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Regulating the Carriage of Firearms by Private Maritime Security Actors: An Empirical Investigation

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Structured Abstract

Article type: Research Paper

Purpose—The basis for this article stems from growing concerns about the impact of private sector entities on the sovereignty of states, especially in handling commonly shared challenges.

Design—The article discusses the findings of the study, which involve an empirical investigation using multi-methods to analyze the reasons and linked outcomes of applying Nigeria's gun control to foreign vessels in the Gulf of Guinea. Key informant interviews (n = 11) were conducted with subject matter experts, while the views of seafarers were elicited through questionnaires (n = 44).

Findings—The study confirms that the domestic legal system remains significant and can alter the level of influence of a transnational phenomenon (such as the PMSC industry) by constraining their methods of operation. The study highlights the reframing of PMSC services to fit within the characteristics of the region.

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Relevance—These findings are relevant to understanding international maritime security governance as a complex adaptive system which may require changes or responses.

Keywords: armed robbery against ships, carriage of firearms,
Gulf of Guinea, maritime piracy, maritime security,
Nigerian firearms legislation and policies,
private maritime security companies (PMSCs)

I. Introduction

The notion that states are typically solely responsible for governance within their territory has been progressively challenged by the growing consciousness that actors other than the state can and do respond to specific situations, especially those that are transnational.¹ So much so that their involvement is recognized by international legal scholars, not necessarily as occupying formal ascertainment within international legal rules but as holding valuable participant status.² Some scholars point out that state authority witnesses transformation to accommodate these changes in a spirit of global cooperation. They argue that globalization ironically ultimately undermines the state that brought about its existence in the first place.³ The interplay between this “globalization” and the state, especially concerning non-state participants, is far more complex. Nigeria’s enforcement of firearms legislation amid maritime security challenges in the Gulf of Guinea provides an apt scenario to discuss the contemporary international system and the complexities for state and non-state actor’s relationships.

This study examines, using a multi-method approach, the rationale and linked outcomes of the application of Nigeria’s gun control laws. The contribution of this article is two-fold. First, it demonstrates how domestic law influences transnational actors. It reveals that Nigeria’s gun control laws and their enforcement, are relevant to the existing global governance structure in international maritime security because they can determine how it develops. Participants in the international norm-making process are likely to transform domestic law. However, local laws can also constrain the actions of transnational actors. Secondly, the study demonstrates that the international maritime security system is a non-linear dynamic system that possesses the ability to generate adapting effects. The trend of engaging PMSCs in anti-piracy activities introduced an international (imperfect) framework before the shift of attention to the Gulf of Guinea. However, the state laws of Nigeria are giving the participation of PMSCs in anti-piracy efforts a different outlook. These marked differences contribute to re-shaping and redirecting PMSC development, as well as creating changes in the international maritime security framework.

Section 2 of this article sets the foundation for the study. It briefly explores the global threat of piracy and armed robbery against ships and the role that PMSCs have played in curtailing the risks. The section also discusses the current state of

Nigeria's gun control laws and how it applies in the maritime domain. Section 3 recounts the methods and processes engaged in the study. Section 4 discusses the findings and is followed by a conclusion.

II. Background

Flowing from the inherently transnational nature of shipping and its economic significance to all states, stakeholders require that unhindered trade occur globally. Unfortunately, in recent decades, piracy and other maritime crimes such as armed robbery against ships continue to interfere with secure shipping. Private maritime security companies (PMSCs) have been involved in providing additional security services to that offered by the states to address maritime security concerns.⁴ Their involvement first around Southeast Asia and in the Gulf of Aden using privately contracted armed security personnel (PCASP) is well documented.⁵

Several scholars, in discussing the role of PMSCs in the context of the challenge their control creates as well as the impact of their use especially off the coast of Somalia, acknowledge their contribution in triggering global changes concerning piracy-related threats and the use of arms on vessels in two significant ways.⁶ First, there was an implicit shift in the long-standing international practice that discouraged the arming of merchant vessels.⁷ Their presence off the coast of Somalia coinciding with the dramatic reduction in attacks in the Gulf of Aden is usually identified as the game-changer, compared to their use in piracy prone areas off the Strait of Malacca.⁸ In addition to the implicit shift, a global consensus developed on how to deal with armed private security through soft law instruments and standards.⁹

The formal declaration of the Gulf of Guinea as a piracy hotspot occurred in 2011.¹⁰ Table 1 shows the statistics of attempted and actual attacks in the region between 2011 and 2019.¹¹ During this period, the International Maritime Organization (IMO) statistics reveal that at least 692 seafarers were taken hostage and actual violence to the crew of vessels was recorded in 122 out of the 527 incidents.¹²

YEAR/SOURCE	2011	2012	2013	2014	2015	2016	2017	2018	2019	
IMO	65	68	55	45	35	62	49	81	67	527
IMB	53	62	51	41	34	55	45	82	64	487

Table 1. Summary of piracy and armed robbery (actual and attempted) attacks that occurred in the Gulf of Guinea (2011–2019).

Several authors acknowledge that the location and patterns of attacks present characteristics, including petro-piracy, which are unique to the sub-region.¹³ The intent of the criminal activities occurring in the sub-region are classified as cargo theft, armed robbery and kidnapping.¹⁴ Experts believe that the majority of the attacks—actual and attempted—are perpetuated by criminals of Nigerian origin.¹⁵ Maritime criminals operate in the port area, territorial sea and the exclusive economic zone. They are known to work with sophisticated weapons and are violent.¹⁶

The existence and persistence of attacks in the Gulf of Guinea created an atmosphere for the potential engagement of PMSC services to improve maritime security. Despite the apparent change in perspective and the resultant framework on the use of arms and ammunition by private guards within the maritime domain, Nigeria continues to insist on the implementation of gun control laws¹⁷ and policies within its maritime domain in a manner that restricts the use of arms-related services by private security entities. Scholars assert that the regional differences in piracy attacks and state response affects the reaction of the global community.¹⁸ Hence, it is crucial to investigate further why Nigeria insists on restricting the use of armed personnel as a potential anti-piracy measure.

The legal framework for regulating the use of firearms in Nigeria is made up primarily of the Firearms Act¹⁹ as well as subsidiary legislation arising from the principal Act.²⁰ Several other national laws refer to some aspects of the control of the use of firearms. These include the Armed Robbery and Firearms Act²¹ and Private Guards Act.²² The UN *Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime*²³ and ECOWAS *Convention on Small and Light Weapons*²⁴ are international agreements to which Nigeria is a signatory. They are relevant to Nigeria's firearms framework since they create obligations on Nigeria to regulate the ownership, possession and transfer of weapons among the civilian population.²⁵ The state's domestic laws on the regulation of firearms reflect these international obligations.

The extant Firearms Act as the dominant aspect of gun control in Nigeria defines firearms in section 2 as

any lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged, and includes a prohibited firearm, a personal firearm and a muzzle-loading firearm of any of the categories referred to in Parts I, II and III respectively of the Schedule hereto, and any component part of any such firearm.

The schedules referred to in section 2 consists of categories of weapons as well as the manner (if ownership is not prohibited), in which they can be obtained. Existing literature and analysis of the law reveals that ownership and possession of arms within Nigeria's territory is highly regulated.²⁶ It requires obtaining a license from the appropriate authority as designated by the Act, after fulfilling specific criteria as stipulated by law.²⁷ The grant of the license is not as of right.²⁸ Approvals may be refused, without prejudice to considerations such as the age, mental capacity, sight quality, temperate habits, and criminal records of the applicant.²⁹

An equally stringent procedure with discretionary powers applies to the movement of arms across national borders.³⁰ Sections 18, 19 and 21 of the Firearms Act collectively provide specific procedures under which the movement of weapons across national borders are permitted. The Firearms Act allows the president or his designate by proclamation to prohibit or restrict (based on conditions), the ownership or possession of firearms as he deems fit.³¹ According to section 35, Firearms Act,

(1) The President, if he thinks fit, may at any time by proclamation prohibit the possession of or dealing in any firearms or ammunition, either throughout the Federation or in any part thereof, and either absolutely or except subject to such restrictions or conditions as may be specified.

The existence of discretionary powers is significant because if exercised, it may effectively create an outright ban on the movement of firearms across national borders. The Nigerian government currently uses these discretionary powers, in a manner that restricts the possession and movement of weapons within the Nigerian space.³²

Scholars generally examine issues of complexities arising from the use of PMSC services that require the use of firearms and how these complexities affect maritime security for other jurisdictions.³³ This study examines the rationale behind the application of said laws and policies by Nigeria, as well as the consequences on the PMSC industry and maritime security in general.

III. Research Methods

This section discusses the methods engaged in the empirical investigation. The study based on a pragmatic approach³⁴ utilizes both expert interviews and questionnaires to elicit a better understanding of the focus of the research.

a. Expert Interviews

Expert interviews were conducted with five stakeholder groups within the maritime sector ($P_n = 11$) between 2016 and 2018. The groups were made up of private security provider interests; Nigerian government agencies involved in maritime law enforcement, Nigerian lawmakers, global shipping company interests, and an independent foreign security expert.

Expert interviews involve participants that possess knowledge about a particular subject, which is ordinarily not accessible to everyone. They possess acquired knowledge on the subject matter of the research through carrying out activities either of a professional or functional nature.³⁵ The experts in this investigation consisted of persons who gained knowledge either from being involved in the Nigerian maritime setting or as maritime security stakeholders at the international scene. From a methodological viewpoint, the researcher identified expert interviews as the most appropriate method to conduct the investigation. The interviews are useful in gaining insights into decision making processes and shedding light on elements of the inquiry through information sometimes not documented. The experts were identified purposively, based on their “know-how” and “know why” status with respect to the subject matter of inquiry.

The method employed a semi-structured interview approach. Though conducted with an interview guide, the interviews were designed to give the participants room to unfold their views.³⁶ The result presented in this article forms part of a more extensive study on private protection of foreign vessels in the Gulf of Guinea.

All participants were informed of the average time expected for the interview and also told of their general rights, including the prerogative not to provide an answer to questions asked. The interviews were audio-recorded, except in three instances where participants did not consent to audio recordings, and a handwritten record of the interview was employed instead.

To maintain confidentiality and because of the sensitive position of some of the interviewees, Table 2 below provides uniform information that could be shared relating to the demographics. The research applied the sociological method of assigning a serial number to participants after each interview.³⁷ This was to enable explicit reference to the interview data while at the same time preserving confidentiality with respect to the identity of the participants.

PARTICIPANT	ORGANIZATION
P1	Nigeria Security and Civil Defence Corps (NSCDC)
P2	The Baltic and International Maritime Council (BIMCO)
P3	International Association of Marine and Shipping Professionals (IAMSP)
P4	SAA/PG West Africa (private maritime security company)
P5	Individual maritime expert
P6	Nigerian Maritime Administration and Safety Agency (NIMASA)
P7	Nigerian Maritime Guard Command (MGC)
P8	ACSS (private maritime security company)
P9	Nigerian Navy
P10	Nigerian Navy
P11	Legislator

Table 2. Demographics of participants in the expert interviews.

b. Self-Administered Questionnaires

As part of the methods for the investigation, the researcher collected data from questionnaires administered to seafarers. Seafarers represent a group of maritime stakeholders directly threatened by pirate attacks. (Qn = 44). The survey aimed to provide through closed and open-ended questions, the perceptions of this group of stakeholders on the application of gun control measures in Nigeria and the outcome on the security situation between 2011 and 2018. The time frame coincided with the period that the region was formally declared a piracy hotspot and until the end of 2018 when piracy was still adjudged as persistent in the region.³⁸ The enforcement of gun control measures by Nigeria took place within said period.

Administration of the instrument occurred using a random selection of seafarers arriving onboard foreign-flagged vessels at four out of six major ports in Nigeria between the period of November and December 2018. Table 3 provides a summary of the demographics of the participants.

The choice of surveys for this particular group was connected to the need to collect information efficiently within the shortest possible time available while they disembarked from vessels. The convenience of respondents, quick administration and absence of interviewer effect are critical advantages of utilizing questionnaires.³⁹ On the flip side, the self-administered questionnaires deny the researcher the oppor-

S/N	NATIONALITY OF SEAFARER-PARTICIPANT	PORT OF CALL				TOTAL
		APAPA	CALABAR	ONNE	PORT HARCOURT	
1	British	2	0	0	0	2
2	Danish	1	0	0	0	1
3	Filipino	1	2	1	0	4
4	French	0	0	1	0	1
5	Indian	1	7	3	4	15
6	Montenegrin	1	0	0	0	1
7	Nigerian	0	2	7	0	9
8	Romanian	0	2	0	0	2
9	Russian	1	0	0	0	1
10	Singaporean	1	0	0	0	1
11	Sri Lankan	1	0	0	0	1
12	Turkish	1	0	0	0	1
13	Ukrainian	1	0	3	1	5
	Total	11	13	15	5	44

Table 3. Demographics of participants in the questionnaires.

tunity to prompt or probe further to improve the research.⁴⁰ There is also a tendency of lower response rate for several reasons such as questionnaire respondents becoming tired of answering questions they perceive are not salient to them.⁴¹ A pilot test was conducted with a convenient sample size ($n = 10$) to test the time involved to reduce the disadvantages of engaging self-administered questionnaires. The pilot was also used to test the time required in answering the questions as well as if the questions were relevant and could be easily interpreted.

c. Analysis

Expert interviews. All audio-recordings were transcribed verbatim. The collected qualitative data were entered into a qualitative data analysis software (Qurikos) to assist in coding and template analysis. Template analysis as a form of thematic analysis enables extensive development of themes from the rich textual data.⁴² It also enables a comparison between the different groups within the specific context of the subject matter of the research. Template analysis creates room for a priori codes which are modifiable and updated through the iterative process of in vivo coding during the analysis. Pre-defined categories were derived from previous literature. The a priori codes were discussed with a top officer from the Nigerian Navy and a security expert. These codes were later refined during the coding process. Table 4 below shows the codes a priori and revised (*2nd* and *3rd*) coding relevant to the aspect of the research discussed in this article.

Questionnaires. Data from closed questions were coded into an excel spreadsheet and assigned appropriate measurements. The essence of the data was not necessarily to generalize for application to a more significant population but obtain the perception of this group of stakeholders to contribute to achieving a holistic picture

	1ST LEVEL (A PRIORI)	2ND LEVEL CODE	REVISED 3RD LEVEL CODE
1.	Background	N/A	
2.	The relevance of distinguishing the threat to maritime security	N/A	N/A
3.	International involvement	N/A	N/A
4.	PMSC participation	N/A	N/A
5.	Application of gun control	Reasons for nation/local jurisdiction legislation	Sovereignty principles Peculiarities Historical antecedents
6.	Impact of gun control	Effect on PMSCs Effect on government services Effect on security	Restriction of services Adaptation of services Changes in maritime security provision model Maritime domain awareness Level of threat Adequacy of security services
7.	Challenges to maritime security	N/A	N/A

Table 4. Extract of template for expert interviews.

of the inquiry. Data of this nature allow links to be formed with findings in the area of research.⁴³ Hence, the study engaged simple descriptive statistics to compare the variables in the instrument. The analysis was not particular about the statistical significance of the result based on the sample size. The responses to the open-ended questions were analyzed by manual coding.

IV. Results and Discussions

The following section provides the results and discussions of this study, which explores the reasons why Nigeria applies strict gun control measures and the impact of such stance on the PMSC industry and security in the region. The scope of this article does not include other clusters of themes relating to “maritime security threat distinction,” “facilitators of maritime security threat” and “PMSC characteristics” derived from the expert interviews. However, some nested themes under these clusters, which are linked to the focus of this research are referred to where necessary. Similarly, aspects of the administered questionnaires not relevant to this article are also not included.

The use of the template in qualitative analysis helps to highlight, based on the frequency participant reference, particular themes that reflect their perception of the subject matter. Table 5 below provides a summary of the frequencies of specific themes discussed by participants. The numbers at the extreme right of each row reflect the total number of times all the participants referred to a particular topic. Table 5 does not reflect other nested themes which may be relevant and discussed in the analysis, in connection to the main ideas.

The study employs the results of the questionnaires in discussing the relationship between the existence of gun control and the PMSC business models as well as the perception as to the state of the threat and the adequacy of security services flowing from the efforts of the government to improve security. Tables 6 and 7 show a summary of the perception of the seafarers on the current state of threat in the region as well as the adequacy of the services currently existing. These themes are pertinent in discussing together with the relevant aspects of the findings from the qualitative interviews, the perceptions of the impact of Nigeria's gun control.

State of Threat

	HTT	IMPROVED	NOT IMPROVED	GRAND TOTAL
British	1		1	2
Danish	1			1
Filipino	2	1	1	4
French		1		1
Indian	9	5	1	15
Romanian		2		2
Russian		1		1
Singaporean			1	1
Srilankan			1	1
Turkish	1			1
Ukrainian	1	2	2	5
Nigerian	2	5	2	9
Montenegrin		1		1
Grand Total	17	18	9	44

Table 6. Summary of perception of seafarers on the state of threat.

Adequacy of Security Services

	ADEQUATE	INADEQUATE	GRAND TOTAL
British		1	1
Danish		1	1
Filipino	3	1	4
French	1		1
Indian	12	3	15
Romanian	2		2
Russian	1		1
Singaporean	1		1
Srilankan		1	1
Turkish		1	1
Ukrainian	2	3	5
Nigerian	6	3	9
Montenegrin	1		1
Grand Total	29	14	43

Table 7. Summary of the perception of seafarers on the adequacy of security services.

a. The Rationale for the Application of Gun Control

The question of whether and to what extent coastal states should control PMSCs has been an issue since their activities began as a market response to curbing piracy. Following the heightened attention that surrounded their involvement off the coast of Somalia, the IMO's Revised Interim Recommendations for Port and Coastal States Regarding the Use of Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area (MSC.1/Circ.1408/Rev.1) through its guideline, encouraged balancing the rights of coastal states in the application of its national legislation on the one hand and concerns of the owners as well operators of ships navigating in or through a high-risk area to provide means for enhancing the security of their ships on the other hand. Notably, Nigerian gun control laws and policies existed before the escalation of maritime security threats in the region. Additionally, since *MSC.1/Circ.1408/Rev.1* are merely guidelines, there is no obligation on the state to follow them.

When asked their perception as to the reason for the strict application of gun control measures by Nigeria within the maritime domain, participants in the expert interviews identify four themes—sovereignty, jurisdiction, historical antecedents and peculiarities.⁴⁴

Sovereignty. Participants display the understanding that Nigeria occupies the status of an entity having no other authority over it. They similarly indicate knowledge that this sovereign status gives it the power to enact and enforce laws within its territory, including the territorial sea the state claims. This status gives it the power to enact and enforce laws within its territory, including the territorial sea the state claims.⁴⁵ Domestic laws provide the framework for governing a state.⁴⁶ These local laws serve as an integrative force to manage interactions within while at the same time, protecting the state from undue external interference. As a feature of sovereign status which her Constitution affirms, Nigeria has laws that regulate affairs of juristic and natural persons within its territory.⁴⁷ The laws include the Firearms Act⁴⁸ and other national legislation and policies that regulate the carriage and movement of weapons, which are particularly relevant to the use of private armed guards. The exercise of Nigeria's sovereign power over her territorial space allows the triggering of criminal liability in Nigeria even if the flag state of the vessel permits the use of such firearms. All participants in the expert interviews indicate awareness of the existence and application of the gun control laws. Similarly, a high percentage of seafarers (77 percent) also indicate awareness of the application of gun control laws within Nigeria's territory.

States are responsible for policing their sovereign space. Unlike PMSCs that are financially motivated, the state is not driven to protect out of the need to make a profit. They remain accountable for controlling violence. Expert interview participants, particularly those from government agencies, frequently spoke of the responsibility of the state to ensure security within her territorial jurisdiction. Given the political, economic, social and military significance of the sea domain that Nigeria controls, they perceived the provision of maritime security as inherently a function of government.

The main issue is the absence of adequate security within and around the Nigerian coast. The experts recognized some level of incapacity on the part of government agencies to provide the necessary maritime security owners and operators of ships need. The perceived inadequacies highlighted include insufficient patrol boats and poor coordination of information sharing in the region. The participants further identified that the state (until June 2019), lacked an appropriate legislative framework to tackle the enforcement of piracy and other unlawful acts at sea. Additionally, poor budgetary allocation causes a disadvantage to the security of the Nigerian maritime environment. Several authors highlight these incapacities in discussing the problem of maritime insecurity in the Gulf of Guinea.⁴⁹ Notably, the state in 2019 enacted the Suppression of Piracy and Other Maritime Offences Act to address the legislative lacuna. The state is yet to institute any trial or secure any conviction based on it.

How sovereignty is conceptualized has significant ramifications for maritime security. Sovereignty as a social construct is flexible in meaning. As the dissent among academic scholars shows, the responsibility for protection as an indicator of sovereign status does necessarily imply direct provision by government agencies of a particular service.⁵⁰ Thomson argues that sovereignty is conceptualized best as authority rather than state control or responsibility.⁵¹ This is because state control continues to wax and wane, but this does not diminish the authority of the state.⁵² States have the authority to delegate activities, as long as the state's ability to make political decisions remains intact. From this perspective, the involvement of non-state actors in engaging in the business of security is potentially advantageous to the state, bearing in mind the incapacities highlighted earlier. On the other hand, scholars like Avant acknowledge that although changes do not erode the state's power, states that open themselves to these changes are likely to experience trade-offs that affect their political process of controlling violence.⁵³ She cites two different examples—one of the U.S. advantageously engaging market mechanisms such that private security companies who generally follow U.S. regulatory regimes and private security providers in South Africa that honor the regulations more in a breach. Yet, the reduction of state control in both instances is not done out of coercion but exist based on the decision of the state. This means that sovereignty as a concept allows the state to consider, in the interest of maritime security, whether to choose to uphold or relax its gun control laws in ways that affect the active participation of PMSC services that require them.

Jurisdiction. The legal competence of a state to exercise control over a particular space within the world's waters is quite complicated. Unlike the terrestrial domain, the law of the sea which reflects the fragmentation of prescriptive (legislative) and enforcement jurisdiction of states across the multi-jurisdictional sphere is the basis for addressing state rights.⁵⁴ The experts display the understanding that the existence and enforcement of gun control laws in the territorial sea and internal waters tie with the prescriptive jurisdiction of the state.⁵⁵ The jurisdiction connects with the right to enact laws for and apply them to all persons, objects and activities within

its territory. Participants exhibited knowledge of the legal implication of the jurisdiction of a coastal state concerning crimes committed within territorial waters.

Two critical issues exist concerning the jurisdiction of the coastal state and the application of its gun control laws. The first issue relates to the compatibility or otherwise of Nigeria's prescriptive jurisdiction in this context with the right of innocent passage which exists under international law.⁵⁶ The other issue has to do with the effect that enforcing gun control laws against foreign vessels has on their protection in other maritime jurisdictions. The extent of the participants' knowledge on the issues of jurisdiction and the application of gun control laws in Nigeria are especially important since some of the participants are involved in policy making in their various sectors.

The interpretation of what innocent passage means is relevant to determining when Nigeria as a coastal state is permitted by international law to enforce its local rules against foreign vessels.⁵⁷ UNCLOS art.18 (1) defines innocent passage as navigating through "the territorial sea without entering internal waters or calling at a port outside internal waters; or proceeding to or from internal waters or a call at such roadstead or port facility."⁵⁸ Based on wordings of this provision, a vessel though intending to call at port, may still be engaged in innocent passage while in territorial sea. Notably, state practices are usually not in consonance with the second leg of the definition of UNCLOS art 18 (1) as they appear only to recognize a vessel neither coming out of port or internal waters nor heading to port or internal waters as engaged in innocent passage. Passage whether in line with state practice or strict interpretation of UNCLOS art 18 (1)(b) can only be innocent according to UNCLOS art 19(1) if it is not prejudicial to peace, good order or security of the coastal state. Prejudicial activities are mentioned in UNCLOS 19(2). Debates exist as to the interpretation of UNCLOS, article 19.⁵⁹ These debates exist with respect to whether the provisions of (1) and (2) are independent provisions such that the objectivity introduced by (2) are distinct from (1) which is subjective.⁶⁰ Similarly debates also exists as to whether the presence of arms onboard constitutes non-innocent activity under (2).⁶¹ These debates make it difficult to state conclusively whether a foreign vessel with armed private personnel on board is prejudicial to good order, peace or security of the coastal state for the purpose of determining enforcement powers of the coastal state in this regard.

Stakeholders such as the IMO and flag states issue several advisories, warning ship-owners and operators as well as PMSCs that countries in the Gulf of Guinea, by application of relevant gun control legislation, do not allow the arming of vessels. These advisories are arguably an indication of at least an acceptance of the position of subjecting passage of ships to coastal state law with respect to the private arming of vessels against pirates. But as Yang argues, the mere fact that a state enforces its legislation within its jurisdictional zones successfully does not necessarily mean that the enforcement of the legislation is legal.⁶²

Experts in the category of government agencies are adamant that the principle of innocent passage cannot be interpreted to negate the application of its gun control law within the maritime domain where it has jurisdiction. P9 explains that "(a)ll

Nigerian legislation are applicable within the jurisdiction ascribed to her by the law of the sea. Even with issues of innocent passage, the laws of the coastal state are still applicable.” Similarly, P6 in discussing the issue of jurisdiction and national security explains that

the provision of UNCLOS on innocent passage is obvious. It is an expeditious movement which does not undermine national security. What amounts to undermining security? contravening the law in such a situation undermines security.

P7 adds further that within its jurisdiction, there is no “move to intercept any vessel except where there is intelligence information that shows that a vessel is carrying toxic waste or bearing arms, which is a contravention of the law.” The opinion of these experts does not reflect the legal uncertainty and surrounding debates of whether or not the presence of vessels on board may be considered as innocent passage. They represent a simple interpretation of responsibility for territorial waters as implying jurisdiction to enforce applicable laws.

In spite of the division into different jurisdictions, the maritime domain remains physically continuous. Hence, the applicability of the state’s enforcement powers in these other maritime jurisdictions is relevant. The contiguous zone (if claimed by the state) is adjacent to the territorial sea of a coastal state.⁶³ UNCLOS art. 33 allows the state to punish infringement of customs, fiscal, immigration or sanitary laws applicable in its territory. The right to punish the violations as highlighted by UNCLOS in this area is an indication that states may have rights to apply their gun control laws within this zone.⁶⁴ Within the exclusive economic zone (EEZ), as the next maritime zone, coastal state laws are enforceable with respect to the specific explorative and exploitative rights.⁶⁵ UNCLOS, art. 58 provides that the EEZ forms part of the high sea where the coastal state does not exercise any of the restricted rights. The law of the sea generally ascribes exclusive jurisdiction to the flag state in the high seas.⁶⁶ P3 opines that while Nigeria may assume the competence to apply its gun control laws in territorial waters, the application of the gun control law does not extend to contiguous zones. Other experts participating in this study do not express views as to the competence of the application of Nigeria’s gun control measures in areas outside the territorial waters, perhaps because of the focus on the idea that most of the attacks in the region occur within territorial waters. But it is an important issue nonetheless because, as pointed out by P5, attacks are happening farther away from the territorial sea into the EEZ which is considered generally as part of the high sea.

Given the already established incapacities, it may be difficult for the state to provide security within the EEZ and beyond. At the same time, the protection of vessels outside the territorial sea using PCASPs becomes logistically more complicated if not impossible, since flag state laws which allow them may conflict with coastal state gun control laws.

Peculiarities. Experts identify specific characteristics that necessitate the application of gun control measures to prohibit the arming of foreign vessels. Interrogating peculiarities in this context are essential because of the discussion aids in

determining the most appropriate security measures for particular threats. The appropriateness and subsequent success in the use of armed guards on vessels off the coast of Somalia do not automatically apply to the Gulf of Guinea region and the threat posed by attacks in Nigeria. Regional differences in such attacks cannot be ignored because they affect plausible solutions.⁶⁷ The experts identify the peculiarities as the nature of attacks, the proliferation of weapons in the region and the location of the attacks.

The Nature of Attacks. Participants identify that attacks in the Gulf of Guinea region involve more personnel than attacks experienced in Southeast Asia and off the coast of Somalia. Additionally, the attacks are characterized as very violent, with resilient pirates using sophisticated weapons, including firearms to conduct their attacks. All the experts (except P3) agree that these characteristics make it necessary to impose the application of laws to prevent the escalation of violence at sea. According to P4, "(n)o matter how good the former United Kingdom or United States Marines are, they simply cannot defend a vessel against attackers that outnumber them and outrange them in terms of weapons." The IMO indicates the threat of escalation of violence at sea exists with the use of private armed personnel.⁶⁸

P3 expresses a contrary opinion concerning the application of gun control due to the nature of the attacks. He opines that the kind of attacks should be the reason why the state should regulate its gun control laws such that foreign vessels can conduct their trade across the maritime zones with appropriate protection using private armed guards. For this particular expert, the application of the gun control laws should not be in a manner that would effectively deprive the foreign vessel and persons on board, the right to use firearms for self-defense in the respective maritime zones. The expert believes that violence of the attackers should be matched with appropriate protection from private armed guards. A plausible explanation for P3 contrary views is that unlike P4 and P8, he is currently not engaged in the provision of security solutions in the region or Nigeria. P4 opines that the threat in the Gulf of Guinea presents a new orientation process for several stakeholders in the maritime domain, especially the foreign PMSCs who want to use a "wrong model to tackle the same problem with different characteristics."

Location of Attacks. Statistics of attacks in the Gulf of Guinea reveal that they occur within the territorial waters of Nigeria as well as the EEZ.⁶⁹ As mentioned earlier, expert participants acknowledge that the territorial sea is within the state's national space. The issue as it relates to the question of innocent passage discussed concerning Jurisdiction is also applicable in this context.

Arms Proliferation in the Region. Another feature which the experts identify as a reason for the strict application of gun control laws in Nigeria is the problem of the proliferation of arms. The illegal presence and misuse of arms is a pressing global security threat, evidenced by the widespread deployment of illicit weapons in conflict situations and criminal attacks. In Nigeria, studies reveal that the demand for illicit weapons remains high, fueled by socio-economic factors such as governance failures, political tension during elections, crime and insecurity.⁷⁰ The gravity of the problem of arms proliferation led states, including Nigeria, to make commitments at the

global and regional level to control and regulate the movement of arms and prevent their diversion into illegal circuit. Experts agree that the government imposes gun control laws as part of the efforts to keep illegal arms within the Nigerian territory under control. As to the proliferation of illicit arms, P3 argues that even with the need to regulate the movement of weapons strictly, proper regulation for storage of arms would suffice. This would enable foreign PMSCs to utilize firearms for protection, especially in maritime zones where Nigeria has no prescriptive jurisdiction.

Notably, even with the seemingly strict gun control laws, the country struggles with a perceived inability to effectively control the movement of weapons into the country through her land and sea borders. In 2017, illegal arms numbering over 2,000 were discovered to have arrived through the seaports on several occasions.⁷¹ Scholars tie the persistence in the proliferation of illicit firearms to poor implementation of the existing legal regime, and the socio-economic environment which currently fosters a culture of violence and the need to self-protect.⁷²

Historical Antecedent. Some participants (P2, P3, P4, and P5) connect historical antecedents in Nigeria to its decision to apply gun control legislation to PMSCs providing security for foreign vessels. Nigeria's political history, like most of the West African states, is colored by some elements of outsider influence, particularly colonialism, and contributions in intrastate wars.⁷³ The formation of Nigeria is a direct result of the era of new imperialism which saw the occupation, division, and colonization of African territories by European powers. Tensions over the legacy of European colonization generally still (sub)consciously affect trust and confidence that the African continent has for the security interests of extra-African powers.⁷⁴ Furthermore, there are records of the involvement of foreign states and even mercenaries alike during the Nigerian Civil War.⁷⁵ These participants who speak of historical antecedents perceive that they affect the trust level with which state view options that involve the introduction of external forces into its territory. For instance, P3 opines that

Though, this is a history of not just your country (Nigeria) but most if not all Africa, I think the fear of what happened in the past and perhaps what still happens in certain countries in Africa, make Nigeria insist on applying her gun control laws in this context even though there is a possibility that armed private guards from PMSCs could actually help....

Similarly, P4 expresses the view that Nigeria being in

a region that has a history although not recent but certainly a history of civil wars, state-on-state wars where expatriate/foreigners have been involved to some degree with the use of arms, states will not ordinarily allow PCASPs operate within their territorial waters which is where most of the attacks take place.

P4 buttresses the rationale of historical antecedent by comparing Nigeria with Cape Verde. Notably, Cape Verde like Nigeria was under colonial rule before becoming an independent state. But P4 explains that the absence of intrastate conflicts or military coup d'état in Cape Verde has limited negative foreign influence, which

might have played a significant role in the country's decision to relax her gun control legislation and allow the regulated use of armed foreign personnel on vessels in its territory.

b. Linked Outcomes

This section discusses the opinions of the various experts on the outcome of the application of gun control. It is not the intention of this study to determine the type of relationship that exists between the application of gun laws and these identified outcomes. It suffices for the research that the participants perceive the identified issues that occur as a response to the State's insistence on the application of its gun control laws and the need to improve maritime security threat of piracy and armed robbery

The Arrest of Foreign Private Security Personnel Onboard Vessels. Participants noted that the Nigerian government, through its law enforcement agencies at sea, had made several arrests of vessels and PMSC personnel suspected to violate her gun control measures. In 2012, the Nigerian Navy arrested a Dutch-flagged PMSC escort vessel *Myre Seadiver Aviatu* at the Lagos roadstead for possession of firearms and ammunition in violation of the gun control laws.⁷⁶ Similarly, in 2015, the *MV Lilac Victoria*, *UACC Eagle*, and *UACC Morgane* were detained on the suspicion that the vessels had firearms and ammunition on-board.⁷⁷ Participants from the government agencies highlight that the arrests and detention of the various vessels changed the narrative as to displaying the seriousness with which the state was handling the issue of the presence of PCASP as a security alternative within its territorial waters. A majority of the seafarers (80.9 percent) involved in this investigation were aware of the application of gun control laws in Nigeria.

The arrest of vessels has ramifications. Apart from the effect on state relationships due to the potential diversity of nationalities of members of the crew, there are also liability issues arising from delays to the vessel. As a response, several advisories were released, cautioning ship owners and PMSCs about the gun control application in Nigeria.

Adaptations in the PMSC Industry Model for Nigeria and the Gulf of Guinea. With the possession of firearms being illegal in Nigerian waters (and most of the other Gulf of Guinea states) PMSCs continue to modify how they provide services to foreign vessels in that region. P8 affirms "that the PMSCs offer solutions that can work within the current restrictions that exist in the Gulf of Guinea region." These modified services include acting as a liaison on behalf of the merchant vessel to arrange, either with a local PMSC company or the Nigerian Navy, for local security personnel to embark on the vessel when in territorial waters⁷⁸; entering into a security arrangement for the purpose of secure anchorage and; entering into a security arrangement for dedicated security/escort of the foreign merchant vessel. Mostly, these modifications do not remain static but continue to experience re-modification, depending on the need to provide services that are both acceptable and profitable.⁷⁹

For instance, in response to prior enforcement of gun control laws, the Standard Contract for the Employment of Security Guards on Vessels (GUARDCON) was explicitly modified for West Africa to accommodate the non-provision of private armed personnel on the vessel. The provision of firearms necessary for the protection of foreign ships is left to local security personnel (LSPs).⁸⁰

Following the arrest of unarmed security personnel on vessels in Nigeria, as discussed earlier, the government expressed the position of detaining any foreign vessels coming into Nigeria with foreign guards whether armed or unarmed. Presently, the status of unarmed security personnel is still unclear, based on the arrests of persons identified as such. PMSCs “hide” under cover of other descriptions on the crew manifest to be able to provide this service. Observation reveals that crew manifests may contain names of security advisors tagged under different terminology such as “cargo welfare officer” or technicians. Interestingly, of the 28 seafarers who indicated that their vessels had engaged PMSC services within the period, 6 specify that the services included the use of unarmed security advisers.

While not commenting on the legality or otherwise of the current practice, it goes to show as P8 asserts, the ability of the companies to change and operate within restrictions. Finding ways to work around the stringent application to provide security alternatives that are also profitable highlights the adaptive features of the PMSC industry. At the same time, it reveals in the context of the interplay between globalization and the state, that changes can and do occur as a result of the actions of the state.

State Evolving Security Model. While insisting on the application of gun control laws, Nigeria still struggles to control her maritime space due to limited capacity for surveillance, response, and enforcement. In place of foreign PMSC services involving the use of armed personnel, the maritime security landscape witnessed the evolution of security models providing extra protection for commercial vessels. Participants identify mainly the establishment and use of secure anchorages and state-affiliated escort services.

Secure Anchorages. The secure anchorage area is a restricted space close to Lagos port. P6 and P7 explain that the area was established by the Nigerian Navy and Nigerian Maritime and Safety Administration (NIMASA), the government institution saddled with the responsibility of ensuring safety and security within the maritime domain. The secure area was established in active collaboration with a local PMSC company, Ocean Marine Solutions (OMS). In this restricted area, vessels obtain protection from attacks, while waiting to perform ship-to-ship transfers. Also, escort vessels provided by the Navy are available for commercial ships who wish to transit through the areas of elevated risk outside Nigeria’s territorial waters. The use of the secure anchorage area is chargeable. According to one of the seafarers, “it is expensive, but it is worth it if you can get security.”

State-Affiliated Escort Services. Several experts and seafarers highlighted that the naval efficiency was previously severely hampered due to a lack of patrol boats. The state tries to remedy this using locally established PMSCs. These companies

enter into individual Memoranda of Understanding (MoUs) to provide patrol vessels that augment the patrol capacity of the Nigerian Navy. The Nigerian Navy equips the vessels with personnel and military weapons for maritime security duties. As P4 explains,

Under the terms of the MOU, the PMSC has to sustain and maintain that vessel logistically.... The crew on board is 50% PMSC crew while the balance is left to the Nigerian Navy. These naval officers operate the weapon systems, do the watches and employ the use of force if required.... The arrangement has effectively helped secure installations and vessels transiting the Nigerian waters.

About 30 MoUs were in force as at the end of 2018. Several participants in the expert interview identify this model as very useful because it provides the Nigerian Navy with the requisite infrastructure for it to provide security within the maritime domain. However, P4 and P5 reveal that the local PMSCs sometimes violate terms of the MoU, primarily when they use the MoU as grounds for embarking private security personnel on board a commercial vessel.

Use of Embarked Security Personnel. Another identified model that arose as a means of improving maritime security is the use of state embarked security personnel (SESP) onboard vessels. This model is, at least on paper, no longer applicable in Nigeria as the Nigerian Navy through several warnings, insists that SESPs on board Nigerian ships are prohibited. However, reports of attacks within Nigerian territorial sea and EEZ such as the attempted attacks on MV *Luhai*,⁸¹ the product tanker *Ebunola*,⁸² and the bulk carrier MV *Thor Infinity*,⁸³ reveals the absence of strict enforcement of the prohibition. P4 connects the existence of this model to the misuse of the Nigerian Navy's MoU mentioned earlier. Some of the experts perceive that the ineffectiveness in the use of SESPs is a reflection of what would occur if PCASPs provides armed services on board vessels, although P3 thinks that the inefficiency of this model ties to a lack of adequate training.

Notably, the evolving security landscape features a developing relationship between local PMSCs and the maritime law enforcement agencies, particularly the Navy and Nigerian Maritime Administration and Safety Agency. These models typify a public-private partnership that is tightly controlled by the government, although experts from the government category prefer to describe it as merely a means to an end. The goal for Nigeria is building up the necessary capacity to ensure that the state can adequately provide security within her maritime domain. The relationship currently aids the growth of the local rather than foreign PMSC, relevant to fulfill the capacity needs arising from shortages experienced by the state. But room for the involvement of international PMSCs still exists. P2, P4 and P7 identify that these foreign PMSCs interface with the local PMSCs or the government agencies directly to arrange security for the merchant vessels within the region.

Conspicuously, these evolving security models generate some legal and operational concerns. For instance, the nature of the operation involving the state-affiliated vessel as to whether it is defensive or enforcement at sea operation is unclear. Commercial vessels approach the threats of violence at sea from a defensive position

whereas the state and state security personnel are ordinarily responsible for fighting criminals at sea. There is no guarantee that in the event of an attack at sea, such state security personnel would heed the opinion of the Master. Furthermore, a state, unlike PMSCs, is responsible for security within its territory but these security models come at an extra cost to commercial vessels. Apart from specialized treatment for vessels that can afford these services, obtaining some form of economic benefit for carrying out such functions may ultimately serve as a disincentive to improving the general security level.⁸⁴ These concerns create the need for further clarification under domestic and even international law.

In spite of the potential legal and operational challenges arising from these adaptations, most of the expert participants (except P3) perceive the models could create the balance (if properly utilized) of satisfying Nigeria's desire as a coastal state to control the possession or carriage of firearms at sea in a manner that that does not infringe on sovereignty while creating room for the PMSC industry to thrive.

Improved Interagency Collaboration. Experts in the interview highlight that in trying to handle the changes connected to enforcing existing firearms law and policies, Nigeria has greatly improved on the knowledge of her maritime environment and the threats experienced. This is indicative of obtaining maritime domain awareness. Maritime domain awareness refers to an actual understanding of activities that could impact the security, safety, economy or environment.⁸⁵ The core of maritime domain awareness is accurate information, intelligence, surveillance, as far from state shore as possible. Boraz argues that "no single entity or agency can be responsible for or can coordinate, all MDA-related activity." That fact, coupled with modern network-centric information capabilities, leads to a strong argument that "nodes" generating maritime situational awareness must be linked.⁸⁶ Expert participants view information sharing as necessary in developing appropriate response within and outside the state. P6 and P7 explained that to foster domain awareness, the state has invested in technologies to improve information collection and understanding among agencies with a shared vision of accomplishing maritime security at sea functions. Sharing of information derived from achieving MDA has led to improved inter-agency collaboration. The regional awareness capability system (RMAC) system, is a recently established satellite surveillance facility that provides "round-the-clock" surveillance of the maritime environment up to 35 nautical miles from the coast.⁸⁷ The Navy's Falcon Eye system is another surveillance system that compliments the RMAC.⁸⁸ It covers blind patches in territorial waters not accessible to the RMAC system.⁸⁹ These surveillance systems enable the Nigerian Navy to monitor activities within the maritime domain and share information with the relevant agencies.

Furthermore, Nigeria adopted a Harmonized Standard Operating Procedure on Arrest Detention and Prosecution of Vessels and Persons in its maritime environment. (HSOP-AD&P) in 2017. The HSOP-AD&P is a set of guidelines designed to control the operations of maritime law enforcement agencies to solve the problem of overlapping functions, inter-agency rivalry, and to promote interagency cooperation.

Noticeably, the HSOP-AD&P suffers from several shortfalls. For instance, the document is at best a tool for administrative convenience, with no legal basis for its existence. The Guideline is not linked with a specific legislation but rather to “the statutory powers of all Ministries, Departments and Agencies (MDAs) charged with maritime law enforcement activities.” The statutory powers of the relevant MDAs are derived from several independent statutes which differ in content. Hence the primary legislation against which the congruence of the specific procedural direction contained in the HOSP-AD&P should be measured is lacking. The absence of a legal basis calls into question the lawfulness of actions undertaken pursuant to the guidelines. Additionally, the Guidelines highlights 26 occasions in which vessels will be liable to arrest but did not specify which organization from the relevant MDAs may arrest in respect of particular offences. This leaves room for the interpretation that any agency to which the Guideline applies may make an arrest for any of the offenses listed, thereby negating the concept of interagency collaboration.

The Adequacy of Security Arrangements and the State of the Threats. Cur-tailing security threats requires the existence of appropriate security arrangements derived after due consideration of the peculiarities of the threat environment. This position was often highlighted by several of the experts during the interview study. Hence, in spite of not having a unified perception on the state of the threat, partici-pants in the expert interview (except P3) view the current security arrangements in the region as adequate to deliver security in the area if properly implemented. The

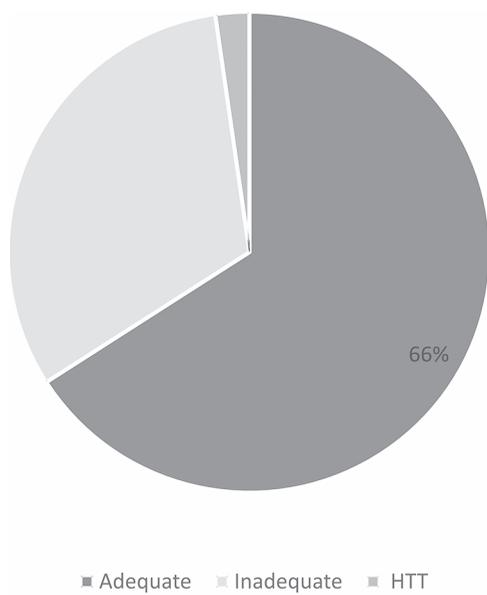


Fig. 1. Perception of interviewed seafarers as to the adequacy of Nigeria's current security arrangements.

majority view of seafarers interviewed, as shown in Figure 1, aligned with the experts' opinions on the adequacy of the current security arrangement.

More than half (66 percent) of the seafarers opined that the current security arrangements were adequate to provide security in the region if effectively implemented. However, for seafarers who had experienced attacks in the area, only 40 percent believed that the security arrangements were adequate. Notably, the 11 seafarers who provided additional comments all identified inadequate patrol boats and reduced response time as affecting the efficiency of the security arrangement in the region.

Generally, participants in the expert interviews acknowledged that waters off the coast of Nigeria were still faced with insecurities. Expert partici-

pants other than those from the government agency category opined that the level of security threat had not improved due to an inability of the governments in Nigeria and across the region to sustain efforts of ensuring that crimes are reduced at sea. The participants connect the state of the threat in Nigeria to the unaddressed problems of criminality on land, internal conflict, and corruption.

The experts from the government agency category tend to view the state of security in Nigeria to have improved tremendously, although a lot still had to be done as a region. Forty-one percent of the entire number of seafarers participating in the self-administered questionnaire exercise thought that the state of security within and off the coast of Nigeria had improved. As shown in Figure 2, 39 percent of the seafarers interviewed replied that the situation had not improved while 20 percent said it was hard to tell if there had been any improvement.

Notably, only 10 out of the 44 seafarers had been involved in an attack in the region, during the period in question. Twenty percent of the seafarers who had been involved in an attack in the region felt that the security had improved. The remaining 80 percent was split evenly between hard to tell whether it had improved and that the situation has not improved.

The statistics on the number of attacks in recent years reveal that apart from a slight dip in the numbers between 2014 and 2015, the threat still remains persistently potent.⁹⁰ The statistics are an indication that, in spite of the arrangement currently in place, the security situation is still far from optimal. This inference tallies with the opinion of the experts who suggest that more needs to be done to improve security; and that of the seafarers that opine that the situation has not improved. The question of why the security situation remains far from optimal in spite of the changes is beyond the scope of this article but it suffices to state that there is need for the state to re-strategize in order to find a more effective arrangement.

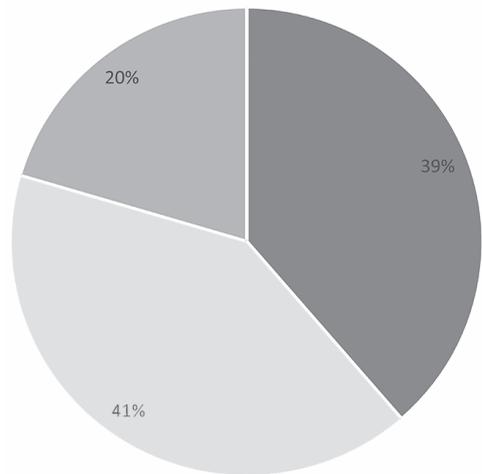


Fig. 2. Perception of seafarers on the state of the threat of piracy and armed robbery against ships off the coast of Nigeria.

c. Quality of the Research

To ensure the quality of the research undertaken, the analysis employs triangulation. Bryman describes triangulation as involving the use of more than one method or source data in the study of a single problem.⁹¹ The investigation employs multi-qualitative methods aimed at revealing the truth of the phenomena investigated in this study. The research also engaged the means of heuristics (analysis of

both legal and nonlegal documents) to confirm the findings provided by the experts during the interview. Triangulation is acceptable because no single approach ever really solves, delineates or validates a particular problem. Engaging different investigative approaches and employing triangulations yields more complete data and results in more credible findings.⁹²

d. Limitations and Future Perspectives

This article focused primarily on the reasons why Nigeria applies its gun control laws in the maritime domain and the linked outcomes. It does not address or discuss other areas explored in the interviews.

Concerning the linked outcomes identified, the study does not determine that the consequences are a direct result of the application of gun control laws only. Instead, the study establishes that the existence and application of gun control laws in Nigeria create emerging patterns which have contributed as alternatives to improving security; hence the outcomes highlighted.

The use of questionnaires rather than semi-structured interviews for obtaining the opinion of the seafarers was a deliberate change in research strategy. It was not possible to conduct in-depth interviews with this critical stakeholder group because most of the seafarers approached were unwilling to take out time to participate in lengthy in-depth interviews. This affected the sample size and the ability to generalize. Future studies would have to involve a sufficient sample size to enable generalizability.

The study acknowledges that, as with other types of interviews, mutual perception of the participants creates biases that can affect the result of expert interviews. Particularly, Menser and Nugel highlights that gender and status relation play a role in expert interviews.⁹³ The authors were able to neutralize these biases as much as possible by displaying knowledge in the field of inquiry in conversations before the interview.

Additionally, it was perceived that some of the participants might have refrained from expressing strong opinions and statements due to their status in their respective organizations. As a suggestion for future studies, the involvement of other subject related experts such as representatives from the insurance industry, flag state policymakers would enrich the research.

V. Conclusion

By investigating the perception of critical maritime stakeholders on the response of Nigeria to the problem of insecurity arising from piracy and armed robbery against ships in the Gulf of Guinea, this study has confirmed the general proposition that state laws can constrain transnational norms. In the context of this investigation, how Nigeria chooses to apply her gun control laws has a constraining effect on the use of PMSC as an anti-piracy measure in the Gulf of Guinea.

This article brought to attention how PMSCs, as a consequence of this constraint on their operational model which was trending due to the success off the coast of Somalia, have had to adapt in the Gulf of Guinea to remain relevant. The state has also experienced changes in how it provides security within the maritime domain, as reflected in the state evolving security models. In the theoretical context of the globalization-sovereignty debate, the investigation articulated in this paper supports the argument that globalization is not a homogenous process. On the one hand, there is the level of influence at the global and national planes where the presence of PMSCs creates a norm making process. At the same time, domestic laws such as the Nigerian highly restrictive gun control has caused them to re-strategize and adapt them to the sub-regional maritime governance framework. These changes have also reflected on the development of several guiding instruments with practical effect at the very least and growing relevance for the legal considerations relating to the regulation of the carriage of firearms within and off the coast of Nigeria for private vessel protection.

The changes witnessed so far in the implementation of Nigeria's firearms regulation in a manner that affects PMSC utilizations have shown that it is possible to obtain arrangements that fit the peculiarities of the threat in the region. The success of such arrangements as shown from the statistics that reveal that the threat still persists, however, is a different issue.

Notes

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2. Jean d'Aspremont, "Non-State Actors in International Law: Oscillating Between Concepts and Dynamics," in *Participants in the International Legal System: Multiple Perspectives on Non-State Actors in International Law*, ed. Jean d'Aspremont (London: Routledge, 2011), p. 6, <https://doi.org/10.4324/9780203816837>.

3. Julian Koo and John Yoo, "Globalization and Sovereignty," *Berkeley Int'l Law Journal* 31(1) (2013), p. 210.

4. Dana Parsons, "Protecting the Booty: Creating a Regulatory Framework to Govern Increased Use of Private Security Companies in the Fight Against Pirates," *Tulane Maritime Law Journal* 35 (2010–2011), pp. 153–181; Carolin Liss, "Private Military and Security Companies in Maritime Security Governance," in *The Transnational Governance of Violence and Crime*, eds. Anja P. Jakobi and Klaus Dieter Wolf (London: Palgrave Macmillan 2013), p. 194. On the use of PMSCs as a market response to crimes at sea, see generally Claude Berube and Patrick Cullen, eds., *Maritime Private Security: Market Responses to Piracy, Terrorism and Waterborne Security Risks in the 21st Century* (London: Routledge, 2012); Jasenko Marin, Mišo Mudrić and Robert Mikac, "Private Maritime Security Contractors and the Use of Lethal Force in Maritime Domain," in *The Future of the Law of the Sea*, ed. Gemma Andreone (Springer Open, 2017), pp. 193–238, https://doi.org/10.1007/978-3-319-51274-7_10.

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6. Carolin Liss, “Private Military and Security Companies in Maritime Security Governance,” 2013, pp. 193–213; Åsne Kalland Aarstad, “Maritime Security and Transformations in Global Governance,” *Crime, Law and Social Change* 67(3) (2016), p. 315, <https://doi.org/10.1007/s10611-016-9656-0>.

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10. United Nations Security Council (UNSC), “Report of the United Nations Assessment Mission on Piracy in the Gulf of Guinea (7 to 24 November 2011),” January 19, 2012, S/2012/45. The region received global attention as a piracy hotspot in 2010 however when the IMO listed it among the six piracy hotspots globally, making the area the second most acute piracy problem on the African continent.

11. Data culled from International Maritime Organization’s Global Integrated Shipping Information System (GISIS) website, <https://gisis.imo.org/Public/PAR/Default.aspx>, accessed February 2, 2020; International Maritime Bureau (IMB), “Piracy and Armed Robbery Against Ships (1 January–31 December 2019),” https://www.icc-ccs.org/reports/2019_Annual_Piracy_Report.pdf. The figures do not represent an exact number of occurrences in the sub-region since not all incidents are reported. The IMB estimates 48% underreporting in 2018 by comparing the total episodes received by IMB against a community of reporting (CoR) incidents for Gulf of Guinea Region.

12. Data culled from the International Maritime Organization’s Global Integrated Shipping Information System (GISIS) website, <https://gisis.imo.org/Public/PAR/Default.aspx>, accessed February 2, 2020.

13. Martin Murphy, “Petro-Piracy: Oil and Troubled Waters,” *Orbis* (2013), p. 432, <https://doi.org/10.1016/j.orbis.2013.05.011>; Sayed Hasan and Daud Hassan, “Current Arrangements to Combat Piracy in the Gulf of Guinea Region: An Evaluation,” *Journal of Maritime Law and Commerce* 47 (2016), p. 179; Hans Liwång, “Piracy Off West Africa from 2010 to 2014: An Analysis,” *World Maritime University Journal of Maritime Affairs* 16 (2017), p. 386, <https://doi.org/10.1007/s13437-016-0121-9>.

14. Liwång 2017, p. 386; Osatohanmwien Eruaga and Max Mejia Jr, “Piracy and Armed Robbery Against Ships: Revisiting International Law Definition and Requirements in the Context of the Gulf of Guinea,” *Ocean Yearbook* 33 (2019), p. 428, https://doi.org/10.1163/9789004395633_017.

15. Hasan and Hassan 2016, p. 171.

16. Hasan and Hassan 2016, p. 180; Liwång 2017, p. 386; Eruaga and Mejia 2019 (n 14), p. 431.

17. Nigeria’s national laws on gun control in this context refer to all enacted legislation and advisories as well as statements by government agencies that have the potential of affecting how

weapons are moved and used within the country. The paper adopts such broad conception because of the existences of legal documents, standards of operation, policies, and statements which collectively depict the position of the state.

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21. Robbery and Firearms (Special Provisions), Act Cap R11, LFN 2004.

22. Private Guards Act, Cap P30, LFN 2004.

23. UN General Assembly, *Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention Against Transnational Organized Crime*, May 31, 2001, A/RES/55/255.

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27. Firearms Act, Sections 3 and 4.

28. Firearms Act, Sections 3–6, 32–34; Firearms Act; Robert Nay 1990, p. 156.

29. Firearms Act, Section 7(2)(a)–(e).

30. Firearms Act, Sections 18, 19 and 20.

31. Firearms Act, Section 35.

32. For instance, Press Release Ref. No. CZ:5300/FPRD/FHQ/ABJ/Vol.2/2, January 27, 2019, where the Inspector General of Police placed an embargo on the issuance of arm licenses.

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34. Martina Feilzer, "Doing Mixed Methods Research Pragmatically: Implications for the Rediscovery of Pragmatism as a Research Paradigm," *Journal of Mixed Methods Research* 4(1) (2014), p. 8.

35. Michael Meuser and Ulrike Nagel, "The Expert Interview and Changes in Knowledge Production," in *Interviewing Experts*, eds. Alexander Bonger, Beate Littig and Wolfgang Menz (Hampshire UK: Palgrave Macmillan, 2009), p. 24, https://doi.org/10.1057/9780230244276_2.

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42. James Brooks, Serena McCluskey, Emma Turley and Nigel King, "The Utility of Template Analysis in Qualitative Psychology Research," *Qualitative Research in Psychology* 12(2) (2015), p. 203, <https://doi.org/10.1080/14780887.2014.955224>; Michael Quinn Patton, *Qualitative Research & Evaluation Methods: Integrating Theory and Practice* (Newbury Park, CA: SAGE Publication 2015).

43. Bryman 2016, p. 187.

44. Generally, the terms sovereignty and jurisdiction are used interchangeably to describe the competence of states. However, the two concepts do not mean the same when construed in a narrow sense. Sovereignty involves the indefeasible right and duty to maintain law and order

within a state's defined territory. It is a status recognized by other states which characterize the state as the final authority in its designated area. Jurisdiction, on the other hand, is a subordinate concept to sovereignty. It is an aspect of the general competence of the state that accommodates the exercise of rights, liberties, and powers as the latter embody various categories of the former. Participants refer to the status which enables Nigeria to establish rules of conduct for her territory (sovereignty) and exercise her powers to enforce the laws (jurisdiction). For discussion on distinguishing the two concepts, see Haijiang Yang, *Jurisdiction of the Coastal State Over Foreign Merchant Ships in Internal Waters and the Territorial Sea* (New York: Springer 2005), <https://doi.org/10.1007/3-540-33192-1>.

45. Charter of the United Nations, October 24, 1945, 1 *United Nations Treaty Series* XVI, ch. 1, art. 2, para. 4, p. 11; *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua V. U.S.)*, Judgment, 1986 I.C.J. 14, para. 202, June 27, 1986. Based on the principle of State sovereignty, the ICJ found Great Britain in violation by not obtaining Albania's permission before conducting a minesweeping exercise in Albanian territorial seas in Corfu Channels. See also Stuart Elden, "Contingent Sovereignty, Territorial Integrity and the Sanctity of Borders," *SAIS Review* 25(1) (2006), pp. 11-24, <https://doi.org/10.1353/sais.2006.0008>.

46. Ip 2010, p. 650.

47. Constitution of the Federal Republic of Nigeria, 1999, section 2.

48. Firearms Act (n=11).

49. Adeniyi Osinowo, "Combating Piracy in the Gulf of Guinea," *African Security Brief* 30 (2015), p. 6; Hasan and Hassan 2016, p. 188.

50. Janice Thompson, "State Sovereignty in International Relations: Bridging the Gap Between Theory and Empirical Research," *International Studies Quarterly* 39 (1995), pp. 213-233, <https://doi.org/10.2307/2600847>; Graham Kerr, "Maritime Security and the Private Security Perspective," *Journal of International Peace Operations* 6(2) (2010), p. 16.

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53. Deborah Avant, "The Privatization of Security and Change in the Control of Force," *International Studies Perspective* 5 (2004), p. 155, <https://doi.org/10.1111/j.1528-3577.2004.00165.x>.

54. United Nations Convention on the Law of the Sea (UNCLOS), 1833 UNTS 397, adopted December 10, 1982, entered into force November 16, 1994; Natalie Klein, "Maritime Security," in *The Oxford Handbook of the Law of the Sea*, eds. Donald Rothwell, et. al (Oxford, England: Oxford University Press, 2015), p. 588, <https://doi.org/10.1093/law/9780198715481.003.0026>.

55. UNCLOS, art. 2.

56. *Ibid.*, arts. 17-19, 21.

57. UNCLOS, art. 25.

58. UNCLOS, art. 18 (1)(a) and (b).

59. Anna Petrig, "The Use of Force and Firearms by Private Maritime Security Companies Against Suspected Pirates," *Int'l & Comp. L.Q.* 62 (2013), pp. 682-683, <https://doi.org/10.1017/S002058931300016X>; Osatohanmwon Eruaga and Maximo Mejia, "Coastal State Law and the Protection of Merchant Vessels: A Nigerian Perspective," *Journal of International Maritime Law* 25(2) (2019), pp. 128. See also *The Uniform Interpretation of Rules of International Law Governing Innocent Passage* (reached and signed at Jackson Hole Wyoming, September 23, 1989), 28 ILM 1444, between the United States and former USSR which aligns with the position of the exhaustive state of par. 2. Contrast with the view of scholars such as Yang 2005, p. 162; Yoshifumi Tanaka, *The International Law of the Sea* (Cambridge, England: Cambridge University Press, 2012), p. 87.

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61. Vijayan 2014, p. 25; Petrig 2013, pp. 681-683. See also *The Uniform Interpretation of Rules of International Law Governing Innocent Passage*, 28 ILM 1444, between the United States and former USSR which aligns with the position of the exhaustive state of par. 2. Contrast with the view of scholars such as Yang 2005, p. 162; Tanaka 2012, p. 87; Eruaga and Mejia 2019 (n 59).

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Zone,” in *The Oxford Handbook of the Law of the Sea*, eds. Donald Rothwell et al. (Oxford England: Oxford University Press, 2015), p. 110, <https://doi.org/10.1093/law/9780198715481.003.0005>. Noyes opines that, despite arguments that states have limited legislative jurisdiction in this zone, there is hardly any support for such a point of view.

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