

MODERN PIRACY: WHAT THE EXPERTS SAY

by Angelo Colombo

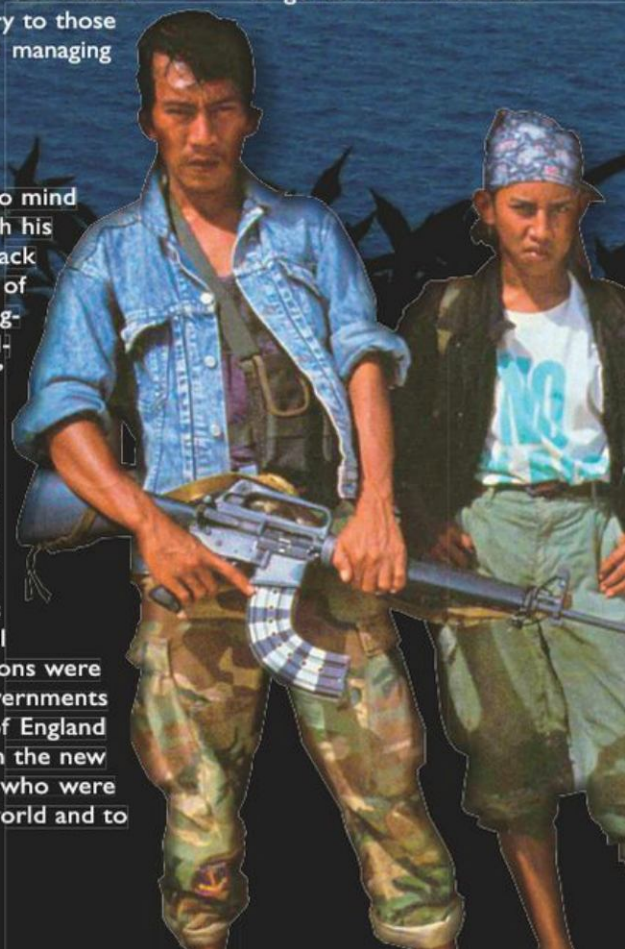
Acts of piracy still occur in many seas of the world and have even returned to those waters that, up until recently, were considered safe. This article wishes to view the opinion of those who have to deal with piracy for professional reasons at different levels. The objective is to cover the spectrum of effects and implications that piracy bears on shipping and recreational yachting from an international legal point of view, to voice the suggestions of those security experts who work on board vessels and are willing to share the advice they give to the crews they instruct. Therefore piracy, as such, other than from an historic and cultural profile, will only be the marginal theme of this article which wishes to concentrate on supplying useful information to mariners on how to prevent attacks or how to manage them to avoid the worst. In actual fact, the following article is no less than three distinct articles in one. It centres on modern piracy tackled from different angles with a sole common denominator which wishes to provoke careful attention to the issue and to offer useful suggestions on the phenomena. To explain the legal implications and other aspects, Superyacht turned to three competent sources that should serve to shed considerable light upon such a topical subject. These are: Studio

Ippolito, an International law firm, Agenzia Investigativa Marco Valdetaro, specialised in all forms of security in the yachting sector and RINA, the Italian naval authority, for the parts inherent to different safety levels. We therefore, don't wish to discourage yachtsmen but we do want to encourage them to go to sea in abidance

age our readers to certain rules that are complementary to those practiced normally when planning and managing cruises.

HEREWITH, THE STUDIO LEGALE D'IPPOLITO'S OPINION:

It is most likely that on speaking of piracy, the first images that come to mind are those that recall youthful readings, perhaps, of Salgari's tales with his picturesque characters as were Sandokan and Yanez or on the Black Buccaneer or even, memories of films, such as the one on the last of the Caribbean pirate series, with a "Jack Sparrow" as the main braggart. Subconsciously we, probably, envisage a pirate as a romantic adventurer whose gestures, carried out under a fluttering "Jolly Roger," the notorious skull and bone flag pirates used in the 18th century, are more heroic than criminal. It must be said, however, that such a belief does not correspond to historical reality and what many relegate to films and adventure stories is instead very real and an awkward phenomena that has lately been increasing. In an attempt to summarise the history of piracy briefly, it can be stated that it dates back to 2000 years B.C. and that much later with the discovery of the Americas, it expanded its horizons across the Atlantic towards the Caribbean Sea and the Antilles, in particular, finding semi legal status in the so called "quick war." If indeed, pirate raids and incursions were used as an instrument of war in the past, as of the 16th century governments had, by then, more or less institutionalised piracy. The monarchs of England and France, in fact, entrusted the fight against Spanish possessions in the new continent to adventurous commanders, also known as buccaneers, who were "quickly given licence" to plunder Spanish settlements in the New world and to



raid ships crossing to Spain for their precious cargo. Contrary to common knowledge, however, buccaneers were not considered as pirates in as much as their licence or "sealed letters" officially authorised them, not to plunder, but to wage war against enemy ships. Consequently, the booty, according to the terms of international law, at the time, could not be regarded as the fruit of illicit practices, but as rightful bounty of war.

In more modern times, piracy continued to be practiced in the seas of the Far East, and with the expansion of foreign trade with China, in the 19th century, it spread wildly. The strong presence of the British navy and handsome rewards for the outlaws' capture, served to drastically reduce the number of pirates in the China Sea. During that period, acts of piracy continued in Southeast Asian waters between Malaysia and Borneo.

Nowadays, in contemporary times, despite differing opinion, piracy not only continues to exist but has even increased of late, due to the exponential growth of terrorism and the chronic political instability and weakness of certain Asian and African countries. According to updated data revealed by the International Maritime Bureau, which is a section of the International Chamber of

Commerce, there have been as many as 293 acts of piracy in 2008 alone. One hundred and eleven were off the coast of Somalia and the Gulf of Aden, and accounted

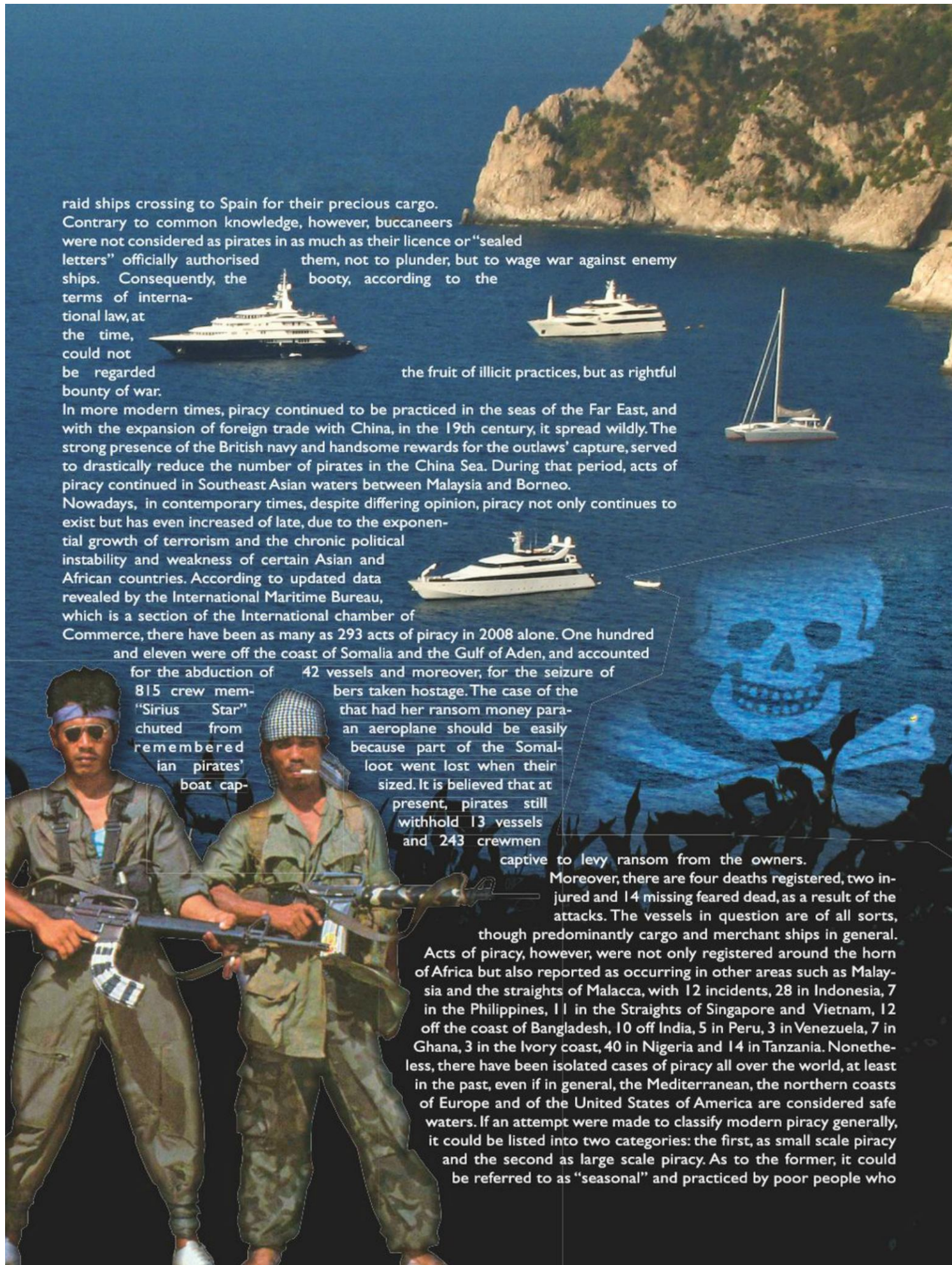
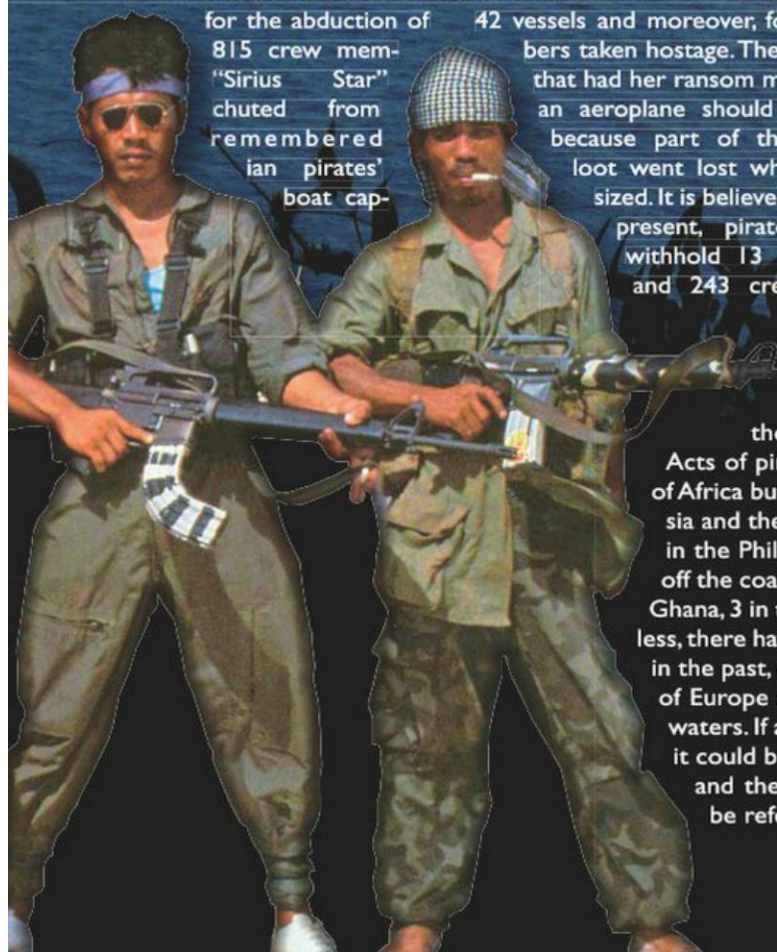
for the abduction of 42 vessels and moreover, for the seizure of 815 crew members taken hostage. The case of the "Sirius Star" that had her ransom money parachuted from an aeroplane should be easily remembered because part of the Somali pirates' boat cap-

size. It is believed that at present, pirates still withhold 13 vessels and 243 crewmen captive to levy ransom from the owners.

Moreover, there are four deaths registered, two injured and 14 missing feared dead, as a result of the attacks. The vessels in question are of all sorts,

though predominantly cargo and merchant ships in general.

Acts of piracy, however, were not only registered around the horn of Africa but also reported as occurring in other areas such as Malaysia and the Straits of Malacca, with 12 incidents, 28 in Indonesia, 7 in the Philippines, 11 in the Straits of Singapore and Vietnam, 12 off the coast of Bangladesh, 10 off India, 5 in Peru, 3 in Venezuela, 7 in Ghana, 3 in the Ivory coast, 40 in Nigeria and 14 in Tanzania. Nonetheless, there have been isolated cases of piracy all over the world, at least in the past, even if in general, the Mediterranean, the northern coasts of Europe and of the United States of America are considered safe waters. If an attempt were made to classify modern piracy generally, it could be listed into two categories: the first, as small scale piracy and the second as large scale piracy. As to the former, it could be referred to as "seasonal" and practiced by poor people who





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commonly live on the coast, are badly armed with light weapons and attack small merchant ships, yachts and fishermen. Their strategy is to climb aboard the boat under attack, threaten the crew so as to steal all they can, primarily the crews' and their eventual guests' money, jewellery and personal belongings. Pirates in the latter category, instead, mainly assault container ships and oil tankers that are then routed temporarily to the bandits' hideouts or to hidden ports where part of the cargo is unloaded with the help of real criminal organisations. These pirates often have well equipped boats, modern weapons, advanced electronic systems, international connections and even avail themselves of brokers to sell their loot. In addition to the sale of the cargo, there is an increasing tendency to hold both the crew and vessel to ransom in exchange of huge amounts of money. That said, among these, there are some pirates who are interested in the ship itself, which once seized, is registered under a different flag, hence, supplied with false papers and sold or chartered out again for transport purposes. In consideration of the fact that about 90% of worldwide trade is shipped by sea and that a noticeable proportion consists of prime materials such as crude oil and its derivatives, it becomes all the more obvious that a threat of piracy cannot but produce worldwide repercussions. In practice, routes that are considered at risk command a substantial increase in transport and insurance costs thereby obliging shipping companies to abandon such routes. Maersk, in fact, one of the world's largest shipping companies, has already announced that it no longer intends to place her tankers at risk by passing via Somalia and that she may well reroute them through the Cape of Good Hope, which is tantamount to longer times of transport and higher costs. The international community and in particular the U.N. has called upon those countries with a larger naval capacity to actively contrast acts of piracy in the Somali Basin. Furthermore, in 2008 the U.N's Security Council passed several resolutions and namely numbers: 1814, 1816, 1838, 1844, 1846 and 1851 authorising naval units engaged in contrasting acts of piracy to enter Somalian waters, albeit, only to combat piracy. These resolutions, have however introduced an important change to international laws governing maritime rights. In accordance to the said resolutions, for instance, a recent NATO operation, held between October 23rd and December 12th, code named "Allied Power" set out, under Italian command, to protect and escort World Food Program ships, crossing Somalian waters, from criminal acts of piracy. Another operation launched on the 8th of December by the EU, dubbed "Atlanta," will last for a whole year. The objective for both convoys was to ensure a safe passage to ships in transit. It should be generally remembered, that the Maritime Bureau created a Piracy Reporting Centre, in Kuala Lumpur in Malaysia as far back as 1992. The PRC is an investigative unit capable of acquiring immediate information in case of pirate attacks, assist sailors, help police forces and the local Coast Guards and to transmit bulletins regarding routes at risk to all the associated maritime concerns.

From a judicial point of view, piracy has always been considered a classic international crime recorded in the C.D. category "delicta iuris gentium" in other words, in the list of the most odious criminal offences that every State can punish according to its own terms of law. The





definition of an act of piracy, as a crime, had been disciplined by the 1958 Geneva Convention on the Rights of the Sea. It was later amended by the 1982 United Nations Convention on the Law of the Sea, signed in Montego Bay. The latter classified naval piracy and disciplined each Countries' power of intervention at sea. On the basis of the Convention's article 101, any act of violence, of kidnapping or of robbery for private greed whether by the hand of a pirate ship's crew or passengers on the high seas or outside the jurisdiction of a any State causing damage to another ship, person or goods transported, is considered an illicit act of piracy. Any voluntary act to partake in a ship's activity that is knowingly involved in acts of piracy is also considered an illicit act of piracy. In proof of the degree of concern the international community ascribes to piracy, article 107, not only contravenes the cardinal rule whereby a ship on the high seas is subject to the protection of, and responds to the sole jurisdiction of her flag State, but it actually overrules the said principal in view of the fact that piracy is considered an offense of universal jurisdiction http://en.wikipedia.org/wiki/Universal_jurisdiction. Consequently any State's war ships, military aircraft or government authorized vessels and aircrafts, may board and seize a ship engaged in piracy and or any ship captured by pirates, and any State may try a pirate and impose sanctions according to that State's own law. In Italy's case, the laws that would be applicable are those inherent to piracy contained in the current Code of Navigation. The articles above indicate that an act of piracy is a typical illicit offence of



misfeasance based on conduct therefore; reference to a specific act need not be pinpointed to apply the offence. In fact, the terms used are generic: violence, kidnapping, robbery and damage of the goods, these in fact need not actually be damaged. However, according to the convention signed in Montego Bay, for an offence to be considered an act of piracy, it must have been committed on the high seas or in waters that are not subject to any States' jurisdiction such as the Antarctic. In fact, should the act of piracy be committed within a State's territorial waters, it shall be punished according to that State's laws and not according to international laws. Furthermore, to apply the offence of piracy there must be two ships. From a subjective point of view, for the offence to be classified as an act of piracy, the offence must be carried out for personal greed. The end is irrelevant and as such should be considered an illicit of general intent. Having briefly summarised international rulings, we wish to point out that nationally, the act of piracy is regulated by the Code of Navigation's article 1135 and its sub codes. It foresees imprisonment for between ten to twenty years for the captain or naval officer of a national or foreign vessel that pillages or brings damage to a ship whether foreign or not, or her cargo, or with the intent of pillaging, uses violence on any person on board irrespective of whether the person is aboard a foreign vessel or not. Minor sentences will be inflicted upon others taking part in the act of piracy.

The captain of a national or foreign boat, who transports weapons illicitly and lacks the required ship's papers, is subject to imprisonment for five to ten years. In comparing international law to the Italian Navigation Code, various differences radically emerge. In the first place, Italy's code foresees two

different types of criminal acts. The first instance calls for the presence of two ships in association to the will to pillage (*animus forandi*). Consequently, according to Italian law, the material that is the object of plunder must be present, as the will to seize it must be proven. In the second instance: an act may instead be considered a "presumable act" of piracy that would be applicable if both hypothesis coexist, that is to say if there is an illicit transport of weapons and if there are no ship's papers aboard. Therefore, by using technical terms it would appear that



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the point in case could exclude the possibility of being charged with the attempted crime. It should be noted, as stated in the Navigation Code, that the judge must be convinced that the ship intended to carry out acts of piracy, that is to say that the ship carried weapons aboard to carry out those acts listed in article 1135. If a ship illicitly carries weapons aboard for criminal acts which are not ascribable to piracy, such as smuggling, illegal supply of arms etc. she cannot be considered as having the intent of committing an act of piracy and such criminal offences will therefore be treated according to different articles of law. A man of law cannot but appreciate the fact that both the international and the Italian Regulations, may well be improved upon, especially as far as the areas of jurisdiction are concerned which are often sources of conflict. Finally, specific attention should be drawn to acts of piracy that are aimed against luxury yachts. As mentioned earlier, modern pirates who operate on a large scale, as a rule attack merchant vessels whose intrinsic value is in their cargo which, because of its value, is particularly attractive and calls for the vessels' and their crews seizure regardless of whether firearms have to be employed or not. Lately, Somalian pirates have even used rocket launchers. Yachts and Superyachts in particular were rarely subject to attack even though, the Piracy Reporting Centre, registered as many as 9 assaults in the last year alone which represent 3% of the total. Among these cases the following might be remembered: the French yacht "Maclow" seized while at anchor in Baia de Todos os Santos in Brazil, the French yacht, Carre D'AS IV captured off Aden and freed by French commandoes, another French boat "TIVE" off the Venezuelan coast, "Rockall" taken off the Somali coastline, the British yacht "Raven Eye" seized again off Venezuela, the U.S. "Sarana" in Ecuador, "Cool Change" that was fortunately attacked unsuccessfully in the Seychelles, "Tiara" from the Cayman Islands, boarded in Corsica and the German "Cobra" that had a fortunate near miss near Sri Lanka. As to the Mediterranean, the episodes of piracy registered are marginal in comparison to the number of small and large yachts that cross the area in the summer period in particular. Offences committed differ somewhat and range from the theft of a tender or of equipment to personal belongings, which however are not cause for general alarm. With regard to regions outside the Mediterranean basin, even if events of piracy against yachts are statistically low in number, owners must be aware that the resurgence of piracy could affect them economically as well as owners of merchant ships. The London Market Joint War Committee has recently added the Gulf of Aden to the war zones on the same par as Iraq and Afghanistan. It has also extended the area at risk around Somalian waters that had, in any case, already been inserted in the war zones list. Such changes have a direct impact on insurance coverage, in as much as, while "all risk" policies cover piracy, which is considered an ordinary risk, they do not, necessarily cover risks of war. Consequently, should a ship fall victim of an act of piracy while in transit in a war zone, the insurance company would not be liable for settlement. There are policies, however, that cover all year round risks of war with an extra premium when a ship reaches war zones, ports excluded, with spot warranties should there be on going conflicts or war that entail an extra risk for the insurance company. It should also be noted, that changes in international military situations can determine the cancellation of an insurance policy in specific areas, with only seven days notice, such a decision, however, could



be reviewed on negotiating new conditions that normally command extra costs. Owners wishing to sail in waters renowned for piracy had better contact their insurance company to assess their actual insurance coverage and if need be, to have an extra clause added to theirs or to have another one issued that covers the risk of war in war zones. On the strength of information gathered, the extra premium paid for the cover ranges from 0,01% and 0,025% of the insured value. Nonetheless, as aforementioned, the premium may vary according to conditions on the field.

To this effect, owners should be aware of the fact that special surveillance equipment can not only influence insurance premiums positively but it can also be useful in preventing pirate attacks or the violation of one's own property and privacy.

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THE AGENZIA INVESTIGATIVA MARCO VALDETTARO'S OPINION.

Nowadays, pirates use fast motor launches with multiple outboard engines and are armed with daggers, Kalashnikovs, semiautomatic pistols and grapnels. The proceedings are always the same, the vessel under attack tries to flee, the pirate craft draws close enough to launch its grapnels and the attack takes its course. Pirates are now to be found in various parts of the world, especially where they have always existed historically and continue to proliferate and launch attacks in more numerous areas than before. Normally these areas are: natural paradises which represent yachtsmen and mariners' favoured routes or seas with an intense traffic of large merchant ships. Modern pirates have always operated, however over the past 20 years they have sadly become more famous probably because they shifted their attention from small yachts to larger ships. Undoubtedly, the ships' commercial and strategic importance attracts the press. Historically, the only and most efficient anti pirate unit, is a French one, that has been operating, for some time now, in

areas considered at risk with a small but efficient fleet.

The unit, comprising especially trained men and adequate aero-naval support, is stationed according to the hot zones in an attempt to contain the phenomena. Recently, Russia and China and other nations, possibly induced by acts of piracy also hitting merchant shipping, have also deployed small fleets in high-risk areas. However, getting back to the 'close at heart' yachting world, piracy has never ceased for this sector since the times of the privateers in the Caribbean or of those in Malaysia and in South-East Asia. There have been scores of attacks on peaceful mariners and many ended happily, maybe with a little fright and a small or large loss of money and belongings on endured by the victims. Others, however ended tragically, the most recent episode dates back to 2006 with the killing of an Italian skipper in the Caribbean Sea between Tobago and Trinidad. Nor can one forget the assassination of the famous skipper, Sir Peter Blake. A map of where piracy hits yachtsmen is easily outlined: off Columbia, the North coast of Venezuela, Trinidad and Tobago, Madagascar, The Malaccan Islands, Islands of the Mekong Delta, the Gulf of Aden etc.etc. We would however prefer to indicate the scenarios that could be at risk: a sea that is easily crossed or at least with medium difficulty, a beautiful sea and coastline, a nation which has a very poor coastline with little coastal control by either the police or the coast guard, a highly attractive spot frequented by yachtsmen that are usually drawn to it by its natural beauty or because an area is on course of another of greater renown, an area that is so large that the likelihood of crossings or encounters with





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other mariners are remote. Amid the various services we have been offering yachtsmen for years there's an anti pirate consultancy service. We've matured a long experience in researching real attacks, examining and conducting statistical cross checks on the modes of assault and their specifics which are continually updated with, places, nationality, habits, and weapons. Finally, we can also boast our personal experience in performing our duty in hot zones on behalf of our clients. On the strength of this, we would like to offer our advice to seamen who may not be particularly appetizing preys to be held at ransom due to their professional ties or financial standing. (Such clients are codified into class A of our protocol.)

- 1) Cruise at least 30 to 40 miles away from the coastline at risk.
- 2) If for nautical reasons, like strong contrary currents and sea, one has to head inland, it is preferable to do so at night time.
- 3) At night, don't activate the transponder, the radar or the navigation lights to avoid being detected.
- 4) Avoid transmitting with VHF or SSB radios.
- 5) To avoid collision when navigating without lights be aware of other vessels that might be doing the same thing and be very wary of cargos that could cross your course because they will be unable to see you in such conditions.
- 6) When cruising in conditions under points 2,3,4, and 5 cargos must be recognised as such and be certain of their kind of ship, at that point, so as to be visible, navigating lights may be switched on. If uncertain, it is best to alter course and slip away in the dark.
- 7) Keep little money aboard hidden but easily findable for possible intruders, maybe even some fake watch replicas that can be readily mistaken and slipped off for the intruders' benefit. Pirates, look for money, gold, jewellery, watches and electronics and they rarely seize the yacht. Should they not find anything aboard, then they are capable of becoming very violent.
- 8) Never drop anchor in hot spots or in areas one is not sure of. If it's indispensable, it would be more advisable to do so in proximity of other yachts, provided that these are recreational yachts as well.
- 9) Ashore, never be ostentatious with money when touring or merely shopping. Women should refrain from wearing precious jewelry and should avoid appearing sexy. In hot zones it is always best to haggle about prices even when not very high.
- 10) Never discuss or let on about departure times or course chosen nor of how many people are on board or other information that could be useful to pirates.
- 11) We strongly recommend the absence of firearms unless carried by personnel trained in their handling, in personal defence including that of others too and in the tactics to be deployed in case of attack. In many cases strikes turned sour because the crew or a single member had a hostile reaction.

In short we advise caution and a lot of care. To those owners, in the A category we strongly recommend to turn to professional help before embarking. To plan everything out in detail and to weigh up the possibilities of coming out unscathed. The presence of professionals aboard, with their experience, their equipment and training and eventually even with their weapons can guarantee pleasant cruising in wonderful places. For customers in this bracket we operate as follows:





- 1) We study the set course to verify its risks and evaluate the degree of peril.
- 2) We inform our client of zones at risk and what these entail and where necessary we suggest alternative courses to reduce risks to the minimum. On the strength of our years of research on the zones at risk we identify the times of lesser danger for safer passages.
- 3) Through investigative channels, we seek to find other yachtsmen who wish to transit at the same time of passage. Touristy areas are frequently visited and since two or three yachts are a deterrent to pirate raids, the chances of other boats wanting to steer the same course are multiple.
- 4) The personnel embarked carries weapons and is trained specifically in handling pirate attacks. The staff is also capable of sailing a motor or sailing vessel without auxiliary help and can therefore even be useful in "particular" cases.
- 5) Night vision equipment would be brought aboard to control cargos or other vessels' crossing course or to watch surrounding vessels when at anchor. On sailing vessels when under sail at night we even use acoustic sensors.
- 6) During such crossings we naturally apply the advice given before forehand to mariners in the non A category.

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RINA'S COMMENTS ON "SECURE YACHT NOTATION"

Formerly the ISPS standard "Ship and Port Facility Security Code" was applied, mandatorily and solely, to merchant vessels over 500 tons, but increasingly larger superyachts have made it necessary to update the regulations in force. In fact if a vessel is used privately, irrespective of length or tonnage, there is no mandatory security certification. Some yacht owners have begun requesting voluntary certification for installations and operational procedures on board for the prevention of terrorist acts, intrusion, boarding and invasion of privacy, procedures which are better than those of a merchant ship which probably employs only the minimum necessary crew. On a yacht you can install automatic systems of anti-intrusion control by means of CCTV and underwater systems and by employing qualified personnel, whereas normally on merchant vessels this task is limited to direct control by the crew. When commenting on this, Mr Paolo Moretti (Eng.) man in charge of the Yachting Area for RINA said "As a result of these requests we decided to create an additional Notation which rewards those who equip their vessels with these procedures and at the same time certifies the correct installation in accordance with the vessel's general safety standards." Therefore all the equipment installed for this purpose is listed in the Notation and is periodically checked by the certifying Body. "In the RINA Notation, in deference to the ISPS, we've added some regulations such as the obligation to install an activation button, meaning a distress signal sent to the shipping company, the owner or the management company, both on the bridge and in a hidden place. This alarm does not go directly to the administration where the vessel is registered, as is the case for merchant ships." So, in brief, the "Secure Yacht Notation"

certifies that the vessel was built in accordance with the regulations and the minimum ISPS requirements, and also with the additions made by the RINA, always referring to the vessel and not the owner: A list of apparatuses, systems and procedures is therefore drawn up to be produced whenever an inspector requests it. With this new voluntary Notation a yacht under 500 tons can gain access to port areas where there are access filters based on security. Naturally, and in a parallel manner, the yacht must prove it has a series of operational pro-