



Fighting Maritime Piracy with Private Armed Guards

Yvonne M. Dutton

11 July 2016

States recently embraced a new policy regarding the fight against maritime piracy, and many began authorizing their cargo ships to carry private armed guards to help protect them when travelling through pirate-infested waters. Whilst this approach has yielded some success in protecting ships, it has also produced some major problems.

Author's Note: For a more detailed argument about why states should cooperate to regulate armed guards providing anti-piracy protection, see the article "Gunslingers on the High Seas: A Call for More Regulation," 24 Duke J. Comp. & Int'l Law 105 (2013), written by Yvonne M. Dutton, which is available on SSRN.

In 2011, the fight against maritime piracy changed. Until then, the world's navies were primarily charged with providing the bulk of anti-piracy protection, and individual ships were encouraged to do their part in deterring piratical acts by employing the industry's "best management practices" – a set of primarily passive defense measures. But, in early 2011, the [International Chamber of Shipping](#) (ICS), the main trade association for the shipping industry, announced that it had changed its previous stance opposing the use of armed guards on ships. Instead, it stated that the decision of whether to hire armed guards should be left to ship owners and their flag states.

States embraced the new policy position, and many began authorizing their cargo ships to carry armed guards to help protect them when travelling through pirate-infested waters. The reason for the change was simple: the world's navies had managed to prevent many pirate attacks after they began patrolling the Gulf of Aden and Indian Ocean in 2008, but they simply could not control

Latest

[An Update on the Security Policy Change Programme](#)

[Chances for Peace in the Third Decade](#)

[A Story of ORG: Oliver Ramsbotham](#)

[A Story of ORG: Gabrielle Rifkind](#)

Most read

[The Role of Youth in Peacebuilding: Challenges and Opportunities](#)

[Making Bad Economies: The Poverty of Mexican Drug](#)

enough of the high seas to make travel safe for all. By 2012, some 60% of cargo ships employed armed guards. Hiring the guards is not cheap—costing ship owners about \$60,000 for a four-person team to accompany travel through the Gulf of Aden. On the other hand, the evidence suggests that no ship protected by private armed guards has been the victim of a successful pirate attack. In 2009, despite the presence of the world’s navies, Somali pirates attacked more than 200 ships, resulting in more than 40 successful hijackings. The contrast with 2015 is significant, with the International Maritime Bureau (IMB) Piracy Reporting Centre showing no attempted or successful Somali pirate attacks.

Although apparently no ship protected by private armed guards has been successfully attacked, there are reasons to be concerned that the guards will not perform their anti-piracy duties in a way that does not escalate violence, involve unlawful use of force, or cause international incidents. A March 2011 incident between private armed guards hired to protect the cargo vessel *Avocet* and alleged pirates in the Gulf of Aden illustrates this point. Video footage shows PMSC personnel firing dozens of shots at an approaching skiff after their team leader ordered them to fire “warning shots.” The guards continued to shoot even after the skiff crashed into the *Avocet*. The Private Maritime Security Company (PMSC) defended the actions of its personnel as justified, stating that the guards feared for their lives and were acting in self-defense. A maritime industry expert, though, expressed the view that the failure to fire actual warning shots and the rapid and sustained rate of gunfire show the guards used excessive force.

A recent New York Times report suggests that the risk that private armed guards may mishandle potential pirate attacks has increased, rather than

Cartels

ORG's Vision

Remote Warfare: Lessons Learned from Contemporary Theatres

decreased, over the last several years. The report centers on a video showing four unarmed men being gunned down at sea by someone who industry experts believe is a private armed guard wielding a semi-automatic weapon. Other private armed guards interviewed for the article lamented a booming \$13 billion-a year security business teeming with untrained guards. They stated that many armed guards employed by a shipping industry concerned with cost-cutting “lack combat experience, speak virtually no English (despite a fluency requirement), and do not know how to clean or fix their weapons.” And untrained guards can panic and fire too soon or hesitate for so long that they miss the chance to employ preventative measures that could prevent resort to deadly force.

However, no coordinated set of international guidelines regulates PMSCs and the hiring and training of private armed guards to aid in the fight against piracy. States instead each make their own rules. Germany and France are examples of states that have taken a more hands-on approach, requiring PMSCs to meet certain criteria to help ensure that guards are thoroughly vetted and well-trained in the use of force before the company can obtain a special license or certificate to provide services on the state’s flagged ships. [The Marshall Islands](#) is similarly hands-on, requiring ship owners to hire only from PMSCs that have been certified to the [International Organization for Standardization’s \(ISO\) 2015 Guidelines for PMSCs](#) by an accredited certification body. The United Kingdom takes a different approach and refrains from mandating particular licensing or certification standards. It does, however, [encourage](#) its ship owners to employ guards from PMSCs that have been voluntarily accredited under the ISO’s 2015 Guidelines for PMSCs. Finally, some states are more hands-off as regards vetting and training of guards. For example, [Singapore states](#) that the decision of whether to hire armed guards is

a matter for ship owners to decide. It does warn that the decision should be made “after a thorough risk assessment and after ensuring all other practical means of self-protection have been employed.”

A Call for More Regulation and Coordination

States that have employed a more hands-on approach to vetting guards and ensuring that PMSCs meet certain standards of operation and training should be commended. However, unless all states are similarly vigilant, we cannot eliminate the risk that untrained “cowboy” guards will indiscriminately shoot to kill when the law and facts do not warrant that use of force. All states should accept responsibility for making sure that the world’s oceans are safe from “cowboy” guards by negotiating an international convention establishing one set of regulations to govern PMSCs and the qualifications and training of maritime security personnel. A world where each state’s PMSC standards differ can create an incentive for ship owners concentrating on the bottom line to choose to sail under the **flag** of a country with looser regulations. Similarly, absent an agreed-upon international standard, PMSCs may choose to register themselves in a jurisdiction with lax laws.

Getting states to agree on a regulatory scheme for PMSCs will require effort. On the other hand, states need not start with a blank slate: the ISO has already created guidelines for PMSCs. The ISO’s 2015 Guidelines for PMSC address security management system elements and operational planning for PMSCs providing armed guards in high-risk areas. For example, Section 4.2.5 of the Guidelines states that the PMSC “should establish and document its processes for compliance with home state, coastal and flag state laws as regards the procurement, licensing and transshipment of firearms for each transit.” That same section more precisely also states that the PMSC should “comply with

any home or flag state or local requirements in respect of identifying and licensing individuals who will use such firearms, including ‘end user certificates’ where national laws apply.” Section 4.3.2 discusses procedures PMSCs should employ for background screening and vetting of guards, stating that “[s]election of qualified personnel should be based on specific competencies and criteria defined by the organization including knowledge, applicable and relevant military, law enforcement or equivalent experience, skills, abilities and attributes.” Section 4.4.3 states that the PMSC “should establish, implement, and maintain procedures to ensure all security operatives carrying out tasks on its behalf are aware of and receive training” on, among other things (1) the maritime environment; (2) ship security systems and defense arrangements; (3) rules on the use of force generally and as they apply for specific transits; (4) competence with specific firearms and how to properly store arms; (5) the prohibition of consuming alcohol or drugs while on the ship; and (6) procedures to document any incidents involving the use of arms. In terms of operational planning, for example, Section 5.1 states that the PMSC “should establish and document processes and protocols for legal authority and licensing, preparation, deployment, command and control and communication with its security personnel.” (ISO makes the Guidelines available for download from [its website](#) for a fee.)

As noted above, the Marshall Islands now [mandates](#) that its shippers hire armed guards only from PMSCs certified to the standards of the 2015 ISO Guidelines by a United Kingdom Accreditation Service ([UKAS](#)) authorized certification body. The United Kingdom [encourages](#) its shippers to “use independent third party certification” to the ISO Guidelines “as an important component of their criteria in selecting a PMSC.” States have little excuse not to follow their lead—the ISO standards and certification processes already exist.

Certification, though, should not be the end of the process. To make certain that PMSCs continue to deliver quality, reputable services, states should create a regular monitoring mechanism that can be implemented by either an existing institution or one that is newly-created. And all states should ensure that the PMSCs their shippers hire are subjected to that regular monitoring mechanism. The process of monitoring PMSCs necessarily will not be without costs. But both ship owners and states should be willing to fund the effort. To continue with a system in which each state creates its own rules or not rules at all puts innocent lives at stake and risks escalating levels of violence at sea. All civilized states should instead work towards making the seas safer for all, not riskier.

Image via [Wikimedia Commons](#).

Yvonne M. Dutton is an Associate Professor of Law teaching international criminal law, comparative law, evidence, criminal law, and criminal procedure. Dutton has practiced law as a federal prosecutor in the U.S. Attorney's Office for the Southern District of New York, where she tried narcotics trafficking and organized crime cases. She also practiced as a civil litigator in law firms in New York and California. Dutton's research interests include international criminal law, international human rights law, and maritime piracy. Broadly speaking, her scholarship examines questions about international cooperation and the role and effectiveness of international institutions in deterring and holding accountable those who commit crimes of international concern. Dutton has published a number of law review articles analyzing issues associated with maritime piracy.

Share this page



Contact

Unit 503
101 Clerkenwell Road London
EC1R 5BX
Charity no. 299436
Company no. 2260840

Email us

020 3559 6745

Follow us



Registered with
**FUNDRAISING
REGULATOR**

Useful links

[Login](#)
[Contact us](#)
[Sitemap](#)
[Accessibility](#)
[Terms & Conditions](#)
[Privacy policy](#)