



**Welcome** once again to the latest monthly bulletin from Seacurus.

In this issue we look at armed guards and the complexities of establishing Rules for the Use of Force (RUF). This is especially important given the video footage of a seemingly overzealous security response currently doing the rounds. As shipping has increased close to the Indian coast, there has been increased concern about the impact of fishing.

The Indian government has issued a shipping notice as a result of collisions, shootings and damage to nets.

We review the implications for change which the IMO MSC90 will bring, and ask whether flag States are truly ready to deal with armed security investigations?

In addition we examine the latest attack figures from the International Maritime Bureau, and the research into the patterns of pirate attacks which appear to be emerging. We also assess the moves by PMSCs to use guards from different nations, as new international standards emerge which will likely reshape the security landscape.



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## Section I – Developments in Piracy Threat

### Indian Government Warning to Deep Sea Coasters

– fishing vessels may represent a bigger risk than the pirates for those avoiding additional insurance payments by coastal routing along the West Indian Coast.

**Latest Attack Figures** – we take a look at the latest figures published by the IMB.

**The Changing Face of Piracy** – new stakeholders, changing attack patterns and increased area of operation are all factors affecting the piracy threat off Somalia.

**Piracy Awareness** – An overview of the latest Shiptalk, “Life at Sea” survey results.

## Section II – Developments in Armed Guarding Services

**Rules of Force** – the debate goes on about what is reasonable.

**Flouting the Flag** – what happens when it all goes wrong?

**The Master’s Role** – a look at the grey area between contractual and regulatory responsibilities.

**Looking East for Cost Effective Security Services** – is this going the same way as crewing, as the industry looks for the least cost option.

# SECTION I - Developments in Piracy Threat

## Indian Government Warning to Deep Sea Coasters

The Indian Government, through the Directorate of Shipping has issued a notice regarding increased shipping traffic off the West coast of the country, "MS Notice No7 of 2012 - Navigation off the Indian Coast - transgressing of fishing nets - mistaking fishing boats with pirate skiffs"

The notice states that shipping traffic has increased off the western coast, as more vessels look to follow the coast to avoid pirate attacks. However this has brought the vessels into increased conflict with local fishing fleets.

The notice states that there are over 300,000 fishing boats in operations off the Indian coast, and that fishing activity during the SE monsoon can be particularly intense.

Generally in the waters off Kerala and Karnataka fishing boats with 4-5 crew onboard will engage in fishing activity with long lines and purseine gear. The boats generally use outboard engines for propulsion.

The problems created by increased commercial shipping passing through areas of intensive fishing have been in numerous forms. One of the most common problems has been ships transgressing fishing nets.

When fishermen see ships heading towards their nets they often sail towards the vessels in an attempt to attract attention and raise the alarm.

Reports have emerged where these fishermen have been mistaken for pirates. The high profile incident in which Italian Marines fired on fishermen is a stark illustration of this issue. However, it seems that was not an isolated incident.

There have also been reports of collisions between ships and fishing boats.

Vessels are advised to take note of dense fishing traffic on the Indian coast, and the possibility that fishermen may approach them if they are heading towards their fishing nets. Also they should look to IMO MSC.1/1334 for guidance on the ground for suspecting fishing vessels to be pirate craft.

Any reports of suspicious craft should be made to the Indian Navy, as too should notification of the presence onboard of armed guards.

# Latest Attack Figures

According to the International Maritime Bureau (IMB), piracy worldwide dropped 28 percent in the first quarter of the year as attacks fell sharply in Somalia's waters thanks to international naval patrols.

Pirate attacks intensified, however, in Nigeria and Indonesia. Pirates attacked 10 vessels off Nigeria in the first quarter, equalling the same number reported for the whole of last year.

The agency said Nigerian pirates were also responsible for an attack in neighbouring Benin during the period. While pirate attacks in Indonesian waters rose to 18 from five in the first quarter last year.

The number of worldwide attacks in January to March dipped to 102, down from 142 cases in the same period in 2011, the International Maritime Bureau's piracy reporting centre in Kuala Lumpur said in a report. It said 11 vessels were hijacked and 212 crew members taken hostage, compared with 18 ships seized and 344 people taken hostage a year ago.

In Somalia, there were 43 attacks, including nine vessel hijackings, compared with 97 attacks a year ago. The agency attributed the decline to "disruptive actions and pre-emptive strikes" by navies in the region.

Multiple navies - including a large U.S. presence - patrol the Gulf of Aden and the wider Indian Ocean, and many private ships now carry armed guards.

The European Union Naval Force recently said it would expand its mission to include Somalia's coast and waterways inside the country for the first time, making its battle against piracy more proactive.

"It is unlikely that the threat of Somali piracy will diminish in the short to medium term unless further actions are taken," the agency said. "The EU announcement to expand their anti-piracy mission to target pirates ashore is another welcome move that could further threaten the Somali piracy model."

As of the end of March, suspected Somali pirates still held 15 vessels and 253 crew members, with an additional 49 crew members hostage on land, the agency said.

# The Changing Face of Piracy



In the past few years, piracy has become a structured industry with investors and stakeholders, this has meant that increasingly the pirates are ever younger militiamen who had been attracted by the large amounts of money to be made through hijacking vessels.

This evolution has led to an increase in violence as these younger men seemingly have less restraint than their predecessors, and reports of the abuse of hostages and damage to vessels have been on the rise since 2010.

The increasing violence is seen as a sign of increasing pirate desperation. As Somalia-based pirates have experienced their worst period since 2008, which has made them desperate for success and far more likely to press an attack even against the increasing number of armed teams.

So what will be the next step, the next evolution in the piracy problem? Some have thought that the problem could be on the wane, but Somali piracy will continue into the future. It is still too good a business for the pirates to drop out of the market, and with an advanced organisation system behind them, pirate gangs will continue to adapt to the security measures employed by the shipping industry.

Somali pirates are very adaptable, skilled and shrewd – a dangerous opponent in every sense. As we have seen in the past, when the times are tough and the pickings lean, the pirates are able to widen the area in which they operate and increasingly analysts are seeing evidence of patterns in their attacks. Only by anticipating the adaptation of piracy and in spotting patterns can the military and shipping industry prepare for what the pirates might do next.

First has been termed, the “drifter” scenario. This sees one pirate boat making a series of attacks not far from the internationally recognised transit corridor (IRTC) According to the research, the drifter pirates, just stay close to one area and hit out at preferred targets.

The second pattern Dr Talas observed, has involved multiple pirate boats working in tandem in a possibly “pre-determined fashion”, to confuse Navy forces.

A final pattern has been detected north of the Bab al-Mandeb strait, these attacks appeared to take place along a straight line that runs north west to south east. This suggests that pirates operate along a transport corridor similar to that used by the people smugglers who used to attack private yachts between 1999 and 2005 along a corridor between Bosasso in north Somaliland and Al Mukalla on Yemen’s Indian Ocean coast.

Work on the study is still ongoing and it is due to be published later this year. It will also contain a detailed analysis of motherships.

# Piracy Awareness

A group of seafarers in blue uniforms are gathered around a tablet, looking at the screen with interest. The background is a soft, out-of-focus image of the same group, creating a sense of depth and focus on the current scene.

We have long known and appreciated the moral dilemma and the human aspects of care which need to be exhibited in protecting seafarers from attack, while assisting and supporting those that do suffer, but this goes far deeper. These shocking figures could sound a death knell for seafaring as a career.

Just over half of those surveyed thought that shipping companies are not doing enough to protect vessels. Yet, the vast majority, almost 90%, stated shipping companies operated to the guidance within best management practices (BMPs) when in the high risk area.

So shipowners are following the best management practices, but unfortunately seafarers do not believe that this is enough. There is no two ways about it seafarers do not perceive BMPs to be adequate protective measures. There is little faith that enough is being done to protect crews.

So what do seafarers want to see? When asked about additional protective measures a wide range of responses were given with respect to the most effective methods in fighting Piracy. The use of armed guards was the most popular option, followed by strong support for Naval presence, crew training and military action ashore.

Nearly three quarters support the use of armed guards on their vessels, but this is tempered with the fact that almost half do still have serious concerns about having weapons on-board the vessel.

Seafarers know what they want, they want effective action – and even despite their own misgivings they seemingly believe that armed security is a workable, pragmatic and appropriate solution. That is not to say they simply want guys with guns placed on-board, as a high number of responses thought it is important that private security companies are regulated.

The Life at Sea survey begins to give some answers, and it is possible to see that piracy affects more seafarers than we ever thought, and that they are desperate for reassurances in order to continue their careers at sea.

# SECTION II - Developments in Armed Guarding Services

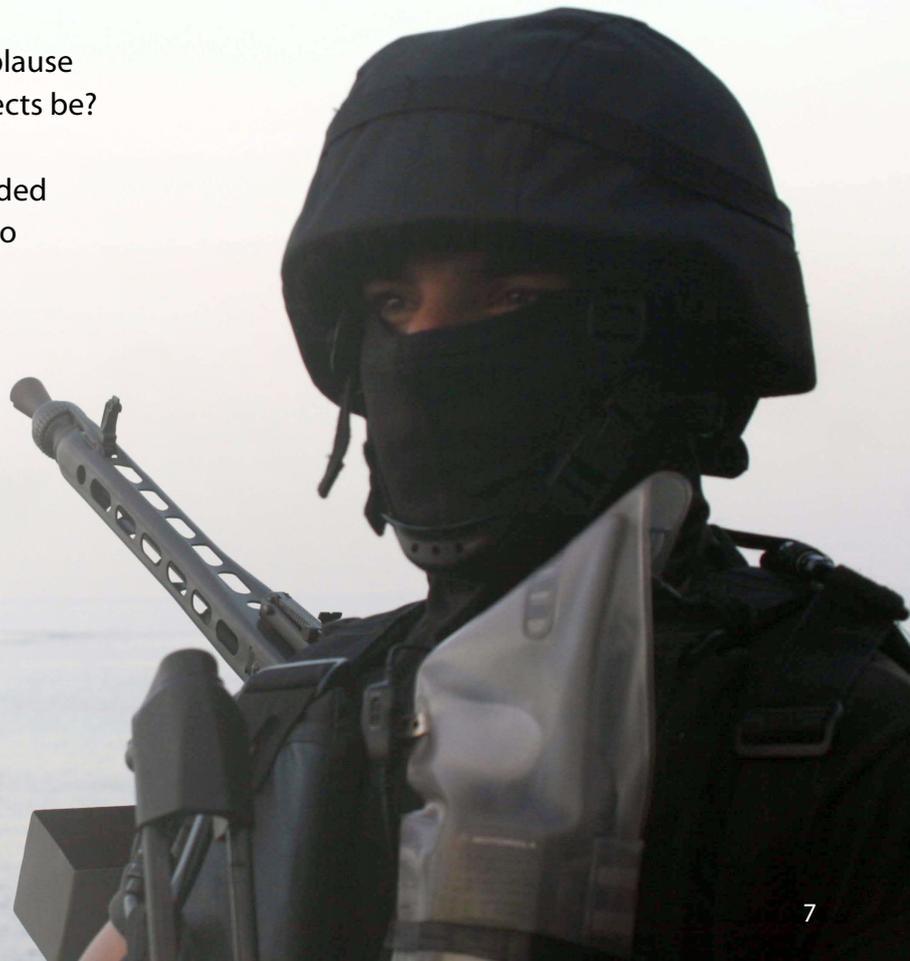
## Rules for the Use of Force

When a video purporting to show an armed security team blasting away at a group of suspected pirates emerged into the public domain last month, it was clearly going to raise some serious questions.

For every "Punch and Judy" response, "That's the way to do it", there are many more considered and concerned views. Ever since the use of armed security guards took off, the one real concern has been of a "Blackwater at sea", and many think that this is what they have witnessed on YouTube, Live Leaks or GCaptain.

The video has appalled some, and caused applause elsewhere – but what will the longer term effects be?

Some actually believe the furore to be misguided and a knee jerk reaction. In fact observers who report seeing the movie in full say the complete sequence involves footage from much earlier in the pirate attack, and from alternative angles provided by the head-cams of the other team members. Having viewed the attack from start to finish they have related that, actually, it's not as bad as the leaked clip makes out. There are issues of the use of force, but as the full narrative emerges it paints the security response in a more favourable light. Rocket Propelled Grenades do tend to change the mindset somewhat.



Now of course this does all come down to the fact that Privately Contracted Armed Security Personnel (PCASP) must have a complete understanding of the rules for the use of force as agreed between shipowner, Private Maritime Security Company and the Master, and that they fully comply with them.

The primary function of the armed team is the prevention of boarding using the minimal force necessary to do so. There is no place in the maritime domain for a “gung ho” response and so PMSCs should provide a detailed graduated response plan to a pirate attack as part of its team’s operational procedures.

PMSC should require their personnel take all reasonable steps to avoid the use of force. If force is used, it should be in a manner consistent with applicable law. In no case should the use of force exceed what is strictly necessary, and should be proportionate to the threat and appropriate to the situation.

Personnel should not use firearms against persons except in self-defence or defence of others, against the imminent threat of death or serious injury, or to prevent the perpetration of a particularly serious crime involving grave threat to life. This is a key tenet of not simply the guidelines to emerge from the International Maritime Organization (IMO), but of the entire (reluctant) acceptance of armed guards on commercial vessels.

Even with rules in place and trained personnel there is always the scope for things to go wrong, and this has always been the innate fear within shipping. From insurers, owners, lawyers and seafarers there has been acceptance that armed guards are effective against pirates, but what happens when the finger pulls the trigger and forgets to stop? It seems we may soon find out.

# Owners Warned to Tidy Up Flouting the Flag

So what happens when things do go wrong? There have long been concerns about the use of “proportional” force applied in a graduated manner, and questions about who should be accountable to whom.

There have been heated rows about regulation of the private maritime security companies and of the ways and means to bring them to book. So how will it be done and who is likely to end up carrying the burden of responsibility?

Some have looked to BIMCOs much vaunted Guardcon for answers, but Holman Fenwick Willan partner Elinor Dautlich said that while the standard contract has an additional advice document on rules on use of force, the standardised contract does not apply internationally as every country had the right to decide its own individual rules.



Speaking of just this eventuality in Lloyd’s List, Dautlich added that a “one size fits all” approach was not possible.

The maritime security industry itself has stressed the importance and significance of ensuring the systems and rules for the use of force are appropriate and adequate.”

The House of Commons Foreign Affairs Committee report on “Piracy off the coast of Somalia”, recognised that the UK Government’s guidance on the use of force, particularly lethal force, is limited and there is little to assist a ship’s master make

a judgement on when force can be used. There remains a lack of critical detail and questions as to whether a private armed guard on board a UK flagged vessel can open fire at a fast approaching skiff need clear unequivocal answers on what is permissible and what is not.

Monitoring the fast approach of a pirate skiff, as the rockets crash into the wheelhouse, is not the time for questions of legality to be ranging through the heads of ship masters and security guards. They need to know what they can do, how and when. Ship masters must be guided so they become comfortable, confident and cognisant in the use of force from their vessel. There are many fears and concerns for masters today, and as they wrestle with issues of criminalisation we have to recognise their concerns and allay them.

There is also a danger that unless unequivocal guidance is produced, then we may once again give pirates the upper hand. When pirates approach vessels on which armed guards are unsure whether they can fire, then without clear and decisive guidance, there is a danger we may emasculate the very frontline solution which is currently keeping piracy at bay.

So where will the guidance come from, and who will police it when things go wrong? Well all eyes are on the IMO as they sit for the Maritime Safety Committee 90 meeting in May in London.

Here the issue of armed guards will be debated, and there are a range of alternative schemes on the table for managing the accreditation, standards and control of private maritime security companies and their personnel. There is much speculation as to how the IMO proposes to control them, but it will likely have to rest with the flag States ultimately.

So in cases such as the video nasty doing the rounds, it should be the flag which leads the investigation and imposes sanctions which the rest of the industry will then assist in implementing.

## Master's Role

As mentioned in the previous article, many are now looking to BIMCO's Guardcon for answers to some very, very difficult questions. This is especially true when it comes to the master. When the gun points at the pirates, will the finger of blame point at the Captain?

According to BIMCO's Giles Noakes one of the main aims of the contract was to distance the master from liability for the actions of the PMSC. Mr Noakes argued that "Enrica Lexie" was a classic example of a master not being charged for the actions of Italian marines, but where the soldiers are of fortune, rather than a nation, will it make a difference?

GUARDCON states that *"the Master shall, at all times throughout the duration of this Contract... have and retain ultimate responsibility for the safe navigation and overall command of the Vessel"*. Further, it goes on to state that *"Any decisions made by the Master shall be binding" and "Nothing in this Contract shall be construed as a derogation of the Master's authority under SOLAS"*.

In light of Guardcon, the Master does not invoke the rules for the use of force (RUF), the security Team Leader must advise the Master of the intention to invoke the RUF; which is intended to protect the Master from criminal liability through "joint enterprise".

It should be noted that the RUF are called up in response to an *“actual, perceived or threatened act of piracy and/or violent robbery and/or capture/seizure by third parties”*; they are not intended to be in force absent a specific threat.

However, the Master’s authority under SOLAS cannot undermine the individual Security Personnel’s absolute right in law to defend himself / others. That right of self defence will be set by the applicable national law. According to lawyers Holman Fenwick and Willan, the relevant laws would be that of the Vessel’s flag State unless the incident takes place in territorial waters, when the law of that coastal state may apply; the law of the next state where the Vessel calls after the incident may also be relevant.

One of the most quoted areas of the contract is the fact that the Master has express authority to order the Security Personnel to cease fire, so in theory the Master has absolute control over the Team Leader and the Security Personnel.

However, as has been pointed out the Master is unlikely to have the necessary expertise to control the use of firearms; this is the professed expertise of the trained Security Personnel and their leadership by the Team Leader. Allied to that, the master could be in the citadel when the perfect opportunity to cease firing occurs.

Norton Rose’s Philip Roche, speaking to Lloyd’s List said, “The master has absolute authority but Guardcon gives the decision to open fire to the head of the security detachment. The master can decide to stop firing but by then the damage could already be done. It seems to me that what might work practically may not work legally as it dilutes the master’s authority”.

Understanding and correctly applying the use of force places a burden on the PMSC, and of course they will have to ensure rigorous vetting and recruitment of personnel and in developing comprehensive RUF and training programmes. However, it may still yet come to pass that Masters are dragged into the debate.

The issue of when to cease firing is the key – the engagement with pirates is important, but as the video of armed guards repeatedly firing has shown, the rules for disengagement will also become significant.



# Looking East for Cost Effective Security Services



The growth of the armed security business has been one mainly driven from the United Kingdom. There has long been an established security and intelligence community in the UK, and with a ready supply of skilled and experienced personnel from the military, then British based companies were ready to step in when the conditions allowed.

Now, however, it seems that the times of this UK dominance could be coming to an end. According to observers, the rise of security personnel and companies from Philippines and China could see the market for UK companies being hit hard.

As the IMO debates a potential mechanism to exert control and checks over the private maritime security industry, new providers from emerging countries are likely to be ready and able to step into the fray.

There have been suggestions that with strong demand and little competition, then the UK companies prices have been held artificially high. Observers have felt that without recognised international standards, shipowners have used the UK companies as some means of safeguarding quality. The long won standing and reputations of many established players have insulated them, and guaranteed them business.

Once the industry has an international benchmark and system in place, then owners will have much greater scope and flexibility to choice from providers on a far wider scale.

This is likely to bring new challenges, but could solve issues too. The fact that it will be more likely that say Filipino guards serve alongside their compatriot seafarers could bring real benefits. However no-one is yet sure how it will play out, but it is likely to shake up the market significantly.

Already there have been a slew of companies offering “former Special Forces” from the Philippines, and this is set to grow further.

The UK companies have not taken this lying down, over the past year they have worked through the UK Government’s Industry Partner for Private Security Companies, the Security in Complex Environments Group (SCEG), for the creation of maritime security standards. This nationally focused work has been ongoing alongside the international perspective taken by the Security Association for the Maritime Industry (SAMI). With both schemes and standards up for debate at the IMO, and with BIMCO backing moves towards a formal International Organization for Standardisation (ISO) system, then we can see that there will very soon be some much needed clarity and certainty as to what security companies must do, and to whom they are accountable.

This will then allow owners to employ service providers with much more confidence, and with greater freedom. The quality will hopefully be the same, but the options may be greater.