Introduction to Private Maritime Security Companies (PMSCs)

As the safety of ships, their crews, and cargo are increasingly put at risk of pirate attack, there has been a related spike in private counter piracy defense teams on board vessels transiting at-risk zones. In an attempt to clarify this emerging industry, we have begun to map the field, examining closely the key players, the guiding documents and the various stances on private security. While this examination helped to detail developments within the private maritime security industry, much of the future remains unclear. There are many legal and logistical challenges to the use of armed guards aboard ships that have not yet been resolved.

Key findings:

- Documents such as the International Code of Conduct for Private Security Providers, the Montreaux Document and MSC. Circ. 1404 suggest protocol for private security teams, but have no legal status and no standardized training or certification to ensure compliance with guidelines.

- Currently the regulation meant to ensure quality of the private security industry is weak, making it difficult for shipowners to discern reputable companies offering private security. There is no required reporting of incidents, although it is recommended in all of the guiding documents.

- Flag State policies regarding the use of armed guards vary greatly; many policies are not reported.

- International navies, IMB, INTERPOL and UKMTO have a neutral or no stance toward the use of private armed security. The IMO considers the use of private armed security to be a Flag State concern. There are varying stances among shipping companies, Flag States and Regional Nations regarding their usage, indicating that this industry is still very new and international bodies are still developing their official policies toward its usage.
<table>
<thead>
<tr>
<th>Documents</th>
<th>Intended for</th>
<th>Authority</th>
<th>Vetting</th>
<th>Use of Lethal Force</th>
<th>Incident Reporting Protocol</th>
<th>Accountability Mechanism</th>
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<tr>
<td>BMP 4</td>
<td>The shipping industry</td>
<td>• &quot;The use, or not, of armed Private Maritime Security Contractors is a matter for individual ship operators to decide following their own voyage risk assessment and approval of respective Flag State.&quot;</td>
<td>In accordance with IMO Circulars</td>
<td>Not discussed</td>
<td>&quot;If armed Private Security Contractors are present on board a merchant vessel, this fact should be included in reports to UKMTO and MSCHOA.&quot;</td>
<td>UKMTO and MSCHOA should be notified</td>
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</table>
| Guardcon Standard Contract for the Employment of Security Guards on Vessels (Developed by BIMCO) March 2012 | The shipping industry (in particular, shipowners) | "BIMCO has developed GUARDCON to assist the industry, and in particular shipowners and their P&I Clubs, by providing clearly worded and comprehensive standard contract on which they can conclude agreements for security services."
"The Master shall, at all times throughout the duration of this Contract and the performance of the Security Services, have and retain ultimate responsibility for the safe navigation and overall command of the vessel."
"Each of the Parties shall not do or permit to be done anything which might cause any breach or infringement of national laws and international conventions..." | "The contractors shall provide suitably qualified, trained and experienced Security Personnel... as required by the Owners and undertake that:"
• Passed a medical exam
• STCW, BMP training
• Relevant experience
• Valid passport, visa, yellow fever card
• No criminal convictions that would preclude them from hold firearms cert
• Prior military/law enforcement service
• Not discharged for disciplinary reasons from military, law enforcement, etc
• Command of common working language
• Appropriate level of mental and physical fitness | "Take all reasonable steps to avoid the use of lethal force." | "The Owners are responsible for liaising with UKMTO and MSCHOA as appropriate and in accordance with procedures set out in BMP"
"Following any incident where a discharge of Firearms occurs, the Master and the Team Leader shall provide formal written records of the incident as may be required by applicable national law." | "The RUF should provide that any attack should be reported immediately to UKMTO and other authorities, as appropriate; furthermore that the use of firearms needs to be report to the Flag State." | Not discussed | Voluntary contract between owner and contractor |
Created for the members of:
- BIMCO
- ICS
- INTERCARGO
- INTERTANKO
- OCIMF
- IG P&I Clubs

"Criteria might include:"
- Voluntary compliance
- Decision to employ rests with individual shipping companies.
- "Strongly suggested" that shipping companies submit security plan to Flag State to ensure compliance
- Shipmaster remains ultimate authority on board

Determined by:
- Ship Owner
- PMSC
- Master

Created for shipping companies and the ship’s masters of UK flagged ships

"The government recognizes that the engagement of armed guards is an option to protect human life onboard UK registered ships from the threat of piracy, but only in exceptional circumstances and where it is lawful to do so."

"Exceptional circumstances under which armed guards may be employed for use onboard UK flagged ships are:
- When the ship is transiting the high seas throughout the High Risk Area...
- The latest BMP is being followed fully but, on its own, is not deemed by the shipping company and the ship’s master as sufficient to protect against acts of piracy; AND
- The use of armed guards is assessed to reduce the risk to the lives and well-being of those onboard the ship.

"The government does not currently recognize an accreditation process for PSCs operating in the maritime sector. Shipping companies must, therefore, be extra vigilant in selecting an appropriate PSC to provide armed security onboard their ships."

"To assess the suitability and capability of the PSC to provide the specialized service of protecting a ship from pirate attack, the shipping company should satisfy itself that the PSC has:"
- Relevant and recent maritime (as opposed to land-based) experience;
- An accurate understanding of the local piracy threat;
- Written procedures on management;
- Access to competent maritime legal advice;
- Appropriate insurance cover;
- Understanding of port State and coastal State laws with respect to firearms, ammunition and other security related equipment;
- Understanding of UK laws and requirements with respect to firearms, ammunition and other military/paramilitary equipment;
- Understanding of post-incident procedures to support UK Police and the Crown Prosecution Service, should a formal investigation be required.

"Under UK jurisdiction, a person may use such force as is reasonable in the circumstances for the purposes of self-defense, defense of another; defense of property; prevention of crime; or lawful arrest. Legal guidance on self-defense and the prevention of crime in UK law is available online..."

"The shipping company and PSC must agree upon the rules for the use of force that the armed security personnel will operate within, based upon the applicable laws. All members of the armed security team must fully understand the rules of the use of force and comply with them."

Specific firearms incident reports (to be completed any time a firearm is discharged, whether accidental or deliberate) should include time and location of incident; details of events leading up to the incident; details of the incident; the identify and details of personnel involved in the incident, and witnesses; written statements from those involved and witnesses; photos; video surveillance; details of injuries and/or material damage; lessons learned from the incident.

Following pirate attack (as soon as possible but "certainly within 6 hours," the ship's master and security team leader should submit a written incident report to UKMTO, MSCHA and the IMB in accordance with BMP. DFT should also be copied to assist DfT to maintain a complete understanding of the threat that UK flagged ships are under, and the effectiveness of different self protection measures (including armed guards) in preventing acts of piracy.

"Firearms reports must be sent to DFT. DIT will forward reports onto the Home Office and the UK Police."

Security team should submit full report to the shipowner/operator following tour of duty, detailing: deployment, operational matters, training, any ship hardening conducted, and recommendations

Interim Guidance to UK Flagged Shipping on the Use of Armed Guards to Defend Against the Threat of Piracy in Exceptional Circumstances

(Deployed by UK Department for Transport)

November 2011

Not discussed

None apparent

"Oceans Beyond Piracy"

Interim Guidance to UK Flagged Shipping on the Use of Armed Guards to Defend Against the Threat of Piracy in Exceptional Circumstances

(Deployed by UK Department for Transport)

November 2011

Not discussed

None apparent, but post-incident evidence gathering "should be in accordance with the guidance contained in the Crime Manual for Ships Security Officers produced by the Association of Chief Police Officers (ACPO). The ship’s Master and the security team leader should provide any investigation with all necessary assistance."
| International Code of Conduct (ICoC) | Individual private security companies | • Voluntary to sign  
• Signatories are required to be certified, and continually audited by a planned Governance and Oversight Mechanism | • Firearm use is prohibited except in self-defense or defense of others during time of imminent threat of serious injury or loss of life  
• Reports prepared by signatories, detailing any instances of discharged weapons, escalation of force, damage to equipment, or injury to person  
• Incident reports submitted "to the Client and, to the extent required by law, to the Competent Authorities" | As required by law, copies of incident reports to "Competent Authorities" | None apparent |
| Montreux Document | Governments, International orgs, PMSC industry, & civil society | • Voluntary compliance  
• Suggests groups follow applicable national laws and International Humanitarian/Human Rights Law | • Use of force and firearms only appropriate in self-defense or defense of third persons  
• Specific details to be cited in report are not discussed  
• Immediate reporting to and cooperation with competent authorities regarding use of force and firearms | "Cooperation, information-sharing and assistance between States...is desirable..."  
*document is addressed to States, but "the good practices may be of value for other entities such as... companies that contract PMSCs, as well as for PMSCs..."  
*Suggestions for addressing misconduct:  
• Contract termination  
• Financial penalties  
• Civil liability  
• Banning future contracts  
• Removing individuals from current/future contracts  
• Establish corporate criminal responsibility in national law  
*None Required | None apparent |
### MSC. Cir 1405, 1406, and 1408
(Developed by IMO) May 2011
*1405 and 1406 revised September 2011

<table>
<thead>
<tr>
<th><strong>Shipowners</strong>, <strong>ship operators</strong>, and <strong>shipmasters</strong></th>
<th><strong>Flag States</strong></th>
<th><strong>Port and Coastal States</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>According to Flag State policy</td>
<td>Shipmaster remains in command at all times</td>
<td>Weapon embarkation and disembarkation contingent on coastal and port state law</td>
</tr>
</tbody>
</table>

**The PMSC should be able to provide documentary evidence which may include**:  
- Maritime experience
- Written management procedures
- Testimonials/references
- Proof of legality of firearms
- Understanding of Flag, Port and Coastal State regulations
- Knowledge of Somali piracy threat
- BMP understanding
- Access to legal advice
- Criminal, employment and military background checks Medical, physical, mental fitness records
- Verifiable system in place to ensure continued suitability of employed personnel
- Relevant experience with firearms to be deployed
- Systems for provision of security identity documentation, travel documents, and visas

- Should comply with standards set forth by Flag, Coastal and Port State Authorities
- Should take all reasonable steps to avoid the use of force
- Should not use firearms except in self-defense, or defense of others against the imminent threat of death or serious injury
- Shipmaster maintains log of instances when firearms are discharged

- Should be:  
  - Accredited by “an established and reputable organization”
  - Companies should be ICoC signatories
  - Maritime experience
  - Publicly available code of conduct and code of business ethics
  - Membership in “appropriate professional org”
  - Employees of PSMSs should be trained in Rules of Force, and maintain up-to-date firearms licenses
  - PSMS to be insured
  - Detailed info about firearms available

### Guidance on the Selection of Private Security Companies  
(Developed by Norwegian Shipowners’ Mutual War Risks Insurance Association) March 2011

<table>
<thead>
<tr>
<th>Members of the Norwegian Shipowners’ Mutual War Risks Insurance Association</th>
<th>According to Flag State policy</th>
<th>Shipmaster remains in command at all times</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flag State laws and regulations are applied to all vessels</td>
<td>Shipmaster retains ultimate control and responsibility for the safety and security of the ship, and shall be consulted before any firearms are deployed (this does not affect a Security Operator’s right to self-defense)</td>
<td>Weapon embarkation and disembarkation contingent on coastal and port state law</td>
</tr>
</tbody>
</table>

**Pro Forma Rules for the Use of Force**:  
- Identify Hostile Intent
- Challenge hostile intent w/ verbal or equivalent action
- Warning shots
- Lethal force only used as absolute last resort to protect someone’s life
- Specific rules must be clear, unambiguous, and available upon request

- Requires Members to report to DNK on employment of armed guards
- UKMTO receives and coordinates incident details
- Company Security Officer shall be contacted and asked for directions

| Security team should submit full report to shipowner & ship operator following tour of duty detailing deployment, operational matters, training and/or ship hardening conducted, and recommendations | Not discussed | None apparent |

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| Security team should submit full report to shipowner & ship operator following tour of duty detailing deployment, operational matters, training and/or ship hardening conducted, and recommendations | Not discussed | None apparent |
Indian Shipowners

• "Indian ship owners may deploy armed security guards, subject to their risk assessment particularly for ships which bear slow speed and have low freeboard."
• "Strongly recommended that shipowners consult their insurers prior to deploying private armed security guards on their ships."

"Should be able to provide documentary evidence which may include":
• Maritime experience
• Written procedures on management
• Understanding of Flag State, Port State and Coastal State requirements with respect to carriage and usage of firearms
• Availability of written testimonials/references from previous clients
• Documentary evidence of legality of firearms
• Understanding of the Somalia-based piracy threat
• Understanding of anti-piracy measures
• Access to legal advices
• Criminal background checks of employees
• History of employment checks
• Military and law enforcement background checks, where applicable
• Records of medical, physical and mental fitness
• Verifiable system in place to ensure continued suitability for employment of their personnel
• Documentary evidence of relevant experience and certification in the use and carriage of firearms to be deployed
• System for provision of security identity documentation, travel documents and visas

"The on board armed guard team should be fully aware that their primary function is the prevention of boarding using the minimal force necessary to do so."
• "If force is used, it should be in a manner consistent with applicable law."
• "The Master should maintain a log of every circumstance in which firearms are discharged"
• "If force is used, team leader should photograph, log, report and collate written statements from all persons present at the incident in anticipation of legal proceedings."
• "It is suggested that following a tour of duty, the onboard team should submit a full report to the shipowner and the flag administration" providing "full details of the deployment, operational matters, any training and/or ship hardening conducted and offering advice as to any other enhancements to security that may be considered."

Post-tour reports should be delivered to the shipowner and the Flag State

Not discussed

None apparent
## Counter-Piracy Stakeholders and Private Maritime Security Companies:

<table>
<thead>
<tr>
<th>Organization</th>
<th>Stance For or Against PMSCs</th>
<th>Guidelines Supported</th>
<th>Preferred Vetting Process</th>
<th>Access to Incident Reports</th>
</tr>
</thead>
</table>
| International Navies         | • “does not encourage or discourage”  
• “completely agnostic” | MSC HoA asks that ships indicate presence of security team | No stance on individual firms                                  | Receives info thru:  
• UKMTO  
• Regional Coordination Center                                    |
| IMB                          | Does not support; acknowledges the need, but with concern | No stance                                                  | No stance                                                      | Receives post-incident information on a voluntary basis from shipowners |
| Shipping Industry            | Varies by Shipping Company   | • Flag State Guidelines  
• BMP 4  
• Varies by national associations | Various standards. Recommendations on hiring requirements.   | For ICoC signatories only, shipowners receive incident reports directly from PMSCs (see Documents: ICoC) |
| Flag States (See next slide for additional information) | Varies by Flag State | Varies by Flag State                                         | Varies by Flag State                                             | Varies by Flag State                                                  |
| Regional Nations             | Varies by Nation and Port    | Some agreements with Specific Companies                     | No stance                                                      | No official access                                                   |
| IMO                          | Maritime security is considered a Flag State concern | See Document: MSC. Cir. 1405, 1406, 1408                   | See Document: MSC. Cir. 1405, 1406, 1408                        | No official access                                                   |
| INTERPOL                     | No stance                    | No stance                                                  | No stance                                                      | No official access                                                   |
| NATO                         | “NATO’s position on the use of private armed personnel remains neutral” | MSC. Circulars 1405, 1406, 1408 | “Recommends all concerned to follow IMO guidelines.” | No official access                                                   |
| Shipmasters (IFSMA)          | “IFSMA strongly opposes the idea of arming the ships either with weapons for seafarers to use or having an armed force on board.” – IFSMA Policy Doc | No stance                                                  | None established                                                  | No official access                                                   |
| Security Association of the Maritime Industry (SAMI) | Supports their use following a full risk assessment; wants them to be certified through SAMI | • MSC Circular 1405  
• Int. Code of Conduct  
• Norwegian Shipowners Guidance | Eventually: documentary check, verification visit, and on-scene survey requisite for company to become SAMI member | No official access; believes access should be provided as required by employer and flag, coastal, and port State laws, and according to MSC Circulars 1404 and 1405 |
| UKMTO                        | No stance                    | No stance                                                  | No stance                                                      | Receives reports from shipowners per BMP (see Documents: BMP4)        |
Flag States’ Stance on Private Maritime Security Companies:

The table below is intended to provide a concise snapshot understanding of Flag States’ views towards armed security. Information is not available for all Flag States. Given the relatively recent focus on the use of maritime security, Flag States’ support or regulation of security, especially armed security, is changing all the time. For example, some Flag States allow arms to be used on a case-by-case basis. There are also multiple different licenses that need to be obtained prior to using armed guards. It is therefore imperative that all decisions regarding the use of armed guards include open dialogue between the shipowner and the flag state. For more detail, see International Chamber of Shipping/ECSA Table on Flag State Rules and Requirements on Arms and Private Armed Guards On Board Vessels [here].

In order to reflect recent changes in the industry, the table below was last updated on December 7, 2011. Much of the original information contained in our table was derived from “Locked and Loaded: What a Shipowner Needs to Know when Considering the Use of Armed Security Guards,” a presentation by P&I Club, the American Club, created in June 2011. OBP has since been independently updating information, beginning in September 2011. OBP acknowledges that this industry is rapidly evolving and we will continue to amend our information as developments become available.

<table>
<thead>
<tr>
<th>FLAG STATE</th>
<th>ALLOWS</th>
<th>PROHIBITS</th>
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<th>ALLOWS</th>
<th>PROHIBITS</th>
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<tr>
<td>Antigua &amp; Barbuda</td>
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<td>USA</td>
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*In September 2011, Bloomberg via Cyprus News Agency reported that Cyprus was changing a law to allow merchant ships to carry gunmen as protection against pirates.

**See ICS/ECSA table for further explanation.

***Per International Law Office: http://www.internationallawoffice.com/newsletters/detail.aspx?g=baf40a7-a2bd-439c-807b-9ad2ee66d90a

****The US Department of State issued a statement in July 2011 “insisting” that all US-flagged vessels carry security personnel, whether armed or unarmed.