



European Commission

**SEMINAR
IMPACT OF PIRACY AND ARMED ROBBERY ON THE HUMAN
ELEMENT:**

**Piracy and armed robbery at sea:
How best to protect seafarers?**

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**CENTRE BORSCHETTE, 36, RUE FROISSART, CONFERENCE ROOM AB 0D
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SUMMARY

This seminar addresses the impact of piracy on the life and working conditions of the seafarers from various perspectives, taking into account that the acts of piracy and armed robbery have escalated in frequency and violence, in particular in the seas off Somalia and the Horn of Africa. An attempt is made to look at various pertinent issues from the seafarers' point of view. The participation of representatives of different areas of the maritime transport sector ensures a broader treatment of the subject as they are united by a common goal: to protect seafarers against piracy and armed robbery at sea in the best possible way.

Panel I: "Measures to consider prior to transiting a dangerous area" from seafarers' perspective

Purpose of the panel: This panel deals with the measures, including physical and psychological, to be considered and taken prior to transiting dangerous areas from the Seafarers' point of view.

Expressed opinions and conclusions:

- The industry's representatives express their **concern about a possible US ban on payment of ransoms for hijacked vessels** noting that, if enforced, it could have serious economic and political implications. Such step would disrupt the trade with immediate effect. Some participants comment that payment of ransom belongs to the "humanitarian law" and refusing to pay would endanger shipping's most valuable asset – the seafarers.

- All speakers who take the floor during this session underline the importance of ensuring **efficient application of the Best Management Practices** by the ships and the shipping companies. The industry's representatives express their continuous commitment for protection of seafarers and ships against the crimes of piracy and armed robbery at sea noting that self-protection measures are not limited to the physical mechanisms employed on board, but also include procedures, pre-planning, communications etc. The industry is developing piracy guidance for the company.
- The importance of **registering on MSCHOA** not only the ships transiting the area, but also the company, is again reminded as a vital factor to ensure the ship's safe passage through dangerous zones.
- All participants agree that the **training of seafarers is crucial**. Seafarers must undergo adequate training, carry out relevant anti-piracy drills, to be psychologically prepared etc. The need of **safety and security culture** is pointed out as well as the need of relevant guidance and shipowners' self protecting measures.
- The importance of **companies' anti-piracy crisis management plans** is highlighted. It is noted that in order to endure the period of captivity the seafarers' actions could be referred to as "calm, compliant, cooperative". Several participants make it clear that during the period of negotiation the master should be only "facilitator" and never "negotiator". The companies have systems and procedures for addressing seafarers' and their families' welfare. The important role of families including their role for healing the post-trauma effects is stressed.
- The **issue of adequate manning** is also re-iterated. More lookouts in dangerous areas are required as well as more crew is needed for taking physical measures to protect the ship against piracy attacks.
- The question on the **responsibilities of governments** is put forward. Some participants note that the flag States should take more actions, including **ensuring collections of evidences** in case of piracy attacks and/or hijackings in order to facilitate prosecution of pirates. The issue of gathering evidence should be included in the guidelines addressed to seafarers. In this respect, some participants suggest that representatives of law enforcement forces of the flag States should be able to board each ship flying their flag, thus ensuring collection of evidences and subsequent successful prosecution of the captured pirates.
- The **shipowners' duty of care** is highlighted. Seafarers should not be put in harm's way; there are suggestions that seafarers should have the right to leave the ship prior to transiting dangerous areas.
- The representatives of the shipowners, seafarers, and operators re-confirm their position **against arming the seafarers** as it could increase the danger for the crew, environment and the ship.
- The participants raise the question of **the legal implications in case armed guards / military personnel** board the ship. Who will be responsible for the overall command, what will be the distribution of responsibilities / liabilities? There are suggestions that in case armed guards / military personnel are placed on board the parties concerned

could conclude an agreement for distribution of responsibilities and liabilities. The issues of the proportionality of the response in case of incident, the possibility of differences between the various actors involved etc. are also mentioned as part of the legal implications.

- Despite all the efforts made by the international community, it is noted that **more action is needed**. Some participants point out at the possibility of institutionalisation of the danger. Piracy and armed robbery should not be accepted and more robust responses should be sought, including responses from the naval forces, greater coherence between the forces, need to address the widening area of risk and efficient deterrence through effective legal prosecution of alleged pirates, flag States' actions etc.

Panel II: The answer of the insurance market and its consequences

Purpose of the Panel: This panel deals with insurance matters concerning Seafarers, in particular those related to the cases of piracy, armed robbery, hijacking, captivity. The P&I Clubs insure third party liabilities arising out of the use and operation of ships. With the rise of the piracy issue and the shipowners' need to address this risk, the underwriters have launched specific covers for ship ransom.

Expressed opinions and conclusions:

- The insurance market responds to the challenge of the crime of piracy through kidnap & ransom and marine protection covers. Payment of ransom is not illegal under the English law. The payment of ransom from the underwriters' perspective is **not a liability, but an expense**; therefore, the P&I Clubs do not cover piracy as a named risk.
- The representatives of the underwriters point out that the P&I Clubs' policy is to **discourage the use of armed guards**, especially private armed guards who are less well trained.
- P&I Clubs support the industry's best management practices. The question of seaworthiness of the ship and the payment under the insurance cover is also mentioned.
- The P&I Clubs **do not consider desirable the agreements on distribution of liabilities** between the ship masters and the armed guards/military personnel in case of their boarding the ship, one way or another.
- It is noted that the **shipowners bear the brunt** of paying ransom; management time and expenses tended not to be considered as well as subsequent care about the crew. There are seafarers taken hostages not only in Somalia but in Nigeria as well.
- The shipowners should have a **clear understanding on what is included in the insurance cover**. It is also underlined that the conditions and premiums included in the insurance policy should not be revealed to the seafarers.
- There is a **need of a coordinated approach** with all maritime countries working together to provide the support and resources to protect their interests and in particular, their national, from the attack is pointed out.

Presentation on location and information-sharing systems, developed by EMSA

SafeSeaNet and LRIT Regional Data Centre as efficient tools developed by the European Commission. Their legal basis is Directive 2009/17/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system. The European Commission has demonstrated continuous commitment to enhance safety and security including by attempting to address the issue by means of some technical ways, such as the location and information-sharing systems developed by EMSA not only in the piracy-prone areas.

Round-table I: "A nightmare comes true: tales of captivity"

Purpose of the round-table: The session is dedicated to the ordeal of the seafarers during the period of captivity and the relationship of the captures seafarers with the outside world and among themselves.

Expressed opinions and conclusions:

- There is a need to establish a **mechanism for support of the seafarers and their families**.
- **Training and risk assessment** are of particular importance. These should be done by the flag State and the flag State should always have the leading role. The question of whether providing practical training material is the individual responsibility or flag States' responsibility is raised. It is observed that the capability of crew to withstand trauma could be achieved by adequate training. It is suggested that it might be necessary to start training in **maritime academies** as part of the general training as well as organizing **special training** for crews.
- During the debate it is also highlighted that there are **various types of piracy depending on the geographical area**. The seafarers' briefing before commencement of the voyage should also include elements of these various types of piracy.
- Some of the participants note that, despite the emphasis put on the efficient application of the Best Management Practices, in reality **many cases where ships do not follow these practices**, self-protection measures are not been implemented on board the ship, the crew is not trained have been observed.
- There is a need to establish **procedures on informing families, dedicated policies in the companies** (possibly via the manning agencies) taking into account that until now the relations with the families had remained unaddressed. Some participants note that Flag States' response to families varies in different countries in Europe. **The importance of communication between the Flag State and the company** is also underlined. Efforts should be made to build seafarers' confidence in the fact that the Flag State, the State of origin and the company do everything possible for their rescue and release.
- When the company has the task to inform the families of hijacked seafarers it is necessary to consider the conduit of the message, which should be included within the crisis preparedness plan. **A competent way to manage families** should be established.

- There is need to establish **working procedure in dealings with pirates** wherein it should be foreseen that only one man, usually the master or some other officer, should deal with the pirates. At the same time, it is underlined that **ransom negotiations will be held only by the company**.
- A proposal is made for development of best practices for the seafarers' nations to develop guidance on how to act in such circumstances. **A name contact** should be established prior commencement of the voyage. Some participants comment on the difficulty to obtain information with regard to the beneficial shipowners.
- There are comments on the importance of **sharing information between companies** with regard to experiences gained from pirates' attacks and crews' captivity, which should also be transmitted to seafarers.
- In view of the fact that the care for seafarers had been omitted from the Best Management Practices **guidelines and new measures at international level** could be considered and agreed upon.

Round-table II: "Curing the post-trauma"

Purpose of the round-table: The session aims at examining the conditions the crew face after their release from captivity including physical and psychological treatment of seafarers; compensation; the need of re-training etc.

Expressed opinions and conclusions:

- Several participants remark that the **post-trauma affects people in different ways**, sometimes it might have a belated effect. It should be ensured that the subsequent shock is adequately addressed. The response to trauma could depend on several factors e.g. where the seafarer comes from, the type of the ship, the length of captivity, the level of communication with company.
- Some of the participants comment that the difficulty to assess the magnitude of post-trauma is due to the **lack of cooperation** as seafarers are reluctant to discuss the issue out of fear of loss of their jobs and there is pressure from the family.
- Participants highlight the **need of collecting information with regard to seafarers who had been held captive, assessing the data gathered and sharing it in a confidential way** in order not to affect their future employment. These confidential records should be kept by companies for a certain period, as long as it is needed, after the release of the captives.
- There is a need the shipping companies and Flag States to **do much more to provide physical and psychological support** to seafarers and their families.
- There is a **compelling need to take care of the families of hijacked seafarers**. It should be ensured that the families received constant information on the ongoing situation. The families' economic needs should be addressed by companies by paying to them the wages due to the hijacked seafarers.

- The question about **compensation of the hijacked seafarers** is also raised. Compensations are related to **material loss** depending on relevant crew employment agreements, **medical treatment** (it is suggested that it might seem appropriate to adjust the legal positions toward establishing the list of material losses related to the act of piracy) and to **moral damages** (it was suggested that the best management practices could be a useful tool to establish common rules in such circumstances).
- It is considered as particularly important to agree that psychological rehabilitation should constitute a prerequisite of the obligatory course of actions for a post-conflict rehabilitation.

Implications of piracy and armed robbery on the attractiveness of the maritime professions

- 2010 is declared by the **IMO Year of the Seafarers**.
- Better cooperation between States on a regional and sub-regional level; a more proactive approach taken by the coastal and port States to security in their waters, including the implementation of the ISPS Code and the better implementation of defensive security measures on board are the factors critical in the reduction of piracy and armed robbery against ships.
- The IMO continues to work with the States in the region and donor partners, including the European Commission, to implement the Djibouti Code of Conduct, which provides a framework for the regional mechanism for anti-piracy operation.
- The importance of education and training of a new generation of seafarers and the establishment by the company's of training programs according to their needs and retaining seafarers as most valuable asset is highlighted.
- Flag States should do more in order to ensure that commercial shipping fully implements best management practices.
- The **European Commission** takes several concrete actions to confront the various challenges faced by the Seafarers and their professions. Among these, to combat piracy and armed robbery, the Commission puts specific emphasis on transposing into EU legislation the international training requirements to promote awareness as regards piracy and armed robbery that will be adopted next June within the revised STCW Convention.
- The importance of ensuring seafarers wellbeing, quality of their skills and attractive professions in shipping and the maritime clusters if the seafarers' career is to be promoted. The human element is the strategic goal for the maritime sector and the Social Agenda that will be presented by the European Commission next year is designed to achieve this goal.