

Piracy and Armed Robbery

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BRITANNIA P&I

The MAST logo features a stylized white wave graphic above the word "MAST" in a bold, white, sans-serif font. The background of the slide is a night-time photograph of a large container ship at a port, with its deck and stacks of colorful containers illuminated by yellow lights. A large, semi-transparent white letter "P" is overlaid on the center of the image.

MAST

What is the difference between piracy and armed robbery?

Piracy

- United Nations Convention on the Law of the Sea (UNCLOS) determines that Piracy consists of any of the following acts:
 - a) any illegal acts of violence or detention, or any act of depredation, committed for **private** ends by the crew or the passengers of a **private** ship or a **private** aircraft, and directed:
 - i. **on the high seas**, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - ii. against a ship, aircraft, persons or property in a place **outside the jurisdiction of any State**;
 - b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
 - b) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b)

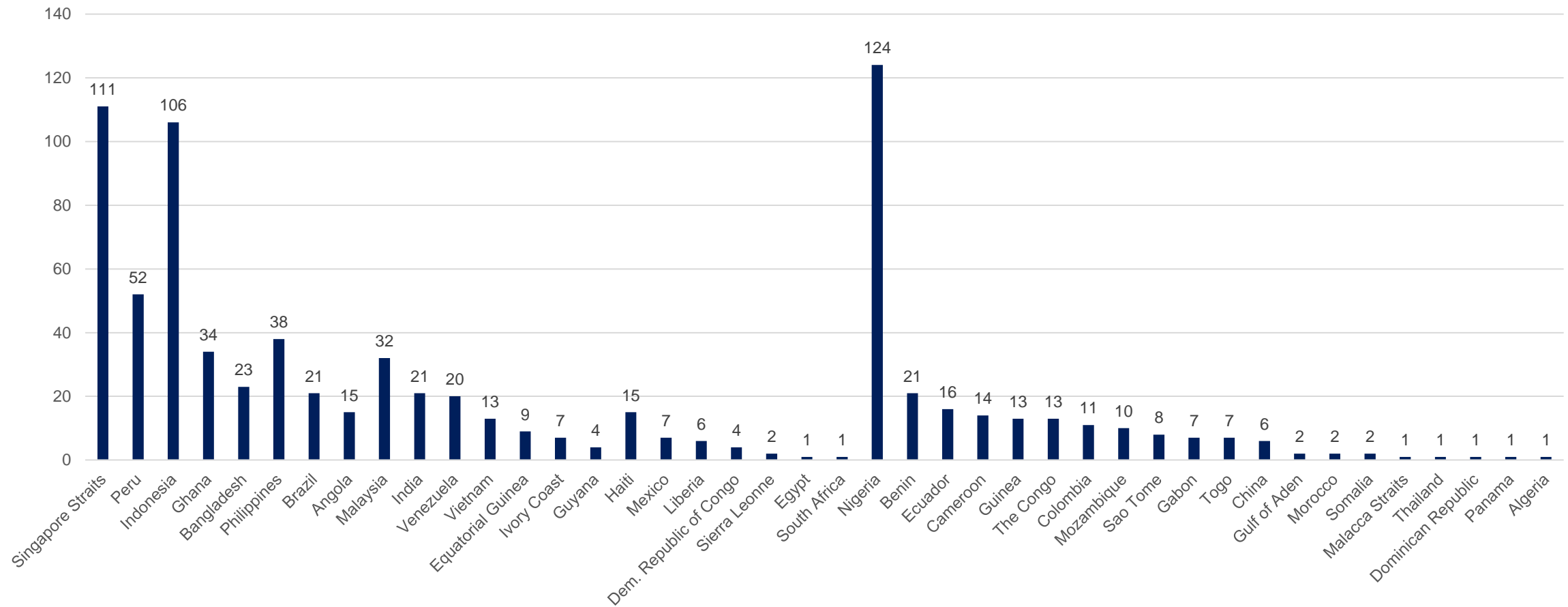
What is the difference between piracy and armed robbery?

Armed Robbery

- IMO defines armed robbery against ships as any of the following acts:
 - a) any illegal act of violence or detention or any act of depredation, or threat thereof, **other than an act of piracy**, committed for **private** ends and directed against a ship or against persons or property on board such a ship, within a **State's internal waters, archipelagic waters and territorial sea**;
 - b) any act of inciting or of intentionally facilitating an act described above.

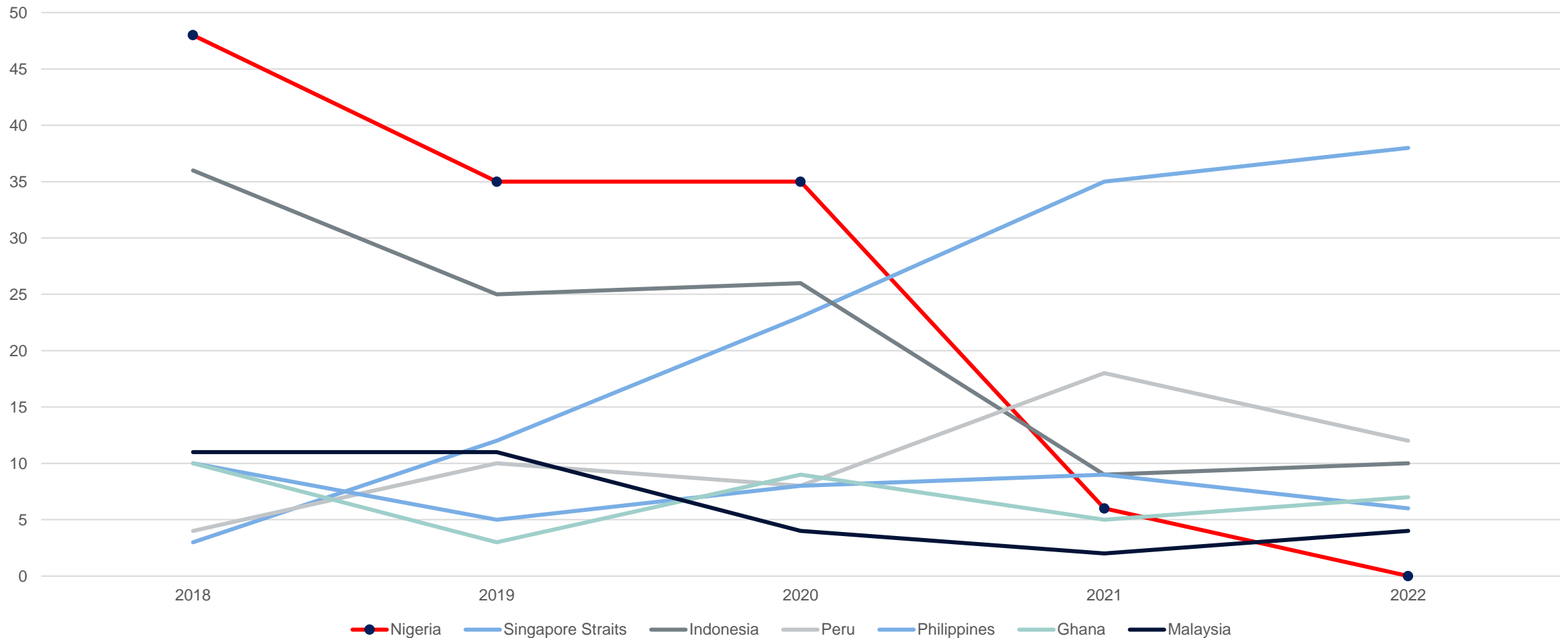
ICC International Maritime Bureau – Piracy and Armed Robbery Statistics

Total Incidents Over a 5-Year Period – By Country/Region



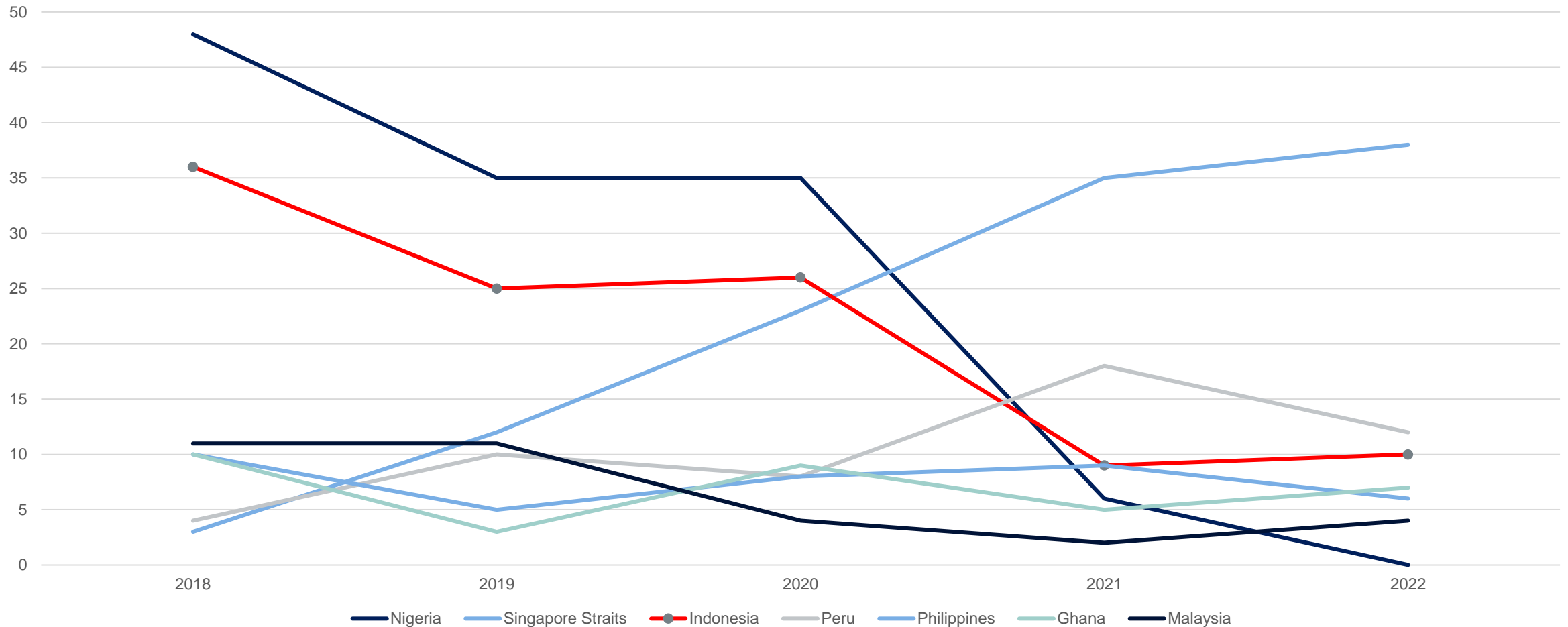
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Selected Countries - Total Number of Reported Incidents From 2018 to 2022



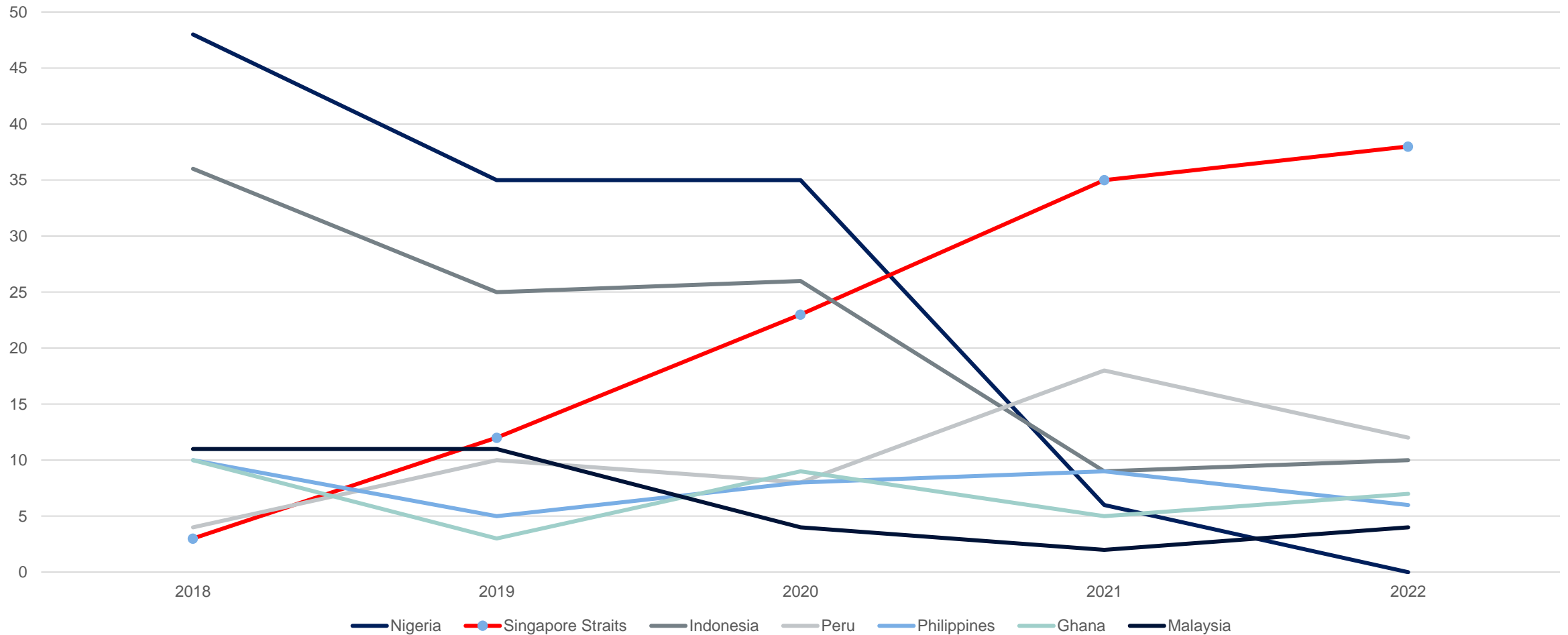
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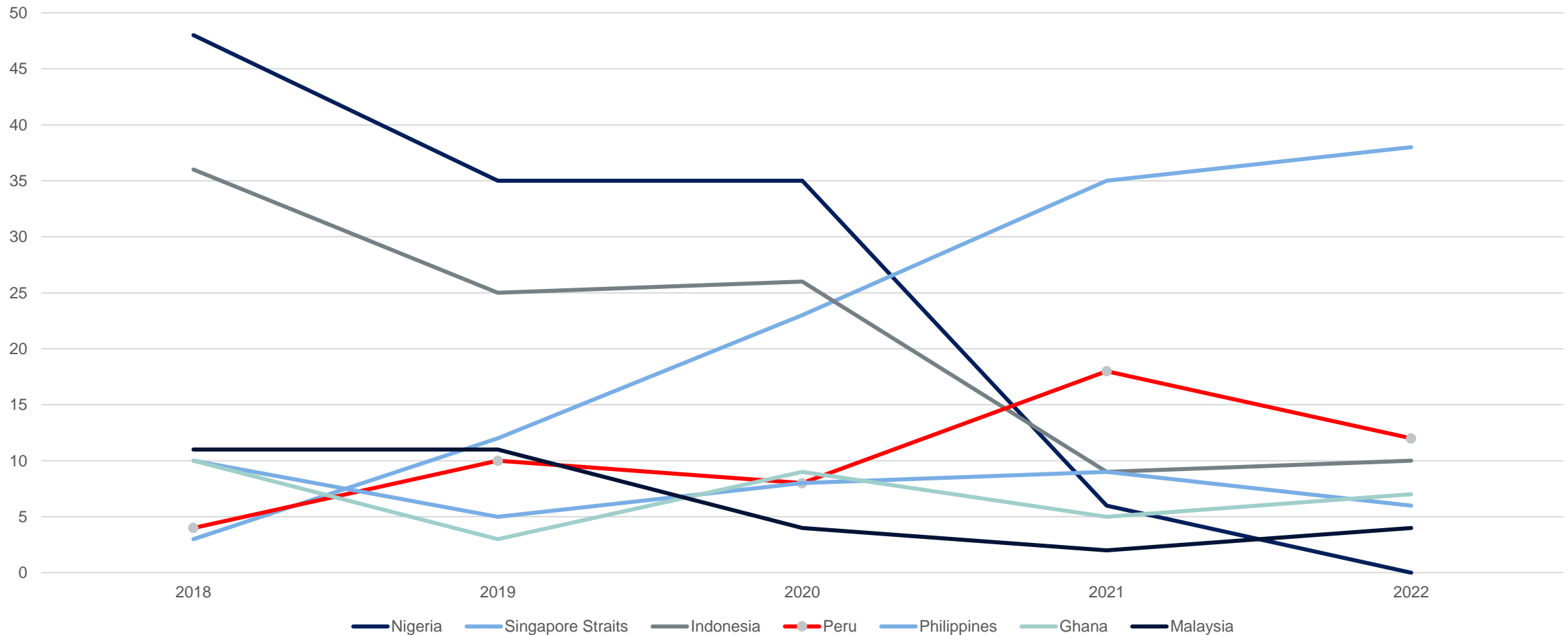
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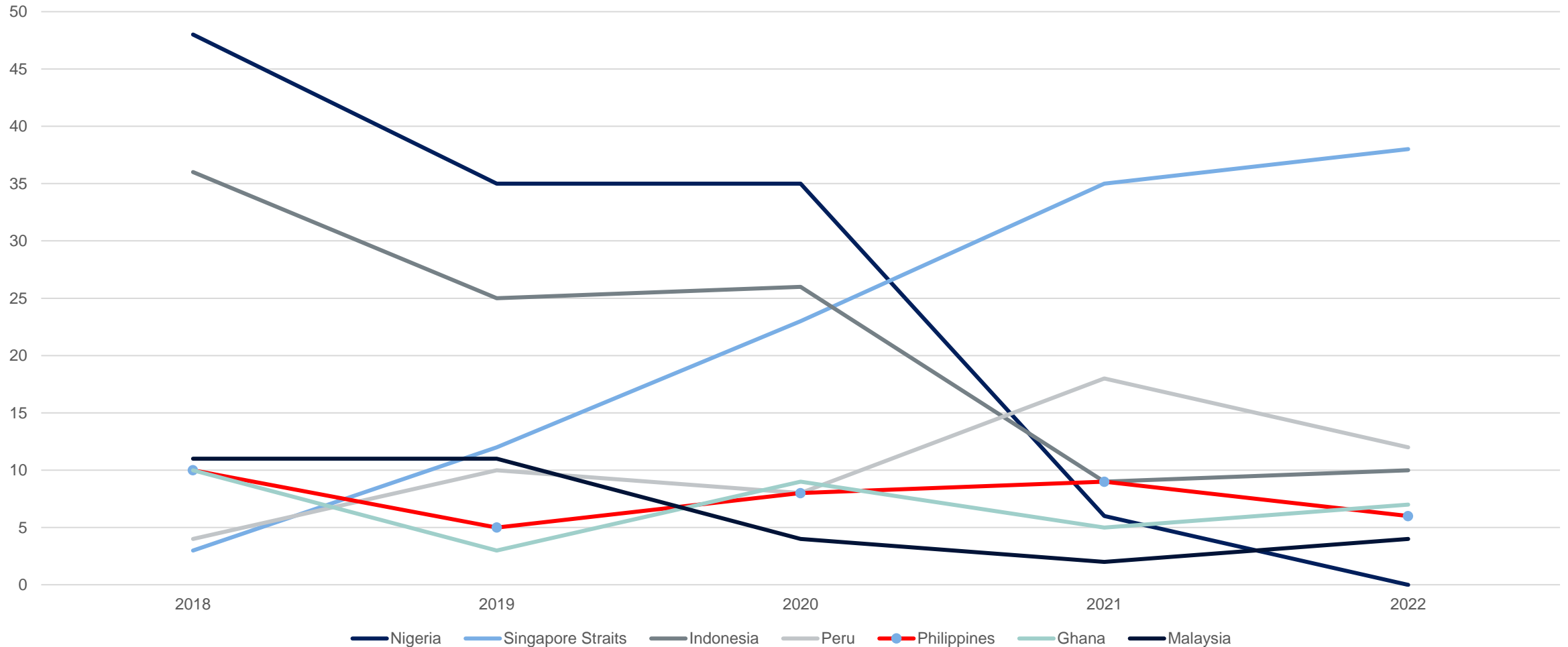
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Preventative measures

PD

Avoiding attacks by pirates and armed robbers

- Understand the threat and assess the risk
- Determine mitigating actions
- Prepare the crew
- Register and report



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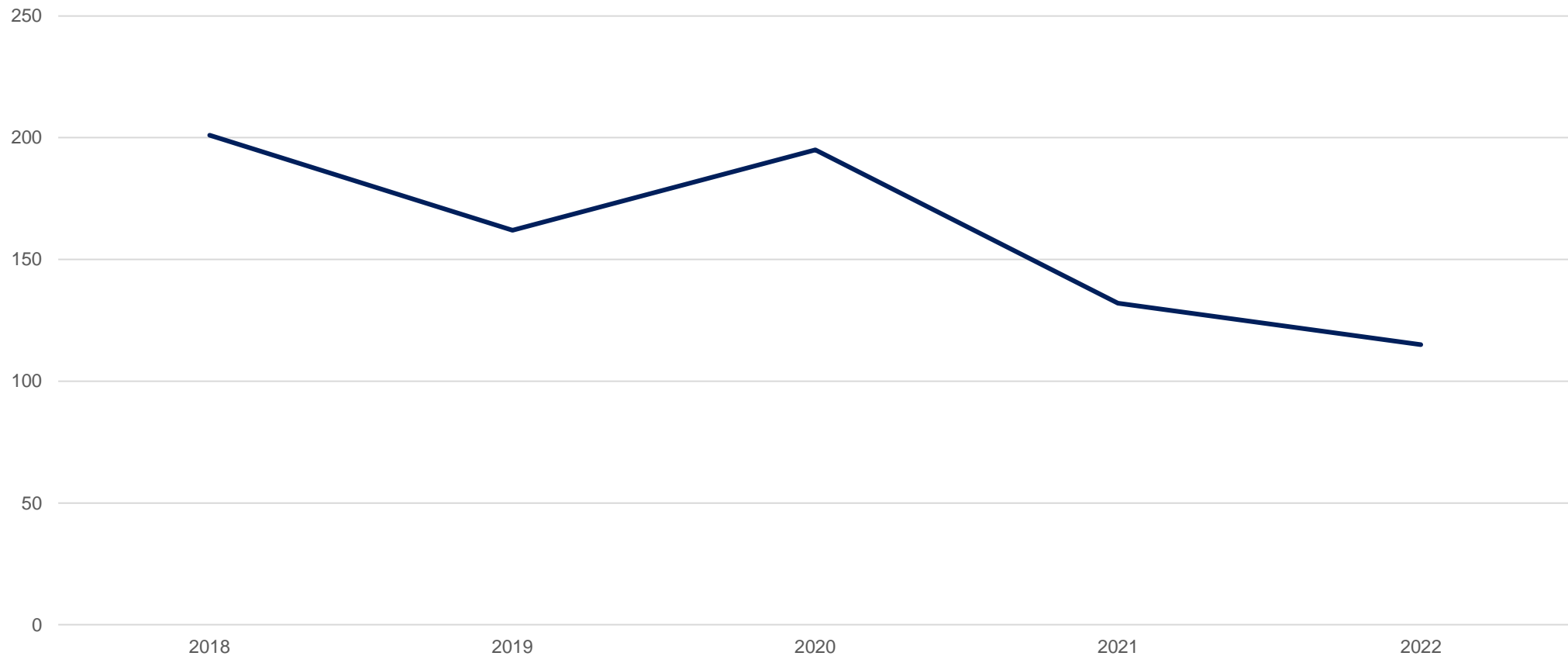
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ICC International Maritime Bureau Data – Piracy and Armed Robbery Statistics

Total Incidents Over a 5-Year Period – By Year



Piracy and Armed Robbery

Phillip Cable LLM



Themes

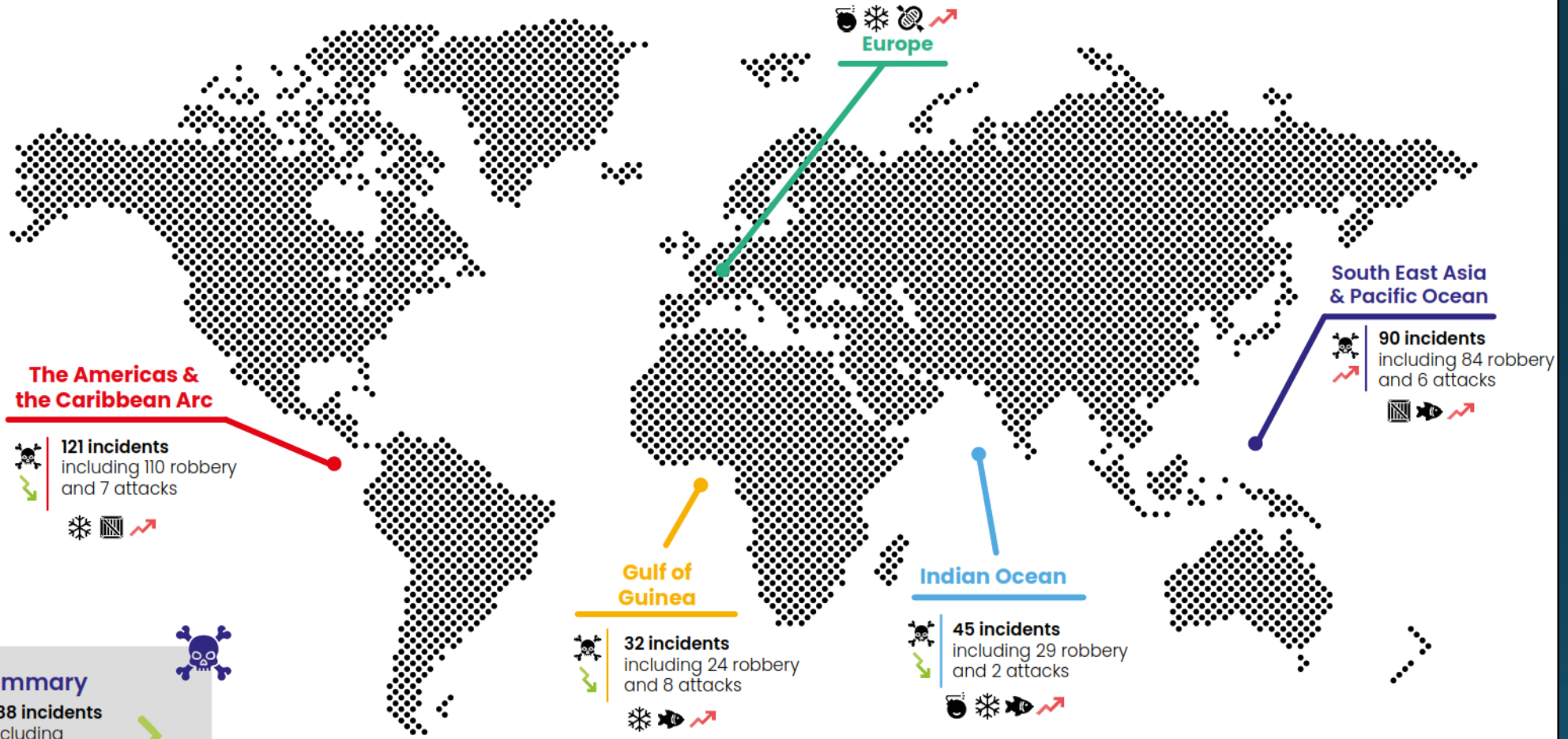
- Current summary of global maritime security threats – piracy to crime to terrorism. What could the future hold?
- Should the history of maritime crime guide our future stance - currently there is a tendency to view piracy as having been defeated.
- More pragmatic stance is needed: Safety of the high seas can no longer guaranteed.
- What should the maritime communities stance be on security at sea; entirely threat based or accept a residual level akin to how the safety culture onboard works. (ie lifeboats are ever present no matter where the ship is)
- Case Study

MARITIME SECURITY OVERVIEW - 2022



The number of acts of piracy continued to decrease in 2022, specifically in the Gulf of Guinea. In contrast, acts of robbery, particularly at certain anchorages, are on the rise.

The other maritime security threats all confirm the upward trend observed in 2021. The spillover of terrestrial conflicts onto the maritime domain has increased, especially in the Indian Ocean. The Russo-Ukrainian conflict has had a major impact on maritime traffic in the Black Sea.



Summary

288 incidents
including
247 robbery
and 23 attacks

Although published during the year to contribute to the threat perception, irregular, suspicious activities or sightings are not taken into account in the statistics of the rest of this document because they do not qualify as an act of robbery or piracy. Nevertheless, these activities are included in full in the lists in the annexes.

THREATS TO GLOBAL MARITIME SECURITY

SMUGGLING

PIRACY

IUU FISHING
(ILLEGAL, UNREPORTED, UNREGULATED)

NARCOTRAFIC

ILLEGAL IMMIGRATION

SPILLING CONFLICT

TRENDS COMPARED TO 2021

UPWARD TREND

DOWNWARD TREND

Reduction over 15 years

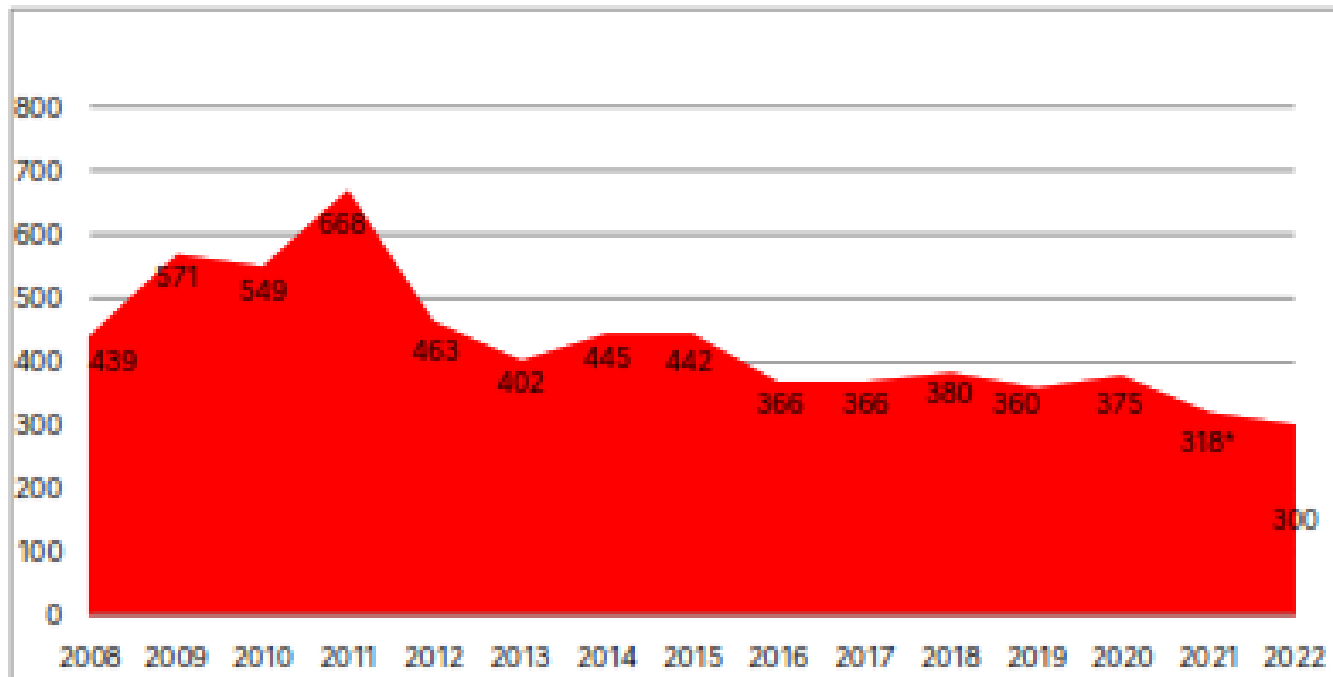
Analysis ?

Why?

What does it matter?

What should our response be?

Annual evolution of incidents



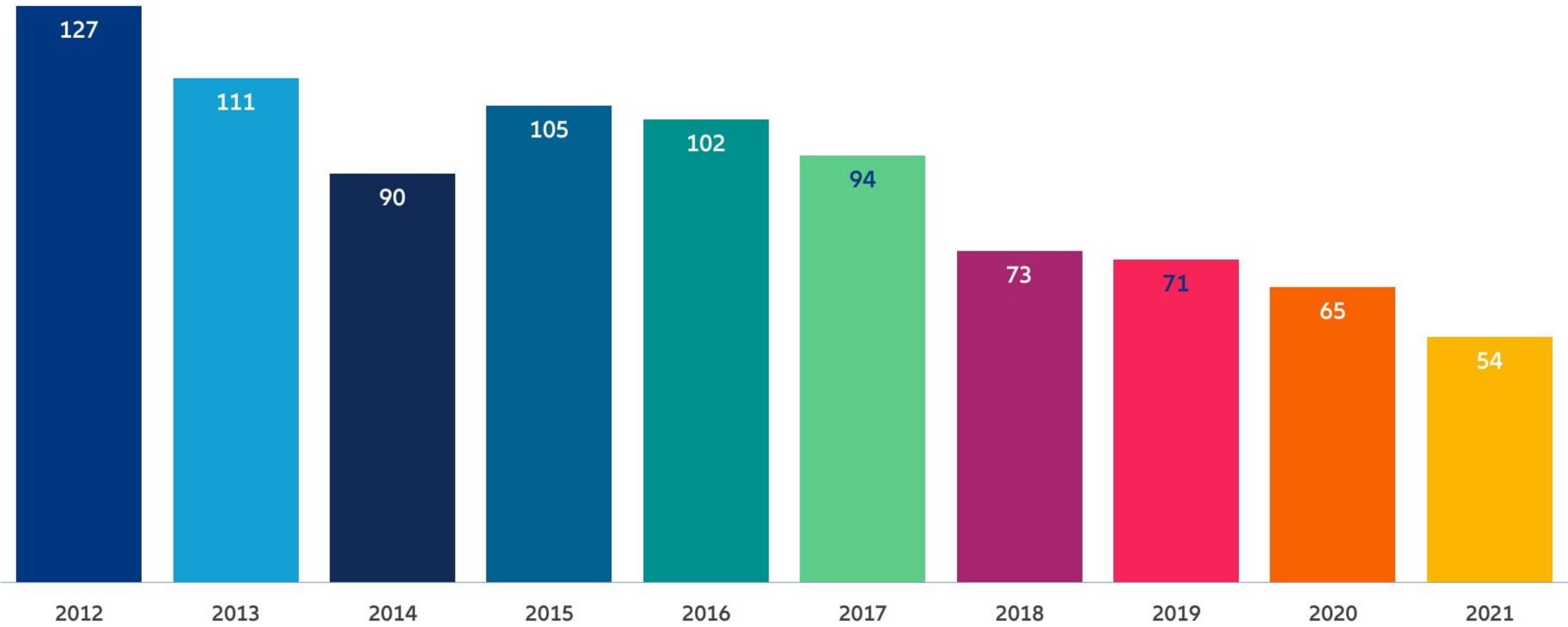
Why?

- “Many factors can explain this decline in maritime piracy, including the involvement of all stakeholders, private and state, regional and extra-regional. However, compliance to Best Management Practices and vigilance remains key and many other factors affect maritime security overall.”

Maritime Information Cooperation and Awareness Centre

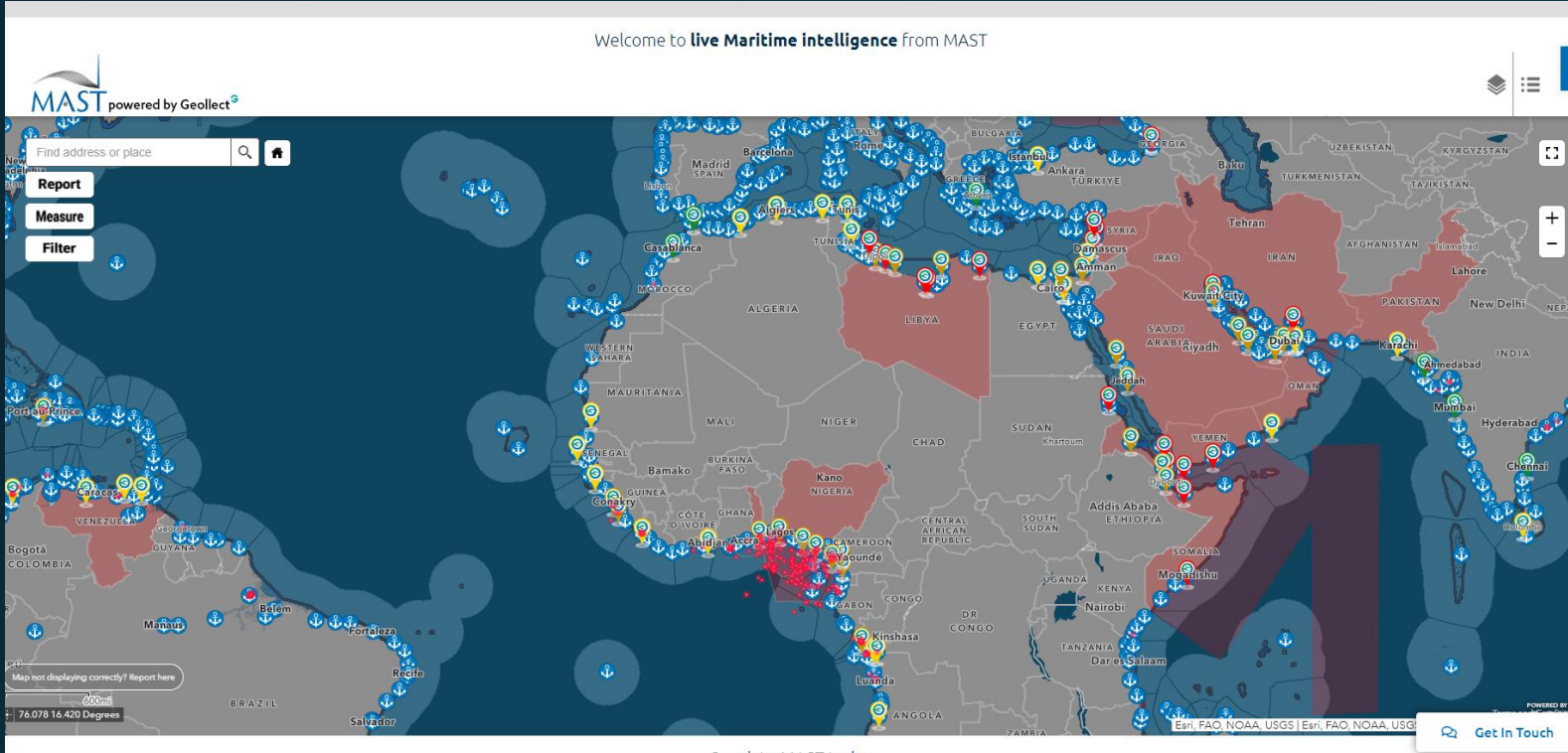
Total shipping losses by year

*Vessels over 100GT only



Is there a place for private security

- Threat has reduced
- Armed security reduced
- Price unsustainable
- Future?



Security – threat driven / intelligence

What is next?

Continuation in current form not viable – Floating armouries

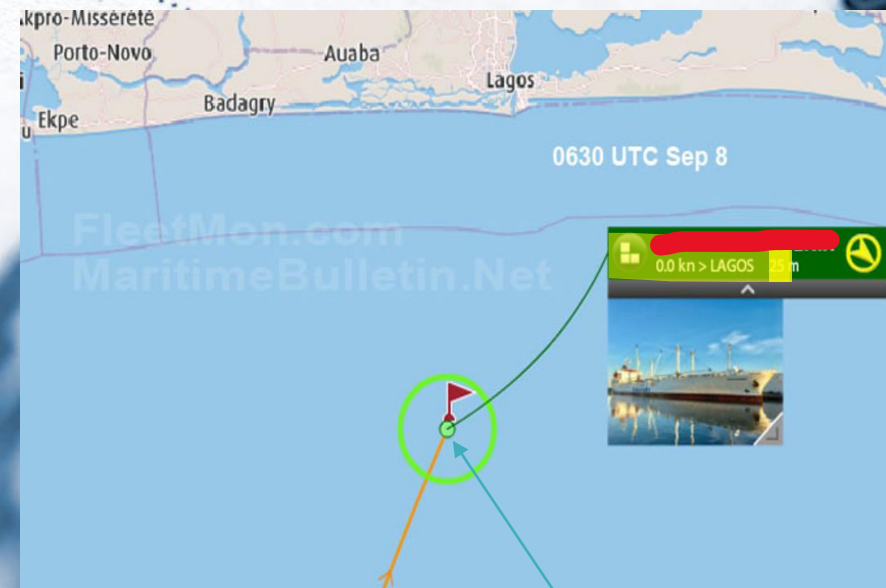
West Africa

More specialist consultant role

Better approach – place firearms on ship as part of ships equipment / embark men as required.

Case study – Kidnap offshore

- 8th September 2020 – Master and Chief Officer kidnapped
- Ship poorly prepared / insufficient watches
- First knowledge of a problem – armed men on the bridge
- Both MASTER and CHIEF in speed boat for over 12 hours (counted fuel cans used)
- Held on small raised platform at edge of small community – threatened but not mistreated
- Family called and threatened regularly
- Navy patrols passed close by
- Departed Nigeria – after 66 days.



25nm

Time line of events

- Typical communications blackout post kidnap for extended period – 2 weeks
- Critical to establish an Emergency Response cell during initial phase
- Control communications with all parties

Crew / Cargo interests / Agents / Insurers - FAMILY

| | |
|------------------------------------|---------------------------------------------------------------------------------------|
| | |
| Day 1 (8th Sept) | Kidnap |
| Day 8 | |
| Day 11 | |
| Day 15 | |
| Day 17 | |
| Day 29 | |
| Day 37 | |
| Day 44 | |
| Day 53 | Crew extraction - early morning |
| Day 54 | Crew reach Lagos – early evening |
| Day 65 | Debrief by Nigeria authorities (Navy, DIA, DSS, Police) at Navy Western Command Lagos |
| Day 66 | Crew fly to London, en route to Amsterdam |

Strategy

Kidnap
negotiation
and
extraction.

New approach vital – ‘Pilgrims case illustrated this’

Introduction of extreme caution and -
fundamentally ‘transparency’


the Suppression of Piracy and Other Maritime Offences Act 2019 (“The Piracy Act”) and the Terrorism Prevention Amendment”

Legal concerns

Widely drafted and unclear 'reporting requirements' to the 'relevant authorities in respect of the payment of ransoms (under Piracy Act)

Money laundering / Anti corruption reporting requirements

Onerous anti terrorism legislation that refers to 'kidnapping' ... casts a wider net



Advice – from a SAN and KC (London)

“Finally, it is worth bearing in mind that the Nigerian authorities have been increasing the rhetoric and the stakes in this area given the prevalence of piracy in Nigeria’s coastal waters and the national and international concerns being voiced at the instability it is causing”

It has been steadily tightening up the legislative environment around insurgency, piracy, and security generally, hence the amendment to the Terrorism Prevention Act 2011 and the passing of stand-alone anti-piracy laws last year...

Against this background, it seems to me that a certain element of inappropriate or overcharging has been taking place, as might have been the case in the “Pilgrims case”

“MAST should take care to satisfy themselves of the bona fides of all local agents and/or practitioners, including their experience, knowledge, and contacts with the Nigerian authorities, (at the requisite levels). Experience of successfully navigating the labyrinth of approvals and/or cooperation needed from all relevant individuals and/or authorities (in absolute discretion) is important”

The watchword must be caution at every stage to ensure that the tightrope of legal compliance is navigated successfully.



Actions

- Immediate deployment - Lagos
- Appointment of senior lawyer to be interlocutor between MAST and relevant authorities
- Work out – who the relevant authorities are
- Liaise and secure support of Russian Embassy
- Establish communications and maintain / document everything!



Money movements

Establish an entirely transparent process:

Application and notification to money laundering authorities and bank

Written request to the local bank for withdrawal of the ransom money

Open explanation to the Bank authorities as to the source and use of the funds



Communication of the details of the negotiations – vital for compliance

Office of the Naval Chief Staff in Abuja

Western and Central Naval Commands

Commander of the Delta Safe Operation in Bayelsa explaining their position and intentions, under copy to X

Philip Cable, in his capacity as X's formal representative for this matter in Nigeria, also wrote direct to Naval HQ Abuja with his own briefing

MAST Agent provided the Commodores in all three Naval Commands with running briefings, by WhatsApp, telephone and in person

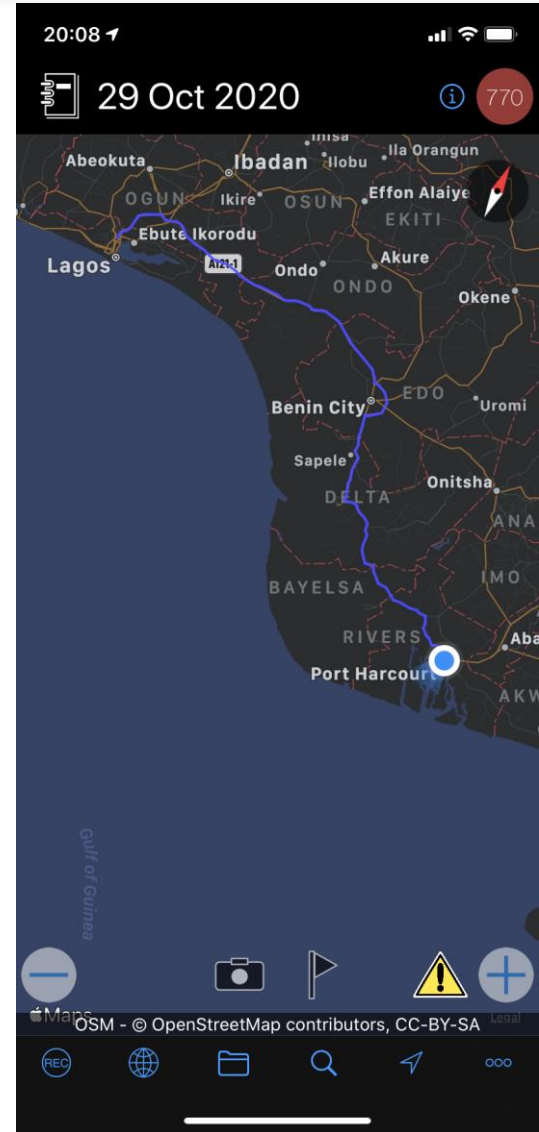
MAST Agent made two trips to Rivers and Bayelsa states to meet military agencies in Port Harcourt, Brass and Yenagoa.

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Final Phase

- Agreement reached with kidnappers
- Hand over to team in Nigeria
- Proceed to Port Harcourt
- Bank / cash withdrawal
- Final preparations and communications with Navy central command in Yenagoa
- Team composition included a lawyer, security (MOPOL) and logistics team (18)

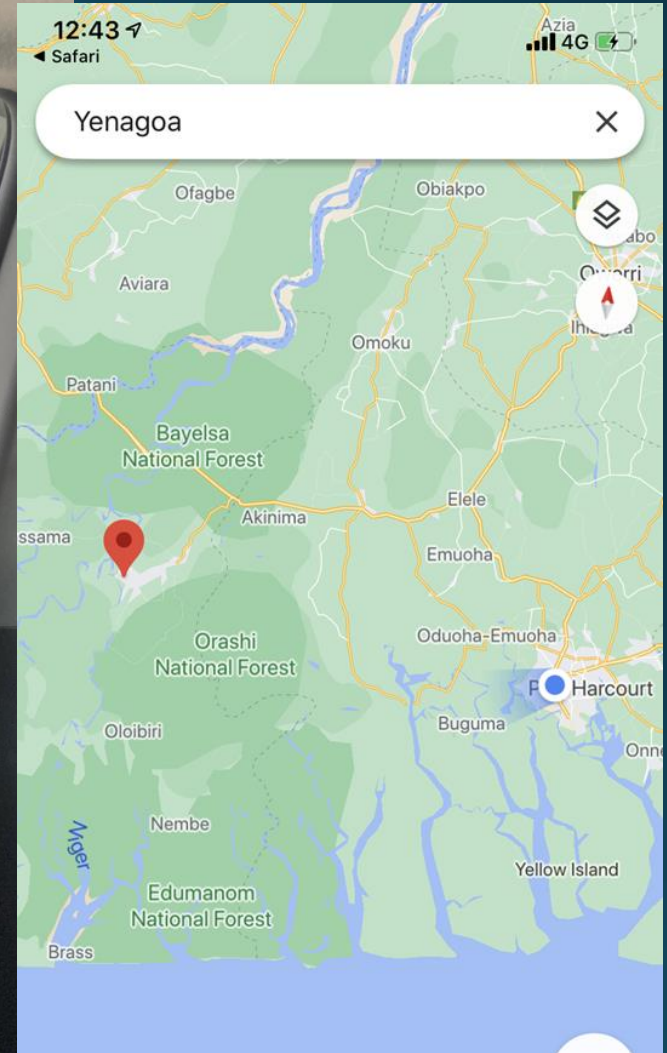






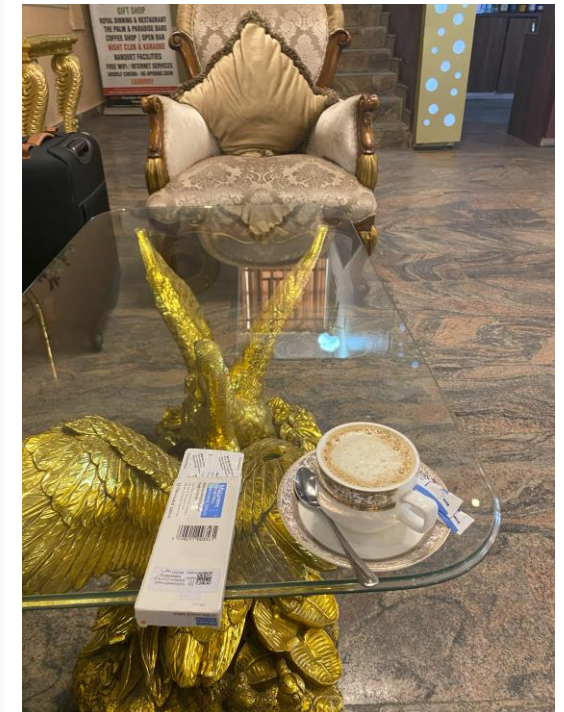
Extraction phase

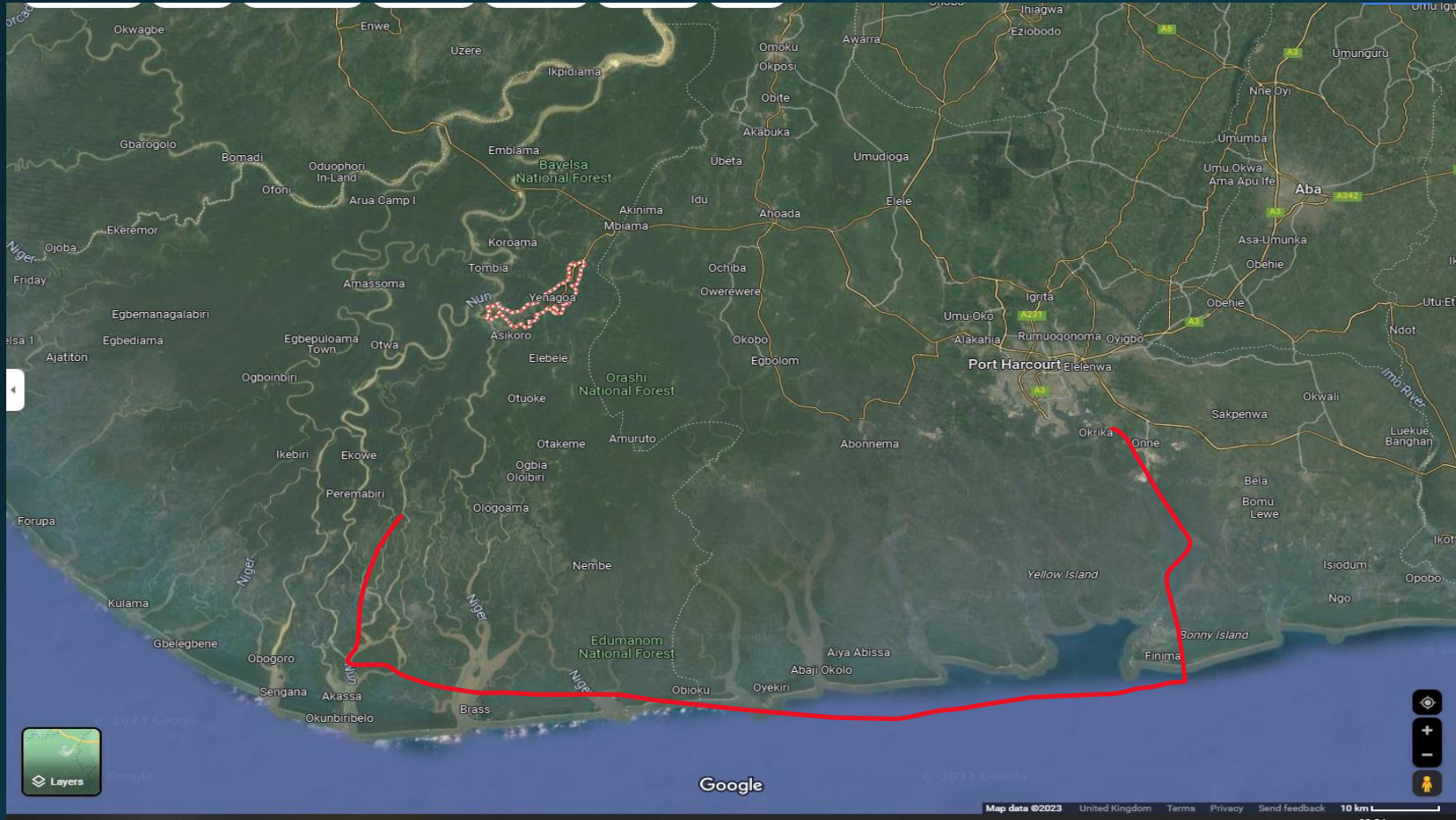
- Notified to proceed to Yenagoa
- Challenge over communications – comms black out preferable.
- Communications with authorities continued at this point.
- Yenagoa is a Local Government Area and capital city of Bayelsa State



Final phase continued

- Communications began to close down
- Concerns over 'why'
- Extraction team deploy after proof of life
- Deployed 2200
- Team Leader returned next day and advised that extraction had stalled.





Final extraction

24 hours in a boat through delta

Swapping boats several times

Collected in Port Harcourt and further 12 hours to Lagos

What happened and why?

All 'relevant' parties were informed as per legislation



Confused tapestry and organisation between regions



Risk of collusion allegation



Held in Lagos for 2 weeks and debriefed by intelligence community and interpol



Embassy level support required (Russian)



EFAAN
MUSTAALA MUHAMMAD INTERNATIONAL
AIRPORT
Welcome

PORSCHE DESIGN

Pilot Glasses
First glasses with
lens-changing feature

Chronograph I
First all-black chronograph

Shake Pen
First writing tool with
shake technology

TwoWay
First Porsche Design women's
handbag with adjustable straps

Timepiece No. 1
The first of the new generation of
timepieces by Porsche Design

Piracy and Armed Robbery

Rishi Choudhury, Associate Director



Potential P&I liabilities

- 3rd Party liabilities remain covered when arising out of incidents of piracy
- Loss of life, personal injury, illness, crew substitution & repatriation
- Loss or damage to cargo (and shipowners will seek contributions in general average from cargo interests), pollution, wreck removal
- However, War Risks are an excluded risk e.g., weapons of war, terrorism.

What is piracy?

The International Maritime Bureau (IMB) defines piracy as:

“an act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in the furtherance of that act”.

Distinguish piracy from terrorism

In *Republic of Bolivia v Indemnity Mutual Mar Ass Co Limited* (1909) the Court defined a pirate as:

“a man who is plundering indiscriminately for his own ends, and not a man who is simply operating against the property of a particular state for a public end, the end of establishing a government, although that act may be illegal and even criminal, and although he may not be acting on behalf of a society which is politically organised”.

- The Court was distinguishing a pirate from someone carrying out an attack for political purposes.

Comparison of piracy with terrorism

The key difference between piracy and terrorism are the underlying motivations and objectives. In the case of terrorism, the motivation is political and involves an intention to cause death/injury/damage. For piracy, the motivation and intention is to forcibly seize property/persons to obtain private/personal financial gain. The distinction is important for insurance purposes because P&I covers liabilities arising from acts of piracy, but it excludes liabilities arising from acts of terrorism, which fall under War Risk cover.

Piracy in West Africa - general

- Littoral states in West Africa (most cases off Nigeria or territorial waters of Nigeria)
- Most attacks when vessels entering/leaving ports/anchorage within territorial waters of littoral states
- National law prevails – not on High Seas as in Gulf of Aden
- Armed guards on board must be navy personnel – Nigeria offer escort vessel
- Navy personnel – “Local Security Personnel” (“LSP”)
- Private Maritime Security Companies (“PMSC”) not permitted on board
- PMSC intermediary to employ LSP local guards to provide additional logistical support in partnership with the LSP
- PMSC’s role is limited in scope – difficult to control LSP.

Piracy in West Africa

BIMCO SEV-GUARDCON

- Contract for Security Escort Vessels in West Africa
- Vessel protected by independently operated SEV as opposed to carrying a security team onboard
- However, in nearly all cases, both are used (LSPs on board and an SEV)
- Usually, 7 crew on the SEV and local authority provides the SEV – minimum spec
- LSPs embark at anchorage
- SEV joins the vessels and sails to the berth; thereafter escorts the vessel out of territorial waters after cargo operations
- Insurance / Knock-for-Knock indemnities / limitation USD5million
- Contract governed by English law.

Latest Developments

West Africa

As a result of the increase in attacks:

- Gulf of Guinea Declaration for the Suppression of Piracy (May 2021)
- Littoral states are committed to battling piracy with most high profile being: Deep Blue project launched in Nigeria (10th June 2021)
- Nigeria and ICC formed – Maritime Collaboration Forum – share awareness of activities in the GoG
- Ghana and Norway push UN to pass resolution criminalising piracy and armed robbery at sea in West African states – June 2022
- IMB states that global piracy is at lowest in 30 years “Gulf of Guinea has cooled down” – October 2022.

Recent Legal Cases on Piracy

Off-Hire

The Eleni C (2019, English High Court)– ship on time charter, after transiting Gulf of Aden, ship was captured by pirates in the Arabian Sea and held for seven months. Was the ship off-hire?

“Clause 49 - Capture, Seizure and Arrest

Should the vessel be captures [sic] or seized or detained or arrested by any authority or by any legal process during the currency of this Charter Party, the payment of hire shall be suspended for the actual time lost”.

“Clause 101 – Piracy Clause

Charterers are allowed to transit Gulf of Aden any time, all extra war risk premium and/or kidnap and ransom as quoted by vessel’s Underwriters, if any, will be reimbursed by Charterers. Also any additional crew war bonus, if applicable will be reimbursed by Charterers to Owners against relevant bona-fide vouchers. In case vessel should be threatened/kidnapped by reason of piracy, payment of hire shall be suspended.”

Held: the off-hire clause 49 did not apply because there was no authority or legal process (however note The Captain Stefanos [2012] EWHC 571 *“capture/ seizure, or detention or threatened detention by any authority including arrest”*) . However, Clause 101 off-hire did apply because the piracy detained the ship as an immediate consequence of the transit, rather than by reference to a particular geographic area.

Remedy: consider Bimco Piracy clause for time charters. Ship on-hire for 90 days.

Recent Legal Cases on Piracy

Cargo Claims

- The Valle Di Cordoba (2015, English Court of Appeal) – ship loaded 33,460mt of oil at Abidjan for carriage to Lagos. Armed pirates took control of the ship and transferred 5,291, to an unknown lightering vessel. The voyage charterers claimed the loadport value of the lost cargo from the shipowners.

“Owners will be responsible for the full amount of any in-transit loss if in-transit loss exceeds 0.5%” “The provisions of Article III...IV...of the Schedule to the Carriage of Goods by Sea Act 1971....shall apply to this Charter and shall be deemed to be inserted in extenso herein”

- Held: theft by pirates was not an in-transit loss however the shipowners were not liable for the loss because the Hague-Visby rule Article IV rule 2 defences were incorporated into the Charterparty.

Recent Legal Cases on Piracy

General

- The “Polar” (2021, English Court of Appeal)
- Ship seized by pirates while transiting Gulf of Aden and held to ransom.

Q&A

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