

OUTSOURCING SECURITY AT SEA: CONSTRUCTIVISM AND PRIVATE MARITIME SECURITY COMPANIES

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ABSTRACT

Between the 16th and the 19th centuries, the maritime warfare and security environment was dominated by non-state actors like mercantile companies and privateers. However, over time, such practices became outlawed as states gradually consolidated their monopoly of force over the maritime domain. Thus, the state monopoly of violence became the established international norm and armed non-state actors disappeared from the seas. This significantly changed after the sudden explosion of the Somali piracy epidemic of 2008 initiated a booming private maritime security industry. Within fifteen years, the use of private maritime security companies became a widely accepted practice within the maritime security environment. Yet, as these non-state actors are increasingly influencing the maritime security environment and the internationally established norms concerning the use of force at sea, questions arise concerning the explanatory power of mainstream IR theories like realism and liberalism in explaining the (re-)emergence and use of these modern privateers. This paper argues why constructivism provides an ideal framework to analyze both the return and use of armed non-state actors in the maritime security domain.

Keywords: *Maritime Security, Maritime History, Private Maritime Security Companies, Constructivism, International Relations Theory*

INTRODUCTION

“The maritime community must take responsibility for their vessels and ensure the safe passage of their cargo and crew through this pirated region. Is the answer to avoid the area completely or hire security teams - privateers - to protect their cargo?” - Admiral T. McKnight, Former Commander of CTF-151, 2012.

Three centuries ago, Britain used private warships of the East India Company to protect its trade in the Indian Ocean from both privateers and pirates. Indeed, throughout the larger historical record, the privatization of security and warfare has been more of a rule than an exception (McFate, 2017). Facing escalating governance costs and with their resources often stretched thin, sovereign entities frequently appealed to the services of private security enterprises like privateering to supplement state power (Thomson, 1996: 1–6). Such privateers –non-state ships and their crews, or private men-of-war, conducting authorized violence at sea– were at their height from the 13th to the 19th century. However, similarly to mercenarism on land, over time such practices became regarded as threats to state power and were ultimately outlawed in the Paris Declaration Respecting Maritime Law in 1856.

In recent years, we are witnessing a (re-)emergence of privatized violence at sea in a more modern form. The explosion of maritime piracy off the coast of Somalia in 2008 went hand-in-hand with the rapid emergence and development of so-called private maritime security companies (PMSCs). These companies provide security services to shipping companies through the provision of privately contracted armed security personnel (PCASP) and, to a smaller extent, the operation of armed escort vessels to protect a client’s ship (Liss, 2015: 63). While some countries were reluctant in allowing the use of such ‘modern privateers,’ others condoned or even encouraged it, effectively outsourcing their monopoly of violence (Aarstad, 2017).

As these non-state actors are increasingly influencing the maritime security environment as well as internationally established norms concerning the use of force in the maritime domain, questions arise concerning the explanatory power of

traditional International Relations (IR) theories like realism and liberalism in explaining the (re-)emergence and use of these modern privateers (Mitchell, 2017; van Meegdenburg, 2019; Leander, 2005). This article concludes that constructivism provides an ideal framework to analyze the return and use of armed non-state actors in the maritime security domain. After first defining both the theoretical framework as well as the case study – the PMSC – the article presents two main arguments concerning the (1) emergence of PMSCs focused on international norm change, and (2) the use of PMSCs by highlighting state choice and agency. The article utilizes contemporary historical content analysis with process tracing as the key method for analyzing whether the developments surrounding the emergence and operation of PMSCs coincide with prior theoretically derived propositions.

THEORETICAL FRAMEWORK

Constructivism emerged as an IR theory out of the trauma following the end of the Cold War. The failure of traditional IR theories like (neo)liberalism and (neo)realism to predict or explain the end of the Cold War fueled questions about the dominant theories and scientific methods of IR (Dunne, Kurki and Smith, 2021: 187–89). As a result, instead of focusing on the international structure, human nature, or material factors, constructivists, often fittingly coined idealists, introduced the idea that international relations are shaped by ideational factors. Accordingly, constructivism's emphasis on the dynamism of international norms makes it a compelling approach to study the changes in maritime security following the emergence of PMSCs.

Constructivists have generally shared a critique of the static material assumptions of traditional IR theory and emphasized the social dimensions of international relations and the possibility of change (Ibid). The variables of interest to scholars like military power or trade relations are not important to constructivists as objective facts but rather because they have certain social meanings (Wendt, 1999). Those meanings are, in turn, constructed from a complex and specific mix of history, ideas,

norms, and beliefs. Such a focus on the social context in which international relations occur leads constructivists to emphasize issues like identity and beliefs as well as the role of social norms in international politics (Anne-Marie and Thomas, 2013).

In contrast to realist and liberalist approaches, constructivists have also emphasized the role of non-state actors in shaping international relations. For example, constructivists have illustrated how non-state actors like NGOs and multinational corporations can play a role in altering state beliefs about issues like the use of landmines in war or international trade. Such 'norm entrepreneurs' are, therefore, able to influence state behavior (Anne-Marie and Thomas, 2013). On the other hand, rationalist IR theories like realism and liberalism have downplayed the significance of non-state actors such as private military contractors by characterizing such actors as mere extensions of state power (Mitchell, 2017). They argue that although private military contractors have been used extensively by states to pursue state power and interests, they have not significantly altered the way states behave nor have they been able to drive foreign or defense policy. In the end, states are still in pursuit of self-interest within an anarchic international system. However, this reasoning becomes questionable when looking at developments surrounding the private maritime security industry.

While constructivists 'have not sung from a single hymn sheet', they have highlighted several common themes, two of which are important for the present analysis on the emergence and use of PMSCs. The constructivist framework allows the analysis to first focus on international norm change. International norms shape both the social identities and interests of state and non-state actors through three mechanisms: (1) institutionalized norms condition what actors consider necessary and possible in the international system, (2) state and non-state actors justify their behavior through established norms of legitimate conduct, and (3) international norms can constrain the conduct and behavior of actors

(Farrell, 2002: 49–56; Mitchell, 2017: 11–12). Second, the idea that international relations are a social construction suggests variations across different contexts rather than a single objective reality, highlighting the importance of “national lexica” and “historical practices” (Leander, 2013: 8). In contrast to macro-level explanations regarding the “end-of-the-Cold-War” and the “spread-of-neoliberalism,” this approach allows us to focus on state choice and agency (van Meegdenburg, 2019: 25–27).

PRIVATE MARITIME SECURITY COMPANIES

Throughout the historical record, the privatization of security and warfare constituted a widely accepted international norm. References to mercenarism are as old as references to warfare itself. As argued by Janice Thomson (1996), historians generally agree that feudalism’s constraints on military service were a major incentive for sovereign entities to turn to mercenaries, as the feudal system was largely based on the principle of defense. As a result, feudal military rights and obligations presented a significant barrier to launching offensive campaigns. To overcome this constraint, European war-makers increasingly started relying on private contractors to raise and supply armies for a profit (Thomson, 1996: 26–27). In turn, with the breakdown of the feudal system of military mobilization, European sovereigns increasingly began exploiting the capabilities of non-state commercial actors like the Free Companies and the Condottieri. However, roughly since the seventeenth century, with the Peace of Westphalia (1648) often identified as a turning-point, private armed contractors started to wane following the increasing consolidation of power by powerful states like France and England (McFate, 2017: 27–32). This trend gradually extended to the maritime domain as well, leading to the ultimate prohibition on privateering following the Paris Declaration Respecting Maritime Law in 1856.

Since the mid-twentieth century, private military contractors (PMCs) have made a return on the international stage, most notably during the US invasions of Afghanistan and Iraq (Pingeot, 2014).

As a result, since the 2000s, the media attention and scholarship surrounding PMCs have expanded at a rapid rate (Mitchell, 2017: 1–5). However, at the same time, another private military/security market has developed in the maritime domain. But the utilization of private armed security contractors at sea has received much less attention than those on land (Cusumano and Ruzza, 2020: 4–6). While the maritime domain has occupied a significant position within the study of geopolitics and national power, the broader array of security issues including non-state actors has remained largely unexplored, exposing a certain ‘seablindness’ in IR theory (Bueger and Edmunds 2017).

Since the end of the Cold War, the notion of the state as the exclusive provider of security has increasingly been challenged by non-state actors such as international organizations, NGOs, and private businesses (Liss, 2015: 61–63). PMCs are amongst these new actors. They are private for-profit firms that specialize in (armed) security services that were, until recently, largely state-military terrain (Pingeot, 2014). In turn, private maritime security companies (PMSCs), as their name indicates, focus on maritime security. The most prominent and controversial services provided by PMSCs are the provision of armed guards and escorts to protect merchant ships against piracy.

The employment of anti-piracy PMSCs started with the rise of piracy in the Malacca Strait in the early 2000s, but it was the Somali piracy epidemic (2008–2012) that caused the boom of the private maritime security industry (Liss, 2015: 63–65). Attacks by Somali pirates caused international concern as the wider Gulf of Aden area is of extreme importance for international trade and the world economy. As a result, the UN Security Council authorized military action and several international military operations were launched to establish a protected corridor. However, this resulted in the diffusion of piracy activities over a much wider area, expanding to approximately 2.5 million square miles (Spearin, 2017b: 137–42).

"It's very daunting when you realize the size of the oceans and the length of the littorals and the difficulties of providing a suitable presence, as we deal with challenges that run the gamut from everything from pirates and criminals to the need for deterrence about potential peer competitors... The net of it all... is that there's no way that our Navy can do everything all over the place".

– US Navy Secretary Donald Winter, 2008. –

The massive diffusion of piracy activities meant that the military operations proved to be insufficient, as hijackings continued hundreds of miles off Somalia's coastline, forcing the shipping industry to resort to PMSCs for additional protection. It is estimated that at least 50% of the merchant ships crossing the Gulf of Aden in 2012-2013 employed armed protection (Cusumano and Ruzza, 2020: 2). Though, not all these guards were provided by PMSCs as some flag states (the state under which the ship is registered) were reluctant in authorizing the presence of private security contractors aboard merchant ships, in light of the established international norm regarding the state as the sole provider of (maritime) security. Instead, some states established vessel protection detachments (VPDs) based on the boarding of exclusively military personnel (Cusumano and Ruzza, 2018: 80-81). Interestingly, these different vessel protection policies between the various flag states emerged under similar security circumstances. A constructivist analysis therefore provides valuable insights into the motivations surrounding the decision to outsource such vessel protection duties to PMSCs.

PRIVATE MARITIME SECURITY COMPANIES AND CONSTRUCTIVISM

conditions are met prior to war (*jus ad bellum*) and during war (*jus in bello*) then it can be ethically justifiable. Nicholas J. Wheeler (2000: 33-34) proposes four criteria under which interventions can be considered ethical: just cause, last resort, proportionality, and high probability of success. In this argument we can see elements of deontological

ethics (the cause of solidarity and responsibility is itself just) as well as consequentialism (the outcome must justify the means). The way in which ethics is defined thus has a significant impact on the intAs mainstream IR theories focus on the "state" as the primary agent in international affairs, scholars had a hard time studying the emergence of PMCs in general. IR scholars who addressed the challenge of PMCs as non-state security providers focused on the implications of the private market for Democratic Peace Theory (Avant, 2006), economic liberalist explanations as to why states have privatized security (Branovic, 2011), or realist explanations of PMCs as extensions of state power (Mitchell, 2017: 7-9). However, because of the state-centric perspectives of these classic rationalist theories, they lack the ability to explain the return of privatized security as well as the significant discrepancies that are present within the vessel protection policies taken by various flag states.

For example, while realism would explain the use of PMCs as an extension of state power, it fails to explain the slippery slope states are navigating by placing military power and the means and authority to use it in the hands of a private entity they do not fully control. Moreover, while PMCs on land are most often engaged in providing services for states, in the maritime domain, these services are often provided to shipping companies or international organizations. Thus, PMSCs present non-state actors that provide services usually reserved for the state to other non-state entities. Additionally, neoliberalist explanations that solely rely on the emerging belief in the superiority of the market and the commitment to reduce the size and functions of the public sector that followed the 1980s, fail to explain the significant variations within the national arrangements of various flag states. In doing so, the state-centric theories lack explanatory power.

Emergence: International Norm Change

There have been many non-state actors involved in maritime security and warfare. The most prominent of these were privateers, but other examples include various forms of mercantile and chartered

companies. Privateers were private persons (or vessels) conducting authorized violence at sea (Spearin, 2017a). The commission of privateers was an established practice in maritime warfare and security between the 13th and the 19th centuries. Privateers could attack and capture enemy ships of whatever sort during wartime or seek out pirates (deemed the enemy of all humankind) on a commercial basis (Spearin, 2017a: 72). However, with the establishment of permanent navies and the development and enforcement of the idea of a state monopoly of force, such armed non-state actors all but disappeared from the oceans... until the emergence of PMSCs (Liss, 2015: 62).

Constructivism addresses the social dimensions of international relations and emphasizes the importance of international norms. The return of private armed maritime actors suggests that the norm against the use of privateers is collapsing, given the widespread presence of private military contractors in maritime security. Indeed, between 2010 and 2012, international regulations were changed, industry guidelines re-written, and national laws adapted to facilitate PMSCs (Aarstad, 2017: 313). As piracy attacks increased and military efforts proved insufficient, ship-owners demanded both states and international regulatory bodies to allow the use of private security contractors, creating the conditions for a booming private maritime security industry (Marin, Mudrić, and Mikac 2017, 191–95; Brown 2012, 5–6). Accordingly, the International Maritime Organization's (IMO) official position on the issue of PMSCs shifted from "strongly discouraging" the carrying and use of firearms between 1993 and 2009, to currently "tacitly acknowledging that the deployment of armed security personnel on board ships has become an accepted industry and flag state practice in certain circumstances" (IMO 2019). Within this process, the so-called "best management practices" (BMPs) of the maritime industry have been extremely influential. The BMPs are a set of pragmatic guidelines directed towards shipowners with the purpose of providing advice to both protect ships and deter pirates when transiting through dangerous waters (Cusumano and Ruzza, 2018). The BMPs were introduced in February 2009, when pirate attacks off the coast of Somalia were rapidly

increasing and the international naval missions had just been deployed.

Since then, the BMPs have been revised four times, with the fifth and latest version – the BMP5 – published in June 2018. It is important to emphasize that the BMPs are a product of the private maritime industry, they are devised and supported by a set of non-state actors including shipping associations and PMSCs themselves (Cusumano and Ruzza, 2020). Due to the massive support from the maritime industry, these industry self-regulatory guidelines have been endorsed by the IMO as well as by several flag states. Denmark has even incorporated these guidelines in their national legislation surrounding the use of PMSCs (Frier, 2018). This illustrates how non-state actors like shipping companies and PMSCs are not merely passive actors within an international system defined by states, but that they actively shape the rules guiding that very system. In doing so, demands from non-state actors like shipping companies resulted in the adaptation of internationally established norms regarding the use of force (at sea) facilitating the rise of PMSCs.

Use: State Choice & Agency

Constructivism allows the analysis of why certain flag states opt for the use of PMSCs while others emphasize the state monopoly of force, illustrating the importance of state choice and agency (van Meegdenburg 2019; Cusumano and Ruzza 2018). In contrast, neorealist theories generally look beyond domestic factors and treat the international 'system' as but the sum total of states with differing capacities. This means that the main actors –utility-maximizing states– exist prior to their interactions (Go, 2008: 204). According to this approach, flag states that outsource their vessel protection to PMSCs as extensions of state power should have similar motivations and policy arrangements related to their pursuit of national power. In reality, this is not the case. Decisions of flag states to facilitate the operations of PMSCs are shaped by shared values, understandings, and dispositions (van Meegdenburg, 2019: 25–27).

Indeed, country-specific differences result from diverging domestic norms, values, and ideas, which in turn produce variations in the compliance and interpretations of the aforementioned international norms (Kruck, 2014: 119).

The sharp increase in piracy off the coast of Somalia raised strong concerns for several flag states. In the wake of the demands voiced by the shipping industry, several flag states authorized the deployment of armed guards onboard merchant ships. Yet, national arrangements concerning the deployment of such guards differed significantly with flag states like the United Kingdom (UK), Greece, and Germany allowing the use of PMSCs while others like the Netherlands, Italy, and Belgium adopted different approaches ranging from the exclusive boarding of military personnel to hybrid alternatives (Cusumano and Ruzza, 2018: 80–82).

The UK adopted a commercial approach to the piracy threat by identifying the operation of PMSCs as the appropriate solution over a military alternative. This can be explained by the liberal beliefs underpinning British political culture and the general openness of British decision-makers towards the use of commercial actors in the security industry (Department for Transport, 2011; Cusumano and Ruzza, 2018: 87–89). Moreover, the Royal Navy's dominant military culture considered vessel security assignments as menial and unwelcome, distracting scarce and elite military personnel away from the more important "core missions" of the Admiralty. This differed significantly from the Italian Navy's position, which was rather supportive of performing vessel protection duties, as a result of the peacekeeping narrative traditionally used by the Italian Armed Forces (Cusumano and Ruzza, 2018).

In contrast, the Netherlands claimed it was confident that the military operations in the area, to which the Netherlands significantly contributed, would suffice in containing the piracy threat. However, in light of the growing number of attacks, the Royal Dutch Navigation Society (KVNR) forcefully demanded

onboard armed protection. Thus, when the IMO openly acknowledged the use of armed guards aboard merchant ships in 2011, the Netherlands opted for the deployment of exclusively military VPDs (KNVR, 2021; Cusumano and Ruzza, 2018: 89–92).

A similar arrangement was made by Denmark, where Danish 'soft' neoliberalism in combination with its 'hard' commitments to International Humanitarian Law and the monopoly of force resulted in a strong ideological position on defense contracting as incompatible with Danish norms and values (van Meegdenburg, 2019: 25–27; Frier, 2018: 221–25). In the end, however, facing heavy pressure on defense resources, both flag states were eventually forced to facilitate PMSCs as alternative solutions.

In Italy, traditional hostility towards the privatization of armed services due to the country's turbulent history marked by challenges to the monopoly of force, shaped the national discourse regarding the use of PMSCs leading to a preference for military providers (Cusumano and Ruzza, 2018: 92–94). However, it was eventually a diplomatic controversy with India in which Italian VPDs had accidentally killed two Indian fishermen, that led to Italy's shift to the use of PMSCs in contrast to motivations related to cost-effectiveness (Bevilacqua, 2018: 247–50; Cusumano and Ruzza, 2018: 92–94). These examples illustrate the variety of motivations and arrangements made concerning the operation of PMSCs in several European flag states, which in turn result from the diverging domestic norms and ideas highlighting considerable state choice and agency instead of downplaying these in favor of macro-level explanations.

CONCLUSION

Much more can be said about the recent and controversial emergence of PMSCs in maritime security, including the company profiles, working methods, and (lacking) legal frameworks surrounding these armed non-state maritime actors. This would be outside the scope of this article, however, as it

mainly aimed to advance a general theoretical point about the study of PMSCs. The article argues that constructivism provides an ideal framework to study the (re-)emergence and use of armed private actors in the maritime domain through PMSCs by presenting two interconnected arguments. First, because of constructivism's focus on international norms, it allows the analysis to explain how PMSCs emerged in an international environment where the state monopoly of force constituted a widespread international consensus. The widespread proliferation of PMSCs within the maritime security environment, illustrated that despite the international military operations to combat piracy, demands from non-state actors like the shipping industry forced international regulatory bodies and, in turn, states to facilitate private armed alternatives. Second, while traditional IR theories often presuppose state interests and present top-down perspectives on the spread of norms and views like neoliberalism (in light of outsourcing), a constructivist approach illustrates the importance of the domestic political context including the shared norms and values that guide political decision-making. This approach, therefore, helps in explaining the variety of flag state approaches to PMSCs, by taking political agency and choice into account as well.

After Somali pirate attacks declined from 2012 onwards, piracy started to resurface in Southeast Asia and the Gulf of Guinea, creating more potential markets for PMSCs. These modern privateers are, therefore, seeking legitimacy in the international security environment to ensure their long-term existence. Maritime security outsourcing offers an interesting case for the analysis of international norm adaptation for IR scholars focused on micro-foundations of norms and normative change. As navies are refocusing on traditional security and becoming increasingly reluctant to spend resources on non-traditional security threats like piracy, illegal fishing, and maritime terrorism, it looks like PMSCs are here to stay.

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