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CHAPTER XIV

Privately Contracted Armed Security Personnel in Indian Ocean Region

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Résumé : L'Océan Indien est vulnérable aux crimes transnationaux en raison de sa position géostratégique. Les questions de gouvernance et de « l'ordre en mer » ont émergé comme un concept important de la politique maritime. L'intervention des personnels de sécurité armés sous contrats privés (PCASP) peut jouer un rôle important dans le commerce maritime. Mais la régulation et la surveillance deviennent le cœur de son bon fonctionnement. L'Inde a présenté des revendications afin que la zone à haut risque dans l'Océan Indien revienne à son origine, car il n'y a pas eu de cas récent de la piraterie dans la mer d'Oman. L'Inde est d'avis qu'il faut, dans un consensus international, réglementer et surveiller les sociétés privées de personnels de sécurité armés (PCASP) dans la région de l'Océan Indien.

Abstract: Indian Ocean is vulnerable to transnational crimes due to its geostrategic position. Issues of governance and "order at sea" have emerged as an important concept of maritime policy and operations. PCASP have the potential to play an important role in maritime trade but regulation and monitoring becomes the crux of its proper functioning. India initiated the claims that the High Risk Area in Indian Ocean should be reverted to its original as there has been no recent incidence of Piracy in Arabian Sea and opines that regulating and monitoring PCASP in the Indian Ocean region requires international consensus.



The Indian Ocean, covering 20% of the world's oceans, is an important transit route for international maritime cargo for the Persian Gulf, Africa, Asia Pacific and Europe. The Indian Ocean region contains one third of the world's population, one fourth of its landmass, 40% of the world's oil and gas reserves. It is the locus of important international sea lines of communication (SLOCs) as more than 80% of the world's seaborne trade in oil transits through Indian Ocean choke points, with 40% passing through the Strait of Hormuz, 35% through the Strait of Malacca and 8% through the Bab el-Mandab Strait¹. UN data highlights that assuming no major upheaval in the world economy, global seaborne trade is expected to increase by 36% in 2020 and to double by 2033². With eight choke points and a number of regional hotspots, stability and safety in the Indian Ocean region is crucial for the global economy. The region faces a multitude of security problems that range from terrorism, piracy, WMD proliferation, to human trafficking and organized crime.

From the geostrategic perspective, Robert Kaplan, in his book *Monsoon*, theorizes that the Indian Ocean is where the rivalry between the United States and China in the Pacific interlocks with the regional rivalry between China and India, and is central to America's fight against Islamic terrorism in the Middle East³. As China seeks to expand its influence through "String of Pearls", the Indians and the Chinese will enter into a dynamic great power rivalry in these waters⁴. As both regional and extra-regional players interest interlock in Indian Ocean for secure maritime trade and good order at sea, it requires policymakers to consider a range of issues from naval power capabilities, private shipping practices, international legal regimes, secure shipping for the Law of Sea to function seamlessly.

II Need For Private Security: Their origin

Maritime Security has existed in the private sector for a number of years for the protection of luxury super yachts, oil platforms and cable laying vessel projects. Post-Cold War shipping in Indian Ocean has become vulnerable to various forms of transnational threats. Somalia piracy that emerged in the late 1990s, developed into a serious global threat to maritime shipping with violent attacks on ships and hefty ransom payment for release of the crew, ship and cargo. Somali pirates collected an estimated ransom of \$58 million in 2009, \$238 million in 2010 and \$160 million in

1) A Pandya et al [2011], "Maritime Commerce and Security: The Indian Ocean", The Henry L Stimpson Centre, February 2011.

2) International Trade – The United Nations [2011], Chapter II Box II.1, p. 44. www.un.org

3) Kaplan, Robert D. [2011], "Monsoon – The Indian Ocean and the Future of American Power" Random House, p. 9.

4) Kaplan, Robert D. (2009), "Center Stage for the Twenty-first Century: Power Plays in the Indian Ocean", *Foreign Affairs*, March-April vol.88 No.2, pp.16-32.

2011⁵. Ransoms made up for only one of the calculable direct and indirect economic costs of piracy. Others included bypassing the Gulf of Aden, adding three thousand miles and increase of voyage from two to three weeks, additional fuel costs of \$3.5 million per year for tankers and \$74.4 million per year for the liner trades⁶. Payment of higher insurance premiums, that increased from \$500 in 2007 to approximately 20,000 per ship per voyage, excluding injury, liability, and ransom coverage⁷.

Indian Ocean High Risk Area

The global shipping industry as a part of its counter-piracy measures, represented at international confederation levels by bodies such as BIMCO, ICS, INTER-CARGO, INTER-TANKO, OCIMF etc., brought out in 2008 a document known as Best Management Practices (BMP) by, of and for the shipping industry. This was in the form of advisories and guidances for self-protection of merchant ships and their crew from piracy attacks and hijack situations while transiting in those intensely piracy prone waters. These vulnerable areas were defined as High Risk Area (HRA), characterized by piracy attacks and / or hijackings. At the same time round the clock naval patrolling of the Internationally Recognized Transit Corridor (IRTC) was conducted by Operation Atlanta [European Union], Task Force 150 [NATO] and individually operated naval deployments by Russia, China and India etc. The pirate attacks in the *high-risk area* thus have fallen precipitously and the last reported hijacking and ransom of a merchant vessel by Somali pirates was in 2012⁸. But pirates limited to the waters off the coast of Somalia and the Gulf of Aden expanded their reach farther into the Indian Ocean and the levels of piracy, frequency, severity, and locations of these attacks varied over the decades. Subsequently in 2011, the industry body known as the Round Table (headquartered at London, UK), extended the HRA geographical coordinate in the Indian Ocean to East of 78 degrees East longitude, which came up to the west coast of India. It forced ship owners and charterers to find alternative ways to mitigate risk. Many governments were reluctant to provide forces for the anti-piracy operations indefinitely as an annual budget of collective cost of naval anti-piracy operations outstretched to two billion dollars. They

5) Mineau, Michael L. (2010) "Pirates, Blackwater and Maritime Security: The Rise of Private Navies in Response to Modern Piracy" Journal of International Business and Law: Vol. 9: Iss.1; <http://scholarlycommons.law.hofstra.edu>; Advisory Council on International Affairs. [2010]. 'Combating Piracy at Sea: A Reassessment of Public and Private Responsibilities', Advisory Report No. 72.

6) William Marmon, [2011] "Merchant Ships Start to Carry Armed Guards Against Somali Pirates", European Affairs, <http://www.europeaninstitute.org> ; see also UNOSAT Global Report on Maritime Piracy - a Geospatial Analysis 1995-2013.

7) David Isenberg [2012] 'The Rise of Private Maritime Security Companies', Somalia Post 29 May <http://www.huffingtonpost.com>.

8) Christopher Spearin [2012] "Private Military and Security Companies, v. International Naval Endeavours, v. Somali Pirates A Security Studies Perspective" Journal of International Criminal Justice 10(4): pp. 823-837.

were ready to embrace sea-going guards as a way to shift some of the expense of defence to the shipping industry. The realization that naval forces cannot provide sufficient protection, and hull insurance underwriters and Protection and Indemnity (P&I) clubs refused to offer acceptable Additional War Risk Premiums [AWRP] unless armed security teams are embarked. A lucrative market of 'On-board' private security forces emerged as the best cost-effective mitigation strategy. As number of countries reversed long standing legal bans and serious restrictions on the direct arming of merchant ships, an explosion of the Private Maritime Security Companies (PMSCs) resulted that contracted Private Contract Armed Security Personnel [PCASP] to individual vessels⁹.

Privately Contracted Armed Security Personnel

As 90% of the world trade travels by sea, today there are well over 200 PMSC's in operation, with PCASP teams embarked on an estimated 30%-60% of the ships that transit the Indian Ocean each year¹⁰. In 2011 the International Maritime Organization (IMO) changed its stance on Shipping Companies employing PCASP onboard Merchant Vessels. IMO's Maritime Safety Committee (MSC) has approved Employment of PCASP on board ships transiting the high-risk piracy areas in the Indian Ocean and reported that it was a matter for Flag State Approval. The Oxford University Small Arms Survey of 2012 reported that the percentage of ships employing armed guards rose from 10% to 50%¹¹. Paying almost \$5,000 a day for a four-man armed team, on duty for four to 20 days for the voyage through the Gulf of Aden, shipping companies around the world in 2011 alone spent over one billion dollars on security equipment and PCASP's¹². While success rate of deterring acts of piracy is reported to be 100% for the shipping companies hiring PCASP's. Some bigger PCASP supplying companies have improved their turnover by 350 %.¹³

The severe risk of piracy in the Indian Ocean region has also translated into a tenfold increase in insurance premiums for ships transiting the Gulf of Aden. Marine insurance firms have started offering to reduce premium costs by as much as 40% for any

9) Andrew Edwards [2014] "Private Contracted Armed Security Personnel (PCASP) – The Need for International Regulation" April 22 ; www.linkedin.com; Fitzsimmons, Scott. 2013. "Privatizing the Struggle against Somali." *Small Wars & Insurgencies* 24(1): 84–102.

10) Huggins Jon and Walje Matt [2012] "The Challenges of Maritime Private Security Oversight" *Private Security Monitor*, December.

11) Small Arms Survey of 2012, The Oxford University.

12) Sarah Kent and Cassie Werber [2015] "How Floating Armories Help Guard Cargo Ships From Pirates on High Seas On Board the Arsenal That Ferry Guns and Guards to Passing Vessels on the Edge of the Indian Ocean"; *The Wall Street Journal*; February 3; <http://www.wsj.com>

13) Rear Admiral Daya Dharmapriya [2012] "Countering Maritime Piracy: A South Asian Perspective" *Regional Counter-Piracy Workshop*, Colombo, Sri Lanka 27-28 September.

vessels hiring private security.¹⁴ A Lowy Institute military analyst, James Brown, stated as many as 2700 armed guards operate aboard merchant ships plying the Indian Ocean trade routes. Some countries are also getting into the private security business, hiring out small elements of their navies to escort commercial vessels along the most dangerous sections of the trans-Indian Ocean voyage. Thus by 2013, in spite of decline in Somali piracy about 35%-40% of the estimated 65,922 merchant vessels transiting across the Indian Ocean's HRA carried PCASP on board.¹⁵ The hiring of armed private security teams became the norm rather than the exception due to the gaps in maritime security.

Maritime PMSCs provide two types of service: armed contractors and armed convoy escort vessels. **Armed Contractors** are typically ex-Navy personnel with shipping industry-accredited safety and training qualifications, and work in teams of 3-6.¹⁶ Maritime PMSCs offer a full suite of counter-piracy services, including hardening of vessels in accordance with industry standards, crew counter-piracy training, and preparation of onboard citadels. Contractors embark with body armour, medical kits, satellite communications, night-vision equipment and weapons usually small arms such as AK47s and RPK light machine guns.¹⁷

Armed Convoy Escort Vessels: PCASP's with Private armed patrol boats are attractive to shipping companies as they do not require weapons-carriage on company ships hence do not compromise their right to innocent passage through territorial waters and any consequences of firing weapons are outsourced to the captain of the private armed patrol boat. Presently 40 private armed patrol boats operate in the Indian Ocean and the most sophisticated of these private navies is outfitted with three large boats in Singapore - each with a crew of 20, capable of carrying 40 private marines, and equipped with a helicopter and drones.¹⁸ They operate by establishing exclusion zones around the client ship and challenging suspicious boats that approach them. The status of private armed patrol boats under international law is unclear as they could themselves even be defined as 'pirates' as they use aggressive force on the high seas without government authority.¹⁹

14) Jerry Seper, [2014] "Blackwater Joins Fight Against Sea Piracy", The Washington Times December 4, 2008; <http://www.washingtontimes.com>

15) The State of Maritime Piracy 2013 Report [2014], Oceans Beyond Piracy.

16) James Brown [2012] "Pirates and Privateers: Managing the Indian Ocean's Private Security Boom" September 12; www.iowyinstitute.com

17) See, "Locked and Loaded: What a Ship-owner Needs to Know When Considering the Use of Armed Security Guards": www.american-club.com; See Aspida Maritime Security, www.aspida.org and Sea Marshals Ltd website: <http://www.seamarshals.com>

18) James Brown [2012] "Pirates and Privateers: Managing the Indian Ocean's Private Security Boom" September 12; www.iowyinstitute.com

19) See A Schwartz [2010], "Corsairs in the Crosshairs: A Strategic Plan to Eliminate Modern Day

Vessel Protection Detachments or VPDs: A VPD is a team of military personnel, usually from the Marine force of the flag state. With shrinking defense budgets, governments are privately hiring out their soldiers to provide security onboard commercial ships. VPD's are hired out to individual shipping companies for protective duties in high risk transit areas or aboard World Food Program vessels. The list of countries offering VPDs has increased in the past five years in spite of blurring the lines between 'sovereign services' and 'mercenaries'. VPD teams are commonly offered by African nations to assist companies operating in their territorial waters. European naval forces offered VPDs to cruise liners and World Food Program ships in the piracy high-risk area. There are a number of problems associated with the use of vessel protection detachments, which are often more expensive than private alternatives and often in short supply.²⁰ Short supply of VPD further increased usage of maritime private security as a way to reduce state liability and avoid the domestic political costs and diplomatic externalities arising from the use of state military personnel²¹.

Floating Armouries: Due to the tightening of state regulation over the use of land based armories, restrictions on weapons in some territorial waters, as well as the high cost of permits and storage in government-owned, land-based armories, maritime PSCs increasingly, turned towards floating armories for convenience, economy, and safety. These are vessels used to store weapons, ammunition, and related equipment such as body armour and night vision goggles and provides other logistics support including accommodation, food and medical supplies storage for PCASP's engaged in vessel protection. They are typically commercially owned vessels, often anchored in international waters. These vessels are not purpose built, but ships that have been converted and retrofitted. Such as ships that were previously offshore tugs, anchor handlers, research vessels, patrol boats and a roll on-roll off ferry²². Presently located in the Gulf of Oman, in the Red Sea and off the coast of Sri Lanka, floating armories allow quick turn-around time of personnel, allowing them to service more clients and services more cost effective. One company may own and/or run several floating armories weapons and other equipment may be embarked or disembarked at any of the armories. They even serve as rental platforms to lease firearms to under-equipped

Piracy", New York University Journal of Law and Liberty 5 (2); Andrew Palmer [2012] The Use of Armed Guards, Legal and Practical Issues, <http://www.idaratmaritime.com/>

20) John S. Burnett [2002], *Dangerous Waters: Modern Piracy and Terror on the High Seas*, New York, Dutton. See also "Piracy - Robbery or Illegal Violence at Sea" February 2, 2015 <http://www.gard.no>; Roger L. Phillips [2012], "Use of Private Guards and VPDs Remains Controversial"; <http://piracy-law.com> April 9.

21) Caldwell, Graham, 2012. "Private Security and Armed Military Guards: Minimising State Liability in the Fight against Maritime Piracy." *RUSI Journal* 157(5): 16–20.

22) See MNG Maritime, 'Logistics, Storage and Transfer Services for the Private Maritime Security Industry'; <http://www.mngmaritime.com/>

PMSCs. Critics opine that the armories themselves could be targets for attack by pirates or terrorists. An industry newsletter in 2012 stated that there were between 10 and 12 armories operating at any one time and the EU Naval Force reported that there were about 20 floating armories in the area.²³ However, information released in September 2014 by the UK Government suggests that the number of floating armories may be significantly higher as it confirmed that as of September 2014 it had granted licenses for 90 UK-registered PMSCs to use 31 floating armories. As this number only represents floating armories licensed for use by UK PMSCs the actual number of armories may be higher²⁴.

Maritime PCASP's are able to offer many potential benefits to the shipping, marine insurance companies and coastal governments by preventing loss of life and property; supplementing the NATO flotilla warships and reducing marine insurance premiums. With on going demand, classifying PMSCs is complicated as some consisted of few employees; others are large, publicly-traded corporations. Many PMSCs are based out of large consumer states, such as the United States and the United Kingdom, while others are indigenous to the states in which they operate. While some PMSCs hire mostly ex-military or police personnel from their home states, others draw heavily on "third-country nationals" (TCNs).²⁵ Initially only British and European guards were deployed as armed security guards and they were paid as much as 3000 USD for a month. With growing competition amongst PMSCs and the entry of Indian, Nepalese, Philippines and eastern European Sea Marshalls, some companies provide Sea Marshalls for as low as 700 USD a month.²⁶ Thus there is concern as to whether some of the armed guards deployed have sufficient competency and skill to use weapons, and apprehension that the use of weapons may escalate an already dangerous situation. Such variance in the function and character of PMSCs, makes attempts at categorization challenging.

India and Indian Ocean:

Projected to be the world's single largest importer of oil by 2050, India's mercantile trade constitutes 41% of its GDP with a value of 77% and 90% of it is sea-borne. The volume of India's trade through the Gulf of Aden is estimated close to USD110 billion

23) Rickett, O., 'Piracy fears Over Ships Laden with Weapons in International Waters', The Guardian, 10/01/2014, <http://www.theguardian.com/>

24) Small Arms Survey [2015], "Floating Armouries in the Indian Ocean", Number 52 May 2015; <http://www.smallarmssurvey.org/>

25) Deborah Avant Mark Berlin and Karl Kruse, [2011] "Monitoring the Global Private Military and Security Industry: What Do We Know, What Do We Need to Know, and How Can We Know It?", IGCC Occasional Paper No. 4.

26) William Simon.O [2014] 'Assessing State Jurisdiction and Industry Regulation over Private Maritime Security', An International Comparative Regulator Review.

annually with 24 Indian-flagged merchant ships transiting it every month.²⁷ The costs of Somali piracy are getting heavier for India which has the largest coastline in the region. It has borne the additional costs of strengthening its 24x7 surveillance closer to its western coast line and additional deployments in Eastern and North Eastern Arabian Sea to check the piracy movement west ward. The IMO revised HRA for commercial ships from 65 degree East Longitude to 78 degree has virtually declared the entire Arabian Sea as piracy infested and has led to re-routing of ships through Kanyakumari thus virtually touching Indian shores.²⁸ Technically it is almost about 35 nautical miles from the baseline and an unwarranted encroachment into India's EEZ (Exclusive Economic Zone). Further international maritime traffic density came hugging the Indian coastline to avoid the said HRA related additional war risk premium. This, in turn, led to maritime congestion jeopardizing maritime safety as it interfered with the Indian shipping and fishing fleets. Proliferation of positioning of armed security guards on board merchant vessels to deter piracy attacks as increased the presence of unregulated foreign owned and operated floating armouries near India's coastline, potentially jeopardizing Indian maritime security interest.²⁹ UNCLOS provides little clarity on the legal status or protections for PMSCs performing embarked duties or vessel-protection escorts when operating in territorial waters. India has experienced two of the noted incidents surrounding armed ship guards. These incidents highlighted the complication and possible risks regarding unregulated PCASP in Indian Ocean Region.

The *Enrica Lexie* Case:

It is absolutely clear as far as the UNCLOS is concerned, that all vessels enjoy the right of innocent passage even in the territorial waters of any country as long as it is peaceful and does not infringe the laws of the land which extend up to 12 nautical miles of territorial waters. The crime of piracy is a breach of *jus cogens* (or a peremptory international norm) but there can certainly be *no* reason or justification for sudden panic and unprovoked use of force at the first sight of an approaching boat or dinghy. On February 15th 2012, Italian military guards on an oil tanker *Enrica Lexie* allegedly shot and killed two Indian fishermen after confusing them for pirates. Post incident, Indian authorities bunged the oil tanker and arrested the Italian security guards to investigate the shooting and charged them with 'murder'. Italy 'challenged' the exercise of Indian jurisdiction over the shooting claiming that Italy should have

27) Rear Admiral Daya Dharmapriya [2012] "Countering Maritime Piracy: A South Asian Perspective" Regional Counter-Piracy Workshop, Colombo, Sri Lanka 27-28 September.

28) See Michele Vespe, Harm Greidanus, Marlene Alvare [2015] "The Declining Impact of Piracy on Maritime Transport in the Indian Ocean: Statistical Analysis of 5-year Vessel Tracking Data Marine Policy" Volume 59, September, pp. 9–15.

29) Eboli, V. and Pierini, J.P. [2012]. 'Coastal State Jurisdiction over Vessel Protection Detachments and Immunity Issues: The *EnricaLexie* Case' Military Law and the Law of War Review 51, pp 117-148.

exclusive jurisdiction over the events. India, by contrast, claims to be able to exercise jurisdiction based on its internal laws. The incident has since led to a diplomatic row between India and Italy. Italy argued that its marines lawfully fired in self-defence as the fishermen manoeuvred aggressively and ignored warning shots. India argued that the marines used a disproportionate degree of force and should stand 'trial for manslaughter' in India. The marines were awaiting word from India's Supreme Court 'on the issue of jurisdiction' as it has now been agreed upon that the incident took place in contiguous waters, not international waters as initially believed.³⁰

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First is the fact that the vessel did not report a firing incident since there it is mandatory regulation. Guidelines issued by the Indian Ministry of Shipping, SR-13020/6/2009-MG (pt.) dated August 29th 2011 make it mandatory for all Indian and foreign commercial merchant vessels with armed guards and military weapons to obtain a Pre-Arrival Notification for Security (PANS) clearance prior to entrance and transit through the Indian Exclusive Economic Zone (EEZ) and / or the Indian Search and Rescue Region (ISRR).³¹ Secondly Military personnel are usually cloaked in immunity by their government but VPD's are an explicit alignment of national military power with private commercial interests. Military personnel embarking upon as a VPD, provide protection to that particular ship and do not contribute to the wider counter-piracy fight. VPDs have their movements dictated by shipping companies rather than governments, and are under the command of the civilian ship captain. Thus VPD's creates substantial ambiguity about their identity. Port officials may be unclear as to whether military detachments are fulfilling other functions, such as intelligence collection, when they enter port on a civilian ship. States may choose to treat civilian vessels carrying VPDs as warships instead, with wider implications for legal and diplomatic status. The state may suffer the consequences of private decisions and might be perceived as an instrument of state policy.³²

Initially the incident highlights issues such as piracy on the high seas, innocent victims, multimillion dollar business ventures, allegedly false evidence, mistaken

30) M. Nalapat, [2012] 'The Italian Navy Strikes Again', SundayGuardian, 21 May; and also 'Italian Naval Guards will have to Undergo Trial in India', The Times of India, 27 June. Guilfoyle [2012], 'Shooting Fisherman Mistaken for Pirates: Jurisprudence, Immunity and State Responsibility', EJIL Analysis blogpost, March 2; <http://www.ejiltalk.org/>

31) Badani Ports, [2012] "Trade Notice—Pre Arrival Notification of Security (PANS)", 12 May, www.adaniports.com; Commander Gurudeep Bala "Private Maritime Security Contractors and Legal Framework"; <http://indiannavy.nic.in>

32) David Isenberg [2012] "The PMSC Silver Lining in the Indian Ocean, September 14, "www.huffingtonpost.com; see Eugenio Cusumano & Stefano Ruzza (2015) "Contractors as a Second Best Option: The Italian Hybrid Approach to Maritime Security", Ocean Development & International Law, 46:2, pp 111-122.

identities and high diplomacy. At its base, the dispute is a legal one dealing with the right to criminalize behavior, the authority to seize a vessel on the high seas and the jurisdiction to try those accused of murder and the status of immunity. Both India and Italy are likely to raise several international valid points as they try to settle the dispute.³³ The international legal community looks up to how the Indian legal system addresses the issues of jurisdiction and sovereign functional immunity in this judicial process.

MV Seaman Guard Ohio:

Indian Navy has expressed serious concerns over unregulated armed guards deployed on private merchant ships crossing Indian waters as intelligence inputs indicating some of the ships have serving and former "combatants" from the "armed forces" of "certain countries" deployed on private ships posing as security guards. India also fears that some of these private guards can both be spies as well as agents looking for infiltration to carry out terror attacks in India. The 26 November 2008, India witnessed a terror attack on its coastal financial city Mumbai killing 180 people and injuring over 300.³⁴ The terrorist attack attracted international attention as the terrorist reached Mumbai by sea using a 'hijacked fishing trawler' and killing a ship captain. Since then India has increased vigilance in its coastal waters.

Thus US-owned and Sierra Leone-flagged MV Seaman Guard Ohio got caught in October, 2013 after a tip off from Indian fishermen, who reported that the vessel was trying to procure fuel without entering Tuticorin port. The ship, owned by US-based maritime security firm AdvanFort International Inc., was intercepted off the coast of Tamil Nadu and later escorted to VO Chidambaranar port (Tuticorin port) on the eastern seaboard and detained 10 crew and 25 security guards by India's Coast Guard for carrying 35 assault rifles and around 5,680 rounds of ammunition in Indian waters without valid permits. The owner of *Seaman Guard Ohio* stated that the arms and ammunition on the ship were purchased legally and meant for use in counter-piracy operations to safeguard vessels in high-risk areas.³⁵

33) See Joseph William Davids [2013] "Jurisdiction And Diplomacy On The High Seas: India Vs. Italy" UNCLOS Blog At World Press 2 February; Sandeep Dikshit [2012] "Italy Works Back Channels, Sea Law To Get Marines Off Indian Hook", The Hindu, February 22; Nigel Bankes [2015] "ITLOS, the Enrica Lexie Incident and the Prescription of Provisional Measures", The blog of the K.G. Jebsen Centre for the Law of the Sea September 9; "Enrica Lexie Incident [Italy v India]" [2015] International Tribunal for the Law of the Sea, Case 24, August 24.

34) OldSailor [2008] "Terrorists May Have Used Sea Route to Launch Attacks in Mumbai", November 27, www.marinebuzz.com

35) Edward Lundquist, [2013] "M/V Seaman Guard Ohio Remains Detained in Indian Port", Defense Media Network, October 21; <http://www.defensemmedianetwork.com>

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The Case has raised *jurisdictional issues arguing that the ship was outside India's territorial waters* when it was intercepted by the Coast Guard. In fact, the firm claims that it strayed closer to Indian waters to refuel and escape a cyclone that hit India's eastern coast around the time. According to a Coast Guard official, the ship was 15 nautical miles off the coast when it was intercepted. But the 12 nautical mile-limit for India's territorial waters will not apply in this case because the Gulf of Mannar—where the ship was intercepted—is an eco-sensitive zone with several small islands and would require a slightly different yardstick to measure the water limit. The crew has been booked under India's Essential Commodities Act for buying 1,500 litres of diesel illegally with the help of a local shipping agent. The Indian government has labeled the vessel operated by PMSC AdvanFort, *a floating armory*; the company's spokesman denied the categorization saying the ship serves as an *escort vessel* that was unable to dispose of its weapons prior to entering port due to the sudden nature of the detainment by the Indian Coast Guard.³⁶ Indian Coast guard countered that violation of the PANS apart, the vessel did not have any authorization from the flag nation to carry out duties of armed escort. While Advan Fort says that it had the requisite permits and licenses and that the weapons were properly registered and licensed to the firm. The Coast Guard asserts that the crew did not have appropriate documentation regarding the weapons carried onboard or the logs of duties performed by 25 armed guards of four different nationalities and there is no record of these personnel on ships.

After detention and investigation, the multinational crews were set free by the Madras High Court, which declared it an unintentional, accidental act and not one of criminal conspiracy but the questions persist regarding the control of arms supplies to PSC's operating in the HRA. The incident brought to light how vessels could easily violate regulations set by the coastal state and highlighted the fact as to how vessels with inadequate documentation could easily carry a large number of weapons with little or no oversight.³⁷ The incident has brought forward, the carriage of weapons on board merchant ships is not straight-forward and there are instances where some armed response teams have illegally hidden weapons on board a ship, creating a potential legal problem for the Master and the ship's owners.

India has been arguing as there no central regulation it is almost impossible to estimate the number of weapons and quantity of ammunition in circulation with the PMSCs.

36) Anupama Chandrasekaran, [2013] "India Charges 33 Aboard Armed US Anti-piracy Ship", Reuters, 19 October; www.reuters.com

37) Subarami [2014], "Court sets Free Crew of Armed US Ship, Says they Came for Food, Fuel", The Times of India.com, 11 July; Queen Mary [2015] "Framing of Charges in Armed Vessel Case" The Hindu, August 13.

XIV. Privately Contracted Armed Security Personnel in Indian Ocean Region

So far only Netherlands and the UK have provided public information regarding small arms transfers to maritime PMSC and the use of floating armories. The total number of PMSC firearms in the HRA estimated is in the range of 7000 to 10,000.³⁸ This is exacerbated by the fluid way in which arms are moved by PCASP from multiple armories and locations as nearly 20 ships stocked with assault rifles and other small arms as well as ammunition are scattered around the Red Sea, the Gulf of Aden and the Indian Ocean. Lack of any provisions and sufficient intelligence inputs of some ships having combatants posing as security guards, India feels this is not only affecting its fishermen but also posing security threat to Indian shores since it is difficult to decipher between a terrorist and a guard.³⁹ The problem faced by such floating armories is logistics and supplies as they operate outside any coastal jurisdiction. A number of PMSCs used Sri Lanka as a regional launching pad, believing its laws were easier to work through. The Sri Lankan government outlawed private arms as it found proof that British PMSCs had breached its laws – essentially smuggling arms into the country. This stringent effort to control armories through regulation is due in part to their use by the Liberation Tigers of Tamil Eelam (LTTE) during the Sri Lankan civil war.⁴⁰ In a 2012 report, the U.N. Security Council committee on Somalia and Eritrea said that the armory business was "uncontrolled and almost entirely unregulated", posing additional legal and security challenges for all parties involved. India, fearful that armories present a security risk, India is pushing the IMO, to develop guidelines for regulating the industry.⁴¹

Since 2011, India has been consistently taking up in IMO and the Contact Group on Piracy off the Coast of Somalia (CGPCS), the issue of the restoration of the HRA to the 65 degrees East longitude.

Due to India's efforts, international bodies such as International Chamber of Shipping and others have now agreed to push back the HRA and the shift would come into effect from December 1st 2015.⁴² IMO views PCASP from the prism of Somalian piracy as temporary measure to be overtaken by greater deliberations in future.

38) Small Arms Survey [2015] "Stockpiles at Sea; Floating Armouries in the Indian Ocean" Weapons and the World, Cambridge University Press.

39) See Vineeta Pandey [2013] "Armed Guards on Private Ships Worries India, Navy Fears Security Risk" <http://daily.bhaskar.com> Dec 04; see also "Armed Guards Back in Spotlight after Detention of Anti-piracy Ship in India"; <http://www.livemint.com/>, Oct 24 2013.

40) Scott C-P [2014] "The Private Maritime Security Companies of South and Southeast Asia?" (Part 2), April 21; www.cimsec.org.

41) "How Floating Armouries Help Guard Cargo Ships from Pirates on High Seas, "Hellenic Shipping News", February 4 2015; www.maritimeindia.org

42) "Re-Drawal of the High Risk Area in the Indian Ocean - Major Gain for India on Global Maritime Stage"; Press Information Bureau Government of India; Ministry of Shipping; October 9 2015; <http://pib.nic.in>.

The International Maritime Organization (IMO):

The IMO is recognized by UNCLOS to develop or revise existing rules in connection with the adoption of international shipping rules and standards concerning maritime safety. IMO does not endorse the PCASP but has issued guidance since 2011 to PMSC providing armed security guards on board ships in high-risk areas. Many maritime nations, including India have framed rules for deploying armed private security guards on board their ships. But oversight of private maritime security operations and armed private security guards became confusing as state jurisdiction is unclear or blurred, and occasionally the states involved may tiff to avoid responsibility and jurisdiction.⁴³ Inadequate and inaccurate data about piracy attacks negates establishing effective and consistent procedures as underreporting of pirate attacks and crime at sea remains a significant and persistent problem. Currently, ship operators and owners are only requested, but not required, to report all incidents involving 'pirates' or 'suspected pirates' or 'use of force' by 'private guards' to the International Maritime Bureau. Further there are reports of the unreported 'serious injuries' or 'fatalities at sea' as a result of 'counter-piracy actions' by PCASP at sea. A full independent and effective investigation by law enforcement personnel needs to be undertaken to ensure that national and international law have been followed during such incidents⁴⁴. Though PCASP operate in a quasi-military capacity they are civilians, working under a civilian mandate. The rights to preemptive force, boarding operations, and detention of suspects are held exclusively by military forces.⁴⁵ Hence countries that hire out their military personnel risk being embroiled in 'disputes beyond their control' With private security booming in the IO, IMO is not equipped as an international body that regulates or evaluates the security of floating armories. There is a lack of regulation on the storage capacity of floating armories and no published limits on the quantity of arms and ammunition that are 'stored on board' and are 'in usage'. There are a risk of a "mini-arms race" developing as floating armories give 'weapons and men for hire'.

43) See Simon O. Williams [2014] 'State Jurisdiction over Privately Contracted Armed Security Personnel at Sea', December www.kcl.ac.uk; Anna Mihneva Natova [2005] "The Relation Between UNCLOS and the IMO Conventions"; <http://www.un.org>; Joel Christopher Coito [2013], Pirates vs. Private Security: Commercial Shipping, the Montreux Document, and the Battle for the Gulf of Aden, 101 Cal. L. Rev. 173; <http://scholarship.law.berkeley.edu>

44) Noah D. Lombardo [2014] "Underreporting of Crimes at Sea: Reasons, Consequences, and Potential Solutions" November; <http://oceansbeyondpiracy.org/>; see also Matt Walje [2013] "Private Maritime Security Companies and the Use of Force" Private Security Monitor Spring 2013.

45) See Jessica N.M. Schechinger [2015] "Flag States, Privately Contracted Armed Security Personnel and Human Rights Violations at Sea" March 24, 2015 <http://piracy-studies.org>; Alice Priddy and Stuart Casey-Masle [2010], "Counter-piracy Operations by Private Maritime Security Contractors, Key Legal Issues and Challenges" Journal of International Criminal Justice 10, pp. 839-856.

IMO could take initiative for the establishment of a clear and concise model set of *Rules for Use of Force*. It could also implement standards which are applicable for floating armouries such as the International Small Arms Control Standards, which provide guidelines on stockpile management of weapons. States may take initiative to establish firmer methods for vetting, employing, operating, and reporting of PCASP, as well as the carriage of weapons, than is mandated by the IMO. At the individual level governments can be more effective in tracking former navy and army members who had become 'guns for hire' on the 'high seas'. A better option is for the flag state to license 'Sea marshals' under a uniform international licensing regime that regulates and standardizes usages of weapons, engagement, personnel training and qualification, and penalties. Alternatively an international non-government organization could closely monitor and regulate PCASP activities till UNCLOS adopt a comprehensive convention regulating them.

Conclusion

Thus use of PCASP is a phenomenon that cannot be ignored at the international level, especially in the field of piracy, and that private security services have a potential worldwide market value of approximately 200 billion USD a year. The use of private security at sea is not only a viable option, but a necessity for a secure maritime trade and maritime governance. There is a long-term suitable role for private companies to provide security for port security, high-value transit protection, training of VPDs and security forces, and marine resource protection. PCSAP could also be used for counter maritime terrorism that are transnational. Modern maritime piracy and other security threats are not just confined to the Indian Ocean and Red Sea zones. PCASP are also offering services in other regions as data from the International Maritime Bureau, show that sea attacks now are more common off oil-rich West Africa than off the Somali coast and also that the hijacking of vessels to siphon off fuel cargoes is on the rise in the waters near Indonesia. But usage of PCASP is complicated in these areas, partly because the trade routes pass closer to land, giving coastal nations more territorial jurisdiction. Further the armory business is confined to the waters off Somali and a shift in existing policies would be required to authorize the use of floating armouries in West Africa. The boom in private security in the Indian Ocean has caught governments by surprise. UNCLOS provides little or insufficient guidance to deal with the emerging maritime challenges regarding PMSC and PCASP. India maintains that amending UNCLOS could be a feasible option to incorporate necessary changes to respond to emerging maritime issues. Further, "*sui generis*" regime could be negotiated to deal with combating piracy and terrorism.

Indian Ocean's growing importance of its ports and shipping lanes, the rise of China and India as significant regional and global players, engagement of the United States and other Western powers in the region, and climate risks to coastal economies and communities across the Indian Ocean ensure that the IO will continue to play a strategic role in global politics in the coming decades. Thus in the 'Asian Century' has

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'non state' threats outpace state capacity, private security should be regulated as PMSCs and PCASPs are relatively new terms in the field of maritime security. Thus it could be concluded that as long term procedure, synergy is required by the navies and PCASP to safeguard the high seas for maintaining good order at sea.