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Executive summary

The shipowner has a responsibility to provide a seaworthy ship for his crew and cargo. The shipmaster has the on-board responsibility for the safety of the ship, crew, cargo and their effects on the environment. Together the ship owner, ship manager and shipmaster must manage the PEESTLE components of counter-piracy to enable a successful voyage. [Appendix A](#) of this paper explains the PEESTLE Framework. The company's risk management activities must understand, be based upon, and grounded in the legal and social constructs of the society in which it functions.

The carriage of armed guards has generally been successful in reducing the rate of attacks and the number of hijacked ships. No ship carrying armed guards has been reported hijacked to date. There have been incidents where embarked security forces have fired on small craft that proved to be non-threatening. Warning shots using solid projectile ammunition have proven ineffective in preventing deaths in these cases. Solid projectile, or ball ammunition is prone to ricochet. More effective methods of alerting small craft approaching vessels that their actions are perceived as suspicious or threatening have been developed. Wider use of unambiguous defensive warning methods may increase merchant ships' perception of security, confirming illegal intent on vessels that actually are attacking, and give private security teams a basis of proof that their actions were both lawful and proportionate to the perceived threat to their ship. In the absence of protection by government forces of the littoral or flag State, individuals on board a ship have the absolute right to defend themselves against attack by pirates or armed robbers. The use of force must be of the minimum level necessary, and reasonably believed to be required to resolve the situation.

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1 Introduction

In response to a Framework Programme (FP) 7 Security call for ‘Non-military protection measures for merchant shipping against piracy’, PROMERC is a Research project to provide situational awareness and ship-specific countermeasures to enable ship managers and shipmasters to aid in the selection of cost-effective and appropriate actions to avoid, deter and defend against pirates.

This paper examines the basis and justification for the shipboard use of force - policy and practice including: individual self-defence, Rules for Use of Force (RUF), orders and responsibility, liability in the ship's context, present practice and examples with reference to international rules and national legislation.

For the purposes of this analysis, the following definitions will be used:

Self-defence – The use of force to protect oneself or other persons against an attack which threatens their life, will cause grievous bodily harm, or restrict their freedom of autonomy. The use of reasonable and necessary force, including lethal force, to defend against attack or imminent attack.

Force – Pressure, power, or violence directed against an assailant.

Lethal force – Force which a reasonable person knows or should know is likely to cause serious bodily harm or death.

Use of Force (UoF)– The application of force.

These and other definitions are compiled in [Appendix C – Other definitions](#).

1.1 PROMERC Counter-piracy Measures Manual

The Manual provides a practical guide to assist in the selection of appropriate non-military Counter Measures in order to reduce the risk of shipboard piracy. The Manual is available as a soft copy document and as an interactive web application that can be interactively searched to retrieve information regarding Counter Measures that match the input criteria. The Political, Economic, Ethical, Social, Technological, Legal and Environmental (PEESTLE) factors affecting European public perception and legal compliance of non-military protection measures are assessed in the manual. [Appendix A](#) explains the PEESTLE Framework.

Layered Defence

The PROMERC Manual recommends a layered approach to defence:

- ❖ Training & Preparations: Aspects of company, ship and crew readiness for the voyage
- ❖ Intelligence & Routing: Selection of voyage route to reduce the risk of encountering piracy
- ❖ Surveillance & Alerts: Heightened situational awareness to quickly respond to latest information
- ❖ Non-lethal Deterrence: Defence methods (passive or active) to stop attack prior to boarding
- ❖ Professional Security: Armed guards and other methods to ensure measured use of force
- ❖ Physical Barriers: Defence methods to stop boarding once attackers are on board of vessel
- ❖ Citadel: Bastion to sustain crew while under siege by pirates in control of vessel ¹

1.2 Graduated Use of Force

Use of Force in the shipboard context ranges from presence and alertness at the lowest level of force up to the use of deadly force as the most lethal alternative.

A minimum requirement of the ship's security plan will be an alert watch. The presence of an alert watch, on a well-lit ship, will deter many attempts to breach security. Pirates are not interested in a pitched, prolonged battle. They are looking for the highest ransom at the lowest cost to them in time and risk. As in any escape from a predator, the prey does not have to be the fastest of those trying to escape, but needs to ensure that they are not the slowest. In a similar fashion, ships transiting high-risk waters need to make themselves a target that is not worth the effort the pirates will have to expend to capture the ship.

The most effective ship's policies will expend the minimum level of effort, in time, money, people and use of force to reduce the risk of piracy to the lowest reasonably practicable level.

¹ ProMerc, Counter-Piracy Measures Manual.

2 Methods and results

2.1 Methods

This paper examines IMO guidance, national legislation, Best Management Practices and commercial guidance. Selected case law will be examined to extract a framework for improved decision-making by ship managers and shipmasters.

2.2 Results

The conclusions of this report will be considered by the Ethics Advisory Board in their evaluation of the PROMERC deliverables.

3 Discussion and Conclusions

3.1 Self-defence

The shipmaster and crew have an individual right to defend themselves against attack. The United Nations General Assembly adopted the Universal Declaration of Human Rights in 1948. Article 3 of the Declaration states that “Everyone has the right to life, liberty and security of person.” “There will inevitably exist circumstances in which certain essential rights of the individual can only be protected by conceding to the individual the right to take initial measures of protection”.²

The Convention for the Protection of Human Rights and Fundamental Freedoms recognizes that persons have a right to life, and also to protect their own life, and the lives of others from criminal use of force. The text reads:

ARTICLE 2

Right to life

1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
 - a. in defence of any person from unlawful violence;
 - b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection.³

3.2 Responsibility

The International Convention for the Safety of Life at Sea (SOLAS) chapter XI-2 “Special Measures to enhance maritime security” entered into force in 2004, and amended SOLAS to include a new chapter mandating the International Ship and Port Facility Security Code (ISPS Code). The ISPS Code includes requirements for companies which operate ships that are subject to the Convention, and gives guidance on how companies may comply with the Code.

The Code requires adoption by the company of a Ship Security Plan for each ship under management. Each Company must designate a Company Security Officer (CSO), who maintains the Ship Security Plans (SSP), Ship Security Assessments (SSA), supports the Ship’s Security Officer (SSO), and liaises with Port Facility Security Officers (PFSO).⁴ The Ship’s Security Officer is responsible for implementing the Company’s Plan on board the ship in support of the Master.⁵

The Ship Security Assessment includes “identification of possible threats to the key ship board operations and the likelihood of their occurrence, in order to establish and prioritise security measures”⁶. A Ship Security Assessment should be conducted before selecting a ship for employment on any voyage through High Risk Waters. Commercial Crime Services, a specialised division of the International Chamber of Commerce currently defines High Risk Waters as:⁷

- South East Asia and Indian Sub-Continent
- Africa and Red Sea

² Bowett, D. (2008) *Self-Defence in International Law*, New York:Praeger, 3.

³ Council of Europe. (2010). *European Convention on Human Rights*. Retrieved from <http://www.echr.coe.int>.

⁴ IMO. (2004). *International Ship and Port Facility Security Code (ISPS Code)*. Part A, Section 11.

⁵ IMO. (2004). *ISPS Code*. Part A, Section 12.

⁶ IMO. (2004). *ISPS Code*. Part A, Section 8.4.3.

⁷ ICC-ICS. (2015). *Piracy & Armed Robbery Prone Areas and Warnings*. Retrieved from <https://icc-ccs.org/piracy-reporting-centre/prone-areas-and-warnings>.

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- South and Central America and the Caribbean Waters

In IMO documents, a “High Risk Area” is an area as defined in the Best Management Practices for Protection against Somalia-based Piracy, unless otherwise defined by the flag State.⁸

The assessment of risk must be conducted during the process of selecting a ship for assignment to a particular trade, charter or voyage. The shipowner or manager must evaluate the vulnerabilities of the ship, to decide on whether a particular ship is suited for a specific employment. A fast, high freeboard ship is less vulnerable to boarding by pirates than a slow speed, low freeboard ship. Once vulnerabilities have been identified, measures can be taken to mitigate the vulnerabilities. Mitigation measures should be based on Best Management Practices, and supplemented by countermeasures identified in the ProMerc Counter-Piracy Measures Manual. After applying the selected mitigation measures, risk is again assessed to gauge whether the initial risk has been reduced to an acceptable level.

Shipowners have a responsibility toward their crew and the shippers of their goods to protect ships from dangers which may be encountered on their intended voyages.

The shipowner has a “bounden legal duty towards the mariners for the safety of their lives, and towards the merchants who load their goods, 'that the ship should be tight, staunch, and strong, and in every way fitted fo the voyage,' or, in other words, 'seaworthy;’”⁹ “The preservation of the seaman’s own life is an inalienable right of the individual and must include the right not to put one self in harms way and the right to run away from mortal danger other than that normally foreseeable in the course of a seafaring career. To presume seamen to have consented to the risk of capture and duress by pirates is an assumption often made by many shipowners.”¹⁰

The Maritime Labour Convention 2006 entered into force on 20 August 2013. The Convention provides that “Every seafarer has the right to a safe and secure workplace that complies with safety standards.”¹¹

This section will consider the shipowners’ responsibility for seaworthiness and the authority of the shipowner and master to protect the ship and crew.

3.2.1 Seaworthiness

Black’s Law Dictionary defines seaworthy as “Properly equipped and sufficiently strong and tight to resist the perils reasonably incident to the voyage for which the vessel is insured.”¹² Many other definitions will be found, particularly as applied to marine insurance and charter parties. The basic concept of seaworthiness is ancient. The Marine Insurance Act states “A ship is deemed seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the sea of the adventure insured.”¹³ There is no fixed or absolute standard of seaworthiness, and the wording of s. 39(1) itself makes this clear: it states that the ship shall be seaworthy for ‘the purpose of the particular adventure insured’.¹⁴ A ship may be seaworthy for one voyage, but not for another.

3.2.2 Authority

A shipowner may elect to protect the crew by employing private security companies to repel immediate pirate attacks under the right of self-defence.¹⁵ A shipowner who fails to protect his crew leaves them vulnerable to capture, grievous bodily harm or death.

⁸ IMO. (2012). 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.
<http://www.imo.org/OurWork/Security/SecDocs/Documents/Piracy/MSC.1-Circ.1405-Rev2.pdf>.

⁹ *Gibson v Small*, (1853) 4 HL Cas 353 at 370.

¹⁰ Warren, R. (2011). *Piracy and shipowners’ ethical dilemmas*, Manchester Metropolitan University Business School, Manchester, UK, www.emeraldinsight.com/1746-5680.htm.

¹¹ ILO. (2006). Maritime Labour Convention 2006, Article IV.1.

¹² Garner, B. (2014) *Black’s Law Dictionary* (10th ed.), 1380.

¹³ *Marine Insurance Act 1906*, 39(4).

¹⁴ Hodges, S. (1996) *Law of Marine Insurance*, 127.

¹⁵ Kees, A. (2011). *Regulation of Private Military Companies*, 3 *Goettingen J. Int’l L.* 199, 203.

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If pirates attempt to deprive vessels of their right to exercise the freedom of navigation, the shipowner and the crew may take reasonable steps to defend the navigation, the shipowner and the crew may take reasonable steps to defend the vessel and the crew while in the exercise of freedom of navigation. These measures, as part of the vessel's legally required vessel security plan, may involve security guards and outfitting lethal and nonlethal weapons, fittings such as razor wire and armour, and equipment, as well as training crew members in the use of lethal and nonlethal measures in self defence.¹⁶

Who is in charge? Under SOLAS, “The owner, the charterer, or the company, as defined in regulation IX/1, operating the ship or any other person, shall not prevent or restrict the master of the ship from taking or executing any decision which, in the master's professional judgment, is necessary for safe navigation and protection of the marine environment.”¹⁷ The International Safety Management (ISM) Code requires the Company to establish that “the master has overriding authority and the responsibility to make decisions with respect to safety”.¹⁸ The International Ship & Port Facility Security Code (ISPS Code) also states “The Company shall establish in the ship security plan that the master has the overriding authority and responsibility to make decisions with respect to the safety and security of the ship”¹⁹

The authority of the Master is well established but two competing lines of authority intervene. First is the case of armed forces personnel placed on board for the purpose of safeguarding the ship and her cargo. These military security detachments serve under their parent organization's Rules of Engagement. They draw their authority from the sovereign powers of the providing state, and their weapons are not under the Master's control. Second, each person has a right of self-defence. The Master may not order a person who feels that his life is in danger not to defend himself. Crewmembers may be armed to defend themselves and their shipmates. Arming crewmembers requires special training and certification and is generally not recommended except for vessels in government service.²⁰ Merchant ships were historically armed against pirates, but this practice fell into disuse in the mid-nineteenth century. Privately contracted armed Security personnel (PCASP) may be employed to defend the ship and crew.

3.2.3 Liability

Failure to maintain the seaworthy condition of the ship may make the shipowner liable in various ways, depending upon the nature of the contract, the breach of the warranty of seaworthiness, and when the breach is discovered. In a contract of marine insurance, unseaworthiness is a peril not insured against, and a loss due to unseaworthiness is not recoverable. Under a charterparty, the carrier could be liable to a shipper for delay and damage to the cargo. The International Transport Workers Federation has recently concluded a new agreement on crew compensation under which “seafarers shall be entitled to compensation amounting to 100% of the basic wage and a doubled compensation payable in case of death and disability.”²¹

3.2.4 Application of Human Rights

The European Court of Human Rights has accepted that Article 2 of the European Convention on Human Rights may imply “a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.”^{22,23} This protection applies to seamen in

¹⁶ Squire Patton Boggs. (2009). Protecting Crews and Ships From Piracy by Arming Merchant Vessels for Self Defense. Retrieved from <http://www.lexology.com/library/detail.aspx?g=c834dd3d-bb76-4064-8cc4-1e12046001d5>.

¹⁷ IMO. (2014). *SOLAS Consolidated Edition*. SOLAS Chapter V, Regulation 34-1.

¹⁸ IMO. (2014). ISM Code and Guidelines on Implementation of the ISM Code 2014, Part A, Section 5.2.

¹⁹ IMO. (2003). *ISPS Code 2003 Edition*, Part A, Section 6.1.

²⁰ Weir, G. (2009). *Fish, Family, and Profit: Piracy and the Horn of Africa*. Naval War College Review. <http://oai.dtic.mil/oai/oai?verb=getRecord&metadataPrefix=html&identifier=ADA519361>.

²¹ Maritime Accident Casebook. (2011). *International Bargaining Forum reaches new piracy area agreement*, <http://maritimeaccident.org/2011/03/%EF%BB%BF-international-bargaining-forum-reaches-new-piracy-area-agreement/>.

²² Osman v. the United Kingdom, - 23452/94, Judgment 28.10.1998 [GC].

²³ Harris, D. (1994) The Right to Life under the European Convention on Human Rights 1 Maastricht J. Eur. & Comp. L. 122.

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pursuit of their occupation. Use of deadly force by Vessel Protection Detachments may fall under Article 2(2), while actions taken by non-state actors would not.

3.3 Best Management Practices

BMP4, *Best Management Practices for Protection against Somalia Based Piracy* is the industry standard for ships transiting the Arabian Sea. It is produced and supported by over 20 international organizations, representing industry, crewing and military organizations. The three fundamental requirements of BMP are Register at MSCHOA, Report to UKMTO, and Implement SPMs. Registration with MSCHOA enables naval ships to maintain an accurate picture of ships in High Risk Waters and respond quickly in case of attack. Reporting to UKMTO gives the military response forces accurate information as to the ship's capabilities, precautions and vulnerabilities. Implementing Ship Protection Measures (SPMs) is an internationally acknowledged minimum standard for ships transiting the Arabian Sea area. BMP4 says the listed measures are the most basic that are likely to be effective. Owners who fail to implement the measures are at the greatest risk of being found to have failed to make their ships fit for the intended voyage.

3.4 Rules for Use of Force

3.4.1 Rules of Engagement

Rules of Engagement (RoE) are issued by military authorities to guide commanders and individual soldiers in the conduct of their mission. RoE are not applicable to non-military personnel, including Privately Contracted Armed Security Personnel (PCASP).

3.4.2 Rules for Use of Force (RUF)

Rules of Engagement apply specifically to the military forces which promulgate and apply them. Privately Contracted Armed Security Companies (PCASP) are not subject to these Rules, and set their own guidelines for the conduct and use of force of their employees. Since the rise of PCASP off Somalia in 2008, public concern about regulation of PCASP grew.²⁴ The first reported incident of an armed guard team firing upon and killing an individual engaged in an attack upon a merchant ship came in 2010.²⁵ The incident occurred the third time *Almezaan* had been attacked by pirates.²⁶ The increase in the number of ships thought to be carrying armed guards, and their use against attackers led to the development of standards for the development of a Publicly Available Standard by the International Standards Organization in 2012.²⁷ This document evolved and was adopted as an International Standard in 2015.²⁸

3.4.2.1 100 Series Rules

The 100 Series Rules for the Use of Force have been developed by legal experts and shipping and security industry interests, and consist of a model set of rules for worldwide use by PCASP. The 100 Series Rules have been developed for the benefit of the entire maritime industry and under-pinned by a thorough public international and criminal law legal review using an objective international law test of what is "reasonable and necessary" when force is used, as a lawful last resort, in self-defence. This objective international legal test is deemed to be of a higher legal standard than that of subjective national legislative provisions for self-defence. The 100 Series Rules will not bind flag States as to their use, but instead provide a choice for their potential incorporation into national guidance as determined by respective governments and competent authorities.²⁹ The 100 Series Rules are attached as [Appendix B – The 100 Series Rules](#).

²⁴ Isenberg, D. (2012, May 26). The Rise of Private Maritime Security Companies. *SomaliaReport*. Retrieved from <http://www.somaliareport.com>.

²⁵ Cowell, A. (2010, March 24). In First, Private Guards Kill Somali Pirate. *New York Times*. <http://www.nytimes.com/2010/03/25/world/africa/25pirate.html>.

²⁶ Morris, L. (2010, March 25). Pirate shot dead in attack on UAE ship. *The National*. <http://www.thenational.ae/news/uae-news/pirate-shot-dead-in-attack-on-uae-ship>.

²⁷ ISO. (2012). ISO/PAS 28007:2012 Guidelines for Private Maritime Security Companies. Geneva: ISO.

²⁸ ISO. (2015). ISO 28007-1:2015 Guidelines for Private Maritime Security Companies. Geneva: ISO.

²⁹ 9 Bedford Row International. (2013). *100 Series Rules*. <https://100seriesrules.com/>.

3.5 Use of Force

The level of force must used be carefully calibrated to be appropriate to the level of threat perceived, reasonable, necessary and proportionate to the situation at hand. The threat level can change rapidly and the decision on the level of force to employ may change in seconds. The spectrum of force to be employed starts with the alert watch mentioned above. The ship's security posture will be increased in planned steps as the level of threat in the area of transit increases. Lookouts will be added, defensive lighting measures employed, and physical barriers to boarding may be employed. Once in the area where pirates are known to operate, armed watches will be stood, if an armed guard has been determined to be required due to the nature of the voyage. Company procedures of the shipping company and the armed security company must be negotiated well before the High-Risk Area. Each member of the ship's company, both seagoing crew and security team must be clear on the Rules in place. "(S)ecurity personnel must understand that, when confronted with a situation where force may be required, the response they select must be appropriate to the perceived threat. Level of force training must emphasize the concept that the decision to employ a particular level of force must be predicated on a "reasonable perception" of the threat."³⁰

The purpose of the use of force must always be to stop the attack. Use of force against pirates who have attacked a ship and the people on it is a permitted response to a present and unlawful use of force in every known system of law.

3.5.1 Non-kinetic force

The application of non-kinetic force seeks to achieve the purpose of the user by means other than through the threat or application of energy to the human body.³¹

As stated in IMO Circular 1405, the primary function of security personnel, both ship's crew and contract security, is to prevent pirates from boarding the ship. Posting attentive lookouts, lighting the ship, using fire hoses, and razor wire may convince a pirate to seek easier targets. This is the best possible outcome for the ship, crew, shipmaster and shipowner. If a passive security posture does not deter an approach by pirates, "personnel to take all reasonable steps to avoid the use of force. If force is used, it should be in a manner consistent with applicable law. In no case should the use of force exceed what is strictly necessary and reasonable in the circumstances."³²

3.5.1.1 Presence

A visible, alert watch and security posture are the first steps towards inducing pirates not to attack. An alert watch is comparable to the presence of a security guard at a bank ashore, or a police presence at a public event. The purpose of the presence is to deter attackers. If deterrence is ineffective, the watch escalates response in proportion to the actions of the attackers. Pirates are looking for the maximum return on their crime at the least risk to themselves, and may often be dissuaded by a prepared ship.

3.5.1.2 Lighting

Ship's lighting should be deployed to minimize the detection range of the ship. BMP4 suggests using the minimum lighting required for safe navigation before pirates are detected. Lighting may be employed to maximize the crew's opportunity to detect pirates, while minimizing the pirates' opportunity to target security team members.

3.5.1.3 Sound

The ship's whistle and general alarm can be used to indicate that pirates have been detected. Acoustic devices with pre-recorded announcements are useful to warn vessels that their conduct is being taken as a security concern by the ship, and inform them that action will be taken if the threat comes closer to the ship. Recordings should be made in the languages of small boatmen likely to be encountered on the voyage, and in increasing levels

³⁰ U. S. Marine Corps. (2008). *Law Enforcement Manual*, MCO 5580.2B, 27 August 2008 at 6-6.

³¹ Casey-Maslen, S. (2010). *Non-kinetic-energy weapons termed 'non-lethal'*, Geneva Academy of International Law and Human Rights. <http://www.geneva-academy.ch/docs/projets/Non-Kinetic-EnergyOctober2010.pdf>

³² IMO. (2012). 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. <http://www.imo.org/OurWork/Security/SecDocs/Documents/Piracy/MSC.1-Circ.1405-Rev2.pdf>.

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of urgency for use as a boat approaches. If time and the range of detection permit, warnings can be transmitted prior to the escalation of force.

3.5.1.4 Barriers

Razor wire is often used to make boarding more difficult, and to channel boarders into avenues where they more easily be observed and counteracted.

3.5.2 Less-than-lethal force

3.5.2.1 Warnings

Acoustic devices that transmit a level of sound that is uncomfortable or painful to the recipient, to induce them to stop approaching.

3.5.2.2 Entanglement

Propeller entanglement devices may be deployed to stop attacking skiffs.

3.5.2.3 Projectiles

Flash bang rounds, which have ranges up to 300 meters, and discharge a large visually apparent smoke cloud and loud report are used to determine intent of approaching vessels, and warn them away. Riot control devices such as foam projectiles and wooden rounds may be utilized to deter attack.

3.5.3 Deadly force

Use of deadly force is justified only under conditions of imminent threat and as a last resort, when all lesser means have failed or cannot reasonably be employed in the time available. Deadly force may be used in self-defence when necessary to protect personnel who reasonably believe themselves to be in imminent danger of death or serious bodily harm. "(P)roof of self-defence constitutes an absolute defence in that it renders the homicide justifiable."³³

Whenever a person employs deadly force, there is risk of personal liability for the harm or injury inflicted. Using deadly force in foreign jurisdictions may entail the risk of being subjected to foreign civil or criminal charges or suit. There is no law that assures immunity from trial or suit in foreign jurisdictions. The generally applicable standard for acceptable use of force is the same as that which will sustain a defence of "self-defence," that is, whether the nature, amount and use of the force was reasonably justified in light of all the relevant circumstances.

The purpose of use of force is to prevent the attackers from causing bodily harm or death to persons on the ship. The appropriate level of force must be used to deny the pirates access to the vessel. If the pirates are able to board, increased levels of force may be needed to protect the lives of the crew. Security teams and crew will be at risk of retaliation should pirates get aboard and if force is used, especially if use of force leads to death among the pirates.

3.6 International positions on the Use of Force

3.6.1 United Nations

The United Nations Human Rights Committee (UNHRC) has stated that "the protection against arbitrary deprivation of life... is of paramount importance. "Human rights law already permits the use of lethal force when doing so is strictly necessary to save human life. In order to be considered lawful, the use of lethal force must always comply with the principle of necessity and must be used in a situation in which it is necessary for self-defence or for the defence of another's life."³⁴ The United Nations Human Rights Council Sub-Commission on the

³³ Wynn v Mahoney, 600 F. 2d 448 at 450.

³⁴ UNHCR. (2008). *Human Rights, Terrorism and Counter-terrorism*, Fact Sheet No. 32. Retrieved from <http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>.

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Promotion and Protection of Human Rights appointed Ms. Barbara Frey as Special Rapporteur to prepare a study on the prevention of human rights violations committed with small arms and light weapons.

Self-defence is a widely recognized, yet legally proscribed, exception to the universal duty to respect the right to life of others. Self-defence is a basis for exemption from criminal responsibility that can be raised by any State agent or non-State actor. Self-defence is sometimes designated as a “right”. There is inadequate legal support for such an interpretation. Self-defence is more properly characterized as a means of protecting the right to life and, as such, a basis for avoiding responsibility for violating the rights of another.³⁵

3.6.2 IMO

The International Maritime Organization has issued several documents which provide guidance to companies and masters.

Circular 1405, Rev.2, dated 25 May 2012, provides guidance to shipowners and shipmasters on the use of Privately Contracted Armed Security Personnel (PCASPs).³⁶ Circular 1405 should be closely studied by the Company and Vessel Security Officers, the shipmaster, and others involved in contracting for security. It contains a risk assessment outline, and advice on selection of a contractor. The sections on team composition and command and control form the basis for important discussions by the shore operational structure, with the master, and with the security company. The circular also covers weapons management and use of force.

Circular 1406 Rev.3, updated 12 June 2015, provides recommendations to the flag state regarding use of armed security personnel.³⁷ The annex to 1406 does not take a stand on the use of PCASP, but recommends that Flag States should:

- provide clarity to masters, seafarers, shipowners, operators and companies with respect to the national policy on carriage of armed security personnel.
- require the parties concerned to comply with all relevant requirements of flag, port and coastal States.
- have in place a policy on whether or not the use of PCASP will be authorized and, if so, under which conditions.

Circular 1443 provides guidance to companies providing PCASP in High Risk Areas.³⁸ This document covers professional certification, documentary evidence of company governance, understanding of applicable law, insurance cover, operational competence and management. The document mentions the Montreux Document, and states that while not directly applicable, but is a useful reference.

3.6.3 Montreux Document

The Montreux Document³⁹ is the most comprehensive instrument on the management and use of Private Security Companies (PSCs) during time of war on land. By reaffirming that states have a duty to ensure that PSCs operating

³⁵ Frye, B. (2006). *Prevention of human rights violations committed with small arms and light weapons*, Human Rights Council, Sub-Commission on the Promotion and Protection of Human Rights, A/HRC/Sub.1/58/27*27 July 2006.

³⁶ IMO. (2012). 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.
<http://www.imo.org/OurWork/Security/SecDocs/Documents/Piracy/MSC.1-Circ.1405-Rev2.pdf>.

³⁷ IMO. (2015). Revised Interim recommendations for Flag States Regarding the Use of Privately Contracted Armed Security Personnel on board Ships in the High Risk Area.
<http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Guidance/Documents/MSC.1-Circ.1406-Rev.3.pdf>.

³⁸ IMO. (2012). Interim Guidance to Private Maritime Security Companies Providing Privately Contracted Armed Security Personnel on board Ships in the High Risk Area.
<http://www.imo.org/OurWork/Security/SecDocs/Documents/Piracy/MSC.1-Circ.1443.pdf>.

³⁹ International Committee of the Red Cross. (2009) *Montreux Document*. Geneva:ICRC.

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in armed conflicts comply with international humanitarian law and human rights law, the Montreux Document helps dissolve some of the mystery surrounding the requirements for lawful actions of such organizations.⁴⁰

3.6.4 Flag States

3.6.4.1 Denmark

Fighting piracy is a high priority for the Danish government. The government has therefore formulated a multi-annual and multi-pronged strategy for Danish efforts against piracy.⁴¹

According to the Strategy for the Danish counter-piracy effort 2011-2014, the shipping companies therefore 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.⁴²

3.6.4.2 Marshall Islands

The Marshall Islands along with ICS and BIMCO submitted the 100 Series Rules as an information paper to the IMO's Maritime Safety Committee in 2013.⁴³ A Marine Notice from the Maritime Administrator recognizes that

Whether to embark PCASP or VPD on board is a decision for the vessel owner, operator, and Master to make after assessing the piracy related risks in the area where the vessel will be operating, as well as the potential risks and benefits of available anti-piracy related countermeasures. This assessment could include discussions with charterers, counsel, and underwriters.⁴⁴

3.6.4.3 Norway

The Security Regulations do not encourage the use of such guards, but rather are intended to regulate the selection and use of private armed security guards to ensure that the highest possible professional and ethical standards are followed in connection with the use of such services on vessels registered in Norway.

These guidelines are not exhaustive, and it is recommended that companies and any hired security firms/guards engage professional, qualified advisers to establish the scope of the legal rules to which they are subject under Norwegian law.⁴⁵

3.6.4.4 United Kingdom

"Private Maritime Security Companies (PMSCs) wishing to employ armed guards on board UK registered ships in these exceptional circumstances must be authorised to possess a range of firearms".⁴⁶

⁴⁰ Kraska, J. (2012) *International and Comparative Regulation of Private Maritime Security Companies Employed in Counter-Piracy*. Modern High Seas Piracy, (Douglas Guilfoyle, Ed. Elgar, 2012). Available at SSRN: <http://ssrn.com/abstract=2223751>.

⁴¹ Danish Ministry of Foreign Affairs. (2015). *Counter-Piracy*. <http://um.dk/en/foreign-policy/piracy/>.

⁴² Danish Ministry of Foreign Affairs. (2011). *Strategy for the Danish counter-piracy effort 2011-2014*. http://um.dk/~media/UM/English-site/Documents/Politics-and-diplomacy/Pirateristrategi_2011_ENG_WEB.PDF

⁴³ PIRACY AND ARMED ROBBERY AGAINST SHIPS An International Model Set of Maritime Rules for the Use of Force (RUF) Submitted by the Marshall Islands, ICS, ISO and BIMCO, MSC 92/INF.14 9 April 2013 .

⁴⁴ Use of Privately Contracted Armed Security Personnel (PCASP) Republic of the Marshall Islands, Marine Notice No. 2-011-39, Rev 8/13.

⁴⁵ Norwegian Maritime Authority. (2012). *Provisional guidelines – use of armed guards on board Norwegian ships*. [https://www.sjofartsdir.no/PageFiles/3282/Provisional guidelines – use of armed guards on board Norwegian ships.pdf](https://www.sjofartsdir.no/PageFiles/3282/Provisional%20guidelines%20-%20use%20of%20armed%20guards%20on%20board%20Norwegian%20ships.pdf).

⁴⁶ UK Home Office. (2015). *Home Office guidance to applicants to possess firearms to protect UK registered ships*. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180859/Guidance_to_applicant_s_to_process_any_firearms_to_protect_UK_ships_v4.pdf.

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The rules state that ‘The UK treatment of firearms held on board ships depends on whether they are a commercial vessel or pleasure craft, UK or foreign registered, whether the firearms are to be landed and the perceived threat such firearms represent in the circumstances they are held on board a ship (para 6.12.1).

‘In most cases, so long as the firearms are declared and secured and remain secured while the vessel is in UK waters, there will be no need for the authorities to board the ship for firearms control purposes. If a foreign vessel is authorised to remain in UK waters for longer than originally intended, the firearms will be removed into HMRC [Her Majesty’s Revenue & Customs] custody for safekeeping under detention procedures (para 6.12.4).’

3.6.5 Open Registries

The problem of piracy has been exacerbated by the expansion of open registry shipping or flags of convenience, as they are also known. States that operate open registries do not have the naval resources to police the high seas in protection of the vessels flying their respective flags. When American flagged shipping was attacked by pirates, protective measures were taken by the United States Navy. NATO patrols the waters off Somalia as Operation Ocean Shield, with contributions from NATO partners, plus Ukraine and New Zealand.⁴⁷ India, Japan, Korea and China have engaged in joint anti-piracy patrols in the Indian Ocean. Liberia, Panama and other open registry flags cannot offer the same level of practical protection to vessels flying their flags.⁴⁸ Panama informs their vessels to take into account the guidelines established by IMO.⁴⁹

3.6.6 Transit States

There is a conflict between the private interest of a company to protect its vessels and seamen by carrying armed security guards on board, and the public interests of a coastal state to ensure its national security.⁵⁰ Weapons and ammunition may complicate port visits in some countries. South Africa requires advance notice of visits by ships carrying defensive weapons.⁵¹ Egypt requires that weapons and ammunition be removed from ships transiting the canal, carried by Egyptian government authorities, and returned to the ship at the completion of the canal transit.^{52,53}

Further, if the ports of call for a merchant ship are in small island nations, it could easily be the case that the private security firm yields superior firepower to the local police. Certainly, it is well within a state's interest to determine how many and what type of weapons it will allow within its territory - if any at all.⁵⁴

3.6.7 Your own situation

Each individual combination of ownership State, flag State, and State of citizenship will have its own set of laws which may be applied to judge the legality of the carriage of weapons, use of force, applicability of self-defence laws, and culpability for injury or death to crewmembers or persons injured by the actions of those on board. If an incident occurs in waters where a littoral State claims jurisdiction, the laws of that State may also be applied.

3.7 Reference Works

⁴⁷ NATO. (2014). *Operation Ocean Shield*. http://www.nato.int/nato_static_fl2014/assets/pdf/pdf_topics/141202a-Factsheet-OceanShield-en.pdf.

⁴⁸ Davidson, S. (2000) *Dangerous Waters: Combating Maritime Piracy in Asia*, 9 *Asian Y.B. Int'l L.* 3.

⁴⁹ Panama Maritime Authority. (2013). *Interim Recommendations for Panamanian Flagged vessels using PCASP while arriving, staying and departing from International Ports*. <http://www.segumar.com/wp-content/uploads/2013/05/MMC-234-mayo2013.pdf>.

⁵⁰ Mo, J. (2010). *Options to Combat Maritime Piracy in Southeast Asia*, *Ocean Development & International Law*, 33:343–358 at 351.

⁵¹ UK P&I Club. (2011). *Armaments on Merchant vessels.*, <http://www.ukpandi.com/loss-prevention/article/750-03-11-armaments-on-merchant-vessels-update-south-africa-2419/>.

⁵² American Shipper. (2010). *Suez gun law catches carriers in crosshairs*, http://www.americanshipper.com/newweb/FC/FLC_story.asp?news=165758.

⁵³ Hedaya, E. RADM. *Maritime Transportation Sector*. (2012). Letter. <https://extranet.skuld.com/upload/INSIGHT/Piracy/Egypt - Armaments on board vessels.pdf>.

⁵⁴ Boren, J. (2014). *Negligent Prosecution*, 16 *Eur. J.L. Reform* 19, 29.

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The following documents may be of assistance when compiling the applicable regulations, and understanding what your company needs to do to comply with your responsibilities.

Facing Violence: Preparing for the Unexpected explores many aspects of self-defence not covered in most works. For the purposes of this paper, these included:

- Legal and ethical implications
- Violence dynamics
- Avoidance
- Immediate response to attack
- The aftermath

*The UK Law on Self-Defence*⁵⁵ is relevant to those who may be subject to UK law, and may be instructive for those in derivative legal systems.

It is both good law and good sense that a man who is attacked may defend himself. It is both good law and good sense that he may only do, what is reasonably necessary.⁵⁶

*Coping with Piracy*⁵⁷ is a guide to implementing Best Management Practices as a minimum standard for ships entering High Risk Areas, and prepares shipowners to make the informed decisions as to how to man and equip their ships to protect their crew.

Defending Against Pirates: The International Law of Small Arms, Armed Guards and Privateers examines the domestic laws of over 180 states, territories and dependencies as they apply to their regulatory regime applicable to the carriage of weapons and armed guards on merchant ships.

The International Chamber of Shipping and European Community Shipowners Association have created a “*Comparison of Flag State Laws on Armed Guards and Arms on Board*”.⁵⁸ This is a table covering the requirements for armed guards and arms, the terms and conditions under which they may be permitted, for 32 states. The document cautions that the official requirements of the flag state should always be consulted before taking action.

3.8 Conclusions

The Master, with his owners, may take on board weapons and ammunition to protect those on board from kidnapping, bodily harm, or death. Any actions taken by those on board must be proportional to the threat faced by the crew.

Weapons provided for use by armed security teams must be legally obtained, exported from the country of origin, properly manifested and controlled through customs in transit countries, and properly controlled while in the Master’s custody on board.

A ship that is not fit for the intended voyage is unseaworthy. Shipmasters and shipowners have a right and a responsibility to protect their ships, crews, and cargoes. Failure to protect the ships may lead to hijacking, kidnap, ransom or death of crewmembers. As costs of ransoms escalate, insurance interests may decide that continuing to pay ransoms is no longer cost-effective. Shipowners who fail to exercise an appropriate standard of care to protect their ships may find themselves without insurance cover, as ships are found not fit to pursue the intended voyage, leading to loss of insurance cover due to unseaworthiness and shipowner negligence.

Masters and owners who fail to have a planned response to pirates may, on the other hand, be at risk of unlawful use of force by improperly trained crewmembers, or insufficiently controlled and supervised armed security forces.

⁵⁵ Hill, T. (2012). *The UK Law on Self-Defence* <https://itun.es/us/vAF4D.I> Andrews.

⁵⁶ *Palmer v R*, [1971] AC 814.

⁵⁷ Jones, S. (2013) *Coping with Piracy*. London: Nautical Institute.

⁵⁸ ICS and ECSA. (2015). *Comparison of Flag State Laws on Armed Guards and Arms on Board*. <http://www.ics-shiping.org/docs/default-source/Piracy-Docs/comparison-of-flag-state-laws-on-armed-guards-and-arms-on-board3030D998A844.pdf>.

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While lawsuits from injured pirates are unlikely, and dead men tell no tales, lawsuits by crewmembers injured by PCASP are almost certain to develop if security teams are not properly screened before embarkation.

Not only are onboard security teams more effective than navies, as they are guaranteed to be present at the point and time of attack, but their usage is economically sustainable in a way that naval patrols are not. Widespread use of private security personnel also likely reduces the drag of maritime piracy on the global economy better than state naval protection, since the relatively low costs of the security detail may furthermore be offset by a decrease in insurance rates.⁵⁹

The shipowner or operator must decide well in advance of a ship's entry into High Risk Waters what steps are required to properly and lawfully protect the crew, ship and cargo. The elements of these decisions will depend on the particulars of the ship, the route, season of the year, and type of cargo on board. The decision whether or not to employ armed guards must be based on a careful risk assessment applying the laws of the flag state, state of ownership, and transit states. Advice from specialist legal counsel, Protection and Indemnity Clubs, and professional security sources is critical to protect the ship from pirates, and the company from legal action. The ProMerc project, and decision support tools have been created to assist the stakeholders in evaluating options and arriving at decisions that fit their circumstances.

⁵⁹ Williams, P and Pressley, L. (2013). *Maritime Piracy: A Sustainable Global Solution*, 46 Case W. Res. J. Int'l L. 177 2013, 208.

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http://cordis.europa.eu/fp7/cooperation/home_en.html

<http://ec.europa.eu>

6 Appendix A – The PEESTLE Framework

The objective of this work is to review Political, Ethical, Economic, Societal, Legal and Environmental (PEESTLE) frameworks, identifying relevant factors affecting European public perception and legal compatibility of non-military protection measures. A catalogue of the relevant factors affecting European public perception and legal compatibility of non-military protection measures has been created.

Political

List current and potential influences from political pressures on non-military measures. Such pressures could come from specific political parties, lobbies, movements, or powerful associations.

Economic

Examine the national, EU, and world economic impact of non-military measures. Such factors area does not encompass the "costs" of each countermeasure, because such costs have been considered Technical factors (and not Economic factors). The economic area is instead related to issues such as insurance companies reactions to the countermeasure, for example, or the effect of the countermeasure on regional trade, or on shipping companies economics.

Ethical

Investigate of the moral and ethical norms within European society regarding the use of non-military protection measures. Ethical is meant as a collection of certain ideas with certain kinds of content, and by the role in which such ideas play in human-social interaction. It encompasses factors such as religion, beliefs, personal principles.

Social

Research ways in which changes in society could affect non-military measures. It encompasses factors such as the cultural background of countermeasure user, or age.

Technological

Investigate technical and technological viability of countermeasures.

Legal

Determine how national, EU, and global legislation affects non-military measures. The legal framework at stake is too polyhedral to be catalogued in specific and narrow factors, but this survey tries to rationalize the most important legal issues which could hinder the usefulness of some countermeasures.

Environmental

Decide how national, EU, and global environmental issues impact non-military measures. The Environmental area is not related to how the weather factors (storms, hurricanes, and so on) could impact on countermeasure; it is instead related to how the use of any countermeasure may influence the environmental setting.

More information on the PEESTLE process, and the results of PROMERC's PEESTLE evaluations may be found in the project documentation.⁶⁰

⁶⁰ PROMERC website, <http://www.promerc.eu/>

7 Appendix B – The 100 Series Rules

NOTHING IN THESE RULES SHALL BE INTERPRETED IN ANY WAY WHATSOEVER AS LIMITING AN INDIVIDUAL'S RIGHT OF SELF-DEFENCE AS UNIVERSALLY RECOGNISED AND PROVIDED FOR UNDER APPLICABLE AND RELEVANT NATIONAL AND INTERNATIONAL LAWS.

RULE 100

In the event of any actual, perceived or threatened attack by third parties the Team Leader (TL) or, in the TL's absence, other PCASP, shall advise the Master or (in the Master's absence) the Officer of the Watch that he intends to invoke these Rules for the Use of Force.

NOTE 1: Nothing in these Rules shall be construed as a derogation of the Master's authority under SOLAS. Accordingly, the Master always retains the authority to order the PCASP to cease firing. However, for the avoidance of doubt, nothing in these rules shall compromise each of the PCASP's right of self-defence in accordance with applicable and relevant national and international law.

NOTE 2: The Master shall, at all times have and retain ultimate responsibility for the safe navigation and overall command of the ship. Any decisions made by the Master shall be binding and the PMSC must instruct the PCASP accordingly.

NOTE 3: Each of the PCASP shall always have the sole responsibility for any decision taken by him for the use of any force which must always be in accordance with these Rules and applicable and relevant national and international laws.

RULE 101

Non-kinetic warnings may be used where there is a reasonable belief that a craft is displaying behaviour(s) assessed to be similar to those of a potential attacker.

NOTE 1: Non-kinetic warnings may include, but are not limited to, the use of VHF, loud- hailers and/or recorded defensive messaging equipment projected by electronic means (Long / Medium Range Acoustic Devices (L/MRAD)) and evasive ship actions. Non-kinetic warnings by visual signal means may include, but are not limited to, the use of flashing lights, flares and non-lethal eye-safe lasers as per manufacturer's instructions. Non-kinetic warnings including the use of water cannon and/or high pressure water hoses may also be appropriate.

NOTE 2: Firearms may be held up and visually shown to a potential attacker as part of a non-kinetic warning and an accompanying verbal warning given by PCASP. Normal safety procedures shall be conducted on all firearms and the TL shall command the PCASP to "Load" the firearms with ammunition at the designated loading bay. Loaded firearms should have safety catches applied.

RULE 102

Firearms may be used to fire aimed Warning Shots when it is assessed by the TL or in the TL's absence, other PCASP, that Warning Shots may deter an actual, perceived or threatened attack.

NOTE 1: A verbal warning is to be given by PCASP prior to firearms being discharged.

NOTE 2:

Subject, whenever necessary, to the authorization of the Master, Warning Shots shall be deliberately aimed and fired at an assessed safe distance by PCASP around the attackers/potential attacker's craft. They are solely intended to further reinforce the deterrence of a perceived attack and no more rounds than are necessary should be fired.

NOTE 3:

Any use of force, especially the use of firearms, shall take into consideration the risk of any unintended consequences or harm.

RULE 103

When under attack or when an attack is imminent, reasonable and necessary use of force may be used in self-defence, including, as a last resort, lethal force.

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NOTE 1: A ship and the persons on board are under attack when it is perceived that they are subjected to force which is likely to result in death, serious bodily harm or abduction.

NOTE 2: An attack is imminent when the need to defend against it is manifest, instant and overwhelming.

NOTE 3:

The firing of firearms directly at an attacking craft in order to disable the attacking craft is legitimate, in order to attempt to neutralize/prevent an on-going attack and when all other graduated RUF measures have failed to deter the attack.

DEFINITIONS

“Abduction”: To seize or detain any person without lawful authority or reasonable excuse from a Ship.

“Armed Robbery”: Any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a states’ internal waters, archipelagic waters and territorial sea and or any act of inciting or of intentionally facilitating an act described above.

“Attack”: A ship and the persons on board are under attack when they perceive they are subjected to force which is likely to result in death, serious bodily harm or abduction. “Crew”: The Ship’s Master, Officers and ratings.

“Firearms”: Portable barrelled weapon from which projectile(s) can be discharged by an explosion from the confined burning of a propellant and the associated ammunition, related ancillaries, consumables, spare parts and maintenance equipment used by security personnel at sea.

“Hijacking”: Illegal seizure or exercise of control over a ship by force or threat thereof or any other form of intimidation

“Potential Threat”: An individual, grouping of individuals and/or vessel that may be assessed as committing or about to commit an act that threatens the safety of the ship on which a PCASP is embarked.

“Imminent”: Manifest, instant and overwhelming. “Lethal Force”: Force that may result in death. “Non-kinetic”: Any warning means that does not include the firing of firearms. “Piracy”: Any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the Crew or the passengers of a private ship or a private aircraft, and directed:

(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; or

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State.

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

“Privately Contracted Armed Security Personnel” (PCASP): The personnel directly engaged or employed by the Private Security Company or Private Maritime Security Company for the performance of security services on board the Ship.

“Private Maritime Security Company” (PMSC): Any privately contracted company that provides both armed and unarmed security services to the maritime industry for the protection of clients against a range of potential threats.

“Self-defence”: Use of reasonable and necessary force, including lethal force, to defend against attack or imminent attack.

“Suspicious Contact or Craft”: Any vessel which exhibits behaviour similar to that of a potential threat.

“Team Leader”: The member of the Privately Contracted Armed Security Personnel (PCASP) designated as the Team Leader and identified as such to the ship’s Owners, Master, Officers and Crew. “

8 Appendix C – Other definitions

Definitions shown in quotations are duplicated from the 100 Series Rules, in [Appendix B](#), above.

“Abduction”: To seize or detain any person without lawful authority or reasonable excuse from a Ship.

“Armed Robbery”: Any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a states’ internal waters, archipelagic waters and territorial sea and or any act of inciting or of intentionally facilitating an act described above.

“Attack”: A ship and the persons on board are under attack when they perceive they are subjected to force which is likely to result in death, serious bodily harm or abduction.

“Crew”: The Ship’s Master, Officers and ratings.

Deadly force – Force which a reasonable actor knows or should know is likely to cause serious bodily harm or death.

“Firearms”: Portable barrelled weapon from which projectile(s) can be discharged by an explosion from the confined burning of a propellant and the associated ammunition, related ancillaries, consumables, spare parts and maintenance equipment used by security personnel at sea.

Force – Pressure, power, or violence directed against an assailant.

“Hijacking”: Illegal seizure or exercise of control over a ship by force or threat thereof or any other form of intimidation

“Potential Threat”: An individual, grouping of individuals and/or vessel that may be assessed as committing or about to commit an act that threatens the safety of the ship on which a PCASP is embarked.

“Imminent”: Manifest, instant and overwhelming. “Lethal Force”: Force that may result in death. “Non-kinetic”: Any warning means that does not include the firing of firearms.

Non-kinetic force – Force which seeks to achieve the purpose of the user by means other than through the threat or application of energy to the human body.⁶¹

“Piracy”: Any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the Crew or the passengers of a private ship or a private aircraft, and directed:

(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; or

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State.

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

“Privately Contracted Armed Security Personnel” (PCASP): The personnel directly engaged or employed by the Private Security Company or Private Maritime Security Company for the performance of security services on board the Ship.

“Private Maritime Security Company” (PMSC): Any privately contracted company that provides both armed and unarmed security services to the maritime industry for the protection of clients against a range of potential threats.

⁶¹ Casey-Maslen, S. (2010). *Non-kinetic-energy weapons termed ‘non-lethal’*, Geneva Academy of International Law and Human Rights. <http://www.geneva-academy.ch/docs/projets/Non-Kinetic-EnergyOctober2010.pdf>

D5.2 – Shipboard Use of Force

Self-defence – The use of force to protect oneself or other persons against an attack which threatens their life, will cause grievous bodily harm, or restrict their freedom of autonomy.

“Suspicious Contact or Craft”: Any vessel which exhibits behaviour similar to that of a potential threat.

“Team Leader”: The member of the Privately Contracted Armed Security Personnel (PCASP) designated as the Team Leader and identified as such to the ship’s Owners, Master, Officers and Crew.

Use of force – The application of force.