

# FLOATING ARMORIES: A LEGAL GREY AREA IN ARMS TRADE AND THE LAW OF THE SEA

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## ABSTRACT

*In response to maritime piracy concerns, shippers often hire armed guards to protect their ships. However, due to national and international laws regarding arms trade, ships are often unable to dock in foreign ports with weapons and ammunition. As a response, floating armories operate as weapons and ammunition storage facilities in international waters. By operating solely in international waters, floating armories avoid national and international laws regarding arms trade. However, there is a significant lack of regulations governing floating armories, and this leads to serious safety concerns including lack of standardized weapon storage, lack of records documenting the transfer of weapons and ammunitions, and lack of regulation from flags of convenience. Further, there is no publically available registry of floating armories and so the number of floating armories operating alongside the quantity of arms and ammunition on board is unknown. This Note suggests several solutions that will increase the transparency and safety of floating armories. Such solutions include requirements that floating armory operators register their vessels only to states in which a legitimate relationship exists, minimum standards that operators must follow, and the creation of a publically available registry. Finally, it concludes by providing alternative mechanisms by which states may exercise jurisdiction over foreign vessels operating in the High Seas.*

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I. INTRODUCTION

Maritime piracy is, unfortunately, alive and well today. The United Nations Convention on the Law of the Sea (UNCLOS) defines piracy as (a) “any illegal act of violence or detention” directed “on the high seas against another ship” or “outside of the jurisdiction of any state,” (b) of “voluntary participation in the operation of a ship . . . with knowledge of facts making it a pirate ship,” and (c) “any act of inciting or of intentionally facilitating” any of the above.<sup>1</sup> Since 2005, one of the biggest shipping avenues in the world lies in the seas around Sri Lanka, Somalia, Oman, and Djibouti.<sup>2</sup> This portion of the Indian Ocean is known as a piracy High Risk Area (HRA), and is home to the vast majority of maritime piracy.<sup>3</sup> Various states and bodies have deployed naval forces to offer protection against piracy, such as Russia, China, NATO, and the European Union.<sup>4</sup> However, this has done little to ease the minds of weary shippers.

In response to growing piracy concerns, shippers often hire private armed security companies or Private Maritime Security Companies (PMSCs) to guard their ships against Somali pirates.<sup>5</sup> However, many domestic and international arms trade laws prohibit PMSCs to dock in foreign ports with their weapons. While some countries may permit ships to enter their ports with armed guards, in others, docking in ports

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1. United Nations Convention on the Law of the Sea art. 101, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

2. THE REMOTE CONTROL GROUP, OXFORD RESEARCH GROUP, FLOATING ARMORIES IMPLICATIONS AND RISKS 4 (Dec. 2014) [hereinafter RISKS REPORT].

3. ICC INT’L MARITIME BUREAU, PIRACY AND ARMED ROBBERY AGAINST SHIPS: REPORT FOR THE PERIOD OF 1 JANUARY–30 JUNE 2016 6, 18 (July 2016).

4. RISKS REPORT, *supra* note 2, at 4; *see also Operation Atlanta Flagship Completes Successful Replenishment at Sea with United States Navy*, EU NAVFOR (Aug. 26, 2015), <http://eunavfor.eu/operation-atlanta-flagship-completes-successful-replenishment-at-sea-with-united-states-navy/>.

5. *See, e.g.*, RISKS REPORT, *supra* note 2, at 5.

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may be considered arms smuggling, breaching an arms embargo, using weapons without a proper license, as well as a range of other offenses.<sup>6</sup> UNCLOS states that the sovereignty of coastal states extends into its territorial waters.<sup>7</sup> Thus countries can, and often do, prohibit foreign ships from entering their territorial waters with weapons and ammunition. However, UNCLOS does not place restrictions on vessels carrying arms in international waters.<sup>8</sup> Further, the Arms Trade Treaty (ATT), the leading international instrument on arms trade, restricts and regulates the methods and types of arms that may cross international boundaries,<sup>9</sup> but does not apply to the international movement of arms where the arms remain under one party's ownership.<sup>10</sup> As a result, the phenomenon of "floating armories" was created. Essentially, private maritime security companies store weapons in a separate vessel in international waters to avoid smuggling laws when they dock in ports.<sup>11</sup> It is important to keep in mind that the PMSC, which provides the armed guards and engages in the actual protection of ships, is often independent of the company that operates the floating armory itself.<sup>12</sup>

On the one hand, there is a negative correlation between the existence of floating armories and the number of instances of piracy reported. In 2014, the International Chamber of Commerce: International Maritime Bureau reported that "231 'instances' of piracy and armed robbery had been reported," particularly around Somalia.<sup>13</sup> However, as of July 2016, the same Bureau reported that maritime piracy has dropped to a record low with only ninety-eight reported instances.<sup>14</sup> These drops in piracy reports may likely be attributed to the fact that during the peak of Somali piracy, approximately thirty to forty percent of merchant vessels in the Indian Ocean's HRA housed

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6. See Oscar Ricket, *Piracy fears over ships laden with weapons in international waters*, THE GUARDIAN (Jan. 10, 2013), <https://www.theguardian.com/world/2013/jan/10/pirate-weapons-floating-armouries>.

7. UNCLOS, *supra* note 1, art. 2.

8. Some exceptions do apply, which will be discussed below.

9. See The Arms Trade Treaty, United Nations, *ratified* December 24, 2014, 52 I.L.M. 985, art. 1 [hereinafter ATT].

10. *Id.* at art. 2(3).

11. See *e.g.*, Ricket, *supra* note 6.

12. See, *e.g.*, RISKS REPORT, *supra* note 2, at 7–8.

13. *Id.* at 1.

14. Press Release, International Chamber of Commerce, Sea piracy drops to 21-year low, IMB reports (2016), [http://icc.se/wp-content/uploads/2016/07/IMB-Q2-press-release-2016\\_-250716.pdf](http://icc.se/wp-content/uploads/2016/07/IMB-Q2-press-release-2016_-250716.pdf).

armed guards on board.<sup>15</sup>

On the other hand, the existence of floating armories has exposed a significant gray area in maritime law. There is a significant “lack of laws and regulations . . . governing [the] operation” of floating armories, and no complete publicly available register of floating armories currently exists.<sup>16</sup> Further, the “flag” of the vessel does not usually correspond with the registration of the company operating the vessel.<sup>17</sup> The lack of continuity between the vessel’s flag and company’s registration contributes significantly to the lack of transparency and oversight. In addition, the number of Somali pirates killed as a result of clashes with private security companies is unknown.<sup>18</sup> In at least one instance, a PMSC killed innocent Somali fishermen, mistaking them for pirates.<sup>19</sup> Moreover, many industry experts are concerned that the absence of regulation leaves the floating armories vulnerable to attack and risk of looting.<sup>20</sup>

As a result, a set of standards and regulations must be created that would preclude floating armories and PMSCs that do not comply from operating. Further, it must be mandated that vessels are registered to an “appropriate” flag state, and companies must be forbidden from registering vessels to blacklisted flag states. A blacklisted state is one that has been determined to be a “very high-risk” flag state, based upon the total number of inspections and detentions.<sup>21</sup> Finally, a complete and publicly available registry must be created that would contain comprehensive information including the name of the operator, flag of the vessel, registration documents, and other information. Each of these solutions will be discussed in detail below.

This Note will begin by discussing the status of maritime piracy today, followed by an introduction of the concept of floating armories and an illustration of how they operate, as well as the link between floating armory operators and PMSCs. In Part IV, it will discuss the legal gray areas regarding floating armories due to their avoidance of interna-

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15. ONE EARTH FUTURE FOUNDATION, OCEANS BEYOND PIRACY: THE STATE OF MARITIME PIRACY IN 2014—ASSESSING THE ECONOMIC AND HUMAN COST 5 (2014), [hereinafter OCEANS BEYOND PIRACY], <http://oceansbeyondpiracy.org/sites/default/files/attachments/StateofMaritimePiracy2014.pdf>.

16. See, e.g., RISKS REPORT, *supra* note 2, at 1.

17. *Id.* at 11.

18. See *Laws and guns*, THE ECONOMIST (Apr. 14, 2012), <http://www.economist.com/node/21552553>.

19. *Id.*

20. Ricket, *supra* note 6.

21. *Id.*

tional and national laws. This Note will focus on three major gaps in the law including the lack of applicable standards and regulations, the inconsistency between floating armory operators and flag state of the vessels, and the lack of a publicly available registry. In Part V, this Note will suggest potential solutions to fill in the current legal gaps. Finally, it will conclude in Part VI by offering alternative mechanisms of state intervention and enforcement for the interim period until international law is created.

## II. THE PROBLEM OF MARITIME PIRACY

The reemergence of maritime piracy began to surge in the mid-2000s.<sup>22</sup> While the peak of piracy in the HRA occurred around 2012, it is still a major issue today.<sup>23</sup> The International Maritime Bureau reported that between January and June of 2016, most of the incidents of piracy actually occurred off the coasts of Nigeria, India, and Indonesia.<sup>24</sup> However, most incidents in the world took place off of the coast of Africa, with Southeast Asia coming in second.<sup>25</sup> Further, as in previous years, guns were the most common weapons used during attacks.<sup>26</sup>

Typically, pirates operate hundreds of nautical miles out in sea where they utilize small skiffs to attack other ships.<sup>27</sup> They are often armed with AK-47 rifles and grenade launchers that allow them to attack some of the largest vessels in the world.<sup>28</sup> Some reports estimate that pirates can receive as much as \$360 million per year in ransom,<sup>29</sup> which encourages them to continue their crimes. Further, piracy poses significant threats to the world economy and trade because approximately

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22. Yvonne M. Dutton, *Gunslingers on the High Seas: A Call for Regulation*, 24 DUKE J. COMP. & INT'L L. 107, 112 (2013) [hereinafter Dutton Gunslingers].

23. *See id.* at 113.

24. ICC INT'L MARITIME BUREAU, PIRACY AND ARMED ROBBERY AGAINST SHIPS: REPORT FOR THE PERIOD OF 1 JANUARY-30 SEPTEMBER 2016 at 5 (2016).

25. *Id.* at 7.

26. *Id.* at 10.

27. Dutton Gunslingers, *supra* note 22, at 113–14.

28. *Id.* at 114; *see also Somali Pirates Capture Supertanker, \$150M of Oil*, USA TODAY (Feb. 10, 2011), [http://usatoday30.usatoday.com/news/world/2011-02-09-pirates-hijack-supertanker\\_N.htm](http://usatoday30.usatoday.com/news/world/2011-02-09-pirates-hijack-supertanker_N.htm).

29. Lars From and Karina Oddershede Dalgaard, *USD 360 million paid in ransom to pirates*, SHIPPING WATCH (April 11, 2013, 11:39am), <http://shippingwatch.com/carriers/article6194367.ece> (last accessed Dec. 11 2016).

ninety percent of goods are traded by sea.<sup>30</sup> Further, forty percent of the world's sea trade passes through the Indian Ocean, the Gulf of Aden, and the Arabian Sea, which are known to be high-risk areas.<sup>31</sup> It is not surprising, therefore, that concerned shippers have turned to PMSCs for protection when travelling through these areas.

### III. HOW FLOATING ARMORIES OPERATE

Floating armories are typically commercially owned vessels that carry weapons, ammunition, and other equipment, such as body armor, food, and medical supplies.<sup>32</sup> They are often anchored in international waters, and are sometimes referred to as “logistic support vessels.”<sup>33</sup> Most are concentrated “in the Red Sea, Gulf of Oman, and the Indian Ocean.”<sup>34</sup> Floating armories’ primary purpose is the storage of weapons, ammunition, and other equipment (such as food and supplies) for PMSCs operating in international waters.<sup>35</sup> Despite this use in practice, they were seldom built for this purpose. Rather, floating armories are ships that were converted for this purpose, and may include previous patrol boats, dive boats, research vessels, and most frequently offshore tugs.<sup>36</sup> Further, there are no requirements for floating armories to have standardized secure storage facilities.<sup>37</sup> The significance of the armories’ structure will be discussed in detail below.

There are typically three types of floating armory operators. The first category includes companies who operate armories solely for storage purposes.<sup>38</sup> These companies will provide the ships and storage facilities while the weapons and ammunition themselves are provided “by the company providing the security personnel” (i.e., the floating armory operator and the PMSC are completely separate).<sup>39</sup> Second, there are operators that operate the storage facilities and also provide

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30. U.K. FOREIGN AFFAIRS COMMITTEE, H.C. 1318, PIRACY OFF THE COAST OF SOMALIA, 2010-12, H.C. 1318, ¶ 14.

31. *Id.*

32. *See* RISKS REPORT, *supra* note 2, at 5.

33. *Id.*

34. *Id.* at 8.

35. *Stockpiles at Sea: Floating Armouries in the Indian Ocean*, SMALL ARMS SURVEY 2015 217, 225 (2015), <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2015/eng/Small-Arms-Survey-2015-Chapter-08-EN.pdf> [hereinafter SMALL ARMS SURVEY].

36. *See* RISKS REPORT, *supra* note 2, at 5.

37. *Id.* at 6.

38. *Id.* at 7.

39. *Id.*

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the weapons and ammunition that may be rented by private security personnel.<sup>40</sup> Finally, there are fully integrated security service providers in which the operator will provide ships, weapons, ammunition, and armed guards.<sup>41</sup> While the exact number of operators is unknown, companies that operate floating armories have hailed from countries including the United Kingdom, Canada, Germany, Greece, Malta, and South Africa.<sup>42</sup>

Additionally, there are no standardized procedures governing embarkation or disembarkation of personnel and arms from floating armories.<sup>43</sup> The typical procedure is one in which a shipper hires PMSCs to come aboard his ship with weapons and ride it through the piracy HRA.<sup>44</sup> Once the ship has passed into safe waters, the guards will disembark and return the weapons and ammunition to the floating armory, all the while keeping the weapons in international waters and avoiding national and international laws.<sup>45</sup> Depending upon the PMSC the shipper hires, there will usually be a contract between the floating armory and the PMSC, the floating armory will provide the armed guards with weapons and ammunition from the armory, and then the armed guards can begin their transit.<sup>46</sup> Some floating armories even provide on-board meals and accommodation for private armed guards awaiting their next transit.<sup>47</sup> In 2014, it was estimated that around thirty floating armories were operating in and around the Indian Ocean; the exact number of floating armories operating today is unknown.<sup>48</sup>

Around 2012, “[a]t the peak of Somali piracy,” PMSCs would typically charge about “\$45,000 per trip for armed guards.”<sup>49</sup> PMSCs utilizing a four-person team of private armed guards can rent as much as four semi-automatic AK-47 84S rifles or fully automatic Chinese T-56 assault rifles as well as 480 rounds of 7.62mm ammunition for sixteen rifle magazines.<sup>50</sup> PMSCs may also rent supplementary arms and ammu-

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40. *Id.* at 8.

41. *Id.*

42. SMALL ARMS SURVEY, *supra* note 35, at 227.

43. *Id.* at 224.

44. *See Cruisin' with guns*, THE ECONOMIST (Jan. 23, 2016), <http://www.economist.com/news/middle-east-and-africa/21688900-brisk-business-safeguarding-guns-cruisin-guns>.

45. *Id.*

46. *See* SMALL ARMS SURVEY, *supra* note 35, at 224.

47. *Id.* at 227.

48. *See id.* at 217.

49. *Cruisin' with guns*, *supra* note 44.

50. *Small Arms Survey*, *supra* note 35, at 226.

nition at an additional cost.<sup>51</sup> However, as floating armories become more and more popular, competition has driven down prices, while less-regulated operators with lower standards are simultaneously entering the market.<sup>52</sup> This causes some experts to worry that the prevalence of less standardized operators “could lead to weapons entering the black market,” while many others fear that poorly run armories are more likely to be attacked by pirates, or have their weapons commandeered by terrorist groups in the region.<sup>53</sup>

#### IV. FLOATING ARMORIES AND THE LEGAL GRAY AREA

Floating armories essentially operate in a legal gray area in which they are not subject to international or national laws and regulations. In addition to the absence of applicable laws and regulations, there are often inconsistencies between the flag of the vessel and the company operating the floating armory, which significantly contributes to the lack of oversight. Finally, there is no publicly available registry indicating the number of floating armory operators, nor the quantity or quality of weapons and ammunition they own, which also limits transparency and accountability. Each of these issues will be discussed in detail below.

##### A. *The Lack of Laws and Regulations*

##### 1. No National or International Standards

Primary concerns regarding floating armories include a lack of both national and international standards to govern who may operate a floating armory, as well as a lack of security requirements and controls governing the amount and type of weapons and ammunition on board.<sup>54</sup> Floating armories are certainly not illegal; however, by operating solely in international waters, they are intentionally avoiding international and national laws. The lack of standards and regulations means that there is essentially nothing to stop any private vessel from turning into an armory in international waters.<sup>55</sup>

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51. *Id.*

52. *See Cruisin' with guns, supra* note 44.

53. *See id.*; Ricket, *supra* note 6.

54. *See RISKS REPORT, supra* note 2, at 10.

55. *See id.* at 1.



There are some existing standards that suggest good practice, but none are legally binding.<sup>56</sup> The International Maritime Organization (IMO) has issued recommendations that address floating armories.<sup>57</sup> In particular, the recommendations call on private armed guards to ensure that weapon usage and storage is consistent with the legislation and policy of the vessel's flag state and of countries with jurisdiction over the waters that the vessel passes through.<sup>58</sup> The IMO also provides good practice guidelines for ship owners, operators, crews, and PMSCs.<sup>59</sup> However, these are merely recommendations and have no binding legal effect on states and individual actors. Of equal concern, there are no common standards or practices among flag states or coastal states with respect to arms storage and transport.<sup>60</sup> While some states do impose standards governing floating armories, there are currently no international standards.<sup>61</sup> Further, some states that do license floating armories, such as Sri Lanka and Djibouti, do not make licenses publically available.<sup>62</sup> This is problematic because the legitimacy of these licenses cannot be scrutinized.

## 2. Safety and Security Implications

One major problem caused by the lack of regulations is the transfer or renting of weapons from floating armories that may end up with a different user or for a different use than originally stipulated.<sup>63</sup> For example, “[i]n 2011, the Sri Lankan Government reportedly lost track

56. See, e.g., *Piracy and private security Laws and guns*, THE ECONOMIST (Apr. 12, 2012), <http://www.economist.com/node/21552553>.

57. See INT'L MARITIME ORG. [IMO], *Guidance to Shipowners and Ship Operators, Shipmasters and Crews on Preventing and Suppressing Acts of Piracy and Armed Robbery Against Ships* (June 23, 2009), <http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Guidance/Documents/MSC.1-Circ.1334.pdf> [hereinafter *IMO Guidance 2009*]; see also INT'L MARITIME ORG. [IMO], *Recommendations to Governments for Preventing and Suppressing Piracy and Armed Robbery Against Ships* (June 12, 2015), <http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Guidance/Documents/MSC.1-Circ.1333-Rev.1.pdf> [hereinafter *IMO Recommendations 2015*].

58. See *IMO Guidance 2009*, *supra* note 57, ¶ 59; *IMO Guidance 2015*, *supra* note 57, ¶ 7.

59. INT'L MARITIME ORG. [IMO], *Revised Interim Recommendations for Flag States Regarding The Use of Privately Contracted Armed Security Personnel On Board Ships In The High Risk Area* (June 12, 2015), <http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Guidance/Documents/MSC.1-Circ.1406-Rev.3.pdf>. [hereinafter *IMO Revised Recommendations*].

60. See SMALL ARMS SURVEY, *supra* note 35, at 220.

61. Letter dated 11 July 2012 from the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council at 24, U.N. Doc. S/2012/544 (July 13, 2012).

62. See RISKS REPORT, *supra* note 2, at 10.

63. *Id.* at 15.

of hundreds of government-owned weapons that it had rented out to PMSCs.<sup>64</sup> Due to the lack of licensing checks, many governments may not even realize that arms and ammunitions have changed hands.<sup>65</sup> For example, the United Kingdom's Open General Trade Control License (Maritime Anti-Piracy) authorizes certain PMSCs to deliver, supply, and transfer specific types of small arms and ammunition to commercial vessels in the HRA.<sup>66</sup> However, this License includes a commitment not to transfer the material to any other entity.<sup>67</sup> Despite this License, many PMSCs do in fact transfer arms to other PMSCs with floating armories acting as intermediaries.<sup>68</sup> Often, these transfers take place without the knowledge of the floating armory operator, yet operators will rarely question or stop such transfers.<sup>69</sup>

There are also few regulations relating to the construction and storage capacity of floating armories. Most floating armories have been adapted for this purpose, and many do not have appropriate storage facilities for arms and ammunition.<sup>70</sup> Often, arms and ammunition are stored in containers within the vessel and even on the deck.<sup>71</sup> This practice poses obvious dangers to crew-members on board and potentially threatens marine life. It also may bring unwanted attention from pirates or terrorists in the area.<sup>72</sup>

Another major safety concern is implicated when floating armories enter a country's territorial waters. In several instances, floating armories have entered the territorial waters of coastal countries near the HRA either accidentally or because of a need to refuel or resupply.<sup>73</sup> UNCLOS stipulates that all ships enjoy the right of innocent passage through territorial seas.<sup>74</sup> Innocent passage is defined by the Convention as "navigation through the territorial sea for the purpose of . . . tra-

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64. Letter dated 11 July 2012 from the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council at 159, U.N. Doc. S/2012/544 (July 13, 2012).

65. SMALL ARMS SURVEY, *supra* note 35, at 230.

66. See *Open General Trade Control License: Maritime Anti-Piracy*, U.K. DEP'T OF INT'L TRADE (Jan. 2017), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/576228/16-288-ogtcl-maritime-anti-piracy.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/576228/16-288-ogtcl-maritime-anti-piracy.pdf).

67. *Id.*

68. SMALL ARMS SURVEY, *supra* note 35, at 231.

69. *Id.*

70. See RISKS REPORT, *supra* note 2, at 15–16.

71. *Id.*

72. See SMALL ARMS SURVEY, *supra* note 35, at 229.

73. *Id.* at 231–32.

74. UNCLOS, *supra* note 1, art. 17.

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versing that sea without entering internal waters or calling at . . . a port facility,” “so long as the passage is not prejudicial to the peace, good order, or security of the coastal State.”<sup>75</sup> However, even innocent passage may cause problems. Coastal states may fear that their national security could be threatened if terrorists, criminals, or insurgents seize the weapons and ammunition on board the floating armory.<sup>76</sup> There are several instances of seizure of vessels and crew by governments expressing such fears.<sup>77</sup> There has also been at least one occurrence in which a floating armory operator went bankrupt, leaving personnel and weapons in the HRA.<sup>78</sup>

Finally, many floating armories may not meet minimum safety requirements for crew. There are two factors that govern the physical security of a vessel.<sup>79</sup> One is compliance with the International Convention for the Safety of Life at Sea (The Convention).<sup>80</sup> The Convention requires a number of safety mechanisms to be put in place, such as a limitation on the number of passengers on board.<sup>81</sup> However, most floating armories are converted tugs, which have a limited capacity by default, in violation of the Convention because they typically have such little space that even housing a few armed guards becomes a problem.<sup>82</sup> The Convention’s regulations are often exceeded given that 3-6 armed guards may be on board at any one time in addition to each vessel’s crew-members.<sup>83</sup> The second safety factor regards the floating armory’s security provisions.<sup>84</sup> Some vessels, but not all, do maintain a sufficient number of guards that provide 24-hour security.<sup>85</sup> However, there are no standardized plans, procedures, or rules for the use of force in

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75. *Id.* art. 18–19.

76. SMALL ARMS SURVEY, *supra* note 35, at 232.

77. *See* Letter dated 11 July 2012 from the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council, U.N. Doc. S/2012/544 (July 13, 2012); Ramola Badam, *UAE coastguard detains floating weapons arsenal off Fujairah*, THE NAT’L (Oct. 17, 2012), <http://www.thenational.ae/news/uae-news/uae-coastguard-detains-floating-weapons-arsenal-off-fujairah>.

78. Paul Gallagher and Jonathan Owen, *Exclusive: Anti-pirate security staff all at sea after major firm suddenly goes bust*, THE INDEPENDENT (June 29, 2014), <http://www.independent.co.uk/news/world/exclusive-antipirate-staff-all-at-sea-after-major-firm-suddenly-goes-bust-9636217.html>.

79. SMALL ARMS SURVEY, *supra* note 35, at 229.

80. *Id.*

81. International Convention for the Safety of Life at Sea, Nov. 1, 1974, 32 U.S.T. 47, 1184 U.N.T.S. 3 [hereinafter SOLAS].

82. SMALL ARMS SURVEY, *supra* note 35, at 229.

83. *Id.*

84. *Id.*

85. *Id.*

situations in which the vessels come under attack.<sup>86</sup> This increases the fear that pirates or terrorists may capture floating armories.<sup>87</sup>

B. *Inconsistency Between the Flag of the Vessel and the Operator*

UNCLOS does not prohibit vessels from carrying arms in international waters. Instead, the jurisdiction over floating armories in international waters rests solely with the vessel's flag state.<sup>88</sup> However, far too often, the flag of the ship is not consistent with the place of business of the company operating the floating armory.<sup>89</sup> Moreover, these ships are occasionally registered to blacklisted states. For example, the Remote Control Project, a project carried out by the Omega Research Foundation, discovered that at least twelve vessels operated by British PMSCs were flagged to blacklisted states, such as Mongolia, the Comoros, and Sierra Leone.<sup>90</sup> This leads to two primary concerns: lack of regulation and conflicts of law issues.

1. Lack of Regulations

There are several reasons why PMSCs register their vessels under foreign flags. Many ship owners make use of what are known as "flags of convenience." Flags of convenience are essentially open-register states in which foreign companies register their ships due to lower regulatory standards, as well as other factors such as staffing and tax issues.<sup>91</sup> For example, many floating armories are flagged to Panama and Sierra Leone, which have generally lenient regulations.<sup>92</sup>

Another complication is that countries differ as to whether they will allow armed guards on ships.<sup>93</sup> For example, Indonesia is opposed to allowing armed guards on ships because of the lack of

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86. *Id.*

87. *Id.*; *Floating armories can lead to 26/11-type attack: Navy chief*, THE TIMES OF INDIA (Dec. 3, 2013), <http://timesofindia.indiatimes.com/india/Floating-armories-can-lead-to-26/11-type-attack-Navy-chief/articleshow/26794932.cms>.

88. UNCLOS, *supra* note 1, art. 92.

89. *See* RISKS REPORT, *supra* note 2, at 9.

90. *See id.* at 12; *see also* PARIS MOU ON PORT STATE CONTROL, *Paris MOU, 2015 White, Grey, and Black Flag List in ANNUAL REPORT* (2015), <https://www.parismou.org/sites/default/files/2015%20White%2C%20Grey%20and%20Black%20Flags%20List.PDF>.

91. RISKS REPORT, *supra* note 2, at 11.

92. SMALL ARMS SURVEY, *supra* note 35, at 234.

93. Dutton *Gunslingers*, *supra* note 22, at 131.

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hiring and conduct standards.<sup>94</sup> The Netherlands will only allow “Dutch flagged ships to be protected by military personnel” hired out by the country to commercial ship owners.<sup>95</sup> These restrictions contribute to the reasons why companies register their floating armories to flags of convenience.

Countries with flags of convenience, often known as “open registry flag states,” have shown very little interest in addressing the issues associated with floating armories.<sup>96</sup> Many such countries have failed to introduce a vessel description for “floating armory” despite issuing flag state approval for this purpose.<sup>97</sup> This is important because it contributes to the lack of oversight and regulation of floating armories. About half of the vessels listed in the Remote Control Project’s study are registered to a flag of convenience.<sup>98</sup> If a vessel is registered to a flag state that requires little or no regulations over the transfer of weapons and ammunition, these vessels may operate with little or no oversight whatsoever.<sup>99</sup>

### 2. Conflicts of Law Issues

The conflicts of law issue is clear. If a U.K.-based company operates a floating armory with a Mongolian flag, only Mongolia can exercise jurisdiction over that vessel, despite the fact that the operator itself is subject to U.K. law. Thus, there is a gap between the law that applies to the operator and the law that applies to the vessel itself with regard to staffing, vessel management, and (of course) arms control. Further, depending upon the individual conflicts laws of the operator’s state and the flag state, the flag state may not be able to exercise jurisdiction over the operator’s state and vice versa.

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94. Max Sijabat Ridwan, *RI says no to private armed guards aboard vessels*, JAKARTA POST (June 13, 2012, 10:40 AM), <http://www.thejakartapost.com/news/2012/06/13/ri-says-no-private-armed-guards-aboard-vessels.html>.

95. Justin Stares, *The Need for Armed Guards Proves Governments Have Failed to Tackle Piracy*, DEF. MGMT. (Feb. 28, 2012), [http://web.archive.org/web/20121114131259/http://www.defencemanagement.com/feature\\_story.asp?id=18807](http://web.archive.org/web/20121114131259/http://www.defencemanagement.com/feature_story.asp?id=18807).

96. See INT’L TRANSP. WORKERS’ FED., *Flags of Convenience* (2012), <http://www.itfglobal.org/en/transport-sectors/seafarers/in-focus/flags-of-convenience-campaign>.

97. SMALL ARMS SURVEY, *supra* note 35, at 234.

98. RISKS REPORT, *supra* note 2, at 11 (demonstrating that flags of convenience include Comoros, Liberia, Mongolia, Panama, Sri Lanka, and Vanuatu).

99. *Id.* at 20.

C. *Lack of Publicly Available Registry*

There is currently no publicly available registry relating to floating armories. The lack of information on floating armories and their operators leads to uncertainty regarding the number of floating armories operating and PMSCs that use them.<sup>100</sup> Without this information, it is nearly impossible to ascertain whether those operating or utilizing floating armories are doing so properly and safely. This uncertainty “is exacerbated by lack of controls and the fluid way in which arms are moved” between armories and operators.<sup>101</sup> Currently, only ninety PMSCs are members of the International Code of Conduct for Private Security Providers.<sup>102</sup> Further, the average size of armed teams seems to be decreasing, meaning that it is still difficult to estimate the number of arms and ammunition being used in the HRA.<sup>103</sup>

V. SOLUTIONS

The goal is not to make floating armories illegal. Rather, the goal is to create standards and regulations that will ultimately ensure the safe and proper operation of floating armories. The following are suggested standards that will ensure that floating armory operators and the PMSCs that utilize them operate with transparency and accountability.

A. *Creating International Standards and Regulations*

Initially, floating armories were self-regulated by the private maritime security industry itself.<sup>104</sup> However, there are several steps that must be taken to properly regulate floating armories with international standards. The IMO and the Security Association for the Maritime Industry (SAMI) have developed a set of voluntary standards applicable to floating armories.<sup>105</sup> The two main international standards are ISO 28000 and ISP/PAS 28007. ISO 28000 governs security in the supply

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100. See RISKS REPORT, *supra* note 2, at 18.

101. See *id.* at 19.

102. *Membership*, INT’L CODE OF CONDUCT ASS’N [ICoCA] (2016), <http://www.icoca.ch/en/membership>.

103. See *Oceans Beyond Piracy*, *supra* note 15, at 16–17; SMALL ARMS SURVEY, *supra* note 35, at 227.

104. SMALL ARMS SURVEY, *supra* note 35, at 235.

105. *Our Philosophy*, MNG MARITIME, <http://www.mngmaritime.com/philosophy> (last visited Dec. 1, 2016).

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chain while ISO/PAS 28007 provides general guidelines for PMSCs.<sup>106</sup> The Remote Control Project recommends that until legally binding standards come into play, operators of floating armories should be required to obtain ISO 28000 and ISO/PAS 28007 certification as an interim measure.<sup>107</sup> Additionally, strict record keeping regulations must be developed and enforced so that weapons and ammunition are not lost.<sup>108</sup>

With regard to construction of floating armories, operators should be required to follow the U.N. Guidelines on Stockpile Management (Guidelines). At a minimum, weapons should be stored in an armory contained within the ship's structure and the armory should have a secure entrance.<sup>109</sup> Additionally, the Guidelines suggest that ammunition and arms should be stored separately, and kept in a weatherproof and ventilated environment.<sup>110</sup>

The Remote Control Project further recommends storing weapons and ammunitions on shelves for additional safety.<sup>111</sup> "Certification of these vessels should be carried out" by an organization such as the IMO in order to ensure that internationally recognized standards are established.<sup>112</sup> Finally, operators should only be permitted to maintain floating armories if they demonstrate that they "comply with any and all relevant laws and standards" for each jurisdiction in which they operate.<sup>113</sup>

In addition to the floating armory operators, PMSCs themselves must be regulated. PMSCs should only be authorized to use floating armories if they are able to prove compliance with laws relating arms and ammunition, particularly with regards to their acquisition, storage,

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106. See Maria Lazarte, *Fighting piracy—ISO guidelines for armed maritime guards*, INT'L ORG. FOR STANDARDIZATION (March 14, 2013), [www.iso.org/iso/home/news\\_index/news\\_archive/news.htm?refid=Ref1717](http://www.iso.org/iso/home/news_index/news_archive/news.htm?refid=Ref1717).

107. RISKS REPORT, *supra* note 2, at 15.

108. See *id.*

109. *Id.* at 16.

110. U.N. OFFICE FOR DISARMAMENT AFFAIRS, INTERNATIONAL AMMUNITION TECHNICAL GUIDELINE: TYPES OF BUILDINGS FOR EXPLOSIVES FACILITIES (2nd ed. 2015), <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/convarms/Ammunition/IATG/docs/IATG05.20.pdf>.

111. RISKS REPORT, *supra* note 2, at 16.

112. *Id.* at 16; See also U.N. Chairman of the S.C. Comm., Letter dated 11 July 2012 from the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council, U.N. Doc. S/2012/544 (July 13, 2012).

113. See RISKS REPORT, *supra* note 2, at 17.



carriage, and use of such materials.<sup>114</sup> This assurance may include obtaining a trade license from the state to which the PMSC is registered to store and transport weapons.<sup>115</sup> PMSCs must also demonstrate that they comply with requirements from each state jurisdiction in which they may operate or travel through.<sup>116</sup> PMSCs must also have a set of rules and procedures in place to govern “appropriate” responses to piracy. For example, each PMSC must have policies available dictating what constitutes “reasonable use of force” in response to maritime piracy in order to reduce the risk that innocent persons will be targeted by PMSCs mistaking them to be pirates.<sup>117</sup>

The Remote Control Project suggests that insurance companies should be urged to play a role in regulating floating armories.<sup>118</sup> Insurance companies possess the power to halt concerning arms shipments or to force compliance with standards.<sup>119</sup> In one instance, a ship was suspected to be carrying Russian attack helicopters to Syria during a European arms embargo.<sup>120</sup> The ship’s insurance was withdrawn so that the ship was required to return to port.<sup>121</sup> Insurance companies can also mitigate the risks posed by floating armories by requiring PMSCs and operators to prove that they possess all the proper licenses to hold their weapons and that they do not use unlicensed floating armories to store arms and ammunition.<sup>122</sup>

Finally, where PMSCs or floating armory operators are authorized to sell weapons and ammunition to a foreign PMSC or vessel registered to

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114. *Id.*

115. *See id.* *See also* UK DEP’T FOR INT’L TRADE AND EXPORT CONTROL ORG., *Open General trade control license (maritime anti-piracy): list of registered companies* (Oct. 15, 2013), <https://www.gov.uk/government/publications/open-general-trade-control-licence-maritime-anti-piracy-list-of-registered-companies> (last updated Apr. 28, 2016).

116. RISKS REPORT, *supra* note 2, at 17.

117. *See Piracy and private security Laws and guns*, *The Economist* (Apr. 12, 2012), <http://www.economist.com/node/21552553> (last accessed Nov. 1, 2016).

118. *Id.* at 16.

119. *See Outsourced floating armouries off Sri Lankan coast may invalidate marine insurance*, *TRADE AND FORFEITING REV.* (Jan. 10, 2013), <https://web.archive.org/web/20130128063103/http://www.tfreview.com/news/risk/outsourced-floating-armouries-sri-lankan-coast-may-invalidate-marine-insurance>.

120. *Ship carrying helicopters to Syria halted off Scotland heads for Russia*, *BBC NEWS* (June 19 2012), <http://www.bbc.co.uk/news/uk-scotland-highlands-islands-18503421>.

121. *Id.*

122. *Piracy FAQs—Updated*, *THE SHIPOWNERS’ CLUB* (Sept. 3, 2013), <http://www.shipownersclub.com/piracy-faqs-updated>.



a different flag state, the ATT would apply to the sale.<sup>123</sup> Therefore, where the PMSC or vessel is registered to a State Party to the ATT, the state itself must ensure that it complies with the ATT's provisions. For example, State Parties must maintain national control systems,<sup>124</sup> refrain from authorizing the arms transfer where it has knowledge that the arms would be used for certain crimes such as genocide and crimes against humanity,<sup>125</sup> and refrain from the transport if the transfer "could undermine peace and security," or be used to "facilitate a serious violation of international humanitarian" or "international human rights law."<sup>126</sup> Additionally, where the transfer occurs in a State Party's jurisdiction, the state that exercises jurisdiction must ensure the legality of the transfer.<sup>127</sup>

Of course, implementation of an international convention is the best way to efficiently govern the use and conduct of armed guards.<sup>128</sup> Through a convention, states could agree upon the types of weapons PMSCs may use, qualifications for PMSC personnel, as well as storage and transfer methods.<sup>129</sup> A convention would also create a mechanism for accountability that would create greater assurance that the regulations put forth above will be adhered to.

#### B. *Flag State Regulation*

Floating armories should be registered with "appropriate" flag state.<sup>130</sup> UNCLOS requires that there "must exist a genuine link between the [flag] State and the ship."<sup>131</sup> Therefore, operators must not be permitted to register vessels under flags of convenience, but may only register vessels to countries where a legitimate relationship exists, such as the principle place of business of the operator. Further, operators should be prohibited from registering any vessel under the flag of a foreign blacklisted state, regardless of whether a genuine link between the company and that state may exist. Moreover, any government that has given permission for operators or PMSCs to use floating armories must

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123. ATT, *supra* note 9, art. 2(1) (clarifying that the activities of the international trade comprise export, import, transit, trans-shipment and brokering).

124. *Id.* art. 5(2).

125. *Id.* art. 6(3).

126. *Id.* art. 7(1)(a)-(b).

127. *Id.* art. 9.

128. Dutton *Gunslingers*, *supra* note 21, at 149.

129. *Id.*

130. RISKS REPORT, *supra* note 2, at 14.

131. UNCLOS, *supra* note 1, art. 94.

withdraw permission immediately for those PMSCs that store weapons on armories flagged to blacklisted countries.<sup>132</sup>

Additionally, states should take measures to set rules in place for ships under their flags. These measures should include detailing approved weapon types, acceptable use of deadly force, defining “proportional” response to pirate attacks, and standards of training.<sup>133</sup> Some states already have such measures in place. For example, the United States allows for self-defense of U.S.-flagged ships, while India allows for Indian-flagged ships to have armed guards on board.<sup>134</sup>

### C. *Creation of a Registry*

Another important requirement is the creation of a registry to ensure that PMSCs and their vessels comply with applicable standards. This is essential for the purposes of accountability and transparency. This registry, which would ideally be maintained by the IMO, should include the name and registration number (IMO number) of each floating armory, as well as the flag state, the operator, and insurer.<sup>135</sup> Further, the registry should contain information such as the quantity of weapons and ammunition stored on each vessel.<sup>136</sup>

## VI. STATE INTERVENTION IN THE INTERIM

Of course, it will likely take time and multilateral efforts in order to implement the proposed solutions. However, there are still several ways that states may not only offer protection to floating armories, but may also hold floating armory operators and PMSCs accountable, in the interim. The exclusive jurisdiction principle of a flag state applies for strictly shipboard matters.<sup>137</sup> But when the effects of a vessel’s activities go beyond the ship, exclusive flag state jurisdiction is not absolute.<sup>138</sup> Thus, there are several situations, which shall be discussed in turn below, in which non-flag states may exercise varying degrees of enforce-

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132. RISKS REPORT, *supra* note 2, at 14.

133. *Id.* at 1.

134. *Id.*

135. RISKS REPORT, *supra* note 2, at 20.

136. *Id.*

137. Linda M. Paul, *Using the Protective Principle to Unilaterally Enforce Transnational Marine Pollution Standards*, in PROCEEDINGS OF THE SECOND INTERNATIONAL CONFERENCE ON MARINE DEBRIS 1989, 1051 (U.S. Dep. of Commerce NOAA Tech. Memorandum NMFS, NOAA-TM-NMFS-SWFSC-154, 1990) [hereinafter *Paul Report*].

138. *Id.*

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ment or legislative jurisdiction over floating armories.<sup>139</sup> For example, UNCLOS allows states to intervene in instances of piracy,<sup>140</sup> which means that states may play a role in offering additional protection to ships, including floating armories that may have been overtaken by pirates. UNCLOS also provides for certain additional exceptions to the exclusive jurisdiction principle, which would also authorize states to intervene in the high seas.<sup>141</sup>

### A. *State Intervention Regarding Piracy*

UNCLOS provides that every state has the authority to intervene with respect to piracy.<sup>142</sup> Article 100 maintains that every state should cooperate “to the fullest possible extent in the repression of piracy on the high seas.”<sup>143</sup> Therefore, a state may exercise jurisdiction over a pirate ship despite the fact that the ship may be flagged to a different state.<sup>144</sup> Moreover, under article 105, every state is “authorized to seize a pirate ship, or a ship taken by piracy” that is currently under the control of pirates.<sup>145</sup> States may also exercise jurisdiction by arresting persons and seizing property on board, and may even initiate proceedings in its courts.<sup>146</sup> The state courts then have jurisdiction to determine penalties imposed and the actions taken with regard to the ship or property seized.<sup>147</sup> This provision is significant for several reasons. First, it enables non-flag states to offer assistance to a floating armory when it comes under attack by pirates. This is crucial given the fears that less-regulated floating armories are more likely to come under attack. Second, this comes into play when ill-regulated armories or PMSCs transfer weapons and ammunition. As previously mentioned, weapons and ammunition may often end up in the wrong hands.<sup>148</sup>

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139. Anne Bardin, *Coastal State's Jurisdiction over Foreign Vessels*, 14 PACE INT'L L. REV. 28, 46 (2002).

140. See UNCLOS, *supra* note 1, art. 100.

141. See *id.* arts. 105, 111.

142. *Id.* art. 100.

143. *Id.*

144. *Id.* art. 103 (defining a pirate ship as one which is intended by the persons in dominant control to be used for the purpose of committing an act of piracy, where the ship has been used to commit any such act, so long as it remains under the control of the persons guilty of that act).

145. *Id.* art. 105.

146. *Id.*

147. *Id.*

148. See RISKS REPORT, *supra* note 2, at 15.

However, UNCLOS gives states authority to seize such weapons and ammunition when they end up in the hands of pirates.

B. *Other Justification for State Intervention*

In addition to piracy, UNCLOS provides several other situations where states may intervene with regard to foreign vessels in international waters. The first is the general principle that every state has a duty to render assistance to any vessel in distress, including its crew and passengers, as well as any person found at sea.<sup>149</sup> Thus, whenever a floating armory or ship utilizing PMSC armed guards comes into distress, because of pirates or otherwise, each state can require the master of a ship flying its flag to proceed to the vessel in need. The only limitation is where proceeding with the rescue would cause “serious danger to the ship, the crew, or [its] passengers.”<sup>150</sup> This provision offers an additional layer of protection for those floating armories that do not have standardized safety procedures in place.

Further, UNCLOS provides for the right of hot pursuit.<sup>151</sup> Coastal states may exercise their right of hot pursuit<sup>152</sup> where state authorities believe that a foreign vessel “has violated the laws or regulations of that State.”<sup>153</sup> This is an application of the well-recognized principle of protective jurisdiction, which justifies extending jurisdiction over foreigners when their actions threaten the security or integrity of the forum state.<sup>154</sup> Additionally, this right applies to both criminal and civil actions.<sup>155</sup> However, the foreign vessel would have had to violate the coastal state’s laws while “within the internal waters, the archipelagic waters, the territorial sea, or the contiguous zone” of the coastal state, and the pursuit may only continue into the high seas where the pursuit has not been interrupted.<sup>156</sup> Moreover, only vessels clearly marked as

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149. UNCLOS, *supra* note 1, art. 98(1).

150. *Id.*

151. *Id.* art. 111.

152. UNCLOS *supra* note 1, art. 111(1) defines the right of hot pursuit as undertaken “when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted”

153. *Id.* art. 111(6).

154. Arthur Lenhoff, *International Law and Rules on International Jurisdiction*, 50 CORNELL L. REV. 5, 12 (1964).

155. Paul Report, *supra* note 137, at 1049.

156. UNCLOS, *supra* note 1, art. 111(1).

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government ships or aircrafts may exercise the right of hot pursuit.<sup>157</sup> Therefore, when a floating armory or ship utilizing armed guards accidentally or intentionally enters a state's continuous zone or territorial sea, and that state has reason to believe it is violating arms trade or other laws, that state has the right to engage in hot pursuit. The possibility of being the subject of hot pursuit should encourage floating armory operators to implement the proposed solutions so that it comes into compliance with standardized practices regarding arms transfer.

Finally, states may exercise jurisdiction based upon nationality. The nationality principle is a universally recognized theory of extraterritorial jurisdiction in which a state exercises criminal jurisdiction over its nationals abroad.<sup>158</sup> Several states have codified this principle into their domestic law, such as Australia<sup>159</sup> and the United States.<sup>160</sup> Thus, where a state's national is aboard a floating armory and is abusing that state's laws with respect to arms use or trade, the state may exercise jurisdiction over that person. Notably, floating armories by themselves are not illegal. The implication here is that less-regulated armories may not obtain the proper licenses to engage in arms transfer, thus violating national laws.<sup>161</sup>

## VII. CONCLUSION

It is undisputed that there is a correlation between the number of floating armories operating and reported instances of maritime piracy. Floating armories have also reduced the number of land-based armories used by PMSCs and have given PMSC personnel the opportunity to access necessary logistical support and equipment needed.<sup>162</sup> However, by virtue of operating solely in international waters, floating armories evade international and national laws with respect to arms trade. This is not to say that floating armories are illegal. Yet, the lack of standards and regulations governing the operation and use of floating armories is extremely concerning. Scant regulation has led to the risk that pirates

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157. *Id.* art. 111(6).

158. Lenhoff, *supra* note 151, at 13.

159. *Crimes at Sea Act 2000* (Cth) §§ 6(2)-(3) (Austl.).

160. 18 U.S.C. § 7(7) (2006).

161. 18 U.S.C. § 922(a)(1)(A)-(B) (2006) (making it unlawful for any person except a licensed importer, manufacturer, or dealer to engage in the business of importing, manufacturing, or dealing in firearms and ammunition, or to ship, transport, or receive any firearms and ammunition in interstate or foreign commerce).

162. RISKS REPORT, *supra* note 2, at 19.

or terrorists may overtake floating armories, and causes significant safety implications both for crew-members and coastal states.

The goal of this Note is not to suggest making floating armories illegal or to restrict the number of operators. However, floating armories, as well as the PMSCs that use them, must be regulated in order to ensure that the weapons and ammunition they store do not end up in the wrong hands and that guards using them do so properly. Instituting international standards and regulations will increase much-needed transparency regarding the number of operators and of weapons and ammunition stored. It will also dramatically decrease the currently overwhelming safety risks. Further, requiring that vessels be registered to “appropriate” flag states will ensure that the armories, operators, and users are properly regulated. Finally, a publically available registry must be created so that each of these solutions can be properly implemented and scrutinized.

Until these solutions are implemented however, there are still actions that states may undertake to intervene where floating armories and the PMSCs that use them are acting questionably or are at risk of falling victim to piracy themselves. UNCLOS provides for several instances where non-flag states may exercise jurisdiction in international waters. These offer floating armories an extra layer of protection, while simultaneously holding them accountable for weapons regulation when they enter a coastal state’s jurisdiction. However, multilateral efforts to implement the above solutions are critical to preserve the safety of the high seas.