

The piracy effect

Piracy attack levels seem to be nearing a critical point – with the potential for dramatic impact on shipping routes and markets. Barry Barker looks at the implications

Pirate attacks on shipping levelled off in late 2009 after a steady build-up that lasted more than a year. That period included the ransom payments on the first VLCC (Vela's *Sirius Star*) and US forces intervening in the *Maersk Alabama* incident.

But after regrouping in 2010, the pirates are now better organised – and the game has changed. Most notably, levels of violence have ratcheted upward. The ongoing *Beluga Nomination* incident reveals much about what's different.

First, pirate violence resulted in seafarer fatalities in connection with failed efforts to rescue the project carrier: it's no longer simply an armed robbery or extortion game. The onboard firefight was reportedly precipitated by the Seychelles coastguard's rescue attempts, after the pirates used a cutting torch to open the crew's safe area – itself a sign of profes-

sionalism rather than opportunism.

Responses by certain navies – outside the EU and NATO patrols, which have strict rules of engagement – have also changed. Other forces besides the Seychelles forces have gone into offensive mode. The Greek-owned VLCC *Chios* was rescued by the Indian navy, which then captured the pirate vessel, a fishing boat. The Korean-owned (Maltese-registered) chemical tanker *Samho Jewelry* was rescued by a South Korean naval ship. An earlier hijacking on a *Samho VLCC*, in 2010, resulted in a record \$9.5M ransom payment.

The attack on the German-owned vessel shows how geography and logistics have moved the battlefield well beyond the Gulf of Aden. The pirates' version of hub-and-spoke logistics is to employ larger mother-ships. It's no longer about fishing boats and skiffs: the *Beluga* vessel's attackers worked from the *York*, a 5,000dwt LPG tanker. With deepsea-capable mother-ships, attacks have occurred well out in the Indian Ocean. The *Chios* attack was in Indian waters, for example. The Aframax *Savina Caylin* was attacked nearly 700nm east of Socotra and was subsequently taken.

There has also been a shift in the target vessels, leaving some analysts wondering whether the pirates' calculus suggested that \$100/barrel of oil equals bigger ransoms. In addition to the Vafias-owned *Chios*, another Greek VLCC, *Irene SL*, was taken (350nm off Muscat).

Ransoms, an accepted part of the landscape, have reportedly grown in size. Think-tank Oceans Beyond Piracy reported a \$5.4M average booty in 2010, boosted by the Samho payment.

New York lawyer Bruce Paulsen, partner at Seward & Kissel, told *Fairplay*: "In an annex to an April 2010 Executive Order from the White House, two individuals in Somalia (on a longer list of terrorists and terrorist organisations) were linked to piracy. Where there is a US connection including, for example, a US insurer, the Office of Foreign Assets Control within the US Treasury looks to see that ransom payments are not made to either of the two pirates on the list. Otherwise, they are not prohibited."

In the UK Commercial Court, the recent Masefield ruling reaffirmed an earlier ruling that ransom payments were not contrary to public policy.

The question now becomes one of comparing piracy's cost to that of overall trade. As numbers mount, the costs grow. Oceans Beyond Piracy puts the annual cost of piracy, including \$238M of ransoms paid in 2010, at \$7-12Bn. This includes increased costs to owners from longer voyages and increased insurances, but also trade impacts and the costs of navies and guards. In the bigger picture, these numbers could still be viewed as a rounding error – WTO data shows 2008 world exports to have been worth \$15.8Trn.

The numbers may belie other 'game changers' around the corner. Security of oil supply is an attention grabber. Joe Angelo, an American ex-coast guard now at the helm of Intertanko, said pointedly that oil flows to the West, and beyond, could be disrupted by pirate activities in the Indian Ocean. Analysts at Poten & Partners said in a recent report that freight and pipeline economics, in a low market, actually favour routeings around the Cape, with piracy avoidance adding three days to the normal 34-day Gulf/Med Cape run. With mother-ships there's less 'avoidance', but attacks on laden VLCCs may be more likely to waken sleeping giants.

One way or another, industry's likely

responses will result in longer voyages. In the Gulf of Aden, designated transit lanes defended by a naval presence have pushed the pirates further offshore. One prominent executive, MSC's Gianluigi Aponte, has suggested that such lanes, better monitored by naval forces, might be marked over the broader Indian Ocean. Such lanes are not without a cost. Drewry consultant Neil Dekker said large deviations, such as a complete diversion around the Cape of Good Hope, would have the biggest impact on Asia-Europe container loops, increasing voyage times by 6.5 days on a notional Hong Kong-Rotterdam voyage.

Technology's role

Technology could play a role in advancing Aponte's very sensible concept (also proffered by Beluga's Niels Stolberg), where critics have pointed out the difficulties in mustering limited naval assets quickly enough in a vast ocean. Pole Star Global's Julian Longson told *Fairplay*: "Our SSRS product, which links a ship alert directly to naval authorities, allows an immediate response when the button is pushed."

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Longson points out that ships are already required to carry the ship security alerting system (SSAS) under the ISPS code. He explained: "Quick response time is critical. The SSRS supports all best management principles by allowing the master to advise navies before the ship is under close attack."

Neil Quartaro, a New York attorney in Watson, Farley & Williams' litigation group, told *Fairplay*: "Many flag states will authorise properly drafted ship security plans that involve armed security details, which have been uniformly successful in deterring pirate boardings."

But he looks for systemic solutions as well. "In my opinion, a comprehensive and co-ordinated approach from the entire

industry and all the stakeholders is needed," he added.

Quartaro, who lectures at Columbia University on international law, said the approach would need to include the judicious use of force, restrictions on the circumstances in which insurers and P&I clubs offer assistance to encourage use of best practices in avoiding attacks, and more proactive involvement by industry.

Although, legally, pirates are distinct from terrorists, the process of collective response to the 11 September attacks in New York may provide inspiration to those wanting to solve the piracy problem. With extreme urging from the United States, the normally very deliberative IMO was able to move quickly, passing the ISPS in 15 months. It came into force in mid-2004 – record time for the IMO. Messrs Angelo, Aponte, Kopernicki and Stolberg notwithstanding, there is nobody taking up the cudgels in an actionable way with international bodies that have teeth.

Piracy is now mainstream and real solutions will involve many interests, which may come from beyond the maritime

world. The point was driven home by Angeliki Frangou, CEO of three listed Navios entities, one of which saw its *Navios Apollon* held for 60 days in late 2009 and early 2010. Frangou told *Fairplay*: "The costs have risen... It's a tax on consumers all over the world. At some point, if the problem is to be stopped, there will need to be the result of a much more co-ordinated effort than we've seen."

Reconciling the many opinions is as great a challenge as addressing the problem of piracy itself, and only when supply of oil is choked, leading to sustained price rises, will greater urgency take hold. Already oil suppliers, traders and consumers are expressing their nervousness. The game has indeed changed. ■