Global Corporate Crime-Fighters:

Private Transnational Responses to Piracy and Money Laundering

Abstract

Countering cross-border crime is conventionally portrayed as a struggle between a new breed of transnational criminals and a defensive reaction by state authorities. In contrast, this paper argues that combating quintessentially transnational crimes like piracy and money laundering increasingly depends on private transnational companies fighting crime for profit by selling their services to other private firms. The paper thus broadens the literature on private security and global security governance in focusing on transnational responses to transnational threats in previously neglected maritime and financial realms. The rise of such corporate crime-fighters is explained by the recent evolution of environments structured by overlapping sovereignty claims which limit state enforcement while simultaneously creating new markets for security services. These cases represent instances of global governmentality insofar as they are diffuse, networked exercises of indirect power carried out by private actors situated in markets who are responsible for policing themselves and others.
Introduction

Cross-border crime is at the heart of fears about a “dark side of globalization,” but surprisingly little attention has been devoted to transnational crime within International Relations and political science (exceptions include Andreas, 2011; Andreas and Greenhill, 2010; Andreas and Nadelman, 2006; Friman, 2009; Jojarth, 2009; Mandel, 2010; Nance and Jakobi, 2012; Jakobi, 2013; Williams, 2003). Most general coverage of transnational crime and responses to it is premised on the idea of a struggle between national public authority and transnational illicit private actors. In contrast, this paper holds that illicit international relations are increasingly a struggle between two kinds of private actors: transnational criminal groups, and transnational actors that fight crime, with both groups motivated by profit. The role of these latter, private, transnational for-profit crime-fighters has been relatively neglected.

We investigate these corporate crime-fighters by focusing on specialized firms selling anti-money laundering and anti-piracy services, drawing on a mix of primary, secondary and interview sources. Rather than being employed by states, corporate crime-fighters are
contracted by other for-profit firms, whether private financial concerns like banks, or shipping companies. The three-way interaction between firms that combat transnational crime, the firms that hire them, and states, is increasingly central to global security governance. In arguing for the importance of these new transnational actors, the paper makes three main contributions.

The first is to build on and expand the literature on Private Military and Security Companies (PMSCs), defined as private businesses offering a range of military and/or security services traditionally seen as the responsibility of governments. Though the last two decades have seen a wealth of literature on PMSCs (Abrahamsen and Williams, 2011; Avant, 2005; Bryden and Caparini, 2006; Chesterman, Simon and Lehnardt, 2007; Feichtinger, Baumandl and Kautny, 2007; Jäger and Kümmel, 2007; Leander, 2003: 264-280), this paper provides a new perspective by examining cases where the operations of both the threat and response are inherently transnational, instead of being segmented and isolated by national boundaries. Unlike most of the PMSC literature, this paper does not focus on security companies that provide local services such as the protection of shopping malls, nor does it discuss PMSCs involved in wars or post-conflict zones. Instead, it looks at maritime piracy and money laundering, two arenas that have received little if any
attention in the PMSC scholarship (for a notable exception, see Nance and Jakobi, 2012).

The second main contribution is to explain how the rise of transnational corporate crime-fighters has been stimulated and shaped by the expansion of environments defined by overlapping sovereignty claims. In Krasner’s (1999: 3-4) terms, domestic sovereignty (the ability of public authorities to exercise effective control within the borders of their own polity) is becoming increasingly entangled with and indistinguishable from interdependence sovereignty (the ability of public authorities to regulate the flows across the borders of their state). Though there were idiosyncratic proximate causes specific to each case study, the emergence of transnational crime-fighters reflects the evolution of such new, complex sovereignty environments. Overlapping sovereignty claims have emerged as a result of newly introduced regulations and/or extended sovereignty claims. Private efforts to combat piracy and money laundering are often the concomitant of the difficulties states face in operating in environments with overlapping jurisdictions. States have indirectly stimulated the growth of private transnational crime-fighters in order to combat crime they cannot address with existing government capacities. They have done so by creating new markets for the private provision of security services. Though these private actors broadly promote the aims of militaries, law enforcement bodies and regulators, they are generally not under
the control of any specific state agencies, and sometimes may act counter to particular agencies’ wishes.

The final section of the paper suggests that these two cases illustrate broader theoretical questions concerning private actors and the state in global governance, in particular relating to the notion of governmentality applied on a global scale (see Dean, 1999 and with specific reference to global governmentality Joseph, 2010; Lipschutz, 2005; Löwenheim, 2008; Neumann and Sending, 2010; Sending and Neumann, 2006). We use the concept of global governmentality to show the more general application of our findings concerning governance as a diffuse, networked exercise of indirect power, and the tendency whereby actors beyond the state take on the responsibility of policing themselves and others, thus becoming both subjects and objects of government. Thus in arguing the third portion of our argument we build on and link with others who have begun to apply a similar governmentality lens to the provision of global security in a way that is very different from a top-down direct exercise of power by states (e.g., Leander and van Munster, 2007; Heng and McDonagh, 2008; de Goede, 2012). Especially relevant is the idea of neo-liberal governmentality as a process by which functions are relocated from the state sphere to the purview of private actors within markets (Clarke, 2004: 35-36; Dean. 1999: 55-58).
However, relating to the limits of governmentality, we emphasize that traditional modes of direct state enforcement like the use of armed force, imprisonment and confiscation of property or wealth have not disappeared.

Harking back to the importance of sovereignty and the growth in state authority claims in stimulating the proliferation of corporate crime-fighters, the thesis proposed here suggests that the rise of private transnational actors does not imply any diminution of the state. Given the newly expanded breadth and depth of sovereignty claims, however, states face an intensifying struggle to enforce their writ, and de facto rely more and more on private actors to do so. These actors broadly promote state interests but are the agents of other private firms, and hence exercise considerable autonomy. Paradoxically it is thus the expansion of public authority that has given rise to the increasing privatization of global security governance.

**Similarities and Differences between the Cases: The Logic of Case Selection**

Why compare private transnational efforts to counter piracy and money laundering? Empirically, these global corporate crime-fighters’ prominence in fighting major,
quintessentially transnational security threats demonstrates their importance for the literature on PMSCs, and for policy-makers. Considering these cases jointly extends the domain of application of PMSC scholarship. Key similarities between the firms fighting piracy and those fighting money laundering indicate that the rise of these new actors is not a product of idiosyncratic issue-specific circumstances, but is more likely to reflect broader global changes, although there are also some important differences in these two areas. The cases represent the more general phenomenon of the rise of non-state actors in global governance, and especially global security governance. This last claim is buttressed by the emerging body of literature on global security governmentality, especially as it relates to the role of markets, which provides theoretical context in evidencing the broader significance of our findings,

While both piracy and money laundering can occur purely within the sovereign territory of one state, as policy challenges both have been defined by their transnational character. They thus epitomize the particular difficulty of global security governance. In both cases, the various private actors that have arisen to combat these threats are comparatively new and driven by profit. In the main, both are contracted by private clients – although they often directly or indirectly cooperate with state militaries, law enforcement agencies and
regulators. In both areas corporate crime-fighters offer their services in a context where regulations are vague, non-existent, or difficult to enforce. Thus although these actors are certainly not against the law in the sense that pirates and money launderers are, they often act in ways that may not be entirely legal or outside existing law.

At the same time, there are also some notable differences between the two cases which exemplify the breadth of security functions such actors perform. The methods employed by anti-piracy PMSCs and AML firms differ considerably. AML firms provide intelligence, software, logistics and other support. PMSCs also offer risk assessment and intelligence gathering services, but mostly fight piracy actively, by providing armed personnel on board merchant ships and escort vessels. The industry for AML services is dominated by a couple of large firms, whereas there are a multitude of small start-ups fighting piracy.

Furthermore, the motivation of the clients varies. Ship- or cargo-owners and insurance companies are potential victims of pirates and have a direct incentive to counter piracy, and thus hire PSMCs. Banks and other financial firms, on the other hand, are usually not harmed by money laundering, and may actually profit from handling dirty money. Claims by banks that their reputations are damaged by association with money laundering are
belied by the fact that nearly every major bank has been hit with a major money laundering scandal, and careful analysis has failed to show any decline in share price or other tangible indication of harm (Harvey and Fau, 2009). However, states have threatened to penalize firms that refuse to play a policing role in this context, and thus banks and others have an indirect incentive to employ private firms to fight money laundering. Thus while the market for anti-piracy services has been a result of state inaction, the failure to provide protection from pirates, the market for AML services is more a result of state action, namely legislating a policing role for private financial institutions. A final difference of note is that there is a relatively well-developed and coherent set of broad, global anti-money laundering standards centered around the Financial Action Task Force 40 Recommendations, whereas the equivalent framework on piracy is much more incomplete and inchoate.

It is this combination of key commonalities, such as the quintessentially transnational character of crime and the growing dependence on private firms to provide a response, and contrasts between piracy and money laundering that explains the utility of comparing these two issues. The fact that, despite these differences, similar actors have arisen at around the same time in response to different types of crimes is suggestive of the role played by common underlying facilitating factors, such as the growth of complex sovereignty
environments. Thus while the similarities between the cases indicate a meaningful comparison between instances of the same type (apples with apples), the differences give some confidence that underlying common causal patterns indicate more general trends.

Rather than constituting a strict hypothesis-testing most-similar case study, the analysis below represents a within-case research design. First, in line with John Gerring’s recent writings on the neglected importance of description in political science (Gerring, 2012), we aim to establish just what global corporate crime fighters are and what they do. This task is made easier in discussing two examples rather than just one. Furthermore, the case studies constitute structured comparisons of causal processes, defined as “a sequence of events or steps through which causation occurs” (Brady and Collier, 2004: 277). Jointly these illustrate the common mechanisms in play and the effects of encompassing contextual factors in each area (see also Goertz and Mahoney, 2012: 184; George and Bennett, 2005: 176-77). Considering anti-money laundering and anti-piracy cases together allows us match the causal processes at work in these instances, and map how broader contextual shifts like the emergence of new, complex sovereign environments have shaped each area.
PART 1: BROADENING THE PMSC LITERATURE AND INTRODUCING THE CASES

We begin below by briefly reviewing the literature on PMSCs to establish how attention to transnational private responses to transnational security threats represents an advance on the current scholarship. We then provide basic information about piracy and anti-piracy PMSCs, and money laundering and AML firms.

Private Military and Security Companies

With a few exceptions (Shearer, 1998; Mandel, 2002; Singer, 2003), academic literature on the rise of PMSCs emerged after the presence of PMSCs in Iraq became increasingly controversial. Much of this literature focuses on the employment of PMSCs in (post) conflict zones and weak states in the Middle East and Africa, and discusses issues such as their legal position, the history of privatized militaries, the emergence of a market for PMSCs, ethical concerns regarding the employment of PMSCs, and the wider implications of privatizing security (Abrahamsen and Williams, 2011; Avant, 2005; Bryden and Caparini, 2006; Chesterman, Simon and Lehnardt, 2007; Feichtinger, Baumandl and Kautny, 2007; Jäger and Kümmel, 2007; Leander, 2003: 264-280; Pfeiffer, 2009).
Significantly, the PMSCs under analysis are mostly involved in addressing armed conflict or the consequences thereof and, even though the companies are based in various countries around the world, their operations have been usually restricted to one specific country, like Iraq.

The neglect of anti-piracy PMSCs and private AML firms may in part be explained by the fact that anti-piracy PMSCs and AML firms differ in some aspects from the companies covered in the literature. They are not part of war efforts or engaged in military conflicts, but are hired to address a specific transnational criminal activity. They are hired not so much by governments but instead by other private businesses. While this is in line with the scholarship on the privatization of policing, there are also significant differences. The privatization of policing literature focuses on the provision of private guards hired by shopping malls, airports or gated communities in Western or selected African countries (Forst and Manning, 1999; Jones and Newburn, 1998; Krahmann, 2010; Prenzler, Earle and Sarre, 2009). Unlike these and other PMSCs active in conflict zones, both anti-piracy PMSCs and private AML firms cross a range of different jurisdictions during their operations; they are inherently transnational.

Armed PMSC guards on board merchant ships, for example, travel between international
waters and various national waters and jurisdictions, while the ship itself sails under the flag of yet another state. Such anti-piracy PMSCs are therefore active in several, at times overlapping, jurisdictions throughout a single operation. The same is true of private AML firms dealing with a variety of corporate entities, national currencies, and financial systems, all of which may bring in to play separate sovereignty claims. Given that anti-piracy PMSCs and private AML firms are hired by private companies and operate across conflicting sovereignty claims, various public institutions have less direct control over them than over state-hired private security providers.

**Piracy and Anti-Piracy**

Even though maritime piracy is an age-old crime, it only re-emerged as an international security concern in contemporary times as a result of a rise in pirate attacks in the Malacca Strait between 1999 and 2005. But the maritime PMSC industry only began to grow in earnest in 2007, when demand for anti-piracy services skyrocketed in the wider Gulf of Aden area. Since 2007, the most audacious pirate attacks have been conducted by Somali pirates in this region. Pirates have hijacked vessels and held them, and their crews, for ransom. In November 2008, for example, the Sirius Star, a new ship worth approximately
$150 million and carrying a cargo of crude oil with a value of $100 million, was taken by pirates in the Gulf of Aden area. While the Sirius Star was released in January 2009 after a ransom of reportedly $3 million had been paid, the hijacking of the super tanker clearly demonstrated the capacity of the Somali sea-robbers to attack ships of any size (Office of Naval Intelligence, 2009; Panti, 2009).

As pirate attacks increased in the Gulf of Aden area, ship owners searched for additional protection. As a result, more and more anti-piracy PMSCs were hired by ship and cargo-owners. While most PMSCs are known for their activities on land, some are also employed to secure commercial vessels, cruise ships, offshore energy installations, and ports. Their specific anti-piracy services include risk assessment and consulting; training of crews or military and law enforcement units; provision of armed guards on board vessels; and the recovery of hijacked ships and cargoes.

In the Gulf of Aden area, anti-piracy PMSCs have been primarily hired to provide armed protection for vessels. In these operations, PMSCs work across a range of jurisdictions during the protection of a single vessel. In a typical example, an anti-piracy PMSC based in Australia is hired by a ship-owner from Greece to protect one of his vessels. The ship is
carrying a crew of seafarers from five different countries and sails under the flag – and therefore the laws - of Liberia. The armed guards board the ship in Sri Lanka. The ship then transits waters under the jurisdiction of several countries, loading and unloading cargo in a number of port states. After the ship leaves the dangerous waters, the armed guards disembark on the high sea or in the jurisdiction of another state.

Examples of such employment of anti-piracy PMSC include the protection of vessels with guards armed with firearms from the Singapore based company Maritime Defence Force, and the employment of the British based firm DRUM Resources, by a German ship-owner. This ship-owner allegedly paid about $50,000 for the protection of his ships by ex-navy personnel armed with non-lethal weapons (Author interview with MDF representative Singapore, 2010; Hans, 2008).

The boom in the demand for anti-piracy PMSCs has led to many new companies being established. Some PMSCs that previously focused on land-based security increasingly offer anti-piracy services. Many of the PMSCs that offer such services are based in the UK, Europe and the U.S., while others have their headquarters in countries as diverse as Australia, Singapore and Israel. Available evidence suggests that the majority of PMSCs operating in
The maritime sector are founded and staffed by ex-military or ex-law enforcement personnel (Author interview, PMSC personnel, Perth, Singapore, Kuala Lumpur, Frankfurt, Hamburg 2004-2012). The rapid establishment of more PMSCs has been possible because it is comparatively simple and inexpensive to set up such an enterprise. Many companies active in the maritime sphere only consist of a few permanent staff, an office and, usually, an impressive presence on the Internet. These companies hire additional personnel and acquire necessary equipment on a case-by-case basis once a contract with a client is signed, which allows the companies to run their business with limited expenses and capital.

The employment of anti-piracy companies is a recent phenomenon that illustrates a significant change of attitude towards these PMSCs. The arming of merchant vessels was previously opposed by governments, the shipping industry, and international maritime organizations. Now, in contrast, they are seen by many as a necessary, if not fully accepted, measure to protect vessels passing through dangerous waters, with more and more ships carrying guards armed with lethal weapons. Significantly, private ship-owners were the first to change their perceptions, and began hiring PMSCs on a large scale, often without explicit government approval (Author interviews, PMSC personnel and ship-owners, Singapore, Kuala Lumpur, Frankfurt and Hamburg 2009-2012). This was possible because
the maritime environment is often under much less scrutiny from governments than land territory.

Subsequently states have taken note and reacted to the rising employment of anti-piracy PMSCs. An increasing number of flag states are in the process of allowing the use of armed guards. Greece, for example, which previously prohibited the use of armed guards on ships, introduced legislation in November 2011 that allows up to six armed guards to work on a Greek flagged vessel (Shipping Herald, 2011; International Chamber of Shipping and European Community Shipowners Associations, 2012). Other countries that had no clear guidelines in place but previously strongly discouraged the arming of ships have also sanctioned the employment of armed PMSC personnel. In the UK, for instance, legislation that UK flagged vessels can be licensed to carry armed guards was approved in October 2011 (BBC News, 2011). Not only are cargo ships sometimes permitted to carry armed PMSC personnel, but so too are other vessels such as cruise ships and fishing boats. Spain, for instance, has since October 2009 allowed the protection of fishing vessels by armed PMSC guards in areas of severe risk.

**Money Laundering and Anti-Money Laundering**
Turning to our second case, money laundering describes the process of obscuring the illicit origins of money derived from other crimes. Though the practice of money laundering is age-old, it was only criminalized as a separate offence from 1986, largely as an adjunct to the U.S. “war on drugs.” The logic of anti-money laundering is that to the extent that criminals’ finances are successfully attacked, both the motive (profit) and the means (working capital) for future crime will be reduced. From its inception, AML has always had an international cast (Zagaris, 1989; Gilmore, 1995).

Instituting an AML policy requires governments to legislate (e.g., create the offence of money laundering) and establish public institutions (e.g., financial intelligence units, described below). But AML policy is critically premised upon delegating major policing functions to private financial firms, especially banks. The delegation of this policing function to private firms has created a market for specialized firms to assist banks with these surveillance and enforcement duties, and hence the rise of private transnational crime-fighters in this area.

Specifically, the key challenge of combating money laundering is to distinguish the
minority of dirty money mingled amongst much larger legitimate financial flows. This function has largely been delegated to banks and other financial firms (Levi and Reuter, 2006). They are charged with the responsibility of establishing the true identity of their customers, the “Know Your Customer” rule. Firms are further responsible for compiling a risk assessment and profile of each customer against which to judge suspicious deviations. Third, financial institutions are responsible for reporting suspicious transactions to the national financial intelligence unit, which in turn sifts and sorts these reports, either investigating directly or deputing to another law enforcement agency (Rider, 2004). Those firms and individuals failing to perform their surveillance duties can be punished by administrative, civil and criminal penalties.

The responsibility to “Know Your Customer” and identify suspicious transactions imposes a substantial burden on the private sector. Under the “risk-based approach,” public authorities expressly foreswear the role of defining money laundering risk for firms (Financial Action Task Force, 2007). As a result, firms are caught in a bind: they must assess risk, they may be punished for failing to do so, but distinguishing clean from dirty money is inherently difficult (Levi and Reuter, 2006; Harvey and Fau, 2009). Faced with the imperative to “do something” in response to AML regulations, private firms developed
in-house solutions. But more and more they rely on other private firms who specialize in helping financial institutions perform their AML responsibilities. Sixty-one percent of European banks and 55 percent of U.S. banks rely exclusively on such commercial risk-assessment software, the remainder combine them with internal procedures (KPMG, 2011: 19). The firms World-Check and the Association of Certified Anti-Money Laundering Specialists (ACAMS) are probably the two most important private AML actors. They are important because both instantiate crime governance processes in mediating between the abstract directions of governments and the day-to-day needs of private financial institutions to comply with these directions.

World-Check offers various software products to financial institutions necessary to fulfill AML requirements (Author interviews, AML Officers, International Banks, Hong Kong, London, and Sydney, 2011, Zurich 2013). According to the rules, firms must know their customers to screen out known criminals and terrorists, and to determine the level of customer due diligence required. To facilitate compliance with these requirements, World-Check offers one product with the names of 500,000 relevant individuals, updated at regular intervals. Similar software tracks and combines the various people, firms and countries that are subject to sanctions by the U.S., EU, UN and other countries and
organizations (there are over 400 separate sanctions lists to be reconciled). Further add-ons provide lists of terrorist organizations and individuals identified by government bodies and international organizations. According to the company itself, 49 of the world’s 50 largest banks use the software, which is also available to smaller firms through the variable pricing model. Underlying their core security function, many of World-Check’s staff are recruited directly from law enforcement agencies, and indeed many government AML bodies have suffered a continuing brain-drain to the private sector compliance industry (Tsingou, 2010: 629; Godefroy, Lascoumes and Favrell-Garrigues, 2012).

Interviews with both regulators and bank employees stress the centrality of World-Check to the practice of anti-money laundering (Author interviews, bank AML officials London, Hong Kong and Sydney, 2011, Zurich, 2013; U.S. Department of Treasury, Washington D.C., 2013; IMF, Washington D.C, 2013). Indeed, the software systems seem to have something of a talismatic quality in re-assuring both bankers and regulators that proper procedures are being followed. National governments and relevant international organizations require that risk-screening software is used, and while they do not directly mandate buying from any one provider, as the established market leader World-Check disproportionately benefits from this requirement. While the various software packages can
be customized according to user’s individual needs, most institutions simply use these products “off the shelf.” The upshot is that by a logic of delegation and default, World-Check sets the specific content of AML policy for many of the world’s most important private financial institutions.

The second example of a private transnational AML group is the Association of Certified Anti-Money Laundering Specialists, ACAMS. ACAMS is a for-profit entity that confers a certification on individuals after they have passed a qualifying exam, and organizes conferences and training workshops. The Association was created in 2001 from another private firm (Global Alert Media), and, like World-Check, it was acquired in 2011 by Reuters Thomson, a Canadian-owned firm operating in over 100 countries.

ACAMS was created at a time when the coverage of the AML regime had grown exponentially. More states instituted AML systems, and the progressive expansion of national laws meant that banks had to do more to stay compliant with regulations by screening for a wider range of crimes (Author interview, ACAMS Trainer, Cleveland, 2009; ACAMS Vice President, by phone, 2012). Beyond banks, hundreds of thousands of
other financial and non-financial firms came to be included within the AML regulatory framework, necessitating re-training staff or hiring new staff with AML expertise. These trends in turn greatly expanded the market for those with AML qualifications, and having an ACAMS certification became a relatively reliable way of communicating one’s credentials in this new and highly lucrative labor market. The cost of certification currently runs at $1670 plus an on-going annual membership fee of $265.

Importantly, the Association’s clientele are by no means limited to the private sector, with officials from regulators and law enforcement increasingly coveting this stamp of approval for their expertise. One interviewee explained how even FBI agents with 20 years’ relevant experience will be considered to be more credible if they have the letters “ACAMS” after their name. One leading figure in the industry referred to it privately as the “must have” qualification (Author interview, American Bar Association, 2012). The Association also trains U.S. Department of Defense personnel. Many of the board members are retired senior government officials. Reflecting these strong links into the public sector, ACAMS refers to itself as a “for-profit public-private” body (Author interview, ACAMS Vice-President, by phone, 2012).
The significance of these practices is that, like World-Check, ACAMS (and its competitors like the International Compliance Association) have been entrusted from translating the very broad national and supranational rules on countering money laundering and the financing of terrorism into the specific practices and techniques applied by banks and other financial firms. As in the case of piracy, through their actions and inactions, public authorities have created a demand for crime-fighters to provide firms with security against money launderers, in large part because state bodies have themselves declined to meet this demand.

PART 2: EXPLAINING THE RISE OF CORPORATE CRIME-FIGHTERS

This section is devoted to explaining the rise of transnational anti-piracy and anti-money laundering firms. We argue that these new kinds of private actors are an indirect and unintended result of new international regulations and states’ expanding sovereignty claims. These trends have seen the emergence of environments with overlapping jurisdictions - reminiscent of the pre-modern idea of heteronomy. Ruggie (1998: 146) defines the medieval European international system as heteronomous inasmuch as it was
defined by “a patchwork of overlapping and incomplete rights of government… inextricably superimposed and entangled” in relations of shared and gradated authority. Though there fundamental differences between the twenty-first century and medieval Europe, it is hard not to see parallels between this chaotic medieval arrangement of authority (at least to modern eyes), and the current situation with regards to shipping and finance.

A further, related parallel is that, as in the past, private agents are today again routinely and openly selling security services. As Thomson (1994) argues, the previously thriving international market made up by the purveyors of private security on land (mercenaries) and sea (privateers) that sold their wares to states and private concerns alike was first delegitimized and then eliminated as the use of organized violence effectively became a state monopoly by around 1900. Thomson sees a close relationship on the one hand between the heteronomous organization of authority and the prevalence of private security agents motivated by profit, and on the other the shift to exclusive Westphalian sovereignty and states’ monopolization of the security function. Although on a much smaller scale, our study finds a similar relationship working in reverse: the decline of an exclusive reliance on top-down state enforcement over maritime and financial commerce has stimulated the growth of private security providers.
The commodification of state sovereignty through the increasing use of Flags of Convenience and shell companies (explained below) further complicate multiplying authority claims while attenuating actual control. Hence, it is not just the lack of resources, but the increasing tendency of jurisdiction and sovereignty claims to intermingle and overlap that has hamstrung states’ enforcement efforts. The varied government agencies have not directly or deliberately created corporate crime-fighters to address these enforcement problems. Rather, the fact that overlapping jurisdictions have out-run state enforcement has created new markets for crime-fighting services, and anti-piracy and anti-money laundering firms have emerged to take advantage of these opportunities.

**State Capacity, Sovereignty Claims, and the Maritime Environment**

Jurisdiction over water areas and maritime assets, including ships, is complex and has changed significantly over time. Indeed, which water areas states are allowed to claim and control and what state control over different water areas entails remains contested and somewhat unclear. Generally speaking, states have since the 18th and 19th centuries tried to control ever-larger maritime areas and thus increase the “territory” that falls “within their
sovereign reach and jurisdiction” (Rothwell and Stephens, 2012: 412).

States initially only aimed to control port areas, bays and estuaries, but this changed with the emergence of the territorial sea as a recognised maritime zone in which states could enforce certain laws and regulations. In the 20th century, state ambition to expand state control over larger water grew apace. With the United Nations Convention on the Law of the Sea (LOSC), adopted in 1982 and coming into force on November 16, 1994, new maritime zones were recognized and defined, including the Exclusive Economic Zones (EEZs) which stretch up to 200 miles from the shoreline. Significantly, not all maritime zones are sovereign territory of the coastal state, with the EEZs being an important example of this (Rothwell and Stephens, 2012: 412,422,428). Waters beyond the EEZs are the high seas and fall outside the jurisdiction of coastal states. The LOSC also endorsed the right of any state to register ships, given that a “genuine link” between the state and the vessel exists, but the nature of the genuine link is not clearly defined. The country of registration is important because, according to LOSC, “(s)hips have the nationality of the State whose flag they are entitled to fly.” A vessel is consequently bound to the laws of the flag state and it is the flag state that is responsible for the protection of all ships flying its colours (UNCLOS Articles 91 and 93; Stopford, 2004). A vessel engaged in international trade therefore has to comply with flag
state and international laws, as well as the laws of coastal/port states when in the waters under their jurisdiction.

This new legal maritime environment complicates state responses to piracy. As Somalia has not been able to tackle the piracy problem off its coast, nations from around the world have deployed warships, often as part of missions sanctioned or mobilized by NATO and the EU (Ehrhar, Petretto and Schneider, 2010: 40-45). However, the area that needs to be secured is simply too vast for contributing states to cover, as pirates have used mother-ships to operate hundreds of miles off the Somali coast. An alternative path is to protect each ship individually by placing armed government personnel on board. Ship-owners in many countries did indeed ask for armed military or law enforcement personnel to be stationed on their vessels. While some countries, notably the Netherlands and France (Author interviews, Navy Officers, Stockholm and La Rochelle, 2012), have used government personnel on merchant and fishing ships, most states have declined to provide this service, either because it is very costly, or because they simply do not have the personnel (Eason and Osler, 2009; Gebauer, 2011).

Yet, the difficulties of combating piracy are by no means just a result of the physical scale
of operations. Instead, overlapping claims of jurisdiction critically affect the efficiency and success of state agencies. First, unless arrangements are made with a flag state, state agencies can only place armed guards on ships flying their own flag. Even here, additional arrangements still need to be made when the protected vessel enters another state’s territory. Second, who can act against pirates depends also on the location where attacks occur or suspected pirate boats are encountered. For example, on the high seas, “any government vessel may board a vessel suspected of piracy as an exception to the otherwise exclusive jurisdiction of the flag State” (Guilfoyle, 2010: 144). More generally speaking, when naval vessels are deployed, protecting ships flying other state’s colors – and therefore having the nationality of the flag state – can be problematic. Third, bringing pirates to trial is difficult. It is often unclear who should bring captured pirates to justice (the seizing state, the victim state, or the coastal state), where the trial should take place and how (and by whom) the evidence should be collected (Guilfoyle, 2010). As a result, a large number of captured pirates are released after their equipment is destroyed.

The problems resulting from overlapping jurisdictions is further complicated by the current system of ship registration. Today, vessel owners have the choice between registering their ship in a national register, which only accepts vessels of its own nationals, or in an open
register, also referred to as Flags of Convenience (FOCs). The main reasons for registering a vessel in a foreign country are economic, with ship-owners able to choose a flag, and with it a set of laws, that is financially beneficial for their companies. The FOC registers, which emerged in their current form between the First and Second World Wars, are consequently popular with ship-owners and include registers from landlocked states such as Mongolia, as well as the two largest ship registries at present, Panama and Liberia (Statista, 2011). Many FOC states do not have the resources or inclination to provide protection for the vessels flying their flag.

Governments’ limited resources and an environment of overlapping jurisdictions have created the private sector demand that has enabled anti-piracy PMSCs to operate and flourish. However, these firms also have to negotiate the same complex legal environment. They have to take not only the laws of the flag state into account, but also those states whose ports and waters armed PMSC guards and their vessels use. PMSCs can either seek official permission from government authorities, bribe officials to turn a blind eye, or operate without approval and hope not to get caught. In rare cases, governments have made arrangements on behalf of PMSCs. Spain, for example, entered into an agreement with the Seychelles, which allows the guards to operate out of the country’s main port of Victoria as
long as weapons are kept by the Seychellois military while on land (Ing, 2011). In cases where other maritime PMSCs have entered the country without such an agreement in place, their weapons have been confiscated by the authorities (Author interview, Seychelles Ministry of Foreign Affairs, Victoria, Seychelles, 2013).

**State Capacity, Sovereignty Claims, and the Financial Environment**

While in the maritime sphere the authority relations that seek to regulate this domain have changed, cross-border finance is actually constituted by authority claims and social relations. Here change has occurred thanks to technological advances and financial deregulation, jointly resulting in the creation of new markets, networks and products, and often a vast expansion of those that already existed. The rise of private AML firms is an indirect result of the gap between law enforcement and regulators’ wish to extend their control into the financial system, and the obstacles to realizing this ambition. This gap has created a demand that AML firms have met. Rather than existing in some extra-sovereign realm, the global financial system in which money laundering occurs is characterized by multiple, overlapping sovereignty claims. For example, a Singaporean subsidiary of a French bank sending criminal proceeds in Swiss Francs to Hong Kong via internet servers
based in the United States could potentially be subject to (at least) five sovereignty claims.

Why don’t states directly address the problem of AML screening and training themselves? Like the solution of naval escorts for merchant ships, part of the reason is undoubtedly cost (Gordon, 2011). A major financial institution, which may be composed of hundreds of separate legal entities spread across dozens of countries, may spend tens of millions of dollars annually on compliance functions, the majority of which is dictated by AML requirements. From a government’s point of view, passing the cost of policy implementation on to private firms is much more attractive than paying for it directly from the public purse.

Yet beyond the cost it is once again the multiplication of sovereignty claims that renders state enforcement so difficult. Large financial firms and markets are inherently global, whereas sovereign authority is segmented, partial and increasingly imbricated with other sovereignty claims. HSBC bank is an example, with its 89 million customers and 300,000 employees spread across 80 countries, processing more than $60 trillion of transactions annually (US Senate Permanent Subcommittee on Investigations, 2012). Like almost every other major international bank, as well as maintaining an in-house Financial Intelligence
Group, HSBC relies on World-Check and ACAMS professionals (Author interview, Hong Kong, 2011).

A parallel with the Flags of Convenience, according to which sovereign affiliation is for sale independent of any substantive connection to the state in question, is the equivalent corporate nationality of convenience under which assets of financial transactions can be effectively “re-flagged” by booking them through a shell company. Such companies change the sovereignty of the funds or flow, and further complicate the jurisdictional questions (Findley et al., 2014). Depending on their specific national laws, different states may look at the same corporate structure and come to different conclusions as to which jurisdiction has claim to regulate the original asset in question. For the system to work at all these claims must be negotiated, arbitrated and at least partially reconciled; in practice, it is generally private AML firms that play this vital role.

In summary, both anti-piracy PMSCs and AML firms emerged because of shortfalls in states’ capacity, but also because they find it difficult to combat transnational security threats in new environments formed when jurisdictions overlap. The fact that transnational crime fighters are active in such environments clearly affects the interactions between these private
security providers and various state agencies – and is consequently a crucial issue in the following examination of how their activities relate to broader theoretical work on authority in global governance, as covered in the final section below.

PART 3: FIRMS, STATES, AND GLOBAL GOVERNANCE

Given that private transnational crime-fighters assume core sovereign policing and security responsibilities, questions emerge regarding the relationship between these private security providers and the state.

The argument here is that rather than the extension of sovereignty and the increasing importance of private security governance being opposed trends, the former has tended to drive the latter. Empirically, this issue hinges on the relationship between the state and these new private actors. Recent work on global governmentality situates these developments in a broader theoretical context, and highlights the general significance of the cases considered here.

Global governmentality helps to explain the particular character private transnational anti-piracy and anti-money laundering governance. First of all governmentality is
distinguished from direct top-down exercises of state power carried out through a definite hierarchy or chain of command. Instead, it is said to devolve and diffuse order-producing and -maintaining practices to a variegated array of agents, extending to companies and individual citizens (Foucault, 1991; Dean, 1999: 16-20; Joseph 2010: 203). This notion is an easy fit with the original insight that gave rise to scholarship on global governance, namely that setting and enforcing rules in a global context is increasingly being done by a wide range of actors beyond the state (compare Rosenau and Czempiel, 1990 with Avant et al., 2010). Helpfully, governmentality also avoids simplistic debates aiming to measure whether states are losing or gaining power or authority. The examples of private transnational anti-piracy and anti-money laundering governance are a close match with these points.

Secondly, rather than the techniques of government removing agency through promoting unthinking compliance with detailed, prescriptive laws and regulations, governmentality inherently depends on actors using their own agency and initiative. Thus Sending and Neumann (2006:651) hold that under this new form of private governance the collectivity of non-state actors has been “redefined from a passive object of government to be acted
upon into an entity that is both an object and a subject of government” (see also Löwenheim, 2008: 259). Private agents autonomously carrying out law and order functions like those discussed earlier again fit in well with this idea of rule.

Lastly, the particular features of neo-liberal governmentality, stressing the centrality of markets, complement the evidence on anti-piracy and anti-money laundering firms here given their for-profit nature and the fact that they are connected and co-ordinated with their clients in shipping and finance through market mechanisms. Clarke (2004), for example, argues that classically government functions are more and more pushed into the market domain. Writing specifically on the transformation of global security governance, Leander and van Munster (2007) similarly explain how governments have taken an indirect, “hands off” approach in allowing for or acquiescing to the creation of new markets for security, in which private agents are responsible both for their own conduct and promoting order more generally. Clearly, anti-piracy and AML firms are profit-driven, and interact with their private clients and even many public agencies through the market.

It is important to emphasize, however, that governmenality complements other forms of power rather than replacing them. Navies still fight with pirates from time to time, states
still imprison people for money laundering. Governmentality overlays and displaces traditional exercises of power, rather than completely replacing them.

How do these three aspects of governmentality (the indirect and diffuse exercise of power, the tendency of non-state actors to become subjects and objects of governance, and the importance of markets), illustrate key aspects of our cases? According to this logic, and taking a money laundering example, the increasing importance of the banks and other financial institutions exercising policing functions does not signal a withdrawal of the state from its traditional functions, so much as a new way through which governance is carried out that reaches farther into society and the economy. Thus de Goede (2009: 108) notes “crime fighting works to authorize a complexity of social actors, including public officials, mid-level bureaucrats, individual citizens, and private companies, to act to make security decisions” (see also Heng and McDonagh, 2008: 553-573; de Goede 2012). The evidence considered below provides a brief indication of this process at work. Significantly, both of our case studies show that even though private transnational crime-fighters may largely operate in line with state interests, control by various state agencies (whether the military, law enforcement, or regulators) over these actors is often patchy or weak, with market
relations between private actors being the primary mechanism of direction and co-ordination.

As discussed earlier, government agencies did not initiate the engagement of anti-piracy PMSCs, but reacted to their increased employment, largely by introducing new regulations that allow the use of armed private guards on board ships flying their colors. The introduction of these new regulations is both an attempt to partially re-establish state control of violence, and a clear indication of a change of state attitude toward these companies. Indeed, governments and international maritime organizations have belatedly authorized anti-piracy PMSCs, as they recognize that these firms make a contribution to secure shipping, and provide a service that is in the interests of states but (in many cases) cannot be provided by state forces. This recognition results, at least to some degree, from the decline in the number of hijackings off Somalia since mid-2012, which is in part attributed to the increased employment of anti-piracy PMSCs that protect individual ships (Economist, 2013).

The introduction of new regulations was necessary because both on the international and national levels such regulations did not exist or were unclear. On the international level,
there are still no binding regulations that specifically address the employment of private armed guards on board vessels. The International Maritime Organization’s (IMO) Maritime Safety Committee recommended in December 2008 that flag states should work with ship-owners to design policies on carrying armed PMSC personnel on ships, a decision confirmed in 2011 (Speares, 2008; IMO, 2011).

Until recently, however, few flag states had specific regulations for the employment of armed guards in place, and only some countries, including Greece and Japan, prohibited the arming of merchant ships (International Chamber of Shipping and European Community Shipowners Associations, 2011). Driven by the increased employment of anti-piracy firms and accounts of controversial PMSC operations, many flag states have recently made efforts to regulate these firms. Overall, flag states have approached the regulation of anti-piracy PMSCs in two different ways. First, some states continue to avoid the establishment of stringent regulations and simply declare that the employment of armed guards is the responsibility of the ship-owner or the master of the vessel. This approach seems to be taken mostly by FOC states and is in line with the generally lax approach to security regulations of many FOC countries (International Chamber of Shipping and European Community Shipowners Associations, 2012). The second approach, which seems to be
taken mostly by states with national registers, is to introduce new regulations that aim to provide oversight and control over anti-piracy PMSCs.

Yet despite increased government control over anti-piracy PMSCs, many loopholes still exist. These include the difficulties of controlling the actual activities of anti-piracy PMSCs, as well as the ability of ship-owners to re-register their vessels in countries without (stringent) regulations. PMSCs therefore continue to operate with considerable autonomy, even if some of their activities – such as the protection of vessels – are in fact in line with the interests of many states. Furthermore, even if clear flag state regulations exist in regard to the employment of anti-piracy PMSCs, international laws and the laws of coastal and port states also need to be taken into account if PMSC operations take place in areas under their jurisdiction.

Like that of PMSCs, the relationship between the state and firms assisting with anti-money laundering sees these firms acting broadly in line with state interests, but often outside public agencies’ control. One view of these firms is that they are merely the faithful servant of states. These public authorities set the rules and issue commands, which are then implemented by general financial firms and private concerns like World-Check. Yet this is
to understate the importance of private actors. Their crucial surveillance and examination role serves to set the specific boundaries of acceptable risk and conduct in financial relations. The training and accreditation functions performed by ACAMS similarly set and inculcate general notions of correct conduct. They produce a technical expertise that can be both sold as a commodity on the labor market, as well as being used as a technique of regulating both the agents themselves and those they deal with.

Thanks to their role in mediating the multiple sovereignty claims in play, AML firms have become de facto rule makers. Because of their international nature, large financial institutions must reconcile different national laws and regulations, as well as the directives of various regional and global international organizations. For example, in the case of Iran, the private firms like World-Check which calculate financial crime risk for international banks assigned such a negative risk rating to the Islamic Republic as to institute a virtual financial blockade (World-Check, 2011). This was the case even in countries that had little desire to impose economic sanctions on Iran (Author interviews, AML Officers, International Banks, Hong Kong, London and Sydney, 2011). In this sense, the money laundering and terrorism risk ratings compiled by World-Check are akin to the credit ratings of firms like Moodys and Standard & Poors (Löwenheim 2008).
Like World-Check, ACAMS has wide latitude in setting the standards upon which its certification depends, and thus in determining how the broad principles of international AML standards are set in practice. States have created the demand for credentials in this area by mandating that Money Laundering Reporting Officers receive AML training, but they do not specify who should provide it, or even the particular contents. Thus although it is international public standards that define that there should be private sector representatives in the front-line of the fight against money laundering, it is private associations like ACAMS that determine what these representatives are actually doing.

Anti-piracy PMSCs and AML firms are playing an increasingly important role in security governance and are thus exercising a key state prerogative. State sovereignty, however, is by no means absent. Indeed it is waxing rather than waning, with both transnational crime-fighters active in environments that are structured by multiple, sometimes competing sovereignty claims. Governments have in both cases bestowed at least some authority on the private security providers, as these companies have come to be seen as helping to enforce state claims that states themselves cannot.
CONCLUSION

This paper has argued for the significance of private, for-profit transnational crime-fighters in global security governance. Because these actors have previously been neglected, the struggle against cross-border crime has been mischaracterized. Rather than efforts to counter piracy and money laundering being a struggle of state authority against private transnational actors, it is increasingly a contest between two different kinds of private transnational actors, both motivated by profit. Attention to the role of private security providers is nothing new. What is more original is attention to the activities of such firms in maritime and financial environments, and the focus on transnational private actors responding to transnational private threats.

Despite the emphasis on private actors, the kinds of globalization represented by the responses to fighting transnational crime covered in this paper signify an evolving state sovereignty rather than its obsolescence. The relevant developments range from increased claims to control larger water areas, the introduction of the Law of the Sea Convention, and greater use of the internet and electronic financial networks. But the more these extensions of sovereignty overlap, the more private actors tend to adapt and mediate these claims. These developments also mean a bigger gap between states’ authority claims and their ability to control these new domains. Corporate crime-fighters act in line with basic state
interests, but thanks to overlapping sovereignty claims, delegation, and the relative novelty of this kind of actor, they often escape the control of particular government institutions. In this context, rather than global markets constraining states, states have indirectly helped to create new markets. Corporate crime-fighters arise, proliferate and prosper in line with these state-mediated market incentives. Recent literature on global governmentality provides a broader theoretical context to underline the more general significance of these two cases in arguing that governance is shifted away from the state, toward the agency and initiative of private actors responsible for shoring up order through their market relations with other for-profit firms.

States’ ability to exercise direct control in line with their claims of sovereign authority may be declining, but only in a relative sense that their authority claims are expanding at a faster rate than their powers of implementation. States and private actors are both expanding their authority as they seek to regulate more and more of the political, economic and social world. Global corporate crime-fighters exemplify this key trend in world politics.
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