PIRACY AND ARMED ROBBERY AGAINST SHIPS

Draft Interim Guidance to private maritime security companies (PMSC) providing privately contracted armed security personnel (PCASP) aboard vessels transiting the High Risk Area off the east coast of Africa

Submitted by the United Kingdom

SUMMARY

Executive summary: The document informs the Committee of the work of a correspondence group of Working Group 3 of the Contact Group on Piracy off the Coast of Somalia, to develop draft Interim Guidance to private maritime security companies (PMSC) providing privately contracted armed security personnel (PCASP) aboard vessels transiting the High Risk Area off the east coast of Africa.

Strategic direction: 6

High-level action: 6.2.2

Planned output: No related provisions

Action to be taken: Paragraph 6

Related document: MSC.1/Circ.1405/Rev.1

Background

1 The Contact Group on Piracy off the Coast of Somalia (CGPCS) is an international forum bringing together countries, organizations, and industry groups with an interest in combating piracy.

2 Working Group 3 (WG3) of the CGPCS, currently chaired by the United States of America, looks at issues regarding the strengthening of shipping self-awareness and other capabilities, and works closely with the commercial shipping industry to enhance awareness and improve capabilities.

3 MSC.1/Circ.1405/Rev.1 offers guidance to shipowners, ship operators, and shipmasters on the use of PCASP for the purposes of protecting vessels from piracy off the east coast of Africa, where the use of PCASP is permitted by the respective flag State.
4 A correspondence group of WG3, chaired by the United Kingdom, was tasked by WG3 to develop guidance to private maritime security companies (PMSC), to complement MSC.1/Circ.1405/Rev.1. The Member States submitting this document were members of the correspondence group.

Draft Interim Guidance to PMSC

5 The correspondence group has completed a draft of its Interim Guidance to private maritime security companies (PMSC) providing privately contracted armed security personnel (PCASP) aboard vessels transiting the High Risk Area off the east coast of Africa. This is attached in the annex. This draft will be reviewed by the CGPCS in late February 2012 and any changes will be notified to the Committee.

Action requested of the Committee

6 The Committee is requested to consider and note the Interim Guidance included in the annex.
ANNEX

DRAFT INTERIM GUIDANCE TO PRIVATE MARITIME SECURITY COMPANIES (PMSC) PROVIDING PRIVATELY CONTRACTED ARMED SECURITY PERSONNEL (PCASP) ON BOARD SHIPS IN THE HIGH RISK AREA OF THE WESTERN INDIAN OCEAN AND GULF OF ADEN

1 INTERIM GUIDANCE PURPOSE

1.1 Over recent years there has been a significant increase in the number of vessels opting to employ private armed security for protection against attacks by Somalia-based pirates in the High Risk Area of the western Indian Ocean and Gulf of Aden. However, no comprehensive international guidance or standards exist at present for security companies providing such services. There is, therefore, an urgent need to address these issues of governance and the potential for accidental incidents and successful acts of piracy resulting from ineffective and/or incompetent security provision.

1.2 In the maritime domain, the inalienable legal responsibility of flag States dictates that compliance with the present interim guidance will not exempt PMSCs from seeking due approval from the competent authorities in flag States and countries of registration. However, the complex and sometimes unclear legal requirements governing the transport, safe carriage and legitimate use of firearms – and the practical/administrative/legal difficulties of their embarkation/disembarkation – demand greater clarity for the protection of both ship owners and PMSCs.

1.3 The purpose of this document is to provide Interim Guidance to PMSCs to enable:

.1 The appropriate content and nature of the documented procedures that they should have in place, to allow ship owners to make an informed judgement on the selection of a PMSC.

.2 PMSC development of calibrated and proportionate assistance to shipowners in the prevention and suppression of piracy and armed robbery, against ships in the identified High Risk Area (HRA), through the considered deployment of PCASP.

1.4 The document is not in itself a set of certifiable standards but provides minimum recommendation on the competencies and abilities a professional PMSC is expected to be able to fulfil.

1.5 This interim guidance to PMSCs is consistent with the IMO's Interim Guidance to shipowners, ship operators, and shipmasters on the use of privately contracted armed security personnel (PCASP) on board ships in the High Risk Area (MSC.1/Circs.1405/Rev.1 and 1406/Rev.1) and should be read in conjunction with those documents.

2 PMSC PROFESSIONAL ACCREDITATION

2.1 The Montreux document and the International Code of Conduct for Private Security Service Providers (ICOC) are useful reference points for private maritime security companies as to the basic principles of international law and human rights standards which apply when operating in high risk environments. However, these instruments establish standards and oversight for land-based security companies contracted by Governments and working in conjunction with military forces, and therefore are not tailored yet to address the peculiarities
of deploying private armed security in a private commercial context as is the case with the use of armed guards on board merchant ships.

2.2 Negotiations are underway to finalize texts that would define the objective and measurable standards under the ICOC and make provision for mechanisms to accredit private military and security companies under these standards. However, the prevailing situation off Somalia requires separate and early consideration of requirements for the use of onboard guards and firms offering armed maritime security services to vessels transiting the High Risk Area.

2.3 This Interim Guidance, therefore, will assist development toward an international standard and accreditation process for private armed security in maritime domain and will, importantly furthermore, assist PMSCs in demonstrating their competence and professionalism to ship owners in the interim.

2.4 PMSCs are encouraged to seek accreditation with relevant national and international private security service standards when these are established.

3 PMSC COMPANY REQUIREMENTS

3.1 The PMSC should demonstrate that it has in place procedures to guarantee its competence to provide security services to shipowners and ship operators and they comply with all relevant legal requirements in their country of residence.

General

3.2 PMSC should be able to demonstrate corporate competence and the soundness of its management processes and provide all necessary information to this end. This should include, but is not limited to documentary evidence of:

.1 company structure and place of registration;
.2 company ownership;
.3 financial position and bank references;
.4 extent of insurance cover (in particular covering third-party risks);
.5 senior management experience, general and specific to the task; and
.6 quality management indicators – e.g. ISO accreditation.

Legal Obligations

3.3 PMSC should demonstrate awareness and understanding of national and international laws relevant to piracy and the use of private security contractors. In particular PMSC should demonstrate:

.1 understanding of applicable laws (flag State, port State, coastal State and nationality) with respect to carriage and use of firearms, noting that the approvals from the flag State must be secured by the vessel owners/operators;
access to competent maritime legal advice on a 24/7 basis, recognizing the complexity of applicable laws concerning the carriage and use of firearms on board merchant ships; and

awareness of and compliance with legal requirements covering the storage of weapons and ammunition in littoral States, for example, but not limited to: Sri Lanka, Muscat, Mauritius, South Africa and Malta.

Insurance Cover

PMSCs should provide documentary evidence that they hold and will maintain for the duration of the contract:

public and employers liability insurance cover to an appropriate level and as required by the shipowner; and

personal accident, medical expenses, hospitalization and repatriation insurance.

As firearms are to be part of the mission plan, the PMSC should insure its personnel to carry and use firearms on the high seas and within the specified territorial waters as set out in the relevant United Nations Security Council resolutions, for accident, injury and damage arising from the use of firearms and liability for any claim that might arise from the carriage and/or use of firearms.

PMSCs should note MSC.1/Circ.1405/Rev.1 references to the vital need for shipowners, charterers and underwriters to review all provisions in their charters and policies to ensure adequate attention is paid to the questions raised from the impact deployment of PCASP may have on shipowners property and liability insurance cover.

Piracy Awareness

PMSCs should demonstrate a sound understanding of:

the changeable piracy situation in the High Risk Area;

understanding of the piracy threat in the region, military operations in the area, and the means to maintain current knowledge; and

thorough and working understanding of Best Management Practice (BMP) and, in particular, ship protection measures.

Operational Competence

A PMSC should be able to demonstrate its professional capability to carry out its role which is primarily to prevent illegal boarding of the vessel and to protect the lives of those on board, using the minimum force to do so. In particular the PMSC should provide documentary evidence demonstrating:

maritime (as opposed to land-based) experience;

the existence of and implementation of written management procedures for PCASP operations including, but not limited to team-leading skills, chain of authority, change in command (in the event, for example, of incapacity of the team leader), responsibilities in life saving;
.3 a written policy on the procurement, transport, embarkation and disembarkation of firearms in accordance with relevant legal requirements;

.4 a clear policy on the rules for the use of force based on the consideration of several scenarios and providing a graduated response plan, each stage of which is considered reasonable and proportionate to the force being used by the attackers; and which at no point will needlessly escalate a situation;

.5 a documented, robust and auditable health safety security environment policy with regard to incident investigation;

.6 a process for post incident actions to support state authority investigations/prosecution should a formal investigation be required; and

.7 written testimonials/references from previous clients in the maritime industry.

4 PCASP MANAGEMENT

4.1 Selection, vetting and training of personnel for a PCASP team is crucial to successful and safe transits for the vessel and crew. The following section provides recommendations to ensure that such personnel are competent to fulfil their assigned role when deployed on board a merchant ship and that the PMSC performs due diligence in its management processes.

Selection and Vetting

4.2 The PMSC should demonstrate that it has verifiable, written internal policies and procedures for determining the suitability of persons to be deployed as PCASP. They should be able to provide documentary evidence demonstrating the suitability and effectiveness of their personnel selection and management procedures including, but not limited to:

.1 criminal background checks (Note: frequency to be determined);
.2 history of employment checks;
.3 military and law enforcement background checks, where applicable;
.4 records of medical, physical, and mental fitness of personnel (including regular drug and alcohol testing);
.5 a verifiable system ensuring the continued suitability for employment of their personnel (ongoing vetting procedures); and
.6 documentary evidence of relevant experience and specific certification in the use and carriage of any firearms to be deployed including in the maritime environment.

Training of PCASP Team

4.3 The PMSC should ensure that the PCASP it employs receive or can demonstrate having received adequate and appropriate individual and collective training. Records of such training should be maintained and demonstrate that PCASP have the necessary operational
capabilities. The PMSC should, therefore, be able to provide documentary evidence of the following:

1. comprehensive, detailed and auditable records of training, both initial and refresher;

2. that the team leader has verifiable experience on the vessel type and the particular route envisaged;

3. that personnel are trained and qualified to documented company standards in the appropriate use of force which include the command and control relationship between the PCASP and the master of the ship;

4. that personnel are trained and competent with the specific firearms, ammunition and other related security equipment deployed on the vessel;

5. that PCASP personnel are given medical training to a recognized national or international standard; and

6. that personnel are given appropriate training and/or briefing specific to the vessel type, where that vessel will be trading and what legal/practical implications that might have for their deployment, and in the provisions of the International Ship and Port Facility Security (ISPS) Code, International Safety Management (ISM) Code and BMP.

Documentation Requirements

4.4 The PMSC should have in place systems for the systems for provision of security identity documentation, travel documents and visas.

5 DEPLOYMENT CONSIDERATIONS

5.1 This section addresses the mission-specific aspects of PCASP deployment and the role of the PMSC in ensuring efficient and successful deployments, including communications with the shipowner or operator. The particulars of a PCASP deployment will vary depending on the ship type and the details of its voyage. However, in order to demonstrate a minimum level of competence, the PMSC should be able to fulfil the recommendations detailed below to the greatest extent necessary.

5.2 In addition to the usual features of a contractual agreement the contract between the shipping company and the PMSC should cover the agreements reached as a result of deployment considerations, as listed but not limited to those identified below.

5.3 Voyage-relevant flag, port, coastal State and applicable nationality laws on the carriage or use of PCASPs and firearms will need to be considered and reflected in operational practice on a case-by-case basis.

Best Management Practice

5.4 Experience supported by data collected by naval forces shows that the application of the recommendation contained in “Best Management Practices for Protection against Somalia Based Piracy” (BMP) can make a significant difference in preventing a ship falling victim to piracy. It is recommended that BMP be applied throughout the HRA and in the IRTC and be considered as the first, minimum, preventative option. An armed team should
only be seen as a supplement to full BMP implementation, and in no way replace the need for BMP to be implemented.

Size, Composition of the PCASP Team and their Equipment

5.5 The size, composition and equipment of the PCASP team should be discussed and agreed between the shipowner/ship operator and contracting PMSC. The PMSC should have policies and procedures to determine the size, composition and equipment of the PCASP team, taking into account, but not limited to:

.1 an assessment of the vessels security needs including factors such as the length estimated duration of the vessel transit, the size and type of vessel, the owner's risk assessment, and the agreed duties of the team and the size and type of vessel. The analysis should indicate the minimum number of persons that should form the security team, taking into account the need for continuity of protection in the event of injury and illness;

.2 the provisions of the ship safety certificate, recognizing that the size of the security team plus the crew should not exceed that specified in the ship's safety certificate. If the ship's safety certificate requirements are exceeded as a result of security personnel being carried additional to the normal ship's complement, then the flag Administration should be consulted;

.3 ensuring a clear hierarchy, and an appropriate skill/experience mix within the PCASP team. The team leader should be competent in vessel vulnerability and risk assessments, and be able to advise on ship protection measures. It is recommended that at least one team member be qualified as team medic;

.4 ensuring that the PCASP is provided with equipment suitable for the mission, taking into account the voyage risk assessment and discussions between shipowner and PMSC;

.5 ensuring the provision of appropriate firearms capability to be employed in accordance with the applicable flag State national legislation pertaining to the type, carriage and use of firearms by PCASP, in order to provide an accurate and graduated level of deterrence. The choice of firearms should be linked to the concept of operations as the use of certain types of firearm in a given situation may in itself constitute a violation of the principle of proportionality;

.6 ensuring that, given the possibility of serious injury, enhanced medical equipment is available on board, and be reviewed to verify ability to manage gunshot wounds. Consideration should be given to the availability of regional medical assistance; and

.7 ensuring that all PCASP members are equipped with, as a minimum, cameras/digital dictaphones to record and preserve evidence in the event of their opening fire, recognizing the difficulties associated with the use of such equipment during a fire fight.
Command and Control

5.6 The PMSC should have a policy and procedures governing the command and control of PCASP on board a ship, and ensure that the PCASP is fully aware of it. In particular, the policy and procedures should:

.1 contain a clear statement that at all times the master remains in command and is the overriding authority on board, and a defined procedure in the event of the master being unavailable;

.2 contain a clearly documented set of vessel and voyage-specific governance procedures; inter alia, covering procedures for the conduct of exercises and real incidents;

.3 a list of duties, expected conduct, behaviour and documentation of PCASP team actions on board; and

.4 a transparent two-way information flow and recognizable coordination and cooperation between the shipowner, charterer, PCASP, PMSC and the vessel's master, officers and crew throughout deployment.

5.7 Such a command and control policy and procedures could include, but are not limited to:

.1 PMSC provision of regular updated intelligence-based threat assessments throughout the contracted period on board, and use of this information to suggest, for example, amendments to the proposed route;

.2 PMSC monitoring of the daily activities of the onboard PCASP team;

.3 PMSC having a 24-hour Emergency Response and Contingency Plan in place covering all foreseeable actions; and

.4 PMSC Head Office provision of feedback on crew training and ship hardening requirements based on reports received from their onboard team.

Categorization of PCASP

5.8 The status of PCASP on board a ship will be determined in consultation between the shipowner and PMSC with reference to any applicable national legislation of the flag State.

Management of Firearms and Ammunition from Embarkation to Disembarkation

5.9 The PMSC should ensure that the PCASP team can demonstrate responsible management of firearms and ammunition at all times.

5.10 The PMSC should be able to demonstrate that it has given full consideration to, and undertaken the following with due reference to MSC.1/Circ.1408:

.1 documented compliance with the relevant flag, coastal and port State legislation governing the transport, carriage and provision of firearms, ammunition and security equipment from embarkation to disembarkation including ports at which the vessel may call whilst the PCASP team is
aboard. The PCASP should be able to prove that the actual inventory carried matches all documented declarations including compliance with any applicable export/import licences;

.2 provision of appropriate containers for firearms, ammunition and security equipment at the point of transfer to and from the ship, in full legal compliance with local jurisdiction;

.3 documented standards and procedures for a complete inventory of all firearms, ammunition and security equipment available upon arrival aboard the vessel (inventory should detail make, model, calibre, serial number and company end user certificate and proof of purchase of all firearms and accessories; and details of ammunition nature and amount);

.4 effective control procedures for separate and secure onboard stowage and deployment of firearms, ammunition and security equipment;

.5 clearly defined and agreed areas aboard where firearms may or may not be carried, together with agreed protocols about the state of weapon readiness (for example unloaded and magazine off, magazine on and weapon "made safe" states) and what conditions would initiate a change in that state;

.6 detailed and exercised orders governing the conditions under which firearms may be loaded and made ready for use should be explicit in the PCASP contract to ensure the highest level of safety and to optimize operational efficiency in the event of an incident requiring use of arms aboard the vessel;

.7 the provision of safe areas ("loading bays") for the loading/unloading of weapons; and

.8 reconciliation of the inventory of both arms and ammunition on disembarkation.

**Shipboard Familiarization**

5.11 The PMSC should request assurances from the shipowner that the master and crew have received familiarization with the role of the onboard PCASP security team and in relation to this guidance. Exercising of the crew with the PCASP should occur during the vessel’s voyage, prior to entering the HRA, to ensure that all involved in the vessel navigating crew understand their roles in completing counter piracy preventive measures and what is expected of them during an incident when the PCASP is deployed and takes action against a pirate attack of the vessel.

5.12 The PMSC should ensure, in consultation with the shipowner and master (subject to any additional requirements of the flag State) that the onboard team have received, as a minimum, shipboard familiarization training including life-saving, safety and fire-fighting requirements and communication protocols.

**Rules on the Use of Force**

5.13 The PMSC must have a clear policy on the rules for the use of force (see 3.8), which must be updated depending on the particulars of a transit, in particular, with respect to the governing flag State law, including criminal law. PMSCs should be aware that national laws
governing the use of force in a particular situation or on a particular location may not be identical.

5.14 It should also be recognized that while the applicable law for an incident on a ship from which PCASP will be operating will be principally that of the flag State, it may also include the laws of coastal States (when passing through territorial and/or coastal waters or in port) depending on where any incident took place and/or the nationality of the victim (or possibly the individual using the force).

5.15 Under international law, including the Law of the Sea, PCASP may only use reasonable force if necessary in self-defence. Force may only be used when unavoidable and as a last resort and shall be proportional to the objective for which it is employed.

5.16 The PMSC must ensure, and be able to demonstrate that PCASP have a complete understanding of, and fully comply with the defined rules for the use of use of force. In particular, it must be demonstrated that PCASP understand:

.1 that they should act in the knowledge that their role is to prevent illicit boarding and protect life on board using force only in lawful self-defence;

.2 that all reasonable steps should be taken to avoid the use of force and, if as a last resort it is used, it should not exceed what is strictly necessary and proportionate in the circumstances prevailing at the time;

.3 that PCASP teams should only use firearms against persons in self-defence or in defence of others in imminent danger of death or serious injury. (This may also include action in the immediate prevention of the perpetration of an incident involving an immediate and specific danger of death or serious injury to the individual or others.);

.4 that any PCASP response involving the use of force should be legal, necessary, proportionate and calibrated at minimal level to meet the threat, and that if the use of force is necessary, it should be used in a manner that is consistent with applicable law; and

.5 the particular laws to which they can anticipate to be subject to during their presence aboard ship.

5.17 The rules on the use of force, including the graduated response plan, should always be agreed between, documented, and signed by the shipowner, master of the vessel and the PMSC prior to embarkation. The plan should include a clear agreement on the role of the ship’s master and the PCASP team leader in the case of an incident.

5.18 The PMSC, in consultation with the shipowner should ensure that both the Master and team leader of the PCASP should sign an undertaking that they understand and agree the conditions governing when and how the decision to use force is made, and by whom.

[Further Guidance on the use of force, and principles for their implementation are provided at Annex A. – placeholder sentence with a view to possibly attaching industry complied guidance on this matter.]
Reporting and Record Keeping

5.19 In line with MSC.1/Circ.1405/Rev.1, the master should report to the appropriate military authorities when a ship intending to transit or transiting the HRA is carrying PCASP, firearms and security-related equipment on board.

5.20 The PMSC should ensure that the PCASP team leader in conjunction with the master maintains a log recording every incident in which firearms are deployed. Such incidents should be documented in detail in the form of a piracy report.

5.21 The PMSC should ensure that a formal written report of each incident is made and approved by the master and the PCASP team leader and that it includes:

- time and location of the incident;
- details of events leading up to the incident;
- written statements by all witnesses and those involved in the incident both from the vessel crew and security team;
- the identity of personnel involved in the incident;
- details and chronology of the incident, including any available video footage, photography;
- injuries and/or material damage sustained;
- lessons learned from the incident and, where applicable, recommended procedures to prevent recurrence; and
- documentation of any tests, including drug or alcohol tests, taken during the investigation of the incident.

5.22 In the event that a PCASP is required to use force, PCASP team leaders should be advised to photograph (if practically possible – the difficulties are acknowledged), log, report and collate contemporaneous written statements from all persons present at the incident in anticipation of legal proceedings.

5.23 In addition to incident reporting it is recommended that, following a tour of duty, the PCASP team submit a full report to the appropriate authorities, for example, United Kingdom Maritime Trade Operations (UKMTO), shipowner/ship operator, normally via their employers, providing a de-brief of the deployment, of any operational matters, training and ship hardening conducted during the voyage, and offering advice about further enhancements to security that may be considered in the light of the most recent experience. Such reporting should cover any stated requirements of the flag State Administration.

GLOSSARY [to be added]