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Pieter W. G. Zhao
Paris School of International Affairs

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OUTSOURCING SECURITY AT SEA

The Return of Private Maritime-Security Companies and Their Role in Twenty-First-Century Maritime Security

Pieter W. G. Zhao

These pirates are criminals; they are armed gangs on the sea. And those plotting attacks must be stopped. . . . We may be dealing with a seventeenth-century crime, but we need to bring twenty-first-century solutions to bear.

SECRETARY OF STATE HILLARY CLINTON, 2009

In 2008, the world was caught off guard by the sudden onset of the so-called Somali piracy epidemic. The hijacking of a Ukrainian ship carrying Cold War-era Soviet tanks, soon followed by the capture of a Saudi supertanker carrying two million barrels of crude oil, brought the problem to the attention of the global shipping industry and, in turn, to that of policy makers.¹ Soon thereafter, the United Nations (UN) Security Council authorized military action against Somali pirates, and warships were sent to the Gulf of Aden to establish a protected corridor for merchant vessels. This, however, caused the piracy activities to diffuse across a much broader swath of the Indian Ocean, expanding to approximately 2.5 million square miles.² The warships dedicated to this task were insufficient to patrol the new, larger affected area effectively, and hijackings continued, now occurring hundreds of miles off Somalia's coastline. Thus, many more warships were needed, but a force of warships large enough to stamp out Somali piracy would have cost the international community more than the piracy itself.

As the naval protection deployed to the region proved inadequate to stop the attacks, the shipping industry began resorting to market-based solutions through

so-called private maritime-security companies (PMSCs). These are private, commercial entities that provide armed security services that otherwise would be commonly considered to be the exclusive province of states.³ Such services most often include the provision of armed guards and,

Pieter W. G. Zhao is a graduate student in international security at the Paris School of International Affairs. He studied history with a specialization in maritime history and international relations at the Erasmus University Rotterdam.

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to a smaller extent, the operation of armed escort vessels to protect a client's ship.⁴ Although precise figures are missing, at least 50 percent of the merchant ships crossing the Gulf of Aden from 2012 to 2013 employed armed protection.⁵ Not all these guards were operated by PMSCs, as some countries initially were reluctant to authorize private armed security contractors on merchant ships in light of international norms in which the state is considered to be the sole provider of armed maritime security. Instead, some countries offered merchant ships sailing under their flag-vessel protection detachments consisting exclusively of military personnel. However, as of 2022, most flag states with significant shipping registries have accepted the use of PMSCs for maritime-security purposes.

This is not the first time that nonstate actors have been involved in different aspects of maritime warfare and security. Three centuries ago, Britain used private warships of the East India Company (referred to as the Company) to protect its trade in the Indian Ocean from both privateers and pirates.⁶ In fact, the privatization of security and warfare has been more of a rule than an exception in the larger historical record. Facing escalating governance costs and with their resources often stretched thin, sovereign entities frequently appealed to the services of private security enterprises such as privateers to supplement state power.⁷ Privateers—nonstate ships and their crews, or private men-of-war, conducting authorized violence at sea—were at their height from the thirteenth to the nineteenth century. Such commissions were an established part of maritime warfare and security during this extended period. Privateers could attack and capture enemy ships of whatever sort during wartime or seek out pirates on a commercial basis.⁸ But with the establishment of standing navies and the development and enforcement of the idea of a state monopoly over force at sea, such armed nonstate actors all but disappeared from the oceans.⁹

In the present day, however, the historical parallels are striking, as we witness governments with thinly stretched resources condone the private security industry's providing armed solutions to maritime-security threats such as piracy, and even encouraging the practice. This modern, widespread reliance on PMSCs as providers of maritime security stands in stark contrast to the established international norm that discourages the presence of weapons on board merchant vessels and to states' commitments to upholding a monopoly over the use of force at sea.¹⁰ Indeed, national laws in various flag states continue to be revised to facilitate the use of PMSCs. For example, in April 2021, new legislation was introduced in the Netherlands allowing shipowners to hire PMSCs, making it one of the latest European additions to a long line of flag states facilitating PMSCs.¹¹ Thus, as the International Maritime Bureau recently reported that piracy and armed robbery at sea appear to be increasing—with the Gulf of Guinea becoming an area of particular concern—the relevance of PMSCs continues to grow as well.¹² Moreover,

looking beyond piracy, PMSCs actively are attempting to establish legitimacy within the maritime-security domain to ensure their long-term legal and commercial viability, and offer services to address a broader range of maritime-security issues, including maritime terrorism, illegal fishing, and more.¹³

This article reconsiders the role of PMSCs in the twenty-first century within the larger story of maritime warfare and security. While international relations and security studies scholars often regard PMSCs as a novel phenomenon, the historical record tells a different story. Properly positioning PMSCs within the history of maritime warfare and security opens the way for discussions of their potential contribution to missions beyond counterpiracy. The first sections examine the background and context of the history of commercialized nonstate armed force at sea. Analyzing the historical dynamics surrounding the use of nonstate actors in maritime security illuminates the developments that led to their prohibition in the Paris Declaration of 1856, contributing to the now-established international norms around the use of force at sea. The next sections focus on the reemergence of armed nonstate actors in their most recent form, the PMSC. Besides providing an overview of various important aspects surrounding these nonstate actors, these contributions aim to provide greater consideration of the use of PMSCs by investigating the extensive history of nongovernmental forces at sea.

THE HISTORICAL DEVELOPMENT OF NONSTATE ARMED FORCE AT SEA

A few centuries ago, the British East India Company's ships in the Indian Ocean were targeted by local pirates. These pirates logically were attracted to the large, slow European merchantmen. This was a very serious issue, however, as the cargo of a large East Indiaman loaded with tea from China would be worth about U.S.\$1 billion in today's currency, comparable to a modern megacontainership.¹⁴ Accordingly, the East India Company requested that the British government provide assistance against these Indian Ocean pirates. The Royal Navy, however, declined the request, as it did not have the means at its disposal to patrol waters so vast and distant from home.¹⁵ The Company therefore was forced to look for alternative solutions. At first, it decided to arm the merchantmen themselves by clearing the first cargo deck to install cannon. While this solution reduced the overall losses from piracy in the Indian Ocean, it created new indirect losses resulting from the reduced cargo load. Indeed, while the cannon occasionally prevented the loss of whole ships, they also reduced the profit realized on every armed voyage, which eventually outweighed the costs of the relatively rare total losses of ships to piracy. This solution therefore was not considered economical. As a result, the Company decided to hire its own private navy. These private warships eventually would patrol dangerous waters, escort merchantmen when needed, and even hunt down

and destroy pirate groups. This solution proved to be relatively effective, and more importantly, it was more cost-effective than arming merchantmen directly.¹⁶

This illustrates how, similar to the influential lighthouse model advanced by Nobel Prize-winning economist Ronald Coase, the monopolization of armed force at sea by the government is a fairly recent historical trend.¹⁷ Yet those addressing twenty-first-century concerns about piracy and the role of the private sector in responding to it (as well as other maritime threats) frequently labor under the assumption that these are novel dynamics, a tendency that arises from an ingrained reluctance by modern governments to question the state's monopoly on armed force at sea.¹⁸ Throughout history, sovereigns and states have depended on various forms of private enterprises for (sometimes) significant portions of their armed forces. At sea, until the mid-nineteenth century, governments heavily relied on nonstate initiatives through privately commissioned vessels known as privateers and mercantile companies.¹⁹ These practices reflected the dominant international norms at the time surrounding maritime warfare and security, including the marketization and internationalization of violence that flourished until the mid-nineteenth century, when such seemingly efficient institutions disappeared.

The employment of the private sector in international security and warfare, on both land and sea, has waxed and waned throughout history. Generally, scholars agree that the constraints on military service in feudal systems incentivized sovereigns to turn to mercenaries to conduct offensive campaigns. Since vassal rights and military obligations primarily were defensive, they presented a significant barrier to launching offensive campaigns. To overcome this constraint, European war makers began relying increasingly on private contractors to raise and supply armies for profit.²⁰ In turn, with the breakdown of the feudal system of military mobilization, European sovereigns increasingly began exploiting the capabilities of nonstate commercial actors such as the free companies and the condottieri.²¹ In fact, during this age of contracted combat, European warfare simply could not be waged without the private sector.²² These practices, therefore, illustrate that during this extended period the sovereign entity did not monopolize the exercise of armed force beyond its borders. Instead, during the six centuries leading up to the twentieth century, armed force generally was democratized, marketized, and internationalized. People bought and sold armed-force capabilities like a commodity on the global market.²³ Yet these practices of nonstate violence were not trivial features of global politics, as they were authorized and sanctioned by sovereign authorities. As a result, nonstate armed forces constituted the international norm from as early as the thirteenth century.

In much the same way as European sovereigns relied on mercenaries to fill their armies on land, they also turned to the private sector to protect their

commerce at sea, raid enemy shipping, and engage in ship-to-ship combat.²⁴ The international maritime order that flourished between the sixteenth and the mid-nineteenth centuries was summed up by Hugo Grotius's concept of *mare liberum* (1609), under which the high seas are construed as a space subtracted from state sovereignty and where any vessel has the right to free navigation.²⁵ Unencumbered by sovereign restrictions on the high seas, the maritime-warfare and -security environment in this period largely was formed by nonstate actors such as privateers and mercantile companies.

Privateering: A Heavily Armed Business Venture

In August 1812, the British vessel *Hopewell*, loaded with a cargo of coffee, cotton, and sugar, left port from the Dutch colony of Suriname on South America's northeast coast. To protect this valuable cargo, it also carried fourteen cannon and sailed in a squadron with five other merchantmen. However, it became separated from the others somewhere in the North Atlantic on 13 August.²⁶ Two days later, *Hopewell* spotted a heavily armed and rapidly approaching American schooner. At three hundred yards, the approaching ship fired a shot off *Hopewell's* bow and demanded that it show its papers and prepare to be boarded, but the captain refused and returned fire against the American vessel. After a heavy exchange, *Hopewell* proved to be outgunned and struck its colors.²⁷ The attacker, an American schooner called *Comet*, was neither a pirate nor a naval vessel, but better considered a business enterprise than a warship.²⁸ *Comet* was a privateer, a ship licensed and authorized by the United States to raid British vessels and confiscate their cargoes; the owners and their crew were hunting for British commercial ships to capture, condemn, and sell for profit. *Comet's* license (a letter of marque) was not a formality; privateering was a widely established international practice recognized as valid and lawful by various courts around the world. Even the enemy recognized that *Comet* acted within the "law of nations," and its captain and crew, if captured, would be accorded the same rights as USN personnel.²⁹

These privateers—nonstate ships and their crews (i.e., private men-of-war conducting authorized violence at sea)—were most prominent from the thirteenth to the mid-nineteenth century.³⁰ The origins of privateering date to the 1200s, when King Henry III of England ordered vessels of the Cinque Ports to attack France.³¹ The legal basis for this was the *right of reprisal*, a medieval principle by which individuals could seek the authority of their sovereign to redress, by force if necessary, the losses inflicted by foreign seafarers.³² Initially, this entailed that a merchant aggrieved by a citizen of another country could apply for "letters of marque and reprisal" from his sovereign to seek restitution.³³ These letters mainly were designed to bring the anarchy of retaliation under the rule of law. Over time, however, the *raison d'être* evolved from personal recompense

to personal gain arising from the seizure of cargo and vessels belonging to rival states or outlaws. In essence, there was a long-term shift from loss recovery to profit generation.³⁴ As a result, in wartime, sovereign entities increasingly began to issue letters of marque against all enemy shipping. Such commissions gradually became part of public warfare and national defense. Accordingly, while these commissions retained expiration dates, other limits generally were removed, authorizing privateers to attack and capture enemy ships of whatever sort during wartime or seek out pirates, who were considered *hostis humani generis*, on a commercial basis.³⁵

Consequently, the private ship of war became an attractive business venture. In the context of an expanding commercial economy, it constituted a commercial opportunity for those willing to invest their resources in the quest for prizes. This prospect attracted not only the capital of merchants and shipowners but the labor of seafarers.³⁶ With a few extra cannon and crewmen, a merchant vessel could be converted into a commissioned vessel capable of capturing prizes along popular trade routes.³⁷ Whatever their purpose and force, private men-of-war invariably were manned like naval vessels, with a large crew in proportion to the vessel's size, and explicitly were organized to fight the enemy and navigate prizes back to a friendly port.³⁸

The scale and character of privateering fluctuated significantly over space and time. Spanish privateering peaked in the 1630s, followed by French privateering in the wars between 1688 and 1714. British privateering, on the other hand, climaxed during the opening weeks of the Fourth Anglo-Dutch War, in 1780, followed by the American privateers, which were at their greatest extent in the War of 1812, as illustrated by the *Comet* incident. In peacetime, letters of marque also were issued for antipiracy operations, meaning that governments theoretically deputized private actors to capture criminals. For example, in 1696, *Adventure Galley*, captained by the notorious William Kidd, received a privateer commission from William III to bring "Pirates, Free Booters, and Sea Rovers to Justice." However, although such private men-of-war have been included as one of the factors that contributed to solving the piracy problem in the Caribbean during the "Golden Age of Piracy" (1650s–1730s) as they supplemented regular naval forces and effectively hunted down pirates, their crews frequently also became pirates themselves, like William Kidd.³⁹ This problem eventually contributed to the decline of privateering.

Mercantile Companies: A Private Antipiracy Force

The beginning of the seventeenth century also saw the proliferation of mercantile companies chartered by states to engage in long-distance trade or establish colonies. Examples include the British East India Company (1600) and the Dutch

East India Company (1602). Although these companies were nonstate actors in principle, their institutional structures and degrees of private versus state control varied greatly. To pursue its goals, such a company was granted pseudosovereign authority to enter into diplomatic relationships and use violence both to protect trade routes and other facilities and to protect the company's economic and political presence overseas.⁴⁰ As a result, unlike the privateers, these mercantile companies blurred the analytical distinctions between the political and the economic and between state and nonstate.⁴¹ They essentially were state-created institutions that used violence in pursuit of economic gain and political power for both state and nonstate actors.⁴² It is outside the scope of this analysis to consider fully the maritime-warfare and -security focus of every mercantile company in its capacity as a nonstate commercial actor, as this was not such companies' core business. Instead, the focus here is on the antipiracy activities of the British East India Company to illustrate several important dynamics.

It was not until the seventeenth century that major European "powers" like the British East India Company entered the Indian Ocean region. However, unlike the Mediterranean, the Indian Ocean was not surrounded by dominant naval powers, which meant that Arabian and Indian corsairs operated freely.⁴³ As a result, British shipping, among others, increasingly found itself at the mercy of pirates, as illustrated earlier. But with the small navies of the time and the delicate balance of power in Europe itself, colonial powers could not afford to send powerful fleets on antipiracy duty in the Indian Ocean. Consequently, the British East India Company formed its own private naval force in 1612 called the India Marine, initially comprising four warships. This private naval force mainly was charged with defending the Company's interests against both pirates and rival European powers.

By 1686, the India Marine was expanded significantly and renamed the Bombay Marine. But the native corsairs were joined by European pirates in larger ships, eager to exploit the Company's inability to defend its trade routes in the Indian Ocean adequately.⁴⁴ In the face of increasing losses, which continued into the eighteenth century, the Company's directors decided to expand the naval force instead of adding greater defensive capabilities to its merchant ships, because hunting down pirates actively was deemed to be more cost-effective than providing for individual defense. Over time, the Bombay Marine's fleet went through a repeating cycle of development and retrenchment. When piracy worsened, the Company would expand its forces; when it declined, the fleet's costs became hard to justify, and the Bombay Marine would be reduced.⁴⁵ Yet the underlying causes of piracy itself remained, and the private naval force eventually (during Queen Victoria's reign, 1837–1901) would become nationalized and incorporated into the Indian Squadrons of the Royal Navy.⁴⁶

THE DYNAMICS UNDERPINNING THE OUTSOURCING OF ARMED FORCE AT SEA

With the breakdown of the medieval system of military mobilization that motivated their initial rise, nonstate actors became the dominant force in European warfare between the sixteenth and nineteenth centuries. As a result, the use of force was marketized, democratized, and internationalized, with nonstate actors such as privateers and mercantile companies dominating maritime warfare and security. Several overlapping dynamics can be identified that underpinned the outsourcing of armed force at sea: the limited state resources available to provide for defense, inadequate political will to deal with the threats, and the asymmetric nature of those threats.

Limited State Resources

Privateers arose during a period when sovereign states were unable to maintain substantial naval forces, or even any at all.⁴⁷ Public navies were expensive, particularly because they had to be maintained during both peacetime and war, and until the late nineteenth century national tax regimes broadly were inefficient and ineffectual.⁴⁸ Consequently, governments with thinly stretched resources often outsourced maritime warfare and security to nonstate actors; private naval forces such as privateers reduced the requirements for a standing navy. While sovereign entities did not necessarily hire privateers themselves, they did provide the regulatory infrastructure to facilitate privateer voyages and payment through a well-established regime known as the international law of prize.⁴⁹ Both naval and merchant vessels were expensive to build and maintain, but the former possessed no commercial value. Sovereigns, therefore, developed this mercenary and privateer infrastructure to obtain access to expensive naval services more cost-effectively.⁵⁰

Additionally, the transaction costs for certain missions such as commerce raiding and antipiracy efforts were lower for privateers than for regular navies. The owners of privateers simply would use their vessels as merchant ships during peacetime (or when otherwise not engaged by a state for naval purposes) and then convert them for privateering during wartime or when the demand for antipiracy missions increased. In this way, privateers essentially were financed by the enemy.⁵¹ States with weaker navies, such as the United States, therefore, benefited the most from privateers. The same dynamics underpinned the outsourcing through the Bombay Marine, as there was a gap between the rewards that resulted from Indian Ocean piracy and the risks of being intercepted by the Royal Navy. When its available pseudostate resources diminished, the East India Company also was forced to employ a market-driven solution itself, and the Bombay Marine essentially financed itself by preventing piratical losses that hurt the Company's bottom line.⁵²

Lack of Political Will

Besides cost-effectiveness, a sovereign entity's political will also affects outsourcing decisions. France stands out as one of the countries that relied on privateering most heavily. This can be traced to France's less extensive maritime tradition, for example, in contrast to those of the Dutch and the English.⁵³ France's naval force was comparatively underdeveloped until the mid-seventeenth century when, under the naval secretaries Jean-Baptiste Colbert (1669–83) and the marquis de Seignelay (1683–90), France partly succeeded in establishing the foundation of a standing navy to rival Britain's, as its early successes at sea during the Nine Years' War (1688–97) demonstrate.⁵⁴

However, France subsequently experienced serious financial and manpower problems, which created a less hospitable climate for navalists, eventually leading to Louis XIV's decision to de-emphasize France's navy. Opponents of the navy not only favored the army but also favored a *guerre de course* (commerce raiding) strategy over regular naval operations. Thus, during the remainder of the Nine Years' War and throughout the War of the Spanish Succession (1701–14), France mainly relied on privateers for the provision of armed force at sea. According to Alfred Thayer Mahan, this recourse to privateering was a mistake because it gave the English space to establish maritime hegemony.⁵⁵ Yet, although the financial aspects undoubtedly played a role as well, it seems to be the lack of political will coupled with the perceived effectiveness of privateering that played the most crucial role in France's preference for private solutions over maintaining a large regular naval force.

Asymmetric and Nontraditional Security and Warfare

The outsourcing of armed force at sea arose when European sovereigns found themselves unable to maintain substantial standing navies. However, even when sovereign entities and regular navies grew stronger, states continued to find nonstate maritime actors such as privateers desirable. This had to do with the nature of maritime warfare and security. Besides the large-scale naval battles of the time, war aims and security threats were varied and included disrupting an enemy's maritime commerce and conducting counterpiracy operations, and states saw private actors as complementary to regular navies for performing low-intensity missions.⁵⁶ For example, besides the lower transaction costs, the relatively greater efficiency of privateers as prize-taking business enterprises explains why regular naval forces generally were not deployed for commerce raiding until the late nineteenth century. Regular naval forces were less effective than privateers as commerce raiders, because most large and heavily armed warships were too slow and difficult to maneuver to chase merchantmen successfully.⁵⁷ In the same way, the Bombay Marine's dedicated private warships could optimize its

fleet for antipiracy activities without compromising the design of the East India Company's merchantmen. This, in turn, freed the regular navies to perform the more traditional combat roles, which generally were considered their core task.⁵⁸

It can be deduced that the outsourcing of armed forces at sea especially was attractive for addressing asymmetric forms of warfare and nontraditional maritime-security threats. These can be characterized as different concepts from traditional warfare and security, which usually concern sovereign entities or states with similar capabilities. Asymmetric and nontraditional threats, on the other hand, mainly are conducted by nonstate actors and focus on undermining the opponent's strengths while exploiting enemy weaknesses, using methods that differ significantly from conventional methods of operation.⁵⁹ Indeed, privateers played no critical role in strategically significant battles at sea, because they could not perform the specialized combat tasks for which regular naval forces were designed. As a result, states tasked privateers to pursue asymmetric and nontraditional war objectives that were more suitable for outsourcing.⁶⁰

Antipiracy operations also can be considered nontraditional, as pirates could strike vulnerable targets at a time and place of their choosing, while defenders had to guard all potential targets over a wide area constantly. The warships of regular navies, however, were designed to engage other navies' warships and were extremely expensive to maintain when on patrol for extended periods, while asymmetric opponents such as pirates avoided combat with them. As a result, a small fleet of powerful and heavily armed warships was considered to be a less effective force for protecting against pirates than a large number of cheaper and smaller ships.⁶¹ Accordingly, their nontraditional and asymmetric nature made antipiracy operations attractive for outsourcing.

THE DISAPPEARANCE OF NONSTATE ACTORS IN MARITIME WARFARE AND SECURITY

Outsourcing armed force to nonstate actors proved to be highly effective for less-combat-intense security requirements. Nonstate actors such as privateers dominated naval warfare, their use became widespread, and the practice became an international norm in the maritime-warfare and -security environment.⁶² Nevertheless, states virtually abandoned (and broadly outlawed) these private maritime actors after the mid-nineteenth century. This raises the question: If these internationally accepted practices served sovereigns' interests so well, why were they ultimately prohibited?

One prominent explanation points toward technological improvements in naval warfare. Around the time of the American Civil War (1861–65), naval warfare underwent a technological revolution in which the age of sail was succeeded by the age of steam. These developments significantly increased unit costs and

created sharper distinctions between naval and merchant vessels, including much more powerful armaments on the part of warships, reducing the transaction-cost advantages.⁶³ However, privateering essentially ended before the American Civil War began, so the explanation proves unsatisfactory.⁶⁴ Instead, the dynamics and tensions surrounding the relationship between public and private interests at the turn of the nineteenth century appear to be more important.

Unintended Consequences

While using nonstate actors to conduct maritime warfare and provide for maritime security served state interests well for a period, the practice was not without problems. At the heart of all this was the process of state consolidation. To attain power and wealth, sovereign entities empowered nonstate actors to exercise violence when state capabilities were insufficient or politically constrained; nonstate market solutions permitted sovereigns to get around constraints on their power.⁶⁵ However, empowering nonstate actors to practice organized violence produced unintended consequences for sovereign entities.

The private interests of nonstate actors such as privateers and mercantile companies often conflicted with the political interests of the state. The consequences of outsourcing armed force, therefore, included the nonstate actors' use of force against unintended targets such as other states with which their home states were at peace, other contracted nonstate actors, or even possessions of the sponsor states themselves.⁶⁶ For example, it became clear that endorsing nonstate actors such as privateers had the effect of condoning and indirectly supporting piracy. When states authorized privateering commissions during wartime, they inadvertently created future pirates when the war concluded and thousands of seamen were left with no more-appealing alternatives. Thus, the system of privateering indirectly sustained the very problem of piracy that it often was engaged to eliminate.

Moreover, by this democratizing, commercializing, and internationalizing of armed forces at sea, problems emerged for interstate politics. While they were more than happy to hire foreign privateers to support their conflicts, states also increasingly began holding each other accountable for the international actions of individuals under their sovereign jurisdictions. It was, therefore, no longer acceptable to deny responsibility on the basis that privateers were pursuing private interests. As a result, claims of neutrality could be compromised by nonstate actors and could, in turn, draw states into broader conflicts inadvertently.

These problems illustrate the cause underpinning the resulting chaos: states' inability to control effectively the nonstate actors they empowered to use violence beyond their borders. This exposes a paradox in the outsourcing of armed forces: To maximize nonstate actors' effectiveness on behalf of the state, states needed to minimize the constraints on their activities. In turn, minimal constraints translated to limited state control and reduced state authority over that violence.

Conversely, regulations designed to enhance state control reduced nonstate actors' incentives to accept the risks entailed in the use of force.⁶⁷ Thus, the tension between private interests and states' urge to regulate their nonstate partners gradually undermined the system of privatized maritime warfare and security. Such unintended consequences encouraged—even necessitated—states to develop regular navies to address the problems they created with privatized forces and the security gaps left by their absence; public opinion, too, slowly turned against nonstate actors such as privateers.⁶⁸ Alfred Thayer Mahan's analysis of the War of 1812 perfectly illustrates this increasing antipathy: "Fighting, when avoidable, is to the privateer a misdirection of energy. Profit is his objective, by depredation upon the enemy's commerce; not the preservation of that of his own people."⁶⁹

A Changing Maritime-Warfare and -Security Environment

By the mid-nineteenth century, states understood the problems associated with outsourcing maritime security and low-intensity naval combat. At the same time, the reliance on private naval forces was an internationally established customary practice that had been in place for centuries. The delegitimization of nonstate maritime actors such as privateers, therefore, required changing international norms.

Fed up with the unintended consequences of outsourcing armed force to nonstate actors at sea, European states gradually began reconsidering the practice. States had never considered privateering to be an ideal solution, but when governments could not raise funds easily to maintain standing navies, it provided a good (arguably the only) alternative. However, in the background of the centuries-long process of internal pacification, centralization, and consolidation, powerful states such as Britain and France increasingly were able to monopolize the use of force and further expand and develop standing navies for themselves.⁷⁰ Those in national naval bureaucracies—who understandably perceived them to be close competitors for the provision of national maritime power—increasingly became hostile to the use of privateers and similar actors.⁷¹ When regular navies were available, they gave governments greater flexibility, because officials could order naval personnel according to their wishes without worrying about conflicting private and public interests.⁷² The gradually improving fiscal capacity of states in the mid-nineteenth century further supported this trend; all the while, overseas (free) trade simultaneously was expanding.⁷³ Additionally, the increasing diplomatic problems and crises that privateers caused over the rights of neutrals also contributed to the overall hostility toward nonstate actors.⁷⁴

Moreover, privateering gradually became regarded as the weapon of weaker powers. By using privateers, even a small or neutral state that could not afford a standing navy still could disrupt and threaten a greater power's overseas trade. Thus, by the mid-nineteenth century, the great powers of Europe looked

favorably on prohibiting privateering. The general sentiment is illustrated nicely by a letter written by Britain's prime minister, Lord Palmerston, to the queen in 1856: "With regard to the proposal for an engagement against privateering, it seems to the Cabinet that as Great Britain is the Power which has the most extensive commerce by sea all over the world, which Privateers might attack, and has on the other Hand the largest Royal Navy which can do that which Privateers would perform, Great Britain would find it for her Interest to join in an agreement to abolish Privateering."⁷⁵

Thus, states' increasing strength, coupled with their wish to improve and consolidate state control, motivated the decline of nonstate actors like privateers because they undermined that state control, which incentivized states to monopolize the use of force at sea, as they did on land as well following the Treaties of Westphalia (1648). This prompted the consolidation of what has been called the antimercenary norm, which arguably can be extended to include an antiprivateering norm.⁷⁶

A NEW INTERNATIONAL NORM ON THE USE OF FORCE AT SEA

To guarantee the private sector's subordination to national navies, the great powers replaced the centuries-old and well-established international law of prize with a new legal regime. On 30 March 1856, delegations from Britain, France, Prussia, Austria, Sardinia, Russia, and the Ottoman Empire signed the Treaty of Paris, ending the Crimean War (1853–56). The convened powers also issued the Paris Declaration respecting Maritime Law, which was intended to "establish a uniform doctrine" on "maritime law, in time of war." The declaration stated that

1. Privateering is, and remains, abolished;
2. The neutral flag covers enemy's goods, with the exception of contraband of war;
3. Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag;
4. Blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.⁷⁷

They thus agreed on three principal ideas: free ships make free goods, blockades must be effective, and (most importantly) privateering is prohibited.⁷⁸ The declaration's primary goal of abolishing privateering therefore was settled in the first article. The agreement provided that states not in attendance at the Congress of Paris would be invited to accede to the declaration. Subsequently, all major powers of the time did so, except for Spain and the United States.⁷⁹

The United States refused to accede, because the declaration did not go far enough to protect private property rights at sea, and it disproportionately disadvantaged smaller naval powers (which included, at the time, the United States),

which were obliged to rely on privately commissioned warships in times of war.⁸⁰ While Spain eventually acceded to the declaration in 1908, after the Second Hague Conference (1907), the United States persisted in its refusal unless an amendment was added regarding privateering—that the private property of citizens of belligerent nations was exempt from capture at sea by an opposing naval force; this demand was not heeded. Nevertheless, during both the American Civil War (1861–65) and the Spanish-American War (1898), the United States proclaimed that it would adhere to the rules of the declaration without acceding to it formally.⁸¹ Consequently, state compliance with the declaration's ban was broad enough that privateers essentially disappeared from the oceans.⁸² Accordingly, the Declaration of Paris was the first international instrument to provide general principles for the law of war at sea.⁸³ Its principles ultimately became considered part of the general principles of maritime law, constituting a new norm on the use of force at sea.

The state monopoly on force thus was extended to the maritime domain, as the law of the sea became centered on sovereign links between ships and states.⁸⁴ The Declaration of Paris's principles—reflecting a new international norm in the maritime-warfare and -security environment—eventually were enshrined in the United Nations Convention on the Law of the Sea (UNCLOS, 1982), which established the general legal framework for all maritime activities. Besides reiterating concepts such as the *freedom of navigation* (article 87), which states that ships flying the flag of any sovereign state shall not suffer interference, UNCLOS also codified the right to *innocent passage* in territorial seas, which proscribes vessels exercising it from engaging in hostile activities, which, among other things, prohibits the presence and use of weapons on board civilian vessels (article 19).⁸⁵ These arrangements, therefore, make the use of force by nonstate actors such as privateers almost impossible legally. Article 101 of UNCLOS functionally defines privateers as pirates or criminals. It prohibits the following:

- (a) 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, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State.⁸⁶

In this way, the internationally established customary practice surrounding the outsourcing of armed force at sea to nonstate actors successfully was replaced by a state monopoly on force in the maritime domain, effectively since the Paris Declaration of 1856.

The market for nonstate armed forces at sea was, therefore, not one that can be proved to have “failed”; rather, it was eliminated by international politics. Accordingly, the historical record on the outsourcing of armed force to commercial nonstate actors belongs alongside Coase’s lighthouse model as an example of the successful provision of a public service—armed force—by a private enterprise. Consequently, this suggests that a significant “gap” in the security market could motivate, in turn, the established international norm to be overturned again and see private, nonstate providers of maritime force reemerge.

THE EMERGENCE OF PRIVATE MARITIME-SECURITY COMPANIES IN THE TWENTY-FIRST CENTURY

As Barack Obama was being inaugurated as president of the United States in 2009, an interesting and far quieter development was under way less than two hundred miles south in Norfolk, Virginia: the conversion of the survey ship *McArthur* into an armed escort vessel, owned and operated by the private military company Blackwater Worldwide, to provide maritime-security services in the Gulf of Aden.⁸⁷ While President Obama’s ascent to power was characterized by some careful optimism about the international security environment, 2009 also saw further intensification of the piracy off the coast of Somalia, perhaps culminating with the *Maersk Alabama* incident, the first successful seizure of an American-flagged ship since the nineteenth century.⁸⁸

The fitting out of *McArthur* by a privately owned security company represented an entirely different set of future expectations about the changing nature of the maritime-security environment, the risks involved, the failure and reluctance of states to respond to those risks adequately, and the degree to which private actors were considered an option to mitigate them.⁸⁹ Within ten years of *McArthur*’s refit, the global maritime-security environment evolved from being the exclusive domain of the world’s navies and coast guards into a complex web of public and private actors, with PMSCs increasingly becoming established players.⁹⁰ With the reemergence of high-seas piracy, commercial nonstate actors resurfaced after more than a century-long absence from the field of maritime warfare and security.

The number of security companies offering armed security services to commercial ship operators peaked between 2011 and 2012. During those years, many new security companies emerged to market their services to the shipping industry, while several established private military and security companies such as Blackwater Worldwide (before its subsequent name changes) refocused or expanded to provide maritime-security services as well.⁹¹ Modern piracy, especially the explosion of Somali piracy beginning in 2008, has been the critical factor contributing to this sudden development.

The Modern Piracy Problem's Origins

With the consolidation of state power in the maritime domain in the nineteenth century and the end of privateering in 1856 (along with the early modern piracy the privateering indirectly fueled), large-scale international piracy was reduced to a few dozen incidents a year in a few isolated regions worldwide.⁹² During the drafting of UNCLOS, negotiators questioned whether piracy should be addressed at all or simply understood as a historical phenomenon with no contemporary relevance.⁹³ Yet statistics collected by the International Maritime Bureau indicate a sharp rise in the number of acts of piracy and armed robbery against ships in the four decades since UNCLOS was concluded: swelling from fewer than fifty per year in the 1980s to several hundred in the early twenty-first century, with almost five hundred incidents reported in 2000.⁹⁴ This trend continued into the second decade of the millennium before piracy attacks began to decline in 2012.⁹⁵

Three regions are most notable in this modern wave of piracy: the waters around Southeast Asia, the Gulf of Guinea, and the Gulf of Aden. In Southeast Asia, pirates have been particularly active in the waters surrounding Indonesia, Malaysia, and the Philippines. From the 1990s to the middle of the following decade, this region was considered the global piracy hot spot, with its concentration of major global ports and critical maritime choke points such as the Malacca Strait making it attractive to pirates.⁹⁶ Most attacks were simple hit-and-run robberies, but more-serious incidents, such as hijackings of entire ships and kidnappings for ransom, also occurred.⁹⁷ Thanks to international coordination and regional governments' improved naval patrols, the attacks diminished, reaching their lowest level in 2009.⁹⁸ After the steep decline of Somali piracy that began in 2012, Southeast Asia once again became the most pirate-infested area quantitatively, experiencing a surge between 2012 and 2014.⁹⁹

The Gulf of Guinea off West Africa is a similar hot spot of modern piracy. In quantitative terms, the number of attacks registered in this region has remained relatively constant, with Nigeria consistently present on the list of most-pirate-infested nations. Piracy in this part of the world constitutes a severe threat to maritime security for two important reasons. First, it mainly is aimed at stealing cargo—chiefly oil—and secondarily at kidnap and ransom, although the latter is becoming increasingly important. This means that pirates consider a ship's crew's well-being to be less important, resulting in greater intimidation and violence toward crewmembers; West African piracy is regarded as the most violent and lethal globally.¹⁰⁰ Second, piracy in the Gulf of Guinea mainly occurs in the territorial waters of fragile coastal states whose response generally has been weak and ineffective as a result of their limited capacity and governance.¹⁰¹ West African piracy also has been increasing over the last decade, with few sustainable

antipiracy initiatives in place, motivating renewed calls for international attention in the United Nations.¹⁰²

The most significant wave of modern piracy was centered off the coast of Somalia between 2008 and 2012, with a high of 544 registered attacks in 2011.¹⁰³ After foreign peacekeeping forces withdrew from Somalia in the mid-'90s, Somalia further deteriorated into a “failed state,” creating the conditions for the piracy epidemic.¹⁰⁴ In this case, the coastal state—which, in the general framework of the law of the sea, should play the dominant antipiracy role—could not secure its own waters, prevent its citizens from committing acts of piracy, or launch criminal proceedings against suspected pirates.¹⁰⁵ These conditions, existing adjacent to the southeastern approaches to the Suez Canal, through which 12 percent of global seaborne trade navigates, created ample opportunities for pirates to exploit. Moreover, the lack of legitimate economic development, opportunities, or alternatives attracted many Somalis to piracy; the annual income for an average Somali is just over two hundred U.S. dollars, while the average ransom gained from a successful hijacking is \$4 million. In 2011, the total ransom paid to Somali hijackers was \$135 million.¹⁰⁶

Somali pirates developed a specific *modus operandi* that combined violence and robbery with holding hijacked vessels and kidnapped crews for extended periods to obtain maximal ransom payments from shipowners.¹⁰⁷ Somali piracy imposed a much heavier toll on shipping than its equivalents in Southeast Asia and West Africa.¹⁰⁸ Somali piracy’s magnitude, rapid growth, and propensity for costly hijackings and extended hostage taking presented an extraordinary challenge to the international shipping industry. It is estimated that the total direct and indirect costs of Somali piracy (from rerouting ships, operating at excess speed, facing additional labor demands, and paying increased insurance premiums) peaked at nearly \$7 billion in 2010 before reducing to \$6 billion in 2012, dropping to \$3 billion in 2013, and finally stabilizing around \$1.5 billion since 2015.¹⁰⁹

The initial international responses to Somali piracy were limited and *ad hoc*. However, following the sudden intensification of attacks that began in 2008 and the increasing awareness of the threat this piracy posed to international shipping, the UN Security Council approved a series of resolutions that condemned piracy off the coast of Somalia and authorized states to combat piracy and armed robbery at sea.¹¹⁰ This led maritime organizations to establish the Internationally Recommended Transit Corridor in the Gulf of Aden and the Indian Ocean to provide a protected corridor for shipping.¹¹¹ Three major international naval operations were established to patrol these waters: Combined Task Force 151 (CTF 151) under the U.S.-led multinational Combined Maritime Forces (CMF), NATO-led Operation OCEAN SHIELD, and the European Union’s Operation ATALANTA (also called European Union Naval Force–Somalia).¹¹² Since 2009,

the number of vessels on patrol has varied, but in aggregate the total has ranged between twenty and forty warships, constituting the primary means of combating piracy off the coast of Somalia.¹¹³ However, quickly it became apparent that these naval operations alone were insufficient to address the piracy threat off Somalia. Somali pirates could successfully seize a vessel in less than fifteen minutes, making it practically impossible for warships to respond to attacks in time.

Moreover, the international naval efforts inadvertently caused the further diffusion of attacks by incentivizing pirates to adopt “mother ships”—larger, seaworthy vessels from which pirates could launch skiffs against targets farther and farther from the coast. The pirates’ area of operations expanded to approximately 2.5 million square miles, meaning that each force of twenty-five warships would need to patrol an area of one hundred thousand square nautical miles—an impossible task.¹¹⁴ It has been estimated that a force of at least eighty-three warships working in coordination would be required to achieve a still-insufficient thirty-minute response time to reported attacks.¹¹⁵ As a result, attacks continued unabated hundreds of miles off Somalia’s coast.

A Private-Sector Response

The inadequacy of counterpiracy efforts, coupled with the limitations on international naval operations, created a market gap and, with it, the conditions for a private-sector response. As pirate attacks persisted despite naval patrols, shipping companies were compelled to seek additional protection from other sources; private maritime-security companies quickly responded to this growing demand.

Since the end of the Cold War, the notion of the state as the exclusive provider of security increasingly has been challenged by nonstate actors such as international organizations, nongovernmental organizations (NGOs), and private businesses.¹¹⁶ Private military companies (PMCs) were among these new actors—private, for-profit firms that specialize in (armed) security services that had been, until recently, largely state-military terrain.¹¹⁷ Private maritime-security companies are a specialized subset of PMCs that focus on the maritime domain. Some well-established traditional PMCs, including Blackwater, G4S, Aegis Defence Services, and Hart International, also began offering maritime services following the increased demand that emerged starting in 2008.¹¹⁸ Compared with their land-focused counterparts, PMSCs took longer to become established, and they focused on a comparatively small range of security services, including passive security services such as performing risk assessments, and active security services such as armed and unarmed protection of vessels and other maritime assets and installations.

At sea, armed security services offered include the protection of offshore energy installations, operations against illegal fishing, and the protection of vessels such as merchant ships, fishing boats, yachts, and cruise ships.¹¹⁹ Protection can

be required against a variety of perpetrators, including terrorists, insurgents, and radical activist groups, in addition to profit-seeking criminal enterprises.¹²⁰ For example, offshore oil and gas installations have been targeted by both environmental activists and insurgents. Maritime-security companies have been consulted on Greenpeace activists' attempt to climb onto a Gazprom offshore platform in September 2013 to protest drilling in the Arctic, and attacks against oil and gas installations by the Movement for the Emancipation of the Niger Delta.¹²¹ However, the most prominent and profitable services offered by PMSCs are related to antipiracy.

While PMSCs offer a wide range of antipiracy services, including risk assessments, crew training, and consultancy, the most prominent and controversial services are the provision of armed guards on board client vessels and the use of armed escort vessels, which are the focus of this article.¹²² Such armed antipiracy services are employed by shipowners and shipping companies when the state cannot ensure their safety and security at sea and the client believes that the threat is significant enough to justify the costs. Shipowners began using PMSCs to provide antipiracy services with the increase of piracy in Southeast Asia in the early years of the first decade of the twenty-first century, but the Somali piracy epidemic turned maritime security into a booming industry.

At the turn of the millennium, piracy in the Malacca Strait caused international concern because of its strategic importance for global trade. In 2005, the Lloyd's Market Association's Joint War Committee declared the Strait of Malacca to be a "war risk area."¹²³ In response, certain shipowners started to hire PMSCs such as the Singapore-based firm Background Asia and the Australian firm Counter-Terrorism International.¹²⁴ In most cases, these companies provided armed guards on board a client's ship, but as demand increased a few companies began using armed escort vessels that accompanied ships through the strait. Most of these companies were relatively small (many only consisting of two to five permanent employees) and were established and operated by ex-military personnel. However, the use of PMSCs remained limited because most piracy incidents in Southeast Asia were hit-and-run robberies (i.e., not vessel seizures or kidnappings), which did not justify the costs of hiring a PMSC. As Southeast Asian piracy declined in the subsequent decade, the employment of PMSCs significantly dropped as well.¹²⁵

The decline of piracy in Southeast Asia was more than compensated for by the subsequent rise of Somali piracy. As the international responses to the piracy epidemic proved insufficient in stopping the attacks, shipowners turned to the private sector for additional protection. The ineffective state-led antipiracy efforts created a security vacuum that PMSCs filled. For the most part, PMSCs provide onboard armed guards for transits through the high-risk areas off the

coast of Somalia. The size of the security teams varies significantly, ranging from as few as two to as many as twenty guards, depending on the type of vessel.¹²⁶ While two to six guards commonly are employed on merchant vessels, PMSCs also have been hired to protect fishing boats, yachts, and cruise ships, leading to differing team sizes and responsibilities.¹²⁷ As a result of these varying sizes and the security teams' varying skills and experiences, the costs for these services have ranged between \$15,000 and \$100,000 per passage.¹²⁸

The teams generally carry small arms, which they bring on board the client's vessel and remove on disembarkation. Because of the vast area in which Somali pirates operate, PMSC operators must stay on board the vessel for longer periods than similar missions in the Malacca Strait. Usually, teams board vessels traveling from Europe to Africa en route to Asia after transiting the Suez Canal, and they disembark in places such as the Seychelles or Sri Lanka once the vessel is through the high-risk area.¹²⁹

Some companies began experimenting with the use of armed escort vessels to accompany client vessels through high-risk waters. Besides Blackwater's refitting of *McArthur* mentioned previously, other PMSCs have fitted out armed escort vessels—notably, Protection Vessels International, founded in 2008, which operates a small fleet of armed patrol boats that carry six to ten crewmembers and are armed with crew-served weapons such as .50-caliber machine guns.¹³⁰ Because using armed escort vessels avoids the logistical hassle of embarking and disembarking armed security teams, Protection Vessels International's rates were not much different from those for onboard guards, averaging around \$50,000 for an eight-day mission.¹³¹ While the use of armed escort vessels did not become widespread in the Indian Ocean region, they are becoming more common in West Africa, where local laws are more permissive.¹³²

While it is difficult to assess the exact number of transits protected by PMSCs, because of confidentiality agreements and the general opaqueness of the sector, it was estimated that 40 to 60 percent of merchant shipping in the high-risk area off the coast of Somalia was protected by some form of armed private security as of 2013. The embarkation of armed guards constituted the great majority—over 90 percent—of the protection provided for these transits, and it yielded between \$1.15 billion and \$1.53 billion in annual revenue.¹³³ The remaining 10 percent of privately protected transits were performed by armed escorts.¹³⁴ In contrast, a 2009 assessment found that only 1 percent of merchant vessels employed private protection.¹³⁵ More recently, the use of these services declined from around 1,500 protected transits per month in 2011–12 to about a thousand as of 2018, according to private security professionals.¹³⁶ Currently, while it is difficult to verify, the market-leading PMSC, Ambrey, claims to provide around 520 protected transits a month.¹³⁷

With regard to effectiveness, the use of PMSCs has produced encouraging results. The success rate of pirate attacks decreased from 38 percent in 2008 to 22 percent in 2010 and fell to 12 percent in 2011. Accordingly, maritime-security representatives claim that armed security teams deterred at least 90 percent of all unsuccessful acts of piracy.¹³⁸ Therefore the mere presence of armed security teams often is considered sufficient to deter pirates from attacking, as pirates generally do not seek an actual engagement. Nevertheless, anecdotal evidence from security representatives confirms instances in which private contractors have been involved in “full combative shooting . . . [and] putting rounds on target,” resulting in the confirmed death of at least one pirate.¹³⁹ For example, in 2009, the Italian cruise liner *MSC Melody* made headlines when its private security guards successfully repelled a pirate attack after a heavy exchange of gunfire.¹⁴⁰ As a result, both media headlines and supporters of PMSCs frequently use the famous claim that “no ship with an armed security team embarked has been boarded or hijacked.”¹⁴¹ However, the lack of oversight and reporting makes the number of actual exchanges extremely difficult to verify.

The number of successful hijackings and the millions of dollars paid in ransom during the early days of the Somali piracy epidemic caused demand for PMSCs to skyrocket. As private maritime security was a niche business, many new PMSCs were established to meet the increasing demand. At its peak, around three hundred companies were believed to offer antipiracy services. This mushrooming effect was possible because most of these enterprises were small businesses with very few permanent staff. These small firms generally were operated by ex-military personnel who hired guards on temporary contracts as needed.¹⁴² As piracy declined and PMSCs became subject to increasing international (self-)regulation, the industry consolidated significantly and now is dominated by a smaller group of larger firms, such as the British companies Ambrey and Hart Maritime, the Malta-based firm Seagull Maritime Security, and Neptune Marine based in the United Arab Emirates.¹⁴³ However, as Somali piracy declined, piracy in Southeast Asia and the Gulf of Guinea resurfaced. The Gulf of Guinea especially requires attention, as established PMSCs increasingly are seeking new contracts in this part of the world, often in cooperation with local governments, which they advertise openly on their websites.¹⁴⁴

DYNAMICS UNDERPINNING THE OUTSOURCING TO PMSCs

Piracy's modern resurgence, especially off the coast of Somalia, was a turning point in the history of maritime warfare and security, as it influenced heavily the emergence and consolidation of armed nonstate actors. However, not all these armed guards initially were provided by PMSCs, because some flag states were reluctant to authorize private security contractors aboard civilian vessels in light

of the established international norms and national laws of both flag and coastal states over armed force.

Instead, to respond to the increasing demand for additional protection from the shipping industry, some flag states established vessel-protection detachments (VPDs) made up of military personnel.¹⁴⁵ Several European flag states, including the Netherlands, France, and Italy, initially did not allow the use of PMSCs, because of a strong conviction about upholding the state monopoly on the use of force.¹⁴⁶ On the other hand, Greece, the United Kingdom, and the United States embraced private alternatives and facilitated the use of PMSCs by their respective merchant fleets. Ultimately, however, virtually all major European flag states permitted the use of PMSCs, with the Netherlands being the last flag state to adjust its legislation, in 2022.¹⁴⁷

Consequently, more than forty flag states, comprising 85 percent of the world's merchant fleet, have established legislation facilitating the use of PMSCs.¹⁴⁸ This raises the question of why these flag states ultimately decided to outsource the use of force at sea to these commercially motivated nonstate actors despite the international norm that positions the state as the exclusive provider of armed maritime security. Are the modern dynamics underpinning the outsourcing to PMSCs similar to those during the early modern historical period set out in the previous section surrounding the use of privateers and mercantile companies?

The rise of PMSCs was coupled with much media attention, primarily because of the controversy attached to using private actors within what was traditionally considered a public domain. It was not long before media outlets started using historical concepts such as privateering to describe these nonstate actors, with headlines such as “The Return of the Privateers.”¹⁴⁹ In 2012, the Lowy Institute, an Australian think tank, published a report about Somali piracy that casually equated PMSCs with privateers.¹⁵⁰ The current article, however, distances itself from such connotations. It is essential to clarify that PMSCs are not modern reincarnations of the early modern privateers. Instead, both actors should be considered within their respective historical contexts to prevent oversimplified parallels that do not hold analytical value. When an analysis focuses on the actors themselves, it becomes clear that they cannot be equated for various reasons, both operational and technical. For example, privateers were focused offensively (as their revenue depended on seizing prizes), while PMSCs are structured to provide defensive and protective services. Moreover, while privateers presented a relatively cost-effective means of acquiring the service of expensive naval capabilities (i.e., warships), modern PMSCs generally provide manpower-oriented solutions and escort vessels whose size, capabilities, and endurance are not analogous to what modern navies provide in the way that early modern privateering ships were comparable to the ships of national navies of the time.¹⁵¹

As a result, rather than analyses' looking at the actors themselves, the focus should shift toward the dynamics underpinning the emergence and facilitation of these nonstate actors. Focusing on these dynamics presents a more valuable analysis because it can provide important insights into the motivations surrounding the decision to outsource the use of force at sea to nonstate actors such as PMSCs. When the analysis zooms out from the actors themselves and looks at the broader dynamics underpinning the outsourcing of armed force through PMSCs in the twenty-first century, it becomes possible to position these nonstate actors within the larger historical record surrounding the nonstate use of force in maritime warfare and security.

Both PMSCs and their early modern counterparts are characterized by possessing both public and private roles. As commercially motivated private enterprises, they seek to maximize profits and market share. At the same time, they deliver a public service with the provision of authorized use of force.¹⁵² Consequently, it is instructive to map the rationales underpinning the use of modern PMSCs onto the same dynamics that underpinned the early modern outsourcing of armed force at sea.

Limited State Resources

With the end of the Cold War, world powers drew down their militaries and, especially, their navies. Simultaneously, new maritime regulations, such as the International Ship and Port Facility Security Code (2004), were introduced in response to threats from terrorism that required improved security measures from both the shipping industry and states.¹⁵³ Complying with these new regulations while also responding to the growing range of security threats, including nontraditional threats such as terrorism, required additional manpower and resources, overstressing state capacities.¹⁵⁴ As a result, when the piracy epidemic took off, states often found themselves without sufficient resources to respond adequately to all requests for protection. Once again, there appeared to be a gap between the rewards from piracy and the risks of being caught by international naval coalitions, which proved insufficient, while collectively costing around \$1.5 billion annually.¹⁵⁵ Accordingly, as states had to direct their limited resources effectively while balancing their national-security interests, they increasingly were forced to facilitate more-cost-effective solutions.

Several flag states facilitated the use of PMSCs after admitting to being overwhelmed by the number of requests from their shipping firms for additional onboard protection from VPDs. For example, the German Ministry of Defense publicly stated that the number of calls from shippers requesting armed protection from military or law-enforcement personnel reached a threshold where it no longer could address the issue adequately on its own.¹⁵⁶ Thus, while several predominantly European flag states, such as Germany and the Netherlands, initially

demonstrated the will to uphold the monopoly on force by exclusively offering such VPDs, ultimately this proved unsustainable.

From March 2011 to November 2012, the Netherlands received only 144 requests for VPDs, while over 450 Dutch vessels transited the high-risk area off Somalia.¹⁵⁷ This was primarily because of complaints by the Dutch shipping industry about the lengthy administrative steps needed to process the applications, the lack of flexibility, and the relatively expensive rates, all of which affected competitiveness.¹⁵⁸ Yet the Dutch military still could not meet this comparatively low demand (relative to the need) and only filled forty of the 144 requests.¹⁵⁹ Limited defense resources, coupled with the small number of available VPDs, left the Dutch military unable to protect more than two vessels simultaneously.¹⁶⁰ Even when the number of military personnel tasked with vessel-protection missions increased to 175 in 2013, the Dutch defense minister still admitted that they could not meet all the shipping industry's requests for protection.¹⁶¹

The Netherlands was not alone in this problem; similar dynamics plagued other flag states, such as Denmark, Italy, and France.¹⁶² Additionally, it is essential to note that about 70 percent of the globe's commercial fleet is registered under a different state from that of the ship's owners—the practice of using so-called flags of convenience. Three flag states, in particular, host the largest open registries, collectively representing 40 percent of global tonnage: Panama, Liberia, and the Marshall Islands.¹⁶³ These flag states, however, are comparatively small nations that do not possess the military or naval capabilities to protect the enormous merchant fleets for which they are responsible. Unsurprisingly, as soon as the shipping industry requested additional armed protection following the increasing pirate attacks, many flag-of-convenience states began resorting to PMSCs to provide vessel security.¹⁶⁴

In comparison with the high deployment costs and the limited number of military personnel that generally can be made available for the mission, PMSCs provide a more cost-effective, flexible, and financially viable solution to the threat of pirate attacks.¹⁶⁵ Moreover, similarly to how the early modern privateers and the Bombay Marine financed themselves, by outsourcing the use of force to PMSCs states effectively make private industry responsible for its own security while preserving limited state resources. This last point was endorsed by Admiral William Gortney, USN: "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."¹⁶⁶

Lack of Political Will

Admiral Gortney's point touches on the second dynamic that underpins the attraction of PMSCs: political will. While resource constraints faced by states such as the Netherlands and Germany significantly affect their military capacity and,

therefore, their ability to provide additional protection to merchant shipping, other flag states, such as the United States, which has a relatively small merchant fleet but a large military force, also adopted the use of PMSCs. Similarly to Bourbon France's preference for outsourcing the use of force at sea in the seventeenth and eighteenth centuries, a flag state's political will again represents an important factor in the decision to outsource armed force at sea in the twenty-first century.

Besides limited state capacity, the ultimate decision to use PMSCs to protect merchant vessels rather than committing additional state resources is a political one. Political decisions, however, are rarely entirely rational or grounded on systematic, evidence-based analysis.¹⁶⁷ In reality, a flag state's political culture and ideologies, and its decision makers' perceptions and biases, all inform the decision whether to use PMSCs. The broader trend since the mid-1980s toward privatizing public services and state-sector enterprises, such as health care and education, and the privatization of ports in the maritime domain, therefore, is an essential backdrop to the decision to outsource the use of force at sea.¹⁶⁸

Neoliberalism has played an important role in encouraging the involvement of private actors in a wide array of traditionally public services such as security.¹⁶⁹ Accordingly, states with a solid neoliberal tradition, such as the United States and the United Kingdom, have embraced outsourcing security and even military services to a relatively large degree. Indeed, following the extensive use of private military contractors in its wars in Afghanistan and Iraq, the United States was one of the first flag states to suggest openly the use of PMSCs to provide maritime security. Its *National Strategy for Maritime Security* report of 2005 included a recommendation to "embed security into commercial practices," stating that "private owners and operators of infrastructure, facilities, and resources are the first line of defense for their own property, and they should undertake basic facility security improvements."¹⁷⁰ Accordingly, since 2008 the United States consistently has pushed for PMSC engagement in vessel-protection duties. Similarly, the neoliberal beliefs underpinning the British political culture made the United Kingdom one of the first European flag states to prefer the use of PMSCs over military alternatives, which it enacted in 2011 through the interim guidance for U.K.-flagged shipping on the use of armed guards.¹⁷¹ Thus, such liberally oriented flag states framed the protection of private assets such as merchant vessels as an activity that state personnel should not be expected to perform, preferring to outsource such duties to commercially motivated private actors such as PMSCs instead.¹⁷²

Moreover, the relatively unsuccessful international attempts to suppress piracy had the ironic effect of hardening political opposition to expending additional state resources on antipiracy efforts. For example, the deterrent effect of the international missions proved to be extremely limited, because the prosecutions of

captured pirates mostly were unsuccessful. Difficulties around competing legal jurisdictions and complications with obtaining evidence (even within NATO there was no standard legal framework for the arrest and transfer of pirates) meant that more than a thousand apprehended pirates were awaiting trial in twenty different countries by 2011.¹⁷³ In many instances, frustrated navies simply caught, disarmed, and released suspected pirates rather than contribute to the existing legal backlog.¹⁷⁴ As a result, political support for counterpiracy efforts declined, and states became increasingly reluctant to engage in them at all.

At the same time, because bureaucratic organizations tend to resist activities that they see as peripheral to their primary missions or responsibilities, military organizations increasingly began viewing counterpiracy efforts, and especially vessel-protection duties, as outside, and a distraction from, their core missions.¹⁷⁵ Even the Dutch Ministry of Defense—which initially saw vessel-protection roles as important and demanding tasks requiring large teams of elite forces—gradually expressed its unwillingness to perform vessel-protection duties as strategic priorities evolved and it began considering vessel-security assignments to be menial and unwelcome, distracting scarce and elite personnel from more-essential missions.¹⁷⁶ Thus, the growing sentiment expressed among most flag states' senior military leadership was that outsourcing presented a preferable alternative to military solutions because it freed resources that otherwise would need to be employed to protect merchant vessels. As Rear Admiral Terence McKnight, the inaugural commander of CTF 151, admonished, "It is time for the maritime community to take responsibility for their own security and free our navies to defend our freedoms on the high seas."¹⁷⁷

Asymmetric and Nontraditional Security and Warfare

The fact that senior naval leaders tasked with confronting piracy off the coast of Somalia recognized and endorsed the value of outsourcing the use of force to PMSCs illustrates the gravity (or perhaps the irony) of the situation. We see that similarly to the dynamics of the early modern period, and building on those previous dynamics, outsourcing armed force at sea especially is attractive for addressing asymmetric forms of warfare or nontraditional maritime-security threats that conventional naval forces prefer not to engage.

The end of the Cold War not only led to the downsizing of major militaries globally; it also ushered in changes to the character of conflict. Interstate wars and wars of decolonization declined, while intrastate conflict and civil wars increased, along with a rise in international terrorism.¹⁷⁸ In the maritime domain, this continues to manifest as an increased focus on nontraditional security threats such as illegal fishing, maritime terrorism, and piracy.¹⁷⁹ These nontraditional security threats, however, do not lend themselves well to conventional or symmetric military responses. Indeed, the raiding of merchant shipping by pirates, whether

in the seventeenth century or the twenty-first, was and remains fundamentally an asymmetric form of warfare. The attackers—today, the Somali pirates—can strike at vulnerable targets at the time and place of their choosing. The defenders, on the other hand, must guard all targets at all times over a wide area.¹⁸⁰ States' primary means of combating piracy, however, is to send massive warships to perform naval patrols. These highly sophisticated, capable, multipurpose vessels can project levels of force many magnitudes greater than what pirates can bring to bear with skiffs and small arms, but can cost \$2 to \$4 billion per unit.¹⁸¹ One observer compared this situation to fighting a small house fire with an air-dropped flame retardant from a DC-10 plane—workable, if one's firefighting budget is infinite, but an inefficient allocation of resources.¹⁸² Fighting piracy with conventional naval forces is not a cost-effective, proportional, or appropriate solution.

While advanced warships might be well suited to conducting a variety of high-intensity tasks, the trend toward maximizing capabilities is coupled with navies reducing their overall number of hulls as well, producing a gap around some lower-intensity tasks related to nontraditional security threats such as counterpiracy efforts.¹⁸³ Nontraditional security threats thus lend themselves better to the specialized responses provided by commercially motivated nonstate actors such as PMSCs. Rather than patrolling an extensive area with a small number of powerful ships, embarked guards and a larger number of cheaper and smaller escort vessels provide a more-effective defense and deterrent against pirates.¹⁸⁴ Both these tasks are better suited to outsourcing, because they are manpower-centric rather than platform-centric, like conventional naval forces.

The VPDs provided by states often are required to meet the extensive and strict regulations attached to every official military deployment, even while vessel-protection duties often are considered low intensity. These high standards for personnel make VPDs relatively expensive, which affects the competitiveness of the flag state's shipping companies. In the Dutch example discussed above, until 2012 shipping companies were required to pay a lump sum of €150,000 as a basic tariff, with an additional fee of €25,000 per week of a VPD deployment. This meant that an average three-week deployment cost shipowners around €225,000 (though this eventually was reduced to €105,000 in 2012).¹⁸⁵ Even at this reduced rate, government-furnished VPDs remained an expensive solution compared with PMSCs, which generally charge rates between €11,000 and €75,000, depending on factors such as the number of guards, the duration of the voyage, and the client vessel's size.¹⁸⁶ Interestingly, unlike the flexible team sizes of PMSCs, the Dutch VPDs always consisted of at least eleven personnel, to adhere to deployment requirements and regulations.¹⁸⁷ Frustrated Dutch shipping companies argued that they were forced to pay around one and a half times more than their competitors in flag states that facilitate PMSCs as a security option.¹⁸⁸

Thus, as nontraditional security tasks, including counterpiracy efforts, were relegated by navies to being noncore missions, outsourcing such manpower-centric solutions to PMSCs became desirable as well. Armed escort vessels, while outfitted with weapons, communications equipment, and navigational systems, still have more in common (and not least their cost) with specialized commercial vessels than the advanced, multimission naval warships that states assign to the international counterpiracy flotillas. Yet the increased use of such smaller escort vessels by PMSCs, especially in West Africa, does conform to the notion that counterpiracy operations merit such less-sophisticated vessels.¹⁸⁹ Indeed, it seems that a small number of highly sophisticated and expensive warships is less effective at defending against pirates than a larger number of cheaper and smaller escort vessels.

PMSCs have been able to offer shipping firms the sort of close protection, availability, and appropriately scaled weaponry and capabilities that state forces simply have not been able to provide efficiently against asymmetric and nontraditional security threats such as piracy.¹⁹⁰ This has made outsourcing maritime security tasks to PMSCs attractive. Moreover, as states increasingly are refocusing their military organizations on traditional security objectives amid the return of great-power politics, future markets and opportunities for PMSCs to address nontraditional security threats may increase.¹⁹¹

The study of history lies at the foundation of all sound military conclusions and practice.

ALFRED THAYER MAHAN, *THE INFLUENCE OF SEA POWER UPON HISTORY, 1660–1783*, 1890

Over the past two decades, the resurgence of maritime piracy—especially off the coast of Somalia—has precipitated the reemergence of nonstate actors in the maritime-warfare and -security environment in the form of PMSCs. These companies increasingly have offered their armed security services to a wide array of clients in various flag states, gradually becoming established players in the maritime-security domain of the twenty-first century. While they are not necessarily modern reincarnations of the privateers and mercantile companies of the early modern period, the outsourcing of armed force at sea to these PMSCs nevertheless is underpinned by similar dynamics. As in the past, governments facing severe resource constraints have sought the support of commercially motivated private actors to address security threats that often are not (politically) considered core missions for the respective states' military and security institutions, especially regarding the various nontraditional security threats such as piracy. This positions PMSCs within a long line of nonstate actors in the history of maritime warfare and security.

Consideration of this historical dimension is essential when analyzing the changing maritime-security environment. Through in-depth historical analysis, it becomes clear how the private sector's employment in maritime warfare and security has waxed and waned, reflecting global historical trends in the balance of roles and responsibilities between the private and public sectors.

Ultimately, the use of PMSCs is underpinned by the need to improve the security of people and goods at sea. The introduction of firearms on board merchant vessels through PMSCs, therefore, illustrates a compromise solution, whereby the services that PMSCs offer against nontraditional security threats result from a lack of both the necessary capacities and the political will of states. In turn, this situation could suggest the development of a new norm in the maritime-security environment, under which nonstate actors such as PMSCs once again become relevant stakeholders instead of exceptions to the rule. While the use of PMSCs initially was considered an exception, its positive results against Somali piracy strengthened the trend's momentum and even led to praise from reluctant flag states.

While the employment of PMSCs has declined since its peak in 2011, it is important to remember that the prominence of the East India Company's private navy also ebbed and flowed, following the trends in piracy. Indeed, when Somali piracy attacks declined in 2012, international observers quickly declared victory, insurance premiums fell, and the international naval presence diminished. This might motivate cost-saving shipowners to cut security spending, relax antipiracy measures, reduce transit speeds, and route their ships closer to the Somali coast to save on fuel. This would echo the developments of the mid-eighteenth century, when the East India Company let its guard down following a decline in pirate attacks, allowing piracy to flare up again. Riding such oscillations, the services of PMSCs gradually might become a consolidated part of the maritime-security environment.

Future research should focus on the use of PMSCs against nontraditional security threats beyond piracy, such as illegal fishing and maritime terrorism, especially considering that states increasingly are refocusing their militaries and navies on traditional security threats and missions. Such research should dedicate more attention to the overall increase in the use of nonstate actors by states in the maritime-security domain. Examples include the use of commercial nonstate assets such as fishing vessels and oil rigs by China in pursuit of geostrategic objectives in the South China Sea, and the increasing reliance by Greek and Italian coast guards on NGOs to perform migrant rescue missions in the Mediterranean Sea.

Such analyses of the proliferation of nonstate actors within the maritime-security sphere provide essential insights into these global historical trends in the balance of responsibilities between the private and public sectors in maritime

security, international security, and global governance. This contributes not only to critical debates within the field of international relations but also to the historical consciousness at large.

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