THE IMPACT OF PIRACY ON SHIPPING AND MARINE INSURANCE

A thesis submitted to the Bucerius/WHU Master of Law and Business Program in partial fulfillment of the requirements for the award of the Master of Law and Business (“MLB”) Degree

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</tbody>
</table>
LIST OF ABBREVIATIONS

- (ASBA) Association of Ship Brokers and Agents
- (BARECON 2001) Bareboat Charter party Form for Ships of any type
- (BIMCO) The Baltic and International Maritime Council
- (BOXTIME) Uniform Time Charter Party for Container Vessels issued by BIMCO
- (BPTIME3) Time Charter for Tankers standard form
- (COA) Contract of affreightment
- (CONWARTIME) War Risks Clause for Time Chartering
- (GA) General Average
- (H&M) Hull and Machinery
- (ICC) International Chamber of Commerce
- (ICA) Inter Club Agreement
- (INTERTANCO) International Association of Independent Tanker Owners
- (IMB) International Maritime Bureau
- (IMO) International Maritime Organization
- (INTERTANK TIME 80) Time Charter party for Tankers
- (JWC) Lloyd’s Market Association's Joint War Committee
- (K&R) Kidnap and Ransom
- (LoH) Loss of Hire
- (UNSC) United Nation Security Council
- (NSC) Nato Shipping Center
- (NYPE 93) The New York Produce Exchange form as amended 1993
- (P&I) Protection and Indemnity Club
INTRODUCTION

The Topic of piracy can be considered from diverse perspectives since it affects international trade, the global economy and the maritime industry in general. The purpose of this research is to analyze how piracy affects the contractual relation between charterers and ship owners in particular.

Maritime transport is a very important element of international trade; it supports globalization and affects the global economy. Maritime transport is essential to the world's economy since over ninety percent of the world's trade is carried by sea. Carrying the goods by sea is also by far the most cost-effective way to move on mass goods and raw materials around the world.1

Piracy should be contemplated for the great harm that it had caused in the past and still continues to cause to the maritime industry and maritime transport. Despite all the efforts made in the last years by the international community while supported by different states and in cooperation with the International Maritime Organization and the maritime industry combating piracy, piracy still continues to occur in many parts of the world.2 Piracy causes significant loss and costs to ship owners, charterers, crewmembers and cargo owners. Piracy may also threaten the environment for example when pirates hijacking a tanker carrying oil or chemicals, cause in the process spill or leakage of the cargo.

For the purpose of this research, the effects of piracy will be discussed and analyzed from a private law perspective focusing in the impact that it can have in the contractual relation between ship owners and charterers and how this situation interferes with marine insurance contracts. Special focus will be given to the different marine insurance covers that are required in cases of piracy.

This thesis aim to determine firstly if the standard forms for charter parties and the additional piracy clauses are suitable to avoid confusion regarding the liabilities of ship owners and charterer potentially overlapping when suffering from piracy threat and secondly if the marine insurance products offered at present for the risk of piracy influence the behavior of the shipping industry.

1 See https://business.un.org/en/entities/13 (consulted on 02.10.2014)
2 See http://www.oceansbeyondpiracy.org/ (consulted on 15.09.2014)
To demonstrate the above this thesis will cover the relevant topics among including as to who carries the risk of delay in a time or voyage charter party in situations of piracy. This than leads to questions like

- What is relevant for ship owners and charterers to consider when entering into a charter party contract where a vessel will be trading in high risk areas of piracy?
- Whether the concepts of frustration and off-hire may release the parties to perform their duties or not when incidents of piracy affect the charter party and

These issues will be discussed and analyzed in this thesis in consideration of the standard charter party forms and the attention is drawn to the additional piracy clauses drafted by Bimco and Intertanko for time and voyage charter parties.

Following this introduction, chapter one of this thesis will briefly go through the definition of piracy. Then the different ways pirates operate will be discussed with attention on piracy in the main trade route between Europe – Asia, including in particular the Somali coast. Special attention is given to this area because it is one of the most important trading areas in the world since that area connects Europe and Asia. This area has been the where mostly all of the incidents of piracy were reported between the years 2009 to 2011.

Furthermore, some actual statistics will be presented to provide an overview about the current situation of piracy and how it affects the relationship between ship owners and charterers. In this chapter a descriptive method will be used to explain the different types of piracy with a special focus on piracy in the Gulf of Guinea. International conventions and guidelines of related international organizations are used here.

In chapter two, a general overview will be provided and some of the different charter party categories will be described focusing on time charter party and voyage charter party and how these contracts might be affected by incidents of piracy. The impact of piracy will be considered on charter party contracts in the light of standard forms of charter party contracts, literature and court cases.
In chapter three, the diverse types of insurance covers that are required in cases of piracy will be discussed and analyzed. I will then refer to whether or not these covers are necessary and to what extent the risk of piracy impacts the interrelationship between owner and charterer. Piracy will be treated as marine risk for this chapter.

Finally and in order to complete this research in chapter four I will provide my conclusions.
1. PIRACY

What is piracy? How should it be interpreted? These are the first questions that must be answered. There are several definitions for piracy, however, for the purpose of this thesis piracy will be referred to in the private law context and as an event that has an impact in the charter parties. For marine insurance contracts, Piracy will be understood as a risk.

To understand the impact that piracy causes in the contracts of carriage, there are two definitions of piracy that, when looked at together, will cover the most relevant elements of piracy.

1.1 DEFINITION

First, in 1982, Article 101 from the United Nations Convention on the Law of the Sea, the definition of piracy that has been provided in the context of international is

(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;
(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

It is worth noting that this definition is contemplated for the acts of piracy that may occur on the high seas and is not considered for acts that may occur in the jurisdiction including territorial waters of any state. According to the Article 86 of the mentioned 1982 UNCLOS, the high seas has been defined as “all parts of the sea not included in exclusive economic zone, in the territorial sea or in the internal waters of a state, or in the archipelagic waters of an archipelagic state”.
The reason of considering piracy in the high seas and not in the confines of the states has been an intention of the international community to keep the definition of piracy for acts occurred in the high seas because that definition for piracy excludes mutiny, hate, political ends and events that occur within territorial waters of any country.³

Secondly, a wider definition of piracy that has been produced by the International Maritime Bureau (IMB) states, "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 furtherance of that act." This definition is more open and allows incidents in territorial waters to be considered as situations of piracy.

In the context of private law, the difference between piracy and mutiny is irrelevant and the wider definition of piracy has been accepted by the courts for contractual purposes while the UNCLOS definition provides limitations through the requirements of two vessels and that the incident of piracy must occurred in the high seas.

The combination of the definitions used together is the best option to understand piracy.

1.2 FORMS OF PIRACY

Pirates have existed since the beginning of shipping and pirates operate in different ways worldwide. Piracy has become more sophisticated in the last years.

According to the Interim Guidelines for Owners, Operators and Masters for Protection against piracy in the Gulf of Guinea, pirates' principal activities can be split into the categories Armed Robbery, Cargo Theft, and Kidnapping.⁴

1.2.1 Armed Robbery

Armed robbery occurs where vessels are approaching, drifting or anchored off ports. In general terms, this form of piracy is opportunistic. In most of these cases, the pirates intentions are focused on taking valuables from the safe, IT equipment, and personal effects from the crew members.

³ Paul Todd, Maritime Fraud and Piracy, page 3.
⁴ See http://www.shipping.nato.int/Pages/Guidelines-for-Gulf-of-Guinea.aspx (consulted on 08.10.2014)
1.2.2 Cargo Theft

This form of piracy, closely related to and regularly happening in conjunction with the shore, predominantly occurs in the Ship to ship transfer areas off Cotonou, Lagos, and Lome, and is almost exclusively related to product and chemical tankers. For these purposes pirates hijacked vessels for several days while cargo is transferred to a smaller vessel. These incidents tend to be organized, potentially involving a criminal element with commercial interests ashore. Recent cargo thefts have demonstrated that pirates often have a maritime know-how allowing them to disable communications and properly operate the cargo system.

1.2.3 Kidnapping and Ransom

This form of piracy is generally associated with the Somali Coast line (both with regards to the Goa and the Somali eastern Coast) as well as with offshore oil industry and the political instability of the Niger Delta area. As regards to the former, these incidents were initially limited to attacks and captures near the coast line. Subsequently, attacks were carried out from fishing and so call similar “mother ships” of vessels which have been captured previously. This focus was on hijacking others to obtain ransom in the cost of Somalia. There are several instances of offshore supply vessels and occasionally other ship types being attacked. Robbery is often the prime objective but occasional kidnapping of crew members can occur. Pirates ask for a ransom in order to free the crew members.

This brief list of the different forms of piracy that exist nowadays is intended to draw attention to the level of sophistication that piracy has today and to make people aware of the several ways pirates operate.

Piracy is a very lucrative “business” and pirates believe that they can operate with impunity.5

Such acts of piracy affect the regions and destabilize the maritime industry causing great harm to the global economy.

1.3 PIRACY TODAY – STATISTICS

Piracy is a growing phenomenon that has not been controlled as it can be evidenced in the Piracy and Armed Robbery Against Ships Report Issued by the International Chamber of Commerce Maritime Bureau 2014.

According to the International Chamber of Commerce (ICC)\(^6\), until September 2014, pirates carried out 178 violent attacks on ships around the world. From the 178 violent attacks, 124 vessels were boarded by pirates and 17 vessels were hijacked from during the period of first of January to the thirty of September 2014\(^7\).

\(^6\) ICC-IMB Piracy and Armed Robbery Against Ships Report – Annual Report 2014

\(^7\) See Table 2, ICC-IMB Piracy and Armed Robbery Against Ships Report 2014
Even though that we can see an improvement in the number of violent attacks decreasing when we compare the statistics from the year 2009 to the year 2014, the numbers of attacks is alarming. The harm that piracy causes to the maritime industry and the costs of piracy are highly significant.

It is also worth noting that most of the situations of piracy and the attacks that occurred during the first nine months of the year 2014 have occurred in South East...
Asia. Please see below in Chart C and Table 2 a report per region of the violent attacks.  

**Chart C:** Total incidents as per Regions of the world January – September 2014

<table>
<thead>
<tr>
<th>Region</th>
<th>Actual Attacks</th>
<th>Attempted Attacks</th>
</tr>
</thead>
<tbody>
<tr>
<td>S E Asia</td>
<td>103</td>
<td></td>
</tr>
<tr>
<td>Africa</td>
<td>44</td>
<td></td>
</tr>
<tr>
<td>Indian Sub.</td>
<td>24</td>
<td></td>
</tr>
<tr>
<td>Rest of the World</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>America</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Far East</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vietnam</td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>Bangladesh</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>India</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brazil</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Colombia</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Africa</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Angola</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Cameroon</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Democratic Republic of Congo</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Gabon</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ghana</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Gulf of Aden*</td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Ivory Coast</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liberia</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nigeria</td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Red Sea*</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Somlalia*</td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>Tanzania</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Congo</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tokyo</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rest of World</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oman*</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Sub total</td>
<td>124</td>
<td>17</td>
</tr>
<tr>
<td>Total</td>
<td>178</td>
<td></td>
</tr>
</tbody>
</table>

All incidents for countries with * above are attributed to Somali pirates

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8 See Table 2 and Chart C, taken from ICC-IMB Piracy and Armed Robbery Against Ships Report 2014.
The situation is very serious and piracy affects international trade, the maritime industry and as well as human lives. From the economic point of view, piracy impacts not only on international trade through an increase in insecurity related to the prompt delivery of the goods transported⁹, but it also affects the globalization, the environment and the people.

The organization “Oceans Beyond Piracy” have stated an estimation of the economic cost of Somali Piracy in the year 2013 in the “The State of Maritime Piracy 2013¹⁰” report. It is worth noting that these costs are an estimation since, due to the lack of reports, the accuracy of the real cost cannot be confirmed. It is believed that ransom costs and recovery costs are actually much higher.


**CHART - A**
It is also worth mentioning that piracy has also very high human costs.

**CHART - B**

<table>
<thead>
<tr>
<th>1,871 Seafarers Attacked by West African Pirates</th>
<th>1,209 Seafarers on Vessels Boarded by West African Pirates</th>
<th>73 kidnapped &amp; held for 22 days on average</th>
</tr>
</thead>
<tbody>
<tr>
<td>279 Seafarers Taken Hostage in 2013</td>
<td>184 hostages during oil siphoning/extended robbery - for 4 days on average</td>
<td></td>
</tr>
<tr>
<td></td>
<td>22 hostages while pirates used vessel as mothership - for 17 days on average</td>
<td></td>
</tr>
</tbody>
</table>

During the year 2013 attacks of West African pirates were much more frequent than those off Somali. According to “Oceans beyond Piracy” report see charts A and B above, in the same year 1,871 Seafarers where attacked by West African pirates, 1,209 seafarers were on vessels that have been boarded by pirates a, 279 were taken in Hostage and from those 73 seafarers where kidnapped for 22 days on average.\(^\text{12}\) These statistics have been put in this research to provide a full picture of how seriously piracy should be considered by ship owners and charterers.

The threat of piracy and the high cost of ransom payments influenced the insurance premiums and products affecting the behavior of the shipping industry.

The following areas have been identified by the Lloyd’s Market Association Joint War Hull Committee as high risk areas for piracy attacks:

The waters enclosed by the following boundaries:

- On the north-west, by the Red Sea, south of Latitude 15° N
- on the west of the Gulf of Oman by Longitude 58° E
- on the east, Longitude 78° E
- and on the south, Latitude 12° S excepting coastal waters of adjoining

territories up to 12 nautical miles offshore unless otherwise provided.

This delineation of high-risk areas should be considered by charterers and ship owners when entering and negotiating contracts and assessing the risks associated with piracy.
2. **CHARTER PARTIES**

2.1 **GENERAL ASPECTS**

The charter party is the contractual document in which the terms and conditions are set out for the letting of a ship between the parties concerned, namely the owner and the charterer.

An owner could be described as the registered owner of the vessel or as the bareboat charterer of the vessel who is sub-chartering the vessel to a third party. The chain of a charter party can be “long” meaning that multiple parties are involved in a chain of successive charter parties. The charterer is the person who is hiring the vessel.

A charter parties adopt a consistent and basic structure covering essential and important rights and obligations of ship owner and charterer.

The contract will contain at least the following points:

- name the parties to the contract,
- set the rate of payment, off hire or freight,
- describe the characteristics of the vessel subject of the contract,
- specify the period of the charter and/or the geographical trading limits,
- describe the cargoes to be loaded,
- determine how the operation and costs of the vessel will be shared and
- will set out all other obligations and duties of the owners and the charterers.

2.2 **CATEGORIES OF CHARTER PARTIES**

The main distinction is between time charter and voyage charter, however there are hybrid concept of time charter as for example time charter trip and frame contracts around an individual charter party possible (CoA).

The most common categories of charter parties are:

- Bareboat charter party is the contract that is entered between a ship owner and a charterer for a period of time without crew. In this particular contract the
charterer hires its own master and crew.

− A time charter party is the hire of a vessel fully crewed for a specific period of time.

− A voyage charter party is the contract that is entered between a ship owner and a charterer for a particular journey from one port to another one for a fixed price.

− Consecutive voyage charter or contract of affreightment (COA) is a contract for successive voyages. For example 10 voyages spread evenly over a period of a year using vessels to be nominated by owners which will perform the particular voyage subject to voyage charter party terms agreed at the outset.

− Slot charter party is the contract that is used to hire a number of container slots on a vessel for either a set period or a voyage.

− Vessel sharing agreement is the agreement that can be made between more than one charterer in order to hire a vessel for the purpose of sharing with other charterers who in turn charter vessels as their contribution to the pool of vessels.

There are several standard forms for the aforementioned categories of charter parties, and ship owners and charterers would usually start by taking the standard forms of charter parties and amend those terms in order to meet their particular needs.

For the purpose of this thesis, the time and voyage charter parties will be discussed in more detail being the most common contractual basis.

### 2.2.1 Time Charters

A Time charter party is a contract under which a ship owner agrees with the time charterer that, during a certain designated period, in return for the payment of hire, he will render services by his servants and crew to carry lawful merchandise that is put onboard his ship by the time charter. The time charter parties are mostly on standards forms. A number of large chartering organizations have developed their own standard forms. The standards forms are frequently used and are regularly revised and updated in order to reflect changes and clarifications to the law and trading conditions.
As a way of example please find below some of the names for standard forms:

- SHELLTIME4 Time Charter of Crude Oil Tankers
- NYPE 1993 (First version: 1913) Time Charter of Ships (Generally for Dry Cargo and Dry Bulk)
- BARECON 2001 Bareboat Charter party Form for Ships of any type
- BOXTIME 2004 Time Charter party for Container Vessels
- INTERTANK TIME 80 Time Charter party for Tankers
- BPTIME3 Time Charter for Tankers

Some of the old standard forms did not address the issue of piracy creating situations that caused confusion in 2009 when piracy incidents reached a peak. In order to solve this situation some organizations have published Standard Piracy Clauses to try to distribute in a fair way the liabilities for the parties entered into a charter party contract in incidents of piracy. We will later refer to these clauses.

2.2.2 Voyage Charter Party

A voyage charter party is a contract between the owner and the charterer for the vessel to proceed to a designated load port to load cargo and carry that cargo to a designated discharge port and there to discharge it. In return for this service the charterer will pay freight adjusted by way of a demurrage payment or a dispatch payment.

When negotiating the freight payable on a voyage charter party the owners and charterers will have the likely period of the voyage in mind. The owner will assess the value of the fixture against the time that his vessel is occupied. When assessing the whole period the owner and charterer will consider the length of the approach voyage, loading operation, the period of the voyage and the length of the discharging operation.

The same as with the time charter parties, ship owners and charterers would usually start by taking the standard forms of voyage charter parties and amend those terms to meet their particular needs.

Some example of Voyage charter parties standard forms are:
In the next section it will be determine how the threat of piracy affects the charter parties and how this impact leads to confusion concerning how the liabilities should be shared between the charterer and the ship owner.

### 2.3 ROUTES

Ship owners may wish to avoid a particular route on trade trying to prevent an incident of piracy in an area the owners considers to be of high risk of piracy. A problem will arise here if the situation of rerouting is not clear in the charter party.

In time charter parties, the charterer orders the vessel where to navigate, however, the master is responsible for the safety of the vessel. Therefore, at the end it is the master the one who determines the route.

The general rule is that in time charter parties, the additional costs for rerouting should be assumed by the charterers. However, in voyage charter parties considering that the owners will be paid for carrying the goods a fixed freight they will also have to assume the additional costs generated by rerouting. We will refer to freight in the next sections.

In the absence of valid and merited reasons to change the determined route, the master is required to execute voyages with the utmost dispatch and to take the shortest route in order to avoid a potential deviation claim. As a precaution, the master of a vessel can change and take a longer route than the route that was established in order to avoid pirate attacks once such a risk has been duly established.

Assuming that the charter party prevents deviation from the customary route ordered by charterers (if re-routing would avoid the risk area), the owners will have to be able to demonstrate that the level of risk from pirates to the vessel in approaching the port would be unacceptable to any reasonable owner or Master. As the risk factor varies depending on factors such as speed and design of vessel, time of transit and actions taken by the owners to minimize the risk, it may be difficult for the owner to establish that the level of risk renders the approach to the port unsafe.
2.4 DEVIATION

A claim for deviation may arise if the ship owner does not comply with his duty of utmost dispatch. Sometimes ship owners want to try to avoid high risk areas because of piracy in order to protect the vessel, the cargo and the crew. Nevertheless, the ship owner has to comply with his duty and not to deviate from the agreed or customary route since evading a specific area only because of the risk of piracy might be considered as a breach of the contract.

We will refer to two cases where the vessel has been deviated in order to avoid a high risk area of piracy and how this deviation has affected the charter parties.

First, we will comment on the Case Triton Lark (Pacific Basin IHX Limited v Bulkhandling Handymax AS) in November 2011.

In November 2008, the disponent owners of a bulk carrier decided deviate the vessel via Cape of Good Hope in the light of recent attacks on vessels transiting the Gulf of Aden. Owners relied upon the CONWARTIME as the charter party did not contain a specific piracy clause. The charter party was a standard form of NYPE.

The dispute as to who should bear the extra costs of USD 462,221 was referred to arbitration. The owners succeeded but charterers lodged an appeal to the High Court. The main issue was the requirement which owners had to meet under CONWARTIME of showing that, in the reasonable judgment of the master, the vessel “may be or is likely to be exposed to” piracy.

The Judge considered that whether there was “likely to be” should be assessed by whether there was “a real likelihood”. This distinction was something more than a possibility but could be less than an even chance. The decision had to be based upon an evaluation of the evidence.

Owners should be able to demonstrate that they have carefully considered all relevant factors in order to proceed to deviate the vessel. A refusal to follow charterers’ orders should not be taken lightly and must be based on good and reasonable grounds.
It is important to note that the case is based on events in late 2008 when there was far less information available about piracy and preventive measures and before the standard Piracy Clauses had been published.

Second, the judgment of Mellish LJ in The Teutonia has stated that if the master has credible information about a potential risk, he must take all the necessary actions in order to avoid danger:

“It seems obvious that, if a master receives credible information that, if he continues in the direct course of his voyage, his ship will be exposed to some imminent peril, as, for instance, that there are pirates in his course, or icebergs, or other dangers of navigation, he must be justified in pausing and deviating from the direct course, and taking any step which a prudent man would take for the purpose of avoiding the danger.”

The decision of deviating a vessel should be carefully considered by the involved parties in order to avoid a potential breach of the charter party due to a deviation caused unnecessarily to avoid piracy attacks.

2.5 FRUSTRATION

Frustration occurs when, without the fault of either party, a contractual obligation has become incapable of being performed because the circumstances that call for performance render the obligation something “radically different” from that which was originally agreed and for which the contract made no or no sufficient provision.

That said, the first question that arises at this point is whether the fact that the vessel has been detained for a given time by pirates can be sufficient in itself to frustrate a charter party contract. If the obligations of the parties have been radically transformed due to an act of piracy, is arguable sense that the time spent during the detention by pirates would put a party in a situation that such party would not have signed the contract if the party knew that something like that would occur.

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13 (1871-1873) LR 4 PC 171, 179
15 Davis Contractors v. Fareham UDC, [1956] AC 696, p.192
As a result, in evaluating whether a contract has been frustrated or not, some of the following questions are relevant:

- Is there a clause that makes full provision?
- Is the charter impossible of fulfillment?
- And does the charter specified a route that now is unfeasible16

If a charter party is frustrated, the consequence will be that the contractual clock stops from running and both parties are discharged from any of the obligations that may arise after the frustration of the contract.17 However, it should be born in mind that the obligations that were already existent before the event of frustration of the contract has been declared are still due and existent.

In situations of piracy the length of the delay of the vessel will be of significance to assess whether the time charter party has been frustrated or not.

Given the circumstances, a piracy act might lead to a frustration of the charter party in the following situations:

- Loss of ship, by way of example, if the charter named a specific vessel - with no vessel substitution clause - and the pirates shot and sink the named vessel the contract can be frustrated.
- Damage to ship could frustrate a contract if a sophisticated pirate shot a rocket against the hull of the vessel and the repair cost is greater that the repaired value of the ship.
- Delay to ship might frustrate a contract when pirates kidnaped the vessel and crew for more than a year and the performance will be radically different from that which was originally agreed.
- Destruction of the vessel – by excepted perils – or damage of the cargo.
- Contemplated route is impossible.

The situation is far from clear and might lead to different results depending on circumstances as events of piracy case is different and will turn on its individual facts. It is a difficult legal problem that depends on the time of capture and time of the contract.

16 Shipping Law, Simon Baughen, Chapter 143 Damages and Frustration, 2009
17 IBID
2.6 FREIGHT

In cases of piracy the problem of freight arises when some or all of the cargo has been lost and will therefore not be delivered by the receiver of the cargo.

Freight already earned will remain payable if the carriage contract is later frustrated. In dry-cargo trade, most of the charter party contracts determine that freight should be payable in advance. Whereas in tanker cargo trade, contracts usually provide for freight to be payable on delivery. If the cargo is stolen or has disappeared, freight will not be payable on stolen cargo.

2.7 SAFE PORT AND UNSAFE PORT

It is a charterer’s obligation to nominate a safe port or berth for the vessel. In 1958, it has been determined in the case “Eastern City” that a port will be safe if in the relevant period of time, the particular ship can reach it, use it and return from it without, in the absence of some abnormal occurrence, being exposed to danger that cannot be avoided by good navigation and seamanship. A port must be in all the circumstances safe physically for a vessel. To contrast, a port will not be safe if in exercising of the ordinary skill and care by the Master and crew would not prevent the vessel of being expose to danger. As an example the port must have adequate channel markings, mooring facilities and tug capabilities.

It is worth mentioning that in some charter parties standard forms provide an express obligation on the charterer to nominate only safe loading and discharge ports, where the owner should be able to assess the risk of any of the listed ports.

Some examples of safe port standard clauses are the following:

NYPE 93 TRADING LIMITS

“…The Vessel shall be employed in such lawful trades between safe ports and safe places within excluding as the Charterers shall direct…”

18 (Eastern City [1958], 2 Lloyd’s Rep 127)
“BALTIME 1939” Uniform Time-Charter

“The Vessel to be employed in lawful trades for the carriage of lawful merchandise only between good and safe ports or place where she can safely lie always afloat within the limits stated in Box 17...”

It has been confirmed that a ship owner has no obligation to proceed the chartered vessel to the ports which pirates are established in. The ship owner can refuse the nomination and the charterer can also be liable for damages if he proceeds and loss is occasioned. The question of whether a port is safe is determined at the date of nomination, but the charterers undertake that it is not merely safe then, but also prospectively safe at the time of nomination. If the designated port becomes unsafe after the date of nomination, the ship owner notifies the charterer to nominate an alternative port. If the charterer does not do so, the ship owner can nominate the vessel himself to the nearest safe port. Terms of the charter party play the key role in such a situation.

2.8 OFF HIRE

In a time charter contract, the charterer has the obligation to pay hire for the ship during the charter period at an agreed rate. The hire should be understood as the payment for the use and hire of the vessel. If the Charterer is prevented from making the full use of the ship for specific, agreed reasons which are completely within the control of the ship owner, the charterer would not be responsible to pay hire for the period in which the ship is not at his full disposition, during which there is loss of time to the Charterer. This period is the famous "off hire"19.

The general principle in a time charter party is that hire continues to run unless the contract expressly provides to the opposite.20 At that point, off-hire clauses operate as an exemption to the charterer’s obligation to pay hire continuously during the charter period.21 Most time charter parties include an off-hire clause, excusing the charterer from his obligation to pay hire at a time when the ship is prevented from performing the charter service.

19 See http://www.shipinspection.eu/index.php/weather-charts/item/606-off-hire
20 Paul Todd, Maritime Fraud and Piracy, p. 47
As an example please find below a clause from the standard form NYPE 93 that list off-hire events as:

“loss of time form deficiency and/or default of officers or crew, or deficiency of stores, fire, breakdown of, or damages to hull, machinery or equipment, grounding, detention by the arrest of the Vessel (unless such arrest is caused by events for which the Charterers, their servants, agents or subcontractors are responsible), or detention by average accidents to the Vessel or cargo unless resulting from inherent vice, quality or defect of the cargo, dry docking for the purpose of examination or painting bottom, or by any other similar cause preventing the full working of the Vessel”\(^{22}\)

The events which will take a vessel off-hire are always either stated in the clause itself or else contained in different sections throughout the charter party. It is then a question of fact whether the event in the case of piracy would be one of the events covered by the off-hire clause or clauses of the related charter party contract.

Some legal issues may arise under charter parties where vessels are captured by pirates. Legal uncertainty may arise particularly in the context of various off-hire clauses under different charter party forms. Questions as if hire will continue to be payable under a charter party for time lost due to taking precautions such as waiting for an escort or night navigation will appear in situations related to piracy.

The answer to these questions is that it will depend on the wording of the off-hire clause in the charter party. Charterers seeking to avoid payment of hire have the burden of bringing themselves within the scope of the off-hire clause and proving that an off-hire event has occurred.

Will the vessel remain on hire if captured by pirates? This will also depend mainly on the wording of the off-hire clause but the answer often affirmative,\(^*\). This view has been confirmed by the decision of the English Commercial Court in June 2010 in the “Saldanah” case when the Judge upheld the finding of an arbitration tribunal that charterers under a NYPE charter party were not able to satisfy the burden of proof on them to bring themselves within the scope of the off-hire clause. However, the outcome today might be different, given developments on marine security and in particular /best management practices (BMP4) as opposed to 2009 (contemporary

\(^{22}\) Clause 17, NYPE 93.
BMP standards not applicable then), for example if the court were to find that BMP measures customary today were not adhered to.

This case provides a useful clarification but it must be borne in mind as expressed above that a differently worded off-hire clause may produce a different outcome.

Reference will be made in more detail in the section of standard piracy clauses to the "off hire" clause that has been incorporated to the Bimco Standard Piracy clause for time charter parties published in 2009.

2.9 SEAWORTHINESS/UN-SEAWORTHINESS

It is a ship owner duty to provide seaworthiness of the vessel under a time charter party.

It has been stated by Channell J in McFadden v Blue Star Line, [(1905) 1 KB 697], that a “vessel must have that degree of fitness which an ordinary careful and prudent owner would require his vessel to have at the commencement of her voyage having regard to all the probable circumstances of it…Would a prudent owner have required that it (i.e. the defect) should be made good before sending his ship to sea, had he known of it? If he would, the ship was not seaworthy…..” The owner of the vessel has an obligation to provide a seaworthy vessel. A seaworthy vessel means that the vessel is fit for the voyage with sufficient qualified crew and cargo worthy. Even if there is no express seaworthiness clause, the duty to provide a seaworthy ship is, nevertheless, implied by law23.

In order for a vessel to be seaworthy, the vessel must at least meet the following points:

- Have a competent crew, which have been sufficiently instructed and with the necessary number of crew members to properly operate the vessel.
- Have updated charts
- Have sufficient bunkers for the voyage
- Comply with all the require documents and permits required by law

- Have ISPS Certificates
- Have an efficient system ashore and onboard

However, it should be noted that the standards of seaworthiness can differ; therefore the ship owners need to keep on top of the latest developments. A vessel should be considered unseaworthy if it is known that the voyage will include areas at high risk of piracy and the vessel is not properly prepared to avoid piratical attacks.  

By properly prepared should be understand that the vessel should have the correct safety equipment, the vessel can also have trained armed guards and made all the necessary efforts have seaworthiness.

The problem here will arise if a vessel is captured by pirates despite having taken all the necessary measures to protect it self. The owner will carry the additional costs of armed guards on board to make the vessel seaworthy and the charterer will assume the costs of the waiting time for example of a convoy or pay additional costs for the time incurred for waiting for example for a Convoy or for the extra bunker consumption.

The above situation as who pays what in incidents of piracy have been trying to be resolved by publishing the Standard Piracy Clause that should be added to the different charter party standard forms.

**2.10 STANDARD PIRACY CLAUSES IN TIME CHARTER PARTIES AND VOYAGE CHARTER PARTIES**

Organizations created and published Standard Piracy Clauses in order solve the problems that aroused from Piracy incidents in the different charter parties as explained in the last section. These standard clauses have been created by experts in the maritime industry and have the purpose to try to share in a fair way the liabilities between the ship owners and the charterers.

In this thesis the focus will be on the clauses issued by BIMCO and INTERTANKO.

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24 Paul Todd, *Maritime Fraud and Piracy*, p. 34
INTERTANKO published two clauses in December 2008, one for time charter parties and the other for voyage charter parties. In March 2009 BIMCO also published a Piracy Clause for Time Charters.

The BIMCO Piracy Clause has stipulated that the vessel shall remain on hire during incidents of piracy, although these particular issues are sometimes modified by reducing the rate of hire or adding a limit in terms of time or amount. 25

INTERTANKO’s Documentary Committee has produced piracy standard clauses, which address the main issues involved in transiting the Gulf of Aden and/or re-routing the ship. These clauses will need to be amended to suit the particular factors affecting each ship and voyage.26

The BIMCO and INTERTANKO standard clauses will be available in the annex of this thesis for further information.

To be kept current for the new risks and for the new challenges that come to the industry with the time, the Standard Piracy Clauses are periodically reviewed and updated to the new needs of the charterers and ship owners. For example, the revised BIMCO Time Charter Clause published in November 2009 introduced a cap of 90 days’ hire. This cap reflected the period for which owners were often covered by loss of hire insurance but it should be noted that vessels are commonly held for periods in excess of 90 days.

If there is no specific Piracy Clause in the charter party, check the War Clause for the necessary information. The BIMCO CONWARTIME 200427 & VOYWAR 200428 are the most commonly used war risks clauses. Those clauses include acts of piracy. Although they give owners and the master considerable discretion, this must be exercised reasonably, in good faith and after careful consideration. Some charter parties (particularly in the tanker sector), such as Shelltime, have narrower war clauses that do not include piracy.

27 See Annex 6
28 See Annex 7
Whether or not these clauses are appropriate must be assessed in the context of the charter party as a whole. An important consideration is whether the charter party includes CONWARTIME 2004, a VOYWAR 2004 or another Clause which deals with piracy. The INTERTANKO Clauses are useful precedents, which can be used in cases where charter party forms do not already cover piracy but they may need to be amended to suit the particular factors affecting each ship and voyage and to fit in with other terms.

The standard piracy clauses such as INTERTANKO and BIMCO have a wording that seeks to preserve a ship owner’s right to either refuse orders to proceed to piracy risk areas or to seek alternative orders in appropriate cases. However the situation should be considered in each case. The Conwartime war risks clause permits the owners of a vessel to refuse to follow charterers’ orders in certain circumstances where the vessel could be deemed to be at risk. The operation of this clause in a piracy situation has been in the recent case of *The Paiwan Wisdom*. In this case, the High Court considered whether there must be an increased risk of an attack by pirates before ship owners can rely on the clause in refusing to follow charterers’ orders to call a port. In July 2012 the High Court determined that owners were not prevented from relying on a CONWARTIME Clause in a NYPE 93 even though there had been no increase in the risk of piracy since the charter party was entered into. Charterers tried unsuccessfully to challenge the owners’ refusal by relying on a case from 1993, the Product Star, where the Court decided that owners were not entitled to refuse charterers’ orders because there had not been a material increase in risk since the charter party was entered into. The Paiwan Wisdom decision provides useful clarification that the Product Star was a case which depended very much on a specific set of circumstances and did not impose a general requirement that owners must establish that there has been an increase in risk before they can rely on a war risks clause. The decision therefore removes one potential obstacle for owners wishing to rely on CONWARTIME and similar clauses, but owners should still ensure that they have a specific piracy clause and also give careful consideration to areas listed in trading exclusions clauses.

Highlight below are the points that are most relevant to be considered in the Bimco clauses:

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29 See Annex 5
2.10.1 Clause for Time Charter 2013\textsuperscript{31}

− The Vessel shall not be obliged to proceed ... to or through any ... area ... which, in the reasonable judgement of the ... Owners, is dangerous to the Vessel ... due to ... piracy....
− If ... the Vessel proceeds ... the Owners shall have the liberty to take reasonable preventative measures, to comply with the requirements of the insurers...and orders of the Government ...
− The Charterers shall indemnify the Owners for any claims from holders of Bills of Lading...
− If the Vessel proceeds ... reasonable costs shall be for the Charterers’ account.
− If the Owners become liable ... to pay to the crew any bonus..., then the bonus ... shall be reimbursed to the Owners by the Charterers ...
− ... the Charterers shall reimburse to the Owners any additional premiums required by the Owners' insurers;
− If the Vessel is attacked by pirates any time lost shall be for the account of the Charterers and the Vessel shall remain on hire.... except that hire payments shall cease as of the ninety-first (91st) day after the seizure ...
− If in compliance with this Clause anything is done or not done, such shall not be deemed a deviation, but shall be considered as due fulfilment of this Charter Party.

2.10.2 Clause for Single Voyage Charter Parties 2013\textsuperscript{32}

− If ... in the reasonable judgment of the Master ... the Owners shall be entitled to take a reasonable alternative route....
− ... if the Vessel proceeds to or through an Area exposed to the risk of Piracy the Owners ...have liberty:
− to take reasonable preventative measures to protect the Vessel, ...deploying equipment ....;
− to comply with the requirements of the Owners' insurers under the terms of the Vessel’s insurance....

\textsuperscript{31} See Annex 1
\textsuperscript{32} See Annex 3
− ....body or group (including military authorities) whatsoever acting with the power to compel compliance with their orders or directions; and

− This Clause shall be incorporated ...The Charterers shall indemnify the Owners against all consequences or liabilities that may arise from the Master signing Contracts of Carriage...

− If in compliance with this clause ....... such shall not be deemed a deviation, but shall be considered as due fulfillment of this Charter Party...In the event of a conflict between the provisions .. ...this Clause shall prevail.
3. PIRACY AND MARINE INSURANCE

3.1 GENERAL ASPECTS

Piracy under marine insurance contracts is an insurable risk. These chapters of this thesis aim to provide some comments about the connection of piracy and marine insurance.

The increase of piracy in the Gulf of Aden and off the Somali coastline in the last years has created an increasingly insecure shipping atmosphere that has had strong implications on marine insurance law and in the marine insurance industry. The increase of the level of activity of pirates evidenced in the first chapter and their sophisticated and progressive techniques have had a marked effect on marine insurance premiums and on insurance coverage. Furthermore, various types of losses related to piracy risk have brought about complications concerning the different types of insurance coverage that need to be acquired for the different situations. 33

With this chapter we aim to provide some considerations on the implications that piracy risk may have on the contract of marine insurance. In view of the diverse interests of various parties such as ship owners, crew members, charterers, and cargo owners that can be affected by piracy, there can hardly be a single insurance product that would cover all the potential claims. The marine insurance industry has reacted quickly to the situations of piracy by creating special insurance products in order to meet parties’ needs when a vessel is hijacked and to address the financial risks to which they can be exposed.

We will refer in the next section to relevant marine insurers and marine insurance products available in the insurance market against the risk of piracy.

3.2 PROTECTION AND INDEMNITY (P&I)

A P&I Club is a mutual insurance association of commercial ship owners 34 that provides protection against risks inherent to the industrial ship operation. P&I covers

certain loss and liability to third parties encountered by the vessel during its operation as set out in the rules and statutes of each P&I Association. P&I insurance is indemnity insurance: the ship owner must first establish his loss to the club and the club will subsequently pay out under the terms of its insurance policy while also applying the agreed deductibles. The P&I does not assume the ship owner's liability, per se. P&I coverage is subject to special terms and conditions and will not cover all and any potential risks, let alone purely operational and commercial risks of a ship owner that are the rules that govern it. In

Piracy is not expressively excluded from P&I, so cover will remain in place for the following liabilities arising from piracy incidents:

- **Cargo**: liability for cargo loss, shortage, damage, extra handling costs or delay.
- **Crew**: passengers and other persons loss of life, personal injury and life salvage claims in respect of members of the crew and third parties, and other personnel on board required for the operation of the vessel. The cover will include the hospital, medical, funeral and repatriation expenses in respect of sick or injured crewmember. All the repatriation expenses, unemployment indemnities and loss of effects of shipwrecked crew.
- **Pollution**: For oil or any other polluting substance escaping from, or caused by, an entered ship resulting in pollution of sea, land or air.
- **Collision**: Collision and contact liability arising out of collision with another vessel, a fixed or floating object or property.
- **Wreck removal and obstruction liability and costs of compulsorily, removing, destroying or marking the wreck. Further, liability arising out of the entered vessel causing an obstruction.**
- **General average contribution**: cargo's proportion of general average and/or special charges not recoverable by breach of the contract of carriage.
- **Fines**: imposed by government/authorities in respect of short or over delivery of cargo, cargo documents, pollution, smuggling, breach of regulations, confiscation and custom fines, etc.
- **Quarantine and disinfection requirements**: Extraordinary expenses incurred in cases of outbreak of infectious disease. Also quarantine and disinfection expenses.

\[36 \text{ See } www.skuld.com\]
In special situations, where crew contracts, have already been approved, some P&I Clubs have accepted that they will cover the increased amounts payable to crew under those contracts due to piracy or the presence of the ship in an area subject to pirate attack.

In case of security guards contracts or indemnities should be based on knock for knock or some other reciprocal sharing of risk. One sided indemnities should be avoided, particularly when in favor of armed guards or relating to the use of weapons by guards.

By way of exception a P&I club could exercise its discretion to decide whether a ship owner’s ransom payment customary not covered under P&I can be reimbursed to a member or not in cases of piracy under the “Omnibus Rule”. By way of example Assuranceforeningen Skuld (gjensidig) Omnibus’ rule in the rules and statutes for the year 2014 is that

“To the Association may cover, in its absolute discretion, the member’s liability, loss, expense or costs which would not otherwise be covered under the Rules, to the extent that the Association considers that such cover would be appropriate and consistent with the purpose of the Association.

The Association, in exercising its discretion under this Rule may, in exceptional circumstances, cover liability, loss, expense or costs, which are otherwise expressly excluded.”

The Association, in exercising its discretion under this or any other Rule may, if it wishes to do so, take into account the Rules of other Clubs of the International Group of P&I Associations or the terms and guidelines of any Pooling Agreement between any such Clubs, but the Association shall not be obliged to take into account any previous case in which the Association or any other Club exercised its discretion in a particular manner...

The Club might have the discretion to reimburse members’ claims that are not specifically covered by any of the rules set out in the Club’s rules and statues, but only if that such claim can be considered to fall within the general scope of Club coverage or is otherwise not expressly excluded from it. With that said, ransom
payments, if they are not specifically excluded by a P&I policy, could be covered under such a rule. Nevertheless, until today there is no evidence that a ransom have been reimbursed by a P&I under this rule.

The next sections refer to ransom payments as an additional coverage of kidnap and ransom.

### 3.2.1 Hull and Machinery (H&M)

Hull and machinery insurance has been created in order to protect the ship owner’s investment in the ship. It is mainly a property insurance which covers the ship itself, the machinery and equipment. The owner will be protected for losses caused by loss or damage to the ship and its equipment. H&M covers physical risks to the vessel, its machinery and provisions.

Piracy has been covered as a marine risk under some H&M policies, however the tendency is that piracy today is rather covered as a war risk under war risk policies which cover vessels entering a the listed area explained in our first chapter this area is established and periodically updated by the London-based Lloyd's Market Association’s Joint War Committee (JWC). Such coverage requires payment of an additional premium and is typically taken out for a specific passage and paid per transit. H&M

### 3.2.2 War Risks

Although P&I cover excludes war risks, the definition of “war risks”\(^{36}\) does not include piracy by way of exception. It is very common nowadays that ship owners have piracy included in their war risks cover. However, war risks policies commonly exclude P&I risks to the extent that cover is available under the owner’s P&I policy. So, while piracy hull risks are covered under the war risks policy, piracy P&I risks

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36 See definition of War Risks' liabilities, costs or expenses. Liabilities, costs or expenses (irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the member or his servants or agents) when the loss or damage, injury, illness or death or other accident in respect of which such liability arises or cost or expense is incurred, was caused by: a) war, civil war, revolution, rebellion, insurrection or civil strife arising therefrom, or any hostile act by or against a belligerent power, or any act of terrorism (provided that, in the event of any dispute as to whether or not, for the purposes of this paragraph (a), an act constitutes an act of terrorism, the decision of the directors of the Association shall be final); b) capture, seizure, arrest, restraint or detainment (barratry and piracy excepted) and the consequences thereof or any attempt thereat; c) mines, torpedoes, bombs, rockets, shells, explosives or other similar weapons of war, provided that this exclusion shall not apply to liabilities, costs and expenses which arise solely by reason of (i) the transport of any such weapons whether on board or not, or (ii) the use of any such weapons, either as a result of government order or with the agreement in writing of the Association where the reason for such use was the avoidance or mitigation of liabilities, costs or expenses which would otherwise give rise to a claim covered under these Rules.
remain covered under the owners' P&I cover. Terrorism risks excluded as a "war risk" in P&I policies and are therefore covered under the war risks policy. Accordingly there may be uncertainty about whether a pirate incident falls under P&I coverage or war risks cover if it is unclear whether the attack has been made by pirates acting for criminal motives or terrorists with political goals.

3.2.3 Marine Kidnap And Ransom (K&R)

K&R coverage has begun as a result of the increasing costs of payment of ransoms for kidnapped crew members and the unwillingness of P&I Clubs to participate in the compensation of such high claims. K&R covers the ransom paid by a member, the loss in transit of the ransom as well as the fees and expenses of security experts. In some cases if agreed K&R may also cover certain additional expenses incurred in the process of the negotiations, including the fees of public relations consultants, specialist response consultants, interpreters and independent negotiators. The cover also extends to legal liability in connection with the piracy event, as for example to settlements, fees and judgments imposed upon the assured as a result of an action for damages brought by or on behalf of any insured person resulting from the kidnap, such as claims brought by crew members. This additional cover has a relevant importance in incidents of piracy since it will protect the Owners financially as a ransom could easily ruin the company. K&R will provide consultants that will assist in negotiations and crisis management during piracy incidents and will provide cover for crew and can be obtained for worldwide cover since piracy can occur anywhere. The advantages of the K&R product is that it will be a bespoke cover that fits with the owners P&I cover, facilitating any claims following a piracy incident.

Ransom paid to secure the release of a vessel and cargo due to piracy is capable of recovery in (i) General Average ("GA") and (ii) Under the Most Common Form of Policy of Marine Cargo Insurance ICC (A).

In a typical piracy situation affecting cargo, ship owners and/or their P&I insurers and/or hull underwriters will be obligated to negotiate and pay any ransom and related expenses. Ship owners will then endeavor to recover a contribution in GA from cargo interests after obtaining a GA Bond or Guarantee.
Recovery in GA is dependent upon a GA Act which is defined in the 1994 and 2004 York Antwerp Rules as follow:

“There is a General Average Act when and only when any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in common maritime adventure.”

Provided all the elements of this very succinct definition are present (consider), expenditure consisting of a pro rata contribution to ransom paid and associated expenses will be recoverable in GA.

3.2.4 Loss Of Hire Extension

The loss of Hire cover exists for the loss of income resulting primarily from physical damage to a particular vessel. The Loss of Hire coverage is available for both Owners and Charterers. The Assured will be indemnified for loss made up to an agreed amount.
4. CONCLUSION

The aim of this thesis has been in first instance set out if the standard forms for charter parties and the additional piracy clauses are prepared to solve the legal uncertainties arising from incidents of piracy that affect the relationship between charterers and ship owners and if those clauses and standard forms are ready to avoid confusions regarding the liabilities that ship owners and charterer overlap when suffering from piracy threat. Secondly, it was meant to prove how piracy affects the insurance products offered for the risk of piracy and how that situation influences the behavior of the shipping industry.

In order to demonstrate the above statements chapter one had provided the definition of piracy, described the different forms that pirates operate in the route that connects Europe and Asia and had present for consideration the statistics for the last incidents of piracy that have happened in the last five years. With this chapter it has been shown that the economic cost of piracy is very high and that it impacts directly the relationship between ship owners and charterers and the marine insurance contracts.

Chapter two gives a general impression of a charter party focusing on time charter party and voyage charter party and how those contracts are affected by piracy. The impact of piracy on charter party contracts is examined in the light of standard forms of charter party contracts.

Chapter three discusses the different available types of insurance covers that are necessary for protection of loss in piracy incidents.

Finally and in order to complete this thesis, conclusions have been organized by chapter to provide additional clarity and a recommendation to prevent charterers and ship owners of incurring additional liabilities in situations of piracy.

It has been demonstrated that in recent years piracy has reemerged and is a threat to all the players in the maritime industry. As there are several issues that have been described along this thesis that should be of concern to the charterers and the ship owners when entering into a contract and trading in risk areas. Piracy has serious impact in charter party and marine insurance contracts. Furthermore, piracy affects not only the global economy, but it also potentially destabilizes countries and harms
people. Pirates have become increasingly violent and are prepared to kill seafarers in order to succeed when attacking a vessel.

Charterers and ship owners should be aware that there are several factors of risks in situations of piracy. Risk may vary depending on factual ships related parameters such as category of the vessel, free board speed, security measures, time of transit and location. The owners and the charterers should cooperate to establish in advance the potential factors of risk and be in a position to take all the necessary precautionary measures to avoid incidents of piracy while trading. The better all parties are prepared to minimize the risk of a piracy attack, the less likely that an attack with all its detrimental consequences will be successful.

Despite the fact that the attacks of piracy have decreased during the year 2014 as evidenced in the reports, the attacks should not be underestimated. Pirates are confident and filter all the stolen cargo back into the market. Such acts of piracy destabilize regions and contribute to an insecure environment. They also have very real international implications, producing ripples that spread throughout the global economy.

There have been many efforts by maritime bodies, governments, and all major players in the industry to regulate piracy with some extent of uniformity. Important developments over the past four years include strong actions taken by international navies, the establishment of the Contact Group on Piracy off the Coast of Somalia and the implementation of Best Management Practices. The Best Management Practices for the Protection against Somalia Based Piracy provides a detailed set of instructions for ship operators and masters regarding preparation for pirate attacks, crew training, measures and steps to be taken in the event of a piracy attack, and post-incident reporting. However, despite the efforts and response by the maritime industry to problems of piracy, various issues, as discussed in this thesis, still remain to be resolved in order to achieve a more effective and uniform front against the threat of piracy in the world. The standard forms and the piracy standard clauses have improved the situation but the incidents still cause confusion in the charter parties and in the insurance contracts.

After having briefly explained the different categories of charter party contracts and its main elements in the chapter, this conclusion section will focus on the direct impact that piracy causes to charter party contracts.

As has been described, in incidents of piracy the time charterer typically bears the risk of any delay in a time charter party. The principle is that the hire continues to be payable during the contract and the reasons for stopping the charterer to pay hire are only exceptional. The burden of proof in this situation is on the party who wants to benefit from the exception. In time charter party contracts considering that the charterer is the one who decides and controls the travel of the vessel, the master must always have the ultimate command to determine the route while considering the safety for the vessel and the most cost effect way. If the master determines that he will deviate for safety reasons he shall have valid reasons and adequate reasons to support the change in route. Re-routing to avoid a piratical attack if he can support the risks is considered a good reason to a deviation. Thus, the Master should try to avoid that the charterers have to pay much more for the additional time and bunkers.

Piracy can become a breach of the charter party due to unsafe port and a charterer will be liable if he orders the chartered vessel to go to an unsafe port. In addition when it comes to off-hire, piracy is normally not considered as an off-hire event. Standard forms regulate the off-hire events and piracy is normally not included.

Unlike the time charter parties, as previously advised, it is the ship owner who bears the cost of any delay or rerouting in a voyage charter party. In a voyage charter party, the ship owner should provide seaworthiness to carry the goods from the loading to the discharge designated ports. When the vessel is trading in high risk areas the vessel should be properly prepared to avoid pirate attacks.

The nature of the time charter party puts the time risk on the charterers. The general rule is that the charterer bears the risk of any delay. As usual every general rule has its own exceptions and this is off hire in time charter parties. If the vessel goes off-hire, the charterer does not have to pay hire for that period. Remember that commonly used standard charter party forms are usually silent about piracy. Therefore, in cases where the contract is silent about piracy and does not include any word as ‘whatsoever’ in its clauses about off-hire, is very likely that in case of going to a dispute courts would not consider piracy as an off-hire event.
Concerning frustration of the charter party contracts in situations of piracy, in summary in time charters piracy probably will not be found to frustrate a contract. However, under a voyage charter party a frustration of the contract could be possible.

As advised along the chapter two of this thesis, the standard piracy clauses drafted by BIMCO and INTERTANKO have been created to bring clarity to the piracy issues when not define in the charter parties. BIMCO piracy clause creates a balance between the liability of the charterer and the ship owner. The clause amended in 2009 clarifies off hire situations determining that the vessel shall remain on hire until the ninety-first day after the seizure of the vessel by pirates.

It is worth to note that the clause requires owner's consent (which is not to be unreasonably withheld) when a passage through a high-risk area is chosen by charterers. Owner's consent is important since P&I cover may be affected in case of unauthorized deviation. A standard P&I deviation clause would read that there would be no recovery in the case of deviation from the contractually agreed voyage if, as a result of such deviation, the assured is denied any defenses or rights of limitation which would otherwise have been available to him to exclude or reduce liability, unless the assured notifies the P&I Club prior to or immediately after the deviation and agrees to pay additional premiums.

Each case must be looked at on its own merits and ship owners and charterers should take account of financial questions, including the ability to recover hire or freight and saved costs in situations of piracy.

After having provide an overview of the different insurance cover that can be involve in situations of piracy such as P&I, H&M, K&R, LoH and war risk the aim of this chapter was also to explain how piracy affects the marine insurance contracts and has an influence in the shipping behavior.

It is very important for owners, charterers and underwriters to review all provisions in their charter parties and insurance policies and ensure that they can be flexibly amended to address and respond to novel and increased piratical activity. Appropriate clauses equitably distributing the risk of piracy may also have the additional benefit of decreasing insurance premiums paid by the parties.
It should be highlighted here that the use of armed guards should be carefully considered in the context of the marine insurance contract since potential problems about insurance coverage may arise. Intervention by armed guards may result in prejudice to P&I cover if their use is in breach of the vessel’s flag state’s, port state’s or other applicable legislation.

It is also worth to note in this chapter that all the insurance premiums for P&I, K&R H&M when in situation of piracy are paid first by the ship owners but the charter parties may allow them to recover from charterers.

Last but not least, the recommendation to charterers and owners is to do a proper assessment of their risk and to consider very carefully their charter parties regarding the threat of piracy, especially when trading to high risk areas. As advised along the thesis, having the proper clauses and information may assist in diminishing the impacts and in assessing properly the implications arising from the threat of piracy.

Under voyage and time charter parties, charterers are responsible for the choice of ports and routes while owners are responsible for the prosecution of the voyage with dispatch. As several issues may arise where charterers order the vessel to an area with a high risk of piracy attacks, the industry drew up guidance that might be of beneficial help and support to front the situations of piracy and be more prepare to mitigate the implications.

Each case needs to be considered individually and will depend on many factors, both legal and factual. If a course of action can be agreed with charterers and other interested parties, a lengthy dispute may be avoided.

The following factors should be considered by charterers and ship owners when threat of piracy

- Existing contractual obligations should be assessed.
- The date of the charter party may be relevant as reflecting the extent to which the parties were aware of the risk from piracy when concluding the fixture.
- Owners should be able demonstrate that they have carefully considered all relevant factors. A refusal to follow charterers’ orders should not be taken lightly and must be based on good and reasonable grounds. Owners should bear in mind that, in the event of a dispute, they may need to justify their
decision in front of an arbitrator or judge in two or three years from now.

- Account will need to be taken of existing commitments towards cargo interests.
ANNEX 1

BIMCO Piracy Clause for Time Charter Parties 2013

(a) The Vessel shall not be obliged to proceed or required to continue to or through, any port, place, area or zone, or any waterway or canal (hereinafter “Area”) which, in the reasonable judgement of the Master and/or the Owners, is dangerous to the Vessel, cargo, crew or other persons on board the Vessel due to any actual, threatened or reported acts of piracy and/or violent robbery and/or capture/seizure (hereinafter “Piracy”), whether such risk existed at the time of entering into this Charter Party or occurred thereafter. Should the Vessel be within any such place as aforesaid which only becomes dangerous, or may become dangerous, after entry into it, the Vessel shall be at liberty to leave it.

(b) If in accordance with sub-clause (a) the Owners decide that the Vessel shall not proceed or continue to or through the Area they must immediately inform the Charterers. The Charterers shall be obliged to issue alternative voyage orders and shall indemnify the Owners for any claims from holders of the Bills of Lading or third parties caused by waiting for such orders and/or the performance of an alternative voyage. Any time lost as a result of complying with such orders shall not be considered off-hire.

(c) If the Owners consent or if the Vessel proceeds to or through an Area exposed to the risk of Piracy the Owners shall have the liberty:

(i) to take reasonable preventative measures to protect the Vessel, crew and cargo including but not limited to re-routeing within the Area, proceeding in convoy, using escorts, avoiding day or night navigation, adjusting speed or course, or engaging security personnel and/or deploying equipment on or about the Vessel (including embarkation/disembarkation).

(ii) to comply with the requirements of the Owners’ insurers under the terms of the Vessel's insurance(s);

(iii) to comply with all orders, directions, recommendations or advice given by the Government of the Nation under whose flag the Vessel sails, or other Government to whose laws the Owners are subject, or any other Government, body or group (including military authorities) whatsoever acting with the power to compel compliance with their orders or directions; and

(iv) to comply with the terms of any resolution of the Security Council of the United Nations, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement; and the Charterers shall indemnify the Owners for any claims from holders of Bills of Lading or third parties caused by the Vessel proceeding as aforesaid, save to the extent that such claims are covered by additional insurance as provided in sub-clause (d)(iii).

(d) Costs

(i) If the Vessel proceeds to or through an Area where due to risk of Piracy additional costs will be incurred including but not limited to additional personnel and preventative measures to avoid Piracy, such reasonable costs shall be for the
Charterers’ account. Any time lost waiting for convoys, following recommended routeing, timing, or reducing speed or taking measures to minimise risk, shall be for the Charterers’ account and the Vessel shall remain on hire;

(ii) If the Owners become liable under the terms of employment to pay to the crew any bonus or additional wages in respect of sailing into an area which is dangerous in the manner defined by the said terms, then the actual bonus or additional wages paid shall be reimbursed to the Owners by the Charterers;

(iii) If the Vessel proceeds to or through an Area exposed to the risk of Piracy, the Charterers shall reimburse to the Owners any additional premiums required by the Owners' insurers and the costs of any additional insurances that the Owners reasonably require in connection with Piracy risks which may include but not be limited to War Loss of Hire and/or maritime K&R.

(iv) All payments arising under Sub-clause

(d) shall be settled within fifteen

(15) days of receipt of Owners’ supported invoices or on redelivery, whichever occurs first.

(e) If the Vessel is attacked by pirates any time lost shall be for the account of the Charterers and the Vessel shall remain on hire.

(f) If the Vessel is seized by pirates the Owners shall keep the Charterers closely informed of the efforts made to have the Vessel released. The Vessel shall remain on hire throughout the seizure and the Charterers' obligations shall remain unaffected, except that hire payments shall cease as of the ninety-first (91st) day after the seizure until release. The Charterers shall pay hire, or if the Vessel has been redelivered, the equivalent of Charter Party hire, for any time lost in making good any damage and deterioration resulting from the seizure. The Charterers shall not be liable for late redelivery under this Charter Party resulting from the seizure of the Vessel.

(g) If in compliance with this Clause anything is done or not done, such shall not be deemed a deviation, but shall be considered as due fulfilment of this Charter Party. In the event of a conflict between the provisions of this Clause and any implied or express provision of the Charter Party, this Clause shall prevail.
ANNEX 2

BIMCO Piracy Clause for Consecutive Voyage Charter Parties and COAs 2013

(a) If, in the reasonable judgment of the Master and/or the Owners, any port, place, area or zone, or any waterway or canal (hereinafter “Area”) on any part of the route which is normally and customarily used on a voyage of the nature contracted for is dangerous to the Vessel, cargo, crew or other persons on board the Vessel due to any actual, threatened or reported acts of piracy and/or violent robbery and/or capture/seizure (hereinafter “Piracy”), whether such risk existed at the time of entering into this Charter Party or occurred thereafter, the Owners shall be entitled to take a reasonable alternative route to the discharging port and, if they so decide, immediately give notice to the Charterers that such route will be taken. In respect of consecutive voyages the Owners shall be entitled to take a reasonable alternative route to the loading port in accordance with the provisions of this Clause. Should the Vessel be within any such place as aforesaid which only becomes dangerous after entry, it shall be at liberty to leave it.

(b) In any event, if the Vessel proceeds to or through an Area exposed to the risk of Piracy the Owners shall have the liberty:

(i) to take reasonable preventative measures to protect the Vessel, crew and cargo including but not limited to re-routing within the Area, proceeding in convoy, using escorts, avoiding day or night navigation, adjusting speed or course, or engaging security personnel and/or deploying equipment on or about the Vessel (including embarkation/disembarkation);

(ii) to comply with the requirements of the Owners' insurers under the terms of the Vessel's insurance(s);

(iii) to comply with all orders, directions, recommendations or advice given by the Government of the Nation under whose flag the Vessel sails, or other Government to whose laws the Owners are subject, or any other Government, body or group (including military authorities) whatsoever acting with the power to compel compliance with their orders or directions; and

(iv) to comply with the terms of any resolution of the Security Council of the United Nations, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement.

(c) Costs

(i) If in accordance with Sub-clause (a) the Owners take an alternative route, they shall be entitled, if the total extra distance exceeds one hundred (100) miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route taking into consideration any savings or adjustments made by using this alternative route;

(ii) If the Vessel proceeds to or through an Area where due to risk of Piracy additional costs are incurred by Owners, including but not limited to additional personnel and
preventative measures to avoid piracy attacks, then half such costs shall be reimbursed by the Charterers to the Owners;

(iii) If the Vessel proceeds to or through an Area exposed to risk of Piracy, the Charterers shall reimburse to the Owners half of any additional premiums required by the Owners’ insurers and half the cost of any additional insurances that the Owners reasonably require in connection with Piracy Risks which may include but not be limited to War Loss of Hire and/or maritime K&R;

(iv) All payments arising under Sub-clause (c) shall be settled within fifteen (15) days of receipt of Owners’ supported invoices or on completion of discharge, whichever occurs first.

(d) If the Vessel is attacked or seized as a result of Piracy any time so lost shall be shared equally between the Owners and the Charterers. The Charterers shall pay the Owners an amount equivalent to half the demurrage rate for any time lost as a result of such attack or seizure. Such payments shall fall due day by day and be payable latest fifteen (15) days after receipt of the Owners’ invoice or on completion of discharge, whichever occurs first. If the Vessel is seized the Owners shall keep the Charterers closely informed of the efforts made to have the Vessel released.

(e) This Clause shall be incorporated into any bill of lading, waybills or documents evidencing contracts of carriage (hereinafter “Contracts of Carriage”) issued pursuant to this Charter Party. The Charterers shall indemnify the Owners against all consequences or liabilities that may arise from the Master signing Contracts of Carriage as presented to the extent that the terms of such Contracts of Carriage impose or result in the imposition of more onerous liabilities upon the Owners than those assumed by the Owners under this Clause.

(f) If in compliance with this Clause anything is done or not done, such shall not be deemed a deviation, but shall be considered as due fulfillment of this Charter Party. In the event of a conflict between the provisions of this Clause and any implied or express provision of the Charter Party, this Clause shall prevail.
ANNEX 3

BIMCO Piracy Clause for Single Voyage Charter Parties 2013

(a) If, after entering into this Charter Party, in the reasonable judgment of the Master and/or the Owners, any port, place, area or zone, or any waterway or canal (hereinafter “Area”) on any part of the route which is normally and customarily used on a voyage of the nature contracted for becomes dangerous, or the level of danger increases, to the Vessel, cargo, crew or other persons on board the Vessel due to any actual, threatened or reported acts of piracy and/or violent robbery and/or capture/seizure (hereinafter “Piracy”), the Owners shall be entitled to take a reasonable alternative route to the discharging port and, if they so decide, immediately give notice to the Charterers that such route will be taken. Should the Vessel be within any such place as aforesaid which only becomes dangerous, after entry, it shall be at liberty to leave it.

(b) In any event, if the Vessel proceeds to or through an Area exposed to the risk of Piracy the Owners shall have the liberty:

(i) to take reasonable preventative measures to protect the Vessel, crew and cargo including but not limited to re-routeing within the Area, proceeding in convoy, using escorts, avoiding day or night navigation, adjusting speed or course, or engaging security personnel and/or deploying equipment on or about the Vessel (including embarkation/disembarkation);

(ii) to comply with the requirements of the Owners’ insurers under the terms of the Vessel’s insurance(s);

(iii) to comply with all orders, directions, recommendations or advice given by the Government of the Nation under whose flag the Vessel sails, or other Government to whose laws the Owners are subject, or any other Government, body or group (including military authorities) whatsoever acting with the power to compel compliance with their orders or directions; and

(iv) to comply with the terms of any resolution of the Security Council of the United Nations, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement.

(c) This Clause shall be incorporated into any bill of lading, waybills or other documents evidencing contracts of carriage (hereinafter “Contracts of Carriage”) issued pursuant to this Charter Party. The Charterers shall indemnify the Owners against all consequences or liabilities that may arise from the Master signing Contracts of Carriage as presented to the extent that the terms of such Contracts of Carriage impose or result in the imposition of more onerous liabilities upon the Owners than those assumed by the Owners under this Clause.

(d) If in compliance with this Clause anything is done or not done, such shall not be deemed a deviation, but shall be considered as due fulfilment of this Charter Party. In the event of a conflict between the provisions of this Clause and any implied or express provision of the Charter Party, this Clause shall prevail.
ANNEX 4

INTERTANKO Piracy Clause – Voyage Charterparties

1. If the Master or Owners determine that the vessel, her crew or cargo may be exposed to the risk of acts of piracy on any part of the normal, direct or intended route for the contracted voyage, Owners shall be entitled

(a) to take reasonable preventive measures to protect the vessel, her crew and cargo including but not limited to proceeding in convoy, using escorts, avoiding day or night navigation, adjusting speed or course, or engaging security personnel or equipment on or about the vessel,

(b) to follow any instructions or recommendations given by the flag state, any governmental or supragovernmental organisation, and

(c) to take a safe and reasonable alternative route in place of the normal, direct or intended route to the next port of call, in which case Owners shall give Charterers prompt notice of the alternative route, an estimate of time and bunker consumption and a revised estimated time of arrival.

2. Charterers shall pay Owners additional freight calculated at the demurrage rate for all time spent as a consequence of exercising the rights referred to in Paragraph 1 of this Clause, together with the cost of all additional bunkers consumed, any additional insurance premiums, and additional crew or other costs incurred by Owners as a result of actual or threatened piracy or as a consequence of exercising the rights referred to in Paragraph 1 of this Clause. All additional costs to be paid together with freight as per Owner’s invoice and supporting documents.

3. Charterers warrant that the terms of this Clause will be incorporated effectively into any bill of lading issued pursuant to this charter party.
ANNEX 5

INTERTANKO Piracy Clause – Time Charter parties

1. Owners shall not be required to follow Charterers’ orders that the Master or Owners determine would expose the vessel, her crew or cargo to the risk of acts of piracy.

2. Owners shall be entitled
   
   (a) to take reasonable preventive measures to protect the vessel, her crew and cargo including but not limited to proceeding in convoy, using escorts, avoiding day or night navigation, adjusting speed or course, or engaging security personnel or equipment on or about the vessel,

   (b) to follow any instructions or recommendations given by the flag state, any governmental or supragovernmental organisation and

   (c) to take a safe and reasonable alternative route in place of the normal, direct or intended route to the next port of call, in which case Owners shall give Charterers prompt notice of the alternative route, an estimate of time and bunker consumption and a revised estimated time of arrival.

3. The vessel shall remain on hire for any time lost as a result of taking the measures referred to in Paragraph 2 of this Clause and for any time spent during or as a result of an actual or threatened attack or detention by pirates.

4. Charterers shall indemnify Owners against all liabilities costs and expenses arising out of actual or threatened acts of piracy or any preventive or other measures taken by Owners whether pursuant to Paragraph 2 of this Clause or otherwise, including but not limited to additional insurance premiums, additional crew costs and costs of security personnel or equipment.

5. Charterers warrant that the terms of this Clause will be incorporated effectively into any bill of lading issued pursuant to this charter party.
ANNEX 6

CONWARTIME War Risks Clause for Time Chartering

(a) For the purpose of this Clause, the words:

(i) “Owners” shall include the shipowners, bareboat charterers, disponent owners, managers or other operators who are charged with the management of the Vessel, and the Master; and

(ii) “War Risks” shall include any actual, threatened or reported: war, act of war, civil war or hostilities; revolution; rebellion; civil commotion; warlike operations; laying of mines; acts of piracy and/or violent robbery and/or capture/seizure (hereinafter “Piracy”); acts of terrorists; acts of hostility or malicious damage; blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever), by any person, body, terrorist or political group, or the government of any state or territory whether recognised or not, which, in the reasonable judgement of the Master and/or the Owners, may be dangerous or may become dangerous to the Vessel, cargo, crew or other persons on board the Vessel.

(b) The Vessel shall not be obliged to proceed or required to continue to or through, any port, place, area or zone, or any waterway or canal (hereinafter “Area”), where it appears that the Vessel, cargo, crew or other persons on board the Vessel, in the reasonable judgement of the Master and/or the Owners, may be exposed to War Risks whether such risk existed at the time of entering into this Charter Party or occurred thereafter. Should the Vessel be within any such place as aforesaid, which only becomes dangerous, or may become dangerous, after entry into it, the Vessel shall be at liberty to leave it.

(c) The Vessel shall not be required to load contraband cargo, or to pass through any blockade as set out in Sub-clause (a), or to proceed to an Area where it may be subject to search and/or confiscation by a belligerent.

(d) If the Vessel proceeds to or through an Area exposed to War Risks, the Charterers shall reimburse to the Owners any additional premiums required by the Owners’ insurers and the costs of any additional insurances that the Owners reasonably require in connection with War Risks.

(e) All payments arising under Sub-clause (d) shall be settled within fifteen (15) days of receipt of Owners’ supported invoices or on redelivery, whichever occurs first.

(f) If the Owners become liable under the terms of employment to pay to the crew any bonus or additional wages in respect of sailing into an Area which is dangerous in the manner defined by the said terms, then the actual bonus or additional wages paid shall be reimbursed to the Owners by the Charterers at the same time as the next payment of hire is due, or upon redelivery, whichever occurs first.

(g) The Vessel shall have liberty:

(i) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of
cargo, delivery, or in any other way whatsoever, which are given by the government of the nation under whose flag the Vessel sails, or other government to whose laws the Owners are subject, or any other government of any state or territory whether recognised or not, body or group whatsoever acting with the power to compel compliance with their orders or directions;

(ii) to comply with the requirements of the Owners’ insurers under the terms of the Vessel's insurance(s);

(iii) to comply with the terms of any resolution of the Security Council of the United Nations, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement;

(iv) to discharge at any alternative port any cargo or part thereof which may expose the Vessel to being held liable as a contraband carrier;

(v) to call at any alternative port to change the crew or any part thereof or other persons on board the Vessel when there is reason to believe that they may be subject to internment, imprisonment, detention or similar measures.

(h) If in accordance with their rights under the foregoing provisions of this Clause, the Owners shall refuse to proceed to the loading or discharging ports, or any one or more of them, they shall immediately inform the Charterers. No cargo shall be discharged at any alternative port without first giving the Charterers notice of the Owners’ intention to do so and requesting them to nominate a safe port for such discharge. Failing such nomination by the Charterers within 48 hours of the receipt of such notice and request, the Owners may discharge the cargo at any safe port of their own choice. All costs, risk and expenses for the alternative discharge shall be for the Charterers' account.

(i) The Charterers shall indemnify the Owners for claims arising out of the Vessel proceeding in accordance with any of the provisions of Sub-clauses (b) to (h) which are made under any bills of lading, waybills or other documents evidencing contracts of carriage.

When acting in accordance with any of the provisions of Sub-clauses (b) to (h) of this Clause anything is done or not done, such shall not be deemed a deviation, but shall be considered as due fulfilment of this Charter Party.
ANNEX 7

VOYWAR War Risks Clause for Voyage Chartering

(a) For the purpose of this Clause, the words:

(i) "Owners" shall include the shipowners, bareboat charterers, disponent owners, managers or other operators who are charged with the management of the Vessel, and the Master; and

(ii) "War Risks" shall include any actual, threatened or reported: War, act of war, civil war or hostilities; revolution; rebellion; civil commotion; warlike operations; laying of mines; acts of piracy and/or violent robbery and/or capture/seizure (hereinafter “Piracy”); acts of terrorists; acts of hostility or malicious damage; blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever), by any person, body, terrorist or political group, or the government of any state or territory whether recognized or not, which, in the reasonable judgement of the Master and/or the Owners, may be dangerous or may become dangerous to the Vessel, cargo, crew or other persons on board the Vessel.

(b) If at any time before the Vessel commences loading, it appears that, in the reasonable judgement of the Master and/or the Owners, performance of the Contract of Carriage, or any part of it, may expose the Vessel, cargo, crew or other persons on board the Vessel to War Risks, the Owners may give notice to the Charterers cancelling this Contract of Carriage, or may refuse to perform such part of it as may expose the Vessel, cargo, crew or other persons on board the Vessel to War Risks; provided always that if this Contract of Carriage provides that loading or discharging is to take place within a range of ports, and at the port or ports nominated by the Charterers the Vessel, cargo, crew, or other persons on board the Vessel may be exposed to War Risks, the Owners shall first require the Charterers to nominate any other safe port which lies within the range for loading or discharging, and may only cancel this Contract of Carriage if the Charterers shall not have nominated such safe port or ports within 48 hours of receipt of notice of such requirement.

(c) The Owners shall not be required to continue to load cargo for any voyage, or to sign bills of lading, waybills or other documents evidencing contracts of carriage for any port or place, or to proceed or continue on any voyage, or on any part thereof, or to proceed through any canal or waterway, or to proceed to or remain at any port or place whatsoever, where it appears, either after the loading of the cargo commences, or at any stage of the voyage thereafter before the discharge of the cargo is completed, that, in the reasonable judgement of the Master and/or the Owners, the Vessel, cargo, crew or other persons on board the Vessel may be exposed to War Risks. If it should so appear, the Owners may by notice request the Charterers to nominate a safe port for the discharge of the cargo or any part thereof, and if within 48 hours of the receipt of such notice, the Charterers shall not have nominated such a port, the Owners may discharge the cargo at any safe port of their choice (including the port of loading) in complete fulfilment of the Contract of Carriage. The Owners shall be entitled to recover from the Charterers the extra expenses of such discharge and, if the discharge takes place at any port other than the loading port, to receive the full freight as though the cargo had been carried to the discharging port and if the extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance
represents to the distance of the normal and customary route, the Owners having a lien on the cargo for such expenses and freight.

(d) If at any stage of the voyage after the loading of the cargo commences, it appears that, in the reasonable judgement of the Master and/or the Owners, the Vessel, cargo, crew or other persons on board the Vessel may be exposed to War Risks on any part of the route (including any canal or waterway) which is normally and customarily used in a voyage of the nature contracted for, and there is another longer route to the discharging port, the Owners shall give notice to the Charterers that this route will be taken. In this event the Owners shall be entitled, if the total extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route.

(e) (i) The Owners may effect War Risks insurance in respect of the Vessel and any additional insurances that Owners reasonably require in connection with War Risks and the premiums therefor shall be for their account.

(ii) If, pursuant to the Charterers’ orders, or in order to fulfil the Owners’ obligation under this Charter Party, the Vessel proceeds to or through any area or areas exposed to War Risks, the Charterers shall reimburse to the Owners any additional premiums required by the Owners’ insurers. If the Vessel discharges all of her cargo within an area subject to additional premiums as herein set forth, the Charterers shall further reimburse the Owners for the actual additional premiums paid from completion of discharge until the Vessel leaves such area or areas. The Owners shall leave the area or areas as soon as possible after completion of discharge.

(iii) All payments arising under this Sub-clause (e) shall be settled within fifteen (15) days of receipt of Owners’ supported invoices.

(f) The Vessel shall have liberty:

(i) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery, or in any other way whatsoever, which are given by the government of the nation under whose flag the Vessel sails, or other government to whose laws the Owners are subject, or any other government of any state or territory whether recognised or not, body or group whatsoever acting with the power to compel compliance with their orders or directions;

(ii) to comply with the requirements of the Owners’ insurers under the terms of the Vessel’s insurance(s);

(iii) to comply with the terms of any resolution of the Security Council of the United Nations, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement;

(iv) to discharge at any alternative port any cargo or part thereof which may expose the Vessel to being held liable as a contraband carrier;
(v) to call at any alternative port to change the crew or any part thereof or other persons on board the Vessel when there is reason to believe that they may be subject to internment, imprisonment, detention or similar measures;

(vi) where cargo has not been loaded or has been discharged by the Owners under any provisions of this Clause, to load other cargo for the Owners' own benefit and carry it to any other port or ports whatsoever, whether backwards or forwards or in a contrary direction to the ordinary or customary route.

(g) The Charterers shall indemnify the Owners for claims arising out of the Vessel proceeding in accordance with any of the provisions of Sub-clauses (b) to (f) which are made under any bills of lading, waybills or other documents evidencing contracts of carriage.

When acting in accordance with any of the provisions of Sub-clauses (b) to (f) of this Clause anything is done or not done, such shall not be deemed to be a deviation, but shall be considered as due fulfilment of the Contract of Carriage.
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