



Corporate Social Responsibility in Private Maritime Security Companies

Dutch Anti-piracy Action in Somalia

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List of acronyms

AIV – Advisory Council on International Affairs (Adviesraad Internationale Vraagstukken)
BMP – Best Management Practices
CDA – Christian Democratic Appeal (Christen Democratisch Appel)
CMF – Combined Maritime Forces
CSR – Corporate Social Responsibility
D66 – Democrats 66 (Democraten 66)
ECHR - European Convention on Human Rights and Fundamental Freedoms
EU – European Union
EUCAP – European Union Capacity Building Mission
EUNAVFOR – European Union Naval Force
EUTM – European Union Training Mission
G4S – Group4Securior
GDP – Gross Domestic Product
HCSS – The Hague Center for Strategic Studies
ICCPR - International Covenant on Civil and Political Rights
ICoC – International Code of Conduct
IMB – International Maritime Bureau
IMF – International Monetary Fund
IMO – International Maritime Organisation
INTERPOL – The International Criminal Police Organization
NATO – North Atlantic Treaty Organisation
NL – The Netherlands (Nederland)
OECD – Organisation for Economic Cooperation and Development
PCASP – Privately Contracted Armed Security Personnel
P(M)SC – Private (Maritime) Security Company
PR – Public Relations
RBC – Responsible Business Conduct
SP – Socialist Party (Socialistische Partij)
VPD – Vessel Protection Detachment
VVD – People’s Party for Freedom and Democracy (Volkspartij voor Vrijheid en Democratie)
WFP – World Food Programme
UDHR - Universal Declaration of Human Rights
UKMTO – United Kingdom Maritime Trade Operations
UN – United Nations
US – United States

Introduction

“We’re not in the business of counting injuries” is what the President of the private maritime security company (PMSC) Trident Group Thomas Rothrauff said in a 2012 Bloomberg report.¹ Rothrauff was asked about the legitimacy of his employees’ violent actions in order to defend bulk freighter the *MV Avocet* from pirate attacks. A ‘helmet-cam’ video showing Trident Group employees firing multiple “warning shots” at an approaching pirate skiff has sparked a lively debate since it leaked to the general public in early April 2012. Where Rothrauff states that his company was in “full compliance with rules for use of force where in place”, others are afraid that the introduction of PMSC’s to anti-piracy action has turned the open seas into “the Wild Wild West”².

The Dutch government has been operating within a dilemma since the mid-2000’s. This dilemma is the result of a ‘capability-gap’ that forces the Dutch government to reevaluate its primary role in armed security and its full jurisdiction over the monopoly of violence against the background of its decreasing ability to meet security demands using existing national and public resources. This dilemma is most expressively present in Dutch regulation regarding anti-piracy measures on commercial ships passing through the Gulf of Aden region. The UK and Norway changed their legislation in 2011; Denmark, Greece, Cyprus and Italy allowed for PMSC protection in 2012; soon followed by Germany, Sweden and France.³ The Dutch government has remained firm in its conviction that the legitimate use of force belongs to the government alone, effectively making The Netherlands the last European country in which PMSC’s weren’t allowed to operate on commercial ships. This policy has

¹ Bockmann & Katz, 2012

² James Staples, retired U.S. merchant marine captain (found in: Bockmann & Katz, 2012)

³ IMO, 2012

brought about a number of problems ranging from the disruption of a *level playing field* in the maritime trade market, to the illegal employment of uncertified and illegitimate PMSC's by Dutch shipping companies. As a result, the Dutch government was forced to change its policy and the 'Law for the Protection of Dutch Merchant Ships' was passed by the Dutch parliament on March 19, 2019.

The aim of this thesis is to analyze the possible implications of the 'Law for the Protection of Dutch Merchant Ships' and propose a possible solution to its negative social impact. The first chapter of this thesis serves to provide an overview of the political and economic developments that led to the introduction of the 'Law for the Protection of Dutch Merchant Ships'. This overview will provide insight into the relevant actors, (inter)national and private interests and political considerations shaping the debate concerning the use of PMSC's for the protection of commercial ships. I have reserved the second chapter for a discussion of the more normative arguments concerning the use of PMSC's on commercial ships. This chapter will contain an in-depth analysis of the relationship between the nation state and military activity by focusing on: classical political theory regarding the state's monopoly on the legitimate use of violence; a genealogical overview of the socio-political and economic developments challenging these classical political theories; and an analysis of recent (inter)national security trends and their effect on Dutch Defense policy. This chapter will serve to provide the theoretical and ethical dimensions shaping the more general debate concerning the relationship between the nation state and military activity; its main function is to problematize the discussion about the use of PMSC's on commercial ships and highlight the main objections to the legalization of this practice. The third chapter contains an attempt at a proposed solution to the problems shaping the Dutch dilemma mentioned before, while bearing in mind all the features analyzed in the first two chapters. In this

chapter I will argue how the concept of 'corporate social responsibility' (CSR) might be able to depolarize the issue of PMSC's performing public tasks. I will start by providing a conceptual historical overview of CSR-theory and the socio-economic developments that caused a surge in its popularity. After this I will trace the history of CSR's introduction to Dutch politics and its corporate arena. The last and most important part of this chapter attempts to define the four most pressing obstacles for CSR-theory: CSR as 'corporate PR'; CSR devoid of ethics and limited to quantifiable data; CSR as a 'wall of codes'; and limiting CSR to compliance. I have chosen to dedicate the fourth chapter to a case-analysis of G4S, one of the PMSC's concerned with the protection of commercial ships passing through the Gulf of Aden region. G4S is currently market leader in the private security business and has at many times played a central role in discussions regarding the legitimacy of PMSC's operating in the public sphere. This chapter will serve to ground the debate and provide a concrete example of the implications that recent changes in Dutch policy might have and the efforts made by PMSC's to address the negative impact their business might have on society in general. Central to this discussion will be the viability of introducing CSR to a PMSC like G4S, considerations about possible obstacles for this endeavor and the degree to which these obstacles might successfully be overcome. My argument here is that there is a possibility to omit the obstacles faced by CSR as the interdependent nature of the relationship between public and private actors in the context of PMSC protection on commercial ships offers unique opportunities.

In summary, the central question this thesis will attempt to address is: 'What problems arise when private security companies are allowed to perform public tasks and how may these problems be overcome?' In order to narrow the scope of this very broad question, I will attempt to answer it by focusing specifically on PMSC activity during anti-piracy actions. The

arguments in this thesis will show how the ambiguous nature of the current legal framework has caused a lack of democratic responsibility in anti-piracy action. This has led to a situation of increased violence and human rights violation as economic incentives have been allowed to precede social incentives. To increase democratic responsibility in PMSC's, I propose that Dutch policy should focus on the creation of corporate social responsibility within the companies that are allowed to operate on board ships passing through high risk areas. It is important however, to be aware of the internal contradictions that face CSR-theory and focus on the possibility of omitting these obstacles in the unique context in which the Law for the Protection of Dutch Merchant Ships will be implemented.

Theoretical Framework and Methodology

Theoretical explorations of the driving forces behind the growing privatization of security and states' increased willingness to make use of PMSC's for national military purposes tend to be relatively recent. As a result, theoretical and empirical knowledge about the causal factors behind this trend is often few and thin. Nevertheless, scholars have succeeded in categorizing different explanations for this phenomenon into four categories: functional, political(-instrumentalist), organizational and ideological.⁴ Functional explanations tend to focus on causal factors like supply and demand changes surrounding military personnel after the Cold War, foreign policy limitations associated with exclusive reliance on government forces, and the reluctance by the government to undertake operations that risk significant citizen casualties⁵. In this light, the increase in use of PMSC's can be seen as a purposive response to new technological, operational and financial imperatives.⁶ Political or instrumentalist explanations conceptualize the shift towards 'hired guns' and away from 'citizen soldiers' as a way to bypass the hard-earned democratic consent associated with a more Westphalian approach to military conflict, thereby making it easier to "guide the ship of state into war".^{7,8} Closely related to these political(-functionalist) explanations are organizational explanations that focus on the disparity between legislative limitations on the deployment of military personnel and "the number of boots on the ground required to achieve military objectives, (...) forcing military organizations to devise alternative ways to mobilize manpower".⁹ The main focus of this thesis will be on ideological explanations of the increase in the use of

⁴ Cusumano, 2018

⁵ Kinsey & Patterson, 2012

⁶ Cusumano, 2018

⁷ Vasquez, 2005

⁸ Avant & Sigelman, 2010, p. 231

⁹ Cusumano, 2016, p. 97

PMSC's on commercial ships sailing through 'high-risk areas', marked by the introduction of 'The Law for the Protection of Dutch Merchant Ships'. Ideological explanations define the driving forces behind this trend in terms of ideological models of the democratic state, the citizen and the soldier. Elke Krahnmann (2010) traces the origins of these ideological models back to 'Social Contract Theory'. According to this strand of political philosophy, security and peace required the monopoly on the legitimate use of violence to reside within the state apparatus. Modern democracy, in turn, legitimized this violence to the extent that it was performed with the consent of the state's citizenry. Krahnmann explains how both Republicanism and Liberalism have attempted to provide competing methods of organizing the state's control over violence. Whereas Republicanism centralized the provision of security within the state and its national military, (Neo)liberalism contends that the regulative forces of the free market are more effective and efficient in coordinating this provision. In this thesis I will take a sociological institutionalist standpoint and argue that country-specific differences result from diverging domestic norms and ideas producing variation in compliance and the interpretation of transnational norms and ideas regarding the use of PMSC's.¹⁰ It is when functional, political(-instrumentalist) and organizational forces are strong or urgent enough, that a state can make slight alterations to its ideological disposition. This thesis will analyze the driving forces - which are predominantly functionalist and organizational in nature - behind the introduction of PMSC's to the Dutch commercial shipping industry. Its main goal is to provide an 'ideological common ground' so that the shift towards a more neoliberal conception of organizing the monopoly on violence will not necessarily mean a shift away from the democratic control that is central to its Republican counterpart.

¹⁰ Finnemore and Sikkink 1998: 893 (found in: Kruck, 2014)

The data used for the analysis in this thesis consists of a large variety of primary and secondary sources like policy papers, news reports, academic works and political documents. I have selected the data for my analysis based on academic relevance, aiming to capture the most dominant explanations for the increase in private security. Also, I have attempted to be as objective as possible by making use of both literature that opposes the use of PMSC's on commercial ships and literature that supports this trend. Using qualitative content analysis I have attempted to understand, explain and contextualize the phenomenon that is the privatization of security. While the problems described in this thesis are primarily theoretical in nature, their impact can be very concrete when translated into foreign or security policy as demonstrated by The Law for the Protection of Dutch Merchant Ships. The ideological focus of this thesis makes qualitative content analysis my preferred methodological approach as quantitative data is only capable of expressing an international security trend and its implications to a very limited extent, bypassing the ethical and political considerations that are vital to ideological analysis. As such, the contents of this thesis will consist in an extensive literature review followed by a qualitative within-case analysis. I will look at the intervening variables of social responsibility in G4s and inductively observe any unexpected aspects of its operation or help identify what conditions present in the case activate or obstruct the causal mechanism.¹¹

¹¹ George & Bennett, 2005, p. 21

1. The Law for the Protection of Dutch Merchant Ships

The role of private security companies in the fight against piracy has found its way to public debate ever since video footage showing private security guards aboard the *MV Avocet* shooting at a group of alleged pirates reached mainstream media in April 2012. Until recently, protecting Dutch cargo vessels against piracy was considered to be a responsibility of the national armed forces. This changed however, after a law was passed by the Dutch House of Representatives on March 19, 2019, which will allow private security companies to protect commercial ships as they pass through ‘high risk areas’. This first chapter will provide a brief history of pirate activities in and around Somalia and the reaction it provoked by the European Union. Part of the international reaction to the growing problems concerning piracy was a number of Dutch anti-piracy missions. Recently however, as a result of a number of political and economic developments, the Dutch government has decided to take a different approach to the protection of commercial ships. Earlier laws proposing the use of PMSC’s on commercial ships were met with strong political opposition and skepticism as allowing private actors to perform the tasks of the national military would mean an infringement on the state’s ‘monopoly on violence’. The aim of this chapter is to provide an overview of the political and economic developments that led to the introduction of the ‘Law for the Protection of Dutch Merchant Ships’. Furthermore, it will serve as a concrete example of the intricate relationship between the nation state, the military and the economy, which will be discussed at length in the next chapter.

1.1 Piracy in Somalia

'Piracy' sounds like a thing of the past. While it is –the first documented instances of piracy date back as far as the 14th century and the classic era of piracy lasted from circa 1650 until the mid 1720's- it has existed and still exists in many forms and in many parts of the world today. One of those places is Somalia, where during the 1990's, annual reports varied from none to 12 instances of pirate attacks.¹² This pirate activity is found to be a direct result of the political and humanitarian situation in Somalia. President Mohamed Abdullahi Mohamed (also known as 'Farmajo') has not been able to bring about the promised economic, political and security reforms. After Farmajo became increasingly more authoritarian and started limiting room for opposition and the social midfield, the Council of Inter State Cooperation, formed by the federal states, ended their cooperation with the federal government in Mogadishu in 2018. The relationship with the international community has worsened after Somali troops interfered with the federal elections, resulting in a large number of Human Rights violations. Although multiple Somali pirate leaders have made a transition to other forms of (maritime) crime and the number of hijacking incidents has declined, piracy networks are still intent on and capable of resuming their activities when given the chance to do so.¹³

Between 20.000 and 30.000 ships pass through the Gulf of Aden annually while Pirate groups operate at distances up to 750 km off the coast of Somalia. It wasn't until 2003 however, that international attention was drawn to the increasing pirate activity in the Gulf of Aden and off the Somali coast. More and more vessels were being attacked or hijacked leading to the World Food Programme (WFP) and the International Maritime Organization

¹² Sörenson, 2011. p. 14 (found in: Harriman & Zetterlund, 2015, p. 15)

¹³ Tweede Kamer der Staten-Generaal, *Voortgang Nederlandse bijdrage aan piraterijbestrijding en recente ontwikkelingen in Somalië*

(IMO) making an appeal to the international community asking for assistance with escorts of sea transport to Somalia. As a result, Operation Alcyon was launched to protect WFP convoys to Somalia from pirate activities.¹⁴ As problems persisted, the United Nations condemned all acts of piracy and armed robbery off the coast of Somalia in 2008 and started to encourage states to take an active part in the fight against piracy, based on Chapter VII of the UN Charter.¹⁵ As a response to the calls of the UN, the European Union launched Operation Atlanta in November 2008, aimed to follow up Operation Alcyon.

European Union Naval Force (EUNAVFOR) Operation Atalanta was the start of a larger EU policy named European Capacity Building (EUCAP) Somalia. The European Council has recently extended the mandate of the EU capacity building mission in Somalia until 31 December 2019, the budget for which will be €66.1 million over two years. The mission mandate is “to enhance Somalia's maritime civilian law enforcement capacity, through supporting Somali authorities in developing the necessary legislation, strengthening the criminal justice chain in the maritime domain, and providing training and equipment”.¹⁶

Other actors besides the EU have also contributed to the fight against piracy in the Somali region: together with 30 other countries, the US started the Combined Maritime Forces (CMF), which deployed three taskforces in the area; two of which were specifically aimed at combating piracy.¹⁷ NATO started operation Ocean Shield, providing naval escorts and fighting piracy-related activities.¹⁸ But also countries like China, Russia and India occasionally

¹⁴ French Ministry of Defense, *L'opération Alcyon* (2010) (found in: Harriman & Zetterlund, 2015, p. 15)

¹⁵ United Nations, 2008a. Resolution 1816, SC/9344; United Nations, 2008b. Resolution 1838, SC/9467 (found in: Harriman & Zetterlund, 2015, p. 15)

¹⁶ European Council, *EUCAP Somalia: mission extended, budget agreed*

¹⁷ Combined Maritime Forces (CMF) (found in: Harriman & Zetterlund, 2015, p. 16)

¹⁸ NATO, *Operation Ocean Shield* (found in: Harriman & Zetterlund, 2015, p. 16)

deploy naval ships as escorts or to patrol the area.¹⁹ Still, pirate activity increased on the world's seas in 2018: no ships were successfully hijacked but armed pirates have continued to harass commercial ships in the Gulf of Aden. The International Maritime Bureau (IMB) urges masters to continue to maintain high levels of vigilance when transiting these waters and to follow the latest Best Management Practice (BMP) recommendations.²⁰

Collaborative efforts between a large number of international stakeholders have resulted in the development of BMP's for shipping companies faced with piracy threats. According to the *Global Counter Piracy Guidance for Companies, Masters and Seafarers*²¹, the use of Privately Contracted Armed Security Personnel (PCASP) on board ships should be determined by the out-put of the risk assessment and approval of the respective flag State. The hiring of these companies is neither recommended nor endorsed by the document. Only after careful risk assessment taking into account route, type of cargo, speed, freeboard, location, protection provided by littoral States and the current threat and risk environment, should a ship owner engage the services of a PMSC. It is also highlighted in the Global Counter Piracy Guidelines that the employment of PMSC's is only an additional layer of protection and that it is not intended to be and should not be seen as an alternative to national protection services. The guidelines emphasize that there should be a clear understanding of the authority under which the PMSC's operate. The application of force in defense of the personnel on the ship should be graduated, reasonable, proportionate and demonstrably necessary. The PMSC's must always act in accordance with the widely recognized principles of self and collective defense.²²

¹⁹ Harriman & Zetterlund, 2015, pp. 15-16

²⁰ International Chamber of Commerce, 2018

²¹ BIMCO, ICS, IFSMA, IGP&I, INTERTANKO, INTERCARGO, INTERMANAGER and OCIMF, 2018

²² Idem., p. 38

1.2 Dutch Policy on Piracy

The Netherlands has been known for its maritime activities ever since Dirck Hartogh discovered Australia and Willem Schouten sailed around the most southern peninsula of Argentina some 400 years ago. As of today, the Dutch Maritime Cluster is still a vital part of the Dutch economy: 2,012 ships sailed under the Dutch flag in 2016.²³ This sector contributes significantly to Dutch economic development and it is still growing and expanding with each new year: in 2017, the direct and indirect production value of the Dutch maritime cluster was at almost €55 billion.²⁴ The maritime cluster generated 3.3% of the total GDP of The Netherlands and provided employment to around 271,500 people. The Dutch ports process more than 550 million tons of goods each year and play a vital role as an international connection point.²⁵ With maritime trade as one of the cornerstones of the Dutch economy, pirate activity in and around Somalia was viewed as a serious threat by the Dutch government. The Netherlands had been participating in Operation Atalanta since 2009 and from 2010 to 2014, Dutch navy vessels also contributed to NATO's Ocean Shield. While The Netherlands will still contribute personnel to support the EU-missions EUCAP Somalia and EUNAVFOR Atlanta, The Netherlands has not contributed a ship to these missions in 2018 and it will not contribute one this year.

In 2013, the Netherlands found itself in an isolated position as it was the only European country left that did not allow for the employment of PMSC's on commercial ships. France and Italy had allowed for the use of PMSC's alongside the available military VPD's (Vessel

²³ KNVR, *Nederlandse Vloot*

²⁴ Stichting Nederland Maritiem Land, 2017

²⁵ Ministry of Infrastructure and Water Management, *Zeevaart en zeehavens*

Protection Detachments); Belgium allowed for VPD protection but has rarely made use of this option and relied almost exclusively on PMSC protection; and the UK, Denmark, Norway, Greece, Spain and Cyprus do not make use of VPD's at all and rely solely on PMSC's for the protection of their commercial ships.²⁶ While in 2009, the Dutch Minister of Defense found the stationing of marines on vulnerable Dutch ships would be undesirable due to legal and logical obstacles, increasing commercial discontent towards official policy led the Dutch government to explore alternative possibilities for dealing with the piracy issue in 2010.²⁷ Part of these explorations was a report by the Advisory Council on International Affairs (AIV)²⁸ which documented claims by Dutch ship owners about their profit margins being under increasing pressure: the extra costs raised by preventative measures like extra equipment, private security employment and higher insurance costs created a situation in which the piracy threat effectively came to 'threaten the economic security of the Netherlands'. Ship owners claimed that piracy was a national security issue and demanded the Dutch government would take responsibility in addressing it through the deployment of military VPD's. Lack of governmental action and the disadvantageous Dutch regulation concerning the use of armed protection had already led to a large number of Dutch vessels registering under other national flags.²⁹ Faced with the negative impact on the national economy and the increasing threat of unregulated violence at sea, the Dutch government decided to sanction VPD's under strict circumstances in order to maintain international order. From the outset however, it was clear that a sufficient number of VPD's could never be provided: a 2011 report by The Advisory Committee on Armed Private Security against

²⁶ *Kamerstukken and national legislation* (found in: Van Ginkel, van der Putten & Molenaar, 2013, p. 22)

²⁷ Scott-Smith & Janssen, 2014, pp 58-59

²⁸ Advisory Council on International Affairs, 2010

²⁹ The number of ships flying the Dutch flag passing through the Gulf of Aden has dropped from 450 to 250-300 in 2012 as a consequence of piracy; KVNR, *Piracy*

Piracy³⁰ observed how only two ships could be provided with VPD's while about 250 requests for support were declined 'because of lack of capacity'.³¹ This conclusion received further support from a 2013 Clingendael report³² which showed how between March 2011 and November 2012, 144 VPD's were requested, whereas 53 of these requests were accepted and only 40 actually became active. In this same time period, the report states, between 450 and 500 Dutch commercial ships would have passed through the Gulf of Aden. Reasons for ship owners to look to alternatives to VPD-protection were the strict criteria a ship owner would have to meet in order to get access to VPD-protection, as well as the fact that the costs of VPD's were considerably higher when compared to PMSC prices. Furthermore, VPD-deployment was very demanding for the Ministry of Defense as these missions required complete self-sufficiency; necessitating a specialized and considerably large detachment of at least 9 armed soldiers. A functionalist argument like this might lose in strength when taking into account the fact that Dutch Defense budgets have been increasing since 2014 and VPD-costs continue to be lower than estimated.³³ Another suggested explanation of the Ministry of Defense's change of heart pertains to Italy's ongoing diplomatic controversy with India, which could be prevented by removing state actors from anti-piracy action and thereby decreasing state responsibility.³⁴

The debate surrounding PMSC's on commercial ships was shaped by a large number of different actors and motivated by a diverging set of interests. Ship owners were concerned

³⁰ De Wijkerslooth Committee, *Monopoly on Violence and piracy* (October 2011) (found in: Scott-Smith & Janssen, 2014, pp. 60-61)

³¹ Scott-Smith & Janssen, 2014, pp 60-62

³² Clingendael, *State or Private Protection against Maritime Piracy? A Dutch Perspective* (found in: Scott-Smith & Janssen, 2014, p. 62)

³³ Ministry of Defense, *Rijksjaarverslag 2018*

³⁴ Cusumano, 2018

about the costs and the security of their personnel, the Dutch Society for Merchant Captains was concerned about the responsibility of the ships' captains and the Ministry of Defense was unsure to what extent it should retain its monopoly on the use of violence in defending Dutch national interests. In 2014, The Law for the Protection of Dutch Merchant Ships was introduced to parliament in an attempt to reconcile the interests of all stakeholders involved. Commercial interests were secured while this shift towards privatization would be carefully guided by the creation of legal frameworks and strict government regulations. The underlying idea was to 'maintain the government's primary role'³⁵ by treating PMSC's as an extension of state responsibilities and as an addition to VPD deployment. As economic interests played such a big part in the reshaping of the relationship between the Dutch government's role in the protection of its national interests and the responsibility of PMSC's within this framework, during the introduction of a legal apparatus diminishing the government's role and increasing the responsibility of private actors, it was continuously emphasized that the process should be carefully managed. The way this management will effectively be applied is still debated; I would like to add to this debate by proposing a vantage point that could possibly relieve some of the problems often associated with outsourcing public responsibilities to private parties.

1.3 Political Opposition

The Netherlands is one of the last countries to join a political movement that attempts to combat the threat of piracy via means other than international cooperation. On March 13, 2018, a law allowing private security for commercial ships was passed by the Dutch House of

³⁵ *Beveiliging zeevaartroutes tegen piraterij*, Verslag van Algemeen overleg (August 2013) (found in: Scott-Smith & Janssen, 2014, p. 66)

Representatives. On March 6, the proposed law had been met with opposition by the People's Party for Freedom and Democracy (VVD) and the Christian Democratic Appeal (CDA), who based their argument on a fundamental conceptualization of the nature of the nation state. Dutch politicians Ten Broeke and Van Helvert intend on making it possible that, under certain conditions, ship-owners can make use of armed private security. Minister Grapperhaus (Justice and Security) calls the proposal an important step in the protection of commercial ships.

The proposed law aims to:

- Safeguard the quality of security companies and their personnel
- Allow for the conditional use of all reasonably possible security measures by the ship-owner and the captain
- Authorize private maritime security agents to use armed force under special conditions
- Regulate the application for and authorization of security for transport

Buitenweg (GroenLinks) and Van Dijk (SP) find it highly undesirable for the State to hand over its monopoly on violence by allowing private security companies to protect commercial ships. A better solution would be to employ the VPD's more flexibly. As a response to this, Ten Broeke states that the vantage point will remain to be VPD protection on commercial ships, unless the costs would be too high or ships would have to make a detour. Another issue was the legal status of private security actors concerning the use of violence: is it similar to that of the VPD's? Van Helvert and Grapperhaus envision similar regulations concerning the use of violence in which it cannot be aimed at inflicting fatal injury. Van Oosten (VVD) emphasized that the vantage point should be that not the captain of the

commercial ship, but the head of the private security unit is responsible for the use of violence. Indication of the ambiguity concerning responsibility is the fact that the captain, according to this law, *does* possess an 'overriding authority' based in the SOLAS-treaty (specifically Regulation 8, chapter XI-2).³⁶ It appears that the captain is responsible for determining whether violence is necessary and the PMSC team leader decides over the nature of that violence. Any criminal offences can later be tried by the Public Prosecutor.³⁷ Further discussion is raised about the fact that within the confines of this law, not the Minister of Defense but the Minister of Justice and Security will oversee the certification of PMSC's.³⁸

It is not the first time that political opposition to the passing of this law based its argument in the concept of the State as 'a monopoly on violence'. In fact, this line of argument has been central to the Dutch opposition to the use of PMSC's on commercial ships.³⁹ The exact phrasing of the concept was first used in the writings of Max Weber, which will be discussed in the following chapter.

³⁶ Tweede Kamer der Staten-Generaal, *Beantwoording vragen over Wet ter bescherming Koopvaardij*

³⁷ Tweede Kamer der Staten-Generaal, *VVD en CDA: particuliere beveiliging koopvaardij schepen*

³⁸ Society and Security Foundation, *Wet ter Bescherming Koopvaardij*

³⁹ Van Ginkel, van der Putten & Molenaar, 2013, p. 34

2. The State and the Military

Article 97 of the Dutch constitution states the following:

1. There shall be armed forces for the defense and protection of the interests of the Kingdom, and in order to maintain and promote the international legal order.

2. The Government shall have supreme authority over the armed forces.

The explicit purposes of the Dutch armed forces are to defend the Kingdom; to protect the interests of the Kingdom; and to maintain and promote the international legal order. Important to note is that The Netherlands are a constitutional democracy; as a result of this, the armed forces can never have the highest authority. This authority resides within the Dutch government. This means that the Dutch Minister of Defense has authority over the armed forces. It is this classic relation between a nation state and military actors operating under its authority that has come to be challenged by the introduction of PMSC's to the public domain.

The main reason for the parliament's cautious disposition regarding the use of PMSC's on commercial ships were doubts about the legitimacy of allowing a private company to take over tasks traditionally reserved for a country's national armed forces. The legitimacy of this was questioned based on a number of traditional beliefs about what the relationship between the state and its military should be like. These beliefs are most famously expressed by 19th century German sociologist, philosopher, jurist and political economist Max Weber, but have been at the center of political philosophy since the ancient Greeks. This next

chapter will provide an overview of the evolution of Weber's ideas and the challenge they faced during 'the Neoliberal turn'. My analysis will trace the socio-economic developments that have led to our current international security situation and the Dutch position in this wider framework. The central point of this chapter is to analyze the shifting power structures as western neoliberal democracies seemed to become increasingly more neoliberal and increasingly less democratic. Allowing public functions to be driven by market logic might prove to violate constitutional law and has arguably been the cause of the 'hybrid threats' that modern society is currently faced with. The ambiguous nature of our current security situation can be seen to translate into equally ambiguous regulatory frameworks that prove to be unable to provide adequate solutions.

2.1 The Monopoly on Violence

"What is a state?" is a central question in Max Weber's 1919 work *Politics as a Vocation*. The answer to this question is provided to us with reference to a specific *means* that is proper to the state: physical force. In other words: "The state is the human community that, within a defined territory [...] (successfully) claims the monopoly of legitimate force for itself"⁴⁰. While Max Weber is renowned for introducing this definition in sociological academics, it echoes the ideologies of many different scholars before him. Weber himself quotes Trotsky: "Every state is founded on force", but many modern scholars point to his work as being the next theoretical step on a path that had been created long before Weber was born. What distinguishes the state from other forms of rule, according to Weber, is the monopolization of force. It is important to note that Weber sees this as a purely formal characteristic and

⁴⁰ Weber & Dreijmanis, 2008, p. 156

that this does not say anything about the substantive content of state action. Weber appears to understand 'force' in this context to specifically mean *legitimate physical force*: *physical* in that it concerns open, direct force directed at the human body; *legitimate* in that its use is a direct extension of the power and responsibility anchored in the concept of the state.

Krahmann has traced the origins of these theoretical developments back to Thomas Hobbes and Jean-Jacques Rousseau. To explain the nature of a state, these political philosophers developed varying theories concerned with 'The Social Contract'. The English Civil War inspired Hobbes to develop his 'Theory of the Social Contract' in his 1651 book *Leviathan*. The central concern of this fictional description of the social contract was the provision of security. Hobbes attempted to examine the nature of the state as it served to free humanity from the war of all-against-all that constituted 'the state of nature'. Through the Social Contract -which was constituted as an agreement between a sovereign and a people- citizens would be able to centralize the means of violence so that an absolute and all-powerful sovereign could protect his citizenry against foreign invasions and against each other. Through a number of crucial alterations, demonstrated in his 1762 work *Of the Social Contract, Principles of Political Right*, Jean-Jacques Rousseau was able to fit Hobbes' social contract theory within the larger framework of modern democracy. Rousseau sought to prevent the abuse of political and military power by the sovereign by defining the social contract as an agreement between all individual citizens constituting a state. According to Rousseau, the legitimacy of the state's monopoly on the use of violence was assured by its being subjected to 'the general will'.

As modern nation states after the French revolution started to transform and adapt to growing societies and more liberal political ideologies inspired by the enlightenment, it

became clear that the direct democracy envisioned by Rousseau was unattainable. But even its more limited conceptualization –representative democracy- was soon to be subjected to critiques like we find in the writings of John Stuart Mill: “The will of the people [...] practically means the will of the most numerous or the most active part of the people; the majority, or those who succeed in making themselves accepted as the majority”⁴¹. To remedy the problems regarding political representation often affiliated with democratic rule, neoliberal scholars like Milton Friedman proposed to limit the coercive powers of the state by emphasizing the role of the free market. To combat the greatest threat to freedom – the concentration of power - Friedman argued in his 1962 work *Capitalism and Freedom* that we should outsource public functions to the free market and thereby create a system of checks and balances. As the growing dissatisfaction with the Republican model of centralized government caused the redefinition of liberalism in the middle of the twentieth century - which saw direct impact on Reagan’s economic and military policy since Friedman was his economic advisor - one might wonder what role is left to play for democratic governance in the relationship between the state, the military and the citizen. This new focus on the regulating forces of the free market in order to limit the power of the state is known in academics as ‘the Neoliberal turn’.

2.2 The Neoliberal Turn

‘The Neoliberal turn’ is a term used to designate a paradigm shift that academics were able to observe in a large variety of principles, disciplines, theories and policies. Within the specific context of the relation between the state and the military this Neoliberal turn is most observably present in US military spending before, during and after the Cold War. The

⁴¹ Mill, 1989, p. 8

paradigm shift can be observed as US policy on military spending left its Keynesian roots and transitioned, as part of a broader trend, into a more neoliberal approach.

It was John Maynard Keynes who revolutionized economic theory in the 1930's by challenging neoclassical beliefs that had come to be the status quo. 'The Great Depression' did not only see to a decrease in national income and employment rates, it also dealt a fatal blow to belief in the workings of the free market. Keynesian economics, which proposed a limited amount of governmental interference into the economic process, had laid the foundation for decades of American military spending as it allowed US Secretaries of Defense to legitimize increases in military budgets by pointing to the fact that 'military spending is good for the economy': "government officials use military spending as a countercyclical tool to avoid recession, reduce unemployment and stimulate economic growth"⁴². The period of economic growth that followed the Second World War formed the high days of Keynesian economics. US congress even passed the Employment Act, which legally obligated the government to maintain full employment by interfering with the market through taxing, borrowing, spending and other mechanisms. But when the Vietnam War proved unable to mend the increasingly severe economic depressions that had started to plague the capitalist system again, American optimism started to falter and a more sober attitude was reinstated. Military expenditures became increasingly more difficult to legitimize while the 'Vietnam syndrome' took hold of the American public. "[Now,] in the deployment of force by the U.S. state, the level of consent to be extracted from the

⁴² Found in: Borch & Wallace, 2010, p. 1729

underlying population is weak and conditional”⁴³; necessitating the construction of a new vantage point. Neoliberals took it upon themselves to provide this vantage point.

A vantage point that was able to omit the fragile and conditional consent of the US public took military expenditures out of the hands of the democratic state and into the hands of the neoliberal private sector. Within this framework, the state plays a limited role as its only function is to safeguard institutions of business ownership and protect property rights and the lawful conduct of business. This affected the military sector as “any conceivable activity in which the military sector engages is analyzed in terms of its potential to generate profit for the private sector”⁴⁴. In this logic, military action will generally be aimed at expanding the neoliberal free market by aggressively breaking down trade restrictions, foreign taxing and sociopolitical impediments.⁴⁵ Krahnmann observes how states with a more liberal approach to the relationship between the state and the military, outsource military tasks more often than states with a more republican approach, like The Netherlands.

The current international system is in a phase of transition, featuring contradictory dynamics and discontinuous change. Key tenets of the liberal international order have been shifting quite dramatically the past few years, pressuring a range of international security and economic arrangements grounded in multilateralism and the peaceful settlement of disputes. Zero-sum thinking seems to prevail as inter-state tensions have been rising for years.⁴⁶ We find ourselves in a hybrid global order which, at times, is defined by its polarized or fragmented nature. This trend is most observably present in for example Donald Trump’s *America First* policy or the United Kingdom’s choice to leave the European Union by means

⁴³ Cypher, 2007, p. 41

⁴⁴ Idem., p. 44

⁴⁵ Idem., p. 44

⁴⁶ HCSS, 2019

of a *Brexit*. Since 1990, more and more democratic states have started reducing state involvement by privatizing security. The United States, Britain and Israel all have started outsourcing logistics, the production of materiel and the use of military action to the corporate sector in order to improve efficiency and stimulate innovation.⁴⁷ Characteristic of international developments of this scale and size is the inability of legal and normative frameworks to capture their essence and provide a timely response to the negative impacts that often follow. Policymakers struggle to keep up with economic developments everywhere; so too in The Netherlands, where just now, regulation and state control seems to catch up with changes in security trends that started as far back as the 2006 Dutch military mission in Uruzgan, Afghanistan.

2.3 Dutch Security Trends

As international norms and regulation are bypassed more and more often, Dutch reliance on these international apparatuses is brought into question. Traditional ideas in Dutch Defense and Security policy focus on the wider framework of the European Union and the NATO. Calls can be heard for a shift away from these multilateral arenas; there is a rising need for a different apparatus to promote Dutch national interests. While The Netherlands will still be dependent on trans-Atlantic cooperation and the NATO for its national security, recent developments have brought about an increasingly more inward focus, together with a growing desire to look to actors and agents outside of and beyond the traditional multilateral international framework. As a comparatively small actor on the world stage, The Netherlands also has comparatively small capacities when it comes to their armed forces

⁴⁷ Stanger, N., *One Nation Under Contract: The Outsourcing of American Power and the Future of Foreign Policy* (found in: Scott-Smith & Janssen, 2014, p. 54)

and can therefore only make use of a limited amount of military strength. In an effort to compensate these shortcomings we see how increasingly more often, national actors turn to private companies for help. This trend can also be observed in Dutch anti-piracy action.

The AIV (2010) traces the introduction of private security companies (PSC) into Dutch security provision back to the mission in Uruzgan. Here, increased security demands forced the Ministry of Defense to turn to the private sector for essential security services for the first time. These services weren't limited to the provision of fuel, catering and equipment, but also included armed security for the Dutch embassy in Kabul and protection by a local militia group called 'the Afghan Security Guard'. According to the AIV, the legal status of PSC's was insufficiently clear and an increasing reliance on the private sector would lead to an equal decline of democratic control over armed security forces. While then Minister of Defense Eimert van Middelkoop spoke of 'capitalism in uniform' as being 'a very risky business'⁴⁸, further employment of private military security companies for essential security tasks during the Dutch mission in Uruzgan seemed to contradict the Ministry's position that "civilian personnel...would not be deployed for offensive tasks or tasks directly related to strategic planning".⁴⁹ In the specific case of PMSC's on commercial ships however, the current Minister of Defense states that the monopoly on violence is not an absolute principle that limits the use of violence to governmental actors. It is said to allow for private security in situations where public resources are insufficient, given that the government determines the conditions under which violence can be used.⁵⁰

⁴⁸ Middelkoop, E., *Privatization of Warfare*, IKV/Clingendael seminar (June, 2004) (quoted in AIV Report no. 59 (2007), p. 36) (found in: Scott-Smith & Janssen, 2014, p. 58)

⁴⁹ Tweede Kamer der Staten-Generaal, *Beantwoording vragen van het lid de Bommel (SP)* (found in: Scott-Smith & Janssen, 2014, p. 57)

⁵⁰ Ministry of Justice and Security *Beantwoording vragen over Wet ter bescherming Koopvaardij*

2.4 International Law-framework: PMSC's

The majority of PMSC's are registered in the United Kingdom but recent trends show increasing numbers of PMSC's from countries like Greece, Cyprus, Malta and China. A PMSC's choice for a specific jurisdiction often depends on factors like legal flexibility, national tax regimes, fire arms regulation and operating permits.⁵¹ The legal position of PMSC's operating on board commercial ships is a very complicated one. Because these ships will pass through different waters falling under different jurisdictions, because they operate under exceptional circumstances and because regulatory frameworks often prove to be outdated or insufficient, it is important to create some degree of clarity in what rules apply to the conduct of PMSC's. Firstly, PMSC's do not operate in an armed conflict situation within the meaning of the Geneva Conventions on humanitarian law: the security guards on ships are qualified as civilians without a license to kill. International law and most national criminal codes will only allow for the use of force to the extent that it is necessary to defend one's own life or the lives of others. Any use of force that would exceed these criteria makes it possible to criminally prosecute PMSC personnel. The institution overseeing this prosecution will be determined by the location in which the events took place, the actors involved in the conflict and the severity of the crimes. This means that prosecution can happen under the law of the vessel's flag state, the law of the PMSC personnel's country of origin or the law of the country in which the crime took place. As a result, it may be possible for several states or actors to claim jurisdiction and therefore different regulatory frameworks may apply and even contradict. One set of regulations may allow for more use of force than another, creating a legally ambiguous situation.⁵² The states surrounding the

⁵¹ Oceans Beyond Piracy, 2017

⁵² Van Ginkel, van der Putten & Molenaar, 2013, pp. 25-26

'high risk areas' in which the pirates operate often have large variations in their laws concerning weapon possession in their territorial waters and in their ports, showing further lack of legal harmonization. Additionally, there is the issue of liability under criminal (or even civil) law. As current PMSC's still very much operate within a legal vacuum, unlawful activities can simultaneously be illegal (as PMSC's are civil actors) as well as legal (as PMSC's operate under state authority, which can grant a certain degree of authorization). This position can result in legal conflict over for example the possession and transportation of large weapons and the degree to which the use of violence is legitimized.⁵³ Several documents like the International Code of Conduct for Private Security Providers, the Montreux Document and MSC. Circ. 1404 suggest regulatory protocols, but these documents have no legal status, no standardized training and no certification procedures. International navies, IMB, INTERPOL and UKMTO have a neutral or no stance on the use of PMSC's and generally consider it the Flag State's concern.⁵⁴

An important difference between the rights, obligations and responsibilities of PMSC's and national actors lies in the state's obligation to fight piracy with all means necessary (as stated in the United Nations Law of the Sea Convention), giving them the right, among other things, to interdict, detain and arrest pirates. As PMSC employees are classified as civilians, these rights do not apply to them and their operational capacity is strictly limited to self-defense. A similar difference can be observed when it comes to the relationship to international human rights law. PMSC's are bound by these international regulations and are obligated to operate within the framework laid down by the International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights and Fundamental

⁵³ Ryngaert, 2018, p. 792

⁵⁴ Oceans Beyond Piracy, 2011

Freedoms (ECHR) and the Universal Declaration of Human Rights (UDHR). According to human rights law however, states are obliged to not only respect human rights but also to protect these rights from interference by others (including private companies) and take an active part in the promotion of these rights.⁵⁵ This distinction, I argue here, is vital in the legitimate exercising of the use of force and it forms the essence of the problems related to PMSC's performing the tasks of national militaries. In the following chapter, I will propose an approach that is directed at overcoming this 'responsibility gap': corporate social responsibility.

⁵⁵ *Idem*.

3. Corporate Social Responsibility

A democratic government can combat the negative effects of introducing market-oriented actors into a situation of national security, in which democratic legitimacy seems to be under strain and different sets of value-systems seem to be operating at the same time, in a number of ways. The Dutch government for example, is considering rewarding socially responsible business conduct through financial benefits.⁵⁶ In the case of private security on commercial ships, the Dutch government seems determined to maintain a strict policy, together with a high degree of control over the hired forces: security companies will need a permit and authorization by the Minister of Security and Justice; also, the company is obligated to make audio or visual recordings of their activities to allow for later analysis.

At the moment, very few enforceable or binding norms exist to regulate the conduct of PMSC's or the responsibilities of states in this domain. No internationally standardized regulation exists and the patchwork of soft law regulations and private sector codes of conduct is more often than not very opaque and over-regulated.⁵⁷ Maybe Lou Pingeot is right when he observes, "there is a need for deeper reflection and debate on the impact of the growing privatization of security, the effect of PMSC's on the democratic control of the use of force, and the type of policies they make possible".⁵⁸ Often overlooked in debates concerning the legitimacy of private security actors performing public tasks are ways of bridging the 'responsibility gap'; one approach like this would focus on the creation of 'corporate social responsibility'. In this chapter I will first provide a brief overview of the

⁵⁶ *VVD plan voor reservisten*; 'Employer Support Payments' already reward/compensate Australian companies for allowing their employees to serve in the army reserves (1.476 Australian dollars per week)

⁵⁷ Van Ginkel, van der Putten & Molenaar, 2013, p. 25

⁵⁸ Pingeot, 2014, p. 4

concept of CSR; its definition, its conceptual history and its practical application in The Netherlands. This will lead me to identify a number of problems that CSR-theory is often faced with, which will also be discussed in chapter 4. Lastly, I will analyze the role of CSR in the specific context of PMSC's.

3.1 Corporate Social Responsibility

As a reaction to the shifting power structures in the relationship between the government and the market after the Cold War, a large number of initiatives have been set up nationally and internationally in the past few decades in order to boost 'corporate social responsibility'. Within the confines of this thesis, I will try to remain exact and clear in a field that knows many overlapping and interdependent concepts like social responsibility, business ethics, philanthropy, corporate citizenship, corporate governance, corporate social performance, pro-social performance, socially responsible behavior, cause-related marketing, sustainability and green business⁵⁹. I have chosen to use the term corporate social responsibility as it is one of the most widely used concepts within both the academic literature and international economic institutions⁶⁰. It best fits the exact context in which I would like to employ it as this specific term is used by the PMSC's operating on board commercial ships to describe their social awareness policies⁶¹. The single most important feature of CSR with regard to The Law for the Protection of Dutch Merchant Ships is its normative description of what the relationship between society and the business sector should be like. This description will be subject to further analysis in the rest of this chapter.

⁵⁹ Hemingway, 2013, p. 2

⁶⁰ UNDP, TWB, WMCSO, OECD, ILO

⁶¹ G4S, Trident Group, Neptune and MAST have all published CSR-policies

CSR is very much a manifestation of the post-World War II changes in social consciousness. These changes were most visibly present during the 1960's as civil rights movements, women's rights movements and environmental awareness gained a more central position within political debates. CSR has come to be used globally in a narrative that is able to influence modern businesses in such a way that simply following regulations and acting in accordance with human rights principles will not suffice anymore: *compliance* is no longer enough. Corporate attention was caught as early as 1953 in asking "what responsibilities to society may businessmen reasonably be expected to assume?"⁶², but considerations about practical implementation only started in the 1980's⁶³. In the 1960's, dissatisfaction about the negative societal impact of 'big business' grew in the US, sparked by events like G.E.'s price-fixing scandal and G.M.'s corvoir motor car debacle and auto safety expose⁶⁴. The sentiment expressed by CSR was even introduced to the legal domain through the Civil Rights Act of 1964. The 70's saw the institutionalization of CSR sentiment through the Environmental Protection Agency, Equal Employment Opportunity Commission, the Occupational Health and Safety Administration and many others.⁶⁵

As of today, CSR-policies have been adopted in many different varieties and on many different levels of society and governance: in 2011, the European Commission adopted a renewed strategy aimed at increasing 'Corporate Social Responsibility & Responsible Business Conduct'. According to the European Commission, "EU citizens rightly expect that companies understand their positive and negative impacts on society and the environment.

⁶² Bowen, H. R., *The Social Responsibilities of the Businessman* (University of Iowa Press, 2013) (found in: Carroll, 2015, p. 87)

⁶³ Works like R. Edward Freeman's *Strategic Management: A Stakeholder Approach* gained popularity

⁶⁴ Carroll, 2015, p. 88

⁶⁵ Idem.

And, therefore, prevent, manage and mitigate any negative impact that they may cause”.⁶⁶

In the European Commission strategy, horizontal approaches to promote CSR/RBC are combined with more specific approaches for individual sectors and policy areas.

The large number of synonyms and definitions for ‘CSR’ is a result of both its rapidly increasing popularity and growing interest from entrepreneurs, politicians and academics.⁶⁷ Its revolutionary take on the role of private enterprises and their relationship to society means much conceptual groundwork is yet to be laid: “perhaps the largest obstacle in creating a conceptual framework for the social entrepreneurship field has been its definition”⁶⁸. Different features characterize the practice of CSR depending on the different disciplines, sectors or situations that it is applied in. Developments in CSR-theory reflect the influence of other theories like agency theory, resource-based firm conceptions, stakeholder theory, stewardship theory and the theory of the firm. CSR-research can be roughly categorized into two categories: analysis of macro social effects; and organizational-level analysis of CSR and its impact on corporate processes and performance. The theoretical orientation is therefore also twofold: explicitly normative, ethical argumentation; and managerial performance studies.⁶⁹ Furthermore, a 2011 study showed how of 152 papers published on social entrepreneurship, only 16 conducted quantitative analysis. Social entrepreneurship or CSR research proves to be predominantly concerned with qualitative analysis like case studies and discourse analysis.⁷⁰

⁶⁶ European Commission, *Corporate Social Responsibility & Responsible Business Conduct*

⁶⁷ Short, M. & Lumpkin, 2009 (found in: Short, 2014)

⁶⁸ Shane & Venkataraman, 2000, p. 218 (found in: Praszquier & Nowak, 2012, p. 12)

⁶⁹ Lindgreen & Swaen, 2010

⁷⁰ Short, 2014, p. 51

Carroll⁷¹ recognizes the ambiguous nature of CSR and is able to define two of its active aspects: *protecting* and *improving*. *Protecting* society designates a company's efforts to limit any negative social impacts like pollution or discrimination. *Improving* society's welfare designates a company's responsibility to actively create positive benefits for society through philanthropy or community relations. Carroll claims CSR encompasses the economic, legal, ethical and discretionary expectations that society has of organizations at a given point in time. In this light, she says economic and legal expectations are *required* of business by society, ethical responsibility is *expected* of business by society and the discretion/philanthropic is *desired* of business by society.

Short⁷² categorizes social enterprises into three types: non-profit organizations endeavoring to act entrepreneurially; for-profit organizations with social missions and hybrid organizations that combine elements of for-profit and non-profit activity. The PMSC's that I am concerned with would fall under the second category as they are primarily concerned with making profit but the nature of their work inevitably forces them to actively position themselves within the social domain. A call for companies like this to actively incorporate social impact into their business-model can also be observed on the national level in The Netherlands.

In the 2018 OECD report *Boosting Social Entrepreneurship and Social Enterprise Development in the Netherlands* we find an examination of 'the role, both real and potential, of social entrepreneurship and social enterprise in socio-economic development, and the support that could be given to the field to allow it to fulfill that potential'. In the report, we see how the concept of social entrepreneurship emerging in The Netherlands has been

⁷¹ Carroll, 2015

⁷² Short, 2014

influenced by the continued involvement of the private sector in welfare delivery service. Important in the process was the 'traditional Dutch belief in the private initiative' resulting from a long history of CSR cooperatives, volunteering, and charity groups. Spearheaded by the CSR initiatives of large corporations, the 1990's and 2000's saw increased media attention for social innovation and social enterprises aimed at the provision of work opportunities for 'vulnerable' groups. While the term 'social enterprise' appeared in newspapers (De Telegraaf) in 2006 as 'a company whose profit gets reinvested towards a social objective and a social value', it wasn't until 2012 that the implementation of the concept became more structured through the creation of the platform Social Enterprise NL. In 2015, the Social & Economic Council even stated that 'CSR should be the core business of every enterprise'.

A large variety of definitions surrounding the concepts of 'social enterprise' and 'social entrepreneurship' make it hard for studies to completely agree on the exact timeframe and rate of the development of the field. What all studies seem to agree on however is that there has been substantive growth of the area in a relatively short period of time. One McKinsey study⁷³ states that the sector grew by about 70% between 2011 and 2016 (from 2000/2500 to 5000/6000 enterprises). The report shows how the most common impact areas for social enterprises in The Netherlands focus on stimulating the circular economy, increasing labor participation and equality, international development, education, well-being and environment. One 'impact area' absent from almost every report or policy on social entrepreneurship is defense and security. The most obvious reason for this is the fact that private enterprises are still relatively new to performing the duties of national security

⁷³ McKinsey & Company, 2016

services. As these dynamics have started to change recently, the lack of research in this area becomes all the more apparent.

3.2 Problems with Corporate Social Responsibility

The practical processes and outcomes of implementing CSR have been subject to debate. Within the confines of this thesis I will focus on four problematic aspects of CSR: CSR as 'corporate PR'; CSR devoid of ethics and limited to quantifiable data; CSR as a 'wall of codes'; and limiting CSR to compliance.

CSR as 'corporate PR'

One problem CSR-theory is faced with is its conceptualization as 'corporate PR'. The value of CSR from a corporate perspective is still very much determined by its demonstrated return (direct or indirect) in financial performance. Although the causal relationship between CSR and financial benefit has always been highly variable and ambiguous, its business case is often supported by arguments from four distinct categories: strengthening business's legitimacy and reputation; reducing business's costs and risks; building or strengthening strategic and competitive advantage; and creating situations in which everyone benefits via synergistic value formation.⁷⁴ Most central to this conceptualization is CSR's instrumental nature; its strategic application that downplays any altruism and focuses on financial returns. When perceived like this, CSR still operates under the law of neoliberal logic and cannot be said to function as a positive framework uniting the interests of the corporate actor and the democratic nation state. What remains is a very narrow rationale supporting the use of CSR. This rationale is very aptly formulated by Crowther and Rayman-Bacchus (2016, p. 209):

⁷⁴ Carroll, 2015, p. 89

“If the cost of socially responsible actions is less than the cost of loss (costs of legal and other sanctions plus cost of lost reputation (cost of lost potential revenue plus cost of lost potential desirable employees)) then, depending on timescales, it is economically sensible to invest in socially responsible actions until a notional equilibrium is reached”.

When translated into the capitalist language of numbers and figures, CSR is at risk of becoming, as one employee of the campaigning charity Amnesty International called it; ‘corporate PR’.⁷⁵ The problems here seem to stem from the fact that ‘markets (as they are currently constructed) do not reward ethical businesses’. This statement is supported by a classic 1968 paper by Carr who argued that business operates within an essentially amoral framework whereas society operates under more defined moral standards.⁷⁶ Wolfgang Streeck has also observed this fundamental disparity and states: “Democratic capitalism as a political economy is ruled by two conflicting principles of resource allocation: one operating according to marginal productivity, or what is revealed as merit by a ‘free play of market forces’, and the other based on social need or entitlement, as certified by the collective choices of democratic politics.”⁷⁷ Whereas Streeck points out the tension between the two different value sets that motivate the interaction between neoliberalism and democracy, Jochen Hoffmann would even go as far as calling it ‘potentially paradoxical’.⁷⁸

CSR devoid of ethics and limited to quantifiable data

Another obstacle for CSR-theory is its abstraction from ethics as it is limited to quantifiable data only. This conflict is at the heart of CSR-theory as it attempts to reconcile economic

⁷⁵ Frankental, 2001 (found in: Crowther & Rayman-Bacchus, 2016, p. 206)

⁷⁶ Found in: Crowther & Rayman-Bacchus, 2016, p. 207

⁷⁷ Streeck, 2011, p. 7

⁷⁸ Hoffmann, 2017

values with social values. The ambiguous and multidimensional nature of CSR activity represents not only a corporate commitment to operate ethically with regard to their employees, but also stimulates positive impact on local communities and society as a whole.⁷⁹ CSR is very dependent on the specific context in which it is implemented and does not allow itself to be captured under one single, comprehensive activity. This makes it very difficult for an organization to measure its level of CSR activity. This ambiguity is aggravated by the results produced by CSR activity. A common issue with civil rights or environmental movements is the difficulty associated with quantifying changes in human rights situations, direct ecological impact or other non-financial benefits. For example, the Dow Jones Sustainability Indexes use the size of the corporate board as an indication of good corporate governance; while a relationship between the two might exist, identifying a direct causal relationship might be a bit rash.⁸⁰ Growing awareness in The Netherlands about the disparity between quantifiable data and its accurate representation of reality is demonstrated by the 2018 publication of the *Monitor of Broad Wealth* by the Central Bureau for Statistics, which analyzes alternative ways of measuring wealth other than GDP.

CSR as a 'wall of codes

The difficulty of quantifying social performance can result in a third obstacle for the implementation of CSR: the 'wall of codes'⁸¹ that enterprises have to face in order to assure customers, stakeholders and the general public of their social responsibility. An ever increasing collection of codes of conduct with names like SA 8000, ISO 14000 and FLA are followed by surveys regarding social and environmental impact and ethical policies from *Fortune*, *The Financial Times*, FTSE4Good, Dow Jones Sustainability Index (DJSI), KLD, Energy

⁷⁹ Watts & Holme, 1999 (found in: Lindgreen & Swaen, 2010, p. 3)

⁸⁰ Chatterji & Levine, 2005

⁸¹ Idem., p. 6

Star and The Coalition for Environmentally Responsible Economies (CERES).⁸² These codes and surveys all make use of different criteria, different rating systems, different assessment methods and different certifications and often result in the dilution of the ethical or social values that precede them. I would argue that one of the most serious obstacles of introducing social responsibility to a framework of neoliberal thought is the unquantifiable nature of its value.

Limiting CSR to compliance

The unquantifiable nature of CSR necessitates something more than a simple incorporation of social variables into the corporate formula. In order to enable us to effectively translate social responsibility to the corporate realm, CSR should not be limited to mere *compliance* but move to the actual *promotion* of social values. CSR in the context of PMSC action should be based in a moral imperative that is shared with the state's responsibility towards its citizens and not a business imperative that is driven by financial benefits for its corporate stakeholders. We see how this overarching problem translates to the individual level when we look at the employee, who is understandably unsure what set of moral values to act upon: did the Trident Group armed security personnel shown in the leaked 2012 video fire 'warning shots' in order to preserve essential human rights? Because (inter)national law obliged them to do so? Or because they were contractually obligated to do so and violating this contract with the *MV Avocet* would be bad for business?

⁸² Collected by: Chatterji & Levine

3.3 Corporate Social Responsibility in Private Maritime Security

Companies

In the last chapter, we saw that an important difference between PMSC's and national militaries lies in their respective relationships to the social domain. Central to this difference was the fact that PMSC's simply needed *compliance* with human rights law and social regulations, whereas state actors are expected to *actively promote* the human rights featured in the ICCPR, the ECHR and the UDHR. The roles of both private and national actors have been changing over the past few decades together with their relationship to the social domain; it has become increasingly more important for private actors to incorporate their social impact within business conduct that would traditionally be dominated by financial considerations. As the Dutch capacity gap has led to a situation where the Dutch government is becoming increasingly more dependent on PMSC's for the protection of their national interests, the lines between private and public activity are blurring and corporate actors can no longer be allowed to merely operate on the peripheries of social responsibility. I argue that PMSC's can only legitimately perform public tasks like the protection of commercial ships sailing through pirate-territory, when they would not only act in accordance with human rights principles and regulations about responsible business conduct, but have the promotion of these rights and principles form a central part of their business conduct. Of course, this is easier said than done. An approach like this impedes on essential conceptions about the role of private actors and the nature of their business that have existed since the introduction of capitalism. Milton Friedman is famous for claiming; "There is one and only one social responsibility of business – to use its resources and engage

in activities designed to increase its profits”⁸³, but to retain these traditional business ethics would prevent the legitimate introduction of private security companies to the public domain (or at least it *should*). Still the context in which PMSC’s operate is a very specific and unique one; the relationship between other private actors, the free market and regulations regarding social impact are very much based on a fundamental tension. The business of PMSC’s is reliant on national regulation to such a large extent that the interdependence between their social responsibility and national policy creates a very niche situation for the introduction of CSR.

A number of features are different when considering CSR in this specific context in comparison to CSR in other, more market dependent contexts: CSR can be made to form a ‘threshold’. For one, the business of PMSC’s in this context is one hundred percent dependent on their regulatory compliance. Since the state would generally be the only user of PMSC services, this situation allows for regulatory compliance to form a threshold before any actual business conduct -thus creating a fundamental responsibility precondition- as opposed to CSR functioning as a set of checks and balances during or after PMSC activity. It is here that state actors, instead of the PMSC’s themselves, are enabled to create a CSR framework so as to maximize the degree of democratic responsibility. This also, to a certain extent, alleviates the problems regarding the ‘wall of codes’, as it is possible to create a uniform and coherent regulatory framework in which a set of well defined actors operate. Still, there seems to be a large amount of fear and doubt in introducing PMSC’s to the public domain. The UN has been criticized for hiring companies well known for their misconduct, violence and financial irregularities and allowing them to operate in a domain characterized

⁸³ Friedman, 1962, p. 133

by the absence of guidelines and clear responsibility⁸⁴ and Global Counter Piracy Guidelines seem reluctant to recommend the use of PMSC's⁸⁵. We might be able to gain more insight into the role of CSR in PMSC activity by looking at one specific private actor operating in this context: Group4Securior.

⁸⁴ Pingeot, 2014, p. 4

⁸⁵ BIMCO, ICS, IFSMA, IGP&I, INTERTANKO, INTERCARGO, INTERMANAGER and OCIMF, 2018, p. 37

4. Group4Securior

One private security company that has been involved with maritime vessel protection since 2003 is Group4Securior (G4S). The legitimacy of G4S's business has often been subject of debate and the company very actively promotes CSR. As I explain below, a case-analysis of G4S's history and Human Rights policy will provide important insights into the role and social responsibility of private security companies during anti-piracy action. G4S is based in the UK, which has been known for a much more liberal approach to the outsourcing of military tasks. There is little to no governmental certification for PMSC's in the UK since it utilizes a self-regulatory policy which relies on voluntary codes of conduct by third parties that are incentivized by market demand.⁸⁶ This chapter aims to use the case of G4S to illustrate the relationship between the state and these companies, on the one hand, and between neoliberalism and democracy on the other. Its ultimate goal is to demonstrate the extent to which CSR might be able to bridge the 'responsibility gap' between PMSC's and national militaries.

G4S is a multinational security services company and has been market leader ever since the merging of *Securior* and *Group4Falck* in 2004. G4S has at multiple times been the world's largest employer quoted on the London stock exchange and employed more than 546,000 people in 2018. The company offers a large variety of security services ranging from supplying security personnel, providing monitoring equipment to prisoner and asset transportation. G4S operates across more than 125 countries worldwide and is the world's largest security company measured by revenues. A large number of governments have

⁸⁶ Cusumano, E. & Kinsey, C., 2016

contracted G4S throughout the years for projects like the installment of intruder alarms and ‘risk management and consultancy services’. Among other things, the company has deployed security staff during the 2012 Summer Olympics, provided security work for HM Prison Birmingham and set up the secure perimeter of Homey Airport (better known as Area 51). A long history of negative media attention⁸⁷ and political opposition⁸⁸ has forced G4S to take a prominent and active position within the debate about private security regulations, making the company perfectly suited for a case-analysis.

4.1 Group4Securior and Anti-piracy

One lucrative business for G4S has been the protection of commercial ships from piracy threats in the Horn of Africa. The security giant has recruited large numbers of former Special Forces personnel and Royal Marines and charges staggering amounts of money to secure the safe passage of ships along the coastline of Africa. Between 2011 and 2013, G4S security teams of 200 experts organized over 500 missions at sea, all of which have been successful.⁸⁹ Whereas anti-piracy measures were considerably more passive in the past, limited to fitting razor wire, ‘skidding’ paint and the use of water cannons, recent political developments have resulted in a more aggressive approach. In 2011, piracy was reported to cost the global economy between \$7 billion and \$12 billion due to higher shipping costs and ransom payments.⁹⁰ As the financial strain caused by the pirates on the commercial trade in and around large parts of Africa grew larger and larger every year, the International

⁸⁷ G4S was voted the third world’s worst company in the 2013 Public Eye Awards

⁸⁸ G4S was mentioned explicitly in four amendments by the European Committee on Foreign Affairs when discussing the ‘human rights concerns in private military and security companies’ operations affecting third countries’

⁸⁹ Maritime Journal, March 2013

⁹⁰ Maidment & Neligan

Chamber of Shipping was forced to change its stance on the use of armed guards on commercial ships late 2011. Soon after, many states began to implement new policies authorizing cargo ships to employ PMSC's. Although an expensive endeavor, by 2012, 60% of cargo ships made use of private armed guards.⁹¹ A 2012 study by the Lowy Institute showed that as many as 140 new companies had started providing maritime security services employing some 2700 armed guards in the course of just one year. According to *Oceans Beyond Piracy*, about a billion dollar a year was spent on the employment of these guards.⁹² As a result of the change in policy, the IMB reported in 2015 that no attempted or successful Somali pirate attacks had taken place. As a main actor in the vessel security market since 2003, G4S saw the change in policy as a critical business opportunity and has provided armed protection and tactical and strategic advice on board oil tankers and container ships ever since.

Incontestable is the fact that private security companies can successfully deal with the piracy threat in Somalia: over the last few years IMB reports show that pirate attacks remain fairly constant but no ships were hijacked in the region.⁹³ Of continuing interest to politicians, scholars and journalists however has been the nature of the anti-piracy action by companies like G4S. The Trident Group employees that were accused of having used excessive force claimed that their 'warning shots' were out of self-defense in a life threatening situation. But a maritime industry expert stated that the failure to fire actual warning shots and the rapid and sustained rate of gunfire pointed to excessive use of force.⁹⁴ From the outset, doubts have been raised about the effects of the employment of private security firms on piracy.

⁹¹Dutton, 2016

⁹² CNN

⁹³ ICC, *IMB Piracy Report 2018*

⁹⁴ Dutton, 2016

Opponents of the new policy pointed to the fact that a more aggressive reaction to the actions of pirates will only result in an aggravation of the conflict and escalate the situation even further. So while the IMB reported a 60% decrease in piracy activity from 163 incidents in the first half of 2011 to just 69 a year later, the nature of piracy activity seems to have become increasingly more violent.⁹⁵

Resulting from these and other incidents in which excessive violence appeared to have been used, private security companies and specifically G4S have become known for malpractice, misconduct, violent action and financial irregularities. As there are still no clear international guidelines or regulations about security conduct and responsibility, G4S employee's misconducts like acting violently towards detainees⁹⁶, unlawfully killing an Angolan deportee⁹⁷ and exploiting illegal resources in African countries⁹⁸ –have received no legal sanctions. The controversies surrounding G4S's security work became known to the wider public as a result of their inability to provide enough security staff during the 2012 Summer Olympics⁹⁹ but reports of misconduct can be dated back as far as the 1990's when it operated under the name Group 4.¹⁰⁰

4.2 Group4Securior and Corporate Social Responsibility

G4S has operated in the maritime security sector since its inception and has always actively supported the development and implementation of quality accreditation and certification.

The 7269 L3 qualification, which formed the foundation for a larger industry-wide effort to

⁹⁵ ICC, *Six month drop in world piracy*

⁹⁶ Forbes, 2013

⁹⁷ The Telegraph, 2014

⁹⁸ Rawlinson, 2014

⁹⁹ Booth & Hopkins, 2012

¹⁰⁰ The Week UK, 2012

create international qualification frameworks, was originally designed by the G4S team.¹⁰¹ The concept of 'social responsibility' is promoted as a central commitment on the G4S website. Since 2009, G4S has published an annual CSR report comprised of socio-economic and environmental reporting, updates on material issues, case studies and other accounts. The firm states that, "as a global leader in security related services, corporate responsibility is very important to G4S and forms a key part of [its] strategy". G4S's 2018 CSR report shows how human rights trainings were conducted; human rights control self assessment processes were revised; internal audits were conducted; operational issues were assessed; the 'human rights heat map' was revised; the supplier code of conduct was revised; a second slavery and human trafficking statement was published; and recommendations by the Brook House Immigration Removal Center were implemented. For 2019 G4S aims to continue to build awareness of human rights across the Group, continue self-assessments and internal audits and complete the implementation of the enhanced supplier code of conduct.

In 2011, G4S signed the UN Global Compact and emphasized their aspiration for socially responsible business behavior. This included the promotion of Human Rights, improved labor situations, environment-friendly policy and combating corruption. As 'there are some human rights that are especially salient in the sector in which G4S operates', the company launched its official Human Rights policy in 2013. Authored by a number of internationally recognized human rights experts, the document committed G4S to fulfilling its human rights responsibilities in all of its companies around the world by applying the United Nations Guiding Principles on Business and Human Rights (2011) across all of its businesses. These guiding principles, as stated in the document, affirm four international standards that have achieved broad international consensus as a human rights baseline for all businesses:

¹⁰¹ British Forces Resettlement Services, 2014

- The Universal Declaration of Human Rights (1947)
- The International Covenant on Civil and Political Rights (1966)
- The International Convention on Economic, Social and Cultural Rights (1966)
- The International Labour Organisation Declaration on Fundamental Rights at Work (1998)

In a rights sensitivity analysis, G4S has identified a number of core areas of human rights that are particularly significant to the nature of their business including: rights to life, liberty, security, due process, privacy, property, freedom of movement, freedom of expression, and asylum; as well as international standards around the use of force and international humanitarian law. Furthermore, the company states to make use of international standards like the International Code of Conduct (ICoC) for Private Security Providers and the Voluntary Principles on Security and Human Rights. The company defines the following benefits of adopting human rights best practice: *customers* know they work with a company that respect human rights; *employees* know they work for a company that respects human rights; *partners* know that business with G4S is conducted based on human rights principles; *shareholders* know they have invested in a company with respect for human rights and; *communities* know that G4S has a positive impact on the areas it operates in.

As G4S's Human Rights policy serves to demonstrate the company's commitment to respect human rights and emphasizes the context in which it aims to conduct its business, the concrete guidelines for the implementation of these principles can be found in their management guidance document: *G4S Human Rights Guidelines*. These guidelines center around the concept of 'knowing and showing' which focuses on monitoring and responding to the human rights situation around its operations. The 'knowing' part of this commitment is elaborated on quite thoroughly: a 'human rights due-diligence checklist' is provided as a

means of assessing the relationship between business activities and human rights guidelines; key areas for human rights risk analysis are defined and; a clear accountability-framework is set out. The 'showing' part of this commitment however, is less specifically defined. A number of training courses (their length varying from 1 to 12 days) directed at meeting the relevant international requirements are supposed to create the 'human rights-awareness' described in G4S's policy documents.

4.3 Group4Securior and Problems with Corporate Social Responsibility

When looking at G4S's CSR commitment, we can see a concrete manifestation of the more general problems that occur while attempting to create CSR in private enterprises. The first of these problems is aptly demonstrated by the benefits G4S defines regarding socially responsible business conduct; customers, employees, partners and shareholders *know* that G4S is committed to CSR. This demonstrates the way private actors valorize CSR through its demonstrated return; its value as a financial asset. This conceptualization of CSR as 'corporate PR' bypasses the original intrinsic motives of CSR and is centered around extrinsic motives: "Extrinsic or self-interested motives have the ultimate goal of increasing the brand's own welfare (e.g. increase sales/profits or improve corporate image), whereas intrinsic or selfless motives have the ultimate goal of doing good and/or fulfilling obligations towards society as a whole (e.g. benefit the community or cause upon which the CSR actions focus)." ¹⁰²

¹⁰² Hoffmann, 2017

One thing that is problematized through this corporate conceptualization of CSR, as we saw in chapter 3, is translating CSR's ethical dimension into the language of investment and return. This problem manifests itself in G4S's CSR reporting as only quantifiable data is discussed at length –which is often limited to data pertaining to gender diversity, work-related accidents and CO² emission- and data regarding the actual content of Human Rights is almost completely absent. G4S's CSR reports, published annually on their website, never once mention pirate activities, maritime services or the precarious endeavor of conducting business in areas like this.

Furthermore, the 'wall of codes' problem is demonstrated by G4S's compliance with a seemingly infinite number of human rights documents, BMP's, ICoC's and environmental policies. Relevant policies mentioned in the 2018 'integrated report' include: Business Ethics Policy, Ethical Employment Partnership, HR Core Standards, Gender Pay Gap Report, Slavery and Human Trafficking Statement, Whistleblowing Policy, Human Rights Policy, Environmental Policy, Supplier CoC and Tax Strategy –all of which seem to exist without relation to the others. G4S's 'integrated approach' lacks the holistic and coherent nature of a national legal framework. I argue that the large number of options to gauge G4S's CSR commitment lacks a clear demarcation of what CSR consists in. Resulting from this ambiguity is G4S's inability to accurately measure CSR-performance, which in turn prevents its effective implementation into the G4S business model.

Lastly, G4S's Human Rights policy provides a concrete example of the 'responsibility gap' that exists between private actors and public actors. Central to G4S's 'strategic approach' to human rights is the recognition of their "duty to ensure that [G4S is] not at risk of violating

human rights”.¹⁰³ While there is occasional mention of ‘operations that promote secure and stable communities’ and ‘potentially positive impacts’, G4S’s overall CSR and Human Rights approach seems to be limited to *compliance*: “the corporate responsibility to respect human rights”.¹⁰⁴ A limited CSR-commitment like this would arguably make G4S armed personnel unqualified to replace national military actors for the protection of Dutch merchant ships as it does not effectively bridge the ‘responsibility gap’.

¹⁰³ G4S, 2018, p. 3

¹⁰⁴ *Idem.*, p. 4

5. Conclusion

The passing of 'The Law for the Protection of Dutch Merchant Ships' is a clear indication of the Dutch attempted solution to the dilemma resulting from their military 'capability gap'. This solution is somewhat paradoxical as it at the same time honors as well as challenges Article 97 of the Dutch constitution. It seems "There shall be armed forces for the defense and protection of the interests of the Kingdom, and in order to maintain and promote the international legal order" receives priority over a strict interpretation of "The Government shall have supreme authority over the armed forces". The Advisory Committee on Armed Private Security against Piracy stated that a more modern stance toward the monopoly on violence would provide a framework that allowed for the monopoly on violence to remain with the government, while at the same time allowing private actors to legitimately use force.

Part and parcel of a larger neoliberal paradigm shift is a more flexible interpretation of the obligations and responsibilities of the nation state. The Neoliberal turn towards the free market as a solution to the inability of national public institutions to provide solutions concerning security threats has led to the invasion of neoliberal values into the public domain and the erosion of democratic responsibility. The negative effects of this paradigm shift with regards to national security are manifested in the state's decreasing ability to maintain its monopoly on the legitimate use of violence. The legal and ethical vacuum that is left in areas from which the nation state has seceded is now being dominated by private actors who are able to translate the absence of regulatory frameworks into valuable business opportunities. In the absence of democratic responsibility, social incentives have

been moved to the backseat and economic incentives dominate a situation characterized by increasingly violent confrontations and a diluting respect for human rights.

It is my opinion that the shift towards private actors operating in the public domain is a *necessary evil*; the 'capacity gap' is filled and the threat of piracy in the Horn of Africa is effectively dealt with. It would however be valuable, if not essential, to mitigate the *evil* of this *necessary evil* and try to find ways to combat the negative impact by private actors on society as a whole. In analyzing the details of the political developments surrounding international policy regarding PMSC's, I was able to define the difference between state actors and private actors in this context: this difference resides in their relationship with 'social responsibility'. This has led me to believe that one solution to the problems of outsourcing the monopoly on the use of violence can be provided by introducing CSR Responsibility into the business model of those actors allowed to operate within this context.

The Law for the Protection of Dutch Merchant Ships seems to be appreciative of the precarious nature of the context in which it will be implemented. Its primary focus is on maintaining the state's monopoly on violence and democratic responsibility through accreditation that is directly linked to the Dutch Minister of Justice and Security, who has expressed his intentions on implementing this law as soon as possible. It is my recommendation, through the analysis provided in this thesis, that the system of accreditation focuses on the creation of CSR. Pingeot observes how more research is required into the effect of PMSC's on the democratic control of the use of force; I contend that this research could benefit from looking into CSR-theory.

For CSR to successfully bridge the 'responsibility gap', it is essential to omit the obstacles I have analyzed in this thesis: CSR as 'corporate PR'; CSR devoid of ethics and limited to quantifiable data; CSR as a 'wall of codes; and limiting CSR to compliance. In the specific context of PMSC's, I argue that there is a possibility to omit these obstacles as the interdependent nature of the relationship between public and private actors offers unique opportunities. The Law for the Protection of Dutch Merchant ships enables a more substantive CSR-rationale than the one formulated by Crowther and Rayman-Bacchus. As the national government constitutes the only 'business opportunity' in this context, it becomes possible to create a 'CSR threshold'. This threshold enables a focus on socially relevant business conduct, ethically valuable considerations, a unified and coherent regulatory framework and an overall increase in democratic responsibility. The content of CSR will not be determined by free market functions and will therefore be less limited by its unquantifiable nature or the fragmented and ambiguous certification as described by Chatterji and Levine.

While it might be possible to combat the negative effects of introducing private actors to the public sphere through the creation of corporate social responsibility, a lot remains to be done to establish an appropriate and effective legal and regulatory framework respectful of the relevant social, ethical and political considerations. More research into the structure, content and viability of this framework is essential before the Law for the Protection of Dutch Merchant Ships can see practical implementation.

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