



LESSONS IDENTIFIED FROM SOMALI PIRACY

Introduction

This paper draws upon the international shipping industry's experience of Somali-based piracy during the period 2007 to 2013, with the intention of identifying lessons from the experience in order to shape future responses, wherever in the world they might be required.

At the time of writing, the number of successful attacks against ships by Somali pirates has reached a five-year low. Whilst the exact reason for the reduction in Somali attacks is unclear, the combined success of the military forces, the use of the industry's Best Management Practices (BMP), plus the increased deployment of private armed guards, would all appear to be important factors. The political situation in Somalia itself has also evolved.

It is emphasised that it is premature to conclude that the crisis is over, that shipowners should in any way adjust their practices outside compliance with the BMP, or that governments should reduce current levels of military protection to shipping. Nevertheless, it is not unreasonable to envisage a situation within the foreseeable future in which the ongoing threat presented by Somali piracy may have reduced significantly.

Moreover, a parallel crisis, involving disturbing levels of violence against ships' crews, is now developing in West Africa, to which recent experience derived in the Indian Ocean is already proving useful (although in many respects the situation that prevails in the Gulf of Guinea is very different).

The significant challenges that the shipping industry has faced in responding to the crisis in the Indian Ocean between 2007 and 2013 might be summarised as follows:

- *Getting the initial attention of governments and making them appreciate the scale of the crisis, and demonstrating that isolated incidents were escalating into a situation that threatened the safety of thousands of ships and seafarers, with the result that a vast and strategically vital area of the Indian Ocean, including major trade lanes, had become a virtual 'no go' area to merchant shipping;*
- *Getting the attention of mainstream news media, and then maintaining it throughout the course of a crisis that has so far lasted for five years;*
- *Clarifying the rights and obligations of sovereign States to address piracy (complicated by the breakdown of a functioning State in Somalia);*
- *Engaging with military authorities, and persuading them that the prevention of piracy/hostage taking has a most important strategic and humanitarian*

function that should not be dismissed as mere 'low level' law enforcement, and fostering understanding that protection against attacks was a shared responsibility in which both the military and the industry had to play their parts;

- *Developing and disseminating appropriate and acceptable Best Management Practice (BMP) recommendations on preventative measures to be taken by shipping companies, ships and crews;*
- *Maintaining constant pressure on shipping companies and ships to sustain BMP compliance at the highest possible level;*
- *Responding to the legal and practical challenges associated with the capture and prosecution of piracy suspects*
- *Responding to the legal and practical challenges created by the employment of private armed guards;*
- *Responding to the humanitarian challenge of thousands of seafarers being left traumatised by the experience of being held hostage for several months (years in some cases) prior to release;*
- *Addressing the legal and moral dilemma created by the necessity for shipping companies and their insurers to make ransom payments;*
- *Addressing the challenges of promoting capacity building ashore and the reconstruction of civil society; and,*
- *Seeking to address the crisis in an appropriate but proportionate manner that recognised that it was likely to continue for several years whilst avoiding a situation in which the threat presented by pirates was regarded as 'normal' or that some of the necessarily extreme measures adopted, such as the use of armed guards, did not become institutionalised.*

Lessons Identified

Highlighting the Problem with Governments

Obtaining the necessary and appropriate level of military protection requires very high level political engagement (i.e. from senior politicians in foreign affairs and defence departments, as well transport ministries) at an early stage.

Notwithstanding the existence of clear international law with respect to the obligations of governments to respond to piracy as defined by UNCLOS, specific circumstances, such as operations in the territorial waters of coastal States or responses to attacks from bases ashore - as well as the organisation of multilateral military protection, may require high level international agreement and the adoption of several and very specific diplomatic resolutions by the UN Security Council.

National transport ministries (and shipping departments) might be encouraged to improve their liaison with other relevant government departments, and maintain contact on a regular basis, even during periods when there may be no immediate piracy or hostage taking issues to address. It is suggested that the reported

incidents of piracy or hostage taking should remain a standing item for discussion between transport/shipping and foreign/defence ministries in order to establish an early warning mechanism should future situations develop.

On the diplomatic front, it is vital to bring any emerging problems to the UN Security Council as soon as possible, particularly with the assistance of those ICS member national associations whose government holds a seat on the Security Council, as well as via the offices of the Secretary-General of the International Maritime Organization.

In order to monitor future incidents throughout the world that might escalate into future crises, it is important that the industry continues to support independent sources of monitoring of incidents and trends, especially the ICC International Maritime Bureau (IMB) which, together with industry associations such as ICS, was amongst the first to identify the pattern of increasing Somali-based attacks. Governments should also be encouraged to contribute to the operating costs of IMB. Regional counter-piracy initiatives are vital and the ReCAAP is an example of the importance of regional engagement.

Shipping companies must also continue to be encouraged to submit incident reports to IMB, as well as flag State and (where relevant) coastal States as required by IMO Guidance, after any suspected or potential incident of piracy or armed robbery. This is equally important during periods when the number of such incidents is relatively low.

Highlighting the Problem with the Media

Ensuring high level political engagement also requires the generation of high level media interest amongst mainstream national media outlets, not just the trade press.

In practice, for the most part, the world's media still operates on a national basis, responding to a national agenda. This means that national shipowners' associations, and their member national companies that may become victims of an attack, have a critical role to play in generating interest with the media, which requires time, effort and resources.

One of the challenges faced by the shipping industry, which was highlighted by the crisis, is that in many nations shipping lacks a large political constituency. Moreover, the majority of seafarers that are victims of attacks are likely to come from nations that are different to that of the nationality of the ship (both the flag State and beneficial ownership nation). This makes media coverage of piracy or hostage taking by national mainstream press a matter of crucial importance.

Experience has shown that, in the absence of their own nationals being affected, national news media are only likely to continue reporting pirate stories over a period of time if it can be shown to have a dramatic human interest that will engage the empathy of ordinary people, a task that was sadly only made easier as it became apparent that seafarers were being held hostage for very long periods of time, in appalling conditions often involving physical and mental abuse.

There is a degree of randomness and unpredictability as to when stories about piracy become a leading news story. Although the nationality of the crew may be a

factor it is not the only one. For example, the high level global coverage given to the 'Alabama Maersk' incident (now the subject of a Hollywood film), and which unusually involved US crew, also occurred at a time when the media was tiring of covering the US elections and the outbreak of the 2008 financial crisis. It is therefore important that the industry is ready to respond to exploit coverage on those occasions when it may go 'viral'.

Notwithstanding the economic and strategic arguments for addressing piracy (which are important to highlight with governments) it has become apparent that in media circles such concerns are easily overshadowed in significance by other 'competing' news stories. Coverage has been most extensive – and thus likely to be noticed by policy makers - when there is a human interest to the story, which includes giving publicity, no matter how unpleasant, to the experiences of ships' crew.

The inter-industry 'Save our Seafarers' campaign and its associated website have provided a very useful tool for messaging and for the dissemination of facts about piracy. In the event that the immediate need for the present campaign is reduced, it is suggested that the website is nevertheless maintained in order that the campaign can be reactivated quickly should future circumstances so require.

Even in periods when the number of incidents might be small, it will be important for trade associations to maintain piracy and hijackings as a topic of conversation with media contacts, in order that their support can be called upon should it be needed in the future.

Clarifying the Rights and Obligations of Sovereign States to Address Piracy

Whilst the fundamental rights and obligations to address piracy as defined by UNCLOS remain unaltered, the crisis has demonstrated the need for greater clarity over the interpretation of current international law, and greater endeavours by nations to take these laws into their domestic legislation.

The Contact Group on Piracy off the Coast of Somalia (Working Group 2) has developed a "lexicon" of interpretation and clarification of laws around piracy and its countermeasures. However, this might benefit from further work, perhaps under the auspices of a body such as the Comité Maritime International (the international association of maritime lawyers) which might also be tasked with compiling and tracking developments under flag State legislation with respect to such issues as the legality of using armed guards, the regulation of private security companies, and implementation of Rules for the Use of Force (see below). There is a need to clearly differentiate between piracy and terrorism and to take this into account in deciding how to respond.

Engaging with the Military

The structures that have been put in place to facilitate co-operation between military forces of the many different countries that have provided protection to merchant shipping are very impressive, as are the mechanisms that have been established to liaise with the shipping industry. However, they have understandably taken time to evolve.

It is therefore most important for industry organisations, when calling for action, to distinguish between the military and their political masters, especially in view of the real dangers to which military personnel have to expose themselves in order to protect shipping. It is also incumbent on industry to recognise that, regardless of the level of military protection that might be available, ship operators always have a responsibility to protect themselves (see below).

At some point in the future many of the military structures that have evolved to deal with the current crisis will no doubt be wound down and replaced with new ones. However, it will be important to ensure that military partners maintain some kind of mechanism whereby continuous information exchange can occur on threats presented by piracy, in order that a means of co-ordinated action can again be readily re-established if needed.

It is also important for military commanders to remain in dialogue with the industry about emerging threats, in order that a consistent message is presented to politicians and policy makers should this be needed, and that the military can anticipate the resources that might be required should new problems emerge.

Maintenance of Best Management Practices

While the shipping industry has long had well-established protective measures to deal with the threat of piracy and armed robbery, these required significant adaptation and detailed elaboration to address the particular and extreme situation that developed in the Indian Ocean, including the need to report to those military forces providing protection.

The widespread dissemination of the Best Management Practices to Deter Piracy in the Gulf of Aden and the Off the Coast of Somalia (the latest version of which is known as BMP4), developed by industry with advice from the military, was a major achievement noting that distribution and adoption was on a voluntary and non-statutory basis. Ownership of the BMP by the industry was one of its greatest features and an enabler in responding quickly when changes were needed. While adherence by ships to BMP4 will continue to be vital in the immediate future, a time will hopefully come when some of the requirements can be relaxed. However, BMP4 (and any subsequent revisions) should be maintained as a resource that can be adapted as might be required to address future situations. BMP4 has already been used as the model to produce Interim Guidelines for Owners, Operators and Masters for Protection against Piracy in the Gulf of Guinea Region.

Use of Armed Guards

From an initial industry position of strong opposition to the use of private armed guards (as opposed to military or police personnel), the severity of the situation has led to reluctant but widespread acceptance of their use. However, the industry regards their deployment as an exceptional response and neither normal nor permanent and a number of legal issues remain with respect to their use on the ships of many flags, especially in the event that someone was injured or killed. Nevertheless, in the event that a similar situation were to arise elsewhere, it is likely that armed guards may be seen by some as part of the response.

In view of the likely future use of armed guards in some circumstances it will be important for the international community to finalise the development of Rules for the

Use of Force (RUF) by the International Organization for Standardization (ISO), alongside the new ISO standards for the regulation of Private Maritime Security Companies which were adopted in 2012 and subsequently welcomed by IMO.

Further work is still needed with respect to a uniform approach by flag States and coastal States towards the legality of the use of private armed guards on board merchant ships. Regardless of the prevailing or future level of threat from piracy, and the ambivalent attitude of many shipowners with respect to the use of armed guards, it is suggested that flag States should finalise outstanding work and policies on these issues.

It is also of the utmost importance that coastal States fully comply with UNCLOS especially regarding the presence of private arms guards within their EEZ, provided that arms are secured within territorial waters and ports.

Capture and Prosecution of Suspected Pirates

There are numerous challenges that hindered arrest and prosecution of suspected pirates such as the provision of adequate evidence at sea and lack of clarity on jurisdiction both at sea and for legal process ashore. Governments need to consider how to find enduring solutions for these problems.

The Humanitarian Challenge

Seafarers who are taken hostage suffer very considerable trauma. Some have lost their lives, many are deeply traumatised, and many will never go back to sea. The industry should therefore continue to support humanitarian response programmes so long as they continue to be needed by those most affected – the seafarers. Governments should establish, with industry, procedures to ensure that the humanitarian impact in future incidents is minimised.

Strong and consistent liaison work between representatives of employers and trade union representatives for seafarers provides a firm basis for identifying, selecting and pursuing common objectives in the suppression of piracy and in enabling joint approaches to other stakeholders.

Shore-based strengthening and reconstruction of civil society

Capacity building and shore based efforts to rebuild civil society are crucial to a successful outcome and piracy has less chance of success where societal structures function. The local economy must be sufficiently functional to provide potential criminals with alternative employment options as piracy seems to develop where administrative structures are ineffectual or non-existent. Police, courts and coast guards are all necessary to effective counter piracy activity. Industry has contributed to civil society with various projects, but that can only be a small contribution to what will generally be a difficult, but indispensable effort.

Ransom Payments

The payment of ransoms to pirates and criminal gangs to secure the release of seafarers has been a controversial issue. However, it will be important for governments to continue to recognise the necessity for such payments by the

shipping industry as they are the only means to secure the release of seafarers held hostage. Ransom payment remains an element of the company's duty of care and of the humanitarian response in support of those unwittingly caught up in acts of piracy and is a factor in reducing what can otherwise be protracted periods in captivity.

Conclusion: Appropriate and Proportionate Responses to Future Crises

It is hoped that all stakeholders in counter-piracy operations whether they be political, military, shipping and security industries or media will bear in mind the lessons identified in dealing with the issue of piracy in the Indian Ocean. The core lesson of responding to illegality robustly and without delay will be more easily delivered next time if these basic lessons are kept readily to hand.

July 2013

