

Attributing Success Factors for Counter-Piracy in a Complex Environment

The Role of IMO in the ‘Arms on Board’ Debate

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Background

Since 1991, the IMO has received and circulated information about reported and attempted attacks by pirates and armed robbers (currently promulgated via the Global Integrated Shipping Information System (<http://gisis.imo.org>)); developed and maintained a comprehensive range of guidance to member states and the maritime industry on measures to suppress piracy and armed robbery against ships; and promoted an orchestrated, multi-agency and international response to these criminal activities. While the accuracy of available statistics is debatable (there is known to be both over-reporting and under-reporting of less serious attacks for a variety of reasons), they are useful indicators of general trends.

Piracy and armed robbery against ships are land-based problems. Although the offenses occur at sea, the criminals operate from bases onshore and must return to shore to realize their ill-gotten gains. To a certain extent the problem can be deterred or contained through action at sea but the only sustainable solutions are good policing and the rule of law ashore. Therefore, the failure to address maritime crime at sea is symptomatic of wider problems on land.

In ‘traditional’ piracy hotspots such as the Straits of Malacca and Singapore, where pirate attacks reached epidemic proportions ten years ago, the IMO’s efforts focused on working with the governments of the littoral States –Indonesia, Malaysia and Singapore– to promote a coordinated approach to ensuring maritime security and countering piracy. This initiative, combined with the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) that promotes and enhances cooperation against piracy and armed robbery in Asia, has been very successful in reducing piracy throughout the region. The IMO has promoted similar approaches in other regions, for example the Djibouti Code of Conduct for the Gulf of Aden and western Indian Ocean area and, more recently, the

Code of Conduct concerning the repression of piracy, armed robbery against ships, and illicit maritime activity in West and Central Africa.

Piracy off the Coast of Somalia

The challenge with adopting this approach to address Somalia-based piracy was the lack of effective government and the rule of law in Somalia itself, a country that had been largely ignored by the international community while suffering a civil war for some 20 years. The pirate business model –the hijacking of ships transiting the area and the kidnapping of their crew for ransom –differed from the ‘traditional’ approach of theft of money, crew effects, equipment and cargoes of ships trading in coastal waters, with attacks often occurring in port areas and anchorages.

In November 2005, the twenty-fourth session of the IMO Assembly, having noted with great concern the increasing number of incidents of piracy and armed robbery against ships which reportedly occurred in waters off the coast of Somalia, adopted resolution A.979(24) on piracy and armed robbery in waters off the coast of Somalia which, inter alia, strongly urged governments to increase their efforts to prevent and suppress acts of piracy and armed robbery against ships and requested the Secretary General of the United Nations to bring the matter to the attention of the Security Council. Over the next six years, despite the efforts of the international community and the shipping industry, the number and geographical spread of pirate attacks continued to rise with attacks occurring throughout the Gulf of Aden, Arabian Sea and wider western Indian Ocean, some up to 1950 nautical miles from the coast of Somalia.

Throughout this period, the IMO’s strategy revolved around the protection of merchant shipping through the containment of the piracy problem until such time as the United Nations, the African Union and other international development partners could bring much needed governance to Somalia itself. The IMO self-protection measures, developed over a number of years to address piracy worldwide, were further developed by the shipping industry as the Best Management Practices, currently in its fourth iteration (BMP 4).

Although measures taken by naval forces to protect shipping in the Gulf of Aden became increasingly successful, for example, the introduction of what is now the “Internationally Recognized Transit Corridor” (IRTC), group transits, escorted convoys, provision of

situational awareness and threat information, and direct action to deter and disrupt attacks, it became clear that the levels of naval forces available were not able to suppress piracy in the vast expanses of the wider western Indian Ocean.

Merchant ships therefore had to become increasingly self-reliant and proactive in their own self-protection and a range of measures were developed. These ranged from increased use of lookouts and increased situational awareness, increased transit speed, through to visible deterrents such as hoses and razor wire, the use of citadels and use of unarmed security advisers, to the employment of Privately Contracted Armed Security Personnel (PCASP) on board ships and the use of firearms.

Development of the Current Guidance on Carriage of Firearms

The carriage of firearms on board merchant ships is a complex legal issue with member states taking diverse positions. As a truly global industry with many stakeholders, shipping benefits from harmonization of procedures, adoption of common minimum standards and clarity with respect to national legal regimes. This is the core of the IMO's work. However, policy on the use of PCASP is not common among member Governments and ships using PCASP are subject to many, diverse legal regimes. At that time there were no agreed minimum performance standards for PCASP.

Over a number of years, the position of the IMO's Maritime Safety Committee (MSC) has evolved from "the carrying and use of firearms for personal protection or protection of a ship is strongly discouraged" (MSC/Circ.623, annex paragraph 40 (June 18, 1993)); to "flag States should strongly discourage the carrying and use of firearms by seafarers for personal protection or for the protection of a ship" (MSC.1/Circ.1333, annex, paragraph 5 (June 26, 2009)), to the current position of tacitly acknowledging that the deployment of armed security personnel on board ships has become an accepted industry and flag state practice in certain circumstances.

In May 2011, the MSC reaffirmed its position that it neither endorses nor condemns the use of armed personnel on board merchant ships and accepted that the carriage of armed personnel was an individual decision subject to the law of flag states. It was accepted that there was a need to be realistic and to accept that some ship-owners were using armed personnel on board and thus there was a need for the IMO to develop guidance on the issue;

however, the MSC had underscored the need for extreme caution in matters relating to liability, jurisdiction, sovereignty, ships in transit and rights of innocent passage, among other issues.

Having developed interim guidance to ship owners, ship operators and ship masters and flag states on the use of PCASP on board ships in the high risk area (currently MSC.1/Circs.1405/Rev.2 and 1406/Rev.2, respectively), the MSC agreed that further guidance on the customs related aspects of the carriage, embarkation and disembarkation of firearms and security equipment in areas under the jurisdiction of coastal and port states, reflecting the concerns of port and coastal states with respect to the presence of teams of armed personnel entering their territorial waters, was necessary. The MSC subsequently approved MSC.1/Circ.1408 on interim recommendations for port and coastal states regarding the use of privately contracted armed security personnel on board ships in the high risk area, and MSC-FAL.1/Circ.2 on the questionnaire on information on port and coastal states requirements related to PCASP on board ships.

In May 2012, following a high-level debate on the issue of PCASP, the MSC developed interim guidance to private maritime security companies providing PCASP on board ships in the high risk area (MSC.1/Circ.1443), which included guidance on rules on the use of force, to complement the existing guidance, and to further assist policy development at the national level and facilitate greater harmonization of policies at the international level related to the issue of private armed security on board ships.

The Work of ISO

Having agreed that the MSC did not support self-certification or self-regulation by the private maritime security sector, the MSC further agreed that the International Organization for Standardization (ISO) would be best placed to develop standards on Private Maritime Security Companies (PMSC) with guidance from the IMO, and forwarded MSC.1/Circ.1443 to ISO to serve as the base document to be used in developing an appropriate ISO standard.

In November 2012, ISO published the new ISO Publicly Available Specification (PAS) 28007. ISO PAS 28007 is a member of the ISO 28000 series, where ISO 28000:2007 is the certifiable security management systems standard and ISO 28003:2007 provides requirements for providing audits and certification to ISO 28000:2007. ISO PAS 28007 sets

out the guidance for applying ISO 28000 to PMSCs. Overall, further development of the IMO guidance and the ISO specifications is expected to continue taking into account new, emerging or even decreasing threats, technologies and the benefit of experience with PCASPs and PMSCs. In addition, the IMO is continuing to interact carefully with its member states with respect to the use of PCASPs and PMSCs.

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