These changes brought the introduction of modern warships, advanced mining systems, submarines, and most importantly, naval aviation. Simultaneously, advancements in law led to increased regulation of ocean spaces, both for merchant and military activities taking place in maritime environments.

Today, however, we are at another turning point in maritime security affairs. As state budgets are declining and demands on world navies are placing them in increasingly precarious positions, we witness the maritime community again take private measures to enhance their own protection against asymmetric threats, thus liberating our naval forces to defend our freedoms on the high seas.

Accordingly, the maritime industry’s self-help measures can be considered a resurgence, or even renaissance, of private maritime security. This time, however, not ungoverned as in the unruly pre-industrialization period, but full of legal and industry compliance regimes in the post-United Nations Convention on the Law of the Sea (UNCLOS) paradigm.

Non-state actors entered the maritime scene with a bang. Literally. The western world re-targeted maritime threats in the year 2000 with the USS Cole bombing in Yemen. This was followed by increased maritime counter-terrorism and naval force protection operations, mimicked in the
commercial world with the adoption of International Ship and Port Facility Security (ISPS) Code coming into effect in 2004, and seeing many countries join as signatories.

On the heels of maritime terrorism came the biggest threat to the physical security of maritime trade: piracy/armed robbery at sea.

Between 2002 and 2005 terrorist attacks and armed robbery spiked in the Malacca Straits. This caused the first private maritime security boom. Just after, in 2008, East African piracy surged, notably around Somalia (Gulf of Aden region). This operating area, extending well into the Red Sea and Indian Ocean region is much larger than the Malacca Straits. The shipping industry continued to suffer loss from hijacking, stolen cargo, and ransom despite the redirection of world naval powers to combat the pirate infestation in the region. The United Nations Security Council passed five separate directives aimed at authorizing member navies to patrol the waters off the Somali coast and apprehend pirates, whether on the high seas or in Somali territorial waters (including on Somali beaches.) Now, additional piracy and armed robbery hotspots have emerged in the Gulf of Guinea region as well as South East Asia, leaving regional coastal states, global players, and non-state actors scrambling to implement security responses and the legal framework necessary to control it.

The spike in Somali attacks since 2008 and West African attacks in since 2013 forced ship owners and charterers to find alternative ways to mitigate risk and avoid, if possible, increasing “exception” insurance premiums for routes like the Gulf of Aden and West African coast. The ‘threat :: response’ ratio of sending multimillion dollar warships to stop a few pirates in outboard skiffs, simply did not add up; the response was not congruent to the threat and world naval powers are finding it difficult to maintain these costs and efforts.

On-board security emerged as the best, most cost-effective mitigation strategy. Thus the private maritime security industry received a steroid treatment following the boom in post-2008 Somali piracy, being called in to supplement, if not virtually replace, a reliance on naval protection.

Security at sea revolves around the protection of infrastructure that is mainly owned and operated by commercial entities of the private sector. Securing these globally dispersed and heavily interconnected supply chains, such as ships and offshore oil-and-gas infrastructure that rely on the maritime domain for transport and extraction can best be done by utilizing private sector assets-specifically, private security.

To demonstrate the vitality of private maritime security to the shipping sector some statistics will
be given below, elucidating figures and supporting the need for research, specifically legal, into this booming industry.

In 2009, 10% of vessels transiting the Horn of Africa/Indian Ocean had private armed guards on board. In 2010 that number jumped to 27%, and today it is suspected to be around 40% worldwide. Regarding cost, Chinese shipping giant COSCO says it pays 12 million USD per year for British private maritime security services aboard its 80 vessel fleet.

Further financial analysis from numbers released by the Independent Maritime Security Association, highlights the cost of hiring a private armed security team at about $50,000 per transit. If only 25% of vessels in the Gulf of Aden region employed guards, the math would work out to 10,612 transits per year. At the 25% range that equates to $530.6 million per year for private maritime security in the Gulf of Aden region alone. At 50% it would be a billion dollar per year business. Current calculations actually appear to surpass this estimate.

Although the private security sector is largely populated by former military, law enforcement and other trained professionals who must meet the stringent vetting criteria of shipping companies and are aware of Rules for the Use of Force, the possibility for accidents to occur with grave legal consequences remains. Major concerns for shipowners, masters, and insurers include accidental misfires, wrongful murder of fishermen, ship arrest due to unlicensed weapons carriage, and inability to adjudicate or gather evidence in the occasion that a security response incident has gone awry.

It is frequently argued that the proliferation of maritime security providers has created an operational legal gray zone and privately contracted armed security personnel (PCASP) thus work in regulation-free vacuum, both because regulations in this sector are thought to not always exist, and because they are on the high seas, an Area Beyond National Jurisdiction, which many believe lacks effective state control. Thus there is a mounting public, government, and industry held belief that the private maritime security providers are yet another armed group that needs to be further regulated.

Much of this perception has arisen from stories or even videos or fear, rather than direct evidence and scholarly assessment of the legal machinery which governs this sector. Nonetheless, it has fueled the belief that the provision and oversight of private security operations at sea is more complicated than on land. Complicated, the legal regime may indeed be, but as evidenced by the numerous hard and soft law instruments which exist to govern this sector, a legal gray area this is not.
The legal regime of the Law of the Sea, specifically that codified in UNCLOS, provides the basis for ocean governance, stipulating state responsibility, obligations, and jurisdiction. This foundation, especially the jurisdiction trifecta of flag, port, and coastal states, as well as the zonal structure established by UNCLOS is chief to ensuring uniform and universal oceans management in all industries, private maritime security certainly being no exception. It provides the necessary checks and balances, coupled with the redundancy of concurrent jurisdiction in certain circumstances, to maintain order over activities at sea.

In addition, soft law industry guidelines have emerged to augment these measures, being fostered within the industry as a less costly and more immediate tool for the sector to regulate itself. This has brought with it a fast professionalization of the industry, accepted by the greater maritime community, especially the IMO. Such growth reflects the global acceptance that private maritime security operations, which are now industry commonplace, are indeed regulated and checked via multiple channels.

Challenges still remain in advocating for use of voluntary crisis reporting measures and standardizing the interplay between private security and insurance sectors to enhance transparency and business accountability. Yet there is no doubt that the efforts of private maritime security have made a substantial positive impact on the global shipping industry, as no vessel employing armed guards has yet fallen victim to piracy or armed robbery.

The industry at large hopes to see this trend continue. Ensuring that the legal regime set down in hard law is respected, followed, and enforced, as well as encouraging industry leaders to adopt already existing soft law mechanisms will guarantee that trends toward increased legal compliance, accountability, and oversight best practices will continue on a positive trajectory.

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