

## PROMISING PRIVATEERS?

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### Understanding the Constraints of Contemporary Private Security at Sea

*Christopher Spearin*

**F**or the secretary-general of the United Nations, Ban Ki-moon, contemporary piracy is nothing less than a “global menace.”<sup>1</sup> There are several piracy “hot spots” the world over, each with its own dynamics, but it is Somali piracy that in recent years has particularly caught the attention and raised the ire of states, shippers, and international organizations.<sup>2</sup> International Maritime Organization (IMO) statistics reflect the quantitative dominance of Somali piracy. In 2010 and 2011, the number of alleged attacks in international waters off East Africa and on the Indian Ocean (into which Somali pirates now venture) was 84 percent of the global totals in each year. In 2012, owing to developments both on land and at sea, the Somali weighting declined, but it was still a considerable 54 percent of global totals.<sup>3</sup>

Largely because of the private-security efforts against Somali pirates—one of the policy measures credited in reducing the incidence of pirate attacks—the

*Dr. Spearin is an associate professor in the Department of Defence Studies of the Royal Military College of Canada, located at the Canadian Forces College, in Toronto, Ontario. His research concerns change in militaries, global security governance, nonstate actors and conflict, mercenaries, the privatization of security, piracy, and Canadian foreign and defense policy. His work has been published in a number of edited books and in a variety of journals; he is the yearly contributor on Canadian foreign and defense policy in the Canadian Annual Review of Politics and Public Affairs.*

word “privateer” is back in vogue.<sup>4</sup> In a 2012 report, Australia’s Lowy Institute casually equated private military and security companies (PMSCs) with privateers.<sup>5</sup> In 2013, *The Economist*, reporting on the PMSC Typhon, used the bold headline “Privateers.”<sup>6</sup> Even Rear Admiral Terence McKnight, U.S. Navy (Ret.), who was the first commander of Combined Task Force 151, the multinational flotilla specifically dedicated to combating Somali piracy, has acknowledged the limits of state naval forces and referred to “security teams–privateers”

as an option.<sup>7</sup> Others have argued that privateering would be an ideal vehicle for legal and operational coordination between public and private actors in dealing with piracy. On some occasions these proponents specifically identify the PMSC industry, and in others they refer to private initiative more generally.<sup>8</sup>

This article argues that usage of the word “privateer” is inappropriate for understanding what PMSCs are now doing at sea and what they might be capable of doing. Operationally, a sufficient understanding is important because the maritime environment, especially counterpiracy work, presents growth opportunities for PMSCs (both start-ups and firms looking to diversify following contracts in Iraq and Afghanistan). According to some estimates, between 40 and 70 percent of commercial shippers utilize private security to counter Somali piracy.<sup>9</sup> This raises a number of thought-worthy issues regarding efficacy and the management of violence. As well, appreciating how experiences on land have framed the industry and what PMSCs can realistically offer at sea will help in perceiving the dynamics of contemporary security governance in the maritime realm. At the strategic level, a sufficient understanding is necessary because many of these invocations of privateering specifically refer to the United States, a considerable consumer of PMSC services on land. This is important, on the one hand, because the United States is the only state with the “command of the commons,” and U.S. Navy commanders have long been given responsibility to ensure safe passage in sea-lanes.<sup>10</sup> On the other hand, the relevant national policy document on piracy, a 2007 presidential memorandum, is fairly flexible as to response options.<sup>11</sup>

This article offers four points to advance an accurate understanding of PMSCs. First, through a historical consideration, it contends that privateering conjures up images of vessels of capability and availability not prevalent in the PMSC industry. While seafaring has always been an expensive endeavor, most PMSCs today cannot incur the costs or offer the kinds of capabilities the privateers once did—because of technological changes, bifurcation between military and commercial vessels, and cost sustainment. Second, while their rationales changed over the centuries and their “warlikeness” was sometimes questioned, privateers were nevertheless fundamentally on the offensive. In contrast, PMSCs have been normatively structured to take a defensive or protective posture. Third, the conception of contemporary privateers pursuing the public good of security obscures both PMSCs’ pursuit of security as a *private* good and reasons shippers engage them. The repercussion may be that though the United States wishes to advance both a global maritime partnership and PMSC usage at sea, the latter works somewhat in opposition to the former, because shippers are now “responsibilized” for their own security. The article closes with a last argument: even if responsabilization brings to mind an earlier era of seafaring, that of “letter of

marque” vessels, it too is not an appropriate term to understand fully the activities of PMSCs.

### VESSEL CAPABILITY AND AVAILABILITY

Privateers—nonnaval ships and their crews, or private men-of-war, conducting authorized violence at sea—were at their height from the thirteenth century to the nineteenth century.<sup>12</sup> Initially, a merchant aggrieved by a citizen of another country (involving, e.g., debts, stolen goods) could apply for “letters of marque and reprisal” from his sovereign authorizing him to seek restitution. These letters, an attempt “to bring the anarchy of retaliation under the rule of law,” indicated both the amounts sought and expiration dates.<sup>13</sup> Though “letters of marque” and “letters of reprisal” differed—the former were for seeking restitution within the territory of a sovereign and the latter beyond it (for example, by capturing flagged ships of the offending state)—the term eventually collapsed into the all-embracing “letter of marque and reprisal.” Such commissions increasingly became part of public warfare; their use to pursue private reprisals was uncommon by the mid-1700s.<sup>14</sup> They were licenses allowing private actors using their own resources and ships to attack merchant shipping. More generally, while expiration dates were still in place, other limits were generally removed, and privateers could attack and capture enemy ships of whatever sort during wartime or seek out pirates (deemed the enemy of all humankind) on a commercial basis. Arguably, this is the common perception of the privateer.

Though sovereigns did not, per se, hire privateers, they did provide regulatory infrastructures to facilitate their voyages and payment. For instance, privateers had to bring captured vessels into friendly ports (those that recognized the privateering license, and not those of an enemy state) for adjudication and eventual remuneration. The rationale for these rules was fourfold: they ensured that commissions would be sought in the first instance; they punished privateers who did not act in accordance with their commissions (if privateers mistreated captured crews or injured neutral countries, bonds could be forfeited); they set a legal distinction between privateers and pirates; and they permitted official “condemnation” and extraction of taxes, when applicable, before financiers or privateer crews realized any profit from the sale of captured cargoes and vessels.<sup>15</sup> Thus, sovereigns developed prize courts—for instance, in France in 1373 and in England in 1426. In the late 1700s, the courts of the newly independent United States arose from the Admiralty courts of the British colonial system. Overall, while their efficacy was debatable, these rules did provide a measure of due process, in terms of both how violence was employed at sea by private actors and how those enacting violence were compensated.

Sovereigns, and then states, developed and maintained this elaborate infrastructure also in part to obtain access, however indirect, to a special form of an expensive technology—ships. While small vessels could become privateer ships, the ideal privateer was larger and possessed certain characteristics.<sup>16</sup> Such vessels required sufficient seaworthiness for open-ocean voyages and, at times, heavy armament to allow them to prey on transoceanic trade. They needed sufficient speed to capture fast merchant ships or to flee from adversity (see below). They also had to be large enough to carry sufficient manpower to dispatch prize crews capable of taking over captured ships and bringing them into friendly ports.

Constructing, maintaining, and operating vessels of this sort would have been a considerable expense to state treasuries already stretched by public navies. Indeed, over the eighteenth and nineteenth centuries Britain's Royal Navy in itself was possibly "the largest industrial unit . . . in the entire western world."<sup>17</sup> Whereas the Bank of England served as the source of credit to finance this public force, France, for a contrasting example, lacked a similar central bank and relied even more heavily on privateers.<sup>18</sup> American privateers for their part considerably outnumbered the fledgling Continental Navy during the War for Independence and the U.S. Navy, its successor, during the War of 1812.

In terms of physical maritime capabilities, some naval analysts contend that there were sharp distinctions between warships and privateering vessels, which were basically converted merchant ships.<sup>19</sup> The former, which took advantage of technological developments in naval architecture and weaponry, were slower, more heavily armed, and suited to a range of military tasks, especially confronting like vessels. The latter were faster and lighter in armament. One analyst offers a contemporary analogy: "In no case did [privateers] use the large ships of the line, comparable in power projection to 20th century battleships or today's aircraft carriers and ballistic missile submarines."<sup>20</sup>

Nevertheless, distinctions between state and nonstate capabilities should not be overdrawn. During the span of centuries in which privateers operated, there was only a slow specialization of vessels for military tasks. Privateers were not somehow backward or second-class. As has been argued by a scholar who has examined the record of the eighteenth and nineteenth centuries, privateers "were just as 'modern' as their state and state-sponsored naval counterparts, in terms of the weapons, ships, and maritime crew they used."<sup>21</sup> The reflections of military historian John Keegan on "men-of-war of the wooden world" underscore the broad commonality between naval and merchant types: "[Naval vessels] did not differ in construction, means of propulsion or essential configuration from their merchant sisters."<sup>22</sup> In fact, in some cases armed merchant ships held their own against naval vessels. English and Dutch merchantmen in the 1600s sometimes proved superior to Portuguese and Spanish warships, and French privateers

during the reign of Louis XIV could be a match for the English frigates of the day.<sup>23</sup>

Such distinctions as existed offered merchant ship owners flexibility. Both naval vessels and merchantmen were expensive to build and maintain, but the former had no commercial equivalence. Also, given that commerce raiding was a wartime task, especially designated and state-owned commerce raiders would represent a burdensome sunk cost during peacetime. As one scholar suggests, political and financial considerations combined to make privateering ideal:

[Commerce raiding] could be carried out using physical assets . . . that had a peacetime commercial use and therefore had received healthy investment from the private sector in the years . . . [prior to war]. Indeed, war increased the risk of commerce and thereby made it less attractive, inclining merchants to look for alternative employment.<sup>24</sup>

In short, merchant vessels were relatively easy to convert for privateering; their transaction costs were lower.<sup>25</sup>

Nineteenth-century technological and operational developments, however, made it difficult for private actors to bridge the gap and offer other naval services. Whereas privateering had for centuries been characterized by wood, sail, and cannon, the 1800s brought substantial advancements: power sources (steam, combustion), propulsion systems (the paddle wheel, the screw propeller), protective materials (iron, steel), and weaponry (gunnery, torpedoes, mines). These changes significantly increased unit cost and generated sharper distinctions between naval and merchant classes, which in turn reduced shipowners' transaction-cost advantages:<sup>26</sup>

When merchant vessels could be transformed easily into privateers, the privateering system meant that in wartime a ready stock of potential privateers could be drawn from at low cost. As military technology developed, however, substitution between private and military use became more difficult, and the cost-saving advantages of privateering declined. It was one thing to transform a merchant vessel into a privateer and quite another to build a nuclear submarine.<sup>27</sup>

With states, through their navies, now accepting the sunk costs of purchasing, operating, and maintaining sophisticated and specialized equipment and supporting logistical systems outside of wartime, the space in which private actors could operate was constrained.<sup>28</sup>

What is more, the demise of commerce raiding by private actors, alongside the decline of piracy (and likewise private pirate hunters), may have itself further segregated commercial actors. It has been argued that reductions of privateer activities in different parts of the world starting in the late 1700s allowed merchantship construction and operation to be optimized, in that armaments were no

longer needed, nor the sizable crews that had been required to use those weapons or to seize other vessels. This contributed to merchant productivity increases and higher tons-per-man ratios.<sup>29</sup>

In the contemporary era, PMSCs have gone a step farther. To avoid overhead, they mostly put guards on merchant ships rather than provide escort vessels. Though reports have suggested that as many as forty vessels might be ready for antipiracy work, the actual vessel-based presence in pirate-infested waters is considerably less.<sup>30</sup> In short, PMSCs are not platform-centric; they differ from privateers who offered what were for their time substantial and robust vessels.

To account for this difference, one should note the often-prohibitive initial capital outlays and the costs of redesign and refurbishment that would otherwise be incurred, outlays that even so can achieve only constrained levels of capability. Regarding nonmilitary vessels today, PMSCs confront the same limitations that merchant owners did in the nineteenth century. This is implied in an observation of the mid-1990s about contemporary maritime technologies:

Although . . . [naval technology and merchant marine technology] will have much in common and there are varying degrees of technological overlap, as, for example, in the manufacture and composition of naval fleet replenishment vessels, auxiliary craft, amphibious landing ships, hydrographic ships and patrol boats, the operational parameters and sub-systems of naval operational vessels are often radically different from merchant ships.<sup>31</sup>

PMSCs attempting to “bridge the delta” would face considerable expense. Certainly, they can dip into the limited pool of smaller and older state vessels, those not already traded between navies and coast guards. However, refurbishment is required, in part for updating, and in part because certain capabilities are likely to have been stripped prior to sale. PMSC vessels have been taken from the former stocks of, for instance, Scandinavian navies, the Japan Coast Guard, and the U.S. National Oceanic and Atmospheric Administration.<sup>32</sup> As a result, and unlike the privateer ships of old, they have rather limited tactical and strategic mobility, seaworthiness, and armament.

These capability limitations and the temporary nature of contract employment further limit the economic viability of PMSCs at sea. Not all shippers confronting Somali piracy risk using PMSCs, and for those that do it is often on a per-passage basis, for which the costs of using a special vessel are higher than onboard personnel. PMSC vessels would also have little opportunity for sustained state employment, because of their limited capabilities and constraints (which will be noted below) on integrating them in larger state naval endeavors. Indeed, analysis of state gunboat diplomacy finds that vessels that are up to date, versatile, advanced, and threatening are at a premium. These qualities are not

fortes of the PMSC industry currently.<sup>33</sup> The PMSC industry generally sees in operating its own vessels uncertain profit streams, sizable sunk costs, client-base uncertainty, and unknown environmental prospects (e.g., a decline in piracy in a theater would collapse opportunities there). Accordingly, it does not emphasize vessels, either qualitatively or quantitatively, as did the privateers of old.<sup>34</sup>

#### OFFENSIVE AND DEFENSIVE DIFFERENCES

Privateering, because of its underlying commercial rationale and its emphasis on capture rather than destruction, was arguably not as “warlike” as state military activities (though some navies awarded prize money well into the twentieth century). The financial necessity for privateers of collecting prizes placed a premium on flexibility and independent action. As noted above, confrontations with enemy warships were not unknown, but the risk of being outgunned was evident. The costs of a privateer ship sunk, damaged, or captured were borne solely by the investors and (in more ways than one) its crew; they were not spread across a state’s treasury. Moreover, even if a privateer captured an enemy warship, such ships when condemned usually did not fetch as much money as merchantmen. During the War of 1812, one American privateer apologized to his employer for capturing a British naval vessel in the West Indies: “Having sought a contest with a king’s ship, knowing that is not our object.”<sup>35</sup>

In a similar vein, blockading and merchant convoying by privateers were relatively uncommon because of the coordination required and the frequent absence of catchable and lucrative prizes.<sup>36</sup> In any case, these tasks were problematic for privateers. Given that their crews did not receive wages but rather shared in the bounty after adjudications of prize courts, their financial imperative in the face of adversity was to flee.

What violence a privateer did commit, therefore, was usually calculated to minimize damage so as to preserve the prize’s value. One can look at the minimization of violence in two ways. In the micro sense, this desire extended to the point that some U.S. privateers during the War of 1812 mounted fake, wooden cannon in hopes of simply overawing their prey. In the macro sense, if privateering arguably lowered the costs for a state to engage in warfare, the means it employed, in a direct way, were not very destructive. Indeed, the destruction wrought by state forces in recent centuries dwarfs the contribution of commercial nonstate actors.<sup>37</sup>

Yet one can argue that the privateer, however “unwarlike,” was generally on the offensive—a characterization at odds with the contemporary PMSC industry. Privateers trolled the seas looking for targets to attack; destruction at sea, or the lack of it, was not central to intent and role. In contrast, for PMSCs, while

weaponry is sometimes used and destruction can result, the desire is to get the client “off the spot,” to repel an attacker. In policing terms, PMSCs, land or maritime, are not in the business of apprehending and delivering suspected pirates for incarceration. In military doctrinal terms, PMSC activities emphasize the defensive rather than the offensive—that is, “operations in which forces await for the approach of the enemy before attacking” over “operations in which forces seek out the enemy in order to attack him.”<sup>38</sup>

This is not to deny, again, that PMSCs use lethal force at sea. Indeed, once violence begins, a PMSC may act in very robust ways, knowing the unlikeliness of backup from public or other private forces. Neither is this to deny that such use of force is controversial.<sup>39</sup> Just as land-based PMSCs have been criticized for aggressiveness in protecting vehicle convoys, PMSC violence at sea can produce serious repercussions should a firm mistake other seafarers, such as fishermen, for pirates.<sup>40</sup> Concern also applies to the declaration of exclusion zones around client ships by firms that have incurred the expense of escort vessels.<sup>41</sup> But this is to say that for the PMSC industry, the “offensive” and “seeking out adversaries” are almost as pejorative as “mercenary.”

Three components inform the defensive nature of the PMSC industry. This identification is based on recognizing that a norm is “a standard of appropriate behavior for actors with a given identity” and thus has qualities both intersubjective (meaning shared understandings) and evaluative (meaning sense of “oughtness”).<sup>42</sup> First, on the part of the PMSC industry itself, there is an overwhelming focus on defensive qualities, a focus that advances self-definition and niche capabilities. Additionally, this defensive focus places PMSCs in contradistinction to mercenaries, which, as part of the norm-forming process, are increasingly cast as offensive-minded actors. For one analyst, defensive activities “minimize the effect of the charge that they are fighting (and therefore killing) in exchange for financial gain.”<sup>43</sup> Another provides support: “If a private security contractor were assigned the offensive duties of a regular soldier, that fine line between contractor and mercenary would be breached.”<sup>44</sup> Contractors on land have themselves made similar observations: “Our job in Iraq is not to fight, it is to run. We can only open fire to defend our clients or our own lives.”<sup>45</sup> The formative message offered by such industry groups as the British Association of Private Security Companies is similar: “Any military would argue that offence is often the best form of defense. The private security companies don’t have that luxury; they are defensive forces.”<sup>46</sup>

Intersubjectivity also implies consideration of the viewpoints of state actors. They similarly distinguish, for three reasons, between the offensive and the defensive, with the former acceptable only if performed by states. From one angle,



states wish to avoid association with the pejorative word “mercenary.” The U.S. Federal Acquisition Regulation, for instance, makes the point doubly: “Private security contractors are not mercenaries and are not authorized to engage in offensive operations.”<sup>47</sup> From another angle, one can view the distinction as a division of tasks, though not necessarily an exclusive one. General Peter Schoomaker, who served as the U.S. Army Chief of Staff from 2003 to 2007, believed that PMSCs allowed military units to conduct combat operations and “higher priority jobs.”<sup>48</sup> Nevertheless, public forces still conduct tactically defensive tasks, such as naval convoying, in countering Somali piracy.<sup>49</sup> Finally, one can view the offensive/defensive distinction as an exercise of self-definition. It helps hone and specialize state-armed forces in terms of their functions, a process that has arguably been under way since the end of the Cold War.<sup>50</sup> The “value added” or unique contributions of state militaries can thereby be expressed in terms of their particular and exclusive offensive character, and in so doing a professional distinction and a warrior ethos are emphasized.

This stance—that only a state’s military, because of its training, character, and authority structure, is to do certain things and have access to certain weapons—is reinforced in a variety of academic, military, and think-tank forums. Surveys of civilian and military officials indicate much greater acceptance of PMSCs working to protect property, personnel, or convoys than of PMSCs performing tasks like “combat” or “fighting counterinsurgency.”<sup>51</sup>

Lastly, there is the “framing” of the PMSC industry by the international community writ large. For the founder of the International Stability Operations Association, another PMSC industry association, international endeavor cannot be underplayed: “In the Geneva Conventions there is no difference between offensive and defensive combat, which is pretty interesting. The way it’s sort of come down and been sorted out by the international community is it really does make that differentiation.”<sup>52</sup> As a case in point, one sees the creation of Voluntary Principles on Security and Human Rights in 2000. Endorsing states, nongovernmental organizations (NGOs), and corporations agree that

consistent with their function, private security should provide only preventative and defensive services and should not engage in activities exclusively the responsibility of state military or law enforcement authorities. Companies should designate services, technology and equipment capable of offensive and defensive purposes as being for defensive use only.<sup>53</sup>

One can also look to the 2008 Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict—a state-based initiative designed, first, to uphold international humanitarian law and, second,

to offer states (and by extension other actors) good practices to consider when utilizing PMSCs. This document similarly affirms “using force and firearms only when necessary in self-defense or defense of third persons.”<sup>54</sup> Building on this, the 2010 International Code of Conduct for Private Security Service Providers lays down that “signatory Companies will require that their Personnel not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, or to prevent the perpetration of a particularly serious crime involving grave threat to life.”<sup>55</sup> Finally, IMO guidance for shippers places PMSC usage in the context of Best Management Practices (BMP), which are preventative, reactive, and defensive in orientation. “Full BMP implementation” is the first resort for shippers; the use of PMSCs is the last. The IMO’s BMP document, like the others, states that firms “should only use firearms against persons in self-defence or in defence of others.”<sup>56</sup>

PMSCs arguably possess great offensive potential. A related irony is that despite their defensive posture, firms often employ and are managed by former special-operations forces (SOF) personnel, perhaps the most offensively oriented embodiments today of the warrior ethos. This SOF “flavor,” however, does not translate into offensive activities but into the following:

- These personnel work well in small, self-reliant groups—an important factor, given the aforementioned frequent lack of backup, either by private or public forces;
- They are generally people-centric, rather than platform-centric, in their approach;
- Their presence serves as a marketing tool as firms become linked to the heralded activities of contemporary SOF.<sup>57</sup>

Without a doubt, these distinctions between offensive and defensive and between state and nonstate actors are no small issues, given the arguments about what PMSCs are and what they might do at sea. There is in play a significant recasting of the roles of the public sector as traditionally understood. As has been suggested, PMSCs diverge from “the past trend towards an ever more restrictive understanding of what role private actors and markets should play in regulating the use of force.”<sup>58</sup> However, the contention here is that the private sector does not enjoy a tabula rasa. As identities and roles shift, the expectations of states and other international actors frame PMSC activity and impact how the firms view themselves. Changes in identity and expectation, therefore, would have to occur before the PMSC industry could become prominent in the application of offensive force like the privateers of old. The context and capabilities, and the resulting imagery, are different.

## PUBLIC GOOD, RESPONSIBILITY, AND COORDINATION

In the maritime context, the idea of pursuing security as a public good, one that is nonexcludable and nonrivalrous, is challenging, both legally and practically. Whereas varying degrees of sovereignty can be exercised in territorial seas and exclusive economic zones, no state is sovereign on the oceans. The United Nations Convention on the Law of the Sea (UNCLOS) reaffirms that the rights of states to enjoy freedom of navigation are not to be unduly restricted, a concept dating from the thought of Hugo Grotius in the seventeenth century. UNCLOS also makes plain the limits on the degree to which ships flying the flag of one state can interfere with the operations of ships flying that of another. Additionally, the utter vastness of the oceans makes it difficult for states to exercise control for long periods of time. This factor points to some of the difficulties the thirty or forty warships forming the various flotillas countering Somali piracy have faced as the pirates have become more resourceful and have traveled greater distances away from Somalia's shores.<sup>59</sup>

Nevertheless, one can still take the notion of contemporary pirate-hunting privateers as an exercise in outsourcing the pursuit of security as a public good for two reasons.<sup>60</sup> First, because privateers would be hunting pirates who prey on international shipping generally, all seafarers would potentially benefit from their offensive-oriented activities.<sup>61</sup> These modern privateers would be working to uphold freedom of navigation for all. Second, as mentioned at the outset, the understanding of PMSCs as privateers and calls for privateering are usually linked to the United States. To a degree, this reflects the significant interaction between PMSCs and U.S. forces in places like Iraq and Afghanistan. It also reflects the historical reality that navies of hegemonic sea powers, going back to the late nineteenth century, have traditionally—though not without significant legal and operational difficulty—backstopped this freedom of navigation for both altruistic and self-interested strategic and commercial reasons.<sup>62</sup> The rise of hypothetical pirate-hunting privateers, therefore, would see the transfer/sharing of the tasks of maintaining freedom of navigation to/with commercial nonstate actors, with states, particularly the United States, participating in terms of *de jure* management and direction through letters of marque.

In contrast, PMSC engagement, as advocated by U.S. Navy voices for the international shipping industry as a whole, has focused on employment by shippers rather than by states or on PMSC self-employment and remuneration through an adjudicated prize system. Indeed, history suggests that only the latter could receive the “privateer” label. Thus, for example, in 2008, when Vice Admiral Bill Gortney was in command of the U.S. Fifth Fleet, he contended that “companies don’t think twice about using security guards to protect their valuable facilities

ashore. Protecting valuable ships and their crews at sea is no different.”<sup>63</sup> Rear Admiral McKnight (Ret.), setting up a dichotomy of either hiring PMSCs or avoiding dangerous waters, likewise asserted that “the maritime community must take responsibility for their vessels and ensure safe passage of their cargo and crew through this [i.e., the Gulf of Aden] pirated region.”<sup>64</sup> In 2010, Admiral Mark Fitzgerald, commander of U.S. Naval Forces Europe, offered this open-ended recommendation: “There has got to be security on these ships in my opinion. . . . It is up to the commercial industry to figure out how to deal with this. But I do not think that we can give them a 100 percent guarantee that we can protect them, nor should we.”<sup>65</sup>

Though the U.S. Navy is the world’s only global navy and has a stated policy of keeping sea-lanes open, these calls put shippers on notice, given the limited naval capabilities of many European merchant-flag states and the fact that open-registry states generally lack naval-projection capabilities altogether. Subsequently, many states have developed authorization procedures and guidance on how shippers should use PMSC services (e.g., financial considerations and vetting procedures). In a similar way, the Montreux Document identifies considerations for states and other actors, like shippers, to contemplate.

The end result is that PMSC usage is currently based on individual shippers making security decisions. While pursuit of security as a public good is not inconceivable, at present the pursuit focuses on security as a private good—one that is excludable and rivalrous.<sup>66</sup>

One can place this in the context of what has been called the “great risk shift,” by which responsibility for security writ large is diffusing away from states as a collection, or from “the state” as an institution.<sup>67</sup> This is “responsibilization,” a reframing of accepted conceptions such that nonstate actors are seen “as a set of autonomous subjects both *responsible for* and *capable of* securing themselves” rather than as objects whose security is provided by the state.<sup>68</sup> On land, for instance, this is evident in how humanitarian and development NGOs increasingly, if uneasily, rely on PMSCs.<sup>69</sup> In some cases donor states even insist that NGOs employ private security.<sup>70</sup> At sea, utilization of PMSCs by shippers, therefore, is an extension of these trends, with the exception that the binary divide between state and nonstate is recast as one between a hegemonic navy and the shipper.

The concern is that responsibilization may hinder U.S. plans to develop cooperative relationships among maritime users—a collective plan to foster security as a public good. In the maritime environment, given its vastness and the much smaller likelihood that a merchantman in need would receive immediate naval response, newfound independence may marginalize cooperation between state and nonstate actors. On the one hand, the 2007 “Cooperative Strategy for 21st Century Seapower” looks beyond interstate cooperation to counter transnational

and irregular challenges: “Increasingly, governments, non-governmental organizations, international organizations, and the private sector will form partnerships of common interest to counter these emerging threats.”<sup>71</sup> PMSCs might value intelligence exchanges with state forces. On land, for instance, operations in Iraq and Afghanistan eventually featured offices designed to offer situational awareness, a common operating picture for contractors and the military, and coordination. On the other hand, even with these structures in place in Iraq and Afghanistan, participation was voluntary, and many PMSCs did not engage. At sea, some shippers eschew state-provided convoying because of the unavoidable time delays involved. As well, shippers likely decline to report instances of piracy and pirate contact, to avoid unwanted publicity, insurance hikes, and again, delays and associated financial impacts. Finally, the commercial demands of shippers and the cumbersome and slow vessels they mostly operate dovetail with the PMSC industry’s defensive posture; shippers are not in the pirate-apprehension business.<sup>72</sup> In sum, this responsabilization may lead to the increasing individualization of response rather than the fostering of collective action.

#### “17TH CENTURY CRIME . . . 21ST CENTURY SOLUTIONS”

If we reach back into history, can we find a phenomenon that better captures PMSC activism today than does privateering? Indeed, in some ways, responsabilization suggests a return to earlier times. There was in the age of sail an *expectation* that when shippers “bore the full costs of their actions, they tended freely to take responsibility for their lives. And thus those in the private sector provided the goods and services that were needed.”<sup>73</sup> During this time, shippers armed themselves, in part because of the relative weakness of naval forces, and in part because of the fear of predation by pirates and enemy privateers alike.

In this vein, several maritime analysts identify from the early 1600s onward a distinction—evident first in the British case and later in the American—between vessels termed “privateers” and others called “letters of marque.”<sup>74</sup> A captain of one of the latter held an actual letter of marque, authorizing him to arm his ship for security during long voyages. A letter-of-marque vessel was primarily a cargo carrier, not optimized as a privateer—which would have a larger (non-wage-earning) crew, greater speed, and heavier armament.<sup>75</sup> The armament of a “letter of marque” allowed some operational flexibility; the vessel could risk running blockades and avoid the inconvenience and expense of convoying.<sup>76</sup>

While some of these rationales are congruent with today’s considerations regarding PMSC usage, there are important differences. First, the *raison d’être* of PMSCs and privateers is the threat or application of violence, whereas this was only one among a host of elements for the letter-of-marque vessel. Second, in today’s environment, merchant crews, backed up by seafarer unions, are generally

unwilling to take up arms. Third—like privateers but unlike PMSCs—“letters of marque” were substantial ships for their day. Finally, in addition to capturing a vessel as the result of a successful defense (and thus benefiting financially), a letter-of-marque vessel might also seek out an enemy ship and capture it as a prize, as privateers did, should the opportunity arise. Put differently, the “letter of marque” had an offensive character lacking among PMSCs. This terminology, then, is no better than “privateer” for the contemporary context.

In that context, the material, regulatory, and ideational differences between contemporary PMSCs and privateers make plain how commercial nonstate violence is presently organized and enacted in the maritime realm. One can see the world as it arguably is, rather than as one presumes it is or would like it to be. One can see an industry that mostly eschews the usage of platforms. The PMSC industry is largely manpower-centric, and the few vessels it employs are limited when compared with either the privateers of the past or warships of today. One can see, whereas historical privateering was mostly offensive-minded, an industry that is today predominantly defensive in its orientation, given the efforts of (self-)definition undertaken by PMSCs (desiring specifically to avoid the pejorative word “mercenary”), states, and other actors. We can see an industry that, thanks to responsabilization, is focused largely on pursuing the private good of security in an independent manner on the behalf of its shipper clients. In sum, in 2009 the American secretary of state, Hillary Clinton, offered this judgment regarding piracy: “We may be dealing with a 17th century crime, but we need to bring 21st century solutions to bear.”<sup>77</sup> Understanding what contemporary commercial nonstate violence looks like, rather than harkening back to an earlier age, is similarly necessary.

Additionally, clear understanding of the nature of and constraints on the private security industry at sea, as currently constituted, is important to assess accurately its future implications. Indeed, there are several vexing questions for which an appropriate mind-set, for analysts and policy makers alike, is required. Concerns are already raised about duplication of effort, difficulties of multinational command, and limitations of intelligence sharing among state forces working to counter Somali piracy. In what ways and to what effect can PMSCs be injected into these considerations? PMSCs are increasingly being viewed as security experts in their own right. To what degree will techniques they introduce that promote their own industry be detrimental to or complementary with state initiatives? Answers to these sorts of questions are important: “While states seek to realize their programmes by mobilizing the knowledge, capacities and resources of others, other auspices [i.e., actors] are clearly acting in very similar ways to realize their agendas.”<sup>78</sup> This article, therefore, is one step in identifying the actual components of these agendas and how they may evolve in the future.

## NOTES

The views expressed in the article are those of the author alone and do not necessarily reflect those of the Canadian Department of National Defence or the government of Canada. The author would like to thank Donald Spearin and Noelle Morris for their assistance in the preparation of this article.

1. Ban Ki-moon, "Remarks at Launch of World Maritime Day Theme for 2011: 'Piracy: Orchestrating the Response,'" *UN News Centre*, 4 February 2011, available at [www.un.org/](http://www.un.org/).
2. One should recognize the varying interpretations of the rationale for Somali piracy. For some, such as Ken Menkhaus, "Somali piracy is a textbook case of a shift in the motives in an armed group from grievance to greed." The resulting notion of Somali pirates as criminals bent on upsetting international trade and causing harm to others is part of the dominant discourse, one that informs international militaristic responses. For others, Somali piracy is a response to the extreme poverty and chaos in Somalia and a justifiable reaction to global economic actors who have exploited Somalia's resources (e.g., fisheries), polluted its waters, and helped structure it as a have-not country. The author wishes to thank an anonymous reviewer for raising this distinction. Please see Ken Menkhaus, "Dangerous Waters," *Survival* 51, no. 1 (February/March 2009), p. 23; D. L. Rothe and V. E. Collins, "Got a Band-Aid? Political Discourse, Militarized Responses, and the Somalia Pirate," *Contemporary Justice Review* 14, no. 3 (September 2011), pp. 329–43; Axel Klein, "The Moral Economy of Somali Piracy: Organized Criminal Business or Subsistence Activity?," *Global Policy* 4, no. 1 (February 2013), pp. 94–100; and James Pattison, "Justa Piratica: The Ethics of Piracy," *Review of International Studies* (forthcoming).
3. International Maritime Organization [hereafter IMO], "Reports on Acts of Piracy and Armed Robbery against Ships: Annual Report—2010," annex 2, p. 2, available at [www.imo.org/](http://www.imo.org/); IMO, "Reports on Acts of Piracy and Armed Robbery against Ships: Annual Report—2011," annex 2, p. 1, available at [www.imo.org/](http://www.imo.org/); IMO, "Reports on Acts of Piracy and Armed Robbery against Ships: Annual Report—2012," annex 2, p. 1, available at [www.imo.org/](http://www.imo.org/).
4. "Analysis: EU NAVFOR Figures Confirm the Value of Armed Security Teams in Thwarting Pirate Attacks," *DefenceWeb*, 6 December 2011, [www.defenceweb.co.za/](http://www.defenceweb.co.za/); "No Somali Pirate Hijacking in Nearly a Year, Says UN," *Guardian*, 3 May 2013.
5. James Brown, *Pirates and Privateers: Managing the Indian Ocean's Private Security Boom* (Sydney, NSW, Austral.: Lowy Institute, 12 September 2012), p. 13, available at [www.lowyinstitute.org/](http://www.lowyinstitute.org/).
6. "Privateers," *Economist*, 12 January 2013.
7. Terence McKnight, foreword to *Maritime Private Security: Market Responses to Piracy, Terrorism and Waterborne Security Risks in the 21st Century*, ed. Claude Berube and Patrick Cullen (New York: Routledge, 2012), p. xix.
8. Todd Emerson Hutchins, "Structuring a Sustainable Letters of Marque Regime: How Commissioning Privateers Can Defeat the Somali Pirates," *California Law Review* 99 (2011), pp. 819–84; Theodore T. Richard, "Reconsidering the Letter of Marque: Utilizing Private Security Providers against Piracy," *Public Contract Law Journal* 39, no. 3 (Spring 2010); D. Joshua Staub, "Letters of Marque: A Short-Term Solution to an Age Old Problem," *Journal of Maritime Law and Commerce* 40, no. 2 (April 2009), pp. 261–69.
9. "Laws and Guns," *Economist*, 16 April 2012; Ben West, "The Expensive, Diminishing Threat of Somali Piracy," *Stratfor*, 8 November 2012, available at [www.stratfor.com/](http://www.stratfor.com/).
10. Barry R. Posen, "Command of the Commons: The Military Foundations of U.S. Hegemony," *International Security* 28, no. 1 (Summer 2003), pp. 5–46; U.S. Navy Dept., *Naval Power 21 . . . a Navy Vision* (Washington, D.C.: 2002), p. 1.
11. United States, White House, "Memorandum from the President: Maritime Security (Piracy) Policy," 14 June 2007, available at [georgewbush-whitehouse.archives.gov/](http://georgewbush-whitehouse.archives.gov/). In comparison, the Obama administration has focused on the financial mechanisms supporting piracy; United States, White House, "Executive Order 13536 concerning Somalia," 13 April 2010, available at [www.whitehouse.gov/](http://www.whitehouse.gov/).

12. This article, like other analyses, utilizes the word “privateer” in reference both to a vessel and to the people associated with it (captains, crew members, etc.). Regarding the timing, the 1856 Paris Declaration Respecting Maritime Law largely abolished commerce raiding by privateers, though the growing desire to protect the rights of neutral shipping helped to curtail the practice earlier. While the United States did not sign this declaration, President Theodore Roosevelt effectively accepted it as customary international law.
13. Alexander Tabarrok, “The Rise, Fall, and Rise Again of Privateers,” *Independent Review* 11, no. 4 (Spring 2007), p. 566.
14. William Young, “A Check on Faint-Hearted Presidents: Letters of Marque and Reprisal,” *Washington & Lee Law Review* 66 (Spring 2009), pp. 899–901; Kevin C. Marshall, “Putting Privateers in Their Place: The Applicability of the Marque and Reprisal Clause to Undeclared Wars,” *University of Chicago Law Review* 64, no. 3 (Summer 1997), pp. 953–81; Donald A. Petrie, *The Prize Game: Lawful Looting on the High Seas in the Days of Fighting Sail* (Annapolis, Md.: Naval Institute Press, 1999), p. 3. Underscoring this shift, Alfred Rubin notes that reprisals themselves came to be seen as acts of belligerency between sovereigns. In short, private claims became public concerns; Alfred P. Rubin, *The Law of Piracy*, *International Law Studies*, no. 63 (Newport, R.I.: Naval War College Press, 1988), p. 22.
15. As described by Alexander Tabarrok, “To condemn a vessel, the privateer had to prove that the enemy owned it. To prove ownership, the privateers relied on the prize’s own papers, including registers, cargo manifests, clearance certificates, and so forth. The prize’s officers, crew, and passengers were also questioned. If the prize was found to be lawful, it was sold at a court-ordered auction.” Tabarrok, “Rise, Fall, and Rise Again of Privateers,” p. 568.
16. David Starkey, for instance, writes that some “English Channel” privateers of the 1700s, with crews as small as twelve, preyed on French fishermen. However, he also notes that much larger vessels worked as privateers in this relatively small area of water. Reuben Elmore Stivers, reflecting on U.S. privateers during the War of 1812, comments that some vessels were not ideal with respect to seaworthiness or armament, largely due to a lack of funds. David J. Starkey, *British Privateering Enterprise in the Eighteenth Century*, *Exeter Maritime Studies*, no. 4 (Exeter, U.K.: Univ. of Exeter Press, 1990), pp. 38–39; Reuben Elmore Stivers, *Privateers & Volunteers: The Men and Women of Our Reserve Naval Forces: 1766 to 1866* (Annapolis, Md.: Naval Institute Press, 1975), pp. 96–97.
17. H. M. Scott, “The Second ‘Hundred Years War,’ 1689–1815,” *Historical Journal* 35, no. 2 (June 1992), p. 454.
18. William H. McNeill, *The Pursuit of Power: Technology, Armed Force, and Society since A.D. 1000* (Chicago: Univ. of Chicago Press, 1982), p. 180.
19. Gary M. Anderson and Adam Gifford, Jr., “Privateering and the Private Production of Naval Power,” *Cato Journal* 11, no. 1 (Spring/Summer 1991), pp. 99–122; Jeremy Black, *Naval Power: A History of Warfare and the Sea from 1500 Onwards* (New York: Palgrave Macmillan, 2009), p. 42.
20. Claude Berube, “Blackwaters for the Blue Waters: The Promise of Private Naval Companies,” *Orbis* 51, no. 4 (Fall 2007), p. 608.
21. Graham Gerard Ong-Webb, “Piracy in Maritime Asia: Current Trends,” in *Violence at Sea: Piracy in the Age of Global Terrorism*, ed. Peter Lehr (New York: Routledge, 2007), p. 81.
22. John Keegan, *The Price of Admiralty: The Evolution of Naval Warfare* (London: Penguin, 1990), p. 136.
23. Black, *Naval Power*, p. 43; Lord Russell of Liverpool, *The French Corsairs* (London: Robert Hale, 1970), p. 81.
24. Nicholas Parillo, “The De-privatization of American Warfare: How the U.S. Government Used, Regulated, and Ultimately Abandoned Privateering in the Nineteenth Century,” *Yale Journal of Law & the Humanities* 19, no. 1 (2007), p. 21.
25. See, in particular, Anderson and Gifford, “Privateering and the Private Production of Naval Power.”
26. *Ibid.*, pp. 116–17; Keegan, *Price of Admiralty*, p. 111.
27. Tabarrok, “Rise, Fall, and Rise Again of Privateers,” p. 575.



28. This is not to say that state navies were uninterested in using merchant-type vessels, but technological differences were evident. In 1887, for instance, the British Admiralty wished to purchase merchant steamers for cruising but found that considerable modifications were necessary regarding bulkheads, engines, and steering, among other requirements. Parillo, "De-privatization of American Warfare," pp. 77–78.
29. Douglass C. North, "Sources of Productivity Change in Ocean Shipping, 1600–1850," *Journal of Political Economy* 76, no. 5 (September/October 1968), pp. 959, 964. Lord Russell of Liverpool notes, for instance, that by 1814 French privateering had decreased considerably; Russell, *French Corsairs*, p. 82.
30. Brown, *Pirates and Privateers*, p. 8.
31. Martin Edmonds, "Naval Technology: What Can Developing Nations Afford?," in *Maritime Policy for Developing Nations*, ed. Greg Mills (Johannesburg: South African Institute of International Affairs, 1995), p. 111.
32. Patrick Cullen, "Private Security Companies in the Malacca Straits: Mapping New Patterns in Security Governance," in *Mercenaries, Pirates, Bandits, and Empires: Private Violence in Historical Context*, ed. Alejandro Colas and Bryan Mabee (New York: Columbia Univ. Press, 2010), p. 202; Bill Sizemore, "Blackwater Brings Latest Tool for Training to Town Nauticus," *Virginian-Pilot*, 19 September 2006, p. A1; *Naval Guards*, [www.navalguards.com](http://www.navalguards.com).
33. Christian Le Mière, "The Return of Gunboat Diplomacy," *Survival* 53, no. 5 (October/November 2011), p. 63. And see Christopher Spearin, "Private Gunboats on the Horizon? Private Security and Contemporary Naval Presence," in *Maritime Private Security*, ed. Berube and Cullen, pp. 38–48.
34. Eric Fredland and Adrian Kendry, "The Privatisation of Military Force: Economic Virtues, Vices and Government Responsibility," *Cambridge Review of International Affairs* 13, no. 1 (Autumn/Winter 1999), pp. 152, 164 note 23. More generally, see Avinash Dixit and Robert Pindyck, *Investment under Uncertainty* (Princeton, N.J.: Princeton Univ. Press, 1996).
35. Roger Fredland, *American Sea Power since 1775* (Chicago: Lippincott, 1947), p. 70.
36. Anderson and Gifford, "Privateering and the Private Production of Naval Power," pp. 104–105; Parillo, "De-privatization of American Warfare," pp. 8, 22, 66.
37. Stivers, *Privateers & Volunteers*, p. 97; Tony Lynch and A. J. Walsh, "The Good Mercenary?," *Journal of Political Philosophy* 8, no. 2 (2000), pp. 133–53.
38. United Kingdom, Ministry of Defence, *British Maritime Doctrine*, BR1806, 3rd ed. (London: 2004), pp. 252, 278.
39. The defensive use of force could still lead to the escalation of violence between PMSCs and pirates. Additionally, public navies, though at times exercising offensive postures, arguably limit the amount of harm they inflict on pirates in that their oft-practiced catch-and-release policies are informed by a number of differing rationales. Scott Fitzsimmons, "Privatizing the Struggle against Somali Piracy," *Small Wars & Insurgencies* 24, no. 1 (March 2013), pp. 91–93; Pattison, "Justa Piratica"; Gregory Viscusi, "Mercenary Guards Jump Ship as Somali Pirates Remain Undeterred," *Bloomberg*, 18 December 2008, [www.bloomberg.com/](http://www.bloomberg.com/). See also Christopher Spearin, "A Private Security Solution to Somali Piracy? The U.S. Call for Private Security Engagement and the Implications for Canada," *Naval War College Review* 63, no. 4 (Autumn 2010), p. 63.
40. This concern also applies to shipborne detachments of military personnel. Consider the fates of two Italian marines who accidentally shot Indian fishermen on 15 February 2012 while protecting the oil tanker *Enrica Lexie*. Annie Banerji and D. Jose, "Insight: Murder Trial of Italian Marines in India Navigates Murky Waters," Reuters, 9 June 2013, [www.reuters.com/](http://www.reuters.com/).
41. Mark Sloan and D. Griffiths, *Dalhousie Marine Piracy Project: Operational Responses for the Discouragement and Suppression of Marine Piracy*, Technical Report 3 (Halifax, N.S.: Dalhousie University, Marine Affairs Program, 2012), p. 93, available at [www.marineaffairsprogram.dal.ca/](http://www.marineaffairsprogram.dal.ca/).
42. Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no. 4 (Autumn 1998), p. 891.

43. Sarah Percy, *Mercenaries: The History of a Norm in International Relations* (New York: Oxford Univ. Press, 2007), p. 231.
44. Robert Young Pelton, *Licensed to Kill: Hired Guns in the War on Terror* (New York: Crown, 2006), p. 109. This does not mean that the distinction is not breached on occasion. Some commentators note the “training” tasks undertaken by Saracen in Somalia. However, one should recall that these actions have received considerable criticism and that the United Nations and the United States have persuaded potential clients not to use the firm, which now has the mercenary label. One should also recall the fact that when a norm is not universally respected, it does not necessarily undermine its overall strength; see Elke Krahmman, “The United States, PMSCs and the State Monopoly on Violence: Leading the Way towards Norm Change,” *Security Dialogue* 44, no. 1 (February 2013), pp. 53–71; and Diana Panke and Ulrich Petersohn, “Why International Norms Disappear Sometimes,” *European Journal of International Relations* 18, no. 4 (2011), pp. 719–42.
45. Nick McKenzie, “Armed and Ready: Private Soldiers in Iraq,” *The Age*, 1 July 2006, available at [www.theage.com.au/](http://www.theage.com.au/).
46. Toni Pfanner, “Interview with Andrew Bearpark,” *International Review of the Red Cross* 88, no. 863 (September 2006), p. 455.
47. U.S. Senate, *Testimony of Mr. Jack Bell: Deputy Under Secretary of Defense (Logistics and Materiel Readiness)*, Readiness and Management Support Subcommittee, Committee on Armed Services, 2 April 2008, p. 5, available at [www.armed-services.senate.gov/](http://www.armed-services.senate.gov/).
48. “US Guards Train in ‘Close Protection’ Work,” *Jane’s Defence Weekly*, 19 October 2006.
49. The emphasis here on tactical is important because at different levels the orientation potentially changes. For instance, according to operational-level British naval doctrine, one can perceive conveying as offensive—“it obliges the enemy to fight in circumstances of our own choosing; the enemy submarines must close on the convoy where they can be more readily located and attacked, with the only alternative being to abandon his objective”; United Kingdom, Ministry of Defence, *British Maritime Doctrine*, Joint Doctrine Publication 0-10 (London: 2011), pp. 2–16.
- Similarly, one can place a tactical action in the larger context in which it is embedded. From this standpoint, Somali pirates might view the actions of public navies and PMSCs alike as offensive, in light of the country’s fate as characterized in note 2 of this article.
50. Anthony King, “The Post-Fordist Military,” *Journal of Political & Military Sociology* 34, no. 2 (Winter 2006), pp. 359–74; Christopher Dandeker, “A Farewell to Arms? The Military and the Nation-State in a Changing World,” in *The Adaptive Military: Armed Forces in a Turbulent World*, ed. James Burt, 2nd ed. (Piscataway, N.J.: Transaction, 2002), pp. 139–61.
51. Sarah K. Cotton et al., *Hired Guns: Views about Armed Contractors in Operation Iraqi Freedom*, MG-987-SRF (Santa Monica, Calif.: RAND, 2010), p. 66. See also Gary Schaub, Jr., and Volker Franke, “Contractors as Military Professionals?,” *Parameters* 39, no. 4 (Winter 2009–10), pp. 88–104; and Volker Franke and Marc von Boemcken, “Guns for Hire: Motivations and Attitudes of Private Security Contractors,” *Armed Forces & Society* 37, no. 4 (October 2011), pp. 725–42.
52. “Interview with Doug Brooks,” *International Affairs Forum*, 1 March 2009, [www.ia-forum.org/](http://www.ia-forum.org/).
53. U.S. State Dept., “Voluntary Principles on Security and Human Rights,” fact sheet, Bureau of Democracy, Human Rights, and Labor, Washington, D.C., 20 December 2000, available at [www.state.gov/](http://www.state.gov/).
54. Swiss Confederation and International Committee of the Red Cross [ICRC], *Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict* (Bern/Geneva, Switz.: Federal Department of Foreign Affairs and ICRC, 17 September 2008), pp. 9, 23, available at [www.icrc.org/](http://www.icrc.org/).
55. *International Code of Conduct for Private Security Service Providers*, 9 November 2010, [www.icoc-psp.org](http://www.icoc-psp.org).
56. IMO, *The Interim Guidance to Private Maritime Security Companies Providing Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area*, MSC.1/Circ.1443, 25 May 2012, pp. 6, 9, available at [www.imo.org/](http://www.imo.org/).

57. See Christopher Spearin, "Special Operations Forces a Strategic Resource: Public and Private Divides," *Parameters* 36, no. 4 (Winter 2006–2007), pp. 58–70.
58. Anna Leander, *Eroding State Authority? Private Military Companies and the Legitimate Use of Force* (Rome: Centro Militare di Studi Strategici, 2006), p. 48.
59. The various naval forces deployed near and beyond the Gulf of Aden use different techniques. Some organize convoys; others patrol certain areas. In the cases when certain naval forces employ flag-specific convoying, this is more akin to securing the private good.
60. Commerce-raiding privateering did not pursue the public good, given its employment as a tool in interstate warfare and the problems that sometimes arose with neutral shipping. In contrast, privateering to counter piracy historically pursued the public good of security. However, for an argument regarding why one should not interpret historical privateering generally as "outsourcing," given the evolving boundaries of the "public" and the "private," see Halvard Leira and Benjamin Carvalho, "Privateers of the North Sea: At Worlds End—French Privateers in Norwegian Waters," in *Mercenaries, Pirates, Bandits, and Empires*, ed. Colas and Mabee, pp. 55–82.
61. In line with note 2 above, this notion of the "public good" reflects the dominant discourse vis-à-vis the nature of and justifications for Somali piracy.
62. James Cable, *Navies in a Violent Peace* (London: Macmillan, 1989), pp. 57–65.
63. U.S. Navy Dept., Combined Maritime Forces Public Affairs, "Super Tanker Attacked in Arabian Sea," story NNS081117-07, 17 November 2008, [www.navy.mil/](http://www.navy.mil/).
64. McKnight, foreword to *Maritime Private Security*, p. xix.
65. Meredith Buel, "US Admiral: Commercial Ships Need Armed Guards to Fight Pirates," *Voice of America*, 20 April 2010, [www.voanews.com](http://www.voanews.com).
66. While functionally this is the case, there may be cause to move away from limited security provision in light of the duty to render assistance provision found under UNCLOS Part VII, sec. 1, art. 98: "Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers: . . . b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him."
67. Jacob Hacker, *The Great Risk Shift: The Assault on American Jobs, Families, Health Care, and Retirement: And How You Can Fight Back* (New York: Oxford Univ. Press, 2006).
68. Patrick Jerome Cullen, "Private Security in International Politics: Deconstructing the State's Monopoly of Security Governance" (unpublished PhD thesis, London School of Economics and Political Science, 2009), p. 118 [emphasis original]. Note that the term "responsibilization" has its roots in contemporary thinking about neoliberal governance. See, for instance, Garry C. Gray, "The Responsibilization Strategy of Health and Safety: Neo-liberalism and the Reconfiguration of Individual Responsibility for Risk," *British Journal of Criminology* 49, no. 3 (May 2009), pp. 326–42; Ronen Shamir, "The Age of Responsibilization: On Market-Embedded Morality," *Economy and Society* 37, no. 1 (2008), pp. 1–19.
69. Birthe Anders, "Tree-Huggers and Baby-Killers: The Relationship between NGOs and PMSCs and Its Impact on Coordinating Actors in Complex Operations," *Small Wars & Insurgencies* 24, no. 2 (May 2013), pp. 278–94.
70. Tony Vaux et al., *Humanitarian Action and Private Security Companies: Opening the Debate* (London: International Alert, 2002), p. 10; Cullen, "Private Security in International Politics," pp. 176–212.
71. J. T. Conway, G. Roughead, and T. W. Allen, "A Cooperative Strategy for 21st Century Seapower," October 2007, available at [www.navy.mil/](http://www.navy.mil/); repr. *Naval War College Review* 61, no. 1 (Winter 2008), p. 10.
72. What is more, without state service authorization, hot pursuit and apprehension might fall under UNCLOS art. 101's piracy definition: "Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft."
73. Larry J. Sechrest, "Public Goods and Private Solutions in Maritime History," *Quarterly Journal of Austrian Economics* 7, no.

- 2 (Summer 2004), p. 24. During the era of mercantilism, states did accept some costs. Navies, despite their limitations, attempted to provide protection to “their” merchant ships—which provided trade-generated revenues to the state that, in turn, funded navies. Over time, states, and especially hegemonic naval powers, became even more assertive at sea and accepted more and more security costs. Mind-sets, therefore, changed; the expectation of state protection became more prominent. See Geoffrey Till, *Seapower: A Guide for the Twenty-First Century*, 2nd ed. (London: Routledge, 2009), pp. 35, 100; Michael Lindberg and Daniel Todd, *Brown-, Green- and Blue-Water Fleets: The Influence of Geography on Naval Warfare, 1861 to the Present* (Westport, Conn.: Praeger, 2002), pp. 24–25; and J. R. Hill, *Maritime Strategy for Medium Powers* (Annapolis, Md.: Naval Institute Press, 1986), p. 31.
74. Petrie, *Prize Game*, pp. 4–5; Starkey, *British Privateering Enterprise in the Eighteenth Century*, pp. 51–52; David J. Starkey, “The Origins and Regulation of Eighteenth-Century British Privateering,” in *Bandits at Sea: A Pirates Reader*, ed. C. R. Pennell (New York: New York Univ. Press, 2001), pp. 71–72; Richard, “Reconsidering the Letter of Marque.”
75. Larry J. Sechrest, *Privateering and National Defense: Naval Warfare for Private Profit*, Working Paper 41 (Oakland, Calif.: Independent Institute, September 2001), p. 9.
76. Richard, “Reconsidering the Letter of Marque.”
77. U.S. State Dept., “Secretary Clinton Announces Counter-piracy Initiatives,” *Dipnote: U.S. Department of State Official Blog*, 15 April 2009, [blogs.state.gov](http://blogs.state.gov).
78. Jennifer Wood and Clifford Shearing, *Imagining Security* (Cullompton, U.K.: Willan, 2007), p. 27.