



Dar es Salaam
Maritime
Institute



Proceedings of the 3rd Dar es Salaam Maritime Institute Blue Economy Conference (2024)

July 04-05, 2024
Dar es Salaam, Tanzania



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First Print July, 2024

Published by
pS Counseling Consultants
P. O. Box 90516
Dar es Salaam, Tanzania
Hotline: +255 (0) 754 861161 WhatsApp: 0786 448577
Emails: mcdoulos7@yahoo.com / mcdoulos3@gmail.com

ISBN: 978-9987-858-28-6
ISSN: 2961-614X

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ASSESSING THE ROLE AND CHALLENGES OF PRIVATE SECURITY COMPANIES IN THE MARITIME SECTOR

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ABSTRACT

Maritime safety and security have come under focus given the reemergence of piracy and attacks by warring parties around the Middle East, disrupting international logistics. Private security industry continues to play a critical role in providing assurance to key players in the shipping industry and hence ensure continuity of operations. This paper assesses the role of the private security companies in maritime safety and security. Specifically, the paper assesses the potential of the private security industry, the role it can play and possible impediments to address to improve its effectiveness in maritime safety and security.

This study employs a mixed-method approach combining literature review and a case study design focused on the qualitative exploration of the potential contributions of private security companies to maritime safety and security. The study found that private security companies have a critical role to play to enhance maritime safety and security in the region. They need to be properly registered and be certified against a number of international standards reviewed in this paper. There are impediments including capacity of actors, regulatory



challenges, and mandate. This paper concludes that whereas there are challenges in optimizing the role of private security industry, the players can surmount these by getting organised and engaged, with key support from key governments and international organisations, and hence the efforts will be focused, efficient and effective in improving maritime safety and security.

Keywords:

Private Security Companies, Private Maritime Security Companies, Maritime Safety and Security, Maritime Safety and Security Standards, Piracy

1.0 INTRODUCTION

Maritime security is a general term for the protection of vessels and their cargo against threats such as piracy, terrorism, smuggling, robbery, and similar external threats (Campling and Colás, 2021). ISO describes it as services which range from intelligence and threat assessment to ship hardening and the guarding and protection of people and property or any activity for which the company personnel may be required to carry or operate a firearm in the performance of their duties. ISO (2015) defines security as a process to pre-empt and withstand intentional, unauthorised act(s) designed to cause harm, damage, or disruption. Maritime safety focuses on the protection of people and environment mostly from naturally occurring or accidental hazards (Safety Culture, 2024).

According to the International Maritime Organisation, 131 incidents of piracy and armed robbery against ships were reported as having occurred or been attempted in 2022. In 2021, 172 incidents were reported, whereas the number was 229 incidents in 2020 (IMO, 2022). This shows that there is a decrease of about 24% at the global level compared to last year, and the lowest number of reported incidents at the global level since 1995 (Sambu, 2023).

From the data referred to above, it also emerges that the areas most affected by acts of piracy and armed robbery against ships in 2022 were the Straits of Malacca and Singapore (72 incidents), West Africa (21 incidents) and South America (Pacific) (14 incidents), followed by Indian Ocean (9 incidents), South America (Atlantic) (6 incidents), South America (Caribbean) (4 incidents), South China Sea (4 incidents) and Arabian Sea (1 incident) (IMO, 2024).

The data reveals that the total number of crew reported as taken hostage/kidnapped in 2022 remains at 24 crew members, and this is a decrease from 48 crew members held hostage/kidnapped in 2021 (Sambu, 2023). Around 58% of the crew members were reportedly taken hostage/kidnapped in incidents in West Africa in 2022. The total number of incidents of piracy and armed robbery against ships reported to IMO as having occurred or having been attempted from 1984 to the end of December 2022 has risen to 8,718 (IMO, 2024).



According to Cao *et al.*, (2023) areas deemed to be high-risk include the Indian Ocean, Southeast Asia, Gulf of Guinea, Gulf of Aden, the Red Sea, Persian Gulf, Arabian Sea, Mozambique Channel, and West Coast of Africa. During the last quarter of 2023 and the first quarter of 2024, the Middle East Region witnesses an increasing and unprecedented geopolitical risk. With the outbreak of war in Palestine and the uprising of Houthis in Yemen, the impact of the Red Sea route was evident, with supply chain disruption on the key international sea route (IMO, 2024). This forced business to reassess the impact and take action to maintain reasonable inventory to mitigate the supply chain disruption and continue monitoring supply, shipping and insurance costs (Rogerson *et al.*, 2024). There was also connectivity disruption due to undersea cable damages.

The affected cables included SEACOM/Tata TGN-Eurasia and Europe India Gateway. These cables transmit internet traffic among Europe, Middle East, India and Eastern and Southern Africa (Franken *et al.*, 2022). With technology becoming a key necessity in the functioning of systems, business continuity and recovery measures came to the core. The experts indicated that the current high-risk areas of the sea include the Indian Ocean, Southeast Asia, Gulf of Guinea, Gulf of Aden, the Red Sea, Persian Gulf, Arabian Sea, Mozambique Channel, and the West Coast of Africa. The veracity of the recent events calls for better response and the role of the Private Security Companies (PSCs) is assessed (Suresh *et al.*, 2020).

PSCs continue to play a critical role in safety and security for both the private sector and the government. They are termed as companies supplying land-based security services like guarding, close protection, security awareness, risk assessment, protective and defensive measures, escort of transport, and policy analysis (ASIS, 2012). PSC workers are engaged in a wide range of activities from highly specialized investigations of corporate crime, to providing armed security for banks and commercial organizations, to protecting private property in public spaces and commercial buildings (Sambu, 2023).

The Global Security Services was valued at USD 240.18 Billion in the year 2020 and is expected to grow to USD. 342.7 billion by 2026 (Azoth Analytics, 2021). It employs between 19.5 to 25.5 million people worldwide (Diphoorn, 2016) and holds up to 3.7 million firearms, with numbers being up to four times the size of police forces (Krahmann, 2017). The significance of this article will contribute to the literature by providing empirical evidence on the role of private security companies in maritime safety and security. It will bridge the contextual gap by focusing on developing economies, to draw attention to evolving roles in private security services. It demonstrates how systematic research in issues in private sector is used to generate evidence that informs and motivates policy change.

This article is structured to cover the introductory part and methodology, then it discusses, the maritime safety and security situation and the role of private security industry. It concludes with recommendations that will help all actors and interested parties within the industry.



2.0 METHODOLOGY

This study used a mixed approach of literature review and a case study design where culminated papers were qualitative in nature, and on the case study of the possible role of private security companies in maritime safety and security. For this end, this paper used in-depth personal interviews, observation, expert opinions, and documentary review for getting both primary and secondary data. The study began with an intensive literature review and analysis of the standards in maritime safety and security and the nature of private security industry.

In total, six respondents were interviewed from Kenya (3) and Tanzania (3), covering the maritime security experts and executives of private security companies, selected using purposive and convenient sampling. This number was deemed sufficient due to saturation should the number be higher. The interviews and discussions were carried out between January and March 2024. The respondents were assured of confidentiality and their identities have not been disclosed in this paper.

3.0 RESULTS AND DISCUSSIONS

3.1 Maritime Safety and Security Standards

Maritime Safety is the protection of crew and passengers aboard vessels, as well as those living in or working near water bodies, from hazards or risk of injury or fatality. Example is the provision of Personal Floatation Devices which aid in recovery of persons in water. According to the experts, maritime safety averts safety tragedies like sinking of ships, explosions or discharge of toxic waste to water bodies. Effective safety will help lower the ship's risk profile. This is critical in determination of the intervals between the required inspection, as per the Paris Memorandum of Understanding on Port State Control¹. For instance, a ship rated as Low Risk Ship requires an inspection interval of three years while a High-Risk Ship requires inspection intervals of five months (Hassellöv et al., 2020). The operators are required to observe and adhere to the maritime standards. These are industry-accepted rules that govern maritime safety and security and enforced by the International Maritime Organization (IMO), as well as other international, regional or national organisations, associations and agencies.

The International Convention for the Safety of Life at Sea (SOLAS), set in 1974 in response to the Titanic disaster, is an international treaty that is now adhered by over 160 countries and covers aspects like the construction of ships, provision of life saving appliances, radio communications and the implementation of safety in navigation – manning, routing, and signalling. On the other hand, the ISO 27991 standard is created to provide guidance on communicating between a Marine Evacuation System (MES) and the platform or survival

¹ Available on <https://www.parismou.org/inspections-risk/library-faq/memorandum>



craft it is attached to, as required by SOLAS regulation III/6.4.4 (Safety Culture, 2024). International Ship and Port Facility Security (ISPS) Code applies to vessels on international voyages and the port facilities serving them. The main components of the ISPS Code include the completion of a Declaration of Security when required by the government or requested by a ship; the development of a ship security plan and a port facility security plan; the use of ship security assessments and port facility security assessments; the participation in training, drills, and exercises on ship security and port security; and the designation of a ship security officer, a port facility security officer, and a shipping company security officer.

Global Maritime Distress and Safety System (GMDSS) has another set of requirements that must be complied with when traveling on international voyages or in the open sea, cargo ships of 300 tons and over, along with all passenger ships carrying more than 12 passengers, according to the Federal Communications Commission. They differ by sea area, but the common requirements include a 406 megahertz (MHz) Emergency Position Indicating Radio Beacon; a Very High Frequency (VHF) radio that can transmit and receive Digital Selective Calling (DSC) and radiotelephony; a NAVigational TELeX (NAVTEX) receiver; a Search and Rescue Transponder (SART); two-way VHF portable radios; and radio equipment maintenance using approved methods (Safety Culture, 2024).

Another key guideline is the Standards of Training, Certification and Watchkeeping (STCW). The International Convention on Standards of Certification and Watchkeeping for Seafarers (otherwise known as STCW, the STCW Code, or the STCW Convention) requires that crew members receive adequate training on topics that are relevant to their duties (Safety Culture, 2024). According to the respondents, training must be validated in the form of required certificates, endorsements, and/or documented evidence. While there are specific requirements for each rank, generally all crew members must have a national certificate of competence with them onboard.

3.2 Safety and Security of Merchant Ships

Respondents indicated that the main concern of a merchant ship is safely conveying its cargo. The danger remains weather and other natural conditions that influence the place it operates. The pirates therefore are seen as pests to be avoided and this is the premise held in the construction of the ship. The focus is on the ability to withstand the forces of nature, load and offload cargo efficiently, be watertight for its intended use and fuel economy. Typically, a merchant ship moves at speeds of between 11 and 15 knots and usually do not have inbuilt defence mechanisms and manning is at the minimum level possible (Osnin, 2006). Safety, therefore, takes priority than security. This makes the ships attractive to pirates.

IMO recommends high level of security surveillance for early detection of security threats or breaches. Even though the ships have distress flares, often this is restricted to situations when the ship is in imminent danger of sinking. They can use water hoses to deter and repulse attackers. Ships crossing high risk areas are advised to travel blacked out and to



establish secure areas. And where there is a conflict between safety and security, safety requirements should be paramount (Osnin, 2006). These suggested techniques seem not to be having expected impact as merchant ships are still an easy prey. The legal framework regulating merchant shipping also emphasises safety, pollution control and operational procedures. The trend has however changed to focus on security too, with escalation of incidents of piracy and terrorism. The IMO circular strongly discourages carriage and usage of firearms. The stance has however softened, as the threats escalated.

The IMO monitors the acts of piracy and armed robbery against ships and according to their statistics, it recorded 8,718 incidents between 1984 and 2022. The trend seems to show that incidents are on the rise, in the recent past. Despite this trend, there is no effort to equip the seamen and enhance their capacity to fight these perpetrators. The focus is the welfare and safety of the seafarers and arming them is seen as an act of aggression, that may instigate an arms race, resulting in higher casualties amongst the ship's crew. The International Maritime Bureau holds this view and recommends other defensive options like sonic devices and electric fences around the ship's deck to deter pirates.

IMO (2024), while acknowledging that carriage of firearms in merchant ships is a complex legal issue with IMO member states taking diverse opinions, appears to have softened its stance and merchant ships may now use privately contracted armed security personnel (PCASP). It acknowledges that there is no agreed minimum performance standard, given the diverse legal regimes. However, there are various guidelines that PCASPs may apply in the conduct of their operations. The issue has been evolving over time amongst the IMO member states.

IMO kept advancing new approaches as the debate went on, and situation kept changing in the state of security. At first, the stance was, "the carrying and use of firearms for personal protection or protection of a ship is strongly discouraged" (MSC/Circ.623, annex paragraph 40 (June 18, 1993). Then, "flag States should strongly discourage the carrying and use of firearms by seafarers for personal protection or for the protection of a ship" (MSC.1/Circ.1333, annex, paragraph 5 (June 26, 2009). This has been updated and revoked by MSC.1-CIRC.1333-REV.1 in June 2015 to the current position of that acknowledges that the deployment of armed security personnel on board ships has become an accepted industry and flag state practice in certain circumstances (IMO, 2024). There are sections of the sea routes that are declared as war risk areas and hence insurers place additional war risk premiums on ships navigating through such waters. They usually place a distinction between piracy and terrorism, given that piracy is covered under standard hull or protection and indemnity policies whereas terrorism comes under war policies and may attract additional premiums to cover. In the real sense, it is hard to distinguish between pirates and terrorists due to intensification of weaponry and techniques.

3.3 Private Maritime Security Companies

The Private Security Companies (PSCs) may apply and acquire license to provide services are Private Maritime Security Companies (PMSCs). Potential threats facing merchant ships



can be reduced drastically if the PMSCs are effective in their duties. They employ both armed and unarmed security solutions. What endears the consumers of these services to PMSCs is that PMSCs are seen to be mostly well-equipped and ready for specific threats merchant ships face. They have round-the-clock monitoring and response capacity. Some operators feel that PMSCs are cost-effective. Their services can be shared by various users. They also offer customised services.

A PSC wishing to offer armed security services for merchant ships, for instance, is required to register and obtain licence as a PMSC. For instance, according to Human Environment and Transport Inspectorate (ILT) (2024), any Dutch-flagged ships can only use PMSCs that have been licensed by ILT. A ship owner who wishes to engage security personnel for merchant ships registered in the Netherlands, is similarly required to obtain permission from the Netherlands Coastguard. A PMSC obtains a license for specific area of operations, eg the Gulf of Aden. A check with the ILT shows that an applicant must be having head office in the European Union Zone or Exclusive Economic zone or has a branch in the Netherlands. The application fee is EUR.17,220. At the moment, the ILT has licensed three PMSCs: ESC Global Security, ESS & SA Maritime and Praesidium International (ILT, 2024).

The key advantage PMSCs possess is that they employ personnel who have served as Naval Commando, former special troops, marines and elite special operations units, trained and qualified to act against all kinds of threats at sea, particularly the maritime piracy. They also operate in various locations along the main sea routes, making support to be available where needed. According to Marine Insight (2024), with the help of the services offered by these security firms, shipping companies can be assured of plenteous security to its crew and cargo. Since shipping piracy has become an unchecked evil in certain water parts and is spreading towards other oceanic networks, opting for maritime security services has become a choice that cannot be overlooked (Marine Insight, 2024).

The consumers of the PMSC services include major commercial shipping companies, cruise liners, oil majors and superyacht owners. Their services also cover port facilities, oil and gas industry and energy sector. Some governments and regional organizations also prefer to use PMSCs, despite existence of naval organizations and coast guards. PMSCs also offer security to naval vessels too and have military departments as part of their clients. Experts opine that they are deemed to be independent and with requisite expertise and hence when an issue is required to be investigated, they will offer an independent opinion since they are not aligned with any state, insurer, shipping line or port.

According to Marine Insight (2021), there are many PMSCs in operations to support shipping companies manage the various threats they face in the course of their business. These PMSCs include Hart Maritime (UK), Seagull Maritime Security (Malta), Marine and Underwater Security Consultants (MUSC)(UK), Hudson Analytix, Solace Global, MAST (UK), Securewest International, Black Pearl Maritime Security, Neptune Maritime Security (UK), ESPADA, STS Maritime Security (USA), Anti-Piracy Maritime Security Services, DIAPLOUS Maritime Services, ESC Global Security, ESS Maritime, Port2port



LPC Limited, Praesidium International, Prorisk International, United Guards Services Ltd, Gallice Developments Ltd, Kahl Sicherheit LSS-SAPU Ltd amongst others.

Majority of the PMSCs are members of Security in Complex Environment Group (SCEG). This is a special interest group for security and risk companies committed to the development and implementation of international standards for the private security and crisis management sector (SCEG, 2024). SCEG are instigates and contributes to the International Code of Conduct Association, which has evolved from the declaration of the Montreux Document of 2008, and now ratified by over 50 countries. They regulate the members to ensure they embrace international security standards and protect human rights. SCEG has strong links with the UK government departments and its affiliate members include the Foreign and Commonwealth Office and the Department of Transport (SCEG, 2024). The legal and insurance sectors are also represented by affiliate members.

3.4 International Standards for PMSCs

Many of the PMSCs have international standards certifications. These include ISO 18788 – Security Operations Management System – and ISO 28007 – Ships and Marine technology – Guidelines for Private Maritime Security Companies (PMSC) providing privately contracted armed security personnel (PCASP) on board ships (and pro forma contract). Many PMSCs also subscribe to the International Code of Conduct (ICoC) for Private Security Service Providers. The goal of the ICoC is to set standards for the security industry worldwide and to establish external independent mechanisms for effective governance and oversight. As a signatory to the ICoC, a PMSC maintains the necessary governance documents to operate as a legal and ethical maritime security organization and adherence to the bylaws governing conduct, training, licensing and personnel recruitment. Below is the evolution of the standards in the private security industry.

3.4.1 The montreux document

The Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict (herein after the Montreux Document) was first adopted in 2008. It is an intergovernmental initiative, launched cooperatively by Switzerland and the International Committee of the Red Cross, supported by DCAF, to promote respect for international humanitarian law and human rights law whenever private military and security companies (PMSCs) are present in armed conflicts. The Montreux Document encourages the adoption of national regulations on PMSCs designed to strengthen respect for international law. The Montreux Document also offers practical guidance in contexts outside situations of armed conflicts as its good practices are best implemented during peacetime.

The various states and intergovernmental organizations which have endorsed the Montreux Document represent an enormous knowledge base of good practice reflecting a variety of legal systems and different experiences of private military and security companies. The Montreux Document is a complementary initiative to the International Code of Conduct



for Private Security Services Providers with a shared goal of promoting effective regulation of the international private security industry (SCEG, 2024).

3.4.2 International code of conduct for private security providers

Building on the Montreux Document (2008), the International Code of Conduct for Private Security Providers (ICoC) of November 2010 sets out a body of principles derived from human rights and international humanitarian law to govern the operations of private security services providers in terms of their own management and as regards their responsibilities towards those who might be impacted by their activities (ICoCA, 2010). It was developed in a multi stakeholder process to clarify the standards required of private security companies operating in complex environments as well as to improve oversight and accountability of these companies. Apart from human rights principles. The Code includes specific commitments on the management and governance of companies, including how they vet personnel and sub-contractors, manage weapons, procedures governing the use of force and grievance procedures (SCEG, 2024).

According to SCEG (2024), the ICOC also acts as a founding instrument for a broader initiative to create better governance, compliance and accountability -provision was made under Article 7a for the establishment of objective and measurable standards based on the Code with the objective of realising common and internationally recognised operational and business practice standards. This was given effect by the negotiation of the American national standard known as PSC1 “Management System for Quality of Private Security Company Operations-Requirements with Guidance” finalised in 2012 (SCEG, 2024).

3.4.3 Land standard – PSC1/ISO18788

The US Department of Defence commissioned the security trade association, ASIS, to develop an American National Standard for land-based Private Security Companies (ASIS, 2012). This standard, known as PSC1, has a core element of human rights and was framed in such a way that it could be adopted by other nations for use internationally. PSC1 was developed after an extensive consultation process which was strongly supported by the SCEG (SCEG, 2024). PSC1 and the associated conformity standard, PSC2, were published in early 2012 and SCEGs unreserved recommendation to the UK Government was that PSC1 be accepted as the basis for the UK national standard, with the additional requirement for independent 3rd party certification, and provision for any UK specific conditions.

The PSC1 standard was submitted to ISO (International Standards Organisation) and after lengthy negotiation it was developed into ISO 18788 Standard “Management system for private security operations – requirements with guidance”. It was published as a full ISO in the summer of 2015 (SCEG, 2024).



3.4.4 Maritime standard – ISO 28007

In recognition of the increasing threat of piracy in the Indian Ocean, discussions between the International Maritime Organisation (IMO) and ISO began in earnest in January 2012 to decide how best to develop an international standard for armed security guards on ships in the High-Risk Area (SCEG, 2024). Four months later IMO's Maritime Safety Committee approved MSC Circular 1443 – Interim Guidance to Private Maritime Security Companies providing Privately Contracted Armed Security Personnel on board Ships in the High-Risk Area.

It was also concluded that ISO should develop an international standard drawing on 1443, which itself had been informed by work completed earlier by the SCEG. The standard, formally endorsed by IMO in June 2015, is ISO 28007 – Ships and Marine technology – Guidelines for Private Maritime Security Companies (PMSC) providing privately contracted armed security personnel (PCASP) on board ships (and pro forma contract).

These two auditable standards provide the means for private security companies and private maritime security companies to be audited against the way in which their processes and management systems have given effect to international and national obligations, laws and regulations as well voluntary commitments they have accepted through accredited certification by Accredited Certification Bodies (SCEG, 2024).

3.5 Maritime Security Services

PMSCs offer critical roles, which can be said to be a complete risk management solution to the shipping industry. According to the experts interviewed, below is a range of services that a PMSC may be contracted to undertake for the contracting party.

3.5.1 Risk assessment

PMSCs carry out comprehensive risk assessment facing the client. This is usually tailored to specific issues and clients. PMSCs usually discuss the scope and work on the risk assessment and present report to the client. Merchant shipping companies would benefit from this service to ensure that key risks in their operations or facing their assets are identified, analysed, evaluated, and hence effectively treated. Risks can range from the vessels, the cargo, the personnel, the port facilities, supply chain, cyber risks, environmental risks amongst others.

3.5.2 Maritime intelligence

PMSCs offer specific intelligence to their clients. This critical information will aid the users in planning the routes well, protection of their vessels and cargo, and put in adequate mitigation against potential threats. This can be general intelligence reports or specific reports for use by key users. Experts interviewed expressed that the industry prefer intelligence reports from PMSC since they are seen as independent and will say it like it



is. Government-affiliated bodies may be restricted in issuing some sensitive information due to diplomatic restrictions.

3.5.3 Investigation

PMSCs offer investigation services to their clients. This is critical in the maritime industry where incidents occur and independent bodies are required to carry out investigations. Incidents can range from piracy, robbery, cargo theft, security breaches in the vessel, hostage situations, sabotage, environmental disasters, cybersecurity incidents among others. Experts opined that given the expertise in the PMSCs, they are more likely to gain trust and confidence of the users of the investigation reports. Insurers may be key beneficiaries of such reports as they may use them in arriving at the decisions to compensate parties against losses incurred in such incidents. According to the experts, other government agencies may also rely on such reports to take further action against the perpetrators, sanctions against the ship owners, corrective and preventive actions to improve the overall safety and security of the maritime activities.

3.5.4 Port security

A port is a sensitive installation, according to the experts interviewed. A state can improve the security of the port facilities to give assurance to the merchant ship owners and insurers if they engage competent PMSCs to take charge of security. Where there is a potential for damage to vessel, cargo or threat to the crew, the port becomes less attractive, according to experts. Licensed PMSCs have capacity and credibility to provide such assurance to all port users. They usually work closely with other government agencies like the ports authority, contractors, government security agencies like intelligence, police, immigration, border control, anti-counterfeit agency, anti-drugs agency, anti-corruption agency, fire department, tax authority, customs department among others.

3.5.5 Anti-piracy security

Piracy is becoming a serious threat to the global shipping industry as demonstrated by the IMO (2023). The escalation in the recent few months, coupled with terrorism activities around the middle east calls for expertise in countering this menace, experts explained. PMSCs provide onboard security teams who may either be armed or unarmed. They are usually well-trained and experienced in their duties.

The PMSCs have the right tools to counter this menace if they work with key stakeholders – the territorial states, the shipping agencies and insurance companies. The PMSCs can play roles to prevent, detect, deter and in recovery efforts when there is an incident. They work with stakeholders to recover the cargo, crew held hostage and the vessels. They can be of great help to negotiate with the pirates and handle their demands. Experts indicated that PMSCs may be in a better position to do so as opposed to government-affiliated agencies. This is due to their independence and possible trust.



3.5.6 Ship security

Vessels need to have enhancement of features to make them less attractive to potential robbers, terrorists or pirates. They also need to be fit for purpose, operate safety and counter any threats they may face. PMSCs offer advisory services regarding vessel hardening, after thorough risk assessment. They also offer advice about route-planning and vessel monitoring and tracking. The experts indicated that the PMSCs are equipped to offer round the clock monitoring of the movement and if there is a distress signal, mobilize response from locations with proximity.

3.5.7 Administration and logistical support

PMSCs have capacity to provide full support to stakeholders globally. They can manage all governmental permits, administrative interface and logistical support for security operations around the world. For instance, STS Marine Security offering such services to the US government, including US Flagged RORO fleets globally.

3.5.8 Cargo tracking and security

The experts interviewed indicated that PMSCs have capacity to ensure security for the general cargo, RO-RO container, bulk carriers, oil/chemical tankers, and offshore vessels. This reduces risks and hence insurance premiums. The risk of loss or misplacement on transit is minimized.

3.5.9 Training

The experts indicated that PMSCs provide extensive marine security training to various stakeholders. Drills that include anti-piracy and breaches exercises are also conducted to ensure full preparation to face any threat. They offer such services to international shipping conglomerates and governments. They organise crew training for courses which are approved by the internationally recognized bodies like the UK Marine and Coastguard Agency.

3.5.10 Recruitment risk management

One of the key risks in the shipping industry is the personnel risk. If this is not handled well, according to experts, will create further risks. There is need to do complete verification of qualifications and competency, thorough vetting and background checks for all personnel before recruitment and to do assessment periodically.

3.5.11 Consultancy

PMSCs can offer various consultancies in maritime security and safety. Experts indicated that other than threat assessments and architectural attributes, stakeholders may seek advice on stowaway prevention, ship security audits, counterpiracy auditing, pre-



engagement due diligence, business continuity assessment among others.

3.5.12 Cybersecurity

Many organisations face information and cybersecurity risks. PMSCs have capabilities to offer services to counter these risks. All stakeholders may benefit from these services. Respondents reiterate that this risk is facing many organizations, and shipping lines are not spared. They cited some instances where Maersk, a leading international shipping company, suffered huge disruptions as a result of global cyber-attack named Petya in 2017². This attack caused losses in excess of U\$ 300 million and resulted in downtime of two weeks³. Such an attack can immobilise vessels and cut off communication with the crew. There is need for proper business continuity plans and PMSCs can offer such support.

3.5.13 Subsea pipeline security

The recent events that led to the damage of the undersea cables off the coast of Yemen calls for heightened security to protect the critical infrastructure that connects continents. Given that internet access and data are defining resources of the twenty-first century, protecting submarine cables is far too essential a domain of international politics to remain a technical addendum to security analysis (Bueger and Edmunds, 2022). Experts opined that the PMSCs can be of great help to patrol the routes and help in recovery efforts should an incident is experienced.

3.5.14 Compliance

Shipping agencies face huge compliance risks. Should they fail in the effort, they face sanctions. Operating in many jurisdictions with varied requirements increase this risk. Since many prominent PMSCs have expertise and know easier means to acquire such permits and documentation, given their presence in various countries, they stand a good chance to support the industry. Experts were of the view that key areas PMSCs may be of help to the industry is on illegal carriages. This includes countering drug smuggling, illegal weapons, human trafficking, and illegal immigration. Specific documentation for some cargo can also be easier done by PMSCs.

3.5.15 Marine environment safeguards

Safety while traversing territorial waters is key. PMSCs can help merchant ship owners to enhance safeguards against environmental disasters. This will help operators mitigate potential risks. Experts indicated that PMSCs can source key experts in those areas to help their clients. Another area of help, according to the experts, is the effective disposal of explosive and toxic materials. This is under strict supervision and observance of guidelines

²Details available in a press release at <https://investor.maersk.com/news-releases/news-release-details/cyber-attack-update>.

³Reported by Los Angeles Times in <https://www.latimes.com/business/la-fi-maersk-cyberattack-20170817-story.html>



given to mitigate hazards. PMSCs can therefore be of help to ensure proper disposal and certification to that effect.

3.6 Potential Challenges to PMSC Role

Experts concur that there is need for armed escorts in places prone to war-like perils. PMSCs are best positioned to take up this role and they can engage both the ship owners and insurers. However, the armed escort remains a point of contention because of their potential to jeopardize sovereignty of littoral states. Sovereignty refers to the supremacy of authority or rule as exercised by a sovereign state. The legality of armed escorts has also been questioned. The application of the international law relating to innocent passage of ships through a State's territorial waters and transit passage when they are under armed escort by PMSCs remain contentious. This is because the United Nations Convention on the Law of the Sea (UNCLOS), under article 2, affirms the sovereignty of a coastal state. This therefore vests the monopoly of legitimate use of force in matters security to the State and not with ships passing through those waters. PMSCs may therefore impinge of the sovereignty of these states should they conduct armed escorts. Here, the state-sponsored armed escort may work in these circumstances. Experts however opine that the areas classified as war risk, are surrounded by weak states, who are either unwilling or incapable of providing this service to ships seeking passage through their waters.

There is a distinction about the manner in which merchant ships and naval ships are granted permission for entry, according to the UNCLOS (1982). Foreign merchant ships are granted a standing permission to enter waters, subject to notices like avoidance of oil rigs, marine parks and the like. Naval ships are however required to seek advance permission for entry, unless there exists bilateral, or multilateral are in place or unless the naval ship is clear that it is under an innocent passage. When PMSCs escort merchant ships, their armed operations will make it a naval ship and hence require advance permission for entry to territorial waters. Some experts were of the view that PMSCs still proceed under innocent or transit passage and are not challenged by the littoral states.

Another critical issue is the licensing and regulation of the work of the PMSCs: A PMSC licensed in one state may not be allowed to operate in another state, and hence face challenges entering sovereign jurisdiction of the other state. This inhibits their ability and ability to carry out full scope of activities at sea. Respondent opined that this can only work if all territorial states approve of such activities. The merchant ship with armed escort may require applying for passage, yet it is entitled to innocent passage. The ship with firearms may then fall under the definition of a naval ship. If, however, all parties agree in advance that the armed escorts are pertinent to their operations and sanction merchant ships as part of innocent passage, this will work well. The latest guidance circular by IMO will be the basis for stakeholders to agree.

Petrig (2016) raised concerns about the regulatory regime of the PMSCs, which exemplifies operational and legal specialities of the use of PMSCs at sea. The first issue was about the jurisdiction at sea, i.e. how the law of the sea informs the question of which State can –



or cannot – be the addressee of specific obligations over the operation of a PMSC. The Montreux Document (2008) follows a four-fold structure of addressees by distinguishing between Territorial, Contracting, Home and Third States. Petrig (2016) therefore submitted that the concepts of Territorial State and Contracting State must be interpreted and refined for the maritime context specifically. Territorial State includes the flag state (when a vessel is at international waters), port state (when approaching the port) and coastal states (when vessel is passing through its waters). According to the law of the sea, flag States are obliged to regulate the issue of arms on board ships (under Article 94 of UNCLOS and customary law), while coastal States are arguably only permitted to do so in a very limited fashion (under Article 21 of UNCLOS). Since they are both Territorial States, a rule obliging all Territorial States to comprehensively regulate arms on board ships seems too wide (Petrig, 2016).

The other issue was the issue of deprivation of liberty at sea by PMSC personnel, which the author related it to the concept of ‘inherently State functions’, i.e. functions that cannot be outsourced or delegated to private persons or entities, for instance, the police power to arrest and detention. There is a view that certain functions are inherently governmental functions, which cannot be delegated and/or outsourced to private entities. This view is reflected in Article 9 of the Draft Convention of the Working Group on Mercenaries, while Article 19(1) obliges each State to make the acts of carrying out such functions by PMSCs or their personnel criminal offences.

PMSC personnel are not generally vested with law enforcement powers. However, some jurisdictions accord them ‘private arrest’ or ‘citizen’s arrest’ powers but must strictly be under legal basis. Some states have explicit rules for such actions (eg Belgium), but in other states, it is regarded as acts of self-defence. The rules allowing private persons to surrender a criminal suspect to the competent authorities also provide a legal basis for private arrest. The premise is that, if a private person is allowed to surrender a suspect, he or she can also hold that suspect until surrender. It is therefore crucial to further explore the circumstances under which PMSC personnel are allowed to hold an overpowered person on board to avoid criminalisation.

3.7 Opportunities for African PSCs

After deliberations with the participants, it became clear that both Tanzania and Kenya regimes do not have registration procedure for PMSCs. Whereas Kenya has the Private Security Regulatory Authority (PSRA) that regulates the PSCs, Tanzanian PSCs are regulated by the Tanzania Police Force (Sambu, 2023). There are clear registration procedures in the two countries for PSCs but the role of these PSCs in maritime security is yet to be recognised as a specialty and registration process set in place. The interview revealed that the closest the PSCs do related to maritime security is to provide port security, either by provision of manned guarding or installation of electronic security solutions. Some respondents in Kenya indicated that some multinational PMSCs had subcontracted some PSCs, who provide consultancies, to handle the negotiations with the pirates in Somalia during the height of the menace in late 2010s. This was done due to the proximity of Somalia from



Mombasa. According to them, the subcontracted consultants were successful. It was not clear though if the said consultants were properly registered as PSCs.

One expert expressed doubt of the capacity of the present PSCs in the two countries to undertake such delicate and complex security operations. There may not be enough experts to be employed by those willing to do so, unless they go for expatriates. There is another problem of the use of firearms. Kenyan PSCs are still not allowed to use firearms in their operations. This will inhibit their venture to maritime security. Tanzanian PSCs are allowed to use weapons, but only restricted to Shotguns, which are so inferior and not fit for purpose. To counter terrorist, who have superior weapons, will be a long shot for them. But the respondents indicated that there are a lot they can still do, going by the assessed roles in this paper, without the armed escort option.

The above scenario is a lost opportunity for PSCs in the two countries, given that their territorial waters remain a key transit route for international shipping lines. The two countries are relatively peaceful and have proximity to troubled areas of the African East Coast, the Red Sea and the Gulf. According to the respondents, they can therefore seek registration as PMSCs or enter into partnerships or joint venture with multination PMSCs to offer support on the ground. None of the respondents had plans to venture into PMSC roles in the near future but all acknowledged that there was a huge potential. Their main reason was lack of expertise and resources.

4.0 CONCLUSIONS

This paper assessed the role of PSCs in maritime safety and security. It assessed the status of the threat landscape, facing the sea transport, with statistics about piracy over the years. The paper explored the possible role of PMSCs in improving the maritime safety and security and how stakeholders would benefit. It also assessed the challenges facing the PMSCs. It ended with an assessment of the readiness of the PSCs in the East African nations of Tanzania and Kenya in venturing into the role of PMSCs.

There are threats facing the safety and security of the vessels and cargo on transit across many sea routes. There are spots deemed high-risk and vessels need support to pass through these spots safely. IMO has softened the stance about the carriage of weapons onboard ships and issued guidelines to the PMSCs. There are other voluntary standards as well, issued by ISO, ICoCA and UN.

There are still some challenges inhibiting full optimisation of the role of PMSCs. The potentiality to threaten sovereignty of littoral nations. The registration and governance of PMSCs involved in armed escort was also seen as a challenge, given that they cross jurisdictions with differing legal regimes regarding armed civilians. From the literature, there seems to be a lingering issue to do with the terminology and hence to roles of the territorial states about the work of PMSCs.

Many jurisdictions have set registration or recognition of PMSCs to offer support in



the high-risk areas. East Africa seem to be lagging in venturing into maritime safety and security, despite proximity to many troubled areas of the sea, due to either lack of capacity or willingness to venture into the maritime security. Due to lack of the interest from PSCs, the two nations of Tanzania and Kenya still do not have registration and regulation mechanisms for PMSCs.

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Schedule of the Interviews With the Selected Experts

Appendix 1: Interview with expert in Nairobi 29 March, 2024

Interview with two experts in Nairobi. One was the proprietor of a PSC operating in Eastern Africa region, with head office in Nairobi, employing over 3,000 people. The PSCs has offered services for the port in Mombasa, a number of shipping lines in facilities in Mombasa and the ferry services. The other expert was a retired senior officer at Kenya Navy and employed by one of the PSCs operating in Kenya. He had extensive experience in naval operations and has assisted some PMSC during the height of piracy in Somalia.

Appendix 2: Interview with expert in Dar es Salaam 20 March, 2024

Interview in Dar es Salaam with a retired senior military officer who served in the AMISOM in Somalia with the Kenya Defence Forces. He now works as a consultant for the oil and gas multinational on security matters and travels frequently along the Eastern Africa coastline.

Appendix 3: Interview with expert in Dar es Salaam 15 March, 2024

Interview in Dar es Salaam with two proprietors of local PSCs operating in Tanzania, one with 740 personnel and the other with 1,720 personnel. The other participant was a managing director for a multinational PSC, with over 4,000 staff in Tanzania. The two local PSCs had served some clients in the shipping industry but on land only. The two proprietors had military background. The director of the multinational PSCs is an expatriate who had served in the navy in a European country and had a stint in a Gulf country and the red sea on official duty.

