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**INTERIM GUIDANCE TO PRIVATE MARITIME SECURITY COMPANIES
PROVIDING PRIVATELY CONTRACTED ARMED SECURITY
PERSONNEL ON BOARD SHIPS IN THE HIGH RISK AREA¹**

1 The Maritime Safety Committee, at its eighty-ninth session (11 to 20 May 2011), approved interim guidance to flag States and to shipowners, ship operators and shipmasters on the use of privately contracted armed security personnel on board ships in the High Risk Area.

2 Given the importance and urgent nature of the issue, and the need to further develop and promulgate detailed guidance and recommendations as soon as possible, the Committee approved and the Council authorized the convening of an intersessional meeting of the Maritime Security and Piracy Working Group (13 to 15 September 2011) to update the guidance, and to develop new guidance for port and coastal States on the same issue.

3 Following the high-level debate on the issue of privately contracted armed security personnel on board ships that took place at its ninetieth session (16 to 25 May 2012), the Committee agreed to also develop guidance to private maritime security companies to complement 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.

4 The Interim guidance to private maritime security companies providing privately contracted armed security personnel on board ships in the High Risk Area is set out in the annex.

5 The attached interim guidance should be read in conjunction with the interim guidance set out in MSC.1/Circ.1405/Rev.2 on Revised 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; MSC.1/Circ.1406/Rev.2 on Revised interim recommendations for flag States regarding the use of privately contracted armed security personnel on board ships in the High Risk Area; and MSC.1/Circ.1408/Rev.1 on Revised interim recommendations for port and coastal States regarding the use of privately contracted armed security personnel on board ships in the High Risk Area²; and the information provided in MSC-FAL.1/Circ.2 on Questionnaire on information on port and coastal State requirements related to privately contracted armed security personnel on board ships, as well as the other recommendations and guidance developed by the Organization for preventing and suppressing piracy and armed robbery against ships.

¹ High Risk Area: an area as defined in the Best Management Practices for Protection against Somalia Based Piracy (MSC.1/Circ.1339), unless otherwise defined by the flag State.
² As they may be revised.

6 Member Governments are urged to bring this circular to the attention of all national agencies concerned with anti-piracy activities, including shipowners, ship operators, shipping companies, shipmasters and crews, and private security companies.

7 Member Governments are also urged to take any necessary action to ensure the implementation, as appropriate, of the interim guidance given in the annex.

8 Member Governments, international organizations and non-governmental organizations with consultative status are invited to bring to the attention of the Committee, at the earliest opportunity, the results of the experience gained from the use of the interim guidance so as to assist the Committee in deciding on any action to be taken.

ANNEX

INTERIM GUIDANCE TO PRIVATE MARITIME SECURITY COMPANIES PROVIDING PRIVATELY CONTRACTED ARMED SECURITY PERSONNEL ON BOARD SHIPS IN THE HIGH RISK AREA¹

1 Purpose

1.1 In recent years there has been a significant increase in the number of ship operators choosing to employ privately contracted armed security personnel (PCASP) for protection against attacks by Somalia-based pirates in the High Risk Area (HRA) of the Western Indian Ocean and Gulf of Aden. According to the United Nations Convention on the Law of the Sea (UNCLOS) (part II, section I, article 2) and customary international law, a coastal State has sovereignty in its territorial sea. This sovereignty within the territorial sea is exercised subject to the rules of innocent passage as per UNCLOS (part II, section 3), and other rules of international law. However, no international guidance or standards exist at present for private maritime security companies (PMSC) providing such services. Such guidance would improve governance, reduce the potential for accidents, and promote competent, safe and lawful conduct at sea.

1.2 Article 92 of UNCLOS refers to the flag State's "exclusive jurisdiction on the high seas", and article 94 of UNCLOS to "duties of the flag State." It is recognized that the decision to allow PCASP on board ships is the prerogative of flag States and not all flag States may allow their use.

1.3 PMSC should acknowledge the possible existence of legal responsibilities with respect to the deployment of PCASP. This should include PMSC seeking the appropriate approval, as applicable and prior to embarking PCASP on board ships, from the competent authorities in:

- .1 flag States;
- .2 countries where the PMSC is registered; and
- .3 countries in which operations are conducted or managed, including countries through which PCASP may transit.

1.4 The purpose of this guidance is to provide interim guidance to PMSC to enable:

- .1 the appropriate content and nature of the documented procedures to be put in place, to allow shipowners to make an informed judgement on the selection of PMSC; and
- .2 PMSC to provide assistance to shipowners in the prevention of acts of piracy and armed robbery against ships in the identified HRA, through the considered deployment of PCASP.

1.5 This interim guidance is not legally binding and is not in itself a set of certifiable standards. It does, however, provide minimum recommendations on the competencies and abilities a professional PMSC is expected to have.

¹ High Risk Area: an area as defined in the Best Management Practices for Protection against Somalia-based Piracy (MSC.1/Circ.1339), unless otherwise defined by the flag State.

1.6 This interim guidance to PMSC should be read in conjunction with MSC.1/Circ.1405/Rev.2 on Revised 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; MSC.1/Circ.1406/Rev.2 on Revised interim recommendations for flag States regarding the use of privately contracted armed security personnel on board ships in the High Risk Area; MSC.1/Circ.1408/Rev.1 on Revised 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 the information provided in MSC-FAL.1/Circ.2 on Questionnaire on information on port and coastal State requirements related to privately contracted armed security personnel on board ships, as well as the other recommendations and guidance developed by the Organization for preventing and suppressing piracy and armed robbery against ships.

2 PMSC professional certification

2.1 The Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict² and the International Code of Conduct for Private Security Service Providers (ICoC)³ are useful reference points for PMSC, but are not directly relevant to the situation of piracy and armed robbery in the maritime domain and do not provide sufficient guidance for PMSC. The Montreux Document, which addresses States, restates rules of international law and provides a set of good practices for States, although it should be noted that international humanitarian law is applicable only during armed conflict. The ICoC, which addresses the private security industry, identifies a set of principles and processes for private security service providers related to support for the rule of law and respect for human rights, but is written in the context of self-regulation and only for land-based security companies, and is therefore not directly applicable to the peculiarities of deploying armed guards on board merchant ships to protect against acts of piracy and armed robbery at sea.

2.2 The prevailing situation off the coast of Somalia therefore necessitates separate and urgent consideration of requirements for the use of PCASP on board ships transiting the HRA.

2.3 This interim guidance is therefore intended to assist in the development of an international standard and certification process for PMSC to protect against acts of piracy and armed robbery at sea and to assist PMSC in demonstrating their competence and professionalism to shipowners in the interim.

2.4 PMSC should seek certification with relevant national and international private maritime security service standards when these are established.

3 PMSC company requirements

3.1 PMSC should establish procedures to provide maritime security services to shipowners and ship operators and comply with all relevant legal requirements.

² The Montreux Document reaffirms the obligation on States to ensure that private military and security companies operating in armed conflicts comply with international humanitarian and human rights law.

³ The ICoC sets forth a set of principles for private security companies.

General

3.2 PMSC should be able to provide documentary evidence to enable relevant interested parties to carry out due diligence. These should include documents relating to incorporation, management and financial standing. This may include, but is not limited to:

- .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 certification.

Applicable law

3.3 PMSC should have awareness and understanding of applicable laws of flag, port and coastal States with respect to the transport, carriage, storage and use of firearms⁴ and security-related equipment and the use of force. In particular PMSC should have:

- .1 understanding of applicable national laws with respect to the transport, carriage, storage and use of firearms and security-related equipment, noting that the approvals from the flag State should be obtained by the shipowners and ship operators and that the PCASP engaged carry the required firearms licence issued or endorsed by the flag State as prescribed; and
- .2 access to competent maritime legal advice on a 24/7 basis, recognizing the complexity of applicable laws concerning the carriage and use of firearms and security-related equipment on board merchant ships.

Insurance cover

3.4 PMSC should hold and maintain for the duration of the contract:

- .1 public and employers liability insurance cover to an appropriate level and as required by the shipowner; and
- .2 personal accident, medical expenses, hospitalization and repatriation insurance.

3.5 As firearms and other security-related equipment are to be part of the contracted plan, PMSC should insure their personnel to carry and use firearms on such voyages for accident, injury and damage arising from the use of firearms and liability for any claim that might arise from the carriage and/or negligent or intentional misuse of firearms.

3.6 PMSC should note references in MSC.1/Circ.1405/Rev.2 on 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 with respect to the impact that deployment of PCASP may have on the shipowner's property and liability insurance cover.

⁴ In the present guidance, all references to firearms include the associated ammunition, consumables, spare parts and maintenance equipment for use by PCASP, and all references to security-related equipment include protective and communication equipment for use by PCASP.

Piracy awareness

3.7 PMSC should have a sound understanding of:

- .1 the changeable piracy situation in the HRA;
- .2 the piracy threat in the region, military operations in the area, and the means to maintain current knowledge; and
- .3 the latest version of the Best Management Practices for Protection against Somalia Based Piracy (BMP) and, in particular, ship protection measures.

Operational competence

3.8 PMSC should have professional capability to carry out their role, which is the protection of persons on board and the ship against unlawful attack, using only that force which is strictly necessary and reasonable. In particular PMSC should be able to provide documentary evidence, which may include:

- .1 maritime (as opposed to land-based) experience;
- .2 documented and implemented company procedures and policies for PCASP operations including, but not limited to, communication, leadership, 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, carriage, storage, embarkation and disembarkation and use 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;
- .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 Management

4.1 Selection, vetting and training of personnel for a PCASP team is crucial to successful and safe transits for the ship 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 PMSC perform due diligence in their management processes.

Selection and vetting of PCASP

4.2 PMSC should have 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;
- .2 history of employment checks;
- .3 military and law enforcement background checks, where applicable;
- .4 record-keeping 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);
- .6 record-keeping of relevant experience and specific certification in the use and carriage of any firearms and security-related equipment to be deployed including in the maritime environment.

Training of the PCASP team

4.3 PMSC should ensure that the PCASP it employs receive and 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 as per section 5 of this document. 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 familiarity of the ship type and the particular route envisaged and in maritime security and protection;
- .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 ship;
- .5 that PCASP personnel are given medical training to a recognized national or international standard;
- .6 that personnel are given appropriate training and/or briefing specific to the ship type, where that ship will be operating 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 PMSC should have in place systems for the provision of security identity documentation, travel documents, visas and all relevant licences.

5 Deployment considerations

5.1 This section addresses the specific aspects of PCASP deployment and the role of PMSC in ensuring efficient and successful deployments, including communications with the shipowner or operator. The particulars of 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, 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 Applicable national laws and regulations (e.g. flag State, port State and coastal State) on the transport, carriage, storage, embarkation, disembarkation, or use of PCSAP and firearms and security-related equipment will need to be considered and reflected in operational practice on a case-by-case basis.

Best Management Practices

5.4 Experience supported by data collected by naval forces shows that the application of the recommendations contained in the latest version of the BMP can make a significant difference in preventing a ship falling victim to piracy or armed robbery against ships. It is recommended that BMP be applied throughout the HRA and in the Internationally Recommended Transit Corridor (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 replaces the need for BMP to be implemented.

PCASP team size, composition and 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. 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 ship's security needs including factors such as the estimated duration of the ship transit, the size and type of ship, its speed and freeboard, the owner's risk assessment, and the agreed duties of the team. 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 ensuring a clear hierarchy and an appropriate skill/experience mix within the PCASP team. The team leader should be competent in ship 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;
- .3 ensuring that the PCASP is provided with suitable equipment, taking into account the voyage risk assessment and discussions between shipowner and PMSC;
- .4 ensuring the provision of appropriate firearms and capability to be employed in accordance with the applicable flag State requirements pertaining to the type, carriage and use of firearms by PCASP. The choice

of firearms should be linked to the agreed need and the rules on the use of force as agreed between the shipowner, PMSC and master;

- .5 given the possibility of serious injury, ensuring the provision of enhanced medical equipment on board capable of managing gunshot wounds. Consideration should be given to the lack of availability of regional medical assistance; and
- .6 ensuring that PCASP are equipped with suitable recording equipment (e.g. video cameras/digital dictaphones) to record and preserve evidence in the event of use of force, as practicable.

Command and control

5.6 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 them. In particular the policy and procedures should contain:

- .1 a clear statement recognizing that at all times the master remains in command and is the overriding authority on board, and an agreed procedure in the event of the master being unavailable;
- .2 a clearly documented set of ship 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 ship's master, officers and crew throughout deployment.

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

- .1 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 monitoring of the daily activities of the onboard PCASP team;
- .3 having a 24-hour emergency response and contingency plan in place covering all foreseeable actions; and
- .4 head office provision of feedback on crew training and ship hardening requirements based on reports received from their onboard team.

Category assigned to PCASP

5.8 Shipowners/operators should refer to any applicable national requirements of the flag State in relation to the category assigned to PCASP on board their ships. PMSC should ensure they understand this in relation to their contracts and equally ensure PCASP understand the implications of the categorization.

Management of firearms and ammunition from embarkation to disembarkation

5.9 PMSC should ensure that the PCASP team manages firearms and ammunition responsibly at all times.

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

- .1 documented compliance with the applicable flag, coastal and port State legislation governing the provision, transport, carriage, storage and use of firearms and ammunition and security equipment from embarkation to disembarkation including ports at which the ship may call whilst the PCASP team is on board. PCASP should be able to prove that the actual inventory carried corresponds with all documented declarations including compliance with any applicable export/import licences;
- .2 the 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 national jurisdiction and port State laws;
- .3 documented standards and procedures for a complete inventory of all firearms, ammunition and security equipment available upon arrival on board the ship (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 natures 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 on board 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 firearms on board the ship;
- .7 the provision of safe areas ("loading bays") for the loading/unloading of weapons;
- .8 a detailed policy for the accounting for of all ammunition at the time of embarkation and disembarkation from each transit, which should include a reconciliation of the inventory of both firearms and ammunition on embarkation and disembarkation;
- .9 a detailed policy and procedures for the zeroing of weapons to the individuals that will carry and possibly be required to use them throughout the transit of the HRA; and

- .10 a detailed policy and procedures for the routine maintenance of PCASP firearms and a programme for the formal inspection and servicing of weapons by a qualified armourer at least annually.

Shipboard familiarization

5.11 PMSC should request assurances from the shipowner that the master and crew have received familiarization with the role of the onboard PCASP security team. Exercising of the crew with the PCASP should occur during the ships voyage, prior to entering the HRA, to ensure that all involved 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 ship.

5.12 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.

Use of force

5.13 PMSC should recognize that laws governing the use of force may differ over time and according to location. The applicable national law, including any criminal laws, 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 and regulations of coastal, port and other States (see 1.1 and 3.3). The location of an incident and/or the nationalities of the ship, the companies and the individuals involved, including of the PMSC, the PCASP and others, will affect the determination of applicable law.

5.14 PMSC should have a clear policy and guidance on the use of force (see 3.8), and should have issued specific rules to PCASP operating for them on the use of force consistent with this guidance (rules on the use of force). These rules should reflect applicable law. The rules should be routinely reviewed and if necessary adjusted.

5.15 PMSC should ensure that PCASP operating for them have a complete understanding of, and fully comply with, the applicable laws governing the use of force. In particular, it should ensure that PCASP understand that:

- .1 they should act according to these applicable laws in the knowledge that their role in regard to the above is exclusively for the protection of life of persons on board and the ship from armed pirate attacks;
- .2 all reasonable steps should be taken to avoid the use of force and, if force is used, that force should be used as part of a graduated response plan, in particular including the strict implementation of the latest version of BMP;
- .3 the use of force should not exceed what is strictly necessary and reasonable in the circumstances and that care should be taken to minimize damage and injury and to respect and preserve human life; and
- .4 PCASP should only use firearms against persons in self-defence or in defence of others.

5.16 An agreed plan of gradual response for use of force, including warning procedures, should be documented, and signed prior to embarkation by all relevant parties, including the

shipowner, the master of the ship and the PMSC. The plan should include a description of the roles of the Master and the PCASP team leader.

- 5.17 PMSC, in consultation with the shipowner, should ensure that:
- .1 both the master and the PCASP team have had the rules for the use of force explained to them;
 - .2 the master and the PCASP team understand and agree the conditions governing when and how the decision to invoke the rules for the use of force is made, and by whom; and
 - .3 the master and the PCASP team sign an undertaking that they have read and understood the rules for the use of force.

Reporting and record-keeping

5.18 PMSC should ensure that the PCASP team leader maintains a log recording every incident in which firearms are deployed, to be acknowledged by the master. Such incidents should be documented in detail in the form of a piracy report. A record should also be made of every instance when a weapon is discharged for any reason other than in self-defence, for example, training, accidental discharge.

5.19 PMSC should ensure that a formal written report of each incident involving the use of force, to be forwarded to the shipowner/ship operator, is made by the PCASP team leader and acknowledged by the master. This report may include:

- .1 time and location of the incident;
- .2 details of events leading up to the incident;
- .3 written statements by those involved in the incident from the PCASP team;
- .4 injuries and/or material damage sustained;
- .5 lessons learned from the incident and, where applicable, recommended procedures to prevent recurrence; and
- .6 documentation of any tests, including drug or alcohol tests, taken during the investigation of the incident.

5.20 The written report referenced in 5.19 may be accompanied by any available video footage or photography.
