



Regulating Private Military and Security Companies at Sea:

New Developments and Challenges

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Introduction

As efforts by states to combat piracy off Somalia have struggled to comprehensively eradicate pirate activity, Private Military and Security Companies (PMSCs)¹ are increasingly hired to provide armed guards to protect vessels passing through the ‘pirate infested’ waters of the wider Gulf of Aden (GoA) area. The large scale employment of counter-piracy PMSCs is a new phenomenon because until the current spate of attacks conducted by Somali pirates began, international maritime institutions, maritime industry representatives, and governments around the world opposed the armament of merchant ships. Yet, as piracy escalated and financial losses grew, sentiments regarding the use of armed PMSC guards have shifted and PMSCs increasingly relied upon. This trend is controversial and problematic because international and national laws often do not specifically address the provision of armed PMSC guards on board ships. However, as a result of the increasing employment of PMSCs off Somalia, new regulations of maritime PMSCs are slowly emerging.

This paper first briefly discusses the employment of armed guards to protect merchant ships from pirate attacks in the wider GoA area. The second part examines how states and international maritime regulatory bodies have reacted to the use of armed PMSC personnel on board ships – many of whom have ultimately sanctioned their employment. The paper concludes by suggesting that despite recent efforts to regulate anti-piracy PMSCs, problems and controversies remain - demonstrating significant weaknesses and shortcomings in national and international maritime security governance.



PMSCs in the Counter-Piracy Response

PMSCs are hired to provide counter-piracy services in different parts of the world, but especially in strategically important waterways where piracy is a serious security concern, pushing clients to pay for additional protection for their vessels. While anti-piracy PMSCs have been hired in the past to protect ships in some waters, such as the Malacca Strait, it was the spate of pirate attacks in the GoA area, or more precisely the substantial financial losses they caused for insurance companies and ship owners, that resulted in the expansion of the industry.

Counter-piracy PMSCs are hired by (potential) victims of pirate attacks, including ship-owners. To protect shipping in the wider GoA area, PMSCs are employed to provide passive security services, including risk assessments for vessels passing through pirate infested waters or training for crew members. However, many PMSCs are engaged to provide active security services, most importantly, the actual protection of ships from pirate attacks. To secure merchant vessels, PMSC guards have to be on board the protected ship and/or on an escort vessel accompanying it. These PMSC guards are armed, mostly with lethal, but in some cases also with non-lethal, weapons. The employment of guards armed with lethal weapons and the working practices of some counter-piracy PMSCs have caused concern, particularly because PMSC personnel have to use and transport their weapons across different jurisdictions.

Responses to the Employment of Armed PMSC Guards

The enduring challenges faced by governments attempting to end piracy in the wider GoA area and the increasing employment of PMSC personnel with lethal weapons on board ships prompted states and international regulatory bodies to respond. While some government officials, such as representatives of the US Navy, have encouraged and openly supported the employment of counter-piracy PMSCs,² the broader set of responses by states and regulatory bodies have focused primarily on attempts to control and regulate armed PMSC activities.

On the international level, no binding regulations exist that specifically address the employment of private armed guards on board vessels. In regard to the international regulation of shipping,



the International Maritime Organisation (IMO) is the institution that is arguably best placed to establish international guidelines because it is concerned with maritime safety issues. However, instead of offering a standardised convention, the IMO's Maritime Safety Committee recommended in December 2008 that flag states should work with ship-owners to design policies for the employment of armed PMSC personnel on board ships.³ In May 2011, the IMO confirmed the crucial role of flag state regulation in its interim recommendations for flag states, ship-owners, ship operators, and shipmasters regarding the use of armed PMSC guards.⁴ Other international regulatory bodies also - so far - do not offer binding regulations and existing maritime regulations also do not provide much guidance.

The increased employment of maritime PMSCs, the dearth of international regulations and perhaps also the encouragement of the IMO, forced flag states to look at their own laws regarding the armament of ships. Few flag states had specific regulations for the employment of armed guards in place and only some countries, including Greece and Japan, prohibited the arming of merchant ships.⁵ However, regardless of the nature of previous regulations, many flag states have responded to the current situation and are discussing new approaches and considering the revision of existing laws.

Overall, flag states have approached the issue in two different ways. First, some states continue to avoid the establishment of clear regulations and simply declare that the employment of armed guards is the responsibility of the ship-owner or the master of the vessel. This approach seems to be taken mostly by Flag of Convenience (FOC) states and is in line with the generally lax approach to security regulations of many FOC countries. The second approach, which seems to be taken mostly by states with national registers, is to introduce new regulations. While flag states are presently at different stages with regards to the establishment of new regulations, there is clear evidence that an increasing number of flag states are (in the process of) allowing the use of armed guards. Greece, for example, which has previously prohibited the use of armed guards on ships, has in November 2011 introduced a new law that allows up to six armed guards to work on a Greek flagged ship. However, the law still needs to be ratified by the Greek Parliament.⁶ Other countries that had no clear guidelines in place have already sanctioned the employment of armed private security personnel: In the UK, for instance, where the armament of



ships was strongly discouraged in the past, a new legislation that UK flagged vessels can be licensed to carry armed guards was approved by the government in October 2011.⁷ Also, not only cargo ships are sometimes permitted to carry armed PMSC personnel, but also other vessels such as cruise ships and fishing boats. Spain, for instance, has since October 2009 allowed the protection of fishing vessels by armed PMSC guards in areas of severe risk. To facilitate their employment, Spain entered into an agreement with the Seychelles, which allows the guards to operate out of the country's main port of Victoria.⁸

PMSCs and Weaknesses in Maritime Security Governance – A Conclusion

The increasing employment of counter-piracy PMSCs and the responses by states and international regulatory bodies demonstrate significant weaknesses and shortcomings in national and international maritime security governance. These are exemplified by the failure of international regulatory bodies to establish binding regulations regarding the use of armed PMSC personnel on ships. The IMO, which is responsible for issues relating to safety at sea and is in many ways best suited to issue clear guidelines, only published recommendations that place the responsibility into the hands of the flag states – which is problematic for a variety of reasons.

Flag state regulation is difficult both in regard to the creation of laws and their enforcement. While improved regulations are emerging in some countries, many (new) laws only regulate issues such as the type of weapons that can be used by PMSC personnel, and how many guards are permitted to protect a ship. They often fail to address other problems such as how armed PMSC personnel will board and de-board merchant vessels- which often has to take place in waters or ports under the jurisdiction of other countries. Furthermore, even if regulations exist, enforcement remains difficult for flag states as the operations of armed PMSC personnel often takes place far away from the country of registration. The fact that counter-piracy operations are conducted at sea, almost entirely removed from the eyes of observers, creates further problems in regards to oversight and accountability.

Equally problematic is that clients can easily avoid strict national flag state regulations by simply changing the registration of a vessel to an open ship register. As discussed above, while it is legal to use armed guards on many FOC flagged vessels, many FOC countries do not have any genuine regulations in place and also do not have the capacity (and sometimes the will) to



enforce regulations even when they exist. This ability of ship-owners and other PMSC clients to avoid stringent regulations clearly reveals shortcomings in maritime security governance.

In conclusion, the employment of armed PMSC personnel on board ships in the wider GoA area is a reality, and international regulatory bodies and individual states have reacted to the use of armed guards in the maritime sphere. However, given the weaknesses in current national and international maritime security governance, oversight and accountability of PMSC activities in the maritime sphere remains both difficult and so far under-addressed. It will require further action by states and the wider international community to ensure that the growing role of PMSCs takes place in a secure, well-regulated and accountable context.

This article was commissioned by the Institute for Near East and Gulf Military Analysis (INEGMA) on behalf of the second United Arab Emirates Counter Piracy Conference, 'A Regional Response to Maritime Piracy: Enhancing Public-Private Partnerships and Strengthening Global Engagement', organized by the UAE Ministry of Foreign Affairs in partnership with global ports operator DP World, held in Dubai in June 2012. The opinions expressed in this paper are the views of the author only, and do not reflect the opinions or positions of the conference organizers. Content may have been edited for formatting purposes.

For more information, see the conference website at www.counterpiracy.ae.

¹ The term PMSCs, Private Military and Security Companies, is used here because most of these firms also offer non-maritime services. This paper only focuses on private guards that work for PMSCs, not other kinds of armed guards on board ships.

² 'Private Security Firms Join Battle against Somali Pirates', *Fox News*, 26 October 2008, http://www.foxnews.com/printer_freindly_story/0,3566,444103,00.html accessed 21 November 2008.

³ Sandra Speares, 'IMO Calls for Policy on Arming Vessels', *Lloyds List*, <http://www.lloydslist.com/ll/news/viewArticle.htm?articleId=20017597485&src=rss>, accessed 10 December 2008.

⁴ International Maritime Organisation, 'Guidance on Armed Security Personnel on Ships Agreed', *IMO News*, Issue 3, 2011, p. 8.

⁵ International Chamber of Shipping and European Community Shipowners Associations, 'Piracy Flag State Laws', July 2011, <http://www.marisec.org/Piracy%20Flag%20State%20Laws%20July%2011.pdf>, accessed 21 February 2012.

⁶ *Shipping Herald*, 'Greece to Allow Armed Guards on Vessels' <http://www.shippingherald.com/Admin/ArticleDetail/ArticleDetailsShippingNews/tabid/98/ArticleID/1821/Greece-to-allow-armed-guards-on-vessels.aspx>, accessed 23 March 2012.

⁷ *BBC News*, 'Somali Piracy: Armed Guards to Protect UK Ships', 30 October 2011, <http://www.bbc.co.uk/news/uk-15510467>, accessed 3 November 2011.

⁸ David Ing, 'Seychelles allows Spanish trawlers to up-arm in fight against pirates', *Jane's Navy International*, 13 September 2011.