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**Privatising Anti-Piracy Services in
Strategically Important Waterways:
Risks, Challenges and Benefits**

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Privatising Anti-Piracy Services in Strategically Important Waterways: Risks, Challenges and Benefits

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Privatising Anti-Piracy Services in Strategically Important Waterways: Risks, Challenges and Benefits

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Introduction

In the past few years, an increasing number of Private Security Companies (PSCs – also sometimes referred to as Private Military Companies, PMCs) have emerged offering and conducting Anti-Piracy Services. These companies offer services in addition to security provided by states and their government agencies. PSCs are today hired to provide anti-piracy services in different parts of the world, but mostly in strategically important waterways where piracy is a serious security concern. This paper examines the employment of PSCs in two such waterways, namely the Malacca Straits and the Gulf of Aden, and discusses the risks, challenges and benefits of privatising maritime security.

Privatising Anti-piracy Services

Since the end of the Cold War, it has become increasingly clear that many (non-traditional) security threats, such as terrorism, transnational crime or environmental degradation, cannot be addressed by individual states and their national agencies alone. As a result, the lines between national and international security have become blurred and security challenges are today met by a range of diverse state and non-state actors. For example, multi-lateral institutions, such as the UN or NATO, have become more and more involved in addressing security threats, but have often encountered operational difficulties. Furthermore, a range of private and other non-state actors have emerged as part of the new security landscape and play an important role in conflict and disaster zones as well as in responses to criminal and radical politically motivated acts. One example of these new private actors is PSCs.

Most PSCs have emerged in the past 20 years, offering a vast menu of military and security services. The rise of PSCs can be attributed to a range of interconnected factors. First, PSCs operating around the world emerged as part of a much wider process of privatisation of public services and state sector enterprises, including, for example, education, healthcare and the supply of utilities such as water and electricity. This process was part of the neo-liberal revolution, which aimed to extend the assumptions of neo-classical economics into general policy prescriptions; hence, privatisation in tandem with trade liberalisation, deregulation and fiscal austerity became core policy foci.¹

Other political and geo-strategic factors also played a role in the rise of the private military industry. Most important among them are the global and national changes in both politics and security generated by the end of the Cold War, including the changing nature of conflict after 1989 and the downsizing of major armies, particularly so in the former Soviet

¹ See: Christopher Colclough and James Manor, *States or Markets? Neoliberalism and the Development Policy Debate*, Oxford: Clarendon Press, 1991. Garry Rodan, Richard Robison and Kevin Hewison (eds), *The Political Economy of South-East Asia, Second Edition*, Melbourne: Oxford University Press, 2001. John Harriss, *Depoliticising Development*, London: Anthem Press, 2002. Joseph Stiglitz, *Globalisation and Its Discontents*, Camberwell: Penguin, 2002.

Union but also in the US and Britain. The latest increase in demand for PSC services is linked to the War against Terrorism, including the conflict in Iraq.²

The demand for private military and security services around the world comes in part from the maritime sector. Indeed, PSCs are today employed to secure the world's oceans, or more precisely, commercial vessels, yachts, cruise ships, offshore energy installations, container terminals and ports. To address these security challenges, PSCs offer a wide range of services. These include risk and vulnerability assessment and consulting for ship owners and port operators, training of naval and maritime security forces, insurance fraud and cargo crime investigation and protection of offshore oil platforms against rebel or terrorist attacks in politically volatile regions.

Most companies active in the maritime sector also offer a range of anti-piracy services, ranging from risk consulting to the recovery of hijacked vessels. Not all companies, however, offer all anti-piracy services, with some solely providing risk consulting or vessel tracking. Yet most PSCs seem to offer many or most of the major anti-piracy services, namely:

- Risk Assessment and Consulting
- Training of Crews, Port Authority Personnel or Military and Law Enforcement Units, and Vessel Tracking
- Provision of (Armed) Guards onboard Vessels or Vessel Escorts
- Crisis Response, Investigation and Recovery of Hijacked Vessels and Cargoes, and the rescue of Kidnapped Crewmembers
- Fisheries Protection and Protection of Fishers against Poachers and Pirates

PSCs, therefore, offer preventive as well as post-attack services, addressing all types of pirate incidents on commercial vessels and pleasure crafts. For example, hit-and-run robberies, maybe even attacks by pirate syndicates, may be prevented through better training of the crew or the presence of guards onboard a vessel. Shipowners whose vessels have been hijacked can on the other hand rely on crisis management assistance during the event, or employ a company to relocate or recover the ship or stolen cargo.

Many PSCs offering anti-piracy and other maritime services are part of, or linked to, either larger PSCs or transnational corporations outside the security industry. Many of the larger companies that offer anti-piracy services are based in the US and Great Britain, with a number of them having offices around the world. Moreover, a number of smaller companies have been established in regions where demand for anti-piracy services is high, including Southeast Asia where piracy has been a concern over past decades. One example is *Background Asia*, with headquarters in Singapore.³

² Singer, *Corporate Warriors*, pp. 50-3. James L. Taulbee, 'Mercenaries, Private Armies and Security Companies in Contemporary Policy', in Daniel N. Nelson and Laura Neack (eds), *Global Society in Transition. An International Politics Reader*, The Hague: Kluwer Law International, 2002, p. 87. Deborah Avant, 'Think Again: Mercenaries', *Foreign Policy*, July/August 2004, http://www.foreignpolicy.com/story/cms.php?story_id=2577, accessed 1 September 2004. David Isenberg, 'Corporate Mercenaries. Part 1: Profit Comes with a Price'.

³ Carolin Liss, 'Private Security Companies in the Fight against Piracy in Asia' 2005, Working Paper no. 120, Asia Research Centre, Murdoch University, <http://wwwarc.murdoch.edu.au/wp/wp120.pdf>, 13 November 2005. Carolin Liss, 'The Privatisation of Maritime Security - Maritime Security in Southeast Asia: Between a rock and a hard place?', *Working Paper 141*, Asia Research Centre, Murdoch University, February 2007,

However, anti-piracy services in general and armed services in particular have so far not been a major business for PSCs, particularly when compared to the services provided in Iraq. One of the most important reasons why PSCs have not done major business in this area is that pirate attacks have so far not occurred on a scale that would have - in the eyes of shipowners or other clients - justified the considerable extra expense of hiring PSCs. The exception is the employment of PSCs to conduct anti-piracy services in strategically significant waterways where pirate attacks on merchant vessels occur frequently, most notably the Malacca Straits and the Gulf of Aden.

The Malacca Straits and the Gulf of Aden: Pirates, States and PSCs

Both, the Malacca Straits and the Gulf of Aden are strategically important waterways and play a significant role in international trade. The Malacca Straits which connects the Indian Ocean with the South China Sea is one of the busiest waterways in the world, with more than 60,000 merchant vessels transiting the waterway each year. Tankers carrying oil from the Middle East to countries such as China and Japan, which rely heavily on imported oil, are just some of the vessels passing through the straits each day.⁴ The Gulf of Aden is also of vital strategic importance, with more than 20,000 vessels travelling between Europe and the Middle East, Asia and Australia passing through the area every year.⁵

Both waterways are consequently congested and particular care is required in navigation, forcing vessels to reduce speed to ensure safe passage. These conditions are favourable for pirates, as they can approach the slow moving targets in their speed boats without too much difficulty. In fact, at certain point in time over the past decades, both waterways have been identified as piracy hot-spots. While the scale of pirate attacks differs in these two waterways, pirates in both areas are predominantly operating from one country – the weakest of the littoral states. In the Malacca Straits, the majority of pirates are based in Indonesia, while sea robbers from Somalia are mainly responsible for attacks in the Gulf of Aden.

There are, however, also major differences between the two waterways and their respective littoral states, which shape the character of pirate attacks. Southeast Asian countries, including those bordering the Malacca Straits, have comparatively stable governments and have in recent decades experienced rapid economic development. Due to their economic success in the first half of the 1990s, Southeast Asian countries were able to strengthen and modernise their defence forces, including their navies. In 1997, the expansion and modernisation of military forces in Southeast Asia slowed due to the Asian financial crisis. However, most local economies, as well as military spending, recovered within a few years. In addition, after September 11, 2001, some countries in the region, including the

<http://wwwarc.murdoch.edu.au/wp/wp141.pdf>. Carolin Liss, 'Southeast Asia's Maritime Security Dilemma: State or Market?', *Japan Focus*, 8 June 2007, available at: <http://japanfocus.org/products/details/2444>.

⁴ On its website, the Malaysian Marine Department publishes the numbers of vessels transiting the Malacca Straits from 1999 to 2004. In this period, the number increased from 43,964 in 1999 to 63,636 in 2004. See: Marine Department Malaysia, 'Mandatory Ship Reporting System in the Straits of Malacca and Singapore', <http://www.marine.gov.my/service/index.html>, accessed 22 June 2007.

⁵ Sarah Smiles, 'Navy Plans Pirate Fight', *Age*, 9 January 2009, <http://www.theage.com.au/national/navy-plans-pirate-fight-20090108-7cw7.html>, accessed 13 January 2009.

Philippines and Indonesia, received substantial financial assistance and training from the U.S. to strengthen the capacities of their militaries and police forces to combat terrorism. Furthermore, while navies still play an important role in safeguarding national waters and responding to criminal activities, they increasingly share these tasks with government agencies such as the marine police or coast guards, many of which were established after the end of the Cold War in Southeast Asia.⁶

Despite the economic growth of Southeast Asian countries, their comparatively stable political situation and the build-up of operational government forces, piracy remains a problem in some water areas, including (until recently) the Malacca Straits. Indeed, since the early 1970s incidences of piracy have been a concern in Southeast Asia, with pirate attacks ranging from simple hit-and-run robberies to hijackings of vessels.⁷ In the early 1990s the waters of the Malacca and Singapore Straits have been identified as the most pirate-infested in Southeast Asia and at the beginning of the 21st century high numbers of attacks were once again reported from the Malacca Straits. The attacks in the straits were a matter of concern, because incidents of a serious nature, including the kidnapping of crew for ransom, have been conducted in this area.⁸ To address the piracy problem, governments responded over the past years by tightening control and increasing patrols in the Malacca Straits area. As a result, the number of pirate attacks in the Malacca Straits dropped since 2005.⁹

The situation in the Gulf of Aden area differs significantly. The piracy problem in the waters off the Horn of Africa stems largely from the political instability of Somalia. The country has often been described as a failed state, and has had no effective government in place since 1991. Indeed, after the end of the Cold War, the country's central government collapsed and Somalia has been ruled by a succession of varying coalitions of politicians and local warlords. With weapons widely available, armed conflict and violence has been a constant component of 'politics' in Somalia. Famine and other natural and manmade disasters have been a further long-term burden for the country's population. The long internal conflict in Somalia combined with natural disasters have left the country devastated. Hundreds of thousands of people have lost their lives and an estimated 2.5 million are in urgent need of assistance. Since January 2006 alone, an estimated 1.1 million people have been displaced in

⁶ Sam Bateman, 'Asean's Tiger Navies', *Jane's Navy International* 102.3 (1997), n. p. David Capie, 'Between a Hegemon and a Hard Place: The US 'War on Terror' and Southeast Asian-US Relations', *Pacific Review*, vol 17, no 2, pp.229-36. Sheldon W. Simon, 'Asian Armed Forces: Internal and External Tasks and Capabilities', in Sheldon W. Simon (ed), *The Many Faces of Security*, Lanham: Rowman & Littlefield Publishers, 2001, p. 51. Carolin Liss, 'Southeast Asia's Maritime Security Dilemma: State or Market?', *Japan Focus*, 8 June 2007, <http://japanfocus.org/products/details/2444>.

⁷ Warren, James Francis (2001) 'A Tale of Two Centuries: The Globalisation of Maritime Raiding and Piracy in Southeast Asia at the End of Eighteenth and Twentieth Centuries', Paper presented at KITLV Jubilee Workshop, Leiden, 14-16 June, pp. 13-17. Carolin Liss, 'Maritime Piracy in Southeast Asia and Bangladesh, 1992-2006: A Prismatic Interpretation of Security', PhD Thesis, Murdoch University, 2008.

⁸ Michael Stehr, *Piraterie und Terror auf See. Nicht-Staatliche Gewalt auf den Weltmeeren 1990 bis 2004.*, Berlin: Verlag Dr. Koester, 2004, pp. 58-9. The Malaysian Transport minister Chan Kong Choy recently stated that less than 0,01% of vessels passing through the Malacca Straits are attacked. Marcus Hand, 'Malaysian Backlash at Malacca Risk Call', *Lloyds List*, 13 July 2005, n. p.

⁹ ICC International Maritime Bureau, 'Piracy and Armed Robbery Against Ships, Annual Report 1 January-31 December 2007', London, January 2008, p.5.

Somalia, with many seeking refuge in neighbouring countries.¹⁰ Given the political instability, authorities in Somalia are unable to secure shipping in their waters. Indeed, local authorities, as far as they exist and function, often have more pressing issues to address.

The waters off the coast of Somalia therefore did not remain trouble free. Indeed, the world's most blatant pirate attacks are currently taking place off the country's coast. In the past 12 months alone, more than 100 ships were attacked in this dangerous area. These attacks included more than 40 hijackings of merchant and fishing vessels, with the pirates receiving millions of US dollars in ransom money for kidnapped crew and hijacked ships. Among the vessels attacked by pirates were the Ukrainian freighter *La Faina*, carrying 33 combat tanks and other weaponry, which was hijacked on the 25 September 2008, and the super tanker *Sirius Star*, taken in mid-November. The *Sirius Star*, a new ship worth approximately US\$150 million, is the largest vessel ever taken by pirates and was carrying a cargo of crude oil with a value of US\$100 million at the time of attack. While the *Sirius Star* has been released in January 2009 after a ransom of reportedly US\$3 million was paid, the hijacking of the super tanker clearly demonstrated the capacity of the Somali sea-robbers to attack ships of any size.¹¹

When attacks on vessels off the coast of Somalia became more frequent and serious in nature, international concern about the safety of ships and crews passing the Horn of Africa grew. As a result, nations from around the world have sent warships to combat piracy in the area. Among the warships and personnel patrolling the area have been ships from the US, Canada, Britain, Germany, France, Russia, Malaysia, China and India. Many of these vessels are part of missions sanctioned or organised by multilateral organisations, including NATO and the EU.¹² However, attacks in recent weeks, such as the hijacking of the tanker *Sea Princess II* on January 2, show that current efforts to combat piracy in the region are not sufficient to prevent major attacks – despite the involvement of naval forces from countries around the world.¹³

¹⁰ International Crisis Group, 'Conflict History: Somalia', updated September 2008, http://www.crisisgroup.org/home/index.cfm?action=conflict_search&l=1&t=1&c_country=98, accessed 20 November 2008. Mohammed Ibrahim, 'Insurgents in Somalia Take Over Police Posts', *New York Times*, 4 January 2009, <http://www.nytimes.com/2009/01/04/world/africa/04somalia.html?partner=rss&emc=rss>, accessed 7 January 2009. 'Ethiopia Begins Somalia Pullout', BBC News, 2 January 2009, <http://news.bbc.co.uk/2/hi/africa/7808495.stm>, accessed 18 January 2009. Ibid. Alex Perry, 'The Suffering of Somalia', *Time Online*, 13 November 2008, <http://www.time.com/printout/0,8816,1858874,00.html>, accessed 20 November 2008. Daniela Krosiak and Andrew Stroehlein, 'Oh my Gosh, Pirates!', *International Herald Tribune*, 28 April 2008, <http://www.ihf.com/bin/printfriendly.php?id=12399900>, accessed 30 April 2008.

¹¹ 'Pirate boat destroyed after new raid', Australian, 20 November 2008. Llanesca T. Panti, '[Somali Pirates Release Philippine Ship and Crew](#)', Manila Times, 14 January 2009, <http://www.manilatimes.net/national/2009/jan/14/yehey/metro/20090114met1.html>, accessed 15 January 2009. Office of Naval Intelligence, 'Worldwide Threat to Shipping Mariner Warning Information', Civil Maritime Analysis Department, United States, 8 January 2009.

¹² Petra Sorge, 'Alliierte gehen ohne Deutschland auf Piratenjagd', *Spiegel Online*, 27 Oktober 2008, <http://www.spiegel.de/politik/ausland/0,1518,druck-584554,00.html>, accessed 28 October 2008. North Atlantic Treaty Organisation, Somalia: Successful completion of NATO Mission Operation Allied Provider' 12 December 2008, <http://www.reliefweb.int/rw/rwb.nsf/db900SID/JBRN-7M9K2N?OpenDocument>, accessed 17 January 2009.

¹³ 'Pirate boat destroyed after new raid', Australian, 20 November 2008. Llanesca T. Panti, 'Somali Pirates Release Philippine Ship and Crew', Manila Times, 14 January 2009, <http://www.manilatimes.net/national/2009/jan/14/yehey/metro/20090114met1.html>, accessed 15 January 2009.

Despite these differences in the scale and nature of pirate attacks in the Malacca Straits and the Gulf of Aden and the differences in government responses to these incidents, PSCs have been hired in both waterways to conduct anti-piracy services. For example, in the Malacca Straits, *Background Asia* has supplied escort vessels for tankers and the Australian based PSC Counter *Terrorism International (CTI)* has provided protection for a tug and a vessel, with the latter departing from an oil rig and travelling through the straits.¹⁴ PSCs have also been hired to protect ships in the Gulf of Aden area. A German shipowner has, for instance, employed the British based company *DRUM Resources* to provide ex-navy personnel to safe guard his vessels with non-lethal weapons, paying about US\$50,000 for the service. The company is reportedly protecting at least two vessels each week in this area, sending between four to eight ex-Royal Marines to watch over a vessel.¹⁵ A second PSC active off the Horn of Africa is the British based company *Eos*, which uses non-lethal weapons and deterrence methods, such as the greasing or electrifying of hand rails and the installation of barbed wire in vulnerable parts of ships, to protect vessels.¹⁶

PSCs: Problems and Controversies

The involvement of PSCs in Iraq and other countries gave rise to a number of concerns about the nature of services provided by these companies. These concerns mostly centre on the lack of transparency and public oversight of operations and business practices of PSCs and whether the protection of national security and the provision of military services should remain within the domain of governments, rather than the profit motivated private sector.¹⁷ These concerns have been fuelled by reports of scandals surrounding the work conducted by a number of PSCs. Allegations include overcharging, the prolonging of conflict in order to increase their own profits, the unnecessary and irresponsible use of violence and involvement in criminal activities.¹⁸

The employment of PSCs in the maritime sector in the Malacca Straits and the Gulf of Aden could lead to similar problems and concerns, which may emerge as a result of the internal set-up and structures of PSCs and the nature of services they provide, particularly the employment of armed PSC personnel.

Office of Naval Intelligence, 'Worldwide Threat to Shipping Mariner Warning Information', Civil Maritime Analysis Department, United States, 8 January 2009.

¹⁴ David Boey, 'Ship Owners Using Hired Guns. Guards Provide Anti-piracy Security for Vessels in Regional Waters', *Straits Times*, 8 April 2005, p. 3. Author's Interview.

¹⁵ Barbara Hans, 'Reeder ruesten gegen Piraten-Attacken'. Barbara Hans, 'Experten setzen Schmierfett zur Piratenabwehr ein', *Spiegel Online*, 20 November 2008, <http://www.spiegel.de/panorama/justiz/0,1518,druck-591393,00.html>, accessed 21 November 2008.

¹⁶ 'Private Security Firms Join Battle against Somali Pirates', *Fox News*, 26 October 2008, http://www.foxnews.com/printer_freindly_story/0,3566,444103,00.html accessed 21 November 2008.

¹⁷ International Consortium of Investigative Journalists, 'Making a Killing. The Business of War', Center for Public Integrity, 2003, <http://www.publicintegrity.org/bow/>, accessed 24 November 2003. Chapter 1, p.1.

¹⁸ One of the better-known examples is the involvement of *DynCorp* employees in the trade and rape of woman and children in Bosnia and Kosovo in 2000. See: International Consortium of Investigative Journalists, 'Making a Killing. The Business of War'. Chapter 2, p. 10.

Company structure and set-up

Many of the more crucial problems and controversies surrounding PSCs' anti-piracy services stem from the organisation and characteristics of the companies themselves. In interviews with PSC employees, most commented on the large number of PSCs now offering maritime related services and questioned the ability of the majority of these companies to actually deliver what they promise and conduct successful operations. In fact, there have been PSC operations that have (at least partly) failed. One example is the unsuccessful attempt by three PSC guards to prevent a pirate attack on a tanker off Somalia. Despite the presence of the unarmed guards who worked for *Anti-Piracy Maritime Solutions*, a PSC with headquarters in Britain, pirates were able to climb onboard in broad daylight. Aware that they were unable to protect the tanker, the guards jumped overboard leaving the vessel with the pirates and crew onboard behind. The guards were rescued by a German navy helicopter.¹⁹

The rising number of PSCs offering maritime related services can be in part attributed to the fact that it is comparatively simple and inexpensive to set up such an enterprise. Many companies active in the maritime sphere only consist of a limited number of permanent staff, an office and usually, an impressive presence on the Internet. These companies hire additional personnel and acquire necessary equipment on a case-by-case basis, once a contract with a client is signed, which allows the companies to run their business with limited expenses and capital. While this arrangement can be beneficial for a client – as resources are bought and staff hired specifically for the client's needs – it also allows companies to rapidly dissolve and recreate themselves if need be.²⁰ It also allows the establishment of PSCs by a wide variety of players.

Similarly, information concerning the companies past and present activities, the company itself and the people they hire if required is usually sparse. The majority of PSCs operating in the maritime sector seem to be founded and staffed by ex-military or ex-law enforcement personnel, with the credentials and reputation of the company often linked to past military experiences of its founding members and employees. Therefore, most companies advertise to employ former members of elite Special Forces from around the globe, with 'vast experience'. Whether or not this experience is in the maritime sector or related to the services and tasks for which they are hired – including, for example, knowledge about the vulnerabilities of a ship – is often unclear. To bridge this information gap and to win a potential client's trust companies go to great length to stress the high moral standing of their employees. Descriptions such as 'of good character' or 'men with highly tested character' are often used.

PSCs often rely on an impressive presence on the internet to promote their services. Yet the lack of information about companies' track records and real experiences in the services they advertise is a characteristic common to all PSCs operating in the maritime sector. All stress on their web pages that the services and operations they conduct for a client remain confidential. While this is understandable in some cases, it offers companies the easy

¹⁹ Mike Pflanz, 'British Crew Jump Overboard as Pirates Hijack Another Tanker off Somalia', Telegraph, 28 November 2008, <http://www.telegraph.co.uk/news/worldnews/piracy/3533644/British-crew-jump-overboard-as-pirates-hijack-another-tanker-off-Somalia.html>, accessed 1 December 2008.

²⁰ This is also the case for PSCs offering non-maritime related services. See: Singer, *Corporate Warriors*, pp. 73-5.

option of claiming to have conducted a wide range of services, as no one is able to verify the information given. One example that comes to mind is the vast number of companies claiming to be experienced in, or claiming to have recovered, hijacked vessels. While a vessel can be anything from a rubber dinghy to a super tanker, the number of hijacked vessels would be enormous if all these claims were true. Furthermore, the lack of information about PSCs track records is also an indicator for another, maybe more serious, problem. PSCs conduct their operations for a specific client and are bound to follow their client's interests. If a hijacked vessel for example is recovered, information about the hijacking and the culprits is only given to local authorities with the client's consent.²¹ Therefore, if the client has no interest in, or does not believe it fruitful to inform law enforcement agencies, the perpetrators are left untouched and are able to continue their line of business.

PSC Services

The role played by PSCs in the maritime sphere is twofold, with some practical, ethical, technical and legal problems associated with both roles. First, statements, reports and risk assessments produced by PSCs regarding maritime security threats have increasingly impacted on decision-making processes of governments and businesses, as well as the formation of opinion in the public sector. PSC personnel, for example, are regularly interviewed by the mainstream media and PSC security assessments find their way into newspapers and other news reports. Employees of PSCs have, for instance, commented widely on piracy in the waters off Somalia and have suggested solutions to reduce the number of pirate attacks, such as the employment of PSCs.²² It has to be understood, however, that by relying on political risk analysis reports and comments from PSCs, one relies on information provided in many cases by the very companies that sell solutions to security threats. It is therefore important to keep in mind that PSCs are primarily commercial enterprises, aiming at producing financial profit for the company and its shareholders. The secrecy surrounding the work of PSCs and the methods of research they employ, resulting in difficulties for outsiders to verify the information presented in PSCs reports, are a further problem.²³

Second, a number of companies provide services that are in the realm of militaries and local law enforcement agencies. PSC employees conducting such work are often armed with firearms, making regulation and oversight of PSC operations an important issue. Oversight of PSCs in the Malacca Straits, the Gulf of Aden and other water areas is crucial to ensure that that violence is not used excessively, that PSCs operate within national and international law, and that controversial 'incidents' involving PSCs comparable to those which occurred in Iraq, will be avoided.

The use of guns by PSC employees makes the risk of unnecessary or irresponsible use of firepower a possibility. In fact, weapons in the hands of guards on a commercial cargo

²¹ Author's Interview with Joe Corless, Operations Director, Gray Page Limited. Interview by author, BalticExchange, London, 23 June 2004.

²² One example is: 'Private Security Firms Join Battle against Somali Pirates', *Fox News*, 26 October 2008, http://www.foxnews.com/printer_freindly_story/0,3566,444103,00.html accessed 21 November 2008.

²³ For a more detailed discussion see: Liss, 'Private Security Companies in the Fight against Piracy in Asia'. Liss, 'The Privatisation of Maritime Security - Maritime Security in Southeast Asia: Between a rock and a hard place?'. Liss, 'Southeast Asia's Maritime Security Dilemma: State or Market?'

vessels or a tanker can have devastating consequences if handled in a careless or inconsiderate, over-eager fashion. Representatives of the International Maritime Organisation (IMO) and various other maritime organisations have pointed out that armed escorts may in fact escalate an already volatile situation and that a shoot-out on an oil or chemical tanker could be disastrous.²⁴ Fishermen can also become targets of ‘trigger-happy’ guards, as their vessels are often difficult to distinguish from pirate vessels. Similar problems to those associated with PSC operations in Iraq are therefore a possibility. Proponents of the use of armed guards on board vessels have, however, argued that PSC services at sea differ significantly from PSC operations on land. For example, comparing PSC operations in Iraq with anti-piracy services off Somalia, John Harris, CEO of *HollowPoint Protective Services*, a US based PSC pointed out that:

Our purpose is singular in nature. We provide protection for vessels, their crews and cargo. Unlike the situation in Iraq where Blackwater is involved in both peacekeeping and protection activities, we only respond to attacks on the vessels we protect. Our agents are highly trained to repel attacks with the utmost regard for the safety and security of the vessels and crews.²⁵

However, not only do PSCs active in Iraq also claim to employ only highly trained professionals but the work they conduct, such as the protection of convoys and people travelling through Iraq, is comparable. While killing innocent ‘bystanders’ (crewmembers or fishermen, for example, on the sea) may be less likely at sea, the possible escalation of violence resulting in disastrous consequences (such as damage to a tanker), is a concern on land and at sea. Furthermore, a problem with the employment of PSCs has been that they are only, or mostly, concerned with the safety of people or assets they protect. As Harris explained, his employees will respond to attacks with “the utmost regard for the safety and security of the vessels and crews”. The use of excessive violence is, however, often the result of the single minded protection of PSC clients, with little consideration shown for those not paying for the company’s services.

Furthermore, the lack of oversight and accountability of PSCs has caused concern. Indeed, one way of reducing the risk of excessive or irresponsible use of violence is the regulation of PSCs to ensure that they comply with national and international laws. This, however, is easier said than done, particularly in the maritime sphere, where operations often take place at sea, either in international or national waters. Clearly, reputable PSCs have to act within the legal boundaries set by multilateral bodies and the states they are operating in. This can be a difficult and complex task as a vessel does not only move between various states and jurisdictions, using the right of innocent passage, but also sails under the flag of yet another state. The question of whether or not ships are allowed to carry armed personnel therefore depends on the one hand on the location of the ship because rules and regulations regarding the bearing and use of weapons by private companies vary from country. Vessels

²⁴ ‘Armed Guards not the Answer to Pirate Threat: Expert’ ABC News, 19 November 2008, <http://www.abc.net.au/news/stories/2008/11/19/2423600.htm> , accessed 21 November 2008. Malakunas, Karl (2005) ‘Armed escorts in high demand on sea’, *Peninsula*, <http://www.thepeninsulaqatar.com/features/featuredetail.asp?file=mayfeatures102005.xml>, accessed 13 May 2005.

²⁵ “‘Ships Need Armed Guards,’ Says Security Firm Chief”, *Maritime Global Net*, 20 October 2008, <http://www.mgn.com/news/dailystorydetails.cfm?storyid=9283>, accessed 23 November 2008.

also have to comply with the laws of the vessel's flag state. In fact, in December 2008, the IMO's Maritime Safety Committee recommended that flag states should work with shipowners to design policies on carrying armed PSC personnel on ships.²⁶ Japanese owners of vessels flying Japanese colours, for instance, have to comply with Japanese laws and approach the Japanese ship register if changes to the policy are required.

Furthermore, given that the involvement of PSCs in protecting vessels is a comparatively new phenomenon many countries do not have sufficient and effective regulations in place. In fact, examples from areas where armed PSC personnel have been employed to protect ships show that these companies often operate in a somewhat grey legal zone. When asked about their operations in the Malacca Straits, for example, PSC employees from various companies have stated in interviews with the author that in most cases the Indonesian and/or Malaysian authorities are informed about planned operations, either through a liaison officer or a personal contact. In the process money changes hands and the company receives 'permission' to conduct its work, even though not always in writing. These 'permissions' to operate in Indonesian or Malaysian waters are, however, not the same as official permits issued by governments.²⁷ PSC operations involving armed guards in the Malacca Straits have consequently been controversial, sparking outcries from Malaysian and Indonesian government representatives.

The employment of PSC personnel in the waters off Somalia is similarly complicated in terms of regulations and is also ultimately more dangerous. Indeed, even though newspapers have reported that officials in Puntland have welcomed the employment of PSCs in Somali waters, the question is how much weight these statements carry. What is needed are appropriate laws and regulations governing the use of foreign armed personnel in Somali waters. Such regulations need, for example, to clarify whether or not PSC personnel can be brought to justice and held responsible for their actions if they operate in an irresponsible manner. Furthermore, approval from officials from the semiautonomous region of Puntland, or even the central government, may not be sufficient to ensure that the presence of armed PSC personnel will not lead to more violence. Somalia's recent history clearly shows the lack of effective government control over parts of the country, the divisions between the various warlords and the armed groups, all of whom are engaged in the 'politics' of the country.²⁸ Whether or not such armed groups and warlords look at the involvement of PSCs favourably is uncertain. Some may, however, oppose the idea that "Western" PSCs are getting involved in "their country" (or preventing them from getting funds/payoffs from pirate attacks). In a worst case scenario, the presence of PSC personnel could therefore trigger violence and armed clashes between such groups and PSC personnel.

²⁶ Sandra Speares, 'IMO Calls for Policy on Arming Vessels', *Lloyds List*, <http://www.lloydslist.com/ll/news/viewArticle.htm?articleId=20017597485&src=rss>, accessed 10 December 2008.

²⁷ Liss, 'Southeast Asia's Maritime Security Dilemma: State or Market?'. Carolin Liss, 'The Role of Private Security Companies in Securing the Malacca Straits', *Maritime Studies*, 157, November/December 2007, pp. 14-22.

²⁸ Some Islamists groups have already reportedly already become involved in addressing piracy. "Islamisten bereiten Angriff auf Piraten vor", *Spiegel Online*, 22 November 2008, <http://www.spiegel.de/panorama/0,1518,592118,00.html>, accessed 23 November 2008.

Hiring a PSC? The Role of the Client

Piracy in the Gulf of Aden, and to a lesser degree in the Malacca Straits is a problem for ship and cargo owners, insurance companies and other parties with interests in international shipping. Clearly, PSCs find work in these areas because their clients believe that government agencies are unable to provide sufficient security and to handle cases, such as investigations into hijackings, in the victim's interest. Difficulties in dealing effectively with sometimes corrupt government authorities (without paying bribes), are a further incentive to hire a PSC. Indeed, the employment of a private company promises the use of highly experienced and motivated individuals, working solely in the client's interest.

Another incentive to hire PSCs at present is the unprecedented number of serious pirate attacks in the Gulf of Aden. Indeed, while the scale of pirate attacks in the past has often not justified the costs incurred by hiring a PSC, the current situation in the waters off the horn of Africa may warrant the additional expenses. The risk of being targeted in these waters is at present perceived to be so high that some major shipping companies have decided to reroute their vessels, which now have to sail past the Cape of Good Hope, adding an additional 12 to 20 days to the journey. This will incur significant extra costs for shipowners and, ultimately, consumers. Insurance rates for vessels passing the critical area are also increasing. Furthermore, the costs incurred in actual hijacking are unprecedented. Negotiations with pirates can take months and the amount of ransom paid for vessels can be as high as several million US dollars. While the attacks may not threaten world shipping as such, the scale of the attacks may indeed make the extra costs for PSC services justifiable for ship and cargo owners. Additionally, arrangements have reportedly been made between insurance companies and at least one PSC, promising discounted premiums for those vessels protected by guards from the security company.²⁹ A further incentive to hire PSCs in the Gulf of Aden is the active encouragement from within the US administration and military to pay for protection services, admitting that the multinational patrols cannot effectively protect shipping.³⁰

However, as discussed above, there are a number of problems and controversial issues inherent in the private maritime security industry of which clients' of PSCs need to be aware. These include problems with PSCs working practices, the nature of services provided as well as the general lack of oversight and accountability of such companies. These problems can prevent potential clients from hiring PSCs and can make it difficult for customer to choose which company to employ. It is indeed important for clients to employ a reliable PSC because the consequences of hiring an unreliable company can be problematic at best or disastrous at worst – not only for the client. A ship owner, for example, has to trust a company to have sufficient knowledge of the laws and regulations governing the company's operations and to choose the right kind of people to be employed as armed guards on one of his vessels in order to avoid accidents and excessive use of violence.

This indicates that clients indeed play a critical role. In fact, studies by scholars such as Deborah Avant have found that the client's willingness to operate according to

²⁹ 'Private Security Firms Join Battle against Somali Pirates', *Fox News*, 26 October 2008, http://www.foxnews.com/printer_freindly_story/0,3566,444103,00.html accessed 21 November 2008.

³⁰ Thom Shanker, 'U.S. Urges Merchant Ships to Try Steps to Foil Pirates', *New York Times*, 20 November 2008, <http://www.nytimes.com/2008/11/20/washington/20military.html> , accessed 21 November 2008.

international values (including respect for human rights and the rule of law) and promote the responsible and proper use of force makes a crucial difference in the employment of PSCs. If clients insist on work in accordance with international values and local and international laws, PSCs will (most likely) comply.³¹ One example how clients can make a difference comes from Southeast Asia: A company³² active in this region provides armed guards to protect merchant vessels from pirates and/or terrorists and gives its customers the choice to employ either western personnel or individuals from Asia familiar with the use of weapons. The second option is not only cheaper, but has an additional advantage. In case such a PSC guard is killed in a shootout with pirates, his body can be thrown overboard and if found, will most likely be identified as a pirate, resulting in no delays for the vessel or legal problems for its owner.³³ International values or laws are clearly not present in the second option, but the choice is left with the client, who has to make a conscious effort (and pay additional money) to ensure that the PSC operates in accordance with international laws and values.

The 'right' choice may be particularly hard to make when employing PSCs to conduct anti-piracy services because the maritime sphere (maybe more than most other environments) offers incentives for clients of PSCs to disregard, or at least not insist on operations in accordance with, international laws and standards. To start with, PSC operations in areas such as the Malacca Straits are semi-legal at best, with payments to local navies and law enforcement agencies the norm. Most of such operations are therefore not conducted according to national or international laws or standards. Furthermore, PSC services that are conducted at sea often take place out of sight of authorities or (locatable) witnesses. It is consequently particularly difficult to hold PSC employees responsible for their actions. This lack of accountability of PSCs may facilitate or even encourage operations that are not conducted in line with international values and national and international laws.

Conclusion

PSCs are today hired in strategic waterways such as the Malacca Straits and the Gulf of Aden to protect ships from pirate attacks. However, there are a number of problems and controversial issues inherent in the private maritime security industry. Most controversial is the employment of armed PSC personnel either onboard merchant vessels or on escort ships. While the presence of such armed personnel may prevent attacks, it could also escalate already volatile situations. The employment of armed guards could, for example, enhance the likelihood of armed conflict or spark an arms race between the two sides, increasing the risk for seafarers.³⁴ With the employment of armed guards already a reality, improved regulation and oversight of companies operating in the Gulf of Aden, the Malacca Straits and other water areas is needed.

Given these problems and controversies, potential clients should choose the PSC they wish to employ carefully. The choice is particularly difficult because the problem of limited

³¹ Deborah D. Avant, *The Market for Force. The Consequences of Privatising Security*, Cambridge: Cambridge University Press, 2005, p.74.

³² Please note that the PSC in question here is NOT one of the companies mentioned earlier in this paper.

³³ Author's Interview.

³⁴ See: 'Private Security Firms Join Battle Against Somali Pirates'.

transparency is inherent in both large, well known (but sometimes controversial) companies such as *Blackwater*, and small, often unknown PSCs. Furthermore, clients have to be aware that they play a crucial role in ensuring that PSCs operate according to international values and national and international laws.

In regard to piracy, it is important to keep in mind that while PSCs may assist in preventing individual pirate attacks and help victims in dealing with the aftermath of such events, they do not address the underlying root causes of modern day piracy itself. In order to successfully combat piracy and bring an end to attacks, responses to piracy have to address its root causes, which include illegal and over-fishing, lax (international) maritime regulations, ineffective government forces, armed conflict and widespread poverty. Combating piracy can consequently not be achieved only by those states in which pirate attacks actually occur. Indeed, countries from around the world with an interest in maritime security, can, and need to, support these broader anti-piracy measures.