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Chair of Security Studies

PRIVATISING SECURITY SERVICES:
THE EFFECTS OF A PHENOMENON ON ITALIAN MARITIME SECTOR

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«No se llega a hacer ninguna obra científica seria, ni descubrir nada, si no se trabaja intensa y prolongadamente. La suerte ayuda a los que la merecen por su preparación y su laboriosidad. Las obras geniales son frecuentemente el resultado de una larga paciencia»

Bernardo Alberto Houssay

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INTRODUCTION

The purpose of this dissertation is to analyse a phenomenon which has been of great interest in the recent international debate over security. Such phenomenon is the provision of security services by private specialised companies, which has been representing both a challenge and an opportunity in a field for a long time completely managed by sovereign States: the monopoly over coercive force. The emergence of these new international actors, especially in the last two decades, determined a lively debate over the opportunities, dilemmas, dangers and possible evolutions that the national security field may undergo in the near future. Due to their peculiar features, and the wide-ranging consequences of their appearance, the Private Security and Military Companies and their activities have been analysed by a large number of specialists and scholars under an equally large number of perspectives.

In order to provide a detailed, but at the same time comprehensive overview of this phenomenon, the following dissertation will analyse security outsourcing on a general level at first, subsequently focusing on its effects on Italy and the way the country perceived and reacted to it. Particular attention will be paid to the effects private security sector has, has had and may have in the country's maritime sector. The reasons behind the choice of these two particular focus points will be extensively explained in the dissertation, but may be summarised in the importance the maritime sector has in the Italian peninsula; the fact that Italian private security companies recently experienced a remarkable evolution in terms of capabilities and potential competitiveness on the international level; and the great number of challenges a sensitive field such as the safeguard of national assets abroad presents to the security policymaking field.

Being security services outsourcing in the Italian maritime sector a litmus test for the possible effects of the phenomenon on a larger scale, the dissertation will start with a brief historical overview of the way the market of private security evolved through the ages. Indeed, a wide number of ancestors of the modern security companies and their employees may be found throughout history, as well as an equally important number of strategies and solutions political actors such as empires, kingdoms and modern states implemented in order to exploit, discipline or even arrest this phenomenon.

After a detailed portrait of what private security market and its actors were in the past, the third part of the chapter will focus on the historical, political, economic and social

reasons behind the evolution of the mercenarism phenomenon into its current form: the Private Military and Security Companies. This will not only provide a useful instrument in order to understand the peculiar strategic and financial features the phenomenon itself has nowadays, but also allow a comparison between the features mercenaries and PMSCs may or may not share. The reason behind a dual-track descriptive and comparative approach lies in the fact that the two phenomena have been often hastily superimposed even within the international community, hindering the process for a deep understanding of the latter, and therefore making the attempts more difficult in regulating it efficiently.

Indeed, both past and present regulatory attempts which have been made by international and supranational actors, and their efficiency, will be analysed in the second chapter. Starting from a brief evaluation of international laws' efficiency in disciplining the phenomenon through ad hoc dispositions, the chapter will analyse some of the international soft law instruments which have proven to be most accurate and effective in tackling the PMSCs emergence: the Montreux Document and the International Code of Conduct. The chapter will also provide an extensive analysis of the positions and the policies chosen by two of the most important international actors: United Nations and European Union, which are both currently developing a large number of political and judicial instruments over this new issue of the international security field.

The third chapter will be divided in two parts: the first one will provide a data analysis about the importance of the maritime cluster in Italy, its value within the country's economy and its exposure to the piracy threat, together with a comparison of both the data sets with other Member States of the European Union. This very data and comparisons will provide useful starting points for an extensive analysis of the policy and legal framework Italy has developed in order to face the piracy phenomenon and its effects over the country's commercial fleet. The evolution of the norms, and their current form will be the core of this part, as Italy has approached the piracy phenomenon, and the possibility to rely on private options for the safeguard of its commercial assets with a large number of solutions and strategies, which presented over time both strong and weak points. Indeed, a brief comparison between the military and private options provided by Italy within the counter-piracy framework will close this chapter.

The fourth and last chapter will revolve around the possible future strategies Italy could follow in order to implement, through a private or public path, the efficiency of its

response to security needs issued by its most relevant national actors. Those are shipping companies, its Defence sector and its emergent private security sphere, which attempts to become competitive on both the domestic and the international market. In order to structure a short set of reasonably foreseeable solutions, which will close the dissertation, the chapter will provide a detailed comparison with the normative strategies adopted by Great Britain. This country presents such a number of differences and similarities in respect to Italy that it can be a useful benchmark to test the appropriateness of possible future strategies. In the chapter, a part will be also dedicated to the most recent and eminent opinions over the private security issue in Italy, which can be safely considered to be an authoritative contribution to the thinking over said strategies.

CHAPTER ONE

SOLDIERS FOR HIRE: A BRIEF HISTORY

1. Introduction

The privatization of security services is not a recent phenomenon. Indeed, it could be possible to say that entrusting private subjects with duties variously linked to the military area is a practice almost old as war itself. History, chronicles and literature, as a matter of fact, trace the evolution of a field which developed peculiar social, political and economic traits over time.

During the centuries preceding the Peace of Westphalia (1648) a large number of empires, nation-states and other regimes and political enclaves preferred the deployment of military forces not belonging to their direct jurisdiction over those of their own. The practice of contracting particular tasks to non-national military experts against payment of a fee spread and consolidated in numerous places and ages for equally numerous reasons.

2. Historical Analysis

2.1. Ancient History

Pharaoh Rameses II hired soldiers who did not come from the Egyptian Empire as his own personal guard. Athenian general Iphicrates always complemented the ranks of his fellow countrymen with Thracian infantry, to the point he institutionalized their presence in Athens' army, until Thebes, Argo and even Sparta followed his example.

Alexander the Great employed Persian infantry and cavalry in crucial battles, paying them to share their techniques and expertise with his men. Carthage counted many foreigners among its troops, ultimately collapsing under the burden of their cost, but even its defeater, the Roman Empire, capitulated against Odoacer, a Hun at the head of an army composed by hired Germans.

2.2. Middle Age

At the time of its height, Byzantine Empire's elite force came from Normand. Even more, in 1100 a. D. England, King Henry II developed a special taxation system in order to

afford Swiss troops, in a fashion that was so widely appreciated and imitated that actual “for hire” armies spread throughout the whole European continent in the next centuries.

Those armies became so crucial, empires depending on them, that they eventually grew uncontrollable, unleashing their violence even during peace periods. Also their leaders, improving effective contract and credit systems and achieving brilliant military results, became so powerful and bold to the point that they could siege and blackmail entire cities, as John Hawkwood’s story tells us. The dismissal of the last “military businessmen”, sometimes violently as happened with Albrecht Von Wallenstein, occurred at the end of the Thirty-Years War, corresponding to the almost complete disappearance of the military privatization practice.

2.3. Modern History, Soldiers of Mis-fortune

The reasons behind this change were many and sometimes linked to the signing of the Peace of Westphalia in 1648, at the end of the aforementioned conflict. The spread of the national sovereignty system, and the subsequent necessity for exclusive political control over armies as a core feature of the newborn *entes superiorem non recognoscentes*, was one of them. Monopoly of force was considered to be crucial for a state in order to protect its own internal affairs and interests, as its dispersion had proven in the past to be highly detrimental for this latter issues.

Further factors which contributed to portray the “totally national” choice as more reliable than the “partially private one” may be found in material changes which occurred in XVII Century Europe, such as the growth of population and the evolution of military tactics, with the use of firearms on a large scale.

The new strategic options, as the deployment of detached troops, gave a new meaning to the importance of soldiers’ national and political identity over their wish for profit. More in general, we could say that besides internal cohesion, patriotism could have made state militias more wishful for victory and less likely to be demoralized, becoming a key element of the new paradigm.

While it is true that citizens’ patriotism became fundamental, their efficiency as national army men did not follow as an immediate and natural consequence. France experienced a vast number of desertions, at the point that historical records tell about generals being murdered by their own volunteer troops. The empire also faced the necessity to deploy

men with the sole purpose of tracking and reinstating those who tried to escape conscription, which was in the meantime adopted in order to meet the needs of the Army, which was dramatically decreasing in numbers.

Indeed, along with France, in countries such as Great Britain, Russia and Prussia was introduced the possibility to avoid the conscription's duties by paying a special tax. The fact that the backbone of the armies was composed by the poorest social classes, suggest us that Peter Paret was right when he wrote «Everywhere men were alike in rejecting the ethical imperative of military service that was held out to them by party propagandists, army reformers and political theorists»¹.

At the same time, armies entirely composed by a country's citizens as the French one, were being defeated by others like the one General Wellington led, which counted Portuguese, German and even French soldiers for hire.

Nevertheless the use of private alternatives over national military forces continued to drop, to the point the former became almost absent for the next centuries. The reasons behind this trend may be found elsewhere aside from military control or economic issues, namely in the concept of *international reputation*. It is important to underline, at this point, that all of the problems military outsourcing involved, this last included, contributed to make it as a less favourable option, if not a problem, until the last decades.

In her “Mercenaries: The History of a Norm in International Relations” Sarah Percy points out that «The decision to turn to citizens to staff armies was a moral as well as a practical decision. When states reformed their armies, the reason a citizen army seemed preferable was in part because it was understood to be morally superior to an army containing foreigners, even though there were few practical reasons why foreign officers if not foreign soldiers could not be retained. A strong citizen army came to indicate something about the state for which it fought. If citizens were willing to die for their state, it suggested that the state was a powerful and glorious entity that took care of its people, who returned the favour»².

As a matter of fact, many states developed national armies as a part of their identity-shaping ideology, in a fashion that could have made the deployment of foreign troops

¹ Paret, P. (1966) *Yorck and the era of Prussian Reform*, Princeton University Press

² Percy, S. (2007) *Mercenaries*, Oxford University Press

contradictory. At the same time, the spreading of this practice strengthened the perception of foreign troops for hire as a threat for states, a perception which anyway was never soothed.

During the American War of Independence, in the Declaration of Independence the enlistment of foreign troops performed by Great Britain was explicitly described as a “barbaric behaviour” and «totally unworthy the Head [sic] of a civilised nation»³.

It seems quite ironic to consider that the newborn United States was hesitant in adopting even a permanent army, as it was believed that professionalized soldiers only fought for their own personal gain, while the country is the same that nowadays employs the largest number of private military experts. When the Federal Republic developed a military professionalization system, the perception of the military service as an essentially moral duty persisted to the point mandatory conscription was not foreseen.

Finally the practice was abandoned even by European countries, the last being United Kingdom -which also formed a permanent army- in XIX century, citizens being associated with freedom and hired professionals with tyranny. A synergy of both normative and strategic factors determined the complete abandon of military outsourcing in modern Western states for many years to come. As outlined above, chronicles showed that deploying soldiers of fortune wasn't anymore cost-effective: for a State's stability, finances and, most of all, reputation.

2.4. Contemporary Age: the African Continent

The deployment upon payment of foreign military experts for strategic purposes gained new importance during the decolonization era. In the 50's and 60's of the XX century, hiring soldiers became a widespread practice in the African continent. This phenomenon had a particular importance in Congo, where a number of mercenaries not exceeding the hundreds was so efficient in performing its tasks that it left a real mark in history.

While Western countries resorted less and less to military force for the resolution of international controversies, after the dramatic experience of World War II, the African ones started to experience an unprecedented level of emancipation and freedom from their

³ Carp, E. (1987) *To Starve the Army at Pleasure: Continental Army Administration and American Political Culture, 1775-1783*, University of North Carolina Press

older European rulers. This resulted in a process of increasing self-determination which wasn't always problem-free.

In a politic scenario heavily polluted by violent uprisings and ethnic conflicts, the reason African states and third parties resorted to private armed groups was mainly to repress the national liberation movements that took place in the continent, undermining the fragile stability of the nations that were arising out from the decolonization process.

As highlighted before, private armies were considered to be a threat for national stability in Western countries, and it is for this very purpose that they were deployed in Africa during the decolonization decades. The political events in the continent are worth a thorough analysis, since they have been so strongly influenced by the interference of mercenary groups that in 1977 the Organization of African Unity (OAU) tried to limit their deployment through the adoption of the “Convention for the Elimination of Mercenarism in Africa”.

The Convention is considered to be the first international treaty aimed at outlawing this kind of activities, thus the first attempt from International Community in analysing the phenomenon of military outsourcing on a world-wide basis. It indeed considers «the grave threat which the activities of mercenaries present to the independence, sovereignty, territorial integrity and harmonious development of Member States of the Organization of African Unity»⁴ and prohibits the recruiting, training, financing and equipment of mercenaries.

In 1960 Moïse Tshombe, President of the self-proclaimed independent State of Katanga hired former European army men in order to re-organize his army and defend his State's territory against Luba People's invasion. Those troops ended up fighting against United Nations' detachments for peace enforcement in the area, which defeated them quite easily due to their technological and numerical superiority. Four years later Tshombe hired them again to quell the bloody Simba rebellion, which was commanded by Pierre Mulele.

In both cases, the commander of the infamous “5th Commando” was Thomas “Mad Mike” Michael Hoare, a former Officer of the English Army. The Commando soon became the core group of National Congolese Army (NCA) and was entirely composed of former servicemen, enlisted and trained in Rhodesia (now Zimbabwe) and South

⁴ Whole text available at http://www.studiperlapace.it/view_news_html?news_id=20041102104239

Africa. They had different social backgrounds as well as a wide range of motivations to fight: personal gain, being in trouble with other countries' law, commitment to Tshombe's cause or simply desire for adventure.

From 1964 to 1967, every official Commander of NCA's regiments had by his side a white operative mercenary commander. As a consequence, when the power play between Prime Minister Tshombe -who had the foreign servicemen by his side- and President Mobutu Sese Seko came to a violent outcome, mercenaries in Congo had to fight against NCA, the same army they had been training until that very moment⁵. This example shows us how military outsourcing was strong in the contemporary era, in ways very similar to those experienced in Europe in the past.

Mercenaries didn't have a hard time finding a new engagement in Africa, even if more than two thousands of them were banned from Congo. The bipolar era in Africa was characterized by a series of minor local conflicts, in which a professional soldier could easily find an employer. For example, during the sixth and the seventh decade of the last century, though to a lesser extent, some of the former Congo's mercenaries were hired by Portuguese forces in Angola, Mozambique, some others in Yemen, in order to train the loyalist militias in the use of modern weaponry against the Republican front. Something similar took place in Nigeria, during the Biafran war.

Unlike what happened in Congo, during Biafran War both the parties in conflict hired white mercenaries, so they soon found themselves fighting and killing each other. So, for the first time during their African campaign, mercenaries had to fight an enemy who had access to an arsenal equal –if not better- than their own.

At the end of the 70's mercenaries seemed to have disappeared from public opinion's spotlight, while their demand kept growing exponentially in the international market. On one hand, many African states demanded former servicemen specialized in a wide range of tasks, while on the other hand, a large number of internal conflicts spurring across the continent put on the market thousands of them, ready to move wherever they could find the possibility for an contract. According to an estimate from the Bonn International

⁵ Villafana, F. (2017), *Cold War in the Congo: The Confrontation of Cuban Military Forces, 1960-1967*, Routledge

Centre of Convention, the cuts to national armies following the Cold War, put on the market a number ranging from 6 to 7 million of ex combatants seeking for a job.

In Africa, particularly, when the unrecognized State of Rhodesia-Zimbabwe transformed itself in the Independent Republic of Zimbabwe and the white minority lost its privileged position, an actual exodus of former white special troops towards South Africa took place: those soldiers swell the ranks of the South African Defence Force (SADF). During the 90's in South Africa, with the gradual disappearing of apartheid and the transition of power towards the black majority, as well as the large cuts of SADF personnel, a wide number of former military experts, well trained, fit and available to operate on any war scenario, suddenly found themselves without a job.

This brief historical overview is fundamental in understanding what features, political costs and advantages, but most of all moral implication the practice of military outsourcing had for the most part of human history. It is also crucial in order to understand when and how the entrustment of private subjects with military duties normally pertaining to a State changed, because this very changes occurred in such a short timeframe that both the international community and the single states still find many difficulties in disciplining this phenomenon.

The men who dedicated themselves in offering their abilities in combat in exchange for money all fell under the definition of “mercenaries” until the present day. So the international community efforts in building a legal framework around their activities revolved around this definition, as happened with the aforementioned OAU Convention, but also with the more recent Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts of 8 June 1977, and United Nations Mercenary Convention of 1989.

Those Conventions and Protocols proved to be effective in repressing the deployment of mercenaries in order to constitute armed forces or perform internal security tasks worldwide, but ended up tackling a phenomenon that had already disappeared almost completely.

Soldiers of fortune, understood as the professionals described before, nowadays represent an insignificant minority in the geopolitical scenario. The worldwide phenomenon our country as well faces today represents an evolution of the military outsourcing practice,

and indeed presents only some of the flaws and problem mercenaries brought to light in the past. The names of this phenomenon are Private Military Companies and Security Companies.

3. Private Military and Security Companies: an Identikit

3.1. Post-Cold War Era: PMSCs Breeding Ground

Knowing the situation in which the Private Military Companies (PMC) and the Private Security Companies (PSC) started to thrive it's fundamental to understand the differences that those companies have in respect to their ancestors. Following the end of the Cold War, the decade after the Soviet Union's collapse was characterized by a widespread optimism, especially in the United States. The country's hegemony was seen (at least by the American public opinion) capable to create a new, stable and pacific international system.

US was obviously paying attention to China's rise and to the slow Russian resurrection, but those were essentially long-term challenges that didn't crack the general harmony. In the same way the threats represented by terrorism and organized crime seemed to be far from the dangers the USSR's ideological and political objectives represented in the past for American security.

Among the events that shook this belief the terrorist attack occurred in the 11th of September 2001 has a primary importance. 19 men, backed by a wider organization, were capable of causing the death of about 3000 people, causing a huge economic and most of all psychological damage: an unforgettable example of asymmetric warfare.

It is in this situation that the belief that a new international underworld thrived, populated by sly enemies. The security couldn't represent anymore a stable exogenous fact, caused by the mere predominance of United States in the international system. The current challenge to the system has therefore become to recognize an order in an increasingly chaotic situation. There is a large number of aspects that have to be taken into account in order to create a logical framework for this issue.

3.2. Six Changes in the International System

First of all, security has become a much more complex field in respect to the past. The attention cannot be focused anymore only on states, but has to be split on a vast gamma of what James Rosneau calls «*sovereignty-free actors*»⁶.

Many of these can mobilize such a notable amount of resources they deeply influence political and economic processes. Rosneau himself asserted that one of the fundamental challenges for current politics is that between the traditional state-centric system and the new multi-centric system.

In this sense, the fact that the most large part of countries developed military and diplomatic systems and institutions almost completely based on the state-centric paradigm represents a problem. Indeed, they are ready to respond only to menaces represented by other governments. Actors like the so-called “rogue-states” which bankroll terrorist organizations are among those who defect this system.

Secondly, even the traditional dichotomy between “foreign” and “internal” affairs is progressively corroded: states cannot isolate themselves anymore from the undesired transnational forces, be them either middle eastern terrorist operating in the United States or Chinese criminal organizations in Japan that challenge Yakuza’s indigenous predominance. Such a radical change requires a total reformulation of the internal-external paradigm, and subsequently a synergy between areas which have always been considered to be clearly separated.

The third data actually dates back to the decolonization era, and regards the large variety of forms the states started to be shaped into. In the international system indeed we don’t have only states whose sovereignty is perfectly solid and responds to the classical requisites, but also a multitude of weak states, not capable to fully exercise their authority or provide what their citizens need. Those are states which are not capable of control adequately their whole territory, making some areas proper “no man’s land” for criminal or terroristic transnational groups.

⁶ Rosenau, J. N. (1990) *Turbulence in World Politics: A Theory of Change and Continuity*, Princeton University Press

That's a challenge that seems to be very difficult even for states considered to be modern, efficient and democratic. The end of the Cold War removed some international conflict catalysts, but the tension release subsequent to the power void allowed the conflicts to grow in number and intensity in some areas of the world. If to this we add the fact that United States' interest towards those areas drastically diminished after they defeated their international competitor, we can understand how the weak present government started to look for the support of private institutions to deal with tasks such as security, in which they didn't have any know-how at all.

This leads to the fourth problem: the extraterritorial menaces which I mentioned before proved to have networking systems, transnational purposes, great flexibility and adaptability in pursuing their goals, as well as a marked predisposition to learn by their mistakes. In *Networks and Netwars: the Future of Terror, Crime, and Militancy* (2001) David Ronfeldt underlined how they have a considerable ability to reduce and control the risks they face after their face-offs with the states.

Phil Williams, in the preface of *Non-State Threats and Future Wars* remembers us that after the dismantling of Medellin and Cali's drug cartels, the Colombian drug trafficker organizations subcontracted their activities to the Mexican and Dominican groups for the transport of the drug into the United States. Even if this reduced their profits, it also reduced the risk that the Colombians had to face directly American agencies that fight against drug trafficking, as when Medellin and Cali did so, they were destroyed⁷.

The last two considerations on international changes are tightly correlated. Globalization involved a positive outcome for the legal global market as well for the criminal one, given that the illegal products are often hidden in the continuous flow of the regular goods, therefore implementing their diffusion, supported by the global transport and communication systems increasing efficiency and diffusion.

But even more important is the normative shift towards the privatization of the public sphere. The neo-liberal revolution that provides models and legitimacy for the market to enter in those which are traditionally considered to be governmental sectors⁸.

⁷ Bunker, R. J. (2005) *Non-State Threats and Future Wars*, Frank Cass

⁸ O'Brien, K. (1998) "*Military-Advisory Groups and African Security: Privatized Peacekeeping*", Taylor & Francis

Privatization and globalization go at the same speed: both rely on the trust people has in the economic international comparison through competition, which is considered to be capable of maximizing effectiveness and efficiency.

Privatization has been propagandized as system of proved superiority in respect to state action in providing some services, since capitalist countries military defeated socialists one. The results have been incredible: the total expense for the most various kind of outsourcing arrived to 1 000 000 000 000 000 000 \$ (a trillion) in 2001, doubling in three years⁹.

This leads to the sixth element, that is to say the transition of some technologies and competences outside the state exclusivity, towards the “*sovereignty-free*” actors. The technology spread indeed is currently so much important that countries like US are totally dependent from it, and this makes them extremely vulnerable, considering that one of the global asymmetric conflict’s aspects is the enemy’s ability to transform some of the modern states characteristics, traditionally seen as positive, into weaknesses.

The pushes coming out from this phase of redistribution of the monopoly of force therefore modelled the new war market, and new international actors appeared to answer to increasingly complex needs.

3.3. Private Military Companies’ Corporate System

Private Military Companies (PMCs) are corporations which provide services generally linked to the war area, societies specialised in selling *military expertise*¹⁰. Representing the evolution of private subjects in the war market, and of mercenaries, those new actors are very different from the typologies analysed until now. One of their fundamental differences is their organisation according to a modern business model. As we have seen, international market globalisation and deregulation have been fundamental in the mercenaries’ restyling process, and gave the PMCs the possibility to rise and operate in a transnational way. The more and more fast and easy flowing of goods and people

⁹ From “Fortune Magazine: an inside look at outsourcing” (2003)

¹⁰ Pech, K. (1999) *Peace, Profit or Plunder? The Privatization of Security in War-Torn African Societies*, P. Mason, whole text available at <http://www.issafrika.org/publications/books/01-jan-1999-peace-profit-or-plunder-the-privatisation-of-security-in-war-torn-african-societies-j-cilliers-p-mason-eds>

through the national borders, compared to the one during the Soviet and Western block period, allow them much more flexible operations.

PMCs are incorporated and registered companies that openly compete in the international market, they link to external financial holdings, recruit more professionally than their predecessors did and most of all offer a vast range of services and performances to a very heterogeneous clientele. The corporate system is not only useful to separate PMC from the old mercenaries in the popular belief, but it also offers advantages in terms of effectiveness and efficiency. The increasing PMCs demand and offer took place in an ideological environment strongly marked by the belief that economic success and efficiency are the primary criteria to guarantee any product's desirability. This turned out to be essential in spreading the idea that the military ones are corporations like all the others, which operate on a quality-price basis¹¹.

3.4. PMSCs Recruiting System

Both Private Military Companies (PMCs) and Private Security Companies (PSCs) recruit from personal database that give information on the whole available workers pool. They evaluate their potential collaborators based on specific qualifications, in order to have an available staff that can respond to every need. The final result is generally more appreciable than the one offered by "classical" mercenaries¹². While the latter work as a group of individuals, PMCs and PSCs personnel is organized as a single corporation body. This corporation fiscal model is the *profit-driven business*, as they look for the best bidder and maintain permanent hierarchies on the inside.

This means they use a *corporate financing* complex system, which ranges from the selling of stocks to the collaborations between institutes, and are authorized to sign many kind of contracts. PMCs are, hence, legal entities, tied to their clients by contracts, in some cases controlled by their countries, through laws that require the registration, referral and approval of the foreign contracts.

Rather than hiding their existence, the great majority of those corporations publicly advertises their activities, even on internet. Mercenaries, on the other hand, offer

¹¹ From "International Security" (2001-2002) Singer, P. W. "*Corporate Warriors: The Rise and Ramification of the Privatized Military Industry*"

¹² Ibid.

themselves on the black market, tend to ask payments in *hard cash* and are generally untrustworthy in the long run, as historical records have shown. Even if it might be true that part of the PMCs and PSCs employees were somehow involved with mercenarism, their hiring processes, their relations with the clients and most of all their impact on the conflicts are very different. Most of all, such organizations are capable of working simultaneously for many clients, something that mercenaries can't do. PMCs and PSCs features and proliferation determined a change in governments' attitude towards them.

As Sean Creehan observed in 2002 Harvard International Review, «*Today's mercenaries still fight for money, but in the context of global capitalism, some groups are becoming less morally objectionable. The organization of mercenaries into corporations that function like consulting firms has put distance between them and their activities. Mercenary corporations' increasing efficiency and self-regulation is influencing the way legitimate governments view mercenaries as instruments of state policy*»¹³.

3.5. PMCs History and Characteristics

The first PMC we know about was born in 1967, when Sir David Stirling, a Britain's army colonel, founded the *Watch Guard International*, a company that deployed English SAS former members to train other countries' soldiers. No offensive action was put in act: *Watch Guard International* specialists limited themselves to give theoretical and practical rudiments, in order to provide a better training for the armed and police forces of newborn states, which defense system was insufficient without an external help. PMCs and PSCs clients are indeed governments, international organizations and even NGOs. They provide protection services to multinational corporations, governmental properties and personnel, embassies, even to the International Committee of the Red Cross' delegates (ICRC)¹⁴.

On the other hand, non-state armed groups that aim to undermine governments' authority generally hire mercenaries. Some PMCs recruit former soldiers exclusively from their country's armed forces, others from all the world's armies (Nepalese Gurkhas, Fijian paramilitaries, Russian Spetsnaz). Some recruit personnel who worked into intelligence

¹³ Creehan, S. (2002), *Soldiers of Fortune 500*, Harvard International Review

¹⁴ The ICRC hires PSCs in order to protect some of its buildings. Data available at <https://www.icrc.org/eng/resources/documents/misc/63he58.htm>

groups (SWAT, anti-drug agencies) and a small part of them relies even on former guerrilla fighters or rebel groups. Anyway, PMCs and PSCs backbone comes from regular armies: the most required come from special units, like the American Navy Seals, the English Special Air Service and Russian Alpha Team.

They're often soldiers who ended their military career, with an age ranging from thirty to forty years, with expertise and experience matured in service. The professionalization level contributes to simplify and make more fluid the operations. Civil specialists are not less required: the use of means for technological war recently increased, and subsequently the demand for sector specialists, who often have to be searched in the civil field.

Not even the state armies are indifferent to this need, as for example, since US increased the use of technical equipment, but without training troops to its maintenance, they need to hire civil employees to fulfill such tasks. The maintenance of the RC-12N Guardrail Surveillance Aircraft for example, entirely depends on civil workers¹⁵. Many western PMCs and PSCs also hire natives as interpreters in the places where they operate, but also to have a better look on social situations, culture and traditions.

3.6. Military Outsourcing Financial Worth

To such a high and assorted professionalization level correspond a precise economic return. Indeed, because PMCs ask an average of 1500 \$ a day for their most skilled military operators, many armed forces representatives complain about how the attraction for such salaries deviates some of the most skilled members of their units towards those corporations, as the request for their know-how grows outside the public sphere.

In the United Kingdom this phenomenon forced the army to offer long leave periods to the soldiers, in order to reduce the long-term damage resulting from the resignations of the special forces members who sought employment in the PMCs¹⁶. The cost of the contracts ranges from a million to a hundred million dollars: non-official esteems (as

¹⁵ Adams, T.K. (1999) "*The New Mercenaries*" whole text at <http://strategicstudiesinstitute.army.mil/pubs/parameters/Articles/99summer/adams.htm>

¹⁶ Miller, K. (2004) "*Outsource This*", Center For American Progress whole text at <http://www.americanprogress.org/issues/military/news/2004/05/06/762/outsource-this/>

global control institutions for PMCs currently don't exist) point that PMCs total annual income is around a hundred thousands of million dollars¹⁷.

From 1994 to 2002 the sole American Defense Department signed over 3200 contracts for a global worth above three hundred thousand billions of dollars with 12 of the 35 PMCs existing in the country. In 2003 the Pentagon contracts with Halliburton jumped from nine hundred million to four thousand billions of dollars. The company currently signed contracts for a total worth of eight million dollars for reconstruction operations in Iraq and logistic operations in the Pentagon¹⁸. If then, as we said, a part of the PMCs provides fighting forces and any kind of backup linked to combat, a high percentage is composed by companies that deal with logistics and supplying. The warehouse area known as "Camp Doha" in Kuwait, that has been an important American base since the Gulf War, had a notable number of civilians among the building, maintenance and security personnel¹⁹.

Since the First Gulf War (1990-1991) to now, the number of contractors deployed in Iraq after deals with PMCs and PSCs is estimated to be increased tenfold, ranging from 20.000 and 45.000 workers coming from all around the world²⁰.

The services PMCs offer most often include consultations (the American "Vinnel" gave advice to the Saudi security forces when they recaptured Mecca Great Mosque, occupied by opposition forces in 1979²¹), training, logistic support (like the one offered by the American *Kellogg Brown & Root*, a subsidiary of Halliburton that worked in the Balkans and Iraq), maintenance, intelligence services, surveillance and control (see Diligence LLC, formed by American and British former secret servicemen²²) and even mine

¹⁷ Singer, P.W. (2004) "*The Dogs of War Go Corporate*", The London News Review whole text available at <http://www.brookings.edu/research/opinions/2004/03/19defenseindustry-singer>

¹⁸ Further information on Halliburton's job offers for former army servicemen at <http://halliburton-veterans.jobs/>

¹⁹ Further information at <http://www.globalsecurity.org/military/facility/camp-doha.htm>

²⁰ In 2004 in a letter for the Missouri Representative Ike Skelton, the former Secretary for Defense stated that 20.000 civil contractors were working in the sole Iraq scenario

²¹ Hartung, W. D. (1996) *Mercenaries Inc. How a U.S. Company Props Up the House of Saud* whole text available at http://www.redrat.net/BUSH_WAR/mercenaries.htm

²² Further information available at <http://www.diligence.com/index.php>

clearance, being involved in humanitarian operations for the removal, storage and destruction of explosive devices in the whole world²³.

3.7. Private Security Companies (PSCs): Analogies and Differences

Compared to PMCs, PSCs are generally smaller and more numerous, at a domestic level they provide service mainly linked to crime prevention and public order. When they project themselves outside their country instead, their action range widens, making them an instrument largely appreciated even in European countries. If a part of their work is similar to the PMCs' one (consulting, training and intelligence) other specialties are exclusive of their category. Along with the security with crucial areas and structures, they provide protection for VIPs, political and military important representatives, and even convoys for the transportation of goods or humanitarian aids.

The risk management English company "Armor Group" served for United Nations bodies, the English, American, Swiss, Swedish, Japanese and Canadian governments, the ECHO (Humanitarian Aid and Civil Protection Department), Red Cross International Committee and a large number of NGOs, like the International Rescue Committee, CARE and Caritas²⁴.

²³ E.g. the Israeli company MAAVERIM carries out mine clearance operations in Croatia and Israel, and also hosts forum for knowledge and consultancy about the threats mines involve in Albania, Angola and South Korea

²⁴ Further information available at <http://www.g4s.uk.com/en-gb/What%20we%20do/Services/Risk%20management%20and%20consultancy/>

CHAPTER TWO

PMSCs IN THE GLOBAL SCENARIO

1. Introduction

Before considering Italy's approach to the privatization of Security Services, it is worth considering how the phenomenon has been perceived by the International Community. As political, economic and social phenomena are becoming increasingly transnational due to states' profound interrelation, also the legal adjustment process often is the result of an international debate. Furthermore, it is once again noteworthy the consideration of the fact that PMSCs are often hired by States for foreign missions, implying that their activities could result in controversies on international level.

2. Are PMSCs Subject to International Law?

The term "Private Military Company" doesn't exist in any international treaty or law. The common definitions of "PMSCs" refer to the data listed in the previous paragraphs, that is to say to the fundamentally civil and legal nature of the corporations, and their range of action: the military market. Thus, the difficulties encountered by jurists and scholars in coming to a largely approved definition of "military" or "security contractor".

This shows the fuzziness that surrounds the idea of private corporations that offer different kind of military services, basically seizing a monopoly which is typical of the states only, but also because PMCs and PSCs differ even among them, as seen before, for organization and services they offer.

The data provided before point out that PMSCs are identical to services-providing corporations which operate in other fields. However, the complexity inherent to the scenarios they operate within makes difficult to determine their particular status. This sector is legally regulated by national laws for the most part, but international binding laws are absent at the present day.

The problem blatantly arises in the moment PMSCs servicemen are deployed in order to substitute national armed forces in international crises, armed conflicts or peacebuilding and peace-enforcement operations. Operations in those fields have to be strictly backed

up by the total adherence to International Law and Humanitarian Law, which may be granted by national armies but is not a foregone conclusion in the case of private subjects. Another issue of relevance concerns PMSCs' accountability, the legal status of their personnel and the consequences of its actions in relation to the distinction International Law operates between combatants and civilians.

Therefore, if we consider the previous large number of structural data, it's easy to understand that international law aimed at tackling mercenaries covers very little, or not at all, the new security and military privatization phenomenon. Indeed, it's necessary to bear in mind that companies which spurred out from a process of corrosion of one of the monopolies that characterize state identity, that is the monopoly of force, certainly need an adequate regulation. This regulation should not be focused on the identification of the phenomenon, but on the potential that its "deviant" forms could have.

2.1. International Law's Effectiveness

Given the services PMSCs offer falls within the sphere of activities of national armed forces, the idea that they are a new version of the mercenaries is largely shared. As said before, activities relating to mercenarism have been tackled by International Law in three cases: the already mentioned Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (1977), the OUA convention for the elimination of mercenarism in Africa (1977) and the United Nations International Convention against the Recruitment, Use, Financing and Training of Mercenaries (1989).

Those treaties and conventions are the result of the historical context experienced during the 6th and 7th decade of the last century which has been described in the first chapter. They are therefore difficult to implement in respect to PMSCs phenomenon which has, as stated before, very little in common with its "ancestors". However, both mercenaries and PMSCs personnel, the so-called *contractors*, have been matched accordingly to the element of private gain related to military activities which they have in common. Also, it is worth noticing that the UN Convention of 1989 has not been signed by none of the Security Council's Permanent Members.

In order to be disciplined by them, private subjects which provide military services have to meet four basic conditions which may be found in all of the three aforementioned

Conventions. These might be summed up in: being foreigner in respect to the parts in conflict, the financial motivation of one's actions, the subsequent scarce level of ideological commitment with the cause, and the difficulty of control by a "legitimate" authority. All this criteria, considering the features *contractors* have in respect to mercenaries, have been proven difficult to apply to them, leaving the PMSCs in a legal vacuum.

In respect to Humanitarian Law, International Humanitarian Law does not foresee any particular status for PMSCs and their personnel. With the only exception of a PMSC participating in an international conflict as a non-state part, its rights and obligations are not defined by IHL but rather by national laws. However, PMSCs' personnel operating in an armed conflict is obliged to comply to IHL provisions, as well as responsible for war crimes.

The regimen applied to PMSCs' personnel varies depending on the tasks it performs, and therefore to the qualification it has according to the statuses provided by IHL. These statuses may be civil, civil accompanying Armed Forces, civil directly participating in hostilities, member of the Armed Forces, combatant or mercenary.

Should PMSCs' personnel be qualified as "combatant", it has right to the status of "prisoner of war" in case of capture, as well as to the status of "civil prisoner" should it be qualified as "civil", and is therefore protected by the Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War (1949).

2.2. Self-Regulation: The Codes of Conduct

In consideration of the fact that PMSCs are so difficult to be placed within the existing international legal framework, is important to point out the initiatives put in place on regional and non-governmental level, before referring to those engineered by Italy. On the international and regional level the most noticeable actions taken in respect to PMSCs activities' regulation are the result of specific initiatives of national governments, the private security industry or economic subjects through codes of conduct (CoCs).

Those codes are set of rules which have to be adopted voluntarily by private subjects, regarding the licensing, contractual, service and use of force procedures, and are drafted on both national and international level. CoCs are developed by PMSCs in cooperation

with other international actors, mainly national governments and NGOs. The two CoCs which provide useful advice for a possible future legally binding discipline on an international level are the Montreux Document and the International Code of Conduct for Private Security Services Providers (ICoC).

Also, the development for a Draft Convention to be negotiated within United Nations' Council for Human Rights framework is ongoing, and will be briefly described in the next paragraphs.

2.3. The Montreux Document: Overview and Definitions

On the 17th of September 2008, after a combined initiative of the Swiss Government and the International Committee of the Red Cross, the "Montreux Document" was permanently drafted. It is the result of an international process in which initially took part 17 states, and several PSCs and PMCs representatives contributed to it. This document does not contain any binding norm, *«but rather a list of relevant existing international obligations and good practices»*²⁵ which can be applied to PMCs and PSCs activities when they are involved in a situation of armed conflict.

What makes the Montreux Document revolutionary is the fact that its birth represented the international community's first step towards a clear identification and an effective control of PMSCs and their activities, and of the juridical environment in which they work. For the first time are gathered and listed the legal obligations, which have been acknowledged as legally binding by the international community, and which are applied to states in their relations with PMSCs, and to the work of the latter during armed conflicts.

The goal of the Document indeed, is the promotion for the respect of the International Humanitarian Law (IHL) in such situations, not the creation of new norms. International obligations and good practices are implemented by already existing regulations, and put into practice in the international environment as a consequence of the application of the UN Convention on the Use of Weapons and Armed Services Deployment.

²⁵ Whole text available at <http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/intla/humlaw.Par.0078.File.tmp/Montreux%20Broschuere.pdf>

Currently 53 countries signed the Document, including Italy on 15 June 2009²⁶. Three of the most important international organizations added themselves to these countries: European Union (27 July 2012), OSCE (21 November 2013) and NATO (6 December 2013). Besides the already mentioned identification of PMSCs and their personnel, made on the base of the characterizing elements described in the previous paragraph, the document includes other important distinctions.

Contracting States: that are the Countries that directly stipulate contracts in order to get PMSCs services, including those when a PMSC stipulates a sub-contractual agreement with another corporation of the same kind;

Territorial States: the States in which soil PMSCs operate;

Home States: meaning the states in which PMSCs are registered and have their main headquarter. Indeed, if the state in which the PMSC is registered is not also the state where the corporation's headquarter is, it is considered as "*Home State*" the territory on which the headquarter is placed.

Later are listed the juridical obligations to which states are bound by common law and International Conventions, then concluding with a list of specific juridical duties concerning PMSCs and their personnel. Those are compelled to the respect of International Humanitarian Law, submitting to the national laws that enforce it, also respecting both the state they belong to, and the state in which they operate penal laws.

2.4. The Montreux Document: Juridical Duties and Good Practices

As civil personnel, PMSCs workers cannot be object of military attacks, unless they are directly participating to hostilities (see APCG 77, art. 1, lett. B). In case it is deployed for a direct support action for a country's armed forces, PMSCs personnel can benefit of the status of prisoner of war as foreseen by the 3rd Geneva Convention. In case PMSCs workers commit a violation of International Law, the directors or managers, are they military or civil, are ascribable as responsible for the violation of the International Law itself, having the duty of maintaining an appropriate control over their personnel, a control

²⁶ Whole list available at <http://www.eda.admin.ch/eda/it/home/topics/intla/humlaw/pse/parsta.html>

that cannot be cancelled or transferred according to the deal stipulated between the PMSC and the Contracting State.

In the second part, the Document recaps the good practices which states and PMSCs should respect: the former in stipulating contracts for the provision of services with such companies, the latter in carrying out their tasks on the field. Even if several international law dispositions are the same for the three typologies of state listed before, some others are much more specific.

Contracting States are obliged not to sign contracts with the PMSCs in order to carry out activities that the International Humanitarian Law specifically assigns to a state's authority, like for example the responsibility for the management of the prisoners-of-war or civil internment camps, as specified by the Geneva Conventions.

Furthermore, the state which signs a contract for services with one or more PMSCs has to put in act all the necessary measures in order to ensure that those companies will respect the norms of the International Humanitarian Law. It's obliged, for example, to verify that International Humanitarian Law is acknowledged by PMSCs, and is also obliged to provide all the necessary measures in order to ensure that PMSCs and their personnel do not violate it. The state has the possibility to use military or administrative regulations, that also call for specific and appropriate procedural sanctions.

Also, as the Geneva Conventions says, the Contracting States should consider in their internal sets of rules penal sanctions applicable to those who commit, order or allow any violation of human rights, with the additional obligation, in case they also signed the aforementioned APCG77, to search, arrest and bring to justice anyone who could possibly have violated those rights. Lastly, it explicitly recapped how the Contracting State has the final responsibility of any possible violation committed by PMSCs, as those private companies carry out the tasks typical of a governmental authority, from which they receive instructions and directions about the action they are involved in.

Similar obligations coming from International Law fall under the competence of the Home States and Territorial States. Also those, besides from having to arrange an internal set of rules that validates International Law, are asked to publicize the norms present in the Geneva Convention to the PMSCs that possibly could be operating on their territory.

Even the second part of the document keeps the described division, listing once again the good practices that states are asked to follow. Such guidelines provide a first regulation about how a service provision contract between a state and a PMSC should be carried out, also pointing out which are the fundamental requirements to have a business authorization granted. The precautions that a Contracting State should put in act when it resorts to a PMSCs services pertain several more aspects. Such aspects are the selection procedures for these companies, through an investigation about the services offered by a given PMSC in the past, in order to obtain information on the control structure of the company itself.

2.5. The Montreux Document: eligibility criteria

Also precise eligibility criteria are listed. They are aimed, for instance, at verifying if that company has been involved in actions that violated the IHL or used inappropriately the force, if it keeps a detailed log about the activities carried out and the personnel involved, if the deployed personnel is correctly trained for the use of weapons, if the company has an internal control system, and if it respects the current work regulations in respect to the employed personnel.

Another eligibility criterion concerns the definitions of the terms of the contract, that is to say to provide norms for the contract annulment in case international laws and IHL are not respected.

In giving an analysis of the eligibility criteria, it should be also highlighted the one on the compliance with the Territorial States' relevant norms, aimed at granting vigilance and control over possible law violations, by PMSCs acting within a specific State, even if under subcontract.

Similar recommendations are provided towards the other two typologies of the Territorial and Home States. The latter in particular, have to pay a specific attention to the process through which PMSCs obtain the permissions to work. In order to get those authorization licenses, PMSCs indeed have to demonstrate their respect for internal law and their awareness on the duties deriving from the respect of IHL.

They also have to ensure full transparency of their organizational structure, to turn only on possible sub-contracting PMSCs which already have their authorizations, to have a financial and corporate structure capable of carrying out the services for which the

authorization is required and, most of all, to have the power to internally control their actions.

It is appropriate to highlight one last time the non-binding nature of the norms included in the text. Even if it is the result of a better awareness towards those deviant manifestation of the market of war that in the past required a firm intervention by the international community, at the same time a part of the political panorama seems to be looking at the private contracts for defence functions with increasing satisfaction.

Many PMCs and PSCs are looked at as examples of efficiency, particularly from international industries' lobbyists, as shown with the aforementioned PMSCs Financial Worth, but also from analysts and politicians who completely assimilated the private companies' significant role in international conflict areas. This contributes to temper the need and the urgency of a more strict international regulation, letting the phenomenon grow in wideness and depth just like a river with no banks.

2.6. The International Code of Conduct for Private Security Services Providers (ICoC)

Similarly to the Document of Montreux, the International Code of Conduct for Private Security Services Providers (ICoC) comes out from an initiative of the Swiss government, this time with some industrial associations and 135 corporations in the PMSCs sector. The beginning of the works dates back to November 2010, and since 19 September 2013 the document is effectively operational²⁷.

The content and the goals of the Code copy in an almost specular manner the content of the previous Document, but have some peculiarities. The main might be considered the fact that the Document is not oriented towards the classical International Law legal persons, but directly towards private security companies. PMSCs, by signing the ICoC, commit to respect at first the principles of right contained in the Montreux Document referred to the states, and also the "Respect, Protect, Remedy" structure, promoted by the United Nations Committee for Human Rights.

²⁷ Data available on the Swiss Confederation's Foreign Affairs Department, whole text available at <http://www.admin.ch/aktuell/00089/index.html?lang=it&msg-id=50311>

This means refraining from any contractual relation with states or any other international legal persons, in case this could constitute a violation of the IHL or of the United Nations Security Council's Resolutions. The PMSCs, by signing the code, promise to respect it and promote it at any operational level. The entrance procedure consider that the signature implicates the company's availability to have its activities monitored, and also a mechanism for the organization of complaints.

The Code is divided into seven sections: after the preamble, the second section provides several definitions, that range from the "Company" to the "Security Services" ones, in order to identify the private businessmen and their activities.

The "Implementation" section deals with the code development through the provision of new norms and the creation of supervising authorities, such as the "Steering Committee" composed by six or nine members, that deals with the control of the effective respect of the dispositions by the signing agencies. Added after the "General Provisions" and "General Commitments", the sixth section, or "Specific Principles Regarding the Conduct of Personnel", is the largest, and gives a series of guidelines about the use of force modalities, detention and arrest. It also prohibits torture and other humiliating and inhumane treatments, sexual abuses and discrimination, human trafficking, slavery and penal servitude, child labour, discriminations.

It's also recapped PMSCs' commitment, in order to protect their employees and civilians at the maximum level, to hire only qualified and identifiable personnel, to use vehicles registered by the national authorities and to signal the equipment used during operations.

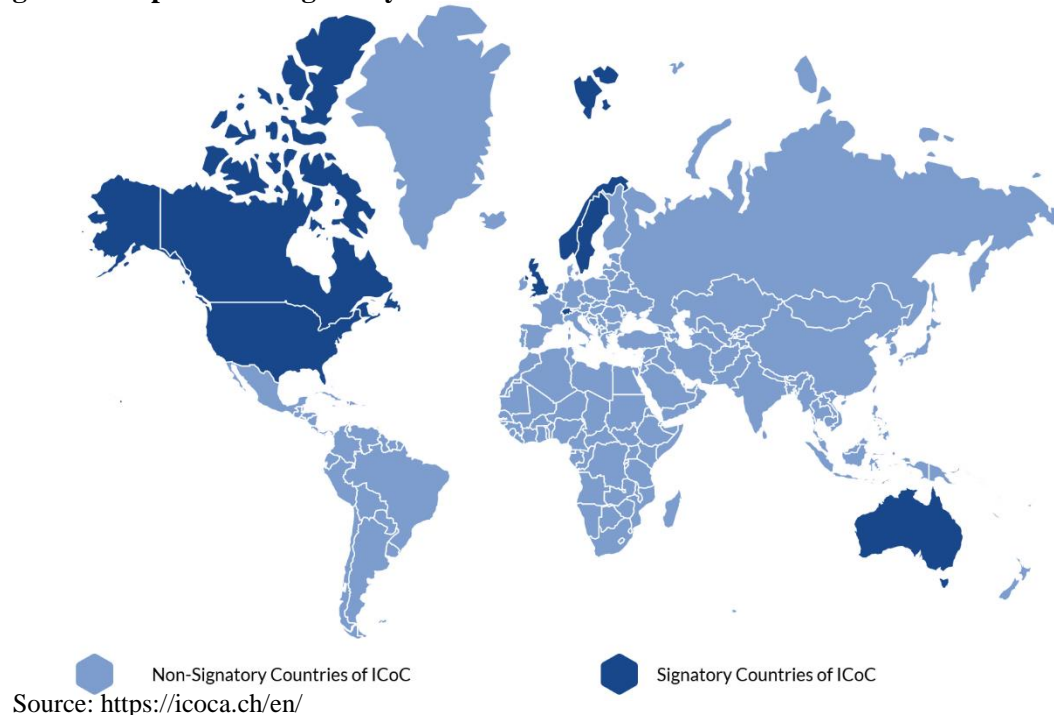
The "Specific Commitments Regarding Management and Governance" section regulates instead private companies' managing level, ensuring they include the respect of the Code in the company policies, and also of its control mechanisms, ensuring it is respected also during operations.

Guidelines are also established for the personnel selection, the training, weapon and tactic equipment management, detailed record of possible accidents, workplace's technical and sanitary security, mechanisms for the prevention and control of menaces and abuses, and also for the complaint procedures and penal and civil responsibilities for possible damages.

The conclusive part establishes that the Swiss Government will continuously update the public list of the companies that signed the Code, and will control the state of effectiveness of the implementation and control mechanisms²⁸. Currently, there are 96 corporations that accepted the Code. To these we add the governments of Australia, US, United Kingdom, Sweden, Switzerland, Canada and Norway. Furthermore, 22 African, South American, American and European civil society organizations are present. The official website provides the number of companies in each state that registered and accepted ICoC's set of rules. Italy currently has only one: the Temi Group, which has its legal office in the Republic's territory²⁹.

The ICoC represents an important gear in a synergic mechanism that, for once, points sharply to PMSCs' activities. Even if its effectiveness depends on the will of the juridical persons to accept it, it's interesting to notice PMSCs' tendency to take care of their public image, as their market expands. The most "virtuous" countries in this sense are those in which the phenomenon gained more importance and from which spread: United States with 15 registered companies, and England, which counts even 17, the highest number registered until now³⁰.

Figure 1: Map of ICoC signatory Countries



²⁸ Whole text available at http://www.icoc-psp.org/uploads/INTERNATIONAL_CODE_OF_CONDUCT_Final_without_Company_Names.pdf

²⁹ Further information available at www.icoca.ch

³⁰ Ibidem

2.7. United Nations Draft Convention

Being Italy a member of the United Nations since 1955, it is of great importance to take into account the normative action the international organization has carried out in the last years with regard to the PMSCs phenomenon. This because the international legal regime our country accepts to transpose in its domestic law influences the legal provisions adopted on the internal level, and also reflects Italy's attitude in respect to the issue.

The UN Working Group on the Use of Mercenaries has been instituted by UN Human Rights Council in 2005 with the specific task of examining mercenaries and mercenary-related activities. In 2008, its mandate has been including the monitoring and study of «the activities of private military and security companies and their impact on the enjoyment of all human rights»³¹. This task included the elaboration of a draft convention on the use of PMSCs including the fundamental principles of IL with the purpose of regulating PMSCs activities and ensuring their respect of IHR.

The assignment of this task has been the result of a growing concern among international institutions regarding the aforementioned legal vacuum PMSCs still thrive in, and their need to be accountable on a legal point of view in respect to international operations. It also has been considered the increase in PMSCs deployment on a global scale and their subsequent increase in numbers. It should be noticed that the issues concerns UN so closely that the Organization itself has adopted a “Policy on Armed Private Security Companies”³², drafted by the United Nations Department of Safety and Security (UNDSS) with the objective of regulating PSCs deployment in protecting UN personnel, properties and buildings movable and immovable.

The UN Working Group has therefore fulfilled its mandate elaborating the UN Draft Convention on the Regulation, Oversight and Monitoring of Private Military and Security Companies, which has been submitted to the UN Human Rights Council in 2014. The Draft Convention bears several differences with both the aforementioned Montreux Document and ICoC, since it foresees a higher objective: the creation of binding legal rules for PMSCs. Furthermore, those rules will be relevant in both peace and wartime.

³¹ UN Working Group on the Use of Mercenaries official website <https://business-humanrights.org/en/conflict-peace/special-initiatives/un-working-group-on-the-use-of-mercenaries>

³² UNDSS, Security Policy Manual, Chapter IV, Section I, Armed Private Security Companies, 8 November 2012

The Draft Convention defines PMSCs as “a corporate entity which provides on a compensatory basis military and/or security services by physical persons and/or legal entities”.

Regarding the “military services”, the Draft Convention refers to specialized services related to military actions. Those services include the activities of information collection, flight and surveillance operations, strategical planning and the transfer of military knowledge or information with military applications. It also includes the material support to national Armed Forces and their activities.

For what concerns the “security services”, they refer to armed surveillance and/or the protection of individuals, buildings, any transfer of knowledge with application on the vigilance and security fields, as well as the development and implementation of security measures relating to intelligence and activities relating to them.

The Draft Convention does not foresee that some exclusively-governmental competences can be outsourced. Those competences are listed and include: direct participation to hostilities, prisoners interrogation activities and other activities related to having police powers including arrest and detention, engaging a war campaign, taking prisoners, espionage activities, engaging third parties in combat activities, intelligence activities, transfer of knowledge with military, security and vigilance applications.

Even if some of the activities listed above are easily worthy of support within the international community, others lead to disagreement, particularly those related to the transfer of knowledge and intelligence activities. The Draft Convention also includes provisions which obligate UN Member States to pre-emptively regulate PMSCs activities within their territories. Those provisions are mandatory for both Territorial States and Home States as defined in the already analysed Montreux Document.

The legal regime PMSCs should undergo within Territorial and Home States should include a control and licensing system which would deal with military services import-export, norms relating to the control of PMSCs personnel, training on IHL and national norms on the use of force and firearms. Furthermore, the Draft Convention requires MS to develop legal and administrative measures aimed at granting PMSCs personnel’s responsibility for its actions. Every State should issue specific legal provisions which prohibit the outsourcing of those activities considered to be eminently governmental.

Those provisions should also aim at prohibiting PMSCs personnel to violate human rights, IHL, international criminal law and the restrictions concerning the use of firearms. As a consequence, the States would have full responsibility in taking adequate measures aimed at prosecuting and sanctioning any possible violation and at granting effective remedies to the victims of PMSCs' irregular actions. For the aforementioned purposes, the Convention establishes the presence of an Oversight Committee composed by experts which should monitor through national reports the advancements in national measures taken, even if it recognises the primary importance of national law in this process.

This document basically represents an attempt to build a legal framework which combines a private approach to security issues with a public sanctions system capable of tackling unlawful conducts. Furthermore, the Draft Convention grants an important participation for States to the international law-making process, prohibiting them the possibility to choose to which international legal regime undergo in their relations with PMSCs³³.

Besides, the clear distinction made by the UN Working Group in the Convention between "mercenaries" and PMSCs can be considered as a form of acceptance of the aforementioned process of liberalization and privatization in a field which was purely occupied by states in the past. It might therefore represent a legal instrument resulting from a deep understanding of private security industry's dynamics. In order to effectively regulate the critical issues of the latter, support from the whole international community is essential.

Such support has not been noticeable from countries heavily involved in the security outsourcing system, like the US and the United Kingdom, which often stated that the present regulations (the Montreux Document and the ICoC) already contain sufficiently effective instruments. Also the economic costs resulting from the implementation process have been pointed out as critical points of the Draft. On the other hand, formal support has been shown by countries in Latin America, Asia and Africa.³⁴

³³ Juma, L. (2011), *Privatisation, human rights and security: Reflections on the Draft International Convention on Regulation, Oversight and Monitoring of Private Military and Security Companies*, Law, Democracy & Development vol. 15

³⁴ *Ibidem*

3. Military Outsourcing in the European Union

An analysis of the European Framework is also necessary, being Italy a Member State of the European Union, thus obliged to comply with the European Law. As said before, security functions' externalization is a practice also both the EU and its member states carry out increasingly, entrusting PMSCs for multilateral and international operations. According to EUobserver³⁵, an independent newspaper, during 2012 the European External Action Service (EEAS) planned a 15 million euro expenditure to hire PMSCs in order to protect European diplomats abroad. This amount of money included the provision of a complete coverage, in terms of protection in Bengasi, Jerusalem, Beirut, Islamabad, Riyadh, Tripoli, Port-au-Prince and San'a' EEAS headquarters. 35 million euro were also spent in order to hire security guards on a daily basis, for the protection of the other 136 EEAS foreign delegations³⁶.

In May 2012, the EEAS planned to spend up to 50 million euro for the deployment of private security guards destined to its mission in Afghanistan for the following four years. The British company "Page Group", which enlists its personnel among the Nepalese Gurkas, obtained the contract, and therefore had to take care of the complex of buildings in which EU's delegates and their staff are hosted in Kabul.

The Hungarian company "Argus" is instead deployed for the protection of European embassies in Saudi Arabia, Lebanon, Haiti, Libya and Saudi Arabia. "Control Risks" is the name of another British company that works in Israel, while Saladin, also British, works in Pakistan³⁷.

The intense relation between PMSCs and the EEAS are also demonstrated by the fact that the aforementioned company "Control Risks" opened in January 2012 an office in Brussels, in order to increase its relations with the Luxembourgian and Belgian clientele, including European institutions.

Also in Belgium, more than 1.500 security guards from the British company "G4S" are already deployed in order to protect the EEAS, the European Commission, the European Council and the European Parliament buildings in Brussels. The same company signed

³⁵ For further information visit <https://euobserver.com/>

³⁶ Rettman, A. (2012)- *Ashton to spend €15mn on private security Firms*, article appeared on 9 March, whole text available at <http://euobserver.com/very-private/115541>

³⁷ Ibid.

with the EEAS in May 2012 an important contract for the provision of security services on the Libyan territory. The contract, which is worth 10 million euro, has been drafted in order to plan a protection strategy for the EEAS delegations in Tripoli and Bengasi for four years starting from 1 June 2012³⁸.

Even if EEAS has shown quite an inclination in hiring private security companies in order to protect its diplomatic delegations abroad, PMSCs have also been deployed during some of the EU's missions which are part of the Common Foreign and Security Policy (CFSP). The deployment of PMSCs represented a reasonable choice for EU's institution given the fact that, in some circumstances and with an appropriate regulation, they can provide a valuable support to EU's missions. However, in the great majority of cases, member states are those who sign contracts with PMSCs in order to back up their national contingents which are active in multilateral operations.

Former MS United Kingdom, for instance, hired private contractors in order to grant the security of its own military and civil personnel deployed in mission, and also Germany hired private security guards in Afghanistan. Generally speaking, however, it is possible to observe a gradual increase in PMSCs' participation to CFSP operations. A careful analysis on the impact private contractors could possibly have on EU's missions and their objectives is therefore crucial, also considering the fact that more than 50% of the PMSCs which are present worldwide, has its headquarter in Europe³⁹.

Since 2003, EU performed 33 civil and military police operation within CFSP framework. According to the data provided by the Council of EU, updated to December 2012, the operations which are still being carried out within the CFSP framework amounts to 15⁴⁰. The simultaneous presence of those operations in multiple countries implied a significant overload for European armies.

³⁸ Rettman, A. (2012)- *Question marks over EU contract for Libya security Firm*", article appeared on 8 May, whole text available at <http://euobserver.com/institutional/116152>

³⁹ Further information available at http://psm.du.edu/articles_reports_statistics/data_and_statistics.html#global

⁴⁰ Operations and starting year: EUCAP SAHEL Niger (2012); EUAVSEC South Sudan (2012); EUCAP NESTOR, Horn of Africa (2012); EUTM Somalia (2010); EUNAVFOR Somalia (2008); EULEX Kosovo (2008); EUMM Georgia (2008); EUPOL Afghanistan (2007); EUPOL RD Congo (2007); EUPOL COPPS, Palestinian territories (2006); EUBAM Rafah, Palestinian territories (2005); EUSEC RD Congo (2005); EUJUST LEX Iraq/ Bruxelles (2005); EUBAM Moldavia e Ukraine (2005); EUFOR ALTHEA, Bosnia Herzegovina (2004)

Despite the fact that they have their national contingents limited and busy with joint missions and operations, member states showed a certain reluctance in carrying out, for instance, armed surveillance operations, because they are not considered to be part of the military *core functions*. Also, the concentration of many European armies for the defence of national territory during the Cold War, decreases their current capacities to intervene in remote war scenarios.

As these capacities are likely to remain limited in the near future, PMSCs are efficiently adapting to the operative necessities branching out the services they provide. However, it is appropriate to keep in mind that the deployment of PMSCs' servicemen in CFSP past and current missions is quite limited, especially if compared with the other international actors.

The main reasons of this choice are the fundamental civil nature of the largest part of the operation, and also the low violence rate of the war scenarios European armies are deployed in. Besides, whether it is true that private security industry developed such a deep experience that many European governments consider outsourcing as a solution for the difficulties they encounter, the majority of them it is still in a contemplative phase about their position and policies about PMSCs deployment⁴¹.

Other European nations such as Spain, Portugal and Belgium have been relying on outsourcing for tasks traditionally assigned to national armed forces, like logistic support and maintenance. On the other hand, France and Greece state they don't rely on PMSCs for international operations, as they consider operative and strategic functions' externalization as a violation of the principle of state monopoly on the legitimate use of force. Also, they believe that the presence of contractors may create, in situation of armed conflict, a dangerous fuzziness about the deployed forces' identity⁴².

This position has been shared also by Italy for a long time. But as it will be explained in the next chapter, the country has shown an increasing openness towards the possibility for security outsourcing in the protection of its commercial and diplomatic missions. National regulations are being modified accordingly, and the demand for *ad hoc* legal

⁴¹ Finabel Report (2008)- *Possibilities and Limitations of the Operational Co-operation with Private "Military" Companies (PMC)*, whole text available at http://www.finabel.org/files/studies/2008.Study.A.24.R__EN_.pdf

⁴² Ibid.

provisions are a political issue which cannot be ignored anymore. Italy has therefore changed its stand also in the European debate in respect to privatization for some security functions.

Basically there's a general convergence on excluding PMSCs from carrying out offensive actions at the European level. Anyway, it would be necessary to uniformly regulate contractors' possibility to use military weapons, given the fact that they are in any case civil personnel. Generally speaking, outsourcing is considered to be acceptable for what concerns logistic support, military equipment maintenance and training. For what concerns strategic planning, or intelligence operations for the collection of information, contrarily, it is not possible to find a shared position among the member states.

Anyway, it is important to keep in mind that even functions that are generally considered to fit into outsourcing might encounter high-risk situations in which outsourcing wouldn't represent the best strategic solution. It is also crucial the coordination between national contingents, international organizations and contractors during CFSP operations.

The EU, at a central level, developed a special management contract to this extent, and also several guidelines based on the Contractor Support to Operations (CSO) contained in the 2011 EU Concept for Logistic Support⁴³. Anyway, the most widespread procedure consists in the signing of contracts at a singular member state level. The conflicts about the role contractors have and the lack of information around PMSCs' responsibilities spur out from the aforementioned routine.

3.1. EU current policies and regulations

At the present time, the EU does not have a specific legislation or regulatory norms about PMSCs and their activities. Anyway, EU institutions have been involved in the elaboration of some policies about these issues in the last years. Trying to develop an appropriate normative framework, the European Commission fostered a research program in 2008 named PRIV-WAR. In this project, a series of recommendations for EU about the best regulatory strategies towards PMSCs and their services have been formulated⁴⁴.

⁴³ EEAS (2011)- EU Concept for Logistic Support For EU-Led Military Operations, whole text available at <http://register.consilium.europa.eu/doc/srv?!=EN&f=ST%208641%202011%20INIT>

⁴⁴ PRIV-WAR Consortium (2011)- *Priv-War Recommendations for EU Regulatory Action in the Field of Private Military and Security Companies and their Services*, whole text available at http://priv-war.eu/wp-content/uploads/2013/03/Priv-War_Recommendations-FINAL-.pdf

First of all, regulatory measures have to be aimed at obtaining a greater respect of Human Rights and International Humanitarian Law, as PMSCs often operate in armed conflict contexts. The suggested regulatory measures should allow to establish a normative system that includes registration, licensing and monitoring criteria for PMSCs which have their juridical headquarter in one of the EU member states, but also for those which are merely hired by those states or other organizations and authorities.

Particularly, the elaboration of minimum standards on supervision duties and applicable sanctions to member states that do not regulate the PMSCs deployment in order to conform it to Human Rights and International Humanitarian Law are recommended. In May 2011, the European Parliament has also stated it «*Considers that the adoption of EU regulatory measures, including a comprehensive normative system for the establishment, registration, licensing, monitoring and reporting on violations of applicable law by private military and security companies (PMSCs) - both at internal and external level –, is necessary*»⁴⁵.

Also, in this circumstance, the Council remarked its approval on the High Representative initiative in declaring EU's support to the Montreux Document⁴⁶. One of the EU's most recent initiatives concerning PMSCs phenomenon is the "EU Strategic Framework and Action Plan on Human Rights and Democracy" adopted by the Council of EU in June 2012. On the Action Point 21, concerning EU's action conformity to International Humanitarian Law, EU states its commitment in promoting the acceptance for other countries of the Montreux Document.

The responsibility for the realization of this goal is given to EEAS member states⁴⁷. As highlighted before, it might be considered the fact that a more concrete approach in the elaboration of an appropriate normative framework for the control of PMSCs activities would be the most suitable solution, also considering the improvement in EU's competencies about security and defence after the Treaty of Lisbon came into force.

⁴⁵ European Parliament (2011)- *Report on the development of the common security and defence policy following the entry into force of the Lisbon Treaty 2010/2299(INI)*, whole text available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2011-0166+0+DOC+XML+V0//EN>

⁴⁶ Ibid.

⁴⁷ Council of the European Union (2012)- *EU Strategic Framework and Action Plan on Human Rights and Democracy*, whole text available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf

In any case, Europe continues to play a key-role in structuring both national and regional control about the provision of military and security services. The European Commission's PRIV-WAR research program, HR's support to the Montreux Document and Parliament's resolutions are backed up by European Council's actions, which might be divided into three categories. Indeed, the Council of European Union formulates "Regulations", which can be directly applied to member states in order to set up common procedures about a given issue; "Common Positions" which are legally binding but have to be implemented at a national level into a set of specific laws or practices; and "Joint Actions", which, as the name states, plan coordinated strategies which have to be carried out by EU's members in order to achieve a specific goal.

An example of Council Regulation is (EC) No. 428/2009 "Setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items" drafted in May 2009, while a Council's "Common Position" is the one adopted under Title V of the EU treaty, No. 2008/944/CFSP "Defining common rules governing control of exports of military technology and equipment" which was designed to replace the previous Council Common Position 2003/468/CFSP "On the control of arms brokering".

In 2008 the Council also drafted the strategy for an important joint action in the CFSP's framework, namely 2008/858/CFSP "In support of the Biological and Toxin Weapons Convention (BTWC), in the framework of the implementation of the EU Strategy against the Proliferation of Weapons of Mass Destruction"⁴⁸.

But how and why have those Regulations, Common Positions and Joint Actions appeared to be valuable control instruments over PMSCs' ability to hide into normative voids? The aforementioned Council Regulation (EC) No. 428/2009 amends the previous European regime, set up in 2000, that aimed at controlling the exportation of the so called "dual-use items and technology", namely the kind of equipment which may have both military and civil applications⁴⁹.

The new regime set up by the Regulation adds, together with the control over export, a system for the authorization and monitoring of brokering and transit of those dual-use

⁴⁸ Official Journal of the EU (2008), whole text available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:302:0029:0036:EN:PDF>

⁴⁹ Official Journal of the European Union (2009) whole text available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:134:0001:0269:en:PDF>

goods, which are listed in an Annex included to the Regulation itself. The Council identifies “brokering” as the activity of negotiating or arranging transactions for the purchase, sale or supply of civil-military goods among third countries, and their transfer.

This regulation appears to be relevant in respect to PMSCs’ activities as the aforementioned Annex lists ten macro-categories (and several sub-categorizations) of dual-use equipment that the private companies may purchase or buy as a part of their contract. The goal of the EU Council was to tackle one of PMSCs’ most profitable activities, ensuring the dual-use items they purchase or buy are not in contrast with European and international laws on defence, environmental protection and human rights.

Council Common Position 2008/944/CFSP, adopted by EU member states in December 2008 is also important in this sense, and even more accurate in tackling some of the issues around the PMSC phenomenon. As the title states, it defines “Common rules governing control of exports of military technology and equipment” and therefore makes compulsory the criteria for the export authorization of military goods and services listed in the EU Common Military List⁵⁰. Those criteria were previously included in the EU Code of Conduct for Armaments Exports of 1998, built on the Common Criteria for Arm Exports of 1991 and 1992.

The aforementioned Code of Conduct made mandatory for EU the draft of an annual report on the weapons exports of its member states. This represented a great improvement in monitoring the transparency and compliance to the norms in exporting arms and military or security services from EU. The results were gradual but increased progressively over time. Since 1999 to the fifteenth report published in 2012 the information included in the documents became more and more accurate, including the equipment’s worth, type, origin and destination. Year 2012 is important because, since all member states produced mandatory reports on their arms exports, most of them decided to make their national data public. At the present day, more than 90% of EU member states reports can be publicly consultable, and the total number of states which publish their data amounts to 36⁵¹.

⁵⁰ More information available on EEAS official website, “Arms Export Control” section at http://www.eeas.europa.eu/non-proliferation-and-disarmament/arms-export-control/index_en.htm

⁵¹ Stockholm International Peace Research Institute (SIPRI), further information available at http://www.sipri.org/research/armaments/milex/milex_database

Also, the standards that Council Common Position 2008/944/CFSP sets out are not limited to the export of military goods: as Council Regulation (EC) No. 428/2009, they take into account both brokering and transferring of equipment, but also of “intangible” goods such as software, and technology used to produce, operate, develop, maintain, install, inspect or repair all the objects listed in the EU Common Military List. The criteria for the monitoring of those goods, equipment or services are also related to the possibility that they might be used with international human rights violation or repression purposes, to provoke or stoke both existing and possible conflicts or affect the stability of a region, but also to be re-exported to undesirable destinations or foster transnational crime or terrorism.

In order to make the Code effective, the Council structured a “Conventional Arms Exports Group” (COARM) which had a key-role in tackling other areas where the regulatory regime was not effective. Indeed, it is thanks to the COARM if in 2009 the aforementioned Council regulation 428 was drafted. Also, this working group was the first to identify military brokering activity as an issue relevant in the security field, in 2000, when a report on the improvement of the Code was drafted. A year later, the member states adopted several guideline in order to make the monitoring of brokering practices a part of their legislations⁵².

This resulted in the Council Common Position (EC) 2003/468/CFSP, which made mandatory the national laws on weapons brokering in the member states. This Common Position states that «member states will take all necessary measures to control brokering activities taking place within their territory», also promoting state’s control over brokering activities that take place outside their territory, but are carried out by subjects whom have their nationality or residence in a member state⁵³.

A set of legally binding Common Positions which might have been made keener in order to pursue the PMSCs monitoring objective are the EU Common Positions which concern the imposition of embargoes on the private, uncontrolled export of arms, services and maintenance or assistance related to military activities to given countries. One example

⁵² COARM official website, further information available at <http://www.consilium.europa.eu/en/council-eu/preparatory-bodies/working-party-conventional-arms-exports/>

⁵³ Official Journal of the European Union, whole text available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2003:156:TOC>

is the Council Common position 2004/31/CFSP of the 9th of January “Concerning the imposition of an embargo on arms, munitions and military equipment on Sudan”. Several countries have been subject to these embargoes, including Lebanon, Somalia, Zimbabwe, Liberia, Guinea Conakry, Democratic Republic of Congo, Ivory Coast and of course Sudan.

These Common Positions are essentially a set of strategies through which EU prohibits the provision of those services and equipment which PMSCs usually sell, like the «Supply or transfer technical assistance, brokering services and other services related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, directly or indirectly to any person, entity or body in, or for use» in a given country.

EU also has the power to cancel the embargoes, also providing the services for reconstruction, peace enforcement and humanitarian help in that country, as happened with the amending Regulation (EC) No 131/2004 concerning the aforementioned 2004/31/CFSP Common Position. The only problem with embargoes as mentioned in the Common Position is that they prohibit a set of “military activities” which are not clearly defined, therefore leaving a significant “no-man’s-land” for national authorities and private companies’ activities.

Looking at the previously mentioned Joint Actions, also those document covered an important role in tackling the problems related to PMSCs. EU Council Joint Action 2000/401 of 22 June 2000 mainly concerns weapons of mass destruction (WMD), ballistic missiles and technical maintenance of these weapons, including their shipping to third countries which are under embargo. Regarding WMD, a large number of services, ranging from repairs, development, assembly, testing, maintenance but also instruction, training, transmission of knowledge or skills or consulting services are covered, in order to monitor the activity of private corporations which may deliver them to third countries that might use them to destabilize a region, or violate human rights.

But more specifically for private military and security corporations, this Joint Action calls member states to «*Consider the application of such controls also in cases where the*

technical assistance relates to military end-uses other than those referred to in Article 2 [...] and is provided in countries of destination subject to an arms embargo»⁵⁴

Some other common policies EU promoted concern the brokering of small arms and light weapons, which is a process that can be included into PMSCs' services in developing countries, and that can turn out to be threatening for a country's stability when this kind of equipment starts to spread among the population. One of the first attempts in monitoring and blocking this trafficking dates back to 1998, when the Council adopted Joint Action 1999/34/CFSP "On the EU contribution to combating the destabilizing accumulation and spread of small arms and light weapons".

This strategy already forecasted the urgency to increase EU's commitment in warning the most important international organizations, such as United Nations and OSCE, about the necessity of a restrictive framework on small arms and light weapons market, as also the EU Code of Conduct did in the same years.

But EU's strategy did not include only international organizations, as it stated that its member states «shall seek to increase the effectiveness of their national actions in the field of small arms». The document was later replaced by the more accurate Joint Action 2002/589/CFSP that listed, together with the export of small arms and light weapons, the trafficking of ammunitions and services for maintenance or training for the use of these items, also enlarging the number of strategies aimed at monitoring and blocking illegal weapons trafficking.

The Joint Actions were so successful in reaching their purposes that the Council adopted several Decisions in order to assist and support foreign governments in developing effective legal frameworks to monitor the possession, brokering and use of small arms and light weapons and their ammunitions. These Decisions gave birth to the so-called "search-and-destroy" of illegal armaments operations in Asia, East Europe and Africa⁵⁵.

Not only the Council, but also the Court of Justice of EU and its judgments have been crucial in taking on the private war phenomenon, both internally and externally, as happened with Case C-465/05 " Commission of the European Communities v Italian

⁵⁴ Data provided by EUR-Lex, further information is available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32000E0401>

⁵⁵ Ibid.

Republic”, where EU’s competence in regulating internal private security services provision is stated⁵⁶.

Before 2007 (when Case C-565/05 took place), the European Court of Justice had already stated EU Commission’s authority in respect to the private security companies sector, in a variety of verdicts that identified these kind of services as a part of the economic sector, which was included in the former “first pillar”.

In spite of all the progresses listed above, EU has been moving uncoordinatedly and slowly towards a common legal framework, intended to specifically tackle the issues related to PMSCs’ area. The Council adopted on 13 June 2002 a non-binding recommendation for European institutions and member states about the urgency of a cooperation among the competent authorities in the private security sector, and the Parliament informally expressed itself as favourable to an harmonization in member states’ regulations regarding the private security sector.

Anyway, disregarding to ECJ previous judgements, EU Council stated that private security companies were not included among the services which the Commission’s directive established to be under EU authority on internal market. It rather gave to the Commission the possibility to present a specific harmonization proposal for the European regulations regarding private security services.

Specifically addressing with restrictive regulations the PMSC phenomenon is a difficult task for a wide range of reasons stated in the paragraphs before. Indeed, any violation of human rights, political destabilization or simply unpunished illegal behaviour that takes place in their territory, or in foreign countries because of their inactivity, tackles their credibility. Whether it’s true that PMSCs are not exactly what mercenaries were in the past, it is also true that opportunity makes the thief.

As it might have emerged, the opportunity for PMSCs is represented by the normative void, since they act like any other private enterprise for their own interest and personal gain.

⁵⁶ European Court of Justice (Second Chamber) Judgement (2007), whole text available at <http://curia.europa.eu/juris/showPdf.jsf?jsessionid=9ea7d0f130d5cdf7027d2a2f4a4984ef89eb11cecd8d.e34KaxiLc3eQc40LaxqMbN4Och4Se0?text=&docid=71719&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1059290>

CHAPTER THREE

PRIVATISING SECURITY SERVICES IN ITALY

1. Introduction

The maritime sector - with particular reference to Italy's merchant fleet - is the most appropriate in order to develop an analysis concerning the impact private security industry has over the country's security policies, and subsequently the way Italy interfaces with this relatively new phenomenon. This is due to several contributory factors. First of all, the relevance maritime commercial transport has in the country's economy, which accounts for about the 50% of the country's total traffic for both importations and exportations⁵⁷.

Secondly the intensification of the piracy phenomenon, albeit to a lesser degree in the last three years, has affected Italy together with other countries actively engaged in the international maritime trade. This happened because some of Italy's commercial routes are part of those "high piracy-risk areas" included by the International Maritime Bureau (IMB) since 2010 in its Best Management Practices. The aforementioned importance of the maritime sector has therefore determined a prompt political debate over the most feasible solutions in order to safeguard the country's economy in the past years⁵⁸.

In the third place, a recent growth of the security services market, both in terms of complexity and economic worth, has affected Europe and Italy as well, giving to this sector important role within the debate⁵⁹. This increasing importance is crucial when it comes to ponder how the security outsourcing has been perceived and disciplined in our country in respect to the piracy issue. Therefore, current regulations and policies are a valuable instrument in assessing the existing framework's efficiency and the understanding of the phenomenon on a national level. This is particularly true when

⁵⁷ Ruzza, S. (2015), *L'impiego delle compagnie di sicurezza private quali team di protezione a bordo dei mercantili: scomoda concorrenza o opportunità per future sinergie nella lotta alla pirateria?*, Centro di Alti Studi per la Difesa

⁵⁸ Confitarma Annual General Meeting (2017), whole text available at <http://www.confitarma.it/dyn/doc/5887.pdf>

⁵⁹ Statista, *Revenue of private security services in Italy from 2008 to 2020*, data available at <https://www.statista.com/forecasts/393488/italy-private-security-services-revenue-forecast-nace-n8010>

considering the fact that security provision for Italian private commercial ships has been completely delegated to private entities in 2015⁶⁰.

Fourthly, the sensitivity of the issue about security services' privatization reaches its peak when it comes to the international level. This is due to the fact that the safeguard of people and economic assets abroad involves a larger number of variables than it does on a domestic level. While domestic security is in fact generally perceived as an exclusive competence of the State, ensuring protection or providing security services abroad implies a higher degree of risk, due to its possible effects on the country on an international level.

The reason of this risk becomes evident when considering that the actions performed abroad within the security framework - whether they imply or not the use of force - may involve other countries' natural or legal persons, interests and political relations, along with relevant foreign and international legal provisions, with predictably complex results. This turned out to be true in several cases which are more or less directly linked to the Italian security area abroad, ranging from the "Quattrocchi Case" (2004), to the "Enrica Lexie Case" (2012) and to the "Provvisionato Case" (2015). This makes essential an analysis about the private security personnel's rules of engagement as well as about the standards set by the Italian law for its deployment.

All the factors described before will be extensively analysed in the next paragraphs, in order to provide a clear picture of the situation Italy experiences in terms of security services outsourcing on an economic, political and strategic level. They will also help backing up the projections for the future, as well as the policy proposals which will be part of the third chapter.

A last, but not least, factor which makes the maritime sector particularly relevant for Italian private security companies, is that the protection of national assets abroad which don't fall within the maritime sphere has always been managed by Italian military or police forces, with only two exceptions. This security framework, and the aforementioned exceptions are explained in the next paragraphs.

⁶⁰ AdnKronos (2015), *Antipirateria: al via i corsi per fare il contractor sui mercantili, selezioni aperte a tutti*, whole article available at http://www.adnkronos.com/fatti/cronaca/2015/04/03/antipirateria-via-corsi-per-fare-contractor-sui-mercantili-selezioni-aperte-tutti_91EdUq7WiqRN8HTNhZYIL.html

The Italian Ministry of Foreign Affairs (MAE) protects its personnel operating in high-risk scenarios through two means: surveillance and armed escort. The Arma dei Carabinieri is normally entrusted with surveillance duties, thanks to the presence of a specialized force created with the purpose of safeguarding the Department's detachments and the Italian diplomatic missions abroad: such special unit is the "Reparto CC Ministero Affari Esteri".

The armed escort is also carried out by the Carabinieri, but for this duty the Ministry resorts to the 2nd Mobile Brigade. All the units within the 2nd Mobile Brigade are deployed to carry out high-profile missions abroad, even those which are part of the fight against international terrorism. During the armed escort missions their duties range from military police functions to the maintenance of peace and public order within different operational scenarios. Furthermore, those units are entrusted to escort Ambassadors and General Consuls in the high risk diplomatic missions through the creation of ad hoc Close Protection Teams (CPT).

With regard to the deployment of contractors for these same functions, the Ministry's opinion is to rely on them only as a last resort. This opinion is the result of a series of concurrent factors. Firstly, the safeguard of diplomatic activity within highly unstable countries is understood as inherent to the diplomatic activity and therefore falls within the State's functions: security outsourcing could be therefore perceived as conflicting with State's sovereignty. In the second place, according to the MAE, the presence of private armed security teams substituting state officials might undermine the reputation that the units of the 2nd Mobile Brigade gained over the years.

Another important issue is that related to secrecy: those who carry out safeguard operations for the MAE officials are aware of their meetings and whereabouts, due to the specific characteristics of their own duty. If those information were to leak out or worse deliberately provided to hostile actors, Italy would undergo the risk of compromising the results achieved by diplomacy, if not even entire missions. However, two cases in which Italy has resorted to the private security option may be found in historical records: in both of them, Italy has entrusted foreign firms, probably due to the state of underdevelopment the domestic private security industry was going through during those years.

The first took place after withdrawal of Italian troops from Iraq in 2006, as in the technical relation attached to the conversion law of the Decree Law D.L.4/ 2007 “Decreto Missioni” presented by Prodi Government, it was stated the necessity for the Italian government to stipulate a contract with a local security firm already operating in Iraq with local personnel, in order to grant the safety of the civil personnel of the Reconstruction Support Unit (USR) leaving the military base in Nassiriya.⁶¹

The decision prompted a mediatic and political debate. Several articles criticized not only the deployment of a private security company, but above all the choice of Aegis, a British company founded by Tim Spicer, who had previously managed Sandline International, another private security company which became famous in the 90’s for having fiercely repressed a rebellion on behalf of the Papua New Guinea government and having exported firearms in Sierra Leone in spite of a United Nations embargo. Spicer was therefore accused by Italian public opinion of being involved in human rights abuses and violations of international law.⁶²

Some members of parliament were therefore concerned and submitted formal questions to the Senate’s Defence Committee. The former Ministry of Foreign Affairs Ugo Intini reassured that Aegis Corporation had a long experience in the area, and being a British corporation, it was subject to the European Union’s norms involving financial transparency. Furthermore, he pointed out that it didn’t appear that Tim Spicer had criminal convictions at the time. In spite of this brief debate the final result achieved by Aegis were generally appreciated within Italian institutions.⁶³

The second case involves SKA Arabia, a British security firms which has its operational headquarter in Dubai, engaged to escort an official of the Italian government during his movements within the Horn of Africa area. The deal foresaw the possibility for armed escort only where and when necessary, not only to the official in question, but to all those operating in the same area who might have requested it as well. In order to make the

⁶¹ Marchetti, E. (2013), *Private Military and Security Companies: il caso italiano nel contesto internazionale*, Edizioni Nuova Cultura

⁶² Gualco, M. (2007), *Iraq, nel ddl 3 milioni di euro per i “contractors”*, l’Unità

⁶³ Camera dei Deputati, Interrogazione a risposta scritta 4/03113 presentata da Deiana Elettra (Rifondazione Comunista- Sinistra Europea) in data 28/03/2007, further information at http://dati.camera.it/ocd/aic.rdf/aic4_03113_15

armed escort compatible with the arms embargo towards Somalia, it was necessary the authorisation of the United Nations Sanctions Committee of the Security Council.⁶⁴

The practice deriving from the two examples is therefore to resort to security firms already present on the ground, and therefore having the necessary license and permissions: it remains a practice considered only as “*extrema ratio*”, apparently not considered to be particularly advantageous in economic or political terms. This is especially true when considering that the Italian government’s outsourcing for security services requires a legislative action which authorises, on a case-by-case basis, the MAE to entrust private security companies with specific duties to be carried out temporarily.

2. The Importance of Maritime Trade in Italy

2.1. Italian Merchant Fleet and Maritime Sector

Data concerning the position of the Italian merchant fleet in relation to its European and world-wide peers in this dissertation has been prevalently gathered by United Nations Committee for Trade and Development (UNCTAD) and the Confederation of Italian Shipowners “Confitarma”. Being an organ of United Nations responsible for issues relating to trade and development, UNCTAD has always shown a vibrant interest in the maritime sector, as highlighted by the fact it has been publishing an annual flagship “Review of Maritime Transport” since 1968. This publication analyses relevant tendencies related to both controlling and flag States, including regularly updated and standardized statistics.

On the basis of data provided in the last Review of Maritime Transport, the Italian merchant fleet results to be the 20th on a global scale according to its Dead-Weight Tonnage (DWT)⁶⁵ with a total value of 15 955 268 tonnes. This ranking has remained unchanged since 2015. According to the data about the leading flags of registration by

⁶⁴ See 61

⁶⁵ Dead-Weight Tonnage (DWT) is a ship’s transportable load capacity expressed in metric tonnes. It results by the mathematical difference between the mass of water moved by the ship at full load and the ship’s own mass. The difference between the masses of water moved by a fully-loaded and a lightweight ship is considered starting from the International Load Line to the main deck. It therefore represents in cubic tonnes the maximum mass of mobile load the ship is capable to transport in safety. The mobile load includes fuel, crew, consumable supplies as well as water, food and replacement parts, passengers and of course the cargo. This definition is derived from the data provided in “Maritime Security: an Introduction” by Michael McNicholas (Butterworth-Heinemann, 2011)

tonnage, Italy covers the 7th position among European countries for its DWT, and the 6th in respect to EU's Member States⁶⁶.

For what concerns its number of ships flying a national flag, Italy covers the 20th position on a world-wide level with a total number of 1430 vessels. To this extent, UNCTAD's classification takes into account only the propelled seagoing vessels of 100 tons and above, ranked by DWT. Italy therefore deploys the 4th largest merchant fleet in Europe and even the 3rd between European Union's Member States⁶⁷. The aforementioned data is organized in the following tables.

Table 1: N. of Vessels per flag of registration

	Flag of Registration	Vessels
1	Malta	2170
2	Norway	1585
3	United Kingdom	1551
4	Italy	1430
5	Greece	1364
6	Netherlands	1244
7	Cyprus	1022
8	Denmark	654
9	Germany	614
10	France	547
11	Portugal	466
12	Belgium	185

Table 2: Million of DWT per flag of registration

	Flag of Registration	DWT (million)
1	Malta	99,2
2	Greece	74,6
3	United Kingdom	40,9
4	Cyprus	33,7
5	Norway	21,9
6	Denmark	16,8
7	Italy	15,9
8	Portugal	13,7
9	Germany	10,4
10	Belgium	8
11	Netherlands	7,6
12	France	6,9

Source: UNCTAD *Review of Maritime Transport 2017*

The merchant fleet grew on a global scale by 3,15% in the 12 months to January 2016 in terms of DWT. This represents a decrease in respect to the previous two years, when the total growth amounted to 3,5%, still the lowest percentage of the entire decade since 2003. However, in its last projection UNCTAD expects the world's seaborne trade volume to

⁶⁶ United Nations Conference on Trade and Development (2017), *Review of Maritime Transport*, whole text available at http://unctad.org/en/PublicationsLibrary/rmt2017_en.pdf

⁶⁷ Ibidem

expand to an encouraging 3.2% in the years from 2017 to 2022. In this global analysis Italy's activity has been continuously decreasing from 2015 to 2017, with a share of world total DWT going from 1% (2015) to 0,91% (2016) and finally 0,86% (2017). In spite of this, the percentage of the country's share of vessels on world total didn't follow the same trend: it decreased from 1.58% (2015) to 1.51% (2016) and increased again in 2017, when it stood at 1.53%.

Still, this data has to be put into a wider historical period, as the Italian merchant fleet carried out a significant work of restructuring and innovation, increasing its total capacity of transportation of a total 41,2% during a period which goes from 1998 to 2012. In this sense the before mentioned fluctuations it experienced in terms of global-scale rankings might be considered as minor adjustments according to a recovery from a previously disadvantageous position.

In Italy, the economic evaluation of the maritime sector has been carried out by the Federation of Italian Maritime Sector (FDM), which brings together various bodies relating to the naval industry and administration. Its latest report assesses that the industrial, manufacturing, institutional and service sector activities linked to the maritime cluster responded well to the recent economic crisis which, since 2007 to 2014, reduced Italy's global production capacity by almost 20%.

In the country's economy, the maritime sector kept both its relevance and stability. It is undeniable that the sector's production decreased by 3,5% and the import/export sectors followed a similar trend, with exports going from 7,1 million to 6,2 in the 2011-2013 period, and imports going from about 4 million to 2 in the same timeframe.

On the other hand, in spite of these decreases, the total value of the industry in 2013 corresponded to 30,4 billion of Euro, accounting for 2,03% of Italy's total GDP, with an increase of 2,6 billion in 2015. Also the workforce units employed in the maritime cluster experienced a -1,11% decrease from 2011, with a total of 170.000 direct workers. The "indirect" workforce, which relates to the service and institutional sector of the sector, experienced a relevant increase of 2%, with 470.000 units employed by 2013⁶⁸.

⁶⁸ Federazione del Sistema Marittimo Italiano (2015), *V Rapporto sull'Economia del Mare: Cluster Marittimo e Sviluppo in Italia*, whole text available at http://www.federazioneilmare.it/images/pubblicazioni/VRapportoEconomiaMare_2015.pdf

2.2. Italian Merchant Fleet in High-Piracy Risk Zones: Legal Framework

Before we get into how piracy affects Italy's trade and how the country responded to the menace in terms of security policies, some data about piracy development in the last years should be taken into account. The International Maritime Bureau (IMB), a body of the International Chamber of Commerce (ICC) collects information about hostile acts carried out against commercial ships on a global scale, both successful and attempted. In its annual report, IMB pointed out that, despite global piracy has reached its lowest levels since 1998, more ship crews were kidnapped at sea by pirates in 2016 than in any of the previous ten years⁶⁹.

However, the fact that piracy activities have been decreasing since their last peak of 439 total attacks in 2011 is the most encouraging data. This is particularly evident when it is taken into consideration that the average number of pirate attacks on a global scale in the 2005-2007 period was of 250. As shown by the table below, since the beforementioned peak, acts of piracy steadily decreased, particularly in the area of Gulf of Aden, occurring more frequently in South-East Asia (Singapore Straits, Vietnam, Malaysia, Indonesia) while the waters around Nigeria have maintained their dangerousness in a stable fashion.

Table 3: Actual and attempted attacks by location, 2011-2016

	2011	2012	2013	2014	2015	2016
Tot. Attacks	439	297	264	245	246	191
Bangladesh	10	11	12	21	11	3
Benin	0	20	2	0	0	1
Gulf of Aden	37	13	6	4	0	1
India	6	8	14	13	13	14
Indonesia	46	81	106	100	108	49
Malaysia	16	12	9	24	13	7

⁶⁹ IMB report: *Sea kidnappings rise in 2016 despite plummeting global piracy*, whole text available at <https://icc-ccs.org/index.php/1218-imb-report-sea-kidnappings-rise-in-2016-despite-plummeting-global-piracy>

South China Sea	13	2	4	1	0	0
Red Sea	39	13	2	4	0	0
Nigeria	10	27	31	18	14	36
Somalia	160	49	7	3	0	1
Singapore Straits	11	6	9	8	9	2
Tanzania	0	2	1	1	0	0
Togo	6	15	7	2	0	1
Vietnam	8	4	9	7	27	9

Source: IMB Piracy and Armed Robbery against Ships Annual Report, 2016

In its reports, the IMB identifies piracy according to the definition provided at the international level by the United Nations Convention on the Law of Sea (UNCLOS) of 1982, also known as “Convention of Montego Bay”. Article 101 of said convention defines piracy as:

«any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

*(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b)».*⁷⁰

This definition is also accompanied by that of “armed robbery against ship” which has been drafted by the United Nations’ agency International Maritime Organization (IMO) in its Resolution A.1025 (26), “Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery Against Ships”. The definition concerns acts which fall within the definition of UNCLOS art. 101, but which are carried out in a State’s territorial waters.

Is a armed robbery against ship:

« (a) any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea;

*(b) any act of inciting or of intentionally facilitating an act described above»*⁷¹.

It is worth noticing those definition are essential for research purposes, as Italy has ratified UNCLOS in 1994, and it is part of IMO’s Executive Council since the Organization’s own foundation in 1948.

IMB data, according to international definitions of piracy activities, is collected in order to provide useful security data to mariners. IMO has been using this data in order to identify the High Risk Areas (HRA) in which extreme attention and opportune precautionary measures are to be taken. The HRA are defined by IMO’s as *«an area*

⁷⁰ United Nations Convention on the Law of Sea, whole text available at http://www.un.org/depts/los/piracy/piracy_legal_framework.htm

⁷¹ IMO Resolution A.1025 (26), whole text at <http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Guidance/Documents/A.1025.pdf>

within the UKMTO⁷² designated Voluntary Reporting Area (VRA)⁷³ where it is considered there is a higher risk of piracy and within which self-protective measures are most likely to be required»⁷⁴.

This definition has been drafted as an additional part of the Best management Practices (BMP) IMO adopted on the 2nd of February 2009 with Resolution A.1025(26), as a response to the aforementioned increase in piracy activities against merchant fleets.

BMPs are a set of guidelines related to both planning and operative dimension addressing the cabin staff of civil ships which transit in High Risk Areas, as mentioned before. IMO defines them as *«an aide-mémoire to facilitate the investigation of the crimes of piracy and armed robbery against ships»⁷⁵*. Given the existing international laws and agreements, BMP provide a guidance for national civil ships concerning the training of investigators, the investigative strategy (stressing the importance of inter-State cooperation), guidelines for investigators on how to deal with a report and the investigative procedure as well.

In respect to PMSC, these guidelines are designed to be added to those contained into both the Montreux Document and ICoC mentioned in the previous chapter.

The High-Risk Areas in which Best Management Practices are likely to be necessary were identified for the first time in June 2010 by IMO as an area included between the Gulf of Aden and the Arabic Sea with 65°E on the Eastern Limit. In its fourth revision (2011)

⁷² United Kingdom Marine Trade Operations (UKMTO) is a Royal Navy capability with the principal purpose of providing an information conduit between military (which includes security forces) and the wider international maritime trade. UKMTO delivers timely maritime security information, often acting as the primary point of contact for merchant vessels involved in maritime incidents or travelling within an area of high risk. UKMTO also administers Voluntary Reporting Areas (VRAs). These schemes are to enhance the security of merchant vessels and therefore vessels/masters/CSOs and Companies are encouraged to send regular reports, providing their position/course/speed and ETA at their next port whilst in transit.

In the event of an incident UKMTO is able to inform relevant regional authorities and warn and advise vessels in the near vicinity of the incident. The information is provided to the wider shipping industry, therefore providing ship owners and Masters with information that could affect their own company risk assessment in that transit.

⁷³ Provides Maritime Security Guidance (MSG) to the mariner operating in the Voluntary Reporting Area (VRA). It receives reports and information on suspicious incidents from merchant shipping and shares that information with its regional, national contacts, as well as Industry and vessels operating in that area.

⁷⁴ IMO Circular Letter No. 3606 (2015), *Revision to coordinates of the High Risk Area*, whole text at <http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Guidance/Documents/Circular%20Letter%20No.3606.pdf>

⁷⁵ See 11

IMO extended this area to Suez and Strait of Hormuz (Northern Limit); 78°E (Eastern Limit); 10°S (Southern Limit)⁷⁶.

In its legislation for the safeguard of commercial ships introduced since July 2011 (then L.130/2011), Italy has transposed IMO's data in order to identify HRAs. In its last Decree (24/10/2015 and 19/10/2015), the Minister of Defence added to the aforementioned HRA other regions such as: the South China Sea, the Straits of Malacca and Singapore, West Africa, the Indian Ocean, the Arabic Sea, the Persian Gulf.⁷⁷

It is worth noticing that alongside to the Italian adjustment process, the before mentioned reduction of dangers in the Gulf of Aden, Somali coast and Indian Ocean determined a general claim to revise the HRA on the international level. The Contact Group on Piracy off the Coast of Somalia and the Maritime Safety Committee had a particularly active role in requesting to the maritime industry the revision of the coordinates in force at the time. This was also due to the India's claims, as the sub-continent encountered many problems since the extension from the 65°E to the 78°E.⁷⁸ The "Enrica Lexie Case", which is still ongoing at the time of writing, has indeed to be considered also in the context of these problems.

As Indian authorities contested the presence of an actual high risk of piracy activities in their national waters, and the revision of the HRA was put in a general framework of détente with India, on the 2nd of December 2015 IMO has revised the HRA. It now corresponds to a zone enclosed «*In the Red Sea: northern limit: Latitude 15°N; In the Gulf of Oman: northern limit: Latitude 22°N; Eastern limit: Longitude 65°E; Southern limit: Latitude 5°S*»⁷⁹. The limit of 65°E was therefore restored, even though Italy kept the previous definition of HRA in its national legislation. The difference between the two HRAs, meaning a reduction of approximately 55% of the surface, is shown in the following map. The previous HRA is in violet, while the current is the red one.

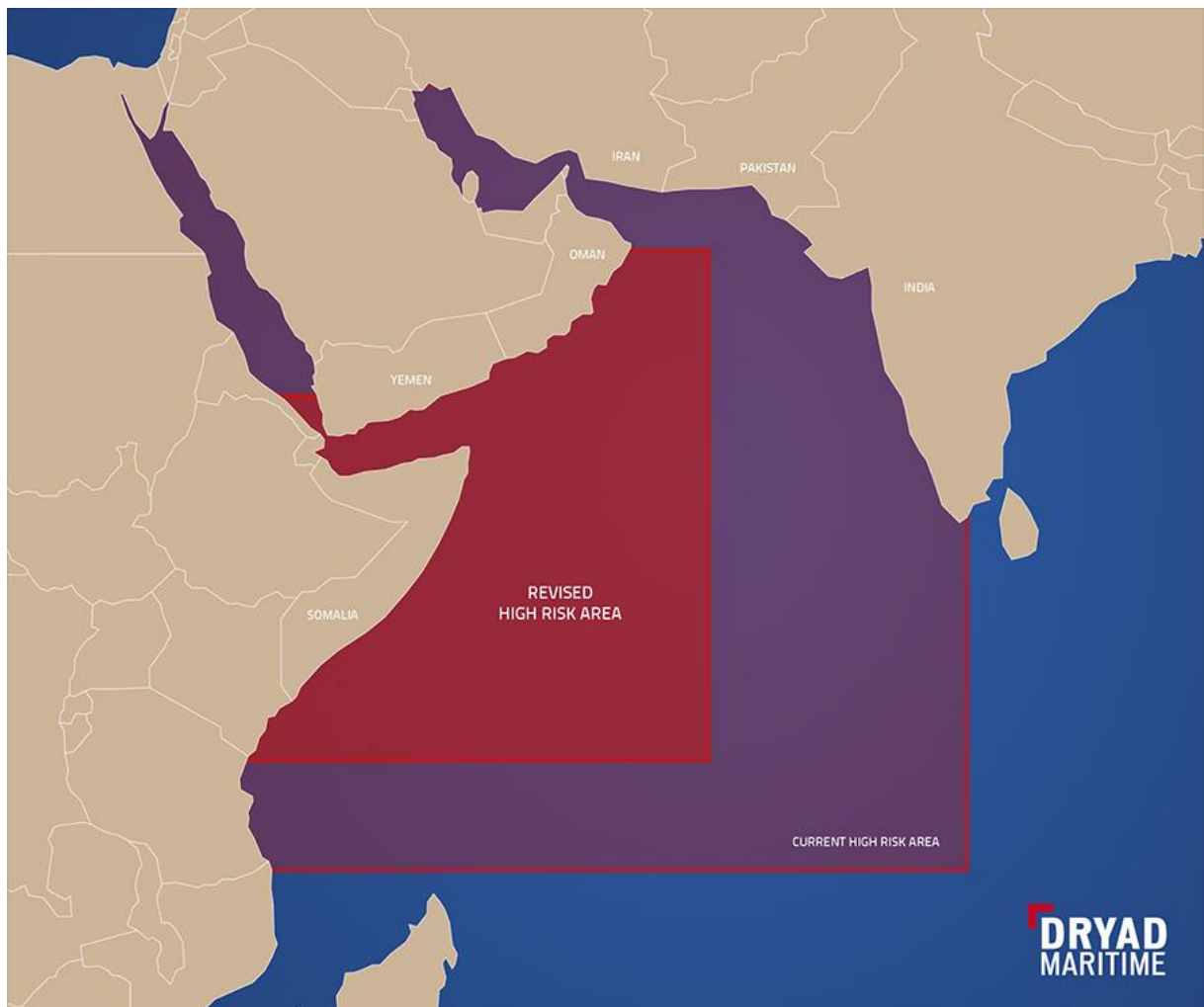
⁷⁶ Best Management Practices for Protection against Somalia Based Piracy (Version 4- August 2011), whole text available at http://eunavfor.eu/wp-content/uploads/2013/01/bmp4-low-res_sept_5_20111.pdf

⁷⁷ Ministero della Difesa, Decreto 24 Settembre 2015, whole text at http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2015-10-06&atto.codiceRedazionale=15A07407

⁷⁸ Re-Drawal of the High Risk Area in the Indian Ocean - Major Gain for India on Global Maritime Stage, to Save About Rs. 1500 crore per Annum for Merchant Ships (2015), Press Information Bureau Government of India Ministry of shipping, further information at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=128577>

⁷⁹ See 14

Figure 2: Previous HRA (violet) and current HRA (red)



Source: Dryad Maritime Official Website

2.3. Impact of Piracy on Italian Merchant Fleet

The most part of Italian maritime traffic takes place in the Mediterranean area with 216 million tonnes of goods and a market share of 36% in 2017⁸⁰. Still, the Suez Canal (part of the HRA) is crossed by a fair number of Italian ships on an annual basis, as the peninsula represents a natural logistic platform to connect the Asian and African maritime routes with the Mediterranean and therefore the European area⁸¹. Particularly, many Italian ships chartered to third parts for transportation purposes cross the area enclosed

⁸⁰ Report Difesa (2017), *Geoconomia Traffico marittimo internazionale in crescita. Superati i 10 miliardi di tonnellate trasportate* text available at <http://www.reportdifesa.it/traffico-marittimo-internazionale-in-crescita-superati-i-10-miliardi-di-tonnellate-trasportate/>

⁸¹ Deandreis, M. (2017), *La Nuova Centralità del Mediterraneo*, Sole24Ore

between the Gulf of Aden and the Indian Ocean. To this data, the transit of ships built in the Far East which transit through dangerous waters should be taken into account.

Comparing the number of piracy attacks Italy has experienced in the last nine years with those suffered by eight of the previously mentioned European merchant fleets may provide a more detailed picture of the risk Italian ships incurred in the past and may incur in the present. To this extent, the “piracy attacks” taken into consideration include both successful and attempted attacks, as done in IMB’s annual report. The data is provided in the table below.

Table 4: Successful and attempted pirate attacks experienced by European fleets

	2008	2009	2010	2011	2012	2013	2014	2015	2016
Italy	4	11	8	8	5	4	7	0	0
Denmark	3	3	4	7	7	6	4	3	1
France	7	2	4	6	0	1	0	0	0
Germany	5	5	5	5	4	0	0	0	0
Norway	7	5	5	8	3	4	4	1	3
Netherlands	3	9	3	0	1	2	7	1	2
UK	6	5	6	6	3	2	0	1	2
Spain	0	2	4	2	2	0	0	0	0

Source: IMB Piracy and Armed Robbery against Ships Annual Report, 2016

In order to provide a useful overview, data concerning number of vessels and DWT must be taken into account. During the 2008-2014 timeframe, Italy has always resulted to be one of the most frequently attacked fleets. This results to be particularly relevant also when considering that Italy has, at the present time, the 3rd largest fleet among EU Member States.

After 2011, aside from a frequency spike in 2014, attacks against Italian ships have been decreasing, suggesting that the major part of them took place when Italy was restructuring and incrementing its fleet. Data may also suggest that the measures taken on the domestic level since 2011, as a response to the increase in piracy activities during the previous years, had the required effects. Those measures will be analysed in detail in the next

paragraphs, however it is also worth noticing that the phenomenon of piracy attacks against Italian ships has - at the moment - completely ended.⁸²

In spite of this, the relative increase in attacks suffered in 2014, albeit moderate in respect to the 2009-2011 period, suggests that caution is to be maintained in respect to the maritime criminal activities. The aforementioned extension of the HRA carried out by the Minister of Defence in 2015 responds to this very requirement.

3. Merchant Fleet Protection in Italy

3.1. The Measures taken before 2011 and the Political Debate

As shown before, piracy has started to become a serious threat to maritime traffic since the beginning of XXI century. Due to the previously mentioned importance of international trade within the Italian maritime sector, the safeguard of the Italian assets at sea has become a key issue for security experts. Therefore, Italy has been the first country to deploy a military frigate off the coast of Somalia in 2005. The frigate in question was the F 858 “Granatiere” patrol ship, deployed under operation “Mare Sicuro” (Safe Sea). The operation had the purpose of safeguarding the commercial ships which travelled through the area of Horn of Africa, and also of acting as a deterrent for pirate. It is worth noticing that the operation was entirely carried out by Italian military forces.⁸³

After “Mare Sicuro”, Italy took part to the most important anti-piracy operations which took place in the Indian Ocean. From December 2008, Italy participated to the European Union’s counter-piracy mission EU NAVFOR Somalia, also known as “Operation Atalanta” along with other Member States. The operation has the purpose of safeguarding commercial ships which transit the area of the Gulf of Aden, the Red Sea and the Indian Ocean, as well as escorting the United Nations’ commercial ships which participate in the World Food Programme. The mission is still ongoing in support to United Nations Resolutions 1814, 1816, 1838 and 1846.⁸⁴

⁸² Confitarma Annual General Meeting (2017)

⁸³ Stato Maggiore della Difesa (2005), *Scheda relativa alla partecipazione italiana all’operazione Mare Sicuro*, further information at https://www.difesa.it/OperazioniMilitari/op_int_concluse/CornoAfrica_MARESIKURO/Documents/81874_SchedaMareSicurovers25nov05.pdf

⁸⁴ Ministero della Difesa, further information at <http://www.marina.difesa.it/cosa-facciamo/operazioni-in-corso/Pagine/atalanta.aspx>

Italy also gave her contribution within the counter-piracy framework during NATO Operation “Ocean Shield” since August 2009 until its ending in November 2016. Aside from the actions of deterrence and defence, the mission’s scope was to assist on a regional level the States requesting for support in the development of anti-piracy measures. Italy had an operative role “on-call” to this operation, that also was deployed in the Horn of Africa area.⁸⁵

In conjunction with the two previously mentioned operations, Italy has also been part of the multinational Combined Task Force 151 (CTF-151) which was deployed in the area of the Red Sea, the Indian Ocean and the Persian Gulf with the same counter-piracy goal of the operations “Atalanta” and “Ocean Shield”. CTF-151 was established in January 2009 in compliance with the aforementioned United Nations Resolutions and is currently endorsed under UNSCR 2316.⁸⁶

All of these three operation have been carried out, for what concerns Italy, only by national military forces, and have been backed up since 2013 by the construction of the support military base “Amedeo Guillet” in the African state of Djibouti. This military base has not been only representing a logistic foothold for Italian military personnel deployed in the different missions taking place within the area, but was also an assembly point for the Military Cores of Protection (NMP) as long as they have been active⁸⁷. The NMP will be furtherly analysed in the next paragraphs.

Italian Navy incorporated the before-mentioned BMP since 2009, establishing the installation of passive protective measures on the vessels (e.g. fortified citadels, water cannons) and a set of procedural practices to be followed before and during navigation or in case of attack. The first version of the document discouraged the deployment of armed guards on board until the BMP4 version was implemented on August 2011⁸⁸. Italian shipowners have always been compliant with the prime orientation on the international level which was expressed into the BMP, even during the most intense period in terms of

⁸⁵ Ministero della Difesa, further information at https://www.difesa.it/OperazioniMilitari/op_intern_corso/Atalanta_OceanShield/Pagine/default.aspx

⁸⁶ Combined Maritime Forces, further information at <https://combinedmaritimeforces.com/ctf-151-counter-piracy/>

⁸⁷ Petrelli, M. (2017), *BMIS: a Gibuti nella base in cui gli italiani combattono i pirati Somali*, Eastwest, whole article at <http://eastwest.eu/it/opinioni/open-doors/bmis-a-gibuti-nella-base-in-cui-gli-italiani-combattono-i-pirati-somali>

⁸⁸ Ministero della Difesa, BMP4, further information at <http://www.marina.difesa.it/cosa-facciamo/operazioni-in-corso/nuclei-militari-protezione/Pagine/BMP.aspx>

piracy attacks suffered, the one which goes from 2009 to 2011. During this period, Confitarma's general position expressed satisfaction with the policies developed, even though several issues were raised by relevant shipowners.

One of these was Stefano Messina, who claimed the need for armed security personnel on Italian commercial ships. Indeed Messina & C. was one of the most active Italian commercial companies within Indian Ocean at the time, and two of his boats, the "Jolly Rosso" and "Jolly Smeraldo" were attacked by Somali pirates during 2009. One of them in particular, the Jolly Smeraldo, was attacked in two different occasions: in April and in October. While in October the pirates were dissuaded by the intervention of war ships deployed for the aforementioned missions in the area, in April the ship crew had to deal with pirates with its own forces, escaping thanks to the use of water cannons and evasive manoeuvres.⁸⁹

Being Italian Navy and Italian Sailors' Labour Union concerned by the possibility that the presence of armed private personnel on civil ships could have led to a violence escalation in pirates' activities within the area, the involvement of the private sector during this phase was very small, and reduced to the furnishing of technical advice services or unarmed surveillance.

An example of unarmed activities on Italian commercial ships may be found in the "Montecristo Case". On the 10th of October 2011, the bulk carrier "Montecristo" belonging to the D'Alesio Group, was attacked by pirates within the HRA, in the Indian Ocean, as soon as the military Japanese ship which was escorting it got away. The ship was captured but the private security team on board managed to coordinate and carry out the necessary security measures: the crew shut itself in the fortified citadel, keeping the ship's wheel and launched a distress call, which determined the intervention of the NATO forces deployed in the area, namely the British Navy, which set free the ship the next day.⁹⁰

Other Italian ships encountered a fate worse than the Montecristo's one. One of them was the oil tanker "Savina Caylyn", belonging to the Fratelli D'Amato company, which was

⁸⁹ Il Secolo XIX (2009), *Messina: «Personale armato a bordo delle navi»*, article available at http://www.ilsecoloxix.it/Facet/comment/Uuid/5bf05006-bf18-11de-beb1-0003bace870a/Messina_Personale_armato_a_bordo_delle_navi_ISAmessina.xml

⁹⁰ Nesticò, M. (2011), *Liberata la Montecristo, uno degli italiani a bordo: 'Sto bene'*, ANSA

captured by Somali pirates within the HRA on the 8th of February 2011, and released on the 21st of December of the same year, after lengthy bargaining with the hijackers. What is particularly interesting in this case is the fact that, in spite of the strong denials of both Italian Government and D'Amato Group, the pirates claimed they received a 11,5 million dollars as a ransom.⁹¹

During this period, the aforementioned events brought several Italian private security companies to try to participate in the creation of a private on-board security sector within the country. One of the most active in this sense was Carlo Biffani, CEO of Security Consulting Group, but the claim of Italian PSCs was basically ignored.⁹²

The reason that made possible a political debate over the security outsourcing issue for Italian merchant ships was the aforementioned criticality in exposition to the piracy menace in the previously analysed 2009-2011 timeframe. Year 2011 in particular was intense due to the seriousness of accidents occurred: five Italian commercial ships were captured, and three of them released only upon the payment of a significant ransom. Aside from the aforementioned "Savina Caylyn" and "Montecristo", also the "Rosalia D'Amato" was captured by Somali pirates within the HRA on April 2011, and released after 7 months and the payment of a ransom. The chemical tanker "Enrico Ievoli" was captured by Somali pirates within the HRA in December 2011 and released four months after, this time under the payment of a 10 million dollars ransom as well.

It is worth noticing that at this time the Italian Government had taken measures with the introduction of L.130/2011 but at the time those events took place these measures did not foresee the possibility for the boarding of armed personnel, as it will be explained later. "RBD Anema e Core" was instead captured on the 24th of July and spontaneously released after the robbery on the 28th of the same month.⁹³

At the beginning of 2011, in consideration of the rising menace represented by piracy within the HRA, several European countries started to allow the boarding of armed personnel on commercial ships, while the shipbuilding industry as well reviewed its position concerning the viability of the private security option. To this extent, is

⁹¹ ANSA (2011), *Savina Caylyn: nave liberata, fine incubo per 5 italiani*

⁹² Evangelista, E. (2017), *Contractors e security operators. Facciamo chiarezza con Carlo Biffani*, Difesa & Sicurezza

⁹³ ANSA (2011), *Pirateria: gli attacchi alle navi italiane ogni anno*

particularly significant the action taken by the International Chamber of Shipping (ICS) which represents about 80% of the global merchant fleet, and expressed its favourability to the private option. The opinion was shared lately also by the International Parcel Tanker Association and, most importantly, by IMO's Security Committee.⁹⁴

Considering the debate's results at the international level, is not surprising that Confitarma, as well as Federpesca, was heard by the Defence Committee in 2011, when it claimed the necessity for the boarding of armed teams on Italian commercial ships for security purposes. During the hearing, the risk of an exodus for Italian merchant fleet - in case the deployment of armed security teams for commercial shipowners was not possible - was foreseen.⁹⁵ An element which contributed to the "dual option" resulting from the debate following the hearing was the general claim addressed to the institutions by Confitarma for the allowance to board armed security teams. The kind of teams which would have had to carry out the security functions was in fact not specified, although a non-binding preference for the private option, seen as more flexible, was manifested.

This preference was also due to the "rigidity" inherent to a military solution, which would have impaired the policy applicability and effectiveness. The preference was also shared by the former Minister of Defence Ignazio La Russa⁹⁶ while the Navy Chief-of-Staff, even without excluding the possibility to extend the legal provisions to PSCs, emphasized the advantages present in the military option, in terms of operative capabilities and clarity of the legal framework.

A tendency towards the private option's exclusion was manifested during the meeting of the Fourth Permanent Defence Committee at the Senate, where the absence of technical operative and regulatory framework was pointed out as a major obstacle in entrusting private companies with safeguard duties towards Italian commercial ships. The military option was therefore pointed out as immediately deployable to face the piracy emergence, while the private one was foreseen within the law only as a complementary and subsidiary solution.

⁹⁴ See 11

⁹⁵ Ronzitti, N. (2011), *Scorte armate contro la pirateria*, Affari Internazionali

⁹⁶ ANSA (2011), *Pirateria: La Russa, su navi no soldati ma vigilantes*

«[...]Given the sensitiveness of the services in question (which requires a deep specific training security guards do not have to this day) an issues relative to the employment conditions for security guards in anti-maritime piracy services exists [...]»⁹⁷

Given this context, the Decree Law D.L. 107/2011 which was relative to the refinancing of Italian military missions abroad, included the law inherent the deployment of armed personnel aboard of Italian commercial ships. The legislation was implemented in August with Law L.130/2011, the same month when Italian maritime industry released the most recently updated version of the BMP: the fourth. This version explicitly included for the first time the option for the boarding of armed teams as an additional (and non-substitutive) security measure in respect to the already mentioned ones.

The law required in order to make actually operative the military protection teams boarded on commercial ships, named “Nuclei Militari di Protezione” (NMP), came into force in October 2011, while the one dealing with private armed teams required much more time, coming into force in October 2013, two years later. This delay raised a general concern in the Italian maritime sector, as shown by the fact that in 2013 the former Confitarma President, Paolo D’Amico, publicly criticised the possibility that the deployment of NMP could have been suspended before the private option came into force.⁹⁸

However this danger failed to materialise. The NMPs have instead been suspended by Minister of Defence Roberta Pinotti in February 2015 with an internal act, which however maintained the L.130/2011 unaltered. This greatly impaired the efficiency in terms of availability for private security teams, as shipowners have - to date - to require an NMP and to deploy a PSC only on a second step. The internal act also made the private option the only available.⁹⁹ The efficiency of the solution, as well as the provisions within the legal framework will be object of analysis in the next paragraphs.

⁹⁷ Senato della Repubblica, 326° *Seduta della IV Commissione della Difesa, Settembre 2012*, translated from original text available at https://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=16&id=00679249&part=doc_dc&parse=si

⁹⁸ Masciaga, M. (2013), Marò, *Paolo D’Amico (Confitarma): «Scorte con i contractor»*, Sole24Ore

⁹⁹ Ruzza, S. (2017), *La risposta italiana alla pirateria somala*, Torino World Affairs Institute

3.2. Law 130/ 2011: Military Option

The text contained within the Decree Law N.107/2011 was converted into law by L.130/2011. Article 5 of said Decree Law was amended during its conversion into law and furtherly amended by D.L. N.215/2011 and L.13/2012. The provisions listed within L.130/2011 deal with all the issues the Legislator found to be relevant in order to provide an appropriate framework for the deployment conditions of military or private armed teams with counter-piracy purposes aboard Italian commercial ships.

The norm indicates that the HRA within which the deployment of armed personnel is allowed are identified by the Ministry of Defence (see above). Also, the deployment of armed personnel is allowed only on commercial ships which have already take one of the passive-defence measures contained in the BMP. In deploying said personnel, the Nuclei Militari di Protezione have to be considered by shipowners as the first safeguard option concerning armed teams (subpar. 1, 4) and the costs incurred by the deployment of NMP shall be met by shipowners (subpar. 3). Finally, the deployment of private teams is allowed only in the case NMP would not be available (subpar. 4)¹⁰⁰.

Several legal acts implemented the provisions relating to the deployment of NMP, making them effectively operative. Firstly, the aforementioned Decree of the Ministry of Defence of the 1st of September 2011 for the identification of HRA, which basically coincide with the guidance provided in BMP4¹⁰¹. As previously analysed, this area has been recently extended in order to include the Gulf of Guinea and South-East Asia.

The second Decree is the Management Order (Decreto Dirigenziale) issued by the Port Authorities' General Command N.963/2011. Said order regulated the technical and administrative procedures concerning the boarding of NMPs. The procedures were later extended to private teams by General Command with the provisions contained in Management Order N.349/2013¹⁰². On October 2011, also a Memorandum of Understanding (MoU) between the Ministry of Defence and Confitarma was signed in

¹⁰⁰ Gazzetta Ufficiale della Repubblica Italiana N. 160 del 12 Luglio 2011, Decreto Legge 12 luglio 2011 , n. 107 whole text at <http://www.marina.difesa.it/cosa-facciamo/operazioni-in-corso/nuclei-militari-protezione/Documents/D.Lgs%2012%20luglio%202011%20n.107.pdf>

¹⁰¹ Ministero della Difesa, Anno 2011, whole text at https://www.difesa.it/Legislazione/Norme_in_rete/Pagine/Anno_2011.aspx

¹⁰² Ministero delle Infrastrutture e dei Trasporti, Comando Generale del Corpo delle Capitanerie di Porto, Decreto Dirigenziale n.349/2013, whole text at http://www.guardiacostiera.gov.it/normativa-e-documentazione/Documents/Decreto_Dirigenziale_349_2013.pdf

the presence of the Chief of Defence Staff. By signing the Memorandum, Confitarma had undertaken to refund the charges deriving from the deployment of NMP, both operative and logistic.¹⁰³

3.3. The private Option Within L.130/2011

As stated before, the legal framework foresaw the possibility to deploy private armed teams as a subsidiary mean, whenever the NMP couldn't meet the shipowners' demand. Also in the case of subparagraph 3.2 of this chapter, the dispositions about private security teams deployment were implemented by a number of means of regulation.

Aside from the already mentioned Management Order N.349/2013, a regulation for the deployment of private armed guards was adopted through a Joint Decree by the Ministries of Defence, Interior and Infrastructures and Transports. The Joint Ministerial Decree in question was N.266/2012, and it did not only set the procedures for implementing art.5 (subpar. 5, 5-bis) of L.130/2011, but also determined the modalities for the use of weapons by private armed guards and the hierarchy between the formers and the captain of the ship.¹⁰⁴

Particularly relevant within the private armed teams' legal framework are the Minister of Interiors' Circular Letters of 19 and 25 October 2013. The former contains the directives concerning the implementation of the aforementioned Joint Ministerial Decree N.266/2012¹⁰⁵, while the latter contains specific indications for the preparing of a regulation on the service conditions for security firms which intend to provide the services mentioned in L.130/2011¹⁰⁶.

¹⁰³ Ministero della Difesa (2011), *Pirateria: militari sui mercantili italiani*, whole text at https://www.difesa.it/Primo_Piano/Pagine/PirateriaMilitarisuimercantiliitaliani.aspx

¹⁰⁴ Ministero dell'Interno, Decreto 28 Dicembre 2012, N.266, whole text at <http://www.gazzettaufficiale.it/eli/id/2013/03/29/13G00072/sg>

¹⁰⁵ Circolare del Ministero dell'Interno al Dipartimento di Pubblica Sicurezza del 19 ottobre 2013 «*Al fine di fornire un indirizzo interpretativo univoco, è stata predisposta la presente Direttiva [...] Il Decreto determina le modalità con cui l'armatore, o un suo rappresentante, è autorizzato ad impiegare guardie giurate a bordo delle proprie navi mercantili, battenti bandiera italiana -che transitano in acque internazionali a rischio pirateria – nonché ad acquistare, imbarcare, sbarcare, portare, trasportare ed utilizzare le armi ed il relativo munizionamento*»

¹⁰⁶ Circolare del Ministero dell'Interno al Dipartimento di Pubblica Sicurezza del 25 ottobre 2013 «*[...] È stata fatta riserva di trasmettere, con separate nota, un documento contenente indicazioni specifiche per la predisposizione del regolamento di servizio degli istituti di vigilanza che debbono svolgere i servizi in questione*»

The Circular Letter of the 19th of October 2013 has a particular role because it deals with the private security personnel's weaponry. More specifically, art.2 of said Circular divides among the Prefetto and the Questore the competency to authorise shipowners in purchasing, transporting, possessing and loaning for use firearms. Also, the competency to authorise shipowners in boarding or disembarking said firearms directly in the ports of States confining with the HRA is divided among the two.

The Prefetto's authority is relevant for military weapons under article 28 of the "Testo Unico sulle Leggi di Pubblica Sicurezza" (TULPS), the text on public security law, while the Questore's authority is relevant for the non-military weapons under article 31 of the same Text. It is worth noticing that, however, the lending of military weapons¹⁰⁷ to boarded security personnel is not foreseen within Ministerial Decree N.266/2012.

In fact, the entire "corpus" deriving from L.130/2011 for what concerns the deployment of private armed teams deals with the general law which regulates security firms and security guards or "Guardie Particolari Giurate" (GPG or PCASP in English), as this professional category is identified in TULPS (particularly artt. 249 to 260-quater) and by Decree of Ministry of Interior N.269/2010. Therefore, under Italian law, the safeguard activities security firms and PCASP are allowed to perform on sea are an extension of those foreseen for the same private actors in protection of both movable and immovable property on land. The most noticeable difference resides in the fact PCASP deployed on commercial ships are specifically allowed to use both semi-automatic and automatic firearms up to calibre 7,65x51 or .308 Winchester, while PCASP on land are entitled with the same gun license provided for other civilians¹⁰⁸.

Aside from the difference in equipment, the safeguard activities aboard commercial ships shall be treated as those carried out on land, as Fourth Permanent Defence Committee at the Senate also stated. During the aforementioned meeting it was established that «*Private security operators' activity does not involve the contrast of piracy but rather the shipowners self-defence activity, thus resulting inherent to subsidiary security duties, and the contribution in preventing pirate attacks*»¹⁰⁹.

¹⁰⁷ "Military weapons" as understood in L.110/1975, artt. 1, 2.2

¹⁰⁸ TULPS (artt. 42, 71, 256)

¹⁰⁹ See 15

3.4. NPM Deployment and Concerns about the Chain of Command

NMPs as well were not devised with the purpose of rooting out or limiting the piracy phenomenon, but rather to protect the commercial ships passing through High-Risk Areas. Their duties may be summarised in protecting the crew and ship, gathering operative information, contributing in training the crew to implement BMPs, advising the ship's Captain about the proper pirate-avoidance strategies.¹¹⁰ They were entirely composed by the "San Marco" Navy Riflemen, therefore under the Italian Navy command. Their structure was engineered according to the aforementioned data concerning Italian ships' transit within the HRA in 2011, with the purpose of meeting the shipowners' demand for protection.

In order to meet this demand, twelve groups of NMPs were composed, with a number of riflemen ranging from six to nine, deployed for periods of two to three months. As stated before, the costs were born by shipowners, for a total estimation of 467,00 euros daily per person and therefore a daily cost ranging from 3882,00 to 4203,00 euros, although NMPs were generally composed by six riflemen. A minimum period of two weeks was foreseen to submit a request for boarding an NMP. If the aforementioned boarding was to happen in a foreign port, it was authorised only after diplomatic clearance.¹¹¹

NMPs' Commanders, aside from leading their own team, are subject to their position within the military chain of command. However, aboard the ships they safeguard, NMPs' Commanders were granted the criminal police (Polizia Giudiziaria) powers for what concerns piracy activities, as stated by articles 1135 and 1136 of the Codice della Navigazione. NMPs' Commanders were also to decide whether or not to surrender to pirates, while the ship's Commander had full authority over issues which didn't fall within NMPs' sphere of influence.¹¹²

This duality within the ship's chain of command raised many concerns especially after the "Enrica Lexie Case". In February 2012, in fact, two of the riflemen who made up the NPM escorting Italian oil tanker "Enrica Lexie", Massimiliano Latorre e Salvatore Girone, fired upon the Indian fishing vessel "St. Anthony", mistaking it for a pirate boat

¹¹⁰ See 18, 20

¹¹¹ Senato della Repubblica, Risoluzione Della IV Commissione Permanente della Difesa (2012), whole text at <https://www.senato.it/service/PDF/PDFServer/BGT/680131.pdf>

¹¹² Ibidem

and killing two crew members who were Indian citizens. The occurrence triggered complex international controversy between Italy and India which is, at the time of writing, still ongoing. It is safe to state that the aforementioned event had a major contribution within the debate over the need for a fuller regulation of military personnel deployed on commercial ships, and even over its very own appropriateness, given the possibility to deploy PCASP.¹¹³

It is however worth noticing that in the timeframe during which NMPs have been deployed - namely October 2011 and February 2015 - no other significant accident took place. This is relevant when considered that the safeguard missions NMPs successfully completed are about 337.¹¹⁴ It is therefore safe to say, even within a not always efficient legal framework, NMPs carried out their duty properly in protecting Italian commercial ships.

3.5. Is the Italian Private Solution More Efficient than the Military One?

As mentioned before, the Italian Law L.130/2011 allowed shipowners to resort to private security firms and their personnel in the event NMPs were not available, in order to carry out subsidiary security duties. According to TULPS, shipowners are allowed to resort, at a general level, even to security firms which have a registered office in another European country or employ personnel from another European country, as long as they are entitled with the proper authorization by the Prefetto.¹¹⁵

This permission represented a chance for foreign security firms to create their own business in Italy in relation to maritime security, as the law concerning the deployment of private armed personnel didn't include Italian security firms until October 2013. As stated before, private military and security industries has thrived all over the world, and the engagement of security firms from other European Member States is allowed under the Italian law.

One of the most relevant cases of "foreign intrusion" is the one concerning Triskel Services LTD. The company in question is British but has an Italian management, and has been the first to provide private security services to an Italian commercial ship,

¹¹³ Senato della Repubblica, Resoconto stenografico della seduta n.199 del 27/02/2014, G5.200 (testo 2)

¹¹⁴ Camera dei Deputati, Doc. 106 N. 4 (pg.103-104)

¹¹⁵ TULPS, art. 260 bis.

namely the “Pan Uno” cargo belonging to the company “Augustea Atlantica”.¹¹⁶ After the Italian legal framework was perfected, Triskel Services has also opened up a new branch in Italy and has acceded to the Italian Association for Surveillance and Trust Services (ASSIV) in 2013.¹¹⁷

Triskel’s success was partially due to the situation of Italian legal framework at the time. Indeed, given the fact that the activities carried out by PCASP aboard Italian commercial ships fall within the same legal framework of those carried out on land, private maritime security personnel has to follow the same existing practice for authorization contained within TULPS. More in the specific, practice for authorization particularly relates to the regulations concerning the Prefetto’s authorization, the personnel’s conditions of eligibility (absence of criminal record) and the granting of a gun license.¹¹⁸

These general rules are backed up by more specific provisions relating only to the maritime security activities, included in the aforementioned Joint Ministerial Decree D.M. 266/2012¹¹⁹, particularly in art. 3. Those rules are: having served, preferably, in the Armed Forces, even as volunteers, with the exclusion of those who served as a consequence of compulsory military services.

Secondly, having passed the theoretical and practical trainings listed in art.6 of the Decree of Minister of Interior D.M.154/2009¹²⁰. In addition to that, possessing a gun license for long firearms. However, the problem within D.M. 266/2012 art.3 was at Letter C, which required the passing of another training, paid by recipients, coordinated by the Minister of Interior, the Minister of Defence and the Minister of Infrastructure and Transport.

While the trainings listed in art. 6 of Decree of the Minister of Interior D.M. 154/2009 were already available in October 2013, those at Letter C of the third article in Joint Decree D.M. 266/2012 were not. Therefore Italian PCASPs could not meet the eligibility conditions. In order to solve this problem, the Italian Government issued Decree Law D.L.215/2011, then converted into Law 24 February 2012, N.13. The Law stated that maritime PCASPs could derogate from the aforementioned eligibility conditions if they

¹¹⁶ Gaiani, G. (2013), *Mercantili italiani, via libera alle guardie private. Ma solo se i maro' non bastano*, Sole24Ore

¹¹⁷ Assiv Official Website (2013), *ASSIV accoglie l'adesione di TRISKEL Ltd, prima in Italia autorizzata alla vigilanza antipirateria*

¹¹⁸ TULPS, artt. 257 to 257-sexies

¹¹⁹ See 22

¹²⁰ Ministero dell'Interno, Decreto 15 settembre 2009, N.154 (art.6)

were former servicemen who had an active duty on international missions for at least six months.¹²¹

This derogation system lasted for three years, when the Ministry of Interior stated the form and contents of course required by D.M. 266/2012 at letter C of art.3 in a Circular Letter.¹²² However, the conditions for PCASP in order to derogate from eligibility conditions stated within D.M. 266/2012 lasted until 31st of December 2017.¹²³

More specifically, the phase for the authorisation request is composed of four steps, and the procedure has to be followed for every single transit the ship does. Firstly, the shipowner's Company Security Officer (CSO) has to inform the Naval Command of the programmed transit through the HRA and has to obtain from it the deny for NMPs, as said before.

Then the deny has to be filed in a petition to the Questura of the province where the shipping company has its legal office. This petition shall specify the dates and the ports for crew boarding and landing, the personal data of the boarded security team, the technical details on boarded weapons and ammunitions as well as general information about the ship. The filing of this petition is necessary to obtain the "Preso d'Atto" (formal acknowledgment).

On the third place, the register of the boarding and disembarking of weapons and ammunitions has to be endorsed by the Questura at the same time the formal acknowledgement is taken. Finally, an application has to be presented to the competent authority of the Port Authority General Command, in order to obtain the authorization for the boarding of personnel. This authorization has to be accompanied by the formal acknowledgement and a declaration of "conformity of the ship", together with its annexes.

All this requirements have to be fulfilled in a maximum of 72 hours from the request for authorisation. It seems quite safe to say that the authorisation process resulting from the legal framework is complex, and might impair Italian security firms' efficiency,

¹²¹ Decreto Legge 29 dicembre 2011, N.16 (art. 6, subpar.1, lett. A)

¹²² Circolare del Ministero dell'Interno al Dipartimento di Pubblica Sicurezza sulla sicurezza sussidiaria nei porti, stazioni ferrovie, metropolitane e depositi di mezzi di trasporto, 26 febbraio 2015

¹²³ Senato della Repubblica, Conversione in legge del decreto-legge 30 dicembre 2016, n. 244, recante proroga e definizione di termini (art. 5, subpar.9)

especially in respect to their counterparts which operate within countries with a less complex procedural system. Within the Maltese system only a single authorisation is required, which is directly released upon CSO's request.¹²⁴

PCASP's functions were pointed out in the aforementioned Circular Letter of the Ministry of Interior on the 25th of October 2013¹²⁵, and were defined as "vigilance activities for the ship's safety", in analogy with the one of NMPs. This therefore involves surveillance duties, identification of potential threats and immediate communication to the ship's Captain and crew, protection of the ship, advising the Captain over protection and safeguard measures to be implemented. Active fighting of piracy is not allowed since, as said before, Italy has signed UNCLOS which established that it exclusively belongs to a State's military units (art.107).

As the PCASP boarded on ships carry out the same duties as their counterparts on land, and, as stated before, they act in order to safeguard goods, not people, and are authorised to the use of lethal force only for self-defence purposes within the provisions of article 52 of the Italian Penal Code.

As already stated, the provision of the NMP service has been suspended in 2015. On the 21st of January the Italian Defence Staff suspended the NMP activities aboard of the Italian commercial ships and, on the 18th of February 2015, the Decree Law N.7 was issued and converted into Law N.43 on the 17th of April 2015.¹²⁶ In spite of this, the procedure regulating the authorization to board PCASP on commercial ships remained unchanged: to this day, shipowners therefore have to submit a request for a non-existing NMP to the Navy before being allowed to request for PCASP. This made the deployment process long and less efficient, actually stretching the timeframe between request and boarding.

According to the current legal framework, the PCASP's team leader has not the powers of a criminal police officer, differently from what happened with NMP's Commanders.

¹²⁴ Marchetti, E.; Pergolizzi, V. (2017), *Antipirateria marittima in Italia: l'esperienza di Metro Security Express*, Torino World Affairs Institute

¹²⁵ See 24

¹²⁶ Decreto Legge 18 febbraio 2015 N.7 (ch. 3, art.15, subpar.6-bis) «*Si segnala la soppressione delle disposizioni normative che consentono al Ministero della difesa, nell'ambito delle attività internazionali di contrasto alla pirateria di stipulare con l'armatoria privata italiana e con altri soggetti dotati di specifico potere di rappresentanza della citata categoria convenzioni per la protezione delle navi battenti bandiera italiana in transito negli spazi marittimi internazionali a rischio di pirateria*»

These powers therefore remain in the hands of the ship Captain. PCASP's team leaders have only the autonomy to issue tactical orders to their team but are otherwise completely subject to the authority of the ship's Captain. These provisions therefore prevent any potential case of power duality.

Rules concerning the number and the type of weapons, as well as their boarding, disembarking or storage are listed in detail within the already mentioned D.M. 266/2012. PCASP are allowed to use on board the same equipment allowed by TULPS on land, with the addition of the one stored on the ship. In the latter case, the shipowner or his representative (generally the ship's Captain) provides the necessary authorisations, solely loaning the weapons to PCASP during the performance of their safeguard duties in international waters. The technical limitations on these weapons have already been mentioned above in this chapter.

The law also provides that PCASP teams should be composed by a minimum of 4 members, meaning two less, when compared to the minimum of 6 of NMP. The PCASP deployment can therefore have a higher degree of flexibility in deployment. It is also worth considering that, according to data issued by the Ministry of Labour and Social Policy, PCASPs have an average daily wage of 680,00 euros, with a subsequent average daily cost of 2.723,5 euros per team: more than 1.000 euros less in respect to NMPs.¹²⁷

After Triskel Services LTD, the first Italian PSC to be entrusted with anti-piracy safeguard duties on a Italian commercial ship was Metro Security Express in November 2013.¹²⁸ Other relevant Italian security firms operating within the maritime sector at the present time are SKP and Daga Security. Both Triskel and Metro Security had the chance to demonstrate their efficiency shortly after they entered the Italian security market.

On the 8th of March 2014 a security team of Triskel Services prevented a pirate attack against the "Jolly Quarzo" which belongs to the already mentioned Messina & C. Group. After spotting three small vessels attempting boarding while the ship was within the HRA, the PCASP men secured the crew, used flares and, after demonstrating to be armed, launched a radio signal to the military units patrolling the area. The assailants therefore

¹²⁷ Ministero del Lavoro, D.M. 21 marzo 2016

¹²⁸ See 42

desisted from their attempt and a Japanese military helicopter escorted the ship back on its route. The whole event ended without a single shot being fired.¹²⁹

Again, on the 6th of August 2014 a security team of Metro Security Express prevented a pirate attack against the motor tanker “Giacinta”. This time, after spotting eight small vessels surrounding the ship, the team secured the crew, used flares and demonstrated to be armed. Even so, pirates desisted only after the PCASP fired a warning shot with their firearms. The sequence of the events was communicated by the PCASP team leader to the ship’s Captain and to UKMTO, and the Giacinta resumed its navigation.¹³⁰

The strengths and weak points, under both the legal and the operative dimensions, suggest that the market of security services outsourcing has been continuously developing in Italy during the last years, as it did in the past in other countries. Private security providers gained a new importance within the political debate, even if obstacles and criticisms point out that several instruments have to be implemented in order to improve the Italian security firms and operators in terms of both efficiency and accountability. These last improvements may be considered crucial, also bearing in mind that the Italian security industry could achieve great importance in the international market. The possible future strategies, along with the latest development of public debate over Italian private security providers will be the focus of the next chapter.

¹²⁹ Analisi Difesa (2014), *Le guardie private salvano la Jolly Quarzo dai pirati*, whole text at <http://www.analisdifesa.it/2014/03/le-guardie-private-salvano-la-jolly-quarzo-dai-pirati/>

¹³⁰ Analisi Difesa (2014), *Guardia private sventano l’arrembaggio al tanker Giacinta*, whole text at <http://www.analisdifesa.it/2014/08/guardia-private-sventano-larrembaggio-al-tanker-giacinta/>

CHAPTER FOUR
PRIVATE SECURITY: A FEASIBLE FUTURE?

1. Introduction

The scenario outlined in the previous chapter has not been peculiar of Italy only. The deployment of private security forces on commercial ships, within a larger international security scenario, has been present in the political debate and decisions of several European Member States. It is worth noticing that, as well as it happened in our country, almost all the countries which decided to resort to PCASP foresaw the “public” option (NMP) in a complementary or alternative fashion. More in details, the private option prevailed only after the possibility to deploy military personnel has been excluded for both legal and operative reasons.

The normative frameworks within these solutions have been engineered are understandably different from each other, particularly relating to the limitations and accountability control systems which have been implemented in respect to boarded security personnel and their firms. Aside from these limitations, the possibility to deploy counter-piracy private teams on national commercial ships has been allowed in several forms by the legislator.

Since Italy decided to suspend the deployment of NMP, its defence policy - in respect to national commercial ships - temporarily developed similarities to those countries which allowed to their fellow shipowners only the possibility to resort to PCASP. Even if its process of withdrawal from the European Union has recently start to take place, it is worth mentioning another country whose legal system also foresees this last possibility only: United Kingdom.¹³¹ In both countries, the deployment of PCASPs on commercial ships has been limited to those areas the Government has identified as “high piracy-risk” in advance.

¹³¹ United Kingdom’s process of withdrawal from European Union is taking place, at the time of writing, under the supervision of the British Secretary of State for Exiting the European Union, David Davis, and the European Commission chief negotiator with the United Kingdom over leaving the EU, Michel Barnier. However, to date, said process has not come to a final settlement in legal terms.

However, given the differences the British and the Italian regulatory systems bear in respect to one another, British security firms do not only have to obtain an authorisation from the Home Office (Ministry of Interior) but also from the Department for Transport (Ministry of Infrastructure and Transport). The decision for the deployment of private armed security teams came out, not very differently from what happened in Italy, especially when taking into consideration the concerns expressed by the relevant representatives of the national naval and shipping industries.

A brief comparison with another European country, which, as Italy, greatly relies on the maritime sector, may be considered worth of being expressed. Both the problems and the solutions engineered by the British government, as well as the debates ongoing in the country, could provide useful food for thought in order to evaluate Italy's future security strategies, or in order to point out some problems which are likely to spur out in the future.

2. The British Case: a Comparison

In spite of the preference for a military solution¹³², expressed by the British Chamber of Shipping, which foresaw the possibility for British shipowners to partially refund NMP-related costs, the Ministry of Defence looked sceptically at this possibility, as the British Armed Forces were considered to be already involved in a large number of operations abroad. Indeed, the participation of the United Kingdom's army could have been possible only as a result of a decrease in the number of said operations.¹³³

The Defence Staff stand in this case recalls another strategy engineered, albeit with more limited effects, by the British Government back in 2004, when the International Ship and Port Security Code (ISPS) was introduced. After the terrorist attack to World Trade Centre on the 9th of September 2001, the United States claimed the necessity to improve the security within Western countries infrastructure for transportation: the International Maritime Organisation engineered said Code in compliance with the SOLAS¹³⁴ Convention and its member States Port Authorities -Italian ones as well -¹³⁵ adopted it.

¹³² UK Chamber of Shipping official website (2012), *Government urged to 'hold firm' on military resources to counter piracy to avoid threat to world trade*

¹³³ Foreign Affairs Committee (2012), *Tenth Report (2010-12) on Piracy off the coast of Somalia: Response of the Secretary of State for Foreign and Commonwealth Affairs*, Great Britain Foreign and Commonwealth Office

¹³⁴ Safety of Life at Sea Convention (1974)

¹³⁵ Formisano, A.V. (2017), *Captain's Handbook*, Duemme

The purpose of the ISPS is enhancing ship and port security through the introduction of new security requirements.

In the UK case, the Government and the Department for Transport (DfT) more specifically, decided to provide ISPS-related training to shipping industry workers through private security contractors instead of British military and law enforcement personnel.¹³⁶

However, on the 30th of October 2011, former Prime Minister David Cameron announced that the British Government was positive about implementing security measures in favour of its national commercial fleet through the deployment of private armed teams. The decision came after Cameron's meeting with the Commonwealth leaders in Australia, during which many concerns were raised over the escalating piracy problem faced in waters off their shores, in a similar fashion to the Italian debate over the issue.¹³⁷

On the 6th of December of the same year, the British Department for Transport published the "Interim Guidance to UK Flagged Shipping on the Use of Armed Guards to Defend Against the Threat of Piracy in Exceptional Circumstances" which latest update dates to December 2015. The publishing of the Interim Guidance signalled a break with the previous Government's stand, which strongly discouraged the deployment of private security armed teams within the countries legal framework.¹³⁸ This decision gave to the British Government the opportunity to back up both the private security industry, which as stated in the first chapter is among the most eminent on a global scale, and the maritime industry. As highlighted by data provided in Chapter 2.1, the UK maritime sector has been one of the largest within the European Union and accounted, at the time, for about 35.1 billion Pounds, 2.3% of the country's GDP.¹³⁹

While the legal framework concerning private security firms operating on land has been mainly engineered by the Foreign Office, the deployment of PCASPs aboard commercial ships has been mainly regulated by the Department for Transport. It happened through the release of the aforementioned set of specific ministerial guidelines, which limited the

¹³⁶ Cullen, P. (2012), *Surveying the Market in Maritime Private Security Services*, Routledge

¹³⁷ BBC News (2011), *Somali piracy: Armed guards to protect UK ships*

¹³⁸ As stated by Foreign Affairs Committee, *Piracy off the coast of Somalia*, Great Britain House of Commons, 2012

¹³⁹ Oxford Economics (2013), *The economic impact of the marine and maritime sector on the UK in 2011/12*, Oxford University Press

use of PCASPs to exceptional circumstances. The possibility for PCASP deployment is, in fact, limited within the High Risk Area identified by IMO, and is foreseen only for those shipowners who already implemented the Best Management Practices listed by the IMO.¹⁴⁰

Shipowners willing to deploy PCASPs have to carry out a risk analysis which has to point out the reasons why BMPs alone are not sufficient in safeguarding their ships, and also to present a comprehensive anti-piracy strategy. Furthermore, the deployment of armed security guards is applicable only to the vessels over 500 gross tonnes (GT) and to passenger ships, even though owners of other kinds of vessels may submit a request for PCASPs authorisation under special circumstances.¹⁴¹ It is also a shipowners' duty to verify that the deployed security firms respect the existing British and international law.

The Department of Transport's guidelines have been considered to be accurate by the International Chamber of Shipping, but have been sometimes criticized by shipowners and security firms due to their apparent fuzziness.¹⁴² Further legal bonds and limitations to shipowners and security firms are foreseen by the law concerning the ownership, use and exportation of firearms. Security firms operating on commercial ships have to be authorised by the Home Office to transport and use firearms according to the legal provisions of Heading V of 1968 Fire Arms Act.

The private security company may obtain a license on behalf of the entire security personnel deployed in order to safeguard a ship's transit, under the condition that every employee has been identified and has undergone specific controls provided by police authorities. The requested authorisation also has to contain specifications about the number and kind of firearms to be boarded. All of the aforementioned rules have to be followed by any security company willing to operate aboard British ships, whether based in the United Kingdom or in a foreign country.¹⁴³

An additional authorisation foreseen within this legal framework, as said before, concerns firearms. The ownership, use and especially exportation of said weapons have to be

¹⁴⁰ UK Department for Transport (2015), *Interim Guidance to UK Flagged Shipping on the Use of Armed Guards to Defend Against the Threat of Piracy in Exceptional Circumstances* ver. 1.3

¹⁴¹ Ibidem, Ch.1, subpar 1.7 «[...] These will be considered on a case-by-case basis and an approach should be made by email to the DfT using the contact details in this Guidance in the first instance»

¹⁴² Ambrus, M.; Rayfuse, R.; Werner, W.; (2017), *Risk and the Regulation of Uncertainty in International Law*, Oxford University Press

¹⁴³ See 7

allowed by the Department of International Trade Export Control Joint Unit (ECJU).¹⁴⁴ Furthermore, the security firms which are considered to be suitable to obtain authorisation are those which signed the before mentioned International Code of Conduct and are therefore subject to the supervision of the ICOC Association, which monitors PSCs' respect of ethical and professional standards. The British legal framework, therefore, gives notable importance to the international standards, even those set by NGOs, in regulating the private security industry within its territory.

A legal framework which still proves to be difficultly tackled is related to the phenomenon of "Floating Armouries" (FA's). This kind of vessels are anchored on several spots within the HRA and used by many security firms as backup points which provide accommodation services, as well as other commodities. However, FA's can most importantly be used by PCASPs, in order to deposit weapons before entering foreign ports, thus avoiding potential complications coming from the infringement of a third country's legislation on arms smuggling.¹⁴⁵

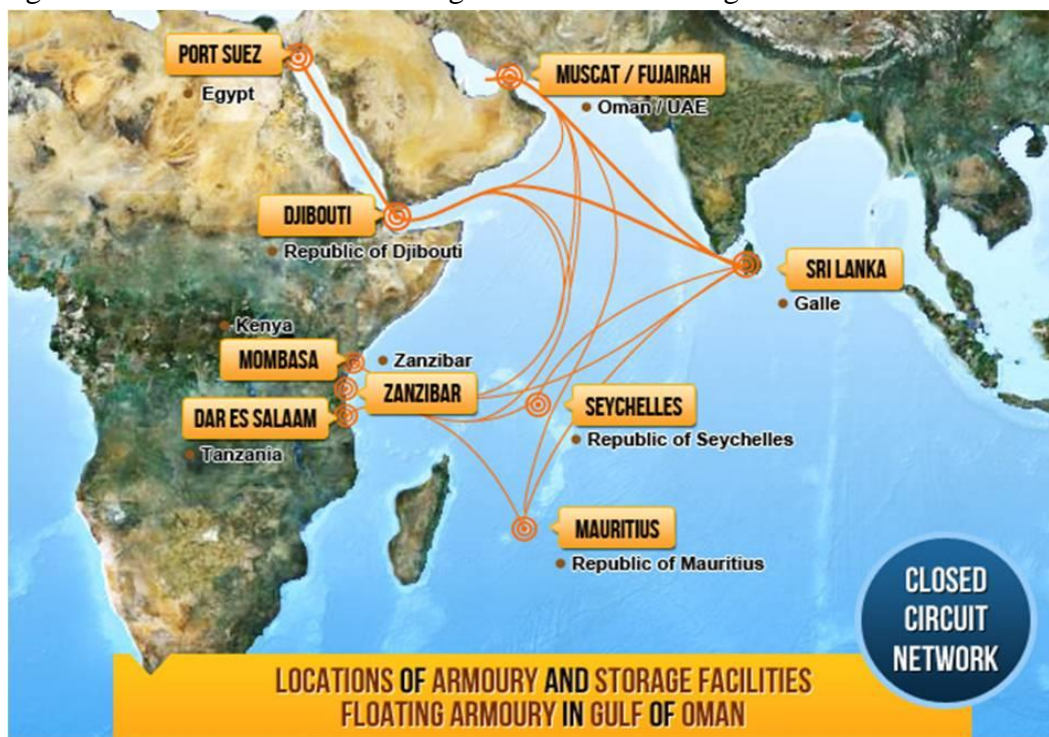
The presence of said armouries raised many concerns on the international level, especially since a pirate attack to them could result in the latter embezzling large quantities of weapons and technical devices, thus improving their tactical capabilities. However, since August 2013, British private security companies have been authorised in using floating armouries flying a flag of a State different from the United Kingdom, while the use of floating armouries flying the United Kingdom's flag is not allowed.¹⁴⁶ It is worth noticing that the presence of FA's has not been present within the Italian political debate over PCASP. This is an aspect which is worth taking into consideration when analysing the feasible strategies for a sustainable development of a competitive Italian private security industry, a topic which will be addressed in the next paragraphs.

¹⁴⁴ The ECJU issues licences for controlling the export of strategic goods, further information at <https://www.gov.uk/government/organisations/export-control-organisation/about>

¹⁴⁵ BBC News (2014), *Floating arsenals: The boats full of guns for hire against pirates*

¹⁴⁶ De Nevers, R. (2015), *Sovereignty at Sea: States and Security in the Maritime Domain*, Taylor & Francis

Figure 3: Main locations of floating armouries within high risk areas



Source: Maritime Security Review

2.1. Relevant Contributions to Future Strategies

The recent decrease in piracy-related activities occurrence, as well as the absence of incidents involving PCASPs, prevented the current debate to revolve around the appropriateness of resorting to private security personnel aboard commercial ships, as well as the risks implied in said option. Still, the creation of a more efficient legal and strategic framework appears to have primary importance, given the weak points the Italian current one presents, and the necessity to grant both timely and effective safeguard measures to shipowners, and a close monitoring from national authorities for the sanctioning of potential abuses.

This is due to several contributing factors. Mainly the eventuality of a downsizing in military forces deployed within the High Risk Area for international security operations - given the already mentioned piracy decrease -, and the subsequent possible increase in piracy threats within the Horn of Africa or the Guinea Gulf as a response. Given this perspective, it is worth noting that Italy didn't act inappropriately or belatedly in respect to other European States, but rather had to find an operative solution which would have fit to its very governmental features under time pressure.

That being said, one of the most relevant contributions which have been made in respect to the lively Italian political debate around the privatization of security services has taken place in Palazzo Montecitorio. It is worth mentioning the working table which was held on the 21st of March 2017, in the Sala della Lupa, not only because it was organized by the Intelligence Culture and Strategic Analysis (ICSA) Foundation and attended by some of the most eminent personalities from the security area, but also because during the discussion concerning a feasible and more efficient future legal framework for the Italian private security industry, some of the problems and solutions pointed out can be safely considered as crucial at the present day.

Among the other participants, who expressed the most weighty opinions that can be found within this debate at the present day, the working table was held by General Leonardo Tricarico, President of the ICSA Foundation, Nicola Latorre, Senate's Defence Committee President, Gianandrea Gaiani, the chief editor of "Analisi Difesa" and a prestigious representative of the Italian judiciary, the magistrate Giancarlo Capaldo.

The Italian private security industry's capability to operate in foreign countries, as a result of a clearer and more accurate set of legal instruments involving the industry's most sensitive areas, was another issue at stake. This was taken into consideration as a result of the relevant growth the private security industry has experienced globally in the last years, and the subsequent eventuality that domestic firms could benefit from this very growth as well. Thus, the presence of more rewarding policies and legal solutions has been regarded as a matter of national interest, representing Italy's possibility to become an important actor within a sector which – nowadays – is being dominated by the United States and Great Britain.

Italian contractors, and PCASPs as well, have been described experiencing a juridical and cultural anomaly spurring from old legal barriers and linguistic misunderstandings, linked to an outdated conception of "private security" which basically associates it to the mercenaries of the past era. Those very barriers and misunderstandings, during the debate, have been pointed out as the main reasons of Italian politics' mistrust towards the domestic private security industry and subsequently as the main reasons for the obstacles the industry itself finds in carrying out its services for domestic and foreign clients in high risk areas.

The 33-years old veteran of the Arma dei Carabinieri and former member of the past Italian intelligence service (SISMi) Umberto Saccone, who is now the President of Grade, an Italian security firm, highlighted that private security operators have to safeguard themselves from the Italian current legal framework in the first place, as it can hinder or even damage their operative and administrative dimensions. The result of this obstruction, according to Mr. Saccone, is the Italians' scarce presence within the global private security industry, and its not-completely satisfactory efficiency. The debate has also shifted to the presence in Italy of a contractors' equivalent which are the already mentioned Guardie Particolari Giurate (GPGs or PCASPs) and their rights and duties under the Italian law.

During the session, one of the most important issues concerning the improvement of PCASPs' operative capabilities was tackled: the possibility to modify the already mentioned Testo Unico sulle Leggi di Pubblica Sicurezza (TULPS). As previously stated, PCASPs are currently allowed to protect only movable and immovable property and not physical persons, while close protection teams formed by the Carabinieri from the 2nd Mobile Brigade are intended for the protection of governmental personalities, according to the current legal dispositions. A modification of the TULPS could result in a legally-framed possibility for private security firms to operate in this last field as well. Some of the norms contained in the 1931 Royal Decree have been described as "anachronistic" and "limiting security firms' profession, forcing them to exploit legal loopholes to operate within the domestic market and cutting them out of the global one"¹⁴⁷.

Thus, the enlargement of the TULPS' legal dispositions has been depicted as a fundamental first step to improve the Italian private security industry, also taking into consideration the fact that the European Court of Justice (ECJ) imposed penalties to Italy after a judgement in September 2007. Those sanctions were the result of the Member State's failure to fulfil its obligations under Articles 43 and 49 of the Treaty on the Functioning of European Union (TFEU) due to the dispositions present within TULPS' (articles 133 to 141 and the already mentioned articles from 249 to 260 *quater*). According to the ECJ said TULPS dispositions violated - among the others - the right of

¹⁴⁷ Convegno presso la Camera dei Deputati, *Sicurezza del Paese ed interesse nazionale - Un ruolo per le private military security companies?*, video record available at <http://webtv.camera.it/evento/10803>

establishment and freedom to provide services under the European Law and were applied in a discriminatory way towards private security firms.¹⁴⁸

As the ECJ Judgment could be immediately activated, and also in consideration of the critical issues concerning the private security sector, the Minister of Interior launched an initiative in order to adjust the norms involved, through a complex rearrangement of the already existing measures – especially regulatory ones – in order to “grant, within a system open to competition, a higher reliability of the private security services and, above all, an adequate protection of the operating personnel and of the public security and public order profiles”. The Minister issued a Circular Letter on the 29th of February 2008, to the law enforcement, Questori and Prefetti in which were listed the guidelines deemed to be appropriate during the preparatory work for TULPS modifications.¹⁴⁹

Said guidelines were implemented in the Decree Law D.L. 59/2008 and later converted into law with L. 101/2008, dealing in particular with the elimination of some of the legal constraints regarding the granting of a licence from the Prefetto to carry out “vigilance or safeguard duties of immovable or movable properties and conduct investigations or researches or collecting information on behalf of a private corporation”. These legal constraints concerned the possibility for the Prefetto to deny the aforementioned licence in consideration of the small number and importance of the private security firms existing on the Italian soil.

The minimum technical requirements and training PCASPs must show to have were also considered for the first time, establishing that the Minister of Interior should have provided to point them out with a decree of its own, as later happened. Further information about said technical requirements is available in the previous chapter. It is worth of notice that with L.101/2008 PCASPs have started to be considered, while carrying out their duties, as public-service operators.¹⁵⁰ However, it must be taken into account that, aside from the aforementioned adjustments, the findings listed in the previous chapter were not

¹⁴⁸ European Court of Justice, Judgement of the Court (Second Chamber) 13 September 2007 in case C-465/05, *Commission v Italy*

¹⁴⁹ Circolare del Ministero dell'Interno al Dipartimento di Pubblica Sicurezza, Corte di Giustizia delle Comunità Europee Sentenza del 13 dicembre 2007 nella Causa C-465/05 (Commissione c/o Repubblica italiana), concernente l'ordinamento della sicurezza privata, 29 Febbraio 2008, whole text available at https://www.poliziadistato.it/statics/19/circolare-post-sentenza-29_02_08.pdf

¹⁵⁰ Decreto Legge 8 aprile 2008, n. 59 recante disposizioni urgenti per l'attuazione di obblighi comunitari e l'esecuzione di sentenze della Corte di giustizia delle Comunità europee, whole text available at <http://www.camera.it/parlam/leggi/decreti/08059d.htm>

subject to modifications, making further adjustments desirable in the near future as pointed out during the Working Table.

On the same occasion, former General of the Carabinieri, Leonardo Leso, observed that the protection of people abroad cannot be a prerogative of the State. This is not only because of the excessive number of the objectives to be safeguarded, which outnumber the country's capabilities, but also due to the continuous cuts of the Defence's budget. Given the impossibility for the Italian State to be present within all those scenarios, and the existence of private companies which are part of the national strategic compartment and dialogue with Italian institutions, the creation of a legal framework which could make possible for private security firms to operate abroad could be the most desirable option. Such framework would result in a reduction of the State's monopoly over coercive force, within a Civil-Military Cooperation (CIMIC) framework.

The Government Commissioner for Innovation and Technology, Diego Piacentini, dealt with the issue of legal references which can be useful in engineering a future regulation, proposing a strict selection for Italian private security firms which would culminate in the attribution of "Nulla Osta Segretezza" (NOS), a security licensing issued by the Italian government which allows natural persons to process information classified as "segretissimo" or above.¹⁵¹ According to Mr. Piacentini's opinion, this should prevent both "unpleasant surprises" for the Italian Government and economic damage due to the absence of Italian firms within the global security business. Mr. Piacentini ended his speech highlighting that national interest must be the guiding light for those who wish to work in the security area, pointing out that such result can be achieved only if Italian private actors can stop outsourcing security services in foreign countries.¹⁵²

The speech delivered by General Orazio Stefano Panato also dealt with security and secrecy issues. According to him, the presence of Italian private security firms abroad is a vital necessity, given the vulnerabilities resulting from the employment of foreign security personnel in the Italian companies which operate abroad. The risks implied in employing such personnel has to be seriously taken into account, especially by those

¹⁵¹ Further information at <https://www.sicurezza nazionale.gov.it/sisr.nsf/per-le-imprese/le-abilitazioni-di-sicurezza/nulla-osta-di-sicurezza.html>

¹⁵² See 17

companies which deal with areas which can be considered strategic for the national interest (e. g. ENI), as industrial espionage is a real danger.

A last, but not least, contribution which is worth mentioning, as it represents useful food for thought in the perspective of a redesign of the Italian security strategy, is the one made by Senator Nicola Latorre. The Senator observed that the Italian private security industry's points of strength, when analysed individually, provide several suggestions for the Italian market in order to innovate itself and be present abroad. Under the domestic perspective, an internal market of systems developed for the civil security and protection could result in positive social consequences with the creation of new employments, within a continuously expanding sector in which our country has gained an important experience as a result of thirty years of missions abroad. Such systems provided in the internal market, according to Mr. Latorre, would include: technological equipment; aerial and terrestrial video surveillance; armaments designed for security duties; the development of the automotive market segment which provides vehicles designed for security purposes; and ad hoc financial investments. The priority for Italian security policies should be to direct the country in order to become a "producer of security".¹⁵³

It is safe to assume that the debate hosted in the Chamber of Deputies has greatly contributed to improve the Italian institutions' global understating of the new security issues and challenges for the country. As said before, those advices could prove useful in the near future as starting points for a restructuring of Italy's security policies within the current geopolitical scenario. Before analysing a set of possible paths Italy could take in order to implement more efficiently the domestic private security industry, it is very important to consider that the last Italian Minister of Defence, Roberta Pinotti, had included in several official documents the necessity to furtherly study the possibility for a public-private partnership within the general framework of the relations between Italian industry and Defence. In fact, the Minister's claim appeared for the first time in 2015 into the "White Book for International Security and Defence"¹⁵⁴, and has been furtherly developed within the "Multi-Annual Policy Paper of Defence over the three years 2016-2018".

¹⁵³ Ibidem

¹⁵⁴ Ministero della Difesa (2015), *Libro Bianco per la Sicurezza Internazionale e la Difesa*, whole text available at https://www.difesa.it/Primo_Piano/Documents/2015/04_Aprile/LB_2015.pdf

The policy proposals contained in this document point out a general openness of Italian institutions towards the possibility to resort to more reliable and better disciplined private solutions. It is worth mentioning that the Minister's papers aim to start an analysis process intended to reach for a new balance between the competences which have to be kept within the national armed forces' jurisdiction and those which can be managed by private firms in the security sector.

This is due to the plurality of systems and the increasingly wide complexity of the technologies deployed for security purposes. Among the proposals listed in order to reach said balance, it is worth mentioning the realisation of public-private partnerships and the possibility for the industry to absorb some of the Defence's technical-industrial structures, in order to improve its efficiency and competitiveness without compromising the primary requirements of national security, thanks to specific norms and qualified personnel. The need for a better definition of the legal status of the private enterprises' personnel which is deployed for logistic support has also been considered to be crucial, together with the efforts from the Italian private security companies to promote the employment of discharged military personnel.¹⁵⁵

2.2. Future Policy Perspectives

The choice of entrusting the public or the private sector with the duty of granting Italian commercial fleet's safety are eminently political. The private option in particular deals with the limitation of the role the Italian private sector can have within the national security framework, intended in its broadest meaning. It therefore concerns the role and the identity of the State, and the legal value attributed to the maintaining of the State's monopoly over coercive force, which has been the core of the thinking around States' key characteristics and the appropriateness of security and military outsourcing.

Nevertheless, the data provided and the analysis developed in the previous chapters are useful instruments in order to track down the key issues of the security outsourcing dilemma, and could be used to formulate a set of policy proposals capable of optimising the Italian private security output, bearing in mind the several interests present within the country.

¹⁵⁵ Ministero della Difesa (2016), *Documento Programmatico Pluriennale per la Difesa per il triennio 2016 – 2018*, whole text available at https://www.difesa.it/Content/Documents/DPP/DPP_2016_2018.pdf

The decrease of pirate activities in the High Risk Area between the Horn of Africa and India is not exclusively attributable to the deployment of public or private armed security aboard commercial ships. It is instead the result of a series of concurrent factors, namely the presence of private armed teams capable of resisting pirate attacks in the short period, and the presence of military forces in the area, deployed for international missions. Those military forces have been providing naval or aerial support to attacked commercial ships - whether they were already protected or not – since their deployment, with appreciable results which have been outlined in the previous chapter.

It would therefore be safe to assume that, in order to maximize the efficiency of any private or public form of protection of commercial ships, the synergic cooperation with national military forces already present in the area is a fundamental starting point. It is also important to consider if, and to what extent, the deployment of armed teams aboard is able to grant adequate protection for persons and commercial assets in areas where international military missions are not being carried out, as it currently is in the Gulf of Guinea, where the piracy menace has demonstrated to be strongly persistent.¹⁵⁶ The local Coastal Guards' efficiency, and the different features the piracy phenomenon shows in the different areas in which it is present, are aspects to be carefully considered as well.

In addition to this, it remains to be seen whether and to what extent the deployment of armed teams in the area around the Horn of Africa will continue to be an adequate and effective response to piracy when the international missions carried out in the area will be dismantled. As seen before, armed private teams have been capable to represent a deterrent for pirate boarding until now, discouraging the most part of pirate attacks through the use of dissuasive and non-lethal measures. It is however still possible that, in the absence of a close naval or aerial military backup, boarded teams will begin to face more violent, prolonged or difficult attacks against better equipped or just self-assured pirates. If this would be the case, the possibility of future gunfights which could threaten the crews' safety has to be taken into account.

This is especially true when considering the technical and time limits medical assistance could suffer in an open sea scenario, which could be crucial after particularly violent attacks, together with the fact that many commercial ships transport explosive, flammable

¹⁵⁶ Holmgren, A. (2014), *Piracy's Persistence in the Gulf of Guinea*, African Defence Review, whole text available at <https://www.africandefence.net/?s=piracy%27s+persistence>

or otherwise highly-dangerous materials, increasing the overall risks which both the ships, crews and protection teams undergo.

These are the kind of variables which will severely test the armed teams' operative efficiency and training, as well as the anti-piracy security development in its broadest understanding. It is also worth considering that the problems which determined the increase of the piracy phenomenon upstream, as, for instance, the lack of control or governance by the states where pirates depart from, are still present in many areas and in a long way from being completely solved at the present moment. Moreover, as a consequence, it could perhaps determine a new resurgence of the phenomenon itself.

For all the aforementioned reasons, it could be suggested to weight very carefully the hypothesis of interrupting the multilateral military efforts carried out for anti-piracy and maritime criminality purposes within the High Risk Area, like the EU NAVFOR operation, since their continuity may result in a fundamental national contribution to security. The potential effect of a re-deployment of multilateral military forces in high risk areas under particular circumstances or conditions should be also taken into account.

As said in the previous chapter, the Italian government extended the area within which the deployment of armed guards is allowed on commercial ships over the internationally-recognized HRA, namely including the Gulf of Guinea and the South-East Asian Seas. However each of these areas is characterized by piracy and maritime criminality forms which differ from those present in the Somali area: the main criminal activity carried out in the first two areas is plundering the ships' cargos, while Somali pirates have focused more on the taking of the ship's crew as hostage during last years.¹⁵⁷ The different features and *modus operandi* of different pirate groups acting in different areas might therefore require different judicial regimes and operative measures.

Policy and security advisors, as well as other governmental organs, should therefore provide precise operative guidelines about the adequate kind of response to different types of attacks, in order to calibrate the various safeguard measures allowed in respect to the level of the threat, that is to say the pirates' mode of operation and the foreseeable level of violence. As piracy differs from place to place, different kind of piracy may require a

¹⁵⁷ IMB Piracy and Armed Robbery against Ships Annual Report, 2016

different number of deployed armed guards, or require the presence of different countermeasures, weapons or rules of engagement.

In all these cases, the need for backup from a coastal or international military operation carried out in the area could weigh in different ways. The risk of an escalation in the use of force – as it has been predicted by experts of the maritime security sector – is a fundamental factor to be analysed when choosing the most efficient safeguard measures for commercial ships.

In spite of the recent interruption in the provision of military protection services established by Italy, the deployment of Nuclei Militari di Protezione (NMP) could still be considered appropriate in cases characterised by high levels of violence or risk, due to the fact that armed teams with military background could grant higher operative standards. The raising of said standards would be linked to the military's integration into the chain of command and into the military jurisdiction, which grants greater reliability as a consequence of a closer and more accurate level of judiciary and political control.

Clearly, the presence of NMP should be subject to specific conditions, as to the higher level of control corresponds an equal level of “political cost” in case of accidents, as happened with the “Enrica Lexie” Case. Therefore, NMPs could be deployed only under the presence of a high threat risk which the private security firms could not be able to control, not very differently from the “subsidiary solution” which was proposed in the past. Also, it should be granted that the deployed military personnel stays, in every phase of the safeguard operation, exclusively under the Italian jurisdiction.

As a consequence, the transits in which the military personnel can be involved would cross only international waters and those adjacent to States which provided the Italian government with the adequate assurances to not apply their jurisdiction. This solution should avoid the recurrence of events like the one which involved Salvatore Girone and Massimiliano Latorre in 2012, and could be developed through the signing of Status of Forces Agreements (SOFA), like the one Italy has already signed with the United States.¹⁵⁸

¹⁵⁸ USAF Academy Legal Office, *Status of Forces Agreement (SOFA)- Italy*, whole text available at <http://www.usafa.af.mil/Portals/21/documents/Leadership/JudgeAdvocate/SOFA-%20Italy.pdf?ver=2015-10-30-115236-060>

The deployment of private armed guards on commercial ships, as shown in the previous chapter, may be safely considered as an adequate solution at the moment, in consideration of Italian shipping industry's needs and the financial and staffing limits the Italian Navy currently experiences, as a result of its participation in a large numbers of scenarios and missions. Still, the hypothesis of maintaining a twin-track regime could be taken into account, maybe considering the private option as the main one, while the military – upon an authorization by the Italian Navy - as a residual possibility.

As shown in the previous chapter, the legal framework involving maritime security developed very quickly in Italy, mainly due to the necessity to timely counteract the threat Italian commercial fleet was undergoing in the past years. In spite of the fact that the ultimate goal was reached, the number of norms resulting from the process required several re-adjustments in midstream, ending in a sometimes dispersive and complex body of law.

It could be therefore appropriate to analyse the possibility for a consolidated text in the perspective of a future reform on L.130/ 2011, which could clarify more appropriately the role and obligations of those actors who variously are linked to maritime security such as: Ministers; law enforcement representatives; port authorities; shipowners; captains; private security firms; and military forces. Such an initiative may also present advantages in an economic perspective, facilitating the access of new actors within the maritime security cluster, therefore diversifying the offer, improving Italian security market competitiveness and efficiency, domestically and abroad.

Italian security firms which are active in the maritime sector, also due to their recent development and relatively small size, are not yet participating in the most important international initiatives for the regulation of the security sector, such as the ICoC. The aforementioned code of conduct indeed, has been signed only by the Italian Temi Group at the present day, and such firm is not involved in the maritime security. Even if the codes of conduct represent soft law instruments, they have proven to be useful in improving both operative and ethical standards of firms working in the security sector, also due to the financial incentives provided by the States which benefit from private security services.

Similar incentives might be provided for Italian companies willing to provide security in the maritime area, for example making the subscription of said standards a fundamental prerequisite for the issue of the licence to operate on national commercial ships. Mandatory subscriptions to codes of conduct like the ICoC could result in a raising of both professional and ethical standards, and could foster the structuring of the sector according to international standards as well, making it more competitive on the global market. All of these purposes, however, must take into account the relatively small size of the private maritime security sector in Italy at the present day, in order to avoid the creation of deal breakers for national corporations which are, nowadays, at the embryonic stage.

CONCLUSIONS

Security is not just an issue, but also an opportunity. Therefore, the challenges both states and international organisations constantly face in this field nowadays can be interpreted not only as the result of a continuous evolution of those actors which threaten peace, national integrity and people's safety. They can represent a powerful stimulus for thinking, cooperating and reshaping the very features contemporary societies are based on.

In this sense, Italy started a remarkably complex analysis of the private security phenomenon, which is still ongoing and has already achieved a number of positive results. The possibility to benefit from the cooperation with such rapidly developing entities as PSCs are, far from being considered a threat to the State's integrity, has been put at the centre of the security debate. It even came to be considered among the most effective solutions the country could adopt in order to protect national interests which could be jeopardised by piracy.

The policymakers' attention to the international scenario and to the geopolitical role Italy has, ended in timely and overall satisfactorily solutions, which nowadays allow shipowners to rely on a domestic market for private security that has yet to show its full potentialities. However, critical issues are still present, and are those related to the legal and political flaws which do not allow, at the present day, an efficient dialogue between public and private Italian security providers, and in a broader meaning, an efficient partnership between private security firms and institutions.

This very issues could be safely considered crucial for the further development of a domestic industry which might not only make Italy able to compete more with larger countries on the international market, but most importantly to improve the range of security solutions it provides for its citizens and institutions. A blind repression of a human phenomenon such as the commercialization of coercive force is, would only result in the phenomenon itself appearing again in more uncontrollable, or even dangerous, forms as it already happened in the past.

It would be then desirable that the synergistic efforts of both Italian private and institutional actors in redesigning the country's maritime security system result in a state-of-the-art framework, capable of making the best out of the public and private sphere.

The most important steps to be made in this sense may be found in the engineering of more precise reliability standards, clearer protocols for operative action and a more fruitful internal cooperation with public-private partnerships.

The purpose of this dissertation was to compare the strong and weak points present at the moment within the approach Italy has in relying on the new private actors for the safety of its economic assets on the sea. The overall picture, made of difficult but increasingly important steps, point towards an encouraging future, as long as the analysis and the dialogue over the phenomenon remains lively as it has been in the recent years.

Military forces and private security companies might find a productive collaboration out of a common objective: making the journey through the sea of opportunities more safe.

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ABSTRACT

The purpose of this dissertation is to analyse a phenomenon which has been of great interest in the recent international debate over security. Such phenomenon is the provision of security services by private specialised companies, which has been representing both a challenge and an opportunity in a field for a long time completely managed by sovereign States: the monopoly over coercive force. The emergence of these new international actors, especially in the last two decades, determined a lively debate over the opportunities, dilemmas, dangers and possible evolutions that the national security field may undergo in the near future.

History

The privatization of security services is not a recent phenomenon. Indeed, it could be possible to say that entrusting private subjects with duties variously linked to the military area is a practice almost old as war itself. History, chronicles and literature, as a matter of fact, trace the evolution of a field which developed peculiar social, political and economic traits over time.

During the centuries preceding the Peace of Westphalia a large number of empires, nation-states and other regimes and political enclaves preferred the deployment of military forces not belonging to their direct jurisdiction over those of their own. The practice of contracting particular tasks to non-national military experts against payment of a fee spread and consolidated in numerous places and ages for equally numerous reasons.

Those armies became so crucial, empires depending on them, that they eventually grew uncontrollable, unleashing their violence even during peace periods. The dismissal of the last “military businessmen” occurred at the end of the Thirty-Years War, corresponding to the almost complete disappearance of the military privatization practice.

Further factors which contributed to portray the “totally national” choice as more reliable than the “partially private one” may be found in material changes which occurred in XVII Century Europe, such as the growth of population and the evolution of military tactics, with the use of firearms on a large scale. The new strategic options, as the deployment of

detached troops, gave a new meaning to the importance of soldiers' national and political identity over their wish for profit. More in general, we could say that patriotism became a key element of the new paradigm.

As a matter of fact, many states developed national armies as a part of their identity-shaping ideology, in a fashion that could have made the deployment of foreign troops contradictory. At the same time, the spreading of this practice strengthened the perception of foreign troops for hire as a threat for states, a perception which anyway was never soothed.

While Western countries resorted less and less to military force for the resolution of international controversies, after the dramatic experience of World War II, the African ones started to experience an unprecedented level of emancipation and freedom from their older European rulers. This resulted in a process of increasing self-determination which wasn't always problem-free.

In a politic scenario heavily polluted by violent uprisings and ethnic conflicts, the reason African states and third parties resorted to private armed groups was mainly to repress the national liberation movements that took place in the continent, undermining the fragile stability of the nations that were arising out from the decolonization process.

The men who dedicated themselves in offering their abilities in combat in exchange for money all fell under the definition of "mercenaries" until the present day. So the international community efforts in building a legal framework around their activities revolved around this definition, as happened with the OAU Convention, but also with the more recent Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts of 8 June 1977, and United Nations Mercenary Convention of 1989.

Those Conventions and Protocols proved to be effective in repressing the deployment of mercenaries in order to constitute armed forces or perform internal security tasks worldwide, but ended up tackling a phenomenon that had already disappeared almost completely. The events after 11th of September 2001 terrorist attack against World Trade Centre shook the public opinion, and is in this situation that the belief that a new international underworld thrived, populated by sly enemies.

Security couldn't represent anymore a stable exogenous fact, caused by the mere predominance of United States in the international system. The current challenge to the system has therefore become to recognize an order in an increasingly chaotic situation. There is a large number of aspects that have to be taken into account in order to create a logical framework for this issue.

Soldiers of fortune, understood as the professionals described before, nowadays represent an insignificant minority in the geopolitical scenario. The worldwide phenomenon our country as well faces today represents an evolution of the military outsourcing practice, and indeed presents only some of the flaws and problem mercenaries brought to light in the past. The names of this phenomenon are Private Military Companies and Security Companies.

The Private Security Industry

Private Military Companies (PMCs) are corporations which provide services generally linked to the war area, societies specialised in selling military expertise. Representing the evolution of private subjects in the war market, and of mercenaries, those new actors are very different from the typologies analysed until now. One of their fundamental differences is their organisation according to a modern business model. International market globalisation and deregulation have been fundamental in the mercenaries' restyling process, and gave the PMCs the possibility to rise and operate in a transnational way.

PMCs are incorporated and registered companies that openly compete in the international market, they link to external financial holdings, recruit more professionally than their predecessors did and most of all offer a vast range of services and performances to a very heterogeneous clientele. The corporate system is not only useful to separate PMC from the old mercenaries in the popular belief, but it also offers advantages in terms of effectiveness and efficiency.

Both Private Military Companies (PMCs) and Private Security Companies (PSCs) recruit from personal database that give information on the whole available workers pool. They evaluate their potential collaborators based on specific qualifications, in order to have an available staff that can respond to every need. The final result is generally more appreciable than the one offered by mercenaries. While the latter work as a group of

individuals, PMCs and PSCs personnel is organized as a single corporation body. This corporation fiscal model is profit-driven, as they look for the best bidder and maintain permanent hierarchies on the inside.

Rather than hiding their existence, the great majority of those corporations publicly advertises their activities, even on internet. Mercenaries, on the other hand, offer themselves on the black market, tend to ask payments in *hard cash* and are generally untrustworthy in the long run. Even if it might be true that part of the PMCs and PSCs employees were somehow involved with mercenarism, their hiring processes, their relations with the clients and most of all their impact on the conflicts are very different.

Compared to PMCs, PSCs are generally smaller and more numerous, at a domestic level they provide service mainly linked to crime prevention and public order. When they project themselves outside their country instead, their action range widens, making them an instrument largely appreciated even in European countries. If a part of their work is similar to the PMCs' one (consulting, training and intelligence) other specialties are exclusive of their category. Along with the security with crucial areas and structures, they provide protection for VIPs, political and military important representatives, and even convoys for the transportation of goods or humanitarian aids.

Private Security under International Law

The term "Private Military Company" doesn't exist in any international treaty or law. The common definitions of "PMSCs" refer to the data listed in the previous paragraphs, that is to say to the fundamentally civil and legal nature of the corporations, and their range of action: the military market. Thus, the difficulties encountered by jurists and scholars in coming to a largely approved definition of "military" or "security contractor".

This shows the fuzziness that surrounds the idea of private corporations that offer different kind of military services, basically seizing a monopoly which is typical of the states only, but also because PMCs and PSCs differ even among them, as seen before, for organization and services they offer.

Given the services PMSCs offer falls within the sphere of activities of national armed forces, the idea that they are a new version of the mercenaries is largely shared. As said before, activities relating to mercenarism have been tackled by International Law in three

cases: the already mentioned Protocol Additional to the Geneva Convention, the OUA Convention and the United Nations International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

In order to be disciplined by them, private subjects which provide military services have to meet four basic conditions which may be found in all of the three aforementioned Conventions. All this criteria, considering the features *contractors* have in respect to mercenaries, have been proven difficult to apply to them, leaving the PMSCs in a legal vacuum. On the international and regional level the most noticeable actions taken in respect to PMSCs activities' regulation are the result of specific initiatives of national governments, the private security industry or economic subjects through codes of conduct (CoCs).

Those codes are set of rules which have to be adopted voluntarily by private subjects, regarding the licensing, contractual, service and use of force procedures, and are drafted on both national and international level. CoCs are developed by PMSCs in cooperation with other international actors, mainly national governments and NGOs. The two CoCs which provide useful advice for a possible future legally binding discipline on an international level are the Montreux Document and the International Code of Conduct for Private Security Services Providers (ICoC).

What makes the Montreux Document revolutionary is the fact that its birth represented the international community's first step towards a clear identification and an effective control of PMSCs and their activities, and of the juridical environment in which they work. For the first time are gathered and listed the legal obligations, which have been acknowledged as legally binding by the international community, and which are applied to states in their relations with PMSCs, and to the work of the latter during armed conflicts.

The goal of the Document indeed, is the promotion for the respect of the International Humanitarian Law (IHL) in such situations, not the creation of new norms. International obligations and good practices are implemented by already existing regulations, and put into practice in the international environment as a consequence of the application of the UN Convention on the Use of Weapons and Armed Services Deployment.

Similarly to the Document of Montreux, the International Code of Conduct for Private Security Services Providers (ICoC) comes out from an initiative of the Swiss government, this time with some industrial associations and 135 corporations in the PMSCs sector. PMSCs, by signing the ICoC, commit to respect at first the principles of right contained in the Montreux Document referred to the states, and also the “Respect, Protect, Remedy” structure, promoted by the United Nations Committee for Human Rights.

The UN Working Group on the Use of Mercenaries has been instituted by UN Human Rights Council in 2005 with the specific task of examining mercenaries and mercenary-related activities. In 2008, its mandate has been including the monitoring and study of the activities of private military and security companies and their impact on the enjoyment of all human rights. This task included the elaboration of a draft convention on the use of PMSCs including the fundamental principles of IL with the purpose of regulating PMSCs activities and ensuring their respect of IHR.

The issue concerns UN so closely that the Organization itself has adopted a “Policy on Armed Private Security Companies”, drafted by the United Nations Department of Safety and Security (UNDSS) with the objective of regulating PSCs deployment in protecting UN personnel, properties and buildings movable and immovable.

The UN Working Group has therefore fulfilled its mandate elaborating the UN Draft Convention on the Regulation, Oversight and Monitoring of Private Military and Security Companies, which has been submitted to the UN Human Rights Council in 2014. The Draft Convention bears several differences with both the aforementioned Montreux Document and ICoC, since it foresees a higher objective: the creation of binding legal rules for PMSCs. Furthermore, those rules will be relevant in both peace and wartime.

This document basically represents an attempt to build a legal framework which combines a private approach to security issues with a public sanctions system capable of tackling unlawful conducts. Furthermore, the Draft Convention grants an important participation for States to the international law-making process, prohibiting them the possibility to choose to which international legal regime undergo in their relations with PMSCs.

In the European Union there’s a general convergence on excluding PMSCs from carrying out offensive actions. Anyway, it would be necessary to uniformly regulate contractors’ possibility to use military weapons, given the fact that they are in any case civil personnel.

Generally speaking, outsourcing is considered to be acceptable for what concerns logistic support, military equipment maintenance and training. For what concerns strategic planning, or intelligence operations for the collection of information, contrarily, it is not possible to find a shared position among the member states.

The EU, at a central level, developed a special management contract to this extent, and also several guidelines based on the Contractor Support to Operations (CSO) contained in the 2011 EU Concept for Logistic Support. Anyway, the most widespread procedure consists in the signing of contracts at a singular member state level. The conflicts about the role contractors have and the lack of information around PMSCs' responsibilities spur out from the aforementioned routine.

At the present time, the EU does not have a specific legislation or regulatory norms about PMSCs and their activities. Anyway, EU institutions have been involved in the elaboration of some policies about these issues in the last years. Trying to develop an appropriate normative framework, the European Commission fostered a research program in 2008 named PRIV-WAR. In this project, a series of recommendations for EU about the best regulatory strategies towards PMSCs and their services have been formulated.

The suggested regulatory measures should allow to establish a normative system that includes registration, licensing and monitoring criteria for PMSCs which have their juridical headquarter in one of the EU member states, but also for those which are merely hired by those states or other organizations and authorities. Particularly, the elaboration of minimum standards on supervision duties and applicable sanctions to member states that do not regulate the PMSCs deployment in order to conform it to Human Rights and International Humanitarian Law are recommended.

One of the EU's most recent initiatives concerning PMSCs phenomenon is the "EU Strategic Framework and Action Plan on Human Rights and Democracy" adopted by the Council of EU in June 2012. On the Action Point 21, concerning EU's action conformity to International Humanitarian Law, EU states its commitment in promoting the acceptance for other countries of the Montreux Document.

Italy and the Private Security Industry in the Maritime Sector

The Italian maritime sector is the most appropriate in order to develop an analysis concerning the impact private security industry has over the country's security policies, and subsequently the way Italy interfaces with this relatively new phenomenon. This is due to several contributory factors.

First of all, the relevance maritime commercial transport has in the country's economy. Secondly the intensification of the piracy phenomenon, that has affected Italy together with other countries actively engaged in the international maritime trade. This happened because some of Italy's commercial routes are part of the High Risk Area.

In the third place, a recent growth of the security services market, both in terms of complexity and economic worth, has affected Europe and Italy as well, giving to this sector important role within the debate. This is particularly true when considering the fact that security provision for Italian private commercial ships has been completely delegated to private entities in 2015.

Fourthly, the sensitivity of the issue about security services' privatization reaches its peak when it comes to the international level. Ensuring protection or providing security services abroad implies a higher degree of risk, due to its possible effects on the country on an international level. A last, but not least, factor is that the protection of national assets abroad which don't fall within the maritime sphere has always been managed by Italian military or police forces.

During the 2008-2014 timeframe, Italy has always resulted to be one of the fleets most frequently attacked by pirates. This results to be particularly relevant also when considering that Italy has, at the present time, the 3rd largest fleet among EU Member States.

Due to the previously mentioned importance of international trade within the Italian maritime sector, the safeguard of the Italian assets at sea has become a key issue for security experts. Therefore, Italy has been the first country to deploy a military frigate off the coast of Somalia in 2005. After that, Italy took part to the most important anti-piracy operations which took place in the Indian Ocean. All of these operation have been carried out, for what concerns Italy, only by national military forces.

Italy also adopts the Best Management Practices on a national level: a set of guidelines drafted by International Maritime Organisation, related to both planning and operative

dimension addressing the cabin staff of civil ships which transit in High Risk Areas. BMPs provide a guidance for national civil ships concerning the training of investigators, the investigative strategy (stressing the importance of inter-State cooperation), guidelines for investigators on how to deal with a report and the investigative procedure as well.

Italian Navy incorporated the before-mentioned BMP since 2009, establishing the installation of passive protective measures on the vessels and a set of procedural practices to be followed before and during navigation or in case of attack. The first version of the document discouraged the deployment of armed guards on board until the BMP4 version was implemented on August 2011.

At the beginning of 2011, in consideration of the rising menace represented by piracy within the HRA, several European countries started to allow the boarding of armed personnel on commercial ships, while the shipbuilding industry as well reviewed its position concerning the viability of the private security option. The International Chamber of Shipping expressed its favourability. The opinion was shared lately also by the International Parcel Tanker Association and by IMO's Security Committee.

In Italy Confitarma and Federpesca claimed the necessity for the boarding of armed teams on Italian commercial ships for security purposes. An element which contributed to the "dual option" resulting from the debate following, was the general claim addressed to the institutions by Confitarma for the allowance to board armed security teams. The kind of teams which would have had to carry out the security functions was in fact not specified, although a non-binding preference for the private option, seen as more flexible, was manifested.

This preference was also due to the "rigidity" inherent to a military solution, which would have impaired the policy applicability and effectiveness. Still, Italian institutions pointed out the absence of technical operative and regulatory framework as a major obstacle in entrusting private companies with safeguard duties towards Italian commercial ships. The military option was therefore seen as immediately deployable to face the piracy emergence, while the private one was foreseen within the law only as a complementary and subsidiary solution.

The law required in order to make actually operative the military protection teams boarded on commercial ships, named "Nuclei Militari di Protezione" (NMP), came into

force in October 2011, while the one dealing with private armed teams required much more time, coming into force in October 2013, two years later.

NMPs have been suspended by Minister of Defence Roberta Pinotti in February 2015 with an internal act, which however maintained the L.130/2011 unaltered. This greatly impaired the efficiency in terms of availability for private security teams, as shipowners have - to date - to require an NMP and to deploy a PSC only on a second step. The internal act also made the private option the only available.

NMPs were devised with the purpose to protect the commercial ships passing through High-Risk Areas, protecting the crew and ship, gathering operative information, contributing in training the crew to implement BMPs, advising Captain about the proper pirate-avoidance strategies. They were entirely composed by the “San Marco” Navy Riflemen, therefore under the Italian Navy command. Their structure was engineered according to the aforementioned data concerning Italian ships’ transit within the HRA in 2011, with the purpose of meeting the shipowners’ demand for protection. A minimum period of two weeks was foreseen to submit a request for boarding an NMP. If the aforementioned boarding was to happen in a foreign port, it was authorised only after diplomatic clearance.

The deployment of private armed teams deals with the general law which regulates security firms and security guards or “Guardie Particolari Giurate” (PCASP), as this professional category is identified in TULPS and by Decree of Ministry of Interior N.269/2010. Therefore, under Italian law, the safeguard activities security firms and PCASP are allowed to perform on sea are an extension of those foreseen for the same private actors in protection of both movable and immovable property on land. The most noticeable difference resides in the fact PCASP deployed on commercial ships are specifically allowed to use both semi-automatic and automatic firearms while PCASP on land are entitled with the same gun license provided for other civilians. Aside from this, the safeguard activities aboard commercial ships shall be treated as those carried out on land.

Considered this, private maritime security personnel has to follow the same existing practice for authorization contained within TULPS. More in the specific, practice for authorization particularly relates to the regulations concerning the Prefetto’s

authorization, the personnel's conditions of eligibility and the granting of a gun license. These general rules are backed up by more specific provisions relating only to the maritime security activities.

Italian Law L.130/2011 allowed shipowners to resort to private security firms and their personnel in the event NMPs were not available, in order to carry out subsidiary security duties. According to TULPS, shipowners are allowed to resort, at a general level, even to security firms which have a registered office in another European country or employ personnel from another European country, as long as they are entitled with the proper authorization by the Prefetto.

This permission represented a chance for foreign security firms to create their own business in Italy in relation to maritime security, as the law concerning the deployment of private armed personnel didn't include Italian security firms until October 2013. As stated before, private military and security industries has thrived all over the world, and the engagement of security firms from other European Member States is allowed under the Italian law.

PCASP's functions were pointed out in a Circular Letter of the Ministry of Interior on October 201, and were defined as "vigilance activities for the ship's safety", in analogy with the one of NMPs. This therefore involves surveillance duties, identification of potential threats and immediate communication to the ship's Captain and crew, protection of the ship, advising the Captain over protection and safeguard measures to be implemented. Active fighting of piracy is not allowed since Italy has signed UNCLOS.

As the PCASP boarded on ships carry out the same duties as their counterparts on land, and, as stated before, they act in order to safeguard goods, not people, and are authorised to the use of lethal force only for self-defence purposes within the provisions of article 52 of the Italian Penal Code.

As already stated, the provision of the NMP service has been suspended in 2015. In spite of this, the procedure regulating the authorization to board PCASP on commercial ships remained unchanged: to this day, shipowners therefore have to submit a request for a non-existing NMP to the Navy before being allowed to request for PCASP. This made the

deployment process long and less efficient, actually stretching the timeframe between request and boarding.

According to the current legal framework, the PCASP's team leader has not the powers of a criminal police officer, differently from what happened with NMP's Commanders. These powers therefore remain in the hands of the ship Captain. PCASP's team leaders have only the autonomy to issue tactical orders to their team but are otherwise completely subject to the authority of the ship's Captain. These provisions therefore prevent any potential case of power duality.

PCASP are allowed to use on board the same equipment allowed by TULPS on land, with the addition of the one stored on the ship. In the latter case, the shipowner or his representative (generally the ship's Captain) provides the necessary authorisations, solely loaning the weapons to PCASP during the performance of their safeguard duties in international waters. The law also provides that PCASP teams should be composed by a minimum of 4 members, meaning two less, when compared to the minimum of 6 of NMP. The PCASP deployment can therefore have a higher degree of flexibility in deployment. It is also worth considering that, according to data issued by the Ministry of Labour and Social Policy, PCASPs have an average daily cost of more than 1.000 euros less in respect to NMPs.

The strengths and weak points, under both the legal and the operative dimensions, suggest that the market of security services outsourcing has been continuously developing in Italy during the last years, as it did in the past in other countries. Private security providers gained a new importance within the political debate, even if obstacles and criticisms point out that several instruments have to be implemented in order to improve the Italian security firms and operators in terms of both efficiency and accountability. These last improvements may be considered crucial, also bearing in mind that the Italian security industry could achieve great importance in the international market.

Italian Security Debate and Future Perspectives

The deployment of private security forces on commercial ships, within a larger international security scenario, has been present in the political debate and decisions of several European Member States. It is worth noticing that, as well as it happened in our country, almost all the countries which decided to resort to PCASP foresaw the "public"

option (NMP) in a complementary or alternative fashion. More in details, the private option prevailed only after the possibility to deploy military personnel has been excluded for both legal and operative reasons.

Since Italy decided to suspend the deployment of NMP, its defence policy - in respect to national commercial ships - temporarily developed similarities to those countries which allowed to their fellow shipowners only the possibility to resort to PCASP. Even if its process of withdrawal from the European Union has recently start to take place, it is worth mentioning another country whose legal system also foresees this last possibility only: United Kingdom. In both countries, the deployment of PCASPs on commercial ships has been limited to those areas the Government has identified as “high piracy-risk” in advance.

However, given the differences the British and the Italian regulatory systems bear in respect to one another, British security firms do not only have to obtain an authorisation from the Home Office (Ministry of Interior) but also from the Department for Transport (Ministry of Infrastructure and Transport). The decision for the deployment of private armed security teams came out, not very differently from what happened in Italy, especially when taking into consideration the concerns expressed by the relevant representatives of the national naval and shipping industries.

The recent decrease in piracy-related activities occurrence, as well as the absence of incidents involving PCASPs, prevented the current debate to revolve around the appropriateness of resorting to private security personnel aboard commercial ships, as well as the risks implied in said option. Still, the creation of a more efficient legal and strategic framework appears to have primary importance, given the weak points the Italian current one presents, and the necessity to grant both timely and effective safeguard measures to shipowners, and a close monitoring from national authorities for the sanctioning of potential abuses.

This is due to several contributing factors. Mainly the eventuality of a downsizing in military forces deployed within the High Risk Area for international security operations - given the already mentioned piracy decrease -, and the subsequent possible increase in piracy threats within the Horn of Africa or the Guinea Gulf as a response. Given this perspective, it is worth noting that Italy didn't act inappropriately or belatedly in respect

to other European States, but rather had to find an operative solution which would have fit to its very governmental features under time pressure.

That being said, one of the most relevant contributions which have been made in respect to the lively Italian political debate around the privatization of security services has took place in Palazzo Montecitorio. It is worth mentioning the working table which was held on the 21st of March 2017. in the Sala della Lupa, not only because it was organized by the Intelligence Culture and Strategic Analysis (ICSA) Foundation and attended by some of the most eminent personalities from the security area, but also because during the discussion concerning a feasible and more efficient future legal framework for the Italian private security industry, some of the problems and solutions pointed out can be safely considered as crucial at the present day.

Italian contractors, and PCASPs as well, have been described experiencing a juridical and cultural anomaly spurring from old legal barriers and linguistic misunderstandings, linked to an outdated conception of “private security” which basically associates it to the mercenaries of the past era. Those very barriers and misunderstandings, during the debate, have been pointed out as the main reasons of Italian politics’ mistrust towards the domestic private security industry and subsequently as the main reasons for the obstacles the industry itself finds in carrying out its services for domestic and foreign clients in high risk areas.

During the session, one of the most important issues concerning the improvement of PCASPs’ operative capabilities was tackled: the possibility to modify the already mentioned TULPS. As previously stated, PCASPs are currently allowed to protect only movable and immovable property and not physical persons, while close protection teams formed by the Carabinieri from the 2nd Mobile Brigade are intended for the protection of governmental personalities, according to the current legal dispositions. A modification of the TULPS could result in a legally-framed possibility for private security firms to operate in this last field as well. Some of its norms have been described as “anachronistic” and “limiting security firms’ profession, forcing them to exploit legal loopholes to operate within the domestic market and cutting them out of the global one”.

Thus, the enlargement of the TULPS’ legal dispositions has been depicted as a fundamental first step to improve the Italian private security industry, also taking into

consideration the fact that the European Court of Justice (ECJ) imposed penalties to Italy after a judgement in September 2007.

It is safe to assume that the debate hosted in the Chamber of Deputies has greatly contributed to improve the Italian institutions' global understating of the new security issues and challenges for the country. As said before, those advices could prove useful in the near future as starting points for a restructuring of Italy's security policies within the current geopolitical scenario. Also it is worth noticing that Italian Minister of Defence, Roberta Pinotti, had included in several official documents the necessity to furtherly study the possibility for a public-private partnership within the general framework of the relations between Italian industry and Defence. In fact, the Minister's claim appeared for the first time in 2015 into the "White Book for International Security and Defence", and has been furtherly developed within the "Multi-Annual Policy Paper of Defence over the three years 2016-2018".

The policy proposals contained in this document point out a general openness of Italian institutions towards the possibility to resort to more reliable and better disciplined private solutions. It is worth mentioning that the Minister's papers aim to start an analysis process intended to reach for a new balance between the competences which have to be kept within the national armed forces' jurisdiction and those which can be managed by private firms in the security sector.

This is due to the plurality of systems and the increasingly wide complexity of the technologies deployed for security purposes. Among the proposals listed in order to reach said balance, it is worth mentioning the realisation of public-private partnerships and the possibility for the industry to absorb some of the Defence's technical-industrial structures, in order to improve its efficiency and competitiveness without compromising the primary requirements of national security, thanks to specific norms and qualified personnel. The need for a better definition of the legal status of the private enterprises' personnel which is deployed for logistic support has also been considered to be crucial, together with the efforts from the Italian private security companies to promote the employment of discharged military personnel.

Policy and security advisors, as well as other governmental organs, should therefore provide precise operative guidelines about the adequate kind of response to different types

of attacks, in order to calibrate the various safeguard measures allowed in respect to the level of the threat, that is to say the pirates' mode of operation and the foreseeable level of violence. As piracy differs from place to place, different kind of piracy may require a different number of deployed armed guards, or require the presence of different countermeasures, weapons or rules of engagement.

In all these cases, the need for backup from a coastal or international military operation carried out in the area could weigh in different ways. The risk of an escalation in the use of force – as it has been predicted by experts of the maritime security sector – is a fundamental factor to be analysed when choosing the most efficient safeguard measures for commercial ships.

In spite of the recent interruption in the provision of military protection services established by Italy, the deployment of Nuclei Militari di Protezione (NMP) could still be considered appropriate in cases characterised by high levels of violence or risk, due to the fact that armed teams with military background could grant higher operative standards. The raising of said standards would be linked to the military's integration into the chain of command and into the military jurisdiction, which grants greater reliability as a consequence of a closer and more accurate level of judiciary and political control.

It would be then desirable that the synergistic efforts of both Italian private and institutional actors in redesigning the country's maritime security system result in a state-of-the-art framework, capable of making the best out of the public and private sphere. The most important steps to be made in this sense may be found in the engineering of more precise reliability standards, clearer protocols for operative action and a more fruitful internal cooperation with public-private partnerships.

The purpose of this dissertation was to compare the strong and weak points present at the moment within the approach Italy has in relying on the new private actors for the safety of its economic assets on the sea. The overall picture, made of difficult but increasingly important steps, point towards an encouraging future, as long as the analysis and the dialogue over the phenomenon remains lively as it has been in the recent years.