

Private Military and Security Companies

*Misconceptions, Reconceptualisations,
and Regulation*

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CARLOS ORTIZ is a visiting research fellow at the Centre for Global Political Economy at the University of Sussex. He has been researching the history and evolution of Private Military Companies (PMCs) since the nineties. His doctoral thesis examined the role of recent public management trends in the contemporary constitution of PMCs. Recent publications unfolding from this research include 'Private military contracting in weak states: permeation or transgression of the New Public Management of security?' for the *Review of African Security* (June 2008) and 'The New Public Management of security. The contracting and managerial state and the private military industry' for *Public Money & Management* (January 2010). During his tenure as CGPE visiting research fellow, he has expanded his framework to address the dichotomy in the private realm between PMCs and adverse private forces (e.g. terrorist networks, insurgents, and drug trafficking organizations). Part of this research is incorporated in his forthcoming monograph *Private Armed Forces and Global Security*, which will be published by Praeger Security International in March 2010.

PRIVATE MILITARY AND SECURITY COMPANIES: MISCONCEPTIONS, RE-CONCEPTUALISATIONS, AND REGULATION

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Abstract

This paper argues the relevance of the notion of Security Partnerships for the understanding of the role Private Military Companies (PMCs) play in state defence and security. Security Partnerships imply the forging of close and formal patterns of collaboration between governments and PMCs and defence contractors. The notion facilitates an appreciation of the diverse tasks PMCs are contracted to satisfy, the extent to which these tasks permeate defence and security strategies, and the future of the model in light of the global financial downturn. In addition, this paper uses this research to highlight certain limitations of the new proposal for the regulation of PMCs put forward by the Foreign and Commonwealth Office in April 2009.

Keywords: Private Military Companies, Private Military and Security Companies, New Public Management, Security Partnerships, private security regulation, Montreux Document

Introduction

In the nineties, we had an intense debate about Private Military Companies (PMCs). This debate centred on seemingly novel private firms offering military and security-related services that used to be considered the preserve of the state and satisfied by constabulary and military forces. A climax to this debate was the release in the United Kingdom (UK) of the Green Paper *Private Military Companies: Options for Regulation*. In the statement announcing its release, it was noted that considering the high standards of the British armed services, it was not surprising that British PMCs were active in the business.¹

Subsequently, and leading to the Iraq conflict, Private Security Companies (PSCs) became a term widely used to refer to this type of service providers. Partly due to the more neutral and elegant connotations attached to the term in academic writing, but also because of a desire by key players to distance themselves from the controversies surrounding the activities of some PMCs, the debate turned to PSCs. At the same time, artificial distinctions started to be made between PMCs and the somehow new and different PSCs.

Meanwhile, the press bypassed the scholarly debate and started to refer to this type of firms as simply security contractors, sometimes just contractors. Contractors working in Iraq have sometimes become interchangeable with mercenaries, even when the overwhelming majority of the people employed by the alluded contractors are Iraqis and perform functions that have nothing to do with the military or security.

Over a decade after the debate about PMCs, a new generation of scholars increasingly write about Private Military and Security Companies (PMSCs). The term is sometimes treated as a cumulative designation. On other occasions, however, PMSCs is a conceptual device used to get around the contested arena of definitions. In this respect, the Foreign and Commonwealth Office (FCO) announced on 24 April 2009 the reopening of public consultation on the regulation of, not the Green Paper's PMCs, but PMSCs. The influential *Montreux Document* is also about 'Legal Obligations and Good Practices' for PMSCs and is partly behind FCO's new stance towards regulation.

This narrative highlights conceptual ambiguities that continue to characterise discussions about PMCs —or PSCs or PMSCs, if the reader prefers. Far from answering questions asked by the general public about the logic behind privatising security and its long-term implications, unevenness comes to mind. This working paper addresses these issues by offering a reflexive and empirically-grounded argument linking the contracting of PMCs to the periodic reinvention of government.

¹ Foreign and Commonwealth Office. 'Statement on the Green Paper on Private Military Companies'. London, 12 February 2002.

Firstly, in the paper, the use of the PMCs term is justified. Secondly, I argue the relevance of New Public Management and the notion of Security Partnerships for the understanding of the role PMCs play in state defence and security. Thirdly, in light of the global financial downturn, I turn my attention to the future of Security Partnerships. Lastly, I examine recent regulation developments in the UK and the United States (US) and discuss their relevance and limitations. The conclusions I reach point to the tightening of Security Partnerships *vis-à-vis* the need for academic renewal in order to grasp fully their significance for the management of state security. The figures for defence spending were last updated in April 2009.

From PMCs to PMSCs, and back

In 1993, news dispatches started to circulate about a mercenary operation underway in Angola, then paralyzed by a protracted conflict between governmental forces and rebels from the National Union for the Total Independence of Angola (UNITA). Upon closer examination, however, the press reports documented an operation involving not mercenaries, but personnel from a South African firm: Executive Outcomes (EO). It was while EO was active that the Private Military Companies term was popularized in the emerging literature on the topic.

EO, which was involved in combat operations, has been characterized by some analysts as the typical PMC. In particular, the argument has been that combat-related services define PMCs. However, this is not entirely accurate, as EO was analyzed in the context of a diverse sample of firms focusing on services ranging from risk and security advice to logistical and reconstruction assistance. In this light, in a forthcoming book I define PMCs as ‘legally established international firms offering services that involve the potential to exercise force in a systematic way and by military or paramilitary means, as well as the enhancement, the transfer, the facilitation, the deterrence, or the defusing of this potential, or the knowledge required to implement it, to clients.’²

I allude to a ‘potential to exercise force’ because force is neither always used nor intrinsic to many private military services. However, it denotes an expertise that can enhance the recipient’s military and security capabilities.³ This expertise is identifiable in the six service segments the private military industry has so far covered: Combat, Training, Support, Security, Intelligence, and Reconstruction. In fact, with the exception of certain Combat and Security-related tasks, most of the services rendered by PMCs are non-lethal in nature.

² Taken from Ortiz, Carlos. *Private Armed Forces and Global Security*. Westport , Praeger Security International, forthcoming 2010.

³ Ortiz, Carlos. ‘The Private Military Company: an entity at the centre of overlapping spheres of commercial activity and responsibility’, in Jäger, Thomas, and Kümmel, Gerhard (eds). *Private Military and Security Companies. Chances, Problems, Pitfalls and Prospects*. Wiesbaden, VS Verlag, 2007, pp. 60-1.

I do not use the term PSCs in order to dissociate clearly PMCs from conventional security firms that specialize in, for example, the guarding of properties or the transport of valuable goods in safe environments. In other words, the use of the PSCs label has fostered the idea in segments of the public that private military personnel are something akin to globe-trotting shopping centre guards, which is misleading. Likewise, the newer PMSCs term fails to simplify these ambiguities by simply juxtaposing two distinctions already overlapping.

Although the market for private military services was already identifiable during the Cold War, it has expanded impressively since the nineties. Many corporations previously focusing on commercial areas such as Aerospace, Construction, Defence, Engineering, Information Technology (IT), and Research & Development (R&D) have expanded to offer private military services. We thus find numerous corporations delivering private military services that do not fit the PMCs label neatly. Analytically, I approach them as hybrid types of PMCs. In parallel, independent PMCs are on occasions linked to or become subsidiaries of these corporations. Therefore, PMCs can be understood as entities at the centre of overlapping spheres of commercial activity and responsibility,⁴ which contrasts with stereotypical views of PMCs (or PSCs) as discrete and static commercial enterprises.

This conceptual framework allows a better understanding of the broadening role PMCs play in myriad tasks associated with the handling of state defence and security, because it involves private military services often delivered by highly diversified corporations. The transition to this security architecture partly finds an answer on the recent evolution of public managerial practices.

Re-engineering the management of state security

Since the late-eighties, the most influential approach to the management and organization of the public sector has been New Public Management (NPM). This is amongst the latest links of a chain interlacing the periodic reinvention of government starting with Woodrow Wilson's argument about the distinctiveness of running the public, as opposed to the private sector.⁵ Subsequently, the Scientific Management movement sought to implement the industrial strategy of 'work-efficiency at the bench' to ambits of government.⁶ In other words, the focus turned to making the public sector a highly technical enterprise. From the fifties onwards, the aim turned to perfecting the essential government machinery: the bureaucracy. The bureaucratic model and the

⁴ *Ibid.*, p. 67.

⁵ Wilson, Woodrow. 'The Study of Administration', in Shafritz, Jay. M., Hyde, Albert C. and Parkes, Sandra J. (eds). *Classics of Public Administration* (5th ed.). Belmont, Wadsworth, 2004, p. 22.

⁶ Gladden, E. N. *A History of Public Administration (vol. 2): From the Eleventh Century to the Present Day*. London, Frank Cass, 1972, p. 389.

bureau, noted by Max Weber to achieve precision, speed, and the reduction of material and personal costs,⁷ became equated with the public sector and management. Dissatisfaction with bureaucracies contributed to a shift towards NPM towards the end of the eighties.

Under NPM, flexible management supersedes centralized and bureaucratic administration. NPM focuses on market values applied to the running of the public sector and a greater use of the private sector in the efficient allocation of public goods and services. This is what Fox and Miller term as 'post-modern public administration', or the abandonment of Wilsonian, Taylorist, and Weberian principles.⁸ NPM is highly empirical in its design and methods. An entrepreneurial spirit shapes policy imperatives and the decision making process; or in the words of former-US Vice President Al Gore, it implies a shift *From Red Tape to Results*.⁹ Efficiency considerations, contractual relations, new managerial practices, and a customer-oriented approach have guided the NPM reform agenda. In the process, Davis observes, the public sector becomes a purchaser rather than a supplier, 'with services provided by a network of public and private companies, each the successful tendering body for yet another government contract.'¹⁰ NPM initially emerged with reform of the welfare state and local government in mind, which paved the way for the application of NPM-style reform to all areas of government. The application of NPM to state defence and security, a distinct ambit I term the NPM of Security, embeds the contractual and managerial principles described above.¹¹ The UK and the US lead the trend.

The decision to contract out is commonly informed by an exercise at establishing whether private-sector use would achieve greater efficiency over public benchmarks set for the delivery of targeted services. In the UK, a Public Service Comparator (PSC) is created to estimate what a 'project would cost if traditional procurement methods were used'¹² PSCs have been used in the application of the Private Finance Initiative (PFI) to defence. Through PFI, the Ministry of Defence (MOD) 'instead of purchasing, owning and operating capital assets', it agrees to the private financing of projects in return for annual rental payments for their use and associated support services.¹³ Similarly to PSCs,

⁷ Weber, Max, 'Bureaucracy', in Gerth, H. H., and Wright Mills, C. (eds). *From Max Weber: Essays in Sociology*. London, Routledge, 1997, p. 214.

⁸ Fox, C. and Miller, H. *Postmodern Public Administration*. London, Sage, 1995.

⁹ Gore, Albert. *From Red Tape to Results: Creating a Government That Works Better and Costs Less. Report of the National Performance Review and Accompanying Reports*. Washington, D. C., Government Printing Office, 1993.

¹⁰ Davis, Glyn. 'Toward a Hollow State?', in Considine, Mark and Painter, Martin (eds). *Managerialism. The Great Debate*. Melbourne, Melbourne University Press, 1997, p. 215.

¹¹ Ortiz, Carlos. 'The New Public Management of security. The contracting and managerial state and the private military industry.' *Public Money & Management*, forthcoming, vol. 30, no. 1, January 2010.

¹² Flinders, Matthew. 'The Politics of Public-Private Partnerships'. *British Journal of Politics and International Relations*, 7:2, p. 225.

¹³ Hartley, Keith. 'The Economics of Military Outsourcing'. *Defence Studies*. 2004, 4:2, pp. 202-3.

in the US a 'most efficient organization' (MEO) is created before determining the most efficient alternative, whether private, public, or a mixed option.

The shift towards the NPM of Security has not occurred suddenly or in a vacuum. It has been the result of gradual changes in defence and security strategies since the eighties. In the UK, the 1998 Strategic Defence Review already recorded the role played by the private sector in the transformation of the Ministry of Defence (MOD) over the previous decade through market testing, contracting out, PFI, and partnerships with the private sector.¹⁴ By the onset of the Iraq conflict, Uttley argues that the debate had ceased to be about the likeliness of private sector support to deployed operations. Instead, it has become about 'when and where contractor support offers the most cost-effective solution'.¹⁵ Therefore, the 2005 Defence Industrial Strategy stressed the need to work in partnership with the private sector to deliver to the front line.¹⁶

These policies have fostered a climate of permissibility for PMCs to participate to the NPM of Security, often in support areas while the defence industry takes care of new technologies and infrastructure. The close patterns of cooperation established with PMCs (mostly of the hybrid type) are increasingly modelled around the notion of 'public-private partnerships' (PPPs). These Security Partnerships, a term that I believe reflects the application of NPM and PPP principles in areas of defence and security, reach services across the board.

Qinetiq, for example, is a listed firm that evolved out of the partial privatization of the Defence Evaluation and Research Agency, previously the sole holder of the British defence R&D establishment, and its subsequent transformation together with the Carlyle Group of the US into a Security Partnership. Led by Qinetiq, the Metrix consortium is in charge of the multi-billion Defence Training Review (DTR) Rationalisation Programme, which will centralize the design and delivery of the technical training for the British Army, the Royal Navy, and the Royal Air Force. Likewise, United Kingdom Military Flying Training System (UKMFTS) is a project to create a tri-service organisation focusing on the flying training of the forces. UKMFTS will be handled jointly by a Training System Partner (TSP) and a PFI. Ascent, a joint venture between VT Group and Lockheed Martin, has been named as the preferred bidder for TSP. VT Flagship, as subsidiary of VT Group, already handles training for the Royal Navy and Lockheed Martin is the largest provider of aircrew training in the US. Holdfast Training Services, a consortium of corporations that include Babcock International Group and Carillion, is in charge of a Security Partnership to run the training of British military engineers.

¹⁴ Ministry of Defence. *Strategic defence review*. London, The Stationery Office, July 1998, Cm 3999, p 170.

¹⁵ Uttley, Matthew R. H. 'Private Contractors on Deployed Operations: the United Kingdom Experience'. *Defence Studies*. 2004, 4:2, p 161.

¹⁶ Ministry of Defence. *Defence Industrial Strategy. Defence White Paper*. London, The Stationery Office, December 2005.

In the US, The US Army's Logistics Civil Augmentation Program (LOGCAP) manages the use of contractors by the Department of Defense (DOD) in logistics support to contingency mobilizations. The LOGCAP's executing contract is passing to a consortium composed by DynCorp International, Fluor Corporation, and KBR (the previous sole holder of the contract). The US Department of State (DOS) manages the provision of personal protective services and support functions under its jurisdiction through the Worldwide Personal Protective Services (WPPS) contract. WPPS also covers the United States Agency for International Development (USAID). As of May 2008, it involved Blackwater Worldwide (now under the name Xe, which has been recently opted out of WPPS), DynCorp International, and Triple Canopy.¹⁷ The secret Black Helix DNA database programme comprises a complex Security Partnership between intelligence, law enforcement, and military agencies together with an undetermined number of IT and biotechnology contractors. In addition, the Terrorist Identities Datamart Environment (TIDE) is a classified database containing the names of some 400,000 terrorist, suspected terrorists, and potential terrorist. Boeing, SRI International, and various subcontractors are involved in this large IT enterprise. It is possible to speculate that the Mastering the Internet (MTI) project in the UK, aimed at monitoring all online activity, will incorporate similar surveillance features. Lockheed Martin and Detica are apparently the key contractors behind MIT,¹⁸ and so on.

It is conventionally argued that PPPs facilitate the clear specification of objectives in a contractual and bidding format, as well as better risk allocation between governments and contractors.¹⁹ While Security Partnerships now characterise Western defence and homeland security markets, informal partnerships permeate the provision of services that are more controversial, such as armed protection in conflict and post-conflict zones. For instance, in the UK private protection services are contracted out to PMCs by the diverse agencies operating in high-risk environments. However, the arrangements are not centrally managed as in the case of DOS. Close patterns of collaboration with PMCs remain in these instances, even if governments prefer not to advertise them as partnerships.

Considering the long-term goals periodic defence and security reviews establish and the fact that any new strategy builds on preceding models, it is unlikely that we would see the new security edifice suddenly and somehow brought to the ground. Indeed, as I have discussed in other publications, the process suffers from imperfections. In particular, there are the issues of restrictions imposed on open and full competition, diminished efficiency due to the difficulties inherent in delivering services in high-risk

¹⁷ Congressional Research Service. *Private Security Contractors in Iraq: Background, Legal Status, and Other Issues*. Washington, D.C., 25 August 2008, p. 9.

¹⁸ Leppard David, and Williams, Chris. 'Jacqui Smith's secret plan to carry on snooping'. *The Sunday Times*, 3 May 2009.

¹⁹ Parker, D. and Hartley, K. 'Transaction Cost, Relational Contracting and Public Private Partnerships: A Case Study of UK Defence'. *Journal of Purchasing and Supply Management*, 2002 9:3, pp. 1-2.

environments, limited oversight, and excessive lobbying and managerial costs.²⁰ In addition, while it can be argued that alleged abuses of force have only been committed by a comparatively small sample of firms amongst hundreds engaged in defence and security in the US and the UK alone, suspicion lingers in the air that this is only the tip of the iceberg. Reports by the US Government Accountability Office (GAO) have produced abundant information on these issues. Disclosure is more limited in the UK, making it difficult to construct a comparative analysis from which to draw conclusions. Nevertheless, the overarching result is a new security architecture whereby PMCs and related contractors directly participate to the handling of state defence and security.

Onwards from the global financial downturn

Besides the imperfections noted, the ongoing global financial downturn further raises questions about the likely future of the NPM of Security and Security Partnerships. There are practical and conceptual issues to consider here.

As in other sectors, the larger defence and security contracts depend on steady financial flows. With the contraction of credit, it has become difficult to attract investors for ongoing and new projects. If defence markets are particularly resilient, there is the critical issue of deteriorating public finances. MOD is currently operating with a deficit estimated at £2 billion. In the UK, like in other countries, reigning in spending across expensive defence equipment, Security Partnerships, and future defence reviews is therefore inevitable over the next decade:

Defence equipment

Costly defence commitments in the UK include the Typhoon Eurofighter (as part of a third tranche the purchase of 88 more units was agreed, but unlikely to be fulfilled as originally planned); the F-35 Joint Strike Fighter (original intention was to buy 150 jets at a price of over US\$50m each, but the total number is likely to go down further than the 138 now contemplated); the A400M military transport aircraft (plan for 25 units, but delivery has been delayed by EADS at a time the C130K Hercules are scheduled to be decommissioned); the Future Rapid Effects Systems (FRES) armoured vehicle programme (plan for hundreds of units valued at about £16B and currently facing delay); the Future Lynx reconnaissance helicopter (plan for 70 units valued at about £1B); the extension of the period of service of the Puma transport helicopters (the value was yet to be determined at the time of writing); the new Type-45 Destroyers (plan for 6 vessels valued at about £5.5B, but currently delayed by two years and over budget by approximately £1B); two new Future Aircraft Carriers (valued at about £4B, but currently delayed by about two years); and the possible shrinkage of the fleet of nuclear missile submarines

²⁰ For a broader analysis of these issues, please see Ortiz, Carlos. 'The New Public Management of security', forthcoming, January 2010.

(the plan was to build four new submarines to replace the Vanguard-class fleet of four).²¹ In the US, Defense Secretary Robert Gates outlined in April 2009 plans to scale back defence spending. With various large equipment projects already over budget and/or experiencing delay, both in the UK and the US defence strategies are shifting towards the consolidation of ongoing commitments rather than ambitious new plans.

Security Partnerships

The most important Security Partnerships in the UK involve the production of military knowledge. However, the DTR Rationalisation Programme is in its early stages and UKMFTS is a future projects for which contracts have not yet been signed. DTR suffered a blow in December 2008 with the withdrawal of Land Securities from the executing consortium. As of 25 February 2009, the *Financial Times* reported that DTR contractors have been offered 'bigger states guarantees as a means of rescuing' the project, which at a value of £12B represents the largest Security Partnership in Europe.²² Meanwhile, the use of Sentinel R1 surveillance planes in Afghanistan became a part-time endeavour due to a deficit of trained personnel.²³ In terms of Security Partnerships related to support services, their expansion is linked to future acquisitions of defence equipment. However, if deliveries are cancelled or further delayed and the life of older equipment is consequently extended, support is likely to grow in synchronisation with a heavier maintenance cycle. In this respect, in March 2009 MOD withdrew all the Nimrod reconnaissance aircraft from overseas service while they undergo safety upgrades.²⁴ Other than agreed intelligence and counter-terrorism initiatives, R&D expenditure remains a question mark. The private provision of personal protection for British officials while on overseas duty, in contrast, is likely to remain at current ratios, as there is no substitute for it.

Future plans

Outlining many ongoing and future plans involving contractors, the Defence Industrial Strategy was published in December 2005. In its foreword, this white paper acknowledged that the UK military standing has moved alongside 'sustained real increases in the Defence budget arising from each Spending Review since the [Labour] Government was elected in 1997,'²⁵ which needs now to be curbed. A follow-up strategy white paper was due for release in December 2007, a few months after Gordon Brown succeeded Tony Blair as Prime Minister. The pending paper, which will necessarily outline revised ceilings to spending and plans, remains to be produced. In the US, the re-organisation of defence priorities in light of constrained budgets and the need to preserve

²¹ Information taken from various editions of *The Financial Times* between December 2008 and April 2009, and the International Institute for Strategic Studies. *The Military Balance 2009*. London, Routledge, 2009, pp. 201-2.

²² Barker, Alex. 'State to back defence PFI plan'. *The Financial Times*, 25 February 2009.

²³ Smith, Michael. 'Life-saving spy planes grounded by lack of crews'. *The Sunday Times*, 15 February 2009.

²⁴ Pfeifer, Sylvia. 'Row erupts over RAF Nimrod's grounding'. *The Financial Times*, 10 March 2009.

²⁵ Ministry of Defence. *Defence Industrial Strategy. Defence White Paper*. London, The Stationery Office, December 2005, p. 2.

jobs is underway as well. However, an element of this consolidation process would involve mediating between the different requirements of armies, navies, and air forces. While armies want to be better equipped for the counter-insurgency and reconstruction conflicts of the twenty-first century, the requirements of navies and air forces tend to centre on conventional warfare, which is based on expensive and sometimes prestige infrastructure. At the same time, the balancing act needs also to make into considerations what is likely to be a long and costly deployment in Afghanistan.

Indeed, because of the global financial downturn and the contraction of public finances, many defence and security-related projects are likely to be downgraded or their implementation schedule extended beyond plans. However, the argument of the preceding section strongly suggests that the principle of the Security Partnership is well established. From large equipment projects to the daily provision of security, support, intelligence, and training services, this is how state defence and security is managed and satisfied nowadays. In addition, Security Partnerships unfold against strategies conceived for implementation over periods ranging anything from one to a few decades. They are critical to the achievement of longer-term defence and security goals and cannot be simply discontinued. Far from it, intense negotiations underway between government and firms to secure the future of Security Partnerships (and jobs attached to them) are likely to result in a tighter and more mature interface. Nevertheless, it is going to take some time for the public to accept all the opportunities and problems inherent in the new security architecture. In particular, this is because persistent concerns about the absence of a fully-fledged legal regime sanctioning and guiding the employment of PMCs.

A renovated impetus for regulation

The new impetus for regulation is primarily discernable from oversight improvements in the US and the attention 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* has generated; secondarily, from the announcement by FCO of a new round of public consultation on the regulation of UK-based PMCs. In order to assess their relevance for the future of Security Partnerships, it seems relevant, firstly, to recall the regulation trajectory in the US and the UK; and secondly, to outline the aims of the *Montreux Document*.

The US partly regulates the international supply of defence articles and services through AECA, first implemented in 1968. AECA implements this control through ITAR. Defence articles and services susceptible of export or import are designated in the United States Munitions List (USML), which is part of ITAR. ITAR also stipulates registration and licensing procedures whereby PMCs and defence contractors willing to offer services internationally are required to register beforehand their intention to do so with DOS. Thereafter, the services or articles on offer need to be covered by USML; be provided

under ITAR terms; and observe foreign policy restrictions as stipulated in AECA and other related acts.²⁶

Until recently, this regulation system lacked oversight features. Above all, abuses of force committed by private personnel rendering armed protection have been an area of concern and criticism. However, these offences can be criminalized now through the Uniform Code of Military Justice (UCMJ) or the Military Extraterritorial Jurisdiction Act (MEJA). UCMJ was originally conceived to govern the actions of uniformed personnel, not contractors. Yet, as a result of an important amendment in 2007, civilians serving with or accompanying the forces during contingency operations, not just wars as in the past, fall now under UCMJ jurisdiction.²⁷ In other words, private military personnel can face the prospect of appearing before US military tribunals. Prosecution through MEJA, on the other hand, involves devolving serious offences to the US and the Federal court system. Practice would decide which one of the two instruments represent the most viable and effective alternative. Most probably, oversight will be systematised into a dual system of prosecution contingent to the seriousness and sensitivity of the offences committed.

In the UK, the 2002 Green Paper proposed three alternatives for regulation: a ban, self-regulation, or the establishment of a licensing system similar to the one governed by AECA and ITAR.²⁸ A licensing system was widely thought to be the best alternative, perhaps complemented by self-regulation in the form of a code of conduct. Nevertheless, now FCO is proposing a code of conduct as the preferred option. Inspired by the *Montreux Document*, this code intends 'to promote high standards...agreed with and monitored by the Government'.²⁹

The *Montreux Document*, finalised on 17 September 2008, is an initiative by the Swiss government and the International Committee of the Red Cross. It is endorsed by several states, including the UK and the US. It aims at creating global standards of operation respectful of international humanitarian law for PMCs delivering services in conflict zones. These include, *inter alia*, adequate vetting procedures and promises by governments to prosecute offences committed by their domestic private military operators.

²⁶ For a more detailed description of this licensing framework, see Ortiz, Carlos. 'Regulating Private Military Companies: States and the Expanding Business of Commercial Security Provision', in Assassi, Libby, Wigan, Duncan, and Van der Pijl, Kees (eds). *Global Regulation. Managing Crises After the Imperial Turn*. London, Palgrave Macmillan, 2004, pp. 205-19.

²⁷ See Lindemann, Marc. 'Civilian Contractors under Military Law'. *Parameters*, Autumn 2007, pp. 83-94; and Singer, Peter. 'The Law Catches Up to Private Militaries, Embeds'. *DefenseTech*, January 04, 2007.

²⁸ Foreign and Commonwealth Office. *Private Military Companies: Options for Regulation*. London, The Stationery Office, February 2002.

²⁹ Foreign and Commonwealth Office. 'Public consultation on private military companies'. Press Release <<http://www.fco.gov.uk/en/newsroom/latest-news/?view=PressS&id=16784533>>, 24 April 2009.

For this purposes, FCO signals its intention to work closely with ‘the relevant UK trade association’, presumably the British Association of Private Security Companies (BAPSC), which was consulted during the formulation of the *Montreux Document*. However, because Security Partnerships involve defence contractors together with PMCs, as well as the intention of the *Montreux Document* to target personnel dealing with the ‘maintenance and operation of weapons systems’ in addition to security personnel,³⁰ defence sector professional associations should participate to the formulation of the code of conduct besides BAPSC. In particular, this is because operational and conceptual overlaps between PMCs and defence contractors do exist, particularly when the PMCs delivering services are of the hybrid type.

Furthermore, in acknowledgement that defence and homeland security requirements are intertwined and involve cooperation between the involved contractors, perhaps FCO would like to consider an even wider approach. In this light, the possible inclusion of the Defence Manufacturers Association (DMA) and the UK Security and Resilience Industry Suppliers' Community (RISC) into the formulation of the code of conduct might be desirable. This would cover the whole spectrum of defence procurement and support, international security, and homeland security services. All these areas fall within the notion of Security Partnerships. The alternative could be a return to the consultation table a few years down the road, once FCO ‘discovers’ that some personnel besides those covered by BAPSC do travel or are integral to the deployment and support of military and reconstruction operations overseas. This wider approach would contribute to the self-stated goals of UK defence to ‘achieve success in the military tasks undertaken *at home and abroad*’; to ‘be ready to respond to the *tasks that might arise*’; and to ‘build *for the future*’.³¹

The overt use of PMCs by governments is confirmed by these three alternatives for regulation. The US and the UK are cases in point here, as the two countries have the largest defence expenditure as percentage of GDP in the West and represent the largest suppliers of PMCs. Moreover, they are also at the forefront of the NPM of Security and make widespread use of Security Partnerships. While the *Montreux Document* does not intend to endorse the use of PMCs ‘in any particular circumstance’,³² it nevertheless confirms customary practice.

The US framework thus communicates the concerned public that, while the use of the private sector is an important component of defence and security strategies, abuses of force can occur and authorities need to enact or update regulation accordingly. As of

³⁰ *Ibid.*

³¹ My Italics. Ministry of Defence. *Defence Framework. How Defence works*. London, Ministry of Defence, p. 3.

³² Federal Department of Foreign Affairs, Switzerland, and the International Committee of the Red Cross. *Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict*. Montreux, 17 September 2008, p. 3.

December 2008, there were over 50 MEJA cases under consideration. Notably, and answering to popular outcry, last December five employees of the firm formerly known as Blackwater Worldwide were charged for their alleged role in the shooting at Nisur Square, Baghdad, on 16 September 2007.

In the case of the UK, the FCO regulation proposal stipulates 'monitoring', not a legal regime aimed at implementing oversight and prosecuting abuses of force. This soft (and cost saving) approach bypasses establishing a British equivalent to ITAR, USML, and MEJA (or an enhanced Armed Forces Act and respective Queen's Regulations for the three services that acknowledge the use of contractors on deployed operations). For instance, the combination of ITAR and the itemized nature of USML allow American authorities to address the variable constitution of PMCs, ranging from independent service providers focusing on specific service segments to highly-diversified corporations. Using colloquial terms, there is no inoculation against potential 'cowboy' cases to emerge in an international and multi-billion industry employing thousands.

Clearly, these legal instances do not threaten the future of Security Partnerships, but they communicate differently what is being done by authorities to formalise and normalise the use of the private sector in areas of defence and security. In my opinion, the current omissions of the UK proposal for regulation could continue to obscure the important contribution PMCs and defence contractors make to national defence and homeland security, as a code of conduct in itself cannot succinctly delineate responsibilities between the public and private sectors.

Conclusions

Defence departments in the UK and the US were emboldened as the world stage turned to the Cold War. Also around this time, the defence industry started its trajectory of unabated expansion and a close relationship between defence contractors and Western governments was forged; in the words of Dwight D. Eisenhower, a military-industrial complex. Cold War PMCs then started to emerge. These primarily took the form of training interests of British and American corporations in the Arabian Peninsula, often linked to arms contracts; as well as small security operations in Africa, Southeast Asia, and the Middle East.³³ The variable constitution of PMCs outlined in section one was already identifiable then, as well as the connection between the management of the public sector and evolving state defence and security strategies. Notwithstanding this background, PMCs and the public managerial techniques encouraging their use have been little discussed by Public Management scholars. For example, in a 2000 compendium on international perspectives on PPPs edited by Stephen Osborne, there is not a single chapter or entry for defence, let alone state security, in spite of the already robust

³³ Ortiz, Carlos. 'Compañías Militares Privadas: Hacia la Transformación del Estado y la Nueva Gerencia Pública de la Seguridad'. *Revista Académica de Relaciones Internacionales*, October 2008, 9, pp. 1-19.

trajectory of Security Partnerships in at least Australia, Canada, the UK, and the US.³⁴ This represents a critical omission about which I only outlined certain salient points.

Divisions of labour inherent in the traditional academic curriculum would probably dictate that Defence Studies is the right discipline to address this gap. However, many Defence Studies scholars approach PMCs as somehow an oddity of the defence sector and not a service-oriented industry in its own right. As a result, PMCs engaged in, for example, homeland security, reconstruction initiatives, and intelligence are left out of the analysis. International Relations scholars, in contrast, sometimes downplay the role played by diversified corporations offering private military services.

In the absence of a Private Security Studies field, I believe this working paper has made the case for the need to foster multidisciplinary synergies in order to take the study of PMCs to the next stage. This would involve not only focusing on controversies, but also the technical principles and logic underpinning Security Partnerships. Given the monumental failure by governments to communicate to the concerned public the new structure of state security, through this more balanced enterprise we could enhance the bearings of academic discourse in the policymaking exercise, and indeed, regulation.

³⁴ Osborne, Stephen P. *Public-Private Partnerships. Theory and practice in international perspective*. London, Routledge, 2000.

References

- Assassi, Libby , Wigan, Duncan, and Van der Pijl, Kees (eds). *Global Regulation. Managing Crises After the Imperial Turn*. London, Palgrave Macmillan, 2004.
- Barker, Alex. 'State to back defence PFI plan'. *The Financial Times*, 25 February 2009.
- Congressional Research Service. *Private Security Contractors in Iraq: Background, Legal Status, and Other Issues*. Washington, D.C., 25 August 2008.
- Considine, Mark and Painter, Martin (eds). *Managerialism. The Great Debate*. Melbourne, Melbourne University Press, 1997.
- Federal Department of Foreign Affairs, Switzerland, and the International Committee of the Red Cross. *Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict*. Montreux, 17 September 2008.
- Flinders, Matthew. 'The Politics of Public-Private Partnerships'. *British Journal of Politics and International Relations*, 7:2, pp. 215–239
- Foreign and Commonwealth Office. 'Public consultation on private military companies'. Press Release < <http://www.fco.gov.uk/en/newsroom/latest-news/?view=PressS&id=16784533>>, 24 April 2009.
- Foreign and Commonwealth Office. 'Statement on the Green Paper on Private Military Companies'. London, 12 February 2002.
- Foreign and Commonwealth Office. *Private Military Companies: Options for Regulation*. London, The Stationery Office, February 2002.
- Fox, C. and Miller, H. *Postmodern Public Administration*. London, Sage, 1995.
- Gerth, H. H., and Wright Mills, C. (eds). *From Max Weber: Essays in Sociology*. London, Routledge, 1997.
- Gladden, E. N. *A History of Public Administration* (vol. 2): From the Eleventh Century to the Present Day. London, Frank Cass, 1972.
- Gore, Albert. *From Red Tape to Results: Creating a Government That Works Better and Costs Less*. Report of the National Performance Review and Accompanying Reports. Washington, D. C., Government Printing Office, 1993.
- Hartley, Keith. 'The Economics of Military Outsourcing'. *Defence Studies*. 2004, 4:2, pp. 199–206.
- Jäger, Thomas, and Kümmel, Gerhard (eds). *Private Military and Security Companies. Chances, Problems, Pitfalls and Prospects*. Wiesbaden, VS Verlag, 2007.
- Leppard David, and Williams, Chris. 'Jacqui Smith's secret plan to carry on snooping'. *The Sunday Times*, 3 May 2009.

- Lindemann, Marc. 'Civilian Contractors under Military Law'. *Parameters*, Autumn 2007, pp. 83–94.
- Ministry of Defence. 'Defence Framework. How Defence works'. London, Ministry of Defence.
- Ministry of Defence. *Defence Industrial Strategy. Defence White Paper*. London, The Stationery Office, December 2005.
- Ministry of Defence. *Defence Industrial Strategy. Defence White Paper*. London, The Stationery Office, December 2005.
- Ministry of Defence. *Strategic defence review*. London, The Stationery Office, July 1998, Cm 3999.
- Ortiz, Carlos. 'Compañías Militares Privadas: Hacia la Transformación del Estado y la Nueva Gerencia Pública de la Seguridad'. *Revista Académica de Relaciones Internacionales*, October 2008, 9, pp. 1–19.
- Ortiz, Carlos. 'The New Public Management of security. The contracting and managerial state and the private military industry.' *Public Money & Management*, 30:1, forthcoming January 2010.
- Ortiz, Carlos. *Private Armed Forces and Global Security*. Westport , Praeger Security International, forthcoming March 2010.
- Osborne, Stephen P. *Public-Private Partnerships. Theory and practice in international perspective*. London, Routledge, 2000.
- Parker, D. and Hartley, K. 'Transaction Cost, Relational Contracting and Public Private Partnerships: A Case Study of UK Defence'. *Journal of Purchasing and Supply Management*, 2002 9:3, pp. 97–108.
- Pfeifer, Sylvia. 'Row erupts over RAF Nimrod's grounding'. *The Financial Times*, 10 March 2009.
- Shafritz, Jay. M., Hyde, Albert C. and Parkes, Sandra J. (eds). *Classics of Public Administration* (5th ed.). Belmont, Wadsworth, 2004.
- Singer, Peter. 'The Law Catches Up to Private Militaries, Embeds'. *DefenseTech*, 4 January 2007.
- Smith, Michael. 'Life-saving spy planes grounded by lack of crews'. *The Sunday Times*, 15 February 2009.
- Uttley, Matthew R. H. 'Private Contractors on Deployed Operations: the United Kingdom Experience'. *Defence Studies*. 2004, 4:2, pp. 145–165.