



Creation of New Industrial Standards and Compliance Regulations

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Industry may well look back at the summer of 2011 as the nadir of piracy: By July 2011 over 40 ships were being held with hundreds of seamen enduring their own living hell at the point of a gun whilst owners negotiated their release for ever increasing sums of money. It took some time for the international community to get off the back foot and start giving piracy the priority it deserved. That change of mood can be traced back to the autumn of 2008 with the hijacking of the *Sirius Star* and the arms carrying *Faina*. A lack of political will meant that the international community failed to contain piracy at precisely the time that it began to proliferate and spread into the Indian Ocean. With the shortcomings of the international community, industry was left to create its own standards– and has proved itself adept in responding to the evolving tactics of pirates. As a somewhat inevitable drift towards the use of armed guards has taken place, the international community has mobilized to put in place much needed national and international standards in order to ensure that those people who are guarding vessels are regulated. This essay looks at two of the regulatory initiatives which have or are shaping owners’ behaviour, namely: the adoption of Best Management Practice Guidelines “BMP” and; Guidelines for the deployment of armed guards.

The emerging success story of industry standards must be the uptake and adherence to BMP which are now in their 4th edition. This set of guidelines – drafted with the cooperation of all the major industry bodies– has as its stated aim the protection of shipping against Somalia based piracy. BMP is broken down into a number of broad headings, including Risk Assessment, Company Planning, Ship Masters Planning, and Ship Protection Measures, which can be implemented by crew or with some external assistance. The EUNAVFOR headquarters based in London estimates that over 80% of ships now comply with BMP.

There has been some frustration from the naval forces as to why more cannot be done by, for example, insurers to force greater compliance. This is not the place to go into detail on the law of insurance and warranties but the language of BMP lacks the certainty of quality assurance type



documents, and, because they are essentially guidelines, it is difficult to enforce them strictly. Owners can only be nudged into compliance and more likely insurers will make policies conditional on having one or two key Ship Protection Measures such as the deployment of razor wire or a condition that the vessel trades at a minimum distance from the coast of Somalia. Additionally, the Maritime Security Centre – Horn of Africa (MSC-HOA) has a policy of reporting what it sees as non-compliance by flag states, who then follow up with individual owners- a practise that has proved effective to enforce higher levels of compliance.

Some commentators are concerned that BMP 4 and other similar guidelines imposed by flag states, have become almost mandatory in tone, a concern to ship-owners because if a vessel is hijacked then there is a greater chance that cargo or charterers will be able to find fault in the conduct of the owners or master which in turn might give rise to contractual liabilities. However, notwithstanding the increase in the use of armed guards it remains the fact that most vessels avoid being hijacked through good seamanship and the adherence to the principles of BMP, than by anything else. BMP has proved to be a successful policy of self-protection, and indeed many of the generic principles within it can be applied in other high risk areas such as in the Gulf of Guinea, which is fast becoming a hot spot to rival the Gulf of Aden.

The number of successful hijackings is well down on the same period last year. The duration of a hijacking based on a rolling average of the last six ships released peaked recently at over 250 days, and with a prolonged hijacking there is an increased risk of the mistreatment of crew. Further, the success of the coalition navies has meant that pirates have lost equipment and even their lives, which in turn has created a greater determination to maximise the return on their successful hijacks. Greater determination from pirates undoubtedly manifests itself in an increase in ransoms paid. As the shocking story of the *Iceberg* (now held for over two years) has shown, pirates are prepared to wait however long it takes to secure a payment.

As pirates have been forced back to using dhows as mother-ships, we will have to wait to see how this affects their appetite to continue their hijacking activities and how they may be forced to change their tactics or the type of weapons they use. For now, each hijacking has serious



financial implications and so, to avoid attack, vessels are routinely routing closer to India with approximately 40% of them carrying armed guards.

It is estimated that there are around 220 maritime security companies, most of whom have signed the Private Security Company's International Code of Conduct ("ICOC"), which is administered out of Geneva. At the moment, the ICOC, a voluntary code, is about the only barrier to entry into the maritime security industry. Trying to sort the wheat from the chaff is difficult and without an independent and internationally recognised auditing standard, much of the due diligence is left to owners. With as many as 75% of all armed security companies being based in the UK or having a UK component, it is perhaps unsurprising that the UK is trying to take the lead in efforts to regulate maritime security companies. Some guidance has been issued by the IMO through IMO Circular 1405¹(which is a comprehensive guide to the due diligence that owners should undertake before selecting a security company) and Circular 1406 (a similar document aimed at Flag States). A third IMO Circular, 1408, is expected and will be aimed at port states.

There are logistical difficulties in moving weapons in and out of the key ports such as Galle, Sri Lanka, and Muscat, Oman and regulations on the entry and movement of weapons within ports around the region are not uniform. Security teams have faced arrest where paper work was incorrect and when vessels were diverted to ports unexpectedly. However, the demand for armed guards necessitates the movement and storage of large numbers of automatic weapons in the region and, often, the need to embark and disembark in sensitive places. At the same time, however, it is unsurprising that some states, such as India, are extremely cautious about weapons being brought in. The recent tragic shooting of the Indian fisherman and the subsequent detention of the *Enrice Lexie* have brought into sharp focus the need for clear guidance, not only on the movement of weapons and rules of engagement, but also on the role of the port authorities and of the vessel's flag state in investigating incidents.

In the UK, a government quango/quasi-autonomous organisation SCEG (Security in Complex Environments Group) has been tasked with producing a national auditable standard which, it is hoped, will provide the basis for a future international framework. The industry trade



organisation Security Association of Maritime Industry (SAMI) is also beginning to audit companies, and nations such as Norway, Cyprus, Greece and the UK have or are drafting legislation that details how armed guards can be deployed on vessels flagged to their state. The UK is some six months from having such a standard, although it is far from clear how long it will be before an internationally recognised standard is formalized. In the short term, a patchwork of regulations to force security companies through a number of audits in order to satisfy a myriad of standards will have to suffice. Moving forward, it must be in everybody's interests to reach as quickly as possible an auditable international standard which will mean that companies audited in one jurisdiction will automatically be recognised in others.

In conclusion, the shipping industry has shown itself capable of drafting standards to help avoid hijackings and to deal with a constantly evolving threat, such as with the BMP which has a proven contribution to the rapid decline in the number of successful attacks. The fact that the deployment of armed guards is becoming standard practise for many ship-owners means that national governments must respond to the demands of ship-owners and put in place the necessary legislation and auditing standards to facilitate this.

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For more information, see the conference website at www.counterpiracy.ae.

¹ Interim Guidance to Ship-ownersOn the use of privately contracted armed security personnel on board ships and High Risk Areas. See also IMO circular 1406 which is similar guidance aimed at flag states.