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SOMALI PIRACY

&

RANSOM PAYMENTS

~ PART ONE ~

HOW SHOULD UNDERWRITERS REACT?

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Historical Context

History has a habit of repeating itself. The Barbary Pirates were active between the 16th and 19th centuries along the coast of North Africa and Southern Europe. Their goal was to capture ships and cargo, but in those times the most valuable of all were people who were then sold as slaves in North Africa. It is estimated that 1 million people were enslaved during this time.

A system of ransom was implemented. Wealthy people could be ransomed, poor could not.

By the early 17th century many of these pirates were Dutch and English, and it became political.

France encouraged pirates to attack Spanish ships, later Britain and Holland supported the pirates against France. By the second half of the 17th century the greater European Naval powers intimidated the pirates so that they made peace with them, but then those great powers gained a commercial advantage by leaving the pirates free to continue attacks on the ships of other nations.

The ransom system was refined. If pirates took prisoners after raiding a coastal village, they would return a few days later to offer to sell the prisoners back to the family members. The pirates were often accompanied by ruthless financiers who would lend the necessary cash in return for homes and land. The pirates were only finally eradicated in the early 19th century when slavery first became illegal in Britain and the major European navies acted together to wipe out the pirates and their bases ending the impunity which existed on land.

Throughout history pirates have been considered *Hostis Humani Generis*; that is the enemies of mankind, because they posed a threat to maritime safety in seas which were not subject to the control of any single state. Pirates were completely outside the law. Anyone could, and was actually expected to, punish them. Punishments tended to be strict, often capital punishments were carried out with a degree of publicity designed to maximise deterrence amongst those sailors and members of other maritime guilds who might be tempted to engage in what was a highly lucrative trade.

To this day the notion of universal jurisdiction exists with the high seas not being under the rule of any single nation state so warships of any flag can engage pirate vessels.

Insurance - Piracy in General

Piracy is covered in both the Institute Cargo Clauses (A) 1/1/82 and 1/1/09.

In the 1982 Clauses, Clause 6 containing exceptions states:-

“6. In no case shall this insurance cover loss, damage or expense caused by:
6.2 capture, seizure, arrest, restraint or detainment (piracy excepted and the consequences thereof or any attempt thereat).”

This wording is identical in the 1/1/09 Clauses. Piracy is therefore covered as an exception *to an exception*.

The Japanese market still widely uses the 1/1/63 ICC All Risks Clauses. Historically piracy has been covered by the marine policy or excluded and covered as a war risk. For a period dating from the end of the Spanish Civil war in 1937 until the 1/1/1982 revision (so including the 63 clauses) piracy was excluded from the All Risks cover but instead insured under the War and Strikes clauses. In the 1982 Clauses piracy reverted to being a marine risk and continues to be so in the 2009 clauses.

Dean v Hornby (1854) 3 El & Bl 179

Prior to the recent decision in *Masefield AG v Amlin* referred to later in this paper, this was the leading English precedent on piracy and formed a corner stone of the assured's case in *Masefield*.

The facts were as follows:-

A vessel was insured on a time policy for a year ending on 21st April 1852. In December 1851, when homeward bound from Valparaiso to Liverpool, she was captured by pirates. In 1852 the vessel was recaptured by an English warship. It was claimed as a “prize of war” and brought to Valparaiso under the command of a prize master with instructions to proceed to Liverpool and obtain an adjudication of a Prize Court, who would consider whether it had been lawfully captured by the Navy (seizing) ship.

The Prize Court might order the destruction of the ship or the sale and distribution of the proceeds to the Captain and crew of the Navy vessel or the return of the vessel if the seizure was unlawful (if, for example, the “prize” had been seized from a neutral country). So this recapture was for the Crown, not for the shipowner.

Upon arrival at Valparaiso the owners received news of the recapture and served Notice of Abandonment on underwriters who refused to accept it. Unfortunately the vessel never made it to Liverpool, its condition was so poor that the prize master sold it at Fayal in the Azores.

Judgement was given to the assured as the Court held that when she was taken by pirates a total loss occurred and after that the owners never had the opportunity of regaining possession and had lost possession by events over which they had no control.

Importantly Lord Campbell said, “The cases as referred to us establish this principle: that, if once there has been a total loss by capture, that is construed a permanent total loss unless something afterward occurs by which the assured either has possession restored, or has the means of obtaining such restoration”.

Coleridge J concurred and added, “I am of the same opinion. There was a capture of pirates, and if that were all, there would *unquestionably* be a total loss. The question therefore is what has occurred since. The vessel is recaptured by an English man of war; a prize master is put on board and she is brought back to England, not on her original voyage but with a view to proceedings in the Court of Admiralty, she received damage and is ordered to be sold, these are all facts that are material. The right to possession is not material, that right was lost by the plaintiffs but the material question is whether possession was ever restored to the plaintiffs; it never was.

Wightman J said, “The question here is whether that which is at one time a total loss has been converted in to a partial one. To make that so the circumstances ought to be such, as either to restore possession to the assured, or to afford them the means to obtaining possession, here there never was a restoration in fact nor the means of regaining possession.”

You will see that in delivering their judgement the Judges in Dean and Hornby left open the possibility for it to be distinguished in a later decision where there was an act of piracy which did not result in a total loss, but the means to restore possession was left open.

As we will see later in this paper this is the approach that the Courts were to take in relation to seizure by Somali pirates.

Marine Insurance Act 1906

Dean v Hornby preceded the passing of the Marine Insurance Act 1906. **Attached (Appendix One)** to this paper are the Sections in that Act dealing with loss and

abandonment (Sections 55 – 63). Section 57 (1) provides that there is an actual total loss (“ATL”) “where the subject matter insured is destroyed or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof”.

Constructive Total Loss (“CTL”) is defined in Section 60 which provides that “there is a constructive total loss where the subject matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred”.

Section 60 (2) states that in particular there is a CTL where the assured is deprived of the possession of his ship or goods by a peril insured against and it is either (i) unlikely that he can recover the ship or goods or (ii) the cost of recovering the ship or goods would exceed their value when recovered.

Section 62 provides that where the assured elects to abandon the subject matter insured he must give notice of abandonment and the section then goes on to set out requirements for the form, content and delivery of the notice.

So the distinction between ATL and CTL is that ATL relates to physical impossibility and CTL to commercial impossibility.

Somali Piracy

The power vacuum following two decades of civil war in Somalia has allowed pirates to flourish and demand big ransoms from passing ships.

The Somali Parliament refused in January 2011 to pass a Bill making piracy illegal. Some Somali MPs actually described the pirates as heroes for keeping foreign fishing fleets away from the Somali shore. The MPs said that the pirates were acting as unofficial coast guards! According to BBC African analyst, Martin Plaut, Somalia once had rich fishing off its lengthy coast-line but over-fishing by foreign trawlers has indeed devastated fish stocks. He added that trawlers from Taiwan and Malaysia were among the fleets of vessels that have hoovered up the catch leaving Somali fishing facing a grim future.

The explosion of piracy off the coast of Somalia has exposed a weakness in the United Nations maritime law that makes high seas piracy illegal throughout the world. In 2008 UN Security Council’s Resolution, number 1846, empowered state and regional organisations to ‘use all means necessary’ to fight piracy off the Somali coast. It called for states with the capacity to do so, to take part actively in the fight against piracy and

armed robbery at sea off the coast of Somalia, to deploy naval vessels and aircraft and through seizure and confiscation, dispose of boats, weapons and other equipment captured. Along Somalia's nearly 4,000 km long coast warships from nearly a dozen countries have formed what UN Secretary General Ban Ki-Moon describes as one of the largest anti-piracy flotillas in modern history. However, piracy continues to flourish and there is no sign that the will of the combined nation states has a solution to the problem.

As at the end of January 2011, the International Maritime Bureau said that a record number of people: 1,181 were taken hostage by pirates in 2010 alone, mostly off the Somali coast. It is estimated that maritime piracy costs the global economy between USD 7 billion and USD 12 billion per year. The NATO shipping centre website contains daily warnings and reports of pirate attacks together with advice to those facing such attacks. Link: <http://www.shipping.nato.int/> .

Responding to the growing threat London's marine insurance market in December 2010 expanded the stretch of waterways deemed high risk from pirates to include the Gulf of Oman and a wider stretch of the Indian Ocean.

Masefield AG v Amlin Corporate Member Limited - Commercial Court Judgment
18th February, 2010

Facts:

On 19th August 2008, the vessel "Bunga Melati Dua", a chemical / palm oil tanker, was seized by Somali pirates in the Gulf of Aden on a voyage from Malaysia to Rotterdam. The vessel, crew and cargo were taken to Somali waters. The claimant / assured was the owner of two parcels of bio-diesel which had been shipped on board the vessel.

The defendant was the insurer of the cargo under an open cover contract. This policy covered loss by both piracy and theft. Soon after the seizure, negotiations between the pirates and MISC, the State owned Malaysia ship owners, were commenced with a view to obtaining the release of the vessel, cargo and crew.

During the course of these negotiations the claimant served a Notice of Abandonment on the insurers. This was declined, but both parties agreed that proceedings should be deemed to have commenced on 18th September. Some 10 days later MISC paid a ransom to the pirates and the vessel was released shortly thereafter. The vessel arrived at Rotterdam on 26th October where the cargo was safely discharged.

Whilst there was a dispute about the effectiveness of part of the declarations made by the assured, they had made declarations under the open cover totalling USD 13,326,481.75 in respect of the two parcels of cargo.

The insurance claim put forward was in the sum of approximately USD 7,000,000.00 representing the net loss after the sale of cargo once it had been discharged in Rotterdam.

The claimant's primary case was that on the capture of the vessel by the pirates and its removal into Somali waters the cargo became an actual total loss in terms of Section 57(1) of the Marine Insurance Act 1906 ("the Act") as the assured had been "irretrievably deprived" of the cargo. In the alternative, the assured claimed there had been a constructive total loss under Section 60 (1) of the Act in that the vessel and cargo had been reasonably abandoned on account of its actual total loss appearing to be unavoidable.

The policy was an all risks policy with a war exclusion which read as follows:-

*"6. In no case shall this insurance cover loss, damage or expense caused by...
6.2 capture, seizure, arrest, restraint or detainment (piracy excepted and the consequences thereof or any attempt thereat)."*

There was a Constructive Total Loss clause as follows:-

"13. No claim for Constructive Total Loss shall be recoverable hereunder unless the subject matter insured is reasonably abandoned either on account its actual loss appearing to be unavoidable or the cost of recovering, reconditioning and forwarding the subject matter to the destination to which it is insured would exceed its value on arrival."

It was common ground between the parties that both theft of the cargo and the capture or seizure of the cargo by pirates were insured risks under the policy. It was also common ground that the effect of clause 13 of the policy was to exclude the additional category of CTL provided for in s.60(2)i of the Act relating to the deprivation of the insured's possession in circumstances where it was 'unlikely' he can recover the ship or goods. The primary issue was whether at the time that the Notice of Abandonment was served on 18th September, the claimant had been irretrievably deprived of the cargo, so it had been actually totally lost, even though it was restored shortly thereafter following payment of a ransom by the ship owners.

In 2008 the threat of piracy in Somali waters was already a real one. The vessel was the 6th ship to be hijacked in 2008. It was believed that the pirates made an initial ransom demand on 22nd August well in excess of USD 2,000,000.00. The negotiation process was under way. Expert evidence was given to the Court suggesting that the ransom negotiations followed a definite and established pattern. The pirates would not be interested in keeping the cargo and there was no risk of the cargo of palm oil being discharged. As a result there would be a "high expectation" that upon the vessel being

released the cargo would be released with it, indeed this is exactly what happened less than 6 weeks after the vessel was seized.

Actual Total Loss (“ATL”):

The issue was whether on 18th September 2008 the claimant was “irretrievably deprived” of its property from the date of the Notice despite the fact that it was subsequently recovered upon payment of a ransom. The Court held that the test is an **objective** one and it is assessed on the true facts as at that date - whether or not known or apparent to the assured. Although the actual fact of the recovery within a short period is not material or decisive the Court was entitled to consider what in fact happened after the relevant date as this would “assist in showing what the probabilities really were if they had been reasonably forecasted”. The Court therefore reserved for itself the benefit of hindsight.

The Court held that the evidence to it showed all parties involved were aware that the cargo was *likely* to be recovered. Expert evidence confirmed this and that other vessels seized by Somali pirates had been promptly released after a relatively short period following negotiations: indeed in this case, the vessel and cargo were safely recovered only 11 days after the ransom had been paid.

What degree of probability is sufficient in these purposes? The Court held that a high level of probability is required - an assured is not irretrievably deprived of property if it is legally and physically possible to recover it (even if such recovery can only be achieved by disproportionate effort and expense). To establish irretrievable deprivation the assured must establish that the recovery is impossible.

The Court held that in this case the condition of the cargo had not deteriorated in the period up to the abandonment to the underwriters. The ransom sought, whilst large, was on a par with sums paid by other owners and represented only a tiny portion of the overall value. But most important of all, the cargo owners had only lost possession and not **property** in the goods. There was no evidence that in this case the pirates intended to deprive the assured of possession and ownership forever. “Deprivation of possession” was not an insured peril and this could not be treated as a total loss which could later be turned into a partial loss by subsequent recovery.

The Court held that one had to consider the facts concerning the dispossession. What was the apparent intention of the person or persons concerned and whether or not, and to what extent, the whereabouts of the subject matter are known. Also, there needed to be a consideration of the period of lapsed time in order to form a view about the prospects of recovery. **This concept of “wait and see” meant that an ATL did not automatically occur when a ship and cargo were seized.**

Constructive Total Loss:

If an assured claims for ATL and it is subsequently determined that there was none, the assured might still claim for CTL since its rights are not prejudiced by the negative finding in relation to ATL.

For a CTL to occur the property had to be ‘reasonably abandoned on account of its total loss appearing to be unavoidable (s.60 of the MIA). The Court reiterated that it is not so much the notice of abandonment but, in the sense of sections 61, 62 and 63 of the MIA, the ‘**abandonment of any hope of recovery**’. No such abandonment had occurred; to the contrary the Court held that the shipowners and cargo owners ‘ had every intention of recovering their property and were fully hopeful of so doing’.

Ransom Payments:

The insured accepted that ransom payments were not illegal but argued they were contrary to public policy. Steel J rejected this and recognised that where diplomatic and military solutions could not be relied upon the Court saw no urgent reason for categorising the activity as contrary to public policy. He also observed that payments of a ransom had previously been held to be recoverable as a sue and labour expense (Royal Boskalis Westminster NV v Mountain 1999 QB 674).

The insured finally argued that it was not under any duty to pay a ransom and for that reason the possibility for such a payment should be disregarded in determining whether property was retrievable. The Court held that the existence of a duty was irrelevant. The only issue is whether the required expenditure would or might lead to recovery and further the sum required was reasonable given the contrast between the sum required and the value of the property.

Whilst in these circumstances the use of the word ‘reasonable’ by the court maybe debateable –clearly the Court was unimpressed with any public policy argument.

Masefield AG v Amlin Corporate Member Limited: Court of Appeal Decision 26th January, 2011

In their Appeal the assured abandoned the claim for constructive total loss, narrowed their argument and asked the Court to consider whether there had been an **actual total loss** or whether ransom payments were **against public policy**. One reasoned Judgement was delivered by Lord Justice Rix, the other two Judges, Lord Justice Moore-Bick and Lord Justice Pattern merely concurred.

Actual Total Loss:

Rix LJ concluded that:

“Piratical seizure in the circumstances of this case where there was not only a chance, but a strong likelihood that a payment of a comparatively small sum, relative to the value of the vessel and cargo, would secure recovery of both, was not an actual total loss. It was not an irretrievable deprivation of property. It was a typical ‘wait and see’ situation.”

So the Court confirmed that piratical seizure did not automatically constitute **actual total loss** but *might* go on to develop into one. This was dependant on the facts of the particular case, and in this case the facts clearly pointed to the payment of a ransom securing the recovery of both. In so holding, the Court departed from the judgment in *Dean v Hornby* and held that there is no legal rule that seizure is an automatic ATL - it was all a question of fact. It was important here that the evidence did not suggest that the pirates had stolen the cargo and vessel for their own use –they had no means to discharge the cargo, however Rix LJ added that piratical seizure might amount to an ATL : “Where the pirates escape with their prize for their own use and there is no prospect whatsoever of finding or recovering the cargo.”

The assured argued that ,the property being held to ransom “must be considered to have been irretrievably lost, physically and/or legally, where the only means of recovering it was to do something which an insured could not be reasonably expected or required to do.” So if a payment of a ransom could not be required an underwriter could not then deny that there had been a total loss.

The assured returned to their argument on Public Policy that had been dismissed in the Commercial Court, arguing that whilst ransom payments were not illegal they were, nevertheless, so undesirable from the point of view of public policy and on universal principles of morality that it would not form any part of the assured’s duty to preserve his property under Section 78(4) of the Marine Insurance Act. This would amount to extortion.

The Court held unanimously that there was no legislation in England prohibiting ransom payments. They referred to a report of the House of Lords European Committee dealing with Somali piracy which in its conclusion supported the status quo “whereby the payment of ransom to pirates is not a criminal offence under UK law”.

Rix LJ stated:

“There is thus something of an unexpressed complicity: between the pirates, who threaten the liberty but by and large not the lives of crews and maintain their ransom demands at levels which industry can tolerate; the

world of commerce, which has introduced precautions but advocates the freedom to meet the realities of the situation by the use of ransom payments; and the world of government, which stops short of deploring the payment of ransom but stands aloof, participates in protective naval operations but on the whole is unwilling positively to combat the pirates with force. Mr Williams described it as a "fragile status quo". In these morally muddied waters, there is no universally recognised principle of morality, no clearly identified public policy, no substantially incontestable public interest, which could lead the courts, as matters stand at present, to state that the payment of ransom should be regarded as a matter which stands beyond the pale, without any legitimate recognition. There are only elements of conflicting public interests, which push and pull in different directions, and have yet to be resolved in any legal enactments or international consensus as to a solution, save that of wary watchfulness, the deployment of naval resources as a form of law enforcement or policing operation, and a regard for 'a comprehensive approach, seeking to address political, economic and security aspects of the crisis in a holistic way' "

This case provides welcome guidance to the shipping and insurance industries on the difficult, morally questionable, but nevertheless pragmatic practice of paying ransoms to secure the safe release of crew and the safe return of vessels and their cargoes. This is a favourable decision for cargo underwriters as the Court held that a seizure did not of itself automatically constitute an actual total loss at the time of the seizure.

The assured in Masefield sought leave to appeal to the Supreme Court, but this was refused. The Court of Appeal decision is therefore the final decision in this matter.

Conclusion

In relation to ATL the Court of Appeal judgment clarifies *Dean v Hornby*. This case distinguishes *Dean v Hornby* in terms of 'possession'. Piratical seizures especially those by Somali pirates should be characterised as seizures with intent to temporarily possess until a ransom is paid, after which the vessel, crew and cargo will in all probability be released. So in such cases where there is no damage to the vessel there is no ATL unless it is proved that it is legally or physically impossible to recover the property.

Appendix One

Excerpt: Marine Insurance Act 1906

Loss and Abandonment

55. Included and excluded losses

(1) Subject to the provisions of this Act, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss which is not proximately caused by a peril insured against.

(2) In particular -

(a) The insurer is not liable for any loss attributable to the willful misconduct of the assured, but, unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew;

(b) Unless the policy otherwise provides, the insurer on ship or goods is not liable for any loss proximately caused by delay, although the delay be caused by a peril insured against;

(c) Unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for

any injury to machinery not proximately caused by maritime perils.

56. Partial and total loss

(1) A loss may be either total or partial. Any loss other than a total loss, as hereinafter defined, is a partial loss.

(2) A total loss may be either an actual total loss, or a constructive total loss.

(3) Unless a different intention appears from the terms of the policy, an insurance against total loss includes a constructive, as well as an actual, total loss.

(4) Where the assured brings an action for a total loss and the evidence proves only a partial loss, he may, unless the policy otherwise provides, recover for a partial loss.

(5) Where goods reach their destination in specie, but by reason of obliteration of marks, or otherwise, they are incapable of identification, the loss, if any, is partial, and not total.

57. Actual total loss

(1) Where the subject-matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof, there is an actual total loss.

(2) In the case of an actual total loss no notice of abandonment need be given.

58. Missing ship

Where the ship concerned in the adventure is missing, and after the lapse of a reasonable time no news of her has been received, an actual total loss may be presumed.

59. Effect of transshipment, & c.

Where, by a peril insured against, the voyage is interrupted at an intermediate port or place, under such circumstances as, apart from any special stipulation in the contract of affreightment, to justify the master in landing and reshipping the goods or other moveables, or in transshipping them, and sending them on to their destination, the liability of the insurer continues, notwithstanding the landing or transshipment.

60. Constructive total loss defined

(1) Subject to any express provision in the policy, there is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred.

(2) In particular, there is a constructive total loss--

- (i) Where the assured is deprived of the possession of his ship or goods by a peril insured against, and

(a) it is unlikely that he can recover the ship or goods, as the case may be, or

(b) the cost of recovering the ship or goods, as the case may be, would exceed their value when recovered; or

(ii) In the case of damage to a ship, where she is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired. In estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs payable by other interests, but account is to be taken of the expense of future salvage operations and of any future general average contributions to which the ship would be liable if repaired; or

(iii) In the case of damage to goods, where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival.

61. Effect of constructive total loss

Where there is a constructive total loss the assured may either treat the loss as a partial loss, or abandon the subject-matter insured to the insurer and treat the loss as if it were an actual total loss.

62. Notice of abandonment

(1) Subject to the provisions of this section, where the assured elects to abandon the subject-matter insured to the insurer, he must give notice of abandonment. If he fails to do so the loss can only be treated as a partial loss.

(2) Notice of abandonment may be given in writing, or by word of mouth, or partly in writing and partly by word of mouth, and may be given in any terms which indicate the intention of the assured to abandon his insured interest in the subject-matter insured unconditionally to the insurer.

(3) Notice of abandonment must be given with reasonable diligence after the receipt of reliable information of the loss, but where the information is of a doubtful character the assured is entitled to a reasonable time to make inquiry.

(4) Where notice of abandonment is properly given, the rights of the assured are not prejudiced by the fact that the insurer refuses to accept the abandonment.

(5) The acceptance of an abandonment may be either express or implied from the conduct of the insurer. The mere silence of the insurer after notice is not acceptance.

(6) Where notice of abandonment is accepted the abandonment is irrevocable. The acceptance of the notice conclusively admits liability for the loss and the sufficiency of the notice.

(7) Notice of abandonment is unnecessary where, at the time when the assured receives information of the loss, there would be no possibility of benefit to the insurer if notice were given to him.

(8) Notice of abandonment may be waived by the insurer.

(9) Where an insurer has re-insured his risk, no notice of abandonment need be given by him.

63. Effect of abandonment

(1) Where there is a valid abandonment the insurer is entitled to take over the interest of the assured in whatever may remain of the subject-matter insured, and all proprietary rights incidental thereto.

(2) Upon the abandonment of a ship, the insurer thereof is entitled to any freight in course of being earned, and which is earned by her subsequent to the casualty causing the loss, less the expenses of earning it incurred after the casualty; and, where the ship is carrying the owner's goods, the insurer is entitled to a reasonable remuneration for the carriage of them subsequent to the casualty causing the loss.

Update November 2011

On 30th October 2011 David Cameron the British Prime Minister announced an intention to permit the use of armed guards aboard British flagged vessels, in line with similar recent moves from other EU States. The announcement means that ship owners will be allowed to hire private armed security firms when sailing in

specified "dangerous areas" such as the Gulf of Aden. There have been no reported cases of successful hijackings when vessels have private armed guards protecting them. This measure is controversial and already some commentators are voicing concerns about infringement of the pirates human rights- in this respect the world has moved forward in 300 years from the days when captured pirates would be publically executed.