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The Incorporation of Private Security Actors to Protect Dutch Merchant Vessels

A Bourdieuan Reflection

Koko Christiaanse and Yarin Eski

I. Introduction

The growing trend of security privatization and the increased influence of private actors in security governance have been widely observed in multi-disciplinary academic fields, including but not limited to criminology, critical security studies, and international relations. The dynamics of this shift in public-private constellation becomes particularly discernible in the maritime sphere due to the unique configurations of power cast when state security matters are taken out of sovereign borders and thrust into international territory. The use of private security firms in the protection of merchant vessels against the threat of piracy is one of the most palpable and observable products of these shifting public-private relations. The Dutch government's recent legalization of the use of private maritime security companies (PMSCs) on board of Dutch merchant vessels through the Merchant Vessel Protection Act (MVPA) provides an ideal case study for understanding new private-public security configurations in the maritime sphere. The law, which allows for the boarding of PMSCs on board merchant vessels and for PCASP to use firearms and lethal use of force within the bounds of the European Law (DIRECTIVE (EU) 2021/555 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 March 2021 on control of the acquisition and possession of weapons (codification), 2021), was passed in 2019 and entered into force on 1 February 2022, after having undergone a period of reparation legislation after its enactment in 2021. The very recently enacted law (as of the writing of this chapter) is a unique step for the Netherlands in sanctioning non-state actors to perform theoretically public security tasks. The landmark law raises salient questions about the traditional monopoly of violence and denotes a shift in the positionality field of public and private security actors within maritime security.

Bourdieu's analytical framework, in particular his concepts of field and the forms of capital, can provide considerable insight into the influence of cultural and economic capital in the configuration of power in a particular arena of study. As such, this chapter will perform a Bourdieusean analysis to dissect the shifting power relations between the state and private actors within the

maritime security field. It will begin with an overview of the applications of Bourdieu within the security field – afterward, the (inter)national politico-legal context of security privatization in the maritime sphere. Lastly, a Bourdieusean analysis of the MVPA will be conducted and future research implications are raised.

2. Security Capital? A Bourdieuan Perspective

Bourdieu’s forms of capital and notion of field are utilized here as a tool to dissect the shift in power relations brought forth by the enactment of the MVPA. With the rise of plurality in the security field, various methods of analysis have arisen within criminology and security studies to assess the construction of power in these new realities. Bourdieu’s forms of capital and notion of field have been highly influential in the development of such methods, which have relevance for this analysis as they provide a flexible framework for studying new and complex security governance regimes that transcend the public/private divide (Abrahamsen and Williams, 2011; Bowden, 2021; Bureš, 2014; Dupont, 2004; Sassen, 2008; Shearing and Wood, 2003).

2.1 Capital and Bourdieu

Bourdieu defines the *field* as “a system of deviations on different levels and nothing, either in the institutions or in the agents, the acts or discourses they produce, has meaning except relationally, by virtue of the interplay of oppositions and distinctions” (1982: 185). According to Bourdieu, the social world is composed of various distinct but overlapping fields. These fields are configured based on the positionality of the actors (individuals, institutions) and the relationships among them (Diphoorn and Grassiani, 2016). The relationality of actors in a field are shaped by the possession and mobilization of capital, which can be utilized to establish one’s dominance or hegemony (O’hara, 2000; Diphoorn and Grassiani, 2016; Bowden, 2021). Within the fields, *Doxa* delineates common sense or ideas that seem “self-evident” (Bourdieu, 1977). Dominant actors in a field have influence over these doxa, as they are able to frame their point of view as universal (Bourdieu cited in Bowden, 2021).

Bourdieu outlines three principal kinds of capital: cultural, economic, and social. Cultural capital stems from possessing knowledge and holding credentials (1973). Bourdieu uses education as a vehicle to explain cultural capital. The objectified state of cultural capital can take shape in material objects and cultural goods, such as textbooks; the embodied state of cultural capital takes place in the way one would conduct themselves differently having been educated, and as its institutionalized state (as recognizable capital) as for example a diploma (Bourdieu, 2018). Economic capital is perhaps the most straightforward, the possession of material goods or an equivalent currency. Social capital “depends on the size of the network of connections” an actor has, influencing the ability

of the agent to belong to a group and forming reciprocal relations with others (id.: 84). The forms of capital are not discrete and can be converted and transformed; however, the way this is done depends on the nature of the field.

All of these forms can be encompassed by symbolic capital, which is of particular note as Bourdieu conceptualizes the state to be the “site par excellence of the concentration and exercise of symbolic power” (Bourdieu cited in Diphorn and Grassiani, 2016). Symbolic capital derives its value from being recognized, or “acknowledged”, and as such is “invisible” (Bourdieu, 2014: 163). This is how the state is able to impose law and a structured order upon its citizens without necessarily being physically present to do so. All forms of capital, social, economic, and cultural, can be converted or take shape in symbolic capital. According to Bourdieu, “wealth never acts simply as wealth”, and its recognition produces a symbolic effect (Bourdieu, 2014: 191). Social capital and cultural capital “already imply the symbolic” (id.), the possession of knowledge, and having relations merits symbolic recognition. Thus, symbolic capital grants authority and legitimacy. In the context of capital accumulation, “the state is meta, that is a power above powers”. That is, the state’s capital has “power over other kinds of capital” (id. 197). Thus, the state as a “meta-field” is what allows the state to structure itself as a natural feat and establish a national economy. Bourdieu conceptualized the state as the “bureaucratic field” (Bourdieu cited in Bowden, 2021). This field does exert power not only through force but also through the bureaucratic systems that collect and produce knowledge, shape discourse, and thus is able to legitimize itself.

According to Bourdieu “there is no accumulation of physical [force] capital, [. . .] without simultaneous or prior accumulation of symbolic capital” (Bourdieu, 2014: 201). When it comes to Weber’s concept of the monopoly of violence, Bourdieu argues that symbolic power takes precedence over physical, not only because every physical act has a symbolic implication but also because this physical violence is controlled and mediated by symbolic capital (Bourdieu, 2014: 200; Berling, 2012). For example, a police officer may only exert force because he or she is wearing a uniform or carrying a badge symbolizing the state, not because he or she *is* the state.

2.2 Security Governance

Drawing from Bruno Latour’s actor-network theory (ANT), various network and nodal governance theories have been developed to address security privatization/hybridization. The concept of nodal governance was developed by Shearing and other colleagues, such as Wood, Johnston, and Dupont (Dupont, 2004). In nodal/network theory, actors are seen as “nodes” in the networks that constitute governance structures (Bureš, 2014; Dupont, 2004; Shearing and Wood, 2003). The state, for example, would be regarded as such a node; this departs from state-centered analyses of security. Similarly,

to ANT, nodes are given no ontological priority, and their positions of power are not assumed (Shearing and Wood, 2003). According to Dupont (2004), network governance rests on a set of assumptions, such as that analyses of contemporary security realities cannot be divided along the public/private lines. This approach to governance also considers security pluralization, also termed “multi-lateralization” by Bayley and Shearing, to have occurred not only as a function of neoliberalization but also as a result of the enabling role of states in this process. Schuilenburg (2015) applies the nodal network framework to hybrid public-private security structures to draw conclusions on (European) security governance.

Bowden (2021) points out the direct influences from Bourdieu’s theory in these nodal frameworks. For example, Dupont’s (2004) network theory of security pluralization centers around “positions”, “ties”, and “relationships”, which closely align with Bourdieu’s notion of the field and how capital assembles and disassembles among the actors within them, as a “structured space of positions” (Bourdieu, 1982). According to Bowden, “Dupont (2004) sets the foundations for a Bourdieusian inspired sociology of the field of security with emphasis on the integrating dynamics of habitus, capital and symbolic power” (2021: 177). The delineation of “security fields” in the Bourdieusian application thus allows for the analysis of fluid and hybrid security structures by marking out the positions and inter-relational capacities between actors beyond traditional dualities and hierarchies.

Perhaps the most direct application of Bourdieu in studying new security configurations is the processual-relational “securing capital” approach developed by Diphooorn and Grassiani (2016). This approach aims to assess which types of capital carry the most weight in acquiring symbolic capital in the pluralized security field. This approach thus aims to analyze how the different types of capital (social, economic, and cultural) transform and produce symbolic capital. Diphooorn and Grassiani (2016) focus on not only the agency and actions of actors but also material objects and means of acquiring capital (such as surveillance footage).

The “global security assemblage” conceptualization proposed by Abrahamsen and Williams in 2011 furthermore draws on Bourdieu’s forms of capital and his notion of the “field”, together with Sassen’s analyses of globalization and partial state disassembly. Sassen argues that states are not withdrawing or eroding in the face of globalization, but rather, partially disassembling to enable the rise of the private institutions and activities we associate with globalization (Abrahamsen and Williams, 2011; Sassen, 2008). Looking at a “security field” therefore involves looking at the relationships between actors; their relative positions among each other; and the forms of economic, cultural, and symbolic capital they possess and exchange. In order to analyse a security assemblage, actors and their relative positions ought to be identified and power assessed through Bourdieu’s economic, cultural, and symbolic typology. Related again to post-structuralism and Latour’s ANT, assemblage theory builds on Bourdieu

by illuminating those structures within the security field that have been historically constructed along the public/private binary.

As Bourdieu's theories serve as a foundational building block in various theoretical frameworks developed to examine new hybridized security realities and their governance, a reflection on the MPVA through Bourdieu's forms of capital and notion of the field can provide novel and nuanced insights into the new security realities brought forth by the MVPA. By delving into the positionality and relationships between public and private actors, with particular emphasis on the state and symbolic capital (authority, legitimacy), Bourdieu's framework provides a possibility to study the impact of the MVPA on the current state of the public/private divide in the provision of maritime security.

3. The Proliferation of Private Security in the Maritime Domain on an International Level

The protection of merchant vessels became a topic of domestic and international concern with the rise of Somali piracy in 2008. With 14% of all traded goods passing through the Gulf of Aden in order to pass through the Suez Canal, the threat of Somali piracy posed a threat to international trade and incurred high costs for the sector (Kamola, 2013; Shirk, 2016). Piracy off the coast of Somalia is characterized by the demanding of ransoms by means of hijacking and kidnapping and is therefore far more costly than robbery-based piracy known before in the Malacca strait (Rothe and Collins, 2011). As such, the United Nations Security Council, at the request of the International Maritime Organization (IMO), passed a number of resolutions to tackle Somali piracy, which urged the international community to cooperate and coordinate to defend ships sailing off the coast of Somalia. The establishment of three main multi-lateral missions coincided with the passing of these resolutions. These missions are Operation Atlanta by the European Union Naval Force (EUNAVOR), the North Atlantic Treaty Organization's Operation Ocean shield, and the multinational Combined Task Force (CTF-151) (Bueger, 2013).

Before international naval forces were organized and coordinated PMSCs were among the first actors that filled the security demand for counter piracy in the global shipping sector at the advent of Somali piracy (Aarstad, 2017; Liss, 2016). It was the industry and individual shipowners that started regarding the use of Privately Contracted Armed Security Personnel (PCASP) on board ships as necessary, even though private security was generally perceived as undesirable and unarmed merchant trade was the norm (Aarstad, 2017; Liss, 2016). While international public actors were yet to assemble, shipowners were able to hire PCASP in the early days of Somali piracy due to an absence of guidelines, regulations, and enforcement capacity of states regarding PMSCs (Richard, 2010).

The hiring of PMSCs was embraced by the shipping industry and individual shipowners when the issue of piracy and the risks associated with sailing

through the high-risk area (HRA) became known to insurance companies, which started offering cuts in premiums by up to 40% for ships that carried PCASP (Aarstad, 2017; Cowen, 2014). With the demand for private maritime security provision soaring, the private maritime security sector mushroomed to approximately 300 companies at the industry's peak (Liss, 2016). This was facilitated by the ease by which PMSCs can be established, owing to the fact that relatively few staff are required and PCASP are employed on short-term contracts, often hired per voyage (Liss, 2016).

Against the backdrop of security privatization as a trend, it also became apparent that public actors, such as the multilateral naval forces, as well as individual states, were unable to provide merchant ships with adequate protection against the piracy threat. After the failure of the United Nations Operation in Somalia peacekeeping forces and the "Black Hawk Down" incident, many western states became unwilling to conduct further on-land interventions in Somalia (Brown, 2012). Because Somalia became a designated no-go zone for western troops, military action against piracy has been limited to sea-based operations; missions therefore only treat the symptoms of piracy and are unable to address the root causes (Brown, 2012). Moreover, international naval operations are unable to fully secure the HRA, with the Gulf of Aden alone covering 410,000 km² and pirates adapting to avoid naval patrolling (Chalk, 2010). According to Brown (2012), it has been estimated that 83 coordinated warships would be required to provide a 30-minute response time to piracy attacks in the HRA: that is more than double the number ever deployed.

Military operations are a large strain on defense budgets and therefore can only provide a short-term solution to the piracy issue (Brown, 2012; Chalk, 2010). For example, deploying one frigate to the Maritime Security Centre – Horn of Africa (MSCHOA) HRA would cost over \$1 million monthly (Brown, 2012). There are furthermore issues regarding the deterrence aspect of naval patrolling; 90% of suspected pirates as of 2012 were released after capture by Naval forces due to prevailing "catch-and-release" policies due to various budgetary and jurisdictional issues (Kontorovich, 2012; Thompson, 2013). It is also difficult to prosecute piracy due to limited judicial framework and rule of law capacities in the region (Brown, 2012; Liss, 2016). Some states, such as the Netherlands, responded to the Somali piracy issue by providing state-employed and trained Vessel Protection Detachments (VPDs) (Cusumano and Ruzza, 2020f; Liss, 2016; Peter Post, personal communication, 2 April, 2021). However, no other flag states other than Italy and France employ the use of VPDs due to the high cost and resources needed to do so (Cusumano and Ruzza, 2020e; Van Ginkel et al., 2013a; Liss, 2016).

As public actors proved unable to comprehensively attend to the Somali pirate issue, it is therefore unsurprising that the hiring of PMCs disseminated as a norm across the shipping industry. In 2011 the IMO issued a number of circulars that provided shipowners and flag states with guidelines for the use

of PMSCs (International Maritime Organization, “Private Armed Security”, n.d.-a). PMSCs are heralded as being extremely effective, and it is often cited that there has never been a vessel successfully hijacked with PCASP on board (Pitney and Levin, 2013; Priddy and Casey-Maslen, 2012). This positive track record of PMSCs in combating Somali piracy, as well as the resulting lowered pressure on states to provide maritime security services, has prompted many flag states to introduce legislation permitting the use of PCASP on board of ships (Cusumano and Ruzza, 2020b; Van Ginkel et al., 2013b). It has therefore been concluded by scholars such as Hespen (2014) that it would have been nearly impossible to counter the threat of piracy without the help of PMSCs. There is furthermore consensus among scholars that Somali piracy was contained largely due to the involvement of PMSCs in security provision (Chapsos and Holtom, 2015; Cusumano and Ruzza, 2020d).

The Netherlands is one of the last countries globally to legalize the use of PMSCs on board of flag ships due to concerns about losing the monopoly of violence. That, however, has changed, as the following section shall explore.

4. The MVPA and the Legalization of PMSCs in the Netherlands

There are a number of factors that have trumped these concerns in the long term, in part due to the normalization of PMSCs as a security measure on maritime ships on an international scale. Due to the anarchic nature of the international legal system, the participation of the Netherlands in this norm is required in order for a “level playing field” to be established, especially due to economic factors.

The “Wet ter Bescherming van de Koopvaardij” (translated: “the Merchant Vessel Protection Act”, hereafter MVPA), was proposed to the Dutch senate (Eerste Kamer) in September 2016 by the VVD and the CDA. It proposed the legalization of the use of privately contracted armed security personnel to protect merchant vessels in areas with a high risk of pirate attacks. Prior to the MVPA’s enactment, the Netherlands made use of VPD teams to protect merchant vessels against piracy. In this system, shipowners had to apply and be approved for a VPD team, which consists of at least 11 Dutch marines.

The MVPA was proposed with support from the Dutch shipping sector, represented by the Royal Association of Dutch Shipowners (“Koninglijke Vereniging van Nederlandse Reders”, hereafter KNVR), which regarded the VPD system economically detrimental to the sector due to its inflexible nature. Firstly, the time required to approve a VPD attachment was far too long for the Dutch shipping sector to adequately compete on the international “spot market”, which trades goods in extremely short periods of time. Secondly, the VPD teams are too large for many smaller ships; such ships do not have the capacity to accommodate 11 marines. The last, and most salient concern raised by the sector, was that VPD teams were simply too expensive compared to

internationally active PMSCs. The MVPA therefore centered around the need to “level the playing field”.

The MVPA introduces a new “VPD-unless” system. It specifies that the use of PMSCs can only be used in a set of specific circumstances. To be approved for PCASP on board, vessel must qualify to be protected by a Dutch VPD team but demonstrate the following:

1. The approved VPD team cannot be deployed in time, such as in the case of ships engaged in the spot market.
2. The approved VPD team is disproportionately more expensive than a bid from a PMSC.

The use of a “VPD-unless”-system rather than a universal approval for the use of PMSCs has been employed due to concerns about the handover of the monopoly of violence. The MVPA works on the assumption that vessel protection is a task to be carried out by the state, and as such that PMSCs are only permitted if the state apparatus falls short of being able to do so. As such, PMSCs are also only competent to use force if sanctioned to do so by the state through the acquisition of a license and exclusively in the event of immediate danger. Thus, the Dutch government frames the transfer of its capacity to legally use violence to private actors as possible only because it has a monopoly over it. In other words, the state sees itself as the only competent actor to sanction the use of force by private actors and therefore still regards itself as having sole authority over it. This said, the state conceding its role as the sole provider of security while admitting that it lacks the capacity to fulfill this role competently points to a shift in the way that traditional Weberian notions of the monopoly of violence is approached amidst new security realities (Weber, 1921). The new position that the Dutch state finds itself in can be explained through the unique circumstances that brought about the international proliferation of private security providers in the maritime domain.

A PMSC can be deployed in a matter of days and is cheap compared to state-supplied VPDs,¹ which in the Netherlands is fixed at a rate of 5,000 euros per day, which is much higher than the rate of PMSCs operating within the EU.² Furthermore, PMSCs have an impressive international track record: to date, there have been no instances of hijacking on ships with PCASP on board (Pitney and Levin, 2013; Priddy and Casey-Maslen, 2012; Hespén, 2014). Furthermore, drops in Somali piracy after 2012 have been attributed to the widespread presence of PMSCs on board of ships during this peak: 35 to 40% of ships traveling between 2013 and 2014 carried PCASP (Walje et al., 2014). Due to these factors, many states embraced the use of PMSCs on board of their ships after the Somali pirate threat became a worldwide concern (Cusumano and Ruzza, 2020d; Van Ginkel et al., 2013b).

In the Dutch context, convenience factors played a large role in political support for the MVPA. The first concerns the embarkation of VPD teams. For

a ship to pick up a VPD team, it often has to take a significant detour, whereas PCASP can embark near the HRA or from floating armories at sea. This saves time and further associated costs. Secondly, because Dutch ships are often relatively small, VPD teams have to consist of 11 persons, whereas PCASP are permitted to be on board with a minimum of three persons. Thus, PCASP are more accessible to a wider variety of ships sailing through the HRA. Thirdly, VPDs had to be requested weeks in advance, which meant that Dutch ships could not participate in the “spot market”, which requires commodities to be traded immediately and shipped in a matter of days. Not being able to participate in this market has large economic drawbacks, which shipowners take into account.

Many convenience factors also coincide with economic factors, especially those impacting individual shipowners. On an international level, Somali pirates have secured up to 13.5 million dollars in ransom money from the hijacking of ships; it is thus unsurprising that average insurance rates per voyage increased from USD 500 to 20,000 in 2008 and further jumped to US\$150,000 in 2010 (Chalk, 2010). According to Aarstad (2017), this hike in insurance costs was also substantially influenced by the Joint War Committee (JWC), which declared the Gulf of Aden as a “war-risk area” in 2008. The JWC represents insurance underwriters from the Lloyd’s and IUA company markets (BMP5, 2018). Shipowners are required to notify insurance underwriters when voyaging through one of the JWC’s “Listed Areas” (Lloyd’s Market Association, n.d.). Insurance companies hold much economic leverage over shipping companies, for example by offering premium cuts for vessels that limit voyages through the HRA. Insurance therefore directly influences shipowner incentives to hire PMSCs; some large insurance companies drop certain premiums such as kidnap and ransom insurance if PCASP are on board, which can cut premiums by up to 40% (Aarstad, 2017; Brown, 2012; Cowen, 2014). It is therefore unsurprising that individual shipowners that work to turn a profit choose the most economically viable option when it comes to selecting on-board security measures.

States are incentivized by the interests of shipowners due to the anarchic nature of the international system. Similarly, to the issue of tax-havens, a hard economic reality that states face in the regulation of the shipping sector is that shipowners can always choose to register in other countries. Some flag states, known as “Flags of Convenience” (FOCs), have shipping registries open to vessels from any nation (Aarstad, 2017; Liss, 2016; Negret, 2016). Vessels are subject to the laws of the flag state they are registered in; shipowners can therefore choose to register in countries that economically benefit them the most in policy. Most FOCs therefore have lax laws and regulations regarding PMSCs (Negret, 2016). According to Hespén (2014) the nine largest flags of convenience (representing 33.66% of the world’s merchant vessels) do not prohibit the hiring of PMSCs or the use of firearms by PCASP. Instead, states like the Marshall Islands, Liberia, and Panama have declared that they do not accept

liability for PCASP present on ships under their flag to distance themselves politically from issues that may arise (Aarstad, 2017; Liss, 2016). Flag states have exclusive jurisdiction over their ships in international waters and are left to determine for themselves whether to legalize and regulate PMSCs (Aarstad, 2017; Negret, 2016). Thus, states with stricter laws and regulations need to consider the demands of the industry in prohibiting or allowing private security providers on board merchant ships: flag states are aware that shipowners can “flag out” to FOCs, which will economically impact them domestically (Aarstad, 2017; Ferry van der Waal, personal communication, April 26, 2021; Wagner, 2018).

In regard to the MVPA, the realist perspective of being in direct competition with other states greatly impacted the political discourse surrounding its legalization. In the first plenary debate concerning the MVPA at the Dutch house of representatives, key points raised by supporting parties such as the VVD and PVV concerned “flagging out” and the economic impacts on the Dutch shipping sector. In an opening statement, Foort van Oosten from the largest political party, the conservative liberal VVD, stated: “If all countries around us permit private security guards and we do not, that disrupts the position of the Dutch shipping sector” (“*Bescherming Koopvaardij*”, 2018: 1). The Dutch right-wing nationalist PVV spoke of “unnecessary job opportunities taken away from the Netherlands and unnecessarily taking tens of millions of euros away from the Dutch economy” (id. 2). These economic concerns were applied to not only the shipping companies but, as the VVD delineated, also “the banks, the shipyards, the banks, and the legal service providers” (id. 1). Thus, the political pressure to legalize the MVPA are in large part explained by economic factors associated with FOCs and the international market pressures that dictate the decisions of shipowners to register in particular countries. To appease shipowners and their representative bodies such as the KNVR, the MPVA allows for a ship to hire PMSCs if hiring a VPD team incurs “disproportionate costs”, which it defines as being 40% more expensive than what a PMSC can offer (Kustwacht Nederland, n.d.). Thus, the MPVA legally links the state’s bestowal of the legitimate use of force upon a non-state actor to the free market.

Lastly, there is the issue of illegal hiring of PMSCs by shipowners. Shipowners can be contacted through radio by PMSCs near the HRA. They can embark and disembark on international waters near the HRA. This problem is facilitated by floating armories, which are ships that float on international water and provide a site for storing arms and supplies, as well as accommodating PCASP for embarkation and disembarkation (United Nations Office on Drugs and Crime, 2020). These floating armories operate in a legal gray area which are not illegal themselves but may provide weapons to such illegal companies without breaking any territorial arms laws. Floating armories are only governed by flag states and therefore register under FOCs, which are often inconsistent in controlling and exercising jurisdiction over their ships (United Nations Office on Drugs and Crime, 2020). Because illegal hiring of PMSCs

occurs outside of Dutch territory, far away on international waters, it is very difficult for the state to oversee any possible violations. On the books, hiring of PCASP may simply be written off as a different expense. To admit to the condition of the maritime security order and relinquish certain provisions of the classic Weberian monopoly of violence is therefore in the interest of the state in order to regulate the activity on board of its flag vessels, rather than tolerate illegal activity.

5. The Regulation of PMSCs in the MVPA

In the MVPA, the Netherlands refers to a variety of international regulatory frameworks and uses them as a basis for ensuring the reliability of PMSCs on board of Dutch merchant vessels. The two main internationally regulatory sources are the Best Management Practices (BMP) to Deter Piracy and Enhance Maritime Security in the Red Sea, Gulf of Aden, Indian Ocean, and Arabian Sea, alongside the International Standardization Organization's ISO standards.

5.1 Best Management Practices

Sections 2.2 and 2.3 of the MVPA, which dictate the criteria for the approval of PCASP on board of Dutch maritime vessels, state that approval can be rejected in the case that “none or unsatisfactory protective measures corresponding with the BMP5 are met” (Ministerie van Algemene Zaken, 2021: 32). The best management practices are a set of guidelines that provide general advice and recommendations to enhance maritime security in addressing the piracy threat in and around the Gulf of Aden. They include advice on how to conduct risk assessments and implement ship protection measures and procedures for the event of attack (Chul, 2014). They furthermore defined the HRA, a zone in the Gulf of Aden where “it is considered that a higher risk of attack exists, and additional security requirements may be necessary” (BMP5, 2018: 2). The IMO, the SHADE conference, and other naval coordination agencies use the HRA as a key defining territory in the coordination of naval missions (Bueger, 2018). As such, the Netherlands also uses it to define the parameters in which the use of PMSCs is legal.

The BMPs have been produced since 2008 by industry representatives such as the International Association of Independent Tanker Owners (INTER-TANKO), the Joint War Committee (JWC), the International Chamber of Shipping (ICS), and the Baltic and International Maritime Council (BIMCO) (BMP5, 2018). Although the guidelines themselves are drafted and endorsed by industry, their creation was coordinated by international public governance actors such as the MSC of the IMO and the United Kingdom Maritime Trade Organization (UKMTO) (Hansen, 2012). The IMO MSC recognized the importance of the BMPs in May 2011, subsequently passing a resolution on the implementation of the BMPs and the need for them to be updated over

time (International Maritime Organization, “Revised Industry Counter Piracy Guidance”, 2018). They are widely distributed and made available by organizations such as the IMO and the MSCHOA and are a significant document in ensuring maritime safety (Cusumano and Ruzza, 2020a). The BMPs are recommended to the members of the IMO in IMO circular MSC1/Circ.1339.

5.2 ISO Certificates 9001:2015, 28000:2007, and 28007:2015

The ISO 28007 standard is a certificate that demonstrates the reliability and legitimacy of a PMSC, which states and private actors can utilize for regulatory purposes (Ministerie van Justitie en Veiligheid, 2019). The standards are internationally agreed upon by experts and issued by the International Organization for Standardization (ISO) (International Standards Association, n.d.). Although the IMO referred the drafting of the standards to the ISO, ISO28007 is not officially endorsed by the IMO (Aarstad, 2017). It was drafted by private actors from the shipping and maritime security sectors, such as BIMCO, the Security Association for Maritime Industry (SAMI) and the Security in Complex Environments Group (SCEG) (Aarstad, 2017). SAMI and SCEG represent the maritime security sector and also assisted with the drafting of MSC.1/Circ. 1443 (Cusumano and Ruzza, 2020d). These stakeholders do not have observer status at the IMO but clearly have formal ties to this prominent public actor, which awards them influence over the drafting of guidelines and policy (Aarstad, 2017).

The ISO standards are incorporated within the MVPA as a core document in the issuing of licenses. The MVPA states that the PMSC must possess the ISO certificates compliant with norm documents 9001:2015, 28000:2007, and 28007:2015. This is highly remarkable as the MVPA codifies a non-public norms document into its public domestic law, one that is drafted by largely private stakeholders and experts. This said, there are some rules in the MVPA that differ and take precedent over the ISO norms; for example, in ISO 28007:2015 considers the captain as responsible for use of force when threatened, while this differs in Article 9 of the law, which also involves the team leader of the security team. The MVPA also requires that the PMSC makes use of a floating armory that possesses a certificate compliant with 28007:2015. This is also of note as this yields the responsibility to regulate floating armories at least partially to another state.

6. The Dutch Monopoly of Violence and Maritime Security as Security Capital? A Bourdieuan Reflection

The MVPA brings about poignant implications for the Dutch state in regard to its positionality in terms of symbolic, cultural, and economic capital within the maritime security field. According to Abrahamsen and Williams (2011), state regulation plays an important role in legitimizing private actors in the provision

of security. The withdrawal of the state in security provision provides private security actors with material and ideational capacities and simultaneously alters the positionality of state institutions within the security field. The state, carrying significant symbolic and cultural power, legitimizes private actors through the drafting of regulatory frameworks that allow these private actors to operate in recognized structures (Abrahamsen and Williams, 2011). Because it is recognition that typifies symbolic power, embedding private actors in the recognized regulatory frameworks of states and IOs therefore endorses them on the part of public actors (Abrahamsen and Williams, 2011).

Regulation and legislation thus bridge the gap between public and private, especially when private actors are able to influence and directly participate in these processes. Private security providers are thus normalized by being able to act in legitimate partnership with the state, sanctioned to respond within the law to private security demands.

The competence to use violence points to the possession of cultural capital, which “derives a scarcity value from its position” (Bourdieu, 2018: 81). Regulation, through for example the issuing of licenses, can therefore be interpreted as a manner of institutionalizing the economic capital as well as the knowledge and expertise (cultural capital) that PMSCs possess. The PMSC’s assets, persons, and operations are shown to be legitimate by the state, which, as a “meta-field”, has the capacity to bestow such cultural and symbolic capital. By being sanctioned to operate within certain parameters, PMSCs are able to accumulate economic capital in a legitimate manner. The institutionalized state establishes a “conversion rate” between cultural capital and economic capital (Bourdieu, 2018). Hence, regulation forms a legitimate relationship between private security providers and the state and therefore also connects these private actors to the symbolic and cultural capital held by public actors. Simultaneously, regulation can also be seen as an attempt to control private security actors, but this is not mutually exclusive with regulation’s legitimating role (Abrahamsen and Williams, 2011).

The shipping sector remains a source of national pride in the Netherlands, holding immense symbolic and cultural power. Pertinent examples include former Dutch prime minister Jan Peter Balkenende’s 2006 speech that coined the term “VOC mentaliteit” (the Dutch “East-Indies Company mentality”) and current prime minister Rutte’s statement that the Dutch trading spirit was “fed to us with the porridge spoon” (Petram, 2017 – online source). The VOC and the “Golden Age” still speak to much of the Dutch cultural imagination and are regarded as a heritage fundamental to the economic success of the Netherlands today (Rietvelt, 2019). The KNVR on its online “Dutch Shipping – Economic Meaning” page refers to the Dutch “literally rich” shipping tradition, citing the well-disseminated elementary history lesson that shipping made the Netherlands a prosperous country.

This economic importance is not limited to the past. The status of the Netherlands as the world’s seventh largest exporter and Rotterdam as one of the

world's largest ports act as symbolic sources of power not only internationally and domestically but also economically (World Shipping Council, 2022). According to the Dutch Statistics bureau, shipping contributed to 2.6 billion euros in added value to the Dutch economy and provided over 19 thousand "Vol Tijds Equivalenten" or VTEs (full-time equivalent jobs) in 2020 (CBS, n.d.).

The symbolic and economic power of shipping in the adoption of the MVPA became clear in the first plenary debate in 2018. The VVD party's Foort van Oosten begins, "Even in the times of the VOC did people feel compelled to protect themselves against piracy" and finishes with "The Netherlands has traditionally sailed the world seas, the shipping industry is an indicator of our welfare and with that tailor-made legislation is fitting" (Tweede Kamer, 2018). Although this discourse hallmarks the position economically liberal VVD party, it is also representative of the Dutch conflation of economic welfare with general population well-being or as Bourdieu aptly put it, "reducing the universe of exchanges to mercantile exchange" (Bourdieu, 2018: 78). The shipping industry in the Netherlands is a large source of cultural, symbolic, and economic capital, and thus, for the Dutch government to reproduce its positionality within this field, it must adapt to the changes within this industry.

It ought to be mentioned that according to Bourdieu, the forms of capital are convertible and transmissible (Bourdieu, 2018). Convertible, in the sense that economic capital can, for example, grant access to cultural capital in its objectified material state (such as buying a painting), and transmissible, as a form of social reproduction. The importance of the shipping industry in the Netherlands is cultural; Dutch people have been socialized, through history classes about the "golden age" at schools, through the celebration of the VOC in monuments; shipping heritage is woven within the very fabric of infrastructure and the blueprints of Dutch cities. Take Enkhuizen's tourism website for example, which boasts its many "treasures from the golden age" where you can "always taste the atmosphere for a rich VOC-past" (Visit Enkhuizen, 2019 – online source). It is thus unsurprising that Dutch government representatives recognize this power. Based on the success of the VVD party, known for its *laissez-faire* mentality, it can be extrapolated that a large portion of Dutch state representatives consider themselves an apparatus for bringing forth welfare, and the economic welfare brought about by the shipping industry converts itself into symbolic and cultural capital, and it seems a given that this sector must be appeased by the state.

What this means for the state's monopoly of violence, albeit a symbolic one, remains subject to debate. With the adoption of the MVPA, the Dutch state does concede singular control over coercive force and use of arms, sharing this with private actors. This demonstrates a material weakness of the state and showcases a dependency on market forces so strong that it undermines one of Weber's fundamental characterizations of the state (1921). Furthermore, a state that shares its monopoly of violence with private actors can be argued not to

be truly sovereign. With the MVPA, the use of force is sanctioned to not only private actors but also foreign actors because PMCSs are necessarily foreign due to Dutch weapons legislation; private enterprises cannot simply own guns or train personnel on Dutch soil.³ On top of this, the standards that the Netherlands holds PMSCs to are not even drafted by its legislative apparatus, but rather by international agents and the private security industry, as showcased by the incorporation of the ISO certification in the MVPA as a prerequisite for license holders (“Wet ter bescherming Koopvaardij”, section 15.a). Lastly, the dependency on floating armories, which are not territorially or legally bound to the Dutch state, also points to discrepancies in the state’s ability to fully cover all aspects regarding the legalization of PCASP. The MVPA states that “the law does not contain rules about floating armouries” (Ministerie van Algemene Zaken, 2021: section 2.1) and that storage of weapons is a matter organized contractually between the PMSC and the weapons storage provider. However, the Dutch Associations of Merchant Vessel Captains (NVKK) warned that the enforcement of controls on storage facilities by the Dutch government (such as that floating armories operating with Dutch vessels must be ISO-certified) is not realistic. Thus, weaknesses in the state’s capacity to control the use of arms in its entirety are revealed through the legalization of PCASP.

On the other hand, the ability of the state to admit to not being able to fulfill a function and providing for an alternative points to an awareness of what it ought to do. After all, a core element of the MVPA and oft-emphasized point in the preceding plenary debates is the assumption that “the protection of merchant vessels sailing under the Dutch flag is a government task”. Besluit van houdende regels ter uitvoering van de Wet ter Bescherming Koopvaardij (Besluit bescherming koopvaardij). The deciding document of the MVPA states:

Although private maritime security in nature is not a government task, but a market activity, the government is fully responsible for the regulation of it, the quality of the service provided by private actors (license-granting), for the compliance with regulations by shipowners, captains, and licence-holders, and the security personnel deployed by them on board of a ship (surveillance and enforcement). These are important government tasks.

(MVPA: section 2.1)

Indeed, it is not unimportant that the act of regulation embeds private security into legitimate frameworks of governance, associating them with the symbolic capital that the state possesses. Because the state lacks the economic power required to protect flag ships from piracy to the degree and at the frequency that the shipping industry demands, private security providers are able to fill the security gap and benefit materially. This said, private security providers having something to gain do not automatically mean that the state stands to lose by legalizing them. Although the state does concede through the act of

legislation that it is incapacitated to perform a particular task, placing the burden of providing security on shipowners (responsibilization), and the private sector, it is also through this act that it ensures that shipowners aren't placed in a deadlock. If the state cannot provide security, it at least must allow for individuals to do it themselves; it cannot deprive the legal right of shipowners to protect their property.

Thus, by regulating these services, not only does the state demonstrate its very capacity to do so (to regulate, to enforce), it also simultaneously fulfills its duty to protect its flag ships by creating and supervising avenues for private actors to step in where the state falls short and lacks resources. Private security companies in this theoretical configuration only draw their legitimacy from the symbolic capital that the state, as a meta-field, produces. The state, in sanctioning the use of violence by private actors, signals its own authority, as it has the agency to legalize or not to legalize and thus to legitimize or not to legitimize. This agency in turn implies control over the monopoly of violence; the state is the only actor culturally, materially, and symbolically powerful to award this power in the first place.

In the Dutch case, the VPD-unless system is unique in that it stipulates that the monopoly of violence still largely lies with the state and demonstrates its capacity to provide its flag ships with marine-based security, while also ensuring that there are options in extenuating circumstances. This points to the authority that the state possesses. Authority can be derived from cultural capital (in its embodied state, for example, a police badge) or from material capital (for example, possessing a nuclear bomb). In the context of the VPD-unless system, the state exhibits its possession of cultural capital through the act of regulating, as well as its material capital by providing its own security system. It is yet to be seen if the Dutch government will have the capacity to enforce the MVPA; however, on a symbolic level, the passing of legislation implies that it can. The VPD-unless system affirms "security as a government task", that is, a task as both provider and regulator of maritime security (MVPA: section 2.1).

This said, the importance of economic capital in undertaking the MVPA should not be underestimated. Due to the anarchic nature of the international legal system, the state of the Netherlands is necessarily in competition with other states when it comes to flagging out. Although the issue of PCASP can certainly be framed as an issue of protecting Dutch vessels and the citizens on them, the passing of the MVPA was also largely catalyzed due to economic concerns for the shipping sector. The VPD-unless system also exposes the necessarily material nature of the MVPA. Shipowners are allowed to employ PMSCs if the cost of VPDs is "unreasonably" high in comparison to an offer by a private firm. An "unreasonably" high price is defined in the MVPA as $\geq 40\%$. Thus, the state clings onto the semblance of authority by requiring the use of VPDs unless a 40% discount be found in the private sector. On top of this, 40% is an increase from the originally proposed 20%, which was feared to make the "VPD-unless" system redundant by setting the bar too low

(MVPA: section 2.2–2). This is also remarkable considering that this demarcates an existence of market competition between the state and private sector for the provision of security, all the while it is theoretically the state that has the power to not only regulate the market but also provide security.

In sum, approaching the MVPA through the lens of Bourdieu's concepts of field and capital provides an understanding of the shifts in power configurations and raises compelling questions about shifting power dynamics in new security realities. On the one hand, the state can be viewed as a "meta-field" that does not compete with but rather bestows upon the private sector. On the other hand, the economic, cultural, and symbolic significance of the shipping sector undoubtedly shapes the discourses and the perception that the individuals within the bureaucratic apparatus have in approaching the MVPA. It can therefore be said that the state is subject to a transformation in positionality due to the enormous forces of capital applied upon it, both economically and culturally by the shipping industry. When it comes to maritime security, this is possible because of the unique spatial configurations of maritime space; ships can flag out due to the organization of the international legal system, and flag ships are quite necessarily far from flag states, meaning that the state cannot exert its monopoly of force directly.

7. Conclusion and Future Research

Ultimately, it is the law in action that will determine whether the passing of the MVPA affirms or defies the Dutch state monopoly of violence. Although there is a case to make for the Dutch state's affirmation of authority through demonstrating its agency to act in lieu of the PCASP issue, there are also remarkable aspects of the MVPA that ought to be critically examined. There are many future research implications for this watershed law – the legalities of the incorporation of the ISO standards in domestic law, as well as the question as to how the Netherlands will ensure the regulation of the use of floating armories. Further research is also warranted as to how PMSCs will develop, which can be studied not only on a micro level, such as how PCASP operate on board ships and how their relationship with shipowners will materialize, but also on the macro level. It should then be studied how the MVPA and the VPD-unless system compares to other domestic laws surrounding PCASP. Other points of inquiry can involve the 40% rule in the VPD-unless system; what does it mean when PMCSs operational in the Netherlands consistently set and negotiate their prices to fall below this boundary? What does this mean for the quality of security provided? Lastly, the impact of the MVPA on the shipping industry can be researched; this could be done with surveys, the collection of quantitative data, as well as the collection of qualitative data among different interest groups. Will the MVPA solve the shipping sector's problems and retain shipowners that would have otherwise flagged out to other states? How does the MVPA, drafted as a response to Somali piracy, address the future of piracy? Will it be applicable in addressing other possible threats to maritime security? The MVPA marks an

exceptional change in the Dutch state's positionality in power networks and its relationship to the Weberian notion of the monopoly of violence and needs to be examined further as such.

Notes

- 1 Maritime security company – personal communication, April 26, 2021.
- 2 KNVR – personal communication, April 26, 2021.
- 3 Personal communication with PMSC owner, 2020.

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Besluit van houdende regels ter uitvoering van de *Wet ter Bescherming Koopvaardij* (Besluit bescherming koopvaardij) Op de voordracht van Onze Minister van Justitie en Veiligheid van 24 november 2020, directie Wetgeving en Juridische Zaken, nr. 3098778.

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