



General Assembly

Distr.: General
4 August 2022

Original: English

Seventy-seventh session

Item 68 of the provisional agenda*

Right of peoples to self-determination

Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, in accordance with Assembly resolution [75/171](#) and Human Rights Council resolution [42/9](#).

* [A/77/150](#)



Report of the Working Group on the use of mercenaries as means of violating human rights and impeding the exercise of the right of peoples to self-determination

Summary

In the present report, the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination examines violations of human rights and humanitarian law perpetrated by private military and security companies, mercenaries and related actors in the maritime context. Private military and security companies, in particular, have increasingly been deployed at sea in recent years as a direct response to the challenge of piracy in multiple geographical regions, and often in conjunction with public security actors. The isolated nature of the marine environment and non-existent or weak regulatory frameworks create a situation where the lack of monitoring and oversight enable human rights abuses of seafarers perpetrated by private security personnel to flourish. Similarly, labour rights of private security personnel themselves are also at substantial risk. Nevertheless, accountability for violations is absent. The proliferation and weak regulation and management of weapons at sea are also of concern. In the report, the Working Group urges States to ensure proper oversight and regulation of private military and security companies operating in the maritime context and to ensure that victims of abuses at sea perpetrated by such actors can gain access to justice and effective remedy.

During the preparation of the present report, the Working Group was composed of Sorcha MacLeod (Chair), Jelena Aparac, Ravindran Daniel, Chris Kwaja and Carlos Salazar Couto.

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I. Introduction

1. The present report is submitted to the General Assembly by the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, in accordance with Assembly resolution 75/171 and Human Rights Council resolution 42/9. In pursuance of its mandate, the Working Group monitors mercenaries and mercenary-related activities in all their forms and manifestations, as well as private military and security companies in different parts of the world. In addition, the Working Group studies their activities and the impact they may have on human rights, in particular the right to self-determination.

2. The present report was prepared on the basis of extensive desk research, contributions collected during a virtual multistakeholder expert consultation held on 24 February 2022 and responses to the call by the Working Group for written submissions.¹ Thanks are extended to those who shared their expertise.

3. In its previous reports, the Working Group has focused primarily on the increasing use and human rights impacts of mercenaries and mercenary-related actors, as well as private military and security companies, in land-based contexts. However, the increasing use of private military and security companies in recent years as a response to the challenges of piracy and other maritime security threats, together with reports of mercenary-related activities in the maritime sphere, represent key geostrategic developments with potential negative consequences for the enjoyment of human rights.²

4. In the present report, therefore, the Working Group examines the escalating provision of military and security products and services in the maritime sphere by private military and security companies and their human rights impacts. The ever-increasing demand for cheaper services, however, is resulting in greater competition, accompanied by a lowering of the quality of private security services at sea and the consequent negative impacts on human rights. Ship owners seek the veneer of compliance with relevant standards via certification, for example, without ensuring actual compliance at sea. Compounding these issues is the fact that jurisdiction on the high seas is virtually unenforceable owing to the isolated environment. Non-existent or weak regulatory frameworks and inconsistent standards across the sector, in particular in relation to the use of force and labour rights, further heighten the problems. Accountability for violations of human rights violations and labour rights is absent.

5. While the Working Group received some information about mercenary-related maritime activities, including regarding the transportation of weapons and materiel by sea, it became evident during the preparation of the report that there is limited information in the public domain or consideration of this specific aspect of maritime security.³ It also became evident that complete information is lacking on the situation of the victims of mercenaries, mercenary-related actors and private military and security companies in the maritime context. This lack of attention and reporting on the issue has made it impossible to offer a comprehensive picture of the topic and confirms the urgent need for further research and action.

6. The Working Group identifies the contexts in which private actors falling within its mandate are involved in the provision of security and the drivers of their use. It also identifies the different types of actors operating in the maritime context and the

¹ See www.ohchr.org/en/calls-for-input/2022/call-inputs-report-maritime-security.

² Expert consultation.

³ Expert consultation.

services provided. In addition, it pinpoints the human rights impacts of the activities of private maritime security actors and identifies the applicable legal provisions and relevant regulatory mechanisms for accountability. It further addresses concerns about the proliferation of weapons at sea and their poor regulation, management and use, as well as worries about inadequate vetting and training of personnel in general. Finally, the Working Group concludes that monitoring and oversight of human rights at sea is weak or absent and makes recommendations for States, regulators, industry and other relevant actors to address the gaps, particularly in relation to the lack of accountability and access to justice for victims of human rights violations perpetrated by private military and security companies in the maritime context.

II. Definitions

7. The Working Group defines the term “private military and security company” as a corporate entity that provides, on a compensatory basis, military and/or security services by physical persons and/or legal entities, including services provided on land or at sea.⁴ Private military and security companies may offer services and operate on land, at sea or both.

8. It should be noted that the maritime security industry and others use the term “private maritime security company”. The Working Group does not use this particular terminology.

9. While certain specificities and challenges – both operational and legal – are associated with the provision of maritime security services, such as anti-piracy operations, floating armouries and jurisdiction at sea, there are also significant overlaps with land-based security operations, such as the guarding of assets and provision of security intelligence.⁵ Land-based and maritime security cannot be strictly distinguished from each other. A reference to maritime security may encompass managerial or logistical support that is provided on or from land, or from different vessels. Focus on the types of services carried out by such private military and security companies is essential, given the mutable nature of their operations, the complex corporate structures employed by the industry, its clients, and flag States and the potential risks to human rights posed by maritime security operations.

10. For the purpose of clarity, “flag State” is taken to mean “a State whose flag a ship flies and is entitled to fly” and its duties are set out in article 94 of the United Nations Convention on the Law of the Sea.⁶ Every State has the right to sail ships flying its flag on the high seas and the Convention gives such a State the right to exercise certain rights and duties in relation to those ships that bear the nationality of that flag State.⁷ A flag State thus exercises “primary legislative and enforcement jurisdiction over its ships on the high seas”.⁸ A “coastal State” is taken to mean a State from whose coast or baselines the breadth of the territorial sea is measured.⁹ The Convention assigns certain rights to coastal States depending on the sea zone in question, i.e. internal waters, the territorial sea, the contiguous zone, its exclusive

⁴ See A/HRC/15/25, annex, part I, art. 2.

⁵ C. Liss and P. Schneider, “Regulating Private Maritime Security Providers”, *Ocean Development & International Law*, vol. 46 (2015), p. 81. Available at <https://cogentoa.tandfonline.com/doi/full/10.1080/00908320.2015.1024053>.

⁶ United Nations Convention on Conditions for Registration of Ships (1986), art. 2 (definitions); and art. 4 (1). See also R.A. Barnes, “Flag States”, in D. Rothwell et al (eds.), *The Oxford Handbook of the Law of the Sea* (Oxford University Press, 2015), chap. 14.

⁷ United Nations Convention on the Law of the Sea, art. 90.

⁸ R.A. Barnes, “Flag States”.

⁹ United Nations Convention on the Law of the Sea, arts. 5–7, 9–10 and 47.

economic zone or the high seas.¹⁰ Under the Convention, a coastal State is permitted to apply laws and regulations to foreign ships transiting through its territorial sea, for example, in relation to navigational safety. Finally, a “port State” is taken to mean a nation that allows “port State control” at its ports. A port State exercises jurisdiction over a foreign vessel for the purpose of inspecting the vessel in its port to verify that the ship and its crew are operating in compliance with international standards.¹¹ Jurisdiction is based in this case on a memorandum of understanding between States.

11. The legal definition of “mercenary” is contained in article 47 of the 1977 Protocol Additional to the Geneva Conventions of 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I). The definition is cumulative in nature and therefore narrow, but the essence of the definition is that a mercenary directly participates in hostilities for substantial private gain (art. 47 (2) (b) and (c)). Article 47 does not criminalize mercenarism but it denies mercenaries the automatic right to the protections accorded under prisoner-of-war status.¹² This definition is also reflected in other international and regional instruments.

III. Context

12. For more than a decade and a half, maritime security has been a focus of concern among States and other international actors, including the United Nations,¹³ the International Maritime Organization (IMO),¹⁴ the African Union¹⁵ and the European Union.¹⁶ The maritime security sector developed exponentially post-2008, in response to the significant increase in the threats of piracy and armed robbery against merchant ships in the Western Indian Ocean and the Gulf of Aden.¹⁷ During that period, the hijacking of vessels and crew kidnappings for ransom by pirates had severe and ongoing negative impacts on the seafaring community.¹⁸ States adopted multiple strategies to deal with these challenges, including naval counterpiracy operations and the deployment of vessel protection detachments on ships flying their flag. In addition, some, but not all, flag States of vessels began permitting the hiring of private military and security companies to protect vessels in areas of high-risk of piracy and armed robbery.

13. As threats to the merchant shipping sector expanded into other geographical hot spots, including the Gulf of Guinea, the Red Sea, the Arabian Sea and the South China Sea, States, shipowners and the broader shipping industry became increasingly

¹⁰ United Nations Convention on the Law of the Sea, part II (Territorial Sea and Contiguous Zone); A. Bardin, “Coastal State’s Jurisdiction over Foreign Vessels”, *Pace International Law Review*, vol. 14, iss. 1 (2002).

¹¹ See www.imo.org/en/OurWork/MSAS/Pages/PortStateControl.aspx.

¹² See International Committee of the Red Cross, “Customary International Humanitarian Law Database”, rules 108 (Mercenaries) and 106 (Conditions for Prisoner-of-War Status).

¹³ See, e.g., www.unodc.org/unodc/en/piracy/index.html.

¹⁴ See www.imo.org/en/OurWork/Security/Pages/MaritimeSecurity.aspx.

¹⁵ See, e.g., African Charter on Maritime Security and Safety and Development in Africa (Lomé Charter) (2016).

¹⁶ See, e.g., <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008E0851>.

¹⁷ Submission by the Chair of the Working Group on the use of private military and security companies in maritime security of the Montreux Document Forum.

¹⁸ Expert consultation.

focused on the topic of maritime security.¹⁹ States developed collaborative approaches to tackle the expanding threat of piracy and its impacts, such as the Code of Conduct concerning the repression of piracy and armed robbery against ships in the Western Indian Ocean and the Gulf of Aden (the Djibouti Code of Conduct),²⁰ while shipowners increasingly hired private military and security companies to protect vessels, personnel and cargos. Regulators and others established best practices for the hiring of private military and security companies at sea, but without endorsing their use.²¹ States have engaged on the topic in relevant international organizations and specific forums, including multistakeholder initiatives, in addition to developing domestic policies.

14. The Working Group notes that private military and security companies hired to provide maritime security as a response to piracy provide a wide variety of physical services, including the following: armed and unarmed protection of ships and/or crew and/or cargo; escorting of merchant vessels; ship hardening; maintenance and operation of weapons systems; security surveillance of places and waters, goods and/or persons; detention of pirates and armed robbers; training of crews on defence against piracy and armed robbery attacks; and security audits.²² They protect vessels and commercial shipping in general, in addition to providing on-site security for offshore platforms, ports and maritime infrastructure. While the utilization of private military and security companies carries the potential for more secure maritime transit, it can, and does, come at a cost to human rights, including the disproportionate use of force; violations of the rights to life, liberty and other physical integrity rights; violations of due process guarantees; and abuses of labour rights.²³

15. Unquestionably, the deployment of maritime private military and security companies has contributed to a substantial decrease in pirate attacks in the Horn of Africa (specifically in the Gulf of Aden, Guardafui Channel and Somali Sea). Despite this positive progress, however, the Working Group is cognizant of the fact that the threat of piracy continues today. The Gulf of Guinea is the region most affected by ongoing pirate attacks, with 96 per cent of all kidnappings occurring there.²⁴ Indeed, in June 2022, the Peace and Security Council of the African Union reiterated its “deep concern over the threat that piracy and armed robbery at sea in the [Gulf of Guinea] poses to maritime security in the Continent, which greatly affect the shipping industry

¹⁹ See, e.g., R. Geiss and A. Petrig, *Piracy and Armed Robbery at Sea: The Legal Framework for Counter-Piracy Operations in Somalia and the Gulf of Aden* (Oxford University Press, 2011); C. Liss, *Oceans of Crime: Maritime Piracy and Transnational Security in Southeast Asia and Bangladesh* (Institute of Southeast Asian Studies, 2011); A. Petrig, “The Use of Force And Firearms by Private Maritime Security Companies Against Suspected Pirates”, in *The International and Comparative Law Quarterly*, vol. 62, iss. 3, p. 667 (2013); J. Stockbruegger, “US Strategy and the Rise of Private Maritime Security”, in *Security Studies*, vol. 30, iss. 4, p. 578 (2021); C. Liss, “The Privatisation of Maritime Security - Maritime Security in Southeast Asia: Between a Rock and a Hard Place?” (Murdoch University, 2007), available from <https://researchrepository.murdoch.edu.au/id/eprint/23746/>; L. Affi and others, “Countering Piracy through Private Security in the Horn of Africa: Prospects and Pitfalls”, in *Third World Quarterly*, vol. 37, iss. 5, p. 934.

²⁰ As amended by the Jeddah Amendment to the Djibouti Code of Conduct 2017, available at <https://dcoc.org/about-us/jeddah-amendment/>.

²¹ See, e.g., BIMCO, ICS, IGP&I Clubs, INTERTANKO and OCIMF, “BMP5: Best Management Practices to Deter Piracy and Enhance Maritime Security in the Red Sea, Gulf of Aden, Indian Ocean and Arabian Sea” (2018).

²² Submission by the Chair of the Working Group on the use of private military and security companies in maritime security of the Montreux Document Forum.

²³ Submission by the Human Rights at Sea; expert consultation.

²⁴ See www.lmalloyds.com/lma/jointwar; and One Earth Future, “The State of Maritime Piracy: 2020” (2020), available from www.stableseas.org/post/state-of-maritime-piracy-2020.

and the economy of coastal States of [the] region.”²⁵ It is therefore highly likely that the demand for private military and security companies at sea will continue to increase, with all the human rights risks and impacts their use implies.

16. Today, the provision of maritime security continues to be an important market for private military and security companies. They are hired predominantly by private actors to carry out numerous security services primarily, but not only, to protect ships at sea. While fewer than 30 per cent of maritime vessels are protected exclusively by private military and security companies, at the same time there is a growing and concerning trend towards progressively more complex hybrid models of maritime security where public and private security actors combine to provide security for vessels.²⁶

17. The Working Group received information about new developments in relation to the hybridity of security responses to piracy, especially around the Gulf of Guinea. Due to the success of State anti-piracy operations and the maritime deployment of private military and security companies, piracy at sea is less of a threat, but banditry activities have been pushed into inland waterways.²⁷ This has resulted in increasing complexity in the ways in which security services are delivered and the emergence of highly profitable contractual arrangements involving the privatization of State naval services, such as escorting and protecting maritime commerce. The hybridization of security provisions is a problematic development from a human rights perspective because of the difficulties in ensuring effective oversight and accountability when human rights violations occur. Concerns about the growing hybridization of security have been highlighted previously by the Working Group in the context of exploitation of natural resources.²⁸

18. Beyond piracy, there are concerns around the use of ships in human trafficking, irregular migration, drug trafficking and the trafficking of wildlife and wildlife commodities. Concern around the use of private military and security companies may arise in connection to some of these activities. For example, the Working Group received information that stowaways on board vessels are sometimes detained in such poor conditions that they are life-threatening.²⁹

19. Private military and security companies rarely provide military services in the maritime context. Furthermore, the Working Group received no information to indicate that private military and security companies currently operating at sea are engaging in naval warfare.

20. Specific challenges arise around the monitoring of the activities of private military and security companies at sea. These companies often operate at a great distance from State enforcement or control. Moreover, there is a concerning absence of specific and/or effective regulation by flag States of private military and security company operations on board ships in areas of high risk of piracy and armed robbery. In addition, there is a lack of awareness of the existing regulations on the part of the shipping industry, private military and security companies and their personnel, as well as port and coastal authorities.

21. The Working Group did receive some limited information that signalled the involvement of mercenaries or mercenary-related actors in the illicit transportation of

²⁵ See <https://peaceau.org/en/article/communiqué-of-the-1090th-meeting-of-the-psc-held-on-28-june-2022-on-maritime-piracy-in-the-gulf-of-guinea>.

²⁶ See www.montreuxdocument.org/media/pdf/reference_document.pdf; expert consultation; submission by the Chair of the Working Group on the use of private military and security companies in maritime security.

²⁷ Expert consultation.

²⁸ See A/HRC/42/42, para. 25.

²⁹ Expert consultation.

weapons, materiel and personnel by sea as a means to circumvent arms embargoes. For example, in 2021 the Panel of Experts on Libya detailed the activities of the so-called “project opus”, an illicit operation involving individuals from multiple States who planned armed maritime interdictions, among other operations.³⁰ The proposed plan ultimately failed but involved the creation and deployment of a marine strike force using speedboats and attack helicopters that would board and search merchant ships. The Panel of Experts concluded that several named individuals were acting in breach of the arms embargo outlined in paragraph 9 of Security Council resolution 1970 (2011) by supplying vessels that met the definition of “military equipment”. The resolution explicitly includes a prohibition on the supply of armed mercenary personnel.³¹

22. Moreover, the Working Group received information suggesting that there may be links to human trafficking via the maritime transfer of coerced mercenary recruits from particular countries. Opacity around the use of maritime vessels to support mercenary-related activities is unsurprising, and the general lack of transparency around mercenary activities is an issue that the Working Group has previously identified as concerning in its reports that focus more broadly on mercenarism.³² It is clear, however, that further data collection and research are required in this area.

A. Drivers of the use of private military and security companies in the maritime context

23. The global drivers of pirate activities that lead to the contracting of private military and security companies are varied, complex and ill-addressed.³³ They include poverty and poor socioeconomic circumstances, with high unemployment among coastal communities, particularly among young people and seafarers. Economically marginalized communities are particularly susceptible to embarking on piracy. The depletion and exhaustion of fishing stocks by pollution and illegal fishing are also root causes of maritime crime among affected communities. In addition, weak systems of governance and institutions, security threats, legal and jurisdictional deficiencies and corruption (both local and regional) all enable piracy. In some cases, the exploitation of natural resources, such as oil, drives communities to maritime crime, including attacks on oil tankers and pipelines to “feed illegal refineries”.³⁴ Fluctuations in these root causes may create more or less permanent hotspots of concern.³⁵

24. The Working Group noted that maritime crime is particularly opportunistic and may be influenced by multiple unpredictable factors, including: weather and climate conditions; links to transnational criminal networks and the resilience and creativity of such networks; and the success of ongoing efforts towards regional and international cooperation for containing and/or suppressing maritime crime.³⁶ Crimes such as human trafficking, drug trafficking, trafficking of weapons and the transport

³⁰ See S/2021/229, paras. 86–89 and annex 76; see also, e.g., www.nytimes.com/2020/05/25/world/middleeast/libya-mercenaries-arms-embargo.html.

³¹ Ibid., paras. 45–47.

³² See, e.g., A/75/259.

³³ European Parliament, *Piracy and armed robbery off the coast of Africa: EU and global impact* (Brussels, 2019), available at [www.europarl.europa.eu/RegData/etudes/IDAN/2019/635590/EPRS_IDA\(2019\)635590_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2019/635590/EPRS_IDA(2019)635590_EN.pdf).

³⁴ Ibid.

³⁵ Submission by the Chair of the Working Group on the use of private military and security companies in maritime security of the Montreux Document Forum.

³⁶ Ibid.

of illicit waste and counterfeit goods were reported to the Working Group as particular issues giving rise to security concerns in the maritime context.

25. Inter-State warfare, militarized disputes and terrorism are also drivers of security concerns at sea. Violence emanating from both land-based and naval armed conflicts can spill over to the civil maritime context.³⁷ Maritime warfare renders oil platforms and underwater cables and pipelines as potentially vulnerable targets requiring additional security.

B. Roles, categories and activities of private military and security companies at sea, including the main actors involved

26. Multiple actors may be involved in the provision of security at sea. While the present report is focused on services provided by private military and security companies, given the evolving and concerning trend towards hybridization of security services, it is helpful to identify other relevant maritime security providers that may operate alongside private security personnel. At any given time, different security models are employed in different regions. Not all flag States permit the use of private military and security companies and associated private contracted armed security personnel, for example. It is also important to set out who exercises authority on board a vessel specifically in relation to the use of force and arrest and detention.

Private military and security companies

27. For the Working Group, the most relevant category of security provider on board vessels is that of private military and security companies contracted directly by the shipowners. When State-based security is limited or absent, private military and security companies may be the only form of security available to vessels. As with the provision of land-based security, private military and security companies hire personnel to be deployed, in this case on vessels, and are referred to as private contracted armed security personnel. In this scenario, the master of the ship exercises authority over the use of force,³⁸ except in situations of self-defence when private contracted armed security personnel may exercise “reasonable and necessary” force to deter a potential threat and as a last resort.³⁹ It may only be used where there is “a reasonable and honest belief that there is an imminent threat to his life or the lives of others,” specifically death, serious bodily harm or abduction.⁴⁰ Private security personnel have no authority to detain or arrest suspects as a general rule. Nevertheless, when a person or persons present a threat to the crew of the vessel it seems to be the case that they are understood as having the authority to detain that person or persons.⁴¹ They may also detain persons for the purposes of rendering medical assistance.

Other maritime security actors

28. In some circumstances, uniformed military personnel may be embarked aboard a private vessel for security purposes and are known as vessel protection detachments. Normally they are authorized and deployed from the vessel’s flag State. In some

³⁷ Ibid.

³⁸ See International Convention for the Safety of Life at Sea, available at [www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-\(SOLAS\),-1974.aspx](http://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-(SOLAS),-1974.aspx).

³⁹ See “The 100 Series Rules: An International Model Set of Maritime Rules for the Use of Force” (2012), available at <https://maritime-executive.com/article/the-100-series-rules-for-the-use-of-force>.

⁴⁰ See www.sguardian.com/wp-content/uploads/2017/03/COLUMBIA-SHIPMANAGEMENT-CAPE-BASTIA-MULTIPLE-TRANSITS-GUARDCON-.pdf.

⁴¹ Submission to the Working Group.

cases, however, they may be deployed on the basis of a memorandum of understanding with another State. For example, vessels used by the World Food Programme often operate with this form of security, such as the detachment provided by the European Union Naval Force Somalia – Operation Atalanta.⁴² In the event where a security response is required, the detachment team leader exercises ultimate military authority on board the vessel, including in relation to the use of force. Usually, the detachment may only use force for the sole purpose of self-defence, however, it may be able to arrest persons if permitted by the flag State.

29. The armed forces of a State that provide escort services to ships in its exclusive economic zone or the territorial waters of multiple States in high-risk areas are known as security escort vessels. They may also be deployed via public-private partnership contracts. Security escort vessels may be used in secure anchorage areas and other designated maritime safe areas. Often, uniformed personnel from the relevant coastal State provide the escort, but personnel from private military and security companies may also be on board the vessel. In terms of authority aboard the vessel, in this instance, operational command and control is exercised by the State’s naval command, which follows the rules of engagement for that State. It is reported that, in one case, the naval command has the authority to arrest and detain suspects. The 2022 standard contract of the industry association BIMCO for security escort vessels, entitled SEV-GUARDCON, explicitly excludes liability for ship owners and contractors in relation to arrest and detention, stating that neither “are responsible for any actions of the security escort vessel security personnel against any unauthorized person on board or attempting to board the Client Vessel, including their arrest or detention.”⁴³

30. Finally, security for vessels may also be provided by armed personnel, usually from public law enforcement, from a coastal State on the basis of specific arrangements between the shipowners and that coastal State. Such arrangements are not specifically endorsed by the flag State. In this case, the assigned team leader exercises authority and should follow the coastal State’s rules of engagement. It is unclear whether they have the authority to arrest and detain suspects, but given their affiliation with the coastal State’s law enforcement agencies it follows that they do have the authority to arrest and detain.⁴⁴

IV. Regulating the role and involvement of private military and security companies in the maritime sector

A. Applicable legal and regulatory frameworks

31. Regulation of the use of private military and security companies at sea is fragmented and involves different applicable international legal rules, international guidance and policies, flag, coastal and port State laws and policies, industry best practices, and business practices that guide, rather than govern, the use of contracted maritime security.⁴⁵

32. In terms of international legal sources, in most situations, conventional and/or customary norms of international law apply, including international human rights law, the law of the sea and international criminal law. If private military and security

⁴² Submission to the Working Group.

⁴³ See www.bimco.org/contracts-and-clauses/bimco-contracts/sev-guardcon#.

⁴⁴ Submission to the Working Group.

⁴⁵ Submission by the Chair of the Working Group on the use of private military and security companies in maritime security of the Montreux Document Forum.

companies were to participate in naval warfare, then international humanitarian law would be an additional relevant legal source.

33. The references in the Montreux Document on pertinent international law obligations and good practices for States related to operations of private military and security companies during armed conflict (the Montreux Document) encompass naval warfare.⁴⁶ Accordingly, the legal frameworks reflected in the Montreux Document apply equally to operations of private military and security companies in a maritime context in situations of armed conflict. The reference document developed by the Chair of the Maritime Working Group of the Montreux Document Forum aims to assist States and other stakeholders in the interpretation of terms and concepts used in the Montreux Document with respect to the specificities of the maritime context.⁴⁷

34. In addition, domestic legal regimes, especially of flag States and coastal States, play an important role, as highlighted above, in relation to the use of force and arrest and detention. Memorandums of understanding between States also play a growing role given the increasing hybridization of the maritime security sector. The Working Group received information that some States that allow for the hiring of private military and security companies at sea monitor and oversee the practice through legislation and policies. These include: identification of high risk maritime zones; authorization, including through letters of non-objection, for the hiring of private security personnel; licensing or declaratory mechanisms for the hiring of private military and security companies; rules on the use of force; and the regulation of firearms, including floating armouries and export controls.

35. Nevertheless, in many cases, domestic regulation of the use of private military and security companies at sea is weak or absent, in particular around the use of force and the vetting and training of personnel. For example, since 2011 IMO has sought to systematically collect information from port States and coastal States on the relevant national legislation, policies and procedures relating to the deployment of maritime private security personnel and weapons use and storage.⁴⁸ This has had limited success. Furthermore, the Working Group notes that enforcement mechanisms are lacking, especially for human rights violations at sea.

36. The Working Group notes with grave concern that an insidious form of forum shopping or “bottom feeding” has emerged.⁴⁹ The shipping industry, in seeking to reduce security costs by avoiding the oversight, monitoring and enforcement of standards for private security, is increasingly choosing to operate from flag States with weak regulation, inadequate oversight and a lack of enforcement capabilities. This is compounded by a lack of cooperation between the regulatory flag States and the coastal and port States where many private military and security teams actually operate.

37. A patchwork of additional standards with varying levels of usefulness may be applicable, including international standards, multi-stakeholder standards, management standards and industry standards. Some of these standards are outlined below.

38. IMO has issued numerous circulars in recent years addressing the use of private military and security companies at sea but it notes that its member States adopt

⁴⁶ See www.mdforum.ch/en/montreux-document.

⁴⁷ See www.montreuxdocument.org/news/referencedocument.html.

⁴⁸ See IMO circular MSC-FAL.1/Circ.2, “Questionnaire on Information on Port and Coastal State Requirements Related to Privately Contracted Armed Security Personnel on Board Ships” (2011).

⁴⁹ Expert consultation.

“diverse positions” on the practice.⁵⁰ Moreover, IMO acknowledges that its own position on the hiring of private security personnel has “evolved” over the years. Historically, it “strongly discouraged” the carrying and use of firearms for personal protection or protection of a ship.⁵¹ As piracy emerged as a serious maritime security challenge, IMO shifted its position to “flag States should strongly discourage the carrying and use of firearms by seafarers for personal protection or for the protection of a ship.”⁵² This latter provision was revoked in 2015 and the position of IMO today is that “the deployment of armed security personnel on board ships has become an accepted industry and flag State practice in certain circumstances.”⁵³ While IMO adopts a neutral position on the use of private security personnel, it has issued numerous circulars providing guidance on the practice and addressing the use of force and firearms in particular.⁵⁴ Furthermore, it supported the development of security management standard ISO/PAS 28007-1:2015 (previously ISO/PAS 28007:2012) regarding private military and security companies in the maritime context. Certification to ISO 28007 is recognized by the International Code of Conduct Association as one way in which its member companies can demonstrate that their policies and procedures are in partial compliance with the International Code of Conduct for Private Security Providers.⁵⁵ Additional governance and human rights documentation must be provided by a member company in order to obtain full certification by the Association, which is not without limitations as a regulatory mechanism.⁵⁶

39. The application of the Montreux Document to the maritime context has recently been a focus of the work of the Montreux Document Forum. Its Working Group on the use of private military and security companies in maritime security has examined the obligations of the three types of States described in the Montreux Document: contracting States (countries that hire private military and security companies); territorial States (countries on whose territory private military and security companies operate); and home States (countries in which private military and security companies are based). In a reference document published by the working group on maritime security in 2021 it interprets existing relevant obligations binding those three types of States and proposes good practices to implement those obligations at sea.⁵⁷ It concludes that, in the maritime context, home States may be flag States, coastal States or port States, and it is generally the prerogative of flag States, dependent on applicable national laws and consistent with international law, to decide whether to permit the use of private military and security companies on board its ships. The reference document contains a recommendation for stronger and more effective regulation of the activities of private military and security companies at sea. In

⁵⁰ See, e.g., IMO circulars MSC.1/Circ.1143, MSC.1/Circ.1406/Rev.2 and MSC.1/Circ.1408; and www.imo.org/en/OurWork/Security/Pages/Private-Armed-Security.aspx.

⁵¹ See IMO circular MSC/Circ.623, annex, para. 40 (18 June 1993).

⁵² See IMO circular MSC.1/Circ.1333, annex, para. 5 (26 June 2009) – updated and revoked in June 2015 by circular MSC.1-Circ.1333-Rev.1.

⁵³ See www.imo.org/en/OurWork/Security/Pages/Private-Armed-Security.aspx.

⁵⁴ See IMO circular MSC.1/Circ.1443, MSC.1/Circ.1408, MSC.1/Circ.1406/Rev.3, MSC.1/Circ.1405/Rev.2 and MSC-FAL.1/Circ.2.

⁵⁵ See <https://icoca.ch/what-we-do/certification/>; and https://www.icoca.ch/en/the_icoc.

⁵⁶ On the International Code of Conduct Association and certification of private military and security companies, see: S. MacLeod, “Private Security Companies and Shared Responsibility: The Turn to Multistakeholder Standard-Setting and Monitoring through Self-Regulation-‘Plus’”, in *Netherlands International Law Review*, vol. 62, iss. 1, p. 119 (2015); and S. MacLeod and R. DeWinter-Schmitt, “Certifying Private Security Companies: Effectively Ensuring the Corporate Responsibility to Respect Human Rights?”, in *Business and Human Rights Journal*, vol. 4, iss. 1, p. 55 (2019).

⁵⁷ Submission by the Chair of the Working Group on the use of private military and security companies in maritime security of the Montreux Document Forum.

particular, it notes that States should: clearly set out which services may or may not be contracted to private military and security companies; establish mechanisms, procedures and criteria for the authorization and licensing of private military and security services; create standards of lawful conduct; and develop requirements for effective monitoring, oversight and accountability.

40. Other multi-stakeholder standards provide different levels of guidance. Some set out basic guidance on the use of private military and security companies at sea but lack specificity. For example, best management practices provide specific geographical guidance, such as best management practices to enhance maritime security for vessels and mariners operating off the coast of West Africa, including the Gulf of Guinea, but there is no reference to human rights or rules on the use of force.⁵⁸ The Oil Companies International Marine Forum guidance for employment of private maritime security companies is more detailed and includes good practices to consider when hiring private military and security companies at sea. For example, there is guidance on what documentation the private military and security company should provide to demonstrate its procedures for how and when force may be used, and procedures for weapons management. Furthermore, the Forum's guidance urges oil company clients contracting private security for a vessel to ascertain whether the private military and security company understands its potential and actual human rights impacts and whether it has "a process to effectively communicate grievance and complaints processes."⁵⁹ While more detailed than other guidance, specificities are still lacking.

B. Roles, responsibilities, challenges, legal gaps and overlapping jurisdictions encountered by home, flag and coastal States in relation to maritime security activities

41. Multiple overlapping jurisdictions is a particular problem in the maritime context. Depending on the maritime zone in which the private military and security company is operating, a potentially large number of different jurisdictions may be involved. Situations of jurisdictional overlaps and jurisdictional conflicts occur owing to the jurisdictional rules contained in the law of the sea and also due to specificities deriving from maritime law. Positive conflicts of jurisdiction tend to be more frequent than negative ones.⁶⁰

42. In addition to jurisdictional challenges, there are also issues related to deficiencies in the legal finish in counterpiracy operations or related maritime security activities. For example, while providing security services to the shipping industry, private security personnel may happen to arrest suspected pirates or armed robbers.

V. Human rights and international humanitarian law impacts

43. The Working Group received information about multiple concerning forms of human rights violations and impacts in the context of the provision of private security services at sea. Certain human rights specificities arise in the maritime context that affect seafarers and the personnel of private military and security companies. In

⁵⁸ See www.ics-shipping.org/publication/best-management-practices-to-deter-piracy-and-enhance-maritime-security-in-the-red-sea-gulf-of-aden-indian-ocean-and-arabian-sea/.

⁵⁹ See <https://www.ocimf.org/publications/information-papers/guidance-for-the-employment-of-private-maritime-security-companies>, para. 6.2.2 and 6.3.3.

⁶⁰ Submission by the Chair of the Working Group on the use of private military and security companies in maritime security of the Montreux Document Forum.

addition, the absence of effective monitoring and oversight mechanisms and regulation gaps contribute to significantly greater difficulty in ensuring accountability for human rights violations committed by private military and security companies and mercenary-related actors in the maritime sector.

44. Private military and security companies contribute to human rights violations in various ways, including, for instance: increased violence at sea and proliferation of weapons; disproportionate use of force; violations of the right to life, liberty, fair trial, and freedom from torture among other rights; and violations of labour rights. The Working Group has received information indicating that seafarers are often subjected to abuses by the personnel of some maritime private military and security companies, as well as mercenary-related actors. Reports were also received of private military and security companies being involved in human trafficking and other forms of exploitation, such as bonded labour.⁶¹ Seafarers are often migrant workers and are therefore in a particular situation of vulnerability in relation to rights violations. In addition, they are often potentially vulnerable to human rights violations as the result of the prevalence of multiple and intersecting forms of gendered and racial discrimination in the maritime context.⁶²

A. Use of force and weapons, including floating armouries

45. The mere presence of armed private security personnel on merchant ships may lead to an escalation of violence at sea, particularly in the absence of effective, enforceable regulation on standards for the use of force. The Working Group notes that disproportionate and/or unnecessary uses of force are prevalent in the maritime context without concomitant accountability and redress.

46. Issues also arise around the carrying and storing of weapons. An important specific phenomenon concerning the proliferation of weapons at sea is the emergence of so-called “floating armouries”. Owing to the complex web of legal requirements pertaining to the transport and carrying of weapons, in an attempt to avoid coastal State regulations, some private military and security companies resort to the storing of firearms and accommodation of personnel in international waters, in what amount to floating armouries.⁶³ This approach allows their personnel to embark on the client ship without weapons, obtaining them later once the ships are outside territorial waters. This phenomenon raises significant concerns, especially around weapons diversion, as these floating armouries operate in a legal grey area, without clear international or national regulations governing their operations, management and use. Nevertheless, flag States are often reluctant to monitor the vessels deployed as floating armouries. It has been suggested that, if States followed IMO guidance, State-controlled armouries onshore would be a better option, carrying fewer risks than “unregulated and potentially substandard floating armouries.”⁶⁴

47. One concerning example provided to the Working Group highlights the vulnerabilities of such floating armouries. In this case, a disgruntled armed private security contractor took control of a vessel and demanded immediate payment of an outstanding salary before he would relinquish control of the ship to its master. He was eventually disarmed and disembarked from the vessel. On being taken to a floating armoury to await transfer onshore, he subsequently broke into a weapons locker and obtained multiple weapons. Thereafter, he hijacked a second vessel and continued to

⁶¹ Expert consultation.

⁶² Expert consultation. See also [A/74/244](#).

⁶³ See “Small Arms Survey 2015: Weapons and the World”, available from www.smallarmssurvey.org/resource/small-arms-survey-2015-weapons-and-world, chap. 8.

⁶⁴ *Ibid.*

make demands for his unpaid salary while threatening to throw weapons and equipment into the sea. The entire event was livestreamed on social media and reported on news sites. In response, the flag State unsuccessfully sought support from naval operations active in the region and the International Criminal Police Organization (INTERPOL) maritime security section. Ultimately, the individual was disarmed and transported back to his home State, where he was charged with piracy. This example raises serious concerns about the poor quality of security provision around floating armouries. Furthermore, it raises multiple and worrying questions in relation to compliance with labour standards at sea by private military and security companies, particularly around remuneration.

B. Labour rights

48. The maritime context gives rise to certain specificities concerning violations of labour standards. For example, in relation to labour rights abuses, maritime operations of private military and security companies pose unique threats to human rights and to the health and safety of employees and third parties, including physical, ergonomic, psychological and social elements.⁶⁵ Moreover, the maritime context is well known to induce high levels of stress and fatigue among seafarers and private security personnel, resulting in parallel high levels of work-related accidents, injuries and diseases. Migrant workers at sea are particularly vulnerable to different forms of exploitation, such as bonded labour. Such seafarers are often recruited from low-income States and receive minimal training.⁶⁶

49. Labour standards and working conditions for private security personnel themselves are of particular concern, also owing to the high stress environment at sea. Already stressful working conditions for maritime security personnel worsened during the coronavirus disease (COVID-19) pandemic. In one example provided to the Working Group, an individual deployed as part of an anti-piracy operation by a maritime security company allegedly killed a colleague and subsequently committed suicide.⁶⁷

50. In another example provided to the Working Group, human rights violations were highlighted in the context of the alleged abandonment of private security personnel by their employer and the owners of the vessel in question. In another instance, 173 security guards were allegedly abandoned at sea until rescued by the security industry.⁶⁸ Precise numbers are unclear because of underreporting, which is often due to personnel concerns about work permit status or an inability for whistle-blowers to report wrongdoing while at sea. Even when States are motivated to monitor private security operations, the ability to oversee working conditions is substantially reduced at sea.

C. Right to life

51. The Working Group also received information that a number of individuals allegedly involved in piracy had been killed at sea in recent years, in some cases by private security personnel, in violation of the right to life and guaranteed due process rights. Precise figures on the number of alleged pirates killed are unavailable, and the bodies of those killed have not been recovered. It was highlighted that there is no

⁶⁵ Submission by the Chair of the Working Group on the use of private military and security companies in maritime security of the Montreux Document Forum.

⁶⁶ Expert consultation.

⁶⁷ Expert consultation.

⁶⁸ Expert consultation.

incentive for those in charge of vessels or for security providers to report pirate attacks, or to increase fear levels through reporting. While reporting pirate attacks could bring more business in theory, it would also bring unwanted scrutiny to the operations of private military and security companies in the maritime context.⁶⁹

D. Torture and other cruel, inhuman or degrading treatment

52. Allegations of inhuman and degrading treatment and torture perpetrated by private military and security personnel are also of concern. Examples provided to the Working Group included instances of seafarers being bound to chairs, deckheads and beds by private security personnel and subjected to abuses that in some cases appear to rise to the level of torture. Other examples included details of psychological torture inflicted by private security personnel on seafarers. In many instances, seafarers were denied access to food and were otherwise kept in poor detention conditions.

E. Deprivation of liberty

53. Detention-related violations are common in the maritime context, in particular issues around detention conditions. For example, the Working Group received information that stowaways are sometimes detained in life-threatening conditions.⁷⁰ The legal authority to arrest and detain is dependent on the model of security used, including the hybrid public-private models outlined above, and the applicable flag State. In some circumstances, the master of the ship has policing powers, but in others the master has no power of arrest or detention. In the maritime context, arrest and detention of a person or persons has specific implications because it may take weeks to reach the appropriate authorities. Therefore, detention conditions at sea become a relevant human rights consideration.

F. Additional examples of human rights violations

54. The Working Group also received information regarding the violation of a number of additional human rights in the context of the provision of private maritime security. Gendered and racialized impacts, including sexual and gender-based violence have been reported. Moreover, access to adequate food may be denied, and general conditions of detainees are often poor.

G. Accountability and oversight mechanisms

55. Accountability for human rights violations committed at sea by private military and security companies is especially difficult to establish because of the often large distance from State enforcement or control, and conflicts of jurisdiction. Such abuses “are frequently not reported, enforced or remedied because of the challenging nature of the maritime environment.”⁷¹ A significant lack of transparency is hugely problematic. For example, finding evidence of abuses or witnesses to abuses is extremely difficult given the profound situation of isolation at sea. Similarly, civil society and media are absent in a way that is not replicated on land, so independent avenues of monitoring and oversight are extremely restricted. Furthermore, the

⁶⁹ Expert consultation.

⁷⁰ Submission by the Chair of the Working Group on the use of private military and security companies in maritime security of the Montreux Document Forum.

⁷¹ See www.humanrightsatsea.org/sites/default/files/media-files/2022-02/GDHRAS_Jan_2022_Final_online_version_sp%20%281%29.pdf.

adoption of flags of convenience from flag States is a huge barrier to information-gathering. For example, flag States often take no responsibility for ensuring the safety of victims because they are usually not their nationals. Overall, such obstacles lead to a fundamental lack of accountability, responsibility and remedy for human rights violations perpetrated at sea by private security personnel. Enforcement of human rights in these circumstances becomes virtually impossible.

56. In terms of oversight, the main challenges presented are in terms of setting rules on the use of force and weapons and the deprivation of liberty at sea by private military and security companies and their personnel, particularly in the context of detention, transfer and prosecution of suspected criminals at sea.

57. The Montreux Document Forum Working Group on the use of private military and security companies in maritime security proposes guidance on the monitoring of compliance and on ensuring accountability, and also proposes good practices relating to maritime private military and security companies.⁷² It stipulates that the effective regulation of the maritime activities of such companies first and foremost depends on the adoption of solid domestic legal frameworks by States in their capacities of home States, flag States and, when applicable, coastal States. The reference document may aid States in adopting such frameworks, as an interpretative guide developed within the context of the Maritime Working Group, aiming at making the Montreux Document more readable from a maritime security perspective.

58. The reference document contains a compilation that reaffirms the existing obligations of States under international law, in particular international humanitarian law, international human rights law and the law of the sea. It also addresses the legal and practical challenges related to the growing participation of private military and security companies in maritime security, not excluding cases where they may take part in naval warfare. Part two of the reference document proposes good practices relating to maritime private military and security companies.

VI. Conclusions and recommendations

59. It is clear from the analysis of the Working Group that the growing use of private military and security companies in the maritime context is giving rise to escalating human rights violations, including against seafarers. Parallel to that, there are concerns regarding violations of the rights of private security personnel, in particular their labour rights. Violations stem from, inter alia, the unregulated use of force at sea, weak vetting and training regimes and poor monitoring and oversight. At the same time, there is a lack of concomitant accountability for such violations, as well as an absence of access to justice and effective remedies for victims, driven by the specificities of the maritime context.

60. The adoption of coherent and effective international and domestic regulation and oversight of private military and security companies operating at sea is essential, and flag States, coastal States and port States play an especially important regulatory role. Consistency across jurisdictions is crucial to prevent forum shopping by shipowners, who otherwise often take advantage of weak regulatory frameworks. Attention must also be paid to the concerning and evolving trend towards the hybridization of security provision at sea, which can present particular problems in relation to monitoring, oversight and accountability. In addition, the largely unmonitored and unregulated

⁷² See www.montreuxdocument.org/media/pdf/reference_document.pdf, part two, chap. 7.

phenomenon of floating armouries must be addressed, including potentially through the establishment of State-controlled armouries onshore.

61. While the abuse of labour rights of private security personnel at sea is prevalent, any legislative initiatives must also address violations of human rights at sea more broadly, focusing particularly on the disproportionate use of force, and violations of the rights to life and liberty, as well as due process guarantees. An effective legislative and regulatory framework in the maritime private security context must also ensure access to justice and remedy for victims.

62. The Working Group recommends that States:

(a) Adopt legislation to effectively regulate the maritime activities of private military and security companies, in particular in the areas of licensing; registration; vetting of personnel; the scope of permissible and prohibited activities; the use of force; and the management, transfer and use of firearms and other weapons (especially in the context of floating armouries), taking into account the jurisdictional complexities of the maritime environment;

(b) Ensure effective monitoring and oversight of hybrid security operations at sea, as well as accountability. In particular, it should be made clear who exercises overall authority on board a vessel, specifically in relation to the use of force and arrest and detention;

(c) Investigate, prosecute and sanction human rights violations committed by private military and security companies at sea and ensure effective access to justice, accountability and remedy for victims;

(d) Ensure the creation of a comprehensive system to provide remedies for violations perpetrated by private military and security companies at sea, in which administrative, legislative and other non-judicial mechanisms complement and support judicial mechanisms;

(e) Consider mutual cooperation in order to facilitate investigations and prosecution, including through legal assistance and extradition agreements, to ensure effective remedies;

(f) Adopt an international legally binding instrument on the activities of private military and security companies, that addresses the provision of both land-based and maritime security, to ensure consistent regulation at the national level, including standards on adequate prevention of human rights violations, protection of victims, accountability and effective remedies;

(g) Ensure that private military and security companies and their personnel are subject to civil liability and penal accountability for violations of human rights at sea; such civil and criminal accountability must be judicially enforceable and not subject to State or other immunities;

(h) Consider adopting existing standards developed by multi-stakeholder initiatives on the provision of private military and security at sea, such as the reference document of the Montreux Document Forum Working Group on the use of private military and security companies in maritime security, entitled “Elements for a Maritime Interpretation of the Montreux Document”, in which that Working Group sets out good practices relating to the hiring of maritime private military and security companies;

(i) Include human rights standards in maritime policies, registration and related documentation, including, for example, flag State registration and memorandums of understanding;

(j) When authorizing or licensing the use of private military and security companies at sea, take the steps necessary to ensure that such companies are certified members of the International Code of Conduct Association and/or certified to ISO/PAS 28007-1:2015.

63. The Working Group recommends that private military and security companies operating at sea:

(a) Adopt clear policies and procedures regarding the use of force at sea, setting out the parameters for the proportionate use of force;

(b) Adopt clear policies and procedures on the management, transfer, storage and use of firearms and other weapons, especially in the context of floating armouries;

(c) Adopt clear policies and procedures on the vetting and training of personnel, including training in the use of force, weapons use and human rights and labour standards;

(d) Adopt clear policies and procedures that ensure respect for human rights and labour standards;

(e) Ensure that publicly accessible, transparent, effective and human rights compatible corporate-level grievance mechanisms are in place;

(f) Undertake the steps necessary to become certified members of the International Code of Conduct Association and/or certified to ISO/PAS 28007-1:2015.

64. The Working Group makes the following recommendations to other actors:

(a) When contracting for the use of private military and security companies at sea, shipowners should ensure that the security company has in place clear policies and procedures on vetting and training; the use of force; the management, transfer, use and storage of weapons, especially floating armouries; and human rights and labour standards;

(b) Shipowners should take the steps necessary to ensure that private military and security companies are certified members of the International Code of Conduct Association and/or certified to ISO/PAS 28007-1:2015;

(c) Regulators, multi-stakeholder initiatives and relevant industry associations should take the steps necessary to consider the specificities of the provision of private security in the maritime context by effectively addressing vetting and training; the use of force; the management, transfer, use and storage of weapons, especially floating armouries; and human rights and labour standards.