



Private Maritime Security Companies (PMSCs) and Counter-Piracy

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Introduction

Despite the deployment of an unprecedented naval force in the Gulf of Aden (GoA), Somali-sourced piracy off the Horn of Africa (HoA) and Arabian Peninsula remains a significant problem. According to the International Maritime Bureau (IMB), 236 attacks occurred in this wider vicinity during 2011, representing roughly 53 percent of the global tally of 439 during the year.¹ High incident levels have been accompanied by a major surge in ransom demands for hijacked ships that now average in the range of US\$4-\$5 million compared to just US\$15,000 in 2005. In 2011, a total of US\$159.62 million was paid out to secure the release of captured vessels, including a record US\$12 million for the return of the *M/V Zirku* – a Kuwaiti-owned oil tanker that was captured in March and held for 73 days.² The deteriorating situation is serving to increase the demand for private military security companies (PMSCs) to make their services available to protect commercial carriers transiting pirate-prone “hotspots.” Although a number of parties have welcomed the emergence of these firms, the privatization of maritime security poses a number of potentially serious challenges that have yet to be resolved.

The Role of PMSCs in Counter-Piracy off the Horn of Africa

According to David Johnson, Chief Executive of the UK-based *Eos Risk Management*, business opportunities for protecting ships in the wider vicinity of the Arabian Peninsula have more than doubled since 2008.³ At least 22 major companies (mostly based in the UK) have entered the market, arguing they constitute a vital force multiplier to existing naval patrols in the GoA by providing professional protection that is uniquely tailored to the requirements of their customers. The wide spectrum of PMSC services currently on offer typically include:



- Carrying out security audits to identify and rectify specific vulnerabilities and gaps in a vessel's security organization and preparedness;
- Running training courses for crew on how to respond when they come under attack;
- Aiding with recovery of hijacked ships and/or the negotiation of ransoms; and
- Deploying guards – armed and unarmed – and occasionally escort boats to accompany freighters when transiting high-risk areas.

Several parties have welcomed the growing presence of PMSCs protecting ships off the HoA. Washington has been especially receptive: In March 2012, Andrew Shapiro, the Assistant Secretary in the State Department's Bureau of Political-Military affairs, explicitly endorsed the employment of protection teams noting that to date “not a single ship with Privately Contracted Armed Security Personnel aboard has been pirated.”⁴

Maritime insurance companies have also supported the use of PMSCs, with some slashing premiums by as much as 40 percent for vessels hiring their own security. In 2008, the UK-based Hart Group launched the first joint venture with an insurance firm. Under the terms of the arrangement, all ships using the firm's guards would benefit from significantly lower rates when sailing past Somalia.⁵

The endorsement of PMSCs reflects some important advantages these companies have over purely state-led counter-piracy initiatives. They are able to provide one-on-one protection, which is obviously beyond the scope of naval deployments in the GoA. They also have a definite deterrent value – reflected by Shapiro's observation that no ship with armed guards onboard has yet been hijacked. Finally, they play an important role in burden-sharing because they shift the onus of mitigating piracy back to the shipping industry – which, until recently, effectively “free ride” off the back of extremely costly coalition naval task forces conducting counter-piracy missions.



Challenges Associated with PMSCs in Counter-Piracy

Despite these benefits, the use of PMSCs has some significant limitations. One major drawback is that clear rules of engagement (ROEs) on the use of force at sea have yet to be fleshed out, much less institutionalized. There is a particular need for greater awareness of the consequences of opening fire against *suspected* pirates and insurgents who are subsequently found to be innocent. To attain this awareness, it is critical that a solid international legal framework regulating the use of PMSCs and their ROEs is developed. Just as importantly, a culture needs to be fostered within PMSCs that encourages these companies to seek sound legal guidance on the potential consequences of their activities. Accidental death or injury, for instance, could expose contractors, and conceivably those that employ them, to exorbitant liability claims and, worse, criminal charges (as it has with the Italian guards who wrongfully killed the two Indian fishermen.)⁶

A related difficulty is the absence of a public registry covering the different companies that provide armed guards to commercial vessels which can be used to audit and verify their bona fides. In many cases shipping companies will be forced to rely on the sales pitch of a PMSC, which is hardly an objective basis for making an informed decision on whether to hire the firm. The winding down of military operations in Iraq has exacerbated these problems as it has increased the number of companies entering the maritime security market. In the absence of any formal vetting procedure, it will be extremely difficult to ascertain whether PMSC contractors have an established and reliable track record in the provision of maritime (as opposed to land-based) security and protection.⁷

PMSCs are also expensive: Providing a robust external escort costs between \$10,000 and \$100,000 depending on the length of the accompanied trip, while an on-board security detail typically runs to between \$21,000 and \$50,000 per transit.⁸ Although larger owner-operators are able to contemplate such outlays, they are well beyond the means of small- and medium-sized shipping companies. Unfortunately, it is these small- and medium-sized shipping companies that



constitute the bulk of attacks in the HoA, presently accounting for around two-thirds of all hijackings in the region.⁹

A final issue relates to the absence of uniform and standardized protocols governing the movement, licensing and storage of weapons transiting the sovereign maritime space of third countries. Many littoral states do not allow armed vessels to enter their territorial waters as such passage runs counter to the established right of “innocent passage.”¹⁰ Even in cases when entry is permitted it is usually accompanied by a requirement that weapons arms be lodged with competent port authorities while the vessel is moored and, in certain cases, the imposition of fees that directly charge against the presence of munitions. These technical issues will obviously create a plethora of legal complications - not to mention delays and associated costs, in particular for voyages involving numerous ports of call, which applies to most merchant ships.¹¹

The Future

Irrespective of the latent problems and difficulties associated with employing PMSCs in counter-piracy missions, the reality is that the presence of these firms is unlikely to disappear any time soon. Indeed even the International Chamber of Shipping (ICS), which has traditionally opposed any use of PMSCs, has accepted that they may have a future role to play in vessel protection. This became apparent last year when the ICS Chairman, Spyros Polemis, acknowledged that mariners must be able to retain *all* possible options – including guards - to deter and defend their crews against attack.¹²

Problematically, with private security contractors now seeking new business opportunities of the sort that arose during the wars in Iraq and Afghanistan, there is a realistic prospect of counter-piracy evolving into the next PMSC “gold rush” – attracting all sorts of actors that may or may not have appropriate maritime backgrounds. To offset this danger, proper protocols governing ROEs, the licensing of weapons, and the transit of armed teams through the territorial waters of third countries need to be developed. Just as importantly a public registry to audit the bona fides of the various companies currently providing protection services for commercial vessels must be put in place.



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

¹ International Maritime Bureau, *Piracy and Armed Robbery at Sea: Annual Report, 2011* (London: International Chamber of Commerce, 2012).

² *The Economic Cost of Somali Piracy, 2011*, One Earth Future Foundation Working Paper, 2012, available online at http://oceansbeyondpiracy.org/sites/default/files/economic_cost_of_piracy_2011.pdf, 10-11; "MV ZIRKU Pirated in the Eastern Part of the Gulf of Aden," EU NAVFOR Public Affairs Office, March 28, 2011.

³ "Splashing and Clashing in Murky Waters," *The Economist*, August 20, 2009.

⁴ Andrew Shapiro, "Expanding Private Sector Partnerships Against Piracy," remarks to the US Chamber of Commerce, March 13, 2012, available online at <http://www.state.gov/t/pm/rls/rm/185697.htm>, as of April 17, 2012.

⁵ "Private Security Firms Join Battle Against Somali Pirates," *The Strategist*, September 10, 2009; "Potential Hikes in Shipping Rates Involving Gulf of Aden Transits," Gerson Lehrman Group, September 29, 2008.

⁶ See, for instance, Katherine Houreld, "Companies Hire 'Shipriders' Against Somali Pirates," *The Associated Press*, June 5, 2009; Sandra Jontz, "Hired Guns Secure Ships, Stir Controversy," *Stars and Stripes*, February 15, 2010.

⁷ Steven Jones, "Implications and Effects of Maritime Security on the Operation and Management of Vessels," in Rupert Herbert-Burns, Sam Bateman and Peter Lehr, *Lloyds Handbook of Maritime Security* (London: CRC Press, 2009), 107; Houreld, "Companies Hire 'Shipriders' Against Somali Pirates."

⁸ Author interviews, London and Hong Kong, February 2010. See also *The Economic Cost of Somali Piracy, 2011*, 17 and Tim Fish, "Private Security Firms Step Up Anti-Piracy Ops in Gulf of Aden," *Jane's Intelligence Review*, May 15, 2007.

⁹ Peter Chalk, Laurence Smallman and Nicholas Burger, *Countering Piracy in the Modern Era: Notes from a RAND Workshop to Discuss the Best Approaches for Dealing with Piracy in the 21st Century* (Santa Monica, CA: RAND, 2009), 3.

¹⁰ Currently there are only 13 flag states that allow PSCs: Cyprus, Denmark, Finland, Germany, Greece, Hong Kong, India, Italy, the Netherlands, Norway, Spain, UK and US. See *The Economic Cost of Somali Piracy, 2011*, 2011.

¹¹ See, for instance, Nick Blackmore, "New Tricks: Examining Anti-Piracy Tactics," *Jane's Intelligence Review* (December 21, 2009).

¹² See, "Shipping Industry Changes Stance on Armed Guards," International Chamber of Commerce Press Release, February 15, 2011, available online at <http://www.marisec.org/pressreleases.htm#15feb>, as of April 17, 2012.