





Current Group Issues

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“Piracy, the use of coercive trade sanctions, and pollution issues continued to dominate the international scene.”

International sanctions

The 2010/11 policy year has been marked by attempts by governments and international organisations, in particular the United Nations, the United States and the European Union, to bring political and economic pressure to bear on a number of countries around the world through the use of sanctions. Perhaps the most significant result of these activities in the last policy year was the impact on the Club's Iranian business.

The UN Security Council Resolution 1929 of 9th June 2010, laid down a number of restrictive measures against Iran which were adopted by various decisions and regulations of the EU, culminating in EU Regulation 961 published on 27th October 2010. This regulation imposed restrictions on trade, finance and the provision of technical assistance to Iran or Iranian entities as well as a ban on insurance. As a consequence the Club's Board decided with some regret that renewal terms should not be offered to the Club's remaining Iranian Members, thus in the process severing a relationship with NITC which had lasted over 30 years.

2010 also saw the introduction of the US Act CISADA – the Comprehensive Iran Sanctions Accountability and Divestment Act – which came into force on 1st July 2010. This imposes new trade sanctions and prohibits the knowing importation or delivery of refined petroleum products (RPP) into or to Iran, as well as providing to Iran goods, services, technology and information facilitating the maintenance or expansion of Iran's domestic production of RPP, provided such goods or services meet the value thresholds stipulated in the Act. Sanctionable activities include the provision of insurance or shipping services which would contravene the prohibitions in the Act. Sanctions under CISADA are directed towards non-US companies and include the denial of access

to US financial markets and banking transactions. However, the Act provides that sanctions are not to be imposed on insurers/reinsurers exercising due diligence in establishing and enforcing official policies, procedures and controls to ensure that insurance is not provided for a prohibited activity.

Against this legislative background, and the risk that other governments, including the UK, could take steps to implement further sanctions, Steamship, along with some other Clubs in the International Group, introduced Rule changes for the 2010 policy year. These changes aimed to protect the Club itself from becoming a sanctions target as a result of actions taken by States or other international organisations because of the activities of any of the Club's Members, or the trades in which Members' vessels are employed.

The International Group Clubs have also agreed to the introduction into the 2011 Pooling Agreement of a sanctions exclusion, to avoid an endorsement on the General Excess Loss (GXL) contract which market reinsurers would otherwise insist upon. The exclusion will effectively prevent pooling where liability is not recovered under the Club's GXL contract, because payment would expose the reinsurers to any sanction under UN Resolutions, or the trade or economic sanctions laws or regulations of the EU, the UK or the USA.

Given the proliferation of sanctions measures a number of circulars and Risk Alerts have been issued to Members, for example pointing out the impact on the Club's ability to provide security in favour of Iranian interests, in light of the restrictions on fund transfers to and from Iran contained in EU Regulation 961. A section of the Club website has been dedicated as a central repository where Members can find updates on sanctions measures as they impact on shipping and insurance activities and with links to the consolidated lists of asset-freeze and sanctions targets maintained by the United States Office of Foreign Asset Control (OFAC) and the United Kingdom Treasury (HMT).

New sanctions measures against Iran continue to be introduced. Hong Kong has recently joined the growing number of States which have enacted their own sanctions measures to counter Iran's alleged nuclear-proliferation and terrorist financing activities and in Europe, further regulations have been approved imposing a new asset-freezing regime, complementing that in EU Regulation 961 2010, on certain persons responsible for serious human rights violations in Iran.

There is every sign that the example of Iran will be followed in the present policy year in relation to other nations which have become targets for international censure, including the Ivory Coast, Libya, Egypt and, more recently, Syria. Since January 2011, a series of UN Resolutions, EU Regulations and US Executive Orders have imposed arms embargoes and asset-freezing measures on persons and entities who are considered to be carrying out acts of violent repression and/or obstructing democracy and economic development in those countries.

Piracy off Somalia

The threat to commercial shipping and seafarers posed by the activities of Somali pirates shows no sign of being eliminated. Attacks continue to occur with great frequency over an extended geographical area. The International Chamber of Shipping-International Maritime Bureau (ICC-IMB) statistics show that during 2010 there were 219 incidents attributable to Somali pirates, a slight increase on the 217 incidents recorded in 2009. The attacks in 2010 resulted in 1,016 seafarers being taken hostage, 13 injured, and eight killed. In the first quarter of 2011 there have been a further 97 attacks on ships by Somali pirates that resulted in 16 vessels being hijacked, 299 seafarers taken hostage, three injured and seven killed.

The attacks and hijacks in 2010 were widely spread and extended from the Gulf of Aden along the coasts of Yemen and Oman and well towards India to a longitude of 72 degrees east. There were attacks over a vast area of the Indian Ocean, extending south to the Maldives, the Seychelles, and the Mozambique Channel. On the western fringe of the Indian Ocean there was a concentration of attacks off the coasts of Tanzania and Kenya.

Review of the ICC-IMB's piracy map shows that the focus of activity in the first quarter of 2011 has moved from the Gulf of Aden to a fan shaped area in the Arabian Sea further to the east as the pirates attempt to distance their operations from the naval forces operating in the Gulf of Aden. Pirate groups are only able to operate at such considerable distances from the Somali coast, through their use of mother-ships from which attacks are launched. Whilst the pirates have always used captured fishing vessels and dhows for this purpose, there have been instances where much larger captured merchant vessels have been used as mother-ships which significantly increases risk for those vessels, their cargoes and crews.



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Towards the end of 2010, there were several instances where the use of a citadel was effective in causing pirates to abandon vessels that had been boarded, as they were thereby prevented from gaining control of the ship and its crew. However, the pirates continually adapt their tactics in order to preserve the income stream generated by the hijacking of vessels, and more recent events have demonstrated that there is now a determination to locate and breach citadels.

The naval forces involved in counter-piracy operations have expressed concern about perceptions that the use of a citadel will result in a military response. The military will not consider boarding a vessel unless the full crew is secure in the citadel, there is self-contained two-way communication, and the pirates do not have access to the vessel's means of propulsion. Further, the Baltic and International Maritime Council (BIMCO) does not advocate the use of a citadel unless it is established that naval resources can be on scene within a few hours.

Attacks that have occurred in the first few months of 2011 have also shown alarming signs of escalating violence, with an associated increase in risk to seafarers. Another very disturbing incident has recently occurred where, following a vessel's release after the payment of a ransom, crew have been separated from the ship and retained by pirates. In the particular case where this occurred the crew concerned are all Indian nationals and the pirates' action is understood to be a response to recent robust action by the Indian navy that has resulted in the capture of around 100 pirates. The move therefore may be more politically motivated than is the case generally, but nonetheless this is yet another unwelcome and unpleasant development.

In view of the continuing risk and the escalating violence, there has been an understandable desire by shipowners and their crews to place armed guards onboard ships. The fact that no ship that has carried armed guards has been hijacked so far provides an understandable impetus to the adoption of this defensive measure. Consequently, the Managers have seen an increase recently in the number of contracts that have been submitted for review by Members wishing to employ armed security.

The use of armed guards remains a controversial issue. The general view of the various industry bodies is that their use should not be encouraged, but there has been a shift towards a more neutral stance given the understandable frustration within the industry that arises from the absence of any solution to the piracy menace. The most recently stated policy of the International Chamber of Shipping (ICS) is that in the exceptional circumstances where armed guards are deemed to be required, then these should be drawn from flag state military resources. Where this cannot be done, the company should seek flag state approval for a private security company to be employed and should conduct a stringent process of due diligence prior to engagement. Checks also need to be made with the port states that will be visited during the vessel's voyage to determine their position and requirements in relation to the carriage of arms. There have been recent difficulties in South Africa associated with failures to apply for permits for the carriage of arms with the necessary 21 days' notice.

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There is also understandable frustration within the shipping industry about the low numbers of pirates who are prosecuted for their crimes, and the number who are released at sea after being apprehended by patrolling naval forces, leaving them free to return to commit further acts of piracy. It is typically the case that apprehended pirates are released either because of a perceived lack of evidence to support a successful prosecution, or the failure of the state of the naval force holding the pirates to find a state, either in the region or elsewhere, that will agree to accept the transfer of the suspects for trial. There have however been successful prosecutions, predominantly in regional states such as Kenya, Seychelles, Maldives, Yemen, and Somalia itself. A report issued by the UN Security Council in July 2010 identified 528 regional prosecutions, and around 40 prosecutions taking place elsewhere such as in the Netherlands, the USA, France, Spain and Germany. In contrast the naval forces released around 700 apprehended suspects in the first six months of 2010.

A report issued by the One Earth Future Foundation in 2010 attempted to quantify the economic costs of Somali piracy. It estimated that ransoms in 2009 and 2010 totalled US\$ 415 million and that the ancillary costs associated with ransom negotiations could be similar in amount. The overall cost of piracy was estimated to range from US\$ 7 billion to US\$ 12 billion per year. However, far more important is the immeasurable cost that Somali piracy has exacted upon the many thousands of innocent seafarers who face this menace on a daily basis, and upon those whose lives have been affected by the increasingly prolonged loss of liberty and maltreatment at the hands of pirates following the seizure of a vessel. The Intertanko initiative, "Save Our Seafarers" has a particular objective of raising awareness of the human cost of piracy, and has wide support from industry bodies, including the International Group.

The persistence and geographical spread of the threat posed by Somali piracy, and the fact that there can never be sufficient naval resources to provide close protection to all merchant vessels operating in the high risk area, means that self-protection measures are of vital importance. In this respect compliance with the BMP Guidelines is imperative. The guidelines are regularly reviewed and revised, and the latest version, BMP3 was issued in June 2010, A further version, BMP4 is anticipated during the course of 2011. The value of the guidance provided by BMP is recognised and endorsed by the naval forces involved in counter-piracy operations. It is reported that no ship that has fully complied with all of the recommendations of BMP has been successfully hijacked, and conversely those that have been hijacked have not complied with BMP, either fully or at all. Data provided by EU NAVFOR derived from both objective and subjective measurements indicates a surprisingly low level of BMP compliance notwithstanding the prominence of the piracy issue. In an effort to encourage more widespread and effective BMP compliance, the Managers have been working on the production of a loss prevention DVD on the subject of piracy which is due to be completed and distributed to Members in the summer of 2011.

The International Group is widely engaged on piracy with the coordinators of the naval counter-piracy operations and with the two UN working groups addressing military and operational coordination, and shipping industry self-awareness and related capabilities. The Managers are involved with these issues through representation on the International Group Maritime Security Sub-Committee.

Deepwater Horizon

On 20th April 2010, a gas leak on a well being drilled by Transocean using the mobile offshore drilling unit (MODU) "Deepwater Horizon" on behalf of BP ignited and exploded, resulting in the sinking of the rig and the loss of 11 lives. As a result of the incident, the well which was located in the Macondo Prospect field, just over 100 nautical miles offshore in the Gulf of Mexico in a water depth of one mile, spilled oil until it was finally capped in July resulting in pollution of nearly five million barrels of oil – the largest marine oil spill in history.

Following the incident, there was an expectation that the US authorities would introduce new and wide-ranging legislation to minimise the risk of such spills in the future. Accordingly, the International Group, in concert with other sectors of the marine transport industry, spent a substantial amount of time explaining to the US authorities the need to differentiate between the offshore oil and the marine transportation industries. It was pointed out that the marine transportation sector has been subject to extensive regulation since the "Exxon Valdez" spill in 1989 and has a very good safety record. It is hoped and anticipated that, as a result of these interventions, any new legislation will be limited to the offshore industry and that the effect on the marine transportation sector will be limited to a periodic review of and increases in pollution limits.

Chinese pollution regulations

It was previously reported that new legislation governing the prevention and control of marine pollution from ships came into force in China on 1st March 2010. This legislation applies to all ships, except for those of less than 1,000 GT and not carrying oil cargo, and seeks to implement the insurance provisions of the 1992 International Convention on Civil Liability for Oil Pollution Damage (1992 CLC), which China ratified some time ago, and the International Convention on Civil Liability for Bunker Oil Pollution Damage (2001 Bunkers Convention), which they ratified in 2008.

China has not ratified the International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage (1992 IOPC Fund) but it is establishing its own domestic pollution compensation fund on the basis of a levy on oil imports.

However, the legislation has given rise to three fairly distinct sets of regulation as follows:

1. The Regulations on the Administration of Civil Liability Insurance for Ship Pollution Damage – these came into force in October 2010 and require P&I Clubs to be approved by the Maritime Safety Agency (MSA) before they are able to issue CLC and Bunker certificates to Chinese registered ships.
2. The Regulations on the Emergency Prevention and Disposal of Marine Pollution from Ships – these require all ships to be responsible for cleaning up any pollution caused by them and, to this end, all ships carrying pollution or hazardous cargoes in bulk and all other ships of 10,000 GT and above must conclude a contract with an MSA approved pollution clean-up response company (OSRO) before entering into a Chinese port. These regulations will now come into force on 1st June 2011 but are unlikely to be enforced until year end.
3. The Regulations on Administration of the Prevention and Control of Marine Environment Pollution Caused by Ships and their Relevant Operations (the so-called "sludge regulations") – these came into force on 1st February 2011 and require all vessels to discharge all their waste residues (primarily sludge) at least once at a PRC port whenever on a voyage to PRC. Moreover, the vessel must first obtain a permit from the MSA and must contract with an MSA approved contractor to carry out this operation.