

Legal Issues Related to Armament of Vessels^{*}

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ABSTRACT

While the number of piracy in the Strait of Malacca and Indonesia is showing a pattern of decline, the number of piracy in the waters of Somalia is rapidly increasing. The waters of Somalia, linking the Suez Canal and the Indian Ocean, is a passage for a dense traffic of large containers and tankers, but the passage of these vessels also makes it a tempting target for the Somali pirates.

The material and human losses from the frequent occurrence of piracy have led the international community to reach a resolution through the UN Security Council, and efforts are being made to repel piracy using warships and military airplanes.

Although the UN states' deployment of warships was partially effective in eradicating piracy, its employment showed limited effect in achieving the complete eradication of piracy.

On the 23rd of May, 2011, the IMO adopted the *Interim Guidance To Shipowners, Ship Operators, and shipmasters on the use of Privately Contracted Armed Security Personnel on board ships in the High Risk Area* as a measure to prevent losses from piracy.

Two main types of prevention measures can be considered to prevent losses from piracy. The first is to install weapons on the ships or to arm the crews with weapons to repel pirates. The second is to embark PMSC(Private Maritime Security Companies) PCASP(Privately Contracted Armed Security Personnel) onboard the ships, at the request of the shipping companies, to deter pirate attacks.

This article will deal with a legal review on each measure to repel piracy.

Key words: Repel piracy, Embarkation of PCASP on Ship, Armament of Vessels

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1. Introduction

While the number of piracy in the Strait of Malacca and Indonesia is showing a pattern of decline, the number of piracy in the waters of Somalia is rapidly increasing. The waters of Somalia, linking the Suez Canal and the Indian Ocean, is a passage for a dense traffic of large containers and tankers, but the passage of these vessels also makes it a tempting target for the Somali pirates.

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On the 23rd of May, 2011, the IMO adopted the *Interim Guidance To Shipowners, Ship Operators, and shipmasters on the use of Privately Contracted Armed Security Personnel on board ships in the High Risk Area*¹ as a measure to prevent losses from piracy.

Two main types of prevention measures can be considered to prevent losses from piracy. The first is to install weapons on the ships or to arm the crews with weapons to repel pirates. The second is to embark PMSC(Private Maritime Security Companies)² PCASP(Privately Contracted Armed Security Personnel)³ onboard the ships, at the request of the shipping companies, to deter pirate attacks.

The following pages contain a legal review on each measure to repel piracy.

2. Arming the Ships/Crews with Weapons⁴

2.1 International Laws

The right to protect one's life and property in the face of imminent danger is recognized by the domestic laws of all nations and the international laws. For instance,

1 MSC.1/Circ.1405(23, May 2011), Interim Guidance To Shipowners, Ship Operators, and shipmasters on the use of Privately Contracted Armed Security Personnel on board Ships in the High Risk Area.

Key contents are as listed:

- ① Risk assessment, ② Financial condition, maritime experience, selection criteria for private security company,
- ③ Insurance coverage for ship owner/crews/3rd party (injury, medical), scope of mortgage, other insurance issues regarding the accidents, injury, and losses resulting from the usage of firearms, ④ Management of firearms,
- ⑤ Guidelines for weapons employment

2 Private Maritime Security Companies(PMSC), Major PMSCs include *Shield Consulting, G4S, Control Risk etc.*, *Shield Consulting* has the largest PMSC market share in the Republic of Korea.

3 The 'PCASP' is short for 'Privately Contracted Armed Security Personnel'. The increased threat to commercial shipping by Somalia-based pirates has led to extended use of armed guards and a marked expansion in the number of firms offering armed maritime security services for vessels transiting the High Risk Area (HRA).

Republic of Korea Criminal Law Article 21⁵ defines the rightful protection and the Charter of the UN Article 51⁶ guarantees the right of ‘self-defence.’

However, there are no clear provisions in the international laws that govern the armament of ordinary ships/crews or their possession of weapons regarding the exercise of rightful protection or self-defence.

2.1.1 United Nations Convention on the Law of the Sea (UNCLOS)

The nationality of a ship is determined by the UN Convention on the Law of the Sea (UNCLOS). Article 91 of the UNCLOS (Nationality of Ships) states that “① Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship. ② Every State shall issue to ships to which it has granted the right to fly its flag documents to that effect”.⁷

Therefore the flag state exercises exclusive jurisdiction over the ships sailing under its flag, and this jurisdiction includes permission to embark the ships with weapons or to arm the crews with weapons. In sum, the flag state’s domestic laws determine the permission on the ships’ possession of weaponry.

2.1.2 Hague Convention (VII) relating to the Conversion of Merchant Ships into War-Ships⁸

Employment of merchant ships as armed warships, a practice known as privateering, was defined illegal by the 1856 Declaration of Paris. However, a series of naval warfare in the late 1800s brought up the issue of merchant ships’ conversion into warships, and in the 1907 Hague Conference, a treaty was signed to allow the conversion of merchant ships into warships when certain conditions are met. For instance, the ships must bear the external marks which distinguish the war-ships of their nationality (Article 2), the commander must be in the service of the State and duly commissioned by the

4 This Chapter mainly *rely on* Dong-Wook Kim, “Whether armament of merchant vessels allowed?” Dok-Do Research Journal, vol.7(Autumn, 2009)

5 “Actions taken to prevent unlawful infringement on oneself or others, with sufficient reason, shall not be punished.”(Criminal Law Article 21 Clause 1)

6 “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.”(Charter of the United Nations Article 51)

7 Neal R. Grandy, 「UNCLOS 1982 A Commentary, Volume III」(The Hague : Martinus Nijhoff Publisher, 1995), pp.103-104.

8 1907 Hague Convention VII Relating to the Conversion of Merchant Ships into Warships(Validated on the 26th of January 1910 by 34 nations excluding the United States), N. Ronzitti, 「The Law of Naval Warfare-A Collection of Agreements and Documents with Commentaries」(Dordrecht : Martinus Nijhoff Publisher, 1988), pp.111-126.

competent authorities, and his name must figure on the list of the officers of the fighting fleet (Article 3), and the crew must be subject to military discipline (Article 4).

These conditions are equivalent to the content of Article 29 of the UNCLOS, which describes the definition of warships. The Hague Convention is effective to this date and is closely related to the UNCLOS regarding the conversion of merchant ships into warships during peacetime and wartime.

2.2 Relevant Laws of the Republic of Korea

2.2.1 「Regulations on firearms, blades, and explosives」

Republic of Korea's 「Regulations on firearms, blades, and explosives」 prohibits the possession of firearms, blades, and explosives unless approved by the government.⁹ In addition, permission is required for import and export of firearms and explosives.¹⁰

2.2.2 「Customs Laws」

Section 2 of the Customs Laws (Ships and Aircrafts) defines the arrival and departure procedures of foreign merchant ships and aircrafts. When a foreign merchant ship or aircraft arrives at an open port, the captain of the ship/aircraft must report the names of the passengers and crews, their possessions, materials to be embarked or disembarked, and other goods as set by the presidential order, to the customs official without delay(Article 135).

The customs officer can request the shipping company or airline to submit information regarding 'drugs' or 'firearms, blades, and explosives' before a deadline. In this case, the shipping company or airline must comply with the request(Article 137-2 Clause 1).

2.2.3 Application in Practice

The captain of a foreign ship should submit information regarding 'firearms, blades, and explosives' by the request of the customs officer prior to entering the port of the Republic of Korea. Unreported or smuggled 'firearms, blades, and explosives' will be treated according to the Customs Laws, and the treatment may be referred to the police through the joint investigation team when needed.

The rules regarding weaponry possession differ for each nation. In countries that permit weaponry possession, crews of foreign ships arriving at port must make a report according to set procedures. However, there are cases in which crews that disembark from ships return to their country using aircrafts. In the past, these 'disembarked crews' were

⁹ 「Regulations on firearms, blades, and explosives」 Article 10 (restriction on possession)

¹⁰ *Ibid.* Article 9

found in possession of weaponry onboard returning aircrafts. In the Republic of Korea, the possession of unreported weaponry by the disembarked crews are also strictly governed by the 「regulations on firearms, blades, and explosives」.

2.3 IMO's Standpoint

2.3.1 Revised guidance on Combating Piracy agreed by IMO Maritime Safety Committee

On the 5th of June, 2009, IMO Maritime Security Committee (MSC) issued a recommendation for revision which stated that the “flag states should strongly discourage the carrying and use of firearms by seafarers for personal protection or for the protection of the ship.”¹¹ The possession of arms on a ship is very likely to worsen the already dangerous situation, and the treatment of weapons which require special training and attitude may increase the possibility of accidents on the ship. It is the IMO's unchanging standpoint that the possession and usage of weapons should be restrained.¹²

2.3.2 Opinions of Nicolaos L. Charalambous, Deputy director of maritime security and facilitation of the IMO

Nicolaos Charalambous, Deputy Director of maritime security and facilitation of the IMO, stated in his interview with the media on the 19th of May, 2009 that “arming merchant ships against Somali pirates will only boost competition in the arms race in the international waters and cannot be the solution to the piracy problem”.¹³ He rhetorically asked “are you hoping to turn the entire sea into an engagement zone?” in expressing his opinion against the armament of ordinary ships.¹⁴

2.4 Others

2.4.1 Insurance Problem

In the case of tankers, an engagement between its crews and the pirates is very

11 Revised guidance on Combating Piracy agreed by IMO Maritime Safety Committee, Maritime Safety Committee-86th session: 27 May-5 June 2009. “The MSC agreed that **flag States should strongly discourage the carrying and use of firearms by seafarers for personal protection or for the protection of the ship.** Seafarers, it was agreed, are civilians and the use of firearms requires special training and aptitudes and the risk of accidents with firearms carried on board ship is great. Carriage of arms on board ship may encourage attackers to carry firearms or even more dangerous weapons, thereby escalating an already dangerous situation. Any firearm on board may itself become an attractive target for an attacker. Carriage of firearms may pose an even greater danger if the ship is carrying flammable cargo or similar types of dangerous goods.”

12 MSC/Circ.623/Rev.3 ANNEX(29 May 2002), p.9.

13 Chosun Ilbo Online Edition, 2009. 5. 19(2009-7-7 Search)

14 *Ibid.*

likely to result in a large-scale fire and heavy losses on the ship. Therefore, the armament of ships will face resistance from the ship owners and complicate the solution. Also, we cannot rule out the possibility that the pirates will attempt to employ weapons with larger firepower to overwhelm the armed ships.

The possibility of accidents on merchant ships carrying firearms or possibility of other accidents such as tanker fire resulting from the exercise self-defence may reduce the issuance of insurance by insurance companies or limit the purchase of insurance policy.

In the Republic of Korea, a majority of shipping insurance excluding those for small vessels of 500T or less employs the ITC-HULLS institution agreement (1983) drafted by the Institute of London Underwriters of the United Kingdom.¹⁵ The agreement defines risks resulting from war to be exempt from the company's responsibility, and excludes such risks from the insurance coverage unless supplemental provisions were added. Likewise, the armament of ordinary ships will lead directly to the increase in insurance costs and may also tempt some insurance companies to deny underwriting the contracts.

2.4.2 Recent Trends in the U.S. Domestic Laws

On the 19th of June 2009, Frank LoBiondo, a Republican house representative from New Jersey, submitted a bill titled 'United States Mariner and Vessel Protection Act of 2009(HR 2984 IH).'¹⁶ The essence of the bill is to permit the embarkation and possession of weaponry onboard the ships of U.S. nationality against external aggression including pirate attacks, to acknowledge the exercise of self-defence, and to exempt the captain, ship owner, and ship operator from responsibility when such actions are taken.¹⁷

The U.S. plans to institute an international agreement with identical contents through the IMO after the bill's enactment, and the debate regarding the 'armament of ships' is expected to expand.¹⁸

2.5 Semi-Conclusion

The continued attacks on ships by pirates in the Somali waters have sparked the debate on the armament of ordinary ships, with the U.S. leading the debate. The hijacking of U.S. ship *MV Maersk Alabama* and the hostage-taking of its captain Richard Philips have led the U.S. congress to submit the bill 'United States Mariner and Vessel Protection Act of 2009(HR 2984 IH)' which permits the armament of ordinary ships and their crews

15 Choong Bin Lim / Manager at Duyang Ltd. "Guide to Shipping Insurance", [http://blog.naver.com/im_chung-bin/3003132922\(2009-7-14_search\)](http://blog.naver.com/im_chung-bin/3003132922(2009-7-14_search))

16 United States Mariner and Vessel Protection Act of 2009(HR 2984 IH), 111st session of Congress.

17 Ibid. Sec. 70122(Authority of use force)

18 Jae Sun Choi, "US grants defense rights to civilian ships/crews against pirates", KMI Briefing on Dokdo and maritime territory #09-69(2009. 6. 29)

and exempts criminal responsibilities when self-defence is exercised. Such measures taken by the United States may eventually lead to the adoption of an international agreement that acknowledges the armament of ordinary ships and their crews.

However the resistance from ship owners and the possibility of accidents resulting from the possession of firearms remain to be solved. Damages on dangerous cargo such as tankers may result in large-scale accidents, and such dangers may lead to higher premiums on insurance contracts and even result in certain insurance policies not being contracted.

UNCLOS defines the possession of armaments by a ship to be dictated by the laws of the ship's flag state. However, the opinions of weaponry possession differs for each country, and the Republic of Korea strictly adheres to its laws that require foreign ships arriving in Korean ports to make advance reports. The difference in each country's stance regarding the armament of ships and the possession of weaponry poses a burden on the international agreement on the issue. The ship owners' uneasiness about higher insurance premiums and the possibility of large-scale accidents resulting from the change are also acting as deterrent factors to an international agreement.

3. Embarking PCASP on Ship

3.1 IMO's Interim Guidelines on PCASP (Privately Contracted Armed Security Personnel)

Similar to its standpoint on arming the ships, IMO initially had a negative opinion about embarking armed personnel on merchant ships. This was because PCASP embarkation may prompt the pirates to arm themselves with heavier weaponry and result in larger losses. However, as the losses from piracy escalated and the number of shipping companies that embarked security personnel on their ships increased, the IMO started recommending the practice of 'Best Management Practice' (BMP)¹⁹ and prepared a set of guidelines on the employment of armed security personnel.²⁰

19 Interim Guideline selected in the 89th MSC of IMO. Contains ① Status of deployed ships in the Gulf of Aden, ② Securement of anti-piracy equipment such as barbed wires, ③ Employment of Citadel, ④ Recommendations on the embarkation of security personnel.

According to the Ministry of Land, Transportation, and Maritime Affairs, ROK ships have been embarked with PCASP since 2008, and all vulnerable ships with speeds of less than 15 knots and side heights of less than 8 meters from the surface of water have been embarked with PCASP since the hijacking of Samho Jewelry in January 2011

20 The recommendations are not intended to endorse or institutionalize the use of PCASP and do not address all the legal issues that might be associated with their use onboard ships. *IMO briefings MSC 89th meeting.*

Currently, there exist no international laws that govern the employment and selection of Privately Contracted Armed Security Personnel (PCASP). The embarkation of armed security personnel, in the absence of international laws to influence the establishment of domestic laws, is dictated by the policy and laws of each respective state.²¹ Therefore, each flag state should institute domestic laws to employ armed security personnel. The laws shall include issues regarding the employment of PCASP and their possession of weapons, and also include guidelines and legal documents offered by the IMO. In the Republic of Korea, such laws are not yet in place. The laws regarding the embarkation of PCASP should be established in advance to prevent an absence of relevant guidelines if the shipping companies should determine that the embarkation of PCASP is required. In order to establish the laws, the relevant current laws should first be reviewed to check that there are no potential conflicts among the laws. Secondly, foreign laws, customs, and legal documents of international organizations (such as IMO) should be reviewed to draft the PCASP laws or to add relevant contents to the existing laws (R.O.K. Law on the International Ships & Port Facility Security : ISPS).²² Thirdly, the first draft should be reviewed through open hearings and the likes to gather the opinions of related parties. Fourthly, the gathered opinions should be incorporated into the laws.

IMO's Interim Recommendations for Flag States demand that the employment of PCASP be made considering the domestic laws, and urges the establishment of procedures for embarking the PCASP. We should therefore establish legal grounds for the PCASP to

21 States show their opinions regarding the embarkation of PCASP and their possession of weapons differently. For example, In **France**, The embarkation of PCASP is prohibited, but the possession of weapons is actually permitted. In **Germany**, there is no written law that defines the embarkation of PCASP and the possession of weapons, but Germany has so far never approved of such requests. **Japan** also prohibits embarkation of PCASP and the possession of weapons. The **United States**, under the principle of self-defense, allows embarkation of security personnel at the discretion of ship's owner. It also permits the possession of weapons under the supervision of the Department of Homeland Security.

International Chamber of Shipping(ICS) and European Community Shipowners Associations(ECSA) July, 2011.
(refer to appendix)

22 Republic of Korea does not have laws on this subject. It is practical to apply the related 'R.O.K. Law on the International Ships & Port Facility Security' with revisions to define the regulations on the embarkation of security personnel on all ships traveling in dangerous areas.

The following are sample clauses of the *revised* R.O.K. Law on the International Ship & Port Facility Security (ISPS)

Article # (Embarkation of maritime security agents)

- ① The owners of ships designated by presidential order and traveling through dangerous areas shall embark maritime security agents.
- ② Ships not pertaining to the first clause may embark security personnel considering the degree of danger and the ship owners' assessment of danger.
- ③ In accordance to clauses 1 and 2, the maritime security agents may embark the ships with designated weapons in possession, after obtaining permission from the minister of land, transportation, and maritime affairs.
- ④ Required issues relating to the embarkation of security personnel in accordance with clause 1 shall be set by the presidential orders, and the weapons embarkation procedures and storage shall be dictated by the orders of the minister of land, transportation, and maritime affairs.

board the ships with weapons in possession. However, even if individual nation's laws permit the embarkation of PCASP, the laws of the nations whose ports or coasts the ship travels through must also be conformed to. If the debarkation of armed PCASP is not permitted in the visiting ports, it will bring about numerous limitations on the employment of PCASP. In the Somali waters excluding the Area of Operations of the naval ships operating in the Gulf of Aden, PCASP is the sole response measure against piracy. IMO also recognizes this practical fact and has drafted guidelines on the employment of PCASP. However, the most pressing problem with employing PCASP is their arrival and departure to and from the states. If a state does not permit the possession of weapons, the ships embarked with PCASP may have to bypass that state and carry the PCASP to the next state that permits their debarkation, even if there is no need for the presence of PCASP any more.

International treaties including the UNCLOS do not contain clauses related to the embarkation of PCASP. However, ship security firms receive inspections on the legality of the weapons that they utilize based on UN's tracking system for deterring illegal weapons. Currently, the embarkation of PCASP is treated by the relevant nation's domestic laws. The embarkation/debarkation of PCASP, their entrance into territorial waters, and their arrival into the nations are governed by the laws of the state to which the ship belongs and the state to which the waters belong.

Ship security firms use individual treaties (contracts) with individual states to solve legal problems. For instance, states around the Somali waters such as Oman, Yemen, and Djibouti generally prohibit the possession of weapons under domestic laws, and forbid the entrance of ships embarked with PCASP. However, in accordance with the individual treaties signed with each nation, ship entrance is selectively permitted in certain cases. For example, Pakistan requests the ships to seal the weapons before entering for customs. The ship security firms sign the treaties on the possession of weapons with each state and pay licence fees to each state. In most cases, weapons are carried after the permission from the police or relevant authorities is given.

In most cases, however, there are numerous limitations on the embarkation/debarkation of PCASP and their entrance into the state or its territorial waters. In order to employ the PCASP in accordance with the guidelines of the IMO, an effort should be made at the IMO level to persuade the relevant states to permit the embarkation/debarkation of PCASP or their entrance into the states' territories. At the least, an IMO resolution is required that demands the signing of treaties between the flag states and the states where the embarkation/debarkation of PCASP will occur.

3.2 Capability Assessment and Selection Criteria of Private Security Firms

The guidelines on the employment of PCASP and shipping firms provide recommendations on assessing the capabilities of private security firms and their setting

their selection criteria. Private security firms are requested to provide information on the firms' weapons, their actual experience on sea, and even the comments of previous customers, in addition to the information on the traits and experience of their employed personnel. The insurance firms may also demand documents on the security firms' training data to assess the appropriateness of their training system.

Regarding this issue, a Norwegian war insurance firm, DNK (Den Norske Krigsforsikring), published detailed guidelines on the selection of private security firms. DNK drafted a checklist of 66 items that the shipping companies should consider when selecting a private security firm. According to Svein Ringbakken, a managing director at DNK, approximate 50 private security firms are currently operating but only a handful pass the guidelines provided by DNK's checklist²³. A thorough capability assessment is required for employing a capable private security firm, but the adoption of overly strict criteria, as show cased by the DNK managing director's comment, will eliminate most of the options for choice. IMO's guidelines in this case may be a blockade for new firms attempting to enter the industry. In addition, the IMO guidelines only list the documents to be submitted by the private security firms but do not provide specific assessment criteria, and this may lead to differing selection criteria for each state. Therefore, there is a need for IMO guidelines to specify the selection criteria on private security firms. Making an agreeable checklist similar to the one developed by DNK at the IMO level. Providing the checklist as an appendix to the guidelines can be a solution. In particular, because it is crucial to prove that the private security firms are providing appropriate training to their personnel, the criteria for the education on ship-boarding and rules of engagement are requested to be submitted by the flag states. These criteria too should be added as an appendix to the guidelines rather than remaining as random suggestions from each flag state.

4. Embarking Police/Military personnel on the ships

4.1 Debates on the Embarkation of Police/Military Personnel on Ships

4.1.1 Whether active duty military personnel can act as security agents on board merchant ships

Whether active duty military personnel can act as security agents on board merchant ships depends on the domestic laws of each state. The international laws and the Laws of the Republic of Korea do not prohibit the boarding of merchant ships by

23 Republic of Korea Shipping Insurance Organization. Mailing Service 2011. No.31.

military personnel, and this can be interpreted as tacitly permitting such activities. In the case of Belgium, a squad (approx 8 ppl) of special forces were decided to embark a merchant ship to repel piracy and guarantee the safe passage of the ship in the Gulf of Aden.

4.1.2 Whether the embarkation of military personnel makes the ship a warship

Even if military personnel are on board a merchant ship for its safety, the legal status of the merchant ship does not change to a warship or a government ship. UNCLOS Article 29 (Definition of warships) states that a warship “is a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.” According to this definition, a merchant ship embarked with military personnel cannot be viewed as a warship under the command of an officer, and the military personnel can be interpreted as merely conducting missions of protecting the ship from the pirates.

4.1.3 Whether it violates the Innocent Passage

The presence of active duty military personnel conducting ship protection activities on board a merchant ship does not affect the ship’s right of innocent passage in the territorial waters of a foreign state. However, if the ship enters the territorial waters with the intention of entering a port, the ship must adhere to the state’s domestic laws. In cases where relevant laws are nonexistent, a mutual agreement that defines the permission, procedure, and obligations of the state and the armed ship can be used as a basis to enter the port.

Article 19 of UNCLOS defines a passage to be innocent ‘so long as it is not prejudicial to the peace, good order or security of the coastal State.’ The same article lists 12 activities which cannot be considered an innocent passage. However, the embarkation of military personnel on merchant ships to protect the safety of the ship does not violate any of the 12 listed activities which include: First, the use of threat against the sovereignty, territorial integrity, or political independence of the coastal state; Second, any exercise or practice with weapons of any kind; Third, any act aimed at collecting information or propaganda to the prejudice of the defence or security of the coastal state; Fourth, activity contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal state.

4.1.4 Whether the coast guard can board a ship as security agents

Whether the coast guard can board a ship and act as security agents depends on the domestic laws. The embarkation of coast guard on merchant ships to protect the ships from pirates should follow the conferment of authority to conduct missions in international

seas, but in the Republic of Korea, the laws do not grant such authority to the coast guard.

The coast guard, unlike the police which was established by law, was established by the presidential order. The laws relating to the missions of the coast guard do not define them for activities that can be conducted outside the waters of the Republic of Korea's jurisdiction.

However, recently the 'Coast Guard Agency Laws' were initiated to provide a legal foundation for the establishment of coast guard agency, and these laws may provide a basis for clear definitions of the coast guard's mission scope, waters under management and the likes which may allow the embarkation of coast guard personnel on merchant ships.

4.2 Review for embarking Police/Military personnel on a ship

Embarking military personnel on ships as armed security agents will not be a legal problem if relevant domestic laws are instituted to provide a basis for treating such issues. Generally, a ship falls under the jurisdiction of the flag state and a ship of a certain nation is governed exclusive by the jurisdiction of that nation. However, in the case of police, there is a need to clearly define the scope of mission, jurisdictional sea area under control and other related matters. A general consensus of the population in favor of anti-piracy and ship protection efforts is required, and the responsibilities of the shipping companies and their scope of liability in the case of actual force employment should be clearly defined. Therefore, this measure should be reviewed and considered in a long term.

5. Conclusion

As we have discussed above, it is practically difficult to repel pirates by arming the ship or its crews with weapons. This view is in accordance with the media interview given by Nicolaos Charalambous, Deputy director of maritime security and facilitation of the IMO, in which he stated that "arming merchant ships against Somali pirates will only boost competition in the arms race in the international waters and cannot be the solution to the piracy problem."

The option of embarking PMSC²⁴ PCASP²⁵ on the ships to prevent pirate attacks, as can be inferred from the guidelines selected by the IMO, is the preferred option to be chosen by its member states.

A notable IMO member state, Norway has chosen the IMO guidelines on the embarkation of PCASP and is actively enacting. DNK, a Norwegian war insurance company,

24 Private Maritime Security Companies(PMSC)

25 Privately Contracted Armed Security Personnel(PCASP)

has proceeded to publish detailed guidelines on the selection of PMSC. As Norway's Provisional Guidelines²⁶ indicate, the use of PCASP can be different from each shipping company.

The member states of IMO shall in the future establish domestic laws to provide legal grounds for the employment of PCASP according to IMO's guidelines, and also prepare procedures for obtaining permission to employing PCASP.

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²⁶ Provisional Guidelines-Use of Armed Guards on Board Norwegian Ships

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Appendix

Flag State	Authorization of arms on board, employment of private armed guards on board and use of firearms		Terms and Conditions	National Official Guidance	Other commentaries
	Security personnel on Board	Possession of weapons on board			
Bahamas	<p>Not recommended neither prohibited</p> <p>It is a decision to be made by the ship operator after due consideration of all risks</p>	<p>Possibility under Bahamian Law</p> <p>But, it is also a decision to be made by the ship operator after due consideration of all risks</p> <p>In addition to that, a firearm license is required</p>	<p>The ship-owner should be able to demonstrate its due diligence (in selecting the security service provider with professional standing);</p> <p>• the security company should be licensed by its national authorities and have licenses from local Port authorities to bring arms on board;</p> <p>• if force is used it shall be the minimum necessary in the circumstances and proportionate according to the threat.</p>	<p>Guidance from the Bahamas Maritime Authority (BMA Information Bulletin No.128 "Guidance to ship-owners on carriage of armed personnel for vessel protection):</p> <p>http://www.bahamasmaritime.com/downloads/Bulletins/128bulletin.pdf</p>	<p>Recommendation to fully follow BMP3's requirements;</p> <p>The Bahamas Government will not accept liability for any matter arising from the use of private armed security personnel on board. It is the sole responsibility of the ship-owner or agents contracting such services (cf. insurance)</p>
Belgium	<p>It is not per se forbidden neither by the general applicable Belgian laws, nor by the Belgian criminal Code</p>	<p>It is not per se forbidden neither by the general applicable Belgian laws, nor by the Belgian criminal Code</p>	<p>Each ship owner has to decide according to general applicable Belgian laws and Belgian criminal Code.</p> <p>The person using weapon has to have a gun license/ firearms certificate.</p> <p>It is not permitted to use certain arm (as automatic firearms).</p>	<p>General Belgian laws and Belgian criminal Code</p>	<p>Political and practical options are under discussion</p>

<p>Cyprus</p>	<p>No provision in national legislation</p>	<p>No provision in national legislation</p>	<p>X</p>	<p>X</p>	<p>A change of policy regarding private armed guards must be done after due consideration of all the risks involved and definitely after carefully assessing the reliability of a private security services company and its armed guards as well as the rules of engagement of such armed guards.</p> <p>JCSA is strongly in favour that individual states must amend their national legislation in order to provide the necessary legal framework which will regulate the use of private armed guards, as well as to allow for the arrest, prosecution and sentencing of captured pirates in "fast-track" procedure. JCSA is currently working closely with the Cyprus Government towards that direction, something which will provide the means for Cyprus to protect its interests as a Maritime Nation against Piracy.</p> <p>JCSA is pushing the Cyprus Government to become even more involved in all international fora towards the establishment of an international legal framework that will guarantee a uniform and effective confrontation of Pirates.</p>
<p>Denmark</p>	<p>Possibility to apply for permission to use armed guards</p>	<p>Prohibition unless there is authorization from the Justice Department</p>	<p>The application to use armed guards (with the Danish Justice Department which consults with the DMA) must specify: -The details of the vessel, the owner, the guards, the employers and their weapons, the route and the possible alternative; -Anti-piracy measures on board; -convoy/escort; -MSCHOA/UMITD notification; -if the crew has been offered to disembark.</p> <p>It has previously been necessary to substantiate a specific and extraordinary threat against the ship in question. Based on an application, the shipping companies now have the possibility of obtaining a firearms certificate for using armed guards on board Danish ships, provided that the general threat assessment for the area is perceived to require this, and as long as the specifics of the case, also in terms of compliance with Best Management Practices, do not otherwise speak against it.</p>	<p>X</p>	<p>The overall responsibility for the security and safety on board remains with the Master; he has the authority to decide when the arms are to be used. The shipowner and the Master are both for their part responsible for the safety and security of the private security guards.</p>

<p>Finland</p>	<p>A private security company will get a licence for performing a job where carrying a gun is necessary for self-defence. Permission for private armed guards onboard ships could be issued as from today for so called short guns (revolvers and smaller guns) for protecting the vessel.</p>	<p>The interpretation of the private security service is that heavier firearms can be used if the client contracts is established for acting as guard for persons (passengers) onboard the vessel. This restriction can also be circumvented if the safety guard is educated by an army unit on the use of shotguns and rifles.</p>	<p>X</p>	<p>The approval procedure is based on the Firearms Act (1/1998) and the Government Decree on Private Security Services (543/2002). Licences are issued by the Police Administration.</p>	<p>Referring to TrafF (Maritime Administration) the armed guards can be employed according to the STON-regulations and they can't be regarded as passengers. Their position in the crew list must be safety officer or safe guard. The Master remains overall responsible for the safety and security onboard. The FSA opinion is that the right to make decisions about using arms belongs to the safety guard but the captain is also in the position to interpose his veto (however it should be taken into account that a Master doesn't necessarily have the appropriate military experience). The FSA opinion is that we must continue pursuing a policy to get government guidance. The optimal solution would be if the government decided to send units from the Finnish Army onboard. Unfortunately we don't have any military bases in the region.</p>
<p>France</p>	<p>Prohibition</p>	<p>Prohibition BUT Authorization can be granted under certain conditions determined by decree</p>	<p>X</p>	<p>General French Laws (Act n° 83-629 of 12th July 1983: this law lists the allowed activities of private surveillance and does not include the maritime activities; decree n° 95-589</p>	<p>Recommendation to fully follow BMP3's requirements.</p>
<p>Germany</p>	<p>Requests never approved by German Flag State BUT it is not forbidden per se neither by the general applicable German laws, nor by the German Criminal Code (might be methods of self defence)</p>	<p>Requests never approved by German Flag State BUT it is not forbidden per se neither by the general applicable German laws, nor by the German Criminal Code (might be methods of self defence)</p>	<p>Each shipowner has to decide according to general applicable German Laws and German criminal Code. The person using a weapon has to have a gun licence/firearms certificate. It is not permitted to use automatic firearms.</p>	<p>General German laws and General criminal Code</p>	<p>Political and practical options are under discussion.</p>
<p>Greece</p>	<p>Prohibition</p>	<p>Prohibition</p>	<p>X</p>	<p>Existing Greek legislation</p>	<p>Proposal of UGS on a draft law concerning the employment of private armed guards on board Greek-flags vessels will be submitted to the government for examination and possibly adoption in the summer recess committee by the Parliament. In accordance with the proposed legislation, private armed guards will be allowed on board, subject to a precise authorization and under strict conditions. The above measure is optional for shipowners.</p>

<p>Hong Kong</p>	<p>Recommended but experienced security consultants only (not considered as security guards; possibly signed on as supernumeraries;) to assist the crew in following BMP's requirements and give confidence to all on board</p>	<p>Not recommended (risk of escalation of violence and risks to the crew); But in case of no naval protection: possibility to obtain authorization to carry weapons The ship owners have to request a letter for the carriage of weapons on board. Conditions: 1. Possession of weapons only by the Master or person authorized by the owner; 2. Take into consideration: - criteria of choice of the security consultants; - legal situation and liabilities; - request agreement of other parties involved in the voyage; - briefing of the crew.</p>	<p>Training and certification in Hong-Kong</p>	<p>Marine Department Security Advisories No. 14 (which supersedes No.4)</p>	<p>Recommendation to join Chinese naval convoy escort; Recommendation to fully follow BMP's requirements ;</p>
<p>Isle of Man</p>	<p>Neither recommended or prohibited. It is a decision to be made by the ship operator after due consideration of all the risks.</p>	<p>No prohibition. A Manx firearms licence is not required for the carriage of firearms on board a Manx ship unless in Manx territorial waters. When in port, local laws concerning the carriage and use of firearms must be complied with. When in the territorial sea, due account should be taken of any applicable laws.</p>	<p>The decision to use armed guards should not be made without first conducting a thorough risk analysis in cooperation with the vessel's insurance underwriters, charterers and legal counsel. The risk assessment does not need to be approved by the Registry. Vetting and selection of a Private Security Provider remains the responsibility of the ship owner. The Master's overriding authority for safety and security of the vessel should be established with the PSP.</p>	<p>Industry Circular No.16, April 2011: Piracy Counter Measures. http://www.gov.im/ib/docs/ied/shipregistry/survey/industry/circulars/industry_circular16piracycounte.pdf</p>	<p>All Manx vessels are requested to register with MSCHOA prior to entering the risk area. The use of BMP when in the risk area is recommended. Security operatives should have the same health and safety protections as crew. Use of firearms on vessels with dangerous cargoes requires special consideration, mitigation measures should be put in place. Procedures and facilities should be put in place for stowage and control of firearms/ammunition on board.</p>

<p>Italy</p>	<p>Adoption of Decree-law n.107 of 12 July 2011 that allow, in article 5, to place armed guards (governmental or in case of unavailability private contractors) on board Italian flagged vessels. DL n.107 entered into force on 12 July 2011, the same day of its publication on the Italian Official Journal.</p>	<p>No provision in national law.</p>	<p>X</p>	<p>On request of the shipowners who bear the entire cost, it is possible to embark armed guards on board from the Naval Forces that may also appeal to personnel of others military forces, and use of arms to ensure the protection of the ship and crew. In case of unavailability of governmental guards, private contractors can be embarked.</p>	<p>Detailed rules and terms of reference for armed guards will be stipulated within 60 days from the entry into force through a Decree of the Ministry of Internal Affairs concerted with the Ministry of Defence and the Ministry of Transport that will fix the requirements for the possess, use, purchase and transport of arms and munitions on board.</p>
<p>Japan</p>	<p>Prohibition</p>	<p>Prohibition</p>	<p>X</p>	<p>Japanese Firearms and Swords Control Law (which in principle prohibits the possession of arms and swords in Japan)</p>	<p>Possibility of discussion on the issue in Japan if the current increasing level of violence of piracy acts isn't rectified</p>
<p>Liberia</p>	<p>No prohibition <ul style="list-style-type: none"> • Within the master's discretion • only if the Administration's requirements are satisfied </p>	<p>No prohibition Within the master's discretion</p>	<p>Owner or Master shall conduct risk assessment as described in MSA 03/2011 and the Guidance; Owner must take appropriate measures to verify the credibility and experience of the company, as detailed in MSA 03/2011 and the Guidance. Provisions relating to PCASP should be included in an Appendix to the Ship Security Plan (SSP). The appendix should include the following features: • Procedures pertaining to application of additional anti-piracy measures <ul style="list-style-type: none"> • Watch keeping and vigilance • Communication procedures with the PCASP • Use of defensive measures • Use of passive/non lethal devices • Authority of the Master (PCASP embarked on the vessel are at all times subject to the overriding authority of the vessel's Master) • Activation of PCASP and the risk of escalation.</p>	<p>Guidance from the Bureau of Maritime Affairs of the Republic of Liberia: 1. Maritime Security Advisory – 03/2011 : http://www.liscc.com/liscc/Portals/0/SecurityAdvisory_03-2011.pdf "Interim IMO Guidance on the use of Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area" 2. "Piracy: Guidance for Liberian Flagged Vessels Regarding 3rd Party Security Teams 2011" 3. Liberian maritime regulations 10.296 and Section 296 which specify that ship's Master shall assume full responsibility for the safety of the members of the crew and passengers, and has to take all necessary and appropriate steps in connection therewith).</p>	<p>Recommendations to the ship owner: <ul style="list-style-type: none"> • Due diligence • Training of crew and PCASP • To discuss in detail the insurance coverage that the maritime security company holds • Assure that a Use of Force Continuum is established as part of the contract with the PMSC </p>

Lithuania	No legal disposition to place armed guards (private or state) on merchant ship.	No legal ground to arm ship's crew.	X	X	After the IMO guidelines for armed guards on board are published, the Lithuanian Shipowners do expect to start their talks with officials and to investigate possibilities to place armed guards on board.
Netherlands	No prohibition per se	According to Dutch law, it is forbidden to have fire arms on board a Dutch flagged ship.	X	X	In practice this means that Dutch law does not permit to place a private armed team on boards with sufficient weapons to act in case of a piracy attack.
Norway	No prohibition (the Act of 16 February 2007 states that actions should be taken by the master in order to avoid and prohibit piracy and this could include the use of force. e.g. private armed guards on board flag state vessels)	No prohibition	Private guidelines with detailed regulations have been published. By The Norwegian Shipowners' Mutual War Risk Club (DNW) . According to the guidelines the DNK has to be notified in advance when the ship owner considers using PSC. According to the Regulation on weapons, the shipowner needs a license issued by the local police. The license is issued for a period of six month. The license is a general permission given to the company to have private armed guards on board the companies' Norwegian flagged vessels.	* Act of 16 February 2007 No 9 relating to Ship Safety and Security (The Ship Safety and Security Act) art. 39 and 40 * Amendments to the Regulation of 22 June 2004 No. 972 concerning protective security measures on board ships and mobile offshore drilling units	In the amended regulation that came into force 1 July 2011: -The Master remains in command and has the last word in all cases; -The ship owner has the overall responsibility for the safety and security on board; -Each party to the contract agrees to bear the responsibility for its own people and property without the right of recourse against the other contracting party;

Poland	No legal disposition to place armed guards (private or state) on merchant ship.	No legal ground to arm ship's crew.	X	X	There is no need for such legal dispositions in Poland. This is due to the fact that almost all ocean-going vessels which are owned and/ or operated by the Polish Shipowners are registered under the 3rd country flag therefore, the problem of crew security and safety is regulated and/or remains under scrutiny and control of the respective flag State administration.
Portugal	No legal disposition allowing for the presence of armed guards on board	No legal disposition allowing the existence and the use of weapons on board.	To adopt this measure a specific permission from the Portuguese Administration is required.	X	There may be scenarios that ship owners are considering the use of armed guards for ships transiting the piracy high risk Area due to the increased threat by Somalia-based pirates. However, the use of PCASP should not be considered as an alternative to Best Management Practices (BMP) and other protective measures.
Singapore	No prohibition.	No prohibition. With a caveat that carriage and use of firearms and ammunition on board Singapore registered ships is not encouraged.	The MPA Shipping circular No. 11 of 2011 refers to the interim guidance in IMO document MSC.1/Circ.1405, 23 May 2011. Owners embarking PCASP should keep the Registry informed of their decision via email	Maritime and Port Authority of Singapore Shipping Circular No. 11 of 2011, 10 June 2011 http://www.mpa.gov.sg/sites/port_and_shipping/circulars_and_notices/ships/circulars_detail_page?fileName=SC11-11.xml	While the crew of a Singapore-registered ship, or their hired armed security personnel may lawfully bear arms, they will still be liable under Singapore's laws if they use their arms on board the ship without lawful excuse, as a person on board is not exempted from criminal liability in respect of any offence that he commits on the ship.
Spain	Royal Decree 1628/2009 on private security and weapons allows to take on board Spanish flag ships (both merchant and fishing vessels) armed private security guards to accomplish protection tasks (preventing and repelling attacks), if such ships are outside the Spanish territorial waters and confront a situation of particular risk to persons and property.	The Order PRE/2914/2009 developed Royal Decree 1628/2009 by setting the conditions for the possession, control, use and acquisition of war weapons' by private security companies, as well as the characteristics of authorized weapons. According to this Order, these services may only be provided by security companies established in Spain, registered in the Spanish Interior Ministry and authorized to provide monitoring and protection activities and services. The security guards must make limited use of such weapons, with the sole aim of preventing and discouraging from possible attacks, but may, if necessary, use the weapons in order to repel an armed aggression in a property and proportional way.	X	Royal Decree 1628/2009, on private security and weapons. Order PRE/2914/2009.	

<p>U.K</p>	<p>No restrictions or regulations currently exist and the recommendations contained in MSC.1/Circ.1406 are expected to be used as a basis for national control measures.</p>	<p>The Government's legal advice indicates that the carriage of weapons onboard UK ships is controlled by UK firearms legislation and licensing requirements; any carriage of weapons on ships by PCASP at the present time would likely contravene these existing laws.</p>	<p>None are specified</p>	<p>Carriage is currently 'Not recommended'. Both Chamber and UK Government are moving to a more neutral stance and the carriage of weapons onboard ship, under exceptional and limited conditions is likely to be permitted in the future under an exemption scheme.</p>	<p>It is acknowledged that some UK ships currently embark PCASP. UK Government and the Chamber wish to de-minimalise the use of PCASP whilst ensuring about control measures are put in place to regulate their activities. The widespread use of PCASP is not encouraged.</p>
<p>USA</p>	<p>Possibility under the principles of "Self-Defence" and "Defence of others" (Ship owner's decision)</p>	<p>The U.S. State Department grants temporary licenses under ITAR regulations, and the Department of Homeland Security enforces the requirements. http://www.gpo.gov/fdsys/search/section.action?collection=code&code=50101 Selection "Code of Federal Regulations" on right side banner, then "2011" then "Title 22 – Foreign Relations", then "Chapter 1 – Department of State", then "Subchapter M – ITAR Regulations". ITAR Regulations are found at 22 CFR 120-130; specific applicability of Section 22 CFR 123.</p>	<p>Weapons: only fifty caliber or less and not fully automatic. SPS Code: to take into account the ISPS Ship Security Plan conditions (the U.S. requires that private armed guard protection be part of the Ship Security Plan approved by the Coast Guard). U.S. Coast Guard approval: conditions have to be reviewed and approved by the U.S. Coast Guard. No U.S. government insurance requirements.</p>	<p>Port Security Advisory (PSA) on Guidance on Self-Defence or Defence of others by U.S. Flagged commercial vessels operating in high risk waters http://homeport.uscg.mil/mysg/ports/ep/home.do. At search block in upper right hand corner of home page input "port security advisory"; then scroll down to PSA 03-09 to open file</p>	<p>The master has the responsibility for and control of private armed security guards including when the force is used; Liability for use of force is dependent on the circumstances of each case; Security guards are not part of the crew and are treated as passengers for the purpose of safety; Within the Ship Security Plan approval process, the owner is responsible for performing background checks on personnel; The Coast Guard Authorization Act (section 912) provides substantial, but not complete, immunity for monetary damages for any injury or death caused by such force to any person engaging in an act of piracy (—).</p>