

ENSURING MARITIME SECURITY WITH PRIVATE ARMED GUARD, THE CASE OF SOMALIAN COAST PIRACY

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Abstract

The rise of incidents of piracy off the coast of Somalia in the Gulf of Aden and India Ocean affects the maritime security particularly concerning maritime security management. This paper will discuss the causes of piracy in the region and how far this development impacted the maritime security. What are the options adopted to manage the maritime security and piracy off the coast of Somalia; inter alia numerous United Nations Security Council resolutions as well as the works of the International Maritime Organization. Shipping companies are now considering of adopting the stationing of privately contracted armed guard on board of their merchant vessels, there are urgent needs to fully address the issue as it entails the question of legalistic as well as practical nature on whether it is a solution to the menace or just another option. Should the responsible flag States allow it to operate under its flag? The role of the International Maritime Organization (IMO) as the international regulatory body with regard to worldwide shipping would also be examined.

Keywords: *Piracy, Gulf of Aden, Maritime Security, Maritime Security Management, Regional Cooperation, Military Escorts, Privately Contracted Armed Security Personnel, International Maritime Organization.*

1. Introduction

Piracy exists since men started to build the ships and go beyond the frontier. As men become more and more advanced, so is the problem of piracy and its menace. It continues to be one of the main sources of income to some individuals/groups. Nonetheless, nothing in the past can beat the scourge of piracy off the coast of Somalia that is now becoming a worrying trend to the international shipping community. Piracy in the wider Gulf of Aden area has become a lingering serious security concern, despite efforts made by governments from around the world to address the problem. Why all the sudden this area came to be in the limelight of the international community in a very negative connotation? Looking at the 'failed' Somali States and inability of the coastal Gulf States towards maritime enforcement, pirates roam the surrounding ocean area and lurk for 'millions of dollars' prey where it is reported that Somalia piracy has caused the world economy up to US\$12 billion a year.

Waking up in great shock, the government and the international shipping

community beefed up their efforts in managing the problem of piracy by hiring private maritime security companies (PMSCs). Though controversial, the prime importance of securing international shipping in piracy-prone areas made PMSCs as the most popular. This paper gives a brief overview of piracy off the coast of Somalia, the work of private security providers and its controversial elements. The paper concludes on how the engagement of PMSCs could become as one of the options in unearthing a million dollar solution to the fight against piracy.

Why Piracy?

Article 101 of the United Nations Convention on the Law of the Sea 1982 defines piracy as consisting of any of the illegal acts of violence or detention, or any act of depredation, committed for private ends. The rise of piracy incidents off the coast of Somalia was primarily monetary motivated and has numerous causes but foremost is the problem of failed State which led to the unavailability of stable and effective national authority to watch the waters much less to develop the country's economy in order to ensure probable employments to its citizens. As more and more people becoming unemployed, the best alternative is to venture the vast ocean as the source of income. The most probable job they could achieve is to become a pirate³. Lower at risk, higher at pay.

Immediate Responses Done

Two main bodies in the international arena play a very prominent role in addressing the scourge of piracy. The UN through its Security Council adopted numerous resolutions such as Resolution 1897 (2009) adopted on 30 November 2009 requires all States to cooperate in the fight against piracy and investigation and prosecution of those responsible in the act of piracy. UN have also issued resolutions⁵ also calling for international community to work together to end this menace by various measures including stationing maritime troops along the Internationally Recommended Transit Corridor, counter-piracy task force⁵, Vessel Protection Detachment⁶, coming out with the Best Management Practices to Deter Piracy off the Coast of Somalia and in the Arabian Sea Area⁷ and foremost is to rebuild the failed Somali State. IMO has also issued Circulars to evade ships from possible hijackers.

The International Maritime Organization (IMO) also adopted numerous resolutions and to ensure that the waters off the coast of Somalia remain safe and secure for international shipping⁸. What most important is to ensure that those pirates are caught and be brought to justice so that it would be a deterrent to others⁹ Some argue that even so, it would not stop the youths to join piracy.

What More? PMSCS and Commercial Anti-Piracy Services

While waiting for the Somali state to mend itself, the international shipping community could not just wait for legitimate government to rule the country. Ships and cargoes have to move from one place to another, crude oil need to be passed from the Gulf States to the Far East, and goods from China has to be transported to the European markets. So the best possible option for shipping companies is to take matters on their own hand, engage private security providers (PSP). For the past 20 years or more, PSPs either on land or its maritime arms have been 'shouldering' the responsibility of government agencies by offering a vast menu of military and security services. PSPs provide services ranging from logistic support, risk analysis, training of military units and intelligence gathering, to the protection of assets and people in the conflict zones. Though their existence is surrounded with controversial, their areas of operation are global.

The PSP or private maritime security companies (PMSCs) are today highly employed to secure commercial vessels, yachts, cruise ships, offshore energy

installations, container terminals and ports. Most PMSCs offer a range of anti-piracy services, among others: risk assessment and consulting; better training of ships'crew; actual provision of unarmed or armed guards; handling of crisis situation when ships being hijacked and crewmembers taken hostage, so on and so forth.

PMSCs Employment and Controversies

The hiring of PSPs or PMSCs to protect a vessel apart from being a costly affair, it is also surrounded with controversies. Indeed, the extra cost of having to hire PMSCs seems to be more justifiable and 'convenient' for ship and cargo owners apart from putting their ships/cargoes at risks of being hijacked by pirates which would be a costly and time consuming affair.

The increasing employment of PMSCs around the world has been controversial as some argues that security provided by the PMSCs should be driven on public interest and vested upon within the realm of government agencies. As PMSCs charged hundreds of thousands of dollars depending on type of ships and its area of operation, PMSCs are always under the watchful eyes for being profit making sector. Nonetheless, proponents of PMSCs have argued that they offer more efficient services equitable to the amount paid in comparison to those provided by the government. This brings down another issue as how PMSCs handle crisis situation. Whether they have excessive use of violence and who would be responsible if they became trigger-happy? Flag States, ship owners, cargo owners, insurers or PMSCs itself. Clearly this bogs a series of uncertainty and need to be resolved.

However, controlling and regulating PMSCs is not an easy task. Being a global player, PMSCs usually do not operate in certain countries making it difficult to provide oversight over their activities. The recent move by the International Maritime Organization in drafting the Interim Guidance to Ship owners, Ship Operators, and Shipmasters on the Use of Privately Contracted Armed Security Personnel (PCASP) on Board of Ships in High Risk Area and draft Interim Recommendations for Flag States regarding the Use of Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area are seen as a step forward regulating its use. This show significant move by IMO in ensuring only reliable and professional private providers of armed security in the maritime field.

PMSCs – Option or Solution

Ever since there were strong arguments on the real necessity of the PMSCs, many have argued whether it really served as solution to the piracy menace in the wider Gulf of Aden area. There were argument that it could serve as one of the option albeit the solution to the menace is yet to be finalised; i.e. the internal situation of Somalia. Thus the PMSCs only serve the purpose of one ship at one time and failed to tackle the real problem. Inherently, shipping companies considered that engaging PMSCs as the only available option in making sure that their ships safe and secure against the act of piracy off the coast of Somalia.

2. Conclusion

Efforts which have been made to solve piracy problem off the coast of Somalia has yet to bear a fruit conclusion. Though various governmental and international bodies took major steps in order to solve it, the mammoth task still lies ahead. Thus the only available option for private shipping community is to engage PMSCs at the very least so that they could ensure that pirates would not be 'interested' or at least feared to attack their vessels. Even it is surrounded by controversies and lack of regulations; PMSCs are here to stay and the business will continue to grow and prosper until the situation in Somalia is restored to a peaceful one. The

commendable work of IMO as the regulatory body of world shipping should be sustained and supported. However, it is pertinent to note that the underlying root causes of modern-day piracy itself must be properly addressed so that piracy could be eliminated.

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