

# LE RENDEZ-VOUS DE L'ASSURANCE TRANSPORTS

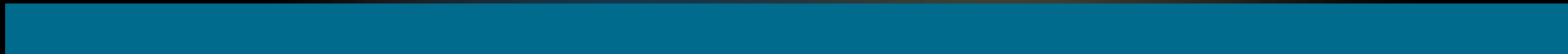
*Cannes*  
*4<sup>th</sup> and 5<sup>th</sup> May 2010*



LE  
RENDEZ-VOUS  
DE CANNES

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a presentation by  
**HILL DICKINSON**



**Piracy and the use of arms**  
by  
**Rhys Clift,**  
**Partner Hill Dickinson LLP**

## Outline: the use of arms

- A few points:
  - Current position
  - Recommendations to ship owners
  - Some difficult questions

## Current position: nutshell

- Huge co-operative naval effort in GOA
- IRTC somewhat effective in prevention
- But:
  - Piracy and hijack is not (cannot be?) eliminated at sea
  - Spread of attacks North, East and South; huge area
  - Capture and prosecution patchy/ineffective
  - Why?

## Current position: prosecution

- **Preference:** prosecute locally (Kenya). Kenya cannot cope (backlog, inadequate resources etc)
- **Reality:** prosecution burdensome and unwelcome to Navies and Ship owners (time, witnesses, translators, crew, officers, due process, operational priorities)
- **Result:** Some naval States favour prosecution, some favour concentration on prevention and disruption only

## Current position: sad reality

- Lack of political will?
- Majority (when caught) detained, disarmed but released
- Majority will never face trial
- Majority will therefore return to the “trade”
- The dangers of piracy and risk of capture massively outweighed by prospects and rewards of success.
- Hence (increasing) calls to use armed guards



## Current position: a military view

- *“The area is enormous..we just do not have enough [naval] assets to cover every place in the Indian Ocean as far away as the Seychelles..**there has got to be security on these ships in my opinion..those security detachments.. on some large commercial ships have been very effective....we [cannot] give them a 100percent guarantee that we can protect them, nor should we..”***
- US Admiral Mark Fitzgerald, Commander US Forces Europe and Africa, April 2010



## Recommendations to Shipowners

- IMO Maritime Safety Committee
- MSC.1/ Circ 1334: ***Piracy and Armed Robbery Against Ships*** (June 2009)
- Provides guidance to shipowners, masters, crews to prevent or suppress pirate attacks.
- Detailed (very) recommendations on cash, ship plans, routing, anchoring, watch keeping, lighting, secure areas, alarms, flares, manoeuvring, passive measures (water hoses, netting, wire, electric fencing, acoustic devices)

## Recommendations to Ship owners

- **But IMO say:**
- **Firearms:** beware laws of applicable States (territorial sea/ports) ..”**carrying firearms may pose and even greater danger if the ship is carrying flammable cargo or similar..dangerous goods**”
- **Arming crew:** strongly discouraged. Two main risks:
  - Escalation of violence and exposure to legal risks
- **Armed security personnel:** hazard of escalation of violence and other risks ; matter for Flag State and owners; beware port and coastal state laws

## Recommendations to Shipowners

- **Best Management Practice:**, issued February, reissued August 2009
- Developed by Intertanko, ICS, OCIMF, BIMCO, SIGTTO, Intercargo, IGP&I, CLIA, IUMI, JWC, IMB, ITF
- Interesting read. Sets out detailed almost military style planning/recommendations
- Shows not all ships are equal. Those at greatest threat:
  - Low speed, Low freeboard, Inadequate planning and procedures, Visibly low state of alert, Evident slow response
  - Few successful attacks at night; dawn and dusk greatest risk; few successful attacks over 15 knots.

## Practical Guidance

- **Recommends** (among other things):
  - Use of water cannon, razor wire, dummies, “passive defence equipment”
  - Use of Internationally Recommended Transit Corridor
  - If boarded offer no resistance; keep calm and cooperate with pirates

## Difficult questions: UK Position

- Opposed to the use of armed guards:
  - MGN 298 2005; detailed recommendations, very much like MSC.1/Circ 1334 in form and content
  - Firearms “**strongly discouraged**” para 6.15
  - Firearms Act 1968, prohibits
  - Firearms (Amendment) Acts 1997, requires handing in of weapons or disposal by 1/2/1998
  - MCGA Notice MSN 1704 1998 (re Firearms Acts)
  - Nutshell: rely on navies for protection; no arms/ armed guards

## Difficult issues: choice and control

- **Who is authorised/suitable to be an armed guard?**
  - No vetting system; due diligence (CVs?, background checks)
- **Who decides what armed guards will or will not do?**
  - Erosion of the Masters ultimate discretion/control? (breach of SOLAS Art 34; safety of life..)
- **When are armed guards permitted to use them, to threaten or to kill?**
  - Need for ROE, Flag State approval

## Difficult issues: coverage

- **Plainly wise to inform all insurers** (Hull, War, P&I,(K&R?))
  - Potential problems of disclosure (for new policies). Increased hazard, material fact?
- **Possible illegality arguments** where Flag State prohibits carrying/use of arms? Even if insurers consent? Section 41 MIA 1906:
  - “There is an implied warranty that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure shall be carried out in a lawful manner”



## Difficult issues: coverage

- Protection & Indemnity cover
  - no exclusion of armed guards, no prohibition
  - but most Club Rules exclude losses arising out of or consequent upon.. **“performing any voyage or being employed in any trade which in the opinion of the Directors in imprudent, unsafe, unduly hazardous or improper”**
  - Is this the effect of carriage of arms?

## Conclusion

- A long list of relevant laws, regulations, Conventions, Resolutions permit disruption and prevention of piracy by States
- Huge cooperative naval venture underway off Somalia
- Little progress thus far with prosecutions and convictions; “catch and release” is cause of frustration
- Use of (lethal) military force risks enflaming situation
- Use of private force likewise; widely discouraged officially
- Use of arms esp armed guards may lead to coverage difficulties

## Conclusion : Kipling, deterrence or appeasement?

*It is always a temptation to a rich and lazy nation,  
To puff and look important and to say:  
"Though we know we should defeat you, we have  
not the time to meet you.  
We will therefore pay you cash to go away."*

*And that is called paying the Dane-geld;  
But we've proved it again and again,  
That if once you have paid him the Dane-geld  
You never get rid of the Dane.*

For "Dane" read "pirate".

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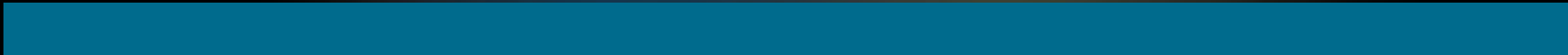
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