

## **Industry Brief**

The first half of 2022 saw piracy in the Gulf of Guinea region at its lowest level since 1994, a development which industry welcomes and which would not have been conceivable as recently as two years ago. It is a testament to all involved in the SHADE process that we find ourselves here.

Counter piracy operations and increased maritime security commitments by Nigeria and other regional states, as well as better preparedness and self-protection by ships have almost certainly affected pirate capability and activity. However, economic and social factors ashore are also likely to have had an impact. In particular, increases in oil thefts have likely provided an alternative and less risky revenue stream for pirates, whilst other societal issues will have had impact. All in all, whilst the decrease in incidents should undeniably be recognised and celebrated, it is too early to declare “mission accomplished”, and is likely to remain so for some time.

The shipping industry has played its role in helping to reduce attacks. The application of BMP West Africa remains critical for all ships in the region. We are grateful to MDAT GOG for the data it provides on compliance, and we will work to increase that compliance with the best practices in the future. Just this week, as already advised by the Deep Blue Commander, Industry has participated in an exercise with the Deep Blue assets of NIMASA and the Navy, to test responses and hopefully increase shared awareness of our respective roles in the maritime space.

At a higher level, industry continues to engage with Nigeria through the Nigeria Industry Joint Working Group. This landmark initiative continues to increase mutual trust and highlight areas in which progress has been made. Through the agreement of the Strategy for Gulf of Guinea Counter-Piracy Initiatives it is possible to assess where progress has been made and where further effort and development is needed. The strategy recently went through its second assessment, and in general identified solid progress. However, as mentioned earlier, accurately determining the effectiveness of specific measures remains difficult, as a consequence of the rapid decline in pirate incidents and the absence of specific events demonstrating practical impacts of improved maritime situational awareness, the increased military and law enforcement presence in the region, and the better cooperation across States, platforms and missions.

In summary, industry views the current situation with cautious optimism. We are pleased at the increased focus on maritime security and the commitment of States to securing their waters. Similarly the marked decrease in pirate activity is hugely welcome, and we need both to safeguard this for the longer term and to understand the key drivers behind it. Finally we need to continue to ensure the success of initiatives such as the NIWG and SHADE GOG, and in particular the spirit of cooperation and mutual interest that drives those efforts.

I must stress, and ask that it be put on record, that the following comments are made by the Round Table of Shipowner Associations, being ICS, BIMCO, Intertanko and Intercargo, and not on behalf the Oil Companies International Marine Forum.

However, it is vital to remember that success is not guaranteed in perpetuity, and that it only takes one bad mission to undo the work of 99 good ones, and I refer here to the extremely troubling case of the Heroic Idun.

The root of the incident essentially lies in confusion at the time as to whether the vessel had the necessary permissions to load cargo from the Akpo terminal, though it should be observed that at the time of the incident the charterer had vetted and approved the vessel and the terminal had issued security details for the call which were ship specific. The vessel approached the terminal with its permission and knowledge. The vessel was informed by the terminal that NNPC clearances had been granted, and obtaining the necessary clearances accorded with normal and legitimate business practices, as has been confirmed in recent days.

The vessel's owners have reported that on 8 August 2022 during the hours of darkness, while the vessel was waiting to be loaded in Akpo Oil Field in the Niger Delta, the ship was approached by a Nigerian Navy vessel. The master was unable to identify the vessel with any certainty, and the naval vessel refused to turn on its AIS when requested to do so by the master. Following the advice of BMP West Africa, the Master issued a mayday, and the ship manoeuvred to avoid boarding. Uncertain of the navy vessel's identity and, suspecting it might be a vessel in the hands of pirates, the Master, in consultation with the company, the local agents and the war risk insurers decided to sail the ship away from the area and immediately reported a potential piracy incident, following industry best practice guidance throughout.

Four days later on 12 August 2022, while passing through the exclusive economic zone of Sao Tome and Principe, the vessel was intercepted by an Equatorial Guinea Navy vessel - an interdiction with no basis in international law - and ordered at gunpoint to proceed to Luba Bay. Ten members of the crew were subsequently

removed from the vessel, detained in an onshore “facility” devoid of furniture and subjected to lengthy interrogations of up to fourteen hours whilst denied access to legal representation. No formal charges or arrests were ever made.

During their detention, the crew were split up, some detained ashore, some remained on the vessel and several of the crew contracted malaria and typhoid during this period.

On 11 November 2022, Nigerian authorities were given permission by Equatorial Guinea to board the vessel whilst in Luba Bay and to move it and crew to Bonny Offshore Terminal, in Nigeria escorted by a navy gunboat and armed guards, and action which took place against the express authority of the flag State, which had ordered that the ship must not sail. On arrival in Nigeria, it transpired that all 26 crew members had been charged with the attempted theft of oil and ‘faking” a piracy attack in breach of the Suppression of Piracy Act. These charges attract life sentences and forfeiture of the vessel.

A trial for all crew has been set for 10<sup>th</sup> January 2023. Both the physical and mental wellbeing of the crew has suffered significantly as a consequence of the ordeal, and we sincerely hope that Nigeria is meeting the commitment stated at IMO’s Maritime safety committee that “the importance Nigeria places on the welfare of seafarers cannot be under, or over, emphasized”.

To summarise this incident more bluntly: the force of legal and military measures to suppress piracy was brought to bear on an innocent ship, and seafarers that did nothing apart from follow the commercial and operational practices that were in operation yesterday, are in operation today and will be in operation tomorrow. A number of legal actions have followed, both in Nigeria and at the International Tribunal for the Law of the Sea. Concerningly, the case has the potential to badly undermine the great progress that has been made in improving maritime security and trust between the parties who share in and benefit from the waters of the Gulf of Guinea. It is essential that this situation is de-escalated, and that the seafarers and ship are released.

In the context of this body, and the wider efforts to improve maritime security throughout the region, the case of the Heroic Idun has the potential to be severely damaging. The actions taken in the interdiction, tracking and detention of the ship raise serious concerns whether the Law of the Sea is properly understood in the region, or whether counter-piracy assets are being properly used. It undermines trust that those who should guarantee the free flow of trade either understand their obligations or the threats to navigation.

In particular the application of the SPOMO act to prosecute seafarers who reported what they felt to be a threat has the potential to undermine the reporting structures that we have worked so hard to establish in recent years, criminalising a fundamental tenet of Maritime Situational Awareness. If seafarers cannot trust those to whom they are reporting, then reporting will cease. This will increase insecurity and have detrimental effects on the ability of States to control their waters and benefit from the blue economy.

Further, it is a situation which war risk underwriters are watching with alarm. They understand that no piracy event took place and in that sense Nigeria's efforts to rid the area of piracy are not diminished. However, the seizure of a vessel which may yet be a constructive loss due its prolonged detention could see war risk premiums increase and make the region less attractive to trade.

Finally, as previously stated, the incident has the potential to refuel negative perceptions and cliches about the region that we have collectively worked so hard to dispel in recent years. This would be a particularly sad outcome given the huge progress that has been made both in cooperation across partners, and in particularly in the thus-far successful fight against piracy.

### **Next steps**

Failure to pragmatically end this situation now will see it drag on into the next year, with no benefit to anyone, and we thus urge for its swift resolution. However, the case does highlight areas in which further progress must and can be made in improving the mutual understanding of all who operated in these waters, assisting in better security and improved maritime situational awareness.

There is clearly a need for the region to better understand how shipping works in practice, and the distinctions between legitimate and illegitimate activity. This can clearly be an objective of SHADE and initiatives such as joint exercises, whilst confidence in reporting mechanisms will assist in developing a "white picture of shipping in the area", and the further development and institutionalisation of SOLARTA will be fundamental to this. Similarly, greater clarity of the mechanisms for approval of operations will be of benefit to the maritime industries.

A better understanding, on the part of responders, of the concerns of seafarers in areas of piracy threat, and measures taken to mitigate those threats, as well as behaviours likely to cause alarm and activate self-protection procedures would have in all likelihood stopped the incident at source, and greater education, driven initially through SHADE and other regional awareness sharing programmes will be essential in this respect.

An understanding of the limitations of States rights on the high seas, within Exclusive Economic Zones, and in Territorial waters, and their primacy over local regulations would have prevented the seizure of the vessel and the rendition and mistreatment of the crew members.

Finally, the use of counter-piracy law against pirates and their backers ashore, rather than to criminalise its victims should be a clear objective in shoring up the progress made in suppressing piracy to date, and reassuring the wider maritime world that the region continues to take the threat seriously and is working to resolve it.

We are grateful for the opportunity to address the plenary at such an important time in its work. It is sad that so much of our focus on this occasion has been on so serious an incident as that of the Heroic Idun, rather than celebrating the successes that have been achieved to date. Nevertheless, industry remains a firm supporter of SHADE GOG and believes that through the working groups here, our plenary discussions and the work of bodies such as the NIWG we are better placed to improve

on the areas which the Heroic Idun has demonstrated need significant improvement, and we are committed to working towards success in this. The first step in doing so, is to acknowledge the failings highlighted by the incident, to de-escalate the situation, and for the crew to be released as swiftly as possible.