Wednesday January 22, 2020

Lloyd's List
Maritime intelligence | informa

Daily Briefing
Leading maritime commerce since 1734

West African pirates hijacking larger vessels to maximise ransom returns

INSURERS ARE MAKING ransom payments to West African gangs of $30,000 to $50,000 per kidnapped crew member, amid warnings that changing piracy tactics have placed vessels at risk of increasingly violent attacks in the Gulf of Guinea over coming months.

Stephen Askins, a London-based maritime lawyer who specialises in piracy, says Nigerian pirate gangs are now "maximising returns" by seeking to seize larger vessels in order to abduct higher numbers of crew. The spotlight is now on the Nigerian navy's response, he said.

In a soon-to-be published paper, Mr Askins said pirates in the Gulf of Guinea are at greater risk of discovery by the military or other gangs, limiting the amount of time crew can be held. "They have no desire to hijack and hold a vessel and unless they have immediate access to the crew they leave," the paper said.

This is unlike the piracy model seen in Somalia eight years ago, when hijacked ships and crew were held hostage for months, even years, off the country's coast before their release was negotiated and a multi-million dollar ransom paid.

"Without the luxury of time, with more attacks being repelled then the obvious answer to maximise returns is to take more people," Mr Askins said in his paper 'Nigerian Piracy — have we reached a tipping point?'

The Gulf of Guinea is the world's most violent and dangerous maritime region, with the numbers of hijacked vessels and crew abducted for ransom soaring in the last month of 2019. Thirty-eight crew were kidnapped alone in attacks on two vessels over December, including the very large crude carrier *Nave Constellation* and product tanker *Duke*. A further suezmax tanker and liquefied natural gas carrier also successfully repelled armed attacks.

The actions of the Nigerian navy — which freed three crew members from the dredger *Ambika* after a three-hour gun battle on January 13 — will be watched carefully, Mr Askins told Lloyd's List in a separate interview.

"It's going to be interesting to see whether this is a tipping point — whether the navy really do now feel they've got to increase the risk [for pirates]. From the *Ambika* you can see that they clearly were resolved to do something about it."

Mr Askins said there was a hijacking attempt on a vessel in the Gulf of Guinea than 24 hours ago and pirates were still active. Crew from the last remaining vessel being held hostage were likely to be released shortly, leaving pirates without any further income and seeking to kidnap more crew.

"The January, Feburary, March months are a busy period, you will see a lot of activity over the next seven to 10 days until they've caught another one," he said.

Sizeable ransoms paid for kidnapped crew perpetuate the cycle, said Harry Pearce, Intelligence Manager for England-based Ambrey, a maritime intelligence and security company.

Attacks were staged against "soft targets routinely trading within West Africa and plying established (predictable) routes," he told Lloyd's List.

"These latest attacks fit a trend — for consecutive years since 2017, attacks in the Gulf of Guinea have been further offshore Nigeria and have been increasingly dispersed. It is this, and target diversification, that is making the operating environment increasingly difficult to secure."

Mr Askins said that the odds of piracy success "very much favour a determined group against a vessel transiting the area without an armed escort vessel". Gangs in and around the Niger Delta were being fed information about vessel movements then confirmed via Automatic Identification System signals.

"Those vessels that are preventing pirates from boarding are relying in particular on the use of citadels and occasional intervention by local naval forces and embedded security teams provided by the Nigerian Navy," he said.

Weak governance and widespread corruption, as well as an inability to use armed maritime security guards at all times has hampered piracy prevention in the region. The Niger Delta has been a piracy and robbery hotspot for many years. It used to be the cast that the cargo would be stolen, rather than the crew kidnapped for ransom.

Violent attacks on seafarers and the extremely poor conditions in which they are being held have further raised the stakes for shipowners and charterers.

Two crew died during their ordeal over December, both from illnesses contracted while being held hostage in a remote jungle location.

WHAT TO WATCH

Marubeni and Klaveness merge panamax pool activities

JAPAN'S Marubeni and Norway's Klaveness have merged their panamax pool activities.

A jointly-owned pool management company called Maruklav will operate the new panamax pool using data insights and analytics for better decision-making and positioning of vessels, according to a statement.

The combination of existing fleets in the MG Harrison Shipping and Baumarine Pools will see the venture with a fleet of about 30 vessels starting in April.

"Combining the strengths of major trading house Marubeni and long-term owner and operator Klaveness will not only leverage individual capabilities, but also capitalise on a more analytical approach to pool management and enable greater flexibility and adaptation to the risk appetite of each individual vessel owner," according to the statement.

Daily management of the pool activities will be run out of Klaveness' offices in Oslo, Dubai and Singapore.

Klaveness chief executive Lasse Kristoffersen said: "We have been looking for a partner on our pool business and we believe we have found a perfect match in Marubeni.

"Together, we will grow and develop this business beyond what each one of us could do on our own."

Maruklav will be led by Michael Jorgensen, senior vice-president and head of dry bulk at Klaveness, with Masashi Kobayashi from Marubeni acting as deputy managing director.

Port of Karachi bans open-loop scrubbers

PAKISTAN'S government is prohibiting the use of open-loop scrubbers at the port of Karachi in yet another push-back against the sulphur emissions abatement technology.

The Standard P&I Club said on Tuesday that the government has banned the discharge of wash-water from open-loop scrubbers, which some owners have installed on board their vessels to comply with the 0.5% global sulphur limit, at the port.

"While in the port, vessels fitted with hybrid type of scrubbers should switch to the closed-loop mode of operations. As for vessels fitted with open-loop scrubbers, they would need to switch over to compliant fuel instead," the government's statement said.

The port of Karachi, Pakistan's largest container port, handled 2.2m teu in 2018.

Several jurisdictions and ports, such as Singapore, have taken the same decision on open-loop scrubbers, fearing that the discharge of wash water from scrubbers will pollute their waters. Pro-scrubber voices repeatedly refute these charges.

There is no scientific consensus on the subject leading to an ongoing dispute and an effort to resolve the matter at the highest level possible.

After a push from the European Union, whose European Commission has been highly sceptical of scrubbers, the IMO agreed last year to develop rules on the waste water discharge of scrubbers.

UK unlikely to take back control of liner block exemptions until 2024

POST-Brexit Britain will remain within the European Union's Consortia Block Exemption Regulation framework in the likely event that it is renewed later this year, but will be free to make its own rules on liner competition from 2024, according to a competition lawyer.

CEBR — which allows widespread co-operation between boxship operators which would otherwise breach competition law — is subject to the approval of the European Commission every four years, and in its current iteration, is set to expire in April.

The commission has already announced its intention in principle to extend CEBR for a further term, a development welcomed by carriers but which has drawn shipper ire.

The timing means that the renewal will occur after Britain has formally left the EU on January 31, but during the so-called transition period, in which the UK will continue to uphold EU rules while negotiations take place on untangling four decades' worth of regulatory alignment.

The UK government has expressed a desire to complete transition by the end of 2020, a timetable widely regarded as challenging.

Jeremy Robinson, a partner in law firm Watson Farley & Williams, said that CEBR starts from the premise that European law, UK law and the law of many countries around the world prohibit anti-competitive agreements.

However, some agreements are declared exempt from such prohibitions if they meet certain criteria under the Treaty on the Functioning of the European Union, which dates back to 1958.

These agreements have to show that they contribute to improving the production or distribution of goods, promote technical or economic progress, allow consumers a fair share of the resultant benefits, don't impose disproportionate restriction to achieving those objectives, and don't allow anyone to eliminate competition.

A consortium agreement between container lines may wish to offer a joint service to the market to transport goods, built around a joint timetable.

"Sometimes individual carriers don't have the capacity or the number of ships to provide a particular service on their own. It's not physically efficient to transport a lot of air on an empty ship halfway around the world. So doesn't it make sense to get people to work together?" he noted.

"How justifiable are those restrictions in this particular context? And the thing about competition law is that it's not just about reading the law and dry agreements, you have to understand how the agreement works in its individual market context.

"You're looking at a lot of an economic facts as well as law. That combination makes it really difficult maths."

To complicate the picture, companies cannot go directly to the European Commission and ask whether or not any given agreement meets the criteria for being exempt from the ban on anti-competitive agreements.

Even with the existence of CEBR, detailed case-by-case assessment is nevertheless required, which will likely prove a job for competition lawyers.

For instance, it is still forbidden to allocate market share or customers, and agreements must allow for participants to withdraw from them if they wish.

"The problem is people are relying on the block exemption when they should not be relying on the block exemption. They need to check whether it has been used validly or not."

Nothing will happen on Brexit day itself, and if CEBR is renewed in April, it will remain applicable. It will be open to the government to make changes from January 1 next year, if it chooses to do so.

The government could also direct the courts to interpret competition law in a different way from the way that has so far obtained.

But there is no indication that this is a priority for the government at the moment. The most likely course of things is that it will remain in place until expiry in 2024, at which point the Competition and Markets Authority, as the relevant non-ministerial department, will make a determination on Britain's policy.

"The CMA may or may not think about it, but my suspicion is that they will just keep the block exemptions in place," Mr Robinson said.

ANALYSIS

Marine accident reports remain inadmissible in English courts

MARINE Accident Investigation Branch reports remain inadmissible in maritime disputes, the High Court has ruled, after that position was challenged following a precedent provided by the successful use of a parallel report from the Air Accident Investigation Branch as evidence in civil proceedings.

The finding in *Ocean Prefect Shipping v Dampskibsselskabet Norden* last month effectively squashes any doubts that may have arisen from *Rogers v Hoyle*, a 2014 decision arising out of the death of a passenger in a vintage Tiger Moth biplane.

A subsequent AAIB report found that a loop manoeuvre was carried out at too low a height to allow the plane to recover from its spin, and that the pilot lacked sufficient knowledge or training to know this.

The Court of Appeal upheld a first instance decision that the report was admissible in evidence, both as to the facts it contained and as expert opinion evidence.

By contrast, the *Ocean Prefect* verdict confirms most shipping lawyers' working assumption that MAIB reports are inadmissible in maritime cases.

Under regulation 14(4) of The Merchant Shipping (Accident Reporting and Investigation) Regulations 2012, MAIB reports are inadmissible in judicial proceedings whose purpose is to attribute liability, unless permission of a court is granted.

In *Ocean Prefect*, a British registered vessel ran aground twice when entering the port of Umm Al Quwain in the United Arab Emirates, and an unsafe port claim was brought by the owners of the vessel in a London arbitration.

The owners' expert considered an MAIB report into the circumstances of the grounding favourable to the unsafe port case, and should thus be borne in mind by the tribunal. The charterers and MAIB itself argued against its acceptability.

The owners applied urgently to the English High Court under the 2012 regulations for permission to rely on the report in the arbitration.

According to an analysis by Evangelos Catsambas and David Handley of shipping law firm WFW, there were two key questions for the court.

First, does a private LMAA arbitration constitute "judicial proceedings" within the meaning of the 2012 regulations; and second, if so, should the court allow the MAIB report to be used in those proceedings.

On the first point, the court found that London arbitration does meet the regulatory definition of "judicial proceedings". The fact that arbitral proceedings are confidential makes no difference in this matter.

On the second point, the main objection for using MAIB reports in maritime disputes has traditionally been the impact this may have on future investigations.

The MAIB has the ability to compel witnesses to meet them and to exclude legal representation from those meetings. Admitting the report in the arbitration would likely to prejudice future investigations, MAIB contended, diminishing its ability to have candid conversations with witnesses who may fear self-incrimination, and to obtain unqualified access to accident sites.

The court recognised that while refusing to admit the report may have cause the owners prejudice in the arbitration, it would still be possible to cross-examine witnesses without reference to the report, and both parties would still be assisted by their own experts.

There was also no restriction on the witnesses explaining, under cross-examination, what evidence they had given to MAIB and, if they were willing to do so, providing copies of the statements that they had made to MAIB.

Mr Justice Teare considered that the potential future detriment to incident investigation outweighed any benefit to the commercial arbitration between the parties, and held that the MAIB report should not be used in the London arbitration unsafe port proceedings.

Moreover, there is a distinction in the AAIB regulations between the "report" and the "records", with legislators considering only "records" should be restricted.

However, there is no similar distinction between "records" and the "report" in MAIB Regulations, meaning that under the MAIB Regulations, the restriction applies to the report itself.

MARKETS

China could start exporting VLSFO as domestic output perks up

A RAMP-UP in domestic production of very low sulphur fuel oil will reduce China's reliance on imports and could even lead to exports of the compliant fuel, according to a new research note.

The forecast, by Sublime China Information, is against the backdrop of the recent 0.5% sulphur cap implementation and Beijing's looming tax rebate policy that is set to encourage Chinese refineries to boost VLSFO production.

The Chinese commodity trading consultancy said that the new tax regime, if it materialises, will increase local refineries' profit by Yuan385 ($55.70) per tonne by producing VLSFO from lower sulphur grades of crude oil. This grade of compliant fuel is being sold in China at about Yuan5,000 per tonne.

"More and more refineries are preparing for the [VLSFO] production and planning the [VLSFO] blending business at Zhoushan Port," it said.

Chinese-made bunker fuel currently faces a 13% valued added tax and a consumption tax of Yuan1,218 per tonne.

The extra cost has dampened domestic production, resulting in about 90% of the fuel supply for ocean-going vessels at the country's ports being imported and sold in the form of the so-called bonded bunker to avoid taxes.

But a tax waiver, that the government has reportedly approved, and expected by some to take effect in February at the soonest, is changing market dynamics.

In a recent report, China-based Huatai Future estimated that refineries under the four state-owned oil majors — Sinopec, PetroChina, CNOOC and Sinochem — were equipped with a combined VLSFO capacity of 18.2m tonnes in 2020.

Sinopec and PetroChina — the larger two of the four — had earlier revealed plans to produce about 14m tonnes this year.

SCI said the production target, if it is hit, was enough to supply about 80% of the consumption in China's bonded bunker market. "This will certainly lead to lower [VLSFO] import volume in the future," it added.

The consultancy further predicted that the VLSFO output in China would reach about 20m tonnes in 2023 and gain access to foreign markets.

"China's [VLSFO] barrels will find markets in the countries covered in the Belt and Road Initiative," it said.

IN OTHER NEWS

DP World cancels leave in fight with Australian maritime union

THE Maritime Union of Australia has vowed to step up industrial action against DP World after the ports multinational cancelled dock workers' holidays.

The Dubai-based ports operator's move affects sites in Melbourne, Sydney, Brisbane and Fremantle, the union said on Tuesday.

It claimed workers' pay has been cut after some staff refused to work outside in the thick smoke haze caused by Sydney's bushfires in early December, according to reports.

Police probe Marshall Islands flag employee's death in New York

POLICE in New York are investigating the death of a Marshall Islands registry employee.

Antonio Litman was found dead "in mysterious circumstances" in the early hours of Monday, according to a representative from the registry.

Local media reported that Mr Litman, who was in his fifties, was found with stab wounds in a burning building in Fort Greene, Brooklyn. The Marshall Islands registry said staff were all saddened to hear about the fatality.

UK agrees treaty with US to protect Titanic wreck

THE wreck of *Titanic* is to receive protection under an international agreement signed by the UK and US.

The two governments have passed legislation giving them the power to grant or deny licences authorising people entering the hull sections of *Titanic* and removing artefacts found outside the hull.

Signed by the UK in 2003, the treaty will now come into force following its ratification by the US Secretary of State Mike Pompeo last month.

DP World expands European inland operations

DP WORLD is further expanding its reach into the logistics supply chain with a stake in European inland container terminal operator Swissterminal.

DP World will hold a 44% share of the company, with the majority stake remaining with the founding Mayer family. The financial terms of the deal were not disclosed.

Roman Mayer, the son of Swissterminal founder Alex Mayer, will remain as chief executive and no structural changes are planned at the company.

China Merchants restructures Sinotrans Shipping

CHINA Merchants Group is to inject more assets into its listed shipping arm, as part of the efforts by the state conglomerate to further consolidate its portfolio in the sector.

Its dry bulker and tanker arm listed in Shanghai, China Merchant Energy Shipping, unveiled the plan to acquire most of Sinotrans Shipping's core business in an exchange filing on Monday.

The acquisition had largely been expected since the latter company — a subsidiary of Sinotrans & CSC Holdings and also ultimately owned by CMG

— was privatised in January 2019 and delisted from the Hong Kong Stock Exchange.

Shanghai port to buy stake in Ningbo-Zhoushan

SHANGHAI International Port Group has agreed to acquire a stake in the nearby Ningbo-Zhoushan Port Co as port consolidation in China speeds up.

While both companies are listed in Shanghai, SIPG revealed in an exchange filing on Tuesday the plan to buy up to a 5% stake in NZPC via a private offering of new shares for no more than Yuan3.7bn ($536m).

The pair is the main operator of their respective port, one of the largest in the world.

Malaysia's palm oil flows to India at risk from diplomatic spat

FOLLOWING news reports suggesting that restrictions might be in the offing, New Delhi has now gone ahead and issued a ban on imports of refined palm oil from Malaysia amid an ongoing diplomatic row between the two countries.

India's Ministry of Commerce and Industry issued a notification warning that the import of refined palm oil had been amended from "free" to "restricted", a move that might put dampener on the chemical tanker trade in the near term.

The country also has plans to place restrictions on other commodities imported from Malaysia, an India-based industry participant told Lloyd's List.

South Korea to send forces to Strait of Hormuz

SOUTH Korea has officially declared it will send forces to the Strait of Hormuz as tensions rise in the Middle East Gulf.

This will be done by expanding the operational areas of its anti-piracy unit originally deployed in the Gulf of Aden to help protect the strategic waterway, the defence ministry announced.

It was reported in August 2019 before the most recent deployment of the Cheonghae Unit that its operations could easily be extended to the Strait of Hormuz from its original remit of conducting anti-piracy operations in the Gulf of Aden.

EU-led naval mission in Gulf gets more support

EIGHT European Union nations have given their support for a new EU-led naval patrol to help avoid potential conflicts in the Strait of Hormuz, according to the French foreign ministry.

"The governments of Belgium, Denmark, France, Germany, Greece, Italy, the Netherlands, and Portugal politically support the creation of a European-led Maritime Surveillance Mission in the Strait of Hormuz," said the ministry, also known as the Quai d'Orsay.

The ministry identified Denmark, France, Greece, and the Netherlands as contributing to the European-led Maritime Surveillance Mission, which will be based at Port Zayed in the United Arab Emirates, and said it looks forward to "further commitments in the coming days" — a reference to other nations' ships possibly joining the mission.

Classified notices follow