



**Maritime
Security
Review**



MSR InDepth

The Route to Security Regulation Steven Jones

This edition of MSR In Depth carries the full length version of an article by Steven Jones covering the International Maritime Organization's (IMO) development of guidance on the use of Privately Contracted Armed Security Personnel (PCASP) onboard ships. The article was originally published in the July edition of the Nautical Institute's publication 'Seaways'.

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The Route to Security Regulation

Steven Jones from the Security Association for the Maritime Industry looks into the way ahead for maritime security.

Amongst the many subjects debated during Maritime Safety Committee (MSC89) in May, the most potentially troublesome was that of developing guidance on the use of Privately Contracted Armed Security Personnel (PCASP) onboard ships.

After much work the International Maritime Organization (IMO) approved two sets of guidance: one for shipowners and one for flag States. The guidance to owners' notes that flag State jurisdiction and any laws and regulations imposed by the flag concerning the use of private security companies apply to their vessels and have to be observed.

The guidance stresses the use of PCASPs should not be considered as an alternative to the Best Management Practices to Deter Piracy off the Coast of Somalia and in the Arabian Sea area (BMP) and other protective measures. Employing armed guards on board as a means to secure and protect the vessel should only be considered after a risk assessment has been carried out. It is also important to involve the Master in the decision making process.

The use of armed security guards has increased dramatically recently in the face of increased attacks and violence from pirates.

With ever more ship owners/operators taking the difficult decision to "go armed", it was inevitable that flag States and the wider shipping industry would require guidance and advice.

While the IMO circular does not address all the legal issues involved in armed guards it will enable flag States to establish policy on whether they authorise the use of private armed guards and, if so, under what conditions. The guidance also includes sections on risk assessment,

selection criteria, insurance cover, command and control, management and use of weapons and ammunition at all times when on board and rules for the use of force as agreed between the shipowner, the private maritime security company and the Master.

Shipowners have also been reminded that while their ship is under a flag State's jurisdiction, all laws and regulations imposed by that flag state concerning the use of private security companies apply to their vessels.

There have been too many unknowns for too long in the armed guard debate, and guesswork has all too often filled the void.

The interim IMO guidance means that we can find a clearly defined baseline from which to develop coherent standards.

The pressure for change came on a number of sides – flag States and Contracting Governments were eager to have standards in place, and the shipping industry too was keen for a system to better allow companies to not simply employ PCASPs, but to ensure they knew how to check they were fit for purpose.

There was an immense amount of work to get through in order to get these guidelines produced. Especially as gaining consensus on such a contentious issue as arming ships was never going to be straightforward.

The flag States can now regulate the use of armed security service providers and hold them accountable for their actions, while shipping companies must appoint PMSCs using an adequate level of due diligence. The approval of such security companies and their personnel, including



any licensing or certification should be a flag State responsibility after appropriate vetting and background checks. Indeed flag States must decide not only whether their employment is appropriate and lawful on their vessels, but whether each PCASP meets the minimum criteria as laid down in the guidelines.

This will likely pose a challenge, and some flag States may struggle with the new responsibilities. Some will have the resources to tackle such an onerous task, but others may lack the infrastructure. There are also issues for some flags established as commercial entities, as they may have to pass costs onto customers. This poses something of a challenge, as concerns were voiced that the guidelines may be interpreted as guidance for the “self-regulation” of the security industry.

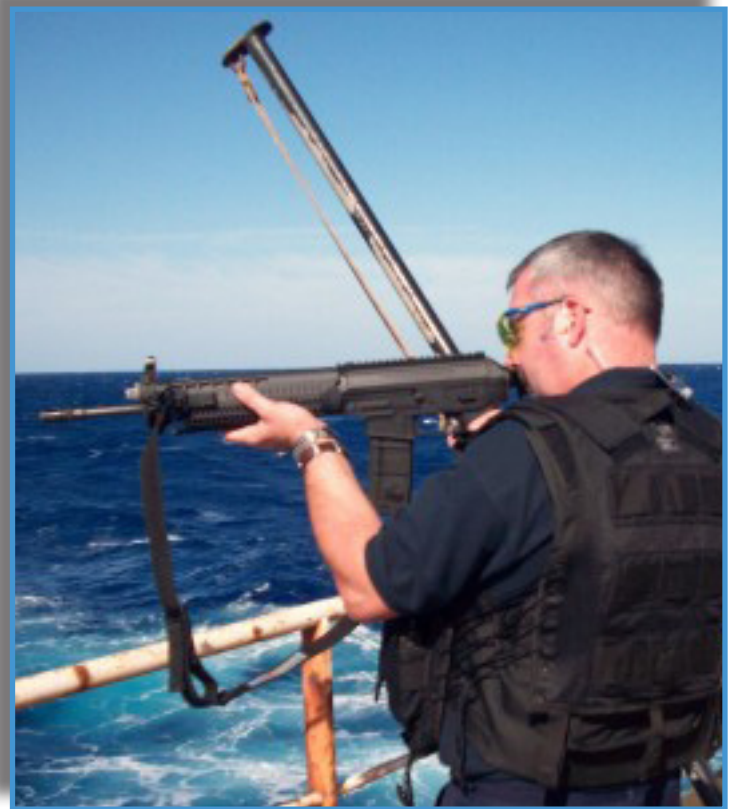
While it is clear that flag States will have to retain oversight – there is a clear need for the security industry to work in tandem with flags and other stakeholders to develop acceptable and workable solutions to this quandary. The need is for regulation, but provided through a system which reassures stakeholders, without burdening them.

Key to the guidelines has been the need for clear standards and a means of vetting PMSCs against them.

Until now there has not been a defined, demonstrable means of proving that a security provider is of the quality required. Indeed no-one has been entirely sure of what that quality was, or of what should be required.

Each company, as is their right, feels themselves to be “better than the competition”. In a commercial marketplace, the desire and need to differentiate has been strong. This has meant it has been almost impossible to paint a full and frank picture of the abilities, capabilities, resources and foundations of PMSCs on a large scale.

This led the IMO discussions to the procedures to be established for vetting of PMSCs and, as one might expect, they agreed that various models and methodologies might be applied by a flag State and that the recommendations should not endeavour to be too prescriptive in this respect. Many flag States have many ways of interpreting standards, and this will inevitably be reflected as they enter a new fray.



There are numerous obligations posed on those vetting and indeed, a number are difficult to assess, as observers voiced. It was felt that issues such as PMSC’s staff training, the appropriateness of their company standards or the medical and mental fitness of PCASP were going to be very hard to standardise and ultimately police.

It was agreed that the choice of what method or methodology is deemed best should be left to flag States to determine.

There were a host of other challenges to overcome within the MSC, and many were tackled.

One area of interest and concern is the status of PCASPs while onboard. Are they, for instance, part of the ships’ crew or are they supernumeraries?

This is very complex and the ramifications, especially in light of the soon to be ratified Maritime Labour Convention (MLC) are significant. After much discussion it was agreed that this was a matter for each individual flag State to decide.



The twin issues of legal implications and potential liability have naturally been a concern.

Discussions on the issue of the Master's responsibility and liability were extensive, and there are natural concerns where the actions of a PCASP may cause injury or death to any person, including the PCASP themselves, or any other damage caused to the ship or its cargo.

Perhaps understandably there were different opinions voiced as to what extent the master could be held liable in such cases. There was concern over the possible legal consequences a ship's Master could face and that the fact that masters are deemed to have "overriding authority" could be construed in such a way that they can be held ultimately responsible for any actions taken by the PCASP which were beyond the master's control.

This is a very real and live issue with increasing concerns voiced. As such the guidelines reflect this issue and take a view from the command and control structure perspective. They also recognise that the importance in contract documentation, of a clear statement that at all times the Master remains in command and retains the overriding authority on board. They noted the distinction between the uses of the terms "authority" versus "responsibility", something which we hope will protect all parties when there is any future apportionment of liability.

There has long been concern of the basic security interactions between master and crew and PCASPs. Some operatives strike up wonderfully positive working relationships with those onboard, while others quite simply don't. It is important therefore that the Master and crew should be briefed on the High Risk Area, location and duration of the ship's passage, the role of the PCASP within the security plan and watch bill, and the crew's actions when under attack. This is about understanding the threat posed, the actions taken to minimise the risk and of the actions all can expect to witness and be relied upon to perform.

It is also important that all parties address any interaction with local military forces, including liaison and reporting as recommended in the BMP, emergency signalling and hand-off between PCASP and the military during armed engagements.

The owners, master and PCASP must be clear on who is doing what and when.

An interesting point of contention was the issue of "minimum secure manning" – just how many PCASPs are needed onboard. There was a call to rely on risk assessment to define a quantitative level, but this argument has its flaws. Especially given the evolving swarming tactics which could see a team swamped with pirates, especially if the risk assessment is not conducted correctly.

In leaving the “minimum” level open it was felt that this would not help those who may be struggling to fully anticipate the dangers facing vessels. It was suggested as a sensible step that a minimum of four armed guards be placed on each vessel if the decision to “go armed” had been reached. This was seen as being vital information for ship owners/operators as it would serve as a quantifiable recommendation that prevented understaffing of PCASP.

In approving the interim guidance to flag States it was recognised that this was essentially a work in progress. Due to time constraints it was felt that only limited progress had been possible on developing guidance for flag States and so there will be more work ahead. Indeed this was the first step to ensuring that systems are in place to ensure quality security providers are able to come to fore, and that control, vetting and standards are in place to reassure all about the companies and individual operatives protecting commercial shipping.

The “interim” status of the guidelines tell you a little of the pressure the IMO felt under to get advice out into the flag States and industry. The guidance is not complete, and as such an additional intersession meeting will be held the week commencing 12 September 2011.

The hard work has only just begun on this issue, but things are likely to change and evolve swiftly now.

It is imperative that the maritime security industry is seen to embrace the need for standards.

With the use of armed security set to rise further, it is estimated that around 20% of ships in the Gulf of Aden and the Indian Ocean, will carry armed guards by 2013. This would see an increase from approximately 12% at present, and it is therefore important that PMSCs engage on the means of establishing standards and quickly put them into effect.

The SAMI Approach

Timed to coincide with the release of these guidelines, the Security Association for the Maritime Industry (SAMI) was launched during the MSC session. The maritime security industry now has an opportunity to show leadership and commitment in creating both a method and means of checking and delivering standards

which provides simple, clear, unequivocal, and reliable guidance for flag States, stakeholders and clients. This is the role to be taken by SAMI.

Having been given the standards by the IMO it is the Association’s intention to set about creating the means to vet and verify our members. As we create an independent, robust, thorough and transparent mechanism to ensure that the IMO guidelines are met with a system worthy of the goal.

For SAMI it is clear that a system has to be formulated in such a way as to deliver not simply a “check box” system of verification, but one that delivers real quality. We are already working with flag States to ensure that SAMI can deliver what they need, what owners/operators will rely on and something which the very best security companies will be part of. Telling clients that you are the best in the business is no longer enough – the time has arrived to develop a means of quantifying and qualifying the standards in place.

My lasting impression is that maybe we should reconsider our stance; maybe meeting the chaotic desperate pirates with a professional disciplined team of maritime security professionals could be an option.



About the Author



Steven Jones spent a decade working as a navigation officer in the merchant navy and was attacked by pirates while serving. After shifting ashore he advised numerous shipping companies on security planning - spending years researching, applying and developing an in-depth knowledge of security and the International Ship and Port Facility Security (ISPS) Code.

This knowledge has provided Steven the basis for a number of publications. These include, "Maritime Security" (with a foreword provided by International Maritime Organization (IMO) Secretary General Mr Mitropoulos), "Shipboard Access Control", "Guide to Shipboard Searching", "Lloyd's Handbook on Maritime Security", "How to Survive a Piracy Attack", and the upcoming new series of Nautical Institute guides covering piracy, stowaways by sea and principles of Maritime Security.

Steven's primary focus is on the human element – particularly the ways and means of bringing security techniques and effective management to commercial crews, office personnel and operators.

He has worked across the maritime industry, within shipping companies, insurers, publishers and professional bodies and was also the founder of the International Dynamic Positioning Operators Association (IDPOA).

Steven is a Member of the Nautical Institute and a Fellow of the Royal Society of Arts.

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2nd Maritime Salvage & Casualty Response

7th & 8th September 2011

London, UK



OPTIMISING YOUR SALVAGE AND CASUALTY RESPONSE OPERATIONS

ACI's 2nd Maritime Salvage & Casualty Response will provide an in-depth look into salvage, towage and casualty response. The event will focus on the most current technical and operational developments in pollution defence and rapid casualty response, as well as effectively summarizing the latest legal and contractual issues to arise in the industry.

Rapid and efficient response is crucial in sustaining a prolific reputation within the salvage industry. In order to maintain such high standards a company must keep up to date with the most recent developments. This meeting will ensure each delegate leaves with a clear understanding of relevant technologies and refinements in procedure, including specific case studies of wreck removal, oil spill strategy, casualty scenarios, and emergency response. In addition any legal and insurance issues will be clarified precisely.

THE AGENDA

Over two days you will have the opportunity to hear from your industry peers on the pressing issues concerning salvage, and casualty response, including:

- *Innovations in the salvage industry including the successful integration of new technologies and operational strategies*
- *Implementing effective cost/benefit analysis to wreck oil removal projects*
- *Developing an effective pollution defence strategy against chemicals and crude oil*
- *Case-study examples of successful and rapid responses to casualty scenarios*
- *Maximizing the effectiveness of your communications across the entire salvage chain.*
- *Know exactly where you stand on insurance and contractual issues*
- *Assessing how best to approach larger scale operations in the salvage and casualty response industries*

WHY YOU CANNOT MISS THIS EVENT

The salvage industry has evolved rapidly over the last few years. Maximize your company's efficiency by adapting the most recent well-proven strategies to tackling salvage and casualty response. This includes a variety of technical options, as well as key decisions in relation to legal matters and insurance. Do not miss out on the opportunity to actively engage with the relevant industry leaders in an interactive and mutually beneficial environment.

WHO WILL ATTEND?

All ACI's events attract a targeted group of senior level executives and decision-makers from industry. Our meetings are strictly end-user focused. Delegates will be drawn from salvage, tug and towage companies; ship-owners and ship-managers, and legal and insurance companies. Positions will include: Presidents, CEOs, VPs; Operations Managers, Technical Directors, Marine Surveyors, Fleet Managers, quality environment and safety managers and DPAs.

Conference Chairman:

John Noble
General Manager
International Salvage Union

Confirmed Speakers Include:

George Tsavlis
CEO
Tsavlis Salvage

Mauricio Garrido
President
T&T Bisso

Richard Janssen
Commercial Manager
SMIT Salvage

Morgyn Davies OBE
Chief Mooring & Salvage Officer
UK Ministry of Defence

Paul Pisani
Director
Alpha Briggs Mediterranean

John A. Witte Jr.
Executive Vice President
Donjon Marine

and many more...



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