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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.

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 benchmark 3rsecutm(.)TjETEN

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

environments, limited oversight, and excessive lobbying and managerial costs.

(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,

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

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

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

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 init

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