



Private Military Contractors

A CIMSEC Compendium

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CIMSEC

Preface

By Matt Hipple

Director of Online Content

CIMSEC started as the bemused past-time of a few Junior Officers, academics, and maritime security enthusiasts looking for a flexible and responsive forum to discuss the many topics of yesterday, today, and tomorrow. In fact, it largely remains the same (I haven't seen a paycheck yet), except our humble virtual tree-house has grown into a robust real-world community spanning from Jolly Old England to New Caledonia to our continuing online content.

Our Kickstarter campaign was, in part, a drive to put an official stamp on that community and gather resources for some larger projects. From paying for our official incorporation as a 501(c)(3) to our upcoming essay prize - this infusion has put us on the path to new and exciting projects. To celebrate, we have put together this compendium of our most-read articles to date - a reflection, if you will, on the last chapter as we turn to the next.

Thank you to everyone that has supported us - this is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning...

About Us

The Center for International Maritime Security (CIMSEC) is dedicated to bringing together forward-thinkers from a variety of fields to examine capabilities, threats, hotspots, and opportunities for security in the maritime domain. CIMSEC pursues this mission through internet forums, collaborating with similarly motivated organizations, sponsoring and hosting events, developing publications, and connecting individuals.

Since our formation in 2012, our all-volunteer team has fostered a forum geared towards exploring challenging maritime security issues. We have particularly focused on bringing in under-heard perspectives into maritime discourse: those of our international counterparts and younger generations. Our NextWar blog has published over 700 articles on various topics and our Sea Control podcast has broadcast over 50 episodes from the U.S., U.K., and Australia, bringing together distinguished experts debating complex security-related issues.

If you are interested in forwarding the discussion on safe-guarding prosperity on the seas, then you should consider becoming more involved with our organization at <http://www.cimsec.org>.



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Whither the Private Maritime Security Companies Of South and Southeast Asia?

By Scott Cheney-Peters

In a week-long operation in June 2010, 6 vessels were attacked and robbed over a 130-mile span while in a nearby strait armed security contractors kept watch for the pirate threat. [1] The same waters have played host to a “sophisticated syndicate...deploying speedboats from motherships” with raiding parties able to “board, rob, and disembark a vessel with fifteen minutes without the bridge knowing.” [2] The location was not the Somali coastline or the Bab el-Mandeb, but rather 4,000 miles to the east, among the Anambas Islands and the Singapore Strait.

For the past decade or so, when people thought of private military contractors (PMCs) [3] they typically thought of land-force outfits like the Academi formerly known as Blackwater and its founder Erik Prince. During this same period, the word “piracy” generally brought to mind skiffs plying the waters of the Horn of Africa and Gulf of Guinea. Others have written elsewhere on this site that some of the more interesting uses of PMCs during this timeframe have in fact been in combating (or attempting to combat) the now-diminished pirate scourge off East Africa in the form of private maritime security companies (PMSCs). Yet historically one of the greatest epicenters of piracy has been in the waters of South and

Southeast Asia. If the region, already home to PMSCs operating in a variety of capacities and more than one-third of the world’s seaborne-oil trade, faces a resurgence of piracy, it may see a similar growth in PMSCs. [4] This article will touch briefly on the historic precedents, preconditions encouraging the presence of PMSCs, and regional factors affecting their utility.

Precedents and Prevalence

South and Southeast Asia have long been home to private and quasi-private security arrangements. Cdr. Chris Rawley, U.S. Navy Reserve, notes that “historically, the line between privateering and piracy has been a thin one. From the 15th to the 19th century, pirates were often employed as a political tool by the Malay states to resist colonization by disrupting trade of the British and Dutch. Conversely, in the mid-1800s, the British East India Company’s private armies protected shipping in Malacca from pirates.”

The history of Singapore’s founding and growth under British rule is itself closely tied to this blurred public-private partnership. When the British arrived at Malaysian Singapore and

sought local allies to protect their trade and investment, the recently displaced Temenggong, sea lord of the orang laut sea people, who themselves were noted for their marauding maritime prowess, presented himself as an acceptable solution. The Temenggongs thus served as part local officials, pressured to resettle their power base to neighboring Johor, and part maritime security contractors for hire, serving British counter-piracy operations in the early 1800s and port security for Singapore. [5]

In recent years, PMSCs have provided a range of services in South and Southeast Asia. According to The Diplomat's Zachary Keck, "PMCs operating in Southeast Asia have primarily been focused on providing maritime security to clients, particularly in combating piracy. This has been especially true in narrow chokepoints like the Malacca Straits" and has included companies such as Background Asia and Counter Terrorism International (CTI).

In addition to providing these escort vessels and transit/cargo security aboard merchant vessels, PMSCs have worked extensively on port security (Gray Page, Pilgrim Elite, and the Glenn Defense Marine Asia group now known for the 'Fat Leonard' scandal), training and maritime hardening efforts (Trident Group), crisis response, and fisheries protection in countries' exclusive economic zones (EEZs) (Hart). [6] PMSC experts James Bridger and Claude Berube remark that in contrast with Africa, the companies in South and Southeast Asia place a greater focus on port vs transit security, due in part to the prevalence of at-berth and in-port crime, as well as training, vessel hardening, and security planning.



Preconditions

What conditions have given rise to this most recent cast of companies? In Carolin Liss's 2011 book *Oceans of Crime*, she attributes the rise of PMSCs in South and Southeast Asia to several factors including states divesting former functions and the changed security landscape. This includes relatively more powerful transnational actors, both those interested in stability such as multinational corporations and multilateral institutions and those, such as terrorist organizations, interested in the opposite. Another element of the changed landscape facilitating PMCs' rise is to Liss the disappearance of the Cold War struggle between the United States and Soviet Union, and the attendant opportunities for training of regional security forces. [7] Further, post-Cold War terrorism heightened the focus of governments and the shipping industry on maritime security, as the threat joined piracy as a perceived regional risk to maritime assets, although it has so

far failed to be nearly as impactful. [8]

In general PMSCs may find a market whenever the threats to maritime assets – be they from criminals, separatists, or environmental, corporate, or territorial disputes – appear to outweigh states' capacities to safeguard those assets. The perception of corruption or distrust of the competency and fairness of states' protective functions will similarly further the reception for external services.

How do these threat measures stack up in South and Southeast Asia? The first thing to note is the wide variance among the nations and waters of the region – as can be expected from such a diverse expanse generalities are hard to come by, so the following is a survey rather than a summation of the area.

With regards to the historical scourge of piracy, a recent report by the insurance firm Allianz made headlines for describing a 700 percent rise in actual and attempted attacks occurring in Indonesian waters in a 5-year span, from 15 in 2009 to 106 in 2013, [9] although most of these were robberies at berth or at anchor. [10] The International Maritime Bureau (IMB)'s April 2014 update notes that Indonesian "Pirates / robbers are normally armed with guns, knives and, or machetes...attacking vessels during the night." [11] Derived from IMB statistics, the Allianz report also notes that in 2013 South Asia's 26 incidents and Southeast Asia's 128 combined to far outstrip Africa's total of 89 incidents, with only 7 of the latter considered acts of Somali piracy. [12]

While privation is often portrayed as a leading spur for illicit maritime activities, analyst Karsten von Hoesslin contends

that groups operating in Southeast Asia exhibit "more sophistication and structural coordination, reflecting the existence of organizations that go well beyond opportunistic marauders seeking to merely compensate for economic hardship." [13] In 2012 von Hoesslin noted such syndicates active in the Philippines, conducting kidnapping and robbery (K&R) operations, with robbery and hijacking organizations plentiful in Indonesia's Anambas Islands and Riau Islands Archipelago. [14]

On the other hand, IMB's April 2014 update demonstrates the fluid nature of piracy, stating only three years later that "attacks have dropped significantly in the vicinity off Anambas / Natuna / Mangkai islands / Subi Besar / Merunding area" and "dropped substantially" in the Strait of Malacca since 2005, although no such improvement is noted for the Singapore Straits. [15] The year 2005 is significant as the year that Gerakan Aceh Merdeka (GAM) separatists and previ-



Piracy and Armed Robbery attempts and attacks from 2013 (left) and 2014 (right). Source: International Maritime Bureau.

ous perpetrators of maritime assaults at the entrance to the Malacca Strait signed a post-Tsunami peace accord with the Indonesian government. [16]

The assets most at risk in Southeast Asia are in general not the more than 60,000 tankers and container vessels that ply the waters but tugs and other small vessels with low free-boards. Nonetheless, Erik Sanchez, a maritime security contractor, notes that insurance companies now require nearly all merchant vessels to “have a security team aboard or have a proven static anti-boarding mechanism that satisfies the requirements set by the insurance company,” meaning there is plenty of business to be had.

Adding to PMSCs’ potential in the region is the lack of enthusiasm for joint patrols by multinational forces in and around Indonesian waters due to sensitivity of competing territorial claims. While understandable from a sovereignty perspective, vessels must as a result rely on the prospect of the strengthening of individual naval forces or seek additional protection.

Although the majority of attacks in the region – whether at sea, at anchor, or in port – are short-run robberies, when hijackings do occur they are often inside jobs. An interesting variant on hijackings occurs in the Sulu Sea between rival fishing companies who “attempt to deplete the maritime assets and platforms of their competitors.” [17] This points to another factor that might increase the region’s potential for PMSCs – that of maritime resource competition.

According to Rawley, “Poorly managed fisheries and maritime crime in SE Asia are inextricably linked. In the 1990s, over-fishing partially caused the loss of livelihood of coastal communities that contributed to the surge in piracy near Malacca. Southeast Asian countries that cannot afford adequate coast guards might reach out to NGOs or PMCs for fisheries enforcement patrols in their territorial waters.”

Taken together, the sustained incidence of piracy and robbery, especially near Indonesian waters, along with resource competition between companies, states, and fishermen indicates that there will be a ready market for PMSCs in the region for some time to come.

Lessening the Prospects for PMSCs

Perhaps the largest mitigating factor for PMSCs’ prospects is the whether governments will themselves tackle the underlying issues, including economic development, instability, and corruption, and/or their outgrowths that PMSCs attempt to address, such as piracy and maritime crime. This factor consists of and can be measured by both the desire and ability of governments to take on these challenges.

As discussed in part one, levels of piracy and armed robbery (PAR) and kidnapping and ransom (K&R) against ships have been two of the main determinants of the market for PMSCs in the region and the frequency, severity, and locations of these attacks have varied over the recent decades. This dynamic owes in part to several measures undertaken by regional governments beyond those development efforts aimed at removing the economic basis for crimes. What follows is not intended as an exhaustive catalogue, but an attempt to highlight some of the most illustrative examples.

Demonstrating Desire

In coming to terms in the post-Tsunami peace agreement, Indonesia’s government and its Aceh foes removed a major source of instability that opportunistic actors from both sides of the conflict reportedly used for kidnapping and ransom operations at the mouth of the Malacca Strait. Whether attackers’ motives were to provide a revenue stream to further the insurgency, or as a manifestation of corruption, the removal of the combatants – along with the tsunami’s decimation of the local population and maritime assets used

in attacks – helps explain the documented drop in numbers by the International Maritime Bureau (IMB). [18] [19]

Alternately, governments can take direct action against criminals based in their territory as well as demonstrate their willingness to crack down on internal corruption feeding such crime. PMSC expert James Bridger remarks that the Chinese government launched a campaign in the 1990s against “criminal syndicates and ‘rogue’ police and coast guard units that had been engaging in hijackings and phantom ship fraud out of Hong Kong and southern China.” While there are dangers in relying on self-reporting, an area once known as a favorite destination of hijacked vessels re-named for resale, [20] Hong Kong, is now known far more for piracy of a digital kind. [21]

Governments can also work together, and with non-governmental organizations such as the IMB, in the fight against maritime crime. These efforts can be particularly important in preventing criminals from exploiting the seams between territorial waters and exclusive economic zones (EEZs). In 2004 Malaysia, Singapore, and Indonesia initiated an agreement known as the Trilateral Coordinated Patrol, or MALSINDO, nominally providing smarter coverage by coordinating patrol areas. Illustrating the importance of closing the maritime seams, the agreement was criticized for failing to provide cross-border pursuit permissions due to sovereignty sensitivities. [22] As Lino Miani notes in *The Sulu Arms Market*, “territorial disputes and historical mistrust...undergirds the hesitation to enter into multilateral agreements.” [23]

In 2005 the three nations of the MALSINDO agreement were joined by Thailand in an attempt to bolster the initiative’s effectiveness by dedicating air assets for maritime air patrol missions with hosted liaison officers in what is known as the Eyes in the Sky (EiS) plan. [24] In addition to the capability boost, EiS also marked the first time the nations allowed each other to briefly cross a short ways into their territorial airspace while executing the coordinated mission. [25] In 2006 the participating countries combined the two efforts in the new Malacca Straits Patrol Network. [26]

Another recent example of inter-governmental cooperation helping close maritime seams is the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP). The initiative, which entered into force in 2006, establishes information-sharing and attack reporting procedures among 19 countries and an Information Sharing Centre (ISC). [27]

Yet Malaysia and Indonesia are notably absent from ReCAAP. In another move seen as indicative of the nations’ territorial sensitivities the pair passed on the U.S.-proposed Regional Maritime Security Initiative in 2004, which would have involved Americans in joint patrols including “special forces on high-speed boats.” [28] A key difference between these

efforts and the Malacca Straits Patrol Network is the involvement of nations external to Southeast Asia. While it doesn’t include Malaysia or Indonesia, ReCAAP involves nations such as Japan, China, Denmark, and the United Kingdom.

Singapore stands in contrast with the two former nations in its openness to long-term partnerships involving a foreign presence. In addition to hosting the ReCAAP’s ISC, it has invited the United States to rotate through a squadron of forward-deployed littoral combat ships, temporarily stationing them at Changi Naval Base, along with the maintenance facility the United States has long maintained in the port. [29] An important indicator of the outlook for PMSCs in the coming years will therefore be the receptiveness of these straits nations to maintain or pursue regional approaches to combating maritime crime – as well as their tolerance for joint patrols or a foreign presence. [30]

Demonstrating Desire

Whatever the merits of these regional initiatives in concept, they and individual nations’ efforts require assets to be effective. These assets in turn require investments in procurement, training, and maintenance. [31] It’s what separates ReCAAP’s ISC from ASEAN’s Center for Combating Transnational Crime – first proposed in 1997 and stuck on the drawing board ever since. [32] Even with the EiS add-on, MALSINDO has been criticized as a public-relations salve lacking the resources to provide comprehensive coverage and hindered by corruption. [33]

Tracking defense expenditures therefore serves as a similar measure of governments’ seriousness in tackling PAR. While the specifics vary, South and Southeast Asian nations have a large appetite and long-term plans for expanding their coast guards and naval forces – with submarines, patrol craft, and naval aircraft high-priority items. [34] Yet the ability to field these maritime forces, and do so effectively, is constrained by limited, though rising, budgets. [35] Many of these investments are aimed at protective capabilities in the event of inter-state conflict against the backdrop of China’s own spending increases, but several can also boost maritime enforcement efforts. Key nations including India, Indonesia, Malaysia, Singapore, Vietnam, Thailand, Bangladesh, and the Philippines are pursuing corvette or frigate programs, as well as various fast attack and patrol boat procurement.

Indonesia bears closer scrutiny as it faces perhaps the largest PAR threat and is expected to double defense expenditures from 2013 to 2018, after increases of 34 percent in 2011, 16 percent in 2012, and 7 percent in 2013. [36] In addition to frigates, the country is also building three classes of fast attack craft that can aid maritime enforcement efforts. [37] Further, Indonesia’s military (TNI) announced in March that it would increase its presence around Natuna Island, a former

mainstay of piracy to the east of the current hotspots near the Riau Archipelago. While this move is publicly aimed at preventing “infiltration” and “instability” in the South China Sea – primarily to safeguard nearby oil and gas fields – the additional air force and naval assets could act in a secondary capacity to deter PAR to the west when not otherwise engaged. [38]

Meanwhile at the western approaches to Malacca Strait, India’s Andaman and Nicobar Islands could act as the first line of defense against a return to epidemic maritime crime in the strait. India’s Andaman and Nicobar Command (ANC) is charged with “maritime surveillance, humanitarian assistance and disaster relief, as well as suppressing gun running, narcotics smuggling, piracy, and poaching in India’s EEZ.” Since establishing the ANC in 2001, the India has continued to develop the command’s capacities, albeit at a slow pace, commissioning a new naval air station in 2012 and a new offshore patrol vessel in 2013. [39]

Yet in the short run, foreign partners or PMSCs may be the easiest capacity-bolstering ways for states to preserve the gains against maritime crime or reduce it further. Help from the former is forthcoming from several corners, potentially limiting the need to turn to PMSCs. India agreed to build four Offshore Patrol Vehicles (OPVs) for Myanmar’s navy, along with a “\$100-million credit line to Vietnam to purchase” four patrol boats. [40] The United States has recently sold former U.S. Coast Guard cutters to Bangladesh and the Philippines on favorable terms. Japan is likewise “donating” 10 patrol boats to the Philippines, reportedly by extending a \$110-million line of credit, [41] and Vietnam has asked to procure them as well. [42] While there has been no public confirmation of a deal between Japan and Vietnam, including during last month’s bilateral agreement on enhanced maritime security ties, it’s possible that this will be announced during President Obama visit this week to Asia. On Friday the Yomiuri Shimbun cited sources stating that Japan and the U.S. will on Thursday announce moves to jointly help ASEAN countries “strengthen their maritime surveillance capabilities,” “counter piracy,” and “help member states better respond to natural disasters such as typhoons and earthquakes.” [43]

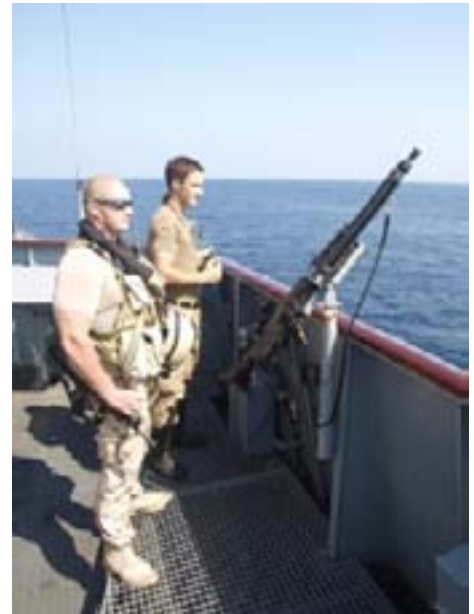
A final way for governments to boost their capacity directly mimics PMSCs’ at-sea protection services through what are known as vessel protection detachments (VPDs). These detachments are typically comprised of active duty service members of a nation’s military and hired out to individual shipping companies for protective duties in high risk transit areas or aboard World Food Program vessels. [44] While VPDs have faced criticism on legal and efficacy grounds – for blurring the lines between sovereign services and mercenaries and for narrowing protection to individual ships – the list of countries offering VPDs has grown markedly in the past five years, albeit primarily for use along the East African coast.

[45]

The effect of this competition on PMSCs is debatable. On one hand some shipping companies have “voiced a strong preference for VPDs” over PMSCs due to their perceived legal protections and ease of moving weapons. [46]

As will be discussed below, however, these legal protections have been challenged. Further, according to a 2013 study, only 35% of Dutch ships traversing high risk areas off Somalia applied

for a VPD due to the “high costs, lack of flexibility of deployment, and long application schedule.” [47] (Figures for Southeast Asia were not available but the business case rationale is likely analogous when available) While those Dutch companies who looked to PMSCs as an alternative did so illegally due the nation’s laws, it’s clear that VPDs will remain attractive to some who would otherwise higher PMSCs.



Investing in Capacity

Governments’ legal regimes and policies serve as additional factors directly impacting the prospects of PMSCs in the region on several fronts. When operating in territorial waters, the U.N. Convention on the Law of the Sea (UNCLOS) provides little clarity on the legal status or protections for PMSCs performing embarked duties or vessel-protection escorts. The innocent passage regime protects the rights of states in territorial waters, including their transiting warships, but sees armed non-state escort vessels, or private armed on-board detachments as violating the “standard practices” of the international community. No definitive case law has put the matter to rest and the increasing acceptance of armed guards on ships combating Somali-based piracy could lead to a change of acceptance elsewhere, but for the time being the waters remain murky. [48]

In setting national policies, Indonesia and Malaysia both publicly prohibit the use of armed shipboard PMSC detachments, with Singapore the exception – provided stringent

weapons control requirements are followed. [49] Carolin Liss notes, however, that despite these pronouncements PMSCs are routinely able to obtain back-channel notifications and permissions, smoothed over with “fees.” [50]

The varying home laws of the shipping companies also impact the environment for PMSCs in South and Southeast Asia. As mentioned, some states such as the Netherlands currently prohibit PMSCs aboard their vessels. Nonetheless, the trend is clearly towards operating states allowing their use in a regulated process as the Netherlands is the sole E.U. nation without such legislation in place, and a Dutch law that would permit PMSC use in 2015 is in the process of approval. [51]

Whether PMSC or VPD, Italy’s experience in the *Enrica Lexie* case is illustrative of the legal dangers in the region facing embarked detachments. In February 2012, two Italian Marines – part of a VPD – shot and killed a pair of Indian fishermen they believed to be pirates. The case has tested the belief that sovereign actors provide greater legal protection for counter-piracy teams in international waters and is still working its way through India’s legal system with a trial date scheduled for July. [52]

Regional weapons control laws also complicate the logistics of both VPDs and PMSCs. Kevin Doherty, President of Nexus Consulting, a PMSC that operates in Southeast Asia, states that in contrast with ports servicing embarked teams in the western Indian Ocean, “many Asian ports don’t allow weapons to be ‘introduced,’ and must therefore be loaded well in advance.” One outcome is the creation of so-called floating armories in international waters, which come with their own set of complications and regional baggage.

India in particular has expressed concern for these armories. Then-Indian Navy Chief of Staff DK Joshi argued at the 2013 Galle Dialogue they could fall prey to pirates and that they and PMSCs’ lack of international regulation made them susceptible to supporting criminals, traffickers, and terrorists. [53] Another on-going case illustrates the complexities and difficulties for PMSCs. After the Sierra Leone-flagged vessel *Seaman Guard Ohio* entered Indian waters in October 2013 it was escorted to port by an Indian Coast Guard vessel. [54] While the Indian government has labelled the vessel operated by U.S.-based PMSC *AdvanFort*, a floating armory, the company’s spokesman denies the categorization saying the ship serves as an escort vessel that was unable to dispose of its weapons prior to entering port due to the sudden nature of the detainment by the Indian Coast Guard. [55]

During the same Galle speech, Joshi commended neighboring Sri Lanka for providing what he viewed as a model regulatory regime of both PMSCs and the nation’s government-supported armories. PMSCs can receive licenses from the Sri Lankan Ministry of Defense to store equipment and weapons on

naval bases or on floating armories run in partnership with the government – although these primarily service western Indian Ocean transits. [56] Center for Naval Analyses’ Nilanthi Samarankaye says that this stringent effort to control armories through regulation is due in part to the “still fresh” memory of their use by the Liberation Tigers of Tamil Eelam (LTTE) during the Sri Lankan civil war, giving context to the regional fears that unregulated PMSCs and their support networks could have destabilizing side-effects.

Marine Resource Protection

A final area of possible mitigation for PMSCs’ prospects is in the realm of marine resource protection. As *The Diplomat’s* Zachary Keck notes, PMSCs “have sometimes been used by states to combat illegal fishing in their EEZs. Tensions over fishing rights in Southeast Asian waters have been high and are likely to persist so long as states continue to dispute their maritime borders in places like the South China Sea.”

Yet PMSCs are not alone in seeking to find solutions to these problems. Maritime activism expert Cdr. Chris Rawley, U.S. Navy, points out that “today, pirates, environmental activists, and more legitimate private security contractors compete for some of the same business, especially in the realm of marine wildlife protection.” For example, “Illegal shark finning remains a problem mostly driven by Asian markets that NGOs have expressed an interest in combating.”

It’s a fascinating trilateral confluence of interests which, instead of seeing states hiring PMSCs, could see NGOs outsourcing to PMSCs to achieve their aims, or alternately NGOs becoming more like PMSCs by “selling” their services to nations. In one possible scenario, in exchange for the enforcement of a nation’s territorial claims, an NGO might extract concessions on marine wildlife preservation. As documented by Rawley, some of have already moved towards PMSCs in tactics and capacity if not in business models or motivation. [57] Says Keck, “Already, we have seen the Philippines use nominally civilian vessels to resupply their marines on the Second Thomas Shoal in the face of China’s blockade. Thus, there seems to be demand for more innovative solutions to the region’s growing maritime disputes.”

In providing training maritime law enforcement (MLE) to national agencies PMSCs might also run into difficulty. Heather Bacon-Shone, a U.S. Coast Guard officer with experience conducting MLE training in Southeast Asia says PMSCs would have trouble finding an adequate profit and could lack credibility if they don’t hire personnel specific to the mission. “MLE training is as much if not more about laws, legal process, case packages, and reasonable suspicion than it is about kicks, punches, and stuns,” said Bacon-Shone. “What we are really trying to teach them is about the rule of law, not about

how to take each other down. It's a real eye-opener for some that we accomplish so much compliance without having to beat people up."

Assessing the Outlook

On the balance, the opportunities for PMSCs in South and Southeast Asia appear constrained. "The need for PMSCs is limited," says Doherty. "The 'high risk' zones are only a day or two of transit, not like the 7-10 days in the [western] Indian Ocean or like a week at anchorage in West Africa." Meanwhile geography might also help prevent a resurgence of piracy in the Strait of Malacca. As Bacon-Shone points out it's "quite narrow and limited of a space, unlike the Gulf of Aden, which is much harder to patrol and control." Additionally, "the prospects for PMCs in Southeast Asia may be dimming, remarks Keck, "as tensions over the South China Sea push Southeast Asian nations to develop stronger navies and coast guards, which should reduce demand from commercial entities for private security."

Nonetheless, PMSCs will not disappear from the scene. Outside the universal need for port security, especially prevalent in the region, there are opportunities in high-value transit protection, training of VPDs and security forces, investigation services, and marine resource protection. And, as we discussed above, Keck says "it's possible that some of the weaker maritime Southeast Asian nations could hire PMSCs to help patrol the waters they claim. This could be seen as a cheaper or at least quicker, temporary solution to their maritime woes, compared with building up their own naval and coast guard fleets."

Furthermore, one should never discount the ability of organized crime syndicates to adjust and find new vulnerabilities to exploit. As von Hoesslin stresses, criminal organizations remain "dynamically fluid and capable of adjusting quickly to enforcement pressures." [58] Counter-terrorism too could return as a greater priority and create an opening for PMSCs. "There are a lot of really bad guys reportedly getting out of jail this year in Indonesia," remarks Doherty, "and the line between piracy and terrorism is not going to be as clear."

In the "Asian Century," PMSCs will continue to play a role when threats outpace state capacity. The breadth of that role has yet to be defined.

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[1] Risk Intelligence, "2010 Statistics Fact File." Marisk.dk

[2] Karsten von Hoesslin, "Piracy and Armed Robbery at Sea in Southeast Asia: Organized and Fluid," *Studies in Conflict & Terrorism* (2012): 35:7-8, 542-552: <http://dx.doi.org/10.1080/1057610X.2012.684652>

[3] I use this term interchangeably with private security contractors (PSCs).

[4] U.S. Energy Information Administration estimate of 2011, updated April 4th, 2013: <http://www.eia.gov/todayinenergy/detail.cfm?id=10671>

[5] Carl A. Trocki, *Prince of Pirates: The Temenggongs and the Development of Johor and Singapore, 1784-1885* (Singapore: National University of Singapore Press, 2007), 24.

[6] Carolin Liss, *Oceans of Crime: Maritime Piracy and Transnational Security in Southeast Asia and Bangladesh* (Singapore: Institute of Southeast Asian Studies, 2011), 331.

[7] *Ibid*, 323.

[8] *Ibid*, 327.

[9] "Safety and Shipping Review 2014," Allianz Global Corporate & Specialty, 27: <http://www.agcs.allianz.com/assets/PDFs/Reports/Shipping-Review-2014.pdf>

[10] Attacks in territorial waters, whether against vessels underway, at anchor, or moored, by definition under the U.N. Convention of the Law of the Sea (UNCLOS) are not considered pirate attacks and when possible I will attempt to distinguish between sea robbery and piracy, although the terms are frequently conflated.

[11] International Maritime Bureau: <http://www.icc-ccs.org/piracy-reporting-centre/prone-areas-and-warnings>

[12] Allianz, 27

[13] Von Hoesslin, 541-542.

[14] *Ibid*, 544.

[15] IMB.

[16] Von Hoesslin, 545.

[17] *Ibid*, 545.

[18] Catherine Zara Raymond, "Piracy and Armed Robbery in the Malacca Strait: A Problem Solved?" *Naval War College Review*, (Summer 2009): Vol. 62, No. 3, 37: <http://www.usnwc>.

edu/getattachment/7835607e-388c-4e70-baf1-b00e9fb443f1/Piracy-and-Armed-Robbery-in-the-Malacca-Strait-A-

[19] Kate McGeown, "Aceh Rebels Blamed for Piracy," BBC News Online, September 8, 2003: <http://news.bbc.co.uk/2/hi/asia-pacific/3090136.stm>

[20] Abby Tan, "In Asian Waters, Sea Pirates Eschew Eye Patches, Steal Ships via Internet," Christian Science Monitor, 13 June, 1996, [http://www.csmonitor.com/1996/0613/061396.intl.intl.4.html/\(page\)/2](http://www.csmonitor.com/1996/0613/061396.intl.intl.4.html/(page)/2)

[21] Interestingly it should be noted that several sources contacted for this article mentioned rumors of continued criminal syndicates operating out of Chinese, which if true, shows the danger in relying only on reported statistics.

[22] Raymond, 36.

[23] Lino Miani, *The Sulu Arms Market* (Institute of Southeast Asian Studies: Singapore, 2011): 122.

[24] Zou Keyuan and Shicun Wu *Maritime Security in the South China Sea* (Ashgate: 2013): 61.

[25] Raymond, 37. Admiral Bernard Sondakh, Indonesian Navy Chief of Staff, emphasized the patrols are "coordinated" vice "joint" as there is no singular command structure. Keyuan and Wu, 62.

[26] Rajeev Sawhney, "Redefining the Limits of the Straits: A Composite Malacca Straits Security System," IDSS Commentaries, 18 May, 2006: <http://www.rsis.edu.sg/publications/Perspective/IDSS0372006.pdf>

[27] "About ReCAAP" (accessed 17 April, 2014): <http://www.recaap.org/AboutReCAAPISC.aspx>

[28] Bill Tarrant, "Balancing Powers in the Malacca Strait," Reuters Global News Journal, March 7, 2010: <http://blogs.reuters.com/global/2010/03/07/balancing-powers-in-the-malacca-strait/>

[29] Christopher P. Cavas, "Next LCS Deployment to Last 16 Months," Defense News, January 6, 2014: <http://www.defensenews.com/article/20140106/DEFREG02/301060023/Next-LCS-Deployment-Last-16-Months>

[30] There is additionally a multitude of short-duration bilateral and multilateral exercises and coordinated patrols with counter-piracy or maritime enforcement components, including India's Indo-Thai Joint Patrols and biannual Indo-Ind Corpat and the Southeast Asia Cooperation and Training (SEACAT) exercise hosted at Singapore's Multinational Operations and Exercise Center at Changi Naval Base.

[31] Miani, 126.

[32] Fund for Peace, *Transnational Security Threats in the Straits of Malacca*, 17: <http://library.fundforpeace.org/library/ttcvr1213-threatconvergence-malaccastraits-08e.pdf>

[33] Liss, 295.

[34] For a recent survey of procurement programs in the region see Wendell Minnick, "Tighter Budgets Limit Southeast Asian Plans," Defense News, 13 April, 2014. <http://www.defensenews.com/article/20140413/DEFREG03/304130015/Tighter-Budgets-Limit-Southeast-Asian-Plans>

[35] For analysis of defense budgets in the region see "Military Spending Continues to Fall in the West but Rises Everywhere Else," SIPRI, April 14, 2014: http://www.sipri.org/media/pressreleases/2014/Milex_April_2014; Global Defense Budgets Overall to Rise for First Time in Five Years," IHS Pressroom, February 4, 2014: <http://press.ihs.com/press-release/aerospace-defense-terrorism/global-defence-budgets-overall-rise-first-time-five-years>; "Southeast Asia: The Next Growth Opportunity in Defense," McKinsey and Company, February 2014.

[36] "Forecast International Expects Defense Spending to Project Upward Across Asia-Pacific Region," Forecast International, October 31, 2013: <http://globenewswire.com/news-release/2013/10/31/585516/10055526/en/Forecast-International-Expects-Defense-Spending-to-Project-Upward-Across-Asia-Pacific-Region.html>

[37] Minnick, "Tighter Budgets Limit Southeast Asian Plans."

[38] Scott Cheney-Peters, "Indonesia's Skin in the Game," CIMSEC's NextWar, Mar 19, 2014: <http://cimsec.org/indonesias-skin-game/>

[39] Jeff M. Smith, "Andaman and Nicobar Islands: India's Strategic Outpost," The Diplomat, March 18, 2014: <http://the-diplomat.com/2014/03/andaman-and-nicobar-islands-indias-strategic-outpost/>

[40] Nitin A. Gokhale, "India's Growing Military Diplomacy," The Diplomat, August 16, 2013: <http://thediplomat.com/2013/08/indias-growing-military-diplomacy/>

[41] "Philippines Asks Japan for \$110M Loan for 10 Patrol Vessels," *manilastandardtoday.com*, February 12, 2014: <http://newsonjapan.com/html/newsdesk/article/100931.php>

[42] "Japan Coast Guard Vessels and Equipment in High Demand in S.E. Asia, Africa," The Asahi Shimbun, September 30, 2013: http://ajw.asahi.com/article/asia/around_asia/AJ201309300001

[43] "Japan, US to help ASEAN monitor Seas," The Japan News, April 20, 2014: <http://the-japan-news.com/news/article/0001221995>

[44] James Brown, "Pirates and Privateers: Managing the Indian Ocean's Private Security Boom," Lowy Institute, 12 September, 2012: <http://www.lowyinstitute.org/publications/pirates-and-privateers-managing-indian-oceans-private-security-boom>

[45] However several of these limit their use solely to World Food Program vessels, and many to own-nation flagged or controlled shipping lines. Ibid.

[46] Ibid.

[47] Bibi van Ginkel, Frans-Paul van der Putten, and Willem Molenaar, "State or Private Protection Against Maritime Piracy?" Netherlands Institute of International Relations Clingendael (February 2013), 10: http://www.clingendael.nl/sites/default/files/20130200_state_or_private_protection_web.pdf

[48] Gerard Ong Graham "A Case for Armed Guards on Ships," World Security Network, June 01, 2005: <http://www.worldsecuritynetwork.com/Other/Gerard-Ong-Graham/A-case-for-armed-guards-on-ships>. As an indication of changed attitudes towards armed guards on vessels, see the International Maritime Organization's interim circulars: <http://www.imo.org/OurWork/Security/PiracyArmedRobbery/Pages/Private-Armed-Security.aspx>

[49] Fund for Peace, Transnational Security Threats in the Straits of Malacca, 15 <http://library.fundforpeace.org/library/ttcvr1213-threatconvergence-malaccastraits-08e.pdf>

[50] Liss, 336-338

[51] "ESS&SA Pioneering Maritime Security Industry," Maritime Executive, February 26, 2014: <http://www.maritime-executive.com/article/ESSSA-Pioneering-Maritime-Security-Industry-2014-02-26/>

[52] "Italian Marines Case: Court to Hear Case on July 31," The Times of India, March 31, 2014: <http://timesofindia.indiatimes.com/india/Italian-marines-case-Court-to-hear-case-on-july-31/articleshow/33023539.cms>. That the actions took place in international waters is a matter of contention, and the Italians' legal team contends the shots fired were warning shots.

[53] PK Balachandran, "Regulate Private Maritime Security Firms: SL Navy Chief," The New Indian Express, November 26, 2013: <http://www.newindianexpress.com/world/Regulate-private-maritime-security-firms-SL-Navy-Chief/2013/11/26/article1910994.ece>

[54] S.Vijay Kumar and Praveen Paul Joseph, "Ship with Armed Guards Detained in Indian Waters," The Hindu, October 19, 2013, <http://www.thehindu.com/news/national/tamil-nadu/ship-with-armed-guards-detained-in-indian-waters/article5229375.ece>

[55] Edward Lundquist, "M/V Seaman Guard Ohio Remains Detained in Indian Port," Defense Media Network, October 21, 2013: <http://www.defensemedianetwork.com/stories/mv-seaman-guard-ohio-remains-detained-in-indian-port/>

[56] Lowy and Oscar Rickett, "Piracy Fears over Ships Laden with Weapons in International Waters," The Guardian, January 10, 2013: <http://www.theguardian.com/world/2013/jan/10/pirate-weapons-floating-armouries>

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[58] von Hoesslin, 546.



PMCS: The End Or the Beginning?

By Claude Berube

The National Intelligence Council's report *Global Trends 2030: Alternative Worlds* released in December 2012 revealed trends, game-changers, and potential worlds that have relevance to maritime security. Two of the four mega-trends identified were individual empowerment and diffusion of power. Two game-changers will be a governance gap (or previously suggested maritime security shadow zones) and the potential for increased conflict. It suggests one potential future of a "Non-state World" in which non-state actors take the lead in confronting global challenges. If this is the future, where the power of traditional states erodes or collapses and individuals and illicit organizations are super-empowered, private maritime security companies could be far more employed than they have been in the past decade.

The quick rise of PMSCs in the past decade was due primarily to the threat of non-state actors—in this case Somali pirates operating off the Horn of Africa. Before the shipping industry responded to changes in its Best Management Practices and states began devoting more air and surface naval platforms to the region, individuals identified an opportunity in maritime security and formed companies. Whether they are mercenaries or entrepreneurs can be left to a discussion in the classroom or comments, but the reality is that the immediate threat to shipping was real and growing by 2006.

The companies themselves were analogous to dining in a large city. In the first category are the four and five star restaurants with superior ingredients and preparation, excellent service, but very costly. The second category includes standard restaurants. The third might be diners—affordable food, quick turn-around on service, and a dependable location. The last category is the street vendors. Because they have no infrastructure other than a mobile cart and they may not carry the best ingredients, their costs are extremely low. But there is a market for each of these categories.

The same has been true of PMSCs. Some are highly rated among the industry for the quality of their security personnel (such as former SAS and Navy SEALs), high-performance gear, and company infrastructure. These are the higher priced five-star restaurants. But as the industry emerged, it seemed anyone would join in if they had a cell-phone and an email address. Even experienced, qualified operators made attempts to form their own companies. Peter Cook, founder and director of the Security Association of the Maritime Industry (SAMI) suggested that this is one reason why the number of PMSCs has dropped in recent years as the number of piracy incidents off Somalia have declined. "New businesses fail at a high rate," he said in a recent interview. "You have operators who might not have the business background necessary to

administer all the paperwork that's involved in setting up and operating a maritime security company."

According to Cook, the number of PMSCs peaked in 2011 when eleven new PMSCs were applying every month for membership in SAMI. While there were an estimated thirty-five to fifty companies in 2010, SAMI now has about 160 members. The industry became highly competitive and very litigious. With some twenty to twenty-five percent of over-capacity in the shipping industry, shippers are trying to find ways to reduce costs and prices. When threats by Somali pirates resulted in far higher insurance rates, shipping companies reluctantly turned to protection from armed guards. At their height in 2008 to 2009, some PMSCs could charge \$5,000 per day for a four-man team; today that price is down to about \$3,500. Since, to date, not ship with an armed team has been taken by pirates, that investment more than offset the potential of paying hundreds of thousands to millions of dollars in ransom.

Although some in the industry argue that incidents of piracy remain unreported or underreported in order for companies to avoid higher insurance rates, the fact is that Somali piracy has dropped precipitously. As a result, Cook notes, there has been a major consolidation of PMSCs. That is not to say they will disappear or their work will not expand. To the contrary, they will likely be more necessary in the coming decades for several reasons.

First, long-time state navies with global projection (such as European nations or even the United States) are likely to diminish in size and projection capability due to increased domestic funding demands. Second, increasing competition for scarce resources and changing demographics will lead to greater instability among underdeveloped nations, particularly those along coastlines. Third, greater need for energy will result in more off-shore oil and gas platforms (currently twenty-five percent of all oil and gas platforms are off-shore such as those in the Gulf of Guinea.) Fourth, as one presenter at a recent Naval War College symposium suggested, a greater need for food sources will result in aqua-farming areas. Simply put, less maritime security capabilities by states and increased needs for security will lead to a greater reliance on PMSCs.

What does this mean for the United State? Most importantly, the nation will have to work with the industry in ensuring it is regulated and accountable. With Somali piracy, the country – like many European countries – was opposed to the use of PMSCs or at least did not recognize them. Public officials and senior military now recognize the partial role they have played off the Horn of Africa. The industry has already begun to self-regulate internationally. Operators quickly share information with each other on the reputation of firms and which ones should be avoided. In addition, organizations

like SAMI provide standards such as certifications as a vetting conduit between PMSCs and the shipping industry.

In the coming decades, maritime security will be far more complex. Absent sufficient state navies and coast guard forces, PMSCs may well be the only alternative to ensuring platforms and regions have some semblance of security.

Image from: <http://maritimeintel.com/wp-content/uploads/2013/11/joao-jose-pic-4.jpg>

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America Should End Mercenary Contracts

By Tim Steigelman

Over the course of the last decade or more, scholars and pundits have debated the feasibility and legality [1] of employing private military contractors [2] (“PMCs”) in lieu of uniformed American military forces. What follows will be a two-part post looking at the historical antecedents and contemporary problems with mercenaries.

I. Historical View of Private Warfare

Historical Mercenaries

Mercenaries long predate modern PMCs. Perhaps the best known example from European history is the condottieri, the soldiers for hire who would fight for one prince or another as their paymaster dictated. One well known Florentine had quite a bit to say about condottieri, blaming them for failing to defend Italy against the invading French led by King Charles in the late fifteenth century. He explains the underlying problem:

“if a prince holds on to his state by means of mercenary armies, he will never be stable or secure . . . Mercenary captains are either excellent soldiers or they are not; if they are, you cannot trust them, since they will aspire to their own greatness . . . but if the captain is without skill, he usually ruins

you.” [3]

Nevertheless, the title condottieri lives on today as part of a PMC trade name. [4]

Mercenary soldiers in America predate the republic itself. Hessian soldiers were famously dispatched from their German homeland to fight George III’s war against the rebellious colonists. This use of mercenary force was such an affront to the political wing of the Continental resistance that it declared King George had transported “large Armies of foreign Mercenaries to compleat [sic] the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.” [5] Having fought the “large Armies of foreign Mercenaries” himself, George Washington echoed Machiavelli and “warned that ‘Mercenary Armies . . . have at one time or another subverted the liberties of almost all the Countries they have been raised to defend.’” [6]

The American Civil War saw its share of the private hiring of soldiers, albeit not in a classic mercenary context. Previous mercenaries like the condottieri and Hessians were complete units that would be hired to go into combat as a unit. The

Enrollment Act of 1863 established a draft for military service, and permitted conscripts to hire a substitute, a person who, for a fee, would take that draftee's place, allowing the paying customer to avoid the draft. [7] The Civil War system of substitutes kept the essence of the mercenary relationship—soldiers for hire, paid under a private agreement to fight—but these were retail, rather than wholesale mercenaries. Although the draft was reinstated for several decades of the 20th century, it is telling that the substitute system was never reintroduced. [8]

Privateers Profiting from War at Sea

The profit motive once enjoyed a prominent if relatively small role in American military power. At the founding, Congress was (and arguably still is) empowered to issue letters of marque and reprisal. [9] While no match for a ship of the line, privateers were effective at least as an irritant to British commerce during the revolution.

A privateer was not a pirate because a sovereign nation issued a letter of marque allowing the privateer to take the enemy's commercial vessels and keep them as prizes. [10] Perhaps surprisingly to a modern audience, the earliest versions of American prize law even allowed American naval officers to retain some of the proceeds of prizes taken by commissioned American warships. [11] That profit motive is no longer on the books. [12]

Even so, private, for-profit companies like Blackwater (now Academi), Triple Canopy, and others have provided contract military and related services to the United States. While proponents will point to their successes and opponents point out failings, their efficacy or lack thereof is beside the point. America should not use mercenaries because it distorts the relationship between an elected government and the people by privatizing inherently governmental services.

Assume America's vital interests are threatened by a distributed network of tribal insurgents Country Orange. The American government needs to close with and engage the enemy. The Orange government agrees to either openly willingly allow or silently cooperate with American military actions in Orange.

American military planners can either send in uniformed military, or PMCs. Preferring to privatize this operation, the government hires (the fictitious) "Mercenaries 'R Us" to handle the job. To maximize its profits, Mercenaries 'R Us declines to armor its contractors' wheeled vehicles or aircraft, obviates

back-up communications devices, decides against individual body armor, and arms its mercenaries only with pistols and long guns. They keep a light footprint and send small teams out into known hostile territory. The inevitable happens, and the enemy successfully ambushes the contractors, with many killed and wounded. [13]

If the injured PMCs were instead American servicemembers, they would be given medical treatment and rehabilitation through military medicine. The VA, for all its flaws, would attempt to help the wounded recover and restart their life after their injuries. If the fallen were uniformed military, their survivors would be taken care of with survivor benefits. All of these benefits were enacted by Congress to support the men and women who go abroad to do the nation's work in harm's way.



In our example, Mercenaries 'R Us sent its employees downrange to do America's bidding. That is where the similarities to the uniformed military members end. PMCs are not entitled to use military medicine. [14] There is no VA for contractors. Death benefits are limited to whatever Mercenaries 'R Us has arranged for its employees and their survivors—likely very little. [15] As long as the stock price stays high and the dividends keep coming, the shareholders are unlikely to have very

much concern for the human toll of warfare. [16] Battles fought in the name of the American people may not be watched particularly closely by a group of investors primarily concerned with the bottom line.

In other words, by hiring Mercenaries 'R Us to fight its battles, America has externalized the cost of war, particularly caring for its combat wounded and the survivors of the fallen. No congressional committees to answer to, no pictures on the nightly news honoring the fallen, no unpleasant reminders of the horror of war. The policymakers get to conduct their military expedition, and the economic cost is borne by the shareholders of Mercenaries 'R Us.

But even on the economic front, hiring PMCs may not be wise in the first place, as contractors may not cost any less overall than uniformed servicemembers. [17] Nor does outsourcing insulate the government from responsibility for its actors, because when the government contracts out to private actors to perform public services, those actors become agents for the state. [18] Moreover, contract warfare seems to skirt at least the spirit of mandatory Congressional oversight of the nation's military. [19] For all these reasons and as the hypothetical above shows, the inherent tension between public, military service and private ends is fraught with peril.

Private military contractors are one facet of the military-industrial-congressional complex that ought to be dismantled. The profit motive is out of American prize courts, and letters of marque have fallen into disuse. The modern renaissance of PMCs seems an anachronism, perilously like the “large Armies of foreign Mercenaries” that so offended the founders. As disparate personalities as Machiavelli and Washington well understood, mercenaries introduce a host of problems that outweigh their seeming availability as ready, armed manpower. America should get out of the mercenary business.

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[1] See, e.g., Theodore T. Richard, Reconsidering the Letter of Marque: Utilizing Private Security Providers Against Piracy, 39 Public Contract Law Journal 411 (2010); see also Claude Berube, Contracts of Marque, U.S. Naval Institute Proceedings Magazine, 2007 Vol. 133.

[2] The term “contractor” or “military contractor” has been long used in defense circles to encompass much more than the subset of commercial mercenary armies, to include private people and entities of all kind providing goods and services to the DOD under a contract, differentiating “government contractors” from civilian government employees. Take, for example, Edward Snowden, widely and properly reported to be an NSA contractor at the time of his heroic and/or infamous acts. For purposes of this piece “contractor” will be used in the narrower sense of armed private forces, and interchangeably with PMC.

[3] Niccolo Machiavelli, *The Prince* (Peter Bondanella & Mark Musa, eds. & trans.) Penguin Books, 1979, pp. 116-17.

[4] Condottieri Contractors. <http://www.condottiericontractors.com/>

[5] The Declaration of Independence (July 4, 1776).

[6] Reid v. Covert, 354 U.S. 1, n.43 (1957)(quoting 26 Writings of Washington 388 (Fitzpatrick ed.)).

[7] http://michigan.gov/dnr/0,1607,7-153-54463_19313-125416-,00.html, a Michigan state government website with a good introduction and access to records of principals and

substitutes from the Civil War.

[8] While the availability of deferments during Vietnam was much debated and reeked of much of the same inequality as directly hiring substitutes, the deferment process at least had the sparing virtue of eliminating private commercial transactions from the process.

[9] U.S. Constitution, Article I § 8. The arguable part comes from international treaties and state practice—or rather, lack of practice.

[10] See, e.g., *The Schooner Adeline*, 13 U.S. (9 Cranch) 244 (1815)(a prize proceeding brought by a privateer).

[11] See *Little v. Barreme*, 6 U.S. (2 Cranch) 170 (1804).

[12] 10 U.S.C. § 7668.

[13] This hypothetical is drawn from *Burke v. Air Serv. Intern., Inc.*, 685 F.3d 1102 (D.C. Cir. 2012).

[14] Out of necessity, injured contractors do receive medical care from military doctors when in theater, which is both a cost driver to the government and a point of contention. Once stabilized and sent home, the gratis health care ends and the injured mercenary is left with private medical insurance.

[15] Citing Jimmie I. Wise, *Outsourcing Wars: Comparing Risk, Benefits and Motivation of Contractors and Military Personnel in Iraq and Afghanistan (2009–2011)*, MBA Professional Report, Naval Postgraduate School (2012), available here.

[16] A private company is generally required to maximize return for its shareholders, and corporate officers who make decisions at the expense of shareholder returns may face liability. Corporate oversight, such as it is, is exercised by shareholders.

[17] See Isenberg, “Are Private Contractors Really Cheaper?”.

[18] See, e.g., *West v. Atkins*, 487 U.S. 42, nn. 14-15 (1988).

[19] See U.S. Constitution, Article I § 8 (requiring biannual reauthorization for the raising and supporting of armies).



A Response to “America Should End Mercenary Contracts”

By Claude Berube

CIMSEC “Private Military Contractor Week” has generated several pieces including the commentary “America Should End Mercenary Contracts”. Any discussion about PMCs can generate visceral reactions, especially given their activities in Iraq and Afghanistan in the past decade. Nevertheless, the possibility of their growing presence in the 21st century maritime environment suggests a healthy debate and a more accurate reflection of the issues is required. Consequently, “America Should End Mercenary Contracts” has several issues which ought to be deliberated and clarified in this forum.

What’s in a Name

The article, in the second paragraph, may be confusing the private military contractors of the Executive Outcomes to the PMCs in Iraq and Afghanistan. In the case of the former, PMCs were reportedly used for offensive operations while in the latter case PMCs were ostensibly used or intended for more defensive purposes such as the protection of convoys. As a result, it is the latter which is more similar to the firms employed in maritime security and, thus, the subject of CIMSEC’s PMC Week. Land-based and maritime-based PMCs have

inherently different missions. Maritime security companies were not hunting down pirates off Somalia, for example. They provide on-board defense security. To date, as several senior Obama administrations have admitted, no ship with an armed guard contingent has been taken by pirates.

Although the author suggests that these modern mercenaries are privateers, that is likewise an inaccurate term for two reasons. First, privateers were issued letters of marque by states. Most maritime security companies today have a direct fiduciary and contractual relationship with shipping companies and not, by and large, states. Second, privateers were issued those letters of marque to actively attack enemy commerce during wartime. As stated earlier, maritime security companies have a more defensive role and do not seek out illicit organizations.

All My Sons

The author’s criticism of the private sector is understandable. Historically, many did not behave ethically; as a result, government regulations ensure basic foods were untainted, children were not used in the labor force, and reasonable work weeks

were the standard. The article states that “to maximize its profits, Mercenaries ‘R Us declines to armor its contractors,” etc. This is a legitimate issue, but it is also legitimate to discuss the role of the federal government in which contracting officers seek out the lowest-bid among various contractors. Or consider that the U.S. went into Afghanistan with “the army you have—not the army you might want or wish to have at a later time,” as then-Secretary Rumsfeld noted when the military sent in vehicle that failed to be up-armored. By contrast, some contractors had the flexibility to respond to changing circumstances on the ground rather than wait the traditional Pentagon acquisition route.

Another criticism by the author of PMCs is that “as long as the stock price stays high and the dividends keep coming, the shareholders are unlikely to have very much concern for

“What the author may not be aware of is that most PMCs... do not have public shareholders; rather they are privately held.”

the human toll of warfare.” What the author may not be aware of is that most PMCs – certainly maritime security companies – do not have public shareholders; rather they are privately

held. But if this argument was valid, should the United States likewise restrict the use of publicly-held military contractors such as General Dynamics, Lockheed Martin, and Northrop Grumman because they build the tools and platforms for conducting war? Arguably, if they are accountable, then so might U.S.- or internationally-regulated PMCs. If the author is only discussing the direct actions by individuals providing security, then he might want to walk into any federal building in Washington DC. During a recent visit to the National Archives as I awaited the building to open for researchers, I noted the half-dozen armed guards who were not police. They informed me that their contract gave them jurisdiction to the sidewalk. Contractors. Armed. In a federal facility.

Holding Companies Accountable

The author is absolutely correct that organizations must be held accountable. He states that his hypothetical “Mercenaries ‘R Us” has “no congressional committees to answer to” and their “contract warfare seems to skirt at least the spirit of mandatory Congressional oversight of the nation’s military.” But that’s not entirely accurate. Since 2007, the House Armed Services Committee had held twenty-two hearings in which the role of private security contractors was discussed. The House Committee on Oversight and Reform also held a very highly publicized hearing on the role of the former Blackwater in Iraq with Erik Prince providing the sole testimony. Since 2007, the Senate Armed Services Committee

has held forty-six hearings in which issues about PMCs were raised.

In addition, the author may not be aware that Congress has already acted on the issue of accountability when it passed the National Defense Authorization Act in October 2007 which modified the Uniform Code of Military Justice which made the UCMJ applicable to PMCs.

This is not unprecedented. During the age of sail, for example, privateers were held as accountable as officers and sailors in the U.S. Navy. For example, the author might benefit from the “Records of General Courts-Martial and Courts of Inquiry of the Navy Department 1799-1867” in which he would find a number of privateers among U.S. navy ships and personnel. For example, the crew of the privateer brig Scourge in Case 196 were tried for pillaging a neutral vessel and assaulting a superior officer. They were tried by a board of navy officers under board president Captain Isaac Chauncey. Those not acquitted received the same punishment as Navy sailors – the lash and forfeiture of their share of prize money. In that era, U.S. Navy officer and sailors also shared in the profits of captured enemy vessels. Nor was this the only case; others were likewise tried for violating the 1800 “Act for the Better Government of the Navy. So PMCs – or rather PMSCs specifically – are and could be held accountable.

Wounded Civilian Warriors

The author states in paragraph 3 that “if the injured PMCs were instead American service members, they would be given medical treatment and rehabilitation through military medicine. The VA, for all its flaws, would attempt to help the wounded recover and restart their life after their injuries. If the fallen were uniformed military, their survivors would be taken care of with survivor benefits. All of these benefits were enacted by Congress to support the men and women who go abroad to do the nation’s work in harm’s way.” Because most maritime security companies are hired directly by shipping companies, this particular statement might not apply. However in the future if the US found itself in a position to hire more armed guards on the few US-flagged ships remaining, then there is precedent for Congress to expand services for them. This includes “An act regulating pensions to persons on board private armed ships” who become wounded or disabled (February 13, 1813), “an act to amend and explain the act regulating pensions to persons on board private armed vessels” (August 2, 1813) and “an act giving pensions to the orphans and widows of persons slain in the public or private armed vessels of the United States (March 3, 1814.) By 1824, the Privateer Pension Fund listed ninety-seven “invalids disabled in action in the line of duty.” The fund was governed by a secretary, John Boyle, who later served as acting Secretary of the Navy.

Conclusion

The issues surrounding PMCs and, specifically, private maritime security companies, are far more complex and demand more attention in the coming decades. The fact is the U.S. and other traditional powers are downsizing their militaries while global and regional security threats are at best constant and at worst growing. While turning toward the private sector for supplementary security in as regulated environment as US military forces may seem distasteful to some, the reality is that without sufficiently right-sized military options, countries and companies will have to turn to their own sources of private security particularly at sea. If the U.S. and partners stick their head in the sand with this issue or dismiss it out of hand, private security will not go away; in all likelihood the vacuum of control and regulation will either expand without appropriate international mechanisms or simply fall upon rising peer-competitors and that may be a far more troubling outcome.

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