



SAMI

Security Association for
the Maritime Industry

www.seasecurity.org

Briefing Document 08/2011:

Use of armed guards on board Norwegian ships



August 2011

Use of armed guards on board Norwegian ships



The Norwegian Maritime Directorate is a government body sub-ordinated the Ministry of Trade and Industry and the Ministry of Environment.

The directorate has jurisdiction over ships registered in Norway and foreign ships arriving Norwegian ports.

The directorate's main goals are to prevent accidents and to achieve a high level of safety for lives, health, vessels and the environment.



Norges
Rederiforbund
Norwegian
Shipowners'
Association

The Norwegian Shipowners' Association (NSA) is an interest and employer organisation for over 160 Norwegian affiliated companies within shipping and offshore construction operations.

It's members are the core and driving force in the Norwegian maritime environment.

NSA members employ over 55 000 seamen and offshore workers from more than 50 different nations.

As a response to the steadily increasing and extremely violent acts of piracy occurring off the coast of Somalia and in the Indian Ocean a number of States have begun to reassess the legislation, guidance and rules they have in place governing the security of their vessels.

One of the most high profile reviews has been undertaken by the Norwegian Government as they have taken steps to ensure that ships registered in Norway are able to protect themselves as effectively as possible against acts of piracy and pirate attacks.

As part of this process the decision has been made to regulate the use of private armed security guards by means of changes to the Regulations of 22 June 2004 No. 972 concerning security, anti-terrorism and anti-piracy measures and the use of force on board ships and mobile offshore drilling units (the Security Regulations) and the Regulations of 25 June 2009 No. 904 concerning firearms, firearm parts and ammunition, etc. (the Firearms Regulations). The amendments entered into force on 1 July 2011.

The Norwegians have stressed that the new 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. Similar to the stance taken by SAMI, the States engaged are not "pro-arming", but they are very much "pro-standards".

The decision to use armed guards may only be taken once a risk assessment has been completed that shows that measures in accordance with the BMPs will not ensure satisfactory security. This requirement affirms the duty of companies to carry out a risk assessment before private armed guards are brought on board.

Moreover, it also affirms the fundamental condition that private armed security guards must be a supplement to, and not a replacement for, passive security measures recommended by the industry.

What follows is a brief assessment of the new rules which have emerged, however this guidance is not exhaustive.

International rules, industry standards, etc.

At present, there are no binding international rules that govern the use and selection of private armed security guards. The IMO regulations (MSC.1/Circ.1405 and 1406) are a work in progress, though it is interesting to note that much of their contents has been driven by the work of the Norwegian administration and government.

Much of the current work is focused on bringing the relatively new demand for armed security in line with the existing legal framework.

Customary international law, among other legal authorities, provides that the use of force is restricted to cases of necessity or self-defence, i.e. cases in which there is no other way out and in which the requirements of necessity, reasonableness and proportionality are observed in connection with the use of force.

The UN Convention on the Law of the Sea of 1982 adopted several principles for combating piracy on the open seas in accordance with customary international law. In general, the Convention on the Law of the Sea grants a very wide scope for the use of force against piracy by nation states. However, UNCLOS provides no basis for private law enforcement.

The threads of the Norwegian regulations are in essence spread across a number of existing Acts – these include the Ship Safety and Security Act, the Firearms Act, the Security Guard Services Act, with sanctions underpinning them as laid down within the General Civil Penal Code 1902.

The Ship Safety and Security Act

The Norwegian “Ship Safety and Security Act” lays down rules regarding on-board security measures that must be implemented to prevent and protect against illegal actions against the ship. These measures are preventive, and it is the company that is obliged to implement them.

The Act sets out the measures such as key elements of the ISPS Code. While primarily intended to prevent acts of terrorism, it can be transposed onto all unlawful actions against the ship, including acts of piracy.

The Act gives the master special authority to implement measures and use force to protect the ship against unlawful actions, and to maintain calm and order on board.

The Firearms Act

The Act of 9 June 1961 No. 1 relating to firearms and ammunition, etc. regulates all trade and acquisition of civilian firearms. The Act establishes that any person intending to acquire, own or hold firearms requires a permit from the chief of police (a firearm licence). The Act is primarily formulated to regulate firearms on Norwegian soil, and is little suited to the special conditions which apply in the present case. On the other hand, the presence of firearms on board Norwegian ships has not been particularly relevant since the passing of the Act, until now.

Given the tragic recent events in Norway, it seems likely that the issues of gun control and licensing will be reviewed. This could have an effect on the regulations currently issued.

The Security Guard Services Act

The Act of 5 January 2001 No. 1 relating to security guard services (the Security Guard Services Act), regulates the use of commercial security guard services and private security guard schemes. The Act is intended to help to ensure that guard services are of a high quality, and to protect the legal rights of persons who are the subject of actions by guards and of the users of such services.

Guards are not permitted to use force in excess of the general right granted by the self-defence provision in section 48 of the General Civil Penal Code of 1902. Interestingly the Act does not permit guards to use firearms, and so amendments were necessary this year to ensure that the Act did not apply to security guard activities on board ships in foreign waters (referred to as "ISPS ships").

Firearm Permits and Regulations

A company which is considering bringing armed guards on board its ships must first apply for a firearm permit. The company may apply for a permit even if no decision has been made to conclude a contract with a specific security firm for the purchase of armed guard services.

The application must be made to the chief of police in the police district in which the company or the operating company has its head office, or the police district in which the local representative of the owner has its registered address. Companies may only be granted a permit for a limited time period of up to six months. At the end of this period, companies may apply for a new permit.

The Firearms Regulations permits companies to be granted a general permit for the temporary holding of firearms by hired security firms on board ISPS ships registered in Norway. Granted permits will only apply in cases in which firearms are brought on board for protection against acts of terrorism and piracy.

Companies may be granted a general permit to hold weapons. Granted permits will therefore not be linked to individual firearms. Companies must apply for an exemption in order to be permitted to hold prohibited firearms:

- fully automatic firearms with a calibre such that the diameter of the bullet does not exceed 7.62 mm;
- fully automatic firearms that use rounds with a size of 9x19 mm; or
- single-shot, repeating or semi-automatic firearms with a calibre such that the diameter of the bullet does not exceed 12.7 mm.

Geographical scope

Temporary firearm permits apply to ships in foreign waters which are sailing in, to or from an area subject to alert level 2 or 3, but only when they are sailing south of 30 degrees north latitude. This line of latitude in essence means that ships can be granted a permit when south of the Suez canal.

More in-depth information on the process can be found in the following documents:

Guidelines to Norwegian Regulation on the use of Armed Guards <http://goo.gl/zEFQQ>

Norwegian Ship Security Regulation <http://goo.gl/5d6pW>

Selection of security firms, etc.

It is becoming increasingly clear that not all maritime security firms have the necessary expertise and credibility required to perform the demanding task of providing armed guard services in high risk areas.

Shipowners are therefore required to carry out a detailed assessment of the suitability of the security firm and the guards for each assignment. The IMO regulations contain detailed provisions on how selection should occur, and the SAMI accreditation process is building upon these requirements to ensure a clear, robust and effective means of checking and verification.

As regards documentation which companies are required to submit to the Norwegian Maritime Directorate for briefing purposes, the regulations require:

- a) A statement of reasons stating why the industry's guideline preventive measures are deemed insufficient and that there is a need for armed guards.
- b) An assessment of the suitability of the security firm and the guards, including the security firm's own documentary evidence:
 1. Of satisfactory procedures for the recruitment and training of personnel;
 2. Of satisfactory procedures for the procurement, use, maintenance, storage and transportation of equipment, including firearms and ammunition, relevant to the assignment in question;
 3. That the guards hold the necessary qualifications and have completed necessary training, including firearms training, for the assignment in question; and

That the guards are at least 18 years of age, can identify themselves and can submit a recently issued certificate of good conduct. If a certificate of good conduct cannot be obtained, an alternate, similar confirmation or reference should be procured.

Minimum Factors

The Norwegians recognise, rightly, that a shipboard assignment requires other qualities of the security team over and above those they might require on land. As such companies have to assess the suitability of the security firm and the guards for the intended assignment.

The security firm's own documentation will be relevant minimum factors. The IMO regulations (contains a list of matters which should be considered with regard to the security firm, including its ownership, financial position, experience, insurance coverage, any accreditations, etc.

Recruitment and Training

The Norwegian Maritime Directorate (NMD) will also require information relating to, "satisfactory procedures for the recruitment and training of personnel". "Satisfactory" must be interpreted to mean, first, that the security firm has drawn up procedures and, second, that the procedures meet, objectively, a certain minimum standard measured by reference to the regulations for the use and selection of security firms contained in the IMO regulations.

As part of this it will the experience and expertise of key company personnel, staff recruitment sources, who is recruited (whether background checks are performed, whether maritime experience is required), etc. will be viewed.

As regards the satisfactory training requirement, this must be deemed also to include training of the crew on board to minimise the risk of injury to crew members in connection with the repelling of a pirate attack as much as possible.

Logistics

The next area of concern can perhaps be termed “logistics”, as the NMD requires information and documentation relating to the, “satisfactory procedures for the procurement, use, maintenance, storage and transportation of equipment, including firearms and ammunition, relevant to the assignment in question”.

This requires, firstly, that the security firm has procedures in place and, secondly, that consideration is given to the IMO regulations when evaluating the quality of the procedures.

The transportation of firearms to the port at which the guards are to embark may be relevant, and it is important in this regard that the company checks that the security firm has procedures in place for obtaining the necessary permits (for example export permits or permits from the port state). The same applies to the security firm’s procedures for the procurement of firearm types permitted by the firearm permit.

Companies should give particular emphasis to checking whether the procedures of the security firm also cover any specialised types of firearm in respect of which the companies have applied for an exemption. Qualifications

The NMD will require documentation concerning the requirement, “that the guards hold the necessary qualifications and have completed necessary training, including firearms training, for the assignment in question”.

This relates directly to the requirement regarding the suitability of the guards, particularly with respect to the handling of the firearms permitted by the temporary firearm permit. The provision also relates indirectly to the suitability of the security firm, and the assumption that “suitable security firms” will recruit suitable personnel.

The required experience may typically be from the military or specialist police forces and in addition the company must verify that the guards are at least 18 years of age and that this can be documented.

Allied to the assessment on security company suitability, from both the company and NMD, the company must consult the master before deciding to use armed guards. The reasons for this are that the master is in command on board, that the appropriateness of armed guards is an issue on which opinions may differ, and that the master will often have experience of sailing through high risk areas. It is assumed that the consultation with the master will be real, and that significant weight will be attached to his/her views.

However, ultimately according to the Norwegian regulations the decision to use armed guards lies with the company. Though the decision to use force to repel a pirate attack is the master’s alone.

Due Diligence

Built into the Norwegian regulations are a rather “catch all” concept that authorises the NMD to decide that companies may not use a particular security firm. It seems that a “black list” of companies could be created if NMD receives specific, credible information indicating that the firm in question is clearly unsuitable.

This is an interesting clause, as it places responsibility clearly with the company to check the credentials of their security provider, but in the event that NMD is privy to additional negative information then the security provider can be In other words, be black listed. There are no details on what types of specific, credible information would trigger such a response, but it is thought that media or other information channels could provide information indicating that the security firm is “unsuitable for assignments on board ships”. It will be very interesting to monitor this provision of the regulations, as it could well give rise to potential conflict.

Insurance

The Security Regulations lays down a duty to notify the company’s insurer(s) before using armed guards, to give reasonable notice to the insurers covering its liability, losses, expenses or expenditure resulting from piracy, and to provide any information required by an individual insurer in order to clarify matters relating to its insurance policy.

The IMO regulations also specify that the security firm itself must be insured, and what this insurance policy should cover. Though the regulations do not specify any sum which the security firm’s insurance should cover.

Procedures

A company must have in place procedures for the use of armed guards, firearms, etc. The use of armed guards will have a large effect on the processes and procedure laid down with many quality and safety management systems and companies should ensure that all their provisions reflect what may be a new move to use armed security.

Security firms must also have in place their own procedures for the use of firearms, while the master should also be consulted about the framing of the procedures.

It is vital that all parties are aware of the agreed procedures so that no doubt can arise about the circumstances under which force may be employed, not least in view of potential subsequent investigations of incidents during which force has been used.

Procedures for the use of armed guards and firearms must be used and implemented by the master.

Storage of firearms

Major issues relating to the carriage of weapons onboard a vessel are the safe and secure storage.

The Norwegian guidance states that firearms must be stored properly, in accordance with the Firearms Regulations

Firearms and ammunition must be stored in such a manner that unauthorised persons do not gain access to them, and must be stored in FG-approved security cabinets (the Norwegian Insurance Approval Board (FG)), or in cabinets with a higher security rating. [The terms “FG-approved security cabinets” and “cabinets with a higher security rating” mean cabinets approved under Norwegian Standard NS 5089, INSTA 610 or NS-EN 1143-1.]

Approved security cabinets, or cabinets with a higher security rating, may contain, in addition to firearms, the number of rounds approved by the manufacturer of the cabinet. If the cabinet is not separately approved for the storage of ammunition, no more than 2,000 rounds may be stored in the cabinet.

Use of force

Authority to use force to prevent or protect a ship against acts of terrorism or piracy is found in the Ship Safety and Security Act.

Force may be used when “necessary” to prevent or protect against a pirate attack. The use of force must be limited to cases in which it is, “necessary, justifiable and proportionate, but [that] the relatively strict requirements regarding the protection of the attacker’s interests which are laid down in the self-defence provision do not necessarily have to be satisfied”. The limits correspond with the basic requirements and conditions that have to be met in order for use of force which would otherwise be unlawful to be deemed immune from prosecution.

Acceptable use of force will be lawful if the conditions specified in the self-defence provision in the Norwegian General Civil Penal Code are satisfied.

Force, including the use of firearms, may only be employed against a threat which is direct, immediate, significant and otherwise unavoidable. Further, it is stated that the use of force must be avoided wherever possible, and when it is necessary, it must be proportionate in view of the scope of the threat and the conditions otherwise.

This further stresses the fact that armed security guards are to function as a supplement to other, passive security measures and not as a replacement for them. Unlawful use of force may trigger criminal liability under the General Civil Penal Code.

Sometimes when a vessel is approached by pirates it may not be entirely clear as to the full test of whether force can be avoided. As such the master may exercise significant discretion when faced with an unclear and apparently precarious situation.

The regulations consider that an imminent pirate attack will therefore satisfy the necessity requirement and could apply even if the pirate vessels and pirates are located up to 2,000 metres from the ship.

Masters Orders

The Master clearly has a vital link between the procedures and the command and control provisions onboard relating the armed team. However the guidance does not mean that the Master must be informed in all cases and that the use of firearms to discourage a pirate attack must be approved. There may well be instances when the Master is not able to give such approval, and so standing orders regarding the use of firearms in accordance with the company’s established procedures in this regard should be established. For example guidance should be given to the night watch if the master will not be immediately available. However, beyond this, the general rule must be that the Master must be informed about and implement the procedure for the use of firearms in accordance with established procedures.

The guidelines stress that individuals are responsible for ensuring that their use of firearms complies with the regulations. This is intended to make all persons on board aware that their actions will be assessed independently, regardless of the master’s command. The armed guards have an independent responsibility to assess whether their use of a firearm will be lawful in the specific case, regardless of what the master or the company’s instructions state.

The Master and the company’s instructions will therefore not exempt the marksman from criminal prosecution, even if the master has the ultimate command and has acted in accordance with the company’s procedures. The company, the master and the armed guard may in such cases be prosecuted in Norway.

However, if the marksman has acted contrary to the Master's instructions, it is assumed that, normally, only the armed guard will be the subject of any criminal prosecution.

Minimal Force

The principle of minimal use of force must be followed, including in cases in which the ship is under attack by pirates. The company must establish detailed procedures for the use of firearms, which must, as a minimum, provide that, if the circumstances permit, the attackers must be warned by means of light and sound signals and the firing of warning shots.

The firing of aimed shots with the objective of rendering a person harmless may only occur as a last resort and after other, gentler means have been tried unsuccessfully, or in situations in which alternative means clearly have no chance of success.

Incident Reporting

The regulations stress the duty of companies to make reports to NMD and the Norwegian National Criminal Investigation Service (Kripos) in the event of an incident.

They should report to NMD within 72 hours of any incident during which a ship has employed force to repel an "attack" on the ship by pirates or terrorists. "Force" must of course be interpreted to mean the use of firearms. Passive security as recommended in the current version of the BMPs will not trigger a company's duty to make a report.

The report must specify the persons involved and the use of force, including the use of firearms.

This reporting requirement aims: to provide the Norwegian authorities with information about the use of firearms on board ships registered in Norway; while also supporting any subsequent investigation. There is also a strong case for supporting any reports with sound and video recordings of the actions taken onboard, however this is not a requirement.

If there is reason to believe that the use of force has resulted in personal injury or death, this must be reported immediately to the Norwegian National Criminal Investigation Service (Kripos).

The regulations do not state who holds the duty to report, but it is clear that it is the master who is the primary target of the provision. Nevertheless, the company bears ultimate responsibility for ensuring that the operation of the ship complies with the rules laid down.

Firearms Register

The Security Regulations establish a duty for the company or the master to ensure that a register is kept of all firearms and ammunition brought onto and taken off the ship.

Each firearm must be identified by:

- Type,
- Manufacturer's mark or model description,
- Calibre, and
- Firearm number.

The quantity of ammunition must also be specified.

Any deviations must be accounted for and the information must be reported to the NMD immediately.

Sanctions

Penal provisions in the Ship Safety and Security Act

The Ship Safety and Security Act sets out penalties for breaches of the Act. The security firm, the guards or the master may be prosecuted by the Norwegian prosecuting authority if the limits on the use of force are breached. In special cases, the company may also be subjected to criminal prosecution. Breaches or defects caused by the security firm may also have severe financial consequences for the company with regard to the ship's insurers or the owner of the cargo.

Penal provisions in the Firearms Act

The Firearms Act states that any person who intentionally or with gross negligence breaches provisions laid down in or pursuant to the Act shall be liable to fines or imprisonment for a term not exceeding three months, unless the offence is subject to a stricter penalty. Unlawful importation, transfer, acquisition or possession may be punished by imprisonment for a term not exceeding two years or, in the case of gross offences, a term not exceeding four years.

Further details can be found on the following websites:



Norwegian Maritime Directorate
www.sjofartsdir.no/en/



Norwegian Shipowners' Association
www.rederi.no