

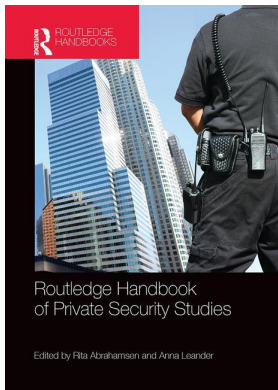
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6

PMSCS IN MARITIME SECURITY AND ANTI-PIRACY CONTROL

Carolyn Liss

The use of privately contracted armed security personnel (PCASP) onboard merchant vessels is today a widely accepted measure to protect ships from attacks by Somali pirates. The large-scale employment of private military and security companies (PMSCs)¹ to provide armed guards is a new phenomenon, given that the armament of merchant ships was until recently rejected by the shipping industry, governments, and international (maritime) organizations. This chapter traces the short history of the employment of PMSCs at sea, with particular attention being paid to armed anti-piracy services – the most prominent services provided by PMSCs in the maritime sphere at present. It will be argued that even though these companies play an increasingly important role in security governance, the maritime environment poses specific challenges for regulators, resulting in some PMSC's activities being left unmonitored. The specific challenges PMSCs and regulators face when private security providers operate at sea will be highlighted in the discussion of anti-piracy services conducted by PCASP.

The [first part](#) of this chapter provides an overview of the rise of PMSCs in maritime security governance and describes the different kinds of services offered by these companies. The [second part](#) focuses on anti-piracy services provided by PMSCs. It discusses the emergence of anti-piracy PMSCs, which began to operate in the Malacca Strait in the early 2000s, and the recent boom of the industry fuelled by the large number of serious attacks conducted by Somali pirates between 2007 and 2012. The [third part](#) discusses the specific challenges that the maritime sphere poses for PMSCs and those trying to control these companies and their activities. Special attention is paid to the regulation of anti-piracy PMSCs and the persistent problems associated with the working practices of these companies. The conclusion presents the finding that PMSCs have today become an integral part of maritime security governance, even though some serious concerns remain over the working practices of PMSCs and their employees.

PMSCs in maritime security

In the past, a range of non-state actors was involved in different aspects of maritime warfare, including the disruption of enemy trade. The most prominent of these actors were privateers: private persons (or vessels) authorized by a government through a 'letter of marque' to attack enemy ships in time of war. However, with the establishment of permanent navies and the

development and enforcement of the idea of a state monopoly on violence (at sea), such armed non-state actors all but disappeared from the oceans. Privateering, for example, began to be delegitimized and was abolished with the 1856 Declaration of Paris (Thomson 1994: 70–71).

Since the end of the Cold War the notion of the state as the sole provider of (maritime) security has increasingly been challenged and ‘new’ actors such as non-governmental organizations (NGOs) and private businesses have played ever more important roles in security governance. PMSCs active in the maritime sphere are among these new actors. They are private businesses and are part of the wider private security industry. Indeed, some of the well-known companies such as Academi (formerly Blackwater) and AEGIS that operate on land also offer maritime services.

The rise of PMSCs active on land and in the maritime sphere has been facilitated by similar, interconnected factors that include:

- the broader process of privatization of public services and state sector enterprises, such as education and healthcare on land and the privatization of ports in the maritime sphere;
- the global downsizing of major militaries; and
- the changing nature of conflict after 1989.

(Singer 2003; Avant 2005)

In the maritime sphere, this has resulted in an increased focus on non-traditional security threats such as piracy, illegal fishing and maritime terrorism. Government agencies such as navies have adapted their operations and today focus much more of their activities on addressing such ‘soft’ maritime security threats (Till 2013: 31–8, 282–305). Additionally, new regulations, including the International Ship and Port Facility Security (ISPS) Code, were introduced in response to threats such as terrorism that required increased security measures from states and the shipping industry. Complying with the new security regulations and responding to the broadened range of security threats require additional manpower and often task-specific resources and can overstretch capacities of government agencies – especially in developing countries where resources are particularly sparse. This lack of capacity and the new requirements necessary through regulations such as the ISPS Code are reasons why PMSCs have become increasingly involved in addressing (non-traditional) maritime security threats.

Compared with services provided on land, PMSC business in the maritime sphere took longer to become established, and the major focus and expertise of these companies have concentrated mainly on a small range of services. PMSCs offer passive maritime services such as risk assessments, as well as active services that focus mostly on the armed and unarmed protection of maritime assets and installations. Indeed, in contrast to the activities of privateers and other for-profit actors in the past, PMSCs primarily provide defensive maritime services at sea or on land. In relation to the landward portions of maritime operations, PMSCs are primarily hired to provide port security, including access control, the screening of containers, and emergency responses. These land-based maritime activities resemble other PMSC operations on land and are not the focus of this chapter.

PMSCs also offer maritime services that are predominantly conducted at sea. The most prominent of these are the protection of offshore energy installations; operations against illegal fishing;² and the protection of vessels such as merchant ships, fishing boats, yachts, and cruise ships. Protection of these assets is needed against attacks from a range of perpetrators, including pirates, terrorists, insurgents, and radical civil protest groups. Offshore oil and gas installations, for instance, have been targeted by environmental activists and insurgents. Greenpeace activists’ attempt to climb onto a Gazprom oil platform in September 2013 to

protest drilling in the Arctic and attacks against offshore oil and gas installations by the Movement for the Emancipation of the Niger Delta are but two examples (Kashubsky 2013). At a time when rising demand for oil and gas is leading to an increase in offshore energy exploitation, and more countries are changing their laws to allow not only state but also private forces to protect oil and gas installations, it is believed that business for PMSCs will continue to increase.

The services offered for the oil and gas industry also include the protection of vessels travelling to and from offshore energy installations such as oil platforms, which overlaps with other vessel protection services advertised by PMSCs. These include the armed protection of a range of different vessels, including the guarding of fishing boats against attacks from other fishers or insurgents. PMSCs have, for example been employed to provide armed guards to protect Japanese-owned fishing boats and Philippine tuna fleets (author's interviews). However, the most prominent and lucrative vessel protection services offered by PMSCs are anti-piracy services.

PMSC anti-piracy services

PMSCs offer a range of anti-piracy services, including risk assessment and consulting, training of crews, provision of armed guards onboard vessels, the use of armed escort vessels to protect a client's ship, and the recovery of hijacked ships and cargoes. The most prominent and controversial of these services is the use of armed guards onboard the client's vessel to protect merchant ships, fishing boats, and pleasure craft against pirate attacks. Anti-piracy PMSCs are employed by ship or cargo owners and are only hired when government agencies cannot ensure the safety of shipping, and the client believes that the threat is significant enough to justify the additional costs. Indeed, hiring a PMSC is costly, and in the highly competitive shipping industry any additional expenses are generally avoided. The employment of anti-piracy PMSCs started with the increase in pirate attacks in the Malacca Strait area in the early 2000s, but it was the more recent spate of serious attacks conducted by Somali pirates that caused the boom of the industry.

Anti-piracy PMSCs were first employed in southeast Asia. Between the 1990s and the mid-2000s, this region was the global hot spot of pirate attacks on commercial vessels and fishing boats. In southeast Asia, pirates were particularly active in the waters of Indonesia, Malaysia and the Philippines. While most attacks at the time were simple hit-and-run robberies by opportunistic pirates, more serious incidents such as hijackings also occurred. Organized pirate gangs or syndicates were responsible for these more serious attacks in which vessels and their crew were held hostage for a limited time and the cargo stolen. In other cases, the entire vessel was seized, given a new identity, and used for trade as a so-called 'phantom ship' (Liss 2011).

At the turn of the century, pirate attacks in the Malacca Strait started to cause concern. The number of reported incidents jumped from two reported actual and attempted attacks in the waterway in 1999 to 75 the following year. In 2001, the number dropped to 17 and declined again in the following year with 16 reported incidents. In 2003, 28 incidents were reported, and there were 37 in 2004, 12 in 2005 and 11 in 2006 (ICC 2007). The attacks in this area caused international concern because of the Malacca Strait's strategic importance. The strait connects the Indian Ocean with the South China Sea and the Pacific Ocean, and more than 60,000 vessels weighing over 300 gross tons passed through the strait each year at the time. These included a large number of tankers carrying oil from the Middle East to destinations such as China and Japan. The Malacca Strait is a favoured location for pirate attacks because ships have to slow down to safely manoeuvre through the narrow waterway, allowing pirates to approach and board targeted vessels more easily. Following the September 11 terrorist attacks,

unfounded speculation that terrorists would collude with pirates in the Malacca Strait caused additional concern, as did accusations that the politically motivated Free Aceh Movement (Gerakan Aceh Merdeka, or GAM) which fought for independence from Indonesia, or rogue members of the group, were responsible for some attacks in the strait (Liss 2011).

In response to this increase in pirate attacks, some ship owners hired PMSCs to protect their vessels. In most cases, PCASP was hired to secure the client's ship, but as demand increased, a few companies also acquired escort vessels that accompanied the client's ship through the strait. The Singapore-based (and Hong Kong-based) PMSC Background Asia, for example, used escort vessels to guard tankers in the strait, and the Australian-based company Counter Terrorism International (CTI) provided protection for a tug in the strait and for a vessel that departed from an oil rig and passed through the waterway (author's interviews). Even though the protection primarily aimed to deter pirates, many PMSCs at the time advertised to provide anti-piracy and anti-terrorism protection for vessels because of the suspected terrorist activities in this area. The majority of PMSCs that were active in the Malacca Strait had their headquarters in Singapore or outside the Asian region, in countries such as the UK and Australia. Most were very small companies (often consisting of only 2–5 permanent employees), founded and staffed by ex-military or ex-law enforcement personnel. However, the employment of anti-piracy PMSCs remained limited and restricted to the Malacca Strait because pirate attacks in other southeast Asian waters were mainly hit-and-run robberies that did not warrant the cost of hiring a PMSC. As the number of attacks in the Malacca Strait continued to decline, with only one or two incidents reported each year since 2008, the employment of anti-piracy PMSCs in the Malacca Strait also dropped.

As the use of anti-piracy PMSCs began to decline in the Malacca Strait, the industry began to flourish and then boom in the wider Gulf of Aden area. Since 2008, attacks by Somali pirates in the Gulf of Aden, the Red and Arabian Seas, the Indian Ocean, and Omani waters have caused international concern. The number of actual and attempted attacks in these waters rose from 51 in 2007 to 111 in 2008, 218 in 2009, 219 in 2010, and peaked at 237 attacks in 2011 (ICC 2012). The attacks in this area differ significantly from incidents in southeast Asia because Somali pirates are mainly interested in ransom payments. The perpetrators usually board a targeted vessel, take control of the ship, and hold it and the crew hostage for a prolonged period of time until a ransom is paid. A World Bank study estimates that between April 2005 and December 2012, 179 ships were hijacked by Somali pirates, and they collected between US\$339 million and US\$413 million in ransom during this time (World Bank 2013). Somali pirates have targeted ships of all types, sizes, and nationality, including merchant ships, yachts, fishing boats, UN supply ships, and supertankers.

Somali piracy has triggered international responses. Like the Malacca Strait, the wider Gulf of Aden area is important for international shipping and therefore the world economy, which depends on the timely, safe, and cost-effective transport of goods by sea. To combat Somali piracy, governments from around the world have sent naval vessels to protect international shipping, often as part of missions sanctioned or organized by multilateral organizations, such as NATO and the EU (Ehrhart *et al.* 2010). For additional protection, some countries, including France and the Netherlands, have also used military personnel as armed guards on merchant and fishing boats under their flags.

As government efforts initially showed little effect, ship owners turned to PMSCs to protect their vessels. Like in the Malacca Strait, most ship owners would pay for PCASP to travel onboard their ships in high-risk areas, but some companies also began to offer the use of armed escort vessels. Between two to six guards are usually employed to protect a merchant ship, but because Somali pirates also target other vessels, PMSCs are also hired to protect fishing boats,

yachts, and cruise ships, and the number of guards and their responsibilities change accordingly. In the Gulf of Aden area, PMSC guards have to stay onboard the client's vessel longer than in the Malacca Strait because the pirates operate in a larger area. Guards usually board ships that travel from Europe towards Asia after the Suez Canal and debark after the high-risk area in places such as the Seychelles or Sri Lanka. Like the Somali pirates, PCASP do also carry (heavy or war) weapons, which need to be taken onboard the client's ship and then removed upon debarkation of PMSC personnel.

With the large number of successful hijackings and the payment of millions of US dollars in ransom, demand for private protection skyrocketed. Since private maritime security was previously a niche business, more and more maritime PMSCs were established to meet demand, and some already established PMSCs that offered services on land began to advertise maritime services as well. At the peak, an estimated 300 companies were believed to offer anti-piracy services, though not all of these enterprises were actually active. Many of these companies have their headquarters in the UK and the USA, but PMSCs also emerged in countries such as Germany, Singapore, Spain, India and Australia. This mushrooming of anti-piracy PMSCs was possible because many of these enterprises are small businesses, with a small number of permanent staff; some companies even operate without a fixed office. The companies are often run by ex-military personnel who hire the guards to protect vessels on short-term contracts when needed. Preference is usually given to guards with a military background. However, a few companies are successful enough to offer guards more permanent contracts of six to twelve months. In recent years, the number of companies has declined because some companies have failed to win customers, did not become profitable enough, or did not have sufficient funds or skills to organize armed international operations (author's interviews; Berube 2014).

Due to the combination of government efforts and the employment of PCASP, the number of Somali pirate attacks began to decline drastically in 2012. That year, 'only' 75 attempted and actual attacks were reported, and in the following year the number dropped further to 15 incidents. Of these 15, only two were successful hijackings, and both vessels were released within a day (ICC 2014: 20). As Somali piracy declined, pirates in southeast Asia and the Gulf of Guinea began to increase their activities. Indeed, in 2013, southeast Asia was once again the region with the most reported pirate attacks in the world. Most attacks in southeast Asia remain simple hit-and-run robberies that do not warrant the employment of PMSCs. However, a few ship owners who have hired PCASP to protect their ships in the wider Gulf of Aden area pay for the guards to stay onboard longer if the vessel will be passing through the Malacca Strait (author's interviews). The employment of PMSCs off Somalia, therefore, has a spillover effect into southeast Asia. This differs from practices in the Gulf of Guinea, where shipowners have to pay local forces or local(ized) security companies for protection.

The maritime sphere: special challenges

The drop in successful hijackings by Somali pirates has in part been attributed to the employment of PMSCs. Indeed, the use of PCASP on ships is now regarded as an accepted and successful method to deter pirates. This acceptance indicates a re-evaluation of the use of PCASP onboard ships, which until the spate of Somali pirate attacks was firmly rejected by the maritime industry, policy makers, and international organizations. However, the employment of PCASP has also raised concerns and created challenges for governments and international regulatory bodies. The working practices of PMSCs at sea, the companies' lack of transparency, and the dearth of public oversight of their activities are of particular concern (see, for example,

Liss 2011; UN Security Council 2012; Liss with Schneider 2015). Government oversight and control of PMSC operations is particularly challenging in the maritime sphere because:

- government control at sea is often weak;
- operations at sea are conducted far from the eyes of impartial observers;
- PCASP works across borders within a single operation; and
- PMSCs often operate in environments with overlapping jurisdictions.

To illustrate, Somali pirates attack vessels far off the coast, where the presence of government forces or any other observers is low. Usually only the crew of the target vessel, the PCASP on board, and the pirates can provide information about incidents. Also, on a voyage a vessel that trades internationally typically passes through international waters and the waters under the jurisdiction of coastal states, and the ship itself has the nationality of the country of registration and is bound to the flag state's laws. Jurisdiction over water areas and vessels is largely determined by the United Nations Convention on the Law of the Sea (UNCLOS).³ The convention loosely defined four maritime zones, namely the territorial sea (with a maximum width of 12 nautical miles from the shore), contiguous zone (24 nm), Exclusive Economic Zone (EEZ; up to 200 miles) and high seas. The high seas are all waters beyond the EEZs and are outside the jurisdiction of individual states. Coastal states have limited rights to enforce national laws on specific issues in the other three zones. For example, coastal states have the exclusive right to exploit natural resources, including fish stocks, in these zones. However, ships do enjoy the right of innocent passage (Stopford 2009: 663–6). UNCLOS also endorsed the right of any state to register ships, provided a 'genuine link' between the state and the vessel exists (Article 91), and stipulates that the flag state is responsible for the protection of vessels flying its colours.

With the increasing employment of armed private guards on merchant and fishing vessels, efforts have been made to control the activities of maritime PMSCs. On the international level, the International Maritime Organization (IMO) began to publish guidelines in 2008 that recommended that flag states in cooperation with ship owners should generate policies to regulate the use of armed PMSC personnel on ships. Even though later versions were more detailed, the general tenor did not change, and the publications remained only guidelines (IMO 2011: 31). In fact, no binding international regulations exist that specifically address the use of private armed guards in the maritime sphere. The governance of anti-piracy PMSCs has therefore largely been left to flag states.⁴

In the past, only a very small number of ships that, for example, carried particularly valuable or dangerous cargo, were protected by private armed guards. Flag states therefore generally did not have comprehensive regulations that governed the use of armed PMSC guards on ships and only a few countries, including Greece and Japan, proscribed the arming of merchant ships. Flag states approached the regulation of maritime PMSCs differently. Some states, including many flag of convenience (FOC) countries, did not establish clear rules and do not carry out active regulatory measures. Unlike national registers, which only accept vessels from their own country, FOC states have open registers that offer registration to any vessel without significant restrictions. Open registers are often 'convenient' for shipowners because of their lax regulations in regard to tax and company laws, crew origin, and vessel safety and security standards (Stopford 2009: 666–75). While they do not prohibit the employment of armed guards, they have delegated the responsibility to ship owners and masters of protected vessels. The Bahamas, as well as Antigua and Barbuda, for example, declared that they will not accept liability for any difficulties caused by the employment of PCASP on vessels under their flags.

Other states have introduced new regulations and are actively exercising control over

PMSCs and their maritime activities. These countries include Greece, Japan, Germany, Norway, Denmark, Sweden and the UK (International Chamber of Shipping and European Community Shipowners Associations 2012). Some countries, such as Spain, have applied the regulations that govern land-based PMSCs to maritime operations, but most flag states have introduced specific regulations for the maritime sphere. However, because every flag state generates its own regulations, major variations in regulatory frameworks exist. Differences can be found, for example, in the licensing of PMSCs and individual guards, the types of weapons allowed, requirements regarding compliance with international voluntary initiatives such as the International Code of Conduct for Private Security Services Providers, and the regulation of the export, transport and storage of weapons (see Liss with Schneider 2015).

Despite the introduction of regulations, many problems and concerns persist. As mentioned above, some flag states do not make serious efforts to regulate anti-piracy PMSCs. A further fundamental problem is that ship owners can change the flag, and therefore the set of laws they have to comply with, easily. Flag states that introduce regulations that are too stringent therefore face the risk that ship owners will change the registration of their vessels to another flag. Furthermore, it remains difficult for flag states to control the activities of anti-piracy PMSCs, even when they introduce new regulations. To begin with, many regulations only address certain aspects of PMSC anti-piracy operations. For example, while Denmark, Sweden, and Norway have introduced regulations, they place the responsibility for vetting PMSCs and the control over the use of weapons and their storage onboard the ship largely in the hands of the client and the master of the protected vessel (Berndtsson and Østensen 2015). Other regulations do not consider the international transportation of weapons or their storage between anti-piracy operations. Also critical is that flag states do not provide oversight of the actual PMSC operations and rely on reports from PMSC clients or the companies themselves for information (Liss with Schneider 2015).

These shortcomings have resulted in problematic working practices of anti-piracy PMSCs and a general lack of government control over their activities. Concerns are the unsupervised use of weapons that can lead to the killing of fishermen or other seafarers mistakenly identified as pirates. The acquisition, transport, and storage of weapons are also worrisome. PMSCs either legally or illegally purchase their weapons or rent them from private businesses or governments. Government control over these weapons is difficult, even when they are acquired legally. For instance, hundreds of Sri Lankan government-owned weapons that had been hired by PMSCs reportedly went missing (UN Security Council 2012: 278–81), and the large number of weapons approved for export to be used by British security firms raised concerns that the weapons could 'have ended up in the hands of pirates themselves' (Leftly 2014).

Furthermore, at the end of an operation, the weapons are either thrown overboard or stored for the next operation. Storage is available in certain ports, some of which are located in countries facing political unrest, or on so-called floating armouries. The latter are mostly old vessels located in international waters that store weapons, ammunition, and equipment (such as body armour and night vision goggles) for different companies. Around 18–20 such armouries are believed to be in operation. Many of them are privately owned, but some are at least in part run by government agencies, such as the Sri-Lankan navy (UN Security Council 2012: 278–81). While these floating armouries are convenient for PMSCs because they do not have to go through the time consuming and expensive procedures to get permits for their employees to enter or exit ports with weapons, they often operate beyond the control of authorities.

Summarizing these concerns about the private anti-piracy business, a UN Security Council report states:

[T]his highly profitable business has expanded beyond the provision of armed escorts to the leasing of arms, ammunition, and security equipment, and the establishment of ‘floating armouries’ that operate in international waters beyond the remit of any effective international regulatory authority. ... The absence of control and inspection of armed activities inevitably creates opportunities for illegality and abuse, and increases the risk that the maritime security industry will be exploited by unscrupulous and criminal actors, eventually coming to represent a threat to regional peace and security, rather than part of the solution.

(UN Security Council 2012: 24)

Conclusion

PMSCs are increasingly active in the maritime sphere, where they are engaged in the protection of maritime installations such as offshore oil and gas platforms and in addressing maritime security threats such as piracy. The explosion in the employment of anti-piracy PMSCs in the Gulf of Aden and the introduction of new laws and regulations that allow the use of PCASP on ships indicates that PMSCs have become accepted players in maritime security governance. These new regulations will also further facilitate the employment of PCASP in the future. Not only has a precedent been set, but some of the new regulations do not restrict the use of armed guards to anti-piracy services. Furthermore, in some cases water areas now merely have to be defined as ‘high-risk areas’ to allow the use of PCASP on ships and possibly oil and gas installations, which are also registered under flags. In this context, it is, however, important to remember that PMSCs only address the symptoms, but not the root causes of threats such as piracy – which include instability and conflict on land, poverty and environmental destruction.

Moreover, the activities of PMSCs justifiably still cause concern, which centres mostly on the companies’ working practices and the lack of government oversight of PMSCs and their activities. As discussed above, oversight of PMSCs is especially difficult when they operate at sea and in environments with overlapping jurisdictions. PMSC operations at sea are not restricted to anti-piracy services, and other services such as the protection of offshore oil and gas installations and operations against illegal fishing cause similar problems. More efforts are therefore needed to effectively monitor and regulate PMSCs and hold them accountable for their actions in order to protect civilians and avoid the uncontrolled use and circulation of weapons. Last but not least, given the difficulties flag states encounter in controlling maritime PMSCs and the reluctance of some flag states to craft regulations, alternative approaches to regulate PMSCs and monitor their operations on the international level should be given more consideration.

Notes

- 1 Some authors prefer to use the term private *maritime* security companies for enterprises that offer anti-piracy services. Here, however private military and security companies will be used because a wider range of maritime services is discussed and the companies involved do not all offer only maritime services, as will be discussed later.
- 2 However, the advertisements for protection of fishing grounds or EEZs against illegal fishers seem to have declined (or disappeared) in recent years.
- 3 See www.un.org/depts/los/convention_agreements/texts/unclos/closindx.htm for the text of UNCLOS.
- 4 Regulatory efforts have also been made within the industry. These will not be discussed here.

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