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## The Political Cost-Effectiveness of Private Vessel Protection: The Italian Case

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### Abstract

Italy has traditionally been wary of private providers of security. Still, private military and security companies (PMSCs) have recently started to play an important role in protecting Italian merchant vessels, eventually replacing the military vessel protection detachment units (VPDs) provided by the Italian Navy. Drawing on neoclassical realism, the increasing involvement of PMSCs in protecting Italian merchant ships is presented as an attempt to reduce the political costs associated with the use of military personnel abroad, epitomised by the arrest of two Italian Navy fusiliers by Indian authorities in February 2012.

### Keywords

Maritime security, private security, private military and security companies, vessel protection, neoclassical realism

Italy has displayed a long-standing distrust for private providers of security. Nevertheless, in the last few years private military and security companies (PMSCs) have played an increasingly crucial role in protecting merchant vessels flying the Italian flag (hereinafter Italian merchant ships) from pirate attacks. PMSCs have now replaced the vessel protection detachment units (VPDs) that were initially provided by the Italian Navy, becoming the sole providers of vessel protection available to Italian merchant ships.

Drawing on neoclassical realism, this article conceptualises the increasing involvement of PMSCs on Italian merchant ships as an attempt to reduce the domestic political costs associated with the use of military personnel abroad. The arrest and prolonged detention in India of two Italian Navy Marines (known as *Marò*) raised public awareness of the severe risks entailed in the use of military personnel as providers of vessel protection and was key in reshaping Italian anti-piracy policies, paving the way for the complete privatisation of vessel protection.

Private security scholarship has already documented the role of domestic mobilisation constraints in incentivising the use of PMSCs. The existing research, however, has focused on the role of domestic political constraints in influencing the outsourcing of military support in the US and UK,<sup>1</sup> examining

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<sup>1</sup> Avant and Sigelman, "Private Security and Democracy"; Cusumano, "Bridging the Gap".

other European countries only to a very limited extent.<sup>2</sup> Moreover, the existing scholarship has concentrated on explaining the causes of security outsourcing on land,<sup>3</sup> largely overlooking the study of the domestic political considerations associated with the privatisation of maritime security.<sup>4</sup> By conducting an in-depth examination of the evolution of Italian vessel protection policies, this article aims to fill this gap. Italy is an ideal case study for observing the connection between military mobilisation constraints and the commercialisation of vessel protection for three main reasons. First, Italy hosts one of the largest European merchant fleets and suffered 35 attacks and the hijacking of five ships between 2009 and 2013.<sup>5</sup> Hence, the case of Italy is of intrinsic importance in the study of maritime security and vessel protection policies.

Second, normative preferences deriving from the country's historical legacy and political culture have traditionally made Rome very reluctant to assign national security tasks to the private sector.<sup>6</sup> As a result, Italy can be seen as a least likely case for the argument that domestic political constraints shape security privatisation, providing a tough test for our argument.<sup>7</sup> Showing that military mobilisation constraints inform the privatisation of vessel protection even in a country like Italy is key to showcasing the usefulness of neoclassical realism *vis-à-vis* other explanations for the increasing use of PMSCs.

Third, Italy has been characterised by large variations in its vessel protection policies, shifting from *de facto* exclusive use of military VPDs to a dual approach allowing for the use of both VPDs and PMSCs and finally to exclusive reliance on PMSCs. Consequently, the Italian case is especially appropriate for using process tracing to analyse the increasing resort to PMSCs.<sup>8</sup> To investigate the logics underlying the evolution of Italian vessel protection more effectively, the study of primary sources such as legislation, ministerial speeches, parliamentary reports, and media articles have been complemented with nine semi-structured interviews with decision-makers and representatives of the shipping and private security industries.

This article is structured as follows. The next section presents the neoclassical realist theoretical framework employed for this analysis. The growth of piracy off the Horn of Africa and the subsequent response by the shipping industry and international community are then examined. The three subsequent sections look at the evolution of Italian vessel protection policies. They are followed by an assessment of those policies against different theoretical frameworks, showing that a neoclassical realist approach provides key insights into Italian vessel protection. The conclusions discuss the implications of the current privatisation of vessel protection for Italy's defence policy and private security industry.

### **Theoretical framework: a neoclassical realist approach to military mobilisation**

The strand of realist scholarship known as neoclassical realism has departed from structural realism's tendency to overlook domestic politics by stressing the importance of unit-level factors as filters between external threats and states' foreign policy.<sup>9</sup> As long noted by security studies scholars, elected leaders adapt "the means, objectives and strategy of intervention to domestic constraints",<sup>10</sup> even at the price of reduced military effectiveness. As a result, domestic factors play an especially important role

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<sup>2</sup> Leander, *Commercialising Security in Europe*.

<sup>3</sup> Abrahamsson and Williams, *Security Beyond the State*; Avant, *The Market for Force*; Kinsey, *Corporate Soldiers*; Krahnemann, *States, Citizens, and Privatization*.

<sup>4</sup> For an exception, see Cusumano and Ruzza, "Security Privatisation at Sea".

<sup>5</sup> Cusumano and Ruzza, "Contractors as Second Best Option", 112.

<sup>6</sup> Ruzza, "Italy: Keeping or Selling Stock?".

<sup>7</sup> Levy, "Case Studies".

<sup>8</sup> Bennett and Checkel, *Process Tracing*.

<sup>9</sup> Ripsman *et al.*, *Neoclassical Realist theory*; Taliaferro *et al.*, "Introduction: Neoclassical Realism, the State and Foreign Policy", 3-4.

<sup>10</sup> Merom, *How Democracies Lose Small Wars*, 120-1.

in shaping policies that require the deployment of military personnel.<sup>11</sup> By restraining governments' ability to mobilise military manpower, domestic constraints act as an intervening variable between threats to national security and the policies devised to address them, frequently forcing defence ministries to resort to alternative sources of military manpower.

Existing research highlights that the difficulty in deploying military manpower abroad due to parliamentary caps and requests to withdraw troops is crucial for explaining the use of PMSCs by the US and UK governments in Iraq, Afghanistan and other theatres. Italy's resort to armed contractors in Iraq also illustrates this point. In 2006, the Italian parliament decided to withdraw Italian troops from operation Iraqi Freedom but agreed to continue supporting the reconstruction of the country via its Provincial Reconstruction Team (PRT) in Dhi Qar. As the PRT could no longer be protected by Italian military personnel, the cabinet outsourced the protection of Italian civil servants still operating in Iraq to the British PMSC Aegis.<sup>12</sup>

Even when it is not specifically constrained *ex ante* by domestic vetoes, the deployment of military personnel is inhibited by political considerations associated with the expected costs and risks of putting soldiers and sailors in harm's way. Although military operations can sometimes be launched in spite of substantial public opposition, public opinion is "the key political constraint when decisions must be made on which forces to deploy in a crisis".<sup>13</sup> Even when military personnel are not exposed to high risks of dying in action, their deployment abroad still entails political and diplomatic risks. Without legal provisions explicitly exempting them from local jurisdiction, such as those usually contained in a status of forces agreement (SOFA), military personnel may be exposed to the risks of prosecution and detention in third countries, which may in turn generate criticism against governments' foreign policy and reduce electoral support for the party in power.

The deployment of military personnel aboard private assets transiting through waters subject to sovereign claims from third countries entails especially high legal and diplomatic risks. The arrest and prolonged custody in India of two Marò, Salvatore Latorre and Massimiliano Girone, is a case in point. The diplomatic and legal controversy with the Indian government caused by the Marò case triggered outrage among Italian media, public opinion and political opposition, which repeatedly criticised the government for allegedly abandoning the two servicemen and failing to bring them back home.<sup>14</sup>

Neorealists hold that military mobilisation decisions are shaped primarily by considerations of military effectiveness.<sup>15</sup> Constructivists, on the other hand, argue that the choice to resort to specific types of military actors is informed primarily by strategic culture and prevailing norms.<sup>16</sup> Neoclassical realist scholarship, on the other hand, considers political constraints to be the key intervening variable between external threats and military mobilisation decisions, arguing that the higher the political costs associated with the deployment of military personnel, the higher the likelihood that alternative sources of military manpower such as PMSCs will be employed.<sup>17</sup> As their use is less subject to parliamentary scrutiny and less visible to public opinion, and they are private agents whose deployment makes it possible to reduce states' accountability and legal liability, private security contractors provide a more politically cost-effective avenue for conducting tasks such as vessel protection. Consistent with neoclassical realist expectations, the realisation that the use of military VPDs could entail severe political costs played a key role in reshaping the Italian approach to vessel protection.

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<sup>11</sup> Rose, "Neoclassical Realism and Theories of Foreign Policy", 147; Schweller, *Unanswered Threats*; Taliaferro, "State Building for Future Wars", 486.

<sup>12</sup> Ruzza, "Italy: Keeping or Selling Stock?", 186-7.

<sup>13</sup> Gelpi *et al.*, *Paying the Human Costs of War*, 1; Reiter and Stam, *Democracies at War*, 164-93.

<sup>14</sup> Biloslavo, "Finalmente scatta la linea dura"; "Marò, l'Italia richiama l'ambasciatore dall'India", *La Stampa*, 17 December 2014, <http://www.lastampa.it/2014/12/17/esteri/mar-litalia-alza-la-voce-contro-il-governo-di-delhi-gentiloni-urgente-il-richiamo-dellambasciatore-w527Yr3MwIHhX434DY048M/pagina.html>. Numerous demonstrations and gatherings asking for the liberation of the Marines were organised by political parties and civil society in several Italian cities throughout the years.

<sup>15</sup> Taliaferro, "State Building for Future Wars".

<sup>16</sup> Krahnmann, *States, Citizens, and Privatization*; Percy, *Mercenaries*.

<sup>17</sup> Cusumano, "Bridging the Gap".

## The boom of Somali piracy and the international reaction

Modern day maritime piracy affects three areas in particular: Southeast Asia, Western Africa and the Horn of Africa. Piracy off the Horn of Africa (also referred as Somali piracy) climaxed in the years 2008-12. According to data from the International Maritime Bureau (IMB, an agency of the International Chamber of Commerce specialised in fighting maritime crime), between 2009 and 2011 Somali piracy was responsible for more than 200 attacks per year, that is more than 50 percent of piracy attacks worldwide.<sup>18</sup> Frequency of attacks aside, Somali piracy is especially problematic for other reasons. First, as the Suez canal is an international chokepoint, with about 18 percent of global maritime traffic travelling along this route, a large number of vessels are forced to transit through piracy-ridden areas. Second, the range of the pirates' activities extends several hundred miles off the coasts of the Horn of Africa, almost reaching Indian shores.<sup>19</sup> Third, the Somali pirates' mode of attack entails hijacking the ship and kidnapping the crew, to be released upon payment of ransom. This implies high human and economic costs. The World Bank estimated that between April 2005 and December 2012 pirates hijacked 179 ships, bringing in between USD 339 and 413 million in ransom for the pirates.<sup>20</sup> By inflating insurance premiums, Somali piracy caused further economic damage to the shipping industry. 'War risk' policies swelled from USD 500 per transit in the high risk area in 2007 to USD 20,000 in 2008, with injury, liability and kidnapping insurance to be paid separately.<sup>21</sup>

Both the shipping industry and the international community took steadfast action against Somali pirates. In February 2009, the IMB in accordance with various international industry representatives published the first *Best Management Practices (BMPs)*. This is a collection of guidelines for vessels transiting through risky waters and useful suggestions, such as installing passive security measures like barbed wire, fortified citadels where the crew can take shelter, and water cannons. Since first published, the BMPs have been updated three times. The third edition (June 2010) included an explicit definition of high risk area (HRA), which comprises the Gulf of Aden, the Arabic Sea, and stretches up to the 78<sup>th</sup> Meridian East (hence reaching India's waters). The fourth and last edition of the BMPs (August 2011) revised the traditional stance of the maritime industry against weapons on merchant vessels, suggesting the complementary use of armed teams whenever passive defensive measures were deemed insufficient. This reflected an opening to the use of armed guards that came earlier in the same year from the International Chamber of Shipping (ICS) and International Maritime Organisation (IMO).<sup>22</sup>

The international community has conducted several naval missions, which were limited in scope and often unilateral until late 2008.<sup>23</sup> Italy was the first country to conduct an anti-piracy mission, *Mare Sicuro*, in 2005, after two ships owned by large Italian shipping companies were attacked by pirates.<sup>24</sup> The 2008 boom of piracy off the Horn of Africa, however, created a need for a more coordinated and comprehensive reaction to piracy. In June 2008, the UN Security Council enacted Resolution 1816, the first of a series of provisions allowing foreign navies to enter Somali waters to fight piracy. In 2008, the US-led multinational partnership known as Combined Maritime Forces established a Maritime Security Patrol Area (MSPA) and an Internationally Recommended Transit Corridor (IRTC) for civilian vessels transiting in the HRA.<sup>25</sup> Most of the burden, however, was carried out by three multilateral anti-piracy missions, which started between 2008 and 2009: EUNAVFOR *Atalanta*, launched in December 2008 and still running; Combined Task Force 151 *CTF-151*, an internationally open, US-led operation, started one month later and also still active; and NATO *Ocean Shield*,

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<sup>18</sup> IMB, *Piracy and Armed Robbery Against Ships*.

<sup>19</sup> UNITAR, *UNOSAT Global Report on Maritime Piracy*, 22-23.

<sup>20</sup> World Bank, *Pirate Trails*.

<sup>21</sup> Chalk, "The Privatization of counter-piracy", 126; Oceans Beyond Piracy, *Economic Cost of Maritime Piracy*, 14-5; US Department of Transportation, *Economic Impact of Piracy*, 2.

<sup>22</sup> Marchetti, *Private Military and Security Companies*; Senato della Repubblica, *Risoluzione della quarta commissione permanente (Difesa)*; Ronzitti, "Scorte armate contro la pirateria".

<sup>23</sup> Bridger, *Safe Seas at What Price?*

<sup>24</sup> Ruzza, "Intervista a Luca Sisto, Vicedirettore Generale di Confitarma".

<sup>25</sup> Gortney, "Statement of Vice Admiral William E. Gortney".

initiated in August 2009 and terminated in December 2016. Together, these three missions were responsible for dispatching about two hundred military vessels to the HRA between 2009 and 2016.<sup>26</sup>

### The impact of piracy on Italy and the introduction of Law 130

Several factors made piracy especially detrimental to the Italian national interest. Above all, roughly 50 percent of Italian imports and exports travel by sea, a share that surpasses 80 percent when trade with non-EU countries is considered.<sup>27</sup> Second, Somali piracy could incentivise a re-routing away from Suez and the Mediterranean, both marginalising Italian ports and increasing the costs of imports.<sup>28</sup> Third, Italy suffered five successful hijackings between 2009 and 2011. Only one of these terminated with the liberation of the crew and vessel by means of a military operation, while the other three resulted in the payment of substantial ransoms.<sup>29</sup> In terms of deadweight tonnage, number of vessels, and amount of extra-European exchange, the Italian merchant fleet is comparable to its British, German and Norwegian counterparts.<sup>30</sup> As demonstrated in Figure 1, however, Italian vessels were targeted by pirate attacks comparatively more often than those of the other three countries.

These factors made a firm reaction to Somali piracy paramount for Italian policymakers and stakeholders. When the combined effects of the naval missions and the passive defence measures suggested in the BMPs proved insufficient, a debate on the use of armed teams started involving four main actors : shipowners, policymakers, the Navy and the private security industry. Both before and after 2011, Italian shipowners were largely aligned with the positions expressed by the international shipping industry. This is not surprising since Confitarma, the Federation of Italian Shipowners, adheres to several international shipping organisations, including the International Chamber of Shipping (ICS), which gave its blessing to the presence of armed teams aboard ships in February 2011.<sup>31</sup>

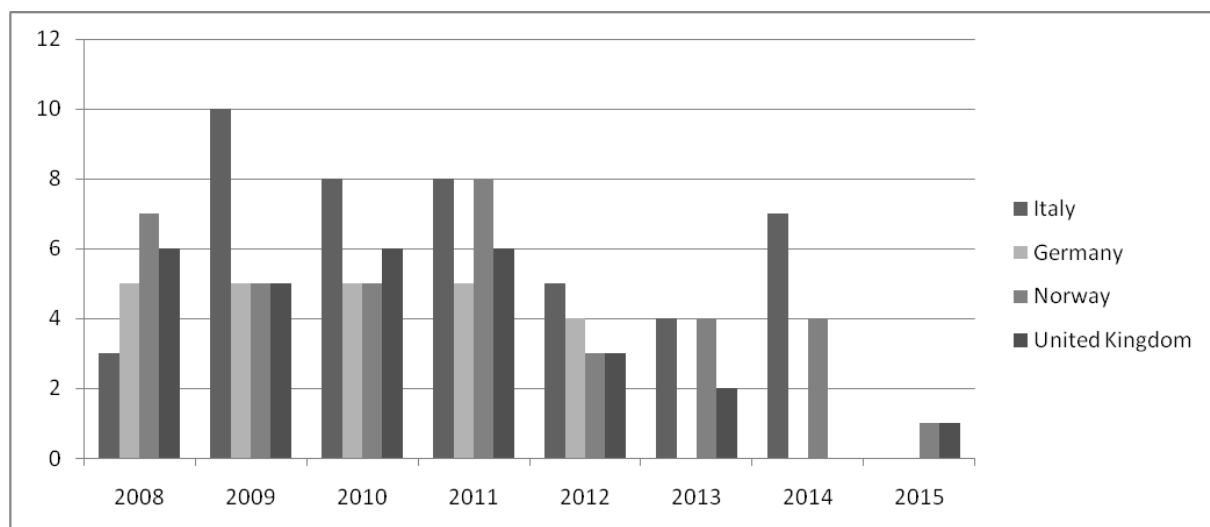


Figure 1: Pirate attacks against the Italian and other comparable merchant fleets (elaborated from IMB data)

<sup>26</sup> Cusumano and Ruzza, "United States Antipiracy Policies".

<sup>27</sup> Confitarma, *Relazione dell'assemblea*, 62; Federazione del Mare, *V Rapporto sull'economia del mare*, 118-9; Quercia, "Sicurezza delle rotte marittime italiane".

<sup>28</sup> Ruzza, "Intervista a Luca Sisto".

<sup>29</sup> Chalk, "The Privatization of counter-piracy", 125-6; Cusumano and Ruzza, "Contractors as Second Best Option", 112; Ruzza, *L'impiego delle compagnie private*, 29.

<sup>30</sup> UNCTAD, *Review of Maritime Transport*; Federazione del Mare, *V Rapporto*, 118-9.

<sup>31</sup> "Shippers back private armed guards to beat pirates", *Reuters*, 11 February 2011, <https://www.reuters.com/article/shipping-piracy-idAFLDE71E1F520110215>.

In 2011, Italian shipowners asked lawmakers to be able to allow armed personnel to board their ships. Italian shipowners had a preference for military teams due to their perceived greater effectiveness and the inextricable level of state commitment associated with the use of military personnel. At the same time, however, they also expressed appreciation for private teams which, given their greater flexibility, are better suited to the needs of ships with no predetermined routes and schedules. From the shipowners' perspective, therefore, the ideal regime was 'dual', that is the use of both uniformed and private armed teams. Their minimum demand, however, was to have at least some form of armed protection onboard, regardless of whether public or private.<sup>32</sup>

The plea coming from shipowners resonated with the lobbying efforts of Italian private security industry representatives.<sup>33</sup> The demands coming from the private security sector were also in line with the preferences expressed by then Minister of Defence, Ignazio La Russa, who declared himself in favour of a private solution for protecting Italian vessels from pirates.<sup>34</sup> During a parliamentary hearing in June 2011, the Navy Chief of Staff, Bruno Branciforte, stated that choosing between military and private teams was an intrinsically political decision beyond the scope of his authority. He also stressed, however, that the military option would ensure proven security capabilities and a clearer legal framework.

According to Luigi Ramponi, then president of the Senate's Standing Defence Committee, allowing for immediate use of PMSCs was impossible, as Italian PMSCs were lacking the adequate operational skills and the relevant regulations were not yet in place. As Italian-flagged ships represent Italian territory, PMSCs operating aboard vessels would be subject to a body of provisions dating back to the Fascist era (known as *TULPS: Testo Unico delle Leggi di Pubblica Sicurezza*), which tightly constrain the activities of private security guards. Consequently, additional provisions regarding the training and licensing of vessel guards and the type and storage of weapons allowed on board had to be issued. The only viable response therefore was to start protecting vessels through VPDs, including a subsidiary private option in the law to be implemented at a later stage in order to fully accommodate shipowners' demands.

In July 2011, a decree including provisions for the use of armed teams aboard Italian vessels was enacted and then converted into Law 130 one month later. Law 130 outlines a dual approach, allowing for the use of both uniformed and private armed teams. It mandates that a shipowner can legitimately employ an armed team only if the ship is transiting through a risky area (as defined by a decree of the Ministry of Defence) and only if appropriate passive defence measures have been taken. A request has to be addressed to the Navy first, which then dispatches a VPD. If no VPDs are available, the shipowner can then resort to the private sector to hire a PMSC that has obtained a license from the Ministry of the Interior beforehand.<sup>35</sup>

### **The military-only phase of Law 130 and the *Marò* case**

While Law 130 has not changed since its inception in August 2011, the ensuing body of policy measures and regulations has evolved through several stages (see Figure 2).

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<sup>32</sup> "Pirateria: Federpesca, adottare misure sicurezza urgenti", *Ansa*, 22 April 2011, [http://www.ansa.it/mare/notizie/rubriche/ambienteepesca/2011/04/22/visualizza\\_new.html\\_898623013.html](http://www.ansa.it/mare/notizie/rubriche/ambienteepesca/2011/04/22/visualizza_new.html_898623013.html); Senato, *Resoconto Stenografico n.1*; Senato, *Risoluzione della quarta commissione permanente*, 22 June 2011.

<sup>33</sup> One of the most vocal companies was the Security Consulting Group (SCG), based in Rome and led by Carlo Biffani. "Mercenari in campo contro i pirati", *La Stampa*, 20 April 2009, <http://www.lastampa.it/2009/04/20/italia/cronache/mercenari-in-campo-contro-i-pirati-FzI3qRdDcld0uQR4ZFZCUP/pagina.html>; "Assedio dei pirati alle rotte del petrolio. Carlo Biffani: 'L'Italia apra ai contractor'", *Il Sole 24 Ore*, 24 April 2011, <http://www.ilsole24ore.com/art/notizie/2011-04-23/assedio-pirati-rotte-petrolio-194012.shtml?uuid=AaHhiXRD>.

<sup>34</sup> "Pirateria: La Russa, su navi no soldati ma vigilantes", *Ansa*, 8 February 2011,

[http://www.ansa.it/mare/notizie/rubriche/shippingecantieri/2011/02/08/visualizza\\_new.html\\_1590493939.html](http://www.ansa.it/mare/notizie/rubriche/shippingecantieri/2011/02/08/visualizza_new.html_1590493939.html).

<sup>35</sup> Senato, *Resoconto Stenografico n.2*; Senato, *Risoluzione della quarta commissione permanente*, 2 October 2012; Interview with Senator Luigi Ramponi, Rende (CS), 12 September 2015.

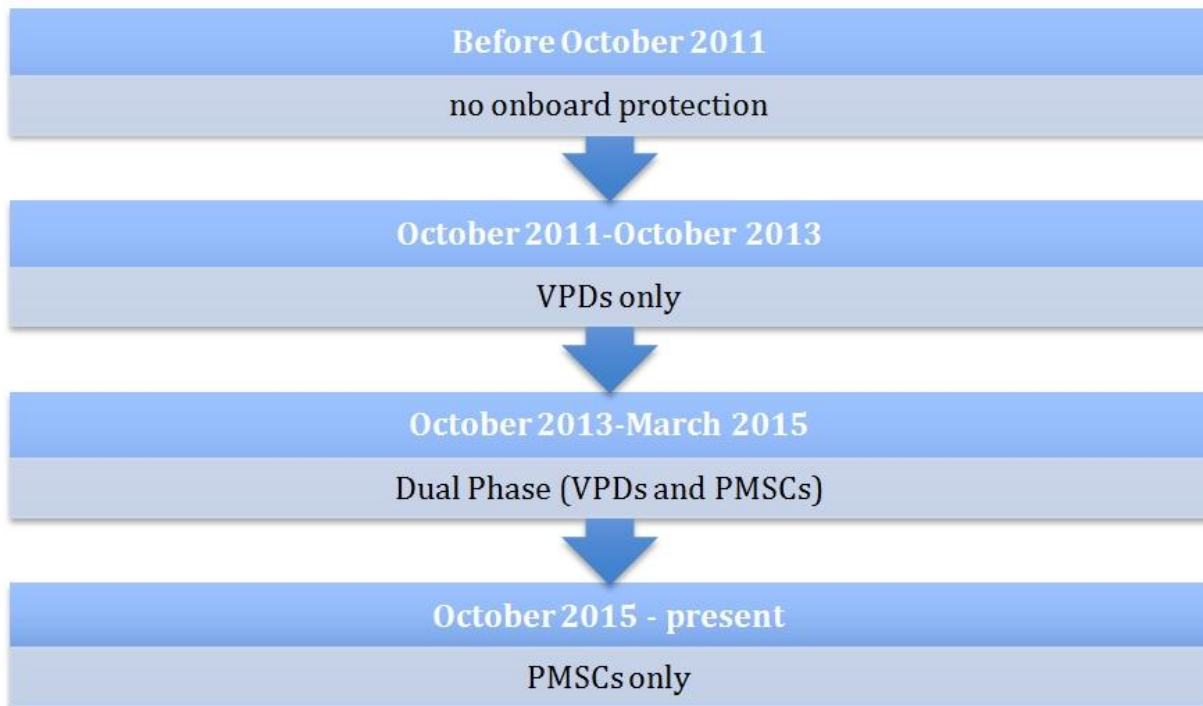


Figure 2: Italian vessel protection regimes

In order to be able to handle a peak of ten simultaneous requests, twelve VPDs were originally envisaged, but it took until October 2011 to make them operational. VPDs have to be composed of six to nine men, and all the costs attached to their deployment are to be borne by the shipowner.<sup>36</sup> The conditions allowing for the use of PMSCs, by contrast, were not specified until much later. As a result, the hiring of private security teams was not possible until October 2013. Consequently, while Law 130 envisaged a dual approach, VPDs were the only option available to shipowners for two full years. An authentically dual system remained in place until March 2015, when Minister of Defence Roberta Pinotti suddenly suspended the supply of VPDs, pushing the Law 130 regime into its 'private-only' phase, still in place today.

VPDs successfully conducted around 350 protection missions,<sup>37</sup> and the combination of naval missions and armed teams aboard vessels translated into a sharp decrease in pirate attacks. According to IMB figures, attacks attributed to Somali pirates decreased from 237 in 2011 to 75 in 2012, 15 in 2013 and 11 in 2014. No attacks were reported in 2015.

However, one major incident occurred in early 2012. On 15 February, a VPD operating aboard the *Enrica Lexie*, an Italian-flagged oil tanker transiting offshore Kerala en route to Djibouti, opened fire in the direction of an incoming boat, under the presumption of an impending pirate attack. According to Indian authorities, the Italian Marines killed two Indian fishermen operating inside India's contiguous zone at the moment of the incident. The Marine Rescue and Coordination Centre in Bombay then requested the *Enrica Lexie* to land in the port of Cochin so that an investigation could be conducted. After consulting with the shipowner, the shipmaster complied. The Marines onboard, informed about the decision, contacted the Joint Operational Command (*Comando Operativo Interforze*, COI), which granted permission to proceed as requested in accordance with "an acknowledged need for cooperation with Indian authorities on antipiracy matters".<sup>38</sup> After the *Enrica Lexie* docked, the two Marines, Massimiliano Latorre and Salvatore Girone, were charged with the murder of the two fishermen and arrested. On 2 May 2012, the ship was released, but the two Marines

<sup>36</sup> Senato, *Risoluzione della quarta commissione permanente*, 2 October 2012.

<sup>37</sup> Second phone interview with Confitarma Representative, 21 May 2015.

<sup>38</sup> Camera dei Deputati, *Interrogazione a Risposta Scritta 4/15000*; Ministero degli Esteri, *Informativa sull'arresto*.



continued to be held and the controversy related to them has continued ever since.<sup>39</sup> New Delhi's insistence on prosecuting the Marò under its jurisdiction has seriously strained India-Italy relations for several years, and the matter is currently under arbitration by the International Tribunal for the Law of the Sea (ITLOS).

Discussing the legal ramifications of the Marò case is beyond the scope of this article.<sup>40</sup> Three observations, however, should be made. First, when civilian vessels employing military teams are transiting in or close to territorial waters, jurisdictional disputes can arise. In the absence of a status of forces agreement (SOFA), functional immunity can be an insufficient legal and diplomatic safeguard.

Second, the automatic or uncritical adoption of the definition of HRA formulated by the international shipping industry creates diplomatic risks that national legislators and policymakers need to examine carefully, reserving for themselves the possibility to decide independently which areas and routes require onboard armed protection and which rules of engagement should be applied. The definition of HRA contained in the *BMP3* stretches eastward to the 78<sup>th</sup> Meridian E, including waters under Indian jurisdiction or on which India claims sovereignty, and was formulated without consultation with this country. Its automatic acquisition by the Italian MoD implied that armed guards onboard Italian vessels were employed in this stretch of sea on the same conditions applied in the rest of the HRA, without any specific agreement, safeguard or operational protocol in place accounting for India's political claims. This generated the preconditions for the *Enrica Lexie* incident.

Third, VPDs can guarantee shipowners an extra layer of protection in case of international legal complications. An Italian shipping industry representative stated that had the armed team employed on the *Enrica Lexie* been private, the controversy with India would have entailed more severe consequences for the shipowner, resulting in a much longer detention for the ship.<sup>41</sup> For example, in October 2013, six private guards operating aboard the *MV Seaman Guard Ohio* were arrested by Indian authorities on charges of entering Indian territorial waters with unlicensed firearms and illegal procurement of fuel. The ship, flying the Sierra Leone flag, was operating for a US-based PMSC, while the guards operating onboard were British and Indian. This case did not generate any serious diplomatic friction between India and any of the other three governments as its consequences have fallen entirely on the shoulders of the private parties involved. The release of the vessel was still refused by Indian authorities seven months after the impounding and the guards remained in custody until November 2017.<sup>42</sup>

### **Law 130 after the *Enrica Lexie* incident**

The arrest of the two Marines soon became a salient political issue in Italy and a source of contention between the Indian and the Italian governments. In the immediate aftermath of the incident, Indian authorities lodged a protest with the Italian ambassador, while the filing of murder charges against Latorre and Girone led Italy to recall its ambassador already in May 2012.<sup>43</sup>

The confrontation dragged on for the rest of the year, mainly over issues of jurisdiction and functional immunity. For India, the act happened on Indian soil (since the deaths occurred on an Indian ship) and functional immunity does not apply (as the service provided by the Marines was considered analogous to that furnished by private contractors). For Italy, on the other hand, the event occurred in

<sup>39</sup> Gaeta, "Il caso dei marò italiani in India".

<sup>40</sup> For a legal analysis, see Bevilacqua, "Counter Piracy Armed Services".

<sup>41</sup> Ruzza, "Intervista a Luca Sisto".

<sup>42</sup> "Court declines to release MV Seaman Guard Ohio", *Business Standard*, 22 May 2014, [http://www.business-standard.com/article/pti-stories/court-declines-to-release-m-v-seaman-guard-ohio-114052201555\\_1.html](http://www.business-standard.com/article/pti-stories/court-declines-to-release-m-v-seaman-guard-ohio-114052201555_1.html); Kalyanaraman, "The forgotten 'Indian 12' on Seaman Guard Ohio", *The Hindu*, 16 December 2017, <http://www.thehindu.com/news/national/the-forgotten-indian-12-on-seaman-guard-ohio/article21823331.ece>; "India firearms charge ex-soldiers sent to jail", *BBC*, 11 January 2016, <http://www.bbc.com/news/uk-england-35279074>; Chennai Six: Britons released from Indian jail, *BBC*, 28 November 2017, <http://www.bbc.com/news/uk-england-42149123>.

<sup>43</sup> "Italy says envoy recall signals 'strong displeasure' with India", *Reuters*, 19 May 2012, <https://www.reuters.com/article/italy-india-shooting/italy-says-envoy-recall-signals-strong-displeasure-with-india-idUSL1E8GJ16420120519>; Ministero degli Affari Esteri, *Press Release*.

international waters as none of the ships involved were in territorial waters. Moreover, since the Marines are uniformed personnel performing a public service are to be considered protected by functional immunity. Optimism for a quick solution progressively faded away. In December 2012, as the case dragged on, the Indian ambassador was summoned to Rome to be informed of Italy's disappointment with the slow progress and lack of cooperation on the Indian side. At the same time, the Italian Ministry of Foreign Affairs mentioned the possibility of initiating legal and diplomatic initiatives at the international level.<sup>44</sup>

Even if the Supreme Court of India removed the case from Kerala's jurisdiction in January 2013, a serious diplomatic crisis erupted between February and March, when the Marines were allowed to return to Italy to vote in the parliamentary elections. After they reached home the Italian government, led by Mario Monti, declared that they would not go back to India. India, in turn, revoked the immunity of the Italian Ambassador until the return of the Marines. A heated political debate followed, which led to the Marines' return to India and the resignation of the Italian Foreign Minister, Giulio Terzi.<sup>45</sup>

A second crisis broke out shortly afterward and lasted for about a year, as the Indian Home Ministry asked the National Investigation Agency (NIA) to prosecute the Marines. The NIA, in turn, invoked the 'Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act' (known as SUA) to assume jurisdiction. The maximum penalty carried by the SUA is the death sentence, but for Italian authorities and public opinion the possibility of such an outcome was considered outrageous and aroused considerable indignation.<sup>46</sup> Answering an appeal filed by the Marines, the Supreme Court of India rejected the NIA's authority in March 2014.<sup>47</sup>

In April 2014, the Italian Foreign Minister, Federica Mogherini (from the centre-left Democratic Party), stated in Parliament that an international solution should be sought to bring the case to an end. A few months later, India's Minister for External Affairs, Sushma Swaraj, affirmed that that would be synonymous with interference into legal matters that should be settled by Indian courts.<sup>48</sup>

Latorre returned to Italy in September 2014 for health reasons, but his repatriation was not considered permanent by Indian authorities. The two governments clashed anew in December, when Italy asked for an extension of Latorre stay and India refused. A request for the temporary return of Girone was also advanced, but similarly rejected. The (centre-left) Renzi-led cabinet came under attack from both the main opposition parties, namely the (centre-right) *Forza Italia* and the populist Five Star Movement, as it was declared "indecisive" in the matter.<sup>49</sup>

The quarrel between India and Italy began to de-escalate only in the summer of 2015, when both countries agreed to arbitration by the International Tribunal for the Law of the Sea, which is still ongoing at the time of writing. Leaving aside the legal aspects of the Marò case, the long-lasting stalemate in the negotiations with India and the alleged inability to 'bring the *Marò* home' severely damaged the reputation of the governments led by Mario Monti, Enrico Letta and Matteo Renzi.

The *Enrica Lexie* incident and its consequences had a major impact on the parliamentary debate on vessel protection, calling into question the choice of employing military personnel to protect private vessels. An Italian Senate Defence Commission report drafted as early as Autumn 2012 clearly reveals

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<sup>44</sup> Biloslavo, "Marò, finalmente scatta la linea dura", *Il Giornale*, 17 December 2012, <http://www.ilgiornale.it/news/interni/mar-finalmente-scatta-linea-dura-866059.html>.

<sup>45</sup> Rahman, "Italian envoy banned from leaving".

<sup>46</sup> Just one month earlier, some live bullets were found in the mailbox of the Indian embassy in Rome. "India consults Italy over live bullet, hate mail received by embassy", *The Straits Times*, 21 February 2014, <http://www.straitstimes.com/asia/india-consults-italy-over-live-bullet-hate-mail-received-by-embassy>

<sup>47</sup> "Italy warns India of European response to marines trial", *BBC*, 10 February 2014, <http://www.bbc.com/news/world-europe-26118155>.

<sup>48</sup> "Italy opens 'new phase' in India marines saga", *Ansa*, 24 April 2014, [http://www.ansa.it/english/news/2014/04/24/italy-opens-new-phase-in-india-marines-saga\\_3602a195-ac83-49b4-8995-0ddb2a99e6c2.html](http://www.ansa.it/english/news/2014/04/24/italy-opens-new-phase-in-india-marines-saga_3602a195-ac83-49b4-8995-0ddb2a99e6c2.html).

<sup>49</sup> "Marò, l'Italia richiama l'ambasciatore dall'India", *La Stampa*, 17 December 2014, <http://www.lastampa.it/2014/12/17/esteri/mar-litalia-alza-la-voce-contro-il-governo-di-delhi-gentiloni-urgente-il-richiamo-dellambasciatore-w527Yr3MwIHhX434DY048M/pagina.html>

a growing awareness that PMSCs offer a more politically cost-effective option, stating that "the use of private teams instead of military ones – because of the private nature of the relationship – can avoid, in case of accidents, the diplomatic complications connected with delicate disputes under international law".<sup>50</sup> Similar arguments were formulated in other European countries. UK experts, for instance, used the Marò case to support the government decision to employ PMSCs, seen as a way to reduce British government liability in the fight against piracy. Other countries using VPDs, like the Netherlands, also expressed concern that Dutch military personnel could be involved in similar incidents, using arguments associated with the greater political cost-effectiveness of PMSCs to call for a revision of Dutch vessel protection policies.<sup>51</sup>

In Italy, the Ministry of the Interior issued Decree 266 in December 2012, which contains the regulations for the use of private security guards on Italian merchant vessels. However, a long bureaucratic process was still necessary in order to implement the decree. In spring 2013, Confitarma expressed the fear of seeing VPDs suspended before PMSCs could operate due to a lack of appropriate regulations.<sup>52</sup> Decree 266 entered into force in April 2013, but it still took until October of that year for the entire norm to become effective, finally allowing Italian shipowners to resort to PMSCs.

While previous Italian vessel protection arrangements had been devised in close consultation with shipowners, the March 2015 suspension of VPD deployments caught the industry by surprise. According to a Confitarma representative, political considerations associated with the aftermath of the Marò case prevailed over Italian decision-makers' previous attempts to accommodate the preferences of the industry.<sup>53</sup> Unsurprisingly, the unavailability of VPDs gave a major boost to the use of private security guards aboard Italian vessels. Until March 2015, PMSCs had only protected around 80 transits, while VPDs had guarded over 350. By May of the same year, privately-protected transits had already reached 150.<sup>54</sup>

Although the shipping industry has continued to advocate their preference for a dual approach, the Italian vessel protection regime remains based on PMSCs only. More convoluted than in most other countries, the authorisation process still requires a shipowner to apply formally for a VPD even though VPDs are no longer available. Private security teams have to consist of four guards who have attended a ministerial course on maritime security, but as these courses have not yet started at the time of writing, only guards with a military background have been allowed on board ships to date.<sup>55</sup>

## Competing explanations

Considerations associated with the constraints and risks of using military personnel to protect Italian vessels played a key role in making the use of PMSCs aboard merchant vessels the only possibility currently available to shipowners. According to neoclassical realism, the higher the constraints and costs associated with the deployment of military personnel, the higher the propensity to resort to PMSCs as alternative providers of security. The timing and rationale of Italy's resort to PMSCs provides support for this argument. As epitomized by the 2012 Senate report, the *Enrica Lexie* case made Italian decision-makers aware that the use of VPDs entailed high domestic political risks, and that such risks could be circumvented by privatising vessel protection. By revealing the diplomatic and political risks attached to the protection of merchant vessels, the arrest of Latorre and Girone was key to overcoming the legal hurdles associated with the deployment of PMSCs, allowing for the use of private guards aboard Italian vessels. Such risks were also crucial in explaining the Ministry of

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<sup>50</sup> Senato, *Risoluzione della quarta commissione permanente*, 2 October 2012, 12.

<sup>51</sup> Caldwell, "Private Security and Armed Guards"; Cusumano and Ruzza, "Security privatisation at Sea"; Interviews with Dutch MoD official, The Hague, 4 April and 5 November 2016.

<sup>52</sup> Confitarma, *Allarme di Paolo d'Amico*; Confitarma. *Lettera aperta di Paolo d'Amico*.

<sup>53</sup> Second phone interview with Confitarma Representative, 21 May 2015.

<sup>54</sup> Cusumano and Ruzza, "Security privatisation at Sea"; Ruzza, "Intervista a Luca Sisto, Vicedirettore Generale di Confitarma".

<sup>55</sup> Ruzza, *Ibid.*; Pergolizzi and Marchetti, "Antipirateria marittima in Italia"; Phone interview with private security industry representative, 22 September 2017.

Defence's decisions to suspend the use of VPDs and ultimately assign Italian vessel protection to PMSCs.

Other, prevailing theoretical explanations of security privatisation account for the use of PMSCs on the grounds of functionalist, ideological, and organisational logics. While these explanations all provide valuable insights, none of them suffices in explaining the privatisation of Italian vessel protection. Functionalist explanations see security privatisation as a purposive attempt to increase the effectiveness and reduce the costs of national security policies by providing capabilities that are missing from the ranks or allowing military organisations under growing financial and personnel strain to outsource support tasks to cheaper private contractors.<sup>56</sup> Such considerations help explain why PMSCs have been employed to operate advanced weapon systems or relied on as local contractors as providers of construction and logistics, but cannot account for the privatisation of Italian vessel protection. Nothing suggests that PMSCs could perform vessel protection more effectively than military personnel. On the contrary, as acknowledged by both the Navy and shipowners, VPDs had the capabilities to perform vessel protection in a more effective and reliable fashion than private guards. Nor did cost-effectiveness play a major role in informing Italian vessel protection choices. Under Law 130, VPD personnel remained on the payroll of the Italian MoD, but all the extra costs arising from their actual deployment in a VPD capacity were paid by shipowners. Hence, from the perspective of the Italian MoD, there were no additional costs attached to vessel protection. As VPDs employed a relatively low number of personnel, such activities did not entail a large manpower drain either.

From the shipowners' perspective, vessel protection teams have to consist of a minimum of six members if they are composed of military personnel, but only four if they are private guards. This makes the private option slightly cheaper. In spite of this, and even if the hurdles associated with requesting VPDs and the fact that they may have to be embarked and disembarked in specific ports make VPDs ill-suited to protecting tramp vessels, shipowners consider VPDs more capable of protecting vessels from both piracy and legal and political complications. Even though Somali pirates have become less active, the threat has not yet been eradicated in the Horn of Africa as a new surge of attacks in 2017 demonstrated.<sup>57</sup> Hence, VPDs are perceived by the shipping industry as an option that can still be useful.

As noted by several scholars, ideological explanations associated with political cultures and normative expectations about who should provide armed services play a key role in explaining variance in the use of PSMCs: The increasing reluctance to hire for-profit providers of combat and tendency to establish a tight state monopoly on violence, for instance, have been explained as the outcome of an international anti-mercenary norm.<sup>58</sup> National political and strategic cultures have also been used to explain the varying propensity to employ PMSCs across countries. Consequently, countries displaying a republican approach to civil-military relations based on the citizen-soldier model, such as Germany, have shown a lower propensity to rely on contractors than countries with a liberal political culture such as the US and UK. Such explanations, however, cannot explain why a country like Italy has chosen a commercial solution to the problem of vessel protection. Italy's history, which has repeatedly seen the state monopoly on violence challenged by terrorist and criminal organisations, has shaped a national discourse wary of outsourcing or fragmenting the security sector. Nor can the political ideology of the parties in power account for the change in Italian vessel protection policies. On the contrary, the fact that the policy allowing for a *de facto* exclusive use of VPDs was put in place by a rightwing government and suspended by a centre-left government further illustrates the indeterminacy of explanations based on political ideologies in shaping Italian vessel protection decisions.

Recent scholarship has stressed the importance of the varying preferences of the different organisations involved in the policy process in explaining why certain tasks are outsourced or performed in-house by the armed forces. National militaries develop different organisational cultures and role conceptions, and therefore a varying understanding of what their core mission is and how it

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<sup>56</sup> Singer, *Corporate Warriors*.

<sup>57</sup> Graham, "Somali piracy is back with a \$1.7 billion problem after shipping firms lower vigilance", *CNBC*, 3 May 2017, <https://www.cnbc.com/2017/05/03/somali-piracy-is-back-17-billion-dollar-problem-shipping-firms-lower-vigilance.html>.

<sup>58</sup> Percy, *Mercenaries*.

should be pursued. Tasks seen as peripheral to their mission tend to be seen as a drain on personnel and resources, and identified by military personnel as menial, detrimental to promotion prospects, and unwelcome. Combat-oriented military organisations like the US military consider a large number of activities as peripheral, and have therefore displayed a greater propensity to outsource tasks such as armed security and foreign military training..<sup>59</sup>

The Italian military, by contrast, has developed a much broader role conception, willingly embracing a large range of humanitarian and law-enforcement roles. The Italian Navy is no exception, and sees itself as a provider of constabulary activities referred to as ‘maritime law enforcement’ and ‘maritime policing’, which include the conduct of search and rescue missions, and the arrest of human smugglers and suspected pirates.<sup>60</sup> Vessel protection was thus initially willingly accepted by the Italian Navy as part of their mission. The decrease in pirate attacks and the migration crisis offshore Libya may have partly shifted the priority of the Italian Navy, which in October 2013 launched the large-scale search and rescue operation, *Mare Nostrum*.<sup>61</sup> However, Italy remain one of the largest contributors to anti-piracy missions, taking over the leadership of operation EUNAVFOR *Atalanta* in August 2014.<sup>62</sup> This suggests that the Italian Navy continued to see the fight against piracy as a core mission in spite of the increasing prominence of the Mediterranean migration crisis. Consequently, the privatisation of vessel protection cannot be explained solely by the changing organisational priorities of the Italian Navy and Ministry of Defence.

### **Conclusions: the future of Italian private (maritime) security**

Consistent with neoclassical realist expectations, the willingness to reduce the domestic political costs of deploying military personnel abroad has played a key role in the privatisation of Italian vessel protection, overcoming Italy’s long-standing opposition to private providers of security. The presence of PMSCs aboard vessels is a significant turning point in Italian national security policies, creating a small maritime market for force. At the time of writing, there are six PMSCs authorised to operate on board vessels by the Ministry of the Interior and private guards have conducted about a thousand vessel protection missions. The overwhelming majority of these have been conducted by two companies: G7 and Metro Security Express (MSE). A G7 spinoff, ESS&SA, has recently entered the market and started conducting some missions while a fourth company, SKP Vigilanza, which protected some vessels in the past, is no longer operating on vessels. Two other companies, Daga Security and Blue Border, are licensed but have not yet conducted any missions.<sup>63</sup>

While the decline in piracy offshore East Africa has reduced shipowners’ demands for armed protection, thereby hindering a further expansion of the market, several vessels still continue to rely on PMSCs. This is especially the case for vulnerable vessels with low decks and limited cruising speed and freight ships which have the costs of their journey fully refunded by their charterers. To date, PMSCs have proven capable of protecting Italian-flagged vessels in accordance with shipowners’ preferences.<sup>64</sup> Nevertheless, shipowner associations continue to advocate the involvement of the Italian Navy in anti-piracy missions, and consider a dual approach the best option for protecting their vessels. Moreover, shipowners consider the regulations regarding the use of PMSCs aboard Italian vessels too restrictive compared to other countries, and call for a reduction in the minimum number of guards required for a mission from four to three and a simplification of the authorisation process. Such requests also resonate with PMSCs’ preferences.<sup>65</sup>

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<sup>59</sup> Cusumano, "The Scope of Military Privatisation".

<sup>60</sup> Marina Militare, *Policing the High Seas*.

<sup>61</sup> Patalano, "Nightmare Nostrum?".

<sup>62</sup> Marina Militare, *Policing the High Seas*.

<sup>63</sup> Third phone interview with Confitarma representative, 26 September 2017; first and second email communications with MoI official, 17 September 2014 and 29 September 2017.

<sup>64</sup> First and third phone interviews with Confitarma Representative, 15 September 2014 and 26 September 2017.

<sup>65</sup> Leso, "Contractor: è tempo "; Pergolizzi and Marchetti, "Antipirateria marittima in Italia".

Italian maritime private security policies are not only relevant for the safety and economic competitiveness of Italian shipping. PMSCs' successful protection of Italian-flagged vessels has set an important precedent in Italian security policies, legitimising private sector involvement to an unprecedented level. Whether the privatisation of vessel protection will translate into greater reliance on PMSCs on land too, remains to be seen.

## Notes on Contributors

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