

## **Private Armed Guards against Piracy**

It is well known today that safety of ships, their crews and cargo are increasingly put at risk of pirate attack and that is the reason private teams are hired on board vessels transiting at risk zones. Examining closely the key players in this emerging industry there have been some developments in the private maritime security field, however much of the future remains unclear as there are many legal and logistical challenges to the use of armed guards aboard the ships that have not yet been resolved.

There have been only limited analyses of legal regime applicable to private military and private security companies (PMSCs) relevant to the shipping industry, in particular shipping companies, ship-owners and their insurers. The options available to shippers in order to safeguard the passage of their goods through pirate infested waters both territorial and international are pirate hunting by PMSCs, self defense by seafarers, employing armed guards, detachments of armed soldiers employed by national militaries, the practice of escorting merchant vessels by military vessels, dispatching security teams from land bases and policing territorial waters ("Policy Options" by Professor Ronzitti). It is emphasized by Professor that the use of private teams is under appropriate conditions legally permissible based on the right of self- defense of human beings which is recognized by all legal orders of the members of the international community. Nevertheless, if a death is to occur at sea as a result of piracy, jurisdiction to prosecute such a crime may be limited to the flag state, victim or defendant's and this does not mean that that the applicable substantive law should derive from the prosecuting state rather than international law.

Arming guards on board ships has been made necessary, however the basic countervailing concern is that it will lead to an escalation of violence by pirates and despite the falling number of pirate attacks reported by International Maritime Organization (IMO) in the Gulf of Aden this year, it is also reported that the pirates have become more aggressive and better organized.

There have been long discussions about if an how to regulate private security companies hired to protect merchant vessels against pirates. Flag States and port States have been encouraged to consider development of safety and security measures on board vessels including regulations for the deployment of privately contracted armed security personnel on board ships through a consultative process, including through International Maritime Organization and International Standards Organization.

Issues were raised when innocent fishermen were killed by PMSCs during vessel protection due to mistakenly firing upon them on the high seas. As there is not any universal code but only interim guidelines, Flag States try to regulate a binding code of conduct of PMSCs aboard the ships. 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 not legal status and no standardized training or certification to ensure compliance with guidelines.

It is obviously difficult for ship-owners 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 and International Navies, INTERPOL and UKMTO have neutral or no stance toward the use of private armed security and as this industry is still very new, international bodies are still developing their official policies toward its usage. There are some Flag States that allow arms to be used on a case-by-case basis, multiple different licenses that need to be obtained prior to using armed guards, therefore all decisions regarding use of armed guards should be made between the flag state and the ship-owner.

Flags States for example that allow the use of armed guards are Cyprus, Finland, Germany, Greece, Hong Kong, India, Italy, Netherlands, Norway, Spain UK, USA while France and Japan prohibit such use of armed guards and while Bahamas, Belgium, Denmark, Isle of Man, Liberia, Lithuania, Marshall Islands, Panama, Poland, Portugal, Singapore, UK take no official stance regarding the use of armed guards.

Shipping companies must be extra vigilant in selecting an appropriate PSC to provide armed security on board their ships and before planning any voyage into the High Risk Areas, it is essential to have undertaken a formal risk assessment and to make a judgment as to the necessity of the voyage. Among the factors for the risk assessment, apart from the information from UKMTO, MSCHOA and IMO, the ship's cargo, the vulnerability of the ship and those on board, vessel class and size, freeboard, speed, manoeuvrability, sea state and self protection measures including BMP, citadel etc. should be seriously considered by ship-owners. In addition, before taking the final decision to engage armed guards it is important to undertake appropriate due diligence which normally includes investigation regarding company structure and place of registration, company ownership, financial position, extent of insurance cover, and quality management indicators.

The ship-owner should verify that the PSC holds suitable insurance cover for themselves, their personnel and third-party liability cover and the PSC should provide evidence that they will hold and maintain for the duration of the contract PL (public liability) cover and personal accident, medical expenses, hospitalization and repatriation insurance.

It is vital that ship-owners, charterers and underwriters review all provisions in their charters and ensure adequate attention is paid to the issues raised. As the issue of whether to deploy armed guards is a controversial one, careful consideration and analysis of any contract will enable owners to take such a decision in a prudent manner.