



BIMCO

Guidance on Rules for the Use of Force (RUF) by Privately Contracted Armed Security Personnel (PCASP) in Defence of a Merchant Vessel (MV)

References:

- A. GUARDCON
- B. IMO MSC Circular 1405 Rev1.

1. Introduction

This Paper provides guidance to ship owners (and their Masters) and Private Maritime Security Companies (PMSC) in areas and in those exceptional circumstances where the use of armed guards are permitted by the Flag State.

This guidance is written to assist ship owners and PMSC meet the requirements listed in the References and agree RUF in support of the above References. It sets out guidelines for a graduated response by armed security guards to any actual, perceived or threatened act of piracy and/or violent robbery and/or capture/seizure by third parties in order to protect the crew and defend a vessel from being hijacked.

In providing this Guidance it is assumed that no armed guards shall be deployed without a detailed risk assessment by the Ship owners and that the deployment of armed guards shall not be an alternative to the implementation of the current Best Management Practices (BMP) and other protective measures.

2. Aim of the Guidance

The aim of the this Guidance is to assist Ship owners and PMSC to review RUF, pertaining to the type, carriage and use of firearms and equipment, in order to provide an accurate and graduated level of response for employment by PCASP that is reasonable and proportionate.

3. Scope

The general requirements of any RUF should be that they are:

(a) In accordance with Flag state law;

(b) In accordance with regulations of any port and any Port and Coastal state laws which govern the storage and use by PCASP of their weapons and Security Equipment;

- (c) Consistent with the aim of protecting and defending the crew and vessel;
- (d) Consistent with the use of force only being used when essential and then using the minimum level necessary;
- (e) Part of a detailed and graduated response plan which is reasonable and proportionate;
- (f) Clear in setting out the roles of the Master and the Team Leader of the PCASP;
- (g) Documented, agreed and signed by the Owners and the Contractors as an Annex to any contract/agreement for the provision of security services on board a ship; and
- (h) Recommended to be submitted by the Owners to the Flag State prior to embarkation of the PCASP.

4. PMSC and PCASP Obligations

The RUF should reflect the obligations imposed and agreed under any contract/agreement and should ensure that the PMSC Team Leader (TL) and the PCASP confirm that they understand these obligations. The RUF should contain guidance that PCASP:

- (a) Are trained and qualified to relevant documented PMSC standards in the appropriate use of force in accordance with Flag state law;
- (b) If they use force it is in a manner consistent with applicable law;
- (c) If they use force it does not exceed what is strictly necessary;
- (d) Use of force is proportionate and appropriate to the situation;
- (e) Have clear and unambiguous instructions and training on when and how force may be used; and
- (f) Take all reasonable steps to avoid the use of lethal force.

5. Self-Defence and the inherent right to exercise it

The RUF should reflect that each of the Security Personnel shall always have the sole responsibility for any decision taken by him for the use of lethal force, including targeting and weapon discharge, always in accordance with the Rules for the Use of Force and applicable national law. Under most national laws individuals have a right to use reasonable force to prevent a serious crime and the right to use force in their own personal self-defence, and the RUF should reflect these rights as appropriate.

6. Chain of Command

The RUF should reflect the regime set out in Clause 8 (Master's Authority and Division of Responsibilities) of GUARDCON and Reference B, namely that the Master has overall control of the vessel and that any decisions made by the Master shall be binding.

It is envisaged that once the Team Leader has decided that there is an actual, perceived or threatened attack he will advise the Master or the Officer of the Watch that he intends to invoke the RUF. It is recognised that consultation with the Master may not always be possible, but there is always a responsible officer on the bridge of the vessel with whom the TL should be able to communicate.

The RUF should reflect that once the RUF has been invoked the TL is responsible for all decisions on the use of force, save that the Master maintains the right to order a ceasefire.

7. Graduated and Proportional Defence

The RUF should reflect the following guidance on graduated and proportional use of force:

(a) Principles

- (i) To enable the graduated approach and command and control of the situation defined above the force used must be necessary and proportional;
- (ii) Respect for human dignity and the human rights of all persons should prevail; and
- (iii) Attempts at non-violent means should be applied first.

(b) Non-violent measures

Examples of non-violent means for consideration are:

- (i) Presence – being visible on the upper deck and bridge wings to potential attackers;
- (ii) Visual – the use of flares or lasers initially aimed over a potential attackers head and then at them;
- (iii) Sound – the use of long range acoustic signalling devices (LRAD) giving warnings or any other means such as loud hailers or even written banners; and
- (iv) Show Intent – the use of passive measures such as hoses, releasing objects to hinder approaches of skiffs (nets, logs etc), showing PCASP weapons and raising them to indicate intent to use.

(c) Weapon states

Firearms are to be stowed in a firearms' container when not required. The keys to the container should be under the control of the TL as guided by the Master.

(d) The RUF should consider "states of readiness" for the PCASP. It is suggested that there should be three states for consideration:

- (i)** Normal: Firearms are stowed in the container/locker with PCASP maintaining normal watchkeeping;
- (ii)** Heightened: Firearms out of the container/locker with PCASP on watches with crew and weapons loaded but made safe; and
- (iii)** Stand To: PCASP prepares stand to positions with weapons made ready with safety catches applied and under orders of the TL.

(e) The following actions should then be considered:

- (i)** The TL assesses the precise level of risk and decides on action to be taken;
- (ii)** The TL issues fire control orders to the PCASP team clearly identifying the intended target/s and type of fire;
- (iii)** PCASP open fire as directed by the TL.

(f) Types of Fire

- (i)** The decision to open fire having been taken by the TL, the type of fire should be defined in the RUF taking into account the distance and behaviour of the suspect craft.
- (ii)** First, warning shots should be:
 - (1)** fired into the air a safe distance above the skiff/over the pirates' heads or, to the side of the skiff, to display clearly the armed capability of the PCASP;
 - (2)** fired into the water ahead of the skiff for the same purpose;
 - (3)** utilised to assess the accurate range, speed and angle of approach of the target skiff.
- (iii)** Second, disabling fire should be used against the skiff engine or hull in order to stop the attack but without intentionally using lethal force.
- (iv)** Third, deliberate direct fire should be used against the attackers when all other methods have failed.

(g) Use of Lethal Force and Opening Fire at a Person

(i) Lethal force should be used only as a last resort and in accordance with the principles referred to in Paragraph 5 above. The circumstances where lethal force in self-defence can be used will vary. Such circumstances may include an armed attack of an MV where the attackers are, for example:

(1) Firing directly at the MV or persons on board in circumstances where the attackers have failed to heed warning shots or other deterrent measures (assuming there was sufficient time for such measures).

(2) Preparing to fire or firing at the vessel whilst clearly demonstrating an intention to close with vessel in an attempt to board, by positioning very close or alongside and preparing climbing ladders for that purpose.

(3) Aiming, launching, rocket propelled grenade or equivalent.

(h) If a PCASP opens fire the RUF should explain that only:

(i) Aimed shots should be fired to stop the attack;

(ii) No more rounds than are necessary should be fired in order to stop the attack; and

(iii) All precautions should be taken not to injure anyone other than the targeted person.

8. Post Incident Action

The RUF should provide that any attack should be reported immediately to UKMTO (the UK Maritime Trade Operations office in Dubai) and other authorities, as appropriate; furthermore that the use of firearms needs to be reported to the Flag State. The RUF should also consider the necessary reporting responsibilities which may involve their personnel having to give statements.