

Privatization of Maritime Security Surveillance and Enforcement: A Compromise of State Sovereignty

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Abstract

One of the most vital engines motivating global economic progress and development in recent times is the freedom to participate in seaborne trade the world over. Moderately unhindered right to traverse the world's ports is an essential component of the global economic success and development story. In the like manner, the serious threats posed to global order by international terrorism, piracy, oil theft and bunkering, to mention but a few, have given rise to overriding and all important national security concerns among the port states. In response to these challenges, some states have increased their strategy with the establishment of maritime security enforcement forces like the Coast Guard in U.S, the Malaysian Maritime Enforcement Agency (MMEA) in Malaysia and the Nigerian Maritime Administration and Safety Agency (NIMASA), to address the problem. However, the Nigerian government has now changed the policy and firmed-out enforcement and surveillance activities in the entire Nigerian maritime domain to a private security company. This paper argues that the issue of maritime enforcement and surveillance goes beyond the activities of private individuals and besides, the policy usurps the constitutional powers of the legislature which established NIMASA through an Act of the National Assembly as well as the responsibility of the navy. The paper also maintains that the concession of maritime surveillance and enforcement to a private security company is a total misunderstanding of the use of private security companies in maritime practice and by so doing it amounts to a compromise of national sovereign in the hands of a few private individuals.

Key Words: Privatization, Maritime Security, Surveillance and Compromise.

1. Introduction

It is not deniable that seaborne trade is significant in world commerce. The international shipping industry has been playing a major role in world trade and economy for a very long time. In fact, it has been asserted that 95% of the world's freight is being transported through maritime trade. In the United States of America for example, more than half of all importation of six million containers are through sea with over two billion dollars worth of cargo entering ports daily (Fox Jr., 2006). The above estimation almost represents the impact of the shipping business in all the countries with advantage of the seas like Nigeria, Malaysia, Indonesia, Australia, Brazil to mention but a few. From this, it is obvious that Maritime industries contribute in no small measure to the world's economy.

However, like any other business enterprises, the issue of asymmetric security threats has been a serious challenge to the world's fleet. These range from high seas robbery, piracy, terrorism, oil theft, etc which in the long run adversely affects the progress of the international economy. Flowing from this, apart from the provision of security personnel designated to maintain peace and order as well as the enforcement and surveillance in the high seas by various governments of coastal states, shippers have also been engaging the service of the private security companies as guards to their ships in the cause of navigating through seas. The services often rendered by private security companies to shippers include safeguarding the ships and crew, tracking of ships, recovery of hijacked ships, negotiation for shippers in case of hostage, etc. Countries like Australia, Malaysia, Indonesia, Singapore and even the U.S are against the strategy on the basis that the policy would aggravate the volatile ocean - like the Straits of Malacca (Liss, 2007). Daniel L. Pines maintains that it would bring about proliferation of weapons in the U.S. (Pines, 2012). In its supposed bid to follow the practice that is mainly adopted by shippers, the Nigerian government engages the service of a private security company for the purpose of maritime enforcement and surveillance, a move that is antithetical to the spirit of the establishment of the navy and probably the first world ever.

2. 1982 UNCLOS and Coastal State Maritime Surveillance

Generally speaking, a coastal state is jurisdictionally competent and has the exclusive right to undertake surveillance and enforcement activities within its maritime domain in pursuant to the Law of the Sea Convention (Article 2) and this may extend up to 12 nautical miles (nm) from the baseline. In the exercise of such sovereign right, a coastal state enjoys the following exclusive right with regard to undertaking monitoring and surveillance activities:

- i. the economic exploitation and exploration of its Exclusive Economic Zone (EEZ) (these activities include exploitation and exploration of living and non-living marine resources) which may extend up to 200 nm from the baseline; and
- ii. the exploitation of the sea bed and sedentary species on the continental shelf (this may possibly extend beyond 200 nm from the baseline in certain circumstances) (Article 56).

It needs be emphasized that all states, by implication, have rights to undertake surveillance and monitoring in the high seas which the coastal state must give due regard to (Article 56). However, other states must not interfere with the exercise of the freedom of the high seas by vessels flying a foreign flag. The above supposition and exercise of power of sovereignty gives coastal states jurisdiction to legislate domestic law for the purpose of carrying out surveillance, monitoring and enforcement activities within its maritime domain. It is generally observed that since the end of the World Wars, the issue of traditional maritime threats which is a major role of the navy has greatly reduced the world over, but non-traditional or asymmetric threats are on the rise yearly. On the strength of asymmetric threats arising from maritime waters affecting shippers, states like the United States, Singapore, Malaysia, Nigeria, Australia, etc. have established coast guards for surveillance and monitoring activities. Specifically, Malaysia established the Malaysian Maritime Enforcement Agency (section 6, of the Malaysian Maritime Enforcement Agency Act, 2004 – ‘MMEA Act’) while Nigeria on its part established the Nigerian Maritime Administration and Maritime Agency (section 1, Nigerian Maritime Administration and Safety Agency Act, 2007 – ‘NIMASA Act’). These two Acts empower the established agencies to carry out surveillance and enforcement of law in regard to activities at their respective maritime domains with the assistance of other security forces. This paper deals with the changing dimension in the case of Nigeria with regard to privatization of the same.

3. The concept of privatization

Historically, privatization appears to have emerged as a counter action or movement against the development of government in the Western world on the one hand, and dissatisfaction with public service delivery strategies, on the other (Eteyibo, 2011). This postulation is a move that has mainly given rise to two different meanings of privatization. Firstly, privatization is said to connote “any shift of the production of goods and services from public to private” or a “shifting into non-governmental hands, goods and services that are being produced by the government” (Bendick Jr. 1989). Secondly, privatization is conceptualized as a paragon shift of activities or control from the government to the private sector (Eteyibo, 2011). Hence, the government is divested of the control and ownership, thereby making the investors to assume control and management of such enterprises, although the literature often conflict on the concept of privatization.

Interestingly, it has been asserted that privatization is a nebulous and incomprehensible idea that evokes serious political reactions. No wonder that furious response often expressed to the concept is largely due to both the political and ideological foundations of the concept. Sometimes, response to the idea of privatization in a given jurisdiction is determined by economic and political position in the world’s economy. This is because where in the world view, privatization would affect economic development, the response is likely to be against such arrangement by a state government (Eteyibo, 2011). It is against this backdrop that a scholar observed that the “more dependent a nation is on foreign investment, the greater the probability that privatization will raise the prospect of diminished sovereignty and excite the passions of nationalism” (Starr, 1989). It is no doubt that such passions in certain instances are mixed with issues of national security as the case examined in this paper. Privatization of maritime monitoring and enforcement to a private individual through his company calls for many questions than answers.

3.1 Privatization in Nigeria

As it was the case with most developing countries, Nigeria as a country began its privatization programme in the late 1980s with the main objectives of attracting more investment, opening up the country's economy to international market forces, attaining macro-economic stability, promotion of economic growth, building a broader tax base system, reducing the nation's fiscal deficits, subsidies, public sector borrowing, to mention but a few. The committee for the implementation of the privatization process was inaugurated on 27th August, 1988 and was vested with powers to supervise and monitor the implementation of the privatization and commercialization programme. This committee was mandated to privatize 111 public enterprises while 34 were to be commercialized. Although the activities of the committee were later truncated, it had succeeded in privatizing 88 enterprises (Eteyibo, 2011).

The above process of privatization regime continued to proliferate when President Olusegun Obasanjo announced the desire of the Federal Government of Nigeria to divest through privatization and commercialization almost 100 state-owned enterprises in the area of manufacturing, production, infrastructure, financial sectors, etc. which include sectors like cement, machine tools, vehicle, sugar mills, telecommunication, ports, power, airways, etc. While one cannot deny the obvious that some of the privatized enterprises like telecommunication, hotels, etc. were successful, a substantial number of them like power supply, oil marketing and refinery, air transport, vehicle assemblage, etc. could not make it as they have been vacillating thereby subjecting the populace to a situation of helplessness. Up till the present moment, apart from buying at exorbitant prices, petrol is still unavailable in Nigeria and Nigerians cannot boast of 2 hours uninterrupted power supply in a day. All these have greatly affected the economic well being of average citizens. Although, throughout the gamut of the privatization process exemplified above, port security monitoring and surveillance was never part of the arrangement and in fact the government in its effort to ensure adequate maritime security and safety established the Nigerian Maritime Administration and Safety Agency through an Act of the National Assembly (NIMASA Act, 2007). However, in what appears self serving and a way of satisfying political cohorts, the government has in recent times privatized monitoring and surveillance in the maritime domain to a private security company.

3.2 Maritime Security and Privatization Galore

It is not an understatement to state that it is counterproductive for a nation to be pursuing or embarking on privatization for the sake of privatization. Undisputedly, developed nations might adopt it as a matter of policy but the same is dicey for developing nations whose teeming population are wallowing in abject poverty. Privatization as a policy may prove to be a tremendously effective mechanism for economic growth. It is imperative that other non-market variables like national security (maritime security, in this instance), enforcement and surveillance are considered in evaluating whether a given nation should privatize its public utilities and indeed the extent of such privatization. The principles and characterizations of maritime security's privatization must not assume an awry dimension of the peculiar political and social problems confronting developing economies like Nigeria. For this reason, the Nigerian government as a matter of urgency, need not throw caution to the winds in divesting its public enterprises like maritime security. It has been argued that privatization generally may be a good policy. Conversely, there is a strong case that it could be made inappropriately as in the case of moral inappropriateness (Eteyibo, 2011) of privatizing maritime security to an ex-militant. Therefore, it is axiomatic that privatizing a public enterprise which offers thousands of citizens, employment opportunities (this, without even considering the security implications) is socially unjust.

The principle of social justice creates an obligation on the state to promote a level playing ground for every citizen to maintain a social minimum for his living. It is a requirement that the government should pursue economic and social policies that promote a meaningful and worthy quality of life to every citizen. These obligations almost have no limitation because it places enormous responsibilities on the government and limits what the government could do with public resources. Hence, the idea of giving a huge amount of money to a crony in the name of security surveillance in the maritime domain is baseless. It goes without saying that the government is under obligation to use public resources and funds justly, fairly, and judiciously. This means that the principle of social justice prohibits the government from divesting state-owned enterprises as long as this undermines the general interest of its citizens.

4. Privatizing Maritime Security: A Compromise of State Sovereignty

It is not an exaggeration that the level of insecurity in the maritime domain is on the rise despite high deployment of the navy. For example, the Arabian Peninsula and Somali-sourced piracy off the Horn of Africa and the Gulf of Aden remain problematic regardless of unprecedented presence of navy forces. This is because of all 439 attacks that occurred at the high seas in 2011 alone, 236 reportedly happened in the African vicinity and this represents 53% the world over (International Maritime Bureau, 2011). Also, there was economic loss to shippers in 2011 as a total of US\$159.62 million was paid as ransom to secure the release of 31 ships hijacked by attackers, (The vessels hijacked include Irene SL, a Greek flagged vessel and Samho Dream, a South Korean oil tanker) this apart from US\$12 million which was paid for the release of M/V Zirku (a Kuwait oil vessel) that was held for 73 days. Notwithstanding the record and economic loss, privatization of maritime surveillance poses a lot of danger. The commutative of the existing arrangement is between shippers and private security companies and it is not the government that engages the private security companies for monitoring and enforcement of the law in the maritime domains.

It is observed that the role of private security companies does not involve enforcement of the law and surveillance activities at all as the case in Nigeria's situation. Despite the engagement of these private security companies by shippers, Southeast Asia governments, International Maritime Organization (IMO), etc. are strongly opposed to the activities of private security companies in their maritime domain as this was considered likely to escalate the already volatile region (Liss, 2007) and the same thing is applicable in the U.S. due to the fear of proliferation of weapons (Pines, 2012) . According to them, private security companies carry weapons in the course of safeguarding the ships of their hirer based on the agreement between them and where shoot out ensues between them and pirates, it could be disastrous. More so, the exigency of weapons carrying by private companies brings about infiltration of the region with weapons thereby threatening their sovereignty over the straits.

In fact the stand of the federal government of Nigeria on the issue is worrisome. Maritime surveillance and enforcement have been firmed-out to Global West Vessel Specialist Agency (GWVSA), a private security company owned and controlled by Chief Government Ekpemupolo (a.k.a Tompolo), an ex-militant in Nigeria whose antecedent ranges from oil bunkering to kidnapping of expatriates, to mention but a few. The perspective of engaging a private security company for maritime security has been misunderstood and misapplied in Nigeria. Private security companies in the maritime domain is not a new phenomenon because private companies like Glenn Defense Marine (Asia) was established as far back as 1946 (Liss, 2007). The emergence of private security companies in recent times in the region was a sequel to the 9/11 2001 attack. Even still, what is obtainable in some parts of Asia and other jurisdictions like Australia could not be regarded as privatization of surveillance and enforcement of maritime security. It is on record that Southeast Asia homes important sea-lanes like the Straits of Malacca and criminal activities like piracy, hijacking, kidnapping, etc. have brought about security concerns to governments and shippers. For these reasons, shippers who wish to increase their security in the cause of traversing seas engage the services of private security companies to avert any ensuing fraud and other maritime insecurity. For example, Exxon Mobil was attacked in 2001 and the company was forced to close down business for four months. The same thing goes for Supper Ferry 40 in which more than 100 people lost their lives to an attack (Liss, 2007). Some private security companies like Hart is based in the U.S and the U.K and some of them do not even have permanent staff, hence shippers' client based agreements are the fulcrum of their operations. Some of the companies are owned by ex-military personnel unlike the Nigerian ex-militant. The private security companies render services like tracking of their clients' ships, training of crew, provision of security personnel to escort ships, investigation and recovery of missing or hijacked ships, negotiation with attackers in the case of kidnapping and hostage of crews, etc.

The privatization of maritime surveillance and enforcement to a private security company is not the solution to maritime and port insecurity, rather the government needs to undertake expansion and modernization of its maritime agencies. It has been maintained that the Navy as a government agency would have essential roles to play in safeguarding the nation maritime zones and should therefore device a strategy to increase security especially with regard to traditional security threats, while internal security should be the business of the police (Bateman, 2005). The questions that need to be asked with respect to privatization of maritime and port security in Nigeria are captured as follows:

1. Since the government has privatized port and maritime surveillance and enforcement, what would now constitute the constitutional roles of the Nigerian Navy and the likes?
2. In the case of traditional maritime security threats from other states, what roles can a private outfit play to subvert the threats?
3. Is a private security outfit capable of protecting national security arising from port and maritime borders?
4. Is it wise and reasonable for a government to enter into a concession in regard to its national security with a private individual?
5. Would privatizing maritime security in the hands of a private individual not amount to a country compromising its sovereignty to such individual?

The scheme of a private security company controlling the entire maritime domain is a compromise of state sovereignty and would worsen the instability witnessed in the maritime domain. If the policy embarked upon by the Nigerian government is allowed to continue, it will not only have adverse effect on the shipping business in Nigeria as the spate of asymmetric threats is likely to increase, it would also affect the economy of the nation as well as aggravate international instability. Expectedly, the private security company will not be able to withstand the exigency of maritime security thereby making the domain to become the center for trade of illicit drugs and arms, safe havens for terrorist organizations and breeding grounds for bio-terrorism activities (Ottaway and Mair, 2004 and Patrick, 2006). The Nigerian government needs to learn from the experiences of countries like Australia, United States of America, Malaysia, etc. that have appeared more bounded with seas and whose maritime domain is much higher. The government must also avert seeing security and surveillance in ports and the maritime domain as a way of compensating political cronies as this will spell doom for the entire country, because it is a matter of national security that must not be compromised.

5. Engagement of a Private Security Company in the Maritime Domain: A Depiction of a Weak State

It is on record that at the end of the Cold War, securitization of the African continent took a new dimension that was characterized by a large number of specialized private companies rendering police and military services that were hitherto the preservation of the state (Ndlovu-Gatshen and Ojatorotu, 2010). This development represents the existence of a terrain of African weak regimes thereby changing the focus of state leaders' vis-à-vis their responsibilities (Ndlovu-Gatsheni S.J and Ojatorotu, 2010). Customarily, the means to violence and recourses are within the exclusiveness of the state and this differentiates it from other social formations. What is even more worrisome is that privatization of security happened in accordance with traditional mercenary activities taking a corporate form and fishing in the troubled waters of Africa.

The 9/11 terrorist insurgence specifically had far reaching impact on the global security architecture and shaping of global politics. Rita Abrahamsen and Michael C. Williams while making their report on Sierra Leone noted that:

“While the recent conflict (1991-2002) provides the immediate context for the expansion of private security provision, the use of private security has a long history in Sierra Leone. As early as 1936 the Sierra Leone Selection Trust, a De Beers subsidiary, was allowed to field a private ‘security force’ of 35 armed men to patrol its diamond concession in the Kono area. Much later, in April 1995, the Strasser government hired the South African Executive Outcomes to fight the Revolutionary United Front (RUF), an arrangement that was continued by President Kabbah until January 1997. Both the extraction of Sierra Leone’s mineral wealth and the survival of its elite have thus historically been crucially dependent on the involvement of international private security actors, a relationship which continues, albeit in different ways, in the current post-conflict situation.”

Ironically, the issue of maritime monitoring and surveillance by a private security company appears to be an extreme displaying of a weak Nigerian state but what its weakness requires is not enforcement and surveillance of maritime sovereignty by political cronyism, hence the humanitarian rehabilitation in this regard will spell doom for the country. This kind of arrangement has been said to be a dangerous phenomenon if conceptualized from a security perspective. Therefore, the idea of a private security company carrying enforcement activities in the maritime domain is not more than a survival technique.

Taking a cue from the United States, much of the debate in recent times over law enforcement privatization has been centered on prisons and from the information available from the Department of Justice, approximately 1.5 million prisoners or 7% of the total prison population is serving different sentences. The supporters of Rick Scott, the Florida' governor, believe that privatization has the benefits of reported cost savings outweighing the possible limitations but critics have pointed out that privately run prisons reduce essential services to inmates so that they can maximize profits and in some occasions similar to "a historically racist practice of the old Confederate South". (Neighborhood watch programs)

6. Conclusion

Privatization no doubt, as a policy, might be somewhat good for developed nations but the concession of the entire maritime domain to the control and monitoring of a private security company poses danger and it is a compromise of state sovereignty. It has been established in this paper that the Nigerian situation is informed as a way of satisfying political cohorts because it has not been done in the best interests of the public. It has also been shown that privatization does not always lead to cost savings or better services. In some cases, private firms have had significantly higher cost overruns than government agencies in the performance of services. In other instances, private firms have performed work that has been criticized as being grossly inadequate. Privatization of the Nigerian maritime domain has been shown as ill-intentioned and inherently inimical to good governance and it has been faulted both, in principle and in practice.

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