The Regulation of PMSCs: Challenges and Good Practices

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N.B. Mark Gray speaks at the invitation of the UNODC Global Maritime Crime Programme, but the views expressed are his own, and do not necessarily reflect the views and/or policy of UNODC.
Master/Team relationship

• “At all times the Master of a ship has the ultimate responsibility for the safety and security of the ship. Even at [the highest levels of] security ... a Master may seek clarification or amendment of instructions issued by those responding to a security incident, or threat thereof, if there are reasons to believe that compliance with any instruction may imperil the safety of the ship.” (ISPS Code Part B Para 4.10)

• Team authority extends from the inalienable right to self defence.
Right of self-defence: lethal force

- An individual right;
- Can be applied to protect others;
- Must be proportionate;
- Must be exercised for only as long as the threat to life applies;
- Can only be applied where there is a genuinely held belief that life is threatened;
- This belief cannot, generally, be ordered ... or unordered;
- Pre-emptive self-defence is reasonable.
Challenges

• Training the concept of self defence;
• “Better value” guards more used to less sophisticated applications of the use of force;
• Master’s authority ... does he have it?
• Proportionality;
• Jurisdiction;
• Nature of cargo & added risks.
Practicalities

• Are the weapons legal?
• Are the guards properly trained to use those weapons?
• Are the weapons functional as intended?
• Do the guards (or Master) fully understand the rules governing the use of force?
• If lethal force is used, what jurisdiction conducts any follow up?
Legal Weapons

- Must be purchased legitimately and physically owned by the PMSC;
- PMSC must have home state authorisation to be a PMSC and import/export firearms;
- PMSC must have flag state authorisation to operate on that ship;
- Must be stored and embarked legitimately by an approved armoury;
- ISO 28007.
- Demand to see: state issued EUC, home state authorisation; flag state authorisation; extant ISO certificate.
Training of PMSCs

• MSOs/PCASPs must be regularly trained in firearms use, including live firing;

• MSOs/PCASPs must be familiar with the firearms that they will use;

• Demand to see: Maritime Firearms Competence Certificate (for each MSO);

• Demand to watch: each MSO conduct weapon handling drills (no ammo).
Weapon Functionality

• Weapons should be serviced regularly (annually = NATO standard) by a trained armourer to ensure functionality;
• Servicing should be certificated;
• Demand to see: servicing certificate (<12 months old); armourers’ credentials;
• Demand to witness: weapon test firing of all weapons (1 or 2 rounds per weapon)
Use of Force

• TL and MSOs should understand the circumstances under which they might use lethal force;
• PMSC should have written *Rules for the Use of Force* (RuF), which should be shared with Master;
• Insist upon: asking TL/team questions on their RuF and their application; Master should talk through scenarios.
Professionalism

• Does Master have confidence in team?
• Do they have right equipment (e.g. binos, night vision, trauma packs)?
• Manning of watches – alertness? All round observation? Changeovers? “Aircon warriors”?  
• MV *KSL Sydney* incident (Oct 18).
KSL Sydney Oct 18

• Pirate skiff approached from rear;
• Not sighted until 5m from hull and grapple on deck;
• Team reacted quickly enough to “deter” boarding and eliminate threat … but lucky;
• Key points:
  – pirates approach from rear at closing speed of 12 knots … 5 mins to cover 1nm; will not appear on radar until last minute, if at all.
  – Pirates still very much operating … end of monsoon is key period
HRA Change 1 May 19

Methodology:
• Jan to Apr 19 versus May to Aug 19
• Analysis of 1,658 transits
• 15 Aug 19 as cut off date
• Average monthly transits on each route for each period compared

Red Sea
-13%

Bottom Left
+13%

Gulf of Oman (GOO)
+37%

Galle
-33%

-30%

No visibility
PMSC Observations

• Many PMSCs operating at loss;
• Most VBAs/FAs operating at loss;
• Many MSOs paid less that ITF seafarer minimum wage;
• One generally gets what one pays for ... $10,000 is the minimum cost to provide a legal, trained, capable, professional, properly paid team, legally embarked with legal, serviced, effective weapons under proper, professional management control with proper (not forged/bribed) ISO certificate – if you are being bid less, ask why!
UNODC GMCP Guides

- Summary of Laws Regulating Floating Armouries and their Operations;
Summary

• Shipping companies must exercise DD;
• Masters must conduct further checks;
• If your security guards’ salary is less than your children’s pocket money … they are likely to be equally ill-equipped to provide for your security;
• If your chosen PMSC does not own their weapons and have correct authorisations, you, the ship-owner, are an unwitting illegal arms trafficker;
• There remains a very real piracy threat … armed security is a consistently proven defence.