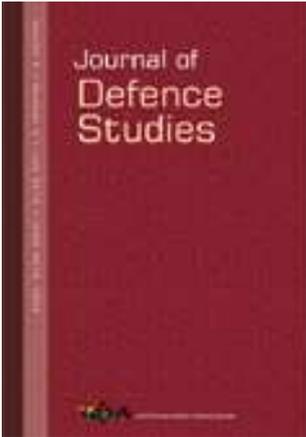


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Troubled Waters

Exploring the Emerging Dynamics between Navies and Private Security Companies in Anti-piracy Operations

*Riddhi Shah**

The return of piracy to the Indian Ocean in modern times has culminated in the resurgence of the private violence industry in the maritime domain. For the first time in modern history, the private military security industry will work alongside traditional navies on the field. The dynamics between the two major security actors in the anti-piracy operations make for an interesting study. This article argues that there exists much potential for fruitful engagement between the two actors: PMSCs and navies. At the moment, however, long-held prejudices, in conjunction with ambiguity in the role of PMSCs in the anti-piracy operations and lack of structural variables, presents a formidable barrier to future PMSC-Navy interaction.

INTRODUCTION

The past decade has seen countless studies carried out on the ‘destabilizing consequences’ of private military security companies (PMSCs), also known as private security companies (PSCs). Reports on misconduct by these security companies in several impoverished countries, which more often than not are theatres of protracted conflicts, have often found their way to leading newspapers. Notwithstanding the continuous negative

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press and intense misgivings in sections of the security community, the private security industry has been growing at a phenomenal rate over the past few decades. In 1990 in the First Gulf War, the ratio of conventional soldiers to PMSC employees was 60 to 1. They have become a much more common sight in combat theatres today. In 2013, reports released by the Congressional Research Service (CRS) and the Government Accountability Office pegged the ratio of conventional soldiers to PSC contractors at 73 to 120 in Afghanistan. In Iraq, state troops were completely withdrawn in 2011. Security, for most part, is now in the hands of less than 6,000 private security contractors.¹

The proliferation of this industry has not been limited to land. The world of security has come full circle. After a hiatus lasting close to two centuries, private violence has resurfaced in the maritime domain; unsurprisingly, in the anti-piracy operations being carried out in the Indian Ocean Region (IOR). The resurgence of private violence on sea has afforded the security community an opportunity to study this development using a lens other than the commonly-used one of the historical perspective.

The resurrection of private violence in the last few decades has raised several questions for the security community. Much has been written about the impact of the private security industry on the states' monopoly on force; the possible unwanted effects of employing this industry; and the normative conditions that have led to the resurrection of this industry. However, the scope for making original inquiries must not end here. Studies have been few and far between on the present-day dynamics between the PMSCs and the traditional security providers in theatres where the two work alongside each other.

The dynamics between these two actors, either on land or in the maritime domain, is an issue that requires serious consideration. As such, this article makes an attempt to study the dynamics between the modern-day navies and the private security industry involved in the anti-piracy operations in the IOR. It is hoped that the article will generate discussion and deliberation, leading to further meaningful research in this area.

THE PROBLEMATIC OF CONCEPTUALIZING 'PMSCs'

The private security industry is a multi-billion dollar industry, growing even larger daily. It is estimated that five new companies offering protection services solely to the shipping industry spring up every week in the private security industry capital of the world—the United Kingdom (UK).²

According to Peter Cook of the Security Association of the Maritime Industry (SAMI), an organization that represents companies working in the maritime security industry globally, most maritime security companies in 2013 registered a 25 per cent hike in demand.³

The private security industry has become the answer to prayers of suffering shipping and insurance companies. Armed guards on board have ensured the prevention of fiscal losses for shipping companies. In countless cases of ships held ransom, the holding companies have lost millions in foregone chartering income and as expenditure mounted for hiring ransom negotiators, drop experts and crew support. Not only do PMSCs provide physical safety during transit, they have now become a mandatory condition for shipping companies wishing to avoid the high premiums that insurance companies levy on vessels traversing through the high-risk zones.

It is not only other private companies that hire PMSCs. The PMSCs offer a 'quick-fix' solution to nation-states that offer flags of convenience, for example, land-locked Mongolia, but lack naval assets and resources to secure ships sailing under their flags.⁴ On land, the role PMSCs play is even larger. The industry offers a broad range of services that includes logistics, technical assistance, consultancy, training, demining, protection of persons and buildings, escorts, border control, demobilization, re-integration, and even combat.

Some companies offer only one or two of these, while others offer the entire gamut. Their client base is equally large and varied. Besides private companies that want to protect their investments in hostile territory, national governments figure substantially on the client list. The private security industry is not used only as substitutes for state troops. Very often, private security contractors are used to 'supplement' state troops. Supporting tasks such as transportation of weapons, food and human resource or safeguarding civilian luminaries present in the conflict theatres are entrusted to PMSCs, 'freeing up' state troops to perform the primary task for which they have been put on the ground—waging war. Furthermore, non-governmental organizations (NGOs) like the United Nations (UN) too hire private security contractors to ensure the safety of their volunteers and employees on ground.⁵

This 'privatized' and 'corporatized' mantle that private violence has donned in the modern age has prompted increasing references to those employed in this industry as 'civilian security providers' or 'civilian contractors'. But are they really 'civilian' in nature? Scholars like Michael

Duffy and Jose L. Gomez del Prado caution against freely applying the term 'civilian' to the industry. For them, contractors or the employees of PSCs are anything but civilian in nature. They assert that these companies have little to do with civilian security. In complete contrast to carrying out civilian constabulary, where maintaining law and order is the primary motive, PMSC contractors habitually carry arms, interrogate prisoners, load weapons, transport and travel in military trucks, in addition to carrying out a host of other military activities.

These contractors can switch from passive-defensive to active-offensive quite easily. Under the international humanitarian law, they cannot be classified as soldiers or as supporting militia chiefly for two reasons: first, they normally are not a part of an army, or chain or command; and second, they tend to be of varied nationalities.⁶ At the other end of the spectrum, scholars are using the rising organization of this industry on corporate lines to draw a distinction between traditional mercenaries and PMSC; possibly to deflect the negative connotations that the term 'mercenary' inspires.⁷

But this task of drawing a fine line between mercenaries and private security is made infinitely difficult in the absence of a universally accepted definition of 'mercenary'. A mercenary, in general, is understood to be a person devoted to war for his own sake.⁸ The widely accepted Additional Protocol I of Article 47 of the Geneva Convention (1949) labels a person as a mercenary on the basis of the following criteria:

1. Is specially recruited locally or abroad to fight in an armed conflict.
2. Does, in fact, take part in activities.
3. Is motivated to take part in hostilities essentially by the desire for private gain.
4. Is neither a national of a party to the conflict nor a resident of a territory controlled by a party to the conflict; in fact, is promised by or on behalf of a party to the conflict material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party.
5. Is not a member of the armed forces of a party to the conflict.
6. Has not been sent by a state, which is not a party to the conflict, on official duty as a member of its armed forces.⁹

Peter Singer, a highly respected scholar on the subject, takes the Geneva approved criteria even further.¹⁰ He describes a mercenary as: not

attached to a national force and works by a contract; motivated solely because of short-term economic reward; recruited in such a way so as to avoid legal prosecution; works in ad hoc and temporary groupings; and employed in a combative function for single clients. Most definitions of mercenaries, like the above-mentioned classifications, maintain a strong focus on the foreign and financial features. Emphasis on these characteristics pulls several PMSCs too close for comfort to the world of mercenaries. Interestingly, stress on the foreign and financial features threatens to pull into this quagmire that which one would not ordinarily associate with mercenaries, such as UN aid workers or foreigners enlisted in regular, state-sanctioned military.¹¹

THE MAKINGS OF A WEAK FOUNDATION

Piracy, the hallmark of a bygone era known for lawlessness on the seas, re-emerged in the modern world in the late 1990s. Piratical activity reached its zenith in the Straits of Malacca in the early years of the millennium, prompting littoral states to take active measures to counter it.¹² Soon after, piracy spread to the Gulf of Aden across the vast Indian Ocean. With close to 8.3 million sq km affected by piracy, the international naval coalition put together to combat piracy was fighting an uphill battle.¹³ By 2011, despite the presence of navies from nearly 30 countries, pirates attacks averaged at 220 annually.¹⁴ The International Maritime Organization (IMO), which up until now had 'not recommended' the presence of weapons and the use of armed guards on board, issued a new circular, MSC.1/Circ.1339, in 2011. It now left the use of armed private guards on board to the discretion of individual ship operators and the national law of the flag states.¹⁵

This decision opened the floodgates for the private maritime security industry. Nations facing inherent limitations due to recession and defence cuts began to look to the private security industry. They made increasingly frequent calls for the 'responsibilization' of shippers. Responsibilization essentially refers to the reconceptualization of non-state actors such as shipping companies from objects that must be secured, to independent subjects that must become 'responsible' for their own safety.¹⁶ Several nations like Germany, the UK, Cyprus, Malta and India reversed their long-standing legal ban/serious restrictions on the direct arming of merchant ships.¹⁷ While most navies maintained a stoic silence on this issue, several state navies like that of the US gave their approval to involving the private security industry in the anti-piracy operations.¹⁸

Lack of objections from any quarter whatsoever has firmly anchored this industry as a security provider at par with state navies in the anti-piracy operations. In the absence of any centralized institution or organization to monitor the private maritime security industry, no concrete data are available on the actual number of PMSC contractors deployed in the IOR. In 2012, a study had estimated this number to be round about 2,700 based on the assumption that a single team was likely to consist of at least four men.¹⁹ Today, this figure has most certainly increased. In spite of such large numbers, the role of the private security guards on board, discussed only as a part of the overall security arrangements, is poorly conceptualized.²⁰

There appears to be no clear consensus either amongst nation-states or amongst the navies on the role of the PMSCs or, more specifically, on the jurisdictional limitations of these actors. The source of this confusion lies in the ever-evolving role of the PMSCs in the anti-piracy operations. The navies' mandate in the anti-piracy operations embraces both offensive and defensive duties. The PMSCs, on the other hand, were to merely participate in defensive posturing. This arrangement though was not a part of any conscious attempt by nation-states to regulate or limit the participations of the PMSCs. It was more a question of owning the required naval assets. Backed by state resources and top-of-the-line technology, and trained to operate in full-scale wars, the state navies are more than capable of taking on pirates, who usually attack in simple skiffs and use small hand-held weapons.

Bereft of even simple naval assets, the PMSCs began with simply putting armed guards on board ships. The international community displaying its customary shortsightedness believed that the PMSCs and the navies would continue working along the same lines. But with the passage of time, PMSCs have upgraded their services. Many now offer escort convoys and insurance-backed guarantees to reimburse any damage incase of a pirate attack.

A London-based security company, supported by insurance underwriters, law and accounting firms and ship managers, has managed to raise sufficient monies to operate seven patrol boats from Djibouti.²¹ Each boat displacing 176 tonnes of water with additional assets in place will be responsible for the security of nearly four commercial ships at one time.²² Simple math tells us that the company owning these patrol boats now caters to the safety of about 220 commercial vessels. According to the US Naval Institute, the very same company has been planning on adding

another 11 vessels to its patrol fleet, notching up its capacity to escort commercial ships across the Indian Ocean.²³

There has also been much discussion on the possibility of naval asset upgradation by PMSCs. Companies are openly discussing upgrading of convoy ships, their weaponry and even the introduction of a private aviation wing with fixed and rotary-wing aircrafts.²⁴ Although relatively simple compared to resources at the disposal of state navies, acquisition of even simple naval assets like patrol boats, that can be used in defensive as well as offensive posturing, has raised complex questions for the navy. It not only forces us to re-think about the limitations of PMSC participation in the anti-piracy operations but also on the responsibilities of the state navies and their jurisdiction over the PSCs operating in the maritime domain.

The ambiguity surrounding the role of private maritime security companies in the anti-piracy operations has majorly contributed to a communication gap between the navies and the PMSCs. Logically speaking, the only two actors in charge of the security of the shipping traffic in the IOR should be exchanging information, if not on a daily basis at the least at regular intervals. Instead, one is met with total apathy from both actors on this front. For the navies, a private security guard's role is limited to the deck of ship. He does no more than act as a buffer on board.²⁵ Why and for what, then, is the need for coordination?

Additionally, since the navies are aware of each passing ship, it is assumed then that by default, the naval warships were aware of the armed guards on board.²⁶ With no guidelines on this issue at present, the unspoken accepted norm is to hold the shipmaster or the owner of the ship responsible for the armed guard on board. For the shipmaster though, informing the concerned authorities of the presence of armed men on board is 'a matter of courtesy'.²⁷ There are no laws which make this a compulsion. In 2012, an estimated 50 per cent commercial ships carried armed personnel on board, but for reasons that one can only guess at, less than 26 per cent reported their presence on board.²⁸

Maintaining situational awareness of armed guards on board is critical for a variety of reasons. One of the obvious reasons is ensuring the safety of the guards. Naval ships countering pirate attacks generally maintain a safe distance. At this distance, it is easy to mistake private guards for pirates. There have already been instances where coalition military warships attempting to help the besieged ship have mistaken armed guards for pirates.²⁹ Incidents like these generally blow up into

blame games, with the traditional armed forces emerging considerably tarnished from the ensuing public debates.

Apart from ensuring safety of the guards on board, maintaining situational awareness makes sense when one reviews the checkered history of the private security industry. It is a common fact that PMSCs have, many a times, been associated with dubious activities. For instance, DynCorp International is known to have been involved in sex trafficking and organized prostitution in Bosnia in the 1990s.³⁰ ArmorGroup had had ties with the Afghan warlords and Saracen Uganda was reported to have links with illegal natural resource exploitations in the Democratic Republic of Congo (DRC).³¹

The high seas, being vast and impossible to completely monitor, present a far better platform for smuggling illegal weapons and other contraband items than land routes ever will. There is some evidence suggesting the involvement of private maritime security companies in less-than-respectable activities. In October 2013, *MV Seaman Guard Ohio*, owned and operated by a US-based security company, was detained and arrested by the Indian Coast Guard. The ship was carry 31 assault weapons and nearly 5,000 rounds of ammunition with no authorization. Moreover, the crew had bought substantial quantities of subsidized diesel illegally from the local fishermen.³²

The large store of arms onboard leads one to believe that this ship, in all probability, was a floating armoury. As the name suggests, these are ships that store ammunition along with other safety gear onshore. In 2012, *The Washington Post* had reported the presence of 18 such armouries in the IOR.³³ Today, one of the largest maritime security providers alone holds close to six floating armouries in the IOR (see Figure 1).³⁴

Each country has different laws with regard to the entry of weapons and ammunitions in their ports. While many require the handing over of all the weapons on board to the port authorities for safekeeping, a few like India have imposed an absolute ban on the entry of weapons into their waters. Regardless of the law, the entry of weapons into ports essentially involves legal complications and high costs. Floating armouries are designed to help the private security guards sidestep legal regulation enforced at ports and in territorial waters. Moreover, with no central body to regulate and monitor, it is difficult to ascertain and guarantee the legality of the acquired weapons on board floating armouries.³⁵

The many shades of gray that surround several PMSCs is perhaps one of the largest contributor to the navies' hesitation to engage with

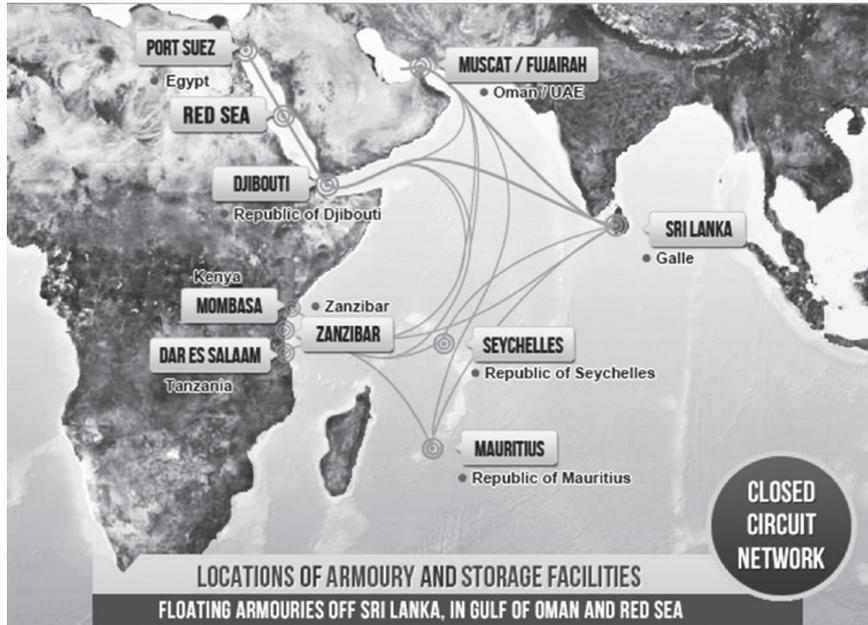


Figure 1 Locations of Armouries and Storage Facilities³⁶

them. According to Martha Clark’s seminal research on PMSC–military relations, in the absence of structural factors such as a military doctrine and training that normally aid PMSC–military interaction, the two actors are liable to base their interaction on perceived identity factors.³⁷ In this case, since the interaction between the navies and the PMSCs is based largely on negative perceptions of private security personnel, their relationship has failed to progress.

During interviews, private security contractors were referred to as ‘mercenaries’ on several occasions. Other phrases such as ‘quick-fix factor’ and ‘in it just for the pay’ are also revealing. Use of such terms and phrases frequently discloses the fact that many serving in the navies did not, in any way, differentiate between traditional mercenaries and private military security contractors in the IOR.³⁸ This commonly held negative perception of private contractors as mere mercenaries also exhibited lack of trust between the actors ‘to watch their backs’.

Although easier said than done, a whetting process of companies providing security services in the maritime domain could probably serve as a solution to multiple problems. At the moment, there is no data collation about the kind of companies leasing out their guards, the

companies' actual strength and how they operate.³⁹ Instituting a whetting process could inspire a degree of trust between the actors, promoting communication between the two and, at the same time, keep organized crime in check.

Maintaining situational awareness can not only help keep the PMSCs in check in the IOR, it is also the key to offsetting the disadvantages the presence of PMSCs brings about in the IOR. In 2012, piracy rates came down in comparison to 2011, 2010 and 2009 when the reported incidents numbered at 439, 445 and 410 m respectively.⁴⁰ Prominent experts in the field have credited the private security industry for this change.⁴¹ If this be the case, then the navies have much to gain by coordinating with another efficient security provider.

As a rule of thumb, most private security contractors have a history of serving in state armed forces. With their background in military training, PMSC contractors could serve as limited but nonetheless potential force multipliers, with a direct bearing upon the navies' *force employment* capabilities.⁴² As efficient security providers, ships with private guards on board are not likely to require protection by state navies. Coordination with private security can thus reduce duplication of effort for the navies. Such organization can free the limited number of state naval warships to patrol a larger surface area, thereby responding significantly faster to distress signals from other commercial ships. Coordination between the two, in theory, can lead to an improvement in navies' *responsiveness* and *skill*, leading to the subsequent elevation of its force employment capabilities.⁴³ Ultimately, one can hope to see positive fallouts for navies' *military effectiveness* at the tactical level in the anti-piracy operations.⁴⁴

Apart from the potential benefits the PMSCs can bring to the navies at the tactical level, private security contractors can prove to be valuable from an intelligence point of view. Military operations repeatedly emphasize the significance of timely intelligence, particularly to improve their responsiveness. With human intelligence (HUMINT) difficult to come by on the sea and defence cuts adding to the woes, can the navies afford to ignore a ready pool of intelligence inputs?⁴⁵

A ROCKY FUTURE?

Working for the private security industry when it had begun its initial foray into the anti-piracy operations was thought to be an option for retirees, who could not seek employment elsewhere on account of their limited job skill sets. Job stability, security and benefits, over and above

the pay, decidedly made working for the state armed forces an attractive option. However, navies today are likely to find maintaining their retention rates an increasingly tough job. A private security contractor can generally earn anywhere upto \$500 a day.⁴⁶

For navies with a relatively lower pay scale like the Indian Navy, maintaining the current status quo, which is in their favour at present, is going to be a future challenge. The solution should have been simple. A hike in salary packages ought to curb the outflow of trained armed forces personnel. Interestingly, better remuneration does not appear to skew the scales in the navy's favour. There is a high concentration of Australian nationals amongst the private security personnel in anti-piracy operations.⁴⁷ This is so despite the fact that the Royal Australian Navy receives a remuneration on par with that of private security, in addition to other benefits.⁴⁸ South Africa, Britain, America and New Zealand are other nations with high representation rates in the private maritime security industry.⁴⁹

Besides better remuneration, the private security industry is known to set a much more moderate tempo for its employees in comparison to state forces. This perhaps is a stronger motivating factor than simply better remuneration. It is a question that merits further research. With no cognizance being taken of this fact, at the moment, it is likely that the naval resource pool, principally their special forces, marines and light infantry possessing the skill sets required for carrying out protective duties on board ships, will register a drain in the future.⁵⁰ For naval officers carrying out duties similar to the private contractors on board, a high pay differential will probably lead to lower morale and officer motivations, upsetting the normal levels of *skills* necessary for the job. In the long run, one may even witness rising naval resentment of the contractors.

CONCLUSION

Growth in the private security industry has partially been encouraged by states looking to scale down their operations and by those unable to guarantee the safety and security of ships sailing under their flags because of innate state limitations. However, state navies have found keeping up with the developments in the Gulf of Aden very difficult.⁵¹ For the most part, navies are either attempting to maintain a neutral stance on this issue or worse, underestimating PMSCs' influence on the anti-piracy operations and on themselves.⁵²

In this process, the potential and capabilities that PMSCs hold

are often ignored. Engagement with private contractors can effect an improvement on navies' military effectiveness at tactical and operational levels. While the beneficial impact of the PMSCs will be limited, pragmatic considerations imply not letting go of an opportunity, however small, to expand their respective areas of influence in the Gulf of Aden; and to tap into the sizeable pool of unused intelligence data that private security guards are liable to hold. The navies will also have to carefully consider their viewpoints holding them back from engaging with PMSCs. In many cases, their positions have inadvertently reflected a 'superiority complex', as well as their pre-conceived notions on private contractors.

Many views on PMSCs may have been contracted from their armed forces brethren on land. It is important to understand that the negative opinions of PMSCs on land tend to originate from the setbacks that the coalition forces have often faced because of their presence in the combat zone, but these unwanted secondary effects are not likely to occur in the maritime domain. For instance, confusion among the natives who are unable to differentiate between the coalition forces, the aid workers and the private security contractors in conflict-ridden areas, which puts civilians in the line of fire, or a negative impact on 'winning the hearts and minds' of the native populace are not issues that will occur in anti-piracy operations since the initiatives at the moment are restricted to the seas.

This is not to say that PMSCs' presence in the anti-piracy operations will solely be constructive. It would not do to over rely on PMSCs. Markets for force that come out of dependence weaken public security foundations and undermine public security structures by promulgating actors who are willing to supply military services and those who are prepared to buy such services. This directly results in an escalation of violence and insecurity in the region. States and the navies have to be wary of the PMSCs' lack of accountability and adopt suitable measures. Many have called for banning PMSCs from working in combat zones. But, the presence of PMSCs in anti-piracy operation is on account of a 'security gap', which, in turn, has arisen because of innate state limitations and as such, this "security gap" cannot be banned out of existence'.⁵³

Holding private security companies accountable for their actions and conduct is finally in the hands of individual states and the international community. There are legal lacunae and lack of regulation surrounding the PMSCs on land as well as in the maritime domain, which allows most of them to carry on with illegal activities without suffering their consequences, and also hampers those initiatives that strive to bring them

to justice. Without a whetting process either by the state or by the navies, the IOR may possibly be witness to soaring rates of organized crime in the future.

Many argue that combating organized crime is a state's prerogative and worry.⁵⁴ They appear to have inadvertently forgotten the fact that piracy, too, is a form of organized crime. It is first and foremost armed robbery, which assumes the label of piracy when the same act is carried out on the high seas. Ignoring this permitted piracy to expand unchallenged; it eventually assumed such great size and proportions that the states were forced to bring their navies into the picture. By ignoring the threat of organized crime once again, the navies risk getting caught in protracted constabulary roles.

Maritime regimes such as the International Maritime Bureau (IMB), INTERPOL and the United Kingdom Maritime Trade Operation (UKMTO) maintain a no-stance or a neutral stance policy towards private security. The IMO has come out with a number of circulars with regard to PMSCs and their use in the Gulf of Aden. In its view, this issue is purely flag states' concern. To complicate the matter further, flag state policies tend to vary greatly on this issue. Like the flag state policies, several international documents such as the International Code of Conduct for Private Security Providers, the Montreaux Document and MSC. Circular. 1404 that prescribe protocol for private security guards are not standardized as well. Just as importantly, they do not contain measures to ensure that their guidelines are followed, nor hold a legal status.⁵⁵

The first step in setting up a legal framework to hold PMSCs accountable is to conceptualize PMSCs as well as define the term mercenaries. Defining the two will have normative and legal policy implications for PMSCs. Besides holding PMSCs accountable, a universally accepted definition would help in disassociating PMSCs from their deleterious cousins and remove identity barriers hindering positive interaction between the navies and the private companies. Lastly, as international law covering mercenaries will evolve, states will be obligated to maintain a control over their activities, which will most certainly be determined by the scope of the definition.⁵⁶

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 42. Force employment constitutes: (i) the ability to control territory; (ii) the ability to inflict and limit losses; and (iii) the ability to prevail quickly.
 43. Responsiveness is the 'readiness of forces to respond or deploy at a short notice'. Skill refers to 'the ability to achieve tasks and carry out orders, fight hard and seize the initiative in combat'.
 44. Military effectiveness is 'the capacity to create military power from a state's basic resources in wealth, technology, population size, and human capital'. See Dunigan, *Victory for Hire*, n. 10.
 45. Author's interview of James Goldrick on 'Private Military Security Companies in the IOR and the Australian Navy', conducted on 4 October 2013.
 46. Ibid.
 47. Brown, *Pirates and Privateers*, n. 4. Information also provided during Author's interview of James Brown on 'Private Military Security Companies in the IOR and the Australian Navy', 4 October 2013.
 48. PMSC contractors receive anywhere between \$300 to \$500 in a day for their services. Their services are generally short-termed, lasting anywhere from a day to three months. A RAN warfare officer can earn upto AUD 61, 704 with additional benefits and an annual increment. See Defence Jobs, 'Navy Pay and Benefits: Pay Details—Defence Jobs Australia', 2014, available at <http://www.defencejobs.gov.au/navy/payAndBenefits/payDetails.aspx>, accessed

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