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PIRATES AND PRIVATEERS: MANAGING THE INDIAN OCEAN'S PRIVATE SECURITY BOOM

EXECUTIVE SUMMARY

The fight against Somali-based pirates is becoming a private battle as global defence cuts reduce naval counter-piracy deployments. Because governments have struggled to contain the spread of piracy in the Indian Ocean, shipping companies have turned to private military security companies to guarantee the safety of their crews and cargo. Private armed teams have proliferated on commercial shipping and several private armed vessels are operating in the region. Meanwhile, some governments are hiring out their own national militaries as security guards onboard ships.

However, this private counter-piracy boom is creating fresh problems. Already, shootings at sea have led to international disputes and accidental confrontations. And murky legal and consular difficulties loom. There is a legitimate role for private companies in fighting piracy. But the challenge for governments will be to recapture the policy agenda and define the limits of what that role is before it leads to new kinds of trouble on the high seas.

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Introduction

Concerns about Somali-based piracy are combining with global defence cuts to fuel a boom in the use of private military security companies (PMSCs) in the Indian Ocean. Over 140 recently launched PMSCs employ at least 2700 armed contractors onboard commercial ships, with more than a quarter of commercial ships now using armed security onboard.¹ A new development is the deployment of private armed patrol boats, essentially private navies operating in a legal vacuum. Additionally, there are plans for more than 2000 European military personnel to be privately hired to shipping as vessel protection detachments. One way or another, the counter-piracy fight is becoming a private one.

Initial evidence suggests that private armed contractors have been effective in reducing successful pirate attacks upon shipping. Piracy attacks have decreased by 60 per cent thus far in 2012, and though it is too soon to conclusively establish why, some experts believe this is because of the use of private armed guards.² In recent months 9 out of 10 failed attacks by pirates on merchant ships were repelled by armed PMSCs.³ Efficiently regulated PMSCs represent a cost-effective counter-piracy solution for shipping companies and allow navies to incur less cost operating counter-piracy flotillas.

However, there have also been problems. Though this boom is only 18 months old, already private contractors and vessel protection detachments have shot and killed suspected pirates. In February, Italian Marines onboard an Italian oil tanker killed two fishermen they suspected of piracy in waters off

India. They now await trial for murder amidst worsened diplomatic relations between India and Italy.

All of this has troubling implications. Coordination with navies is difficult and accidental confrontations between different counter-piracy forces are possible. Industry regulation may be difficult and dispute resolution fractious. The potential for a mini-arms race between pirates and PMSCs is very real. And private counter-piracy forces are already changing the way pirates operate.

Government policy, international organisations and international law have failed to keep pace with the rapid changes happening in the shipping and maritime private security industries. Instead they are relying on industry self-regulation, goodwill, and a degree of luck to manage the new presence of so many armed players in the Indian Ocean.

A fresh set of problems, however, is likely to develop from the use of vessel protection detachments – a phenomenon that has little recent parallel on land. This practice will involve militaries accepting new kinds of risk and could well distort traditional civil-military distinctions.

This Lowy Institute Analysis examines the origins, characteristics, problems and likely trajectory of the private security boom in the Indian Ocean. It concludes with some preliminary policy recommendations for governments and identifies areas warranting further research.

PIRATES AND PRIVATEERS**Surging Somali piracy, sparse resources, scant resolve**

After foreign forces withdrew from Somalia in the mid 1990s, worsening security and economic conditions led to an increase in piracy in the Indian Ocean. Somali-based pirates were able to attack passing shipping traffic with impunity and began to take ships and crew hostage with increasing regularity. This grew into a global security challenge because the area at risk from Somali piracy sits astride the world's second busiest trade route.⁴ Since 2008, three UN Security Council Resolutions have addressed Somali piracy, providing a legal basis for anti-piracy patrols and escorts involving the navies of most of the world's major maritime powers. Yet by and large the pirates have not been deterred. They have become increasingly brazen, with piracy incidents increasing between 2008 and 2011.⁵ The piracy business model has been highly successful; last year pirates secured total ransoms of US\$146m for hijacked ships and crew. The recovery of the shipping industry since the 2008 global financial crisis has also presented more opportunity for pirates and their own industry has become highly sophisticated. Pirates hire currency specialists to count ransom drops and test for counterfeit notes. Local Somali investors finance start-up piracy operations in return for ransom shares, and piracy funds have driven a Somali housing boom.⁶

For reasons that are as yet unclear, the frequency of both attempted and successful hijackings has dropped significantly thus far in 2012.⁷ One reason for the decline in Somali piracy may be the more frequent presence of PMSCs on Indian Ocean shipping. Certainly

this perception pervades the shipping industry. But regardless of whether piracy continues to decrease or not, the utility of PMSCs at sea has been well established.

The international military response to Somali piracy has been substantial. At any given time, three international maritime task forces contribute up to 40 warships and maritime patrol aircraft, and ten other national flotillas have operated in the piracy high-risk area.⁸ Counter-piracy coordination has been remarkable given that it has involved a high degree of interaction between navies that do not commonly work together, including the Chinese, Japanese, Russian, Iranian, Pakistani, Indian, and United States navies.⁹ Monthly meetings coordinate, or at least deconflict, patrols by the different forces, and three liaison offices monitor shipping traffic, provide piracy intelligence, and coordinate incident response.¹⁰ An Internationally Recommended Transit Corridor in the Gulf of Aden provides the maritime equivalent of a well-lit path where warships are pre-positioned to assist transiting shipping convoys.¹¹ Yet, for all the shipping it has directly protected, one result of this traditional naval response has been for pirates to shift attacks further into the Indian Ocean.

The problem of Somali piracy, now spread over 8.3 million km² of ocean, has become too big for naval forces to counter alone. Some estimates conclude that 83 coordinated warships with embarked helicopters, more than double the numbers currently deployed, would be needed to provide a 30-minute response time to any piracy incident in the high-risk area.¹² Even then, typical pirate attacks are over within 30 minutes. In the words of one observer, the counter-piracy efforts of the world's navies

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have been akin to ‘a police car patrolling an area the size of France’.¹³

Facing resource constraints, the European and US navies have shown little willingness to provide additional counter-piracy forces. Maintaining warships and aircraft in the Indian Ocean is expensive – annual operating costs alone for the major counter-piracy fleets are US\$1.5bn.¹⁴ Salaries, logistical support, and wear and tear on warships and helicopters levy additional burdens on already strained defence budgets. The pressure on finite naval resources has also risen due to tensions elsewhere, including, for example, the Straits of Hormuz. European navies particularly are concerned about the impact of ongoing piracy operations on their defence budgets, and have either reduced their counter-piracy commitments or are looking to do so.¹⁵

Counter-piracy operations provide limited deterrence, as prosecution of pirates is mostly unsuccessful. Competing jurisdictions and difficulties in obtaining evidence make prosecutions difficult – even within NATO there is no common legal framework for the arrest and transfer of pirates. Judicial capacity constraints in African countries are problematic. More than 1000 pirates await trial in 20 countries.¹⁶ Many navies simply release pirates after catching them. The US Navy has 71 pirates in semi-permanent detention on ships because there is no ‘repeatable international process to bring them to justice’.¹⁷

But the chief factor limiting international responses to piracy is an unwillingness to operate on land in Somalia – both to improve governance and development, but also to strike

at ports and villages from which pirates operate. This is because of memories of previous failed interventions but also due to concerns about imperiling crews held hostage. The UN has refused six requests to blockade Somali seaports in the past two years.¹⁸ The European Union only mandated its naval force to strike at pirate safe havens this year and has done so only once.¹⁹

Privateers into the breach

The limitations on counter-piracy naval forces have not only allowed Somali piracy to continue, but have also created the conditions for a private security response. The use of PMSCs has become prolific across the shipping industry. The Volvo Ocean race now uses them to secure its \$10m yachts on their African coast transit.²⁰ Encounters between pirates and privateers are becoming increasingly common. One company reports over 90 encounters with pirates, 18 of which were resolved through the firing of shots.²¹

Maritime PMSCs have greatly expanded their operations protecting commercial shipping in the Indian Ocean in the past 18 months. Over 140 firms operate in the region, the bulk of those established last year.²² No less than 26 per cent of civilian ships transiting the Gulf of Aden officially declare the use of armed PMSCs onboard.²³ Anecdotal reports suggest that a much larger proportion of ships, perhaps half, are carrying such teams. Up to 18 private ships operate as floating armouries in international waters – allowing contractors to arm themselves for transits and sidestep arms trafficking regulations enforced in ports.²⁴

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It is difficult to determine how many individual private security contractors are currently working in the Indian Ocean, as there is no central registry for their licensing or qualification. Based on the number of ships officially reporting the use of armed teams, and assuming a minimum team size of four, it is likely at least 2700 armed guards are operating onboard commercial ships.²⁵ And this number is increasing. A large British PMSC increased contractor employment by 150 per cent last year and plans to employ a total of 1000 this year.²⁶ Hundreds more staff are employed providing support services for the industry on land. Most contractors are British or American; however, contractors from Australia and New Zealand are common too because their military training is interoperable with the US and UK.

Maritime PMSCs are experiencing high annual revenue growth in counter-piracy and are signing larger contracts.²⁷ Listed security group G4S last year flagged piracy-related maritime security as a 'big commercial opportunity'.²⁸ Some firms have been successful in raising tens of millions of dollars from investors to finance private navies.²⁹ The boom shows no signs of slowing and firms surveyed for this analysis are optimistic about growth prospects and hiring increases in the next 12 months.

Behind the boom: commercial imperatives and policy drift

The commercial imperatives of the shipping industry and lack of government leadership have fuelled the private counter-piracy boom. Until May last year, the shipping industry did not condone the use of armed PMSCs on ships. Typical concerns about their use included: the

safety risk to ships' crews; collateral damage risk to ships; the potential to provoke escalation by pirates; liability and insurance issues in the case of death or injury; and the legal complexities of employing potentially lethal force at sea.³⁰ Since then all major shipping industry groups have accepted that PMSCs are a key, if perhaps temporary, component of the global response to piracy.

The policy change occurred when industry groups belatedly accepted that many shipping companies were using PMSCs. Shipping companies began to demand policy guidance from governments and insurers on the legality of using armed teams. Two key factors drove the shift to armed PMSCs. First, the rising costs of insurance. Ships carry multiple insurance policies and piracy risk is largely covered by war risk premiums.³¹ Since 2008 the Lloyd's Joint War Committee, a coordinating body of Lloyds London underwriters, has designated Indian Ocean piracy regions as a 'war-risk zone', increasing insurance premiums for ships that transit.³² Concurrently, underwriters have offered to reduce premiums for ships that hire private security and take out separate kidnap and ransom insurance.³³ In some cases, underwriters will not issue kidnap and ransom insurance unless a ship hires armed guards.³⁴

The second factor was the escalating cost of capture by pirates. The average ransom is now \$4.58m and captured ships and crew are held for an average 158 days. Shipping companies lose millions in foregone chartering income while their ship is held to ransom. They also incur high costs in hiring specialist ransom negotiators, ransom drop experts, and support for crews once released. Hiring a PMSC for \$50, 000 is a comparatively small price to pay

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to substantially reduce these costs.³⁵ Some ships can recoup this cost simple by slowing their speed through pirate-infested areas and saving on fuel.³⁶

The response of governments to the use of armed PMSCs has largely been reactive. Although US and UK counter-piracy commanders have sometimes articulated a role for PMSCs, particularly after the 2009 defence of the ship *Maersk Alabama* by a private armed team, their employment was initially illegal in most countries.³⁷ The UK government flagged that it would reconsider the ban after industry guidelines on maritime PMSCS were released in May 2011, and changed its policy to allow their use five months later.³⁸ The US government began encouraging the use of armed PMSCs in November 2011, circulating talking points on their utility to diplomatic posts.³⁹ Ten other major shipping states have subsequently amended policy to allow private armed guards on shipping and several more are considering similar changes.⁴⁰

How maritime PMSCs operate

Maritime PMSCs provide two types of service: armed contractors and armed convoy escort vessels. Contractors are typically ex-Navy personnel with shipping industry-accredited safety and training qualifications, and work in teams of 3-6.⁴¹ Maritime PMSCs offer a full suite of counter-piracy services, including hardening of vessels in accordance with industry standards, crew counter-piracy training, and preparation of onboard citadels (panic rooms used during a pirate attack). Contractors embark with body armour, medical kits, satellite communications, night-

vision equipment and weapons (usually small arms such as AK47s and RPK light machine guns).⁴² Costs for PMSCs and their contractors vary greatly. Individual contractors earn up to \$500 per day and companies can charge out contractors for \$1000 per day.⁴³ A typical contractor will work on contract for up to one year and complete some pre-deployment training.

New service industries are emerging to support the needs of private armed teams. Shipping logistics agencies facilitate the movement of personnel, weapons, and equipment on and off ships. Companies collect piracy intelligence, and some run operations rooms tracking armed teams and providing constant piracy updates. Some PMSCs subcontract to medical evacuation companies and a small number maintain in-house medical evacuation services for their contractors. New companies provide bespoke insurance for armed teams, advise shipping industry clients on how to vet PMSCs, and offer certification for individual contractors.⁴⁴ A new online marketplace connects armed teams offloaded due to sudden shipping schedule changes with other ships seeking their services at short notice.⁴⁵

PMSCs embark from ports near the Gulf of Aden, including Port Djibouti, Salalah, Muscat, and Dar-Es-Salaam. A common port for disembarkation is Galle in southern Sri Lanka, an average 13 days passage from the Suez Canal and close to international shipping routes.⁴⁶ New support industries service armed teams there. Sri Lankan companies offer 'battle hardened Sri Lankan Sea Marshals' for hire, provide transport for teams boarding ships, and logistical support for the movement of weapons and ammunition.⁴⁷ The Sri Lankan government

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provides comprehensive support for PMSCs and the Sri Lankan Ministry of Defence licenses them to store equipment and weapons in bonded warehouses within naval bases.⁴⁸

A majority of companies surveyed for this project procure their weapons in Western Europe and all reported complying with flag state regulations on the carriage of firearms. However, 'flag of convenience' states provide limited inspection regimes, and compliance with the International Traffic in Arms Regulations is complicated and expensive for maritime PMSCs. Governments require companies to register movement of weapons through their ports and often refuse permission to private companies.

Some PMSCs sidestep regulations by using their own floating armoury ships on the high seas.⁴⁹ This allows their contractors to embark on client ships in port, and pick up their weapons and equipment during a rendezvous outside of territorial waters. Some companies and contractors acquire weapons illegally and simply dispose of them overboard at the end of a transit. A contractor explains:

Given that you can get an AK-47 for about \$200 in most big African towns ... and it costs about \$1,000 per weapon to do it legally, and then there's all the forms, coastguard licences etc, a lot of people think it's easier to buy weapons illegally and drop them down to Davy Jones's locker when you get out of the danger area.⁵⁰

Private patrol boats - seaborne vigilantes?

Whilst armed guards on ships are largely a passive and defensive counter-piracy measure, private armed patrol boats provide a more aggressive method of protecting shipping. At least 40 private armed patrol boats have been, are, or will soon be operating in the Indian Ocean.⁵¹ They operate by establishing exclusion zones around the client ship and challenging suspicious boats that approach them. Some firms offer boarding teams on these escort vessels, with team members who are 'well versed in waterborne operations and have experience in boarding/ counter boarding drills, waterborne interdiction and maritime/amphibious warfare'.⁵² Private armed patrol boats are attractive to shipping companies because they do not require weapons-carriage on company ships and thus do not compromise their right to innocent passage through territorial waters.⁵³ Also, any consequences of firing weapons are outsourced to the captain of the private armed patrol boat.⁵⁴

Such private navies are not new; they briefly operated in the Malacca Straits seven years ago and the notorious PMSC Blackwater unsuccessfully attempted a similar Indian Ocean venture in 2009.⁵⁵ Nor have they been particularly profitable in the past. But ambitious plans to raise new private fleets in the Indian Ocean are attracting corporate heavyweights and financing.⁵⁶ One venture raised US\$40m in the past year. Another chaired by the CEO of global commodities trader Glencore is fitting out three boats in Singapore, which will carry 20 crew, 40 armed contractors, and utilise drones and helicopters to fight pirates.⁵⁷ The most common weapon

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employed on these boats is the 50-calibre heavy machine gun, able to fire at vessels more than a nautical mile away.

The status of private armed patrol boats under international law is unclear; they could themselves even be defined as pirates because they use aggressive force on the high seas without government authority.⁵⁸ Policy discussions on the boom in private counter-piracy have largely ducked the issue of private navies. As more vessels operate in the Indian Ocean, this will become a pressing issue. Some private armed patrol boat operators surveyed for this analysis have stated they would be willing to respond to non-client ships under attack. If unchecked, these fleets could be more akin to seaborne vigilantes than to private incarnations of naval counter-piracy forces.

Public privateers: national militaries for hire

For the past six months, two Italian marines have been held in a southern Indian jail awaiting trial for murder. Their arrest, for shooting two Indian fishermen they suspected of piracy whilst onboard the Italian ship *Enrica Lexie*, highlighted a concerning parallel development to the private security boom. Because of shipping company demands for armed teams and shrinking defence budgets, governments are now privately hiring out their soldiers to provide security onboard commercial ships. Such privately hired military teams are known as vessel protection detachments, or VPDs. Their role has been explained as 'self defence, liaison with law enforcement agencies, training and security vetting of personnel, the use of weapons,

communications with sovereign authorities, record-taking and evidence'.⁵⁹ Such teams have also been commonly offered by African nations to assist companies operating in their territorial waters.⁶⁰ The Russian Navy has employed them occasionally since 2009, and since 2010 European naval forces have sporadically offered VPDs to cruise liners and World Food Program ships in the piracy high-risk area.⁶¹ However, the use of VPDs by European naval forces has soared in the past 18 months. By the end of next year almost 2000 naval personnel may be operating in the Indian Ocean under private hire to protect commercial interests.

The Netherlands, France, Spain, Belgium, and Italy all offer private shipping companies the opportunity to hire VPDs for use during transits of the Indian Ocean. Other countries are considering whether they should do the same. Indonesia, with over 76, 000 citizens employed as crew at sea, is seriously considering offering VPDs, partly in order to assuage concerns about the safety of its seafarers.⁶² The services are available to ships registered in each nation, or to companies substantially controlled by each nation's citizens. The shipping industry has voiced a strong preference for VPDs to conduct shipboard counter-piracy, rather than contractors from maritime PMSCs.⁶³ This is largely based on the logic that national militaries can move weapons and personnel through transit ports more easily, and that military personnel have better protection from prosecution, and more certain legal status, than private contractors.

The Dutch military commenced offering VPDs last year, asserting a constitutional imperative to protect their citizens operating at sea. Dutch

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shipping companies have been banned from using armed PMSCs onboard their ships due to Dutch government concerns that this would undermine the state's monopoly on the use of force. An early VPD deployment placed 24 military personnel and medical staff onboard and the cost of the military team was borne largely by the private shipping company.⁶⁴ So far, the Dutch have deployed 26 VPD missions and plan on deploying 100 teams with ten personnel each this year, and 175 next year.⁶⁵ Total operating costs for Dutch teams are estimated at US\$29m this year, of which shipping companies are expected to pay approximately half.⁶⁶ Transit points for Dutch VPDs include Singapore, Malta, Bahrain, Sharjah, Durban, and Mauritius.⁶⁷ In most locations, Dutch embassy staff supervise embarkation and disembarkation, and in February an agreement was signed to store weapons and equipment for commercial shipping transits on a Singapore Armed Forces airbase.⁶⁸

There are a number of problems associated with the use of vessel protection detachments, not least of which is that they are often more expensive than private alternatives and often in short supply.⁶⁹ VPDs are an explicit alignment of national military power with private commercial interests. When national militaries patrol the piracy high-risk area in warships, they are patrolling for the common good and able to respond to any vessel under attack. When military personnel embark upon an individual ship as a VPD, they are only able to provide protection to that particular ship and do not contribute to the wider counter-piracy fight. Certainly, placing marines on a private ship is cheaper than escorting it with a warship. But it makes separating state and commercial

interests difficult. The use of national militaries as guards on board shipping also creates substantial ambiguity about their identity, and raises a raft of political and legal problems. Port officials may be unclear as to whether military detachments are fulfilling other functions, such as intelligence collection, when they enter port on a civilian ship. States may choose to treat civilian vessels carrying VPDs as warships instead, with wider implications for legal and diplomatic status.

When militaries hire their personnel out as VPDs, they cede a degree of authority over them to the civilian ship captain and shipping company. In effect, VPDs have their movements dictated by shipping companies rather than governments, and are under the command of the civilian ship captain. This means the state may suffer the consequences of private decisions and opens up the possibility that a private ship might be perceived as an instrument of state policy. What happens to the ship will have direct implications for the national government. In the *Enrica Lexie* case, the actions of Italian marines onboard a private Italian ship created diplomatic furor. The Italian ambassador to India was recalled to Rome, and the incident has robbed Italy of any political capital it may have had in its wider relationship with India for the foreseeable future. It is becoming clear that many governments have not fully considered the consequences of hiring VPDs to shipping companies.

PIRATES AND PRIVATEERS**Concluding judgments and recommendations**

The use of maritime PMSCs to guard against the piracy threat seems to have been effective, yet the practice is not without risks. The boom in PMSCs responding to the piracy threat in the Indian Ocean raises serious questions about the quality of the contractors. The shipping industry has already acknowledged ‘significant competence and quality variations...across the spectrum of contractors’.⁷⁰ The legal status of armed PMSCs and, in particular, private armed patrol boats, is murky. The proliferation of PMSCs seems already to have contributed to breaches of international conventions on the movement of weapons. It is extremely difficult to prosecute illegal behaviour by private contractors or the companies that support them because their legal status is unclear and there are so many overlapping jurisdictional issues associated with their use. In particular, the possibility of private armed patrol boats intercepting and perhaps boarding other civilian vessels raises significant legal questions, and there is significant potential for accidental confrontations at sea.

Disputes arising from contentious and potentially lethal confrontations between PMSCs and pirates are likely. Dispute resolution in the shipping industry is difficult enough because of its complexity and intersecting national interests. As one commentator has noted ‘A ship [may be] built in Japan, owned by a brass-plate company in Malta, controlled by an Italian, managed by a company in Cyprus, chartered by the French, skippered by a Norwegian, crewed by Indians, registered in Panama, financed by a British bank, carrying a cargo owned by a

multinational oil company’.⁷¹ Contractors involved in shooting incidents, or detained by port states for illegal carriage of weapons, create consular and political difficulties for their home states.

The private hiring of national military personnel (VPDs) is potentially even more problematic, raising a range of legal and political questions. For example, by ceding some authority for military personnel to shipping companies, national militaries risk becoming embroiled in disputes beyond their control. In these disputes the state that has hired out its military personnel might ultimately be held responsible for their actions. At the very least, this has the potential to do serious damage to national reputations and to cause serious diplomatic incidents. An incident at sea, or in a port, involving a VPD could easily entangle several governments in serious legal and political disputes.

Most governments and shipping industry associations seem to assume that the use of PMSCs will be temporary. But it is far from clear that the current decline in pirate attacks in the Indian Ocean will be permanent. And given the apparently positive impact of PMSCs in the Somali case their use is likely to become more common. Governments and the International Maritime Organization (IMO) need to accept that armed PMSCs have a legitimate and probably increasing, long-term role in the counter-piracy fight and act therefore to recapture leadership of the policy and regulatory agenda related to their use.

Greater regulation

As far as the regulatory agenda goes, the IMO and governments should build on a number of

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initiatives that already exist to regulate the private security industry. Originally devised to cover the use of private forces on land, the International Code of Conduct for Private Security Service Providers has been an excellent tool for bringing together private companies, international organisations, governments and NGOs.⁷² The Code provides advice on the responsibilities of companies, as well as advice on dispute resolution and jurisdictional issues. It is developing protocols for accreditation of members through a regime of inspections and site visits. Though this will be difficult to implement at sea, the cooperative discussion on maritime PMSCs in this forum is productive and promising.⁷³ Regional organisations, such as the Indian Ocean Naval Symposium, should deepen discussions on maritime PMSCs and the need for greater government oversight.

Several industry associations are being formed to self-regulate PMSCs at sea, one of which is developing comprehensive guidance on contractor rules of engagement.⁷⁴ International standards are also in development for the maritime security industry.⁷⁵ Self-regulation could help to clearly define the risks of employing cheaper, poorly trained forces, and make sanctions from the insurance industry more readily available. That said, despite the promising progress of industry self-regulation, there will still be a role for national governments and the IMO in regulating maritime PMSCs. The main challenge for policy-makers will be wading through the 'colossal' legal complexities of private counter-piracy forces and the lack of a presumptive jurisdiction in which to resolve any disputes arising from their use.⁷⁶

Countries whose nationals are heavily represented among maritime PMSCs need to invest greater effort in tracking their citizens employed in the private maritime security industry. Most contractors in the industry are former military personnel, and national governments have some responsibility for how the taxpayer-funded military skills of these personnel are used – even when they leave the military. One way to begin addressing this risk is to require former military personnel to register their overseas employment in the security industry.⁷⁷

There are also some aspects of the private counter-piracy effort that should be actively discouraged. In particular, as already noted there are several troubling aspects about the use of private armed patrol boats. At the very least, governments need to closely monitor the development of these fleets. Arguably, they should actively discourage their use where possible, and establish disincentives for national citizens and registered vessels that seek to procure private armed patrol boat services. The IMO should show greater leadership on the issue of private armed patrol boats.

Governments and the International Maritime Organization also need to resolve the ambiguities surrounding the use of national militaries onboard commercial shipping (VPDs), and in the interim should be cautious about their use. Without an agreed international legal framework to resolve disputes involving VPDS, and with limited visibility of where and how such teams are operating, the potential for legal and political disputes between countries is substantial.

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Develop practical coordination between naval and private counter-piracy forces

Beyond better regulations of PMSCs there is also a need for greater coordination. Coordination between navies and privateers has generally been casual, but this should now be made more formal. Maritime PMSCs can help navies develop maritime situational awareness in the piracy high-risk area, and navies could share selected intelligence with PMSCs to help them assess the risks of certain transits. Navies could also facilitate access to military communications for vetted PMSCs.⁷⁸ Close information sharing will be necessary to monitor how pirates respond to the presence of armed security teams onboard shipping, and to prevent an arms race between such teams and pirates. Greater information sharing and coordination could also encourage PMSCs to more diligently report confrontations with pirates. Additionally, as the presence of maritime PMSCs becomes more common in the high-risk area, mistaken identification and friendly fire confrontations become a greater risk. Already, there have been occasions when warships attached to coalition military forces have mistaken private contractors for pirates.⁷⁹ Such episodes could have fatal consequences as well as major diplomatic repercussions. Tighter information-sharing is needed so that navies know when and where to expect the presence of private counter-piracy forces.

The United Kingdom is the natural locus for policy leadership on privateers

Because the IMO has been overly cautious thus far in approaching the issue of maritime PMSCs, the responsibility for policy leadership has largely fallen on the United Kingdom. The UK is a natural locus for both counter-piracy and maritime PMSC regulatory initiatives.

Almost one-third of piracy ransoms paid last year flowed through the UK and the majority of maritime insurers and PMSCs are based in London. The UK government-initiated Security in Complex Environments Group, a special-interest group formed from PMSCs, is working with government to establish national accreditation schemes and provides a mechanism for dialogue on PMSC issues.⁸⁰ The UK is also well positioned to coordinate reporting and naval interactions with private armed teams: two major counter-piracy flotillas are commanded from London, and the UK Maritime Trade Office already performs a coordination role in the high-risk area. The UK government has discussed maritime PMSCs at the highest levels, coordinated working groups with industry, released interim guidance and guidelines for its own flag ships, and the UK Secretary of State for Transport recently concluded that ‘ultimately we need an international accreditation scheme for PMSCs’.⁸¹ The UK should lead the development of this accreditation scheme and develop a mechanism for standardising training and accrediting industry personnel. In consultation with the insurance and shipping industries, the UK government should develop a public register and reporting regime that includes a blacklist of substandard or illegal companies and sanctions for those who hire them.

The boom in private security in the Indian Ocean has caught governments by surprise. So far the use of private armed guards seems to have been effective, although not without risk. There is a legitimate and long-term role for private companies to provide security at sea. But their use requires more regulation and coordination than we have seen thus far.

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NOTES

¹ There is a considerable body of literature on definitions associated with the private use of force. This paper uses the term ‘private military security companies’ as it best represents that the key component of services offered by these companies is skills and training learned within militaries.

² Mike Pflanz, Piracy attacks drop to zero for first full month in five years, *The Telegraph*, 8 August 2012:

<http://www.telegraph.co.uk/news/worldnews/piracy/9462185/Piracy-attacks-drop-to-zero-for-first-full-month-in-five-years.html>.

³ Henry Bellingham, *Tackling piracy*. However, often the ships most likely to hire guards are those least likely to be attacked by pirates whereas vulnerable ships (those which are slow and have a low freeboard) are likely to fail to comply with even the most basic industry measures to counter piracy. Sam Bateman, *Presentation to Perth counter piracy conference*, 17th July 2012.

⁴ 23 000 ships transit the Suez Canal annually, including at least 7 per cent of the world’s oil tankers and 26.5 per cent of all container traffic. Helen B. Bendall, Cost of piracy: a comparative voyage approach in *Maritime economics and logistics* 12 2011, pp178-195, 2011.

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<http://www.dailymail.co.uk/home/moslive/article-2071108/British-ex-servicemen-battling-protect-international-shipping-Somali-pirates.html>.

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⁴¹ Not all PMSC contractors are former naval personnel and it is common for maritime PMSCs to establish offices near the UK’s Special Boat Service to suggest an association.

⁴² See Aspida Maritime Security website: www.aspida.org and Sea Marshals Ltd website: <http://www.seammarshals.com/p/weapons/> for details on typical weapons. Some PMSCs have employed high-explosive weapons onboard ships although insurers discourage this: interview with private military security company December 2011. See also presentation to the America Club, *Locked and loaded: what a shipowner needs to know when considering the use of armed security guards*: www.american-club.com/seminars/Locked%20and%20Loaded.pdf.

⁴³ Interview with private military security company, August 2012.

⁴⁴ See Gray Page website: <http://www.graypage.co.uk/armed-maritime-security-provider-vetting.html>.

⁴⁵ See Flag Victor website: <https://www.flagvictor.com/>.

⁴⁶ Interview with private military security company, January 2012.

⁴⁷ See Marine Transport Services (PVT) Ltd website: <http://www.marine.lk/services.html>, Mercantile Shipping Group website: <http://www.mfsl.lk/ship>

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⁴⁸ Gotabaya Rajapaksa, *Sri Lankan Secretary of Defence Galle dialogue maritime conference keynote address*, November 2011:

<http://www.galledialogue.com/index.php?id=20>. Also Tradewinds, 27 January 2012:

<http://www.tradewindsnews.com/>. However, there are recent suggestions that the Sri Lankan government is trying to force PMSCs to hire Sri Lankan provided weapons.

⁴⁹ The United Nations Report of the Monitoring Group on Somalia details illegal arrangements firms have made at Annex 6, July 2011: <http://www.un.org/Docs/journal/asp/ws.asp?m=s/2011/433>.

⁵⁰ Charlotte Eagar, To catch a pirate.

⁵¹ See PVI Ltd website for example of such vessels: <http://www.pvilttd.com/>.

⁵² See Mercator International website: <http://www.mercorp.co.uk/>.

⁵³ Article 19 of the UN Convention on the Law of the Sea defines Innocent Passage and notes: ‘Passage of a foreign ship shall be considered prejudicial to the peace, good order or security of the coastal state if in the territorial sea it engages in any of the following activities:any exercise or practice with weapons of any kind.’

⁵⁴ The devolution of authority to fire in self-defence from the master of a ship to an armed PMSC team may breach Safety of Life at Sea regulations, see Ince & Co, *Piracy – issues arising from the use of armed guards*, and Christian Ménard et Jean-Claude Viollet, *d’information par la commission de la defense nationale et des forces armees sur les sociétés militaires privées*.

⁵⁵ A Singapore-based PMSC previously offered a 125m vessel with a helicopter and six fast boats for convoy escort missions in the South China Sea and Malacca Straits, and now operates in the Indian

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Ocean. See Background Asia Risk Solutions website, <http://www.backgroundasia.com/security/maritimesecurity.html>.

⁵⁶ One PMSC plans to deploy seven former naval patrol boats with teams of eight people onboard, Michelle Wiese Bockmann, Somali piracy spurs private navy to start within five months.

⁵⁷ Neil Maidment and Myles Neligan, UK security firms take up arms against pirates, and Martin Plaut, Private patrol boats to tackle Somali pirates, *BBC World Service Africa*, 30 May 2012: <http://www.bbc.co.uk/news/world-africa-18209357>.

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⁶² Interview with Indonesian navy, May 2012.

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⁶⁵ Interview with Dutch military representative, July 2012.

⁶⁶ The government has reduced team costs by 40 per cent to make them affordable for merchant shipping.

⁶⁷ See http://www.defensie.nl/missies/somalie/beveiligingsteams_schepen.

⁶⁸ Dutch Ministry of Defence website: http://www.defensie.nl/english/latest/news/2012/03/08/48193981/Singapore_supports_antipiracy_mission_in_Gulf_of_Aden.

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⁷⁰ Industry May 2011 guidance: www.intertanko.com/upload/92299/NAPPiracy312.pptx.

⁷¹ John S Burnett, *Dangerous waters: modern piracy and terror on the high seas*, New York, Dutton, 2002.

⁷² Most of the maritime PMSCs identified in research for this paper are signatories to the ICOC: http://www.icoc-ppsp.org/Home_Page.html.

⁷³ Additional principles and standards relevant to the maritime environment are being developed by the ICOC

⁷⁴ Peter Cook, *Armed guards on ships*.

⁷⁵ See ASIS website: http://www.asisonline.org/guidelines/committees/psc.4_std.htm.

⁷⁶ Congressional Research Service, *Piracy off the Horn of Africa*, 27 April 2011, p 31.

⁷⁷ This can be made a condition of employment on initial enlistment in the military, with loss of military retiree benefits and/or legal sanctions if not adhered to once leaving the military. The New Zealand

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Defence Force has implemented a modified version of this scheme.

⁷⁸ Berube and Cullen, *Maritime private security*, p 42.

⁷⁹ Interview with Royal Australian Navy, December 2011.

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<http://www.adsgroup.org.uk/pages/19813174.asp>.

⁸¹ Justine Greening, *Armed guards to tackle piracy*, Speech to the International Maritime Organization, 16 July 2012:

<http://www.dft.gov.uk/news/speeches/greening-20120516a>.

ANNEXURE

Policy drift: changing policies on private counter-piracy forces

2010	<ul style="list-style-type: none"> • US National Defense Authorization Act recommends government embark armed security teams aboard US flagged vessels carrying US government cargo in high-risk areas.
September 2010	<ul style="list-style-type: none"> • EUNAVFOR commander supports private sector patrol boat fleet to protect merchant shipping, European Community Shipowners' Association calls for vessel protection detachments.
October 2010	<ul style="list-style-type: none"> • Norwegian tanker company Odfjell seeks permission from Norwegian and Singaporean authorities to arm crew and carry armed guards.
February 2011	<ul style="list-style-type: none"> • International Chamber of Shipping announces a change of stance on private armed guards, recognising that they are being used extensively off Somalia.
March 2011	<ul style="list-style-type: none"> • Norwegian Shipowners' Mutual War Risks Insurance Association issues guidance on the selection of maritime PMSCs to its members.
May 2011	<ul style="list-style-type: none"> • Industry guidelines for the use of maritime PMSCs released, noting the increase in maritime PMSCs, expressing concern about the quality of some contractors, and ruling that the use of PMSCs is a matter for individual ship operators. The guidelines state a preference for the use of military vessel protection detachments as armed guards over contractors. • 89th session of the IMO Maritime Safety Committee releases Circulars 1405 and 1408 which incorporate the provisions of the May 2011 Industry Guidelines and normalise the use of private armed guards.
June 2011	<ul style="list-style-type: none"> • Shipping company Dockwise warns the Netherlands it will sail its vessels under a different flag unless it is allowed to use private armed guards. • UK Minister of State, Foreign and Commonwealth Office announces a reconsideration of UK policy banning private armed guards on shipping.
July 2011	<ul style="list-style-type: none"> • Swedish car shipper Wallenius Lines announces it is using private armed guards.
August 2011	<ul style="list-style-type: none"> • Egyptian Ministry of Defence withdraws prohibition on the carriage of armed guards, weapons and ammunition on vessels transiting the Suez Canal and Egyptian territorial waters.
August 2011	<ul style="list-style-type: none"> • German government announces it will consider changing its policy on private armed guards. • Indian Shipping Ministry releases <i>Guidelines on deployment of armed security guards on merchant ships</i>.
September 2011	<ul style="list-style-type: none"> • IMO approves revised guidance for flag states, ship owners, ship operators, ship masters, and port and coastal states on the use of privately contracted armed security personnel on board ships in the high-risk area. • Spain announces that Spanish tuna vessels in the Indian Ocean will be fitted with heavy machine guns and crew trained in how to use them by the Spanish navy.
October 2011	<ul style="list-style-type: none"> • UK government announces change in policy on the use of private armed guards on ships 'because there is no doubt that private armed security provides significant protection'. • International Chamber of Shipping cautions, 'Private armed guards do not represent a long term solution. Rather their use actually signifies a failure on the part of the international community – and those governments with significant military forces – to ensure the security of maritime trade...the reality is they have ceded control of the Indian Ocean to pirates.'
November 2011	<ul style="list-style-type: none"> • US Department of State issues guidance encouraging 'the responsible use of Privately Contracted Armed Security Personnel (PCASP) on merchant vessels transiting high-risk waters off the Horn of Africa.' • UK Department of Transport releases <i>Interim guidance to UK flagged shipping on the use of armed guards to defend against the threat of piracy in exceptional circumstances</i>.
January 2012	<ul style="list-style-type: none"> • Philippines changes its policy to allow private armed guards on shipping.
February 2012	<ul style="list-style-type: none"> • At the London Conference on Somalia the UK Prime Minister declares, 'it's right for merchant ships to have armed guards on them.'

- 23000 SHIPS PER YEAR
- 7% GLOBAL OIL TRAFFIC
- 26% GLOBAL CONTAINER TRAFFIC

PRIVATE COUNTER PIRACY FORCES

- 2700 ARMED GUARDS
- 18 FLOATING ARMOURIES
- 40 PRIVATE ARMED PATROL BOATS
- OVER 140 PRIVATE SECURITY COMPANIES

📍 PORTS OF EMBARKATION/DISEMBARKATION

AL HUDAYDAH - YEMEN

ADEN - YEMEN

DJBOUTI - DJBOUTI

SALALAH - OMAN

HIGH RISK AREA

GALLE - SRI LANKA

MOMBASA - KENYA

SINGAPORE

SOMALI PIRATES

- PIRATES AWAITING TRIAL **1000**
- HIGHEST RANSOM **US\$13.5m**
- TOTAL RANSOM FOR 2011 **US\$146m**
- AVERAGE HOSTAGE DURATION **158 DAYS**

NAVAL COUNTER PIRACY FORCES

- UP TO **40** SHIPS & AIRCRAFT
- FROM OVER **20** COUNTRIES
- OPERATING COSTS **US\$1.5bn PA**

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