

AIDA Paris 2010 World Congress
Working Party Transport Insurance
Questionnaire/discussion paper

1. Definition of Piracy :

1.1. Sources in the national law of your country ?

- criminal law
- insurance law
- insurance contracts market practice

1.2. International implementation/inspiration ?

- Convention on the High Seas 1958 (art. 15)
- UNCLOS 1982 (art. 101)
- (Draft) Guidelines for National Legislation on Maritime Criminal Act (CMI 2007)
- Model National Law on Acts of Piracy and Maritime Violence (CMI 2001)
- 1988 SUA Convention and 2005 Protocols
- London Institute Clauses (Hull, Cargo)

1.3. Qualification Criteria

1.3.1. Initiative/motive : distinction with ?

- war
- state action (through maritime mercenaries)
- terrorism (political motives as opposed to pursuit of private financial gain)
- barratry and mutiny

1.3.2. Location ?

- high seas
- territorial waters
- from the shore

1.3.3. Subject matter ?

- vessels
- off shore installations

1.3.4. Goal pursued ?

- pilferage of moveable assets : cargo, equipment, victuals, cash, personal belongings
- theft of vessel
- ransom (through hijacking or sea-jacking of vessel and cargo and taking hostages by kidnapping of crew/passengers)

2. Prevention and Repression of Piracy

2.1. Preventive and countermeasures by public authorities

Policing and enforcement actions ?

- exchange and sharing of information

- surveillance/monitoring/patrolling
- organization of safe corridors
- military escorts by naval warships on site
- other

Initiative ?

- national initiative of your country
- participation by your country in supranational initiatives

2.2. Precautionary measures by vessel owners, carriers, insurers

- on board risk management
- early warning look-out and outmanoeuvring
- travel in convoys
- selective corridor routing
- blacked out operations (without navigating lights) to avoid spotting by pirates
- arming the merchant vessel or manning it with on-board private (armed) security guards
- technical means (early detection systems, electric fence and barbed/razor wire on the ship's rail, fire hose or high pressure water jet, dissuasion by posting of dummies on deck, maintaining high travel speed)
- special crew training
- other

2.3. Repression in your country :

- special criminal qualification of an act of piracy
- universal jurisdiction for detention and criminal prosecution of pirates on the high seas replacing the territoriality principle ?
- did your country ratify the Convention for the Suppression of Unlawful Acts against Safety of Maritime Navigation (SUA) 1988 and the 2005 Protocols ?
- did your country take into account the 2001 CMI Model law and/or the 2007 (Draft) Guidelines for National Legislation on Maritime Criminal Acts ?

3. Insurance Aspects of Piracy

3.1. Available cover :

3.1.1. Is piracy in marine Hull&Machinery and marine cargo policies generally :

- covered or excluded as a regular named marine peril
- if excluded, insurable through a special or optional clause or contract
- if insurable, against increased premium, subject to restrictions (e.g. excluding certain areas) and observance of special preventive measures ?
- assimilated with a war and/or terrorism peril ?

3.1.2. Are special Kidnap and Ransom (K&R) covers, loss of life and bodily injury covers available for the persons on board. Is ransom payment valid in your country or is there a legal ban on it ?

3.1.3. Is property and third party liability (shipowner's or charterer's third party liability and a variety of other interests, including workmen's compensation for the crew on board) cover for

the piracy peril available from P&I Clubs (see e.g. “weapons of war¹” and “or other similar weapons” exclusions) ?

3.1.4. Is indirect (consequential) or pure immaterial damage (e.g. loss of hire (LoH) cover available ?

3.2. Effect of lack of (imposed) precautionary measures (i.a. crew training) on piracy cover ?
Loss of cover on the ground of :

- breach of express warranty
- breach of implied warranty of seaworthiness
- gross negligence

3.3. What are the possible insurance sources to recover the ransom payment and associated (negotiation, consultancy, hand over) expenses (as opposed to material loss) :

- besides on the basis of an express K&R policy
- property (H&M, cargo) and third party liability insurers :
 - under the qualification of sue and labour expenses (cost to avert imminent danger) ?
 - or under another qualification ?
 - on an “ex gratia” payment basis ? What would be the effect of an “ex gratia” payment on the reinsurance cover ?
 - through discretionary payment on the basis of the “omnibus rules” in P&I Clubs ?

3.4. Apportionment of the cost burden on the basis of General Average ?

Can the cost burden of ransom and associated expenses be shared among the interests concerned, members of the risk-bearing community on the basis of General Average Contribution Rules ?

Is the (key) target of the pirate action threat (viz. the crew, the vessel or the cargo) relevant in the apportionment of this burden of the loss ?

¹ E.g. mines, torpedoes, bombs, rockets, shells, explosives.