



IMO
INTERNATIONAL MARITIME LAW INSTITUTE
Established Under the Auspices of the International Maritime
Organization, a Specialised Agency of the United Nations



the Draft Law of Georgia on the

THE PLACEMENT OF PRIVATELY

CONTRACTED ARMED SECURITY PERSONNEL

AND USE OF FIREARMS AND AMMUNITION ON

BOARD THE SHIPS FLYING THE GEORGIAN

FLAG

A legislation Drafting Project Submitted in Partial Fulfillment of the
Requirements for the Award of the Degree of Master of Laws
(LL.M.) in International Maritime Law at the IMO International
Maritime Law Institute

Submitted by: Ivane Abashidze (Georgia)

Supervisor: Mr. Riyaz Hamza

Academic Year 2013-2014

DEDICATION

*“He that can have patience can have what he will.” -
Benjamin Franklin*

I dedicate this work to my beautiful and ancient maritime country –
Georgia.

ACKNOWLEDGEMENTS

I would like to take this opportunity and pay my deep gratitude to my supervisor Mr. Riyaz Hamza for his invaluable help, guidance and patience throughout my work on present project, who did his utmost to put me on a right direction, you have been a tremendous mentor for me. Your advice on both research as well as on my career have been priceless.

I also would like to thank my personal supervisor Dr. Norman Martinez for his patience and assistance given to me during my stay at IMO IMLI. I would like to specially thank Ms. Ramat Jalloh, for her invaluable comments on present work as the reviewer of my work. Further, I also thank to Ms. Elda Belja who has given considerable attention and interest to my work. I would like to thank also administrative staff of IMLI. All of you have been there to support me when I recruited patients and collected data for my drafting project.

I would like to express the deepest appreciation to IMO IMLI Director Prof. David J. Attard for making IMLI what it is, worlds the best establishment in international maritime law. Professor Attard, who has the attitude and the substance of a genius: he continually and convincingly conveyed a spirit of adventure in regard to research, and an excitement in regard to teaching. Without his overall guidance and persistent help this project would not have been possible.

I also pay my deepest gratitude to NIPPON Foundation for providing me the opportunity to study at IMO IMLI as a NIPPON fellow, the status which I will carry proudly throughout my life.

I would like to thank the Government of Georgia for nominating me as a Candidate, which makes me even more responsible to justify the confidence entrusted in me for the sake of good of My Country.

A special thanks to my family. Words cannot express how grateful I am to my Mother and for all of the sacrifices that you've made on my behalf. Your prayer for me was what sustained me thus far.

I would also like to thank all of my friends who supported me in writing, and incited me to strive towards my goal.

Table of Treaties

List of IMO Documents

Explanatory Note

To the Draft Law of Georgia on the

THE PLACEMENT OF PRIVATELY CONTRACTED

ARMED SECURITY PERSONNEL AND USE OF

FIREARMS AND AMMUNITION ON BOARD THE SHIPS

FLYING THE GEORGIAN FLAG

Chapter I

General Overview and Introduction

- 1. Historical Background of Piracy**
- 2. Modern Trends and Definition of Piracy**
- 3. Piracy and International Law**
 - 3.1. What Does Maritime Security Stand For?**
 - 3.2. International Peace and Security at Sea and International Legal Frame**
 - 3.3. Nature of the Universal Jurisdiction**
 - 3.4. Inter-relations between UNCLOS and SUA 1988**
 - 3.5. International Maritime Organization and Djibouti Code of Conduct**
- 4. Privately Contracted Armed Security Personnel (PCASP)**

Chapter II

Legal System of Georgia

- 1. Historical Background**
- 2. Modern Legal System of Georgia**

Chapter III

General Commentaries to the Draft Law – Parliamentary Note – Part A.

- 1. General Note**
- 2. Framework of the present draft Law and Purpose**

3. Objective of the Draft Law

4. Inevitability of the Law

Chapter IV

Commentaries to the Draft Articles – Parliamentary Note – Part B.

Draft Law of Georgia on the Placement of Privately Contracted Armed Security Personnel and the Use of Firearms and Ammunition on Board the Ships Flying the Georgian Flag

Table of Treaties

- 1982 United Nations Convention on the Law of the Sea
- the International Convention for the Safety of Life at Sea (SOLAS), 1974
 - ❖ the International Ship and Port Facility Security Code (ISPS Code)
- the Suppression of Unlawful Acts Against the Safety of Maritime Navigation 1988 (SUA Convention, including the 1988 Protocol).

List of IMO Documents

Circular letter No.3394, 15 August 2013 - Interim Guidelines for Owners, Operators and Masters for protection against piracy in the Gulf of Guinea region

MSC.1/Circ.1405/Rev.2, 25 May 2012 – Revised Interim Guidance to Shipowners, Ship Operators and Shipmasters on the Use of Privately Contracted Armed Security Personnel on Board Ships in High Risk Area.

MSC.1/Circ.1443, 25 May 2012 – Interim Guidance to Private Maritime Security Companies Providing Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area.

Resolution A.1044 (27), Adopted on 30 November 2011 – Piracy and Armed Robbery against Ships in Waters off the Coast of Somalia

MSC-FAL.1/Circ.2, 22 September 2011 – Questionnaire on Information on Port and Coastal State Requirements Related to Privately Contracted Armed Security Personnel on Board Ships

MSC.1/Circ.1406/Rev.1, 16 September 2011 – Revised Interim Recommendations for Flag States Regarding the Use of Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area

MSC.1Circ.1408, 16 September 2011 - 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.1339, 14 September 2011- Best Management Practices for Protection against Somalia Based Piracy (BMP 4)

MSC.1Circ.1404, 23 May 2011 - Guidelines to assist in the Investigation of the Crimes of Piracy and Armed Robbery against ships

Res.MSC.324, 20 May 2011 - Implementation of Best Management Practice Guidance

Circular letter No.3164, 14 February 2011 - Responding to the scourge of piracy

Resolution A.1025, adopted on 18 January 2010 - Code of Practice for the investigation of crimes of piracy and armed robbery against ships

MSC.1.Circ.1390, 9 December 2010 – Guidance for Company Security Officers (CSOs) – Preparation of a Company and Crew for the Contingency of Hijack by Pirates in the Western Indian Ocean and the Gulf of Aden

MSC.1-Circ.1302, 16 April 2009 - Piracy and armed robbery against ships in waters off the coast of Somalia

MSC.1.Circ.1332, 16 June 2009 - Piracy and Armed Robbery against Ships in Waters off the Coast of Somalia

MSC.1-Circ.1333, 26 June 2009 - Piracy and armed robbery against ships - Recommendations to Governments for preventing and suppressing piracy and armed robbery against ships

MSC.1-Circ.1334, 23 June 2009 - Piracy and armed robbery against ships - Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships

SN.1-Circ.281, 23 August 2009 - Piracy and armed robbery against ships in waters off the coast of Somalia - Information on Internationally Recommended Transit Corridor (IRTC) for ships transiting the Gulf of Aden

CL2933, 23 December 2008 - Request for information on national legislation on piracy

MSC.1-Circ.1233, 15 June 2007 - Piracy and armed robbery against ships in waters off the coast of Somalia

Resolution A.923, adopted on 22 January 2002 - Measures to prevent the registration of "Phantom" ships

Resolution A.738, adopted on 17 October 2011 - Measures to prevent and suppress piracy and armed robbery against ships

Resolution A.683, adopted on 21 November 1991 - Prevention and suppression of acts of piracy and armed robbery against ships

Resolution A.545, adopted on 29 February 1984 - Measures to prevent acts of piracy and armed robbery against ships

Explanatory Note to the Draft Law of Georgia on

THE PLACEMENT OF PRIVATELY CONTRACTED ARMED

SECURITY PERSONNEL AND USE OF FIREARMS AND

AMMUNITION ON BOARD THE SHIPS FLYING THE

GEORGIAN FLAG

Chapter I

General Overview and Introduction

1. Historical Background of Piracy

The development of the contemporary understanding of the concept of maritime piracy runs through the Mediterranean Sea of ancient Greece and Rome, the Baltic and North Atlantic, modern and medieval Europe—the Latin West and Orthodox East, the Islamic world, the littoral waters of the Asia-Pacific, and the “golden age” of Caribbean piracy.¹

Historically piracy has been considered as the act of any kind which was committed at sea and was characterized as a violent act.²

2. Modern Trends and Definition of Piracy

It would be reasonable to state that, no area of the world’s oceans is considered as threat free of armed robbery and piracy. The recent developments show that geographical coverage of this imminent threat to international peace and security has grown further. Only in first ten days of 2014 Global Integrated Shipping Information System (GISIS)³ of the International Maritime Organization (hereinafter the “IMO”)

¹ Kraska, James; *Contemporary Maritime Piracy International Law, Strategy, and Diplomacy at Sea*, ABC-CLIO, LLC, Santa Barbara, California, 2011, p. 10.

² *Ibid.*

³ The IMO GISIS database records information provided by Flag States. The GISIS was launched in 2005, in order to allow direct reporting by Member States in compliance with existing requirements and access to data compiled by the Secretariat.

has prescribed 7 (seven) acts committed against merchant vessels in the following regions: 5 acts in South China Sea, 2 acts in West Africa.⁴

There was a peak in pirate activity in early 2011 with over 700 hostages held aboard vessels off the coast of Somalia. Throughout 2011, however, pirates captured fewer seafarers, reflecting a significant drop in the success rate of pirate attacks. In 2012 the International Maritime Bureau of the International Chamber of Commerce have recorded 297 incidents in total.⁵ Worldwide Incidents in 2013: 234 reported incidents including 12 hijackings. Somali related incidents in 2013: 13 reported incidents including two hijacking.⁶ However, in the present day the period of time that seafarers are detained is increasing. Possibly as a result of this change, the public's attention to the anguish of seafarers has declined as well, though there remain far too many who continue to endure captivity or face the risk of attack in the High Risk Areas. Maritime piracy and armed robbery and their impact continue to be poorly understood by the public.⁷ (Piracy affected areas are shown on *Figure No.1*)⁸

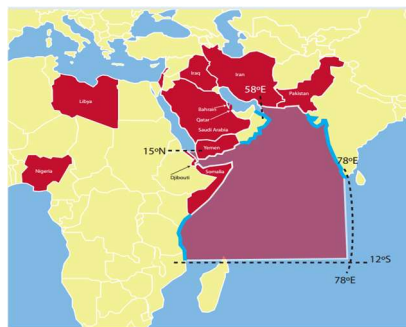


Figure No.1. Piracy Affected areas of World Oceans

⁴ Information obtained on the IMO GISIS database - Authorized Member State: Georgia [accessed 10 January 2014].

⁵ Information available on the following link: http://www.crimson.eu.com/assets/2012_Annual_IMB_Piracy_Report.pdf [accessed 23 February 2014].

⁶ Information available on the following link: <http://www.icc-ccs.org/piracy-reporting-centre/piracynewsfigures> [accessed 06 January 2014].

⁷ International Maritime Organization - MARITIME SAFETY COMMITTEE, 91st session, Doc. MSC 91/INF.2, PIRACY AND ARMED ROBBERY AGAINST SHIPS, Report on the Human Cost of Piracy (HCOP) data collated by the International Maritime Bureau, Submitted by ICC - 28 August 2012. p. 2.

⁸ Note: Red color identifies possible high risk areas for piracy, including war risk areas. For further information please refer to the official web-site of International Group of P&I Clubs at: <http://www.igpandi.org/downloadables/piracy/news/Marsh%20Piracy%20implications.pdf> [accessed 27 February 2014].

3. Piracy and International Law

The most comprehensive treaty regime since the United Nations Charter⁹ undoubtedly is the United Nations Convention on the Law of the Sea 1982¹⁰ (hereinafter the “UNCLOS”), which has been ratified by the 166 States by the end of 2013.¹¹

In order to analyse legal regime applied to the piracy by the convention, it is reasonable to consider examining legal regimes of maritime zones under UNCLOS.

In accordance with the Convention world oceans are divided in 9 zones:

Internal waters (IW); archipelagic waters (AW); territorial sea (TS) up to 12 n.m.¹²; contiguous zone (CZ) up to 24 n. m.; exclusive economic zone (EEZ) up to 200 n. m.; exclusive fisheries zone (EFZ) up to 200 n. m.; continental shelf (CS) up to 200n.m. + maximum 150 n. m.; high seas (HS); the area (Area). (See figure No.2)

⁹ United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, available at: <http://www.refworld.org/docid/3ae6b3930.html> [accessed 23 February 2014]. The Charter was signed at San Francisco on 26 June 1945. The amendments included here are: Amendments to Articles 23, 27 and 61, 557 UNTS 143, adopted by the General Assembly Resolutions 1991A and B (XVIII) of 17 December 1963, entered into force on 31 August 1965 for all Members; - Amendment to Article 109, 638 UNTS 308, adopted by the General Assembly Resolution 2101 (XX) of 20 December 1965, entered into force on 12 June 1968 for all Members; Amendment to Article 61, 892 UNTS 119, adopted by the General Assembly Resolution 2847 (XXVI) of 20 December 1971, entered into force on 24 September 1973 for all Members.

¹⁰ UN General Assembly, *Third United Nations Conference on the Law of the Sea*, 14 December 1983, A/RES/38/59, available at: <http://www.refworld.org/docid/3b00f01414.html> [accessed 23 February 2014].

¹¹ Information available on the following web-site: https://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.htm [accessed 06 January 2014].

¹² The nautical mile (symbol M, NM or nmi) is a unit of length that is approximately one minute of arc measured along any meridian. By international agreement it has been set at 1,852 metres exactly (about 6,076 feet).

Figure No. 2.
Maritime Zones

It is necessary to define the regime applied to the mentioned maritime zones:

a) I
n
t

Baselines	EEZ/EFZ 200N.M.		HS
	CZ 24N.M.		
	IW	TS 12 N.M.	
	200 N.M. + X (UP TO 150 N.M.)		CS AREA

ernal waters – part of the sea, located between the land and the baselines. Under UNCLOS every State enjoys full sovereignty over internal waters. Unlike the territorial sea the right of innocent passage is not exercisable within the internal waters.¹³

- b) Archipelagic waters - UNCLOS set the definition of Archipelagic States in Part IV, which also defines how the State can draw its territorial borders. A baseline is drawn between the outermost points of the outermost islands, subject to these points being sufficiently close to one another. All waters inside this baseline are designated Archipelagic Waters. The State has full sovereignty over these waters (similar to internal waters), but foreign vessels have right of innocent passage through archipelagic waters (similar to territorial sea).

¹³ Tanaka, Yoshifumi; *the International Law of the Sea*, Cambridge University Press, Cambridge, 2012, p. 78.

- c) Territorial Sea – is the marine space under the sovereignty of a coastal State not exceeding 12 nautical miles, measured from baselines.¹⁴
- d) Contiguous Zone - The contiguous zone may not extend beyond 24 nautical miles from the baselines. The coastal State may exercise the control necessary to: (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea; (b) punish infringement of the above laws and regulations committed within its territory or territorial sea.¹⁵
- e) Exclusive Economic Zone (EEZ)– In the EEZ the coastal State has: (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to: (i) the establishment and use of artificial islands, installations and structures; (ii) marine scientific research; (iii) the protection and preservation of the marine environment.¹⁶ The EEZ shall not extend beyond 200 nautical miles from the baselines.¹⁷

The world's EEZs encompass 35.81 percent of the seas; 35.59 percent of the Atlantic and Arctic Oceans; 32.34 percent of the Indian Ocean; and, 36.29 percent of the Pacific Ocean. Seas that are enclosed or semi-enclosed by EEZs include the Baltic Sea, the Black Sea, the North Sea, the Red Sea, the Arabian Gulf, the East China Sea, the South China Sea, the Sea of Japan, the Java Sea, and the Celebes Sea. The Norwegian Sea, the Sea of Okhotsk, the Gulf of Mexico, the Arabian Sea, the Bay of Bengal, and the Sulu Seas are nearly totally enclosed by EEZs.¹⁸ Ships and aircraft of all nations, including warships and military aircraft, enjoy complete freedom of movement and operation on, over, and under the EEZ.

¹⁴ Article 3 of UNCLOS.

¹⁵ Article 33 of UNCLOS.

¹⁶ Article 56 of UNCLOS.

¹⁷ Article 57 of UNCLOS.

¹⁸ Kraska, James; *op. cit.* p. 126.

- f) Exclusive Fisheries Zone (EFZ) - The EFZ or fishery zone refers to an area beyond the outer limit of the Territorial Sea (12 nautical miles from the coast) in which the coastal State has the right to fish, subject to any concessions which may be granted to foreign fishermen. Some countries have made no claim beyond the territorial sea. Some States have claimed an exclusive fishing zone instead of the more encompassing 200 n.m. Exclusive Economic Zone (EEZ).¹⁹
- g) The continental shelf - the continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 n.m. from the baselines.²⁰ The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.²¹ The regime of EEZ applies *mutatis mutandis* to artificial islands, installations and structures on the continental shelf.²²
- h) High Seas - The high seas are open to all States, whether coastal or land-locked. It comprises, *inter alia*, both for coastal and land-locked States:
- (i) freedom of navigation;
 - (ii) freedom of overflight;
 - (iii) freedom to lay submarine cables and pipelines;
 - (iv) freedom to construct artificial islands and other installations permitted under international law;²³
 - (v) freedom of fishing;²⁴
 - (vi) freedom of scientific research.^{25/26}

¹⁹ Further information on the Web site: <http://www.maritimeboundaries.com/> [accessed 23 February 2014].

²⁰ Article 76 of UNCLOS.

²¹ Article 77 of UNCLOS.

²² Article 80 of UNCLOS.

²³ Subject to the regime of Continental Shelf.

²⁴ Freedom is not absolute and is subject to the limitations applied by the fish species.

- i) Area – is considered as the common heritage of mankind²⁷ and subsequently, is out of any jurisdictional claims.

3.1. What Does Maritime Security Stand For?

There is no international recognized definition of the term maritime security. However, “Maritime Security” has to be distinguished from “Maritime Safety”. “Maritime Security” is the combination of preventive and responsive measures to protect the maritime domain against threats and intentional unlawful acts. “Maritime Safety” is the combination of preventive and responsive measures intended to protect the maritime domain against, and limit the effect of, accidental or natural danger, harm, and damage to environment, risks or loss.²⁸

To many observers “Maritime Security” appears to be a large and sometimes nebulous concept. In fact it has become a large task involving many entities from international, public and private sectors aiming at

- preserving the freedom of the seas,
- facilitating and defending commerce, and
- maintaining good governance at sea.²⁹

Transnational forces and irregular challenges continue to be the primary threat today and in the foreseeable future, especially in the maritime domain. Major identified aims concerned in a broader sense are the following:

- International and national peace and security
- Sovereignty, territorial integrity and political independence

²⁵ Freedom is not absolute and is subject to the regime of Continental Shelf and the rules for the exploitation of living resources of the oceans.

²⁶ Article 87 of UNCLOS.

²⁷ Article 136 of UNCLOS.

²⁸ Lutz Feldt, Dr.; Peter Roell, Ralph D. Thiele; ISPSW Strategy Series: Focus on Defense and International Security Maritime Security – Perspectives for a Comprehensive Approach, Issue No. 222, 2013, p. 2.

²⁹ *Ibid.*

- Security of Sea Lines of Communications
- Security protection from crimes at sea
- Resource security, access to resources at sea and to the seabed
- Environmental protection
- Security of all seafarers and fishermen.³⁰

All maritime regimes, be they based on UNCLOS or derive from this basic document, be they regional or local, must ensure or, in critical situations, enforce compliance with this globally accepted document.

3.2. International Peace and Security at Sea and International Legal Frame

Piracy and armed robbery against ships are serious problems endangering safety of life at sea and international peace and security.³¹ UNCLOS contains provisions relating specifically to maritime security, which are exceptions to the High Seas exclusive jurisdiction of the Flag State on the High Seas. Articles 100–107 address piracy, and Article 111 contains provisions for hot pursuit through the high seas into a coastal State’s territorial sea. Article 99 pertains to trafficking in human slaves. Also, international maritime drug trafficking became more prevalent during the decade of negotiations for UNCLOS, therefore it also provides control mechanisms of the illicit traffic in narcotic drugs in Article 108.³² Article 110 incorporates the customary norm in international law that warships may approach commercial vessels in order to determine their nationality and board them on suspicion of piracy – exercising right of visit enshrined in UNCLOS.³³

Definition of piracy, as the crime considered with universal nature, in modern international law is found in Article 101 of UNCLOS, which states:

³⁰ *Ibid.*

³¹ Tanaka, Yoshifumi; *op. cit.* p. 353.

³² Also see: *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, 1988. Available at: http://www.unodc.org/pdf/Convention_1988_en.pdf [accessed 5 January 2014].

³³ Kraska, James; *op. cit.* p. 127.

Piracy consists of 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;

(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).”

Definitive element of piracy seems to be the “private end” and the place of illegal act shall be outside territorial sea. However, similar crime committed within the territorial sea of the State, is considered as “armed robbery” and constitutes punishable crime in accordance local laws and regulations of a State in question.

The definition of piracy must be read in conjunction with other provisions of UNCLOS, and in particular Article 58(2), which applies the definition to the EEZ and not just the high seas. Article 58(2) imports the provisions applying on the high seas found in Articles 88 to 115 into the EEZ, so long as they are not incompatible with the other provisions of the EEZ. Thus, piracy also may be committed in an EEZ, and any State may assert jurisdiction over the crime if it is committed in waters that lie beyond the territorial sea.³⁴

Article 101(a)(i) provides that acts “committed on the high seas” may constitute piracy, and Article 101(a)(ii) refers to acts committed “in a place outside the jurisdiction of any State.”

3.3. Nature of the Universal Jurisdiction

³⁴ Tanaka, Yoshifumi; *op. cit.* p. 357. See Also, *Serving the Rule of International Law: Essays in Honour of Professor David Joseph Attard*; Norman A. Martínez Gutiérrez (Editor), Mallia, Patricia, *The fight against piracy and armed robbery against ships off the coast Somalia – International Cooperation Illustrated*, Routledge, 2010, p. 218.

As above deliberations prove piracy as an international crime attracts universal jurisdiction. The doctrine of universal jurisdiction holds that a State can prosecute offenses to which it has no connection at all - the jurisdiction is based solely on the extraordinary heinousness of the alleged conduct. According to the doctrine, any State can prosecute universal offenses, even over the objection of the defendants' and victims' home States.³⁵ Unlike all other forms of international jurisdiction, the universal kind is not premised on notions of sovereignty or State consent. Rather, it is intended to override them. An assertion of universal jurisdiction can create conflict and possibly hostilities among countries.

It is exceptional for States to have jurisdiction under their law over crimes committed abroad by foreign nationals against foreign nationals. But certain crimes – piracy, slavery, torture, war crimes, genocide and other crimes against humanity – are so prejudicial to the interests of all States, that customary international law allows any State to exercise jurisdiction over them, wherever they take place and whatever the nationality of the alleged offender or victim.³⁶

Under the doctrine of universal jurisdiction, customary international law has for centuries treated pirates as international outlaws subject to the jurisdiction of any State. Piracy is any illegal act of violence or detention committed on the high seas, as already stated, for private ends by a private ship against another ship. Warships of any State may board a foreign-registered ship on the high seas that is suspected of piracy. If it proves to be a pirate ship, it can be seized and those on board arrested and tried in the flag State of the warship, provided the domestic law of that State allows for a trial, or another State is willing to exercise jurisdiction. Despite this, piracy is again a curse in many parts of the world.³⁷

The piracy norm has its origins in many-hundreds-year-old custom, the United Nations International Law Commission chose to codify and expand the piracy norm in the Articles concerning the Law of the Sea 1956³⁸ and it was kept in the revamped UNCLOS. Indeed,

³⁵ Strapatsas, Nicolaos; *Universal Jurisdiction and the International Criminal Court*, 29 Manitoba L.J. 1, 2002, p.1.

³⁶ Anthony, Aust; *Handbook of International Law*, 2nd Edition, Cambridge University Press, Cambridge, 2010, p.44.

³⁷ *Ibid*, p. 251.

³⁸ Text adopted by the International Law Commission at its eighth session, in 1956, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (at para. 33). The report, which also contains commentaries on the draft articles, appears in Yearbook of the International Law Commission, 1956,

UNCLOS has more parties than the Genocide Convention³⁹ or the Convention against Torture.^{40/41}

The availability of universal jurisdiction to prosecute piracy was reaffirmed in 2008 by the United Nations Security Council in its resolutions authorizing a robust naval response to piracy in the Gulf of Aden.⁴² Security Council endorsed application of the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA 1988) to the problem of piracy off the coast of Somalia.⁴³

3.4. Inter-relations between UNCLOS and SUA 1988

UNCLOS and SUA 1988 are together considered as the most comprehensive international treaties in regards suppression of unlawful acts against safety of maritime navigation. Together these conventions establish robust international legal regime applied to the universal crime such as piracy. SUA 1988 was adopted by 156 States and, importantly, by the United States, Kenya, and the Seychelles. However, SUA 1988 was not adopted by coastal States affected by piracy, such as Somalia, Malaysia, and Indonesia.⁴⁴ SUA 1988 enabled any State party to prosecute anyone who “seizes or exercises control over a ship by force or threat of force or any other form

vol. II. Available at: http://legal.un.org/ilc/texts/instruments/english/draft%20articles/8_1_8_2_1956.pdf [accessed: 24 February 2014].

³⁹ UN General Assembly, *Prevention and Punishment of the Crime of Genocide*, 9 December 1948, A/RES/260, available at: <http://www.refworld.org/docid/3b00f0873.html> [accessed 24 February 2014].

⁴⁰ UN General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <http://www.refworld.org/docid/3ae6b3a94.html> [accessed 24 February 2014].

⁴¹ See <http://treaties.un.org/Pages/ParticipationStatus.aspx> [accessed 5 January 2014].

⁴² See <http://www.un.org/News/Press/docs/2008/sc9541.doc.htm> [accessed 5 January 2014].

⁴³ SUA 88 Convention originally was developed in the wake of the attack on the *Achille Lauro* cruise ship hijacking. Kraska, James; *op. cit.* p. 144. UN General Assembly, *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, 10 March 1988, No. 29004, available at: <http://www.refworld.org/docid/3ae6b3664.html> [accessed 10 March 2014].

⁴⁴ See https://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml [accessed 5 January 2014].

of intimidation.”⁴⁵ In this way, SUA 1988 enjoys an advantage over UNCLOS because it covers acts in territorial sea. It is worth noting that SUA 1988 does not explicitly criminalize piracy. In fact, nowhere in the SUA 1988 is the word piracy mentioned. SUA 1988 only spells out acts that fall under the rubric of piracy, such as the “seizure of a ship by force.”⁴⁶

3.5. International Maritime Organization and Djibouti Code of Conduct

The IMO Djibouti Code of Conduct is worth mention because it departs from UNCLOS and SUA 1988. The Code is also important because, it only focuses on the Western Indian Ocean and the Gulf of Aden. Each signatory State commits to criminalizing piracy and armed robbery against ships at the domestic level.⁴⁷ Signatory States also agree to ensure that there are adequate guidelines for exercising jurisdiction, procedures for investigations, and prosecutions of alleged offenders. Article 2 of the Code also seeks to ensure that persons committing or attempting to commit piracy or armed robbery against ships are detained and prosecuted. Article 4(5) allows reverse hot pursuit as long as the coastal State grants authorization.

4. Privately Contracted Armed Security Personnel (PCASP)

One of the major developments in regards guaranteeing secure shipping in world oceans is definitely PCASP and Private Maritime Security Companies (hereinafter the “PMSC”). As it was already stated mentioned development was heavily influenced not only because of the concrete threat of piracy, but other related threats in world oceans.

Escalation in Piracy has thus necessitated deployment of both naval vessels and privately contracted armed guards operating under an obscure legal framework that is largely undefined. The failure to provide a sustainable or efficient solution under the prevailing approach to counter-piracy requires that new strategic alternatives be further developed through greater

⁴⁵ SUA Convention Article 3.

⁴⁶ *Ibid.* art. 3(1).

⁴⁷ See *The Djibouti Code Of Conduct Concerning The Repression Of Piracy And Armed Robbery Against Ships In The Western Indian Ocean And The Gulf of Aden*, Jan. 29, 2009, art. 2

understanding of counter-piracy operations by drawing upon its historical and contemporary necessity and the lessons learned from its operation in addition to the strengths and weaknesses of legislative responses within the international community.

It has been argued that the use of either military vessel protection detachments (VPDs) or PCASP may offer a quicker, more cost-effective and successful on the spot protection against the threat of piracy.⁴⁸

Vessel owners and operators faced with the threat of capture and fearful for the safety of their cargo and crew have been forced to consider and pursue additional options for their protection. PCASP factually “jumped on board” the opportunity to monopolize this new field through the provision of services for ransom deliveries and negotiations, protection, and policing both on board and alongside of commercial vessels trekking the most active international maritime trade routes. Private security teams are now patrolling the decks of approximately 40% of the largest vessels in high-risk areas.⁴⁹

However, use of PCASP on board the merchant vessel has been a huge concern as far as it influences state responsibility and delegation of authority and part of the jurisdiction to the private companies, practically talking caring out executive function of a Flag State.

The Swiss Federal Department of Foreign Affairs (“FDFA”), in conjunction with the International Committee of the Red Cross (“ICRC”) backed the Swiss PCASP Initiative with the chief objective to “promote respect of International Humanitarian Law (“IHL”) and Human Rights Law (“HRL”) by private military and security companies” in conflict areas.⁵⁰ In September 2008, after extensive consultation the “Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict” (hereinafter the “*Montreux*

⁴⁸ Contact Group on Piracy off the Coast of Somalia (CGPCS), CGPCS, Final Declaration of the 11th Plenary Session, New York, 29 March 2012, § 5(c).

⁴⁹ See: <http://www.economist.com/node/21552553> [accessed 24 February 2014].

⁵⁰ Geneva Centre for the Democratic Control of Armed Forces, 2008, available at: <http://www.privatesecurityregulation.net/about-us> [accessed 24 February 2014].

Document”).⁵¹ The Montreux Document sought to clarify the existing legal obligations of relevant actors and create a non-binding, comprehensive set of good practices designed to help states implement obligations under national law. The Document specifically refers to PCASP affiliated with States through government contracts, but advocates that the same compilation of good practices be adopted and implemented by PCASP under contract with non-state parties, which would extend to key participants in the commercial shipping industry. This affiliation is recognized by the IMO in MSC.1/Circ.1443 on the “*Interim Guidance to Private Maritime Security Companies Providing Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area*”⁵² in the following manner:

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

It is quite clear from mentioned citation that IMO is not encouraging using PCASP on board merchant fleets as it is prescribed in the Montreux Document and tries to bring operation of PMSC in line with the requirements set by the IMO, however considering non-obligatory nature of IMO documents in respect PCASP it still vary from country to country in what extent and if at all they will apply mentioned guidelines in their respective legislations.

⁵¹ *The Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict*, (Sept. 2008), <http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/intla/humlaw.Par.0078.File.tmp/Montreux%20Brochure.pdf> [accessed 24 February 2014].

⁵² Available: <http://www.imo.org/OurWork/Security/SecDocs/Documents/Piracy/MS.1-Circ.1443.pdf> [accessed 24 February 2014].

However, underestimating the threat of piracy by the Flag State may lead to the serious consequences and vulnerability of international trade will be once again questioned, due to the inability of the States effectively defend their merchant fleet, practically refusing ascertaining proper jurisdiction over them. Accepting open registration under Georgian flag creates even more burden for the government to ensure secure navigation on the high seas and in the areas affected by the piracy and armed robbery.

Industry interest has never been to pay more money, as far as additional costs mean additional investments and expenditure. Position of the underwriters in this respect is of a crucial importance. Underwriters, under the normal circumstances refuse to underwrite the property or even lives in the areas affected by the piracy and armed robbery, if the respective Flag State does not allow PCASP's on board the merchant vessel operating in the High Risk Areas.

Chapter II

Legal System of Georgia

1. Historical Background

Georgian legal system has been formed during the centuries. First breakthrough in the history of law in Georgia is affiliated with the King of Georgia Vakhtang VI in the beginning of 17th century. The king's legislative council ("Darbazi") conducted research and codified both Church and civil legislation, which for the given period of time was influenced by the Roman traditions of drafting technics, reflecting basic structure of Justinian traditions and *Corpus Juris Civilis*.⁵³

In the beginning of 20th century, Georgia re-gained its independence and adopted its first Constitution in 1921. The first Constitution had taken approach towards civil traditions of legislative system architecture.

⁵³ *The Corpus Juris Civilis* ("Body of Civil Law") is the modern name for a collection of fundamental works in jurisprudence, issued from 529 to 534 by order of Justinian I, Eastern Roman Emperor. It is also sometimes referred to as the Code of Justinian, although this name belongs more properly to the part titled *Codex Justinianus*.

Another serious development in Georgian constitutional and legislative history was the adoption of 1995 Constitution, also reflecting strong civil traditions.

2. Modern Legal System of Georgia

Under the constitutional rules of Georgia, international treaty of Georgia shall be directly applicable and binding upon the domestic courts and citizens upon ratification. International Treaty of Georgia constitutes part of Georgian legislation and is the subject of publication.

In accordance with the Article 4 of the Constitution: “after the creation of appropriate conditions and formation of the bodies of local self-government throughout the whole territory of Georgia two chambers shall be set up within the Parliament of Georgia: the Council of Republic and the Senate.” Mentioned provision establishes, that until regaining territorial integrity of Georgia Parliament of Georgia shall remain unicameral legislature⁵⁴ and constitutes main legislative body of Georgia which encompasses of 150 members, out of which 77 members of the Parliament are elected on the basis of proportional electoral system and 73 elected on the basis of majoritarian system. Parliament of Georgia is elected for the period of 4 years.

Head of State of Georgia is the President. Executive Government of Georgia (hereinafter the “GoG”) is headed by the Prime Minister.

All the Ministries are given the power to consider and draft the Laws of Georgia as may be necessary, which will be submitted to the GoG for further review and approval after which the draft Law shall be forwarded to the Parliament of Georgia.

Parliament of Georgia has three normal hearings and between hearing committee reviews. Parliament within the 7 days after adoption of the draft Law, shall submit adopted Law to the President. The President shall promulgate the Law within ten days or return it to the Parliament with coherent remarks. If the President returns the draft Law to the Parliament, the latter shall put to the vote the remarks of the President. For the adoption of the remarks the same number of

⁵⁴ In accordance with the Merriam-Webster definition is the following: “having or consisting of a single legislative chamber”.

votes shall suffice as determined for this kind of draft Law by Article 66 of the Constitution. If the remarks are adopted, the final version of the draft Law shall be submitted to the President who shall sign and promulgate it within a term of seven days. If the Parliament rejects the remarks of the President, the initial version of the draft Law shall be put to the vote. A Law or an Organic Law shall be deemed to be adopted if it is supported by not less than three fifths of the number of the members of the Parliament on the current nominal list. If the President fails to promulgate the draft Law within the defined term, the Chairman of the Parliament shall sign and promulgate it. A Law shall enter into force on the fifteenth day after its official promulgation unless another term is defined by the Law in question.

Georgia is a party to following international instruments, reflecting principles of safety and security of navigation:

- 1982 United Nations Convention on the Law of the Sea – UNCLOS.
- 1974 Safety of Life at Sea Convention (SOLAS 1974).
- 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.

Chapter III

General Commentaries to the Draft Law - Parliamentary Note – Part A

1. General Note

Seafarers being the most courageous men who face the perils of the sea on a daily basis are further threatened by the pirates and armed robbery. Georgia as any other maritime countries daily meets the danger of piracy and armed robbery and fully comprehends the need of cooperation of governments, maritime authorities, shipping industry and international

organizations to combat the piracy and armed robbery. Therefore safeguarding the life at sea is the ultimate goal of international shipping community. Taking into consideration principles laid down in Article 92 of the 1982 United Nations Convention on the Law of the Sea that a ship is subject to the exclusive jurisdiction of its flag State on the high seas with the one of the major exception provided in Article 105 of the mentioned Convention.

GoG is much aware of the pain and anguish of the seafarers and their families; even more so because there were 15 Georgian seafarers held captive by the pirates for more than one year. On 8 September 2010 the crew of Malta-flagged cargo ship “Olib G” consisting of 15 Georgians and 3 Turkish seafarers was seized by Somalia pirates and held for 15 months off coasts Somalia.

Respecting all rules of international law concerning the piracy and negotiations with them and taking into account the sensitivity of the situation seafarer’s liberation process was inconceivably hard and successfully completed on 8 January 2012. All Georgian and Turkish Seafarers are freed.⁵⁵

Georgia fully comprehends needs of international community in order to positively settle modern threat of piracy, throughout international cooperation.

Meanwhile the initiation of present draft law by the GoG constitutes response to the threat for the national security interests applied on Georgian flagged vessels. Georgia as the maritime country and party to UNCLOS, also as the member of the United Nations Convention on Conditions for Registration of Ships - Geneva, 7 February 1986, fully realizes importance of the genuine link as reaffirmed principle of international law.

As the part of the reforms being carried out in Georgian maritime sector since 2010, present draft Law shall serve as the deterrent of Georgia as the Flag State, that being an “Open International Ships Registry” it is even more significant to safeguard Georgian trade interests and the interests of Georgian ship-owners through thoroughly implementing all mandatory IMO requirements on the national level.

⁵⁵ For farther information, please refer to the following web-site: http://www.somaliareport.com/index.php/post/2478/Pirates_Release_MV_OLIB_G_for_Reported_3m [accessed 6 January 2014].

2. Framework of the present draft Law and Purpose

Present document comprises set of maritime Rules for the Use of Force (RUF) (“the Rules”) designed for placement and use of Privately Contracted Armed Security Personnel (PCASP) on board ships flying Georgian flag. They are set out for the benefit of the Master, Ship owner, charterer, insurer, underwriters, Private Maritime Security Companies (PMSCs), PCASP and interested third parties on how and under which circumstances force may be used in self-defence in the context of maritime piracy, armed robbery or hijacking.

3. Objective of the Draft Law

The objective of the Law is twofold. Firstly, to establish the right for the Ship-owners in order to acquire the right for placement of PCASP on board the Georgian Flagged ship and lawful use of force in accordance with the right of self-defence when subjected to either perceive or actual acts of maritime piracy, armed robbery or hijacking. Secondly, the Law may also serve to reduce risk to the Master, crew, PMSC, PCASP ship-owner, charterer, insurer and underwriters of civil liability claims and/or potential criminal or other charges, by establishing basic principles.

4. Inevitability of the Law

The necessity of presented Law is derived from the interests of rapidly growing Georgian Flag. Also for the sake of peace and good order on oceans, for safer and secure shipping. Considering that current IMO instruments do not have binding nature on the country and every Member State, if they wish so, may define on national level the rules and regulations on the use of PCAPS on board their vessel, GoG has decided to implement IMO standards on national level through

considering international practice. Nowadays, more than 20 Flag States have authorized use of PCAPS on board their respective vessels (including: the USA, Malta, Cyprus, etc.).⁵⁶

Chapter IV

Commentaries to the Draft Articles – Parliamentary Note – Part B

Structure of the draft Law

Structure of the draft Law is the following: Preamble, 3 Chapters and 15 Articles.

Preamble

As the general legislative practice of Georgia draft Law begins with the Preamble, which declares that Georgia as a maritime nation “*Recognizes*” threat of the piracy endangering safety of life at sea. Mentioned threat is ultimately reflected in the safety of life, vessel and the cargo at sea as three major principles of safety of navigation.

Preamble, further recalls Article 92 of UNCLOS, which states, that:

1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

Therefore, reaffirming principles laid down in mentioned article in the draft law is of utmost importance as far as it “*Takes into consideration*” and once again encourages GoG to seek every

⁵⁶ Information obtained on the official web-page of the Baltic and International Maritime Council (BIMCO) available on the following link: https://www.bimco.org/en/Security/Piracy/Guidance_on_piracy/~/_media/Security/Piracy/Private_Armed_Guards_Flag_State_Laws_June_2012.ashx [accessed 24 February 2014].

way possible to guarantee and enforce jurisdiction over Georgian ships regardless of their location. However, preamble also recognizes one of the major exceptions from said article as reflected in Article 105 of UNCLOS:

“On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.”

Georgia by adopting presented draft Law “Notes” that prevailing nature of any jurisdiction where Georgian flagged ships enter into constitute primary source for interpreting provisions laid down in the draft Law.

Georgia also while “bearing in mind” importance to address the piracy and armed robbery and to contribute and not only benefit from the international peace and security, “Further notes” that interests of Georgian merchant fleet is a reaffirmed principle upon which acts any GoG and “Being guided” by the principles of UNCLOS declares and undertakes to exercise effectively rights and obligations as a Flag State.

Article 1

Article deals with the purpose and the scope of the Law. Namely defines conditions for the Placement of Privately Contracted Armed Security Personnel on board the ship flying the Georgian flag and recognizes the right and duty of a ship owner to protect the crew and the fact that armed response may be applied on board Georgian ships, as a reaffirmed principle of “self-defence” in international law.

The Law does not cover the passage of foreign flagged ships through the territorial sea of Georgia with the PCASP on board and shall be accorded treatment defined in the appropriate legislation of Georgia, such as Law of Georgia on “Maritime Zones of Georgia”, “Maritime Code of Georgia”, etc.

Article 2

Article deals, with the nature of the law and defines that application of the present Law to the Company is depending upon proper decision by the Shipowner of Georgian ships and expressly defines voluntary nature of the Law. The word “Company” is defined in accordance with the

SOLAS 1974 convention, as amended, in particular with the International Ship Management Code – regulation IX/I of the SOLAS 1974 and construes following that “*Company*” means the owner of the ship or any other organisation or person such as the manager or the bareboat charterer who has assumed the responsibility for operation of the ship from the shipowner and who, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed on the company by this Law.

Article 3

Article defines, that all applicable rules and regulations, also guidelines adopted by the Parliament of Georgia regarding the PCASP shall be directly applicable in Georgia, if they do not contradict the nature and the scope of the Law. This particular provision is very important as far as it entitles appropriate authorities of Georgia to bring and utilize the newest measures developed by the IMO in this regard.

Article 4

Article deals with the terms and definitions used in the Law. Use of Article 4 is farther strengthened bringing general term for the application of other terms and definitions not expressly defined in this article to be construed in accordance with the Maritime Code of Georgia, other laws of Georgia and international treaties of Georgia. Therefore, flexibility of the Law is further affected by the paragraph 2 of Article 4.

Article 5

Article defines responsible authorities for the purposes of the Law. Namely Legal Entity of Public Law Maritime Transport Agency of the Ministry of Economy and Sustainable Development of Georgia (hereinafter the “*MESD*”) shall be sole responsible authority as the national maritime authority of Georgia in order to implement present Law. The status of the Agency is defined in accordance with the Law of Georgia on “Regulation and Management of Transport Field” and in particular Article 7 of the mentioned Law. Also, the status of the Agency is further defined by the Order №1-1/585 “*On Approval of the Charter of the Legal Entity of*

Public Law the Maritime Transport Agency” of the Minister of MESD. Namely Article 3, para. 2 of the said order establish that:

*“2. In terms of granted authority by the legislation in force, main functions of the Agency are as follows:
a) Flag State Control, survey of the vessels flying the Georgian Flag;
b) Maintenance of the Ships State Registry of Georgia;”*

Therefore, order precisely defines that every aspect of the Flag State shall be covered by the Agency and in this particular case use of PCASP on board the Georgian ships. This authority of the Agency is further reflected in the bellow Articles of the draft Law.

However, the Law of Georgia on “Management and Regulation of Transport Field” states that activities carried out by the Agency are in accordance with the current legislation of Georgia. The scope of the present draft Law also defines that use of force in the threat of piracy and armed robbery may be applied on board the Georgian ship. However, security issues apart from maritime security is a concern of several other entities in Georgia, as far as Law of Georgia “on Arms” define Legal Entity of Public Law Service Agency (hereinafter the “*Service Agency*”) of the Ministry of Internal Affairs of Georgia (hereinafter the “*MIA*”) is authorised by the said Law for issuing appropriate licences and approvals for carrying firearms and ammunition. As it was already mentioned, presented draft Law is concerned of Jurisdictional issues as well, therefore it was decided by the GoG that, appropriate entity of Georgia shall be also responsible for issuing approvals to carry firearms and ammunitions on board the Georgian ship.

Article 6

Article deals, with the number of PCASP to be employed and duration of their deployment. Draft Law is quiet flexible in terms giving wide operation to the agreement and necessity procedures to be implemented in order to define number of PCASP needed in particular cases. It is also important to highlight that participation of the Shipowner is considered in the decision making process.

The Law also defines, that number of PCASP will be included in the Ships Security Plan which in accordance SOLAS 1974, as amended, means a plan developed to ensure the application of measures designed to protect the persons on board, cargo, cargo transport units, ship’s stores or the ship from the risks of a security incident.

Article 7

Article defines Masters prevailing authority over any person, including PCASP, on board the vessel. Masters overall responsibility over the ship, crew and the cargo may be summarized as follows:

- The safe and efficient day-to-day operation of the vessel;
- Complying with the laws of navigation and the entire body of statutes that regulate ships and seagoing matters;
- Maintaining the seaworthiness of the vessel and protecting the interests of the Shipowner;
- Implementing the Safety and Environmental Protection policies of the Safety;
- Management System as defined in ISM Code;
- Motivating the crew in the observation of those policies;
- Monitoring and reviewing the Safety Management System and reporting any deficiencies to the Ship Operations Group;
- Preparing the annual Master's review of the Safety Management System;
- Acting as Alternate Vessel Security Officer when needed.

Therefore, reference in the draft article is made to the general provisions of the Maritime Code of Georgia, which are based on the mentioned postulates. It has to be mentioned, that in several documents of the IMO⁵⁷ Masters authority is expressly defined. However, para. 3 of the draft article provides, that responsibility is also to be bore to the PCASP for the actions carried out by them, therefore Law creates the balance between the actions by the PCASP and the Master.

Article 8

⁵⁷ See: MSC.1/Circ.1339 14 September 2011 on the PIRACY AND ARMED ROBBERY AGAINST SHIPS IN WATERS OFF THE COAST OF SOMALIA Best Management Practices for Protection against Somalia Based Piracy.

Article precisely defines the procedure to be followed by the PMSC in order to be able to obtain necessary approvals and sets 30 business day period for the Company to be observed before applying to the Agency for obtaining permits necessary. The given period of time serves the following purpose, to enable Company for the preparation and assessment of risk to be carried out in accordance with the Law and other regulations of Georgia.

The draft Law in Article 8 also defines minimum criteria to be observed while carrying out risk assessment and implies the obligation of both Agency and the Company to thoroughly examine firstly by the Company and at a later stage by the Agency risk assessment.

Paragraph 3 of the present draft Article lists the responsibilities and obligations undertaken by the Company, as far as for Georgia as a Flag State it is the Company which has the responsibility not the sub-contractor, however the subcontractor shall also be obeyed to the provisions of the present draft Law, in order to be able to obtain the right to embark on board the Georgian ship.

The draft Article also establishes procedures concerning the carriage, control and use of firearms, as defined by the Georgian legislation. The Company's policy on carriage of firearms is the prevailing authority and there should be documented procedures that, *inter alia*, include: Master's notification of firearms being on board; Safety briefing to the person(s) carrying the firearms and Measures for the secure storage of the firearms.

Article 9

Article deals with the selection procedures for the PMSC and takes into consideration mandatory requirements Company has to observe while selecting PMSC and what are the requirements of Georgian legislation in this regard. One of the major requirements, amongst others, should be the mandatory quality management system certificate ISO 31000:2009 series, which deals with the principles and generic guidelines on risk management. ISO 31000:2009 can be used by any public, private or community enterprise, association, group or individual. Therefore, ISO 31000:2009 is not specific to any industry or sector. ISO 31000:2009 can be applied throughout the life of an organization, and to a wide range of activities, including strategies and decisions, operations, processes, functions, projects, products, services and assets. ISO 31000:2009 can be

applied to any type of risk, whatever its nature, whether having positive or negative consequences.⁵⁸

Draft Article also requires, that PMSC shall be licensed in accordance laws and regulations of the country of registration, enabling Georgia as a Flag State to accept foreign PMSC as the provider of PCASP workforce.

Article 10

Article reflects mandatory training requirements for PCASP and refers to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, as amended – and requires that mandatory training requirements by the PCASP shall be attested accordingly. Failure to meet the required skills and competence may lead to the refusal of approval by the Agency.

Article 11

Rules applied to PCASP on board the vessel and storage of firearms and ammunition on board the Georgian ship is further defined in draft Article 11. The draft Law expressly requires, that upon embarkation of PCASP on board he/she shall conduct familiarization training for the ship's crew, in order to enable everyone on board on the rules applied during the presence of PCASP on board the ship and what are the consequences further defined by the PMSC action protocol under the authority of the Master.

Draft article further defines, that all firearms and ammunition shall have all appropriate documentation in order to prove legality of approved weapon on board the vessel, including necessary permits issued by the Service Agency of the Ministry of Internal Affairs.

The Law in draft Article 11 also defines, that no one shall have the right to use/utilize and access to the firearms and ammunitions deployed on board the vessel other than the PCASP. Draft Article taking into consideration relevant provisions of international law and national

⁵⁸ Information obtained from the official website of International Standardization Organization (ISO). See: http://www.iso.org/iso/catalogue_detail?csnumber=43170 [accessed 25 February 2014].

sovereignty and jurisdictions of states recognizes that testing and zeroing of firearms and ammunitions shall be conducted only on the High Seas.

The draft Law further enshrines the principle applied to the use of force and armed response on board the Georgian ship and brings an element of “unavoidableness” into legal description of armed response and formally requires that such action shall be undertaken under the consent of the Master of the ship.

Draft Article also defines, that where action taken by the PCASP on board the vessels results in obvious injury of pirates or armed robbers or incapacitation of their craft occurs, provisions of SOLAS 1974 Regulation V/33⁵⁹ shall apply, as amended. In doing so, the Master’s professional judgment should be exercised in ascertaining the necessary extent and type of assistance rendered, according to the circumstances prevailing, and must not put the crew’s own safety at risk.

The draft Article further reaffirms, that unlawful use of firearms on board the Georgian ship shall be construed as the crime and the person shall be criminally liable in accordance with the appropriate Criminal legislation of Georgia.

Article 12

Draft Article involves two different responsible ministries – MESD and MIA of Georgia in order to establish the categories of the Firearms and Ammunitions allowed to be used on board the Georgian Ship in accordance with the Law of Georgia “on Arms”. The Article 1 of the statute of the MIA⁶⁰ refers to the following:

“The Ministry of Internal Affairs of Georgia ... is the system of special, militarized institutions implementing the executive authority, which within the frames of its competence envisaged by the legislation ensures the protection of state security and public order, human rights and freedoms from illegal encroachment.”

⁵⁹ The reference also shall be made to the IMO Maritime Safety Committee RESOLUTION MSC.167 (78) - GUIDELINES ON THE TREATMENT OF PERSONS RESCUED AT SEA. Adopted on 20 May 2004.

⁶⁰ Decree No.337 of the GoG on the approval of the “Statute of the Ministry of Internal Affairs of Georgia”. Available at the official web-site of the Ministry of Internal Affairs of Georgia at: <http://police.ge/files/debuleba/Statute%20of%20the%20Ministry%20of%20Internal%20Affairs%20of%20Georgia.pdf> [accessed 26 February 2014].

Therefore, state security issues also need to be addressed by the MIA and involvement of the MIA is fully justifiable due to the vital characteristics of the MIA and its role in State security.

Article 13

Draft Article defines, that PCASP shall be accorded the same treatment as the shipowner's health and safety policy as for the crew and as a matter of safety of life at sea PCASP shall be eligible for life rafts and necessary Life Saving Appliances (LSA) shall be available on board the Ship.

Following IMO resolutions shall be observed while interpreting the same standards:

- A.930(22) Guidelines on provision of financial security in case of abandonment of seafarers Adopted on 29 November 2001;
- A.931(22) Guidelines on shipowners' responsibilities in respect of contractual claims for personal Injury to or death of seafarers. Adopted on 29 November 2001;
- A.987(24) Guidelines on fair treatment of seafarers in the event of a maritime accident;
- 1056(27) Promotions as widely as possible of the application of the 2006 guidelines on fair treatment of seafarers in the event of a maritime accident;
- LEG.3(91) Adoption of guidelines on fair treatment of seafarers in the event of a maritime 27/04/2006 accident.

Article 14

Draft Article further claims, that Georgia as a Flag State shall not be liable under any circumstances whatsoever arising from the contract between the Company and the PMSC. It is similarly excluded any responsibility of Georgia arising from the actions performed by the PCASP on behalf the Company, meaning that any person acting under this Law agrees that provisions of Article 14 are accordingly understood.

The draft Law gives further guidance to the company that, liabilities, losses and expenses arising out of the deployment of PCASP may impact on the company's property and liability insurance cover. Companies prior to engagement in any contractual relations are requested to consult with their insurers to assess the potential impact on their insurance cover.

Furthermore, the Law defines, that company found in breach of para. 3 "g" of the draft Article 8 shall be liable to pay 50 000 (Fifty Thousand) Georgian Lari on behalf state budget of Georgia. Draft Article 8 para. 3 "g" defines, that industry Best Management Practices shall be implemented to the greatest extent possible when entering the High Risk Area, as defined within

the Best Management Practices document. Not observing present mandatory requirement in most of the cases will be reflected in the consequences over the case.

Article 15

Draft Article deals with the final provisions and entry into force. The Agency will have 90 days additional time upon entry into force of the present Law as defined in paragraph 3 of draft Article 15 in order to ensure that all necessary by-laws and regulations, appropriate procedures are in place.

Ministers of MESD and MIA will be obliged to issue the Joint Order on the “Categories of the Firearms and Ammunitions allowed to be used on board the Georgian Ship in accordance with the Law of Georgia “on Arms””.

LAW OF GEORGIA ON THE PLACEMENT OF PRIVATELY CONTRACTED ARMED SECURITY PERSONNEL AND USE OF FIREARMS AND AMMUNITION ON BOARD THE SHIPS FLYING THE GEORGIAN FLAG

PREAMBLE

Recognizing, Seafarers being the most courageous men who face the perils of the sea on a daily basis are further threatened by the piracy and armed robbery. Georgia as any other maritime country encounters the danger of piracy and armed robbery and fully comprehends the need of cooperation of governments, maritime authorities, shipping industry and international organizations to combat the threat of piracy and armed robbery. Therefore safeguarding the life at sea is the ultimate goal of international shipping community,

Taking into consideration principles laid down in Article 92 of the 1982 United Nations Convention on the Law of the Sea that a ship is subject to the exclusive jurisdiction of its flag State on the high seas with the one of the main exceptions provided in Article 105 of the mentioned Convention,

Noting utmost importance and prevailing nature of all relevant jurisdictions to which carrying arms and ammunitions on board the Georgian Ships may come into conjunction while on voyage, including innocent passage as guaranteed right by the Convention mentioned above,

Bearing in mind that continuing acts of piracy and armed robbery representing an imminent threat to human life, safety of shipping and marine environment,

Further noting, that importance of safeguarding Georgian merchant fleet and its worldwide image,

Being guided by the 1982 United Nations Convention on the Law of the Sea and Relevant Guidelines and Resolutions adopted by the International Maritime Organization in this respect

Hereby declare the following Law:

CHAPTER 1.

GENERAL PROVISIONS

ARTICLE 1. PURPOSE AND THE SCOPE OF THE LAW

1. Law of Georgia on the Placement of Privately Contracted Armed Security Personnel (hereinafter the “PCASP”) and Use of Firearms and Ammunition on Board the Ships Flying the Georgian Flag (hereinafter the “Law”) regulates rules and conditions for the Placement of Privately Contracted Armed Security Personnel on board the Ship flying the Georgian flag.
2. Georgia recognizes the right and duty of a ship owner to protect the crew and the fact that armed response may be applied on board Georgian ships. The present Law enables the owner of the Ship flying Georgian flag for placement of PCASP and use of appropriate firearms and ammunition.

ARTICLE 2. APPLICATION AND THE NATURE OF THE LAW

The present Law shall be applicable only to those Companies explicitly expressing their intention to be bound with the provisions of present Law.

ARTICLE 3. APPLICATION OF THE LAW IN TIME

For the purposes of present Law the newest guidelines, resolutions, regulations of the International Maritime Organization (hereinafter the “*IMO*”) on PCASP shall apply “as amended” and shall be directly applicable in Georgia, so far as they do not contradict the nature and the scope of the present Law.

ARTICLE 4. TERMS AND DEFINITIONS

1. Terms and definitions used in this law shall have following meanings:

- (a) BMP - Industry Best Management Practices –produced by the International Maritime Organization, as updated from time to time;
- (b) Company - a company as defined in regulation IX/I of the SOLAS 1974, as amended;
- (c) HRA – High Risk Area, an area as defined in the industry Best Management Practices unless otherwise defined by the Agency;
- (d) IMO – International Maritime Organization;
- (e) LSA – Life Saving Appliances, as defined in LSA Code;
- (f) PCASP - Privately contracted armed security personnel;
- (g) PMSC - Private maritime security companies - Private contractors employed to provide security personnel, both armed and unarmed, on board for protection against piracy and armed robbery;
- (h) SOLAS 1974 - The International Convention for the Safety of Life at Sea, 1974, as amended;
- (i) SSP – Ship Security Plan;
- (j) STCW Convention – International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended.

2. Other terms not defined in paragraph 1 of present article shall have the meaning prescribed in the Maritime Code of Georgia, in other laws of Georgia and in the International Treaties of Georgia.

ARTICLE 5. RESPONSIBLE AUTHORITIES

1. Legal entity of Public Law Maritime Transport Agency of the Ministry of Economy and Sustainable Development of Georgia (hereinafter the “*Agency*”) represents the sole responsible authority regulating placement of PCASP on board the Ship flying Georgian flag.

2. Legal Entity of Public Law Service Agency of the Ministry of Internal Affairs of Georgia upon the request submitted by the Company, shall be responsible for the issuing of approval for the deployment of firearms and ammunitions on board the vessel flying the Georgian flag, in accordance with the present law, other applicable Georgian legislation and applicable international instruments to which Georgia is party to.

CHAPTER 2

PROCEDURES AND SPECIAL ARRANGEMENTS

ARTICLE 6. DURATION OF PLACEMENT AND NUMBER OF REQUESTED PCASP

1. Duration of the placement may be requested by the Company and submitted to the Agency together with the appropriate documentation as may be defined later by the Agency.
2. The requested number of PCASP shall be defined by the Agency together with the owner of the ship flying Georgian flag and shall be considered as the integral part of the Ships Security Plan, as endorsed and approved by the Agency.

ARTICLE 7. OVERALL RESPONSIBILITY

1. The Master of the ship must have overall responsibility for the safety and security of the Ship as defined by the Maritime Code of Georgia, under any circumstances whatsoever.
2. The orders of the Master within the limits of his/her competencies are to be thoroughly carried out by all persons on the ship. In the event of anyone on the ship not carrying out the Master's orders the Master is to take the necessary measures with regard to these persons as prescribed in the Maritime Code of Georgia.
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 law and applicable and relevant national and international laws.

ARTICLE 8. MANDATORY RISK ASSESSMENT AND RESPONSIBILITY OF THE COMPANY

1. The company may upon registration under Georgian flag or at a later stage at any time, but not earlier than 30 business day before submission intention, approach Agency in order to obtain all necessary information regarding the deployment of PCASP and the firearms and ammunition on board the ship.
2. Before applying to the Agency Company as practicable as possible shall ensure that proper risk assessment is carried out, which at least, but not limited, contains the following elements of risk assessment:

- (a) ship and crew security, safety and protection.
- (b) whether all practical means of self-protection have been effectively implemented in advance.
- (c) the potential misuse of firearms resulting in bodily injury or death.
- (d) the potential for unforeseen accidents.
- (e) liability issues.
- (f) the potential for escalation of the situation at hand and
- (g) compliance with international and national law.

3. Submitting the intention to the Agency for deployment of PCASP on board the ship the Company, in accordance with the present Law and relevant legislation of Georgia, shall impose the following responsibilities:

- (a) the SSP is developed, updated and approved by the Agency with the Ship Security Assessment considering that the ship is operating in HRA, in doing so, emergency response plan should include a clear decision tree to determine appropriate measures, when responding a threat.
- (b) the embarkation of additional personnel on board the vessel is in line with the requirements for the safety equipment on board and crew accommodation requirements.
- (c) the embarkation of firearms and ammunition together with the PCASP.
- (d) all firearms and ammunition are disembarked from the vessel when PCASP disembark.
- (e) all firearms and ammunition are not to be deployed from the designated secure keeping in sea areas which are not identified as HRA.
- (f) the national requirements on regarding firearms and in coastal and port states are in strict compliance.
- (g) in all cases, the industry BMP shall be implemented to the greatest extent possible when entering the HRA, as defined within the BMP.

- (h) the Company's obligations to safety and security on board remains directly with the Company at all times. The Master's prevailing authority shall be in written and explicitly established in any contract with PMSC.
- (i) Procedures should be in place and properly implemented on board concerning the carriage, control and use of firearms, as defined by the Georgian legislation. The Company's policy on carriage of firearms is the prevailing authority and there should be documented procedures that, *inter alia*, includes:
 - .a.) Master's notification of firearms being on board,
 - .b.) Safety briefing to the person(s) carrying the firearms,
 - .c.) Measures for the secure storage of the firearms.
- (j) any information as may be requested by the competent authorities of Georgia shall immediately be available upon request.

ARTICLE 9. SELECTION CRITERIA FOR THE PMSC

1. The Company should be able to demonstrate that due diligence has been carried out when selecting the PMSC. Selection should, be based on the criteria adopted by the international maritime community and shall contain the following, but not limited:

- (a) Company structure and place of registration;
- (b) Company ownership;
- (c) Financial position (e.g. annual accounts/bank references);
- (d) Extent of insurance cover (in particular covering third-party risks);
- (e) Senior management experience; and
- (f) Quality management system - ISO 31000:2009 series standard on the implementation of risk management
- (g) In all cases the professional standing of a PMSC should be ascertained.

2. PMSC should be licensed by their National Authorities and also have licenses from local Port Authorities to embark and disembark firearms.

ARTICLE 10. TRAINING REQUIREMENTS TOWARDS PCASP

All PCASP are subject to following requirements to meet:

- (a) clear understanding of the activities in which they are or will be engaged, attested by their signature on the relevant contract.
- (b) able to prove the knowledge and skills using firearms and related ammunitions;
- (c) has undergone following trainings, as required by the STCW Convention, as amended:
 - .a.) Personal survival techniques (STCW A-VI/1-1);
 - .b.) Firefighting and fire prevention (STCW A-VI/1-2);
 - .c.) Elementary first aid (STCW A-VI/1-3)
 - .d.) Personal safety and social responsibility (STCW A-VI/1-4)
 - .e) Training in crowd management as specified in section A-V/2, paragraph 1 of the STCW Code.

ARTICLE 11. RULES APPLIED TO THE PCASP ON BOARD AND RULES FOR THE USE AND STORAGE OF FIREARMS AND AMMUNITION

1. The PCASP shall, upon embarkation, complete crew familiarization.
2. All firearms and equipment are to be accompanied by all required documentation, including permissions issued by the Service Agency, necessary for their legitimate use by the PCASP.
3. Firearms and ammunition must not to be handled at any point whatsoever by the ship's crew or by any other person other than the PCASP.
4. The testing and zeroing of firearms is permitted only in international waters and only under the permission granted by the Master.
5. Armed response on board the ship flying the Georgian flag may be applied when the threat of piracy or armed robbery is unavoidable, taking into consideration all relevant provisions of

International Law and shall be only permitted by the means of Order given by the Master of the Georgian ship.

6. All actions carried out by the PCASP in response to the threats of piracy or armed robbery shall be in strict conformity with the requirements of the Law of Georgia on “Police”. Special consideration shall be given to the provisions of Law of Georgia on “Police” in regards using firearms, physical force and special tools.

7. Where action taken by the PCASP on board the vessels results in obvious injury of pirates or armed robbers or incapacitation of their craft occurs, provisions of SOLAS 1974 Regulation V/33 shall apply, as amended. In doing so, the Master’s professional judgment should be exercised in ascertaining the necessary extent and type of assistance rendered, according to the circumstances prevailing, and must not put the crew’s own safety at risk.

8. The unlawful use of firearms is subject to criminal liability in terms of Georgian legislation in respect of any offence that is committed on a Georgian registered ship

ARTICLE 12. CATEGORIES OF FIREARMS AND AMMUNITIONS ALLOWED TO BE USED ON BOARD THE GEORGIAN SHIPS

Minister of Economy and Sustainable Development of Georgia jointly with the Minister of Internal Affairs of Georgia shall establish the categories of the Firearms and Ammunitions allowed to be used on board the Georgian Ship in accordance with the Law of Georgia “on Arms”.

ARTICLE 13. EQUAL TREATMENT OF PCASP

PCASP should be afforded the same protection under the Shipowner’s health and safety policy as for the crew. Sufficient LSA is to be provided for all persons on board. In case of any shortfall in lifeboat capacity, the carriage of a liferaft in lieu is acceptable for the short duration of transit, with excess persons on board. Applications for such temporary LSA arrangements must be made

via the Recognised Organisation in the usual way.

ARTICLE 14. LIABILITY

1. Georgia as a flag State shall not be liable under any circumstances whatsoever arising from the contract between the Company and the PMSC. It is similarly excluded any responsibility of Georgia arising from the actions performed by the PCASP on behalf the Company.
2. Liabilities, losses and expenses arising out of the deployment of PCASP may impact on the company's property and liability insurance cover. Companies prior to engagement in any contractual relations are requested to consult with their insurers to assess the potential impact on their insurance cover.
3. Company found in breach of obligation under Article 8, para. 3, subparagraph “g” shall be liable to pay 50 000 (Fifty Thousand) Georgian Lari on behalf the State Treasury of Georgia.

CHAPTER 3

FINAL PROVISIONS AND ENTRY INTO FORCE

ARTICLE 15. FINAL PROVISIONS

1. Within 90 days upon entry into force of the present Law, Firearms and Ammunitions allowed to be used on board Georgian Ships shall be defined, as prescribed in Article 12 of the present Law and published officially for further dissemination.
2. The Agency shall ensure that all necessary arrangements are made for the full and smooth operation of the present law within 90 days upon entry into force the present Law.
3. The present Law shall come into force after 90th day of the publication in Official Gazette:
www.matsne.gov.ge

President of Georgia

Giorgi Margvelashvili