

Comments on the Draft ICoCA Recognition Statement for ISO 28007-1 (2015)

March 2016

Dr. Rebecca DeWinter-Schmitt, Senior Managing Director, Human Analytics (18 February 2016)

As an observer to the ICoCA, Human Analytics welcomes the opportunity to comment on the draft recognition statement and accompanying annexes for ISO 28007-1. Having reviewed these documents, we feel that they meet the requirements laid out in the certification procedure for reviewing possible standards that can provide a path to ICoCA certification. Our only comment is that four gaps directly or indirectly noted in the gap analysis undertaken in Annex A do not seem to have found their way explicitly into the additional information requirements laid out in Annex B.

Topics not mentioned in Annex B, where the ICoCA may want to push for additional information from member PMSCs are:

1. Ensuring that, in line with the UN Guiding Principles on Business and Human Rights, when PMSCs evaluate and prioritize risk controls, management, mitigation, and treatments that they prioritize addressing human rights risks based on their scope and severity;
2. Including indications of prior involvement in human rights violations, which in some countries may not be captured in criminal background checks, employment histories, and military and law enforcement service records, in the selection and vetting criteria for personnel and subcontractors, as required in ICoC paragraphs 48 and 51;
3. Evidencing that personnel receive mandatory training in reporting requirements related to the types of crimes and human rights violations laid out in ICoC paragraph 22; and
4. Ensuring that grievance mechanisms offer effective remedies to victims of negative human rights impacts as foreseen in ICoC paragraph 67 a). The remediation of harms caused by PMSCs' activities is not addressed anywhere in ISO 28007.

Finally, with the IMO determining that the ICoC is compatible with the responsible provision of maritime security on board ships, and with indications that shipping lines like Maersk are undertaking extensive human rights due diligence processes, the ICoCA is afforded an opportunity to promote uptake of the ICoC in shipping companies contracts with PMSCs as well as in the regulation of flag, coastal and port states' regulations.

Rémy Friedmann, Senior Advisor, Swiss Federal Department of Foreign Affairs (FDFA) (25 February 2016)

Please find herewith Switzerland's comments to the Annex B of the Draft Recognition Statement for ISO 28007-1(2015) (Draft Certification Additional Information Requirement for ISO 28007/28000):

- In 5. b) I., add a reference to IHL such as:
"The process by which you incorporate in your reporting policies the relevant international **humanitarian** and human rights law (...)."
- In 5. d) I, add a reference to IHL such as:
"The manner in which you provide training to your personnel on the ICoC and all its human rights **and international humanitarian law** elements. This should include in particular the international standards on use of force, detention, apprehension and anti-corruption."

Matt Walje, Project Officer, One Earth Future (25 February 2016)

Below are the comments from Oceans Beyond Piracy/One Earth Future Foundation. This has come a long way and looks good. I have included a few comments explicitly with the intention of trying to develop what differentiates and provides a value add for ICoC Certification by maritime security providers.

- Annex A:
 - In 1.2 *“Does the standard require a company to have a process to consider the potential impact of UN Security Council Sanctions on contracts with governments and their agents?”*
 - As the IMO circulars and standards will have more direct relevance to the maritime environment, it might be worth considering IMO guidance in addition to any UNSC sanctions.
 - In 1.2 *“Does the standard require a company to have a process to evaluate and prohibit the practices described in ICoC Paragraph 22?”*
 - *“However, the Standard does not require PMSCs to have a process to evaluate and prohibit the practices described in paragraph 22 of the ICoC.”* Though some have claimed that the opportunity for committing violations for such crimes at sea are limited, the fact remains that significant opportunity exists for “forced or compulsory labour, hostage-taking, human trafficking, the trafficking of weapons or drugs, child labour or extrajudicial, summary or arbitrary executions” to occur in the maritime. In fact, these are crimes that are an explicit problem in the maritime domain.
 - In 1.2 *“Does the standard require that a company maintains awareness of all reporting requirements?”*
 - *“Reporting requirements.”* Reporting requirements vary significantly between Flags. Some standardization would be a welcome change. For an example of responsible reporting requirements see: <http://www.register-iri.com/forms/upload/MN-2-011-39.pdf>
 - In 1.2 *“Does the standard require the company to ensure that all vehicles discharging contractual responsibilities are registered and licensed with relevant national authorities?”*
 - *“PMSCs operate vehicle (including small boats, transportation vehicles, etc.) in complex environments.”* Floating armouries in particular are a concern here. They are registered, but registered with Flag States that are not necessarily White Listed, meaning that they are not among the more responsible or legitimate flags. When companies with a home state in the UK register their vessels in such a way as to avoid regulation, the spirit of this requirement is failed.
 - In 1.3 *“Does the required reporting program include each of the practices or behaviours described in paragraph 22 of the ICoC.”*
 - *“However, the provision is not specific to the practices included in ¶22 of the ICoC.”* As stated above, the practices in para 22 are absolutely relevant in the maritime and should be specifically addressed.
 - In 1.3 *“Does the standard require an incident report to include each of the following: (...)”*
 - *“However, some elements of the ICoC are not covered, including the nationality and addresses or contact details of persons involved in the incident.”* This is a very

important issue. There is almost no way to track down possible victims at sea, as most of the coastal states have governance issues.

- In 2.1 *“Does the standard require that company personnel agree to participate in internal and external investigations and disciplinary procedures?”*
 - *“The Standard does not include an explicit requirement for the company to require its personnel to participate in internal and external investigations.”* This could absolutely be problematic. See Enrica Lexi and Seaman’s Guard Ohio for possible scenarios.

- In 6 *“Does the standard require that a company assess and/or address each of the following: (...)”*
 - *“risk of injury to local populations”* Given the known risk to local shipping and fishing populations, I think that this needs to be an additional information requirement. It is insufficient to presume that this falls under human rights abuses. An explicit assessment of risk to local populations should be included.

 - *“Appropriate PPE; Appropriate weapons and ammunition”* Not addressed here is team size. BIMCO’s GUARDCON contract and several flag state regulations require a 3 man team minimum as the risks associated with a 2 or 1 man team are deemed to be too high. This is not, in the opinion of many, sufficiently addressed in ISO 28007 and provides an incentive to hire cheaper teams whose credentials are the same (ISO 28007) but whose practices may be inherently irresponsible. Distinguishing between companies based on responsible team size may be an edge or a value add that ICoCA could add here and would be supported by SAMI, BIMCO, and Marshall Islands at minimum.

- In 7 *“Does the standard require evidence of sufficient coverage of financial capacity to meet commercial liabilities?”*
 - *“The organization should ensure the subcontracted or outsourced entity has appropriate insurance cover for those activities.”* It might be a good idea to require additional information here related to the company’s capacity to repatriate contractors and team members. Several of the PMSCs that have gone belly up left a large number of their employees high and dry, stuck without pay or a return ticket. Such an additional assurance provided by the ICoC Certification might be a welcome assurance for team members themselves, creating a recruiting advantage for ICoC certified companies.

- In Training requirements – Mandatory Subjects for Training. 2)
 - This could be a selling point for ICoC certification to shipping companies. A vessel’s crew is going to be extraordinarily diverse. It is one of the few places that you will have Poles, Russians, Ukrainians, Indians, and Filipinos all working together for a common end in close confines. If you are able to demonstrate that a certification means your guards are not only competent to protect the vessel, but will also be trained to get along well with the diverse cultural perspectives of the crew, that could be a useful piece of vetting information for a shipping company.

- In Training requirements – Mandatory Subjects for Training. 4)
 - The concern here is that the training does not relate to when a report should be issued so much as to when it should not. i.e. incident reports can result in lengthy investigations which would be a disruptive or undesirable event. It seems that

some assurance is warranted that this does not indicate to a client that the PMSC would be “discrete” in dealing with incidents.

- In Training requirements – Mandatory Subjects for Training. 6)
 - The worst kept secret in shipping is that bribes, particularly in the form of tobacco, are a part of business. Even customs restrictions related to tobacco product.
- In Training requirements – Mandatory Subjects for Training. 7)
 - Verifying this piece will be difficult given the number of jurisdictions and flags involved, but this is more a piece for the monitoring function.
- Annex B:
 - In 5. a) I., it may be worth considering that many teams are shifting to a model in which a western team member is placed as the team lead (usually British) and the remainder of the team are made up of Filipinos, Indians, or Nepalis. It may be too soon to be clear, but this may have some discrimination implications if those other team members are prevented from moving up to a team leadership position. Equally, the use of TCNs is a financial decision, meaning they are paid less than their British or western counterparts. If this is truly based on ethnic or national origin, it is a potentially serious discrimination issue.
 - In 5. b) III.: “*client and to the competent authorities*”, this really is key. Beyond the shipping company, the Flag State must receive a report, as well as the coastal state in cases within international waters. For example, a recent incident indicated that a Yemeni national was killed in Yemeni territorial waters by a security team, but no report of the event reached appropriate authorities. The same vessel nearly fired on Somali coastguard personnel during the same transit.

Marcel Kodran, Managing Director, Comites Solutions (26 February 2016)

As we are not a Private Maritime Security Company, we are not directly affected by the proposed standard. However, we do have several positive comments on the sent risk register of the ISO 28007-2015 in relation to the Code and regarding the additional information, which has to be provided to the ICOCA:

1. The standard covers to our understanding the most relevant risk management issues in security companies whereby the demanded additional information complies the standard most adequately in regards to the Human Rights requirements (e.g. through the HRRRA, Implementation-Action Plan);
2. The standard 28007-2015 addressing the Maritime Security Providers is understood (like e.g. the ISO 18788-2015 for PSCs) to be accessible and affordable in various countries on all continents;
3. ISO-Certification Bodies compete in an open market worldwide, making a market monopolization of industry standard certifications much more difficult.

All in all we appreciate very much the fact that the ICOCA is aiming to implement industry standards as a membership criteria, which have less chance to be abused as market entry barriers by e.g. a limited accessibility to certification bodies. We certainly hope that yet existing independent certification bodies for other ISO standards are motivated or even receive an incentive to take this product on board. On the other hand, we would suggest that the ICOCA, if administrative capabilities allow such efforts, conduct an irregular analysis of the certification body market for the concerned security industries.

Having seen the ICoCA's movement towards standards of the International Standardization Organization for the Maritime Security Companies, we would surely appreciate similar actions concerning Private Security Companies delivering services on land in near future.

Antony Chattin, Director, MSS Global (26 February 2016)

As we discussed in the Observer Pillar breakout at the AGA, the key issue with ISO 28007-1:2015 certification is the certified 'scope'; Peter Cook from SAMI backed this up at the time. There is a strong case of 'buyer (ICoCA) beware' here.

I believe you will very likely find that all PMSCs with ISO 28007 certification will have a certified scope that focusses on the High Risk Area (HRA) and wider Indian Ocean; a copy of their certificate will give you a clear indication.

Due to market conditions, most PMSCs have broadened their operations well beyond those confines; often in to areas where human rights risk is potentially much greater (littoral regions of West Africa, South China Sea to name a couple). As a CB, when we audit their ISO 28007 certificate – we only audit the operations within the certified scope. Human Rights risk is generally much reduced (not absent, but reduced) in the Indian Ocean operations and therefore easier to control; that is unlikely to be the case in other regions. A PMSC may have to adopt a deeper and more comprehensive approach to manage the more acute and real risks in these other regions – but we will not review or assess those as they are likely to be outside the certified scope.

So where does that leave the ICoCA recognition of ISO 28007? In simple terms, I strongly suggest you require a company to demonstrate the scale of their global operations, and then give you an indication of their balance of effort/scale. This will allow you to take a considered opinion as to whether you are content to accept an Indian Ocean facing ISO 28007 certificate, or if you need, in effect, a full assessment of their global operations, almost as if they did not have ISO 28007. You need to be alive to the risk that companies could retain an ISO 28007 certificate through a transit every couple of months, but in fact have their biggest operation in West Africa, and outside their certified scope.

Sylvia White, General Counsel & Andrew Farquhar, Managing Director, GardaWorld (26 February 2016)

We wanted to give some comments on the draft ICoC a recognition statement for ISO 28007, on behalf of GardaWorld and Aegis entities.

The scope of ISO 28007 states that it covers "...Privately Contracted Armed Security Personnel (PCASP) on board ships. To claim compliance with these guidelines, all recommendations ("shoulds") should be complied with."

While it is true that the scope does not limit the application of the ISO, the fact is that PCASP are only used on ships ordinarily in the high-risk area. This leaves a very significant concern as to whether the full management system for the entire business is being reviewed and certified or whether it is only elements that relate to the use of PCASP in the HRA. It is a fact that the maritime sector offers services beyond PCASP in the HRA. Indeed there is significant crossover between offshore and onshore services in the extractives industry. In addition increasingly the maritime sector is becoming involved in what may have been more traditionally considered "land" security.

From our perspective this leaves a significant challenge for the ICoCA to determine whether the extent of certification truly covers the business areas of the applicant. It seems to us that the bigger human rights risks may in fact arise in respect of operations that are outside of the HRA and in respect of which the external certification agents may have had no oversight.

Our suggestion would be that in each section in annex A - there is a specific requirement added such that the company with 28007 certification should demonstrate that their programs apply to all of their business services (that fall within the remit of ICoCA) not just PCASP in the high-risk area?

The alternative would be to accept ISO 28007 certification only for maritime companies that offer services solely within the HRA?

Of course the same issue arises where a company is certified in some jurisdictions only for PSC 1 and it may be that ICoCA has an alternative way of dealing, for example by requiring an absolute undertaking from the member that is not working (to the extent relevant to ICoCA) in other jurisdictions.

Glynne Evans, Chair/ Paul Gibson, Director, The Standards and Accreditation Working Group, SCEG (26 February 2016)

Thank you for the opportunity to comment on your recognition of ISO 28007, which I do as Chair of the Standards and Accreditation Group of the SCEG.

I took part in the negotiations of the ICOC. Maritime security services are specifically mentioned only in para 7 which states "*and thereafter to consider the development of additional principles and standards for related services, such as training of external forces, the provision of maritime security services...*"

The genesis of ISO PAS 28007 and its successor ISO 28007 lay in a request to ISO (International Standards Organisation) from the International Maritime Organisation", a UN Specialised Agency, to meet the requirements of its members. IMO in due course welcomed the publication of ISO PAS 28007 in November 2012 and ISO 28007 in April 2015.

The language of the Standard is carefully judged and tightly drafted. For that reason, ISO 28007 requires in depth analysis and consideration by Certification bodies who are reviewing the activities of PMSCs seeking accredited certification. The Guidance published by the UK Accreditation Service (UKAS) for Certification Bodies in October 2015 offers clarification and amplification, not least on human rights and other areas. It is worth noting also that the Standard is the first ever ISO which references the UN Guiding Principles on Business and Human Rights in its introduction.

I attach a link to the UKAS document:

https://www.ukas.com/download/publications/publications_relating_to_certification_bodies/CIS%2009.pdf