

Outsourcing Security at Sea

The emergence of private maritime security companies in the 21st-century and
what they mean for modern maritime security



Student Name: Pieter Zhao

Student Number: 496220

Supervisor: H.A.M. Klemann

Master in History

Specialization: Global History and International Relations

Erasmus School of History, Culture and Communication

Erasmus University Rotterdam

Master's Thesis

22. June 2022



Outsourcing Security at Sea

ABSTRACT

In 2008, the international shipping industry was shaken by the sudden explosion of Somali piracy. The high number of pirate attacks posed a significant problem to the shipping industry, leading to calls for armed protection. Initially, this resulted in the establishment of an international transit corridor patrolled by warships from a variety of states. This approach, however, proved to be inadequate and ineffective as pirate attacks diffused over a much wider area and continued hundreds of miles from Somalia's coast. Accordingly, a security vacuum was created as the shipping industry turned to the private sector for additional protection. This market gap was filled by an emerging private maritime security industry through so-called private maritime security companies (PMSCs), offering a variety of armed security services. Yet, while the emergence of PMSCs has often been considered a historical novelty by various scholars within the disciplines of international relations and security studies, the historical record tells a rather different story. Throughout history, armed non-state actors have been more of a rule than an exception in the maritime warfare and security environment. Accordingly, this thesis synthesizes the emergence of PMSCs in the 21st-century with the larger historical record of non-state armed security and warfare at sea. It analyzes how these PMSCs can be positioned within the larger historical record of maritime warfare and security; and what their emergence means and says about the current state of affairs in maritime security in relation to established international norms surrounding the use of force at sea. In doing so, the thesis employs the historical method centered around a qualitative methodology that mainly focuses on primary source analyses while also incorporating the relevant literature. Sources include documents and reports from a wide range of international actors including international organizations, states, shipping industry associations, research institutes, as well as PMSCs themselves. The main findings illustrate how PMSCs can be positioned within a long line of non-state actors in the larger historical record of maritime warfare and security following the similarities in the dynamics underpinning the outsourcing of armed force to both early-modern actors such as privateers and the PMSCs of the 21st-century. Consequently, the emergence of PMSCs has created significant consequences and challenges to the established international norms guiding the maritime warfare and security environment since the Paris Declaration of 1856, which positioned the state as the sole provider of maritime security. By responding to the market gap, created by the inadequate state responses, PMSCs have managed to largely bypass the state in both their operation and regulation. The research, therefore, illustrates the dynamism surrounding the international norms guiding the maritime security environment and suggests the possibility of a maritime security environment in which non-state actors like PMSCs become relevant stakeholders instead of exceptions to the rule, following the recent refocus of states and navies away from non-traditional security threats like piracy towards traditional security.

KEYWORDS: Private Maritime Security Companies, PMSCs, Maritime Security, Maritime History, Private Military Companies, International Norm Change

Table of Contents

ABSTRACT.....	2
I. Introduction.....	5
Research Questions.....	6
Literature Review.....	7
Terminology.....	7
Outsourcing the Use of Force at Sea in Historical Context	8
Modern (Re-)emergence of Private Armed Force	9
Private Maritime Security Companies (PMSCs)	10
Knowledge Gaps and Innovative Aspects.....	12
Sources and Methods	12
Reflection on Sources	13
Methodology and Theoretical Foundation	13
II. The Historical Development of Non-State Armed Force at Sea.....	15
The Maritime Warfare and Security Environment: 1600 – 1856	16
Privateering: A Heavily-Armed Maritime Business Venture	16
Mercantile Companies: A Private Anti-Piracy Force	18
The Outsourcing of Armed Force at Sea: the Dynamics	19
The Disappearance of Non-State Actors in Maritime Warfare and Security.....	21
Unintended Consequences	21
A Changing Maritime Warfare and Security Environment	22
Towards a New International Norm Regarding the Use of Force at Sea.....	23
Conclusion: The Change of an International Norm	25
III. The Emergence of Private Maritime Security Companies in the 21 st -Century: the Return of the Privateer?	26
What are Private Maritime Security Companies?.....	26
Origins: Modern Piracy Problem	27
International Responses: Well-intentioned but Inadequate.....	29
Private Maritime Security Companies (PMSCs): Responding to the Market Gap	31
Dynamics Surrounding the Outsourcing of Armed Force at Sea: Why PMSCs?	35
Historical Comparisons: PMSCs and Privateers.....	35
The Outsourcing of Armed Force at Sea through PMSCs: the Dynamics.....	36
Conclusion: Towards a New International Norm?.....	41

IV. The Consequences of Outsourcing the Use of Force at Sea to PMSCs in the 21 st -Century: A Case of International Norm Change?.....	43
The Regulatory Frameworks Surrounding PMSCs: What are the rules?.....	43
International Legal Instruments	44
Industry Self-Regulation	46
Challenges to Established International Norms: What are the Consequences?	49
Challenges to States: Are States in Control?.....	50
Challenges to the International Norms: PMSCs as Norm-Entrepreneurs	55
Conclusion: The Echoes of the Past.....	59
V. Conclusion	61
Bibliography	65
Primary Sources	65
Secondary Literature	72

I. Introduction

These pirates are criminals, they are armed gangs on the sea. And those plotting attacks must be stopped... We may be dealing with a 17th-century crime, but we need to bring 21st-century solutions to bear.

– Hillary Clinton, 2009.¹ –

In 2008, the world was caught off-guard by the sudden start of the so-called Somali piracy epidemic. The hijacking of a Ukrainian ship carrying Cold-War era Soviet tanks, soon followed by the capture of a Saudi supertanker carrying two million barrels of crude oil, brought the problem to the attention of the global shipping industry, and in turn to that of policymakers.² Soon thereafter, the UN Security Council authorized military action against Somali pirates, and warships were sent to the Gulf of Aden to establish a protected corridor. This, however, caused the diffusion of piracy activities over a much wider part of the Indian Ocean, expanding to approximately 2.5 million square miles.³ As a result, there were not enough warships to keep up and hijackings continued hundreds of miles from Somalia's coastline. In turn, many more warships were needed, but a force of warships large enough to stamp out Somali piracy would have cost the international community more than piracy itself.⁴

As the military operations deployed in the region proved insufficient in stopping the attacks, the shipping industry increasingly started resorting to market-based solutions through so-called private maritime security companies (PMSCs). These are non-state entities that provide commercialized armed security services that are commonly considered to be exclusively state/military terrain.⁵ Such services most often include the provision of armed guards and, to a smaller extent, the operation of armed escort vessels to protect a client's ship.⁶ Although precise figures are missing, at least 50% of the merchant ships crossing the Gulf of Aden in 2012-2013 employed armed protection.⁷ Yet, not all these guards were operated by PMSCs as some countries were initially reluctant in authorizing the presence of private armed security contractors on merchant ships, in light of the established international norm that considers the state as the sole provider of maritime security. Instead, they offered merchant ships sailing under their flag so-called vessel protection detachments consisting of exclusively military personnel. However, as of 2022, most flag states with significant shipping registries have accepted the use of PMSCs for maritime security purposes.⁸

This is not the first time that non-state actors have been involved in different aspects of maritime warfare and security. For example, three centuries ago, Britain used private warships of the East India Company to protect its trade in the Indian Ocean from both privateers and pirates.⁹ In fact, the

¹ Associated Press, "Clinton: U.S. Will Try to Seize Pirate Assets," NBC News, April 15, 2009, <https://www.nbcnews.com/id/wbna30231056>.

² John J. Pitney Jr and John-Clark Levin, *Private Anti-Piracy Navies: How Warships for Hire Are Changing Maritime Security* (Lanham: Lexington Books, 2013), IX–XIII.

³ Christopher Spearin, "Sea Power and PMSCs," in *Private Military and Security Companies and States: Force Divided*, ed. Christopher Spearin, New Security Challenges (Cham: Springer International Publishing, 2017), 137–42, https://doi.org/10.1007/978-3-319-54903-3_5.

⁴ Pitney Jr and Levin, *Private Anti-Piracy Navies*, IX–XIII.

⁵ James Brown, "Pirates and Privateers: Managing the Indian Ocean's Private Security Boom," Report (Sydney: Lowy Institute for International Policy, September 12, 2012), Africa, <https://apo.org.au/node/31014>.

⁶ Carolin Liss, "PMSCs in Maritime Security and Anti-Piracy Control," in *Routledge Handbook of Private Security Studies* (Routledge, 2015), 63.

⁷ Eugenio Cusumano and Stefano Ruzza, *Piracy and the Privatisation of Maritime Security: Vessel Protection Policies Compared* (London: Palgrave Macmillan, 2020), 2, <https://doi.org/10.1007/978-3-030-50156-3>.

⁸ Cusumano and Ruzza, 2–4.

⁹ Pitney Jr and Levin, *Private Anti-Piracy Navies*, 2.

privatization of security and warfare has been more of a rule than an exception in the larger historical record. Facing escalating governance costs and with their resources often stretched thin, sovereign entities frequently appealed to the services of private security enterprises like privateering to supplement state power.¹⁰ Privateers – non-state ships and their crews, or private men-of-war, conducting authorized violence at sea – were at their height from the 13th to the 19th-century. Such commissions were an established part of maritime warfare and security during this extended period. Privateers could attack and capture enemy ships of whatever sort during wartime or seek-out pirates on a commercial basis.¹¹ Yet, with the establishment of permanent navies and the development and enforcement of the idea of a state monopoly of force at sea, such armed non-state actors all but disappeared from the oceans.¹²

It's very daunting when you realize the size of the oceans and the length of the littorals and the difficulties of providing a suitable presence, as we deal with challenges that run the gamut from everything from pirates and criminals to the need for deterrence about potential peer competitors... The net of it all... is that there's no way that our Navy can do everything all over the place. – US Navy Secretary Donald Winter, 2008.¹³

In the present-day, however, the historical parallels are striking as we are again witnessing governments with their resources stretched thin condoning or even encouraging the private security industry to provide armed solutions to maritime security-related issues like piracy. The modern widespread convergence towards PMSCs as providers of maritime security, therefore, stands in stark contrast to the established international norm that discourages the presence of weapons on-board merchant vessels and states' commitment to upholding a monopoly of force at sea.¹⁴ Indeed, national laws are continuously being revised in various flag states to facilitate the use of PMSCs. In January 2022, new legislation was introduced in the Netherlands which allows Dutch shipowners to hire PMSCs as well, making it one of the latest European additions in a long line of flag states facilitating PMSCs.¹⁵ Thus, as the International Maritime Bureau recently reported piracy and armed robbery at sea to increase, with the Gulf of Guinea becoming an area of particular concern, the relevance of PMSCs continues to increase as well.¹⁶ Moreover, besides piracy, PMSCs are actively attempting to establish legitimacy within the maritime security domain to ensure their long-term existence and offer their services to a wider range of maritime security-related issues including maritime terrorism, illegal fishing, and more.¹⁷ Illustrating the continuity and significant relevance of this topic.

Research Questions

Accordingly, this thesis aims to synthesize the emergence of PMSCs in the 21st-century with the larger historical record of maritime warfare and security. While scholars within the disciplines of international

¹⁰ Janice E. Thomson, *Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe*, *Mercenaries, Pirates, and Sovereigns* (Princeton: Princeton University Press, 1996), 1–6, <https://doi.org/10.1515/9781400821242>.

¹¹ Christopher Spearin, “Mercenaries, Privateers, and Chartered Companies,” in *Private Military and Security Companies and States: Force Divided*, ed. Christopher Spearin, New Security Challenges (Cham: Springer International Publishing, 2017), 72, https://doi.org/10.1007/978-3-319-54903-3_3.

¹² Liss, “PMSCs in Maritime Security and Anti-Piracy Control,” 62.

¹³ Jen Dimascio, “Navy Aims to Protect Seas from Pirates,” *Politico*, October 2, 2008, <https://www.politico.com/story/2008/10/navy-aims-to-protect-seas-from-pirates-014185>.

¹⁴ Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 2.

¹⁵ Ministerie van Algemene Zaken, “Wetsvoorstel om de koopvaardij te beschermen - Scheepvaart en havens,” onderwerp, <https://www.rijksoverheid.nl/onderwerpen/scheepvaart-en-havens/wet-ter-bescherming-koopvaardij>.

¹⁶ International Maritime Bureau, “Piracy and Armed Robbery Against Ships: Report for the Period January - December 2020,” Periodic Report, Piracy and Armed Robbery Against Ships (London: ICC International Maritime Bureau, 2020), https://www.icc-ccs.org/reports/2020_Annual_Piracy_Report.pdf.

¹⁷ Patrick Cullen and Claude Berube, *Maritime Private Security: Market Responses to Piracy, Terrorism and Waterborne Security Risks in the 21st Century* (Abingdon-on-Thames: Taylor & Francis Group, 2012), 3–11, <http://ebookcentral.proquest.com/lib/uunl/detail.action?docID=957374>.

relations and security studies often regard PMSCs as a novel phenomenon, the historical record tells a rather different story. The thesis will therefore analyze how these PMSCs can be positioned within the larger historical record of maritime warfare and security. And what their emergence means and says about the current state of affairs in maritime security in relation to historically established international norms surrounding the use of force at sea, such as the state monopoly of force. Thus, this central question touches on both the disciplines of maritime history concerning the historical development of non-state violence at sea, as well as international relations regarding norm change in the international system and maritime security environment.

After providing an overview of the relevant literature and some words on the sources and methods, the thesis will be structured around three sub-questions or chapters that will collectively guide the thesis towards the central question concerning the (re)emergence of PMSCs and their effects on these established international norms. The first sub-question focuses on the background and context regarding the history of commercialized non-state armed force at sea. It will analyze the historical dynamics surrounding the use of such non-state actors and investigate what developments caused them to become outlawed in the Paris Declaration of 1856. Which eventually led to the established international norms surrounding the use of force at sea. This sub-question, therefore, forms the necessary basis for the following sub-questions as the PMSCs of today can only be understood in relation to this complex history. The second sub-question builds on the previous question by focusing on the re-emergence of armed non-state actors through its most recent form, the PMSC. Besides providing an overview of a variety of important aspects surrounding these non-state actors, the chapter aims to relativize the historical novelty of PMSCs by positioning them within the larger historical record of commercialized non-state armed force at sea. The third chapter will further guide the thesis towards the central question by analyzing the international regulatory framework in which PMSCs find themselves and the challenges that emerged in relation to the previously analyzed historically established norms concerning the use of force at sea. Finally, the conclusion will summarize these findings to ultimately answer the central research question guiding this thesis.

Literature Review

As the thesis touches on several themes within the disciplines of history, international relations, and security studies, the literature review has been divided into several interconnected sections as well. After some words on terminology, the historical scholarship regarding the use of commercial non-state actors within the maritime warfare and security environment will be covered. It then flows into the literature concerning the re-emergence of the modern private military sector and PMSCs. It is important to note, however, that the scholarship surrounding the causes and conditions for the use of PMSCs are still significantly under-researched and under-theorized in important aspects. A clear historiographical debate is therefore largely absent from the scholarship regarding these private maritime actors.¹⁸ Accordingly, the literature review will provide an overview of the current state-of-the-art research in which PMSCs find themselves.

Terminology

Throughout the literature concerning privatized armed security and warfare, the terms ‘private military companies,’ ‘private security companies,’ and ‘private military and security companies,’ are used extensively in varying ways according to several definitions. In essence, these terms describe the same non-state entities, private for-profit firms that specialize in (armed) security services that were, until recently, largely state-military terrain.¹⁹ Throughout this work, the term private military company will

¹⁸ Andreas Kruck, “Theorising the Use of Private Military and Security Companies: A Synthetic Perspective,” *Journal of International Relations and Development* 17 (January 1, 2014): 112–15, <https://doi.org/10.1057/jird.2013.4>.

¹⁹ Lou Pingeot, “Private Military and Security Companies,” in *The Oxford Companion to International Relations* (Oxford University Press, 2014), <http://www.oxfordreference.com/view/10.1093/acref/9780199738878.001.0001/acref-9780199738878-e-279>.

be used to refer to such non-state entities while the term private military contractor refers to their operators/personnel. In turn, private *maritime* security companies (PMSCs) are private military companies with a specific focus on maritime security.²⁰

Outsourcing the Use of Force at Sea in Historical Context

In answering the central question, scholarship about the history of non-state actors in maritime warfare and security provides important insights into the historical context, emergence, and development of PMSCs and the consequences of privatized violence for historically established international norms. In the past, a wide range of non-state actors has been involved in different aspects of warfare both on land and in the maritime domain. The most relevant of these actors for this study were privateers, but other examples include mercantile companies.²¹ However, with the establishment of permanent state navies and the development and enforcement of a state monopoly on violence (at sea), such armed non-state actors all but disappeared from the oceans.²²

Since the end of the Cold War, the idea of the state as the exclusive provider of (maritime) security has gradually been challenged by ‘new’ actors like NGOs, International Organizations, and private businesses. As a result, scholarly attention regarding the historical use of non-state actors in international security overall expanded rapidly since the 1990s. Janice Thomson’s classic work on *Mercenaries, Pirates, and Sovereigns* (1994), for example, analyzes the role played by non-state actors in European state-formation. In doing so, she argues how armed non-state actors were essential in the establishment of international norms like the state monopolization of force through a historical narrative.²³ Similarly, Alejandro Colás and Bryan Mabee further point to the early-modern practices of piracy and privateering to argue how the functioning of diplomacy and trade were ‘reliant on the combination of private and public mobilizations of force, authority, manpower, and resources.’²⁴ They explain how, until the 19th-century, the entanglement of both public and private actors characterized the ways in which maritime powers both waged war and conducted trade. Yet, the dual processes of state consolidation, on the one hand, which increased economic and military capacities and the authority exercised over citizens, and the economic shift from mercantilism to industrial capitalism, on the other hand, necessitated free trade. According to them, this sharpened the separation between public and private activities in the maritime domain. As a result, international norms and maritime law were slowly established as privateering, understood as state-sanctioned seaborne violence, became illegal through the Treaty of Paris (1856), commerce was made private, and warfare became consolidated as a public responsibility.²⁵ This connection identified between private actors in maritime warfare and security and the establishment of international norms in the maritime domain is further analyzed by Gary Anderson and Adam Gifford who study the dynamic between the private production of military power at sea and the complex system of international law that emerged to regulate the practice.²⁶

Such historical scholarship is invaluable when answering the research questions, particularly the first sub-question, as they investigate whether the dynamics and effects of non-state actors in maritime

²⁰ Liss, “PMSCs in Maritime Security and Anti-Piracy Control.”

²¹ Carlos Ortiz, “Overseas Trade in Early Modernity and the Emergence of Embryonic Private Military Companies,” in *Private Military and Security Companies: Chances, Problems, Pitfalls and Prospects*, ed. Thomas Jäger and Gerhard Kümmel (Wiesbaden: VS Verlag für Sozialwissenschaften, 2007), 11–22, https://doi.org/10.1007/978-3-531-90313-2_1.

²² Liss, “PMSCs in Maritime Security and Anti-Piracy Control.”

²³ Thomson, *Mercenaries, Pirates, and Sovereigns*.

²⁴ Alejandro Colás and Bryan Mabee, *Mercenaries, Pirates, Bandits and Empires: Private Violence in Historical Context* (London: Hurst, 2010), 85.

²⁵ Colás and Mabee, *Mercenaries, Pirates, Bandits and Empires*; Åsne Aarstad, “Maritime Security and Transformations in Global Governance,” *Crime, Law and Social Change* 67 (April 1, 2017), <https://doi.org/10.1007/s10611-016-9656-0>.

²⁶ Gary M. Anderson and Jr Adam Gifford, “Privateering and the Private Production of Naval Power,” *Cato Journal* 11, no. 1 (1991): 99–122.

warfare and security on states in the 19th-century translate into the 21st-century and if PMSCs, therefore, introduce a shift in these historically established international norms.

Modern (Re-)emergence of Private Armed Force

While the aforementioned works provide important insights into the historical context and development of privatized violence at sea, they do not investigate modern private military companies themselves. Since the late-twentieth century, private military force (re-)emerged on the international stage, most notably during the American invasions in Afghanistan and Iraq.²⁷ Accordingly, since the 2000s, the media attention and scholarship surrounding these so-called ‘modern mercenaries’ expanded at a rapid rate.²⁸

Initially, scholars like David Shearer with an interest in African security mainly examined the role played by modern mercenaries in the wars of decolonization as well as in the development of the first modern private military companies and their involvement in civil wars.²⁹ In his work – which was the first detailed analysis of the modern private military sector (1998) – Shearer brought attention to the fact that the scholarship surrounding the use of private military companies has not kept pace with their development, creating a sense of urgency to refocus on these private actors. He, therefore, argued that dismissing these actors as unpleasant aberrations to the established monopoly of violence is misleading and unhelpful. Instead, the emergence of military companies should be taken more seriously as these non-state actors can claim successes in achieving immediate strategic objectives, which he illustrated by actions of the South African firm Executive Outcomes in Angola (1993-94) and Sierra Leone (1995-96).³⁰ More recently, the invasions of Iraq (2003-2011) and Afghanistan (2001-2021) popularized the crucial role played by private military companies in enabling military operations by providing logistics, training, intelligence, and armed security, paving the way for the first systematic studies on the topic.³¹ Peter Singer’s influential book titled *Corporate Warriors* (2004) has become an almost-standard work regarding the scholarship on private military companies. In it, Singer provides the first systematic account of the private military industry and its broader implications, including the business models, the types of companies, and more. He argues that the (re-)privatization of warfare allows for startling new capabilities and efficiencies in the conduct of modern warfare, but simultaneously points out how the introduction of profit onto the battlefield raises several structural challenges for democracy, national security, and human rights.³² Following Singer, scholars have continued examining several related issues like the effectiveness, ethics, regulation, structure, identity, strategies, and discursive power of private military companies.³³

Scholars within the discipline of international relations have been particularly interested in studying the rationales underlying the increasing use of private military companies and their variations across countries over time. Such scholarship has currently elaborated roughly four main explanatory models for the growing role of non-state actors in international security. These explanations accounting for the increasing resort to private military companies can be identified along functionalist, ideological, organizational, and political lines of argument. Functionalist explanations by scholars like Christopher Kinsey and Malcolm Patterson generally conceptualize privatization in security and warfare as a response to technological, operational, and financial imperatives, providing military organizations under growing personnel and financial strain with the possibility of increasing effectiveness and

²⁷ Pingeot, “Private Military and Security Companies.”

²⁸ Sommer Mitchell, “Becoming Legitimate: How PMSCs Are Seeking Legitimacy in the International System” (PhD Dissertation, Tampa, University of South Florida, 2017), 1–5.

²⁹ David Shearer, *Private Armies and Military Intervention*, 1st ed. (New York City: Routledge, 1998).

³⁰ Shearer, *Private Armies and Military Intervention*.

³¹ Peter Warren Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca: Cornell University Press, 2004).

³² Singer, *Corporate Warriors*.

³³ Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 4–7.

reducing their costs by outsourcing tasks to private military contractors.³⁴ Explanations on the grounds of ideational factors, advanced by Singer, argue that the outsourcing of security and warfare has gained momentum due to the emerging belief in the superiority of the market and the commitment to reduce the size and functions of the public sector in conformity with neoliberalist trends.³⁵ More recently, other scholars like Eugenio Cusumano introduced the importance of taking the organizational/bureaucratic preferences of the main actors involved in the policy-making processes into account. For example, outsourcing can provide foreign ministries with the possibility to rely on security operators capable of performing based on their employers' preferred standard operating procedures. This, in turn, allows for resistance against the detachment of state/military personnel on assignments seen as peripheral to their core missions.³⁶ Lastly, several scholars including Deborah Avant have emphasized the political convenience of outsourcing over the other explanations. They consequently argue that the privatization of security and warfare could deteriorate democratic control over the use of force, establishing avenues for the executive to sidestep domestic political constraints and reduce the potential electoral costs of military deployments.³⁷

These works provide important insights into the motivations and rationales underlying the outsourcing of armed force by states. However, while they often echo historical dynamics, these explanatory models fail to take the larger historical record of privatized armed force into account and, therefore, often treat private military force as a historical novelty. Positioning this debate in the broader historicization of private violence can provide depth and perspective when analyzing PMSCs in the 21st-century.

Private Maritime Security Companies (PMSCs)

Besides the scholarship on private military force in general, the PMSC as a sub-category of private military companies has been explored much less extensively. Scholars that did, mainly focused on mapping the use of PMSCs, analyzing its strategic implications, and lining out the different regulatory frameworks.³⁸ Indeed, while the maritime domain has occupied a significant position within the study of geopolitics, strategy, and national power, the broader array of security issues including non-traditional security and non-state actors has remained largely unexplored, exposing a certain 'seablinkness' in the discipline of international relations at large.³⁹

Recently, however, publications have started appearing that address this negligence by conceptualizing maritime security by for example examining the status of merchant vessels, their

³⁴ Christopher Kinsey and Malcolm Hugh Patterson, *Contractors and War: The Transformation of United States' Expeditionary Operations* (Stanford: Stanford University Press, 2012); James Jay Carafano, *Private Sector, Public Wars: Contractors in Combat-- Afghanistan, Iraq, and Future Conflicts* (Westport: Greenwood Publishing Group, 2008); Eugenio Cusumano and Stefano Ruzza, "Security Privatisation at Sea: Piracy and the Commercialisation of Vessel Protection," *International Relations* 32, no. 1 (March 1, 2018): 80–103, <https://doi.org/10.1177/0047117817731804>.

³⁵ Singer, *Corporate Warriors*.

³⁶ Cusumano and Ruzza, "Security Privatisation at Sea"; Eugenio Cusumano, "The Scope of Military Privatisation: Military Role Conceptions and Contractor Support in the United States and the United Kingdom," *International Relations* 29, no. 2 (June 1, 2015): 219–41, <https://doi.org/10.1177/0047117814552142>; Eugenio Cusumano and Christopher Kinsey, "Bureaucratic Interests and the Outsourcing of Security: The Privatization of Diplomatic Protection in the United States and the United Kingdom," *Armed Forces & Society* 41, no. 4 (October 1, 2015): 591–615, <https://doi.org/10.1177/0095327X14523958>.

³⁷ Cusumano and Ruzza, "Security Privatisation at Sea," 83; Deborah Avant and Lee Sigelman, "Private Security and Democracy: Lessons from the US in Iraq," *Security Studies* 19, no. 2 (May 21, 2010): 230–65, <https://doi.org/10.1080/09636412.2010.480906>.

³⁸ Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 5; James Brown, "Pirates and Privateers: Managing the Indian Ocean's Private Security Boom," Report (Sydney: Lowy Institute for International Policy, September 12, 2012), Africa, <https://apo.org.au/node/31014>.

³⁹ Christian Bueger and Timothy Edmunds, "Beyond Seablinkness: A New Agenda for Maritime Security Studies," *International Affairs (London)* 93, no. 6 (2017): 1293–1311, <https://doi.org/10.1093/ia/iix174>.

importance to state power, and the extent to which they are subjected to state sovereignty.⁴⁰ Additionally, the surge in modern piracy between 2008 and 2012 has attracted considerable attention to the use of PMSCs. Cusumano and Stefano Ruzza, for example, provide an exploratory study, advancing the study of private security at sea from both empirical and theoretical grounds. Their book titled *Piracy and the Privatization of Maritime Security* (2020) focuses on the development of different vessel protection policies from 2008 to 2020 while zooming-in on the use of armed onboard guards.⁴¹ Pitney Jr. and Levin, on the other hand, take up a similar challenge but instead focus on the emergence of private anti-piracy navies through armed escort services provided by PMSCs.⁴² In short, most of these studies argue that the surge in Somali piracy in 2008 – in combination with the failure of international military missions to sufficiently combat piracy – caused the international shipping industry to resort to private security solutions. Caroline Liss, however, argues that the first modern PMSCs started operating as early as the 1990s in relation to Southeast Asian piracy in the Malacca Strait.⁴³ Yet, as her primary focus is on the role played by PMSCs in international security governance, she regrettably does not provide much further explanation and even terms private armed force ‘a new phenomenon.’ Lastly, Christopher Spearin turns the methodology around by focusing on the extent to which long-held expectations among states impact the private military industry.⁴⁴ His chapter on sea power focuses on the relationship between conventional state forces and PMSCs in maritime security and analyzes the civil-military distinctions and differing nature in terms of technology and capability.⁴⁵ In contrast to many of the aforementioned scholars, Spearin emphasizes the constrained nature of PMSCs by arguing how private maritime security solutions are mainly manpower-oriented and therefore do not challenge state control as such.⁴⁶ While such scholarship touches on several important aspects of the questions guiding this research, they generally neglect the development of these modern non-state actors in relation to state power/sovereignty within the larger historical record.

All told, there exists a significant gap in academia between the historical use of non-state actors in maritime warfare and security and the PMSCs of the 21st-century. Studies have examined links between the widespread use of mercenaries on land before the Peace of Westphalia (1648) and the modern use of private military contractors,⁴⁷ but the analysis of PMSCs in the historical context related to privatized security practices like privateering remains limited to a few mentions.⁴⁸ For example, Admiral McKnight, former commander of the multinational anti-piracy Task Force 151 ends his foreword to the book *Maritime Private Security* (2012) by posing a somewhat sensational question:

The maritime community must take responsibility for their vessels and ensure the safe passage of their cargo and crew through this pirated region. Is the answer to avoid the area completely or hire security teams – *privateers* – to protect their cargo? – T. McKnight, 2012.⁴⁹

Such analogies have also been made concerning mercantile companies like the British East India Company as the public sanctioning of the private use of force is a defining feature of the overseas charter system that was present in early-modern Europe.⁵⁰ The thesis will, therefore, further investigate

⁴⁰ Renée de Nevers, “Sovereignty at Sea: States and Security in the Maritime Domain,” *Security Studies* 24, no. 4 (October 2, 2015): 597–630, <https://doi.org/10.1080/09636412.2015.1103132>.

⁴¹ Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*.

⁴² Pitney Jr and Levin, *Private Anti-Piracy Navies*.

⁴³ Liss, “PMSCs in Maritime Security and Anti-Piracy Control,” 61–65.

⁴⁴ Christopher Spearin, *Private Military and Security Companies and States: Force Divided* (New York City: Springer International Publishing, 2017).

⁴⁵ Spearin, “Sea Power and PMSCs.”

⁴⁶ Spearin, 127–28.

⁴⁷ Sean McFate, *The Modern Mercenary: Private Armies and What They Mean for World Order* (Oxford, New York: Oxford University Press, 2017).

⁴⁸ Brown, “Pirates and Privateers”; Cullen and Berube, *Maritime Private Security*.

⁴⁹ Cullen and Berube, *Maritime Private Security*, XIX.

⁵⁰ Ortiz, “Overseas Trade in Early Modernity and the Emergence of Embryonic Private Military Companies.”

whether these analogies present similar dynamics between early forms of non-state maritime warfare and security or merely instances of sensational name-dropping.

Knowledge Gaps and Innovative Aspects

Thus, much has been written about the historical development of private violence in relation to state power, leading to the establishment of international norms regarding the use of force in the maritime domain. Moreover, scholars in international relations have dedicated quite some attention to modern private military companies including, albeit to a lesser extent, the emergence of PMSCs in the maritime domain. However, the literature on modern private military companies and their maritime counterparts both tend to overlook the historical dimension.

Accordingly, in a world dominated by nation-states, expressions of private violence have generally been neglected: either as relics of a more disorganized past or as minor nuisances to states themselves. Yet, the prevalence and centrality of non-state warfare and security in the past (as part of, or against, the consolidation of state power) and present (in the form of private military companies) warns against such complacency. The thesis, therefore, aims to fill this academic lacune by connecting the historical explanations as to why non-state armed force at sea was abolished during the mid-19th-century to the question of what the emergence of PMSCs in the 21st-century means and says about the current state of affairs concerning such historically established norms in the maritime domain. In doing so, it also contributes to the disciplines of history and international relations more generally by emphasizing the role of non-state armed force in understanding the international system.

Indeed, whereas much has been written on the strategic implications and regulatory frameworks surrounding PMSCs, less has been written on the emergence of PMSCs and how they came to affect the widespread international consensus against armed non-state actors at sea. In analyzing this question, the thesis combines these different academic contributions to articulate the emergence of PMSCs in a new light. To the best of the author's knowledge, no study has thus far positioned the modern PMSC in the larger historical record of non-state maritime warfare and security.

Sources and Methods

A wide range of source material will be consulted to examine the historical evolution of privatized armed force at sea, the effects on states, and the subsequent changes to established international norms. Because the thesis focuses on the emergence and actions of PMSCs in relation to the established international norms regarding the use of force at sea, it will target a compilation of international guidelines and standards, which constitute (1) the international consensus surrounding the appropriateness of privatized armed actors in maritime security and warfare, (2) international guidelines providing frameworks for how to deal with privatized maritime security and warfare, and (3) soft international law providing regulatory standards for PMSCs. Yet, compared to the nationally-anchored governance arrangements, throughout history, the global guidelines and standards surrounding PMSCs have always been quite loose in their institutional structure, and consist of interplays between public and private actors across the national and global levels of analysis. Primary sources, therefore, include documents and reports from a wide range of international actors including international organizations like the International Maritime Organization, national governments, the shipping industry and industry associations like the Baltic and International Maritime Council, the PMSCs themselves, and their industry associations like the now-defunct Security Association for the Maritime Industry, as well as influential research institutes like the Dutch Clingendael Institute.

Due to its focus on PMSCs throughout the larger historical record of privatized violence and the effects on historically established international norms, the thesis is less concerned with comparing the national frameworks that various flag states have developed amidst these global guidelines and standards. Nevertheless, it is recognized that the global and national governance frameworks are often two sides of the same coin. National frameworks of major flag states in the international system can

trigger developments in international regulation and vice-versa. But more importantly, to analyze in what ways PMSCs affect the international norms guiding the maritime security environment, it is important to include national frameworks around these non-state actors as well. The thesis therefore also incorporates examples and case studies from various flag states to provide illustrations of the effects of PMSCs on these established international norms.

Reflection on Sources

Due to the high relevancy of PMSCs regarding modern maritime security, primary sources are quite easily digitally accessible. For example, documents and reports published by international organizations, associations, and research institutes on maritime security, and more specifically, piracy and the private maritime security sector are mostly public. At the same time, however, the private security sector remains a highly opaque sector making it difficult to gain direct insights into the companies operating these private armed contractors. Moreover, PMSCs find themselves in a highly dynamic field that sees many changes in short periods. This makes it challenging to get an overview of the latest developments surrounding PMSCs but the International Maritime Organization and International Maritime Bureau, as well as several research institutes, provide useful tools to deal with these developments through, for example, the Piracy & Armed Robbery Map.⁵¹

Furthermore, as a result of the tensions between the private and public sectors regarding the outsourcing of armed force capabilities to private contractors, it is important to be aware of and acknowledge the potential biases, interests, and external pressures that might be present within various sources. In the end, international laws and regulations are non-binding and open to interpretation, which for example means that a PMSC might interpret the right to self-defense on the high seas rather differently than an international organization might do. Similarly, economic motivations and interests might influence the information retrieved from PMSCs and shipping companies while governmental sources might present contrasting perspectives. These variations are, therefore, important to take into account when analyzing the impact of PMSCs on established international norms surrounding the use of force at sea.

Methodology and Theoretical Foundation

The methodology is centered around qualitative methods of research mainly focusing on document analyses based on written primary source material, as well as the supporting literature. Within the analysis, the international relations theory of constructivism will provide the dominant overarching perspective as both an analytical tool and theoretical paradigm for the larger research question. As of yet, scholars who addressed the challenge of private military contractors as non-state security providers focused on the implications of the private market for Democratic Peace Theory,⁵² economic liberalist explanations as to why states have privatized security,⁵³ or realist explanations of PMCs as extensions of state power.⁵⁴ However, because of the state-centric perspectives of these rationalist schools of thought like realism and liberalism, they cannot sufficiently explain the return of privatized armed security amidst the established international norm surrounding the state as the sole provider of armed maritime security. Moreover, unlike their private military counterparts on land, which most often provide their services directly to states, PMSCs generally provide armed security services to the maritime industry. In other words, PMSCs present non-state actors that provide services usually

⁵¹ IMB Piracy Reporting Centre, “Live Piracy Map,” International Chamber of Commerce, 2021, <https://www.icc-ccs.org/piracy-reporting-centre/live-piracy-map>.

⁵² Deborah Avant, “The Implications of Marketized Security for IR Theory: The Democratic Peace, Late State Building, and the Nature and Frequency of Conflict,” *Perspectives on Politics* 4, no. 3 (2006): 507–28.

⁵³ Željko Branovic, “The Privatisation of Security in Failing States - A Quantitative Assessment,” Occasional Paper (Geneva: Geneva Centre for the Democratic Control of Armed Forces (DCAF), April 2011), https://ciaotest.cc.columbia.edu/wps/dcaf/0022680/f_0022680_18665.pdf.

⁵⁴ Mitchell, “Becoming Legitimate,” 7–9.

reserved for the state to other non-state entities, which further illustrates the incompatibility of such state-centric perspectives.

Within less than ten years, the International Maritime Organization has issued international guidance and rewritten industry guidelines, while national laws were being changed as well, to enhance maritime security through PMSCs.⁵⁵ How can such historically well-established international norms be changed so drastically and what are the consequences of this? Constructivism, therefore, provides a valuable theoretical foundation for the analysis because it allows the thesis to highlight the historical dynamism surrounding these international norms and non-state actors. International norms shape both the social identities and interests of state and non-state actors through three mechanisms: (1) institutionalized norms condition what actors consider necessary and possible in the international system, (2) state and non-state actors justify their behavior through established norms of legitimate conduct, and (3) international norms can constrain the conduct and behavior of actors.⁵⁶ Moreover, the notion that international norms are social constructions suggests variations across different contexts rather than a single objective reality, highlighting the importance of ‘national lexica’ and ‘historical practices.’⁵⁷ Therefore, in contrast to macro-level explanations regarding the ‘end-of-the-Cold-War’ and the ‘spread-of-neoliberalism,’ this approach allows us to focus on state agency as well.⁵⁸ Through these analyses, it is possible to analyze the shift in the widespread international consensus against the utilization of non-state actors within the maritime warfare and security environment. Subsequently, the reliability and validity of such sources, involving both public and private actors, are judged through extensive source criticism in which the author’s identity, potential biases, interests, and external pressures, among other factors are taken into account.

⁵⁵ Aarstad, “Maritime Security and Transformations in Global Governance.”

⁵⁶ Theo Farrell, “Constructivist Security Studies: Portrait of a Research Program,” *International Studies Review* 4, no. 1 (March 1, 2002): 49–56, <https://doi.org/10.1111/1521-9488.t01-1-00252>; Mitchell, “Becoming Legitimate,” 11–12.

⁵⁷ Anna Leander, *Commercialising Security in Europe: Political Consequences for Peace Operations* (London: Routledge, 2013), 8.

⁵⁸ Hilde van Meegdenburg, “‘We Don’t Do That’: A Constructivist Perspective on the Use and Non-Use of Private Military Contractors by Denmark,” *Cooperation and Conflict* 54, no. 1 (March 1, 2019): 25–27, <https://doi.org/10.1177/0010836718765901>.

II. The Historical Development of Non-State Armed Force at Sea

The early history shows that, contrary to the belief of many economists, a lighthouse service can be provided by private enterprise... The lighthouses were built, operated, financed, and owned by private individuals... We may conclude that economists should not use the lighthouse as an example of a service that could only be provided by the government.
– Ronald Coase, 1974.⁵⁹ –

A few centuries ago, the East India Company's ships in the Indian ocean were targeted by local pirates. These pirates were logically attracted to the large and slow-moving European merchantmen. This was a very serious issue, however, as a large East Indiaman, loaded with tea from China, would be carrying a cargo of about a billion USD in today's currency, comparable to a modern mega container ship.⁶⁰ Accordingly, the East India Company requested the British government for assistance against these Indian Ocean pirates. The Royal Navy, however, declined the request as it did not have the means at its disposal to patrol waters so vast and distant from its home shores.⁶¹ The Company was therefore forced to look for alternative solutions. At first, it decided to arm the merchantmen themselves by clearing the first cargo deck to install cannons. While this solution dropped the overall losses due to piracy in the Indian Ocean, it created new indirect losses related to the cargo not being carried as a result of the cannons. Indeed, while the cannons occasionally prevented the loss of whole ships, they also guaranteed moderate losses on every armed voyage, which eventually outweighed the relatively rare total losses to piracy. This solution was therefore not considered economical. As a result, the Company decided to hire its own private navy. These private warships would eventually patrol dangerous waters, escort merchantmen when needed, and even hunt down and destroy pirate groups. This solution proved to be relatively effective but, more importantly, it did so in a cost-effective manner.⁶²

This anecdote illustrates how, similar to the influential lighthouse example advanced by Nobel prize-winning economist Ronald Coase, the monopolization of armed force at sea by the government is a fairly recent historical trend.⁶³ Yet, addressing 21st-century concerns about piracy and the role of the private sector in responding to it, as well as other maritime threats, generally labors under the misconception that these are novel dynamics.⁶⁴ Throughout history, sovereigns and states have long depended on various forms of private enterprises for a significant portion of their armed forces. At sea, until the mid-19th-century, governments relied heavily on non-state initiatives through privately commissioned vessels known as privateers and mercantile companies.⁶⁵ These practices reflected the dominant international norms surrounding maritime warfare and security including the marketization and internationalization of violence that flourished until the mid-19th-century when such seemingly efficient institutions disappeared. This chapter, therefore, explores the role of these non-state commercial actors in maritime warfare and security in relation to the sovereign entity and analyzes the dynamics surrounding both their facilitation and prohibition between roughly the 16th to the 19th-centuries. A wide-ranging account of the early-modern history of maritime warfare and security, however, is beyond this chapter's aims. Instead, it aims to first provide an overview of the maritime warfare and security environment during this period to analyze the dynamics surrounding the

⁵⁹ R. H. Coase, "The Lighthouse in Economics," *The Journal of Law & Economics* 17, no. 2 (1974): 357–76.

⁶⁰ James H. Thomas, "Merchants and Maritime Marauders: The East India Company and the Problem of Piracy in the Eighteenth Century," *The Great Circle* 36, no. 1 (2014): 83–107.

⁶¹ Pitney Jr and Levin, *Private Anti-Piracy Navies*, IX–XIII.

⁶² Pitney Jr and Levin, IX–XIII.

⁶³ Anderson and Adam Gifford, "Privateering and the Private Production of Naval Power," 99–100.

⁶⁴ Cullen and Berube, *Maritime Private Security*, 13–14.

⁶⁵ Anderson and Adam Gifford, "Privateering and the Private Production of Naval Power," 99–100.

outsourcing of armed force at sea. It will then identify the subsequent developments contributing to the decline and ultimate prohibition of such non-state actors, leading to the established international norms surrounding the use of force at sea including the state monopoly of force.

The Maritime Warfare and Security Environment: 1600 – 1856

The employment of the private sector in international security and warfare, both on land and sea, has waxed and waned over the course of history. Generally, scholars agree that feudalism's constraints on military service were a major incentive for sovereign entities to turn to mercenaries, as the feudal system was largely based on the principle of defense. As a result, feudal military rights and obligations presented a significant barrier to launching offensive campaigns. To overcome this constraint, European war-makers increasingly started relying on private contractors to raise and supply armies for a profit.⁶⁶ In turn, with the breakdown of the feudal system of military mobilization, European sovereigns increasingly began exploiting the capabilities of non-state commercial actors like the Free Companies and the *Condottieri*. In fact, during this age of contracted combat, European warfare could not be waged without the private sector.⁶⁷ These practices, therefore, illustrate that during this extended period, the sovereign entity did not monopolize the exercise of armed force beyond its borders. Instead, during the six centuries leading up to the 20th-century, armed force was generally democratized, marketized, and internationalized. People bought and sold armed force capabilities like a commodity on the global market.⁶⁸ Yet, these practices of non-state violence were not a trivial feature of global politics, as they were authorized and officially sanctioned by sovereign authorities. As a result, non-state armed forces constituted the international norm from as early as the 13th-century.⁶⁹

Much in the same way as European sovereigns relied on mercenaries to fill their armies on land, did they also turn to the private sector at sea to protect their commerce, raid enemy shipping, and engage in ship-to-ship combat.⁷⁰ Indeed, the international maritime order that flourished between the 16th to the mid-19th-century can be summed up by Hugo Grotius' concept of *mare liberum* (1609), where the high seas are construed as a space subtracted from state sovereignty where any vessel has the right to free navigation.⁷¹ The maritime warfare and security environment was therefore largely formed by non-state actors such as privateers and mercantile companies.

Privateering: A Heavily-Armed Maritime Business Venture

In August 1812, a British ship called the *Hopewell*, fully loaded with a cargo of coffee, cotton, and sugar, left port from the Dutch colony of Surinam. To protect this valuable cargo, she carried fourteen cannons and sailed in a squadron with five other merchantmen. However, due to the vast expanse of the Atlantic Ocean, she became separated from her sister ships on the 13th of August.⁷² Two days later, the *Hopewell* spotted a heavily armed and rapidly approaching American schooner. At three-hundred yards, the approaching ship fired a round off the *Hopewell*'s bow and demanded her to show her papers and prepare to be boarded, but the captain refused and returned fire. After a heavy exchange, the *Hopewell* proved to be outgunned and struck her colors.⁷³ The attacker, an American schooner called the *Comet*, was neither a pirate nor a ship belonging to the US Navy. In fact, it is best to think of the *Comet* not as

⁶⁶ Thomson, *Mercenaries, Pirates, and Sovereigns*, 26–27.

⁶⁷ Cullen and Berube, *Maritime Private Security*, 14–15.

⁶⁸ Thomson, *Mercenaries, Pirates, and Sovereigns*, 3–6.

⁶⁹ Ibid.

⁷⁰ Cullen and Berube, *Maritime Private Security*, 15–17.

⁷¹ Hugo Grotius, *Hugo Grotius Mare Liberum 1609-2009: Original Latin Text and English Translation* (Brill, 2009).

⁷² James Butler, *American Bravery Displayed, in the Capture of Fourteen Hundred Vessels of War and Commerce, since the Declaration of War by the President* (Carlisle: Printed by George Phillips (for the author), 1816), <http://online.canadiana.ca/view/oocihm.47881>.

⁷³ Edgar Stanton Maclay, *A History of American Privateers* (New York: New York : D. Appleton and Co., 1899), <http://archive.org/details/cu31924028732604>.

a regular warship at all, but as a business enterprise.⁷⁴ The owners and its crew were hunting for British commercial ships to be captured, condemned, and sold for a profit. Indeed, the *Comet* was a privateer, a ship licensed and authorized by the United States to raid British vessels and confiscate their cargoes. The license, however, was not a mere formality. It was a widely established international practice recognized as valid and lawful by various courts throughout the world. Even the enemy recognized that the *Comet* acted within the ‘law of nations,’ and its captain and crew, if captured, would be accorded the same rights as US Navy personnel.⁷⁵

These privateers – non-state ships and their crews, or private men-of-war, conducting authorized violence at sea – were most prominent from the 13th to the mid-19th-century.⁷⁶ The origins of privateering can be found in the 1200s when the English king ordered vessels of the Cinque Ports to attack France.⁷⁷ This was legally based on the right of reprisal, a medieval principle by which individuals could seek the authority of their state to redress, by force if necessary, the losses inflicted by foreign seafarers.⁷⁸ Initially, this entailed that a merchant aggrieved by a citizen of another country could apply for ‘letters of marque and reprisal’ from his sovereign to seek restitution.⁷⁹ These letters were mainly designed to bring the anarchy of retaliation under the rule of law. Over time, however, the *raison d’être* evolved from personal recompense to personal gain arising from the seizure of cargo and vessels belonging to rival states or outlaws. In essence, there was a long-term shift from loss recovery to profit generation.⁸⁰ As a result, in wartime, sovereign entities increasingly began to issue such letters of marque against all enemy shipping. Such commissions, therefore, gradually became part of public warfare and national defense. Accordingly, while expiration dates on such commissions remained in place, other limits were generally removed and privateers could attack and capture enemy ships of whatever sort during wartime or seek out pirates, who were considered *hostis humani generis*, on a commercial basis.⁸¹ Consequently, the private ship-of-war became an attractive business venture. In the context of an expanding commercial economy, it constituted an investment opportunity for those willing to invest their resources in the quest for prizes. This prospect not only attracted the capital of merchants and shipowners, but also the labor power of seafarers.⁸² With a few extra cannons and crew, a merchant vessel could be converted into a commissioned vessel capable of capturing prizes along popular trade routes.⁸³ Whatever their purpose and force, private ships-of-war were invariably manned by crews that were large in relation to the vessel’s size, and they were organized specifically to fight the enemy and navigate prizes back to a friendly port.⁸⁴

The scale and character of privateering fluctuated greatly over space and time. Spanish privateering reached its peak in the 1630s followed by French privateering in the wars between 1688 and 1714. British privateering, on the other hand, climaxed during the opening weeks of the Fourth Anglo-Dutch War of 1780 followed by eventually the American privateers who were at their greatest extent in the War of 1812, as illustrated by the *Hopewell*.⁸⁵ In peacetime, letters of marque were also issued for anti-piracy operations, meaning that governments theoretically deputized private actors to

⁷⁴ Alexander Tabarrok, “The Rise, Fall, and Rise Again of Privateers,” *The Independent Review* 11, no. 4 (2007): 565–66.

⁷⁵ Tabarrok, 566.

⁷⁶ Spearin, “Mercenaries, Privateers, and Chartered Companies,” 72–75.

⁷⁷ Thomson, *Mercenaries, Pirates, and Sovereigns*, 21–26.

⁷⁸ David J. Starkey, “Privateering,” in *The Oxford Encyclopedia of Maritime History* (Oxford University Press, 2007), <http://www.oxfordreference.com/view/10.1093/acref/9780195130751.001.0001/acref-9780195130751-e-0667>.

⁷⁹ Spearin, “Mercenaries, Privateers, and Chartered Companies,” 72–75.

⁸⁰ Starkey, “Privateering.”

⁸¹ Spearin, “Mercenaries, Privateers, and Chartered Companies,” 72–75.

⁸² Starkey, “Privateering.”

⁸³ Tabarrok, “The Rise, Fall, and Rise Again of Privateers,” 565–66.

⁸⁴ Starkey, “Privateering.”

⁸⁵ *Ibid.*

capture criminals. For example, in 1696, the *Adventure Galley* captained by the notorious William Kidd, received a privateer commission from William III to bring ‘Pyrates, Free Booters, and Sea Rovers to Justice.’⁸⁶ However, although such private men-of-war have been included as one of the factors that contributed to solving the piracy problem in the Caribbean during the ‘Golden Age of Piracy’ (1650s-1730s) as they supplemented regular naval forces and effectively hunted down pirates, they also frequently became pirates themselves, like William Kidd.⁸⁷ This problem eventually contributed to the decline of privateering, which will be discussed in a later section.

Mercantile Companies: A Private Anti-Piracy Force

The beginning of the 17th-century also saw the proliferation of mercantile companies chartered by states to engage in long-distance trade or establish colonies. Examples include the British East India Company (1600) and the Dutch East India Company (1602) among others. Although these companies were non-state actors in principle, their institutional structure and degree of private versus state control varied greatly. To pursue their goals, the companies were granted the authority to enter into diplomatic relations and utilize violence to both protect trade routes and other facilities, as well as project the company’s economic and political presence overseas.⁸⁸ As a result, unlike the privateers, these mercantile companies were often endowed with nearly all the powers of sovereignty, blurring the analytical distinctions between the political and economic, and the state and non-state.⁸⁹ They were essentially state-created institutions that used violence in pursuit of economic gain and political powers for both state and non-state actors.⁹⁰ It would, therefore, be outside the scope of this analysis to fully consider all mercantile companies as purely non-state commercial actors exclusively focused on maritime warfare and security, as this was not their core business. Instead, the analysis focuses on the anti-piracy activities of the British East India Company to illustrate several important dynamics.

It was not until the 17th-century that major European powers like the British East India Company entered the Indian Ocean region. However, unlike the Mediterranean, the Indian Ocean was not surrounded by dominant naval powers which meant that Arabian and Indian corsairs operated freely.⁹¹ As a result, British shipping increasingly found itself at the mercy of pirates, as the opening anecdote illustrated. But with the small navies of the time, and the delicate balance of power in Europe itself, colonial powers could not afford to send powerful fleets on anti-piracy duty in the Indian Ocean. The British East India Company realized this reality and formed its own private naval force in 1612 called the India Marine, initially consisting of four warships. This private naval force was mainly charged with defending the Company’s interests against both pirates and rival Europeans.⁹² By 1686, the India Marine was significantly expanded and renamed ‘the Bombay Marine’ as the native corsairs were joined by European pirates in larger ships, eager to exploit the Company’s inability to adequately defend its trade routes in the Indian Ocean.⁹³ In the face of these increasing losses which continued into the 18th-century, the Company’s directors further decided to expand the naval force instead of focusing on powerful defenses on all merchant ships because such dedicated warships could be used to actively hunt down pirates in a more cost-effective manner. Over time, the Bombay Marine’s fleet went through

⁸⁶ Daniel Defoe, *A General History of the Pyrates*, (Chelmsford: Courier Corporation, 1724), xxii–xxiii; Theodore T. Richard, “Reconsidering the Letter of Marque: Utilizing Private Security Providers against Piracy,” *Public Contract Law Journal* 39, no. 3 (2010): 412–17.

⁸⁷ Richard, “Reconsidering the Letter of Marque,” 431–36.

⁸⁸ Thomson, *Mercenaries, Pirates, and Sovereigns*, 31–32; Spearin, “Mercenaries, Privateers, and Chartered Companies,” 76.

⁸⁹ Ortiz, “Overseas Trade in Early Modernity and the Emergence of Embryonic Private Military Companies,” 17–22.

⁹⁰ Thomson, *Mercenaries, Pirates, and Sovereigns*, 41.

⁹¹ Pitney Jr and Levin, *Private Anti-Piracy Navies*, 7–8.

⁹² *Ibid.*, 8 – 14.

⁹³ *The Cambridge History of the British Empire: British India, 1497-1858*, Ed. by H.H. Dodwell (Cambridge University Press, 1929), 144.

a repeating cycle of development and retrenchment. As piracy worsened, the Company would expand its forces. But when it declined, costs became hard to justify, and the Bombay Marine shrunk.⁹⁴ Yet the underlying causes for piracy itself remained. The private naval force would eventually become nationalized and incorporated into the Indian Squadrons of the Royal Navy during Queen Victoria's reign (1837-1901).⁹⁵

The Outsourcing of Armed Force at Sea: the Dynamics

As such, with the breakdown of the medieval system of military mobilization, non-state actors increasingly became the dominant force in European warfare between the 16th and 19th-centuries. As a result, the use of force was largely marketized, democratized, and internationalized with non-state actors like privateers and mercantile companies dominating maritime warfare and security. Accordingly, several overlapping dynamics can be identified underpinning the outsourcing of armed force at sea:

1. *Limited State Resources*

Privateers arose during a time when sovereign entities were unable to maintain standing navies beyond a negligible size, or even at all.⁹⁶ Public navies were expensive, particularly because they had to be maintained in peacetime as well, and until the late-19th-century, tax systems tended to be relatively inefficient and ineffectual.⁹⁷ Consequently, with their resources stretched thin, governments often found that the most cost-effective option available was to outsource maritime warfare and security to non-state actors. During this extended period, outsourcing reduced the demand for a standing navy, for which non-state actors like privateers were often a substitute.⁹⁸ While sovereign entities did not necessarily hire privateers themselves, they provided the regulatory infrastructure to facilitate their voyages and payment through a well-established regime known as the international law of prize.⁹⁹ Both naval and merchant vessels were expensive to build and maintain, but the former had no commercial value. Sovereigns, therefore, developed this elaborate infrastructure in part to obtain access to this relatively expensive form of technology in the most cost-effective way.¹⁰⁰

Additionally, outsourcing was beneficial in relation to specific tasks like commerce-raiding and anti-piracy as transaction costs for such activities were lower for privateers than regular navies. Owners of privateers would simply use the vessels as merchant ships in peacetime and convert them for privateering during wartime or when the demand for anti-piracy increased. In doing so, privateers were essentially financed by the enemy.¹⁰¹ States with weaker navies like the United States, therefore, benefited the most from privateers. The same dynamics underpinned the outsourcing through the Bombay Marine as there was a gap between the rewards resulting from Indian Ocean piracy, and the risks of being caught by the Royal Navy. Seeing their resources stretched thin, however, the East India Company was forced to employ a market-driven solution. As a result, by preventing pirate attacks that hurt the Company's bottom line, the Bombay Marine essentially financed itself as well.¹⁰²

2. *Lack of Political Will*

Besides the cost-effectiveness, a sovereign entity's political will can also be an important dynamic in the outsourcing of armed force at sea. For example, throughout this extended period, France stands out as one of the countries that relied most on privateering. This can be traced back to France's lack of a

⁹⁴ Pitney Jr and Levin, *Private Anti-Piracy Navies*, 12–14.

⁹⁵ Charles Rathbone Low, *History of the Indian Navy: (1613-1863)* (R. Bentley and son, 1877); Pitney Jr and Levin, *Private Anti-Piracy Navies*, 14.

⁹⁶ Anderson and Adam Gifford, "Privateering and the Private Production of Naval Power," 100–105.

⁹⁷ Tabarrok, "The Rise, Fall, and Rise Again of Privateers," 565–68.

⁹⁸ Anderson and Adam Gifford, "Privateering and the Private Production of Naval Power," 100–105.

⁹⁹ Anderson and Adam Gifford, 105–12.

¹⁰⁰ Spearin, "Mercenaries, Privateers, and Chartered Companies," 72–75.

¹⁰¹ Anderson and Adam Gifford, "Privateering and the Private Production of Naval Power," 112–17.

¹⁰² Pitney Jr and Levin, *Private Anti-Piracy Navies*, 18–21.

maritime tradition, in contrast to for example the Dutch and the English.¹⁰³ France's naval force was therefore significantly underdeveloped until the mid-17th-century. Under the naval secretaries of Colbert (1669-1683) and de Seignelay (1683-1690), France partly succeeded in establishing the foundation of a standing navy to rival the English, as evidenced by France's early success during the Nine Years' War (1688-1697).¹⁰⁴ However, serious problems ensued concerning financing and manpower which created a less hospitable climate for navalists, eventually leading to Louis XIV's decision to de-emphasize the navy. Opponents of the navy did not only favor the army but also favored a more indirect *guerre de course* (commerce-raiding) strategy over regular naval operations. Thus, during the remainder of the Nine Years' War and the War of the Spanish Succession (1701-1714), France mainly relied on privateers for the provision of armed force at sea.¹⁰⁵ According to Alfred Thayer Mahan, this recourse to privateering was a mistake because it allowed the English maritime hegemony.¹⁰⁶ Yet, although the financial aspects undoubtedly played a role as well, it seems to be the lack of political will coupled with the effectiveness of privateering that played the most important role in France's preference for non-state actors over a regular naval force.

3. *Asymmetric and Non-Traditional Security and Warfare*

Indeed, the outsourcing of armed force at sea arose when European sovereigns found themselves unable to maintain standing navies beyond a negligible size. However, even as sovereign entities and regular navies grew stronger, states continued to find non-state maritime actors like privateers desirable. This had everything to do with the nature of maritime warfare and security. Besides the large-scale naval battles of the time, war aims and security threats were quite varied and included the disruption of the enemies' maritime commerce and anti-piracy operations.¹⁰⁷ Non-state actors were therefore often considered desirable as complementary to regular navies. For example, besides the lower transaction costs, the relatively greater efficiency of privateers as prize-taking business enterprises explains why regular naval forces were not deployed in commerce-raiding until the late-19th-century. Regular naval forces were less effective than privateers as commerce-raiders because of their large and heavily-armed warships, which were often too slow and difficult to maneuver to efficiently chase merchantmen.¹⁰⁸ In the same way, the Bombay Marine's dedicated private warships allowed them to optimize their fleet for anti-piracy activities without compromising the design of the East India Company's merchantmen. This, in turn, freed the regular navies for the more traditional combat roles, which were generally considered their core task.¹⁰⁹

It can, therefore, be deduced that the outsourcing of armed forces at sea was especially attractive concerning asymmetric forms of warfare or non-traditional maritime security threats. These can be characterized as concepts different from traditional warfare and security, which is usually fought between sovereign entities or states with similar capabilities. Asymmetric and non-traditional threats, on the other hand, are mainly carried out by non-state actors and focus on undermining the opponent's strengths while exploiting their weaknesses using methods that differ significantly from the conventional methods of operations.¹¹⁰ Indeed, privateers played no important role in strategically significant battles at sea because regular naval forces performed specialized tasks that privateers could

¹⁰³ Colás and Mabée, *Mercenaries, Pirates, Bandits and Empires*, 60–63.

¹⁰⁴ Colás and Mabée, 60–63.

¹⁰⁵ Ibid.

¹⁰⁶ Jon Sumida, "Alfred Thayer Mahan, Geopolitician," *Journal of Strategic Studies* 22, no. 2–3 (June 1, 1999): 49, <https://doi.org/10.1080/01402399908437753>.

¹⁰⁷ Anderson and Adam Gifford, "Privateering and the Private Production of Naval Power," 100–105.

¹⁰⁸ Anderson and Adam Gifford, 112–17.

¹⁰⁹ Pitney Jr and Levin, *Private Anti-Piracy Navies*, 18–21.

¹¹⁰ Aditi Chatterjee, "Non-Traditional Maritime Security Threats in the Indian Ocean Region," *Maritime Affairs: Journal of the National Maritime Foundation of India* 10, no. 2 (July 3, 2014): 77–95, <https://doi.org/10.1080/09733159.2014.972669>; K. Kumar, "Asymmetric Threats and Their Challenges to Freedom of Navigation," *World Maritime University Dissertations*, Marine Environmental & Ocean Management, January 1, 2010, 109–10, https://commons.wmu.se/all_dissertations/421.

simply not perform. As a result, privateers disproportionately focused on the asymmetric and non-traditional war objectives. This, in turn, made them attractive to outsourcing.¹¹¹ Similarly, anti-piracy operations can also be considered non-traditional as pirates could strike vulnerable targets at the time and place of their choosing, while defenders had to constantly guard all potential targets over a wide area. The warships of regular navies, however, were designed to engage other navies' warships and were extremely expensive to maintain when on patrol for extended periods, while asymmetric opponents like pirates avoided combat with them. As a result, a small number of powerful and heavily-armed warships was considered less effective at protecting against pirates than a large number of cheaper, and smaller ships.¹¹² Accordingly, the non-traditional and asymmetric nature made anti-piracy operations attractive to outsourcing.

The Disappearance of Non-State Actors in Maritime Warfare and Security

As such, the outsourcing of armed force to non-state actors proved to be highly effective. Non-state actors like privateers dominated naval warfare and became a widespread international norm in the maritime warfare and security environment.¹¹³ Nevertheless, after the mid-19th-century such non-state maritime actors were virtually abandoned by states. Thus, the question arises: if these internationally accepted practices served sovereigns' interests so well, why were they ultimately prohibited?

One prominent explanation points towards technological improvements in naval warfare. Roughly after the American Civil War (1861-1865), naval warfare underwent a technological revolution in which the 'Age of Sail' was succeeded by the 'Age of Steam.' These developments significantly increased unit costs and created sharper distinctions between naval and merchant vessels, which in turn reduced the transaction-cost advantages.¹¹⁴ However, because privateering essentially ended before the American Civil War started, this explanation has proven unsatisfactory.¹¹⁵ Instead, it is important to look at the dynamics and tensions surrounding the relationship between public and private interests at the turn of the 19th-century.

Unintended Consequences

While the authorization of non-state violence in the maritime warfare and security environment served state interests relatively well, the system was not without its problems. At the heart of these practices was the process of state consolidation. To attain power and wealth, sovereign entities empowered non-state actors to exercise violence because their own capabilities were insufficient and/or politically constrained. By turning to the market and non-state actors, these constraints could be evaded.¹¹⁶ However, each non-state practice had the potential to produce unintended consequences for sovereign entities.

The private interests of non-state actors like privateers and mercantile companies often conflicted with the political interests of the state. The consequences of outsourcing armed force, therefore, included the non-state actors' use of force against unintended targets like other states with which their home states were at peace, other contracted non-state actors, or even the home states themselves.¹¹⁷ Over-time, it for example became clear that the endorsement of non-state actors like privateers condoned and indirectly supported piracy. When states authorized privateering commissions during wartime, they inadvertently also created potential pirate vessels when the war concluded as thousands of seamen were left with no more appealing alternative.¹¹⁸ Thus, the system of privateering

¹¹¹ Anderson and Adam Gifford, "Privateering and the Private Production of Naval Power," 104–5.

¹¹² Pitney Jr and Levin, *Private Anti-Piracy Navies*, 18–21.

¹¹³ Thomson, *Mercenaries, Pirates, and Sovereigns*, 42.

¹¹⁴ Spearin, "Mercenaries, Privateers, and Chartered Companies," 73–75.

¹¹⁵ Anderson and Adam Gifford, "Privateering and the Private Production of Naval Power," 118.

¹¹⁶ Thomson, *Mercenaries, Pirates, and Sovereigns*, 67.

¹¹⁷ Thomson, 63–68.

¹¹⁸ *Ibid*, 44–54.

indirectly sustained the problem of piracy itself. Moreover, by democratizing, marketizing, and internationalizing armed forces at sea, problems emerged for interstate politics. While states were more than happy to hire foreign privateers to support their conflicts, they also increasingly started holding each other accountable for the international actions of individuals under their sovereign jurisdictions. It was, therefore, no longer acceptable to deny responsibility on the basis that individuals were pursuing private interests. As a result, claims of neutrality could be compromised by non-state actors, which could in turn inadvertently draw states into conflicts.¹¹⁹

These consequences illustrate the underpinning reason for the resulting chaos, the state's inability to effectively control the non-state actors it authorized to use violence beyond its borders. This exposes a paradox in the outsourcing of armed force: to maximize non-state actors' effectiveness, states need to minimize the constraints on their activities. In turn, minimal constraints mean limited state control and reduced state authority. Conversely, regulations designed to enhance state control reduce non-state actors' incentives to accept the risks entailed in the use of force.¹²⁰ Thus, the tension between private interests and the states' urge to regulate their non-state partners gradually undermined the existing maritime warfare and security system. Such unintended consequences encouraged states to develop regular navies, and public opinion slowly turned against non-state actors like privateers.¹²¹ Alfred Thayer Mahan's analysis of the War of 1812, perfectly illustrates this increasing antipathy:

Fighting, when avoidable, is to the privateer a misdirection of energy. Profit is his objective, by depredation upon the enemy's commerce; not the preservation of that of his own people. – Alfred Thayer Mahan, 1905.¹²²

A Changing Maritime Warfare and Security Environment

By the mid-19th-century, states were aware of the problems associated with the outsourcing of armed force at sea. At the same time, the use of non-state actors was an internationally established customary practice that had been in place for centuries. The delegitimation of non-state maritime actors like privateers, therefore, required international norm change.

Following the unintended consequences, European states gradually started reviewing the practice of outsourcing armed force to non-state actors at sea. In essence, privateering was never considered ideal, but when governments could not easily raise the funds to maintain standing navies, privateering provided a good alternative. However, in the background of the centuries-long process of internal pacification, centralization, and consolidation, powerful states like Britain and France were increasingly able to monopolize the use of force, leading to the further expansion and development of standing navies.¹²³ Increasing hostility from national naval bureaucracies, who perceived non-state actors like privateers as close competitors in the provision of naval force, further influenced their unfavourability.¹²⁴ Indeed, when available, regular navies gave governments greater flexibility because they could order naval personnel according to their wishes without worrying about conflicting private and public interests.¹²⁵ This was further supported by the gradually improving fiscal capacity of states in the mid-19th-century, while overseas (free) trade was simultaneously expanding.¹²⁶ Additionally,

¹¹⁹ Ibid, 54-59.

¹²⁰ Thomson, *Mercenaries, Pirates, and Sovereigns*, 43–44.

¹²¹ Cullen and Berube, *Maritime Private Security*, 17–19.

¹²² Alfred Thayer Mahan, *Sea Power in Its Relations to the War of 1812*, vol. 2, Cambridge Library Collection - Naval and Military History (Cambridge: Cambridge University Press, 2011), 126, <https://doi.org/10.1017/CBO9780511793523>.

¹²³ Colás and Mabee, *Mercenaries, Pirates, Bandits and Empires*, 21–25.

¹²⁴ Anderson and Adam Gifford, "Privateering and the Private Production of Naval Power," 117–20.

¹²⁵ Tabarrok, "The Rise, Fall, and Rise Again of Privateers," 575–76.

¹²⁶ Henning Hillmann and Christina Gathmann, "Overseas Trade and the Decline of Privateering," *The Journal of Economic History* 71, no. 3 (2011): 730–33.

increasing diplomatic problems caused by privateers over the rights of neutrals also contributed to the overall hostility towards non-state actors.¹²⁷

Moreover, privateering gradually became regarded as the ‘weapon of the weaker power.’ By using privateers, even a small and/or neutral state that could not afford a standing navy would still be able to effectively disrupt and threaten overseas trade. Accordingly, by the mid-19th-century, the great powers looked rather favorably on a prohibition on privateering, which is nicely illustrated by a letter written by British Prime Minister, Lord Palmerston, to the Queen in 1856:¹²⁸

With regard to the proposal for an engagement against privateering, it seems to the Cabinet that as Great Britain is the Power which has the most extensive commerce by sea all over the world, which Privateers might attack, and has on the other Hand the largest Royal Navy which can do that which Privateers would perform, Great Britain would find it for her Interest to join in an agreement to abolish Privateering – Lord Palmerston, 1856.¹²⁹

Thus, the increasing strength of states coupled with their wish to improve and consolidate state control caused the decline of non-state actors like privateers because these undermined state control through various unintended consequences, creating an incentive for states to monopolize the use of force at sea as they did on land as well following the Treaties of Westphalia (1648). These considerations prompted the consolidation of what has been defined as the anti-mercenary norm, which can arguably be extended to include an anti-privateering norm.¹³⁰

Towards a New International Norm Regarding the Use of Force at Sea

As a result, to guarantee the private sector’s subordination to state navies, the great powers replaced the centuries-old and well-established international law of prize with a new legal regime. On the 16th of April 1856, the delegations of Britain, France, Prussia, Austria, Sardinia, the Ottomans, and Russia signed the Treaty of Paris, ending the Crimean War (1853-1856). Attached to this document was the influential *Paris Declaration Respecting Maritime Law*, which was intended to ‘establish a uniform doctrine’ on ‘Maritime Law in time of War.’ In this Declaration, the signatories declared that:

1. Privateering is, and remains abolished;
2. The Neutral Flag covers Enemy’s Goods, with the exception of Contraband of War;
3. Neutral Goods, with the exception of Contraband of War, are not liable to capture under Enemy’s Flag;
4. Blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.¹³¹

They thus agreed on three major points: free ships make free goods, effective blockade, and most importantly, no privateering.¹³² The declaration’s primary goal to abolish privateering was therefore settled in the first article. The agreement provided that states who were not attending the Congress of Paris would be invited to accede to the Declaration. In turn, all major powers of the time acceded to the

¹²⁷ Anderson and Adam Gifford, “Privateering and the Private Production of Naval Power,” 117–20.

¹²⁸ Anderson and Adam Gifford, 117–20; Thomson, *Mercenaries, Pirates, and Sovereigns*, 69–76.

¹²⁹ H.W. Malkin, “The Inner History of the Declaration of Paris,” *British Yearbook of International Law* 8 (1927): 30.

¹³⁰ Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 17; Sarah Percy, *Mercenaries: The History of a Norm in International Relations* (Oxford: Oxford University Press, 2007), <https://doi.org/10.1093/acprof:oso/9780199214334.001.0001>.

¹³¹ “Declaration Respecting Maritime Law. Paris, 16 April 1856,” International Committee of the Red Cross (ICRC), April 14, 1856, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=473FCB0F41DCC63BC12563CD0051492D>.

¹³² Warren F. Spencer, “The Mason Memorandum and the Diplomatic Origins of the Declaration of Paris,” in *Diplomacy in an Age of Nationalism: Essays in Honor of Lynn Marshall Case*, ed. Nancy N. Barker and Marvin L. Brown (Dordrecht: Springer Netherlands, 1971), 44–66, https://doi.org/10.1007/978-94-010-3002-1_6.

Declaration with the only exceptions of Spain and the United States.¹³³ The United States refused to ratify on the grounds that the Declaration did not go far enough to protect private property rights at sea and that it disproportionately disadvantaged smaller naval powers, which were obliged to rely upon privately commissioned warships in times of war.¹³⁴ While Spain acceded to the Declaration in 1908, after the Second Hague Convention (1907), the United States refused unless an amendment was added, regarding privateering, that the private property of citizens of belligerent nations was exempt from capture at sea by an opposing naval force. This demand, however, was never heeded. Nevertheless, during the American Civil War (1861-1865) and the Spanish-American War (1898), the United States proclaimed that it would adhere to the rules of the Declaration, without formally acceding to it.¹³⁵ As a result, compliance with the Declaration's ban on privateering was such that non-state actors essentially disappeared from the maritime warfare and security environment.¹³⁶ Accordingly, the Declaration of Paris was the first international instrument to provide general principles for the law of war at sea.¹³⁷ The principles contained in this Declaration, therefore, ultimately became considered part of the general principles of maritime law, constituting a new norm on the use of force at sea.

Like on land, the state monopoly of force was extended to the maritime domain, as the law of the sea became centered on sovereign links between ships and states.¹³⁸ The Declaration of Paris' principles – reflecting a new international norm in the maritime warfare and security environment – eventually got enshrined in the *United Nations Convention on the Law of the Sea* (UNCLOS, 1982), which established the general legal framework for all maritime activities. Besides reiterating concepts like the Freedom of Navigation (Article 87), which states that ships flying the flag of any sovereign state shall not suffer interference, this international agreement also codified the right to 'innocent passage' in territorial seas as long as a vessel does not engage in hostile activities, which, among other things, prohibits the presence and use of weapons on-board civilian vessels (Article 19).¹³⁹ These arrangements, therefore, make the use of force by non-state actors like privateers almost legally impossible. In fact, privateers practically came to be defined as pirates or criminals according to Article 101 of the UNCLOS:¹⁴⁰

- (a) Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - i. On the high seas, against another ship or aircraft, or against persons or property on board such a ship or aircraft;
 - ii. Against a ship, aircraft, persons, or property in a place outside the jurisdiction of any State;

As such, the internationally established customary practice surrounding the outsourcing of armed force at sea to non-state actors like privateers was successfully replaced by a state monopoly of force in the maritime domain since the Paris Declaration of 1856.

¹³³ Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 17–18.

¹³⁴ Anderson and Adam Gifford, "Privateering and the Private Production of Naval Power," 119.

¹³⁵ Natalino Ronzitti, ed., *The Law of Naval Warfare: A Collection of Agreements and Documents with Commentaries* (Dordrecht: Brill Nijhoff, 1988), 61–73, <https://brill.com/view/title/9810>.

¹³⁶ William Edward Hall and Charlotte Higgins, *A Treatise on International Law* (Oxford: Clarendon Press, 1924), 621.

¹³⁷ Ronzitti, *The Law of Naval Warfare*, 61–73.

¹³⁸ Nevers, "Sovereignty at Sea," 597–99.

¹³⁹ "United Nations Convention on the Law of the Sea," United Nations Treaty Collection, December 10, 1982, https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en; Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 18.

¹⁴⁰ "United Nations Convention on the Law of the Sea."

Conclusion: The Change of an International Norm

All told, this chapter has illustrated how the pre-1856 maritime warfare and security environment was dominated by non-state actors like privateers and mercantile companies through the outsourcing of armed force at sea. This practice was underpinned by various overlapping and interconnected dynamics related to (1) the limited state resources that forced the sovereign entity to resort to the more cost-effective non-state alternatives like privateers for the provision of armed force at sea; (2) the lacking political will of states to invest significant resources into a standing naval force when, often cheaper and more effective, non-state alternatives were widespread; and (3) the asymmetric and non-traditional nature of certain maritime warfare and security objectives, like commerce-raiding and anti-piracy, that were attractive to outsourcing as it allowed regular naval forces to focus on their core missions.

However, by the turn of the 19th-century, the maritime warfare and security environment was changing as these seemingly efficient institutions disappeared. As a result of the state's inability to effectively control the unintended consequences of the outsourcing of armed force to these non-state actors, states increasingly wished to monopolize the use of force in the maritime domain as well. In the background of the increasing consolidation and centralization of state power, powerful states like France and Britain managed to undermine the centuries-long internationally established customary practice surrounding the outsourcing of armed force at sea and replaced it with a new maritime warfare and security environment in which the state monopoly of force became the established international norm. The market for non-state armed forces at sea was therefore not necessarily a market that can be proven to have 'failed,' rather it was one that was eliminated through international political means. Accordingly, the historical record regarding the outsourcing of armed force to commercial non-state actors belongs alongside Coase's lighthouse model as an example of the successful provision of a public service – armed force – by a private enterprise. Consequently, could this hypothetically mean that a significant gap in the market could, in turn, cause a re-emergence of such commercial non-state actors and thus overturn the established international norm again? This will be addressed in the following chapters.

III. The Emergence of Private Maritime Security Companies in the 21st-Century: the Return of the Privateer?

It is a concern from a naval perspective that we do not have enough vessels to reduce piracy in the Indian Ocean because of the huge area... thirty vessels are committed to counter-piracy now and fifty could be available within a year, but to effectively suppress piracy in the Indian Ocean we would need a thousand...

– Stein Hagalid, NATO Shipping Centre, 2009.¹⁴¹ –

During the inauguration of Barack Obama as President of the United States in 2009, another interesting and far quieter development occurred less than two-hundred miles south of Washington DC in Norfolk, Virginia: the conversion of the survey ship *McArthur* into an armed escort vessel owned and operated by the private military company *Blackwater Worldwide* with the aim of providing maritime security services in the Gulf of Aden.¹⁴² Indeed, while President Obama's ascendancy to power was characterized by some careful optimism about the international security environment, the year 2009 also marked the further intensification of piracy off the coast of Somalia, with the famous *Maersk Alabama* becoming the first successful seizure of an American-flagged ship since the 19th-century.¹⁴³ The fitting-out of the *McArthur* by a privately-owned security company, therefore, represented an entirely different set of future expectations about the changing nature of the maritime security environment, the risks involved, the increasing failure and reluctance of states to adequately respond to them, and the degree to which private actors might be considered an option to mitigate them.¹⁴⁴ Consequently, within ten years, the maritime security environment changed from being the exclusive domain of the world's navies and coast guards to becoming a complex web of public and private actors, with PMSCs becoming an increasingly established player.¹⁴⁵ Thus, after being absent from the maritime warfare and security environment for over a hundred years, commercial non-state actors had resurfaced.

This chapter analyzes the re-emergence of non-state actors in maritime warfare and security through these private maritime security companies or PMSCs. It will first analyze the origins of PMSCs by looking at the connection between modern piracy and the emergence of the first PMSCs, followed by an overview of their working methods and services. Afterward, rather than analyzing these PMSCs as a historical novelty, the chapter aims to position the PMSCs within the larger historical record regarding the outsourcing of armed force at sea by analyzing the dynamics underpinning their emergence in line with the dynamics identified in the previous chapter. It should therefore be noted that the chapter does not aim to provide a detailed overview of the company profiles of PMSCs including their finances and management; as the focus is primarily on the larger dynamics surrounding their emergence within the historical record of authorized non-state violence at sea.

What are Private Maritime Security Companies?

The number of companies diving into the maritime domain to offer armed security services to commercial shipping peaked between 2011-2012. During those years, many new companies emerged

¹⁴¹ Tim Brooks, "GCC Navies 'Will Be Key to Fighting Pirates,'" *The National*, December 9, 2009, <https://www.thenationalnews.com/uae/gcc-navies-will-be-key-to-fighting-pirates-1.484804>.

¹⁴² Jerry Seper, "Blackwater Joins Fight against Sea Piracy," *The Washington Times*, December 4, 2008, <https://www.washingtontimes.com/news/2008/dec/4/blackwater-joins-fight-against-sea-piracy/>.

¹⁴³ Edmund Sanders and Julian E. Barnes, "U.S. Ship Captain Held by Somali Pirates," *Los Angeles Times*, April 9, 2009, <https://www.latimes.com/archives/la-xpm-2009-apr-09-fg-somali-pirates9-story.html>.

¹⁴⁴ Cullen and Berube, *Maritime Private Security*, 3–4.

¹⁴⁵ Nicolas Florquin, "Escalation at Sea: Somali Piracy and Private Security Companies," in *Small Arms Survey 2012: Moving Target*, Small Arms and Armed Actors (Geneva: Cambridge University Press, 2012), 212.

offering their services to the shipping industry while several existing private military companies like *Blackwater Worldwide* refocused or expanded to include maritime security services as well.¹⁴⁶ Modern piracy, and especially the explosion of Somali piracy in 2008, has been a key factor contributing to this sudden development.

Origins: Modern Piracy Problem

In line with the increasing consolidation of state power in the maritime domain and the ultimate abolishment of privateering in 1856, which indirectly fueled the continuation of early-modern piracy, large-scale international piracy became limited to a few dozen incidents a year in a handful of regions across the world.¹⁴⁷ In fact, during the drafting of the *United Nations Convention on the Law of the Sea*, it was questioned whether piracy should be included or rather be conceived as a historic phenomenon that is no longer relevant.¹⁴⁸ Yet, statistics collected by the International Maritime Bureau indicated a sharp rise over the past four decades in the number of acts of piracy and armed robbery against ships:¹⁴⁹ from less than 50 a year in the 1980s to several hundred in the early 21st-century, with almost 500 reported incidents in 2000.¹⁵⁰ This continued into the second decennium as well until the number of piracy attacks gradually started to decline in 2012.¹⁵¹

Throughout this modern piracy wave, three regions have been most notable: the Southeast Asian seas, the Gulf of Guinea, and the Gulf of Aden. In Southeast Asia, pirates have been particularly active in the waters surrounding Indonesia, Malaysia, and the Philippines. Between the 1990s and the mid-2000s, this region was considered the global piracy hotspot. The presence of some of the busiest ports in the world as well as important maritime chokepoints like the Malacca Strait, make this an attractive region for piracy.¹⁵² Most attacks in this region were simple hit-and-run robberies, but more serious incidents such as hijackings of entire ships, and kidnappings for ransom also occurred.¹⁵³ Thanks

¹⁴⁶ David Isenberg, “The Rise of Private Maritime Security Companies,” Cato Institute, May 26, 2012, <https://www.cato.org/publications/commentary/rise-private-maritime-security-companies>.

¹⁴⁷ Colás and Mabee, *Mercenaries, Pirates, Bandits and Empires*, 83–86.

¹⁴⁸ Birgit Feldtmann, Christian Frier, and Paul Mevis, “Introduction by the Guest Editors - On-board Protection of Merchant Vessels against Piracy: Models of Regulation,” *Erasmus Law Review* 11, no. 4 (2018): 206–8, <https://doi.org/10.5553/ELR.000133>.

¹⁴⁹ According to the IMO’s definition, acts of piracy can only occur in international waters. The notion of piracy is therefore complemented with that of ‘armed robbery against ships,’ which occurs in territorial waters (i.e. less than 12 nautical miles from shore). The International Maritime Bureau defines piracy as ‘an act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in the furtherance of that act. For the sake of readability and brevity, this thesis follows the IMB’s definition.

¹⁵⁰ Maritime Safety Committee, “Report on Acts of Piracy and Armed Robbery Against Ships: Annual Report - 2008” (London: International Maritime Organization, March 19, 2009), <https://wwwcdn.imo.org/localresources/en/OurWork/Security/Documents/133-Annual2008.pdf>; International Maritime Bureau, “IMB Piracy Reporting Centre,” International Chamber of Commerce, 2021, <https://www.icc-ccs.org/piracy-reporting-centre>.

¹⁵¹ Maritime Safety Committee, “Report on Acts of Piracy and Armed Robbery Against Ships: Annual Report - 2011” (London: International Maritime Organization, March 1, 2012), https://wwwcdn.imo.org/localresources/en/OurWork/Security/Documents/180_Annual2011.pdf; Maritime Safety Committee, “Report on Acts of Piracy and Armed Robbery Against Ships: Annual Report - 2012” (London: International Maritime Organization, April 2, 2013), https://wwwcdn.imo.org/localresources/en/OurWork/Security/Documents/193_Annual2012.pdf.

¹⁵² Noor Apandi Osnin, “Private Maritime Security Company (PMSC) in the Strait of Malacca,” *WMU Journal of Maritime Affairs* 5, no. 2 (October 1, 2006): 195–206, <https://doi.org/10.1007/BF03195104>; Maritime Safety Committee, “Report of the Maritime Safety Committee on Its Eighty-Seventh Session” (London: International Maritime Organization, May 24, 2005), https://www.dco.uscg.mil/Portals/9/DCO%20Documents/Marine%20Safety%20Center/Tonnage/Committee%20Docs/MS_C_80-24_Report_of_the_MSC.pdf?ver=2017-06-20-121133-870.

¹⁵³ Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 20–25; Liss, “PMSCs in Maritime Security and Anti-Piracy Control,” 63–65.

to international coordination, and to the local governments' improved naval patrolling, the attacks dropped and reached their lowest level in 2009.¹⁵⁴ However, after the decline in Somali piracy in 2012, Southeast Asia once again became the most pirate-infected area in quantitative terms, with a surge over the years 2012-2015.¹⁵⁵ Another region traditionally associated with piracy is the Gulf of Guinea in Western Africa. In quantitative terms, the number of attacks registered in this region has remained relatively constant with Nigeria being consistently present in the list of most-piracy-infected countries. Piracy in this part of the world constitutes a serious threat to maritime security for two important reasons. First, it is mainly aimed at stealing cargo – oil most importantly – with kidnap and ransom being dismissed to a secondary role, although this is becoming increasingly important. This means that the well-being of the crew is considered less important, resulting in more intimidation and violence toward crewmembers. Accordingly, West-African piracy is considered most violent and lethal.¹⁵⁶ Second, piracy in the Gulf of Guinea mainly occurs in the territorial waters of fragile coastal states, whose response has generally been weak and ineffective due to their limited capacities.¹⁵⁷ Additionally, West-African piracy has generally increased since the last decade, with no promising anti-piracy initiatives in sight.¹⁵⁸ Leading to renewed calls for international attention in the United Nations.¹⁵⁹

Yet, the most significant wave of piracy occurred off the coast of Somalia between 2008 and 2012, with a record 544 registered attacks in 2011.¹⁶⁰ After foreign forces withdrew from Somalia in the mid-1990s, Somalia gradually turned into a 'failed state,' creating the conditions for the Somali piracy epidemic.¹⁶¹ This meant that the coastal state – which in the general framework of the law of the sea should play the dominant role in anti-piracy – was unable to secure its own waters, prevent its citizens from committing acts of piracy, and launch criminal proceedings against suspected pirates.¹⁶² Consequently, these conditions created ample opportunities for piracy, especially considering the fact that about 12% of the world's seaborne trade navigates through the Suez Channel. Moreover, the lack of economic opportunity and development further attracted many Somalian citizens to piracy. While the yearly income for an average Somali is just over 200 USD, the average ransom gained from a successful hijacking is 4 million USD, and in 2011, the total amount of ransoms paid was 135 million

¹⁵⁴ Maritime Safety Committee, "Report on Acts of Piracy and Armed Robbery Against Ships: Annual Report - 2009" (London: International Maritime Organization, March 29, 2010), <https://wwwcdn.imo.org/localresources/en/OurWork/Security/Documents/152-Annual2009.pdf>; Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 20–25.

¹⁵⁵ Carolin Liss, *Assessing Contemporary Maritime Piracy in Southeast Asia: Trends, Hotspots and Responses*, vol. 125, PRIF Reports (Frankfurt am Main: Peace Research Inst. Frankfurt, 2014).

¹⁵⁶ Kaija Hurlburt and D. Conor Seyle, "The Human Cost of Maritime Piracy 2012," Research Report (Oceans Beyond Piracy | One Earth Future Foundation, June 1, 2013), <https://doi.org/10.18289/OBP.2013.001>.

¹⁵⁷ Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 20–25.

¹⁵⁸ BBC News, "Piracy in West Africa: The World's Most Dangerous Seas?," *BBC News*, June 18, 2019, sec. Africa, <https://www.bbc.com/news/world-africa-48581197>; International Chamber of Shipping, "Piracy in West Africa 2020," International Chamber of Shipping, 2020, <https://www.ics-shipping.org/current-issue/piracy-in-west-africa/>; Daniel Pelz, "Why Is Piracy Increasing on the Gulf of Guinea?," DW.COM, February 21, 2021, <https://www.dw.com/en/why-is-piracy-increasing-on-the-gulf-of-guinea/a-56637925>; "Gulf of Guinea remains world's piracy hotspot in 2021, according to IMB's latest figures," ICC - International Chamber of Commerce (blog), April 14, 2021, <https://iccwbo.org/media-wall/news-speeches/gulf-of-guinea-remains-worlds-piracy-hotspot-in-2021-according-to-imbs-latest-figures/>.

¹⁵⁹ United Nations Security Council, "SC/10820: Delegations in Security Council Note Progress in Combating Piracy, but Warn 'Pirates Will Quickly Be Back in Their Skiffs' If Attention Diverted," United Nations | Meetings Coverage and Press Releases, November 19, 2012, <https://www.un.org/press/en/2012/sc10820.doc.htm>.

¹⁶⁰ Rick Nelson, "Combating Piracy: Challenges and Opportunities for Regional and Private-Sector Involvement," Commentary, Home Security Program (Washington, DC: Center for Strategic & International Studies, June 20, 2012), <https://www.csis.org/analysis/combating-piracy-challenges-and-opportunities-regional-and-private-sector-involvement>.

¹⁶¹ Brown, "Pirates and Privateers," 3–5.

¹⁶² Birgit Feldtmann, "On-board Protection of Merchant Vessels from the Perspective of International Law," *Erasmus Law Review* 11, no. 4 (2018): 209–10, <https://doi.org/10.5553/ELR.000128>.

USD.¹⁶³ As a result, Somali pirates developed a specific *modus operandi* which not only includes significant violence and robbery against ships but also the long-term hijacking of vessels and kidnapping of crews to obtain substantial ransom payments from the shipowners.¹⁶⁴ Somali piracy, therefore, presented an extreme challenge to the international shipping industry due to its magnitude, rapid growth, and propensity for hijackings with increasingly large ransoms. It is estimated that the total direct and indirect costs (re-routing, increased speed, extra labor, insurance premiums) of Somali piracy peaked around 7 billion USD in 2010, reaching close to 6 billion in 2012, halving down to 3 billion in 2013, and finally stabilizing around 1.5 billion for the years after 2015.¹⁶⁵ Thus, Somali piracy imposed a much heavier toll on shipping than its equivalents in Southeast Asia and West Africa.¹⁶⁶

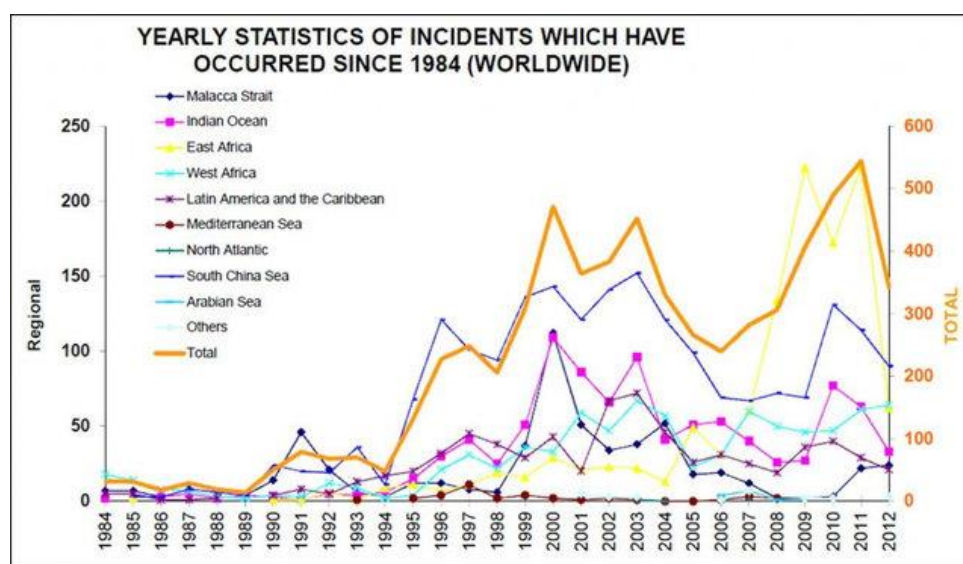


Figure 1: Piracy Statistics (1984-2012)

Source: *International Journal of Civil Engineering and Technology*.¹⁶⁷

International Responses: Well-intentioned but Inadequate

Initially, responses to Somali piracy were limited and ad hoc. However, following the sudden intensification of piracy attacks in 2008, coupled with the increasing awareness of the threat it posed to international shipping, international responses took off in a series of UN Security Council resolutions that condemned piracy off the coast of Somalia and authorized states to actively fight piracy and armed robbery at sea.¹⁶⁸ This led to the establishment of the Internationally Recommended Transit Corridor (IRTC) in the Gulf of Aden and the Indian Ocean, to provide a protected corridor for shipping.¹⁶⁹

¹⁶³ Nelson, “Combating Piracy.”

¹⁶⁴ Feldtmann, “On-board Protection of Merchant Vessels from the Perspective of International Law,” 209–10.

¹⁶⁵ Maisie Pigeon et al., “State of Maritime Piracy 2017: Assessing the Economic and Human Cost,” Report (Broomfield, CO: Oceans Beyond Piracy | One Earth Future Foundation, 2018), <https://oneearthfuture.org/research-analysis/state-maritime-piracy-2017>; Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 28.

¹⁶⁶ Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 25–31.

¹⁶⁷ Lê Quốc Tiến and Cuong Nguyen, “Impact Of Piracy on Maritime Transport and Technical Solutions for Prevention,” *International Journal of Civil Engineering and Technology* 10 (January 1, 2019): 958–69.

¹⁶⁸ United Nations Security Council, “Security Council Condemns Acts of Piracy, Armed Robbery Off Somalia’s Coast, Authorizes for Six Months ‘All Necessary Means’ to Repress Such Acts,” United Nations | Meetings Coverage and Press Releases, June 2, 2008, <https://www.un.org/press/en/2008/sc9344.doc.htm>; United Nations Security Council, “S/RES/1814(2008) | Security Council Resolution 1814 (2008) [on the Relocation of the UN Political Office for Somalia (UNPOS) from Nairobi to Somalia]” (United Nations Digital Library, May 15, 2008), <https://digitallibrary.un.org/record/632004>.

¹⁶⁹ Combined Maritime Forces, “Maritime Security Transit Corridor (MSTC),” Combined Maritime Forces (CMF), September 18, 2017, <https://combinedmaritimeforces.com/maritime-security-transit-corridor-mstc/>; Feldtmann, “On-board Protection of Merchant Vessels from the Perspective of International Law,” 211.

Accordingly, three major international naval operations were established to patrol these waters: the Combined Task Force (CTF-151) under the US-led multinational naval partnership Combined Maritime Force (CMF), NATO's Ocean Shield, and the European Union's NAVFOR's Operation Atalanta.¹⁷⁰ Consequently, between 20 to 40 warships on average patrolled the area, constituting the primary means of combating piracy off the coast of Somalia.¹⁷¹ Yet, it quickly became apparent that the naval operations alone were insufficient in addressing the piracy threat. As successful pirate attacks have occurred in less than 15 minutes, it was often practically impossible for patrolling warships to adequately respond.

Moreover, the international naval efforts inadvertently caused the further diffusion of piracy activities through the use of 'mother ships,' larger and seaworthy ships that allow pirates to launch skiffs further from the coast. The pirates' area of operations, therefore, expanded to approximately 2.5 million square miles, meaning that a presence of 25 warships would require each ship to patrol an area of 100,000 square nautical miles.¹⁷² Accordingly, it has been estimated that at least 83 coordinated warships would be required to reach a 30-minute response time, and even that would still be insufficient considering the average time of a pirate attack.¹⁷³ As a result, attacks continued hundreds of miles from Somalia's coastline.

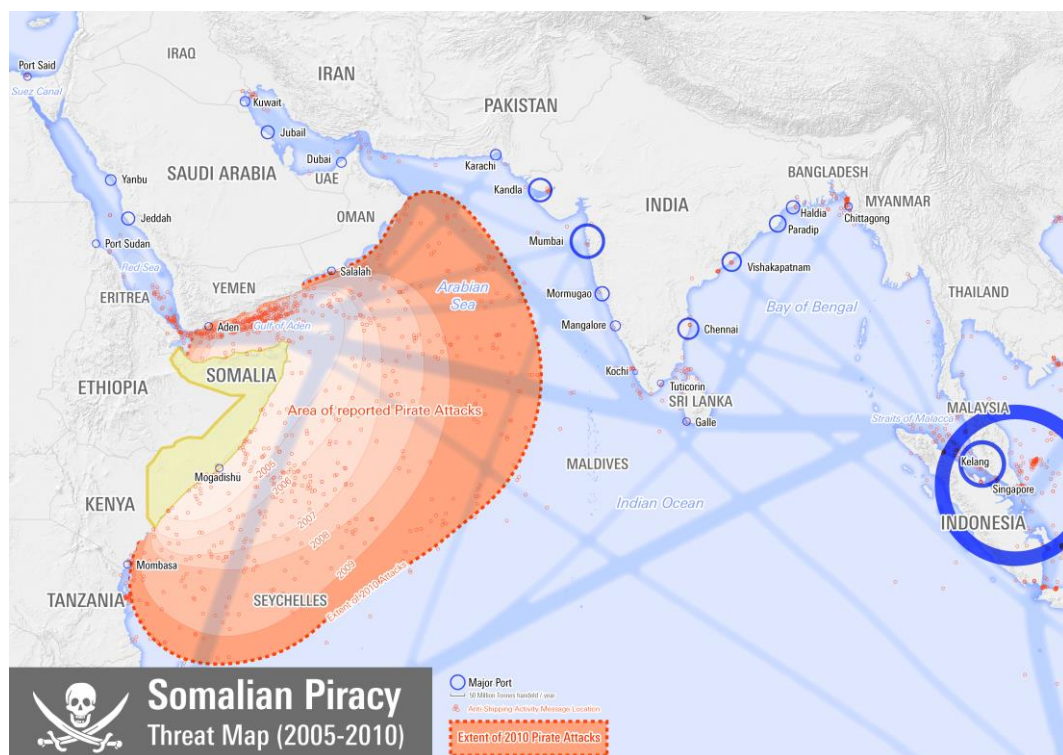


Figure 2: Somali Piracy Geographic Distribution (2005-2010)
Source: Wikimedia Commons.¹⁷⁴

¹⁷⁰ Combined Maritime Forces, "CTF 151: Counter-Piracy," Combined Maritime Forces (CMF), September 17, 2010, <https://combinedmaritimeforces.com/ctf-151-counter-piracy/>; NATO, "Operation OCEAN SHIELD," Allied Maritime Command - NATO, accessed March 15, 2022, <https://mc.nato.int/missions/operation-ocean-shield.aspx>; European Union External Action, "Home | EUNAVFOR," EU Naval Force - Somalia Operation ATALANTA, 2022, <https://eunavfor.eu/>; Feldtmann, "On-board Protection of Merchant Vessels from the Perspective of International Law," 211.

¹⁷¹ Spearin, "Sea Power and PMSCs," 137–42.

¹⁷² Spearin, 137–42.

¹⁷³ Brown, "Pirates and Privateers," 4–5.

¹⁷⁴ Wikimedia Commons and Planemad, *Map Showing the Extent of Somali Pirate Attacks on Shipping Vessels between 2005 and 2010*, December 2010, Attack Locations: NGA - Maritime Safety Information

Private Maritime Security Companies (PMSCs): Responding to the Market Gap

The inadequacy of states' counter-piracy efforts coupled with the limitations on the international naval operations created a market gap and with it, the ideal conditions for a private sector response. As pirate attacks continued, shipping companies were forced to look for additional protection elsewhere. Accordingly, private maritime security companies were quick to respond to these increasing demands.

Since the end of the Cold War, the notion of the state as the exclusive provider of security has increasingly been challenged by non-state actors such as international organizations, NGOs, and private businesses.¹⁷⁵ Private military companies or PMCs are amongst these new actors. They are private for-profit firms that specialize in (armed) security services that were, until recently, largely state-military terrain.¹⁷⁶ In turn, private *maritime* security companies (PMSCs), are PMCs with a specific focus on maritime security. Additionally, some well-established land-based PMCs like *Blackwater*, *G4S*, *AEGIS Defence Services*, and *Hart International* also started offering maritime services following the increased demand in 2008.¹⁷⁷ Compared to their on-land counterparts, PMSCs took longer to become established and their major focus and expertise are concentrated on a small range of maritime security services. These services include passive security services like risk assessments and consultancy, as well as active security services that focus on the armed and unarmed protection of vessels and other maritime assets and installations. At sea, such armed security services include the protection of offshore energy installations, operations against illegal fishing, and the protection of various vessels such as merchant ships, fishing boats, yachts, and cruise ships.¹⁷⁸ Such protection can be required against a variety of perpetrators including terrorists, insurgents, and radical activist groups.¹⁷⁹ For example, offshore oil and gas installations have been targeted by both environmental activists and insurgents. Greenpeace activists' attempt to climb onto a Gazprom offshore platform in September 2013 to protest drilling in the Arctic and attacks against oil and gas installations by the Movement for the Emancipation of the Niger Delta are but two instances for which private maritime security companies have been consulted.¹⁸⁰ However, the most prominent and profitable services offered by PMSCs by far are related to anti-piracy.

Indeed, while PMSCs offer a wide range of anti-piracy services including risk assessments, crew training, and consultancy, the most prominent and controversial services are the use of armed guards on-board a client's vessel and the use of armed escort vessels, which are the focus of this thesis.¹⁸¹ Such armed anti-piracy services are employed by shipowners and shipping companies when the state cannot ensure their safety and security while at sea, and the client believes that the threat is

https://msi.nga.mil/NGAPortal/MSI.portal?_nfpb=true&_pageLabel=msi_portal_page_65,

https://commons.wikimedia.org/wiki/File:Somalian_Piracy_Threat_Map_2010.png.

¹⁷⁵ Liss, "PMSCs in Maritime Security and Anti-Piracy Control," 61–63.

¹⁷⁶ Pingeot, "Private Military and Security Companies."

¹⁷⁷ Neil Maidment and Myles Neligan, "Exclusive - Security Firms Take up Arms against Pirates," *Reuters*, November 21, 2011, sec. World News, <https://www.reuters.com/article/uk-g4s-pirates-idUKTRE7AK1LS20111121>; "Private Security Firms Benefit from Piracy," *France 24*, November 30, 2008, <https://www.france24.com/en/20081130-private-security-firms-benefit-piracy-somalia>; Hart Maritime, "Maritime Security," Hart International, March 26, 2016, <https://hartinternational.com/maritime-security/>; Liss, "PMSCs in Maritime Security and Anti-Piracy Control," 62.

¹⁷⁸ Dirk Siebels, "Maritime Security in Africa: Potential for the Private Sector?," ETH Zurich: Center for Security Studies, February 24, 2015, <https://css.ethz.ch/en/services/digital-library/articles/article.html>; Reuters, "Gambia Turns to Private Sector for Maritime Protection Patrols," *DefenceWeb* (blog), September 14, 2017, <https://www.defenceweb.co.za/security/maritime-security/gambia-turns-to-private-sector-for-maritime-protection-patrols/>.

¹⁷⁹ Liss, "PMSCs in Maritime Security and Anti-Piracy Control," 62–63.

¹⁸⁰ Mikhail Kashubsky, "Protecting Offshore Oil and Gas Installations: Security Threats and Countervailing Measures," *Journal of Energy Security*, 2013; Liss, "PMSCs in Maritime Security and Anti-Piracy Control," 62–63; OCIMF, "Guidance for the Employment of Private Maritime Security Companies" (London: Oil Companies International Marine Forum, February 2022), <https://www.ocimf.org/publications/information-papers/guidance-for-the-employment-of-private-maritime-security-companies>.

¹⁸¹ Liss, "PMSCs in Maritime Security and Anti-Piracy Control," 63–65.

significant enough to justify the costs. The employment of PMSCs in relation to anti-piracy started with the increase in piracy in Southeast Asia in the early 2000s, but it was the Somali piracy epidemic that caused the boom of the industry. At the turn of the century, piracy in the Malacca Strait started to cause international concern due to its strategic importance for international trade. In 2005, the Lloyd's Market Association's Joint War Committee even declared the Strait of Malacca as a 'War Risk Area.'¹⁸² In response, certain shipowners started to hire PMSCs like the Singapore-based firm *Background Asia* and the Australian firm *Counter-Terrorism International*.¹⁸³ In most cases, these companies provided armed guards on-board a client's ship but as demand increased, a few companies started using armed escort vessels that accompanied ships through the Strait. Most of these companies were rather small (consisting of 2-5 permanent employees), and were established and operated by ex-military personnel. However, the employment of PMSCs remained limited as most of the piracy incidents were hit-and-run robberies, which did not warrant the costs of hiring a PMSC. As Southeast-Asian piracy gradually declined, the employment of PMSCs significantly dropped as well.¹⁸⁴

The decline in piracy in Southeast Asia was more than compensated by the subsequent rise of Somali piracy. As the international responses to the piracy epidemic proved to be insufficient in stopping the attacks, shipowners turned to the private sector for additional protection. In a sense, the ineffective anti-piracy efforts by states created a security vacuum that was successfully filled by PMSCs. For the most part, PMSCs provide onboard armed guards for transits through the high-risk areas off the coast of Somalia. The size of the security teams vary significantly ranging from as small as 2 to as large as 20 guards, depending on the type of vessel.¹⁸⁵ While 2 to 6 guards are commonly employed on merchant vessels, PMSCs have also been hired to protect fishing boats, yachts, and cruise ships, leading to differing team sizes and responsibilities.¹⁸⁶ As a result of these varying sizes, as well as the varying skillsets and experiences of the security teams, costs have ranged between 15.000 USD to 100.000 USD per passage.¹⁸⁷ The teams are generally armed with hand-held firearms, which need to be taken on-board the client's vessel and removed upon disembarking. Because of the vast area in which Somali pirates operate, PMSC-operators have to stay onboard the vessel for longer periods than in the Malacca Strait. They usually board vessels that travel from Europe to Africa or Asia after passing the Suez Canal and they disembark after passing the high-risk area in places like Seychelles or Sri Lanka.¹⁸⁸

Some companies also started experimenting with the use of armed escort vessels. For example, besides the *McArthur* mentioned in the opening, various PMSCs have started fitting-out armed escort vessels like the firm *Protection Vessels International* founded in 2008, which operates a small fleet of armed patrol boats carrying 6 to 10 crewmembers and armed with .50 caliber machine guns.¹⁸⁹ Because armed escort vessels avoid the logistical hassle of embarking and disembarking armed security teams, *Protection Vessels International's* rates were not much different from onboard guards – averaging

¹⁸² Bobby Thomas, "Malacca Straits a 'War Risk Zone'? Lloyd's Should Review Its Assessment," Commentary (Singapore: Institute of Defence and Strategic Studies, August 19, 2005), <https://www.rsis.edu.sg/rsis-publication/idss/718-malacca-straits-a-war-risk/#.YjHFbzUo9PY>; Osnin, "Private Maritime Security Company (PMSC) in the Strait of Malacca," 199.

¹⁸³ Scott Cheney-Peters, "Whither the Private Maritime Security Companies of South and Southeast Asia?," *CIMSEC - Center for International Maritime Security* (blog), April 16, 2014, <https://cimsec.org/whither-the-pmscs/>; Liss, *Assessing Contemporary Maritime Piracy in Southeast Asia*.

¹⁸⁴ Liss, "PMSCs in Maritime Security and Anti-Piracy Control," 63–65.

¹⁸⁵ Spearin, "Sea Power and PMSCs," 142–45.

¹⁸⁶ Liss, "PMSCs in Maritime Security and Anti-Piracy Control," 63–65.

¹⁸⁷ Spearin, "Sea Power and PMSCs," 142–45.

¹⁸⁸ Liss, "PMSCs in Maritime Security and Anti-Piracy Control," 63–65.

¹⁸⁹ Protection Vessels International, "About Us," PVI, accessed March 16, 2022, <https://www.pviltld.com/about-us/>; Pitney Jr and Levin, *Private Anti-Piracy Navies*, 55–58.

around 50,000 USD for an eight-day voyage.¹⁹⁰ While such armed escort vessels did not become widespread within the anti-piracy services offered by PMSCs in the Indian Ocean region, they are becoming more common in West Africa as a result of local legislation.¹⁹¹ While it is difficult to assess the exact number of transits protected by PMSCs because of business confidentiality and the general opaqueness of the sector, it was estimated that 40 to 60 percent of merchant shipping in the high-risk area off the coast of Somalia was protected by some form of armed private security as of 2013. The use of embarked armed guards constituted the great majority of these protected transits – over 90 percent – accounting for between 1.15 billion and 1.53 billion USD in annual revenue.¹⁹² The remaining 10 percent can be attributed to armed escorts.¹⁹³ In contrast, a 2009 assessment found that only 1 percent of merchant vessels employed private protection.¹⁹⁴ More recently the numbers declined from around 1500 protected transits per month in 2011-2012 to about 1000 as of 2018, according to private security professionals.¹⁹⁵ Currently, while it is difficult to verify, the market-leading PMSC, *Ambrey Security*, claims to provide around 520 protected transits a month.¹⁹⁶



Figure 3: Statistics Claimed by the British PMSC Ambrey Security
Source: Ambrey Security (Screenshot)

With regards to effectiveness, the use of PMSCs has shown rather encouraging results. The success rate of pirate attacks decreased from 38 percent in 2008 to 22 percent in 2010, to eventually 12 percent in 2011. Accordingly, maritime security representatives claim that armed security teams deterred at least 90 percent of all unsuccessful acts of piracy.¹⁹⁷ The mere presence of security teams armed with firearms is therefore often considered sufficient in deterring pirates from attacking, as pirates generally do not seek an actual engagement. Nevertheless, anecdotal evidence from security

¹⁹⁰ Isaac Arnsforf, "Ex-Marines Fighting Pirates as World Shipping Lanes Attacked," *Bloomberg.Com*, October 18, 2011, <https://www.bloomberg.com/news/articles/2011-10-17/ex-royal-marines-fighting-somali-pirates-as-world-shipping-lanes-attacked>.

¹⁹¹ Declan Bush, "BIMCO Advises How to Hire Security Escort Vessels in Gulf of Guinea," *Lloyd's List*, December 2, 2021, <https://lloydslist.maritimeintelligence.informa.com/LL1139164/BIMCO-advises-how-to-hire-security-escort-vessels-in-Gulf-of-Guinea>; Pitney Jr and Levin, *Private Anti-Piracy Navies*, 55–58; Ambrey, "Ambrey: Safety & Security" (Ambrey Security, 2022), <https://ambrey.com/wp-content/uploads/2022/02/AMBREY-Safety-Security.pdf>.

¹⁹² Jon Bellish, "Economic Cost of Somali Piracy 2012," Working Paper (Broomfield, CO: Oceans Beyond Piracy | One Earth Future Foundation, 2013), <https://oneearthfuture.org/research-analysis/economic-cost-somali-piracy-2012>; Pitney Jr and Levin, *Private Anti-Piracy Navies*, 55–58.

¹⁹³ Pitney Jr and Levin, *Private Anti-Piracy Navies*, 55–58.

¹⁹⁴ Spearin, "Sea Power and PMSCs," 145.

¹⁹⁵ Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 41.

¹⁹⁶ Ambrey, "Ambrey - Security: We Make It Our Business, to Protect Yours.," Ambrey, 2022, <https://ambrey.com/security/>.

¹⁹⁷ Florquin, "Escalation at Sea," 204–8.

representatives confirms instances in which private contractors have been involved in ‘full combative shooting... putting rounds on target’ that has resulted in the *confirmed* death of at least one pirate.¹⁹⁸ For example, in 2009 the Italian cruise liner *MSC Melody* made headlines when its private security guards successfully repelled a pirate attack after a heavy exchange of gunfire.¹⁹⁹ As a result, both media headlines and supporters of PMSCs frequently use the famous claim that ‘no ship with an armed security team embarked has been boarded or hijacked.’²⁰⁰ However, due to a serious lack of oversight and reporting, the number of actual exchanges is extremely difficult to verify, which will be further addressed in the next chapter.

With a large number of successful hijackings and the payment of millions of dollars in ransom during the early days of the Somali piracy epidemic, demand for PMSCs skyrocketed. As private maritime security was generally a niche business, many new PMSCs were established to meet the increasing demand. At its peak, an estimated 300 companies were believed to offer anti-piracy services. This mushrooming effect was possible because most of these enterprises were small businesses, with a small permanent staff. The firms are generally operated by ex-military personnel who hire guards on temporary contracts when needed.²⁰¹ Recently, however, the number of companies has significantly declined following the decrease in Somali piracy coupled with increased international (self-)regulation. As a result, the market became consolidated and dominated by a smaller group of larger firms such as the British companies *Ambrey Security* and *Hart Maritime*, the Malta-based firm *Seagull Maritime Security*, and the firm *Neptune Maritime Security* based in the United Arab Emirates, among others.²⁰² However, as Somali piracy declined, piracy in Southeast Asia and the Gulf of Guinea resurfaced again. Especially the Gulf of Guinea requires attention as established PMSCs are increasingly seeking new contracts in this part of the world, often in cooperation with local governments, which they openly advertise on their websites.²⁰³

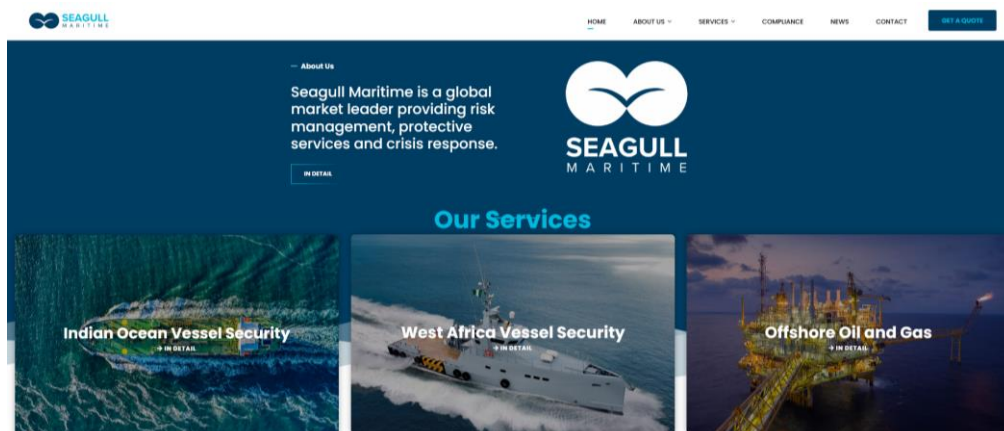


Figure 4: Website of PMSC Seagull Maritime
Source: Seagull Maritime (Screenshot)

¹⁹⁸ Cullen and Berube, *Maritime Private Security*, 31–35.

¹⁹⁹ John Hooper, “Italian Cruise Ship Fends off Pirates with Gunfire,” *The Guardian*, April 26, 2009, sec. World news, <https://www.theguardian.com/world/2009/apr/26/italian-cruise-ship-pirates>.

²⁰⁰ Al Jazeera, “Global Cost of Somali Piracy ‘Halved’ in 2013,” Al Jazeera, May 7, 2014, <https://www.aljazeera.com/news/2014/5/7/global-cost-of-somali-piracy-halved-in-2013>; Associated Press, “No Somali Pirate Hijacking in Nearly a Year, Says UN,” *The Guardian*, May 3, 2013, sec. World news, <https://www.theguardian.com/world/2013/may/03/somali-pirate-hijacking>.

²⁰¹ Liss, “PMSCs in Maritime Security and Anti-Piracy Control,” 63–65.

²⁰² Hart Maritime, “Maritime Security”; Seagull Maritime, “Company Profile,” Seagull Maritime Ltd., 2021, <https://seagullmaritimeltd.com/aboutus/company-profile>; “Maritime Security & Security Risk Management,” Neptune P2P Group, 2022, <https://neptunep2pgroup.com/>.

²⁰³ “Privateers - Pirates Face a New Foe: A Private Navy,” *The Economist*, January 12, 2013, <https://www.economist.com/international/2013/01/12/privateers>.

Dynamics Surrounding the Outsourcing of Armed Force at Sea: Why PMSCs?

The modern resurface of piracy, especially off the coast of Somalia, can be considered a turning point in the history of maritime warfare and security as it heavily influenced the emergence and consolidation of armed non-state actors. However, not all these armed guards were initially provided by PMSCs, as certain flag states were reluctant in authorizing the presence of private security contractors aboard civilian vessels, in light of the established international norm regarding the state as the sole provider of armed security. Instead, to respond to the increasing demand for additional protection by the shipping industry, besides the international naval efforts, some flag states established vessel protection detachments based on the boarding of exclusively military personnel.²⁰⁴ For example, several European flag states like the Netherlands, France, and Italy initially did not allow the use of PMSCs because of a conviction to uphold the state monopoly on the use of force.²⁰⁵ On the other hand, flag states like Greece, the United Kingdom, and the United States embraced the private alternatives and facilitated the use of PMSCs by their respective merchant fleets. Over time, however, all European flag states ultimately allowed the use of PMSCs, with the Netherlands being the last European flag state to adjust its legislation in 2022.²⁰⁶ Consequently, more than 40 flag states, or 85 percent of the world's merchant fleet, have established legislation facilitating the use of PMSCs.²⁰⁷ This raises the question of why these flag states ultimately decided to increasingly outsource the use of force at sea to these commercially-motivated non-state actors despite the international norm that positions the state as the exclusive provider of maritime security. Are the modern dynamics underpinning the outsourcing to PMSCs similar to the early-modern historical dynamics set out in the previous chapter surrounding the use of privateers and mercantile companies?

Historical Comparisons: PMSCs and Privateers

The rise of PMSCs was coupled with a lot of media attention, especially because of the controversy attached to the use of private actors within a traditionally-considered public domain. It was not long before media outlets started using historical concepts like privateering to describe these non-state actors, with headlines such as 'the Return of the Privateers.'²⁰⁸ In 2012, the Australian think-tank, *the Lowy Institute*, published a report about Somali piracy in which they rather casually equated PMSCs with privateers.²⁰⁹ This work, however, distances itself from such practices of historical name-dropping. It is important to clarify the fact that PMSCs are not modern reincarnations of the early-modern privateers.

²⁰⁴ Ministerie van Defensie, "Beveiligingsteams op schepen - Missie in Somalië - Defensie.nl," Onderwerpen, Ministerie van Defensie (Ministerie van Defensie, November 21, 2017), <https://www.defensie.nl/onderwerpen/missie-in-somalie/beveiligingsteams-op-schepen>; Cusumano and Ruzza, "Security Privatisation at Sea," 80–81.

²⁰⁵ Bibi Van Ginkel, Frans-Paul Van der Putten, and Willem Molenaar, "State or Private Protection against Maritime Piracy? A Dutch Perspective," Clingendael Report (The Hague: Clingendael, February 2013), <https://www.clingendael.org/publication/state-or-private-protection-against-maritime-piracy>; Giorgia Bevilacqua, "Armed On-board Protection of Italian Ships: From an Apparent Hybrid Model to a Regulated Rise of Private Contractors," *Erasmus Law Review* 11, no. 4 (2018): 247–57, <https://doi.org/10.5553/ELR.000108>.

²⁰⁶ Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, "Wet ter Bescherming Koopvaardij" (2022), https://wetten.overheid.nl/BWBR0042278/2022-02-01/#Hoofdstuk1_Artikel3; Ministerie van Algemene Zaken, "Wet ter bescherming van de Koopvaardij," Scheepvaart en havens - Rijksoverheid.nl, Rijksoverheid.nl (Ministerie van Algemene Zaken, August 24, 2021), <https://www.rijksoverheid.nl/onderwerpen/scheepvaart-en-havens/wet-ter-bescherming-koopvaardij>; Ministerie van Defensie, "Beveiliging koopvaardijsschepen tegen piraterij niet langer alleen door Defensie - Nieuwsbericht - Defensie.nl," nieuwsbericht, Ministerie van Defensie (Ministerie van Defensie, April 2, 2021), <https://www.defensie.nl/actueel/nieuws/2021/04/02/beveiliging-koopvaardijsschepen-tegen-piraterij-niet-langer-alleen-door-defensie>.

²⁰⁷ ICS, "Comparison of Flag State Laws on Armed Guards and Arms on Board" (International Chamber of Shipping, March 2021), <https://www.ics-shipping.org/wp-content/uploads/2021/03/Comparison-of-Flag-State-Laws-on-Armed-Guards-and-Arms-On-Board-2017.pdf>; ESC, "Approved Flag States," ESC Global Security, 2022, <https://escgs.com/services/maritime-security/anti-piracy-security-services-in-ior/approved-flag-states>.

²⁰⁸ Kurt Albaugh, "The Return of the Privateers," USNI News, June 16, 2012, <https://news.usni.org/2012/06/15/return-privateers>; "Privateers - Pirates Face a New Foe: A Private Navy."

²⁰⁹ Brown, "Pirates and Privateers."

Instead, both actors should be considered within their respective historical contexts to prevent oversimplified parallels that do not hold any analytical value. When focusing on the actors themselves, it becomes clear that they cannot be equated for various reasons both operational and technical in nature. For example, privateers were mainly focused on the offensive while PMSCs are structured to take a more defensive position. Moreover, while privateers presented a relatively cost-effective way of acquiring expensive technological naval capabilities, PMSCs generally provide manpower-oriented solutions and escort vessels that do not have the size, capabilities, and endurance comparable to the early-modern privateering vessels.²¹⁰

As a result, rather than looking at the actors themselves, the focus should be shifted towards the dynamics underpinning the emergence and facilitation of these non-state actors. Focusing on these dynamics presents a more valuable analysis because it can provide important insights into the motivations surrounding the decision to outsource the use of force at sea to non-state actors like PMSCs.

The Outsourcing of Armed Force at Sea through PMSCs: the Dynamics

When zooming-out from the actors themselves and looking at the wider dynamics underpinning the outsourcing of armed force at sea through PMSCs in the 21st-century, it becomes possible to position these non-state actors within the larger historical record surrounding the non-state use of force in maritime warfare and security. Indeed, both PMSCs and their early-modern counterparts are characterized by a distinctively dual nature, they partake in both public and private roles. As commercially-motivated private enterprises, they seek to maximize profits and market share. At the same time, they deliver services that enter the arena of the authorized use of force, thereby assuming a public role as well.²¹¹ As a result, the rationales underpinning the use of PMSCs can be grouped under similar dynamics underpinning the early-modern outsourcing of armed force at sea:

1. *Limited State Resources*

After the end of the Cold War, the world witnessed the global downsizing of major militaries and more specifically, navies. Simultaneously, new maritime regulations, including the International Ship and Port Facility Security (ISPS) Code (2004), were increasingly introduced in response to threats such as terrorism that required improved security measures from both the shipping industry and states.²¹² Complying with these new regulations while also responding to the broadening range of security threats including non-traditional threats like terrorism, required additional manpower and resources that often overstretched state capacities.²¹³ As a result, when the piracy epidemic took off, states often increasingly found themselves unable to adequately respond to all requests for protection as their resources were stretched thin. Once again, there seemed to be a gap between the rewards resulting from piracy and the risks of being caught by the international naval missions, which proved to be insufficient while also collectively costing around 1.5 billion USD annually.²¹⁴ Accordingly, as states had to effectively direct their limited resources while also balancing their national security interests, they were increasingly forced to facilitate more cost-effective solutions.

Indeed, several flag states facilitated the use of PMSCs after admitting to being simply overwhelmed by the number of requests by their shipping firms for additional onboard protection through potential vessel protection detachments. For example, the German Ministry of Defense publicly stated that the number of calls from shippers requesting armed protection from military and/or law enforcement personnel reached a threshold where it was no longer capable of adequately addressing the

²¹⁰ Spearin, "Sea Power and PMSCs," 156–57; Christopher Spearin, "Promising Privateers?: Understanding the Constraints of Contemporary Private Security at Sea," *Naval War College Review* 67, no. 2 (2014): 103–6.

²¹¹ Ortiz, "Overseas Trade in Early Modernity and the Emergence of Embryonic Private Military Companies," 15–17.

²¹² IMO, "SOLAS XI-2 and the ISPS Code," Maritime Security and Piracy, International Maritime Organization, 2019, <https://www.imo.org/en/OurWork/Security/Pages/SOLAS-XI-2%20ISPS%20Code.aspx>.

²¹³ Liss, "PMSCs in Maritime Security and Anti-Piracy Control," 62.

²¹⁴ Brown, "Pirates and Privateers," 4–5.

issue on its own.²¹⁵ Thus, while several, especially European, flag states like the Netherlands initially did demonstrate the will to uphold the monopoly of force by exclusively offering such vessel protection detachments, this ultimately proved to be unsustainable. For instance, from March 2011 to November 2012, only 144 requests for vessel protection detachments were filed in the Netherlands while over 450 Dutch vessels passed the high-risk area.²¹⁶ This was largely because of complaints by the Dutch shipping industry about the lengthy administrative steps needed to process the applications, the lack of flexibility, as well as the relatively expensive rates, which all affected competitiveness.²¹⁷ Yet, even with the low number of applications, the Dutch military was still unable to meet the number of requests as only 40 of the 144 requests were fulfilled.²¹⁸ The limited defense resources coupled with the small number of available vessel protection detachments made the Dutch military unable to protect more than two vessels at the same time.²¹⁹ Even when the number of military personnel tasked with protecting Dutch vessels was increased to 175 in 2013, the Dutch minister of defense still admitted that they were unable to meet all the shipping industry's requests for protection.²²⁰ The Netherlands was not alone in this, however, as similar dynamics were present in flag states such as Denmark, Italy, and France, among others.²²¹ Additionally, it is important to note that about 70% of the globe's commercial fleet flies the flag of a state different from that of ownership, the so-called 'flags of convenience.' Three flag states in particular host the largest open registries, with their flags representing 40% of worldwide tonnage: Panama, Liberia, and the Marshall Islands.²²² These flag states, however, are generally small nations that simply do not have the military capacities nor naval capabilities to protect their enormous merchant fleet. Accordingly, as soon as the shipping industry requested additional armed protection following the increasing pirate attacks, the resort to PMSCs became a widespread practice among such flag states.²²³

Thus, as a result of the high deployment costs and the limited number of military personnel available, PMSCs provide a more cost-effective, flexible, and financially viable solution to the threat of pirate attacks.²²⁴ Moreover, similar to the way the early-modern privateers and the Bombay Marine financed themselves, by outsourcing the use of force to PMSCs, states effectively 'responsibilize' the

²¹⁵ David Knight, "The World from Berlin: 'Protection from Piracy Comes at a Price,'" *Der Spiegel*, August 26, 2011, sec. International, <https://www.spiegel.de/international/germany/the-world-from-berlin-protection-from-piracy-comes-at-a-price-a-782661.html>; Brian Rohan, "Germany Rejects Troop Boost to Protect Shippers," *Reuters*, April 7, 2011, sec. Financials, <https://www.reuters.com/article/piracy-germany-idUKLDE73622I20110407>; Tim R. Salomon, "Armed On-board Protection of German Ships (and by German Companies)," *Erasmus Law Review* 11, no. 4 (2018): 233–46, <https://doi.org/10.5553/ELR.000131>.

²¹⁶ Cusumano and Ruzza, "Security Privatisation at Sea," 89–92.

²¹⁷ Van Ginkel, Van der Putten, and Molenaar, "State or Private Protection against Maritime Piracy? A Dutch Perspective."

²¹⁸ Ministerie van Defensie, "Evaluatie van de inzet van VPD's voor de begrotingsbehandeling in het najaar van 2012," Kamerstuk (Den Haag: Tweede Kamer der Staten-Generaal, November 13, 2012), <https://zoek.officielebekendmakingen.nl/blg-193099>.

²¹⁹ Cusumano and Ruzza, "Security Privatisation at Sea," 89–92.

²²⁰ J.A. Hennis-Plasschaert, "Kabinetsstandpunt inzake Vessel Protection Detachments aan boord van Koninkrijksgevlagde koopvaardij schepen en aanvullende maatregelen," Brief Regering, Beveiliging zeevaartroutes tegen piraterij (Den Haag: Tweede Kamer der Staten-Generaal, April 26, 2013), https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2013Z08833&did=2013D18128.

²²¹ Van Ginkel, Van der Putten, and Molenaar, "State or Private Protection against Maritime Piracy? A Dutch Perspective"; Christian Frier, "Armed On-board Protection of Danish Vessels Authorisation and Use of Force in Self-defence in a Legal Perspective," *Erasmus Law Review* 11, no. 4 (2018): 221–32, <https://doi.org/10.5553/ELR.000129>.

²²² UNCTAD, "Review of Maritime Transport 2019" (New York City: United Nations, November 1, 2019), https://unctad.org/system/files/official-document/rmt2019_en.pdf; Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 208.

²²³ ICS, "Comparison of Flag State Laws on Armed Guards and Arms on Board"; Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 229–30.

²²⁴ Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 71.

private industry for their own security, while saving on limited state resources. This last point was further endorsed by the retired US Navy admiral William Gortney:

Companies don't think twice about using security guards to protect their valuable facilities ashore. Protecting valuable ships and their crews at sea is no different – W.E. Gortney, 2010.²²⁵

2. *Lack of Political Will*

The above quote by the American admiral also touches on the second dynamic underpinning the outsourcing of armed force at sea through PMSCs, the political will. While serious resource constraints faced by states like the Netherlands and Germany significantly affect the capacity and therefore ability of many flag states to provide additional protection to its merchant shipping, other flag states like the United States which has a relatively small merchant fleet but a large military force, also increasingly opted for the use of PMSCs. Indeed, similar to Bourbon France's preference to outsource the use of force at sea in the 17th and 18th-centuries, a flag state's political will again presents an important dynamic in the decision to outsource armed force at sea in 21st-century as well.

Besides the limited state capacities, the ultimate decision to refrain from additional state protection to merchant vessels, and instead utilize PMSCs, is political. Political decisions, however, are rarely fully rational and grounded upon systematic, evidence-based analysis.²²⁶ In reality, a flag state's political culture/ideology and its decision-makers' perceptions and biases are crucial as well in their decision to utilize PMSCs. The broader process of privatizing public services and state sector enterprises, such as healthcare and education on land, and the privatization of ports in the maritime domain since the mid-1980s, therefore, forms an important backdrop to the decision to outsource the use of force at sea.²²⁷ Neoliberalism has played an important role in encouraging the involvement of private actors in a wide array of traditionally-considered public services like security.²²⁸ Accordingly, states with a strong neoliberal tradition like the United States and the United Kingdom have embraced the outsourcing of security and even military services to a relatively large degree. Indeed, following the extensive use of private military contractors in its wars in Afghanistan and Iraq, the United States was one of the first flag states to openly suggest the use of PMSCs. Its *National Strategy for Maritime Security* report of 2005 included a paragraph titled 'Embed security into commercial practices,' which stated that 'private owners and operators of infrastructure, facilities, and resources are the first line of defense for their own property, and they should undertake basic facility security improvements.'²²⁹ Accordingly, from 2008, the United States consistently pushed for PMSC engagement in vessel protection duties. Similarly, the liberal beliefs underpinning the British political culture made the United Kingdom one of the first European flag states to prefer the use of PMSCs over military alternatives, which was enacted in 2011 through the *interim guidance for UK flagged shipping on the use of armed guards*.²³⁰ Thus, such liberally-oriented flag states framed the protection of private assets like merchant

²²⁵ Eugenio Cusumano and Stefano Ruzza, "United States Antipiracy Policies: Between Military Missions and Private Sector Responsabilization," in *US Foreign Policy in a Challenging World: Building Order on Shifting Foundations*, ed. Marco Clementi, Matteo Dian, and Barbara Pisciotta (Cham: Springer International Publishing, 2018), 74–76, https://doi.org/10.1007/978-3-319-54118-1_4.

²²⁶ Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 71–73.

²²⁷ Singer, *Corporate Warriors*; Deborah D. Avant, *The Market for Force: The Consequences of Privatizing Security* (Cambridge: Cambridge University Press, 2005), <https://doi.org/10.1017/CBO9780511490866>; Liss, "PMSCs in Maritime Security and Anti-Piracy Control," 62.

²²⁸ Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 71–73.

²²⁹ Department of Homeland Security (DHS), "The National Strategy for Maritime Security," The White House | President George W. Bush, September 20, 2005, 18, <https://georgewbush-whitehouse.archives.gov/homeland/maritime-security.html>.

²³⁰ Department for Transport, "Threat of Piracy: Use of Armed Guards on UK Flagged Vessels," GOV.UK, December 6, 2011, <https://www.gov.uk/government/publications/interim-guidance-to-uk-flagged-shipping-on-the-use-of-armed-guards-to-defend-against-the-threat-of-piracy-in-exceptional-circumstances>; Department for Transport, "Interim Guidance for UK Flagged Shipping on the Use of Armed Guards," GOV.UK, December 1,

vessels as an activity that state personnel should not be expected to perform.²³¹ Instead, the outsourcing of such duties to commercially-motivated private actors like PMSCs was considered more appropriate.

Moreover, over time the insufficiency of the international state responses to successfully suppress piracy created more political opposition to the spending of expensive state resources on anti-piracy efforts. For example, the deterrent effect of the international missions proved to be extremely limited because the prosecution of captured pirates was mostly unsuccessful. As a result of several difficulties, due to competing jurisdictions and complications in obtaining evidence – even within NATO there was no common legal framework for the arrest and transfer of pirates – more than 1000 pirates were awaiting trial in 20 different countries by 2011.²³² In many instances, frustrated navies simply caught, disarmed, and released suspected pirates.²³³ As a result, political support for anti-piracy efforts declined and states became increasingly reluctant to engage in counter-piracy overall. At the same time, as bureaucratic organizations tend to resist being involved in activities seen as peripheral to their primary objectives, military organizations increasingly started seeing counter-piracy efforts and especially vessel protection duties as outside their core missions.²³⁴ Even the Dutch Ministry of Defense, which initially saw vessel protection roles as important and demanding tasks requiring large teams of elite forces, gradually expressed their unwillingness to perform vessel protection duties as their strategic priorities changed and they started considering vessel security assignments as menial and unwelcome, distracting scarce and elite personnel from more important missions.²³⁵ Thus, the growing sentiment expressed among most flag states' senior military personnel became that outsourcing was a better alternative to military solutions because it freed resources that would otherwise need to be employed to protect merchant vessels:

It is time for the maritime community to take responsibility for their own security and free our navies to defend our freedoms on the high seas. – T. McKnight, 2012.²³⁶

3. *Asymmetric and Non-Traditional Security and Warfare*

The fact that even the first commander of the multi-national naval force tasked with confronting piracy off the coast of Somalia recognized and endorsed the value of outsourcing the use of force to PMSCs, illustrates the gravity and maybe irony of the situation. The above quote by Rear Admiral McKnight, therefore, forms the perfect bridge into the final dynamic underpinning the outsourcing of armed force at sea to PMSCs. Indeed, similar to the early-modern period, and building on the previous dynamics, it

2015, <https://www.gov.uk/government/publications/interim-guidance-to-uk-flagged-shipping-on-the-use-of-armed-guards-to-defend-against-the-threat-of-piracy-in-exceptional-circumstances/dddd>.

²³¹ Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 72.

²³² Foreign & Commonwealth Office and Henry Bellingham, "Tackling Piracy: UK Government Response," GOV.UK, October 12, 2011, <https://www.gov.uk/government/speeches/tackling-piracy-uk-government-response>; Brown, "Pirates and Privateers," 5.

²³³ United Nations Security Council, "In Race between Pirates and International Community, Pirates Clearly Winning, Secretary-General's Top Legal Adviser on Piracy Warns Security Council," United Nations | Meetings Coverage and Press Releases, January 25, 2011, <https://www.un.org/press/en/2011/sc10164.doc.htm>.

²³⁴ Cusumano and Ruzza, "Security Privatisation at Sea," 94–97.

²³⁵ G.A. Van der Steur et al., "Aanbieding van Het Beleidsstandpunt 'Bescherming Nederlandse Schepen Tegen Piraterij', Aangaande de Inzet van Gewapende Particuliere Beveiligers Aan Boord van Nederlandse Koopvaardijsschepen - Beveiliging Zeevaartroutes Tegen Piraterij - Parlementaire Monitor," Brief Regering, Beveiliging Zeevaartroutes Tegen Piraterij (Den Haag: Tweede Kamer der Staten Generaal, December 21, 2015), <https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmjley0/vk01hsgzdqzt>; J.H. Ten Broeke and A.A. van Eck, "Lijst van Vragen En Antwoorden over de Aanbieding van Het Beleidsstandpunt 'Bescherming Nederlandse Schepen Tegen Piraterij', Aangaande de Inzet van Gewapende Particuliere Beveiligers Aan Boord van Nederlandse Koopvaardijsschepen," Beveiliging Zeevaartroutes Tegen Piraterij (Den Haag: Tweede Kamer der Staten Generaal, May 27, 2016), <https://www.tweedekamer.nl/kamerstukken/detail?id=2016Z10334&did=2016D21437>; Cusumano and Ruzza, "Security Privatisation at Sea," 94–97.

²³⁶ Cullen and Berube, *Maritime Private Security*, XVI.

can once again be deduced that the outsourcing of armed force at sea is especially attractive in relation to asymmetric forms of warfare or non-traditional maritime security threats.

Besides the global downsizing of major militaries, the end of the Cold War was also coupled with a changing nature of conflict. Interstate wars and wars of decolonization declined while intrastate conflict and civil wars increased, along with a rise of international terrorism.²³⁷ In the maritime domain, this has resulted in an increased focus on non-traditional security threats such as illegal fishing, maritime terrorism, and piracy.²³⁸ These non-traditional security threats, however, do not lend themselves well to conventional or symmetrical military responses. Indeed, similar to early-modern times, the raiding of merchant shipping, either by pirates in the 17th-century or the 21st-century, remains a fundamentally asymmetric form of warfare. The attackers – in this case, the Somali pirates – can strike at vulnerable targets at the time and place of their choosing. The defenders, on the other hand, must guard all targets at all times over a wide area.²³⁹ The primary means of combating piracy by states, however, was to send massive warships to perform naval patrols. The capabilities of these naval assets have significantly advanced during the last few decades, resulting in highly sophisticated multi-purpose vessels that can cost up to 2-4 billion USD per unit.²⁴⁰ Such naval vessels can inflict a level of force of several times more magnitude compared to the pirates aboard small skiffs armed with nothing more than handheld firearms.²⁴¹ One observer, therefore, compared this situation to fighting a small house fire with an airdropped flame retardant from a DC-10 plane – workable if one's firefighting budget is infinite, but an inefficient allocation of resources.²⁴² Fighting piracy with such conventional naval solutions is therefore not considered a cost-effective, proportional, or appropriate solution. Thus, while such advanced warships might very well be suited to conduct a variety of high-intensity tasks, these developments have also resulted in a reduction in the overall number of hulls available, potentially leading to a vacuum being created regarding the lower-intensity tasks like non-traditional security threats including counter-piracy efforts.²⁴³ Non-traditional security threats such as piracy, therefore, lean themselves better to the specialized responses provided by commercially-motivated non-state actors like PMSCs. Rather than patrolling an extremely large area with a small number of powerful ships, embarked onboard guards and a larger number of cheaper and smaller escort vessels provide a more effective defense and deterrent against pirates.²⁴⁴ Both these armed services are therefore better suited to outsourcing because they are mainly manpower-oriented and do not require the highly-sophisticated naval capabilities that states offer.

Regarding the manpower-oriented nature of counter-piracy efforts, the vessel protection detachments provided by states are often required to meet the extensive and strict regulations attached to every official military deployment, even while vessel protection duties are often considered 'low-intensity.' Accordingly, these vessel protection detachments are often relatively expensive, which affects the competitiveness of the flag state's shipping companies. Returning to the Dutch example, up until 2012, shipping companies were required to pay a lump sum of 150.000 EUR as a basic tariff, with an additional fee of 25.000 EUR per week per deployment. This meant that an average 3-week deployment cost around 225.000 EUR, which eventually got reduced to 105.000 EUR in 2012.²⁴⁵ Despite this downward adjustment, these vessel protection detachments remained an expensive solution

²³⁷ Andrew Mack, "Global Political Violence: Explaining the Post-Cold War Decline," *Coping with Crisis* (New York City: International Peace Institute, 2007).

²³⁸ Liss, "PMSCs in Maritime Security and Anti-Piracy Control," 62.

²³⁹ Pitney Jr and Levin, *Private Anti-Piracy Navies*, 20.

²⁴⁰ Assuming the average unit cost of a US Navy destroyer.

²⁴¹ Spearin, "Sea Power and PMSCs," 141.

²⁴² Pitney Jr and Levin, *Private Anti-Piracy Navies*, 20.

²⁴³ Spearin, "Sea Power and PMSCs," 135–37 & 156–57.

²⁴⁴ Pitney Jr and Levin, *Private Anti-Piracy Navies*, 20; Spearin, "Sea Power and PMSCs," 142.

²⁴⁵ Ministerie van Defensie, "Evaluatie van de inzet van VPD's voor de begrotingsbehandeling in het najaar van 2012."

in comparison to PMSCs which generally charge rates between 11.000 EUR and 75.000 EUR, depending on factors such as the number of guards, the duration of the voyage, and the vessel's size.²⁴⁶ Interestingly, unlike the flexible team sizes of PMSCs, the Dutch vessel protection teams always consist of at least 11 personnel due to strict deployment regulations.²⁴⁷ Frustrated Dutch shipping companies, therefore, argued that they were forced to pay around 1.5 times more than their competitors in flag states that did facilitate PMSCs.²⁴⁸ Thus, as these non-traditional security objectives including counter-piracy efforts became regarded as non-core missions for military personnel, the outsourcing of such manpower-centric solutions to PMSCs became desirable as well. Regarding the less-widespread use of armed escort vessels, while such vessels have generally not been lacking in weaponry, communications equipment, and navigational systems, they admittedly do not represent the kind of naval assets found in the international counter-piracy flotillas deployed by states. Yet, the increased utilization of such smaller escort vessels by PMSCs especially in West Africa does conform to the notion that counter-piracy operations merits such less-sophisticated vessels.²⁴⁹ Indeed, it seems that a small number of highly-sophisticated and expensive warships are less effective at protecting against pirates than a larger number of cheaper and smaller escort vessels.

In short, PMSCs have been able to offer shipping firms the sort of close protection, availability, and appropriate weaponry and capabilities that state forces have simply not been able to efficiently provide in relation to asymmetric and non-traditional security threats such as piracy.²⁵⁰ This, in turn, made outsourcing to PMSCs attractive. Moreover, as states are increasingly refocusing their military organizations on traditional security objectives amidst the 'return of great-power politics' – evidenced by the United States' 'Pivot to Asia' strategy in 2011 and more recently by the 2021 AUKUS-security pact – future markets and opportunities for PMSCs regarding non-traditional security threats could potentially increase.²⁵¹

Conclusion: Towards a New International Norm?

Over the past two decades, the resurgence of maritime piracy, especially off the coast of Somalia, has signaled the re-emergence of non-state actors in the maritime warfare and security environment through PMSCs. These companies have increasingly offered their armed security services to a wide array of clients in various flag states, gradually becoming established players in the maritime security domain of the 21st-century. While they are not necessarily modern reincarnations of the privateers and mercantile companies of the early-modern period, the outsourcing of armed force at sea through these PMSCs is nevertheless underpinned by similar dynamics. As in the past, governments facing serious resource constraints have once again sought the support of commercially-motivated private actors regarding security threats that are often not (politically) considered a core mission of their state's military and security institutions, especially regarding the various non-traditional security threats like

²⁴⁶ Christopher Spearin, "Private Military and Security Companies v. International Naval Endeavours v. Somali Pirates: A Security Studies Perspective," *Journal of International Criminal Justice* 10, no. 4 (September 1, 2012): 823–37, <https://doi.org/10.1093/jicj/mqs030>; Van Ginkel, Van der Putten, and Molenaar, "State or Private Protection against Maritime Piracy? A Dutch Perspective," 19–20.

²⁴⁷ Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 125–27.

²⁴⁸ Van Ginkel, Van der Putten, and Molenaar, "State or Private Protection against Maritime Piracy? A Dutch Perspective," 19–20.

²⁴⁹ Spearin, "Sea Power and PMSCs," 152–56; Bush, "BIMCO Advises How to Hire Security Escort Vessels in Gulf of Guinea"; Protection Vessels International, "Security Escort Vessels," PVI, 2022, <https://www.pviltid.com/services/security-escort-vessels/>.

²⁵⁰ Spearin, "Sea Power and PMSCs," 156–57.

²⁵¹ Thomas Wright, "The Return to Great-Power Rivalry Was Inevitable," Brookings Institute, September 12, 2018, <https://www.brookings.edu/opinions/the-return-to-great-power-rivalry-was-inevitable/>; Kenneth G. Lieberthal, "The American Pivot to Asia," Brookings Institute, December 21, 2011, <https://www.brookings.edu/articles/the-american-pivot-to-asia/>; "Aukus: UK, US and Australia Launch Pact to Counter China," *BBC News*, September 16, 2021, sec. World, <https://www.bbc.com/news/world-58564837>.

piracy. As such, PMSCs can be positioned within a long line of non-state actors in the history of maritime warfare and security.

Their presence, therefore, suggests a new reality in the maritime security domain in which non-state actors play a significant role. Accordingly, besides continuously seeking new markets to expand their services to, PMSCs are also increasingly seeking legitimacy within the maritime security environment to ensure their long-term existence. Such developments surrounding the re-emergence of non-state actors within the maritime warfare and security domain, therefore, spark questions about what this means for the international norms surrounding the use of force at sea which were established following the Declaration of Paris in 1856.

IV. The Consequences of Outsourcing the Use of Force at Sea to PMSCs in the 21st-Century: A Case of International Norm Change?

In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex. The potential for the disastrous rise of misplaced power exists and will persist.

– Dwight D. Eisenhower, 1961.²⁵² –

After half a century of public service, this was the final warning that American President Dwight D. Eisenhower left during his farewell address in January 1961. Many observers expected a rather different political farewell from the former military leader, perhaps a more nostalgic ‘old soldier’ speech like that of General Douglas MacArthur during his farewell to Congress ten years earlier. Yet, Eisenhower decided to warn against the dangers of what he termed the ‘military-industrial complex.’ Times have changed, however, because while Eisenhower mainly focused on the potentially unwanted influence from the scientific-technological circles, has the military-industrial complex expanded to include a booming private military and security industry with multinational enterprises offering services that were exclusively state/military terrain during Eisenhower’s time as President. In the maritime domain, PMSCs have even become the dominant providers of armed security services in comparison to the vessel protection detachments provided by states, something which Eisenhower surely would not have foreseen. As such, the concerns expressed by Eisenhower might be even more relevant in the present-day. Indeed, over the past two decades, international guidelines have been rewritten while national laws have been adjusted in various flag states to facilitate the use of PMSCs by the shipping industry. The re-emergence of non-state actors in the maritime warfare and security environment coupled with their widespread use in anti-piracy efforts has therefore sparked serious concerns about what this means for the international norms surrounding the use of force at sea.

Accordingly, this chapter analyzes the international regulatory responses to the re-emergence of PMSCs and the subsequent challenges that emerged in relation to the historically established norms regarding the use of force at sea. It will first analyze the international regulatory framework surrounding the activities of PMSCs. In other words, on what international legal foundation, if any, do PMSCs operate, and are these activities regulated? Subsequently, the chapter will analyze what consequences and challenges emerged following the widespread use of PMSCs within the maritime security domain. In doing so, besides looking at the consequences for both the flag- and coastal states, the active involvement of PMSCs in the law-making process is also addressed to highlight the extent to which PMSCs affect these historically established norms. Lastly, the conclusion will summarize these findings and illustrate how they echo the dynamics of the past.

The Regulatory Frameworks Surrounding PMSCs: What are the rules?

Various types of non-state actors have been involved in the international security environment both on land and sea throughout the larger historical record. Under sovereign authorization, non-state actors like privateers and mercantile companies dominated the maritime warfare and security environment for centuries. However, over time, as the notion of the state monopoly of force gained recognition and was increasingly enforced following the Paris Declaration of 1856, the outsourcing to non-state actors gradually disappeared and states became regarded as the exclusive providers of armed force at sea. Moreover, as the Paris Declaration became incorporated into the general legal principles governing the

²⁵² Dwight D. Eisenhower, “President Dwight D. Eisenhower’s Farewell Address (1961),” National Archives | Washington DC, 1961, <https://www.archives.gov/milestone-documents/president-dwight-d-eisenhowers-farewell-address>.

maritime domain, the *United Nations Convention on the Law of the Sea* (UNCLOS) further obstructed the potential existence of armed non-state actors by opposing the presence of weapons and thus armed guards onboard civilian vessels. Yet, within the first two decades of the 21st-century, nearly all states with sizeable merchant shipping and fishing industries have converged in facilitating the outsourcing of armed force through PMSCs. This section, therefore, considers the legal framework within which these non-state actors emerged and operate before analyzing their effects on the established international norms.

It is important to note, however, that PMSCs engaged in maritime security possess a transnational and institutionalized nature, distinct from the general private military and security industry. For example, unlike the outsourcing of armed security on land, the employment of PMSCs by the shipping industry against threats like piracy generally triggers the laws of a plurality of states. Such operations take place within the unique nature of ocean-based territories to which the UNCLOS ascribes certain jurisdictional rights.²⁵³ As a result, initially, PMSCs were often hired by shipowners without explicit state approval. This can be explained by the simple fact that anti-piracy operations largely take place at sea, far from any governmental oversight or control. Moreover, most states did not have any clear guidelines regarding the use of PMSCs.²⁵⁴ Accordingly, following this transnational nature, the chapter mainly focuses on the *international* legal environment within which PMSCs find themselves.

International Legal Instruments

PMSCs find themselves within a complex international legal environment consisting of both international conventions – so-called ‘hard-law’ – and international guidelines – so-called ‘soft-law’ – established by various actors such as the International Maritime Organization. The current framework of international law governing the maritime security environment in which PMSCs operate is mainly composed of three conventions: the *United Nations Convention on the Law of the Sea* (UNCLOS, 1982), the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation* (SUA, 1988), and the *International Convention for the Safety of Life at Sea* (SOLAS, 1974) including its many amendments.²⁵⁵

The UNCLOS provides an important starting point for analyzing the regulatory structure surrounding PMSCs as it comprises the overarching legal framework for maritime law. Regarding piracy, the UNCLOS grants a variety of law-enforcement powers against pirate vessels, such as the right to visit, inspection and boarding, and the search and seizure of items on board (Articles 105 and 110).²⁵⁶ However, in doing so, the UNCLOS explicitly and exclusively grants such rights to states and in particular military entities. For instance, Article 107 provides that:

A seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.²⁵⁷

Accordingly, under these legal provisions, only military units are allowed to engage in counter-piracy efforts.²⁵⁸ Indeed, the Convention is completely silent on the involvement of non-state actors in relation to any maritime security threat. This is logical because the emergence of PMSCs is largely a post-UNCLOS development. Yet, the UNCLOS is still considered relevant regarding the employment and

²⁵³ Osatohanmwon Anastasia Eruaga, “Private Maritime Security Companies Within the International Legal Framework for Maritime Security,” in *Maritime Law in Motion*, ed. Proshanto K. Mukherjee, Jr. Mejia Maximo Q., and Jingjing Xu (Cham: Springer International Publishing, 2020), 180–81, https://doi.org/10.1007/978-3-030-31749-2_10.

²⁵⁴ Carolin Liss, “(Re)Establishing Control? Flag State Regulation of Antipiracy PMSCs,” *Ocean Development & International Law* 46, no. 2 (April 3, 2015): 89–92, <https://doi.org/10.1080/00908320.2015.1024057>.

²⁵⁵ Eruaga, “Private Maritime Security Companies Within the International Legal Framework for Maritime Security,” 181–82.

²⁵⁶ “United Nations Convention on the Law of the Sea.”

²⁵⁷ “United Nations Convention on the Law of the Sea.”

²⁵⁸ Feldtmann, “On-board Protection of Merchant Vessels from the Perspective of International Law,” 212–14.

operation of PMSCs for two reasons. First, the fact that the UNCLOS grants both the counter-piracy powers and the related right to use proportional force to state/military entities does not necessarily exclude the individual right of self-defense against a maritime threat such as a pirate attack. The individual right to self-defense is an accepted legal concept that is not only rooted in domestic law but also in international law, for instance, in Article 31(1) of the Rome Statute.²⁵⁹ The issue of the right to self-defense was also raised in the legal debate of the International Law Commission of the United Nations in connection to Article 45, which is the predecessor of the UNCLOS's Article 107. During these discussions, it was confirmed that the counter-piracy powers granted to states do not exclude the exercise of the individual right to self-defense against piracy.²⁶⁰ Accordingly, this is the only, albeit rather indirect, legal foundation for the employment of PMSCs. Second, the UNCLOS further details the rights of states over vessels within the different maritime zones.²⁶¹ As we shall see in the second section, these provisions are of crucial importance for both the engagement of PMSCs as well as the challenges they pose to states and internationally accepted norms. For example, ordinarily, a merchant vessel enjoys the right of innocent passage within a state's territorial waters (Article 19). The presence of firearms on merchant vessels as a result of PMSCs, therefore, raises several legal concerns.²⁶²

The maritime security powers provided under the UNCLOS, which is aimed at the general principles of maritime law, are further supplemented by other international conventions. Most notably the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation* (SUA Convention) and the *International Convention for Safety and Life at Sea* (SOLAS Convention). The SUA Convention is aimed at those unlawful maritime acts that could compromise the safety of navigation that are not contemplated by the UNCLOS. While the SUA Convention also does not explicitly deal with the possible powers of non-state actors in the maritime security environment, it does indicate a shipmaster's right to make a civil arrest in connection to attacks against his vessel (Article 8).²⁶³ In doing so, it indirectly provides for private responses to maritime security threats and crimes like piracy in contrast to the UNCLOS, which only refers to state entities in the mitigation of maritime security threats. However, the SUA Convention does not grant any additional rights regarding the use of force.²⁶⁴ Lastly, the aforementioned International Ship and Port Facility Security (ISPS) Code along with the various amendments to the SOLAS Convention, as the foundational treaty for the ISPS Code, establishes a legal framework for cooperation between contracting states, their agencies, and the shipping and port industries to detect and take preventive measures against maritime security threats affecting ships or port facilities.²⁶⁵ In light of the relevance to PMSCs, the provisions within these legal instruments provide the foundation for the applicable 'command of the vessel' protocol in the event of a security threat such as a pirate attack. According to the ISPS Code and the SOLAS Convention, the

²⁵⁹ "Rome Statute of the International Criminal Court" (International Criminal Court, July 17, 1998), <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>.

²⁶⁰ International Law Commission, "Articles Concerning the Law of the Sea with Commentaries" (United Nations, 1956); Feldtmann, "On-board Protection of Merchant Vessels from the Perspective of International Law," 214.

²⁶¹ Eruaga, "Private Maritime Security Companies Within the International Legal Framework for Maritime Security," 182.

²⁶² "United Nations Convention on the Law of the Sea"; Eruaga, "Private Maritime Security Companies Within the International Legal Framework for Maritime Security," 183.

²⁶³ IMO, "Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation" (United Nations, March 10, 1988), <https://treaties.un.org/doc/db/terrorism/conv8-english.pdf>; IMO, "Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf," International Maritime Organization, accessed April 3, 2022, <https://www.imo.org/en/About/Conventions/Pages/SUA-Treaties.aspx>.

²⁶⁴ Feldtmann, "On-board Protection of Merchant Vessels from the Perspective of International Law," 214–16.

²⁶⁵ IMO, "International Convention for the Safety of Life at Sea (SOLAS)," International Maritime Organization, 1974, [https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-\(SOLAS\),-1974.aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-(SOLAS),-1974.aspx); IMO, "SOLAS XI-2 and the ISPS Code"; Eruaga, "Private Maritime Security Companies Within the International Legal Framework for Maritime Security," 184–85.

shipmaster has overriding authority and responsibility for the security of the vessel.²⁶⁶ Yet, as we shall see in the second section, these provisions have created a legal conundrum regarding the employment and operation of PMSCs.

All told, while they collectively comprise the legal environment in which PMSCs find themselves, these ‘hard’ international legal instruments are not directly applicable to the employment of PMSCs, nor are they designed to be. As a result of this absence, the International Maritime Organization issued several interim recommendations for the employment of armed guards on merchant vessels, starting in 2011.²⁶⁷ Overall, these recommendations have enjoyed a positive response because they directly address several complexities surrounding the use of PMSCs in the maritime security environment, including the need for flag states to detail professional certification, insurance cover, operational competence, and the relation between the contractors and the shipmaster.²⁶⁸ Yet, be that as it may, these recommendations still lack in providing genuine sector-specific recommendations and guidelines that address the legal and regulatory gaps surrounding the use of PMSCs. In the end, the interim recommendations are ultimately soft-law instruments, making them inherently non-mandatory and non-legally binding.²⁶⁹ As a result, due to the inability of international law to adequately address the regulation of PMSCs, the industry started to regulate itself. In fact, the International Maritime Organization’s interim guidelines indeed followed the regulations devised by the industry itself.

Industry Self-Regulation

Calls to legally regulate the facilitation of PMSCs have been present since at least the rapid expansion of PMSCs in relation to Somali piracy. However, actual attempts to establish such an international convention governing the use of PMSCs have never met any success.²⁷⁰ This can largely be explained by the ambiguous feelings connected to the facilitation of PMSCs by the international community. While PMSCs have admittedly been effective at both deterring pirates and protecting ships, formally recognizing this fact would consequently contradict the fundamental monopoly of the state over the use of force in the maritime domain.²⁷¹ Thus, as a result of the need to establish an acceptable operational standard despite the lacking international law, the shipping industry alongside PMSCs themselves increasingly started introducing initiatives regulating their behavior. Such industry self-regulation can be defined as a common set of understandings among participants in a particular industry regarding specific issues which include norms of conduct, organization, and limitations on activity.²⁷² Additionally, besides the general motivation to further enhance the security of people and goods

²⁶⁶ Eruaga, “Private Maritime Security Companies Within the International Legal Framework for Maritime Security,” 184–85.

²⁶⁷ IMO, “Private Armed Security,” International Maritime Organization, 2019, <https://www.imo.org/en/OurWork/Security/Pages/Private-Armed-Security.aspx>.

²⁶⁸ Eruaga, “Private Maritime Security Companies Within the International Legal Framework for Maritime Security,” 186–88.

²⁶⁹ Jasenko Marin, Mišo Mudrić, and Robert Mikac, “Private Maritime Security Contractors and Use of Lethal Force in Maritime Domain,” in *The Future of the Law of the Sea: Bridging Gaps Between National, Individual and Common Interests*, ed. Gemma Andreone (Cham: Springer International Publishing, 2017), 192, https://doi.org/10.1007/978-3-319-51274-7_10.

²⁷⁰ Michael Scheimer, “Separating Private Military Companies from Illegal Mercenaries in International Law: Proposing an International Convention for Legitimate Military and Security Support that Reflects Customary International Law,” *American University International Law Review* 24, no. 3 (2009): 609–46; Yvonne Dutton, “Gunslingers on the High Seas: A Call for Regulation,” *Duke Journal of Comparative & International Law* 24, no. 1 (October 1, 2013): 140.

²⁷¹ Marin, Mudrić, and Mikac, “Private Maritime Security Contractors and Use of Lethal Force in Maritime Domain,” 195–96.

²⁷² Eruaga, “Private Maritime Security Companies Within the International Legal Framework for Maritime Security,” 190.

regarding the provision of private maritime security services, such regulation also further increases the popularity and potential legitimacy of PMSCs.²⁷³

Due to the decentralized nature of the self-regulation process, such self-regulatory initiatives include various different guidelines and associations. Examples include both multi-stakeholder initiatives geared towards the regulation of private security within the maritime industry, such as the ISO/28007 standard for PMSCs developed in cooperation with the International Organization for Standardization, as well as initiatives taken by industry associations like the Baltic and International Maritime Council such as the GUARDCON standardized contract for the employment of security guards onboard ships.²⁷⁴ Since 2021, such a standardized contract is also available for the employment of armed escort vessels.²⁷⁵ Additionally, since 2010, industry associations specifically aimed at PMSCs started emerging as well to increase the professionalism of the industry and further regulate the growing number of PMSCs. These include the International Association of Maritime Security Professionals (IAMSP), the Security Association for Maritime Industry (SAMI), and the Security in Complex Environments Group (SCEG).²⁷⁶

Yet, out of the various self-regulatory initiatives, the shipping industry's Best Management Practices series (BMPs) are by far the most influential. The BMPs are a set of pragmatic guidelines directed towards shipowners, masters, and crews with the purpose of providing advice to both protect ships and deter pirates when transiting through dangerous waters, specifically aimed at Somali piracy.²⁷⁷ The BMPs were introduced in February 2009, when pirate attacks off the coast of Somalia were rapidly increasing and the international naval missions had just been deployed. Since then, the BMPs have been revised four times, with the fifth and latest version – the BMP5 – published in June 2018. It is important to emphasize that the BMPs are a product of the private maritime industry, they are devised and supported by a set of non-state actors including (but not limited to) the Baltic and International Maritime Council, the International Maritime Bureau, the International Chamber of Shipping, the International Association of Independent Tanker Owners, and the Joint War Committee.²⁷⁸

The BMPs initially did not recommend the use of armed protection onboard merchant vessels. The second version of the BMPs (BMP2) was released in August 2009 and only suggested making a clear risk assessment and crisis management procedure before transit, as well as advising to follow the Internationally Recommended Transit Corridor and joining a group transit. Accordingly, the suggested defensive measures were still highly passive including measures like proper training and briefing to crewmembers, maintaining a constant lookout, raising freeboards, and installing high-pressure water

²⁷³ Marin, Mudrić, and Mikac, "Private Maritime Security Contractors and Use of Lethal Force in Maritime Domain," 203.

²⁷⁴ Technical Committee, "ISO 28007-1:2015," ISO, 2015, <https://www.iso.org/cms/render/live/en/sites/isoorg/contents/data/standard/06/31/63166.html>; BIMCO, "GUARDCON," Baltic and International Maritime Council, 2012, <https://www.bimco.org/contracts-and-clauses/bimco-contracts/guardcon>.

²⁷⁵ Mette Kronholm Fraende, "BIMCO Launches New Contract for Employment of Security Escort Vessels," Baltic and International Maritime Council, December 2, 2021, <https://www.bimco.org/news/priority-news/20211202-bimco-launches-new-sev-guardcon-contract>.

²⁷⁶ SCEG, "About SCEG," Security in Complex Environments Group (SCEG), December 2021, <https://www.sceguk.org.uk/about-sceg/>; Eruaga, "Private Maritime Security Companies Within the International Legal Framework for Maritime Security," 193–95; Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 42–45.

²⁷⁷ Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 36–41; Cusumano and Ruzza, "Security Privatisation at Sea," 84–89.

²⁷⁸ BIMCO et al., "BMP5: Best Management Practices to Deter Piracy and Enhance Maritime Security in the Red Sea, Gulf of Aden, Indian Ocean and Arabian Sea," BMP (Edinburgh: International Chamber of Shipping, June 2018), <https://www.ics-shipping.org/publication/bmp5-hi-res-needs-further-compression-not-clear-on-date-only-one-available-is-for-a-related-file/>; Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 36–41.

pumps to prevent boarding. Maneuvering and accelerating were also suggested as ways to decrease the chance of boarding.²⁷⁹ Such passive measures were continued in the third revision – BMP3 – which was released in June 2010. Besides further defining the ‘high-risk area,’ this version of the BMPs provided more specific suggestions including the use of personal protection vests for crewmembers, and the installation of razor wire or electrified barriers on the vessel’s outboards.²⁸⁰ Yet, the suggested defensive measures remained largely passive in nature. Despite the efforts taken by the international naval counter-piracy operations, which were fully operational at the time, as well as by the three aforementioned BMPs, the frequency of pirate attacks and hijackings nevertheless increased in 2010. As a result, the International Chamber of Shipping carefully started openly suggesting the use of armed guards in early 2011. Many other industry associations like the International Parcel Tanker Association quickly followed suit and in August 2011, the fourth revision of the BMPs (BMP4) was released.²⁸¹

The fourth iteration of the BMPs constitutes a massive turning-point because it disregards previous caveats against the use of armed guards and instead declares that shipowners have an option to consider armed protection as an additional layer of security.²⁸² In doing so, however, BMP4 suggests a preference for the use of military vessel protection detachments. However, this last recommendation was eventually disregarded in the latest revision of the BMPs – BMP5 – as it became clear that vessel protection detachments proved to be less convenient, favorable, and cost-effective than their market-based counterparts.²⁸³ Yet, interestingly, BMP5 does recommend only resorting to PMSCs that adhere to the ISO/28007 standard.²⁸⁴ Accordingly, with practically no substantial number of vessel protection detachments deployed over the years since the release of the BMP5, PMSCs have generally become the mainstream option for armed protection in the maritime domain. Additionally, in March 2020, the International Chamber of Shipping along with other shipping industry associations launched the *Best Management Practices to Deter Piracy and Enhance Maritime Security off the Coast of West Africa including the Gulf of Guinea*. This is the first self-regulatory initiative taken specifically in relation to the growing number of piracy attacks in West Africa. Similar to BMP5, it includes the use of PMSCs as a possible additional layer of protection against piracy attacks. What is new, however, is an added section that provides recommendations concerning the use of armed escort vessels as well, besides embarked armed guards.²⁸⁵

²⁷⁹ International Chamber of Shipping, “BMP2 - Best Management Practices to Deter Piracy off the Coast of Somalia and in the Arabian Sea Area,” BMP (Edinburgh: Witherby Seamanship International Ltd, August 2009); Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 36–37.

²⁸⁰ International Chamber of Shipping, “BMP3 - Best Management Practices to Deter Piracy off the Coast of Somalia and in the Arabian Sea Area,” BMP (Edinburgh: Witherby Seamanship International Ltd, June 2010).

²⁸¹ Reuters Staff, “Shippers Back Private Armed Guards to Beat Pirates,” *Reuters*, February 15, 2011, sec. Somalia News, <https://www.reuters.com/article/shipping-piracy-idAFLDE71E1F520110215>.

²⁸² International Chamber of Shipping, “BMP 4 – Best Management Practices for Protection against Somali Based Piracy,” BMP, August 2011, 39–40, <https://www.ics-shipping.org/publication/bmp4-best-management-practices-for-protection-against-somali-based-piracy/>; Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 38.

²⁸³ BIMCO et al., “BMP5: Best Management Practices to Deter Piracy and Enhance Maritime Security in the Red Sea, Gulf of Aden, Indian Ocean and Arabian Sea”; Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 41.

²⁸⁴ BIMCO et al., “BMP5: Best Management Practices to Deter Piracy and Enhance Maritime Security in the Red Sea, Gulf of Aden, Indian Ocean and Arabian Sea,” 19–20.

²⁸⁵ International Chamber of Shipping, “BMP West Africa: Best Management Practices to Deter Piracy and Enhance Maritime Security off the Coast of West Africa Including the Gulf of Guinea,” BMP (International Chamber of Shipping, March 2020), 27–28, <https://www.ics-shipping.org/publication/best-management-practices-to-deter-piracy-and-enhance-maritime-security-in-the-red-sea-gulf-of-aden-indian-ocean-and-arabian-sea/>.



Figure 5: The Latest Best Management Practices (BMPs)
Source: International Chamber of Shipping (Screenshots)

Thus, the self-regulatory efforts taken by the private maritime industry as a whole are quite substantive. Interestingly, the various decentralized self-regulatory initiatives taken to regulate the use of PMSCs are not necessarily averse to each other. In fact, they often make reference to other standards and recommendations made by different maritime industry initiatives, as illustrated by the fifth version of the BMPs.²⁸⁶ In the end, however, such industry self-regulatory initiatives are not legally binding. Instead, their significance hinges on the will of stakeholders to voluntarily accept and adhere to these regulations and constraints. Yet, the substantial efforts made by the private maritime industry to regulate the employment of PMSCs do show the will of the industry and PMSCs themselves to become professionalized and recognized as legitimate actors within the maritime security domain. And more importantly, they do so without necessarily seeking the guidance or leadership of states and intergovernmental organizations. In fact, these regulatory efforts taken by the private maritime industry eventually ended up influencing the international and even national legislation surrounding the use of PMSCs in various flag states.

Challenges to Established International Norms: What are the Consequences?

Before the emergence of PMSCs, the majority of flag states unanimously adhered to various international norms such as the state's monopoly over the use of force in the maritime domain as well as the absence of firearms on-board civilian vessels. Accordingly, the introduction of firearms on-board merchant vessels held by non-state actors would be considered an extreme violation of the public interest concerning the security of people and goods at sea. The widespread outsourcing of the use of force to PMSCs, therefore, suggests a compromise solution whereby armed maritime security services are increasingly offered by professional non-state entities that are commissioned to provide protection when state capacities are largely unable to prevent danger to people and goods at sea. But what are the consequences of condoning the use of force to PMSCs? Does this compromise solution challenge the historically established international norms surrounding the use of force at sea?

²⁸⁶ Eruaga, "Private Maritime Security Companies Within the International Legal Framework for Maritime Security," 195.

Challenges to States: Are States in Control?

At first, when various flag states like the Netherlands were still debating whether to provide vessel protection detachments to its merchant shipping, the concerns voiced by opposition members were mainly related to technical or practical issues like the delivery time, costs, and the assessment criteria for ships. Fast forward to 2019, when the Dutch Senate approved adapting its legislation to allow for private alternatives to its vessel protection detachments, the concerns associated with the use of PMSCs have evolved to become more fundamental in nature. Indeed, the concerns raised within the various flag states that have facilitated PMSCs relate to serious issues of state control, responsibility, accountability, and legitimacy, or in other words, issues that are associated with a breach of the monopoly of force, or the misappropriation of the power to use force.²⁸⁷ Moreover, questions related to the sovereign rights of coastal states also started rising as a result of the presence of armed protection on-board civilian vessels.

Challenges to Flag States

Like the privateers from the early-modern period, PMSCs are non-state actors that rely on the use of force at sea, this is the core of their business model. Yet, considering that PMSCs are authorized by state authorities and work within, albeit sometimes weak, international and/or national legal frameworks, it can be argued that PMSCs merely expand state authority because they fall under the decision-making process and therefore the control of their outsourcing states. In turn, only PMSCs that operate without such proper authorization from states would challenge state authority. In reality, however, and again similar to the privateers, state control over PMSCs can be rather difficult, despite the existing legal and regulatory frameworks, and the separation between PMSCs that operate legally and illegally can be clouded.²⁸⁸ As illustrated, clear and directly-applicable international laws regulating the PMSC-industry do not truly exist, and even if they would exist, enforcement in international waters is often difficult.

For example, what happens when things go wrong? Or maybe, more importantly, are the flag states even aware when things go wrong under their authorization? On the 16th of September 2007, employees of the private military company *Blackwater Worldwide* killed 17 innocent Iraqi civilians while escorting an American convoy in Baghdad. This event, which became known as the Nisour Square Massacre, outraged Iraqis and seriously strained diplomatic ties between the United States and Iraq.²⁸⁹ While this tragic event illustrated the dangers of outsourcing the use of force to privately contracted operators, four of the contractors eventually went on trial in the United States and were found guilty of several charges including first-degree murder and manslaughter.²⁹⁰ The event, therefore, presents a rare example in which private military contractors were found accountable and responsible for their actions performed under an outsourced security agreement.²⁹¹ The fact that the event happened on land and under the direct authority of the United States – as the United States directly contracted the private military company unlike the indirect relationship between a flag state and a PMSCs – was therefore essential. On the 15th of February 2012, two Italian marines allegedly shot and killed two Indian fishermen who had been mistaken for pirates while providing a vessel protection service to the tanker *Enrica Lexie*.²⁹² Following the shooting, the Indian Navy intercepted the Italian tanker and arrested the marines, sparking a massive diplomatic row between India and Italy as a result of

²⁸⁷ Van Ginkel, Van der Putten, and Molenaar, “State or Private Protection against Maritime Piracy? A Dutch Perspective,” 34.

²⁸⁸ Liss, “(Re)Establishing Control?,” 85–87.

²⁸⁹ Alissa J. Rubin and Andrew E. Kramer, “Iraqi Premier Says Blackwater Shootings Challenge His Nation’s Sovereignty,” *The New York Times*, September 24, 2007, sec. Middle East, <https://www.nytimes.com/2007/09/24/world/middleeast/24iraq.html>.

²⁹⁰ The four convicted contractors were eventually pardoned by President Donald Trump in 2020.

²⁹¹ Marin, Mudrić, and Mikac, “Private Maritime Security Contractors and Use of Lethal Force in Maritime Domain,” 195–96.

²⁹² Ibid; Feldtmann, “On-board Protection of Merchant Vessels from the Perspective of International Law,” 216.

conflicting opinions over the legal jurisdictions and functional immunity of the Italians, which was ultimately arbitrated in the Hague.²⁹³ While this event illustrates the severe consequences attached to the use of military vessel protection detachments, it also drew attention to the utilization of PMSCs. What would happen if such an incident occurs involving privately contracted maritime security personnel? And also, if such incidents have happened with military vessel protection detachments, have they also happened with PMSCs?

Unfortunately, there is surprisingly scarce information available on the actual use of force by PMSCs, mainly because reporting organizations like the International Maritime Bureau focus on violence perpetrated by pirates and not necessarily by PMSCs.²⁹⁴ Yet, unofficial and media reports of deadly incidents have appeared, often including the deaths of innocent fishermen.²⁹⁵ A report by the United Nations, although lacking in details, suggests that around 200-300 pirates went missing and that at least 62 were killed at sea during the first five months of 2011.²⁹⁶ The lack of knowledge regarding the circumstances surrounding the deaths of these suspected pirates coupled with the reports of PMSCs mistakenly firing on fishing vessels raises serious concerns about the ability of states to effectively monitor and control the PMSCs they facilitate in the outsourcing of vessel protection duties. In fact, flag states generally do not monitor the activities of PMSCs at all. Instead, they often rely on reports from the shipmaster and/or the PMSCs themselves to gain some insights, but this is generally not required by the flag state.²⁹⁷ Thus, based on the limited data available, it can be deduced that the increased use of PMSCs coupled with the limited international regulation, runs the risk of leading to a general escalation of violence at sea. While PMSCs often mention that their mere presence forms a sufficient deterrent to pirates, it can also be argued that this is only the case because the majority of ships remain unarmed, and pirates generally prefer to avoid fights when they can simply wait until they come across an unarmed ship. Accordingly, when the use of PMSCs becomes a widespread practice, pirates could become more inclined to increasingly use force during attacks as well. Additionally, this could also motivate pirates to target local vessels which are not protected such as fishing boats and dhows, which could seriously affect local development. Recently, for example, an increase in attacks against local vessels has already been observed in West Africa.²⁹⁸ Such an increase in overall violence, therefore, presents a serious unintended consequence of the facilitation of PMSCs that works against the public interest of protecting people and goods at sea, exposing the lack of control by flag states.

So far, no private maritime security contractors have ever been arrested on the suspicion of unlawful killing. But more importantly, unlike the two mentioned cases which both directly involved either the outsourcing state or state personnel, international law has little guidance to offer if such an incident would happen.²⁹⁹ In fact, as covered in the first section, the only international legal foundation for the activities of PMSCs is the right to self-defense. This is also recognized by states as practically

²⁹³ Permanent Court of Arbitration, “The ‘Enrica Lexie’ Incident (Italy v. India),” Permanent Court of Arbitration, May 21, 2020, <https://pca-cpa.org/en/cases/117/>.

²⁹⁴ Florquin, “Escalation at Sea,” 212.

²⁹⁵ Clive R. Symmons, “Embarking Vessel Protection Detachments and Private Armed Guards on Board Commercial Vessels: International Legal Consequences and Problems under the Law of the Sea,” *Military Law and Law of War Review* 51 (2012): 36; A Katz, “Fighting Piracy Goes Awry With Killings of Fishermen,” *Bloomberg.Com*, September 16, 2012, <https://www.bloomberg.com/news/articles/2012-09-16/fighting-piracy-goes-awry-with-killings-of-fishermen>.

²⁹⁶ United Nations Security Council, “Report of the Special Adviser to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia,” Letter (New York City: United Nations, January 25, 2011), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/206/21/PDF/N1120621.pdf?OpenElement>; Florquin, “Escalation at Sea,” 212.

²⁹⁷ Liss, “(Re)Establishing Control?,” 95.

²⁹⁸ Nirit Ben-Ari, “Piracy in West Africa,” United Nations | Africa Renewal, November 19, 2013, <https://www.un.org/africarenewal/magazine/december-2013/piracy-west-africa>; International Chamber of Shipping, “Piracy in West Africa 2020.”

²⁹⁹ Feldtmann, “On-board Protection of Merchant Vessels from the Perspective of International Law,” 216–17.

all flag states permit the use of force, including lethal force if necessary, as the last response to an immediate danger to life. It could therefore be concluded, from a purely international law perspective, that an individual's right to self-defense forms an acceptable legal basis for the activities of PMSCs, and that the further particularities of this right are determined by domestic legal principles. While this would certainly be an attractive approach from the perspective of the PMSCs and certain flag states, such an approach neglects serious challenges inherent to the right to self-defense. For instance, domestic concepts of self-defense vary significantly regarding the precise point in time when the right is triggered or whether such a right can also be extended to attacks against property. As a result of these discrepancies, acts of self-defense can be legitimate according to one flag state but not to another flag or maybe coastal state.³⁰⁰

This legal uncertainty has therefore created a situation in which different PMSCs adopt different 'graduated response plans to a pirate attack.' According to certain PMSCs, the use of force is only justified in direct response to shots fired by pirates, while other companies allow team members to fire whenever they conclude that the ship or crew was in danger of serious harm or death.³⁰¹ Consequently, in the absence of consistent regulation, private maritime security guards may become lax or overreact to threat situations in ways that violate the application of proportional force when exercising their right to self-defense. For example, a notorious video released in 2012 by a private contractor on vessel protection duty depicted a 'wild-west' situation of an encounter between the MV *Avocet* and an approaching skiff.³⁰² The four privately contracted armed guards can be seen directly opening heavy fire, while unprovoked, described as 'warning shots,' at the incoming skiff which eventually crashes into the *Avocet* because the driver was presumably injured or killed.³⁰³ When asked to comment on the number of casualties following this engagement, the CEO of the PMSC in question, *the Trident Group*, stated that they were 'not in the business of counting bodies.'³⁰⁴ While most private maritime contractors have admittedly shown greater restraint than in this specific case, the *Avocet* case was probably not unique either. In order to avoid such incidents, self-regulatory efforts to create a unified set of rules concerning the use of force emerged to provide a clear 'legal' basis for armed guards to exercise their right to self-defense. This resulted in the *100 Series Rules: An International Model Set of Maritime Rules for the Use of Force*, published in 2013, which was initiated by two retired Royal Marines in cooperation with the International Chamber of Shipping and the Baltic and International Maritime Council.³⁰⁵ However, like the other self-regulatory initiatives, this is again a non-universally adopted and non-binding document.

Another complex issue related to the right to self-defense concerns the established command and control procedures on merchant ships. As illustrated, the SOLAS Convention clearly states that the shipmaster has overriding authority over the entire vessel and its crew (Article 34.1).³⁰⁶ Some flag states would even consider the shipmaster, under circumstances, to be a formal representative of the state. Accordingly, when an armed guard faces an immediate threat, he or she would be obliged to first consult

³⁰⁰ Ibid, 213-216.

³⁰¹ Florquin, "Escalation at Sea," 211.

³⁰² Alan Katz and Michelle Wiese Bockmann, "Shooting to Kill Pirates Risks Blackwater Moment," Global Policy Forum, May 8, 2012, <https://archive.globalpolicy.org/pmscs/51600-shooting-to-kill-pirates-risks-blackwater-moment.html>.

³⁰³ Humans At Sea, *Somali Pirates VS Ship's Private Security Guards*, 2017, <https://www.youtube.com/watch?v=tpNpDM-enLw>; Eruaga, "Private Maritime Security Companies Within the International Legal Framework for Maritime Security," 196-97.

³⁰⁴ Katz and Bockmann, "Shooting to Kill Pirates Risks Blackwater Moment."

³⁰⁵ "100 Series Rules: An International Model Set of Maritime Rules for the Use of Force (RUF)," 2013; "The 100 Series Rules: An International Model Set of Maritime Rules for the Use of Force An Update," SAFETY4SEA, August 12, 2013, <https://safety4sea.com/the-100-series-rules-an-international-model-set-of-maritime-rules-for-the-use-of/>; Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 44-45. For an unexplained reason, the official website of the 100 Series Rules went offline during the time of writing.

³⁰⁶ IMO, "International Convention for the Safety of Life at Sea (SOLAS)."

the shipmaster before taking action, as the shipmaster is ultimately responsible for the safety of the vessel and personnel on-board.³⁰⁷ However, a contrary view emphasizes the individual's right to self-defense. Indeed, the right to self-defense suggests that situations of immediate danger to life (and property) allow for a proportionate response to alleviate the threat, including the use of force, even without the shipmaster's authorization.³⁰⁸ Additionally, it could be argued that the shipmaster does not have the necessary tactical knowledge or training to make appropriate decisions over such life-threatening situations.³⁰⁹ Some legal experts, therefore, argue that the individual's right to self-defense overrules these regulations within the SOLAS Convention. This means that in such life-threatening situations, private maritime security personnel would be allowed to disobey a shipmaster's decision to withhold the use of force against a threat, and thus undermine the flag state's authority.³¹⁰ Indeed, while it concerned military personnel, during the *Enrica Lexie* shooting, the armed guards failed to consult either the shipmaster or any other crewmembers regarding the steps to be taken in such a threatening situation, leading to serious unintended consequences.³¹¹ The diverse opinions of various legal experts have therefore created a legal conundrum over who ultimately has the final say over the decision to use force in self-defense.

Challenges to Coastal States

Besides undermining flag state control over the use of force in the maritime domain, the increased employment of PMSCs also creates challenges to the sovereignty of coastal states. According to maritime law, the coastal state is responsible for the safety and security of vessels within its territorial waters. The use of PMSCs by merchant vessels and their facilitation by flag states can therefore be interpreted by coastal states as undermining their ability to effectively govern their own maritime territory. For example, after the publication of the third revision of the BMPs in 2010, tensions emerged regarding the definition of the 'high-risk area,' which overlapped with India's territorial waters. In this case, the intersection between the 'high-risk area' and Indian jurisdiction created frictions between flag states that adopted the BMP's definition and India, which deemed the area subject to its territorial sovereignty.³¹² India's discontent can therefore be considered a precondition that led to the massive diplomatic escalation following the *Enrica Lexie* incident.³¹³ After all, local fishers are often indistinguishable from pirates leading to tragic accidents affecting the population of the coastal states.

Accordingly, one of the biggest issues regarding the widespread use of PMSCs arises from the presence of privately-contracted guards armed with firearms on civilian vessels in territorial waters. Indeed, article 19(2) of the UNCLOS includes the following clause regarding the right of innocent passage: 'the passage of a foreign ship shall be considered prejudicial... if in the territorial sea it engages in... any exercise or practice with weapons of any kind.'³¹⁴ As a result, it could be concluded that a passage is not considered innocent if weapons are on-board, especially when those weapons are

³⁰⁷ Florquin, "Escalation at Sea," 211–12.

³⁰⁸ Alice Priddy and Stuart Casey-Maslen, "Counter-Piracy Operations by Private Maritime Security Contractors: Key Legal Issues and Challenges," *Journal of International Criminal Justice* 10, no. 4 (September 25, 2012): 884–845, <https://doi.org/10.1093/jicj/mqs057>; Eruaga, "Private Maritime Security Companies Within the International Legal Framework for Maritime Security," 184–85.

³⁰⁹ Feldtmann, "On-board Protection of Merchant Vessels from the Perspective of International Law," 218–19.

³¹⁰ Eruaga, "Private Maritime Security Companies Within the International Legal Framework for Maritime Security," 184–85.

³¹¹ Annie Banerji and D. Jose, "Murder Trial of Italian Marines in India Navigates Murky Waters," *Reuters*, June 10, 2013, sec. Top News, <https://www.reuters.com/article/india-italy-marines-idINDEE95900B20130610>; Valeria Eboli and Jean Paul Pierini, "The 'Enrica Lexie Case' and the Limits of the Extraterritorial Jurisdiction of India," *I Quaderni Europei* 39, no. 2 (March 1, 2012): 4.

³¹² Christian Bueger, "Zones of Exception at Sea: Lessons from the Debate on the High Risk Area," Working Paper, The Lessons Learned Consortium of the Contact Group on Piracy Off the Coast of Somalia (Cardiff University, October 2015).

³¹³ Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 37–38.

³¹⁴ "United Nations Convention on the Law of the Sea."

intended to be used as well (opposed to mere transportation).³¹⁵ Thus, while flag states have often condoned or even facilitated the presence of armed guards on-board their merchant vessels, coastal states like Malaysia, India, Nigeria, Benin, and Togo, have generally refrained from endorsing services involving the presence of firearms on-board merchant vessels by PMSCs.³¹⁶ Subsequently, this complex web of legal constraints has led to remarkable situations and violations of established rules regarding the transportation and storing of firearms by PMSCs. To sidestep both national and international regulations, reports started emerging in 2011 of so-called floating armories or weapon arsenals operated by PMSCs in international waters, which allowed private maritime security contractors to embark on their client ships in port unarmed and acquire their firearms and equipment outside territorial waters.³¹⁷ Other reports included testimonies from contractors who would simply acquire their firearms illegally and dispose of them overboard at the end of a transit.³¹⁸

Given that you can get an AK-47 for about \$200 in most big African towns... and it costs about \$1000 per weapon to do it legally, and then there's all the forms, coastguard licenses, etc., a lot of people think it's easier to buy weapons illegally and drop them down to Davy Jones' locker when you get out of the danger area.

– Anonymous PMSC-contractor, 2011.³¹⁹

The floating armories form a perfect example of the lacking state control over the activities of PMSCs. Stocking weapons into floating armories allows PMSCs to sidestep the complications attached to transporting firearms through different jurisdictions, which might compromise the client vessel's right of innocent passage.³²⁰ Such floating armories have moved in synch with the private maritime security industry itself, growing and declining accordingly. Yet there is no official register keeping track of the existing floating armories. However, independent studies estimated that about thirty floating armories were active in the high-risk area in 2014.³²¹ There are many problems attached to the use of floating armories, including the possibility of the further overall proliferation of firearms at sea where they are not properly regulated. Moreover, there have already been incidents during which floating armories drifted into the territorial waters of coastal states undermining the public and national security of sovereign states, like the MV *Seaman Guard Ohio* incident in 2013.³²² Yet again, no substantive regulation exists regarding floating armories.

³¹⁵ Feldtmann, "On-board Protection of Merchant Vessels from the Perspective of International Law," 217–18.

³¹⁶ Lars Bangert Struwe, "Private Security Companies (PSCs) as a Piracy Countermeasure," *Studies in Conflict & Terrorism* 35, no. 7–8 (July 1, 2012): 592, <https://doi.org/10.1080/1057610X.2012.684660>.

³¹⁷ United Nations Security Council, "Letter Dated 18 July 2011 from the Chairman of the Security Council Committee Pursuant to Resolutions 751 (1992) and 1907 (2009) Concerning Somalia and Eritrea Addressed to the President of the Security Council," Letter (New York City: United Nations, July 18, 2011), <https://www.undocs.org/Home/Mobile?FinalSymbol=S%2F2011%2F433&Language=E&DeviceType=Desktop&LangRequested=False>; Brown, "Pirates and Privateers," 7–8.

³¹⁸ Brown, "Pirates and Privateers," 7–8.

³¹⁹ Charlotte Eagar, "To Catch a Pirate: The British Ex-Servicemen Battling to Protect International Shipping from the Clutches of Somali Pirates," Mail Online, December 20, 2011, <https://www.dailymail.co.uk/home/moslive/article-2071108/British-ex-servicemen-battling-protect-international-shipping-Somali-pirates.html>.

³²⁰ Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 45.

³²¹ Small Arms Survey Geneva, "Stockpiles at Sea: Floating Armouries in the Indian Ocean," in *Small Arms Survey 2015: Weapons and the World*, Small Arms Survey (Cambridge: Cambridge University Press, 2015), 216–41, <https://doi.org/10.1017/CBO9781107323636.016>.

³²² More information about the MV *Seaman Guard Ohio* incident at BBC News, "MV Seaman Guard Ohio: India Police Arrest Crew of US Ship," *BBC News*, October 18, 2013, sec. India, <https://www.bbc.com/news/world-asia-india-24577190>; Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 45; Eruaga, "Private Maritime Security Companies Within the International Legal Framework for Maritime Security," 199–200.

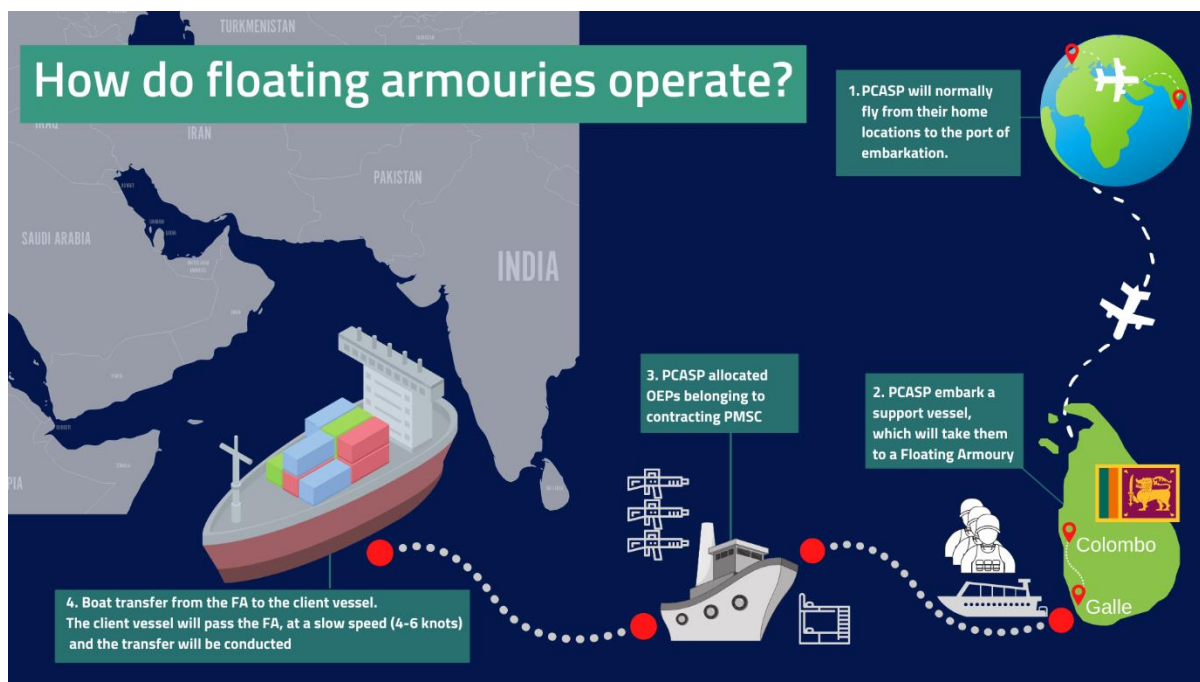


Figure 6: The Operation of Floating Armouries
Source: Dryad Global.³²³

Challenges to the International Norms: PMSCs as Norm-Entrepreneurs

Traditionally, rights and obligations within the maritime warfare and security environment should be addressed by states, as the only legitimate actors to apply the use of force since the Paris Declaration of 1856. Yet, the previous challenges illustrate that states are no longer in complete control over those non-state actors to whom they have authorized the use of force. In the same way, those rights and obligations also extend to states when it comes to the production of international laws and regulation. Indeed, international legal scholarship considers norm-making and law enforcement as falling under the exclusive authority of the state.³²⁴ Yet, this also seems to be increasingly affected by the emergence and proliferation of PMSCs. As illustrated, the market response leading to the use of PMSCs has altered accepted international norms such as the state monopoly of force and the norm of keeping civilian vessels unarmed. In doing so, the focus of the shipping industry has moved from the question of whether PMSCs should be engaged in the first place to working out ways to safely engage with them.³²⁵ As a result, following the negligence by states, the initiative to regulate the use of PMSCs has consequently been transferred to the maritime industry itself. In other words, by providing insufficient legal regulation and oversight over the rapid proliferation of PMSCs, states have allowed the private sector to increasingly regulate itself, which undermines their exclusive rights and obligations regarding the production of international law and norms. In fact, these self-regulatory efforts have ultimately affected both international and national legislation surrounding the use of PMSCs.

Influence on International Organizations and Legislation

Due to their heavy involvement in counter-piracy following the surge in pirate attacks off the coast of Somalia, PMSCs have been able to increasingly shape the development of regulations within the maritime security environment. As a result, PMSCs gradually became agenda-setters, effectively pressuring both the shipping industry and flag states to consider piracy as an issue the state cannot

³²³ Dryad Global, "Floating Armouries," Dryad Global, 2022, <https://dg.dryadglobal.com/floating-armouries-how-do-they-operate>.

³²⁴ Eruaga, "Private Maritime Security Companies Within the International Legal Framework for Maritime Security," 195.

³²⁵ Eruaga, 181.

handle by itself and thus requires market-based solutions.³²⁶ In contrast, when the first PMSCs started operating in Southeast Asia, the piracy issue was not considerable enough to allow PMSCs to control the narrative. As a result, coastal states like Indonesia and Malaysia introduced legislation that effectively re-nationalized the control over the use of force against pirates in their territorial waters.³²⁷ Consequently, when the piracy epidemic started off the coast of Somalia, relevant stakeholders were initially reluctant against the idea of privately-contracted armed protection, in line with the long-established norms surrounding the monopoly of force.³²⁸ Yet, as the attacks increased and state efforts proved insufficient, PMSCs managed to change the narrative in cooperation with the shipping industry, reassessing the position of private armed security. Indeed, besides providing armed security services, PMSCs also publish statements, risk assessments, and reports on the piracy threats in the relevant regions. Such documents can impact both the public perception as well as eventually the decision-making process surrounding such security threats.³²⁹ Accordingly, economic and financial interests dominated over those flag states and international organizations principally opposed to the use of PMSCs. As for-profit commercial entities, the shipping industry naturally turned to the use of PMSCs over the less flexible and more expensive state alternatives.³³⁰ Moreover, due to the transnational nature of the international shipping industry – with most of the world’s merchant shipping flying flags of convenience – the use of PMSCs quickly became widespread. Afraid to lose their competitive edge against rival shipping companies, the worldwide shipping industry quickly joined PMSCs in their lobby to urge flag states to facilitate private armed security solutions.³³¹ The fact that shipowners can easily reflag their vessels to another flag state that accommodates their preferences better, further pressured states to facilitate the use of PMSCs.³³²

In turn, the maritime industry including the PMSCs themselves managed to dominate the subsequent international regulatory process, following the legal uncertainty. Parallel to and even before the International Maritime Organization started publishing guidelines regarding the use of PMSCs, several stakeholders within the private sector, including the shipping industry and PMSCs, started issuing guidance and recommendations through various self-regulatory initiatives to both enhance the security of people and goods at sea and increase the popularity of PMSCs. For example, when the shipping industry through the International Chamber of Shipping opened up to the use of PMSCs in 2011, intergovernmental organizations like the International Maritime Organization swiftly followed suit. Indeed, as soon as the shipping industry started openly requesting armed protection, the International Maritime Organization shifted from a vocal hostility against the presence of firearms on-board ships to a more ambivalent stance.³³³

Within this process, the BMPs have been extremely influential. The interim guidelines published by the International Maritime Organization moved in synch with the fourth revision of the BMPs, openly acknowledging the use of armed guards. In September 2011, one month after the publication of the BMP4, the International Maritime Organization published two sets of interim guidelines for the use of PMSCs in the high-risk area: one directed at the shipping industry

³²⁶ Eruaga, 197–99.

³²⁷ Carolin Liss, “Privatization of Maritime Security in Southeast Asia,” in *Private Military and Security Companies: Chances, Problems, Pitfalls and Prospects*, ed. Thomas Jäger and Gerhard Kümmel (Wiesbaden: VS Verlag für Sozialwissenschaften, 2007), 135–48, https://doi.org/10.1007/978-3-531-90313-2_9; Carolin Liss, “Private Military and Security Companies in Maritime Security Governance,” 2013, 202, https://doi.org/10.1057/9781137334428_10.

³²⁸ Eruaga, “Private Maritime Security Companies Within the International Legal Framework for Maritime Security,” 197–99.

³²⁹ Ibid.

³³⁰ Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 270.

³³¹ Cusumano and Ruzza, 236–38.

³³² Liss, “PMSCs in Maritime Security and Anti-Piracy Control,” 65–68.

³³³ Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 237–38.

(MSC.1/Circ.1405) and the other to flag states (MSC.1/Circ.1406).³³⁴ These soft-law instruments are therefore heavily influenced by the BMPs, which are a product of the private sector. The first set of guidelines directed at flag states mainly requests them to consider authorizing the use of PMSCs on their merchant shipping for additional protection against piracy and further recommends flag states to introduce a set of rules and regulations regarding their employment.³³⁵ In May 2012, these sets of interim guidelines got complemented by two new circulars regarding the use of PMSCs: one aimed at the port and coastal states (MSC.1/Circ.1408) and another directly aimed at PMSCs themselves (MSC.1/Circ.1443). The first circular aimed at coastal states mainly recommends the design of ad hoc policies and protocols regarding the embarkation, disembarkation, and cruising of private maritime security teams, including their firearms and ammunition. The interim guidelines aimed at PMSCs, on the other hand, further recommend the development of maritime security standards, like the ISO/28007.³³⁶ Thus, within a few years, the International Maritime Organization's official position on the issue of PMSCs shifted from 'strongly discouraging' the carrying and use of firearms between 1993 and 2009, to currently 'tacitly acknowledging that the deployment of armed security personnel on board ships has become an accepted industry and flag state practice in certain circumstances.'³³⁷ The evolving position of the International Maritime Organization on the issue of private armed security, therefore, illustrates the significant influence of the maritime industry including PMSCs on the development of these soft-law instruments. As a result, international organizations like the International Maritime Organization and shipping associations such as International Chamber of Shipping acted as catalysts for norm-diffusion, which eventually also influenced national decision-making within flag states regarding the use of PMSCs.³³⁸

Influence on National Legislation

The emerging soft-law, developed in conjunction with the commercial interests of the shipping industry and PMSCs, also influenced national legislation and soon turned into hard-law as an increasing number of flag states started enacting and incorporating various self-regulatory initiatives concerning the use of PMSCs. In other words, the self-regulatory efforts of the private maritime industry eventually influenced state legislation, thus undermining the position of the state as the sole law-making entity, especially in relation to matters regarding the use of force. Accordingly, PMSCs started acting as norm-entrepreneurs, blurring the lines between public and private responsibilities in global governance.

³³⁴ Maritime Safety Committee, "Revised Interim Recommendations For Flag States Regarding The Use Of Privately Contracted Armed Security Personnel On Board Ships in the High Risk Area" (International Maritime Organization, September 16, 2011), <https://www.westpandi.com/globalassets/news/111003-msc-1---circ-1406---rev-1---revised-interim-recommendations-for-flag-states-on-the-use-of-pcasp.pdf>; Maritime Safety Committee, "Revised Interim Guidance to Shipowners, Ship Operators and Shipmasters On The Use Of Privately Contracted Armed Security Personnel On Board Ships in the High Risk Area" (International Maritime Organization, September 16, 2011), http://docs.yasinskiy.net/books/imo-msc-circ/1405_1.pdf; Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 36–41.

³³⁵ Maritime Safety Committee, "Revised Interim Recommendations For Flag States Regarding The Use Of Privately Contracted Armed Security Personnel On Board Ships in the High Risk Area"; Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 38–39.

³³⁶ Maritime Safety Committee, "Revised Interim Recommendations For Port And Coastal States Regarding The Use Of Privately Contracted Armed Security Personnel On Board Ships in the High Risk Area" (International Maritime Organization, May 25, 2012), <https://wwwcdn.imo.org/localresources/en/OurWork/Security/Documents/MSC.1-Circ.1408-Rev1.pdf>; Maritime Safety Committee, "Interim Guidance to Private Maritime Security Companies Providing Privately Contracted Armed Security Personnel On Board Ships in the High Risk Area" (International Maritime Organization, May 25, 2012), <https://wwwcdn.imo.org/localresources/en/OurWork/Security/Documents/MSC.1-Circ.1443.pdf>; Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 38–39.

³³⁷ IMO, "Private Armed Security."

³³⁸ Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 236–38.

For example, the Marshall Islands collaborated with the now-defunct Security Association for the Maritime Industry (SAMI) to champion the use of PMSCs in relation to Indian Ocean piracy during the 89th meeting of the Maritime Safety Committee of the International Maritime Organization.³³⁹ This industry association represented over 180 PMSCs which were registered in 35 different countries at its peak. While the Security Association for the Maritime Industry was obviously not a member-state nor an invited observer, the Marshall Islands – one of the largest open registries in the world – invited representatives of the industry association as part of its official delegation.³⁴⁰ Accordingly, this session eventually led to the drafting of the first two interim guidelines on the use of PMSCs by the International Maritime Organization (MSC.1/Circ.1405 and MSC.1/Circ.1406). This, therefore, illustrates the influential position held by the maritime industry including PMSCs at the International Maritime Organization, which is an *intergovernmental* organization, as well as the proactive manner by which PMSCs and their industry associations were able to set the agenda through its members and client-states like the Marshall Islands.³⁴¹

Similar influences can also be observed in nationally-anchored European flag states. Italy, for example, has traditionally been hostile towards the outsourcing of armed services. Accordingly, it was one of the most prominent flag states in the operation of state-run vessel protection detachments. Yet, it ultimately shifted towards a hybrid model that also incorporates PMSCs besides their vessel protection detachments. This shift was prompted by two important developments, the *Enrica Lexie* incident as well as the international shipping industry's changing position on the use of PMSCs in 2011, which was announced in BMP4. As a result, Italy's largest shipowner's association, *Confitarma*, actively started advocating for the use of PMSCs, while also threatening the possibility to reflag if measures would not be taken by the Italian authorities.³⁴² Similar developments can be observed in many other flag states, which gradually started emulating the maritime security policies of other states because they were afraid to lose their competitiveness. This is perfectly illustrated by a statement announced by Norway's Minister of Transport: 'Norway cannot be the only country not allowing for armed guards.'³⁴³ Similarly, the Netherlands, which had been so principally opposed to the outsourcing of armed force, eventually gave in to emulation tendencies following the demands from the maritime shipping industry. Indeed, when explaining its decision to vote in-favor of the motion regarding the facilitation of PMSCs in the Dutch Senate, the Liberal Democratic Party (D66) stated that: 'almost all other seafaring EU countries have already taken this step' (translation by the author).³⁴⁴

Yet, the influence of the maritime industry goes even further. For instance, various self-regulatory efforts have directly influenced national legislation surrounding the use of PMSCs. Besides incorporating PMSC-representatives within its national delegation to the International Maritime Organization in 2011, the Marshall Islands have also adopted the *100 Series Rules* on the use of force

³³⁹ Eruaga, "Private Maritime Security Companies Within the International Legal Framework for Maritime Security," 197–99.

³⁴⁰ Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 42–45.

³⁴¹ Aarstad, "Maritime Security and Transformations in Global Governance," 318–21.

³⁴² Cusumano and Ruzza, "Security Privatisation at Sea," 92–94; Eugenio Cusumano and Stefano Ruzza, "Contractors as a Second Best Option: The Italian Hybrid Approach to Maritime Security," *Ocean Development & International Law* 46, no. 2 (April 3, 2015): 111–22, <https://doi.org/10.1080/00908320.2015.1024063>.

³⁴³ Åsne Kalland Aarstad, "Who Governs Norwegian Maritime Security? Public Facilitation of Private Security in a Fragmented Security Environment," *Cooperation and Conflict* 52, no. 2 (June 1, 2017): 269, <https://doi.org/10.1177/0010836716652425>.

³⁴⁴ Eerste Kamer der Staten-Generaal, "Stemming Wet ter Bescherming Koopvaardij (2018/2019 nr. 22),"

Eerste Kamer der Staten-Generaal, Maart 2019,

https://www.eerstekamer.nl/verslagdeel/20190319/wet_ter_bescherming_koopvaardij.

Original quote: 'De indieners en de minister hebben voor onze fractie overtuigend kunnen uitleggen dat vrijwel alle andere zeevarende EU-landen deze stap eerder hebben gezet...'

as an official standard for PMSCs operating on their nationally-flagged vessels.³⁴⁵ Thus effectively turning a soft-law initiative into a hard standard. Another influential example is, once again, the BMPs. Indeed, as a starting point, the BMPs are non-binding self-regulatory initiatives taken by the maritime industry to regulate the use of PMSCs. However, the BMPs have significantly influenced the national regulation surrounding the use of PMSCs in various flag states.³⁴⁶ In some cases, it can even be argued that by directly implementing the BMPs into their national regulation, certain flag states have transformed nonbinding self-regulatory initiatives into binding national legislation. For example, the Danish Ministry of Industry, Business, and Financial Affairs published a ministerial order (Bek.1084) in 2011 that announced that Danish-flagged vessels had to develop their counter-piracy procedures in accordance with the recommendations made by the most-recent BMPs of the maritime industry (article 8).³⁴⁷ While this is already significant, the ministerial order goes even further in article 13 which criminalizes the situation in which a shipowner does not follow the obligations set-out in said ministerial order. In other words, Danish shipowners could potentially get punished for not implementing the recommendations made by the BMPs, and thus by the maritime industry.³⁴⁸

Thus, following the demands and influence of the maritime industry including PMSCs themselves, flag states increasingly had to introduce new laws and regulations to facilitate the use of PMSCs. However, while it can be argued that this, therefore, illustrates the ultimate responsibility of states because the PMSCs eventually fall under national legislation, the law-making process was largely controlled by the maritime industry. Indeed, following the legal uncertainty and negligence by states, the initiative to regulate was taken by the private maritime industry itself forcing flag states to follow suit despite the established international norms discouraging the presence of firearms on-board civilian ships, the state monopoly of force, and the state's ultimate responsibility as the sole law-making entity. This process, therefore, illustrates both how PMSCs managed to undermine these established international norms and in turn significantly influence the evolving global governance surrounding the use of force at sea.

Conclusion: The Echoes of the Past

All told, the re-emergence and widespread proliferation of armed non-state actors through PMSCs has generated many consequences and challenges to both states and the more fundamental international norms underpinning the maritime security environment. The legal uncertainty surrounding the activities of PMSCs coupled with the inability/unwillingness of states to enforce the few legal instruments that do exist have led to a situation in which PMSCs are largely able to operate outside of state control and oversight. Moreover, as a result of mainly economic and commercial pressures, PMSCs in cooperation with the wider maritime industry have managed to dominate the narrative and take the initiative in the regulation of their own activities. This has significantly influenced both international as well as national legislation surrounding the facilitation of PMSCs. In doing so, PMSCs have been able to bypass states in the law- and norm-making process and seriously undermine established international norms

³⁴⁵ Cusumano and Ruzza, *Piracy and the Privatisation of Maritime Security*, 227; "The 100 Series Rules for the Use of Force," The Maritime Executive, December 5, 2012, <https://www.maritime-executive.com/article/the-100-series-rules-for-the-use-of-force>.

³⁴⁶ Feldtmann, "On-board Protection of Merchant Vessels from the Perspective of International Law," 216–17.

³⁴⁷ Erhvervsministeriet and Søfartsstyrelsen, "Bekendtgørelse om teknisk forskrift om forholdsregler til forebyggelse af pirateri og væbnede overfald på danske skibe," *Erhvervs og Vækstmin* BEK nr 1084/2011 (March 11, 2011), <https://www.retsinformation.dk/api/pdf/139401>; Feldtmann, "On-board Protection of Merchant Vessels from the Perspective of International Law"; Christian Frier, "Armed On-board Protection of Danish Vessels Authorisation and Use of Force in Self-defence in a Legal Perspective," *Erasmus Law Review* 11, no. 4 (2018): 221–32, <https://doi.org/10.5553/ELR.000129>.

³⁴⁸ Erhvervsministeriet and Søfartsstyrelsen, "Bekendtgørelse om teknisk forskrift om forholdsregler til forebyggelse af pirateri og væbnede overfald på danske skibe"; Feldtmann, "On-board Protection of Merchant Vessels from the Perspective of International Law," 216–17.

surrounding the state monopoly of force at sea, the presence of firearms on-board merchant vessels, and even the sovereignty of various coastal states.

Accordingly, similar to the past, PMSCs illustrate how state control at sea remains weak. Moreover, the very nature of the maritime domain, especially concerning the ability of merchant vessels to simply reflag themselves, makes state control even more difficult and confirms the notion of the sea as *res nullius* – a space where state sovereignty does not apply. Indeed, the paradox identified in the early-modern period concerning the outsourcing of armed force, therefore, also rings true regarding the use of PMSCs in the 21st-century: to maximize non-state actors' effectiveness, states need to minimize the constraints on their activities. In turn, minimal constraints mean limited state control and reduced state authority. Conversely, regulations designed to enhance state control reduce non-state actors' incentives to accept the risks entailed in the use of force. Yet, while states in the 19th-century increasingly tried to consolidate their power at sea, in the present-day, it seems that many of the current regulatory gaps may be partly intentional. It could be argued that many flag states generally accept a certain lack of control, showing a willingness to turn over some authority to these private actors. Indeed, while various flag states do make attempts to regulate PMSCs to a certain extent, it seems that they also do not want to disincentivize these companies or obstruct their work. As a result, similar to how the international norms surrounding the maritime warfare and security environment were turned against non-state actors during the mid-19th-century, this development could indicate a change of norms in favor of such non-state actors. With PMSCs increasingly playing a more established role in the maritime security environment of the 21st-century.

V. Conclusion

The study of history lies at the foundation of all sound military conclusions and practice.

– Alfred Thayer Mahan, 1890.³⁴⁹ –

Times have significantly changed since the start of the Somali piracy epidemic in 2008. While non-state actors would have been considered a severe violation of the international norms guiding the maritime warfare and security environment before 2008, in the present-day, PMSCs have become widely accepted actors within the maritime industry. An examination of the maritime security environment anno 2022 illustrates an increasingly mature private maritime security industry with PMSCs offering routine-like armed security services in the Gulf of Aden and the wider Indian Ocean region, while simultaneously trying to penetrate the security market in the Gulf of Guinea. Indeed, PMSCs have been able to rapidly expand their services despite the established norms guiding the maritime security environment such as the state monopoly of force and the absence of firearms on-board merchant vessels. International observers have therefore made headlines while talking about these ‘exceptional historical novelties.’ Yet, such claims expose a serious lack of historical awareness and lead to oversimplified conclusions that ignore important historical dynamics. As the opening quote by the influential maritime historian Alfred Thayer Mahan illustrates, the historical dimension is essential when analyzing the changing maritime security environment. Through in-depth historical analysis, it becomes clear how the employment of the private sector in maritime security has waxed and waned throughout the course of history, reflecting global-historical trends in the balance of role responsibilities between the private and public sectors. Accordingly, this thesis analyzed how PMSCs can be positioned within the larger historical record of maritime warfare and security; and what their emergence means and says about the international norms guiding the maritime security environment since 1856. The work, therefore, includes both maritime historical dimensions as well as maritime security dimensions.

Regarding the historical dimensions, during the three centuries preceding the influential Declaration of Paris in 1856, the maritime warfare and security environment was dominated by non-state actors such as privateers and mercantile companies who employed the use of force under sovereign authorization. Yet, over time, the increasing strength of states coupled with their wish to consolidate state control ultimately led to the decline of such non-state actors as these increasingly undermined state control through various unintended consequences, creating an incentive to monopolize the use of force and consolidate state authority over the maritime domain. Consequently, during the mid-19th-century, powerful states managed to change the centuries-long international norm surrounding the outsourcing of armed force at sea by replacing it with a new maritime security regime in which the monopoly of force became the guiding principle. However, as a result of the rising threat from Somali piracy in the early 21st-century coupled with the inadequate state responses, a security vacuum was created leading to a market gap that was quickly filled by commercially-motivated non-state actors who returned to the maritime warfare and security environment in the form of PMSCs.

Thus, are these PMSCs modern reincarnations of the non-state actors from the early-modern maritime warfare and security environment? While such simple analogies might be tempting, they overlook the respective historical contexts in which these non-state actors found themselves. Instead, it is more important to look at the dynamics underpinning the use of such non-state actors in the maritime warfare and security environment to identify historical trends. Accordingly, it becomes clear that the

³⁴⁹ A. T. Mahan, *The Influence of Sea Power upon History, 1660–1783*, Cambridge Library Collection - Naval and Military History (Cambridge: Cambridge University Press, 2010), <https://doi.org/10.1017/CBO9780511783289>.

dynamics underpinning the facilitation of both the non-state actors in the early-modern period as well as in the 21st-century are largely the same. First, in both cases, the outsourcing of armed force to non-state actors can often be related to governments and sovereigns facing escalating governance costs because of a (non-traditional) security threat while having their resources stretched thin. As a result, they are forced to resort to more cost-effective and market-based solutions such as privateers or PMSCs. Second, besides the often seriously lacking state capacities, the political will of states and sovereigns has also played an influential role in the decision to outsource the use of force to non-state actors in both early-modern as well as modern times. Especially when such non-state alternatives allow expensive and sophisticated military assets to focus on what are considered to be their core missions such as naval battles or freedom of navigation operations. Accordingly, the political will touches on the last dynamic which is related to the nature of the operations to which non-state actors typically lean themselves better than state alternatives, namely non-traditional security threats and asymmetric warfare. These are operations for which state assets are generally not optimized due to a significant asymmetry regarding the capabilities of the adversaries, including operations related to commerce-raiding, anti-piracy, illegal fishing, and maritime terrorism, among others. Thus, as a result of these similarities in the dynamics underpinning the outsourcing of armed force to such non-state actors, PMSCs can be positioned within a long line of non-state actors in the larger historical record of maritime warfare and security.

Similarly, such historical dynamics can be extended to the second dimension regarding the challenges to the established international norms surrounding the use of force at sea. Armed non-state actors disappeared in the mid-19th-century following the massive unintended consequences of practices like privateering coupled with the wish of powerful states to increasingly consolidate their authority at sea. This resulted in the establishment of new international norms surrounding the use of force at sea, such as the monopoly of force and the norm of keeping civilian vessels unarmed. These norms ultimately got enshrined in the various international conventions such as the *United Nations Convention on the Law of the Sea* (1982). Additionally, international regulatory bodies such as the International Maritime Organization emerged which attempt to govern the maritime domain on behalf of their member-states. As a result, the maritime security environment in which PMSCs emerged was inherently different from that in which early-modern non-state actors operated. Yet, the emergence of PMSCs created serious consequences and challenges to these established international norms guiding the maritime security environment. The legal uncertainty surrounding their employment, coupled with the inability of states to effectively monitor the activities of PMSCs, have allowed them to largely operate outside of state control and oversight. This includes both flag states, which have generally been unable to effectively control those non-state actors to whom they have authorized the use of force, and coastal states, which have seen their maritime sovereignty increasingly undermined by PMSCs. Moreover, in cooperation with the larger maritime industry, PMSCs have even been able to control the narrative and take over the initiative in the regulation of their own activities, which has eventually influenced both international and national legislation. Thus, PMSCs have managed to largely bypass the state in both their operation as well as their regulation, which seriously undermines the established international norms guiding the maritime security environment since the mid-19th-century.

As a result, the emergence and proliferation of PMSCs echo the challenges of the past. Like in the past, state control at sea is often weak and this has not necessarily changed. The limited physical visibility of the activities of PMSCs on the high seas, therefore, plays an important role as well. While the vessels themselves might officially be regarded as the territory of the flag state, whatever happens when the vessels transit international waters is ultimately isolated from public scrutiny. This makes it as difficult to monitor the activities of PMSCs today as it was during the era of the privateers. However, while powerful states in the mid-19th-century wished to further consolidate their power over the maritime domain, in the 21st-century, this seems to be turning around. In fact, as the paradox identified in both periods illustrates – to maximize non-state actors' effectiveness, states need to minimize the constraints on their activities – it seems that states are increasingly willing to hand over some of their

authority to these non-state actors. In the end, the use of PMSCs is ultimately underpinned by a wish to improve the security of people and goods at sea. The introduction of firearms on-board merchant vessels through PMSCs, therefore, illustrates a compromise solution, whereby the services offered by PMSCs in relation to non-traditional security threats are a result of both the lacking capacities and political will of states. In turn, this situation could suggest the development of a new norm in the maritime security environment in which non-state actors such as PMSCs once again become relevant stakeholders instead of exceptions to the rule. Indeed, while the use of PMSCs was initially considered an exception, its positive results in relation to Somali piracy strengthened its momentum and even led to praises from reluctant flag states. And while the employment of PMSCs might have declined since its peak in 2011, it is important to remember that the East India Company's private navy also ebbed and flowed following the trends in piracy. Indeed, when Somali piracy attacks declined in 2012, international observers quickly declared victory, insurance premiums fell, and the international naval presence declined. Accordingly, this might motivate cost-saving shipowners to cut security spending, relax anti-piracy measures, reduce transit speeds, and route their ships closer to the Somali coast to save on fuel. This would echo the developments of the mid-18th-century, when the East India Company let its guard down following a decline in pirate attacks, allowing piracy to flare up again. Following such trends, the services of PMSCs might gradually become a consolidated part of the maritime security environment.

These insights, therefore, bring us to some final remarks. Above all, when looking at the issue of piracy either in Somalia or in West Africa, history teaches us that the only real solution is on-land. Indeed, the East India Company's private naval force was only able to suppress the problem of piracy temporarily, as soon it reduced its forces, piracy flared up again. By looking at the use of PMSCs in maritime security, we are therefore mainly discussing repression. Instead, a more sustainable solution to the issue of piracy requires us to shift our focus towards human security: securing the livelihood of the people that are desperate enough to turn to piracy. This requires a carrot and stick approach, but rather than solely focusing on the stick, through the use of PMSCs and military patrols, international efforts should also be focused on providing incentives and alternatives for those people involved in piracy. Moreover, rather than merely using private solutions to protect shipping, while considering the fact that developed nations are reluctant to deploy troops on the ground in countries such as Somalia, there might also be opportunities for the private sector to provide assistance in capacity-building projects regarding local law-enforcement and counter-piracy efforts. The private industry has clearly demonstrated its resolve in addressing the threat of piracy at sea through PMSCs and the establishment of the Best Management Practices for the shipping industry, among other initiatives. If the private sector, therefore, provides alternatives to address challenges in areas that states are hesitant to operate in, policy barriers might have to be reevaluated, as we saw regarding the emergence of PMSCs. And while this would inevitably create a new round of judicial concerns, it would also present the international community with an opportunity to learn from the past and be proactive, instead of reactive, in its interaction with the private sector. Yet, it remains a question whether the private sector, including PMSCs in particular, would have an interest in doing so, as they ultimately profit from piracy.

While this thesis attempted to present a detailed analysis of the emergence of PMSCs in the maritime security environment to advance the academic debate by providing new historical insights into the scholarship surrounding both private and maritime security, it inevitably includes limitations that future research should address. First of all, when looking at the rise of PMSCs in the 21st-century, the work covers a relatively short timeframe, generally focusing on the period between 2007 and 2022 following the rise of Somali piracy. While this short timeframe already provides important evidence for the disruptive effect of PMSCs in relation to the established international norms governing the maritime security environment, future research should further confirm whether the emergence and proliferation of PMSCs forms an exception or precedent within the 21st-century maritime security environment. Moreover, another limitation within this work relates to the limited geographical scope. While the study included the most important aspects of piracy in Southeast Asia and the Gulf of Guinea, it mainly focused on Somali piracy due to its massive impact on the maritime industry. This focus was largely

related to time and space constraints but also to the fact that the rise of piracy in the Gulf of Guinea is a rather recent phenomenon, leading to a lack of available information. Moreover, both forms of piracy are inherently different from the pirate attacks taking place in the international waters off the coast of Somalia. As a result, future scholarship should devote more attention to the facilitation of PMSCs concerning these other pirated regions as well.

Finally, the thesis mainly looked at the use of PMSCs in relation to anti-piracy efforts, largely due to both the opaqueness of the sector regarding other maritime security threats and the prominence of PMSCs within this specific field of maritime security. Yet, future research should further focus on the use of PMSCs regarding other non-traditional security threats such as illegal fishing and maritime terrorism. Especially considering that states are increasingly refocusing their militaries and navies on traditional security. Accordingly, future research should generally dedicate more attention to the overall increase in the use of non-state actors by states in the maritime security domain. Examples include the use of commercial non-state assets such as fishing vessels and oil rigs by China in pursuit of geostrategic objectives in the South China Sea; and the increasing reliance by Greek and Italian coast guards on NGOs in relation to migrant rescue missions in the Mediterranean. As illustrated by this thesis, such analyses concerning the proliferation of non-state actors within maritime security provide important insights into the global-historical trends in the balance of role responsibilities between the private and public sectors in maritime security, international security, and global governance. Which not only contributes to key debates within the field of international relations but also to the historical consciousness at large.

Bibliography

Primary Sources

- “100 Series Rules: An International Model Set of Maritime Rules for the Use of Force (RUF),” 2013. Al Jazeera. “Global Cost of Somali Piracy ‘Halved’ in 2013.” Al Jazeera, May 7, 2014.
<https://www.aljazeera.com/news/2014/5/7/global-cost-of-somali-piracy-halved-in-2013>.
- Albaugh, Kurt. “The Return of the Privateers.” USNI News, June 16, 2012.
<https://news.usni.org/2012/06/15/return-privateers>.
- Ambrey. “Ambrey - Security: We Make It Our Business, to Protect Yours.” Ambrey, 2022.
<https://ambrey.com/security/>.
- . “Ambrey: Safety & Security.” Ambrey Security, 2022. <https://ambrey.com/wp-content/uploads/2022/02/AMBREY-Safety-Security.pdf>.
- Arnsforf, Isaac. “Ex-Marines Fighting Pirates as World Shipping Lanes Attacked.” *Bloomberg.Com*, October 18, 2011. <https://www.bloomberg.com/news/articles/2011-10-17/ex-royal-marines-fighting-somali-pirates-as-world-shipping-lanes-attacked>.
- Associated Press. “Clinton: U.S. Will Try to Seize Pirate Assets.” NBC News, April 15, 2009.
<https://www.nbcnews.com/id/wbna30231056>.
- BBC News. “Aukus: UK, US and Australia Launch Pact to Counter China,” September 16, 2021, sec. World. <https://www.bbc.com/news/world-58564837>.
- Banerji, Annie, and D. Jose. “Murder Trial of Italian Marines in India Navigates Murky Waters.” *Reuters*, June 10, 2013, sec. Top News. <https://www.reuters.com/article/india-italy-marines-idINDEE95900B20130610>.
- BBC News. “MV Seaman Guard Ohio: India Police Arrest Crew of US Ship.” *BBC News*, October 18, 2013, sec. India. <https://www.bbc.com/news/world-asia-india-24577190>.
- . “Piracy in West Africa: The World’s Most Dangerous Seas?” *BBC News*, June 18, 2019, sec. Africa. <https://www.bbc.com/news/world-africa-48581197>.
- Bellish, Jon. “Economic Cost of Somali Piracy 2012.” Working Paper. Broomfield, CO: Oceans Beyond Piracy | One Earth Future Foundation, 2013. <https://oneearthfuture.org/research-analysis/economic-cost-somali-piracy-2012>.
- Ben-Ari, Nirit. “Piracy in West Africa.” United Nations | Africa Renewal, November 19, 2013.
<https://www.un.org/africarenewal/magazine/december-2013/piracy-west-africa>.
- BIMCO. “GUARDCON.” Baltic and International Maritime Council, 2012.
<https://www.bimco.org/contracts-and-clauses/bimco-contracts/guardcon>.
- BIMCO, ICS, IGP&I Clubs, INTERTANKO, and OCIMF. “BMP5: Best Management Practices to Deter Piracy and Enhance Maritime Security in the Red Sea, Gulf of Aden, Indian Ocean and Arabian Sea.” BMP. Edinburgh: International Chamber of Shipping, June 2018.
<https://www.ics-shipping.org/publication/bmp5-hi-res-needs-further-compression-not-clear-on-date-only-one-available-is-for-a-related-file/>.
- Branovic, Željko. “The Privatisation of Security in Failing States - A Quantitative Assessment.” Occasional Paper. Geneva: Geneva Centre for the Democratic Control of Armed Forces (DCAF), April 2011.
https://ciaotest.cc.columbia.edu/wps/dcaf/0022680/f_0022680_18665.pdf.
- Brooks, Tim. “GCC Navies ‘Will Be Key to Fighting Pirates.’” *The National*, December 9, 2009.
<https://www.thenationalnews.com/uae/gcc-navies-will-be-key-to-fighting-pirates-1.484804>.
- Brown, James. “Pirates and Privateers: Managing the Indian Ocean’s Private Security Boom.” Report. Sydney: Lowy Institute for International Policy, September 12, 2012. Africa.
<https://apo.org.au/node/31014>.
- Bueger, Christian. “Zones of Exception at Sea: Lessons from the Debate on the High Risk Area.” Working Paper. The Lessons Learned Consortium of the Contact Group on Piracy Off the Coast of Somalia. Cardiff University, October 2015.
- Bush, Declan. “BIMCO Advises How to Hire Security Escort Vessels in Gulf of Guinea.” *Lloyd’s List*, December 2, 2021.
<https://lloydslist.maritimeintelligence.informa.com/LL1139164/BIMCO-advises-how-to-hire-security-escort-vessels-in-Gulf-of-Guinea>.

- Butler, James. *American Bravery Displayed, in the Capture of Fourteen Hundred Vessels of War and Commerce, since the Declaration of War by the President*. Carlisle: Printed by George Phillips (for the author), 1816. <http://online.canadiana.ca/view/oocihm.47881>.
- Combined Maritime Forces. “CTF 151: Counter-Piracy.” Combined Maritime Forces (CMF), September 17, 2010. <https://combinedmaritimeforces.com/ctf-151-counter-piracy/>.
- . “Maritime Security Transit Corridor (MSTC).” Combined Maritime Forces (CMF), September 18, 2017. <https://combinedmaritimeforces.com/maritime-security-transit-corridor-mstc/>.
- International Committee of the Red Cross (ICRC). “Declaration Respecting Maritime Law. Paris, 16 April 1856.” April 14, 1856. <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=473FCB0F41DCC63BC12563CD0051492D>.
- Defoe, Daniel. *A General History of the Pyrates*. Chelmsford: Courier Corporation, 1724.
- Department for Transport. “Interim Guidance for UK Flagged Shipping on the Use of Armed Guards.” GOV.UK, December 1, 2015. <https://www.gov.uk/government/publications/interim-guidance-to-uk-flagged-shipping-on-the-use-of-armed-guards-to-defend-against-the-threat-of-piracy-in-exceptional-circumstances/dddd>.
- . “Threat of Piracy: Use of Armed Guards on UK Flagged Vessels.” GOV.UK, December 6, 2011. <https://www.gov.uk/government/publications/interim-guidance-to-uk-flagged-shipping-on-the-use-of-armed-guards-to-defend-against-the-threat-of-piracy-in-exceptional-circumstances>.
- Department of Homeland Security (DHS). “The National Strategy for Maritime Security.” The White House | President George W. Bush, September 20, 2005. <https://georgewbush-whitehouse.archives.gov/homeland/maritime-security.html>.
- Dimascio, Jen. “Navy Aims to Protect Seas from Pirates.” Politico, October 2, 2008. <https://www.politico.com/story/2008/10/navy-aims-to-protect-seas-from-pirates-014185>.
- Dryad Global. “Floating Armouries.” Dryad Global, 2022. <https://dg.dryadglobal.com/floating-armouries-how-do-they-operate>.
- Eagar, Charlotte. “To Catch a Pirate: The British Ex-Servicemen Battling to Protect International Shipping from the Clutches of Somali Pirates.” Mail Online, December 20, 2011. <https://www.dailymail.co.uk/home/moslive/article-2071108/British-ex-servicemen-battling-protect-international-shipping-Somali-pirates.html>.
- Eerste Kamer der Staten-Generaal. “Stemming Wet ter Bescherming Koopvaardij (2018/2019 nr. 22).” Eerste Kamer der Staten-Generaal, Maart 2019. https://www.eerstekamer.nl/verslagdeel/20190319/wet_ter_bescherming_koopvaardij.
- Eisenhower, Dwight D. “President Dwight D. Eisenhower’s Farewell Address (1961).” National Archives | Washington DC, 1961. <https://www.archives.gov/milestone-documents/president-dwight-d-eisenhowers-farewell-address>.
- Erhvervsministeriet, and Søfartsstyrelsen. “Bekendtgørelse om teknisk forskrift om forholdsregler til forebyggelse af pirateri og væbnede overfald på danske skibe.” *Erhvervs og Vækstmin* BEK nr 1084/2011 (March 11, 2011). <https://www.retsinformation.dk/api/pdf/139401>.
- ESC. “Approved Flag States.” ESC Global Security, 2022. <https://escgs.com/services/maritime-security/anti-piracy-security-services-in-ior/approved-flag-states>.
- European Union External Action. “Home | EUNAVFOR.” EU Naval Force - Somalia Operation ATALANTA, 2022. <https://eunavfor.eu/>.
- Florquin, Nicolas. “Escalation at Sea: Somali Piracy and Private Security Companies.” In *Small Arms Survey 2012: Moving Target*. Small Arms and Armed Actors. Geneva: Cambridge University Press, 2012.
- Foreign & Commonwealth Office, and Henry Bellingham. “Tackling Piracy: UK Government Response.” GOV.UK, October 12, 2011. <https://www.gov.uk/government/speeches/tackling-piracy-uk-government-response>.
- Grotius, Hugo. *Hugo Grotius Mare Liberum 1609-2009: Original Latin Text and English Translation*. Brill, 2009.
- ICC - International Chamber of Commerce. “Gulf of Guinea remains world’s piracy hotspot in 2021, according to IMB’s latest figures,” April 14, 2021. <https://iccwbo.org/media-wall/news->

- speeches/gulf-of-guinea-remains-worlds-piracy-hotspot-in-2021-according-to-imbs-latest-figures/.
- Hart Maritime. “Maritime Security.” Hart International, March 26, 2016. <https://hartinternational.com/maritime-security/>.
- Hennis-Plasschaert, J.A. “Kabinetsstandpunt inzake Vessel Protection Detachments aan boord van Koninkrijksgevlagde koopvaardij schepen en aanvullende maatregelen.” Brief Regering. Beveiliging zeevaartroutes tegen piraterij. Den Haag: Tweede Kamer der Staten-Generaal, April 26, 2013. https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2013Z08833&did=2013D18128.
- Hooper, John. “Italian Cruise Ship Fends off Pirates with Gunfire.” *The Guardian*, April 26, 2009, sec. World news. <https://www.theguardian.com/world/2009/apr/26/italian-cruise-ship-pirates>.
- Humans At Sea. *Somali Pirates VS Ship’s Private Security Guards*, 2017. <https://www.youtube.com/watch?v=tpNpDM-enLw>.
- Hurlburt, Kaija, and D. Conor Seyle. “The Human Cost of Maritime Piracy 2012.” Research Report. Oceans Beyond Piracy | One Earth Future Foundation, June 1, 2013. <https://doi.org/10.18289/OBP.2013.001>.
- ICS. “Comparison of Flag State Laws on Armed Guards and Arms on Board.” International Chamber of Shipping, March 2021. <https://www.ics-shipping.org/wp-content/uploads/2021/03/Comparison-of-Flag-State-Laws-on-Armed-Guards-and-Arms-On-Board-2017.pdf>.
- IMB Piracy Reporting Centre. “Live Piracy Map.” International Chamber of Commerce, 2021. <https://www.icc-ccs.org/piracy-reporting-centre/live-piracy-map>.
- IMO. “Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.” United Nations, March 10, 1988. <https://treaties.un.org/doc/db/terrorism/conv8-english.pdf>.
- . “Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf.” International Maritime Organization. Accessed April 3, 2022. <https://www.imo.org/en/About/Conventions/Pages/SUA-Treaties.aspx>.
- . “International Convention for the Safety of Life at Sea (SOLAS).” International Maritime Organization, 1974. [https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-\(SOLAS\),-1974.aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-(SOLAS),-1974.aspx).
- . “Private Armed Security.” International Maritime Organization, 2019. <https://www.imo.org/en/OurWork/Security/Pages/Private-Armed-Security.aspx>.
- . “SOLAS XI-2 and the ISPS Code.” Maritime Security and Piracy. International Maritime Organization, 2019. <https://www.imo.org/en/OurWork/Security/Pages/SOLAS-XI-2%20ISPS%20Code.aspx>.
- International Chamber of Shipping. “BMP 4 – Best Management Practices for Protection against Somali Based Piracy.” BMP, August 2011. <https://www.ics-shipping.org/publication/bmp4-best-management-practices-for-protection-against-somali-based-piracy/>.
- . “BMP West Africa: Best Management Practices to Deter Piracy and Enhance Maritime Security off the Coast of West Africa Including the Gulf of Guinea.” BMP. International Chamber of Shipping, March 2020. <https://www.ics-shipping.org/publication/best-management-practices-to-deter-piracy-and-enhance-maritime-security-in-the-red-sea-gulf-of-aden-indian-ocean-and-arabian-sea/>.
- . “BMP2 - Best Management Practices to Deter Piracy off the Coast of Somalia and in the Arabian Sea Area.” BMP. Edinburgh: Witherby Seamanship International Ltd, August 2009.
- . “BMP3 - Best Management Practices to Deter Piracy off the Coast of Somalia and in the Arabian Sea Area.” BMP. Edinburgh: Witherby Seamanship International Ltd, June 2010.
- . “Piracy in West Africa 2020.” International Chamber of Shipping, 2020. <https://www.ics-shipping.org/current-issue/piracy-in-west-africa/>.
- International Law Commission. “Articles Concerning the Law of the Sea with Commentaries.” United Nations, 1956.
- International Maritime Bureau. “IMB Piracy Reporting Centre.” International Chamber of Commerce, 2021. <https://www.icc-ccs.org/piracy-reporting-centre>.

- . “Piracy and Armed Robbery Against Ships: Report for the Period January - December 2020.” Periodic Report. Piracy and Armed Robbery Against Ships. London: ICC International Maritime Bureau, 2020. https://www.icc-ccs.org/reports/2020_Annual_Piracy_Report.pdf.
- Katz, A. “Fighting Piracy Goes Awry With Killings of Fishermen.” *Bloomberg.Com*, September 16, 2012. <https://www.bloomberg.com/news/articles/2012-09-16/fighting-piracy-goes-awry-with-killings-of-fishermen>.
- Katz, Alan, and Michelle Wiese Bockmann. “Shooting to Kill Pirates Risks Blackwater Moment.” Global Policy Forum, May 8, 2012. <https://archive.globalpolicy.org/pmscs/51600-shooting-to-kill-pirates-risks-blackwater-moment.html>.
- Knight, David. “The World from Berlin: ‘Protection from Piracy Comes at a Price.’” *Der Spiegel*, August 26, 2011, sec. International. <https://www.spiegel.de/international/germany/the-world-from-berlin-protection-from-piracy-comes-at-a-price-a-782661.html>.
- Kronholm Fraende, Mette. “BIMCO Launches New Contract for Employment of Security Escort Vessels.” Baltic and International Maritime Council, December 2, 2021. <https://www.bimco.org/news/priority-news/20211202-bimco-launches-new-sev-guardcon-contract>.
- Maclay, Edgar Stanton. *A History of American Privateers*. New York: New York : D. Appleton and Co., 1899. <http://archive.org/details/cu31924028732604>.
- Mahan, A. T. *The Influence of Sea Power upon History, 1660–1783*. Cambridge Library Collection - Naval and Military History. Cambridge: Cambridge University Press, 2010. <https://doi.org/10.1017/CBO9780511783289>.
- Maidment, Neil, and Myles Neligan. “Exclusive - Security Firms Take up Arms against Pirates.” *Reuters*, November 21, 2011, sec. World News. <https://www.reuters.com/article/uk-g4s-pirates-idUKTRE7AK1LS20111121>.
- Maritime Safety Committee. “Interim Guidance to Private Maritime Security Companies Providing Privately Contracted Armed Security Personnel On Board Ships in the High Risk Area.” International Maritime Organization, May 25, 2012. <https://www.wcdn.imo.org/localresources/en/OurWork/Security/Documents/MSC.1-Circ.1443.pdf>.
- . “Report of the Maritime Safety Committee on Its Eighty-Seventh Session.” London: International Maritime Organization, May 24, 2005. https://www.dco.uscg.mil/Portals/9/DCO%20Documents/Marine%20Safety%20Center/Tonnage/Committee%20Docs/MSC_80-24_Report_of_the_MSC.pdf?ver=2017-06-20-121133-870.
- . “Report on Acts of Piracy and Armed Robbery Against Ships: Annual Report - 2008.” London: International Maritime Organization, March 19, 2009. <https://www.wcdn.imo.org/localresources/en/OurWork/Security/Documents/133-Annual2008.pdf>.
- . “Report on Acts of Piracy and Armed Robbery Against Ships: Annual Report - 2009.” London: International Maritime Organization, March 29, 2010. <https://www.wcdn.imo.org/localresources/en/OurWork/Security/Documents/152-Annual2009.pdf>.
- . “Report on Acts of Piracy and Armed Robbery Against Ships: Annual Report - 2011.” London: International Maritime Organization, March 1, 2012. https://www.wcdn.imo.org/localresources/en/OurWork/Security/Documents/180_Annual2011.pdf.
- . “Report on Acts of Piracy and Armed Robbery Against Ships: Annual Report - 2012.” London: International Maritime Organization, April 2, 2013. https://www.wcdn.imo.org/localresources/en/OurWork/Security/Documents/193_Annual2012.pdf.
- . “Revised Interim Guidance to Shipowners, Ship Operators and Shipmasters On The Use Of Privately Contracted Armed Security Personnel On Board Ships in the High Risk Area.” International Maritime Organization, September 16, 2011. http://docs.yasinskiy.net/books/imo-msc-circ/1405_1.pdf.

- . “Revised Interim Recommendations For Flag States Regarding The Use Of Privately Contracted Armed Security Personnel On Board Ships in the High Risk Area.” International Maritime Organization, September 16, 2011. <https://www.westpandi.com/globalassets/news/111003-msc-1---circ-1406---rev-1---revised-interim-recommendations-for-flag-states-on-the-use-of-pcasp.pdf>.
- . “Revised Interim Recommendations For Port And Coastal States Regarding The Use Of Privately Contracted Armed Security Personnel On Board Ships in the High Risk Area.” International Maritime Organization, May 25, 2012. <https://www.wcdn.imo.org/localresources/en/OurWork/Security/Documents/MS.C.1-Circ.1408-Rev1.pdf>.
- Neptune P2P Group. “Maritime Security & Security Risk Management,” 2022. <https://neptunep2pgroup.com/>.
- Ministerie van Algemene Zaken. “Wet ter bescherming van de Koopvaardij.” Scheepvaart en havens - Rijksoverheid.nl. Rijksoverheid.nl. Ministerie van Algemene Zaken, August 24, 2021. <https://www.rijksoverheid.nl/onderwerpen/scheepvaart-en-havens/wet-ter-bescherming-koopvaardij>.
- Ministerie van Algemene Zaken. “Wetsvoorstel om de koopvaardij te beschermen - Scheepvaart en havens.” Onderwerp. Rijksoverheid.nl. Ministerie van Algemene Zaken, August 24, 2021. <https://www.rijksoverheid.nl/onderwerpen/scheepvaart-en-havens/wet-ter-bescherming-koopvaardij>.
- Ministerie van Binnenlandse Zaken en Koninkrijksrelaties. Wet ter Bescherming Koopvaardij (2022). https://wetten.overheid.nl/BWBR0042278/2022-02-01/#Hoofdstuk1_Artikel3.
- Ministerie van Defensie. “Beveiliging koopvaardijsschepen tegen piraterij niet langer alleen door Defensie - Nieuwsbericht - Defensie.nl.” Nieuwsbericht. Ministerie van Defensie. Ministerie van Defensie, April 2, 2021. <https://www.defensie.nl/actueel/nieuws/2021/04/02/beveiliging-koopvaardijsschepen-tegen-piraterij-niet-langer-alleen-door-defensie>.
- Ministerie van Defensie. “Beveiligingsteams op schepen - Missie in Somalië - Defensie.nl.” Onderwerpen. Ministerie van Defensie. Ministerie van Defensie, November 21, 2017. <https://www.defensie.nl/onderwerpen/missie-in-somalie/beveiligingsteams-op-schepen>.
- . “Evaluatie van de inzet van VPD’s voor de begrotingsbehandeling in het najaar van 2012.” Kamerstuk. Den Haag: Tweede Kamer der Staten-Generaal, November 13, 2012. <https://zoek.officielebekendmakingen.nl/blg-193099>.
- NATO. “Operation OCEAN SHIELD.” Allied Maritime Command - NATO. Accessed March 15, 2022. <https://mc.nato.int/missions/operation-ocean-shield.aspx>.
- Nelson, Rick. “Combating Piracy: Challenges and Opportunities for Regional and Private-Sector Involvement.” Commentary. Home Security Program. Washington, DC: Center for Strategic & International Studies, June 20, 2012. <https://www.csis.org/analysis/combating-piracy-challenges-and-opportunities-regional-and-private-sector-involvement>.
- OCIMF. “Guidance for the Employment of Private Maritime Security Companies.” London: Oil Companies International Marine Forum, February 2022. <https://www.ocimf.org/publications/information-papers/guidance-for-the-employment-of-private-maritime-security-companies>.
- Pelz, Daniel. “Why Is Piracy Increasing on the Gulf of Guinea?” DW.COM, February 21, 2021. <https://www.dw.com/en/why-is-piracy-increasing-on-the-gulf-of-guinea/a-56637925>.
- Permanent Court of Arbitration. “The ‘Enrica Lexie’ Incident (Italy v. India).” Permanent Court of Arbitration, May 21, 2020. <https://pca-cpa.org/en/cases/117/>.
- Pigeon, Maisie, Emina Sadic, Sean Duncan, Chuck Ridgway, and Kelsey Soeth. “State of Maritime Piracy 2017: Assessing the Economic and Human Cost.” Report. Broomfield, CO: Oceans Beyond Piracy | One Earth Future Foundation, 2018. <https://oneearthfuture.org/research-analysis/state-maritime-piracy-2017>.
- Press, Associated. “No Somali Pirate Hijacking in Nearly a Year, Says UN.” *The Guardian*, May 3, 2013, sec. World news. <https://www.theguardian.com/world/2013/may/03/somali-pirate-hijacking>.
- France 24. “Private Security Firms Benefit from Piracy,” November 30, 2008. <https://www.france24.com/en/20081130-private-security-firms-benefit-piracy-somalia>.

- The Economist. "Privateers - Pirates Face a New Foe: A Private Navy," January 12, 2013. <https://www.economist.com/international/2013/01/12/privateers>.
- Protection Vessels International. "About Us." PVI. Accessed March 16, 2022. <https://www.pvilt.com/about-us/>.
- . "Security Escort Vessels." PVI, 2022. <https://www.pvilt.com/services/security-escort-vessels/>.
- Reuters. "Gambia Turns to Private Sector for Maritime Protection Patrols." *DefenceWeb* (blog), September 14, 2017. <https://www.defenceweb.co.za/security/maritime-security/gambia-turns-to-private-sector-for-maritime-protection-patrols/>.
- Reuters Staff. "Shippers Back Private Armed Guards to Beat Pirates." *Reuters*, February 15, 2011, sec. Somalia News. <https://www.reuters.com/article/shipping-piracy-idAFLDE71E1F520110215>.
- Rohan, Brian. "Germany Rejects Troop Boost to Protect Shippers." *Reuters*, April 7, 2011, sec. Financials. <https://www.reuters.com/article/piracy-germany-idUKLDE73622I20110407>.
- "Rome Statute of the International Criminal Court." International Criminal Court, July 17, 1998. <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>.
- Ronzitti, Natalino, ed. *The Law of Naval Warfare: A Collection of Agreements and Documents with Commentaries*. Dordrecht: Brill Nijhoff, 1988. <https://brill.com/view/title/9810>.
- Rubin, Alissa J., and Andrew E. Kramer. "Iraqi Premier Says Blackwater Shootings Challenge His Nation's Sovereignty." *The New York Times*, September 24, 2007, sec. Middle East. <https://www.nytimes.com/2007/09/24/world/middleeast/24iraq.html>.
- Sanders, Edmund, and Julian E. Barnes. "U.S. Ship Captain Held by Somali Pirates." *Los Angeles Times*, April 9, 2009. <https://www.latimes.com/archives/la-xpm-2009-apr-09-fg-somali-pirates9-story.html>.
- SCEG. "About SCEG." Security in Complex Environments Group (SCEG), December 2021. <https://www.sceguk.org.uk/about-sceg/>.
- Seagull Maritime. "Company Profile." Seagull Maritime Ltd., 2021. <https://seagullmaritimeltd.com/aboutus/company-profile>.
- Seper, Jerry. "Blackwater Joins Fight against Sea Piracy." *The Washington Times*, December 4, 2008. <https://www.washingtontimes.com/news/2008/dec/4/blackwater-joins-fight-against-sea-piracy/>.
- Siebels, Dirk. "Maritime Security in Africa: Potential for the Private Sector?" ETH Zurich: Center for Security Studies, February 24, 2015. <https://css.ethz.ch/en/services/digital-library/articles/article.html>.
- Small Arms Survey Geneva. "Stockpiles at Sea: Floating Armouries in the Indian Ocean." In *Small Arms Survey 2015: Weapons and the World*, 216–41. Small Arms Survey. Cambridge: Cambridge University Press, 2015. <https://doi.org/10.1017/CBO9781107323636.016>.
- Technical Committee. "ISO 28007-1:2015." ISO, 2015. <https://www.iso.org/cms/render/live/en/sites/isoorg/contents/data/standard/06/31/63166.html>.
- Ten Broeke, J.H., and A.A. van Eck. "Lijst van Vragen En Antwoorden over de Aanbieding van Het Beleidsstandpunt 'Bescherming Nederlandse Schepen Tegen Piraterij', Aangaande de Inzet van Gewapende Particuliere Beveiligers Aan Boord van Nederlandse Koopvaardij-schepen." Beveiliging Zeevaartroutes Tegen Piraterij. Den Haag: Tweede Kamer der Staten Generaal, May 27, 2016. <https://www.tweedekamer.nl/kamerstukken/detail?id=2016Z10334&did=2016D21437>.
- SAFETY4SEA. "The 100 Series Rules: An International Model Set of Maritime Rules for the Use of Force An Update," August 12, 2013. <https://safety4sea.com/the-100-series-rules-an-international-model-set-of-maritime-rules-for-the-use-of/>.
- The Maritime Executive. "The 100 Series Rules for the Use of Force," December 5, 2012. <https://www.maritime-executive.com/article/the-100-series-rules-for-the-use-of-force>.
- Thomas, Bobby. "Malacca Straits a 'War Risk Zone'? Llyod's Should Review Its Assessment." Commentary. Singapore: Institute of Defence and Strategic Studies, August 19, 2005. <https://www.rsis.edu.sg/rsis-publication/ids/718-malacca-straits-a-war-risk/#.YjHFbzUo9PY>.

- UNCTAD. "Review of Maritime Transport 2019." New York City: United Nations, November 1, 2019. https://unctad.org/system/files/official-document/rmt2019_en.pdf.
- United Nations Treaty Collection. "United Nations Convention on the Law of the Sea," December 10, 1982. https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en.
- United Nations Security Council. "In Race between Pirates and International Community, Pirates Clearly Winning, Secretary-General's Top Legal Adviser on Piracy Warns Security Council." United Nations | Meetings Coverage and Press Releases, January 25, 2011. <https://www.un.org/press/en/2011/sc10164.doc.htm>.
- . "Letter Dated 18 July 2011 from the Chairman of the Security Council Committee Pursuant to Resolutions 751 (1992) and 1907 (2009) Concerning Somalia and Eritrea Addressed to the President of the Security Council." Letter. New York City: United Nations, July 18, 2011. <https://www.undocs.org/Home/Mobile?FinalSymbol=S%2F2011%2F433&Language=E&DeviceType=Desktop&LangRequested=False>.
- . "Report of the Special Adviser to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia." Letter. New York City: United Nations, January 25, 2011. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/206/21/PDF/N1120621.pdf?OpenElement>.
- . "SC/10820: Delegations in Security Council Note Progress in Combating Piracy, but Warn 'Pirates Will Quickly Be Back in Their Skiffs' If Attention Diverted." United Nations | Meetings Coverage and Press Releases, November 19, 2012. <https://www.un.org/press/en/2012/sc10820.doc.htm>.
- . "Security Council Condemns Acts of Piracy, Armed Robbery Off Somalia's Coast, Authorizes for Six Months 'All Necessary Means' to Repress Such Acts." United Nations | Meetings Coverage and Press Releases, June 2, 2008. <https://www.un.org/press/en/2008/sc9344.doc.htm>.
- . "S/RES/1814(2008) | Security Council Resolution 1814 (2008) [on the Relocation of the UN Political Office for Somalia (UNPOS) from Nairobi to Somalia]." United Nations Digital Library, May 15, 2008. <https://digitallibrary.un.org/record/632004>.
- Van der Steur, G.A., M.H. Van Haegen-Maas Geesteranus, J.A. Hennis-Plasschaert, and A.G. Koenders. "Aanbieding van Het Beleidsstandpunt 'Bescherming Nederlandse Schepen Tegen Piraterij', Aangaande de Inzet van Gewapende Particuliere Beveiligers Aan Boord van Nederlandse Koopvaardij schepen - Beveiliging Zeevaartroutes Tegen Piraterij - Parlementaire Monitor." Brief Regering. Beveiliging Zeevaartroutes Tegen Piraterij. Den Haag: Tweede Kamer der Staten Generaal, December 21, 2015. <https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vk01hsgzdqzt>.
- Van Ginkel, Bibi, Frans-Paul Van der Putten, and Willem Molenaar. "State or Private Protection against Maritime Piracy? A Dutch Perspective." Clingendael Report. The Hague: Clingendael, February 2013. <https://www.clingendael.org/publication/state-or-private-protection-against-maritime-piracy>.
- Wikimedia Commons, and Planemad. *Map Showing the Extent of Somali Pirate Attacks on Shipping Vessels between 2005 and 2010*. December 2010. Attack Locations: NGA - Maritime Safety Information https://msi.nga.mil/NGAPortal/MSI.portal?_nfpb=true&_pageLabel=msi_portal_page_65. https://commons.wikimedia.org/wiki/File:Somalian_Piracy_Threat_Map_2010.png.

Secondary Literature

- Aarstad, Åsne. "Maritime Security and Transformations in Global Governance." *Crime, Law and Social Change* 67 (April 1, 2017). <https://doi.org/10.1007/s10611-016-9656-0>.
- Aarstad, Åsne Kalland. "Who Governs Norwegian Maritime Security? Public Facilitation of Private Security in a Fragmented Security Environment." *Cooperation and Conflict* 52, no. 2 (June 1, 2017): 261–79. <https://doi.org/10.1177/0010836716652425>.
- Anderson, Gary M., and Jr Adam Gifford. "Privateering and the Private Production of Naval Power." *Cato Journal* 11, no. 1 (1991): 99–122.
- Avant, Deborah. "The Implications of Marketized Security for IR Theory: The Democratic Peace, Late State Building, and the Nature and Frequency of Conflict." *Perspectives on Politics* 4, no. 3 (2006): 507–28.
- Avant, Deborah D. *The Market for Force: The Consequences of Privatizing Security*. Cambridge: Cambridge University Press, 2005. <https://doi.org/10.1017/CBO9780511490866>.
- Avant, Deborah, and Lee Sigelman. "Private Security and Democracy: Lessons from the US in Iraq." *Security Studies* 19, no. 2 (May 21, 2010): 230–65. <https://doi.org/10.1080/09636412.2010.480906>.
- Bevilacqua, Giorgia. "Armed On-board Protection of Italian Ships: From an Apparent Hybrid Model to a Regulated Rise of Private Contractors." *Erasmus Law Review* 11, no. 4 (2018): 247–57. <https://doi.org/10.5553/ELR.000108>.
- Bueger, Christian, and Timothy Edmunds. "Beyond Seablindness: A New Agenda for Maritime Security Studies." *International Affairs (London)* 93, no. 6 (2017): 1293–1311. <https://doi.org/10.1093/ia/iix174>.
- Carafano, James Jay. *Private Sector, Public Wars: Contractors in Combat-- Afghanistan, Iraq, and Future Conflicts*. Westport: Greenwood Publishing Group, 2008.
- Chatterjee, Aditi. "Non-Traditional Maritime Security Threats in the Indian Ocean Region." *Maritime Affairs: Journal of the National Maritime Foundation of India* 10, no. 2 (July 3, 2014): 77–95. <https://doi.org/10.1080/09733159.2014.972669>.
- Cheney-Peters, Scott. "Whither the Private Maritime Security Companies of South and Southeast Asia?" *CIMSEC - Center for International Maritime Security* (blog), April 16, 2014. <https://cimsec.org/whither-the-pmscs/>.
- Coase, R. H. "The Lighthouse in Economics." *The Journal of Law & Economics* 17, no. 2 (1974): 357–76.
- Colás, Alejandro, and Bryan Mabee. *Mercenaries, Pirates, Bandits and Empires: Private Violence in Historical Context*. London: Hurst, 2010.
- Cullen, Patrick, and Claude Berube. *Maritime Private Security: Market Responses to Piracy, Terrorism and Waterborne Security Risks in the 21st Century*. Abingdon-on-Thames: Taylor & Francis Group, 2012. <http://ebookcentral.proquest.com/lib/uunl/detail.action?docID=957374>.
- Cusumano, Eugenio. "The Scope of Military Privatisation: Military Role Conceptions and Contractor Support in the United States and the United Kingdom." *International Relations* 29, no. 2 (June 1, 2015): 219–41. <https://doi.org/10.1177/0047117814552142>.
- Cusumano, Eugenio, and Christopher Kinsey. "Bureaucratic Interests and the Outsourcing of Security: The Privatization of Diplomatic Protection in the United States and the United Kingdom." *Armed Forces & Society* 41, no. 4 (October 1, 2015): 591–615. <https://doi.org/10.1177/0095327X14523958>.
- Cusumano, Eugenio, and Stefano Ruzza. "Contractors as a Second Best Option: The Italian Hybrid Approach to Maritime Security." *Ocean Development & International Law* 46, no. 2 (April 3, 2015): 111–22. <https://doi.org/10.1080/00908320.2015.1024063>.
- . *Piracy and the Privatisation of Maritime Security: Vessel Protection Policies Compared*. London: Palgrave Macmillan, 2020. <https://doi.org/10.1007/978-3-030-50156-3>.
- . "Security Privatisation at Sea: Piracy and the Commercialisation of Vessel Protection." *International Relations* 32, no. 1 (March 1, 2018): 80–103. <https://doi.org/10.1177/0047117817731804>.

- . “United States Antipiracy Policies: Between Military Missions and Private Sector Responsabilization.” In *US Foreign Policy in a Challenging World: Building Order on Shifting Foundations*, edited by Marco Clementi, Matteo Dian, and Barbara Pisciotta, 63–81. Cham: Springer International Publishing, 2018. https://doi.org/10.1007/978-3-319-54118-1_4.
- Dutton, Yvonne. “Gunslingers on the High Seas: A Call for Regulation.” *Duke Journal of Comparative & International Law* 24, no. 1 (October 1, 2013): 107–60.
- Eboli, Valeria, and Jean Paul Pierini. “The ‘Enrica Lexie Case’ and the Limits of the Extraterritorial Jurisdiction of India.” *I Quaderni Europei* 39, no. 2 (March 1, 2012): 2–27.
- Eruaga, Osatohanmwon Anastasia. “Private Maritime Security Companies Within the International Legal Framework for Maritime Security.” In *Maritime Law in Motion*, edited by Proshanto K. Mukherjee, Jr. Mejia Maximo Q., and Jingjing Xu, 175–206. Cham: Springer International Publishing, 2020. https://doi.org/10.1007/978-3-030-31749-2_10.
- Farrell, Theo. “Constructivist Security Studies: Portrait of a Research Program.” *International Studies Review* 4, no. 1 (March 1, 2002): 49–72. <https://doi.org/10.1111/1521-9488.t01-1-00252>.
- Feldtmann, Birgit. “On-board Protection of Merchant Vessels from the Perspective of International Law.” *Erasmus Law Review* 11, no. 4 (2018): 209–20. <https://doi.org/10.5553/ELR.000128>.
- Feldtmann, Birgit, Christian Frier, and Paul Mevis. “Introduction by the Guest Editors - On-board Protection of Merchant Vessels against Piracy: Models of Regulation.” *Erasmus Law Review* 11, no. 4 (2018): 206–8. <https://doi.org/10.5553/ELR.000133>.
- Frier, Christian. “Armed On-board Protection of Danish Vessels Authorisation and Use of Force in Self-defence in a Legal Perspective.” *Erasmus Law Review* 11, no. 4 (2018): 221–32. <https://doi.org/10.5553/ELR.000129>.
- . “Armed On-board Protection of Danish Vessels Authorisation and Use of Force in Self-defence in a Legal Perspective.” *Erasmus Law Review* 11, no. 4 (2018): 221–32. <https://doi.org/10.5553/ELR.000129>.
- Hall, William Edward, and Charlotte Higgins. *A Treatise on International Law*. Oxford: Clarendon Press, 1924.
- Hillmann, Henning, and Christina Gathmann. “Overseas Trade and the Decline of Privateering.” *The Journal of Economic History* 71, no. 3 (2011): 730–61.
- Isenberg, David. “The Rise of Private Maritime Security Companies.” Cato Institute, May 26, 2012. <https://www.cato.org/publications/commentary/rise-private-maritime-security-companies>.
- Kashubsky, Mikhail. “Protecting Offshore Oil and Gas Installations: Security Threats and Countervailing Measures.” *Journal of Energy Security*, 2013.
- Kinsey, Christopher, and Malcolm Hugh Patterson. *Contractors and War: The Transformation of United States’ Expeditionary Operations*. Stanford: Stanford University Press, 2012.
- Kruck, Andreas. “Theorising the Use of Private Military and Security Companies: A Synthetic Perspective.” *Journal of International Relations and Development* 17 (January 1, 2014). <https://doi.org/10.1057/jird.2013.4>.
- Kumar, K. “Asymmetric Threats and Their Challenges to Freedom of Navigation.” *World Maritime University Dissertations*, Marine Environmental & Ocean Management, January 1, 2010. https://commons.wmu.se/all_dissertations/421.
- Leander, Anna. *Commercialising Security in Europe: Political Consequences for Peace Operations*. London: Routledge, 2013.
- Lieberthal, Kenneth G. “The American Pivot to Asia.” Brookings Institute, December 21, 2011. <https://www.brookings.edu/articles/the-american-pivot-to-asia/>.
- Liss, Carolin. *Assessing Contemporary Maritime Piracy in Southeast Asia: Trends, Hotspots and Responses*. Vol. 125. PRIF Reports. Frankfurt am Main: Peace Research Inst. Frankfurt, 2014.
- . “PMSCs in Maritime Security and Anti-Piracy Control.” In *Routledge Handbook of Private Security Studies*. Routledge, 2015.
- . “Private Military and Security Companies in Maritime Security Governance,” 193–213, 2013. https://doi.org/10.1057/9781137334428_10.
- . “Privatization of Maritime Security in Southeast Asia.” In *Private Military and Security Companies: Chances, Problems, Pitfalls and Prospects*, edited by Thomas Jäger and Gerhard

- Kümmel, 135–48. Wiesbaden: VS Verlag für Sozialwissenschaften, 2007.
https://doi.org/10.1007/978-3-531-90313-2_9.
- . “(Re)Establishing Control? Flag State Regulation of Antipiracy PMSCs.” *Ocean Development & International Law* 46, no. 2 (April 3, 2015): 84–97.
<https://doi.org/10.1080/00908320.2015.1024057>.
- Low, Charles Rathbone. *History of the Indian Navy: (1613-1863)*. R. Bentley and son, 1877.
- Mack, Andrew. “Global Political Violence: Explaining the Post-Cold War Decline.” *Coping with Crisis*. New York City: International Peace Institute, 2007.
- Mahan, Alfred Thayer. *Sea Power in Its Relations to the War of 1812*. Vol. 2. Cambridge Library Collection - Naval and Military History. Cambridge: Cambridge University Press, 2011.
<https://doi.org/10.1017/CBO9780511793523>.
- Malkin, H.W. “The Inner History of the Declaration of Paris.” *British Yearbook of International Law* 8 (1927).
- Marin, Jasenko, Mišo Mudrić, and Robert Mikac. “Private Maritime Security Contractors and Use of Lethal Force in Maritime Domain.” In *The Future of the Law of the Sea: Bridging Gaps Between National, Individual and Common Interests*, edited by Gemma Andreone, 191–212. Cham: Springer International Publishing, 2017. https://doi.org/10.1007/978-3-319-51274-7_10.
- McFate, Sean. *The Modern Mercenary: Private Armies and What They Mean for World Order*. Oxford, New York: Oxford University Press, 2017.
- Meegdenburg, Hilde van. “‘We Don’t Do That’: A Constructivist Perspective on the Use and Non-Use of Private Military Contractors by Denmark.” *Cooperation and Conflict* 54, no. 1 (March 1, 2019): 25–43. <https://doi.org/10.1177/0010836718765901>.
- Mitchell, Sommer. “Becoming Legitimate: How PMSCs Are Seeking Legitimacy in the International System.” PhD Dissertation, University of South Florida, 2017.
- Nevers, Renée de. “Sovereignty at Sea: States and Security in the Maritime Domain.” *Security Studies* 24, no. 4 (October 2, 2015): 597–630. <https://doi.org/10.1080/09636412.2015.1103132>.
- Ortiz, Carlos. “Overseas Trade in Early Modernity and the Emergence of Embryonic Private Military Companies.” In *Private Military and Security Companies: Chances, Problems, Pitfalls and Prospects*, edited by Thomas Jäger and Gerhard Kümmel, 11–22. Wiesbaden: VS Verlag für Sozialwissenschaften, 2007. https://doi.org/10.1007/978-3-531-90313-2_1.
- Osnin, Noor Apandi. “Private Maritime Security Company (PMSC) in the Strait of Malacca.” *WMU Journal of Maritime Affairs* 5, no. 2 (October 1, 2006): 195–206.
<https://doi.org/10.1007/BF03195104>.
- Percy, Sarah. *Mercenaries: The History of a Norm in International Relations*. Oxford: Oxford University Press, 2007. <https://doi.org/10.1093/acprof:oso/9780199214334.001.0001>.
- Pingeot, Lou. “Private Military and Security Companies.” In *The Oxford Companion to International Relations*. Oxford University Press, 2014.
<http://www.oxfordreference.com/view/10.1093/acref/9780199738878.001.0001/acref-9780199738878-e-279>.
- Pitney Jr, John J., and John-Clark Levin. *Private Anti-Piracy Navies: How Warships for Hire Are Changing Maritime Security*. Lanham: Lexington Books, 2013.
- Priddy, Alice, and Stuart Casey-Maslen. “Counter-Piracy Operations by Private Maritime Security Contractors: Key Legal Issues and Challenges.” *Journal of International Criminal Justice* 10, no. 4 (September 25, 2012): 839–56. <https://doi.org/10.1093/jicj/mqs057>.
- Quốc Tiến, Lê, and Cuong Nguyen. “Impact Of Piracy on Maritime Transport and Technical Solutions for Prevention.” *International Journal of Civil Engineering and Technology* 10 (January 1, 2019): 958–69.
- Richard, Theodore T. “Reconsidering the Letter of Marque: Utilizing Private Security Providers against Piracy.” *Public Contract Law Journal* 39, no. 3 (2010): 411–64.
- Salomon, Tim R. “Armed On-board Protection of German Ships (and by German Companies).” *Erasmus Law Review* 11, no. 4 (2018): 233–46. <https://doi.org/10.5553/ELR.000131>.
- Scheimer, Michael. “Separating Private Military Companies from Illegal Mercenaries in International Law: Proposing an International Convention for Legitimate Military and Security Support the

- Reflects Customary International Law.” *American University International Law Review* 24, no. 3 (2009): 609–46.
- Shearer, David. *Private Armies and Military Intervention*. 1st ed. New York City: Routledge, 1998.
- Singer, Peter Warren. *Corporate Warriors: The Rise of the Privatized Military Industry*. Ithaca: Cornell University Press, 2004.
- Spearin, Christopher. “Mercenaries, Privateers, and Chartered Companies.” In *Private Military and Security Companies and States: Force Divided*, edited by Christopher Spearin, 57–88. New Security Challenges. Cham: Springer International Publishing, 2017. https://doi.org/10.1007/978-3-319-54903-3_3.
- . *Private Military and Security Companies and States: Force Divided*. New York City: Springer International Publishing, 2017.
- . “Private Military and Security Companies v. International Naval Endeavours v. Somali Pirates: A Security Studies Perspective.” *Journal of International Criminal Justice* 10, no. 4 (September 1, 2012): 823–37. <https://doi.org/10.1093/jicj/mqs030>.
- . “Promising Privateers?: Understanding the Constraints of Contemporary Private Security at Sea.” *Naval War College Review* 67, no. 2 (2014): 97–116.
- . “Sea Power and PMSCs.” In *Private Military and Security Companies and States: Force Divided*, edited by Christopher Spearin, 127–68. New Security Challenges. Cham: Springer International Publishing, 2017. https://doi.org/10.1007/978-3-319-54903-3_5.
- Spencer, Warren F. “The Mason Memorandum and the Diplomatic Origins of the Declaration of Paris.” In *Diplomacy in an Age of Nationalism: Essays in Honor of Lynn Marshall Case*, edited by Nancy N. Barker and Marvin L. Brown, 44–66. Dordrecht: Springer Netherlands, 1971. https://doi.org/10.1007/978-94-010-3002-1_6.
- Starkey, David J. “Privateering.” In *The Oxford Encyclopedia of Maritime History*. Oxford University Press, 2007. <http://www.oxfordreference.com/view/10.1093/acref/9780195130751.001.0001/acref-9780195130751-e-0667>.
- Struwe, Lars Bangert. “Private Security Companies (PSCs) as a Piracy Countermeasure.” *Studies in Conflict & Terrorism* 35, no. 7–8 (July 1, 2012): 588–96. <https://doi.org/10.1080/1057610X.2012.684660>.
- Sumida, Jon. “Alfred Thayer Mahan, Geopolitician.” *Journal of Strategic Studies* 22, no. 2–3 (June 1, 1999): 39–62. <https://doi.org/10.1080/01402399908437753>.
- Symmons, Clive R. “Embarking Vessel Protection Detachments and Private Armed Guards on Board Commercial Vessels: International Legal Consequences and Problems under the Law of the Sea.” *Military Law and Law of War Review* 51 (2012): 21.
- Tabarrok, Alexander. “The Rise, Fall, and Rise Again of Privateers.” *The Independent Review* 11, no. 4 (2007): 565–77.
- The Cambridge History of the British Empire: British India, 1497-1858*, Ed. by H.H. Dodwell. Cambridge University Press, 1929.
- Thomas, James H. “Merchants and Maritime Marauders: The East India Company and the Problem of Piracy in the Eighteenth Century.” *The Great Circle* 36, no. 1 (2014): 83–107.
- Thomson, Janice E. *Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe*. *Mercenaries, Pirates, and Sovereigns*. Princeton: Princeton University Press, 1996. <https://doi.org/10.1515/9781400821242>.
- Wright, Thomas. “The Return to Great-Power Rivalry Was Inevitable.” Brookings Institute, September 12, 2018. <https://www.brookings.edu/opinions/the-return-to-great-power-rivalry-was-inevitable/>.