Securing the Seafarer:

Regulating the Private Maritime Security Industry in South Africa

2020

PSiRA
Private Security Industry Regulatory Authority

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Executive summary

In South Africa, the private security industry is regulated by the Private Security Industry Regulatory Authority (PSiRA). Private maritime security, a subsector of the industry, is thus regulated by PSiRA. This paper provides insight as to how private maritime security is regulated in South Africa, taking into account the two other regulators, namely the South African Maritime Safety Authority (SAMSA), and the Transnet National Ports Authority (TNPA). The distinction between the various regulators is important in clarifying their roles and powers in private maritime security services.

Private maritime security providers play a pivotal role both inland and on the high seas. Inland, they are active mainly in ports, and at sea, in anti-piracy operations. In essence, private maritime security is a preventive and responsive measure to address the risks vessels encounter, particularly at sea. Given the dearth of literature on private maritime security in South Africa, this study attempted to draw knowledge on private maritime security companies, including the need for their regulations.

Although private maritime security is recognised in South Africa, the vast majority of its contractors operate abroad, beyond South African borders (and waters). The need or rather the demand for the deployment of private maritime security contractors is driven by international ships and foreign countries, under whose laws they are bound. Most private maritime security providers with South African citizenship and permanent residency are not registered with PSiRA, which is not only a challenge for the Authority, but brings into question the credibility of its data.

The lack of PSiRA awareness of the requirements for private security providers (including some key maritime stakeholders) remains a concern. Some stakeholders believed that PSiRA is responsible only for private security and not its subsector, private maritime security. The thorny issue of unregistered stowaway search companies that perform a security service (with the assistance of security dogs) also brought to the fore the lack of PSiRA awareness. Furthermore, maritime security training providers were found to be unregistered. The need to address this issue and other compliance requirements in collaboration with SAMSA, the Safety and Security Sector Education and Training Authority (SASSETA) and the South African Police Service (SAPS) cannot be overemphasised.

Acronyms

ISPS Code	**International Ship and Port Facility Security Code**
IMO	International Maritime Organisation
PMSC	Private Maritime Security Company
PSC	Private Security Company
PSiR Act	Private Security Industry Regulation Act 56 of 2001
PSiRA	Private Security Industry Regulatory Authority
SAMSA	South African Maritime Safety Authority
SAPS	South African Police Service
SASSETA	Safety and Security Sector Education and Training Authority
STCW	Standards of Training Certification and Watchkeeping
TNPA	Transnet National Ports Authority

1 INTRODUCTION

1.1 Introduction

Maritime security focuses on mechanisms aimed at protecting the activities that take place at sea. As a concept, maritime security refers to the security of the maritime domain or to a set of policies, regulations, measures and operations to secure the maritime domain.[1] Private maritime security contributes to maritime trade, which in turn contributes to economies globally. It is not disputed that the presence of private maritime security companies and personnel has increased in the last two decades, rendering security services in ports and on board commercial ships at sea.

In South Africa, as in other countries, the shipping industry contracts private security companies to protect its vessels and goods at sea. PSiRA regulates the private security industry in South Africa and ensures compliance by security service providers. In terms of the Private Security Industry Regulation Act No 56 of 2001 (PSiR Act), private maritime security is a security service.[2] There is a distinction between maritime security and private maritime security. Maritime security focuses on protection of the sea, and assets at sea and ports belonging to the state. The protection functions are performed by the state or organs of state.[3] Private maritime security refers to the deployment of private maritime security contractors for the protection of maritime assets, which are owned by either private individuals/companies or the state. While private maritime security contractors are profit-driven as businesses,[4] state security is state-interest driven.

The effective regulation of the maritime private security contributes indirectly to the fight against the illegal use of firearms, continued piracy, human trafficking, hijacking and illegal fishing, among other things. There is a need to develop and implement laws that protect not only the sea but daily activities at sea. In regulating private maritime security, there is a need to consider both international and South African laws. As a regulator, the Authority is mandated to regulate the private security industry (including the private maritime security sector), including the development of mechanisms to ensure effective compliance by private maritime security services providers.

1.2 Rationale and brief overview

PSiRA was established in terms of the PSiR Act, its primary objectives being to regulate the private security industry and to exercise effective control over the practice of the occupation of security service provider in the public and national interest and in the interest of the private security industry itself.[5] Private maritime security is a security service that falls within the realm of private security and thus is regulated by PSiRA.

In South Africa, the South African Maritime Safety Authority is the designated authority responsible for ensuring maritime safety. SAMSA was established on 1 April 1998 under SAMSA Act 5 of 1998.[6] SAMSA's objectives are:

> To ensure safety of life and property at sea; prevent and combat pollution from ships in the marine environment; and promote the Republic's maritime interests.[7]

It is important to note that SAMSA is the designated authority responsible for matters of maritime safety in South Africa. However, when focusing on private maritime security, PSiRA is the responsible authority, regulating private maritime security in South Africa. This distinction is important as it clarifies which authority is vested with which powers.

In a nutshell, this report looks at how the private maritime security industry is regulated in South Africa. The report is divided into five components. This introductory chapter is followed by a literature review, research findings, recommendations and, lastly, a conclusion.

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1 B Germond 'The geopolitical dimension of maritime security' Marine Policy 54 (2015) 137-142.
2 S 1 of the Private Security Industry Regulatory Authority Act 56 of 2001.
3 E.g. state or government agencies such as the South African National Defence Force and SA Navy.
4 Protecting assets at high sea such as the vessel and goods.
5 Section 3 of the PSiR Act.
6 For more information on SAMSA, see http://www.samsa.org.za/Pages/Mandate.aspx. (accessed 4 June 2019).
7 Among other things, SAMSA is also responsible for the following: The Administration of the Merchant Shipping (National Small Vessel Safety) Regulation, 2007, as amended (the Regulations). These Regulations extend SAMSA's Core mandate to include inland waterways (only waterways accessible to the public) within the Republic.

1.3   Research background

1.3.1   Maritime security as a preventive and responsive measure

Since the beginning of 2000, maritime security has been increasingly used to describe preventive measures set up to respond to illegal activities at sea or from the sea, and protection of ports and vessels.[8] Germond argues that maritime security is connected to economic factors and environmental considerations.[9] It is a combination of preventive and responsive measures to protect the maritime domain against threats and intentional unlawful acts.[10] Private maritime security looks at security at ports and on board ship. Port security includes all security and counter-terrorism activities that fall within the port's domain, including the protection of port facilities and the coordination of security activities when ship and port interact.[11]

To understand private maritime security, it is important to consider its origins and the consequent development of the use of private military and security companies (PMSCs), particularly in the Horn of Africa.[12] The deployment of private security companies was a means to address the high increase in piracy in Somalia. Piracy in the Horn of Africa led to an upsurge in the number of PMSCs focusing on maritime security. Their presence in Somalia dates back to 1999, when Somali authorities employed them to prevent illegal fishing and toxic-waste dumping and to train a Somali coastguard.[13] During the period of 2005 and 2012, there was an increase in piracy in the Horn of Africa. The United Nations Security Council declared Somali piracy a 'threat to international peace'.[14]

Modern-day pirates are increasingly prepared to use violence, with the number of pirates armed with automatic weapons on the rise and injuries to crew, assaults and killings occurring regularly in pirate attacks in the region.[15] A further concern is the latest increase in hostage taking of crewmembers and vessels for ransom.[16] It has been argued that states that were previously sceptical about private maritime security companies began to take advantage of the booming business by offering expensive, customised permits that allow private maritime security companies to operate from their ports with weapons, security personnel and equipment and, in some cases, private patrol vessels.[17] For instance, Djibouti not only sells permits for private maritime security companies to operate from its port with weapons, but installed a gun-rental scheme whereby merchant ships relying on private maritime security companies could rent arms and take them on board for a fee.[18]

1.3.2   Maritime security and international crimes

It is not disputed that the sea is vulnerable to a number of security threats. Murphy argues that the threats are not from traditional commercial pirates, but from a new breed of maritime terrorist whose skills evolved from a conventional piracy base.[19] Potgieter defines maritime security as the prevention of illicit activities in the maritime domain.[20] Further, Potgieter argues that it could be linked directly to the national security efforts of a country or it could cover regional and international efforts to enforce maritime security.[21]

The discourse on maritime security generally focuses on the 'threats' that prevail in the maritime domain.[22] These include maritime interstate disputes, maritime terrorism, piracy, trafficking of narcotics, people and illicit goods; arms proliferation, illegal fishing, environmental crimes, and maritime accidents and disasters.[23] Beuger argues that maritime security concerns the economic development of coastal states: the benefits of a country's exclusive economic zone, including fishing and offshore resource exploitation, can be realised only within effective maritime security regimes.[24]

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8 Germond (n 1 above).
9 As above.
10 As above.
11 GK Vaggelas & AK Ng 'Port Security: The ISPS Code' in I WK Talley The Blackwell Companion to Maritime Economics (2012) 674-700.
12 A Afyare, W Elmi & A Knight Combating Piracy in the Horn of Africa Waters: The Palgrave Handbook of Contemporary International Political Economy (2019) 485-500.
13 L Affi, AA Elmi, WA Knight & S Mohamed 'Countering piracy through private security in the Horn of Africa: prospects and pitfalls' (2016) Third World Quarterly, 37(5), 934-950.
14 As above.
15 C Liss The Privatisation of Maritime Security-Maritime Security in Southeast Asia: Between a rock and a hard place? (2007).
16 As above.
17 A Petrig 'The Use of Force and Firearms by Private Maritime Security Companies Against Suspected Pirates' (2013) 62(3) International and Comparative Law Quarterly 667-701.
18 As above.
19 M Murphy Contemporary Piracy and Maritime Terrorism (2007).
20 TD Potgieter 'Maritime security in the Indian Ocean: strategic setting and features' ISS Paper 236 (2012) 24.
21 As above.
22 C Bueger 'Communities of security practice at work: The emerging African maritime security regime.' African security' (2013) 6 (3-4), pp.297-316.
23 As above.
24 As above.

In this global economy, all countries should have an interest the protection of maritime activities. It could be argued that commercial vessels are susceptible to becoming criminal targets because of the high-end goods and valuable merchandise concentrated in one space. The effectiveness of security measures ultimately depends on how they are implemented regionally.[25] Companies extracting oil, gas or other natural resources depend on offshore platforms or terminals along the coast from which the extracted goods are shipped to various destinations around the world.[26]

The need for the provision of security in the maritime domain cannot be overemphasised. The use of private security actors is constantly increasing. The missing link is the effective regulation of these private actors, which is why South Africa is the focus of this study.

The overarching aim of the research is to obtain an in-depth understanding of the private maritime security industry and provide recommendations to the Authority, which will ensure effective industry compliance with the PSiR Act.[27]

The research objectives of the study are as follows:

- Identify the types of services within the private maritime security;
- Identify the minimum training standards within the private maritime security;
- Ascertain the laws applicable to the private maritime security sector;
- Identify the challenges to compliance by private maritime security providers;
- Provide recommendations to PSiRA in ensuring effective industry regulation.

1.3.3   Research hypothesis and questions

The research hypothesis is as follows:

The private maritime security industry in South Africa is effectively regulated by the Private Security Industry Regulatory Authority, which is mandated by law to regulate the same and exercise the effective control over the practice of the occupation of the security providers (in the private maritime security) in the public, national and private security interest.

Flowing from the above hypothesis, the primary research question is as follows:

What measures should PSiRA put in place in order to effectively regulate and exercise the effective control over the practice of the occupation of security?

Secondary research questions are as follows:

- What are the types of services rendered within the private maritime security in South Africa?
- What are the minimum training standards within the private maritime security in South Africa?
- What are the applicable laws relating to the private maritime security sector in South Africa?
- What are the compliance challenges?

1.4   Research methodology

1.4.1   Qualitative research methodology

Research methodology can be considered the overarching strategy to achieve the aim and objectives of the research questions.[28] To address the questions, interviews were held with various actors. This study used qualitative methodology comprising both desktop and fieldwork, which generated an in-depth understanding of the subject as a basis for engagement between the Authority with an opportunity to engage and the sector on issues which directly affect it. This methodology further allowed interviewees an opportunity to expand and narrate further about their experiences in the industry.

The study assumed that the participants would be forthcoming with the information as it was in their best interests to be regulated. Western Cape and KwaZulu-Natal (Durban) were the primary provincial targets, but participants from Gauteng and Eastern Cape also responded to the call for the interviews. In conducting the interviews, the study used a semi-structured questionnaire that allowed the respondents to expand on and share in more depth their experiences about the industry.

25 R Herbert-Burns, S Bateman & P Lehr Lloyd's MIU handbook of maritime security (2008).
26 Liss (n 15 above).
27 PSiR Act.
28 M Sutrisna 'Research methodology in doctoral research: understanding the meaning of conducting qualitative research' in Proceedings of the Association of Researchers in Construction Management (ARCOM) Doctoral Workshop held in Liverpool John Moores University (2009). Conducted by ARCOM Liverpool, UK: ARCOM.

1.4.2 Purposive sampling

The study used purposive sampling, which essentially identifies the group or target audience with specific characteristics. Purposive sampling is not based on chance. The sample of the study comprised institutions and personnel from various key stakeholders, such as port security officials, PSiRA management, private maritime security companies and personnel in South Africa, and various maritime training institutions.

The study identified, among others, officials from various regulatory agencies within private maritime security. Through the purposive sampling, questions of interest that will formulate discussions were raised. Face-to-face interviews were conducted and this assisted in obtaining extensive feedback, which highlighted common issues and/or challenges. This exercise provided direction on the issues to be prioritised in addressing challenges in the sector.

1.4.3 Ethical considerations

In conducting this research, ethical considerations of the interviewees were taken into account. Firstly, consent from the authorities in charge of the security service officers/respondents as well as from the respondents themselves was obtained. Secondly, the interviewees were informed about the research and the purpose thereof. Thirdly, the participants were informed of their right to choose whether to participate in the research or not, including ending the interview at any point, if they so wished. Confidentiality and anonymity of participants was honoured as requested, and interviewees were advised in writing of their right to confidentiality and anonymity.

1.4.4 Limitations to conducting the study

A challenge that arose was the lack of participation from a number of officials from key regulatory bodies and private maritime security companies. Some questioned why the Authority was conducting a study on private maritime security, referring to it as a 'niche market'. It was suggested that PSiRA should rather focus on other sectors of the industry that need enforcement and oversight mechanisms,[29] such as the guarding sector. Others argued that because private maritime security was not a big sector in South Africa, there was no need for PSiRA to conduct such a vigorous study.[30]

Various regulators were consulted for the study to gather data on compliance or lack thereof. While some bodies were forthcoming, others argued that they had nothing or very little to do with private maritime security.[31] Notwithstanding these shortcomings, the data collected was sufficient to generate an informed analysis on the subject matter.

1.4.5 Conceptual clarity

This section focuses on conceptual clarity by unpacks the key definitions of private maritime security PSiRA and to definitions developed internationally and/or by other countries.

Many concepts and definitions have been developed to define maritime security across the board. Despite deferring views, it can be argued that these concepts give direction as to which areas to focus on within maritime security when considering the possible development laws, regulations and policies applicable to the South African context.

There is an argument that maritime security cannot be defined without referring to asymmetric threats such as piracy. Article 101 of the UN Convention of the Law of the Sea defines piracy as any illegal act of violence or detention committed for private ends by the crew or the passengers of a private ship or a private aircraft, on the high seas, against another ship, aircraft persons or property. Chalk defines piracy as an act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in furtherance of that act.[32] Chalk argues that piracy attacks constitute a direct threat to the lives and welfare of the citizens of a variety of flag states. According to Affi, Afyare, Knight and Mohamed, piracy is an illegal act committed for private ends on the high seas. Therefore,[33] any act taking place within territorial waters is considered 'armed robbery' and falls under the jurisdiction of that state.[34]

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29 Anonymous participant, 13 August 2019.
30 Anonymous participant, 9 September 2019.
31 Anonymous participant, 13 November 2019.
32 Article 101, United Nations Convention of the Law of the Sea.
33 P Chalk The maritime dimension of international security: terrorism, piracy, and challenges for the United States (2008).
34 As above.
35 Affi (n 13 above) 934-950.
36 As above.

On the international scale, private maritime security service providers are referred to as PMSC and are defined as 'private contractors employed to provide security personnel, both armed and unarmed, on board for protection against piracy'.[37] This definition, however, fails to take into account the protection of assets on board vessels or even oil tankers.

Maritime security is of international concern. One international player involved in maritime is the International Maritime Organisation (IMO), the United Nations specialised agency for maritime matters of which South Africa is a signatory. According to Bueger, 'securitisation under the theories of maritime security implies that issues are treated as urgent and top-priority matters and that usually more resources are devoted to them'.[38] Bueger further states that 'the concept of maritime security communities entails cooperation, working together to formulate policies and strategies with all stakeholders and or entities involved in maritime security'.[39]

The 'laundry list' approach in defining maritime security has, rightly or wrongly, been criticised as insufficient since it neither prioritises issues nor provides clues on how these issues are inter-linked, nor outlines how threats can be addressed.[40] Moreover, it creates enduring puzzles over which threats should be included.[41] Are international concerns such as climate change and disasters at sea maritime security issues? Should interstate disputes be treated in terms of national security rather than maritime security?[42] Be that as it may, addressing these pertinent questions is beyond the scope of this study.

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The definition of piracy 'includes only action on the high seas and only action undertaken by one ship against another ship. This means that forms of violence conducted in the territorial sea as well as without the involvement of two ships, such as, for instance, the violent taking of control of a ship by members of its crew or passengers, even when the follow-up consists of holding to ransom the ship and its crew and passengers, are not included'.[44]

2   LITERATURE REVIEW

There is no literature on private maritime security in the South African context or dating from when private maritime security officers began operating in South Africa. No literature was found on South African port security. To bridge this gap and as already mentioned above, the study relied on face-to-face interviews with the various participants. In spite of the dearth of literature, the face-to-face interviews were helpful in providing an overview of private maritime security within the South African context. This part of the report, thus, presents a literature review based largely on the international anti-piracy discourse.

2.1   The demand for private maritime security companies

In his work on *Maritime Security in the Indian Ocean:* strategic setting and features, Potgieter argues that with naval deployments to the region being reduced, the shipping industry is reluctantly turning to private security companies.[45] The lack of political will on the part of government forces the shipping industry to seek alternative measures to combat piracy and terrorism. International communities can be criticised for their failure to address piracy and terrorism, considering piracy has been classified as a crime by some states and that. Moreover, especially because there has been consensus that piracy is international concern.

According to Potgieter, ports are attractive criminal targets because of the concentration of valuable merchandise in one location. The location and layout of ports often inhibit security measures, while berthed or anchored ships with unarmed crews are vulnerable, an aspect that is exploitable by organised crime and terrorists. Physical security is necessary to curb criminal activities at ports.

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37 J Kraska 'International and comparative regulation of private maritime security companies employed in counter-piracy.' in D Guilfoyle (ed) Modern Piracy: Legal Challenges and Responses (2013). See also M DeVault, B Robert B, J Steven, Taylor, Introduction to Qualitative Research Methods: A Guidebook and Resource (2015).
38 C Bueger 'What is Maritime Security?' (2015) Marine Policy 159-164.
39 As above.
40 As above.
41 As above.
42 As above.
43 Kraska (n 37 above).
44 T Treves 'Piracy, law of the sea, and use of force: Developments off the coast of Somalia' (2009) 20(2) European Journal of International Law 399–414.
45 Potgieter (n 20 above) 24.
46 As above.
47 As above.

The presence of private maritime security service providers in the maritime domain has arguably proven effective. Further, the number of such companies in the industry is increasing. There has also been a decrease in the number of pirate attacks since private maritime security providers began to present themselves as a responsive measure. For that reason, private maritime security companies are making a significant contribution to the industry.[48]

2.2 The need to regulate private security actors involved in anti-piracy

Affi et al argue in their article titled 'Countering piracy through private security in the Horn of Africa: prospects and pitfalls' that regulating the activities of private maritime security companies is necessary.[49] They estimated that between 25% and 40% of the world's ships transiting through the Gulf of Aden and the Indian Ocean have armed guards on board.[50] This assertion is supported by the exponential growth of private maritime security companies in the private security industry and emphasises the need to regulate the industry. In South Africa, PSiRA is already regulating the industry. Affi et al further argue that, in addressing piracy, private maritime security companies presented themselves as a primary and effective response to piracy.[51] Both Potgieter and Affi concede that no ship under the protection of private maritime security companies has ever been hijacked, but continue to argue that private maritime security companies are a short-term solution to a long-term problem. This argument cannot be supported, as the literature on private maritime security supports the role played by the private security sector and concedes that the presence of these security companies has proven to be effective.

In The *geopolitical dimension of maritime security*, Germond argues that 'since the beginning of 2000, maritime security was increasingly used to describe preventive measures set up to respond to illegal activities at sea or from the sea, protection of ports and vessels.[52] In his work *Communities of security practice at work*, Beuger posits that international donors as well as African states have paid only scant attention to maritime threats and how maritime borders and regional waters can be protected and regulated.[53]

According to Potgieter, the need for a structure that addresses maritime security capacity-building and that involves both regional and extra-regional countries is evident.[54] He further argues that private security companies are usually insufficiently regulated, and the movement of private security personnel into and out of countries is not subject to a coherent policy framework.[55]

2.3 Private maritime security companies and the use of force

The literature on International and comparative regulation of private maritime security companies employed in counter-piracy by Kraska provides that, in developing the private maritime security sector, certain factors need to be implemented cautiously, taking into account the 'appropriate rules for the use of force' against threats to the vessel or its crew, questions of liability and carriage of weapons in the ports of other countries.[56] Kraska and Affi et al support the notion that there is an obligation on government to have measures in place that protect the sea and implement policies that guard activities that take place at sea.

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48 Considering the South African context, it can be said that more information still needs to be collected relating to how the private maritime security service providers respond to illegal activities that occur at sea. Maritime security affects the trade industry as well as the global economy, which necessitates the need for governments at the national and regional level to initiate discussions and work together to find ways to curb act of piracy and the commission of illegal acts at sea.
49 Affi (n 13 above) 934-950.
50 As above.
51 As above.
52 Germond (n 1 above) 54.
53 Bueger (n 22 above) 297-316.
54 Potgieter (n 20 above) 24.
55 As above.
56 Kraska (n 37 above).

2.4   Maritime security and hotspots in high seas

There are two types of piracy, namely assault, such as low-level armed robbery and opportunist attacks mounted close to land by small, high-speed craft crewed by maritime normally armed with knives. In the maritime community, the primary security issues have long been fraudulent documents and certificates, piracy and armed robbery against ships, phantom ships, and illegal migrants and stowaways.[57] Southeast Asia is home to important sea-lanes and straits, including the Malacca Straits, one of the busiest waterways in the world.[58] More than 50 000 vessels on international routes transit the Malacca Straits each year, which connects the Indian Ocean with the South China Sea.[59] Southeast Asia has since the late 1980s also become one of the global `hotspots´ of pirate attacks on commercial vessels and fishing boats.[60]

Most vessels that are attacked do not have armed guards. If a vessel is registered under American laws it will fly an American flag. The flag on a vessel dictates which laws govern it. If there is any dispute or violation of any laws, the flagship of the vessel is consulted. According to the Baltic and International Maritime Council, there has been an increase in the number of shipping companies employing private maritime security contractors … 'In 2011, an estimated that 5% to 10% of ships transiting the high-risk waters off the Horn of Africa employed private maritime security contractors.[61] By 2012, it was estimated that 35% to 40% of ships transiting the high-risk areas employed private contracted armed security personnel.[62] These percentages highlighted the need to ensure effective regulation of the rapidly growing private maritime security.

3   RESEARCH FINDINGS

The section presents findings of the field research undertaken in the context of South Africa. These findings address the following research questions mentioned earlier in this report: What are the types of services rendered within the private maritime security in South Africa?; What are the minimum training standards within the private maritime security in South Africa?; What are the applicable laws relating to the private maritime security sector in South Africa?; and What are the compliance challenges?

3.1   Types of services rendered within the private maritime security

The study found that there are certain types of private maritime security services in the South African context. These include counter-piracy, passenger vessel security, offshore asset protection, port security, ship security plans and vessel recovery. The main actors in South African are predominately in the Western Cape. The two types of security services provided to commercial shipping by offshore private maritime security companies are on-board guards and ship escorts. Many private maritime security companies place their personnel directly on board ship, along with their weapons.

Depending on the nature of the security provided and the goods transported and protected, the private security officers may or may not carry firearms. It is estimated that between 25% and 40% of the world's ships transiting through the Gulf of Aden and the Indian Ocean have armed guards on board.[63] Where private security actors would be sailing or passing through high-risk waters, they are mostly likely to be armed, as it is usually here that piracy attacks occur. According to an anonymous participant, whilst providing security services for vessels going up the east and west coasts of Africa, they cannot afford to be unarmed, as the risks of attack are high.[64]

The types of services rendered in the private maritime security sector are largely informed by the threat or risks involved in that specific environment. For instance, the United Kingdom's 2014 maritime security strategy refers to maritime security risks rather than threats. It describes one of these risks as the 'disruption to vital maritime trade routes as a result of war, criminality, piracy or changes in international norms'.[65] The realm of maritime security encompasses a number of issues, such as the sea, marine life, marine creatures, shipping, trade through import and export, and water as a resource. These inform the need to protect and regulate everything related to the maritime environment. Threats to the maritime environment include: 'maritime interstate disputes, maritime terrorism, piracy, trafficking of narcotics, people and illicit goods; arms proliferation, smuggling, illegal fishing, environmental crimes, and maritime accidents and disasters'.[66]

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57 E Asyali & M Yilmazel 'An analysis of port state control inspections related to the ISPS Code' (2005) in Proceedings of the IAMU, 6th AGA conference.
58 Liss (n 15 above).
59 As above.
60 Lisa (n 15 above).
61 Kraska (n 37 above).
62 As above.
63 Affi (n 13 above) 934-950.
64 Anonymous respondent, 19 August 2019.
65 Bueger (n 38 above) 65-68.
66 As above.

3.1.1   Use of specialised equipment in maritime security

The study found that technologies and specialised equipment used are usually governed by the country to which the vessel is sailing. For instance, a threat assessment conducted by the private maritime security company would be based on the area and the threat at the destination, which would determine what specialised equipment or security will be used.

Some of the security equipment includes barbed-wire being around the vessel, binoculars, radar to detect any threat, helmets and go-pros.

3.1.2   The use of stowaway searches companies

A stowaway is commonly understood to be 'a person who hides himself on board a ship just before the ship sails to obtain a free passage to the ship's destination, to escape from a country by stealth or to get to sea unobserved'.[67] The study found that stowaways at ports - most illegal and foreign nationals - are there is a huge challenge regarding stowaways at ports. Stowaways enter the ports illegally and are mainly foreign nationals. They claim to want to go to Europe for better jobs.[68] They use ropes to board the vessel illegally. It was stated that if a port has a high number of illegals boarding vessels, the port is not safe.[69] In addressing this problem, ship owners and ship agencies contract stowaway search companies that claim to have trained dogs to flush out illegal persons and trespassers.[70] A challenge is that this is that this service is not adequately regulated.[71] Upon boarding the vessel, stowaways hide in the engine room, which is very noisy, making it difficult for the dogs to search successfully.[72]

It was found that this service of using dogs is not reliable, as the dogs have not been properly trained to distinguish between stowaways and crewmembers.[73] There are also no guidelines within maritime domain regulating K9s yet this service is being provided. Stowaways are usually found once the vessel has left the ports and where searches were conducted by the k9's.[74] This is where the need for collaboration between various enforcement agencies becomes profound. It was found that when stowaways are detected on a vessel, SAPS, Immigration department and port health, among others, are called to assist.[75] This included facilitating deportation.

3.2   The minimum training standards within the private maritime security

3.2.1   ISPS Code

The study found that IMO developed a number of international training standards as a requirement for individuals participating in maritime security activities or services. The one training standard that seems to be common across the board is the ISPS Code, developed in response to the perceived threats to ships and port facilities after the 9/11 attacks. As ships, ports and cargoes are key points for security in the maritime transportation system, the ship/shore interface emerges as the main weak point.[76] The ISPS Code focuses mainly on the cooperation and coordination between ports and ships on security matters.[77]

The Code has the following objectives:[78]
- Establishment of an international framework that fosters cooperation among contracting governments, government agencies, local administrations and the shipping and port industries, in assessing and detecting potential security threats to ships or port facilities used for international trade, so as to implement preventive security measures against such threats;
- Determining the roles and responsibilities of all parties safeguarding maritime security in ports and on board ships nationally, regionally and internationally;
- Ensuring early and efficient collation and exchange of maritime security-related information nationally, regionally and internationally;
- Providing a methodology for ship and port security assessments that facilitates the development of security plans and procedures to be used to respond to varying ship and port security levels; and
- Ensuring that adequate and proportionate maritime security measures are in place on board ships and in ports.

67 W Von Zharen 'Human contraband: stowaways in popular culture' (2000) 31 Journal of Maritime Law and Commerce 601.
68 N Masophi, TNPA, Port Elizabeth, 13 August 2009.
69 As above.
70 As above.
71 As above.
72 As above.
73 As above.
74 As above.
75 As above.
76 Asyali (n 57 above).
77 As above.
78 http://www.imo.org/en/OurWork/Security/Guide_to_Maritime_Security/Pages/SOLAS-XI-2%20ISPS%20Code.aspx (Accessed on 12 February 2020).

The ISPS Code, therefore, guides maritime security, focusing on ports and ships. A criticism is that it seems to be offered by one person/training centre in South Africa. In addition, it is also argued that all those who claim to offer the training are offering only ISPS Code awareness.[79]

The Code focuses mainly on the security aspects of the ship, seafarers, ports and port workers, to ensure preventive measures can be taken if a security threat is determined.[80] Its main aims are to:[81]

- Monitor the activity of people and cargo operation;
- Detect different security threats on board vessels and in port and implement measures;
- Provide a security level to the ship and fulfil various duties and functions at this level;
- Establish the roles and responsibilities of the contracting governments, agencies, local administrations and the shipping and port industries; and
- Build and implement roles and responsibilities for port state officers and on-board officers to tackle international maritime security threats.

The Code, therefore, aims at reducing the vulnerability of port facilities and merchant ships to terrorist attacks and to increase the security awareness of the industry.[82]

Training in the Code is an international requirement, yet there is no institution in South Africa accredited to provide Code training on the landside. The only accredited institution in South Africa is the South African National Academy of Intelligence in Pretoria. According to TNPA, all the institutes that claim to provide ISPS Code training in South Africa are providing only Code awareness and port environment understanding. If ISPS Code awareness is accredited by SASSETA, it then relates to the landside (as opposed to what one obtains at sea).

3.2.2   Designated security duties STCW Code A-VI/6-2

The designated security duties Standards of Training, Certification and Watch-keeping (STCW) Code A-VI/6-2 is a course accredited by SAMSA and meant for all seafarers designated to perform security duties, including anti-piracy and anti-armed-robbery-related activities, on seagoing vessels, which are required to comply with the requirements of the ISPS Code.[83] This training ensures that the seafarer can perform security duties, including anti-piracy and anti-robbery security duties.[84] It ensures that officers maintain the conditions in the ship security plan, recognise security threats and risks, understand the importance of and undertake regular security inspections of the ship, and maintain and use security equipment and systems found on board the ship.[85]

3.2.3   Security awareness STCW Code A-VI/6-1

This training standard was developed to meet the requirements of Security-Awareness as contained in Section A-VI/6, Table A-VI/6-1, Chapter VI of the STCW Code.[86] The training in Security Awareness is for all seafarers serving on seagoing vessels which are required to comply with the requirements of the ISPS Code, on the business of that ship as part of the ship's compliment without designated security duties.[87] The objective of the training is to ensure that all seafarers have heightened security awareness and vigilance.[88] The objectives and outcomes of the training include empowering candidates with knowledge to contribute to the enhancement of maritime security through heightened awareness, recognise security threats, and understand the need for and methods of maintaining security awareness and vigilance.[89]

This training standard was developed to meet the requirements of Security-Awareness as contained in Section A-VI/6, Table A-VI/6-1, Chapter VI of the STCW Code. The training in Security Awareness is for all seafarers serving on seagoing vessels which are required to comply with the requirements of the ISPS Code, on the business of that ship as part of the ship's compliment without designated security duties. The objective of the training is to ensure that all seafarers have heightened security awareness and vigilance. The objectives and outcomes of the training include empowering candidates with knowledge to contribute to the enhancement of maritime security through heightened awareness, recognise security threats, and understand the need for and methods of maintaining security awareness and vigilance.

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79 Masophi (n 68 above).
80 For more information, see https://www.marineinsight.com/maritime-law/the-isps-code-for-ships-a-quick-guide/ (accessed 4 December 2019).
81 As above.
82 Asyali (n 57 above).
83 For more information, see http://www.samsa.org.za/PART%206%20OCCUPATIONAL%20HEALTH%20SAFETY%20AND%20SECURITY/Security%20Trainng/STA-06-602%20-%20Designated%20security%20duties_0.pdf (accessed 5 December 2019).
84 As above.
85 As above.
86 For more information, see http://www.samsa.org.za/PART%206%20OCCUPATIONAL%20HEALTH%20SAFETY%20AND%20SECURITY/Security%20Trainng/STA-06-601%20-%20Security%20awareness_0.pdf (accessed 5 December 2019).
87 As above.
88 As above.
89 As above.

3.2.4 The role of TNPA vs SAMSA

There is more than one authority in the South African maritime environment, which is viewed as a potential weakness.[90] It was suggested that there be a primary executive entity responsible for maritime and was argued that 'if everyone is responsible, then no-one would be responsible'.[91] Emphasis was made that 'if it floats then SAMSA must address its matters. If it doesn't float then TNPA is responsible'.[92]

TPNA does not provide accreditation to any maritime training institution nor maritime training programmes. It was determined that private security officers should receive maritime training from institutions accredited by SAMSA. All training centres and institutions providing training pertaining to the sea or maritime must be accredited by SAMSA. There are a number of courses offered in South Africa for one to qualify to be a working in the specialised field of private maritime security. There are no strict requirements for one to enrol for these courses. An individual must be able to read and write and understand instruction.

The participants argued that TNPA is not operating the ports in accordance with the IMO.

3.2.5 Minimum requirements for maritime security training in South Africa

In South Africa, there are no minimum requirements for a person to enrol for any of the maritime security course. What was common from the participants was that for one to enrol for any of the training courses, they must be able to read, write and understand the medium of instruction given. The study found that depending on the country, a private maritime security officer must have a seaman's book. Failure to acquire the relevant training, the ship captain would not allow a private maritime security guard to board the vessel. Depending on the area or country, the client/consumer requiring security services may stipulate additional requirements and specifics or level of training.

Interviewed private maritime security officers stated that they had acquired the following training and courses: a SAMSA-accredited STCW course, which involves life-raft training, firefighting and ship security officer's course. It is also not uncommon for private maritime security officers to be former SAPS members. Another course was survivor-at-sea training and there was also mention of SAMSA-accredited firefighter-at-sea training, which is not necessarily security training (and thus not registered with PSiRA). Other courses included personal survival training, first aid,[93] Competency in security awareness (one-day course), designated security duties (two-day course) and ship security officer course.[94] It was also gathered that the awareness course is undertaken by persons who are part of a security team on board.[95]

The study found that every commercial ship at sea there would have at least one security ship officer on board, who must have undertaken a three-day security training course,[96] an IMO requirement since 9/11.[97] Other courses mentioned included those offered by Maritime Safety Training and Development, which has operated for 20 years.[98] These include ISPS Code awareness, ship's security officer course, a two-day first aid programme, a four day medical first aid at sea programme, and medical care at sea.

The study also found that for those security officers working in ports, being the national key points, there was a requirement that security officers must have an ISPS Code awareness training as well as national key point training.

90 M Kinghorn, King Cole Maritime, Port Elizabeth, 13 August 2019.
92 As above.
93 As above.
94 V, Luppnow & J, Mason, Maritime Safety Training & Development (pty) LTD, 23 July 2019.
95 As above.
96 As above.
97 As above.
98 As above.
99 As above.

Of all participants interviewed, only one was not PSiRA-registered. The majority of security service providers and training institutions interviewed said that they were registered with PSiRA because they had previously worked as security service providers in sectors of the industry unrelated to maritime security. The participants were, therefore, aware of PSiRA.

An unregistered security service provider stated that there was no need to be registered with PSiRA because 'PSiRA has no jurisdiction over what happens at sea'. The current perception appears to be that, anything that floats must be dealt with by SAMSA and anything that is land-based must be dealt with by PSiRA'. This view contravenes the PSiR Act, which states any person who renders a security service must be registered with the Authority.

The rationale for the reluctance to register with PSiRA was that even though the training for private maritime security is done in South Africa, the training itself is not utilised within South African waters.

3.4   The applicable law relating to the private maritime security sector

3.4.1   The regulation of the private maritime security

As a security service, the regulation of the private maritime security is subject to the PSiR Act. Accordingly,

> no person, except a Security Service contemplated in section 199 of the Constitution (Act No. 108 of 1996), may in any manner render a security service for remuneration, reward, a fee or benefit, unless such a person is registered as a security service provider in terms of this Act.[100]

With reference to private maritime security, this provision focuses on would be private maritime security officers. Application for registration for private maritime security providers (officers) must comply with section 21 of the PSiR Act. The requirements for registration must meet the requirements prescribed in section 23 of the PSiR Act.[101]

Regarding would be security providers (businesses), the PSiR Act states that a security business may only be registered as a security service provider "if all persons performing executive or managing functions in respect of such security business are registered as security service providers.[102] The Act further also provides that "in the case of a security business, which is a company, close partnership, business trust or foundation, as the case may be, must be registered as a security service provider'. Businesses offering maritime security services must therefore comply with the PSiR Act. The application for registration must be in line with Section 23(2) of the PSiR Act.

3.4.2   The use and possession of firearms

The use and possession of firearms within the South African private maritime security industry is regulated by two pieces of legislation, namely the PSiR Act and the Firearms Control Act (Act No. 60 of 2000). The PSIR Act established the Private Security Industry Regulatory Authority whose primary objects are firstly, to regulate the private maritime security industry and secondly, to exercise effective control over the practice of the occupation of the maritime security service provider in the public and national interest, among other things.[103] The study found that PSiRA does not have a record on its database of private maritime security businesses that are licensed by the South African Police Service (SAPS). This basically suggests that the Authority is unable to ensure that firearms within the private maritime security sector are accounted for.

According to PSiRA Regulations), every security business applying for registration as a security service provider must, for the purposes of compliance with the Act,[104] demonstrate, through a declaration with such substantiation as may be necessary, to the satisfaction of the Authority that the applicant will meet the certain minimum requirements at the commencement of its business activities in the rendering of a security service. This includes that 'the applicant is in lawful possession of the firearms and other weapons that are necessary to render the security service in respect of which it has contracted.[105]

The PSiRA Regulations further provide that, among other things, a security business must keep a posting sheet containing information on 'whether a security officer was provided with a firearm or other weapon, and if so, the type of firearm or weapon, its proper identification number if any, as well as information on the legal authority in terms of which the firearm was provided and possessed.[106] Further, the security business must have 'legal authorisation in the form prescribed by law in respect of the possession of and use of firearms and other weapons by the security business and its security officers.[107] These regulations are also applicable to private maritime security companies.

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100 Section 20(1)(a) of the PSiR Act.
101 Among other things, the applicant must be a fit-and-proper person to render a security service.
102 Section 20(2)(b) of the PSiR Act.
103 Section 3 of the PSiR Act.
104 Section 23(2) of the PSiR Act.
105 Regulation 5(1)(b)(xi) of PSiRA Regulations.
106 Regulation 10(7)(f)(vi) of PSiRA Regulations.
107 Regulation 10(7)(l) of PSiRA Regulations.

The study found that the when performing duties of armed guards in ships, there are a number of challenges and lengthy processes involved when a maritime security company or persons wish to transport firearms in and out of the South African ports.[108] It was also revealed that there are challenges relating to utilising firearms obtained in South Africa (beyond the borders), in that when the private maritime security officers arrive in another country's port, they need to obtain the authorisation to possess those firearms and comply with the domestic laws of that specific country.[109] It was further stated that the solution to this challenge is for the maritime security companies to have armouries outside the South African territorial water.[110] This means that the firearms will not registered in South Africa or any other country. Since these firearms are not registered in any country, they are then dumped into the sea after they have been used and cannot be stored in the armouries. It could be argued that the laws of the country whose flag is on the ship would be applicable to the use and possession of firearms on board the ship.

It was argued that in essence, no South African laws or other country's laws are violated because the firearms are not used within the South African territorial waters or other country's waters.[111] The participants stated that the floating armouries at sea are open to use by anyone as they are located in international waters.[112] Many private maritime security companies use these floating armouries to store firearms in international waters.[113] This method of storing firearms allows companies 'to arm themselves for transits and evade arms tracking regulations enforced in ports'.[114] The company known as Protection Vessels International (a global leader in armed maritime security), for instance, deployed its ship Sea Scorpion as a floating weapons hub.[115] The armouries are not governed by any laws specific to any country. Where the maritime security companies are in possession of the firearms and have obtained the authorisation to possess them, the firearms would be stored on board the vessel in a locked safe. The captain or the master of the vessel would have the key of the safe. The master is in charge and is responsible for the ship.

According to Petrig, countries such as Sri Lanka permit private companies to rent out weapons to private maritime security companies.[116] This is, however, not the case in South Africa. In using force, whether for self-defence or defence of others, companies must respect the right to life. The South African Constitution provides that everyone has the right to life. Private maritime security officers are permitted to use force only in line with domestic law and when there is an imminent threat. According to Affi *et al,* other private maritime security companies provide escort services using smaller ships – upon which private security personnel are stationed – to accompany commercial ships through piracy hotspots.[117] This is an alternative method of providing maritime security to shipping companies that do not want security personnel and weapons on board their ships for legal reasons, or where ships have insufficient space.[118]

3.5   The challenges relating to compliance within the maritime security sector

3.5.1   Enforcing compliance

The study found that although inspections are conducted there were very few inspections conducted in the private maritime security domain. Some stakeholders raised concerns relating to the manner in which PSiRA conducts its inspections, saying it was more of a tick box exercise, when in fact it must go beyond this.[119] It was stated that there have been many human rights violation by private maritime security companies in Somalia because of piracy.[120] Further, many companies fail to report on incidence of loss of life. If incidents are reported, they would be reported to the (IMO), which is the specialized agency of the United Nations (UN) charged with responsibility for the technical and safety aspects of international shipping.[121]

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108 Anonymous respondent, 22 July 2019.
109 As above.
100 As above.
111 As above.
112 As above.
113 As above.
114 As above.
115 Petrig (n 17 above) 667-701.
116 As above.
117 Affi (n 13 above) 934-950.
118 As above.
119 Anonymous respondent, 9 September 2019.
120 As above.
121 S Mankabady The International Maritime Organization: International Shipping Rules v. 1: international Shipping Rules Vol 1 (1986).

It could be argued that the shipping industry considers the use of private security as a 'necessity that is being forced' on it by the international community's inadequate response to piracy.[123] The increase in use of private maritime security companies has resulted in a shift by some states that were previously against the use of such companies. There is now a general acceptance of the use of private maritime security companies. Some states have already reviewed their legal frameworks to accommodate security companies.

It was found that port security officials (in-house security officers) do not have 'peace officer' status in terms of the law.[124] They do not have 'inspector' status in terms of the PSiR Act at ports and cannot inspect private maritime security officers. Only PSiRA inspectors can conduct inspections and the infrequency of inspections is a major challenge in ensuring compliance.

3.5.2   Stowaway searches

The study also found that there is a lack of control procedures on stowaway search companies. The Convention on Facilitation of International Maritime Traffic, 1965, as amended, (The FAL Convention), defines a stowaway as 'a person who is secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of the ship-owner or the master or any other responsible person and who is detected on board the ship after it has departed from a port, or in the cargo while unloading it in the port of arrival, and is reported as a stowaway by the master to the appropriate authorities.'[125] For those vessels that visit the ports, there are companies which conduct stowaway searches upon departure. They make use of dog handlers to perform stowaway searches with well-trained detector dogs. The security officers or rather the dog handlers are supposed to be well trained and equipped to perform said stowaway searches. They are supposed to be registered in terms of the PSiR Act as security service providers. The dogs used are generally not accredited. It was found that there is arguably no accredited institution to train dogs and dog handlers who conduct Stowaway searches. A stowaway search is a security service which is regulated under the PSiR Act.

Another issue raised on the issue of stowaways was that, previously when a stowaway was found on a vessel, there was a lengthy process involving the Department of Home Affairs and the South African courts. Steps had to be taken to deport the stowaway to the country of origin.[126] Accordingly, this process is said to be very costly. Stowaways are usually found once the vessel has sailed. There were allegations by some of the participants that the new practice now is that when a stowaway is found on a vessel, they are generally dumped or thrown overboard.[127] This is obviously illegal.

3.5.3   National key points (ports)

Challenges were noted relating to security officers (armed security guards) stationed at ports, which are South African national key points. All guards stationed at national key points are required to take fingerprints regularly, but it was reported that more often than, they are turned away by the police station, as there is no fingerprinting ink. If In the event that there is ink on that specific day, they are made to pay for the use of the ink (for their fingerprints).[128] It was also stated that some of the guards working at ports do not have ISPS code awareness training.[128] It was reported that the person/institution offering the ISPS code awareness training is the only person/institution that is accredited by the port captain to provide this awareness training.[130] It was alleged that it is unlikely to see TNPA enforcing the law as it is mainly focused on access control.[131]

123 Affi (n 13 above) 934-950.
124 Masophi (n 68 above).
125 See also SL Chen, YH, Chen,& Wu, C.H 'The impact of stowaways and illegal migrants by sea: a case study in Taiwan' Proceedings of the International Association of Maritime Universities (IAMU), 24th–26th October (2005).
126 Anonymous respondent, 9 September 2019.
127 As above.
128 As above.
129 As above.
130 As above.
131 As above.

3.5.4   Oversight of South African ports

The study found that Transnet National Ports Authority (TNPA) is the regulator, responsible for the oversight on the Ports in terms of security and compliance in South Africa. The TNPA is basically the landlord of the ports. As security service providers, one aspect deals with security within the ports and shipping agents that are responsible for the facilitation of ships coming into the port.[132] The other aspect deals with the terminal operators. Some of these operators have their own security both in-house and contracted security.[133] The TNPA has a working relationship with the Department of Transport that is overseeing security within the ports in South Africa. Prior to a vessel entering the South African territorial waters, the shipmaster must declare the security on-board and any firearms.[134] In addition to security, the TNPA deals with a number of stakeholders, which include a number of government departments, and among those is PSiRA to assist with ensuring compliance.[135]

It was gathered that the TNPA is responsible for non-conformances at ports. While the TNPA identifies challenges in the maritime or port domain, it was found that it cannot enforce compliance, as 'we do not have the teeth to bite'.[136] The TNPA argued that it does not have the capacity to enforce the law.[137]

3.5.5   Status of the TNPA

TNPA is a state-owned company that has in-house security service officers.[138] The TNPA regulates the following areas:

*   Security regulation in the port in line with the provisions of the ISPS Code (Maritime Security Regulations, 2004 and Merchant Shipping Act 57 of 1951);
*   Access and egress control at all access points in the port in line with Section 83 of the National Ports Act 12 of 2005[139] and Port Rules;
*   Enforce vessel clearances in line with the ISPS Code and SAMSA Notice 28 of 2016; and
*   Enforce PSiRA compliance in line with Act 56 of 2001.

TNPA representatives argued that even though they provide security within a state-owned entity, they are required to be registered with PSiRA in terms of the PSiR Act.[140] There are also tenants and port operators working in the maritime industry and in ports, some of which provide security services.[141] As the landlord of ports, the TNPA is required to enforce compliance, On which legislation should this compliance be based?[142] The TNPA believed that it should be the PSiR Act and the argument was made that TNPA legislation should give the TNPA powers to enforce compliance, including the PSiR Act, as far as it applies to the ports and maritime environment.[143]

The following example was given:

> If company D, which operates at the port, contravenes the PSiR Act or regulations, TNPA cannot enforce anything. The only thing that the TNPA can do is phone PSiRA to come to the ports yet it is within the TPNA's maritime space. The TPNA cannot even issue a notice to say you are violating this piece of legislation because it is toothless.[144]

The TNPA argued that the legislation that governs TNPA speaks only to the business operation.[145] For a business to be sustained, there must be security, which is the in-house security. The TNPA is playing the role of in-house security, but features nowhere in any legislation.[146] It was argued that since the maritime sector is specialised, PSiRA should recognise the TNPA as an enforcement agency that will enforce compliance at ports rather than call upon PSiRA to enforce compliance.[147] The plea from the TNPA is that PSiRA should give it power to enforce the PSiRA regulation in the port and maritime domain. This could be addressed only by legislation and not the Authority, which is itself a creature of statute.

3.5.6   Monitoring and oversight

Unlike on land, where certain areas have CCTV cameras, at sea there are no such cameras. This makes it impossible to monitor and to exercise oversight of private maritime security companies. Actions taking place, legal or illegal, cannot be recorded. Instead, witness statements are relied upon, with no guarantee of credibility. Affi *et al* argue that private security companies defend their lack of reporting on the grounds that contractual agreements with shipping companies forbid them from publicly revealing what happened in the course of their job.[148]

132 Masophi (n 68 above).
133 As above.
134 As above.
135 As above.
136 As above.
137 As above.
138 As above.
139 National Ports Act 12 of 2005.
140 Masophi (n 68 above).
141 As above.
142 As above.
143 As above.
144 As above.
145 As above.
146 As above.
147 As above.
148 Affi (n 13 above) 934-950.

4 RECOMMENDATIONS

From the research findings, the following recommendations are made to assist PSiRA to improve regulation of the private maritime security sector:

4.1 Registration of service providers as maritime security providers

As the PSiRA database does not reflect the number of providers providing maritime security, it is strongly recommended that a maritime security subsector be added to the list of subsectors in the South African private security industry. The Authority will then know the extent of the industry, to ensure its effective regulation, and to effectively monitor and exercise oversight on the same. This will also ensure that special attention is given to this specialised sub-sector. Credible data must, therefore, be generated and readily available for purposes of professionalising and even possibly transforming the private maritime security sector in South Africa.

As a result of the challenge relating to the non-accreditation of stowaway search companies, there is a need to ensure that they are registered with the Authority as security service providers. The nature of their work, including the use of dogs, creates the impression that a security service is being rendered. As security service providers, it is important for these companies to comply with the PSiR Act just like any other private security service providers operating in the country.
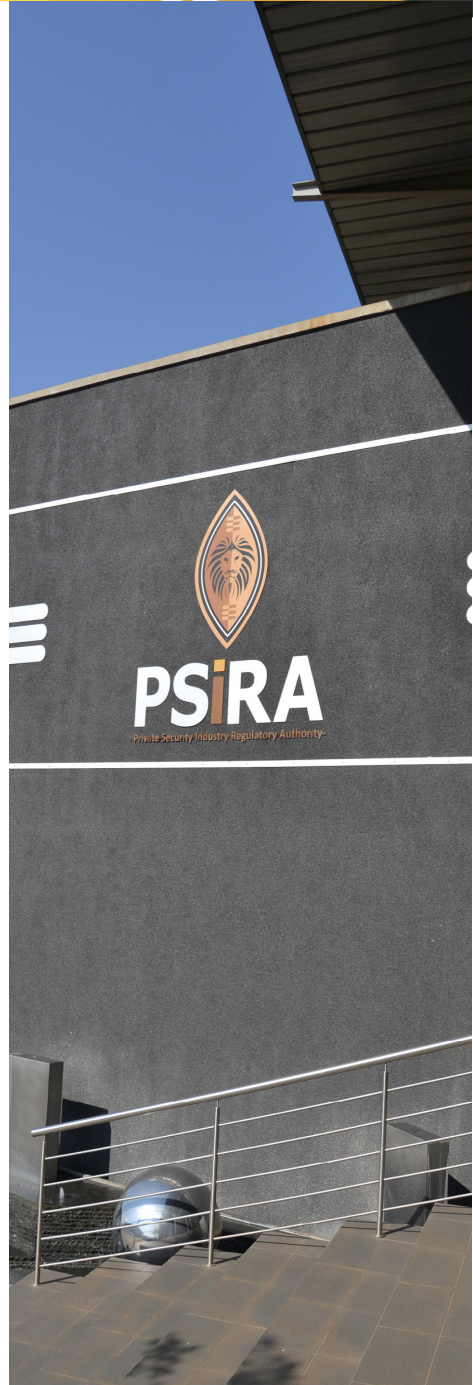
4.2 Accreditation of private maritime security training

Private maritime security training and accreditation need to be addressed as soon as possible. It is recommended that PSiRA must regulate training in line with its powers, taking into consideration the roles of other agencies such as the TNPA and SAMSA. In developing minimum training standards for private maritime security providers, the ISPS Code, the STCW Code A-VI/6-2, the STCW Code A-VI/6-1 and other training codes must be taken into account. It is further recommended that maritime security training providers be registered with PSiRA.

4.3 Improving PSiRA awareness

It is recommended that more awareness campaigns on the PSiR Act and compliance issues relating to the maritime security sector must be conducted. This is due to the plethora of non-compliance issues within the sector. The question of whether or not the Authority has jurisdiction beyond the South African borders (and South African waters in particular) is settled. In terms of section 39 (1) of the PSiR Act, any act constituting an offence in terms of the Act and which is committed outside the Republic by any security service providers (registered or obliged to be registered), is deemed to have been committed in the Republic.

South African private maritime security service providers working abroad remain bound by South African law as private security service providers. International companies that deploy South African citizens as private maritime security service providers must be aware of the South African law relating to the exportation of security services beyond South African borders. Hence the need for awareness campaigns, which are also important to promote the South African ship register.

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4.4   Improving regulation of private maritime security

It is recommended that the regulation on private maritime security sector must be improved. This essentially means that the Authority must take concrete steps to fully implement the PSiR Act in so far as the maritime security sector is concerned. This must include the carrying out of inspections both at ports and on vessels. Such inspections must be undertaken in respect of both in-house and outsourced security providers. Moreover, the PSiRA inspectors must understand the intricacies of the sector in order to effectively carry out their inspections (including unannounced inspections). Such inspections would also assist in ensuring that maritime security service providers comply with the country's labour laws.

It is further recommended that PSiRA develop a system which disaggregates its data to also reflect the number of security providers in the private maritime security sector. This will improve the inspections and needless to say, the compliance of the sector. The credible data will also assist the effective regulation on the use and possession of firearms in this sector. The Authority would be in a position to know the number of firearms in this sector. A record of incidences of firearm discharges (including loss of lives) occurring at seas must be reported to the Authority by the private security providers.

4.5   The use and possession of firearms in maritime security

It is recommended that PSiRA play a role in strengthening the implementation of the Firearms Control Act in the private maritime security environment, taking into account the 'appropriate rules for the use of force against threats to the vessel or its crew, questions of liability and carriage of weapons in the ports of other countries.'[149] As the shipmaster is responsible for declaring firearms on board the vessel, the Authority must be kept abreast with the record of such declarations, particularly as they relate to private maritime security providers.

4.6   Collaboration between PSiRA and stakeholders

As the study found that there are many role players within the maritime space, there is a need for the Authority to collaborate with these role players, particularly as it concerns the provision of private security services. These stakeholders include TNPA, SAMSA, SASSETA, and SAPS, among other agencies. The study has already discussed the roles they play within the maritime environment. While SAMSA's mandate focuses on the seaside (and not on the landside), TNPA is responsible for the landside or ports. SAMSA cannot enforce compliance on land issues relating to land and TNPA cannot enforce compliance in issues relating to the sea. PSiRA by statute has the right to exercise authority in matters relating to the private maritime security industry and develop mechanisms to ensure effective compliance by security services providers. This is applicable both on the land and sea sides.

It is also critical for PSiRA to collaborate with the IMO in order to understand the dynamics within the maritime space. The IMO is responsible for the technical and safety aspects of international shipping. The collaboration between PSiRA and the above-mentioned stakeholders would also improve compliance in the private maritime security environment. The non-compliance (with the PSiR Act) cannot be addressed by the Authority alone. Hence the importance of such collaboration.

4.7   International standards on the use of force

It is recommended that in reviewing laws, regulations and policies on the private maritime security sector, international standards must be considered. Further, regulations must define what constitutes lawful use of force, for instance. The IMO discourages the use of force and arms in combatting piracy. The 100 Series Rules: An International Model Set of Maritime Rules for the Use of Force provides guidelines on reasonable and necessary use of force.[150]

Since the use of force raises a number of human rights issues, it is important to consider international human rights standards. It is important, too, to note that in providing security services, the activities of private maritime security companies have potentially positive and negative consequences for their clients, the local population in the area of operation, the general security environment, the enjoyment of human rights and the rule of law.[151] Considering international standards is, therefore, essential.

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149 Kraska (n 37 above).
150 Affi (n 13 above) 934-950.
151 The International Code of Conduct for Private Security Service Providers. Available at
     https://icoca.ch/sites/all/themes/icoca/assets/icoc_english3.pdf (accessed 10 January 2020).

5   CONCLUSION

This study has attempted to provide an in-depth understanding of the private maritime security sector in South Africa with the overarching aim of providing recommendations to the Authority, which would ensure effective compliance of the PSiR Act by the industry. Providing the rationale and brief overview of the sector, the study outlined the services provided within private maritime security and presented the argument for the need to strengthen the regulation of the sector. The study highlighted maritime security as a preventive and responsive measure aimed at addressing the risks which vessels encounter, particularly at high seas. In spite of the dearth of literature on private maritime security in South Africa, the study attempted to draw knowledge on the following: the demand for private maritime security companies; the need to regulate private security actors involved in anti-piracy; private maritime security companies and the use of force; and maritime security and hotspots on the high seas.

The study further presented research findings focusing on the types of services rendered within the private security maritime sector and provided an analysis on the functions of some of the key role-players. It also considered the training standards, pointing out the need for accreditation of minimum standards by the Authority and underscoring the need for collaboration between PSiRA and stakeholders. Lack of PSiRA awareness in the maritime environment was raised, as were the challenges of enforcing compliance (with the PSiR Act), stowaway searches, guards at national key points, port oversight, the status of the TNPA, and monitoring and oversight of activities on the high seas.

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