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CLINGENDAEL INSTITUTE
DEN HAAG
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The Shipping Industry View of PMSC Regulation, Policy and Practice.



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BIMCO and PMSC Regulation, Policy and Practice



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1905 : Baltic Ice Reporting

1988 : The Baltic and International Maritime Council

2012 : BIMCO

- A shipping association providing a wide range of services to a **global membership** of stakeholders in the shipping industry, including shipowners, operators, managers, brokers and agents.
- **BIMCO's objective - to facilitate the commercial operations of its membership by means of developing standard contracts and clauses**, and providing quality information, advice, and education.
- BIMCO promotes fair business practices, free trade and open access to markets and is a strong advocate for the harmonisation and **standardisation of all shipping related activity**.
- Accredited as a Non-Governmental Organisation (NGO) with all relevant United Nations agencies and other regulatory entities, **BIMCO actively promotes the application of internationally agreed regulatory instruments**.



Privatisation and Outsourcing of Security



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- **How have we arrived here ? Traditionally war and/or counter insurgency post conflict has required privatisation**
 - **ButNow - A blurring of boundaries**
 - **Asymmetric warfare**
 - **Law enforcement**
 - **Often exacerbated by**
 - **Lack of or no legal infrastructures**
 - **Often a law enforcement vacuum, not war fighting.**
 - **Abrogation of responsibilities leads to a business " buying" security as the only alternative.**
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Armed Guards Background Issues/Concerns



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- **Use of PCASP a reality but not regulated or certificated - was this sensible CSR?**
- **Didn't know the legal implications involved in the use of PCASP - was this responsible?**
- **Where possible ship owners do avoid, re-route, rely on BMP4 or VPD'S**
- **Use PCASP for commercial drivers/reasons**
 - **competition**
 - **and the seafarer and**
- **Law enforcement vacuum unfilled**
- **Solutions therefore were:**
 - **Self Regulation or**
 - **Flag State Legislation**

Piracy - Limited Regulation, Policy and Practice



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Requirement Background



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- BIMCO initiative – GUARDCON & RUF Guidance.
- Aim: Provide ship owners and PMSC with a clearly worded and comprehensive standard contract to govern the employment and use of security guards, with or without firearms, on board merchant vessels.
- Rationale: BIMCO does not want to see the use of PCASP on ships becoming institutionalised BUT it recognises that while the industry awaits a more permanent long term solution ashore PCASP also provides an effective deterrent to piracy attacks when VPDs unavailable.



GUARDCON Purpose



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- Ship owners need a standard contract that they can use safe in the knowledge that it:
 - Will not prejudice their P&I cover and
 - That it provides for the security company to carry adequate liability insurance
 - **Not** intended to replace proper due diligence.
 - Rules on the control and use of force form an important integral part of the new agreement:
 - Based on IMO Guidelines 1405/1406
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GUARDCON Stipulations



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- BIMCO view that Ship owners should only employ PMSC as a supplement to existing anti-piracy and BMP measures and **not as an alternative**.
- **GUARDCON emphasises that ship owners should not seek to reduce costs by employing less than the number of guards recommended.**
- Risk analysis has shown that in the majority of cases the **recommended minimum number will be four guards**. This number has been proven to give the best protection against attack because all quarters of the ship can be covered, a proper round the clock watch system can be maintained and it allows for “redundancy”.



Role of the Master Overarching Principles



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1. The master should not be involved in the targeting and the actual firing of weapons.
 2. It is a common refrain of PMSC that they may not have time to consult with the Master and they (masters) often want a contractual right to order a cease fire where in his view the safety of crew, vessel or the environment are at risk. That is to use their discretion and to react as they see fit.
 3. The master has overall responsibility for the safety of crew and vessel. As such he must have this right - a SOLAS requirement.
 4. All on board are subject to the applicable Flag state criminal law.
 5. Further the committee had in mind the need to try and avoid the master being exposed to criminal liability in circumstances where unlawful force is used.
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Need for Rules for the Use of Force RUF



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- Assistance to owners and PMSC when drawing up and agreeing RUF for their own purposes.
- **Not** Rules of Engagement! (ROE)
- Outside of BIMCO's remit to draft a set of standard Rules for the Use of Force as such because, ultimately, the content of such Rules is a matter of national law
- Therefore the guidance itself does not form part of the GUARDCON contract.
- **Aim** of the Guidance Document is to help review RUF, pertaining to the type, carriage and use of firearms and equipment,
- **Not** an alternative to the implementation of BMP and other protective measures.



BIMCO RUF Provisions



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- Guidelines for a graduated response by armed security guards to any actual, perceived or threatened act of piracy and/or violent robbery and/or capture/seizure by third parties in order to protect the crew and defend a vessel from being hijacked.
- Provides for an accurate and graduated level of response for employment by PCASP that is reasonable and proportionate.
- Sets out a desired template for providing a layered defence with lethal force being a last resort to be used in exceptional circumstances.
- This guidance is now supported by the “100 Series RUF” which provides a model standard set of rules that mirrors the guidance.



PMSC Use - Risk Analysis and Decision Making



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- Importance of rigorous risk analysis – ship and crew safety the priority.
 - Early involvement of Flag State essential
 - BIMCO understands the drivers – seafarer and commercial demands but.....
 - There is a risk in “situating the appreciation” e.g. GUARDCON guidance
 - BMP requirement – effective implementation first priority
 - Note reference to ISPS Code for methodology – BMP lists considerations only.
 - BIMCO SVRA
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Post GUARDCON Issues



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- **PCASP Team size and composition - Team Leader plus 3 = 4**
 - **Risk analysis factors should conclude**
 - **Redundancy a given**
 - **Safety and security of seafarers (CSR)**
 - **Role of PMSC and professionalism**
 - **IMO MSC Circ 1/1443 (post GUARDCON)**
 - **RUF**
 - **Guidance provided**
 - **Internationally recognised benchmark**
 - **BIMCO view**
 - **BUT NO ACTUAL STANDARD**
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Post GUARDCON - A Need for a Standard



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- **ISO PAS 28007 Based on ISO 28000 Security Management System**
- **Purpose**
 - **To provide reassurance that the PMSC industry is responsible, professional and effective**
 - **To improve accountability**
 - **To help clients identify the good companies**
 - **To raise standards internationally**
- **Direction from IMO**
- **Prescriptive MSC Circ 1443 at MSC 90 and others**
- **Direction - ISO to be completed by MSC 91 in Dec 2012 – it was.**



Drivers to Produce Standard



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- **Three fundamental drivers;**
 - **Allow Governments control of critical functions**
 - **Provide a platform for stakeholders to transparently see that the required laws (and others) have been identified and will be complied**
 - **Allow independent third party certification under a recognised 'accredited' system**
 - **Creating; Confidence for all stakeholders**
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Will it Raise Standards?

Yes – Two Drivers



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- Provides standards for Licences for weapons and import and export of weapons and other Critical Factors:
 - PCASP Team size, composition and equipment, Embarkation and disembarkation, Firearms and management of them, RUF
 - Interface between Master and PCASP – “C2” procedures and policy
 - PCASP Vetting and Training
 - Maritime knowledge/experience of management/PCASP
- Secondly BIMCO will provide oversight of implementation through shipowner membership and is offering PMSCs a Consultation Forum

Way Ahead, Accreditation and Government Involvement



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- **Speedy implementation of ISO 28007**
- **A Complex and sensitive issue BUT extant.**
- **A requirement for approval of the process by National Accreditation Services**
- **Ratification and support from IMO at MSC 91..... This the time for Government involvement. So far very limited.**
- **Commended by CGPCS, EU , UK....IR**
- **Businesses though also need reassurance that there is government oversight of accreditation – IAF.**



Q&A



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For all the answers and more:

www.bimco.org

