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DOI:

[10.1080/10439463.2020.1732975](https://doi.org/10.1080/10439463.2020.1732975)

Document Version

Peer reviewed version

[Link to publication record in King's Research Portal](#)

Citation for published version (APA):

Gould, A. J. (2021). Sovereign Control and Ocean Governance in the Regulation of Maritime Private Policing. *POLICING AND SOCIETY*, 31(3), 337-353. <https://doi.org/10.1080/10439463.2020.1732975>

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Sovereign Control and Ocean Governance in the Regulation of Maritime Private Policing

Abstract

In recent decades, new public-private policing assemblages everywhere have constituted new forms of authority and political order in the contemporary world. Part of a broader project exploring the politics of multilateral policing in maritime space, this article examines the complex of regulatory practices governing maritime security companies in the Western Indian Ocean. While literature on private maritime security has largely focused on the regulatory mechanisms of a select few individual flag states, this article investigates how flags of convenience, international organizations and the commercial maritime community have interacted to produce a regulatory system that entrenches distinct forms of private power in multilateral policing governance on the high seas. While overwhelmingly, the regulation of private security on land has served to anchor multilateral policing in particular structures of sovereign authority and/or public good, this article argues that the assemblage of regulatory practices in the High Risk Area (HRA) is mutually constitutive of distinct forms of public-private relations and social ordering at sea.

Key Words – Piracy, Private Security, Ocean Governance, Regulation

Introduction

With the increasing normalization of private security companies in everyday policing, a consensus has developed around the idea that the state should not be assigned 'conceptual priority' (Shearing and Wood, 2003, p. 400) in the contemporary policing landscape; instead, it is just one 'node' among many, its relationships with and positioning relative to other actors constantly in flux. Abrahamsen and Williams (2011) have argued that the security field is increasingly governed by 'global security assemblages' in which commercial entities, private security companies and states, operating over a range of spatial scales, interact to produce infinitely diverse sets of security practices. The diversity of the social structures in which security provision is now embedded, they argue, suggests that security governance structures 'mark analytical spaces that lie between...common distinctions and require their own empirical investigation' (Abrahamsen and Williams, 2011, p. 218).

Recent literature on the regulation of private security, in this tradition, has demonstrated that there can be no generalization over the normativities and forms of authority underpinning different types of regulatory actor in multilateral policing governance. Loader and White, for example, have demonstrated that the extent to which regulatory governance aligns private security practices with the public good is an empirically open question. Even the regulatory act of allowing private security companies to operate in any capacity, after all, facilitates the emergence of a form of 'private power [which] may challenge and erode...the democratic social order' (Loader and White, 2017, p. 178). In Criminology and International Relations alike, scholars have frequently viewed the (evolving) regulation of private security as providing a key window into shifting relationships between public and private logics and authority structures in contemporary security governance.

Adding to a growing body of literature that aims to establish how different sets of local, regional and global dynamics intersect in shaping different policing assemblages around the world, this article explores how regulatory practices constitute the power and authority of the private sphere in multilateral security in international waters¹. Facing a threat of hijack by pirates since at least 2008, commercial ship operators in the Western Indian Ocean have frequently employed private guards to stay on board their vessels for the transit through the at-risk area. During the height of Somali piracy in 2011, around 70% of vessels transiting the Gulf of Aden carried private

¹ Beyond 12 nautical miles from the shoreline, per the UN Convention on the Law of the Sea.

security teams; some estimates put the value of the maritime private security industry at this time at \$1.1bn per year² (Oceans Beyond Piracy, 2012, p. 2).

However, the regulatory politics of maritime private policing remains poorly understood. Existing studies of the regulation of private maritime security have focused almost entirely on a small group of Western flag states, whose merchant fleets make up only a small proportion of vessels transiting the High Risk Area. This literature has neglected the reality that a vast range of actors are involved in governing maritime (private) security, with flags of convenience and commercial shipping and insurance actors playing a particularly important role. Ocean governance has long been synonymous with complex and shifting structures of authority, and drawing on an interdisciplinary theoretical platform, this article seeks to answer the question of how the maritime *system's* regulation of private security companies has constituted private power in policing at sea, and why.

This article seeks to make a dual contribution. On the one hand, it seeks to provide a new account of how complexes of regulatory practices, generally framed as constraining the authority of private actors, can constitute their autonomy and legitimacy in multilateral policing governance, in a space of limited statehood (where commercial actors form the primary constituent population). It argues that weak and flexible lines of public and private regulatory authority constitute an environment in which private actors, in particular the shipping industry, have near-unlimited autonomy in shaping how private security is practised. Latterly, the article argues that this arrangement is mutually constitutive of broader political realities of ocean governance, where as Steinberg(2001), De Nevers(2015a) and others have argued, space and place is constituted in such a way that sovereign authority and the public-private binary are indistinct conceptual touchstones for understanding social life. The study of policing and security has to a large degree focused on the English-speaking world, so much so that there is sometimes an assumption that the 'arrangements and problems [of multilateral policing governance in the UK and US] are universal'(Van Stokkom and Terpstra, 2018, p. 418). However, it is vital that literature on private security takes account of diverse empirical contexts, and that the literature retains the conceptual flexibility to take account of differently articulated or alternate organizing principles in security governance. This article's focus of the articulation of sovereign authority and the public-private binary in an unconventional political environment, on this theme, is an important aspect of its contribution to the literature.

The structure of the article is as follows. Firstly, the article will develop a conceptual platform using the existing literature on the regulation of private security. The article will then explore the two primary bodies of regulation that govern the maritime private security industry, emanating from flag states and commercial maritime organizations. After this, the article will place its findings into the context of the geographical literature on the construction of political space offshore, before drawing together its conclusions.

The Regulatory Politics of Private Security

Abrahamsen and Williams argue that security is a *field* of power, where both public and private actors and the categories of public and private 'coexist within historically shifting boundaries...reflecting particular social interests and power relations at particular points in time'(2011, p. 111). Drawing on Bourdieu, they assert that the social relations of the security field are constituted by prevailing divisions of capital – whether economic, cultural or symbolic – among different actors, with 'habitus' referring to the practices through which actors recognize and reproduce social structures by orienting themselves in their fields. Of course, this does not preclude the reality that actors can re-orient themselves in these fields, and resist and re-formulate the 'rules of the game'. While it would be problematic to assign conceptual priority to any one form of practice in constituting the social relations of (multilateral) policing provision, it

² The High Risk Area has consistently accounted for the overwhelming majority of global expenditure on private maritime security in recent years.

is clear that some have broader effects than others in reproducing and re-formulating the structures of the field.

As the primary representation of statutory power, regulation³ is arguably the most significant form of practice in shaping the nature of private authority in multilateral security governance. Sociologists studying the regulation of private security have generally been concerned with how regulatory mechanisms constitute the public-private relations of multilateral policing by controlling who can enter the security industry, what codes of conduct they must adhere to, and how far and under what conditions (and in what spaces) private operatives can access particular policing powers. It is important to note that in many nation-states, regulatory authority is fragmented between different bodies, exercising different forms of control over the security landscape. Industry-led and public-private regulatory mechanisms, for example, build legitimacy for private security companies seeking to cast themselves as credible and responsible providers of security services. Non-binding (inter)national ethical guidelines such as the Montreux Document and UN Guiding Principles on Business and Human Rights, likewise, plausibly play a role in shaping how the private security industry operates.

The constellation of regulatory actors and practices both reflects and reinforces the forms of private authority that exist in a given policing environment. For example, while much scholarship has sought to analytically deprioritize the state in the governance of security, it is clear that in contemporary policing, there are 'a number of ways in which state ordering and regulation as anchoring are exceptional', particularly regarding the affirmation of the state's 'symbolic power and cultural authority' and its 'legitimacy claims and public perceptions of its legitimacy' (Crawford, 2006, p. 459); Loader and Walker have argued that, crucially, the state 'retains an in-the-final-instance authority' over who can practice security (Loader and Walker, 2004, p. 224). As Gould (2017) has argued, states have overwhelmingly sought to protect their sovereign power (and constrain the expansion of private authority) by restricting private security actors' access to coercive policing powers. Far from being a timeless, fixed reality, however, such practices are mutually constitutive of the accumulation of capital by the modern nation-state – as Loader and Walker argue, the state's 'capacity to concentrate and circumscribe non-negotiable coercion' has 'lended coherence to much of what policing has come in liberal democratic societies to be about' (2001, p. 27). While 'the state's role as a crucial site of governance' is guaranteed by its exclusive possession of a 'capacity...for coercion' (Bittner, cited in Newburn and Jones, 1998, pp. 248–249), scholars have established that there are a wide variety of other metrics that illustrate how regulatory systems – whether to sustain state primacy or protect the public good – have sought to restrict the extent of private authority in multilateral policing.

Button and George (2006) have used the concepts of 'width' and 'depth' to categorize regulatory systems, with 'width' referring to the scope of the security services regulated and 'depth' referring to the 'extent regulations apply to enhance the quality of the private security sector' (Button and Stierstedt, 2018, p. 401), usually through entry or other licensing requirements. On the basis of width and depth, Button and George have asserted there are five categories of regulatory environment – 'non-interventionist' ('where the country has no regulation'), Minimum Narrow, Minimum Wide, Comprehensive Narrow and Comprehensive Wide (2006). While there are a wide variety of requirements enshrined in national regulatory systems globally, Button and Stierstedt (2018) and Prenzler and Sarré (2008) highlight several as being of particular significance in the construction of robust regulatory controls. Both consider public regulation to be stronger (and private authority to be more constrained) where there is a 'regulatory monopoly' (where responsibility for regulation lies with 'one unit of government administration' (Prenzler and Sarre, 2008, p. 10)), where there are mandated training standards, and an enforceable code of conduct (with sanctions for transgression). Perhaps most critically, Prenzler and Sarre argue that regulatory agencies must be proactive ('compliance monitoring and complaints investigation need to be vigorous' (2008, p. 12)), whether the regulation in question emanates from self-regulation or criminal or civil law. Much scholarship has linked the permissiveness of evolving or emergent legislation to evolving forms of sovereign control, in

³According to Koop and Lodge, scholars largely agree that regulation 'is about intervention in the activities of a target population'. See (Koop and Lodge, 2017, p. 105)

particular the consolidation of a neoliberal form of governmentality in policing and security – where the free market itself may be seen as fulfilling a significant regulatory function.

The remainder of this article will explore how regulatory authority over the maritime private security industry is divided among and performed by the range of actors involved in ocean governance. In international waters, governance has always been characterized by weak and shifting lines of authority and public accountability. Few (if any) scholars, however, have explored how the regulation of private security constitutes private authority in policing in spaces of limited statehood, where the normative foundations of territory and nation play an ambiguous role in anchoring social life. Existing scholarship on the regulation of private maritime security has been narrow, with scholars generally focusing exclusively on one or two (Western) flag state(s) and examining their approaches to private security companies in isolation; for example, Berndtsson and Østensen(2015), De Nevers(2015b), Cusumano and Ruzza(2015, 2018) and Åarstad(2017). Empirically narrow approaches of this kind are inherently unable to explore how the politics of private policing is constitutive of broader practices of ocean governance, in which any one or two regulatory actors are of limited significance. In adopting a broader approach, this article seeks to contribute to both the general literature on the politics of private policing as well as scholarship on the politics of maritime security and ocean governance.

The analysis of regulation in this article uses three types of source. Of primary importance are the regulatory documents released by commercial entities, international organizations and flag states and their registries; this study also has also made use of guidance offered to commercial maritime actors by flag states and the International Maritime Organization (IMO). Finally, as part of a broader research project, a number of semi-structured interviews were conducted with personnel from the maritime security and shipping industries; this data was used primarily to triangulate information from and interpretations of other sources. This methodology mirrors that of other studies exploring the regulation of private security, particularly Button (2007) and Button and Stierstedt (2018).

As Button (2007, p. 113) highlights, however, any exploration of regulatory systems can only aspire to examine ‘a snapshot in time’, as regulatory governance in any field is always subject to change. This is a particularly important challenge in the context of maritime private security, where flag state regulation has often been conceived and implemented outside legislative processes, and regulatory changes can take place quickly and without warning. Nonetheless, barring a few changes – such as the Marshall Islands’ decision to make ISO 28007 certification a requirement for security guards on board its flagged vessels in 2016 – the regulation of the industry has remained largely stagnant since 2013. At this time, the industry began to consolidate (with the number of active companies dropping substantially), and the energy for further regulation largely dissipated. The Security Association for the Maritime Industry (SAMI), a security industry trade association which had been the driving force behind a number of regulatory initiatives, was voluntarily liquidated in 2016 due to declining membership.

The next section of the paper will explore the international flag state regulatory regime, focusing on flags of convenience as well as Western states. It will argue that the permissiveness of many flag state regulatory regimes, together with a lack of state oversight and the ease of switching vessel registration, ensures that private authority is in many ways unchecked in maritime policing.

Flag States and the Regulation of Private Security

Under the UN Convention on the Law of the Sea, every seagoing merchant vessel must be registered to a state (which becomes its ‘flag’). Outside the boundaries of territorial waters, flag states are the sole jurisdictional authority, with flag state law applying to merchant vessels as if

they were part of sovereign territory. In theory, the carriage of guards and firearms on merchant vessels is subject to the same laws and regulations as security personnel in terrestrial environments. The IMO circular MSC.1/Circ. 1406 (the first version of which was released in May 2011) repeatedly stressed that in light of the increasing use of armed guards by merchant vessels in the High Risk Area, 'the carriage of such personnel and their firearms...is subject to flag State legislation and policies and it is a matter for flag States to determine if and under which conditions this will be authorized' (IMO, 2015, p. 3).

Recognising that some flagged vessels were already carrying armed guards prior to 2011, the British government was one of the first to provide a legal and accessible framework through which ship operators could seek to employ private security companies. As De Nevers (2015b, p. 153) outlines, security companies operating on UK-flagged ships can now receive authorization to operate from the Home Office under Section 5 of the 1968 Firearms Act. After submitting a provisional contract with a shipping company, prospective guards go through identity and background checks. Companies must give details of the vessels to be protected and the number and types of firearms required (UK Home Office). In addition, security companies are required to obtain permission to export firearms under a Trade Control License from the Department for International Trade. Security companies must demonstrate compliance with the principles of the ICoC, and provide for the UK Government their policies vis á vis standard operating procedures, rules of engagement, and stockpiling protocols, in order to acquire a license (UK Department for International Trade, 2019, p. 3).

Many European states have taken a similar path. In 2012, the German Government introduced a licensing process for armed guards on-board German-flagged vessels. Companies must supply information on their 'equipment and internal procedures' and undergo an assessment of their 'maritime knowledge' and employee background checks (Bürgin and Schneider, 2015, p. 123). German law also requires that guards have at least 110 hours of training (including for first-aid and firearms usage) and that companies have a minimum of 5m euro liability cover for personal and property damage. It stipulates a maximum weapon allowance of 1 pistol and 1 rifle per guard, while excluding 'weapons of war'. In the absence of the stringent firearms legislation of many European countries, the use of armed security guards on-board US-flagged vessels has never been illegal, but security companies nonetheless require approval from the U.S. State Department (under International Traffic in Arms Regulations) and U.S. Coast Guard to operate. They are prohibited, however, from using weapons that are either fully automatic or fire ammunition of over .50 calibre (De Nevers, 2015b, p. 153).

Common features of these regulatory frameworks are background checks of security personnel, rolling permits, and substantially greater (though not unrestricted) private access to weapons than ashore. However, some scholars have questioned their rigour. Focusing on the Norwegian, Swedish and Danish systems, Berndtsson and Østensen (2015, p. 146). argue that licensing regimes have created 'regulatory façades' which, while creating an impression of pervasive state control, actually make substantial concessions to commercial actors (resulting in 'a fairly thin veneer of government control') in terms of overseeing and regulating the operation of maritime security companies. While 'states may perceive a need to construct regimes that profess to govern the use of PMSCs at sea', the reality of ocean governance is such that 'robust state control is deemed unnecessary, too demanding, or too costly' (2015, p. 148).

In any case, the role of Western flag states' regulation in the governance of private security in international waters could be overstated; vessels flagged by these states make up only a very small proportion of the overall volume of private security traffic across the High Risk Area. According to the UK Department for Transport, the fleets of Panama (18.9%), Liberia (11.9%), the Marshall Islands (11.7%) and Hong Kong (9.8%) comprise 52.3% of the global merchant fleet (measured by deadweight tonnage), with Singapore (6.8%), Malta (5.7%) and Greece (4.1%) the only other countries flagging more than 4% of commercial tonnage. The states whose regulatory regimes have attracted most academic attention have much smaller fleets, including the UK (0.8%), Italy (0.9%), the USA (0.6%), Norway (1.1%) and Denmark (1.0%); the fleets of Germany, Spain, France and the Netherlands are smaller still (UK Department for Transport, 2017, p. 5). The next section of this article will explore how flags of convenience have exercised jurisdictional authority over private maritime security in the High Risk Area.

'Flags of Convenience'

The number of vessels registered under so-called 'flags of convenience' has risen significantly in the last 50 or 60 years. While the most important qualifier for a FoC is that ship owners without any connection to the country in question can register to fly its flag (hence 'open' registry), ship owners have historically sought to register vessels with FoCs in order to access more favorable tax or regulatory regimes. The Rochdale report highlights that for vessels registered with flags of convenience, 'a registry fee and an annual fee...are normally the only charges made' (Metaxas, 1981), with the flag levying limited or no taxes on their business income. The report also asserts that FoCs generally have 'neither the power nor the administrative machinery to effectively impose any government or international regulations; nor has the country the wish or the power to control the companies themselves' (Metaxas, 1981, p. 58). The major open registries are now akin to global commercial organizations, with offices around the world, even where capacity to enforce ecological, labour or other forms of national or international law may be non-existent. The next part of this article will examine the regulatory regimes of the world's four largest flag states.

While security companies could already register to operate on Panamanian vessels, the passing of MSC.1/Circ. 1406 in May 2011 heralded the establishment of a formal, multi-stage regulatory process, which came into force in October of that year (Panama Maritime Authority, 2016). Companies are required to provide the Panama Maritime Authority with information including details of third-party insurance cover; the 'technical formation' and experience (curriculum vitae) of the security personnel (and a 'copy of the certificates or diplomas that credit the[ir] suitability'); procedures for the handling and inventory of weapons; compliance with 'internationally recognized' quality standards; and documents that prove that 'the Company has the necessary resources which includes technical, management and administration procedures to carry out the work for the security and protection of the ships that transit within the high risk areas' (Panama Maritime Authority, 2014).

The Liberian private security regulatory process, established in 2011, is possibly the most permissive of all the world's major flag states. A ship operator wishing to employ guards on-board a Liberia-flagged vessel must apply to the Liberian Bureau of Maritime Affairs, submitting documentation concerning the Ship Security Plan, 'communication procedures', verification that 'appropriate measures' have been taken to verify the competence and credibility of companies providing maritime security services, a statement of BMP compliance and verification that there is a Rules of Force document in place (Liberian Bureau of Maritime Affairs). The Liberian Government places almost total discretion regarding the hiring and oversight of maritime security companies in the hands of ship operators. As a policy document released with Maritime Security Advisory 03/2011 describes, 'the Liberian Registry...does not have a preferred vendor or favor the services of one security provider over another' (Liberian Bureau of Maritime Affairs, 2011). As in the Panamanian regime, it is for the ship operator rather than the flag state to undertake due diligence.

The Marshall Islands' regime is more rigorous. Although the Marshall Islands' gun control legislation is stringent, deployment of armed guards 'for the sole purpose of enhancing the safety and security of any Republic of the Marshall Islands registered vessel' are exempt from its terms. Companies must submit information including the names and nationalities of guards, number and types of weapons carried, and information relating to the vessel (Master, IMO No. etc), at which point they can be issued a 'Letter of Non Objection' (LONO). In January 2016, the Marshall Islands made the possession of ISO/PAS 28007 certification a requirement for LONO issue, and also places weapons restrictions on security companies; handguns, fully automatic firearms, rocket-propelled grenades and shotguns are all prohibited. Perhaps most importantly, LONOs are granted for individual voyages rather than being open-ended. It is significant, however, that 'the principle purpose behind a LONO is to provide assurance to coastal State authorities that the flag state is aware of private armed security personnel embarked on the vessel' (Republic of the Marshall Islands, 2012).

Hong Kong, the world's fourth largest registry, has little meaningful regulation or oversight of private maritime security companies on-board its flagged vessels. Although the Hong Kong maritime authority recommended that its flagged vessels apply the terms of the IMO's MSC.1/Circ.1405/Rev.2, 'where appropriate', when it was issued in May 2012, and 'does not encourage' the deployment of armed security guards, this has not been translated into any developed legislative controls. It 'recommends' that 'a thorough due diligence is done on the security consultants, as there is no established organization to vet such companies'; that all commercial stakeholders are in agreement; that 'lawyers have been consulted on the legal situation'; that the 'line of command and rules of engagement are clearly understood and conform with legal advice'; and that the 'crew are fully briefed' and that weapons are held in the possession of the Master. 'Upon receipt of the request [for approval to deploy armed security] with the points above addressed, a letter for the carriage of weapons on board Hong Kong registered ships...will be issued.' (Hong Kong Marine Department, 2011).

Sovereignty, Oversight and Flag State Regulation

Clearly, the multinational naval coalitions active in the High Risk Area (most prominently, the EU Naval Force, NATO's Operation Ocean Shield and the Combined Task Force 151) have contributed to the drop-off in piracy there since 2013. However, their impermanence (and the limited geographical scope of their operations, confined largely to the area around the Internationally Recommended Transit Corridor) must be taken into account when thinking about how 'public' policing at sea constitutes maritime political order. The naval coalitions have long been considered an exceptional measure, and not the articulation of a permanent or semi-permanent (inter)national public policing regime for the high seas. The EU Naval Force's current mission expires in 2020 (and at the time of writing, comprises only two vessels) (EU NAVFOR, 2019), while Operation Ocean Shield was wound up in November 2016. As the former head of the European Commission's Land and Maritime Security Unit has commented, it is widely accepted that the 'key factor' in the drop-off in piracy has been 'the...presence of armed guards' (Regal Maritime, 2015).

It is difficult to generalize over the regulatory constraints flag states place on the recruitment and operation of these guards. Certainly, many traditional maritime nations have replicated the types of regulatory control they frequently exercise on land. Germany, Spain, the UK, US and the Scandinavian states all place restrictions on the types of weapons guards can carry and impose entry qualifications for security guards, including background checks. According to Button and Stiernstedt(2018), such types of controls are integral to robust regulatory regimes, even if their terms are much more permissive at sea than ashore; UK firearms restrictions are a particularly good example of this.

Other states (of the states with significant merchant fleets, however, only Italy and the Netherlands (Oceans Beyond Piracy, 2017)) have sought to restrict ship operators on board flagged vessels to contracting uniformed military personnel, termed Vessel Protection Detachments (VPDs). 2011 legislation created a 'hybrid' system of VPDs for Italian vessels (Cusumano and Ruzza, 2015)⁴, while the Netherlands initially banned the use of private security guards on board their merchant fleets altogether in favor of VPDs. Such regulatory practices undoubtedly represent resistance to the prevailing rules of the game in multilateral maritime policing, but the size of the fleets in question is too small for the practice to be considered as having a significant constitutive effect on the field at large. In any case, Italy suspended its VPD program completely in 2015 (Oceans Beyond Piracy, 2017), while the Netherlands has allowed ship operators to choose between VPDs and employing their own guards since 2016(Cusumano and Ruzza, 2018, p. 91).

⁴ It should be noted, however, that there continued to be insufficient regulatory architecture for armed guards to be lawfully employed on Italian vessels until 2013.

Generally, while few of the Western flag state regulatory systems go beyond 'minimum' in terms of rigour, there is no 'single unit of government administration' (Prenzler and Sarre, 2008, p. 10) that governs private security at sea; shipowners have long been able to decide which jurisdiction their vessels are subject to. Open registries have primacy in terms of shaping the nature of private power in policing at sea, and these registries (seen by some as 'the ultimate embodiment of deregulatory principles in international shipping' (Lane, p. 3) come far closer to 'non-interventionist' than 'minimum' in terms of the strength of the regulatory controls they impose. None of the open registries (with the exception of the Marshall Islands) place any restrictions on the types of weapons contractors can use, impose entry qualifications for security guards, or issue only short-term licenses; the Singaporean registry does not even require consultation before armed guards can be deployed on Singapore-flagged vessels (Maritime and Port Authority of Singapore, 2012).

No less important than the terms of regulation themselves are the structures of oversight and coercion that underpin them. Prenzler and Sarre highlight the importance of 'enforceable codes of conduct' in private security regulation, and regulatory agencies being 'proactive' in monitoring compliance and investigating complaints (2008, p. 9). The absence of detailed codes of conduct in any major flag state regulatory system is illustrative of the reality that few (if any) states have sufficiently pervasive maritime law enforcement capabilities to monitor or discipline private security at sea. As was noted by the UK House of Commons Foreign Affairs Committee in 2012, most security companies were 'simply ignoring' even the UK's licensing laws (UK House of Commons, 2012), while the majority of open registries have no maritime law enforcement capability at all. In fact, because of a lack of resources during the peak of piracy in the Indian Ocean, naval vessels were substantially less inclined to operate near those merchant vessels registered with UKMTO as having armed security on board (Author Interview, 2015), illustrating the unfeasibility of routine, effective monitoring of private security by any (flag) state. Crawford has written that effective regulation requires a 'monitoring' component ('some mechanism or process of feedback for monitoring what happens in pursuance of the goal') as well as a 're-alignment' component ('some form of corrective action to realign the subjects of control where deviation from the goal is perceived') (2006, p. 452). Both are largely absent in the flag state regulation of private maritime security in international waters. With constraints on private authority in policing being such an important symbol of state sovereignty and liberal democracy, particularly in public spaces, it is open to question whether flags of convenience, in particular, operate like 'states' in any meaningful sense in governing private security on the high seas.

Industry Regulation

According to Haufler, industry self-regulation is a 'new source of global governance' in the contemporary world, a part of wider 'mechanisms to reach collective decisions about...problems with or without government participation' (2001, p. 1). As highlighted earlier, it is certainly not true that only 'public' actors have an interest in regulating private security. Loader asserts that private security companies, whether for ethical, political or commercial reasons, are almost universally engaged in a 'quest for legitimation' of some form. (Loader and Et al, 2014, p. 475) As Börzel and Risse (2010) argue, market-driven regulatory processes often exist in the 'shadow of hierarchy', where there is an incentive to create stringent regulatory processes to deter the imposition of state regulation. In this case, particularly important questions concern whether self-regulatory initiatives genuinely restrict the autonomy of individual ship operators, how far flag states and the IMO have sought to bolster their authority, and how far regulation aspires to control both ends of the market. Where the drive towards cost-saving and deregulation in shipping is ever-important, do the regulatory processes created by the commercial maritime community simply reflect the financial interests of the shipping industry and the autonomy of individual ship operators, or do they reflect genuine aspirations to raise standards and protect a public good (including human rights) at sea?

This section will examine two security industry regulatory initiatives to have emerged since the upsurge of piracy in the Western Indian Ocean, ISO/PAS 28007:2012/2015 and the 100 Series Rules; these are the only regulatory initiatives to have gained significant support among flag states and the maritime commercial community. This section will argue that while many states have sought to co-opt both initiatives and promote them as providing effective and proportionate regulatory control, their controls are weak and do not aim to provide a barrier to market entry for companies not adhering to the standards.

ISO/PAS 28007:2012/2015

The ISO 28007 framework, an extension of the International Standards Organization's supply chain security management standard ISO/PAS 28000, was designed to 'save shipowners, operators and managers the time, effort and resources needed to vet any individual security companies they decide to use to help repel piracy and high seas attacks' (Lloyd's Register, 2014). For many maritime actors, ISO/PAS 28007 has become a common reference point for an acceptable or desirable management standard for maritime private security companies. The Marshall Islands, most prominently, amended its legislation on private maritime security in 2016 to make ISO 28007 certification a precondition of the issue of a Letter of Non Objection. No other major flag states have gone down this route, but many have strongly recommended that domiciled security companies and ship operators employ those in possession of ISO 28007 certification. In spite of acknowledging that ISO 28007 is an 'industry developed' standard, the UK Department for Transport nonetheless 'supports the development and use' of the certification, and 'would encourage shipping companies to...incorporate the requirements of ISO PAS 28007 as part of their selection criteria when choosing a Private Maritime Security Company'. DfT guidance asserts that 'The UK Government regards the publication of ISO PAS 28007:2012 as an important contribution to promoting high professional standards, including human rights, among maritime security companies' (UK Department for Transport, 2015). The IMO, likewise, recommends that states 'establish a policy [on armed transit] that may include, inter alia...ensuring that PMSC employing PCASP on board ships hold valid accredited certification to ISO 28007-1: 2015' (IMO, 2015).

ISO/PAS 28007 is a framework based on 'risk-based systems oversight' or 'risk-based quality management'. Based heavily on the guidelines in MSC.1-Circ.1405, it focuses not on the application of a uniform standard – whether on human rights, ship hardening or training – but on the development of 'appropriate', risk-reducing measures determined by the nationality, remit and constitution of the company. Such documents require the establishment of procedures on, for example, vetting, incident reporting, financial documentation, and company management, but give little concrete guidance as to what these should look like. In many ways, this is similar to the procedures that some security companies must go through in order to gain flag state authorization; the precise standards required remain open to question.

One maritime security provider commented at interview that there is 'genuine confusion' about some of the terms of ISO 28007, particularly concerning human rights. He suggested that while certain provisions were included to qualify International Code of Conduct signatories for certification, there is little clarity on the standards security companies are actually required to uphold (Author Interview, 2015). It would have been perfectly straightforward to preclude any guards with criminal records from operating, include a specific use-of-force gradient or make use of the UN Guiding Principles on Business and Human Rights, but those involved in the drafting process chose not to do so. Even if ISO 28007 certification were a prerequisite for flag state approval (which it is overwhelmingly not), it would lack the mandated training requirements, enforceable code of conduct and proactive enforcement of compliance required to constitute robust control of the security industry (Prenzler and Sarre, 2008, p. 10). One security provider commented that he was 'disappointed the bar was not set higher' with ISO 28007 (Thomas, 2015). Either way, the majority of companies in the shipping or insurance industries do not view failure to attain ISO 28007 certification as barring a company from maritime security work. The

drive towards cost-saving ensures that there will continue to be demand for companies at the lower and middle sections of the market, which ISO 28007 plays no role in controlling.

Moreover, shipping unions and the security industry trade association (SAMI) were intimately involved in the drafting of ISO 28007. According to Lloyd's Register, the International Chamber of Shipping (ICS) and the Baltic and International Maritime Council (BIMCO) ('as official liaisons to ISO') were extremely active' in the development process ('indeed it was officially their draft which was the base document') (Lloyd's Register, 2014), and had a 'decisive influence' on the drafting process (Author Interview, 2015).

Rules for the Use of Force (RUF)

The exercise of coercive authority by private security actors has presented one of the most important ethical dilemmas associated with the fragmentation of policing governance. For reasons outlined earlier, states have historically sought to tightly control private security companies' access to offensive weapons, and establish clear limits concerning where and how they may exercise powers of arrest and detention.

In the sphere of maritime security, however, neither flag state regulation, MSC.1-Circ.1405-Rev1, the ICoC nor ISO 28007 offer any substantive, applicable guidance on how private security actors can use coercive force on the high seas. Overwhelmingly, the sentiment of flag state regulation in this area is that PMSCs should have a 'graduated' plan of 'minimum force', 'in accordance with applicable law', 'that reflects the right of self-defence', and is enshrined in the contractual agreement between security company and ship operator as well as national statute. As a 2011 report by the UK Parliament stated, on this point, 'the guidance on the use of force, particularly lethal force, is very limited and there is little to help a master make a judgment on where force can be used' (UK House of Commons, 2012); GUARDCON notes that in terms of the use of force, 'the police in most countries are subject to robust and onerous regulations and procedures before weapons are used with each step assessed and recorded in a Decision Log...transparency and accountability is fundamental. At the moment the maritime security industry does not have anything like the same level of scrutiny' (BIMCO, 2017).

As in the case of ISO 28007, the maritime community responded to the absence of relevant 'state-led initiatives and state legislation' (100 Series Rules) on the use of force by producing its own standards, which have gained increasing traction in the maritime community in recent years. The first and most important of these is the 100 Series Rules. In addition to providing guidance to the maritime community on the lawful use of force, the 100 Series Rules also seek to 'reduce risk to the Master, crew, PMSC, PCASP, ship owner, charterer, insurer and underwriter of civil liability claims and/or potential criminal or other charges'. The 100 Series Rules, if not a 'benchmark' standard like ISO 28007, has attracted support from the registry of the Marshall Islands, which specifically highlights the document as representing the kind of 'graduated' use of force policy required for the issue of a Letter of Non Objection (Republic of the Marshall Islands, 2012). The Rules are set out below;

“Rule 100

In the event of any actual, perceived or threatened attack by third parties the Team Leader (TL) or, in the TL's absence, other PCASP, shall advise the Master or (in the Master's absence) the Officer of the Watch that he intends to invoke these Rules for the Use of Force.

Rule 101

Non-kinetic warnings may be used where there is a reasonable belief that a craft is displaying behaviour(s) assessed to be similar to those of a potential attacker.

Rule 102

Firearms may be used to fire aimed Warning Shots when it is assessed by the TL or in the TL's absence, other PCASP, that Warning Shots may deter an actual, perceived or threatened attack.

Rule 103

When under attack or when an attack is imminent, reasonable and necessary use of force may be used in self-defence, including, as a last resort, lethal force."

In many ways, the document is very similar to other industry guidance on the use of force by private security personnel. BIMCO's RUF document also emphasises the inalienable right to self-defence and the ultimate authority of the Master, as well as highlighting a number of potential practices on weapons storage, warning shots and the role of the Team Leader (BIMCO). Figures in the maritime community, however, have cast doubt on whether the 100 Series Rules represent an effective regulatory mechanism for the use of force by private security on the high seas.

In an interview, one former naval officer drew attention to the absolute (and largely inexplicable) authority the Rules delegate to the Master in security operations, noting that in navies, individual sailors are certainly not given authority to exercise lethal force on the basis of their merely feeling threatened; navies put in place clear operational qualifiers for the use of varying degrees of force by personnel (Author Interview, 2015). While some security companies have undoubtedly incorporated the 100 Series Rules into RUF that are rigorous and consistent with those used by naval forces (as suggested by the UK Foreign Affairs Committee), the rules do not in themselves provide a procedural basis for this. In many ways, the 100 Series Rules (and the vacuum of flag state regulation out of which they emerged) capture perfectly the prevailing realities of industry regulation of the maritime security industry. While the 100 Series Rules have been used to bolster companies' professional brands, their terms are too unclear to be realistically enforceable (and there is no body that could credibly enforce them). Crucially, not using the Rules is no barrier to working in the sector.

Industry Oversight and Regulatory Flexibility

Where their own regulation may be either weakly worded or lack credible enforcement/sanctions procedures, several flag states and international organizations have promoted industry-produced regulatory initiatives as having the potential to 'keep out rogue pirate-hunters, avoid self-regulation and provides owners with a means to select – and flag state administrations a standard by which to audit – security providers' (Liberia Maritime Authority, 2013). At its most effective, self-regulation can undoubtedly maintain standards by acting as a gatekeeper for the market. Of course, this requires both clear standards (and enforcement of them) and a wide net – either through legislation that reinforces the authority of the industry regulator or a division of symbolic capital that guarantees the client body's deferral to it in hiring decisions.

Ultimately, it is clear that ISO 28007 and the 100 Series Rules are regulatory frameworks that introduce best practice, but whose ambitions and capacity to raise standards and restrict autonomy across the sector are limited. Firstly, the actual terms of both (on issues such as human rights, vetting and the use of force) are vague; a director of one maritime security think-tank felt

that many of the standards were introduced as a point of commercial expediency rather than to protect the rights of seafarers, prevent substandard guards and companies from operating, and curb the use of excessive force at sea (Author Interview, 2015).

More importantly, however, neither framework is underpinned by the kind of authority necessary to enforce standards or disqualify non-signatories from operating in the industry. As has been observed, non-state market driven and (self-regulatory) systems 'are unlikely to govern effectively if they depend solely on firms' strategic interests for compliance' (Meidinger, 2006). Particularly in a sector where 'grudge purchasing' (Button, 2012) of security services is so prominent (often resulting from insurance requirements or a fear of legal liability in the event of a hijacking (Author Interview, 2015)), voluntary industry-led regulatory measures can only aspire to define and encourage best practice rather than impose it; the industry regulation of maritime private security is both 'narrow' and 'minimal'. Clearly, 'there is no binding power behind the codes', meaning that (with ISO 28007 certification costing around \$20,000 to obtain (Oceans Beyond Piracy, 2012)) 'there is a commercial advantage in not adhering to the suggested standards' (Thomas, 2015).

It seems likely that this is in part a function of the role of the shipping and insurance industries (and their desire to allow maximum commercial flexibility) in constructing regulation. In maritime security, the line between 'responsive' regulation and 'industry capture' (Button, 2007) of the regulatory process is a blurry one, with no industry regulatory body having a clear commitment to a 'public' regulatory interest. Flag states do have the legal authority to make the attainment of particular certifications mandatory for security companies to operate on their vessels, but with one notable exception (the Marshall Islands) both they and the IMO have gone no further than merely recommending that ship operators take whether companies are certified or not into account in their own due diligence. As with flag state regulation, though in different ways, the guiding logic for industry regulation of private maritime security has been the protection of the individual autonomy of ship operators in hiring and overseeing security contractors in international waters.

The next section of this article will argue that this is the result of the translation of a broader logic of ocean governance to the security field, which is mutually constitutive of a distinct articulation of sovereign authority and relationship between the public and private spheres offshore.

Ocean Governance and Private Security

The regulation of private security both reflects and reinforces the social structures that underpin multilateral policing governance. Although the precise character of such structures varies between localities, countries and regions, explanations of why states and other actors have sought to constrain private authority have often centred on the maintenance of state sovereign power or the protection of security as a public good. Depending on the environment, regulation may prohibit private actors' use of offensive weapons, restrict where they can operate, or ensure that only those to have obtained certain types of training can enter the profession. In some cases, similar regulatory logics and practices have been born out in maritime space; it is the clause in the Netherlands constitution guaranteeing a state monopoly of violence that formed the normative basis of its VPD-only policy, in force between 2011 and 2016. As was highlighted in the first section of this article, such forms of regulatory control are mutually constitutive of the state's 'symbolic power and cultural authority' (Crawford, 2006, p. 459) in defining and protecting the 'public interest' in security governance; the public-private binary (with the state as the supreme 'public' authority) is arguably the foundation of modern policing.

Even this, however, should not be treated as a fixed empirical reality; this article has demonstrated that the constellation of regulatory practices in maritime space constitutes a distinct form of private authority in security governance in international waters. The existing literature on the regulation of private maritime security has failed to appreciate the breadth of the political system that governs the oceans, and how the translation of long-established

institutions in maritime commerce (in particular the flag of convenience regime) to the security field has facilitated the emergence of structures of regulation and oversight without a clear normative anchor in sovereign authority or the public good. The permissiveness of flag state regimes, the capacity of vessels to switch registration, and the narrow scope of industry regulation constitute the near-unlimited autonomy of ship operators in the governance of private security offshore. Put another way, the regulation of private security at sea has served to legitimize a largely de-regulated sphere of private security. As Loader and Walker argue, 'the state structures the security network both in its presence and in its absence, both in its explicit directions and in its implicit permissions' (2004, p. 225).

On maritime security specifically, some have argued that the 'outsourcing' of protection of merchant fleets to private security companies is itself a manifestation of sovereign power at sea (De Nevers, 2015a, p. 601). While flag states' *de jure* authority over private security at sea is not in question, this account obscures the complexity of not only the structures of public-private relations in contemporary policing (which are central to our understanding of modern statehood and contemporary life), but also the practices that constitute them. By scholarly consensus, the evolving forms of control that private security has been subject to have constituted social changes as diverse as the fragmentation and privatization of urban space, the emergence of a neoliberal governmentality in policing and security, and the consolidation of a global 'risk' society. Perhaps most importantly, the 'interventionist forms of government control' (Prenzler and Sarre, 2008, p. 1) that have typically come to govern the security industry are reflective of the accumulation of non-material (as well as material) forms of capital by the state – the state's ring-fencing of coercive force being a particularly important symbol of policing in liberal democratic societies.

Although it is true that strong states have often used naval power to protect maritime commerce, the view of sovereign 'outsourcing' implies both that capacity/authority over a particular form of practice has moved from one actor to another, and that it was/is fundamentally within the power of the state to constrain private authority in security at sea. Public policing (marked by an envelopment of space, in which particular sets of norms are enforced), even now, does not exist at sea as it does ashore. While it is true that strong states can still project sovereignty at particular times and in particular places, the high seas remain free of pervasive sovereign authority; some have asserted that protecting the at-risk area in the Indian Ocean from piracy alone would require 'five times as many ships as the task force can muster' (*The Economist*, 2011). One interviewee stated that contemporary blue-water navies are not institutionally constituted or inclined towards 'constabulary missions' (Interview with Author, 2015). While states have significant authority in shaping maritime security governance, this does not stem from forms of capital akin to those underpinning substantive sovereign control ashore – and consequently, as this article has sought to demonstrate, public-private relations in policing have been performed through distinct forms of practice. In Steinberg's words, the seas have long formed a space 'not...*within* which power could be *deployed*...but as an *empty* space across which power could be *projected*' (1999b).

Indeed, the foundation of the regulatory politics of private maritime security may be a form of oceanic ideology and governance that dates back far longer than the upsurge in Somali piracy, or even the institutionalization of open registries. While some have treated the oceans as an anarchic void where lawlessness and chaos are the norm, Steinberg (2001) has argued that they instead represent a 'specially constructed space within society'; Connery, similarly, has argued that 'capitalism's world triumph can be read through the achieved universality of its land concepts, in the near ubiquity of concepts of borders, ownership, and otherwise administered space', while the oceans present 'elemental barriers...to the conceptual appropriations that obtain on land' (2001, p. 77).

On this distinction between projection and possession, Steinberg uses the concept of 'stewardship', arguing that it has been the 'overarching norm' of ocean governance for centuries. Where the zoning of maritime space by modern and historic international law has sometimes been interpreted as territorializing the seas, he argues that it is generally only the number and form of stewards (including states, empires and the Church) that has varied rather than the

nature of stewardship itself. While the concept of stewardship revolves around the notion of the oceans as 'susceptible to social intervention in pursuit of specific goals' (whether military or commercial), stewarded spaces, in line with the Roman concept of *imperium*, are not 'possessed in full as alienable property' (1999, p. 255), and the maintenance of the oceans as a smooth, connective space has long prevailed as the central governing logic. Grotius' *De Jure Praedae* (which, according to Connery, was 'seminal in the establishment of the transnational character of maritime space') asserts that 'that...which has never been occupied, cannot be the property of any one, because all property has arisen from occupation' (2001, p. 178). Crucially, there is broadly a consensus that the sovereign logic of public policing (and its attendant subordination of private violence) is inextricable from the geographical construction of the state as a 'power container' (Giddens, 1987, p. 115); it is in keeping with the history of ocean governance, if not contemporary terrestrial social life, that private security in the Western Indian Ocean is governed as it is.

With *mare liberum* (freedom of the seas) having long been the prevailing political imaginary in the stewardship of the oceans, maritime commercial interests continues to occupy a position of symbolic importance in maritime social order. With the oceans as the connective space on which the world-system rests, all marine stewardship is inextricable from the aspiration to enable the frictionless movement of goods and capital by sea. Glück, on this point, has argued that in ('indomitable and unclaimable') maritime space, 'the free circulation of commerce [*mare liberum*] is sacrosanct' (2015, p. 645), while Harlow asserts that 'the only necessary (or even permissible) regulation is that which ensures that all ships will be able to travel freely across its vast surface' (Steinberg, 2001, p. 23). Unsurprisingly, the shipping and insurance industries retain considerable authority in shaping how maritime (private) security is practiced and regulated on the high seas; as UK Foreign Office Minister Henry Bellingham said in a speech to the International Chamber of Shipping in 2011, 'it is down to the industry to analyse its own risks, decide what security it needs, and who it wants to provide it' (UK House of Commons, 2012).

Of course, this is not to say that a similar assemblage of power and practice pervades public-private relations in security governance in all forms of maritime space. As Eski (2019), Brewer (2014, 2017) and others have argued, while the security logics of private security in ports have centred on the protection of commercial assets and the ensuring of frictionless movement of goods through the supply chain (as on the open ocean), the securitization of maritime boundaries has seen states exert a far greater degree of oversight and control in the practice of multilateral security governance there. Following the introduction of the ISPS code in 2004, in particular, public and private security actors in ports everywhere have engaged in 'brokerage activities' (Brewer, 2017) in the formation of collaborative security assemblages in which national and commercial security are ostensibly prioritized equally. Of course, ports are ultimately part of terrestrial sovereign territory, but coastal states have also sought to exert a substantial degree of control over armed guards in their territorial waters (out to 12 nautical miles from the shore). Citing the potential undermining of sovereign authority, many countries with coastlines in piracy hot-zones, including India, Singapore, Indonesia, Nigeria, Sri Lanka and others, have either banned or placed stringent restrictions on armed guards operating on vessels in their waters.

Ultimately, this illustrates the importance of space in shaping how public-private relations are performed in contemporary multilateral policing. While sovereign jurisdiction (of various kinds) is a constant in all forms of maritime space, security logics and capital are assembled such that this sovereignty is performed entirely differently across different maritime geographical forms. While the 'anchored pluralism' (Loader and Walker, 2007) thesis undoubtedly provides an invaluable guide to how states have engaged with other security actors (and is certainly not irrelevant in policing in international waters), this article suggests that the performance of public and private logics and other conceptual touchstones is far from consistent.

Conclusion

Where existing work on the regulation of private maritime security has been narrow in scope, this article has explored the full breadth and complexity of the assemblage of regulatory actors and practices that governs private maritime security on the high seas, examining the regulation of open registries and the commercial maritime community as well as Western flag states. It has argued that these regulatory regimes have entrenched a distinct form of private authority in multilateral policing offshore. While on land, states and other actors have sought to restrict private authority in policing in ways that (variably) sustain state sovereignty, protect the public interest and reflect and reinforce a variety of other social realities of multilateral security, the complex of regulatory actors and practices that governs private security in international waters in the Western Indian Ocean has constituted a form of private authority largely unchecked by these 'interventionist forms of...control' (Prenzler and Sarre, 2008, p. 1). This, the article argued, suggests that the social structures that have animated the regulation of private security at sea are not anchored in the same joint imaginaries of state sovereignty and the public-private binary that have typically shaped the type and extent of private power in multilateral policing on land. In its final section, the article sought to make sense of this argument using the geographical literature on maritime space, which has frequently highlighted the distinctiveness of the spatialities and forms of control that exist at sea.

This article has also demonstrated the value of interdisciplinary approaches to the governance of private security. While Bigo has argued that, generally, Criminology and International Relations have 'ignored the possibility of a dialogue' (2016, p. 1068), they 'share an episteme based on an understanding of the practices of (in)security and the experiences lived by human beings'. Work on private security in both disciplines seeks to uncover how security contracting maps onto (for example) democratic accountability, the changing relationship between public and private or the constitution of space, but both disciplines have frequently ignored the insights of the other. On the regulation of private security, scholarship in IR has overwhelmingly retained a focus on the theory and empirics of state control of private security in conflict zones (even where the politics of the everyday represents a better conceptual touchstone), while criminological work has often failed to fully engage with the concepts of power and the state, or transnational or globalized empirical contexts. By combining both approaches, as accomplished most prominently by Abrahamsen and Williams (2011), it is possible to come to a more complete understanding of how the politics of security governance vary across time and space.

Much work on private security has argued that there are no fixed realities in security governance, and particular assemblages of actors and practices are derived from historic accumulations of symbolic and other forms of capital. This article, most importantly, has demonstrated that even commonly prevailing realities of contemporary security, such as the orienting or 'civilizing' of security towards the public interest, are not ubiquitous, and that we must re-examine territory, the state, and all the other normative and analytical categories in whose terms the provision of security and policing has historically been conceived.

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