11 September 2001, ships with destination USA must report to their destination port 96 hours in advance, with details of the cargo, crew, and passengers.
- The Mediterranean has been protected by the NATO mission "Active Endeavour" since October 2001. NATO warships additionally escort ships through the Straits of Gibraltar. Naval forces also operate off the Horn of Africa.
- In July 2003, the UN International Labour Organization (ILO) resolved to introduce biometric ID cards for the roughly 1.2 million seamen employed in merchant shipping.
- The ISPS Code was introduced on 1 July 2004.
- On 28 April 2005, Japan, Laos, Singapore, and Cambodia agreed to join forces in the fight against piracy and armed attacks against vessels in Asia. With this agreement, the signatories acknowledged the importance of safety for vessels and the right to maritime navigation in conformity with the United Nations Convention on the Law of the Sea of 1982. Their agreement once again confirms the need to cooperate in preventing piracy in accordance with UNCLOS.
- In Singapore, vessels carrying hazardous cargo receive a military escort as they enter and leave the port.
- Soldiers from eight countries guard the Arabian Sea to track down terrorists.
- Japanese warships patrol Far Eastern shipping lanes and join with Singapore in naval exercises in the Straits of Malacca.

Technical developments

The industry has introduced a number of more or less sophisticated technical solutions in recent years to protect against piracy. The following security measures can be recommended:

- Conversion of the vessel's railing, use of electric fencing and lubricant foam to make it more difficult for pirates to board the vessel
- High-security containers to protect the cargo
- Creation of security zones to protect the crew, such as doors which cannot be opened from the outside
- Highly sensitive radar systems which can detect approaching pirates at close range
- Floodlights to illuminate the vessel
- Special night-vision equipment and heat cameras
- Miscellaneous acoustic and visual alarm systems
- Acoustic defence systems (LRAD)
- Movement detectors and light barriers
- Installation of water guns
- Satellite-aided tracking systems enabling shipping companies to keep track of their vessels at all times
- Air surveillance (Eye in the Sky)
- Unmanned remote-controlled robot ships to patrol and monitor threatened sea lanes and to pursue and fight pirate vessels

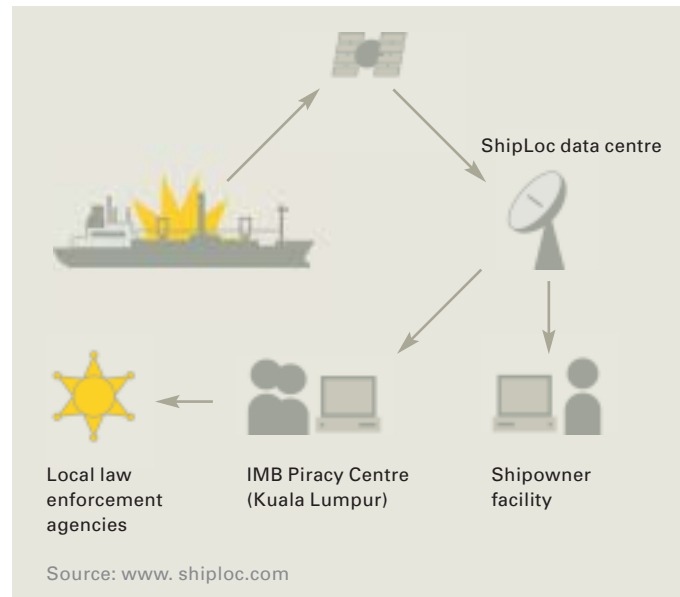


Remote-controlled robot vessel.

The Shiploc system

In its security catalogue of December 2002, the IMO recommends that its member states use the satellite-based Shiploc alarm system. Transmitters concealed on the vessel emit signals at regular intervals. Satellites send the calculated position data back to the Shiploc data centre. Shipowners and the IMB Piracy Centre can retrieve these data online at any time and inform local security authorities if a vessel changes its position unexpectedly.

The Shiploc system plays a decisive part in tracking vessels which have been seized and is now also used in a similar form to track lost cargo. In this case, the transmitters are installed in the containers themselves.



Flow of information in the Shiploc system.

First attack on a passenger vessel thwarted by an “acoustic gun”

In November 2005, the cruise liner *Seabourn Spirit* narrowly escaped hijacking by Somali pirates. It was the first time that pirates had attempted to seize a passenger liner carrying several hundred western holidaymakers. The fact that the attack failed is due entirely to the liner’s captain, Sven Erik Pederson. He reacted to the approaching vessel immediately and headed out to the open sea at full steam, but the pirates gave chase and fired rocket-propelled grenades at the liner. The pirates did not give up until Pederson made use of the LRAD. LRAD stands for Long Range Acoustic Device and is a non-lethal weapon developed for the US military. No bigger than a satellite receiver, the device not only emits loudspeaker announcements but can also send immensely loud high-frequency acoustic signals over a distance of several hundred metres. The noise causes considerable pain to the ears, makes communication impossible, and consequently compels attackers to give up. LRAD manufacturer American Technology compares the sound with that of a fire alarm, the difference being that the latter is a warning of danger at a level of 80 to 90 decibels whereas the LRAD fires at up to 150 decibels. The system has been installed on passenger and naval vessels since 2003.

The attack on the *Seabourn Spirit* prompted the Pentagon to rethink and step up the struggle against piracy. The USS *Winston S. Churchill*, a US guided missile destroyer, stopped a vessel seized by Somali pirates on 21 January 2006. The vessel carrying small arms to Somalia had been reported missing in the Indian Ocean by the International Maritime Bureau (IMB). The pirates were arrested and brought to Kenya by US armed forces where they now face trial. This was the first time that US forces had acted as police in international waters.



LRAD on board a passenger ship.

Codes of conduct

Preventive codes of conduct have repeatedly been issued by the IMO, most recently in its MSC/Circ.623/rev.1, as well as by shipping company associations, the international seamen's trade union, insurance companies, and trade associations. The most important recommendations are set out below:

- Minimise the contents of the ship's safe
- Arrange for regular patrols on the vessel
- Deploy additional security guards
- Lock access doors and windows to the bridge and engine room
- Implement a security plan for the vessel
- Maintain permanent radio link
- Remain in the vicinity of other vessels whenever possible

Enlarging the security team would be exceedingly effective, but this is often impossible for shipping companies and skippers as the number of crew members declines from one year to the next due to the pressure of costs. For many shipping companies, the additional cost of hiring more crew is considered economically out of proportion to the relatively small risk of being attacked.

Services and training offered by the IMB

In the meantime, shipowners can also make use of services which help to avoid attacks and train their crews to deal with pirates. The IMB in particular offers a comprehensive range of services.

Continual reports and statistics

The IMB's Piracy Reporting Centre and the IMO continuously collect data on recent incidents and general developments relating to this subject. Their findings are published in monthly and annual reports on paper and on the internet.

Official support

As already mentioned, shipping companies are often reluctant to report an attack at all as they fear long lay times due to official investigations and the possibility of problems arising during the investigation. For this reason, maritime organisations repeatedly draw attention to the fact that full reports of every single attack are indispensable in order to investigate a case. Only then is there a realistic chance of finding the offenders and recovering the lost goods – and of suppressing piracy in the long term. The IMB used to carry out its own investigations and local questioning with

financial support from the ITF Seafarers Trust. To avoid the feared lay times, investigators boarded the vessel at its next port of call. In this way, the vessel was not delayed unnecessarily by the investigations.

Search for offenders by the IMB

Since pirate attacks mainly take place in territorial waters, the victims are almost always dependent on the support of local authorities in clearing up the case. International pursuit is virtually inconceivable here, for nothing can be done without the goodwill and help of regional officials. A further problem lies in the totally different practice of law in different countries. Although the IMO is striving to standardise investigative methods on an international level, the situation in practice remains different. Particularly the Asian countries, in which the majority of piracy cases occur, are very wary of bilateral agreements, as they are afraid of losing some of their national sovereignty through new agreements. Maintaining close contact and a trustful relationship with local decision-makers is still the only way to win their confidence and support. For this reason, the IMB works closely together with regional authorities, supplying them with information and assisting their investigations. As a result, the IMB has now established close relations with Asian authorities and its investigations are increasingly proving successful.

In recent years, the IMB has become an indispensable partner in the fight against piracy, particularly when it comes to recovering the lost goods, finding the offenders or investigating insurance losses. Its services also include the following:

- Providing support in setting up the satellite-based position-finding system Shiploc and taking over its servicing. The IMB can then order further measures without delay when an incident occurs.
- Monitoring goods whilst they are being shipped and when they arrive at their destination port
- Examining suspicious shipping documents and other ship's papers
- Checking the credibility of shipowners and shipping companies

Risk management: An important tool against piracy

Classical risk management is based on the actual risk situation confronting a firm, its units, and the component parts of those units. For the purposes of risk management, vessels must be viewed as a shipping company's units. The principles of integrated risk management can then be applied to these operations. They comprise the "identification and analysis of exposure to risk" and the "selection, implementation, and verification of measures to minimise risk".

In the past, these classical risk management principles on board ships were quite simply described as "good seamanship". They were not written down but were passed on by word of mouth from one generation to the next and taken for granted in every member of the crew. This basic trust functioned perfectly for centuries, but is increasingly coming up against its limits in our modern complex, highly networked, and extremely technical transport world.

Risk management as a integrated solution

Merchant shipping is an economic sector with a long tradition and also one which for a long time viewed such modern systems as risk management with scepticism. The innovative methods of risk minimisation have only gradually been taken up. For a long time, the immense pressure of costs and competition also prevented shipping companies from investing in these methods. In addition, shipping companies and their crews have been confronted with an avalanche of new international legislation in recent years, and the resultant additional time and financial input is still viewed with irritation. Attempts are not uncommonly made to minimise the effort required and even to evade responsibility entirely.

Police patrol in the port of Basra.



Risk management experts therefore recommend that a risk-based approach using the aforementioned risk management principles be implemented in addition to the traditional seamanship, which still remains the basis of a smoothly functioning risk management. In shipping companies and on board their vessels, these should be implemented according to the following criteria:

- Concentrate on essentials
- Simplify complex processes
- Form a continuous process chain for effective risk analysis and risk minimisation
- Draw up a clear definition of responsibilities, preferably involving all members of the crew
- Set up review standards and provide the resources necessary to ensure continuous risk management

The on-board risk management system

Successful risk management means combining statutory regulations and supplementary measures to combat piracy in accordance with the above criteria in an on-board risk management system. Information on the supplementary measures can be obtained from shipping company associations and shipping organisations. A list of publications and advisory agents can be found at the end of this brochure.

Together with the statutory regulations, these measures and recommendations are building blocks in the development of an individual risk management system. A generally applicable standard cannot be defined, due to the large number of different factors to be taken into account when developing the system. These factors include the vessel's size and design, its maximum speed, the flag it flies, its route, type of cargo, number and qualifications of the crew members, and the vessel's technical equipment, to mention but a few.

Measures for a safe future at sea

Statistics show that the situation has improved in recent years as a result of reactions to the terrorist attack of 11 September, the tsunami disaster, and the growing commitment of many countries in the struggle against violence at sea. However, we also know that this may well be a temporary phase and that new statistical records await us in other areas, such as kidnapping. The countries concerned, companies and insurers must therefore continue their efforts in the future.

Possibilities on a state level

International cooperation on all levels remains a basic prerequisite for successfully fighting piracy and other violent attacks, now and in the future. Particularly in the port and flag states concerned, every effort should be made to make further progress in the following areas:

- Translating statutory recommendations and existing international laws into national law
- Drawing up a statutory framework governing rights of pursuit in national waters
- Establishing uniform statutory foundations for world-wide prosecution of the offenders
- Permitting international cooperation in pursuing offenders
- Stepping up the establishment of multinational patrols with due regard to the problems of national sovereignty outlined above

Contribution of shipping companies and crews

In addition to lobbying by associations and organisations, action must also be taken by the shipping companies and crews themselves.

- In keeping with the concept of holistic risk management, they should analyse and evaluate as precisely as possible their individual risks for each sailing area and for every single vessel.
- The opportunities offered by international regulations to avert terrorist attacks and increase the security of vessels should be actively used to defend against attacks by pirates.
- The security systems available on the market should be employed appropriately.
- Every violent attack on a vessel should be reported without fail.

Risk management by risk experts

Insurers and reinsurers are similarly called upon to devote more attention to the subject of piracy. It is the part of the tasks of national and international insurance associations to draw public attention to this subject so that the statutory

measures mentioned above can be enforced. When underwriting war covers, insurers and reinsurers can analyse the risk with great precision and should therefore use their know-how to support their clients, be it in marine cargo, hull, or P&I insurance.

For underwriters, this means

- keeping themselves fully conversant with the subject of piracy and taking current developments into account when assessing risks and
- only granting piracy cover provided that the owners have taken technical security precautions, pursue a holistic risk management approach, and arrange for adequate crew training.

Last but not least, the insurance industry should continue to use every means at their disposal to support all the government and non-governmental organisations which devote their attention to this problem. Munich Re supports the initiatives to suppress piracy throughout the world and promotes corresponding measures.



Left: Are there any pirates, terrorists, or smugglers on board? A Visit, Board, Search, and Seizure Team (VBSS) approaches the Indian cargo vessel M.S.V. *Al-Kausar* for an inspection.

Right: The VBSS team boards its high-speed boat – ready for action.



Annex

Extracts from the United Nations Convention on the Law of the Sea of 1982 (1982 Convention)

Article 38

Right of transit passage

- (1) In straits referred to in article 37, all ships and aircraft enjoy the right of transit passage, which shall not be impeded; except that, if the strait is formed by an island of a State bordering the strait and its mainland, transit passage shall not apply if there exists seaward of the island a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics.
- (2) Transit passage means the exercise in accordance with this Part of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. However, the requirement of continuous and expeditious transit does not preclude passage through the strait for the purpose of entering, leaving or returning from a State bordering the strait, subject to the conditions of entry to that State.
- (3) Any activity which is not an exercise of the right of transit passage through a strait remains subject to the other applicable provisions of this Convention.

Article 39

Duties of ships and aircraft during transit passage

- (1) Ships and aircraft, while exercising the right of transit passage, shall:
 - a) proceed without delay through or over the strait;
 - b) refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of States bordering the strait, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
 - c) refrain from any activities other than those incident to their normal modes of continuous and expeditious transit unless rendered necessary by force majeure or by distress;

d) comply with other relevant provisions of this Part.

(2) Ships in transit passage shall:

- a) comply with generally accepted international regulations, procedures and practices for safety at sea, including the International Regulations for Preventing Collisions at Sea;
- b) comply with generally accepted international regulations, procedures and practices for the prevention, reduction and control of pollution from ships.

(3) Aircraft in transit passage shall:

- a) observe the Rules of the Air established by the International Civil Aviation Organization as they apply to civil aircraft; state aircraft will normally comply with such safety measures and will at all times operate with due regard for the safety of navigation;
- b) at all times monitor the radio frequency assigned by the competent internationally designated air traffic control authority or the appropriate international distress radio frequency.

Article 92

Status of ships

- (1) Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.
- (2) A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

Article 100

Duty to cooperate in the repression of piracy

All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

Article 101**Definition of piracy**

Piracy consists of any of the following acts:

- a) 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:
 - i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- b) 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;
- c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Article 102**Piracy by a warship, government ship or government aircraft whose crew has mutinied**

The acts of piracy, as defined in article 101, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship or aircraft.

Article 105**Seizure of a private ship or aircraft**

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to ships, aircraft or property, subject to the rights of third parties acting in good faith.

Article 107**Ships and aircraft which are entitled to seize on account of piracy**

A seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorised to that effect.

Article 110**Right of visit**

- (1) Except where acts of interference derive from powers conferred by treaty, a warship which encounters on the high seas a foreign ship, other than a ship entitled to complete immunity in accordance with articles 95 and 96, is not justified in boarding it unless there is reasonable ground for suspecting that:
 - a) the ship is engaged in piracy;
 - b) the ship is engaged in the slave trade;
 - c) the ship is engaged in unauthorised broadcasting and the flag State of the warship has jurisdiction under article 109;
 - d) the ship is without nationality; or
 - e) though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.
- (2) In the cases provided for in paragraph 1, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.
- (3) If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.
- (4) These provisions apply mutatis mutandis to military aircraft.
- (5) These provisions also apply to any other duly authorised ships or aircraft clearly marked and identifiable as being on government service.

Extracts from the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation of 1988 (SUA Convention)

Article 3

1. Any person commits an offence if that person unlawfully and intentionally:
 - a. seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or
 - b. performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or
 - c. destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or
 - d. places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or
 - e. destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or
 - f. communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or
 - g. injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).
2. Any person also commits an offence if that person:
 - a. attempts to commit any of the offences set forth in paragraph 1; or
 - b. abets the commission of any of the offences set forth in paragraph 1 perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or
 - c. threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b), (c) and (e), if that threat is likely to endanger the safe navigation of the ship in question.

Article 4

1. This Convention applies if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States.
2. In cases where the Convention does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State referred to in paragraph 1.

Article 5

Each State Party shall make the offences set forth in article 3 punishable by appropriate penalties which take into account the grave nature of those offences.

Article 6

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 when the offence is committed:
 - a. against or on board a ship flying the flag of the State at the time the offence is committed; or
 - b. in the territory of that State, including its territorial sea; or
 - c. by a national of that State.
2. A State Party may also establish its jurisdiction over any such offence when:
 - a. it is committed by a stateless person whose habitual residence is in that State; or
 - b. during its commission a national of that State is seized, threatened, injured or killed; or
 - c. it is committed in an attempt to compel that State to do or abstain from doing any act.
3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the International Maritime Organization (hereinafter referred to as "the Secretary-General"). If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.

5. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 7

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present shall, in accordance with its law, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts, in accordance with its own legislation.

3. Any person regarding whom the measures referred to in paragraph 1 are being taken shall be entitled to:

a. communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;

b. be visited by a representative of that State.

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or the alleged offender is present, subject to the proviso that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify the States which have established jurisdiction in accordance with article 6, paragraph 1 and, if it considers it advisable, any other interested States, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 9

Nothing in this Convention shall affect in any way the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag.

Article 10

1. The State Party in the territory of which the offender or the alleged offender is found shall, in cases to which article 6 applies, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 3 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided for such proceedings by the law of the State in the territory of which he is present.

Authors



Dieter Berg
Head of Department
Corporate Underwriting/
Global Clients (Marine)
Project Leader "Piracy"



Thomas Artmann
Underwriting and Product
Line Manager Marine



Tillmann Kratz
Expert for facultative risks
and corporate underwriting



Katja Lührmann
Legal issues in marine
underwriting



Edwin Mast
Master Mariner, Expert on
nautical/technical issues,
Cargo Loss Prevention and
Risk Management Marine



Anja Milberg
Treaty Casualty Underwriting

Literature/sources/addresses

Further reading

Baur, Tobias. *Piraterie – Ein unterschätztes Risiko im Außenhandel (Piracy – An underestimated risk in foreign trade)*. Master Thesis (Fachhochschule Reutlingen), 2003.

Ellen, Eric. *Piracy at sea*. London: International Maritime Bureau, 1992.

IMB. *Piracy and armed robbery against ships*. Annual reports.

IMO Library publications (www.imo.org):

- *Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships*. December 2000.
- IMO Circular.
- *The UK government's strategy for tackling piracy and armed robbery at sea*. March 2005.
- IMO (Ed.). *Focus on IMO. Piracy and armed robbery at sea*. January 2000.

Hill, Julian. O'May *On Marine Insurance*. London: Sweet & Maxwell, 1993.

OECD (Directorate for Science, Technology and Industry). *Security in Maritime Transport: Risk Factors and Economic Impact*. July 2003. www.oecd.org

Trupin, Jerome. Flitner, Arthur L. *Commercial Property Insurance and Risk Management*. American Institute for CPCU, January 2001.

Organisations and societies

BIMCO: Baltic and International Maritime Conference, Bagsværd, Denmark, www.bimco.dk

CMI: Comité Maritime International, Antwerp, www.comitemaritime.org

DfT: Department for Transport, London, www.dft.gov.uk

IMB: International Maritime Bureau, London, www.icc-ccs.org

IMO: International Maritime Organisation, London, www.imo.org

OECD: Organisation for Economic Co-operation and Development, Paris, www.oecd.org

UNCTAD: United Nations Conference on Trade and Development, Geneva, www.unctad.org

VDR: German Shipowners' Association, Hamburg, <http://www.reederverband.de/english/index.cfm>

European Commission, Brussels, <http://ec.europa.eu/maritimeaffairs/>

© 2006

Münchener Rückversicherungs-Gesellschaft
Königinstrasse 107
80802 München
Germany

Order number 302-05053