**Comments on Government Green Paper entitled**
***Private Military Companies: Options for Regulation***
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Sandline International welcomes the publication by the Foreign and Commonwealth Office of the Green Paper on the subject of regulating Private Military Companies. This topic has been the matter of public debate in the UK for approximately five years, gaining particular prominence following what has become known as the "Arms to Africa" affair in the Spring of 1998 when this company was contracted by the Government of Sierra Leone to provide it with military assistance.

It is our view that the Green Paper presents one of the most balanced, impartial summaries of the debate on not just regulation of the sector but also the criticisms that have been levelled at PMCs since public interest was originally stimulated by the disclosure of Executive Outcomes' initial deployment into Angola in the Spring of 1993.

The Green Paper also takes the commendable and (for the sector) long-awaited step of considering the viability of the use of PMCs by the international community. We particularly welcome the observation made by the Secretary of State for Foreign and Commonwealth Affairs in his Foreword that "[a] strong and reputable private military sector might have a role in enabling the UN to respond more rapidly and more effectively in crises." This, we note, is further amplified in the Green Paper itself with the statement at paragraph 59 that:

"The UN operation in Sierra Leone, UNAMSIL, costs about $600mn a year. It is at least possible that if the tasks of UNAMSIL were put out to tender, private companies would be able

to do the job more cheaply and more effectively. It is also possible that such forces might be available more quickly to the UN and that they would be more willing to integrate under a UN command than is the case with such national contingents."

With this background we comment below on the options for regulation as proposed within the Green Paper itself.

A number of regulatory options have been put forward ranging from the adoption of a voluntary code of conduct through various licensing options and, at the other end of the spectrum, an outright ban. Assuming that banning the activities of PMCs is discarded, then whichever option or combination of regulatory options is selected we are concerned that there a number of practical issues which need more detailed consideration. These issues have shaped our thinking as to the format of a licensing structure (which we have set out later in this document). Amongst them are:

1 Company *v* Individual: The Green Paper appears to primarily focus on the regulation of corporate entities. This, therefore, leaves relatively unexplored the question of the regulation of individuals (and possibly unincorporated entities such as sole traders and partnerships). For example, would regulation encompass individuals who are self-employed and who provide security services, eg personal protection services, in such a capacity? How would any future regulatory structure address the licensing of individuals who are employed by non-UK PMCs which in some instances (eg US and South African companies) operate under different regulatory environments or in other instances are not subject to any form of national regulation?

2 Non-UK companies: How would the regulatory structure address non-UK companies that employ UK individuals, or are perhaps owned (in whole or in part) by UK nationals, or which have representative offices in the UK? Sandline International is a case in point – much of what has been written publicly about the company presupposes that a UK regulatory environment would apply to Sandline but the company is not presently incorporated in the UK although it does employ UK nationals from time-to-time, including individuals employed on specific contracts or as consultants. Sandline has made it clear that it is willing to adopt and comply with reasonable regulatory controls

but there may be quasi-UK companies who will seek the shelter of their offshore corporate status to avoid compliance.

3 National *v* International: In the absence of a comparable international regulatory environment to that implemented in the UK what actions would be necessary to prevent current UK companies deciding to take their operations offshore?

4 Confidentiality: What assurances are available to foreign Governments seeking to hire the services of a UK PMC that matters they legitimately regard as confidential at the State level will not be disclosed to the licensing authority, thus compromising (in their eyes) their national security? Would it be possible for the licensing authority to demonstrate a disconnect in some way from the UK Government, perhaps by contracting out any licensing administration to a third party organisation such as the British Standards Institute?

On the question of the individual licensing of contracts in particular there are a further number of practical issues which require detailed consideration. Amongst these are:

1 What assurances could be given to PMCs and arrangements put in place to ensure that compliance with a future regulatory structure which requires individual contracts to be licensed will not compromise their competitive capabilities when pursuing a potential project in competition with non-UK companies which are not subject to national licensing arrangements of their own?

2 If a contract-by-contract licensing structure is adopted for combat-related operations when should the PMC approach the relevant licensing authority? Much effort, energy, time and money could be expended in reaching the contract negotiation stage and the client could be expecting an imminent deployment. It may be, therefore, that this is too late a point for a licence to be sought – a denial at this point could lead to a great deal of resentment and could jeopardise an existing ongoing relationship between the PMC and client through no fault of its own. Conversely, making an application at the enquiry or tendering stage could lead to a significant and administratively burdensome number of unnecessary applications. Perhaps a more informal process may be more appropriate?

3 How will a contract-by-contract licensing structure address the fact that arrangements are often varied post-commencement? For example, taking a hypothetical situation where a licence is required for the acceptance of a combat-related contract but not for other types of projects, how would the legislation deal with the extension of a training contract into one which incorporates combat support? Indeed, there may not even be a formal contract addendum covering this extension. This type of situation is not an unlikely scenario as evidenced by the work of Executive Outcomes in Angola where its first training contract issued on September 1993 gradually developed into one in which combat support services were required and provided.

4 The question of the selective licensing of combat-related projects only at the individual contract level appears to be a preference of a few academics interested in the sector. However, as well as the specific problem outlined in the above paragraph, there is also the broader problem of defining which contracts require pre-licensing and which do not. In other words, how would "combat-related" services be defined? Would training legitimate Government forces which are in the process of dealing with a rebel threat in the use of weaponry be considered "combat-related" but similar training in peacetime where no current threat exists be excluded? Would the same apply to the provision of training in say intelligence gathering capabilities? What about maritime surveillance projects where the service provider is authorised to use force in appropriate circumstances to say interdict unlicensed fishing vessels?

5 Consideration should be given to the potential transfer of know-how or skills which the UK Government may not wish to see made available to certain other countries. For example, various proprietary techniques are employed by many specialist units in the UK Armed Forces and by the intelligence services, eg techniques used by the SAS in hostage situations, which could form part of a training programme offered by a PMC to another country. It may be that the transfer of this know-how is not considered to be appropriate but without an analysis of the complete and detailed course curriculum in question (which itself may not be devised until after a contract has even commenced) it may not even be possible to determine whether such sensitive techniques are included therein.

As previously stated, Sandline International is supportive of a regulatory framework which generates confidence in the professionalism and standards of the legitimate and ethical participants in the sector. However, the extent and severity of this framework must be tempered by the practical problems that will be faced if it is too onerous. The unanswered questions we have posed above are a flavour of these potential problems and it is for this reason that we prefer a licensing regime consisting of the following elements:

- The issue of a general licence to UK PMCs (both corporate and individuals) able to demonstrate compliance with appropriate and reasonable criteria and which agree to comply with the terms and conditions thereof;
- The adoption of a Code of Conduct by licensed PMCs such as that published by the US-based International Peace Operations Association in Washington (www.ipoaonline.org);
- Annual automatic renewal of the above licence, subject to none of the conditions of its issue being breached (with the provision of a statement to that effect required);
- The regular publication by the Government of a list of countries within which and entities (eg named rebel groups) to whom PMCs are prohibited from supplying their services without the prior provision of a specific licence (perhaps paralleling the existing DTI-maintained embargoed countries list?);
- Powers granted to the licensing authority to conduct random audits of the projects completed, being undertaken and/or being negotiated by a licensed PMC to ensure that they are complying with the terms of the licence issue;
- The option for the international community or the UK Government to deploy observers on combat and combat-related projects if they are material and high profile; and
- A further condition that any reference by the PMC to its licence in literature, etc, makes it clear that the licence does not imply endorsement or otherwise of the company's projects by the UK Government.

Three overarching matters should be taken into consideration in the formulation of any eventual licensing structure:

1 A PMC which acts outside existing national and international laws and military codes will find that it will very quickly go out of business as it is shunned by potential legitimate customers. We believe that this is a very strong incentive for PMCs to act law-

fully and energetically demonstrate that they operate professionally and ethically. Despite the many criticisms levelled at PMCs and the damaging hypothetical scenarios suggested by commentators there have been few, if any, proven instances of their occurrences. Not, in our view, because PMCs are more adept than others at covering their tracks but because they pay a disproportionate amount of attention to such matters for the very reason that non-compliance would result in commercial suicide.

2 Consideration should clearly be given to the establishment of parallel regulatory environments in the EU and worldwide. It would be unfortunate if UK companies found that their activities were constrained but that their competitors abroad were able to continue developing their business without similar constraints and checks. UK regulation in isolation will not enhance the international respectability of the sector.

3 Whatever the scope of the licensing regime introduced it must have the backing of the leading industry players otherwise existing and future companies in the field will adopt the line of least resistance and seek an alternate legal jurisdiction which does not impose an excessively burdensome set of regulations. It would not be difficult for these companies to justify this rationale to their clients and potential clients, thus it would not necessarily jeopardise their business generation opportunities, but it would undermine the value of the UK regulatory environment and it would also have a reasonably direct impact upon UK taxation revenue from this sector. It should be borne in mind that US PMCs seem to tolerate the rather bureaucratic ITAR process because a significant amount, estimated to be somewhere in the region of 80% to 90% of their business revenue comes from US Government-funded projects. Undoubtedly UK companies would be very keen to retain their domicile status (and existing offshore registered entities with strong UK ties would reconsider theirs) if this was the case in the UK too.

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