

National and International Regulation and Practices Pertaining to PMSC of Malaysia

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Abstract

The cases of sea robberies and crimes in Asia and particularly in Malaysia waters from 2013 to 2018 is quite alarming. The cases from 2013 to 2018 is consecutively 150, 187, 203, 85, 101, and 83. There was a steady increase in cases from 2013 to 2015, which reached a peak of 203 cases in 2015. The current area of serious concern is the Sulu-Celebes Sea and waters off Eastern Sabah. The Malaysia maritime security forces that consist of the Royal Malaysian Navy, MMEA, and Marine Police have all out to stop these sea crimes. The increased number of assets and frequency of patrol is not practical and costly and it is difficult to ensure the security of each vessel. One solution by the shipowner is to engage the service of the private maritime security company (PMSC) as a last security net. Ministry of Home Affairs (MOHA) had established regulation for the operation of PMSC in Malaysia based on local law. However, the regulation is not compatible with international requirements and especially when shipping is the most international industry in the world. The reason for the incompatibility is may due to MOHA was using regulations and standards of on-land private security companies in Malaysia to develop the standard for the private maritime security firm. Another reason is Marine Department Malaysia, which represents Malaysia in the International Maritime Organization was not referred.

Keyword: Private Maritime Security Company, Maritime Security, Regulation, ISPS Code, UNCLOS

1. Introduction

Seafarers are exposed to the risk of piracy due to geographical area and activities area. Nearest high piracy area to Malaysia such as Celebes-sea, Malacca straits, Singapore Straits, Java Sea, and South China sea. Statistics show that increase in piracy activities since 1995 around the world. The increasing number of piracy activities are quite alarming to the world until ISPS code were established, ISPS code introduced to counter piracy and terrorist threats[1]. Shipping companies are started to hire private maritime security services to escort their vessel to high piracy areas. This measure had shown its effect by reducing the number of piracy cases as shown in statistics year 2012. Piracy activities normally are hijacked of the vessel and its crew for ransom, stealing of cargo, and crew personal properties. The hotspots of piracy today are the Indian Ocean, East Africa, and the Far East including the South China Sea, South America, and the Caribbean.

Private Maritime Security Company (PMSC) is the company provides security service and consultancy to private vessels, commercial ships, and offshore terminals and structures whether at sea or marine ports. Security issues about the terrorist attacks at US in 2001 and increase in 2003 during the aftermath of the gulf war trigger the setup of PMSC [2]. PMSC was introduced by International Maritime Organization (IMO). Among the services provided is armed vessel security in a high-risk area, vessel's security audits, and crew training. PMSC is deemed necessary as an additional security layer to the existing maritime security forces. PMSC is the last security net to ship owners from the attack from pirates, robbery, and terrorists. PMSC is a company that provides security services to assist vessels from piracy attacks and needs to get a license from the authority of the state. In the IMO called as private contracted armed security personnel and for the Montreux document called as private military and security company. In Malaysia, the license to operate the PMSC is obtaining from Ministry of Home Affairs Malaysia (MOHA). However, National Security Council Malaysia (NSC) is responsible to create the standard operation procedure for PMSC to operate in accordance with the national's regulation. Guidelines for PMSC operation are produced by IMO which specifically the maritime security committee. Other international bodies are Security Association Maritime Industry (SAMI)[3] and International Association Maritime Security Professional (IAMSP) that produce the best practice.

There is no compatibility between national SOP of Malaysia with the international regulation Shipping is the largest industry trade in the world, where the shipowner, ship's crew, and flag of registration are from different countries. The area of the vessel operates is also foreign to those mentioned. Therefore, shipping should follow both international and national standards. While the cases of piracy keep happen unstopped [4]

However, standard developed by MOHA is not compatible with the international requirement set by IMO, and other international security agency and flag state. Even the MOHA standard is conflicted with the practice of Marine Department (MARDEP) of Malaysia as the responsible agency for the ship's safety and security.

The reason for the incompatibility is may due to MOHA was using regulations and standards of on-land private security companies in Malaysia to develop the standard for the private maritime security firm. Another reason is Marine Department of Malaysia, which represent Malaysia at International Maritime Organization was not referred

The objective of this study is to identify local and international regulation and guidelines pertaining to PMSC.

2. Research Method

The first objective is to obtain existing SOP from the relevant agency in Malaysia, namely MOHA and National Security Council (NSC) Malaysia. This is conducted by personal engagement with the relevant officials and the interview was using unstructured interview method. The result of interview have provided information on SOP of PMSC.

The second objective is to identify relevant international regulations and guidelines. This is performed by using an online search as engine such Google and search in the organization website, namely IMO, ISO, SAMI and ICOCA.

3. Results and Analysis

Table 1 shows Standard Operational Procedure (SOP) for PMSC. SOP are come out NSC and MOHA. It is relevant to use standard operational procedure because sop are standard from authority. All the point from the procedure are considered can be used as,

how to handle services, how the company need to comply with standard authority, who is authority that involves in maritime security company and regulation that operation needs to follow.

Method of Handling Maritime Security Services	Application Requirement -Recruitment of guards -Firearms usage & Handling -Approved operational area -Type of services approved -Handling of journey, operation and accident -Escort Vessel -Insurance coverage -Uniform dress -Report -Training -Audit -Closing
SOP Firearms handling and usage	Application -Approved Type Firearms -Firearms Storage -Firearms quantity/ ratio -Firearms mobilization -Monitoring
SOP Maritime Security Services Onboard Vessel	Requirement -Responsible area -Security monitoring and control -Dealing with accident
SOP Maritime Security Services for Escort Vessel	Requirement -Responsible area -Security monitoring and control -Dealing with accident
SOP Maritime Security Services in Port Area	Requirement -Responsible area -Security monitoring and control -Dealing with accident
SOP Maritime Security Services for Oil Platform/ Static Floating Structure	Requirement -Responsible area -Security monitoring and control -Dealing with accident
SOP Maritime Security Services for Island and Coastal Area	Requirement -Responsible area -Security monitoring and control -Dealing with accident

Table 1: Standard Operational Procedure for PMSC Malaysia (SOP)

Best management practice 5 (BMP5) provides fundamental to deter piracy during voyage ship to the destination. BMP 5 also support by 26 organization such BIMCO, INTERCO. Requirement fundamental for BMP 5 is to understand the threat, conduct the risk assessment, implement ship protection, report to UKMTO (initial, daily, final, and report of suspicious. The purpose of BMP5 is to help ship plan voyage and use the 3D concept of, detect, deter, and delay piracy. To conduct the risk assessment need to consider

capability, intent, and opportunity that can make piracy a threat. There is three-layer to defend the ship and ship protection measures such a primary layer of defense is a good lookout, razor wire, increase speed, and hire privately contracted arm security personnel. The secondary layer of defend is door hardening, use gate or grate, and use CCTV to surveillance the piracy. And the last layer of defending is entering the room of the citadel [5].

UNCLOS is an international treaty that sets out the legal framework for ocean activities. It defines the maritime zones along a country's coastline, and the rights and duties of a country regarding these zones [6]. UNCLOS also recognizes that coastal states have sovereign rights over the natural resources of the seabed and subsoil of the continental shelf, as well as jurisdiction over certain activities like marine scientific research. Unites nation convention Law of Sea 1984 is binding law about boundaries and more protect to sovereignty if any issue involves boundaries against the law. Definition piracy is defined at high sea referred by UNCLOS 1984 and ISPS CODE 2014

ISPS are come from incident 9/11 after the terrorist attacked and adopt under SOLAS Xi-2 convention which is all the region that sign for SOLAS needs to implement for ISPS code for ship and port security. In the ISPS code are provided guideline 3 level of security which is level one is normal operation which ship and port in the mode normal, level two is heightened as long as risk of security incident and level three is Exceptional for the period of time when a probable security incident

Suppression Unlawful Act Convention SUA Convention 2005 act of violence that adopted on 10 March 1988 that disporitor by International Maritime Organization IMO with the purpose of SUA convention is to make sure appropriate action punishes to the person that committing unlawful act against ship. SUA convention not apply to the warship only apply to the merchant ship against law. An example of unlawful act is the hijack of a vessel [7].

The Montreux Document, in line with international humanitarian law, was written bearing in mind that PMSCs operate in an armed conflict environment. However, it is also meant to provide practical guidance in other contexts. A current example is the contracting of PMSCs to protect merchant shipping against acts of piracy. Even if fighting piracy is best understood as a matter of law enforcement (and not of armed conflict), the Montreux Document's statements on jurisdiction remain pertinent reading[8].

The increased threat to commercial shipping by piracy in the Indian Ocean and other areas around the world has led to extensive use of Private Maritime Security Companies (PMSC) that supply Privately contracted armed security personnel PCASP to provide security onboard vessels transiting the high risk areas. ISO 28007 was published in 2015 and replaces ISO/PAS 28007:2012 which was introduced due to rapid growth in the number of maritime security companies and the implications of using PCASP (legal issues, safety concerns for seafarers and varying national regulations). ISO 28007 gives guidelines containing additional sector, Specific requirements, which PMSCs wishing to comply with ISO 28000 can implement to demonstrate that they provide appropriate PCASP services onboard ships. Compliance to the ISO 28007 specification demonstrated by ISO 28000 certification[9].

Security Association Maritime Industry (SAMI) and International Association of Maritime Security Professional (IAMSP) one of the association that contributes to the maritime security world that ensuring better regulation for PMSC and how to deter piracy[10].

The International Code of Conduct for Private Security Service Providers (ICoC) is a set of principles for private military and security providers, created through a multi-stakeholder initiative convened by the Swiss government. This process involved and continuously involves representatives from private security companies, states, and civil society organizations. The code reinforces and articulates the obligations of private security providers particularly with regard to international humanitarian law and human rights law. The ICoC also sets the foundation for developing an institutional framework to provide oversight of and accountability to the ICoC. Accordingly, the stakeholders involved agreed on 'Articles of Association' setting up an oversight mechanism, the International Code of Conduct Association (ICoCA)[11], which has received mixed reviews[12].

Maritime Safety Committee (MSC) deals with all matters related to maritime safety and maritime security that make the guidelines for PMSC. Below is table 2 of regulation that related to PMSC [13].

MSC.1/Cir.1408	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.
MSC.1/Circ.1406/Rev.2	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.1405/Rev.2	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-FAL.1/Circ.2	Questionnaire on information on port and coastal state requirement related to privately contracted armed security personnel onboard.
MSC.1/Circ.1443	Interim guidance to private maritime security companies providing privately contracted armed security personnel on board ship in the high-risk area.

Table 2: Description of Maritime Safety Committee circular

4. Conclusion

The study has identified six SOP produced by MOHA and NSC that is relevant to PMSC. These SOP are in line with the national regulation, namely Firearms Act 1960, Private Agency Act 1971, Port Authority Act 1993, MSO 1952& 1960, ZEE Act 1984, National Security Act (5) PB 1979. For International, identified bodies that produced the regulation and guidelines are IMO, ICOC, the Government of Switzerland, and UNCLOS. Guidelines produced by IMO are as follows; MSC.1/Cir.1408, MSC.1/Circ.1406/Rev.2, MSC.1/Circ.1405/Rev.2, MSC-FAL.1/Circ.2, MSC.1/Circ.1443. Guidelines produced by the Government of Switzerland is Montreux Document. Results obtained in this study had fulfilled the two objectives sets earlier in the study. The article has listed the regulation that PMSC needs to protect the interest of sovereignty and business. The increase of piracy cannot be solved but it can enhance security by making regulations and make best practices as refer to the international guidance such IMO, UNCLOS, ISPS code. Studies find the

best practices to deter piracy, and guideline for shipmaster, shipowner, and ship operator. Bodies that related to security are playing their own roles in order to enhance security and counter-piracy.

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