

SUMMARY

In response to violence and criminality in the maritime sector, the shipping industry has progressively relied on several models of contracted maritime security to protect vessels and seafarers. This trend has resulted in a proliferation of weapons at sea and various types of armed security teams operating aboard private commercial vessels. If the activities of these armed maritime security teams continue to be largely unregulated, the activities of some unaccountable actors could increase incidents of violence at sea and possibly hinder efforts to pursue sustainable rule of law solutions to maritime criminality. Accordingly, Oceans Beyond Piracy (OBP) and other organizations within the maritime community are striving to increase transparency and oversight of maritime security operations. However, differences in function, applicable national jurisdiction, and types of services offered by maritime security providers makes assessing operational scope and designing uniform global policy for this sector a challenging endeavor.

As a first step in empirically examining the extent of maritime security operations, OBP seeks to define various models of contracted maritime security. OBP will release a series of issue papers which build on our publication from December 16th, 2016 titled [“Defining Contracted Maritime Security”](#) to further classify and define each identified model of contracted maritime security. As defined in the paper, these categories include:

- ▶ **Private Maritime Security:** Embarked private security force personnel hired by the shipping industry.
- ▶ **Vessel Protection Detachments:** Uniformed military personnel embarked on a vessel with explicit approval of the Flag State.
- ▶ **State Affiliated Escort:** Escort by a State military asset.
- ▶ **Coastal State Embarked Personnel:** Embarked armed personnel originating from the Coastal State, based on arrangements between ship operators and the providing national authorities – not specifically endorsed by the Flag State.

This issue paper will explore the model of Vessel Protection Detachments (VPDs).

VESSEL PROTECTION DETACHMENTS (VPDS)

As outlined in OBP’s previous issue paper titled [“Privately Contracted Armed Maritime Security”](#), armed security has proven to be a popular and effective model to mitigate piracy off the coast of Somalia. Although use of the model remains widespread, some flag states explicitly prohibit armed private security personnel aboard vessels which fly their flag. To address this issue, some flag states began authorizing and deploying uniformed military personnel from their respective states to embark on commercial vessels transiting the Red Sea and Indian Ocean.

Vessel Protection Detachments (VPDs) are uniformed military personnel embarked on a vessel with explicit approval of the Flag State. VPDs most commonly match the nationality of the vessel or are procured and regulated through a Memorandum of Understanding or Status of Forces Agreement between the home state of the VPD and the Flag State of the Vessel (e.g. World Food Program Vessels).

VPDs are unique in the maritime security paradigm, as they introduce military personnel, equipment, and activities—including military-specific command and control hierarchies—directly into the commercial maritime sector, aboard private vessels. This infuses sovereign state military operations into commercial activities. The most prominent VPD activities are those conducted by Italian and Dutch governments, although other countries such as Estonia, Lithuania, Serbia, Croatia, Finland, and Ukraine also deployed VPDs either on their own flagged vessels or as part of coalition operations.

The Italian Ministry of Defense deployed VPDs to protect Italian flag commercial vessels transiting the High Risk Area (HRA)¹ between 2011 and 2015. Following 35 attempted and five successful pirate attacks against Italian commercial vessels transiting the waters off the Horn of Africa between 2009 and 2013—including the hijacking of the Italian flagged bulk carrier *Montecristo* in October

¹ HRA is defined by the IMO here: <http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Guidance/Documents/Circular%20Letter%20No.3606.pdf>

2011 (in which the crew was freed by the British Navy) and the oil tanker *Savina Caylyn* (which was released in February 2011 after the payment of no less than USD \$ 11.5 million²)—Italian lawmakers passed Law 130/2011 which offered ship owners with Italian flagged vessels transiting through the HRA the possibility to request the presence of a VPD on board.³

Of note, this was not Italy's first venture into military anti-piracy activities. Italy was one of the first countries to deploy naval vessels to the Horn of Africa region in an anti-piracy mission called *Mare Sicuro*.⁴ Subsequently, Italy has continued to play a significant role in ongoing multinational naval coalitions in the maritime security arena, including NATO's *Ocean Shield*⁵, EUNAVFOR *Atalanta*⁶, EUCAP *Nestor*⁷, and the Combined Task Force 151.⁸

The Italian VPDs were quite large (ranging from six to nine soldiers of the Italian Navy Infantry Fusiliers Brigade San Marco) and expensive (€ 467 per day per person), the costs of which were borne by the ship owners. This was significantly more expensive than the cost of Private Maritime Security Companies (PMSCs), as detailed in OBP's issue paper titled "[Privately Contracted Armed Maritime Security](#)". Additionally, the fact that private Italian ship owners had to pay such a premium for a public service was slightly controversial to the industry and the public.

Due to the high costs associated with VPDs, many Italian ship owners preferred to use the services of PMSCs as they were deemed more cost effective and efficient. Italian law did allow for the employment of private security, but only in cases where VPDs were not available from the Italian government. Ship owners asking for the authorization to embark Privately Contracted Armed Security Personnel (PCASP) were required to submit documentary evidence that a previous request for the services of a VPD had been rejected by the Italian Navy due to the unavailability of VPD teams during that period.⁹ As a result, many applications were declined or stalled in paperwork, forcing ship owners to either sail without security or embark private security without the explicit authorization of the flag state. In 2015, the Italian government suspended its VPD program.¹⁰

INTERNATIONAL INCIDENTS: THE *ENRICA LEXIE*

Despite VPD presence, a vessel itself remains a commercial ship, lacking clear markings identifying it as being on government service, and cannot be considered a government ship entitled to the immunities defined by UNLCOS.¹¹ The VPD is simply performing point-to-point protection against piracy and armed robbery. Neither the VPD nor the civilian client vessel is authorized to patrol the seas, board, inspect or arrest suspect pirate ships.

This issue came to a head in 2012 during the *Enrica Lexie* incident, where Italian marines as part of an embarked VPD aboard the *Enrica Lexie* opened fire and killed two Indian fishermen.¹² India's perspective, that armed security personnel on merchant vessels are posing a danger to their nationals, may lead some coastal states to call for further regulation of VPDs, and for their roles, rights, and obligations to be clarified in international law. The Italian viewpoint is that the two Marines cannot be detained by India, that the incident occurred in international waters, and that the accused are further immune from prosecution due to their official status.

2 "Pirates Release MV Savina Caylyn For Reported \$11.5m." GCaptain, December 21, 2011. <http://gcaptain.com/pirates-release-savina-caylyn/>.

3 "From Military Vessel Protection to Private Security Companies: The Italian Anti-Piracy Approach | PIRACY STUDIES." Accessed August 24, 2017. <http://piracy-studies.org/from-military-vessel-protection-to-private-security-companies-the-italian-anti-piracy-approach/>.

4 Ibid

5 "Allied Maritime Command - Operation OCEAN SHIELD." Accessed August 24, 2017. <http://www.mc.nato.int/missions/operation-ocean-shield.aspx>.

6 "Italy Takes over Command of Counter-Piracy Mission Atalanta." Naval Today. Accessed August 24, 2017. <http://navaltoday.com/2017/07/28/italy-takes-over-command-of-counter-piracy-mission-atalanta/>.

7 "EUCAP Nestor, the Republic of Seychelles Coast Guard and EU Naval Force Warship Conduct Counter-Piracy Exercise at Sea | Eunavfor." Accessed August 24, 2017. <http://eunavfor.eu/eucap-nestor-the-republic-of-seychelles-coast-guard-and-eu-naval-force-warship-conduct-counter-piracy-exercise-at-sea/>.

8 "CTF 151: Counter-Piracy." Combined Maritime Forces, September 17, 2010. <https://combinedmaritimeforces.com/ctf-151-counter-piracy/>.

9 "From Military Vessel Protection to Private Security Companies: The Italian Anti-Piracy Approach | PIRACY STUDIES." Accessed August 24, 2017. <http://piracy-studies.org/from-military-vessel-protection-to-private-security-companies-the-italian-anti-piracy-approach/>.

10 "Italy to End Participation in NATO Counter Piracy Mission." Accessed August 24, 2017. <http://www.oceanuslive.org/main/viewnews.aspx?uid=0000980>.

11 UNCLOS, Part II, Subsection C, Article 32; UNCLOS, Part VII, Article 95; Part VII, Article 96.

12 "Jurisdictional and Immunity Issues in the Story of Enrica Lexie : A Case of Shoot & Scoot Turns Around!" EJIL: Talk!, March 25, 2013. <https://www.ejiltalk.org/jurisdictional-and-immunity-issues-in-the-story-of-enrica-lexie-a-case-of-shoot-scoot-turns-around/>.

The Netherlands is a country with a sizeable VPD program which has continuously operated since 2012. As the Dutch constitution guarantees the state's monopoly on the use of force,¹³ private security personnel are forbidden to bear arms, and therefore Dutch flagged vessels are legally prohibited from embarking private security for protection anywhere in the world. Therefore, the only legal option available to Dutch ship owners at the time was to ask for protection, in the form of VPDs, from the Dutch government.¹⁴

Responding to these requests in 2011, the Dutch government decided it would rather deploy Royal Dutch Marines as VPDs than change the law and open the market to PMSCs. Beginning in 2012, the Netherlands Defense Budget set aside €23.4 million reserved for VPD deployments, of which ship owners would contribute an estimated €11.3 million through payments of €8300 per VPD team per day. This charge was later reduced to €5000 per team per day. Just like in the case of Italy, however, this was significantly more expensive than PMSCs and prompted some ship owners to explore private security options despite the legal barriers in cases where VPDs were unavailable.

A typical deployment of Dutch VPDs consists of teams of regular Dutch Marines with kits composed of .50 caliber anti-materiel rifles, 7.62x51mm rifles, 5.56x45mm rifles, and ammunition, along with electronic and medical equipment. To facilitate the deployment, the Dutch government needed to develop a sound logistics footprint to consistently embark and disembark their VPDs along major shipping routes which cross the HRA. The Dutch military has used EU and NATO naval vessels in the Red Sea and Indian Ocean to conduct some embarkations and disembarkations, but also has agreements with Sri Lanka^{15,16}, Egypt¹⁷, Singapore¹⁸, and the UAE¹⁹, permitting VPD teams to transit through their countries and store security equipment in their ports— which the Dutch Ministry of Defense calls “pre-stocking.”²⁰

EXPERIENCE OF BOSKALIS WITH DUTCH VPD DURING THE TOW OF FSU HEIDRUN B

“During the leg from Port Klang to Malta the convoy crossed the piracy affected area in the Indian Ocean, off Somalia and Gulf of Aden. The VPD of the Dutch Marines embarked off Sri Lanka and provided for security during the voyage by means of several armed teams on board of each tug and tow.”²²

As a result of the effective logistics solution, Dutch VPDs have been successfully embarked on and disembarked from Dutch vessels throughout the region, and they have been instrumental in thwarting attempted pirate attacks against vessels in the HRA.²¹

Another unique example of VPDs operating in the Indian Ocean region is the protection of World Food Program (WFP) and African Union Mission in Somalia (AMISOM) convoys delivering food and aid into Somalia. The WFP is the food assistance branch of the United Nations, and AMISOM

is a peacekeeping mission operated by the African Union in Somalia with approval of the United Nations. Convoys of merchant vessels flying various flags and delivering WFP and AMISOM food and aid to Somalia receive protection from naval vessels, but also in some cases embark a VPD.²³

13 “Dutch Use of Vessel Protection Detachments in the Indian Ocean.” International Security Discipulus, September 26, 2012.

<https://internationalsecuritydiscipulus.wordpress.com/2012/09/26/dutch-use-of-vessel-protection-detachments-in-the-indian-ocean/>.

14 “Committee Meeting about Vessel Protection Detachments.” Text, June 28, 2013.

<https://www.houseofrepresentatives.nl/news/committee-meeting-about-vessel-protection-detachments>.

15 “Netherlands Use Colombo to Fight Pirates | Maritime Security Review.” Accessed August 24, 2017.

<http://www.marsecreview.com/2013/01/netherlands-to-use-colombo-to-fight-pirates/>.

16 “Sri Lanka : Sri Lanka, Netherlands Cooperate to Provide Protection against Maritime Piracy.” Accessed August 24, 2017.

http://www.colombopage.com/archive_17A/May13_1494656958CH.php.

17 Red Box Energy Services. Dutch Marines (VPD) on Board MV RED ZED II. Accessed August 24, 2017. <https://www.youtube.com/watch?v=0ThT124mtEw>.

18 Defensie, Ministerie van. “Singapore Supports Antipiracy Mission in Gulf of Aden - News Item - Defensie.NL.” Nieuwsbericht, March 8, 2012.

<https://www.defensie.nl/english/latest/news/2012/03/08/singapore-supports-antipiracy-mission-in-gulf-of-aden>.

19 “VPD to Protect Vulnerable Sea Transport Against Piracy, The Netherlands | World Maritime News.” Accessed August 24, 2017.

<http://worldmaritimeneeds.com/archives/43228/vpd-to-protect-vulnerable-sea-transport-against-piracy-the-netherlands/>.

20 Defensie, Ministerie van. “Singapore Supports Antipiracy Mission in Gulf of Aden - News Item - Defensie.NL.” Nieuwsbericht, March 8, 2012.

<https://www.defensie.nl/english/latest/news/2012/03/08/singapore-supports-antipiracy-mission-in-gulf-of-aden>

21 “News: Dutch Marines Repel Pirates.” Accessed August 24, 2017. <http://www.oceanuslive.org/main/viewnews.aspx?uid=00000403>.

22 “Project Sheet: FSU Heidrun B Tow and Towage.” Accessed August 24, 2017. <https://boskalis.com/download-center/download/eyJmaWxlVWlkjoiNjEzMiIsInJmVjZW5jZVpZCl6MH0%3D/78bda4eca6e12bce3d071b7bc6ce58c9ce32ebee.html>

23 “Operation Atalanta Warship ITS Euro Escorts World Food Programme Vessel | Eunavfor.” Accessed August 24, 2017.

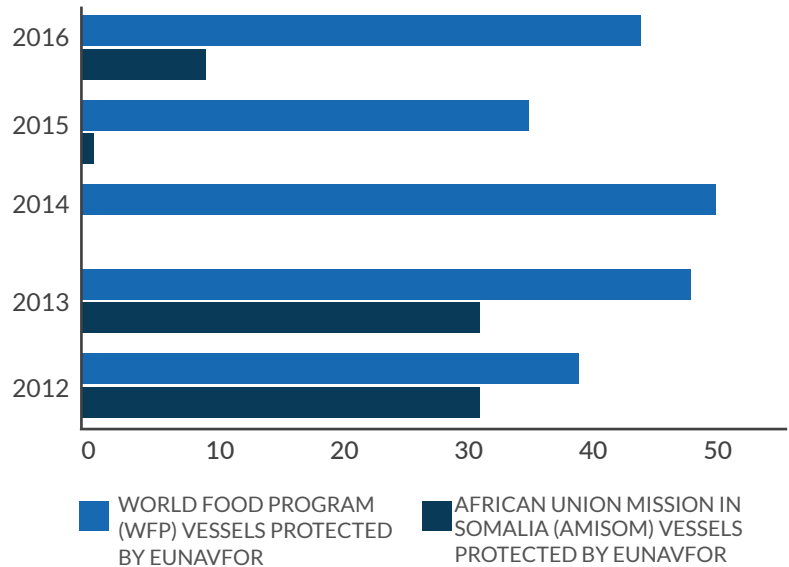
<http://eunavfor.eu/operation-atalanta-warship-its-euro-escorts-world-food-programme-vessel/>.

Several countries, including Lithuania²⁴, Serbia²⁵, Croatia²⁶, Estonia²⁷, Finland²⁸ and Ukraine²⁹ provide VPDs to support EUNAVFOR's Operation Atalanta protection mission of World Food Program deliveries. By embarking a VPD directly onto commercial vessels, warship escorts for WFP vessels become unnecessary. This allows more EUNAVFOR warships to remain on station and continue other important counter-piracy missions.³⁰ This is different from the VPDs provided by Italy and the Netherlands described above, as these WFP vessels may be registered in a different country than the home-country of the VPD. In other words, military personnel from a VPD providing nation are embarked on a WFP vessel registered in a different flag state; which may complicate certain legal characteristics including jurisdiction, sovereignty, navigational rights, and use-of-force.

The Estonian VPDs for the WFP, as one indicative example, were comprised of ten-man teams, including one officer, who were housed aboard EUNAVFOR assets such as the French frigate *Nivôse* and German destroyer *FGS Hamburg*, among other vessels, since Estonia did not have its own vessels in the region.³¹

Unlike private security actors at sea, VPD operators, as military personnel, are trained to follow strict and defined rules of engagement through traditional military chain of command. Yet in the commercial maritime setting, VPD personnel may have to act on their own, including in matters relating to the use of force. Some governments have gone so far as to codify such relationships in order to provide their operators with the legal latitude necessary to respond to seaborne threats at will. For example, the Italian Ministry of Defense signed a Memorandum of Understanding with Italian Ship Owners Association indicating that ship Masters have no responsibility to oversee VPD personnel.

WORLD FOOD PROGRAM AND AMISOM VESSELS PROTECTED BY EUNAVFOR



ADDITIONAL CHALLENGES

Additional challenges faced by VPDs are similar to those of PMSCs. Some challenges include:

- ▶ Immigration and customs clearances for personnel, firearms, ammunition, and other security equipment entering and exiting national territory;
- ▶ Communication with local government and military authorities in order to ensure safe transportation to/from Vessel RV point and landing site;
- ▶ Coordination with the protected vessel to meet at the pre-selected RV point on schedule;
- ▶ Ensuring timely and consistent transportation to and from the protected vessels to the host vessel or seaport.

Despite this, challenges remain in clarifying the roles, activities, and Rules of Engagement for VPDs operating aboard vessels from various flag states and through the territorial waters of several coastal states. Some coastal states may argue that the embarkation of armed military personnel on privately owned and operated vessels could prejudice the merchant vessels' status under the regime of innocent passage. To avoid future conflict, it may be beneficial to consider a globally accepted framework harmonizing the embarkation and activities of VPDs, as well as standardizing the relationship between VPD and the Master of the commercial vessel. OBP will continue our efforts to research, define, and analyze VPD employment with relevant stakeholders from industry, militaries, flag states, and coastal states.

- 24 "Lithuanian Autonomous Vessel Protection Detachment Remain at the Top of Their Game | Eunavfor." Accessed August 24, 2017. <http://eunavfor.eu/lithuanian-autonomous-vessel-protection-detachment-remain-at-the-top-of-their-game/>.
- 25 "Operation Atalanta Italian Warship Pays a Visit to Serbian Vessel Protection Team | Eunavfor." Accessed August 24, 2017. <http://eunavfor.eu/operation-atalanta-italian-warship-pays-a-visit-to-serbian-vessel-protection-team/>.
- 26 "Operation Atalanta Force Commander Meets Croatian Vessel Protection Team | Eunavfor." Accessed August 24, 2017. <http://eunavfor.eu/operation-atalanta-force-commander-meets-croatian-vessel-protection-team/>.
- 27 "Estonian Consulate General in New York City." Accessed August 24, 2017. http://www.nyc.estemb.org/security_policy.
- 28 "Finnish Autonomous Vessel Protection Detachment Handover The Protection Of World Food Programme Ship To Lithuania | Eunavfor." Accessed August 24, 2017. <http://eunavfor.eu/finnish-autonomous-vessel-protection-detachment-hand-over-the-protection-of-world-food-programme-ship-to-lithuania/>.
- 29 "Ukrainian Foreign Affairs Minister Confirms VPD for EU NAVFOR | Eunavfor." Accessed August 24, 2017. <http://eunavfor.eu/ukrainian-foreign-affairs-minister-visits-nato-and-eu-navfor/>.
- 30 "Operation Atalanta Force Commander Meets Croatian Vessel Protection Team | Eunavfor." Accessed August 24, 2017. <http://eunavfor.eu/operation-atalanta-force-commander-meets-croatian-vessel-protection-team/>.
- 31 "EU Naval Force: Estonian Vessel Protection Detachment Operating On A French Vessel | Eunavfor." Accessed August 24, 2017. <http://eunavfor.eu/eu-naval-force-estonian-vessel-protection-detachment-operating-on-a-french-vessel/>.