Maritime Safety and Security: The Potential Role of Private Security Companies

Eric Sambu*

A B S T R A C T

This paper assesses the role of private security companies in maritime safety and security. Specifically, the paper assesses the potential of the private security industry, the role it can play and possible impediments to address to improve its effectiveness in maritime safety and security. The paper adopts an exploratory research design, in a qualitative study that applied documentary research supplemented by interviews with six experts selected using the criterion sampling method. The study claims that private security companies (PSCs) have a critical role to play in enhancing maritime safety and security in the region through the sharing of intelligence information, providing escort and logistical support to vessels, capacity building to operators of marine security, assisting in rescue, negotiating ransom and enactment of policies. Experts opined that PSCs need to be properly registered and certified against several international standards reviewed in this paper. The study established impediments including capacity of actors, regulatory challenges, and mandate. This paper concludes that whereas there are challenges in optimizing the role of the private security industry, the players can surmount these by getting organised and engaged, with support from key governments and international organisations, and hence the efforts will be focused, efficient and effective in improving maritime safety and security. It, therefore, recommends that a licensing process and regime be established regionally to support the PSCs, the officers and PSCs be assisted in building capacity for marine security and policy and regulatory frameworks be set for arming vessels.

1. Introduction

The maritime industry is a vital component of global trade, facilitating the transportation of approximately 80% of the world's goods. However, the sector faces significant safety and security challenges, including piracy, armed robbery, smuggling, human trafficking, terrorism, and environmental threats. Due to a renewed outbreak of piracy and attacks by warring parties in the Middle East, which have disrupted international logistics, maritime safety and security have come under more intense scrutiny. International trade is hampered, and the sea routes are mainly plagued by piracy and robbery at sea, threatening the safety of seafarers and assets (Lartey, 2024). Desai and Shambaugh (2021) indicated that piracy costs 16 billion USD a year due to thefts, ransoms, transport delays, increased insurance costs and anti-piracy protection.

According to the International Maritime Organisation (IMO) (2022), there were 131 incidents of piracy and armed robbery against ships reported as having occurred or been attempted in 2022. There were 172 and 229 incidents reported in 2021 and 2020 respectively. There was a decrease of about 24% in 2022 at the global level compared to the prior year, and

hence the lowest number of reported incidents at the global level since 1995. The most affected areas in robbery against ships and piracy in 2022 included the Straits of Malacca and Singapore (72 incidents), West Africa (21 incidents) and South America (Pacific) (14 incidents), the Indian Ocean (9 incidents), South America (Atlantic) (6 incidents), South America (Caribbean) (4 incidents), South China Sea (4 incidents) and Arabian Sea (1 incident) (IMO, 2022). Additionally, the number of crew members abducted decreased significantly from 48 in 2021 to 24 in 2022, with 58% of the abductions occurring in West Africa. IMO reported a total of 8,718 incidents of armed robbery against ships and piracy between 1984 and 2022 (IMO, 2022). However, according to Desai and Shambaugh (2021), armed conflict, hijacking for ransom, and robbery at sea largely go unreported and remain a cause for concern.

Maritime security is a general term for the protection of vessels and their cargo against threats such as piracy, terrorism, smuggling, robbery, and similar external threats (IMO, 2022). Likewise, ISO (2015) describes it as services which range from intelligence and threat assessment to ship hardening and the guarding and protection of people and property or any activity for which the company personnel may be required to carry or operate a firearm in the performance of their duties. Reports have

* *Corresponding author*: sembueric@gmail.com

indicated that by 2026, Global Security Services is projected to have grown from its 2020 valuation of 240.18 USD billion to 342.7 billion USD (Azoth Analytics, 2021). It employs between 19.5 to 25.5 million people worldwide (Diphoorn, 2016) and holds up to 3.7 million firearms, with numbers being up to four times the size of police forces (Krahmann, 2017). Despite the efforts of international organizations, governments, and naval forces, these threats persist, often stretching public resources beyond their limits. In response to these challenges, private security companies (PSCs) have emerged as key players in safeguarding maritime operations. According to the International Code of Conduct Association (ICoCA, 2024), the PSC is fast evolving in response to new transformational technologies such as drones, CCTV surveillance, cybersecurity, and digital intelligence. They offer services such as armed onboard protection, risk assessments, surveillance, and crisis management. In addition, PSC workers are engaged in a wide range of activities from highly specialized investigations of corporate crime, to providing armed security for banks and commercial organizations, to protecting private property in public spaces and commercial buildings (Sambu, 2023). Although their involvement has helped to reduce piracy and other maritime crimes, it has also raised serious questions regarding responsibility, regulation, and ethical procedures that necessitate further research. The lack of uniform international standards governing PSCs in maritime operations has led to discrepancies in their operational procedures and legal frameworks. This situation can result in conflicts of jurisdiction, incidents of excessive force, and the potential undermining of state sovereignty (IMO, 2022). Additionally, the reliance on private entities for security raises concerns about the privatization of a traditionally public function.

While significant attention has been given to maritime safety and security, much of the existing literature focuses on the role of state actors, such as naval forces, coast guards, and international organizations, in combating piracy, terrorism, and other maritime threats. However, the increasing involvement of private security companies (PSCs) in maritime operations remains relatively underexplored, especially in terms of their effectiveness, regulation, and broader implications. This study seeks to examine the evolving role of private security companies in maritime safety and security, assess their effectiveness, and explore the legal, ethical, and practical implications of their operations. Addressing these issues is critical for enhancing maritime security governance and ensuring that the involvement of PSCs aligns with international laws and best practices.

2.0 Literature Review

2.1 Maritime Safety and Security Standards

According to IMO (2024), maritime safety involves the protection of persons aboard vessels, and those living in or working near water bodies, from risk of injury or hazards or fatality. Maritime safety averts safety tragedies like sinking of ships, explosions or discharge of toxic waste to water bodies. Effective safety will help lower the ship's risk profile. This is critical in the determination of the intervals between the required inspection, as per the Paris Memorandum of Understanding on Port State Control. The operators are required to observe and adhere to the maritime standards. These are industry-accepted rules that govern maritime safety and security and are enforced by the IMO, as well as other national, regional or international organisations, associations and agencies.

The International Convention for the Safety of Life at Sea (SOLAS) is an international treaty that was set in 1974 in response to the sinking of the Titanic ship. It is now adhered to by over 160 countries and covers aspects like ship construction, life-saving appliances, radio communications and navigation safety implementation-manning, routing, and signalling. Furthermore, in compliance with SOLAS regulation III/6.4.4, the ISO 27991 standard was developed to guide communication between the Marine Evacuation System (MES) and survival craft (Safety Culture, 2024). Another critical code in marine safety and security is the International Ship and Port Facility Security (ISPS). This applies to the vessels on international voyages and the port facilities that serve them. This code covers components like declaration of security when requested by the ship or required by the government, development of port facilities' security plan or the ship security plan, the ship or port facility security assessment, training, drills and exercises covering ship and port security, and the designation of security officer for the ship, port facility or the shipping company.

Cargo ships over 300 tons and passenger ships carrying over 12 passengers are required to observe the requirements set in the Global Maritime Distress and Safety System (GMDSS when travelling on international voyages or in the open sea, in accordance with the Federal Communications Commission. This sets the frequency requirements and device specifications for navigation, search and rescue (Safety Culture, 2024). The personnel manning various aspects of vessels are required to undergo relevant training and demonstrate this through documented evidence. The guide specifying this is the International Convention on Standards of Certification and Watchkeeping for Seafarers, also known as the STCW convention or code (Safety Culture, 2024). This demonstrates competence in performing the task allocated to the crew, according to rank. The competence includes the safety and security of the vessel and the cargo or passengers onboard.

2.2 Safety and Security of Merchant Ships

Typically, a merchant ship moves at speeds of between 11 and 15 knots and usually does not have inbuilt defence mechanisms and manning is at the minimum level possible (Osnin, 2006). Safety, therefore, takes priority over security. This makes the ships attractive to pirates. IMO promotes avoidance as opposed to combat and hence recommends heightened security surveillance for early detection of breaches or security threats. Even though the ships have distress flares, often this is restricted to situations when the ship is in imminent danger of sinking. They can use water hoses to deter and repulse attackers. The advice to ships is to black out and establish secure areas when crossing high-risk parts of the sea. The ships are advised to prioritise safety over security, where there is conflict (Osnin, 2006). The legal framework regulating merchant shipping also emphasises safety, operational procedures and pollution control. These suggested techniques seem not to be having the expected impact as merchant ships are still easy prey. The trend has however changed to focus on security too, with the escalation of incidents of piracy and terrorism. The IMO circular strongly discourages the carriage and usage of firearms. The stance has however softened, as the threats escalated.

The IMO monitors marine safety incidents, especially armed robbery against ships and acts of piracy. IMO's records show that from 1984 to 2022, 8,718 incidents were documented. The trend appears to indicate that incidences have increased recently. Despite this trend, there is no effort to equip the seamen and enhance their capacity to fight these perpetrators. The focus is the welfare and safety of the seafarers and

arming them is seen as an act of aggression, that may instigate an arms race, resulting in higher casualties amongst the ship's crew. The International Maritime Bureau holds this view and recommends other defensive options like sonic devices and electric fences around the ship's deck to deter pirates. IMO (2024), while acknowledging that carriage of firearms in merchant ships remains a complex legal issue. The IMO member states have diverse opinions about arming the vessels. However, this stance against carriage of firearms appears to have softened and merchant ships may now use privately contracted armed security personnel (PCASP). IMO acknowledges that there is no agreed minimum performance standard, given the diverse legal regimes. However, there are various guidelines that PCASPs may apply in the conduct of their operations. The issue has been evolving amongst the IMO member states. IMO kept advancing new approaches as the debate went on, and the situation kept changing in the state of security. On 18th June 1993, IMO passed resolution MSC/Circ.632 that among other issues stated in its annex para 40 that "the carrying and use of firearms for personal protection of protection of ship is strongly discouraged." IMO hardened its stance further via MSC/Circ.1333 in para 5 of the annexe, passed on 26th June 2009, which stated that "flag States should strongly discourage the carrying and use of firearms by seafarers for personal protection or protection of a ship." IMO then softened this stance and revoked this circular through MSC.1-Circ.1333-Rev.1 issued in June 2015 which acknowledged that the deployment of armed personnel on board ships has become an accepted industry and flag state practice in certain circumstances. According to Safety Culture (2024), there are sections of the sea routes that are declared as war risk areas and hence insurers place additional premiums to cover war risk on ships navigating through such waters. They usually place a distinction between terrorism and piracy, given that piracy is usually covered under protection and indemnity policies (standard hull) whereas terrorism comes under war policies and may attract additional premiums to cover. In the real sense, it is hard to distinguish between pirates and terrorists due to the intensification of weaponry and techniques.

2.3   Private maritime security companies

Private security companies (PSCs) may apply and acquire licenses to provide services are private maritime security companies (PMSCs). Potential threats facing merchant ships can be reduced drastically if the PMSCs are effective in their duties (Krahmann and Schneiker, 2016). They employ both armed and unarmed security solutions. What endears the consumers of these services to PMSCs is that PMSCs are seen to be mostly well-equipped and ready for specific threats merchant ships face. They have round-the-clock monitoring and response capacity. Some operators feel that PMSCs are cost-effective. Their services can be shared by various users. They also offer customised services. A PSC wishing to offer armed security services for merchant ships, for instance, is required to register and obtain a licence as a PMSC. For instance, according to the Human Environment and Transport Inspectorate (ILT) (2024), any Dutch-flagged ships can only use PMSCs that have been licensed by ILT. A shipping company wishing to engage security officers for merchant ships with the Netherlands' flag, is similarly required to obtain permission from the Netherlands Coastguard. A PMSC obtains a license for a specific area of operations. A check with the ILT shows that an applicant must have a base in the European Union (EU) zone, an Exclusive Economic zone or an operating branch in the Netherlands. The application fee is EUR.17,220. At the moment, the ILT has licensed three PMSCs: Praesidium International, ESC Global Security, and ESS & SA Maritime (ILT, 2024).

According to Marine Insight (2024), the key advantage PMSCs possess is that they employ personnel with experience as Naval Commando, marines, special troops, and special operations elite units, qualified and trained to counter various threats at sea, including robbery against ships and piracy. They also operate in various locations along the main sea routes, making support to be available where needed. Moreover, security firms' services assure the safety of the crew, cargo and the ship, given the escalating shipping piracy in many parts of the sea routes. PMSCs therefore present a choice that cannot be overlooked by the shipping companies and the various states. The consumers of the PMSC services include major merchant shipping companies, cruise ship liners, superyacht owners and oil majors. Their services also cover port facilities, the energy sector and the oil and gas industry, operating in the marine environment. Some governments and regional organizations also prefer to use PMSCs, despite the existence of naval organizations and coast guards. PMSCs also offer security to naval vessels and have military departments as part of their clients. Experts opine that they are deemed to be independent and with requisite expertise and hence when an issue is required to be investigated, they will offer an independent opinion since they are not aligned with any state, insurer, shipping line or port.

Numerous PMSCs are in operation to assist maritime businesses in managing the different dangers they encounter, as reported by Marine Insight (2021). These PMSCs include Hart Maritime (UK), Seagull Maritime Security (Malta), Marine and Underwater Security Consultants (MUSC)(UK), Hudson Analytix, Solace Global, MAST (UK), Securewest International, Black Pearl Maritime Security, Neptune Maritime Security (UK), ESPADA, STS Maritime Security (USA), Anti-Piracy Maritime Security Services, ESC Global Security, Diaplous Maritime Services, ESS Maritime, Port2port LPC Limited, Praesidium International, Prorisk International, Gallice Developments Ltd, United Guards Services Ltd, Kahl Sicherheit LSS-SAPU Ltd amongst others. It appears that none of the PMSCs have bases in African developing nations and this paper assesses their readiness to participate in marine security, especially when some of the areas deemed risky are around its waters. The majority of the licensed PMSCs are members of the Security in Complex Environment Group (SCEG). SCEG is a special interest group for risk and security companies focused on the development and implementation of international standards for such companies and their sector (SCEG, 2024). SCEG instigates and contributes to the International Code of Conduct Association (ICoCA), which is now ratified by over 50 states. It evolved from the declaration of the Montreux Document of 2008. SCEG regulates its members to ensure they embrace international security standards and protect human rights. SCEG has strong links with the UK government departments and its affiliate members include the Department of Transport and the Foreign and Commonwealth Office (SCEG, 2024). The legal and insurance sectors are also represented by affiliate members.

2.4   International Standards for PMSCs

Many of the PMSCs have international standards certifications. These include ISO 18788, Security Operations Management System and ISO 28007, Ships and Marine Technology. Many PMSCs also subscribe to the International Code of Conduct for Private Security Service Providers (ICoC). According to ICoCA, the ICoC sets standards for the global security industry and establishes external independent mechanisms for effective oversight and governance. Once a PMSC becomes a signatory to the ICoC, it maintains documentation to demonstrate effective governance and ethical and legal conduct that adheres to the bylaws, and other

requirements like recruitment, training, licensing and conduct. The trend in the standards for the security industry is analysed in the foregoing.

2.4.1 The Montreux Document

The International Committee of the Red Cross and the Swiss government, with assistance from DCAF, introduced the Montreux Document, which was initially adopted in 2008. When PMSCs are involved in violent conflicts, this program encourages adherence to human rights and international humanitarian law. It promotes the adoption of national PMSC legislation by countries to increase adherence to international law. Since practical guidance is best applied in times of peace, the legislation applies to PSCs even though it pertains to conflict zones. The ICoC's efforts to regulate the private security sector are supplemented by the Monteux Document (SCEG, 2024).

2.4.2 International Code of Conduct for Private Security Providers

Adopting human rights and international humanitarian law, the International Code of Conduct for Private Security Providers (ICoC) was passed in November 2010 and lays out a set of principles to govern PSC operations, including their management and accountability to individuals who may be impacted by their operations (ICoCA, 2010). ICoC is a multistakeholder initiative developed to clarify the standards required of PSCs operating in complex environments and to improve accountability and oversight of the PSCs. Similarly, ICoC details commitments on the governance of PSCs that include vetting of officers and subcontractors, management of weapons, policies and procedures on the use of force and grievance procedures (SCEG, 2024). Moreover, ICoC sets a framework to improve governance, compliance and accountability of the PSCs through objective and measurable standards. In effect, this was based on the PSCI standards-the Management System for Quality of Private Security Company Operations (SCEG, 2012).

2.4.3 PSC Standards – PSC1/ISO18788

The American Security Trade Association, ASIS, was commissioned by the US Department of Defence to develop a national standard for PSCs (ASIS, 2012). The resultant standard is known as PSC1, published in 2012, together with the associated conformity standard. The core element in that standard is human rights, framed in a way that it could be adopted globally. SCEG recommended PSC1 as a basis of the UK standard, having contributed to its setting, but added the requirement for independent 3rd party certification. This standard was later adopted by the International Standards Organisation (ISO) and moderated to become ISO 18788, Management System for Private Security Operations–requirements with guidance, and published in 2015 (SCEG, 2024). Many PSCs and PMSCs are now certified under this standard and it is gaining momentum, with many consumers of these companies demanding this certification. This also forms the basis for certification by ICoCA.

2.4.4 PMSC Standard-ISO 28007

The increasing threat of robberies and piracy in the sea brought together the IMO and the ISO in 2012 to develop a standard for armed officers on ships in high-risk areas (SCEG, 2024). This resulted in the issuance of MSC/Circ.1443: Interim Guidance to PMSCs providing PCASP on board ships in high-risk areas. ISO went on to develop a standard based on this circular: ISO 28007, Ships and Marine Technology, Guidelines for PMSC providing privately contracted armed security personnel (PCASP) on board ships (and pro forma contract). In addition, PSCs and PMSCs can audit their management systems, procedures, and compliance with national and international laws, rules, and other voluntary commitments that have been approved by accrediting authorities using ISO 18788 and 28007 (SCEG, 2024).

2.5 Empirical Literature

Although most of the sea lanes established by the IMO are situated within the maritime territories of different coastal states, Lartey (2024) acknowledges that all states are permitted to use them for high seas navigation under international law, and states have a legitimate interest in maintaining the safety of these lanes for maritime commerce. Superpowers like the USA and China are among the states that have contributed to the security of these lanes due to their interest and capacity. Moreover, Lartey (2024) urged heightened surveillance and sharing of intelligence reports, with concerted efforts that build the capacity of literal states to tackle the problem. Multilateral coordination and non-restrictive access to the latest developments in naval security innovations that enable 24/7 surveillance and response to threats also enhance the literal state's capabilities (Lartey, 2024). There is no mention of the use of PSCs in this work and this paper seeks to assess that. Likewise, Desai and Shambaugh (2021) studied the impact of illegal fishing on piracy and argued that fishers turn to piracy to smooth expected income losses and deter illegal foreign fishing fleets. They linked high piracy to locations with high catch volumes. Their findings linked piracy with weak governance. Their findings highlighted the need for anti-piracy solutions beyond enforcement to include policing of fishing practices that are illegal and perceived by local fishers to be harmful to small-scale fishing economies. There is no role assigned to tackle this problem and this paper attempts to assess the readiness of PSCs to cover this gap.

Moreover, Rafal (2024), in his study of the Philippine territorial waters, established that the Armed Forces of the Philippines (AFP) and the Philippine Coast Guard (PCG) have limited capacity to defend threats in maritime and air environments. In addition to more equipping and resourcing the units, capacity building was recommended to enable them to handle the threats which was reported to be increasing. Bueger (2024) analysed the possible new ways of maritime security, given the industrialisation of the sea, with infrastructure such as optic fibre sea cables, underwater electricity grids, hydrogen pipelines, energy islands, and exploration sites. Maritime regulations have also created traffic separation schemes, marine protected areas search and rescue zones, artificial reefs and related infrastructure. Therefore, the sea is no longer an open, free or even anarchic space. The shift in maritime security is therefore to protect the infrastructure from harm and recognise spatial entanglement and the multidimensional character of maritime security. It calls for the connection of maritime security with other security agendas such as cyber security, energy security, and disaster response. It will also require recoupling maritime security and regional sea governance and the need to work towards new global norms and institutions. This work did not cover the direct role of PSCs in this framework and this paper attempts to map this new dimension to the maritime security space.

Furthermore, Krahmann and Schneiker (2016) affirmed that states, international organizations as well as non-governmental organizations and transactional organizations are increasingly dependent on PSCs for logistical support and maintenance and for the protection of their facilities and employees, especially in the regions of armed conflict. Among the reasons for contracting PSCs include lack of personnel by national forces, cost efficiency since it is cheaper to outsource, dependence on some

specific PSCs, possibility of reducing political costs associated with deploying national militaries. They noted that PSCs offer military and security capabilities on short notice anywhere in the world hence endearing them to these organisations, to an extent that governments are outsourcing to them functions previously thought to be 'inherently governmental. However, they decried regulatory gaps, that threaten to expose society to abuses and reputational damage to their clients due to their potential excesses. This work fell short of assessing their role in the marine environment in the provision of their services and this paper bridges that gap. On the other hand, Petrig (2016) raised concerns about the regulatory regime of the PMSCs, which exemplifies legal and operational specialities of the utilisation of PMSCs's services at sea. The first issue was about the jurisdictional issue at sea, about the state responsible for the operations of PMSC. While allocating responsibility, The Montreux Document (2008) specifies the roles of the home state, contracting state, territorial state and third states. Petrig (2016) therefore submitted that the concepts of Contracting State and Territorial State must be refined and interpreted specifically for the maritime context. Territorial State includes the flag state (when a vessel is in international waters), port state (when approaching the port) and coastal states (when the vessel is passing through its waters). According to the law of the sea, under Art.94 of UNCLOS and customary law, it is the responsibility of the flag States to regulate the issue of arms aboard ships. Article 21 of UNCLOS grants limited responsibility to coastal States.

3.0 Methodology

The study that culminated in the paper was qualitative, an exploratory study on the possible role of private security companies in maritime safety and security. This was deemed appropriate to capture the subjective experiences of the experts. To gather both primary and secondary data, the study employed in-depth in-person interviews, observation, expert responses, and documentary reviews. An intensive literature review was carried out to analyse the standards in maritime safety and security and the nature of the private security industry. In-depth interviews were applied to provide additional information can be possible role of PSCs in solving the menace faced by vessels in the high seas. The interviews were guided by a semi-structured guide to help focus the discussions. The same points were used to solicit feedback from two experts who were not available for face-to-face interviews and filled out Google forms to provide their responses and this was followed by phone interviews. The phone calls lasted 24 and 38 minutes respectively. Face-to-face interviews took between 2 and 3 hours per respondent. The interviews and discussions were carried out between January and March 2024. Thematic analysis was applied to analyse the responses received, to fit into predetermined themes, developed through a literature review exercise. These included logistical support, escort services, technical solutions and consultancy.

Criterion sampling, a form of purposive sampling, was applied in selecting the respondents, given that this is a new area with a lack of information about who the experts in the field could be. The population of the said experts is unclear and there was no database to refer to. Criterion sampling is applied to get cases that meet predetermined criteria and are deemed to be information-rich (Patton, 2001). In line with these facts, the respondents were identified using a business network of two trainers in the field of maritime security. All respondents had over twenty years of experience in security. Out of the ten invitations, six responded positively and participated. In total, six respondents were interviewed from Kenya (3) and Tanzania (3). These countries were selected due to the proximity

to the sea, with the two largest ports in Eastern Africa, a place that is near one of the risky parts of the Indian Ocean, prone to piracy and robberies. The two countries also boast of a budding private security industry, though largely not involved in maritime security, an aspect that motivated this research. In Kenya, the three experts were involved in rescue missions during the height of piracy in Somalia waters and two worked with PSCs. In Tanzania, two respondents worked with PSCs and one was a lecturer and expert in maritime security. Their identities and those of their institutions have been protected for ethical reasons. This number was deemed sufficient due to saturation should the number be higher. The respondents were assured of confidentiality and their identities have not been disclosed in this paper.

To reduce the bias, interviews were conducted for each respondent separately and details were not disclosed to the rest, except when confirming new ideas that came up. All respondents were competent in the English language and no translation was required. The researcher and respondents were all good in the Kiswahili language and was used in discussions in some instances. The validity of the responses was enhanced by the background of the researcher being familiar with the geographical locations and the technical language used. Being Kenyan and living in Tanzania enhanced credibility and reliability, given the ease of unbiased access to details that was boosted by cultural awareness and language. Reliability was also boosted by the experience and expertise of the selected respondents. The interview guide was pretested and moderated to ensure that relevant data was collected to answer the research question.

4.0 Findings

This paper sought to assess the potential role of PSCs in marine security. The first question was to understand the dangers or risks faced by vessels. Respondents indicated that the main concern of a merchant ship is safely conveying its cargo. The danger remains weather and other natural conditions that influence the place it operates (Respondent 6). The pirates therefore are seen as pests to be avoided, and this is the premise held in the construction of the ship. The focus is on the ability to withstand the forces of nature, load and offload cargo efficiently, and be watertight for its intended use and fuel economy. However, the recent events demonstrate that security is taking prominences as a substantial risk to vessels, especially in some sea routes.

The next question was to understand the specific areas of the sea with heightened dangers and the specific dangers faced in the recent past. According to the experts interviewed, the areas deemed to be high-risk include Indian Ocean, Southeast Asia, the Gulf of Guinea, the Gulf of Aden, the Red Sea, the Persian Gulf, the Arabian Sea, the Mozambique Channel, and the West Coast of Africa (Respondents 1, 3, 4 and 5). *"During the last quarter of 2023 and the first quarter of 2024, the Middle East Region witnesses an increasing and unprecedented geopolitical risk. With the outbreak of war in Palestine and* the *uprising of Houthis in Yemen, the impact of the Red Sea route was evident, with supply chain disruption on the key international sea route"* – Respondent 1.

"The impact of this upsurge in crime activities *in the sea forced businesses to reassess the impact and take action to maintain reasonable inventory to mitigate the supply chain disruption and continue monitoring supply, shipping and insurance costs"* – Respondent 3.

"There was also connectivity disruption due to undersea cable damages.

The affected cables included SEACOM/Tata TGN-Eurasia and Europe India Gateway. These cables transmit internet traffic among Europe, the Middle East, India and Eastern and Southern Africa. With technology becoming a key necessity in the functioning of systems, business continuity and recovery measures came to the core" – Respondent 4.

The next question was to understand the trend and if the PSCs based in East Africa have a role to play n marine security. The experts affirmed that the problems of piracy and robberies against vessels seem to be escalating. The veracity of the recent events calls for better response and the role of the PSCs is assessed. The respondents were unanimous that PSCs had critical roles they could play in marine security. Respondent 5 indicated that Kenya had a vibrant private security sector, with services cutting across several industries. *"Sadly, there is little interest in venturing into marine security, despite proximity to troublesome Somalia waters and a key port in East Africa– Mombasa. I have been in the security industry for over 25 years and involved in marine security representing companies from the Western World. I can confirm that there is a lot that PSCs based here can do."* Respondent 5. In addition, Respondent 3, who is based in Dar es Salaam, expressed a similar opinion. However, the respondent decried the lack of readiness of the PSCs in Tanzania to take part in marine security. *"Tanzania has over 2,000 PSCs of various sizes and capacities. I concur that PSCs based here have a golden chance to take* opportunities *in marine security, but from my experience, the only attempt they have made is port security, which they have done for many years. None of them is attempting to venture into marine security.",* Respondent 3. The next question was the specific roles that PSCs can play in marine security. The experts provided a potential list of roles with clarification. This has been summarised according to the themes that came up during the interviews.

4.1 Maritime Security Services

PMSCs offer critical roles, which can be said to be a complete risk management solution to the shipping industry. The following is an outline of services that a PMSC may be hired to perform for the contracting party, per the experts interviewed.

4.1.1 Risk Assessment

The experts explained that PMSCs carry out comprehensive risk assessments facing the client. This is usually tailored to specific issues and clients. PMSCs usually discuss the scope of work on the risk assessment and present a report to the client. Merchant shipping companies would benefit from this service to ensure that key risks in their operations or facing their assets are identified, analysed, evaluated, and hence effectively treated (Respondent 3). Risks can range from the vessels, the cargo, the personnel, the port facilities, the supply chain, cyber risks, and environmental risks amongst others (Respondent 4).

4.1.2 Maritime Intelligence

PMSCs offer specific intelligence to their clients. This critical information will aid the users in planning the routes well, protecting their vessels and cargo, and putting in adequate mitigation against potential threats (Respondent 1). This can be general intelligence reports of specific reports for use by key users (Respondent 6). Experts interviewed expressed that the industry prefers intelligence reports from PMSC since they are seen as independent and will say it like it is. Government-affiliated bodies may be restricted in issuing some sensitive information due to diplomatic restrictions (Respondent 2).

4.1.3 Investigation

PMSCs offer investigation services to their clients. This is critical in the maritime industry where incidents occur, and independent bodies are required to carry out investigations (Respondents 1, 4 and 5). Incidents can range from piracy, robbery, cargo theft, security breaches in the vessel, hostage situations, sabotage, environmental disasters, and cybersecurity incidents among others (Respondent 6). Experts opined that given the expertise in the PMSCs, they are more likely to gain the trust and confidence of the users of the investigation reports. Insurers may be key beneficiaries of such reports as they may use them in arriving at the decisions to compensate parties against losses incurred in such incidents (Respondent 2). According to the experts, other government agencies may also rely on such reports to take further action against the perpetrators, sanctions against the ship owners, and corrective and preventive actions to improve the overall safety and security of maritime activities.

4.1.4 Port Security

A port is a sensitive installation, according to the experts interviewed. A state can improve the security of the port facilities to give assurance to the merchant ship owners and insurers if they engage competent PMSCs to take charge of security (Respondents 1, 2, 5 and 6). Where there is a potential for damage to the vessel, cargo or threat to the crew, the port becomes less attractive. Licensed PMSCs have the capacity and credibility to provide such assurance to all port users (Respondent 6). They usually work closely with other government agencies like the port's authority, contractors, government security agencies like intelligence, police, immigration, border control, anti-counterfeit agencies, anti-drugs agency, the anti-corruption agency, fire department, tax authority, and customs department among others (Respondent 6).

4.1.5 Anti-piracy security

Piracy is becoming a serious threat to the global shipping industry as demonstrated by the IMO (2023). The escalation in the recent few months, coupled with terrorism activities around the Middle East calls for expertise in countering this menace, experts explained. PMSCs provide onboard security teams who may either be armed or unarmed (Respondent 3). They are usually well-trained and experienced in their duties (Respondent 6). The PMSCs have the right tools to counter this menace if they work with key stakeholders – the territorial states, the shipping agencies and insurance companies (Respondent 5). The respondents unanimously concurred that PMSCs can play roles in preventing, detecting, deterring and in recovery efforts when there is an incident. They work with stakeholders to recover the cargo, crew held hostage and the vessels (Respondent 3). They can be of great help in negotiating with the pirates and handling their demands (Respondent 4). Experts indicated that PMSCs may be in a better position to do so as opposed to government-affiliated agencies. This is due to their independence and possible trust.

4.1.6 Ship Security

The respondents affirmed that vessels need to have enhancement of features to make them less attractive to potential robbers, terrorists or pirates. They also need to be fit for purpose, operate safely and counter any threats they may face. PMSCs offer advisory services regarding vessel hardening, after thorough risk assessment (Respondent 6, 3 and 1). They also offer advice about route planning and vessel monitoring and tracking (Respondents 4 and 5). The experts indicated that the PMSCs are

equipped to offer round-the-clock monitoring of the movement and if there is a distress signal, mobilize response from locations with proximity.

4.1.7 Administration and logistical support

PMSCs can provide full support to stakeholders globally (Respondents 1 and 6). They can manage all manner of permits, liaisons, and logistical and administrative interfaces for global security operations (Respondents 1 and 6). For instance, STS Marine Security offers such services to the US government, including US-flagged RORO fleets globally. *"We provided logistical support for many shipping lines during the height of the piracy in Somalia, from our base in Mombasa."* – Respondent 6.

4.1.8 Cargo tracking and security

The experts interviewed indicated that PMSCs can ensure security for RO-RO containers, the general cargo, and all vessels and this reduces risks and hence insurance premiums. The risk of loss or misplacement in transit is minimized. *"Many of the PSCs here are already providing such services of tracking the movement of the containers from the port to landlocked countries and they do an excellent job, given the expertise and investment made in technology"* – Respondent 4.

4.1.9 Training

The experts indicated that PMSCs provide extensive marine security training to various stakeholders. Drills that include anti-piracy and breach exercises are also conducted to ensure full preparation to face any threat (Respondent 1). They offer such services to international shipping conglomerates and governments (Respondent 3). They organise crew training for courses which are approved by internationally recognized bodies like the UK Marine and Coastguard Agency (Respondent 5).

4.1.10 Recruitment Risk Management

One of the key risks in the shipping industry is the personnel risk. If this is not handled well, according to experts, will create further risks. *"There is a need to do* complete *verification of qualifications and competency, thorough vetting and background checks for all personnel before recruitment and to do assessment periodically and this is a role that PSCs can do well."* – Respondent 5.

4.1.11 Consultancy

PMSCs can offer various consultancies in maritime security and safety. Experts indicated that other than threat assessments and architectural attributes, stakeholders may seek advice on stowaway prevention, ship security audits, counterpiracy auditing, pre-engagement due diligence, and business continuity assessment among others. *"Our key roles were advisory to various shipping lines using the port of Mombasa for so many years"* – Respondent 6.

4.1.12 Cybersecurity

Many organisations face information and cybersecurity risks. PMSCs can offer services to counter these risks (Respondents 1, 2 and 5). All stakeholders may benefit from these services. Respondents reiterate that this risk is facing many organizations, and shipping lines are not spared.

They cited some instances where Maersk, a leading international shipping company, suffered huge disruptions because of a global cyber-attack named Petya in 2017[*]. This attack caused losses of over U$ 300 million and resulted in downtime of two weeks[†]. Such an attack can immobilise vessels and cut off communication with the crew. There is a need for proper business continuity plans and PMSCs can offer such support (Respondent 1).

4.1.13 Subsea Pipeline Security

The recent events that led to the damage of the undersea cables off the coast of Yemen call for heightened security to protect the critical infrastructure that connects continents (Respondent 3). Protecting submarine cables is essential given the critical nature of internet accessibility in today's world (Respondent 2). Experts opined that the PMSCs can be of great help in patrolling the routes and help in recovery efforts should an incident be experienced.

4.1.14 Compliance

According to the respondents, shipping agencies face huge compliance risks and should they fail in the effort, they face sanctions. Operating in many jurisdictions with varied requirements increases this risk. Since many prominent PMSCs have expertise and know easier means to acquire such permits and documentation, given their presence in various countries, they stand a good chance to support the industry (Respondent 6). Experts were of the view that key areas PMSCs may be of help to the industry is illegal carriages. This includes countering drug smuggling, illegal weapons, human trafficking, and illegal immigration. Specific documentation for some cargo can also be easier done by PMSCs (Respondent 5).

4.1.15 Marine Environment Safeguards

Safety while traversing territorial waters is key. PMSCs can help merchant ship owners to enhance safeguards against environmental disasters. This will help operators mitigate potential risks. Experts indicated that PMSCs can source key experts in those areas to help their clients. Another area of help, according to the experts, is the effective disposal of explosive and toxic materials (Respondents 2 and 3). This is under strict supervision and observance of guidelines given to mitigate hazards. PMSCs can therefore be of help to ensure proper disposal and certification to that effect (Respondent 3).

The foregoing analysis points out areas in marine security that the PSCs can play according to the respondents. Given the huge opportunities available, the next question was why the PSCs were not taking these chances, yet they were within reach of their capacity and geographical location. The experts had varied opinions about this.

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[*] Details available in a press release at https://investor.maersk.com/news-releases/news-release-details/cyber-attack-update.

[†] Reported by Los Angeles Times in https://www.latimes.com/business/la-fi-maersk-cyberattack-20170817-story.html.

4.2 Impediments to Opportunities for PSCs

After deliberations with the participants, it became clear that both the Tanzania and Kenya regimes do not have registration procedures for PMSCs. Whereas Kenya has the Private Security Regulatory Authority (PSRA) that regulates the PSCs, Tanzanian PSCs are regulated by the Tanzania Police Force (Sambu, 2023). There are clear registration procedures in the two countries for PSCs but the role of these PSCs in maritime security is yet to be recognised as a specialty and registration process set in place. According to the interview, port security, either through the installation of electronic security systems or the employment of manned guarding, is the area in which PSCs are most closely related to maritime security. Some respondents in Kenya indicated that some multinational PMSCs had subcontracted some PSCs, who provide consultancies, to handle the negotiations with the pirates in Somalia during the height of the menace in the late 2010s. This was done due to the proximity of Somalia to Mombasa. According to them, the subcontracted consultants were successful. It was not clear though if the said consultants were properly registered as PSCs.

Respondent 6 expressed doubt about the capacity of the present PSCs in the two countries to undertake such delicate and complex security operations. There may not be enough experts to be employed by those willing to do it unless they go for expatriates. There is another problem with the use of firearms (Respondent 5). Kenyan PSCs are still not allowed to use firearms in their operations. This will inhibit their venture into maritime security. Tanzanian PSCs are allowed to use weapons but are only restricted to Shotguns, which are so inferior and not fit for purpose (Respondent 2). To counter terrorists, who have superior weapons, will be a long shot for them. Respondent 6 raised concern about the legal regime for armed escorts crisscrossing international boundaries, saying it is still a grey area that limits the role of PSCs in venturing into marine security.

Respondent 3 pointed out the licensing requirements for PMSCs saying that the region has no set authority to issue permits and therefore, taking away that opportunity from the local PSCs. The PSCs lack many certification standards. However, the respondents indicated that there is a lot they can still do, going by the assessed roles in this paper, without the armed escort option. They can also be the local agents of the licensed PMSCs as they take advantage to build their capabilities (Respondent 6).

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

5.0 Discussion

Experts concur that there is a need for armed escorts in places prone to war-like perils. Therefore, PMSCs are best positioned to take up this role and they can engage both the ship owners and insurers. However, the armed escort remains a point of contention because of their potential to jeopardize the sovereignty of littoral states. This finding is in line with the findings of other researchers in the field such as Buege and Edmunds (2022), Lartey (2024), Osnin (2006) and Rafah (2024). Sovereignty refers to the supremacy of authority or rule as exercised by a sovereign state. The legality of armed escorts has also been questioned by experts and this is aligned to issues raised by Petrig (2016). Therefore, the applicability of the international humanitarian law about innocent passage of ships through a State's territorial waters or transit passage, under armed escort by PCASPs remains contentious. This is because the United Nations Convention on the Law of the Sea (UNCLOS), under Article 2, reiterates the coastal State's sovereignty. This therefore vests the monopoly of legitimate use of force concerning the security of sea areas to the territorial state, not with the ships passing through those waters. PMSCs may therefore impinge on the sovereignty of these states should they conduct armed escorts. Here, the state-sponsored armed escort may work in these circumstances. Experts however opine that the areas classified as war risk, are surrounded by weak states, who are either unwilling or incapable of providing this service to ships seeking passage through their waters.

There is a distinction between the way merchant ships and naval ships and granted permission for entry, according to the UNCLOS (1982). Foreign merchant ships are granted standing permission to enter waters, subject to notices like avoidance of oil rigs, marine parks and the like. Naval ships are however required to seek advance permission for entry, unless there exists bilateral, or multilateral are in place or unless the naval ship is clear that it is under an innocent passage. The contention, also raised by Rafah (2024) is that when PMSCs escort merchant ships, their armed operations will make it a naval ship and hence require advance permission for entry to territorial waters. Some experts were of the view that PMSCs still proceed under innocent or transit passage and are not challenged by the littoral states.

Another critical issue in the findings is the licensing and regulation of the work of the PMSCs. A PMSC licensed in one state may not be allowed to operate in another state and hence face challenges entering the sovereign jurisdiction of the other state. As highlighted by Petrig (2016), this limits their capacity to conduct operations at sea. Respondent opined that this can only work if all territorial states approve of such activities. The merchant ship with an armed escort may require applying for passage, yet it is entitled to innocent passage. The ship with firearms may then fall under the definition of a naval ship. If, however, all parties agree in advance that the armed escorts are pertinent to their operations and sanction merchant ships as part of innocent passage, this will work well.

The other theme that came up was the issue of deprivation of liberty at sea by PMSC personnel, which the author related to the concept of 'inherently State functions', i.e. functions that cannot be outsourced or delegated to private persons or entities, for instance, the police power to arrest and detention. There is a view that certain functions are inherently governmental functions, which cannot be delegated and/or outsourced to private entities. This view is reflected in Article 9 of the Draft Convention of the Working Group on Mercenaries, while Article 19(1) obliges each State to make the acts of carrying out such functions by PMSCs or their personnel criminal offences. PMSC personnel are not generally vested with law enforcement powers. However, some jurisdictions accord them 'private arrest' or 'citizen's arrest' powers but must strictly be under legal basis. Some states have explicit rules for such actions (e.g. Belgium), but in other states, it is regarded as an act of self-defence. The rules allowing

private persons to surrender a criminal suspect to the competent authorities also provide a legal basis for private arrest. The premise is that, if a private person is allowed to surrender a suspect, he or she can also hold that suspect until surrender. It is therefore crucial to further explore the circumstances under which PMSC personnel are allowed to hold an overpowered person on board to avoid criminalisation.

6.0 Conclusion

This study assessed the potential role of PSCs in maritime safety and security. It assessed the status of the threat landscape, facing sea transport, with statistics about piracy over the years. The paper explored the possible role of PMSCs in improving maritime safety and security and how stakeholders would benefit. It also assessed the challenges facing the PMSCs. It ended with an assessment of the readiness of the PSCs in the East African nations of Tanzania and Kenya in venturing into the role of PMSCs. There are threats facing the safety and security of the vessels and cargo in transit across many sea routes. There are spots deemed high-risk, and vessels need support to pass through these spots safely. IMO has softened the stance about the carriage of weapons onboard ships and issued guidelines to the PMSCs. There are other voluntary standards as well, issued by ISO, ICoCA, and UN. There are still some challenges inhibiting full optimisation of the role of PMSCs.

Because PMSCs engaged in armed escort operate across states with varying legal frameworks pertaining to armed citizens, their registration and governance are considered as a challenge. From the literature, there seems to be a lingering issue to do with the terminology and hence to roles of the territorial states in the work of PMSCs. Many jurisdictions have set registration or recognition of PMSCs to offer support in high-risk areas. East Africa seems to be lagging in venturing into maritime safety and security, despite its proximity to many troubled areas of the sea, due to either a lack of capacity or willingness to venture into maritime security. Due to a lack of interest from PSCs, the two nations of Tanzania and Kenya still do not have registration and regulation mechanisms for PMSCs. The study recommends building the capacity of the local PSCs to take advantage of opportunities in marine security. This should include training of officers and owners of PSCs and awareness of the opportunities as well as licensing requirements.

Acknowledgements

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