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SHARING THE PRIZE: THE ROLE OF PRIVATE INDUSTRY IN COUNTERING PIRACY AND THE IMPACT ON NATIONAL POWER

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INTRODUCTION

Naval forces have historically contributed to a state's national power in many ways. Between the 13th and 19th centuries, government forces were supplemented by privateers, who played a significant role in generating sea power for countries like the United Kingdom, France and the United States of America. They provided both a cost-effective means to disrupt enemy economies, and freed up naval vessels for other tasks. Privateering was largely abandoned in the mid-to-late 19th century, but more recently, private industry has re-emerged in the modern security environment in the form of Private Military and Security Companies (PMSCs). PMSCs have played important roles in many land-based conflicts since the end of the Cold War, and are taking on new roles in the maritime sector as well.

This paper will explore the emergence of PMSCs in the maritime sector, particularly as it pertains to addressing the threat of modern piracy. One of the ways that PMSCs have contributed to counter-piracy efforts in recent years is by embarking security personnel, known as Vessel Protection Detachments (VPDs) in merchant ships. This paper will look at what parallels can be drawn between privateering and the use of privately-supplied VPDs, and in doing so, it will examine the influence PMSCs have on the national power of the states from which they emerge, by whom they are employed, and in which they operate. It will demonstrate that while the use of PMSCs to ensure vessel security in a counter-piracy role may be logical and effective, it is unlikely to have a direct beneficial impact on the national power of any state. This is due to the economic benefit arising from the protection of the sea lines of communication, but affects

individual states indirectly due to difficulties in creating a link between a state, the ships that serve its economic interests, and the PMSCs that provide the protective services.

This paper will begin by briefly looking at national power, and the impact that naval forces have on it. It will then look at the history of privateering and why it was advantageous to the countries that employed it, arguing that this was based on three primary factors: a) it could be provided by forces that had an alternative commercial application in peace time; b) that it did not require robust command and control structures and; c) that it drew on a source of funding outside of the state's coffers. It will then draw parallels between traditional privateering and the modern application of vessel security in a counter-piracy role. Finally, it will analyze the impact that this will have on the national power, using the United Kingdom as a case study.

NATIONAL POWER

In order to analyze the impact that naval forces have on national power, it is first necessary to define what is meant by power. One definition is that power is the "ability to influence the behaviour of other actors in accordance with one's own objectives."[1] This can include influencing the other actor to do something, to continue to do something, or to not do something.[2] Some scholars, such as Kim Nossal, differentiate between influence and power, suggesting that power is only exercised when the other actor is influenced in a manner contrary to its interests.[3] For the purposes of this paper, however, influence and power shall be treated as one and the same, as both are felt to be equally relevant to the discussion.

There are a number of methods available to break down the determinants of national power, one of which is proposed by Jablonsky, who differentiates between natural determinants

[1]Theodore A. Couloumbis and James H. Wolfe, cited in David Jablonsky, "National Power", *Parameters* 27, no. 1 (Spring, 1997): 34, http://search.proquest.com/docview/1306226031?accountid=9867.

[2]Jablonsky, "National Power" …, 34.

[3]Kim Nossal, "Power and World Politics," Chap.5 in *The Patterns of World Politics*, edited by Kim Nossal, (Scarborough, Ontario: Prentice-Hall, 1998): 90.

of power such as geography, resources and population, and social determinants, such as economic, political, military, psychological and informational.[4] This paper will not conduct an exhaustive analysis of the impact of naval forces on each of these determinants, but will rather focus on those that are the most pertinent.

While the natural determinants of power may shape the size and type of naval forces maintained by a state, it is against the social determinants that naval forces tend to influence national power. This paper will therefore focus on these social determinants and in particular the military, economic and political (or diplomatic) elements. The impact that naval forces have on military elements of national power is perhaps self-evident, but it is nonetheless useful to discuss the role that naval forces have in conflict. In the words of the great naval theorist, Sir Julian Corbett:

> Since men live upon the land and not upon the sea, great issues between nations at war have always been decided – except in the rarest cases – either by what your army can do against your enemy's territory and national life, or else by the fear of what the fleet makes it possible for your army to do.[5]

In other words, while it is true that historically, navies have also fought each other on the high seas, the ultimate impact of these battles and to naval operations in general, is to influence events ashore. Navies can do this by transporting land forces to a theatre of conflict, or they can attack land-based targets through naval gunfire, cruise missiles or by launching aircraft that in turn strike the targets. Perhaps most importantly however, navies can either protect or disrupt the sea lines of communication that are essential to supporting forces ashore.[6]

Navies also have a significant impact on the political or diplomatic elements of national power. Warships provide a useful tool for providing a military presence in a foreign country. By

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[4]Jablonsky, "National Power" …, 38.

[5]Julian S. Corbett, *Principles of maritime strategy*, (Courier Corporation, 2012), 14.

[6]Jeremy Black, *Naval Power: A History of Warfare and the Sea from 1500 Onward*, (New York: Palgrave Macmillan, 2009), 108.

conducting port visits or sitting of the coast, political messages can be passed without the need for having soldiers on the ground, which can send an entirely different message.[7] Through the participation in multinational task forces and exercises, navies also provide a forum for partnership with other countries. As with other military forces, naval contributions to international peace and security can also garner a state support from its allies, or in multinational bodies like the United Nations or the North Atlantic Treaty Organization.

Finally, navies also have a major impact on a state's economy. In the same way that naval forces can protect sea lines of communication during a period of conflict, they also protect them in peacetime. As previously discussed, nations that rely on seaborne trade have traditionally maintained powerful navies to protect their commerce. In the modern globalized world, it is estimated that 90% of the world's trade moves by sea.[8] As a result, navies provide an essential service in maintaining the sea lines of communication, which benefits global trade. This keeps the cost of the movement of goods low, and benefits the economies of those nations that rely on the sea. Conversely, throughout history, navies have also sought to attack the merchant shipping capacity of their enemies, in order to disrupt their economies. Between the 13th and 19th centuries, this became a growth industry as private citizens emerged to play an important role in the provision of sea power.

PRIVATEERING

Parrillo defines privateers as "privately owned and operated ships, licensed to forcibly capture enemy merchant vessels and pocket the proceeds."[9] In this context, privateering was

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[7]Canada, Department of National Defence, *Leadmark: The Navy's Strategy for 2020.* (Ottawa, ON: Chief of the Maritime Staff, 2001), 36-39.

[8]International Maritime Organization, "International Shipping Facts and Figures –Information Resources on Trade, Safety, Security, Environment," 7, last accessed 2 May 2016, http://www.imo.org/en/KnowledgeCentre/ShipsAndShippingFactsAndFigures/TheRoleandImportanceofInternationalShipping/Documents/International%20Shipping%20-%20Facts%20and%20Figures.pdf.

common practice during wartime among the North Atlantic powers from the 13th century until the end of the 19th century.[10] In many cases, privateers made up significant portions of the national naval strength. Their role was specific, however, and it was solely to disrupt the maritime trade of enemies by capturing its merchant ships, also known as commerce raiding.[11] It must be emphasized that this differed from piracy in that it was conducted under the legal authority of the state.[12] The state would grant a license, or "letter of marque", which permitted the privateer to inspect merchant ships and to seize those belonging to the nation with which it was at war. Privateers were generally prohibited from seizing neutral shipping. However, there were exceptions if the cargo came from, or was destined for, an enemy port, or if the ship was headed for a blockaded port.[13] Many states that employed privateers also had systems of regulation, and prize courts, which would determine the legality of the privateer's actions and the disposition of the vessel and its cargo.[14]

It should be noted that commerce raiding was not the sole purview of the privateer. State-owned naval vessels also performed commerce raiding, with some success. In the case of American privateering, naval vessels actually appear to have been more effective at commerce raiding than their private compatriots, however the sheer numerical advantage of the private fleet meant that the overall impact of privateers was more significant.[15] On the other hand, there were

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[9]Nicholas Parrillo, "De-Privatization of American Warfare: How the U.S. Government Used, Regulated, and Ultimately Abandoned Privateering in the Nineteenth Century," *The Yale Journal of Law & the Humanities* 19.1 (2007): 2, http://heinonline.org/HOL/Page?handle=hein.journals/yallh19&collection=journals&page=1#.

[10]Christopher Spearin, "Promising Privateers?" *Naval War College Review* 67, no. 2 (Spring 2014): 99, http://web.a.ebscohost.com/ehost/detail/detail?sid=b4cd3e71-122c-471d-910f-cc64ef1f5b86%40sessionmgr4002&vid=0&hid=4201&bdata=JnNpdGU9ZWhvc3QtbGl2ZQ%3d%3d#AN=94921559&db=a9h.

[11]Parillo, "De-Privatization . . . ", 8.

[12]Gary M. Anderson and Adam Gifford Jr, "Privateering and the Private Production of Naval Power," *Cato Journal* 11.1 (1991-1992): 105, http://heinonline.org/HOL/Page?handle=hein.journals/catoj11&collection=journals&page=99#.

[13]Anderson and Gifford, "Privateering and the Private Production . . . ", 110.

[14]*Ibid.*, 106.

[15]Parillo, "De-Privatization . . . ", 23.

other functions that were the exclusive purview of state naval forces. These included engaging in combat with other naval forces, and conducting blockades of enemy ports.[16] There are two primary factors that led to these functions remaining predominantly in the public realm. The first is that they required heavily armed vessels that were expensive to procure, and served no useful purpose outside of their intended role,[17] a concept that will be further explored when looking at the advantages of privateering. Secondly, privateers were motivated by profit, and therefore, "their goal was to seize the richest cargo at the lowest cost."[18] In other words, it was in their interest to avoid the risk of engaging with enemy warships at all costs.

In order to conduct an analysis of whether there is a place for a modern privateering, we must look at the factors that made privateering successful. The primary factor is that privateering was the "most cost-effective means available to a belligerent government to wage war."[19] One of the rationales provided for this cost-effectiveness is that privateering vessels were much less expensive than heavily armed warships. However, there was nothing that prevented states from building inexpensive, lightly armed ships, purpose built for commerce raiding, and in many cases, this took place. Rather, the cost-effectiveness of privateering came from the fact that privateers were otherwise merchant ships, and were only paid by the state when a prize was captured. They could also be engaged in merchant shipping at the same time and could simply conduct commerce raiding on an opportunity basis. More importantly, at the end of hostilities, they could return to being pure merchantmen, without the associated costs of maintaining a large standing navy.

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[16] *Ibid.*, 8.
[17] *Ibid.*
[18] Anderson and Gifford, "Privateering and the Private Production . . . ", 104.
[19] *Ibid.*, 101.

Another benefit of commerce raiding (not solely that conducted by privateers) was that it not only disrupted the economy of the enemy, but that it actually generated revenue for the state. In effect, the cost of privateering was borne by the enemy.[20] Although commerce raiding is no longer practiced, the potential to seek out other actors to finance security activities is nonetheless a relevant area for investigation in the modern security environment.

This use of a cost-effective fleet had two ultimate advantages. Firstly, it allowed dedicated naval vessels to focus on those tasks for which they were best suited. Secondly, it "reduced the demand for a standing national navy."[21] In addition to reducing the financial burden on the state, in the case of the United States, it had an additional benefit. As Parillo has described, in the 19th century, the United States was ideologically inclined to maintain a small public military. As a result, the use of privateers allowed it to produce sea power, without the risk to civic life that would come from the presence of a large naval force.[22]

Evidently, the impact of privateers on national power is that they filled an important military function, directly contributing to a state's sea power during wartime. In addition, they also allowed the state's naval forces to be dedicated to direct combat operations. Economically, they also had a significant impact, not necessarily by enhancing the economy of their own state, but by disrupting the economy of their enemies. If looking at power through a realist lens, where power can be seen as a zero-sum game, this would translate to an economic benefit to the state. The political or diplomatic influence is much less evident. Commerce raiding in general tended to have high risks of collateral damage,[23] particularly to neutral countries, and therefore was often criticised. However, given that most of the major powers at the time employed privateers to

[20]*Ibid.*
[21]*Ibid.*, 104.
[22]Parillo, "De-Privatization . . . ", 10.
[23]Anderson and Gifford, "Privateering and the Private Production . . . ", 106.

some extent, it is not assessed that this had significant impact on national power, although it did have a significant impact on the practice of privateering.

MODERN APPLICATIONS

By the end of the 19th century, privateering had largely been abandoned. While the evolution of naval technology would have made privateering less advantageous, its demise was in fact due to international objection as a result of "problems caused by privateers over the rights of neutrals."[24] The signing of the Declaration of Paris in 1856 prohibited the "taking of prizes at sea by privately owned vessels"[25], and while it was not signed by the United States, in practice they no longer employed privateers.[26] The end of privateering also signified the emergence of a new norm in the provision of military power, in which it became the exclusive purview of the state. Since the end of the Cold War, however, the world has seen the emergence of PMSCs.[27] These companies are now "important actors in the security sector"[28], and have participated in many recent conflicts around the world. Although much of the attention payed to PMSCs is in operations conducted on land, they also play a role in maritime security. As maritime PMSC expert Carolin Liss has explained, they provide a number of services as follows:

- Risk assessment and consulting;
- Training of crews, port authority personnel or military and law enforcement units, and vessel tracking;
- Provision of (armed) guards onboard vessels or vessel escorts;
- Crisis response, investigation and recovery of hijacked vessels and cargoes, and the rescue of kidnapped crew members;

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[24]*Ibid.*, 118.

[25]Anderson and Gifford, "Privateering and the Private Production . . . ", 119.

[26]*Ibid.*

[27]Carolin Liss, "Privatising the Fight Against Somali Pirates," *Perth: Murdoch University, Asia Research Centre Working Paper* 152 (2008): 1, http://www.murdoch.edu.au/Research-capabilities/Asia-Research-Centre/_document/working-papers/wp152.pdf.

[28]Daniel Warner, "Establishing Norms for Private Military and Security Companies," *Denver Journal of International Law & Policy* 40, no. 1-3 (September 2011): 109, http://web.b.ebscohost.com/ehost/detail/detail?sid=81b5611e-65ac-4a2a-85df-e9905078c4a5%40sessionmgr120&vid=0&hid=124&bdata=JnNpdGU9ZWhvc3QtbGl2ZQ%3d%3d#AN=84656982&db=a9h.

- Fisheries protection and protection of fishers against poachers and pirates.[29]

This paper proposes that the specific application of the provision of guards onboard vessels is one that is well suited to a comparison with traditional privateering. Even more specifically, it will look at this application in the context of protection of vessels from pirates. Although piracy has a long history, attacks have increased since the end of the Cold War, and it began to receive a great deal of international attention during a spike in pirate attacks off the coast of Somalia in 2008.[30] Counter piracy efforts can take several forms. Naval vessels can be used to seek out pirates and to disrupt their operations, but deterrence operations are also effective. This can take the form of providing an armed escort to merchant shipping, or through the embarkation of security personnel, armed or otherwise, known as VPDs.[31] Although the international community responded to the piracy crisis by deploying warships to the area,[32] another trend that emerged was the employment of PMSCs who provided protective services to ships transiting through high risk areas.[33] Although there have been instances of PMSCs providing armed escort vessels, the more common use has been the provision of VPDs. Like commerce raiding during the era of privateering, VPDs are not the sole purview of private industry and have also been provided by naval personnel from a number of countries. The use of

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[29]Carolin Liss, "Losing control? The privatisation of anti-piracy services in Southeast Asia," *Australian Journal Of International Affairs* 63, no. 3 (September 1, 2009): 396, http://web.a.ebscohost.com/ehost/detail/detail?sid=1fd5b6d2-9e96-4116-be8c-f47973eeed03%40sessionmgr4003&vid=1&hid=4201&bdata=JnNpdGU9ZWhvc3QtbGl2ZQ%3d%3d&wb48617274=907CFC4F#AN=19283016&db=eoah.

[30]International Maritime Organization, "Reports on Acts of Piracy and Armed Robbery Against Ships, Annual Report – 2013," Annex 4, last accessed 2 May 2016, http://www.imo.org/en/OurWork/Security/SecDocs/Documents/PiracyReports/208_Annual_2013.pdf.

[31]Symmons, "Embarking Vessel Protection Detachments and Private Armed Guards on Board Commercial Vessels: International Legal Consequences and Problems under the Law of the Sea," *Military Law and the Law of War Review* 51/1 (2012): 23, http://heinonline.org/HOL/LandingPage?handle=hein.journals/mllwr51&div=7&id=&page=. Although some sources define VPDs as "state-based military or law enforcement units", this paper uses the term to define either state-based on privately contracted detachments, and will specify which type is being discussed.

[32]Liss, "Privatising the Fight . . .", 4.

[33]Spearin, "Promising Privateers . . . ", 98.

PMSCs as VPDs proved successful, and has even been recommended by senior naval officers[34]. This emergence also caused some to refer to these PMSCs as modern privateers, however, as Spearin has argued, the role that these companies play, and the way they execute their duties has little in common with the privateers of the 13th to 19th centuries.[35] In particular, privateers operated their own ships (in fact, the term is often used to describe both the ship, and the sailors that crew it). Furthermore, privateers had a distinctly offensive role, which differs from the modern PMSC, which tends to fill a defensive role.[36] Nonetheless, there are parallels to be drawn between privateers and PMSCs in this application in terms of how they can be an effective way for private industry to generate sea power.

One of the advantages of privateering that was described above was the absence of large capital costs, due to the fact that privateering vessels were merchant ships that had a purpose in peacetime. Although this differs from the case of the PMSC providing VPDs, the low capital costs are nonetheless a common advantage. While the privateer could return to normal trading operations at the end of hostilities, the PMSC reduces personnel costs by contracting personnel only when required.[37]

A great deal of the discussion surrounding the use of PMSCs revolves around cost-effectiveness. However, as Baker and Pattison point out, "although PMSCs can be used to circumvent the military costs … citizens will still be required to take on the financial costs".[38] In essence, they are suggesting that when the PMSCs are contracted by the state, the cost of the

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[34]Terrence McKnight, as cited by Spearin, "Promising Privateers . . . ", 97.

[35]Spearin, "Promising Privateers . . . ", 98.

[36]*Ibid.*, 103-104.

[37]Carolin Liss, "(Re)Establishing Control? Flag State Regulation of Antipiracy PMSCs," *Ocean Development & International Law*, 46:2, 88, http://www.tandfonline.com/doi/abs/10.1080/00908320.2015.1024057.

[38]Deane-Peter Baker and James Pattison, "The Principled Case for Employing Private Military and Security Companies in Interventions for Human Rights Purposes," *Journal of Applied Philosophy* 29, no. 1 (February 2012): 6, http://web.a.ebscohost.com/ehost/detail/detail?sid=bbdd9d06-eb63-45e1-8970-106a0b9108ae%40sessionmgr4004&vid=0&hid=4201&bdata=JnNpdGU9ZWhvc3QtbGl2ZQ%3d%3d#AN=71688184&db=a9h.

operations is still publicly borne. Like discussions around out-sourcing in the commercial sector, the discussion therefore becomes one of how the PMSC can be more cost-effective than a state's military forces. In the case of privateering, however, in addition to cost-effectiveness, privateers also drew on an additional source of funding, that of their enemies. By capturing enemy shipping, they were effectively providing a partial source of funding that did not draw on the state's resources. Similarly, the use of PMSCs for VPDs is typically funded by the ship owners, effectively making these ship owners "'responsibilized' for their own security."[39] This has disadvantages in that the potential exists for states to be seen to be neglecting their responsibilities, however from a purely financial perspective, it is clearly advantageous to the state.

A final comparison is that, like commerce raiding, VPDs have the advantage of requiring little coordination with other naval assets, which can be advantageous to a PMSC that lacks the robust command and control network inherent in a modern naval force.

One argument against the use of PMSCs is the lack of accountability, and the potential for abuse. This can be derived from the notion that private industry is profit driven, and not motivated by higher-level ideals. As a result, the use of PMSCs might be most effective when their profit motivations are synchronized with the state's objectives. In the case of VPDs, the goal of the state (or the international community in general) is to prevent ships from being attacked by pirates. Similarly, the commercial interest of a PMSC providing a VPD is to protect the ship that it has been contracted to protect, and therefore, in this application there is good synchronization of purpose. As opposed to the international community's experience in the land environment, the risk of collateral damage to other ships in the maritime environment is

[39]Spearin, "Promising Privateers . . . ", 98.

relatively low, and so the primary concern is with an excessive use of force.[40] In other words, the existing risk is that VPDs could use an excessive amount of force against pirates and cause a potentially unnecessary escalation. Similarly, VPDs could use force against vessels that pose no actual threat to the vessel. The latter concern is of particular importance in many regions plagued with piracy today, as pirate vessels are often undistinguishable from fishing boats. It should be noted, however, that this is not a concern unique to private VPDs. As highlighted by the case of the *Enrica Lexie*, where an Italian Navy VPD allegedly shot and killed two Indian fisherman that were suspected of piracy[41], these concerns are equally important to state-provided VPDs. Naval forces typically rely on robust Rules of Engagement in order to manage these risks, and similar measures can be used by private contractors. There is little that governing bodies can do, however, to ensure that PMSCs implement such measures, and policing of their activities on the high seas can be particularly problematic.[42] The tools available for states to regulate their PMSCs will be discussed in the following section.

Having looked at some of the advantages of using PMSCs to provide VPDs, we must now look at what influence they have on sea power. Like privateers, by providing VPDs, PMSCs can fill a role that does not require the use of the advanced weapon systems found in modern warships. By doing so, naval forces can be used to conduct higher priority missions, or even to fill other roles in the counter-piracy spectrum.

An argument against the use of PMSCs in general is that they are uniquely focused on the protection of the client that has employed them. In this application, this means that they are solely interested in the protection of the vessel in which they are embarked. It can be argued that this is simply treating the symptoms of piracy, and not the root cause. However, given that piracy

[40]Liss, "Privatising the Fight . . .", 12.
[41]Symmons, "Embarking Vessel Protection Detachments . . . ", 29.
[42]Liss, "Losing control . . . ", 399.

typically stems from problems on land, it is unlikely that any naval force can make any significant contribution to the resolution of the underlying issues causing piracy. Nonetheless, widespread use of VPDs would make piracy a less attractive option for potential pirates, and could yield some results. Indeed, concerted action by naval forces and the use of VPDs off the coast of Somalia has contributed to a significant decrease in the number of attacks in that area.[43]

From the analysis above, it is evident that a number of factors that made privateering a viable option for generating sea power are also present in the use of PMSCs for VPDs in a counter-piracy role. Although it is likely that there will always be some challenges in the regulation of PMSCs, significant progress has nonetheless been made, particularly with regards to the establishment of an International Code of Conduct.[44] With the necessary efforts put forward to ensure that abuses are minimized, it is assessed that the provision of VPDs by PMSCs is an effective and appropriate role for private industry to play in the realm of maritime security. This analysis has, however, thus far been independent of the impact on national power. The following section provides this analysis.

PMSC AND NATIONAL POWER

In order to determine the impact on national power, we must first determine what nation we are looking at. In the case of privateering, this was straight forward as the privateers originated from a given state, and worked in that state's interest. In the modern context of counter-piracy, it is much more complicated.

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[43]International Maritime Organization, "Reports on Acts of Piracy and Armed Robbery Against Ships, Annual Report – 2013," Annex 4, last accessed 2 May 2016, http://www.imo.org/en/OurWork/Security/SecDocs/Documents/PiracyReports/208_Annual_2013.pdf.

[44]Daniel Warner, "Establishing Norms for Private Military and Security Companies," *Denver Journal of International Law & Policy* 40, no. 1-3 (September 2011): 116, http://web.b.ebscohost.com/ehost/detail/detail?sid=81b5611e-65ac-4a2a-85df-e9905078c4a5%40sessionmgr120&vid=0&hid=124&bdata=JnNpdGU9ZWhvc3QtbGl2ZQ%3d%3d#AN=84656982&db=a9h.

The Montreux Document, which proposes best practices for the use of PMSCs, links PMSCs to three types of states: a) contracting states; b) the state in which they operate; and c) the state in which the PMSC is based.[45] As VPDs are often contracted directly by ship owners, the contracting state in this case is not relevant.

As VPDs often operate on the high seas, there is not necessarily a state in which they operate. One alternative possibility is therefore to look at the regions in which the piracy is taking place. However, many of these areas, Somalia in particular, are prone to piracy because the state does not have the means or the capacity to address it.

Another possibility is to look at the state conducting the shipping. This is unfortunately complicated by the fact that the flag state and the vessel ownership are frequently different from one another.[46] This means that the link between a state and its merchant shipping in the modern globalized environment has become somewhat tenuous. Factoring in the origin or destination of the cargo further complicates the situation, and the end result is that it is very difficult to link specific ships to specific states. This situation may also factor into the proliferation of privately sourced VPDs. Based on the factors identified above, it is difficult for a state to prioritize which of its vessels should be provided with naval support, leaving a void for PMSCs to fill.

[45]Swiss Confederation and International Committee of the Red Cross (ICRC), "Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict," (Geneva: ICRC, 2009), 31, https://www.icrc.org/eng/resources/documents/publication/p0996.htm.

[46]In order to demonstrate the complexities resulting from the use of Flags of Convenience, a review of data prepared by the United Nations Conference on Trade and Development was conducted. As an example to highlight the relationship between ownership and flag (or lack thereof), the country with the highest percentage of the world's shipping by flag state is Panama, at over 20% (as measured by dead weight tonnage). However, in terms of vessel ownership, Panama does not factor in the top 35 countries that are presented. Rather, it is Greece that owns the most vessels. Interestingly, of the top 15 countries by vessel ownership, only Singapore has less than 50% of its vessels carrying a foreign flag. Data is available at http://unctad.org/en/publicationslibrary/rmt2015_en.pdf.

A final consideration is to look at the states from which the PMSCs themselves originate. However, data on PMSC activities is notoriously incomplete and furthermore, the extent to which a PMSC represents the country from which it originates is not always significant.

The factors above are outlined not simply to highlight a challenge with this analysis, but also to highlight that it is very difficult to establish a link between a state and the use of a privately-contracted VPD embarked in a merchant ship. As will be discussed below, this has a significant impact on the impact of VPDs on national power. In order to overcome this complexity for the purpose of this analysis, however, it will examine the recent experiences of the United Kingdom. The United Kingdom is a useful example as it:

a) has a long history of both merchant and naval shipping;

b) maintains one of the world's most powerful navies;

c) is among the top shipping nations by ownership[47] and flag[48];

d) is a major economic power, as it has the world's 5th highest GDP (as of 2014)[49];

e) as an island nation relies significantly on the sea for its imports and exports; and

f) is reportedly one of the main providers of PMSCs in the maritime sector.[50]

Using the United Kingdom is useful as a case study because it has a stake in protecting the sea lines of communication, but also has the means to play a role in doing so.

Using the same framework of social determinants that was used earlier in this paper, we can look at how the use of PMSCs will impact national power. The impact of the use of PMSCs will have some marginal impact on the United Kingdom's military power, as it will free up the

[47]United Nations Conference on Trade and Development (UNCTAD), "Review of Maritime Transport 2015," 36, Last accessed 8 May 2016, http://unctad.org/en/publicationslibrary/rmt2015_en.pdf.

[48]*Ibid*., 42.

[49]World Bank, "Gross Domestic Product 2014," last accessed 8 May 2016, http://databank.worldbank.org/data/download/GDP.pdf.

[50]Liss, "Losing control . . . ", 395.

Royal Navy to focus on higher priority tasks. Although it is conceivable that the use of PMSCs in this way could build the capacity for protecting vessels in the event of a potential conflict, it is unlikely that these units would be effective against any major naval power.

In terms of economic power, there is a clear benefit to the cost-effective protection of shipping. By keeping the sea-lanes open, the price of shipping is reduced, thus stimulating the global economy. For a country like the United Kingdom that depends on shipping for its trade, this is a critical factor. However, while there will be cases where the vessel that is protected is clearly British, for the most part, the protection of shipping will not have a benefit that is unique to the United Kingdom. Rather, it is in the common good, and of benefit to all nations that rely on the sea for commerce. As a result, while this is of significant benefit to the state, it is considered to be an indirect benefit.

As previously stated, countering piracy is in the common good, and therefore contributing to this effort can generate some diplomatic capital for a state. However, the tenuous link between a PMSC and its home country means that a state is unlikely to gain direct influence as a result of providing privately sourced VPDs. There is also a diplomatic down-side to using PMSCs, which stems from the potential for abuse, and the fact that there is a generally negative public perception from the use of PMSCs. From our analysis of privateering, we have seen that this can be fatal for the industry. As a result, it is in both the PMSC and the state's interest to ensure that conduct is maintained at a high standard.

A final opportunity for diplomatic influence is not in the direct provision of the VPDs themselves, but in the state's involvement in the regulation of the industry. At this time, significant progress has been made towards the establishment of norms and best practices, through such instruments as the Montreux Document and the International Code of Conduct for

Private Security Service Providers.[51] However, while many states and companies have signed these documents,[52] they remain voluntary. As a result, there is significant opportunity for interested states, like the United Kingdom, to make meaningful contributions to the evolution of the ethical, legal and regulatory framework that surrounds the employment of privately-contracted VPDs. In addition, given the difficulties associated with regulating the actions of PMSCs on the high seas, there is an opportunity for a state with significant naval forces, like the United Kingdom, to providing a policing function, a role that they also successfully filled in the era of privateering.[53]

In summary, while there are some minor military advantages to using privately sourced VPDs, the most significant benefit to national power stems from the maintenance of sea-lanes for the protection of the economy. However, this is truly a common good, and therefore the link between PMSCs and the national power is, at best, indirect. There are nonetheless opportunities to participate in the regulation of the industry, which could yield more significant diplomatic benefits.

CONCLUSION

Throughout history, naval forces have contributed to the national power of the states from which they originate. This paper has highlighted several ways in which they have contributed. In addition to contributions to military campaigns, naval forces have also protected the state's sea borne economy, while disrupting that of its enemies. Finally, naval forces provide the state with an effective instrument of diplomacy. From the 13th to the 19th century, many states also

[51]International Code of Conduct Association, "The ICoC," last accessed 8 May 2016, http://icoca.ch/en/the_icoc.

[52]Warner, "Establishing Norms . . .", 116.

[53]Parillo, "De-Privatization . . . ", 50.

employed privateers, who also contributed to the state's sea power by providing a cost-effective means to disrupt their enemy's merchant shipping.

Since the end of the Cold War, PMSCs have emerged as a new private industry actors that contribute to maritime security, creating an opportunity to search for parallels with privateering. Looking at the ability of PMSCs to provide VPDs to protect merchant ships from pirates in a number of high-risk areas around the world, this paper has shown that there are indeed some similarities worth noting. PMSCs are able to provide an effective deterrent for pirate attacks without the need for significant capital investment. Furthermore, like privateers, they are able to draw on a source of funding outside of the state's coffers, in this case, the ship owners themselves. Finally, they can operate independently, therefore lacking the requirement for the robust command and control structures normally resident only in modern naval forces. As a result, the use of PMSCs to provide VPDs is an effective way for private industry to contribute to maritime security. There are nonetheless many challenges with regulating these companies, and the potential for abuse must be considered.

Although the use of PMSCs to provide VPDs may be an effective way for private industry to contribute to maritime security, the benefit to any given state is less clear. In the modern, globalized environment, it is difficult to create strong links between states and the ships that serve their economies. Due to a lack of regulation, it is equally difficult for states to control PMSC activities, particularly when they are contracted directly by ship owners. Drawing on the experience of the United Kingdom, this paper has attempted to determine what impact the use of PMSCs could have on its national power. It has determined that while there might be a minor benefit from a military perspective in allowing state naval forces to focus on other activities, the true benefit comes from the protection of the sea lines of communication, which is beneficial to

the global economy. While this provides a clear benefit, it can only be indirectly tied back to any given state. The use of PMSCs does however provide an opportunity for a country like the United Kingdom to gain influence in the international community, and that is through the participation in the development and enforcement of ethical, legal and regulatory frameworks for the use of PMSCs in the maritime environment.

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