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Regulating private maritime security companies by standards: causes and legal consequences

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Abstract

The quest for international legal instruments capable of regulating private maritime security companies (PMSCs) efficiently has been previously explored in-depth, but few scholars or practitioners have anticipated the rise of a new kind of regulation instrument coming from outside the traditional circles of regulators composed of states, international organizations and the maritime industry. Traditional international law instruments have been unable to create international solutions for the specific issue of PMSCs and the outcome is the rise of specialized private soft law instruments. This article focuses on one of these soft law instruments produced by an outsider: the ISO/PAS 28007-1:2015. The hypothesis is that arrival of the International Standardization Organization (ISO) on the private maritime security regulation field is the consequence of both the rise of ISO standard as a powerful regulation instrument in maritime matters and societal security matters, and the very specific configuration of international law on PMSC regulation. The contribution explores the logic by which the international regulation landscape opens the door to the ISO initiative, how the ISO came to invest the issue of PMSCs, and raise some of the potential legal implications of the ISO/PAS 28007-1:2015.

Keywords: standards, ISO, piracy, private maritime security companies, PMSC

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1. Introduction

As numerous private maritime security companies (PMSC or PMSCs) have entered the game of maritime security, there have been debates on the kind of regulatory framework in which these actors must act, notably as regards the use of force and liability. The current regulatory framework related to PMSCs does not rest on classic hard law instruments of international law. Rather, it is complemented by soft law instruments, such as the four sets of guidelines issued by the Internation-

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al Maritime Organization (IMO) Maritime Safety Committee.[1] However, the IMO guidance is not sufficient to meet the concerns of the shipping industry and the insurance companies contracting PMSCs on the one hand and, on the other, those of well-established PMSCs faced with an increasing number of maverick competitors. This situation resulted in the rise of specialized *private* soft law instruments intended to overcome this problematic situation and to regulate this maritime category of the 'burgeoning transnational market for force' as described by Avant.[2] The rise of these instruments and the regulation of PMSC is a challenge, as explained by White and MacLeod, given the traditional focus on the state as principal right holder and duty bearer in international law, the use of PMSCs by international organizations does indeed raise complex issues of responsibility and accountability.[3] But, as noted by DeWinter-Schmitt and Elms, the international hard and soft law landscape seems to be relatively well articulated for the industry of PMSCs, notably with the recent developments in the ANSI/ASIS private security company (PSC) series and International Code of Conduct for Private Security Service Providers (ICoC) process that contributes to the further elaboration of soft law standards.[4]

This article focuses on one of these soft law instruments produced by a private actor: standard 28007-1:2015 (ISO 28007) issued by the International Standardization Organization (ISO). The hypothesis is that the ISO 28007 has the potential to emerge as the international regulation tool of reference for PMSCs for three reasons. First, because of the wide support coming from the IMO Maritime Safety Committee as well as the industry. Second, because in comparison to the Montreux Document and the ICoC, it seems to be the best tool for the situation of piracy, more directly relevant to the situation of piracy and armed robbery in the maritime domain.[5] Third, because it has the capacity to be articulated with other international hard law and soft law instruments on PMSCs and, more importantly, it can generate multiple legal consequences, beyond its role as a benchmark.

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1 IMO Maritime Safety Committee, 'Interim guidance to private maritime security companies providing privately contracted armed security personnel on board ships in the High Risk Area'(25 May 2012) MSC.1/Circ.1443; IMO Maritime Safety Committee, 'Revised interim recommendations for flag states regarding the use of privately contracted armed security personnel on board ships in the High Risk Area' (12 June 2015) MSC.1/Circ.1406/Rev.3; IMO Maritime Safety Committee, 'Interim recommendations for port and coastal states regarding the use of privately contracted armed security personnel on board ships in the High Risk Area' (16 September 2011) MSC.1/Circ.1408; IMO Maritime Safety Committee, 'Revised interim recommendations for port and coastal states regarding the use of privately contracted armed security personnel on board ships in the High Risk Area' (25 May 2012) MSC.1/Circ.1408/Rev.1; IMO Maritime Safety Committee, 'Revised interim guidance to shipowners, ship operators and shipmasters on the use of privately contracted armed security personnel on board ships in the High Risk Area' (25 May 2012) MSC.1/Circ.1405/Rev.2.

2 Deborah Avant, 'The Privatization of Security and Change in the Control of Force' (2004) 5 International Studies Perspectives 153, 153.

3 Nigel D White and Sorcha MacLeod, 'EU Operations and Private Military Contractors: Issues of Corporate and Institutional Responsibility' (2008) 19 EJIL 966.

4 Rebecca DeWinter-Schmitt and Heather Elms, 'A Critical Analysis of Proliferation, Dynamic Interaction, and Evolution of Self-regulation within the Private Security Industry' (Working paper presented at the International Studies Association Annual Convention, San Francisco, 6 April 2013) 7.

5 IMO Maritime Safety Committee, 'Interim guidance to private maritime security companies providing privately contracted armed security personnel on board ships in the High Risk Area' (25 May 2012) MSC.1/Circ.1443, Annex, 2.1.

The arrival of the ISO on the private maritime security regulation field is not a mere coincidence; rather, it is a logical consequence of both the rise of the ISO standard as a powerful regulation instrument in maritime matters and societal security matters, and the very specific configuration of the international law on the PMSC regulation. This contribution explores the process by which the ISO came to invest in the issue of PMSCs, and it raises some of the potential legal implications of ISO 28007 with an assessment of this potential.

2. The regulation of PMSCs and the ISO standards

To understand how ISO standards have entered the regulation of PMSCs and its legal implications, it is necessary to first understand what standards are as a regulation instrument with legal implications (2.1) and then analyse PMSC regulation as a subject of the ISO standardization (2.2). This will allow us to fully explore the legal potential and implications of ISO 28007 (2.3).

2.1 Standards as regulation instruments in international law

To comprehend how standards are regulation instruments in international law, one must first and foremost define what is meant by standards and what function they fulfil (2.1.1) and how they can constitute sources of legal obligation and are legally used in various ways (2.1.2).

2.1.1 The definition and function of standards

The international reference when trying to define standards in the field of standardization is that established jointly by the ISO and the International Electrotechnical Commission (IEC) in the terminology guide of normalization activities periodically revised since 1976. Based on the guide, a standard is a document established by consensus, and approved by a recognized body, that provides for common and repeated use, rules, guidelines or characteristics for activities or their results, aimed at the achievement of the optimum degree of order in a given context.[6] The given definition may be completed with the definition supplied by the ISO outside of the guide. That particular definition remains close to the first one but sheds light on what is meant by 'common and repeated usages' for which rules and characteristics are provided. Indeed, it states that standards define demands, specifications and guiding principles or characteristics to be systematically used in order to ensure the suitability for use of products, processes and services.[7]

The creation of standards is driven by needs that are inherent to any international market that wishes to evolve towards optimal integration. Indeed, standards play an active role in the very organization of international trade under three angles: the harmonized transmission of information to consumers and between operators at different stages of production, the role of the organization

6 ISO – IEC, *Guide 2 – Standardization and related activities – General vocabulary* (8th edn, 2004) 12, para 3.2.

7 ISO, 'We're ISO: we develop and publish International Standards' (*International Standardization Organization*) <www.iso.org/standards.html> accessed 1 May 2017.

in network production, and the interface role to determine the interoperability and substitution of products on a market. From that point on, any integrated market requires standards in order to exist[8] as they act as a 'common grammar' between the actors of the market. It also enables all actors to agree on the 'how' and the 'what', which are key conditions of crucial steps such as conception, packaging and/or assembling, the closing of contracts and insurance.[9]

2.1.2 The legal nature and legal apprehension of standards

Standards are guarantee instruments that define criteria in order to reach an ideal model. One of the characteristics of the standards is that they are not binding as such from a legal standpoint; they are created with the intent of being an instrument of a voluntary nature.[10] Standards do not create legal obligations just by the mere fact of their existence. If they provide demands in the sense of provisions formulating criteria to be met, these demands are not mandatory – i.e. non-binding – unless induced by a legal norm.[11] Indeed, the application of the rules defined by standards is only made binding by virtue of a legal instrument or an exclusive reference to this legal instrument.[12] This *sui generis* non-binding aspect can clearly be deduced from the explanations given in the ISO and IEC common terminology guide. The latter specifies a different definition for 'mandatory standard', which states that the distinction with the standard can be found in the binding characteristic brought by the reference within the legal instrument.[13] Nevertheless, the legally non-binding characteristic of the standards is nonetheless insufficient to discern all the implications at the legal level of standards.

It seems important not to stop at the debate on the legal value of standards as such but to grasp the legal dimension of standardization.[14] To comprehend this legal dimension, one must remember the importance of the referent logic of the standard. The reference that they constitute creates the basis for accountability[15] between the recipient of the standard and other parties. This implies that in order to understand the legal dimension of standardization, the key element lies in the recognition of the standard, its referent characteristic and, most of all, the use of this matrix. As soon as a company decides to conform to a standard, it becomes accountable in terms of its conformity to the standard. From that point on, specific ties can appear in the various legal relations that this company has with a third party: the criteria developed by the standard will be used as explicit or implicit condition

8 Harm Schepel, *The Constitution of Private Governance: Product Standards in the Regulation of Integrating Markets* (Hart Publishing 2005) 5.

9 ibid.

10 ibid 15.

11 ISO – IEC (n 6) 32, para 7.5.1.

12 ibid 44, para 11.4.

13 ibid.

14 Régis Bismuth, 'Une cartographie de la standardisation internationale privée: tentative d'identification de l'objet et de ses enjeux' in Régis Bismuth (ed), *La standardisation internationale privée* (Larcier 2014) 17.

15 Thomas Berns, 'Conclusion: Gouverner sans fin, ou quand le réel nous gouverne' in Benoit Frydman and Arnaud Van Waeyenberge (eds), *Gouverner par les standards et les indicateurs* (Bruylant 2013) 384.

by a company, a client, an administration or even a market. In this framework, the legal dimension manifests itself in the recognition that the standard will benefit from – either *de facto*, by becoming a market demand, or *de jure*, where it can assume different forms.[16]

We have identified numerous forms of *de jure* recognition of standards, such as their inclusion in the legal texts of international organizations for the purpose of presumption of conformity,[17] their inclusion in a contract as a requirement to comply,[18] their potential recognition as trade usage in international commercial arbitration,[19] their inclusion in the contract as drafting support,[20] the resort to standards as a check-list in the contract review process,[21] the compliance requirement based on a rule of substantive law,[22] their use as a scale to attest best standard practices,[23] or even their use as standard of care or as proof of due diligence[24]. There are also other forms of *de jure* recognition of standards, notably in United States law through their use in the domestic framework of self-audit privilege, in the fact that governmental agencies can take into account standards in self-policing incentives and through mitigating factors of the discretionary authority of prosecutors in the United States, and finally, through their use in the framework of a conviction.[25]

16 Bismuth (n 14) 17.

17 Erik Wijkström and Devin McDaniels, 'International standards and the WTO TBT Agreement: Improving Governance for Regulatory Alignment' (WTO Staff Working Paper, April 2013) ERSD-2013-06, 2, 3.

18 Richard Kemp, 'The growing role of standards in cloud contracts – some perspectives on ISO 27018' (*Lexology*, 26 October 2014) <www.lexology.com/library/detail.aspx?g=1ba0b154-346b-4c88-8ed3-ed1d2249ff87> accessed 1 May 2017. One case is that of the compliance requirement included in a set of specifications as part of an offer or while in a Service Level Agreement (SLA) in which the standard is a technical specification formalizing the expectations of the parties on the level of service.

19 Marc-Antoine Carreira da Cruz, 'International standards as trade usages in international arbitration' (2016) 22 Young Arbitration Review 34.

20 This is, e.g., the case in the field of contracts for construction and engineering work for which the standard ISO 6707-2:2014 specifies the contractual terms used. See ISO 6707-2:2014 - Buildings and civil engineering works – vocabulary – part 2: contract terms.

21 ISO 9001:2008 – Quality Management Systems – Requirements, 7.2.2 previously 4.3.

22 Schepel (n 8) 277, 350; Robert W Hamilton, 'The Role of Nongovernmental Standards in the Development of Mandatory Federal Standards Affecting Safety or Health' (1978) 56 Texas Law Review 1329.

23 Burke Files and Asset, 'Due Diligence, Standards and The Law' (*International Due Diligence,* 2013) <www.international-due-diligence.org/due-diligence-standards-and-the-law/> accessed 1 May 2017.

24 Caroline G Hemenway, '10 Things You Should Know About ISO 14000: Get acquainted with the international environmental management system standard before it's too late' (*Quality Digest Magazine*, October 1995) <www.qualitydigest.com/oct/iso14000.html> accessed 1 May 2017; European Co-Operation for Accreditation, *Legal Compliance as a part of Accredited ISO 14001: 2004 certification* (EA-7/04 M: 2007) 13, para 5.5; *R. v Maple Leaf Metal Industries Ltd.* [2000] ABPC 95; *R. v Grant Forest Products Inc.* [2001] O.J. No. 3374; OHS Insider, 'Is Following an Industry Standard the Same Thing as Due Diligence?'(2012) <https://ohsinsider.com/search-by-index/due-diligence/is-following-an-industry-standard-the-same-thing-as-due-diligence-3> accessed 1 May 2017.

25 Marc-Antoine Carreira da Cruz, 'La contribution de la standardisation à la cohérence entre la responsabilité sociétale des entreprises et l'espace normatif de l'OMC en droit international' (IDPD Université de Nice Sophia Antipolis 2015) 214-20.

2.2 PMSC as a field of standardization

After comprehending the way in which standards are regulation instruments, one must explore how the PMSC has become a field of standardization for the ISO. This entails an understanding of the process of extension of standardization from technical to management and behavioural matters (2.2.1), which allows us to address the question of the standards on private security companies and dealing specifically with PMSCs (2.2.2).

2.2.1 The extension of standardization: from technical to management and behavioural matters

The recent ISO initiative to work on a standard on PMSCs is one of the last results from a long process of extending the ISO standardization field. From its creation in 1947 until approximately the 1980s, the ISO's policy of standardization covered almost exclusively technical disciplines (industrial metrology, component materials determination, and acceptability of products and materials); these disciplines have been the subject of purely technical assessments.[26] Beginning in the 1980s, the ISO started tackling new themes, including quality, safety and the environment.[27] The type of expertise expanded, stakeholder input was collected and, from that point on, standards were recognized through certifications based on management principles. At that time, standardization was based on a new approach that drew on the insurance industry,[28] the world of quality control and technical inspection processes inherited from the so-called quality movement and then the total quality management.[29]

As a result of this approach, a new generation of standards emerged in the late 1980s and early 1990s: the management system standards (MSS),[30] of which the ISO would be the flagship producer. In the late 1990s, a third model emerged in the ISO's standardization policy: the behavioural standardization, where validation is based on certifications of good practice.[31] The major evolution of this third model was the growing importance of the external orientation of standardization processes and the fact that the process itself became an evaluation object in its own right and was no longer

26 Vincent Helfrich, *La régulation des pratiques RSE par les normes: Le cas de la norme ISO 26000 sur la responsabilité sociale*, 5ème Congrès de l'Association pour le Développement de l'Enseignement et de la Recherche sur la Responsabilité d'Entreprise 'Transversalité de la Responsabilité Sociale de l'Entreprise: l'entreprise à l'aune de ses responsabilités vis-à-vis de l'homme, de l'environnement et du profit?' (2008 Grenoble) 9.

27 ibid.

28 Stepan Wood, 'The role of the International Organization of Standardisation (ISO) in governing environmental conflict and corporate social responsibility in developing countries: Questions for research' in Beatriz Londoño Toro (ed), *Propriedad, Conflicto y Medio Ambiente* (Universidad del Rosario 2004) 19.

29 Abby Ghobadian, David Gallear and Michael Hopkins, 'TQM and CSR nexus' (2007) 24 IJQRM 704; Su Mi Park Dahlgaard, 'The evolution patterns of quality management: Some reflections on the quality movement' (1999) 10 TQM 473, 480; ISO 9000, ISO 14001, and apart from the ISO, the OHSAS 18001 and SA 8000.

30 ISO 9000, ISO 14001, and apart from the ISO, the OHSAS 18001 and SA 8000.

31 Helfrich (n 26) 10.

only the final product/service.[32] This changeover where the process became central is seen as a major accomplishment and characteristic of the business world in the 1990s.[33] This third model led to a new generation of standards in new thematic fields far beyond their initial core business: notably corporate social responsibility, sustainability, risk assessment, and safety and resilience of the society.[34]

2.3 The ISO initiative on private security companies and PMSCs

Based on the evolution of standardization described, and when getting back to the issue of PMSCs, how did the idea of an ISO initiative of standardization related to PMSCs come to life? This process is a result of the match between the ISO policy and several external factors. One can observe bridges in the context of developing a standard on PMSCs and on private security companies in general, but it is important to observe that, even though these two ISO initiatives have connections and happened globally at the same time, they have distinct stakes, development and specificities.

First, on the matter of private security companies in general (and thus not the standard on PMSCs), one needs to understand that the ISO initiative that led to the creation of an ISO standard for the management system for private security operations – ISO 18788:2015[35] – is a consequence of a specific context and long process. As noted by MacLeod, there has been a global context of rapid and increasing outsourcing of security services by states to private security companies in recent years and associated human rights violations, which have served as the catalysts for long overdue regulation of the global private security company industry.[36] Avant describes this outsourcing trend as 'a burgeoning transnational market for force' with new trends: a strong evolution of the ratio of contractors to active-duty personnel during conflicts, the transnational nature of the market, and the fact that states are no longer the only organizations that finance security.[37] In this context, there have been some landmarks, notably the Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to operations of Private Military and Security Companies during Armed Conflict. As noted by DeWinter-Schmitt, the Montreux Document set the stage for other regulatory efforts, such as the development of the multi-stakeholder ICoC.[38]

About the process, it was set off by a stakeholders' initiative mixing public and private actors and, initially, the US Department of Defense, ASIS International - a global company that develops educational programs and materials for security professionals - and the American National Standard

32 Gerard Zwetsloot and Marcel Van Marrewijk, 'From quality to sustainability' (2004) 55 JBE 80.

33 ibid.

34 ISO 26000, ISO 37101, ISO 31000, ISO 22316.

35 ISO, ISO 18788:2015 – Management system for private security operations – requirement with guidance for use.

36 Sorcha MacLeod, 'Private Security Companies and Shared Responsibility: The Turn to Multistakeholder Standard-Setting and Monitoring through Self-Regulation-'Plus" (2015) 62 Neth Int Law Rev 119.

37 Avant (n 2) 153, 157.

38 Rebecca DeWinter-Schmitt (ed), 'Montreux Five Years On: An analysis of State efforts to implement Montreux Document legal obligations and good practices' (2013) 7 <www.wcl.american.edu/index.cfm?LinkServID=B1E626D9-095E-4A28-94A94551CEA3488E> accessed 1 December 2017.

Institute (ANSI).[39] At the very early stage, it all began with the general issue of regulating the behaviour of private security contractors in war zones. The US Department of Defense reached out to ASIS International in the summer of 2010 after the House of Representatives passed H.R. 5136, which called for standards and certification of private security service providers.[40] Subsequently, new legislation was enacted and passed by the Congress and, in January 2011, President Obama signed *P.L. 111-383, The Ike Skelton National Defense Authorization Act for Fiscal Year 2011*, which included a requirement for standards and third party certification for private security service providers.[41] Specifically, the legislation calls for guidance, first, to establish criteria for defining standard practices for the performance of private security functions, which shall reflect input from industry representatives as well as the Inspector General of the Department of Defense; and, second, to establish criteria for weapons training programs for contractors performing private security functions, including minimum requirements for weapons training programs of instruction and minimum qualifications for instructors for such programs.[42]

In March 2011, ASIS International was awarded a contract with the US Department of Defense to develop an ANSI standard that provides principles and requirements for a quality assurance management system for private sector security organizations to abide by and demonstrate their accountability to internationally recognized norms of civil and human rights while providing quality assurance in the provision(s) of their products and services.[43] In 2012 and 2013, the ANSI approved these two standards: the ANSI/ASIS PSC.1-2012 and the ANSI/ASIS PSC.3-2013.[44] As the ambition was to have a single, internationally agreed standard the PSC.1 standard co-developed by the ANSI and ASIS International was pushed in the pipeline of the ISO channel to feed the creation of a global standard – thus an ISO standard. Concretely, the PSC.1 was submitted to the ISO to be considered for adoption of an international standard for private security companies working in complex environments.[45]

On the specific initiative of the ISO on PMSCs, the process and stakes were different. First, one should remember that the ISO is not a novice in the standardization of maritime matters. The ISO has a long history of collaboration with the IMO in this field, as it has been in charge of more than

39 DeWinter-Schmitt and Elms (n 4) 5-6.

40 National Defense Authorization Act for Fiscal Year 2011 (USA).

41 ASIS International, 'ASIS Awarded Contract with US Department of Defense to Develop Standard to improve Performance and Accountability of Private Security Services Providers' (*Asis Online*, 16 March 2011) <www.asisonline.org/News/Press-Room/Press-Releases/2011/Pages/PSPProviderStandard.aspx News release> accessed 1 May 2017.

42 ibid.

43 ibid.

44 ASIS - ANSI/ASIS, PSC.1 -2012 American National Standard – Management System for Quality of Private Security Company Operations – Requirements with Guidance; ANSI/ASIS PSC.3 -2013 Maturity Model for the Phased Implementation of a Quality Assurance Management System for Private Security Service Providers.

45 Foreign & Commonwealth Office (U.K.), *Written Statement of Parliament – Private Security Companies* (17 December 2012) <www.gov.uk/government/speeches/private-security-companies > accessed 1 April 2017.

300 standards (plus more than 90 in progress) related to ships and marine technology, with standardization of design, construction, structural elements, outfitting parts, equipment, methods and technology, and marine environmental matters, used in shipbuilding and the operation of ships, comprising sea-going ships, vessels for inland navigation, offshore structures, ship-to-shore interface and all other marine structure subjects to IMO requirements.[46] The second point is that the ISO is the only international organization with massive experience not only in standardization of numerous maritime matters but also in the standardization of management processes, societal security[47] (amongst others, mass-evacuation, video-surveillance, organizational resilience), emergency management,[48] risk assessment processes[49] and especially supply chain security management,[50] which are all matters linked with the complex issue of PMSC behaviour and its regulation. Third, a crucial reminder is that, in 2007, the ISO had already produced a standard which collectively dealt with security assessment, competence of personnel and maritime facility issues: ISO 20858:2007. Indeed, this standard establishes a framework to assist marine port facilities in specifying the competence of personnel to conduct a marine port facility security assessment and to develop a security plan as required by the ISPS Code International Standard, conducting the marine port facility security assessment, and drafting/implementing a Port Facility Security Plan (PFSP).[51] Fourth, of course, the parallel process of working on the more general topic of private security companies, which led to ISO 18788, was an element that worked in the ISO's favour.

The field was therefore opportune, and the ISO could not only boast its unique and multidisciplinary expertise in a context where the IMO acknowledged the lack of standard to regulate PMSCs, but also its know-how in creating standards for the IMO requirements. Then, how did things happen exactly? The perspective of the IMO Maritime Safety Committee was that it did not support self-certification or self-regulation by the private maritime sector.[52] Also, the Maritime Safety Committee has specifically stated that other famous instruments, such as the Montreux Document and the ICoC, were not directly relevant to the situation of piracy and armed robbery in the maritime domain and

46 ISO, 'ISO/TC 8 Ships and marine technology – scope' (*International Standardization Organization*, 2017) <www.iso.org/committee/45776.html> accessed 1 March 2017.

47 ISO, 'ISO/TC 292 Security and Resilience – scope' (*International Standardization Organization*, 2017) <www.iso.org/committee/5259148.html> accessed 1 March 2017.

48 ISO, ISO 22320: 2011 - Societal Security – Emergency Management – Requirement for incident response; ISO 22322: 2015 - Societal Security – Emergency Management – Guidelines for public warning; ISO 22324: 2015 - Societal Security – Emergency Management – Guidelines for colour-coded alerts; ISO 22325: 2016 - Societal Security and resilience– Emergency Management – Guidelines for capability assessment; ISO/TR 22351:2015 – Societal Security – Emergency Management – Message structure for exchange of information.

49 ISO, ISO 31000: 2009, ISO 31000 – Risk management.

50 ISO, ISO 28000:2007 - Specification for security management systems for the supply chain.

51 ISO, ISO 20858: 2007 – Ships and marine technology – Maritime port facility security assessments and security plan development.

52 IMO, 'IMO's evolving position on PCASP' (*International Maritime Organization*, 2017) <www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Pages/Private-Armed-Security.aspx> accessed 1 April 2017.

did not provide sufficient guidance for PMSCs.[53] Following that standpoint, the interim guidance to PMSCs was agreed upon by the Maritime Safety Committee, when it met for its 90th session in May 2012. And it is on this very precise occasion that the Maritime Safety Committee formally agreed that the ISO would be in the best position to develop international standards for PMSCs based on the IMO-developed guidance and with relevant IMO liaison and participation in the ISO process for the development of standards.[54] Hence, the ISO – and more specifically, the ISO Technical Group TC 8 working on Ships and Marine Technology – was seen by the IMO as being in the best position to develop the standard with their guidance and participation.[55]

From that point, the process reached a first step in November 2012 with the publication of a specification:[56] the ISO/PAS 28007:2012. In November 2012, at its 91st session, the Maritime Safety Committee welcomed the news.[57] The new standard fits in the core ISO 28000 series related to security management.[58] In this context, the new-born ISO/PAS 28007:2012 set out the guidance for applying the existing ISO 28000, a certifiable security management systems standard for supply chain to PMSCs.[59] Three years later, in April 2015, the ISO 28007,[60] a full-grown standard, superseded the ISO/PAS 28007:2012.

3. The ISO 28007 and its potential legal implications

Now that we understand the way the ISO invested in a standard on PMSCs, we can analyse the ISO 28007 on PMSCs and its potential legal use. In order to achieve that, it is paramount to first understand what this standard is (3.1) and then explore the potential legal implications (3.2).

3.1 The content and addressee of the standard

Who is ISO 28007 aimed at? And what is its purpose? To answer this question, one must look at the content of the standard. ISO 28007 gives guidelines containing additional sector-specific recommendations which companies that comply with ISO 28000 can implement to demonstrate that

53 IMO Maritime Safety Committee, 'Interim guidance to private maritime security companies providing privately contracted armed security personnel on board ships in the High Risk Area' (25 May 2012) MSC.1/Circ.1443, Annex, 2.1.

54 IMO Maritime Safety Committee, 'Guidance for private maritime security companies agreed by IMO's Maritime Safety Committee Maritime Safety Committee (MSC)' MSC 90th session (16 to 25 May 2012).

55 Maria Lazarte, 'Fighting Piracy - ISO guidelines for armed maritime guards' (*ISO News*, 14 March 2013) <www.iso.org/news/2013/03/Ref1717.html> accessed 1 April 2017.

56 Foreign & Commonwealth Office (n 45).

57 IMO Maritime Safety Committee, *91st session, 26 to 30 November 2012*, briefing of November 30, 2012.

58 ISO, 'ISO/TC 292 Security and Resilience – scope' (*International Standardization Organization*, 2017) <www.iso.org/committee/5259148.html> accessed 1 March 2017.

59 ISO, ISO 28000:2007 - Specification for security management systems for the supply chain.

60 ISO, ISO 28007-1 – Ships and Marine Technology – Guidelines for Private Maritime Security Companies (PMSC) providing privately contracted armed security personnel (PCASP) on board ships (and pro forma contract) – Part 1: general.

they provide privately contracted armed security personnel on board ships.[61] The standard is thus designed for PMSCs, yet it does not intend to solve the issue of overlapping competencies between flag states, coastal/port states and home states of the PMSC. It intends to delineate a comprehensive set of requirements that a PMSC must follow to be able to comply with a certain optimum on the legal, financial, management, risk and ethical perspectives in its internal organization, and for external purposes towards clients, authorities and insurances companies. The standard aimed to help the PMSC to comply with this optimum to prove it can be able to answer adequately to any due diligence process a shipowner can lead when selecting the PMSC and when contracting it, and to prove that it can answer effectively and suitably to any emergency or incident situation while in operation. The standard is composed of six sections: the scope, the normative references, the terms and definitions, the security management system elements for PMSCs and the operation guidance.

The first section deals with the scope of the standard and explains what was said previously: ISO 28007 gives guidelines containing additional sector-specific recommendations that companies who comply with ISO 28000 can implement to demonstrate that they provide privately contracted armed security personnel on board ships.[62] The scope section also states that the standard is subject to certification and ISO 28000 on security management systems for the supply chain is indispensable for its application. It is important to stress that if the standard is designed for PMSCs, it can nevertheless be used by shipowners in their relation to PMSCs as we will see further. The second section focuses on the normative references[63] – i.e. the way the standard is articulated with other standards. In this case, it says that ISO 28000 – specifications for security management systems for the supply chain, is indispensable for its application. The third section presents the terms and definitions used for the purposes of the standard,[64] which will allow us to avoid misunderstandings and conflicts of interpretation.

The fourth section is the heart of the standard. It presents general and specific requirements for the security management system for PMSCs.[65] It has six subsections, each divided in many sub-sub sections. Subsection 4.1 deals with general requirements: the understanding of the PMSC and its context; the understanding of the needs and expectations of interested parties; the determination of the scope of the security management system; the security management system itself; the issue of leadership and commitment; the question of competence, organizational roles, responsibilities and authorities; the structure of the organization; the financial stability of the organization, and the delicate and crucial question of the outsourcing and subcontracting and the insurance issues. The other subsections (4.2, 4.3, 4.4, 4.5 and 4.6) deal with more specific requirements: the planning, the resources, the training and awareness, the communication and the documentation and records. Globally, section 4 of the standard is composed of numerous requirements of various nature of which many of them overlap with recommendations made by the IMO in its guidance to PMSCs.[66]

61 ibid Part 1: general, 1. Scope.

62 ibid.

63 ibid Part 2: Normative references.

64 ibid Part 3: Terms and definitions.

65 ibid Part 4: Security management systems elements for Private Maritime Security Companies (PMSC).

66 IMO Maritime Safety Committee, 'Interim guidance to private maritime security companies providing privately contracted armed security personnel on board ships in the High Risk Area' (25 May 2012) MSC.1/Circ.1443.

The connection with other instruments of international law is also made by several requirements, notably that the PMSC should establish, implement and maintain procedures to ensure that all security operatives carrying out tasks on its behalf are aware of and receive training in the relevant and applicable provisions of international law and national law, and of SOLAS Convention, the ISPS Code, International Safety Management and any current best management practices.[67] Nevertheless, the ISO 28007 is not a copy of the IMO Maritime Safety Committee interim guidance, as the fifth section of the standard is quite rich in various requirements that go beyond the guidance. Indeed, the fifth section is of the utmost importance as it deals with the operation aspects.[68] It is composed of nine sub-sections including command and control of the security personnel questions and incident management, monitoring and investigation. When observing the standard carefully, one can note that the planning and control requirements encompass not only requirements on the command and control of security personnel, guidance on rules for the use of force and incident management, but also some categories of requirements on casualty management,[69] protection of evidence,[70] and client complaints, grievance procedures and whistle blowing.[71]

Another point is the massive emphasis on risk assessment for PMSCs. This point, already present in the IMO guidance is well developed here with a double necessity for a PMSC to conduct its own risk assessment and to be able to simultaneously expose how it responds to the risk assessment carried out by shipowner before contracting the PMSC.[72] A crucial point of the standard is the requirement related to outsourcing and subcontracting: not only should a PMSC have a clearly defined and documented process to explain to shipowners and state authorities the circumstances under which it outsources activities, functions and operations and its supply chain, but it should also take responsibility for activities outsourced to another entity and have legal enforceable agreements covering such arrangements.[73] In connection with this requirement, the standard ask to the company is that it should demonstrate that it has sufficient insurance to cover risks and associated liabilities from its operations and activities, consistent with contractual obligations.[74] A major point is that this requirement also applies to the outsourcing or subcontracting of services, activities and operations.[75] Finally, the sixth section of the standard focuses on performance evaluation[76] and is composed of requirements allowing the PMSC to evaluate how it accomplishes the previous requirements, through a monitoring system, internal audit, management review, nonconformity and corrective action, and systems of continual improvement.

67 ISO, ISO 28007-1– Part 1: general, 4.4.3.

68 ibid Part 1: general, 5. Operation.

69 ibid 5.7.

70 ibid 5.6.

71 ibid 5.9.

72 ibid 4.1.2.

73 ibid 4.1.10.

74 ibid 4.1.11.

75 ibid.

76 ibid 6 Performance evaluation.

3.2 The potential legal use and implications of ISO 28007

ISO 28007 includes a diverse range of requirements. But what are the potential legal implications of this tool? The articulation of this standard with legal instruments can take many forms with various legal uses and implications. We explore five of them.

3.2.1 Presumption of conformity to comply with substantive law

First, it can be included as a rule to comply with substantive law.[77] More precisely, it can act as a presumption of conformity rule in the provision of a law, international treaty or in an instrument of an international or regional organization.[78] The best example of this integration is the revised interim recommendations of the IMO Maritime Safety Committee for flag states regarding PMSCs, which says that when developing policies authorizing on board PMSC personnel, flag states are encouraged to establish a policy which may include: ensuring that PMSCs employing security personnel on board ships hold valid accredited certification to ISO 28007 or meet applicable national requirements.[79] In a similar fashion, the best illustration of the presumption of conformity would be the case where a national law or a regional instrument, such as a European directive or regulation, states that if a PMSC fulfils ISO 28007, then it would be automatically considered to fulfil the law, directive or regulation requirement.

3.2.2 Contractual inclusion

The contractual inclusion is, of course, the second most obvious possibility as it exists in other sectors.[80] The IMO guidance on PMSCs to shipowners, ship operators and shipmasters have prefigured a close - yet not exactly the same – possibility. Indeed, it indicate that PMSCs should be able to provide documentary evidence such as ISO certification for quality management to enable relevant interested parties to carry out due diligence.[81] The idea is that contractual obligations made by the shipowners could include a requirement to the PMSC of being ISO 28007 certified. Beyond this option we figure out other possibilities of legal use of the standard. In this way, it is possible to consider the use of ISO 28007 as a part of contract drafting support or to use it as a check-list in the contract review process.[82]

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77 Schepel (n 8) 277, 350; Hamilton (n 22).

78 Wijkström and McDaniels (n 17) 2, 3.

79 IMO Maritime Safety Committee, 'Revised interim recommendations for flag states regarding the use of privately contracted armed security personnel on board ships in the High Risk Area' (12 June 2015) MSC.1/Circ.1406/Rev.3, Annex, 5.2.2.

80 Kemp (n 18). One case is that of the compliance requirement included in a set of specifications as part of an offer or while in a Service Level Agreement (SLA) in which the standard is a technical specification formalizing the expectations of the parties on the level of service.

81 IMO Maritime Safety Committee, 'Interim guidance to private maritime security companies providing privately contracted armed security personnel on board ships in the High Risk Area' (25 May 2012) MSC.1/Circ.1443, Annex 3.2.6; 'Revised interim guidance to shipowners, ship operators and shipmasters on the use of privately contracted armed security personnel on board ships in the High Risk Area' (25 May 2012) MSC.1/Circ.1405/Rev.2, Annex, 4.1.6.

82 ISO, ISO 9001: 2008 – Quality Management Systems – Requirements, 7.2.2 previously 4.3.

3.2.3 Inclusion in insurance policy

A variant to the inclusion of the contractual clause is the inclusion in the insurance policy needed by the shipowners when contracting a PMSC for a protection mission. Insurance companies could, in the shipowner's insurance contract, use an ISO 28007 certification as one requirement the PMSC hired by the shipowner must fulfil. The insurance company would thereby only agree to cover the risks arising from a PMSC if the shipowner hires a PMSC that can prove its valid ISO 28007 certification.

3.2.4 Proof of due diligence and standard of care, and sentences

Another important potential legal application of the standard is related to tort law, civil law and criminal law. As explained in the next section, ISO 28007 was officially incepted by the IMO, plus numerous stakeholders of the PMSC sector and shipowner industry participated in the creation of the standard. Given that fact and considering the detailed requirements of the standard on risk assessment, training standards, competence assessment, reasonable steps to avoid and deter the use of force and incident management notably, one must think about the possibility to use the standard (or some specific set of provisions of the standard) as a 'standard of care' or as proof of 'due diligence',[83] notably in tort law and criminal litigation.

The following reasoning could be mobilized and supported in court decisions; it is of course hypothetical, but it allows us to develop the idea. Even though a national law does not require a PMSC to be ISO 28007 certified, it could perhaps be argued, when establishing if the defendant had a due diligence attitude, that one of the means is to demonstrate that the party has taken 'all reasonable steps' to prevent a violation and that 'reasonable measures' include, among other things, the ISO 28007 certification. More precisely, in a case of negligence in tort law or in a case of strict liability in criminal law, ISO 28007 could be used for two scenarios. Let us imagine the question of the potential liability of a PMSC vis-à-vis a guard or sailor who died on the ship as a result of a firearms accident. And let us imagine a flag state national law that only requires PMSCs to take 'necessary precautions' against firearms incidents on board, but does not define the term 'necessary precautions'. However, the defendant could argue that the 'necessary precautions' applied by the PMSC were in conformity with the requirements of ISO 28007, notably on firearms training, training procedures and protocols, and firearms use on board. Then one must consider that the PMSC has exercised due diligence to prevent a breach in the conditions of safe use of firearms. On the other hand, ISO 28007 could be used for the opposite reasoning: the lack of due diligence on the part of the defendant. Although the national law does not include or refer to this standard when defining 'necessary precautions', the court could refer to the fact that the PMSC did not follow requirements commonly accepted as the reference in the profession such as those of the ISO 28007 standard, in its decision to consider that the undertaking had failed to exercise due diligence in respect of the safe use of firearms on board.

83 See references above (n 24).

Finally, still hypothetical but again interesting, is the possibility that a court decision condemning a PMSC could include, among other things, the obligation to take steps to be certified to a standard, which happened in a criminal case dealing with environmental damages[84] in addition to the payment of fines or jail term. Thus, the company would be ordered to implement several measures and to be ISO 28007 certified.

3.2.5 Incorporation within the self-policing incentives of regulators and mitigating factors of the discretionary power of prosecutors

In the absence of an integration or articulation formally guaranteed by a government agency between the statutory provisions and the ISO 28007 standard, another bias exists on the issue of due diligence. This potential bias – quite hypothetical but very interesting - is that of 'self-policies incentives' and 'mitigating factors' in the regulatory framework. This scheme exists in the United States, notably in environmental law under the auspices of the Federal Environment agency (EPA) and the Department of Justice with respect to the register of environmental offenses.[85] Let us imagine a mirror scheme with PMSC prosecution or an administrative assessment made by the governmental agency in charge of PMSC regulation. The regulatory authority or the public prosecutor shall agree, after a thorough review of the policy put in place by the PMSC, to eliminate or substantially reduce the fines or prosecutions if the PMSC discloses on its own initiative offenses it has committed, and if it organizes its policy to manage (no self-regulation for that) and correct its offenses. In this context, the use of instruments such as ISO 28007 in the management of the problem could be assessed by the regulator or the prosecutor in the assessment leading to the reduction or elimination of the fines imposed.

4. Conclusion: Reception, impact and power assessment

Regulating PMSCs at the international level is a hard game to play because of the interlocking competencies between flag states, coastal/port states and home states of the PMSC. The IMO Maritime Safety Committee has pushed as far as possible in trying to propose a basic harmonized framework and has issued a set of four guidelines and recommendations related to the four dimensions (ship-

84 Robert Mims (AUSA), 'United States v. Leading Edge Aviation Services, Inc., No. 4:14-CR-00121 (N.D. Miss.)' (US Department of Justice, Environmental Crimes Section Monthly Bulletin, December 2014) 13 <www.justice.gov/sites/default/files/enrd/legacy/2015/04/13/ECSBulletinDec2014.pdf> accessed 1 June 2017; EPA, 'Leading Edge Aviation Services Sentenced For Unlawful Handling Of Hazardous Waste At Greenville, Miss. Facility' (*United States Environmental Protection Agency*, 4 November 2014) <https://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/f5944771da7fa2c485257d8600699eb1!OpenDocument> accessed 1 March 2017.

85 United States Department of Justice, *Factors in Decisions on Criminal Prosecutions for Environmental Violations in the Context of Significant Voluntary Compliance or Disclosure Efforts by the Violator* (1991); United States Federal Register, *Environmental Protection Agency - Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations*, 60, 246 (22 December 1995) Part III Notice Fed. Reg. 66, 706; Patrick J Ennis, 'Environmental Audits: Protective Shields or Smoking Guns? How to Encourage the Private Sector to Perform Environmental Audits and Still Maintain Effective Enforcement' (1992) 42 Wash U J Urb & Contemp L 389, 408.

owners, PMSCs, flag states, coastal/port states) of the problematic[86] taking in account the architecture of competencies existing between states. In these circumstances, the IMO called for the creation of an international specialized standard capable of harmonizing management guidance and practices for PMSCs on all the aspects.[87] Thanks to the ISO's experience in maritime and management matters, its long story of collaboration with the IMO, and more recently its capacity to produce standards on complex societal security matters, it could easily engage with the private maritime security regulation field. Considering that it was built on a process involving stakeholders from PMSCs and shipowners, ISO 28007 was launched by the IMO and is anything but a powerless and disconnected soft law instrument.

But what is the power and the impact of this standard? One can observe several elements to answer this question when looking at industry position, national law, and international organizations statements. First, on the level of the power, it is important to note that besides the powerful endorsement of the IMO, the standard is backed by other important actors related to the fight against maritime piracy, notably INTERPOL, the European Commission and the Contact Group established by UN Security Council Resolution 1851.[88] This institutional support has been notably formalized by the Contact Group on Piracy off the Coast of Somalia 16th Plenary Session in 2014, when it noted the extant development of guidelines and advisories by the IMO and the ISO and declared a need to share these best practices, as articulated in the IMO guidelines and ISO 28007.[89] The support also came from important private stakeholders - not always directly related to the fight against piracy - such as the Security Association for the Maritime Industry (SAMI) and the Oil Companies International Maritime Forum (OCIMF).[90]

On the side of national law, the United Kingdom, one powerful country of origin of many PMSCs, and the Marshall Islands, one of the world's top ship register states,[91] have both included ISO 28007 as a component in their legislation on armed guards and firearms on board ships. For the Marshall

86 IMO Maritime Safety Committee, 'Interim guidance to private maritime security companies providing privately contracted armed security personnel on board ships in the High Risk Area'(25 May 2012) MSC.1/Circ.1443; IMO Maritime Safety Committee, 'Revised interim recommendations for flag states regarding the use of privately contracted armed security personnel on board ships in the High Risk Area' (12 June 2015) MSC.1/Circ.1406/Rev.3; IMO Maritime Safety Committee, 'Interim recommendations for port and coastal states regarding the use of privately contracted armed security personnel on board ships in the High Risk Area' (16 September 2011) MSC.1/Circ.1408; IMO Maritime Safety Committee, 'Revised interim recommendations for port and coastal states regarding the use of privately contracted armed security personnel on board ships in the High Risk Area' (25 May 2012) MSC.1/Circ.1408/Rev.1; IMO Maritime Safety Committee, 'Revised interim guidance to shipowners, ship operators and shipmasters on the use of privately contracted armed security personnel on board ships in the High Risk Area' (25 May 2012) MSC.1/Circ.1405/Rev.2.

87 ibid.

88 Lazarte (n 55).

89 EEAS, 'Contact Group on Piracy off the Coast of Somalia Sixteenth Plenary Session' (14 May 2014) Communiqué, para 23.

90 Security News Desk, 'Key Maritime Security Stakeholders Welcome ISO Announcement' (*Security News Desk*, 2 June 2014) <www.securitynewsdesk.com/key-maritime-security-stakeholders-welcome-iso-announcement/> accessed 1 May 2017.

91 Lloyd's List Intelligence, 'Flag State 2015: Top 10 Ship registers' (2015) <www.lloydslist.com/ll/static/classified/article506818.ece/binary/Flag-worldfleet-final2.pdf> accessed 1 June 2017.

Islands law, should a PMSC be hired, companies need to seriously consider the exclusive use of PMSCs which have been certified to the ISO 28007 standard by an authorized accreditation body.[92] For the U.K., the Department of Transport issued an Interim Guidance to U.K.-flagged ships on the use of armed guards to defend against the threat of piracy in exceptional circumstances. In this guidance, the Government formally encouraged shipping companies to use accreditation to ISO 28000, incorporating the requirements of ISO 28007 as part of their selection criteria when choosing a PMSC.[93]

In addition to these valuable institutional acknowledgements, private support and inclusion in national public law, has ISO 28007 been endorsed by PMSCs and the shipowner's sector? As a matter of fact, the creation of an international standard dedicated to PMSCs has been globally welcomed by the sector: for shipowners and PMSCs that already fulfilled strict quality and compliance systems, there was a critical need[94] for an international compliance system that could guarantee professionalism as the market of PMSCs was infested by maverick companies.[95] The standard is seen as a step towards a more efficient international regulatory framework notably because, as expressed by some PMSC executives, its certification gives a clear benchmark for the whole shipping industry.[96] Thus, the standard was welcomed not only by major PMSCs but also by shipping actors, such as the Singapore Shipping Association.[97]

In the field, many PMSCs have embraced the standard and - more importantly - they have been certified ISO 28007 by external auditors. Here, it is important to note that world actors of maritime risk and assurance industry, such as Lloyd's Register Quality Assurance, have directly created certification offers[98] after the standard creation process. Having a notable certification body was fundamental for the empowerment of ISO 28007 in the international maritime security regulatory framework. As noted by the Security in Complex Environment Group, an interest group in ADS, the major U.K. trade organization for defence and security companies, some of the leading PMSCs quickly became certified, notably Ambrey Risk, Neptune Maritime Security, and MNG Maritime Ltd.[99]

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92 International Chamber of Shipping and European Community Shipowners Associations (ECSA), *Comparison of Flag State Laws on Armed Guards and Arms on Board* (March 2015).

93 United Kingdom Department of Transport, *Interim Guidance to UK Flagged Shipping on the Use of Armed Guards to Defend Against the Threat of Piracy in Exceptional Circumstances* (2013) 18.

94 Lazarte (n 55).

95 Safety4Sea, 'BIMCO – ISO join forces to establish PMSC standards' (*Safety4Sea Major issues*, 8 May 2012) <www.safety4sea.com/bimco-iso-join-forces-to-establish-pmsc-standards/> accessed 1 May 2017.

96 Security News Desk (n 90).

97 Singapore Shipping Association, *Annual review 2012/2013 Global shipping & trade* (2012-2013).

98 Lloyd's Register Quality Assurance, *ISO/PAS 28007 Certification – Asset protection* (December 2013); Lloyd's Register Quality Assurance*, ISO/PAS 28007 Maritime Security Launch Seminar*.

99 As well as Black Pearl Maritime Security (a part of MS Security & Personal Ltd.), Orchid Risk Management Ltd, Solace Global Maritime Ltd, Ocean Protection Services, Securewest, Protection Vessels International, EOS Risk Management, Alphard Maritime Group. See Security in Complex Environment Group, 'SCEG Companies awarded accredited certification for ISO 28007 (maritime) <www.sceguk.org.uk/accredited-certification-psc1-and-iso-28007/sceg-companies-awarded-accredited-certification-for-iso-28007-maritime/> accessed 1 May 2017.

An extremely important matter is the fact that BIMCO, the world's largest international shipping association, with more than 2100 members in more than 120 countries, has implemented a strong policy of linking the associate membership and the ISO 28007 certification. BIMCO announced this measure in August 2013, during the creation of the standard[100] and the measure was requested by many PMSCs.[101] The principle is clear and powerful: BIMCO members must check whether any PMSC they are using is ISO 28007 certified; any PMSC which is a member of BIMCO, or wishes to join, is required to be and to remain ISO 28007 certified, and any revocation of the ISO 28007 certification would also incur revocation of BIMCO membership.[102] In July 2015, the powerful association insisted on reminding all its members of this rule as it had come to BIMCO's attention that some PMSCs may have had their certification withdrawn.[103] Thus, ISO 28007 certification acts as strong leverage to make the sector evolve in the new regulatory framework.

Another development is the way ISO 28007 could act as leverage when it is articulated in other soft law instruments. One example is the fact that the first version of ISO 28007, ISO/PAS 28007:2012 annexes the BIMCO GUARDCON as an example of a pro-forma contract,[104] one of the most famous standard contracts for the contracting of PMSCs. Another example is that, in parallel to the ISO 28007 creation process, the SAMI, ICS and other industry stakeholders have developed a '100 Series Rules for the Use of Force' by armed guards, directed at the PMSC team and there was a question whether it would be connected – as a part or in another way – to the standard.[105] Here, it is interesting to note the game of mutual support between these soft law instruments between 2012 and 2013. Indeed, at this time, the Rules were submitted to the ISO with a view to supporting ISO/PAS 28007:2012, and they were accepted as a work item to become, one year later, co-sponsored by the ISO when the Rules passed through the IMO at the Maritime Safety Committee 92nd session as an INF paper.[106] Eventually, the Rules state themselves that it was drafted with due diligence taking into account current IMO Maritime Safety Committee Circulars, and - interestingly – ISO 28007, as well as applicable and relevant national and international laws where practicable.[107]

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100 Seatrade Maritime News, 'At last, an accepted international standard for maritime security' (29 August 2013) <www.seatrade-maritime.com/news/europe/at-last-an-accepted-global-standard-for-maritime-security.html> accessed 1 May 2017.

101 Safety4Sea (n 95).

102 Hellenic Shipping News, 'BIMCO Security Update on ISO and illegal PMSC's' (4 July 2015) <www.hellenicshipping-news.com/bimco-security-update-on-iso-and-illegal-pmscs/> accessed 1 May 2017.

103 Black Pearl Maritime Security Ltd., 'Bimco Security Update on ISO & illegal PMSC's' (*Black Pearl News*, 22 July 2015) <www.ms-bp.com/black-pearl-news/bimco-security-update-on-iso-illegal-pmscs/> accessed 1 May 2017.

104 Kyrikos Faraklas, 'ISO/PAS 28007 - Private Maritime Security Company Management System Certification' (4th Annual SAFETY4SEA Forum, 2 October 2013); Liz McMahon, 'BIMCO backs international guidance on rules for use of force' (*Lloyd's List Maritime Intelligence*, 3 April 2013) <https://lloydslist.maritimeintelligence.informa.com/LL039864/BIMCO-backs-international-guidance-on-rules-for-use-of-force accessed> accessed 1 May 2017.

105 Singapore Shipping Association, *Annual review 2012/2013 Global shipping & trade* (2012-2013).

106 David Hammond, 'The 100 Series Rules: An International Model Set of Maritime Rules for the Use of Force – An Update' (*Communis Hostis Omnium*, 6 August 2013) <https://piracy-law.com/2013/08/06/the-100-series-rules-an-international-model-set-of-maritime-rules-for-the-use-of-force-an-update/> accessed 1 May 2017.

107 ibid.

Considering all the previous elements, ISO 28007 can be seen as a potential international regulation tool of reference for PMSCs. As underlined, it benefits from unprecedented support from the IMO and also from shipowners (notably BIMCO) and the PMSC industry. It has the capacity to connect with other international public (IMO Maritime Safety Committee guidance) and private instruments (the '100 Series Rules for the Use of Force', GUARDCON) on PMSCs and, more importantly, it generates multiple legal consequences, beyond its role as a benchmark (in contracts, law, insurance policies and courts).