

June 2009

Ratcheting down the risk of piracy

Dennis L. Bryant

In light of two recent piratical attacks on US-flag merchant vessels in waters of the Indian Ocean off Somalia, and continuing attacks on merchant vessels there and in other waters worldwide, the US Coast Guard, on May 11, 2009, issued a revised version of its Maritime Security Directive 104-6. The directive provides US-flag vessels with specific, risk-based measures to take in order to reduce the risk of piracy. The directive as a whole is classified as Sensitive Security Information (SSI), so it will not be publicly released. Many of the measures addressed in the directive, though, are derived from common sense and industry-wide best management practices.

Congress has gotten involved. The Senate held three hearings on piracy in early May. There have been two hearings in the House. The most recent, held on May 20 by the Subcommittee on Coast Guard and Maritime Transportation of the House Committee on Transportation and Infrastructure, was the most dramatic, with the Chairman, Representative Elijah E. Cummings (D-MD), warning the Department of Defense and the Coast Guard of the need to act swiftly and threatening to introduce legislation mandating placement of military guards on US-flag vessels transiting high-risk waters if those services did not come up with a satisfactory approach to better protect US merchant vessels.

While the maritime industry has been concerned about the threat of piracy and armed robbery against ships for over ten years, the issue only gained political traction recently. Piracy in waters of the Malacca Straits was largely ignored, as was armed robbery in waters off Nigeria and South America. Even the rise of piracy off Somalia was initially swept under the carpet. Four events changed the public and particularly the political landscape:

1. The seizure of the Ukrainian freighter *Faina* on 25 September 2008 off the coast of Somalia while carrying a cargo of surplus Russian tanks and other weapons for discharge in Mombasa, Kenya;
2. The seizure of the very large crude carrier *Sirius Star* on 17 November 2008 off the Seychelles Islands carrying a cargo of 2 million barrels of crude oil;

E-mail

dennis.l.bryant@gmail.com

Internet

<http://brymar-consulting.com/>

Maritime Reporter & Engineering News

<http://marinelink.com/en-US/magazines/Archive.aspx?MID=3>

3. The attempted seizure of the US-flag container ship *Maersk Alabama* off the coast of Somalia on April 8; and
4. The unsuccessful attack on the US-flag cargo ship *Liberty Sun* by pirates off the coast of Somalia on April 14.

Reports indicate the ransoms of \$3.2 million and \$3 million respectively were paid for release of the *Faina* and *Sirius Star* respectively. The circumstances surrounding the *Maersk Alabama*, the hostage-taking involving its master Richard Phillips, and the deaths of three of the four pirates are too well-known to require repeating here. The *Liberty Sun* incident was caught on video.

Naval patrols

Governments worldwide resisted implementation of counter-piracy naval patrols, which have not been used since the early 1800's. As a result of the recent uptick in piratical attacks, though, there has been a dramatic change. Warships from various nations (with helicopters and patrol aircraft) are finally patrolling off the coast of Somalia and in the Gulf of Aden. International cooperation in counter-piracy measures is increasing. Attempts to bolster the government of Somalia have commenced. Negotiations with neighboring countries (primarily Kenya) are developing venues where suspected pirates may be brought to trial. Attempts are even being made to freeze pirate assets. I guess this means that their ATM cards will no longer work.

The maritime industry had been pressing for measures such as these for some time. It took some high-visibility seizures and attempted seizures to capture the attention of the mass media, the public, and the politicians. Only time will tell how successful these measures will be in actually suppressing piracy. More assets and greatly increased cooperation between the various naval forces are vital.

The rule of law

A significant gap in the counter-piracy effort continues to be prosecution. Individuals, particularly if poor and disenfranchised, will continue to engage in piracy so long as it is profitable and has few consequences. Piracy off the Horn of Africa has clearly been profitable, with hundreds of millions of dollars having been paid in ransom over the past few years. This year, approximately a dozen suspected pirates have been killed in conflicts with various naval patrols in the area. This seems to have been seen by the pirates as just another cost of doing business – at least so far.

The missing element is the rule of law. Piracy is an international crime. In fact, it was the first internationally-recognized crime. There have been several practical problems though. Piracy has been off the agenda for so long that many nations do not have statutes directly addressing the crime. Some nations have narrowly defined the crime so that it only applies to

piratical attacks against ships flying their flag. Other nations just don't want to be bothered with all of the difficulties involved with bringing the suspects to court thousands of miles from the scene of the attack and then marshalling all the witnesses and evidence that would be required to conduct a trial. Several nations have even offered the lame excuse that, if a suspect was brought to justice in a distant nation, the pirate upon eventual release from jail would claim asylum, asserting that he would be subjected to inhumane treatment if returned to Somalia.

No one ever said that fighting piracy would be easy, but it is one of the obligations of nationhood. Each country has a duty to bring its criminal statutes and judicial procedures up to date to effectively address this international crime. It will only get worse if ignored.

Self defense and risk reduction

The maritime industry has been lax, though, in particular regards. For the most part, it has failed to adopt prudent self-defense measures. While I do not advocate the carriage or use of lethal weapons on commercial vessels, there are a variety of other options. First, the use of lookouts must be increased. There is no reason that pirates should be able to board a ship undetected in high-risk waters such as the Gulf of Aden. If this requires the ship to carry more than the usual number of crew, so be it. Second, the ship should transit the high-risk area at the highest reasonable speed. Third, the ship should check in with the naval forces in the area. They can't protect you if they don't know that you are in the area. Fourth, the ship should, to the extent possible, operate within the designated corridors. Fifth, the ship should participate in an organized convoy, if possible. Sixth, the crew should conduct regular counter-piracy drills and an extra drill should be conducted just prior to the ship entering high-risk waters. Sixth, the fire hoses should be laid out on the fantail and kept charged during the transit of high-risk waters. Seventh, if the ship regularly transits high-risk waters, the owner/operator should invest in non-lethal devices such as electric fencing, the long-range acoustic device (LRAD), and remote-controlled fire monitors. Eighth, if approached by a threatening craft, the ship should notify the owner and operator, as well as the naval authorities. The ship should be brought up to maximum speed and maneuvered evasively. The crew should be mustered and a team sent to the fantail to man the firehoses. Ninth, if boarded, the crew should take the steps that were taken by the crew of the *Maersk Alabama* – delay, disperse, and disable. Delay the pirates while awaiting arrival of naval forces. Disperse throughout the ship so that pirates don't know how many crew are on board and where they are, keeping in touch with each other via radio-telephone and sound-powered phone. Disable the ship so that the pirates cannot easily sail it to the Somali coast.

For the ship owner, operator, and master, the ultimate goal is to NOT be attacked. In this respect, the ship should appear to the pirates as a difficult target. The pirates will then move on to an easy mark, leaving you undisturbed.

USCG Maritime Security Directive

The Coast Guard is requiring US-flag vessels transiting high-risk waters to prepare a detailed security plan to address the hazards posed by potential terrorism, piracy, or armed

robbery at sea. Security protocols must be submitted to the Coast Guard by May 25. The Coast Guard will then work with the owners and operators in the development and approval of individual security plans for these vessels. Once the security plan is approved, the ship owner or operator must implement the plan and the ship must be operated in accordance therewith while in high-risk waters. The designation of high-risk waters in the Maritime Security Directive has yet to be released, but certainly includes the Gulf of Aden and waters of the Indian Ocean off the coast of Somalia, as well as the Straits of Malacca and waters off the coast of Nigeria.

The Directive provides a list of security options, largely incorporating best management practices endorsed by the maritime industry. One point on which the Directive deviates from the industry recommendations is with regard to carriage of weapons. The Directive does not require, but strongly encourages carriage of weapons on US-flag vessels transiting very high-risk waters, particularly the Gulf of Aden and off the coast of Somalia. Best management practices advocated by the Coast Guard include, but are not limited to those mentioned above. A more complete list of best management practices is posted on the Maritime Administration website at http://marad.dot.gov/documents/Best_Management_Practices_to_Deter_Piracy.pdf.

Arguments against the carriage of weapons

Personally, I am opposed to carriage of weapons on commercial vessels. Such a practice raises safety issues for the crew, which is not trained in their use. If a special team is embarked, then there are problems integrating that team with the regular crew. Ships are dangerous enough, with sophisticated equipment and, many times, hazardous cargoes, without introducing weapons. There are numerous practical difficulties in getting weapons on board and then off ships, not only in foreign ports, but even in the United States. Arms export licenses may be needed from the State Department. Such licenses are almost impossible to acquire because consent for such export must be obtained from each nation at which the vessel will make a port call.

Finally, there is the very real possibility that an individual on the ship who injures or kills a suspected pirate may be arrested and prosecuted by a foreign government. One need only recall the unfortunate incident in the Suez Canal in March 2008. The *Global Patriot*, a Military Sealift Command-chartered US-flag ship with an embarked Navy security team was approached by three small boats. A verbal warning was issued, but ignored or not understood by persons on the small boats. Warning shots were then fired. Tragically, one of the shots intended as a warning hit and killed an individual on one of the small boats. Fortunately for the US vessel and its crew, the individuals involved (US military personnel) were entitled to sovereign immunity, so there was no prosecution, although the US Government paid substantial reparations for the incident. The same outcome would not obtain if the ship had been in regular commercial service with armed crewmembers or private security guards. While we are generally familiar with criminal and tort liability under US law, it is uncertain what laws would be applied if the ship and its crew were detained by a foreign government, particularly in Somalia.

Conclusion

In conclusion, and to state the obvious, there is no easy solution to the piracy problem. It is a complex situation requiring a long and multi-pronged response. Measures can be taken in the short-term, though, to reduce risks. Many of those measures are in the hands of the various governments and government agencies. Other measures, though, such as non-lethal self-defense practices, can and must be undertaken by ship owners, operators, and masters. The only viable way to ratchet down the risk of piracy is through an “All Hands Evolution”.

© Maritime Reporter and Engineering News