

SUMMARY

In response to violence and criminality in the maritime sector, the shipping industry has relied on several models of contracted maritime security to protect vessels and seafarers. This trend has resulted in a proliferation of weapons at sea and various types of armed security teams operating aboard private commercial vessels. If the activities of these armed maritime security teams continue to be largely ungoverned, the actions of some unaccountable actors could increase incidents of violence at sea and possibly hinder efforts to pursue sustainable rule of law solutions to maritime criminality. Accordingly, Oceans Beyond Piracy (OBP) and other organizations within the maritime community are striving to increase transparency and oversight of maritime security operations. However, differences in function, applicable national jurisdiction, and types of services offered by maritime security providers makes assessing operational scope and designing uniform global policy for this sector a challenging endeavor.

As a first step in empirically examining the extent of maritime security operations, OBP seeks to define various models of contracted maritime security. OBP is releasing a series of issue papers which build on our publication from December 16th, 2016 titled "[Defining Contracted Maritime Security](#)" to further classify and define each identified model of contracted maritime security. As defined in the paper, these categories include:

- ▶ **Private Maritime Security:** Embarked private security force personnel hired by the shipping industry.
- ▶ **Vessel Protection Detachments:** Uniformed military personnel embarked on a vessel with explicit approval of the Flag State.
- ▶ **Coastal State Embarked Personnel:** Embarked armed personnel originating from the Coastal State, based on arrangements between ship operators and the providing national authorities – not specifically endorsed by the Flag State.
- ▶ **State Affiliated Escort:** Escort by a State military asset

REGIONAL USE OF COASTAL STATE EMBARKED GUARDS

The Gulf of Guinea

(This region is broadly defined as the coastline from Senegal to Angola, but most of the embarked security examples are drawn from Togo, Benin and Nigeria.)

Continued threats of Piracy and Armed Robbery to commercial vessels underway, in anchorage areas, or in ports in West Africa, have led ship operators to consider a different set of security solutions than ships transiting through the High Risk Area¹ (HRA) off the Horn of Africa.

In contrast to the Privately Contracted Maritime Security model, which evolved in the Indian Ocean HRA and is defined in OBP's previous issue paper, [Privately Contracted Armed Security](#) the prevailing model of embarked maritime security in the Gulf of Guinea involves the contracting of uniformed police or military personnel from coastal or port states onto a vessel in the anchorage, port, or territorial waters (or even Exclusive Economic Zone) of that state. This is most prevalent in Nigeria, Togo, and Benin, where OBP has been assessing this model. The coastal states in this region do not permit private armed security guards of any kind to engage in vessel protection activities in their waters. Instead, the military and/or police forces of the coastal state offer their own security services, for a fee, to private ship-owners in the region.

While the model of embarked guards was previously almost exclusively limited to West Africa, there has been a recent proliferation of embarked government or government-endorsed personnel in other higher risk areas including South East Asia and the coast of Somalia.

1. HRA is defined by the IMO here: <http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Guidance/Documents/Circular%20Letter%20No.3606.pdf>

Somalia

There are examples of regional authorities requiring the employment of specific armed security agencies on vessels in Somali territorial waters and EEZ. Particular examples of this include the use of embarked teams on trawlers and other fishing vessels that were granted regional fishing licenses and vessels conducting surveying work in the Somali basin. Since these reports are based primarily on episodic accounts, we have limited hard data to document this issue.

South East Asia

Because of national regulations that apply to territorial waters in South East Asia, the traditional model of employing Private Maritime Security cannot be used in the most of the shipping lanes in this region. Instead, some shippers have begun working with private companies to arrange for embarked armed security in the form of Government Forces from coastal states in the region. According to a PMSC active in the area, three countries; Indonesia, Malaysia and the Philippines are now offering to employ their forces through a third party to protect vessels sailing through their Territorial Waters (TTW). Since this model has only developed very recently, the focus of this paper will remain on models employed in the Gulf of Guinea.

UNDERSTANDING THE COASTAL STATE EMBARKED PERSONNEL MODEL **(Focusing on Gulf of Guinea Nations)**

Because of limitations imposed by coastal states and the unique shipping patterns in the Gulf of Guinea region, those ship-operators who desire to employ additional security measures for their vessels have turned to private maritime security companies (PMSCs) which have established operations in the area. These companies have established liaisons with the relevant Gulf of Guinea coastal states to arrange for security services provided by the Navy or Police.

These PMSCs either communicate directly with the relevant coastal state authorities to broker an arrangement for embarked security or employ the help of a local liaison to manage the interface between the ship-operator and the Navy or Police.

While some nations, such as Benin and Togo, have established specific procedures for the embarkation of armed personnel or the provision of security services, the policies for other coastal states may not be as clear. Nigeria presents a more complicated case, as the country has an official policy that forbids the embarkation of any armed personnel on merchant vessels in territorial waters. However, operators and Flag States note that there is an unofficial system which still continues that facilitates the employment of armed guards from government agencies. This ambiguity between official policy and actual practice has made it difficult for both operators and Flag States to ensure adequate security for vessels while remaining within legal boundaries.

In some circumstances, foreign PMSCs may embark unarmed maritime security liaison officers (MSLO) to be the onboard security manager who facilitates communication between the bridge team and the coastal state navy or police personnel aboard the ship. However, the presence of MSLOs has not always been welcome or understood by coastal state authorities, and some of these advisors face arrest or deportation upon arrival in port.

MARINE SECURITY SERVICES

Three types of maritime security services are offered by governmental authorities in the Gulf of Guinea region:

1. ***Escort vessel / Guard Ship*** with coastal state military or police team onboard which can protect commercial vessels or offshore installations in waters of the coastal state including in the EEZ.
2. ***Secure Anchorage Areas (SAAs)*** are anchorage areas protected by coastal state armed forces where vessels can wait and in some cases even conduct activities such as ship to ship transfers.
3. ***Coastal State military or police personnel*** can embark a vessel entering that coastal state's waters or a particular anchorage or port, remain onboard to protect the vessel throughout all operations, and then disembark as the vessel departs the coastal state's waters or the area of concern.

This issue paper will focus on Number 3 — Coastal State Embarked Personnel.

At times, this has also created confusion or friction in the chain of command structure, with the unarmed MSLO, as a civilian representative of a private security company, giving guidance that may influence the rules of engagement for the embarked armed military or police security team. Some have reportedly gone so far as to personally hold all ammunition and/or weapons of the government security team, issue direct orders to open fire, or muster to a citadel.

CHALLENGES AND OPPORTUNITIES

Status

As mentioned above, serious ambiguities and challenges are present in this model. One major challenge is defining the status of the guards on client vessels under laws of the flag state, coastal state, international law, and commercial law—especially with regard to insurance claims. The guards are uniformed members of a coastal state's armed forces or police, but are not necessarily members of the ship's crew, passengers, or supernumeraries. At the time of writing there is no consensus as to the status of these guards and to the status of the vessel when such guards are embarked.¹

Command Structure

Also of concern is the command structure of these coastal state embarked personnel. Operating offshore, often with limited equipment such as proper communications equipment, these guards must make decisions alone on which course of action to take in response to an armed threat. Although some legal scholars, advisors, and standard commercial contracts suggest that the ship's Master should maintain the ultimate authority aboard at all times, the division of responsibility can become blurred if uniformed military personnel on the vessel decide to take actions without the Master's approval or directive, as has been the case in several incidents.

With these soldiers and sailors accustomed to following a strict chain of command and having a clearly defined division of responsibility, their actions aboard private commercial vessels without their normal command and control structures present can be confusing², or worse—go awry, leading to hijacking, kidnapping³, capture, or even death of crew via friendly fire.⁴

Adding further complications to this matter is if a civilian MSLO from a PMSC is present. MSLOs have at times acted as the de facto Team Leader or commander of the embarked security team. In such a scenario, the coastal state personnel may ask “who do we take commands from—the ship's Master, the MSLO, or our command ashore?” often receiving no solid answer. This not only results in confusion, but can lead to communications breakdowns, insubordination, non-performance or abandonment of duties, and unnecessary violence at sea.

COST SUMMARY

BENIN (NAVY/MIXED)

\$476.97	Agent's coordination fee
\$10,638.66	4 Armed Guards
\$2,500.00	Embark/Disembark via Shuttle
\$4,200.00	Maritime Liaison Sec. officer
\$17,815.62	Total Cost for 7 Day Operation

NIGERIA (NAVY)

\$4,550.00	4 Armed Guards
\$4,200.00	Maritime Liaison Sec. officer
\$2,750.00	Naval Admin Cost Per Operation
\$2,500.00	Embark/Disembark via Shuttle
\$2,450.00	Agency Service Charge
\$16,450.00	Total Cost for 7 Day Operation

TOGO (NAVY)

\$ 180.65	Agent's coordination fee
\$ 1,520.00	4 Armed Guards, First Day
\$6,720.00	Subsequent Days
\$2,500.00	Embark/Disembark via Shuttle
\$4,200.00	Maritime Liaison Sec. officer
\$15,120.65	Total Cost for 7 Day Operation

1 <http://cimsec.org/troubled-waters-2-risks-contracting-government-security-forces-gulf-guinea/13016>

2 <http://swatsecuritysystems.com/info/11176/maritime-security-provision-off-nigeria-remains-confused->

3 <http://cimsec.org/troubled-waters-2-risks-contracting-government-security-forces-gulf-guinea/13016>

4 http://www.riskintelligence.eu/news/news/news_2015/

Use of Force

On the topic of violence at sea, it is important to highlight a related subject which also remains undefined—the Use of Force or Rules of Engagement for these coastal state embarked personnel undertaking vessel protection duties. While several legal documents, such as GUARDCON West Africa, make reference to Rules for the Use of Force, this framework is not standardized globally or harmonized between private security and governmental forces—such as military or police guards from coastal states in the Gulf of Guinea or between the various coastal states in the region. Not only is this a legal challenge, since adherence to Rules for the Use of Force continues to be recorded in commercial contracts, often without being defined, but also poses a serious danger when, at best, the coastal state embarked security guards are insufficiently trained on the Rules for the Use of Force, or worse, unaware of any Rules at all.

A separate perspective altogether is whether the security guards adhere to any Rules of Engagement / Rules for the Use of Force, and what can be done if they make any transgressions resulting in un-necessary use of force or violence. This could lead to deprivations of human rights, serious injury, or even death of those on the receiving end. The sovereignty of the guards as uniformed military personnel acting in their official capacity makes them largely protected outside of their own military tribunals or court-martials, and in several cases they have been considered to act with impunity, operating with misconduct as there is no authority and no system to hold them accountable.

Since it is generally understood that there is significant under-reporting of attacks and security response incidents in the Gulf of Guinea, figures on defensive actions taken by coastal state security teams remain elusive. However, anecdotal evidence which OBP has received from MSLOs, PMSCs, and shipowners suggests that incidents do occur with frequency. Coastal state embarked security personnel from some countries remain un(der)-trained on tactics and Rules for the Use of Force, and various governmental agencies providing security services at sea lack any effective system for lodging grievances or reporting the use of excessive force.

Procurement System

Perhaps the greatest challenge is assessing the procurement system in place for obtaining and providing services from coastal state embarked personnel. The governments of several Gulf of Guinea coastal states have come under intense public and media scrutiny for offering services of the armed forces and police to protect private shipping companies for profit, or as some media outlets say “marketing the Navy as a private business.” Another factor to consider are charges of corruption by public officials, as it is possible that many of the funds received from the deployment of uniformed personnel as security guards on private ships are undocumented and are not properly accounted for by the controlling agencies themselves. This lack of transparency, revenue diversion, and insufficient use of funds in the procurement system results in excessive costs for ship-operators and solutions which are at times substandard or even ineffective. This, in turn, opens up a labyrinth of financial compliance challenges for ship operators who may be subject to the US Foreign Corrupt Practices Act, UK Bribery Act, or similar laws in their home country.

In order to improve the efficiency and safety of security services offered by coastal states in the Gulf of Guinea, OBP first believes that it is necessary to bring transparency to this system. Once these models are better understood, stakeholders could consider encouraging relevant governmental authorities to standardize systems and procedures for embarking governmental security personnel, improve security training and Use of Force awareness, streamline operational efficiency, and discourage possible corrupt practices. These improvements could make the system more user-friendly, efficient, and accountable. OBP will also continue to monitor the security situation in the Gulf of Guinea, as well as areas in SE Asia and off the Coast of Somalia where these models are also now taking hold.