

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.



Key Documents that provide guidance on the use of Private Armed Security Guards:

Documents	Intended for	Authority	Vetting	Use of Lethal Force	Incident Reporting Protocol			Accountability Mechanism
					Info Reported	Info Flow	Ship Owner Obligation	
<p>BMP 4 August 2011</p>	<p>The shipping industry</p>	<ul style="list-style-type: none"> “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.” 	<p>In accordance with IMO Circulars</p>	<p>Not discussed</p>	<p>“If armed Private Security Contractors are present on board a merchant vessel, this fact should be included in reports to UKMTO and MSCHOA.”</p>	<p>UKMTO and MSCHOA should be notified</p>	<p>Not discussed</p>	<p>None apparent – document “does not constitute a recommendation or an endorsement of the general use of armed Private Security Contractors.”</p>
<p>Guardcon Standard Contract for the Employment of Security Guards on Vessels (Developed by BIMCO) March 2012</p>	<p>The shipping industry (in particular, shipowners)</p>	<p>“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.”</p> <p>“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.”</p> <p>“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...”</p>	<p>“The contractors shall provide suitably qualified, trained and experienced Security Personnel... as required by the Owners and undertake that:”</p> <ul style="list-style-type: none"> • 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 	<p>“Take all reasonable steps to avoid the use of lethal force.”</p>	<p>The Owners are responsible for liaising with UKMTO and MSCHOA as appropriate and in accordance with procedures set out in BMP</p> <p>“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.”</p>	<p>“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.”</p>	<p>Not discussed</p>	<p>Voluntary contract between owner and contractor</p>

<p>Industry Guidelines for the Use of Private Security Contractors May 2011</p>	<p>Created for the members of:</p> <ul style="list-style-type: none"> • BIMCO • ICS • INTERCARGO • INTERTANKO • OCIMF • IG P&I Clubs 	<ul style="list-style-type: none"> • 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 	<p>“Criteria might include:”</p> <p>For Individuals:</p> <ul style="list-style-type: none"> • Criminal background check • History of employment check • Military background check • Medical/physical/mental health assessment • Verification of firearms certifications <p>For the company:</p> <ul style="list-style-type: none"> • Verifiable internal policies & procedures for determining suitability of employees • Verifiable system to ensure continued suitability (health, etc.) of employees after initial hire 	<p>Determined by:</p> <ul style="list-style-type: none"> • Ship Owner • PMSC • Master 	<ul style="list-style-type: none"> • Shipmaster logs when firearms are discharged • Unclear who receives or oversees this information 	<p>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</p>	<p>Not discussed</p>	<p>None apparent</p>
<p>Interim Guidance to UK Flagged Shipping on the Use of Armed Guards to Defend Against the Threat of Piracy in Exceptional Circumstances (Developed by UK Department for Transport) November 2011</p>	<p>Created for shipping companies and the ship’s masters of UK flagged ships</p>	<p>“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.”</p> <p>“Exceptional circumstances under which armed guards may be employed for use onboard UK flagged ships are:</p> <ul style="list-style-type: none"> • 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. 	<p>“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.”</p> <p>“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:”</p> <ul style="list-style-type: none"> • 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 	<p>“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...”</p> <p>“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.”</p>	<p>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</p>	<p>Following pirate attack (as soon as possible but “certainly within 6 hours,”) ship’s master and security team leader should submit a written incident report to UKMTO, MSCHOA and the IMB in accordance with BMP</p> <p>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</p> <p>“Firearms reports must be sent to DFT. Dft will forward reports onto the Home Office and the UK Police.”</p>	<p>Not discussed</p>	<p>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.”</p>

<p>International Code of Conduct (ICoC) (Developed by Swiss Government with US & UK) October 2010</p>	<p>Individual private security companies</p>	<ul style="list-style-type: none"> • Voluntary to sign • Signatories are required to be certified, and continually audited by a planned Governance and Oversight Mechanism 	<p>-“Signatory Companies commit to the following, as set forth in this Code, to operate in accordance with this code...” and thus: -“Signatory companies will exercise due diligence in the selection of Personnel, including verifiable vetting and ongoing performance review of their Personnel. Signatory Companies will only hire individuals with the requisite qualifications as defined by the applicable contract, applicable national law and industry standards, and the principles contained in this code.” Requisite qualifications, as outlined by ICOC include (but are not restricted to):</p> <ul style="list-style-type: none"> • Over age 18 • With background criminal, character and health checks in accordance with ICOC, • Who have not been dishonorably discharged, had employment or engagement contracts terminated for violations of ICoC principles • Disqualifying crimes include (but are not limited to): battery, murder, arson, fraud, rape, sexual abuse, organized crime, bribery, corruption, perjury, torture, kidnapping, trafficking of drugs or persons 	<p>Firearm use is prohibited except in self-defense or defense of others during time of imminent threat of serious injury or loss of life</p>	<p>Reports prepared by signatories, detailing any instances of discharged weapons, escalation of force, damage to equipment, or injury to person</p>	<p>Incident reports submitted “to the Client and, to the extent required by law, to the Competent Authorities”</p>	<p>As required by law, copies of incident reports to “Competent Authorities”</p>	<p>None apparent</p>
<p>Montreux Document (Developed by ICRC & Swiss Government) August 2009</p>	<p>Governments, International orgs, PMSC industry, & civil society</p>	<ul style="list-style-type: none"> • Voluntary compliance • Suggests groups follow applicable national laws and International Humanitarian/Human Rights Law 	<p>Offers a list of “good practices” which aim to “provide guidance and assistance.” The good practices do not have a legally binding effect and are not meant to be exhaustive.” States are “invited to consider these good practices in defining their relationships with PMSCs...”</p> <p>For Individuals:</p> <ul style="list-style-type: none"> • No previous involvement in serious crime <p>For the company:</p> <ul style="list-style-type: none"> • Possess requisite registrations, licenses or authorizations • Maintenance of up-to-date personnel and property records • Sufficient training of personnel on rules on the use of force and firearms; international humanitarian and human rights law; religious, gender and cultural issues; handling complaints by civilian population; and measures against bribery, corruption and other crimes 	<p>Use of force and firearms only appropriate in self-defense or defense of third persons</p>	<p>Specific details to be cited in report are not discussed</p>	<p>Immediate reporting to and cooperation with competent authorities regarding use of force and firearms</p>	<p>“Cooperation, information-sharing and assistance between States* ...is desirable...”</p> <p>*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...”</p>	<p>Suggestions for addressing misconduct:</p> <ul style="list-style-type: none"> • Contract termination • Financial penalties • Civil liability • Banning future contracts • Removing individuals from current/future contracts • Establish corporate criminal responsibility in national law <p>*None Required</p>

<p>MSC. Cir 1405, 1406, 1408, and 1443 (Developed by IMO) May 2011</p> <p>*1406 revised September 2011; 1405 Rev. 1 revised May 2012</p>	<p>(Respectively)</p> <ul style="list-style-type: none"> Shipowners, ship operators, and shipmasters Flag States Port and Coastal States Private Maritime Security Companies 	<ul style="list-style-type: none"> According to Flag State policy <ul style="list-style-type: none"> Shipmaster remains in command at all times Weapon embarkation and disembarkation contingent on flag, coastal, and port state law 	<p>“The PMSC should be able to provide documentary evidence which may include”:</p> <ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> PMSC should provide a detailed graduated response plan to a pirate attack as part of their teams’ operational procedures. PMSC should require their personnel to take all reasonable steps to avoid the use of force. If force is used, it should be in a manner consistent with applicable law. PMSC should require that their personnel not use firearms against persons except in self-defense or defense of others. 	<p>Shipmaster maintains log of instances when firearms are discharged</p>	<p>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</p>	<p>Not discussed</p>	<p>None apparent</p>
<p><u>Guidance on the Selection of Private Security Companies</u> (Developed by Norwegian Shipowners’ Association Mutual War Risks Insurance Association) March 2011</p>	<p>Members of the Norwegian Shipowners’ Mutual War Risks Insurance Association</p>	<ul style="list-style-type: none"> Flag State laws and regulations are applied to all vessels 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) 	<p>“Should be” :</p> <ul style="list-style-type: none"> 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 PSMCs should be trained in Rules of Force, and maintain up-to-date firearms licenses PSMC to be insured Detailed info about firearms available 	<p>Pro Forma Rules for the Use of Force:</p> <ul style="list-style-type: none"> 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 <p>Specific rules must be clear, unambiguous, and available upon request</p>	<ul style="list-style-type: none"> 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 	<p>UKMTO receives incident reports before vessel leaves the area</p>	<p>Not discussed</p>	<p>None apparent</p>

<p>Guidelines on Deployment of Armed Security Guards on Merchant Ships (Developed by Indian Shipping Ministry) August 2011</p>	<p>Indian Shipowners</p>	<ul style="list-style-type: none"> • “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.” 	<p>“Should be able to provide documentary evidence which may include”:</p> <ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • “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.” 	<ul style="list-style-type: none"> • “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.” 	<p>Post-tour reports should be delivered to the shipowner and the Flag State</p>	<p>Not discussed</p>	<p>None apparent</p>
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Counter-Piracy Stakeholders and Private Maritime Security Companies:

Organization	Stance For or Against PMSCs	Guidelines Supported	Preferred Vetting Process	Access to Incident Reports
International Navies	<ul style="list-style-type: none"> “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: <ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> 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 (<i>see Documents: ICoC</i>)
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	<i>See Document: MSC. Cir. 1405, 1406, 1408</i>	<i>See Document: MSC. Cir. 1405, 1406, 1408</i>	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, BMP 4	“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	<ul style="list-style-type: none"> 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 (<i>see Documents: BMP4</i>)

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.

FLAG STATE	ALLOWS	PROHIBITS	NO OFFICIAL STANCE	FLAG STATE	ALLOWS	PROHIBITS	NO OFFICIAL STANCE
Antigua & Barbuda			✓	Japan		✓	
Bahamas			✓	Liberia			✓
Belgium			✓	Lithuania			✓
Cyprus	✓*			Marshall Islands			✓
Denmark			✓	Netherlands		✓	
Finland	✓**			Norway	✓		
France		✓		Panama			✓
Germany	✓***			Poland			✓
Greece	✓			Portugal			✓
Hong Kong	✓			Singapore			✓
Isle of Man			✓	Spain	✓		
India	✓			UK	✓		✓
Italy	✓			USA	✓****		

*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=baf40aa7-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.

