

Steven Kay QC  
9 Bedford Row International  
London WC1R 4AZ  
+44 207 489 2727  
[www.9bedfordrow.co.uk](http://www.9bedfordrow.co.uk)  
[www.iclb.eu](http://www.iclb.eu)

## **Legal Review of the 100 Series Rules**

### **1. Introduction**

1.1 The threat to the seas and specifically, international maritime trade posed by piracy that has necessitated the private sector to protect their right to trade can only be addressed by measures that are lawful. The need to employ security personnel with arms to protect commercial interests and persons on board requires that employers and all others with concurrent responsibility operate within an internationally recognized legal standard so as to prevent themselves from being held liable in criminal law or civil law for any acts carried out on their behalf. The security personnel given the responsibility to protect must follow internationally recognized laws to ensure that steps taken by them do not also expose them to criminal or civil liability.

1.2 The Rules for the Use of Force to protect merchant vessels, their crew, passengers, cargo and security personnel, are a graduated series of responses to ensure adequate and appropriate measures are taken to safeguard those at risk from unlawful and criminal acts whilst on board a vessel. The 100 Series Rules provide owners of vessels, owners of cargo, charterers, contractors, insurers, underwriters and other interested parties with a lawful framework and example international benchmark upon which those charged with ensuring the security of a vessel and all those aboard may act.

### **2. Jurisdiction**

2.1 A vessel, owners, charterers and those on board will be subject to the laws of several jurisdictions at any one time during a passage being: flag state, coastal state, port of state and in certain circumstances the laws of the national state of an individual.

2.2 If a crime is committed on board a ship, flag state laws apply **but** if the crime is within the jurisdiction of the coastal state the criminal jurisdiction of the coastal state may prevail. If a pirate is killed in the territorial waters of a state or port, the perpetrator of the killing may become subject to the criminal laws of the coastal state. This emphasizes the need to ensure all acts and conduct that fall within the scope of the Rules for the Use of Force comply with the likes of the 100 Series Rules that have as their aim the objective to ensure at all times, lawfulness.

2.3 The carrying of weapons on board will involve compliance with coastal state and port of state laws that are to be regarded as paramount.

### **3. Law of self-defence**

3.1 Self-defence is a universal concept of law and inherent right that permits a person to protect himself or to intervene to protect another. The 100 Series RUF sets an objective standard that a person acts in lawful self-defence of himself or another when he has a genuine belief that he or the other person is under attack or imminently to be attacked, so that it is necessary to defend himself or the other person by using no more force than is reasonably necessary to repel the attack or threatened attack.

3.2 The use of force must be proportionate to the degree of danger faced. Once the attack or imminent threat of attack has been repelled, the use of force in self-defence must cease. If a person exceeds the amount of force reasonably necessary to stop or prevent an attack they will be exposed to criminal responsibility for their conduct. Their superiors may also be at risk of being held criminally responsible for any failures in their supervision.

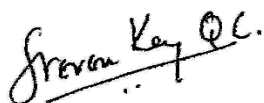
3.3 It is important that those charged with the responsibility to protect vessels and persons on board attempt to diffuse a potentially hostile situation by taking measures to deter hostile elements, as the 100 Series Rules rightly seek to ensure that use of lethal force is that of last resort.

### **4. Measures to ensure proper compliance**

4.1 The use of security personnel carrying weapons requires all parties responsible for their contracting to ensure that such personnel and those interacting with them in the discharge of security duties are trained in the use of the 100 Series Rules. It is important that these duties are properly discharged and records maintained to show that they have been discharged to prevent vicarious liability. Once training has taken place, regular checks on the competence of all those with duties arising from the Rules will be necessary to ensure they are fully aware of their obligations and apply them in practice.

4.2 The need for proper compliance and the duties to record, inform, report and supervise apply throughout the management chain of responsibility and all involved need to ensure they perform to the highest standards to protect themselves from liability.

Signed:

A handwritten signature in black ink, reading "Steven Kay QC.", with a horizontal line drawn underneath the signature.

Steven Kay QC

London

17 January 2013