



## **PRIVATE MILITARY COMPANIES - INDEPENDENT OR REGULATED?**

Much has been written about the risk exposure resulting from the autonomy of private military companies (PMCs). The suggestion being that, without some form of control, they are more or less free to behave as they see fit in the environments within which they operate. For example, instead of being directed by their client (a recognised government), their position of strength could result in a role-reversal. Another often quoted observation is that there are no mechanisms in place to govern their human rights performance other than their self-imposed operating principles.

These concerns are raised by the same group of observers who acknowledge that UN or unilateral government deployment in an area of conflict is increasingly unlikely for a variety of reasons: (i) cost; (ii) risk of casualties; (iii) lack of national support or political will; and (iv) inadequate strategic interest. Furthermore, if a force of this nature is deployed it would generally be *after* some form of peace has been established and not as the stimulus to create this condition, ie peace-keeping as opposed to peace enforcement.

### What is a Private Military Company?

For the sake of this paper PMCs are defined as those organisations which do more than provide passive assistance in areas of conflict. They may provide training and equipment to extend the capabilities of their client's military resources, providing them with the strategic or operational advantage that is necessary to suppress their opposition or, going even further, play an active role alongside the client forces, as force multipliers, deploying their own personnel into the field of conflict, but with the strict caveat that they are acting within the chain of command of the client's military hierarchy.

A PMC, by this very definition, is not in the business of providing arms to its client in isolation but would only supply weaponry and systems within a wider package of training, support and use. Therefore, PMCs are not "arms dealers" but are more packaged services providers. Using the example of computers as an analogy, they are not hardware providers, but deliver a turnkey solution containing all the elements the client needs to make use of the technology, ie hardware, software, personnel, installation, training and implementation.

These PMCs have permanent structures and are not created simply to fulfil the needs of one contract. They employ or have access to the services of a large number of ex-serving personnel from first world armies and the client employs this expertise through a single contract with the PMC and not through a series of arrangements with individuals or small informal

groups. Furthermore, these PMCs operate from established offices and within a defined corporate management structure, delivering the necessary support services from within the company, eg marketing, sales, administration, accounting, personnel, procurement, etc. They may even make use of promotional literature to create awareness and do not operate “in the shadows” as one might expect of the typical 1970s “mercenary”.

In addition, once contracted and deployed, PMCs operate as a military hierarchy with associated discipline, observance of the laws and customs of the host nation and, finally, adhering to the principles of the Geneva Convention and the international law of armed conflict. Failure to comply with these laws would deter client interest and also result in prosecution and the possible forced closure of their business. Furthermore, activities by these companies which are contrary to the national interests (stated or otherwise) of the country(s) where they are based would seriously interfere with their corporate development. The fact that a PMC is allowed to continue to operate and administer itself from within a particular host country is potentially a strong pointer that it is regarded as ethical, legitimate, adheres to acceptable operating principles and may be of strategic value.

#### Do PMCs need to be regulated by an external body?

Many PMCs state that they apply a degree of self-regulation which obviates the need for external oversight and control. They will say that their internal procedures and practices are based on those of the first world army(s) which are the source of their manpower supply. They argue that they operate within a code of ethics and discipline, in such areas as determining who they can and who they cannot work for, when their services are no longer required and how their personnel behave once deployed in theatre, that is more than adequate. They will say that, in the event that they or a competitor breaches this basic code, they become exposed to the full force of both the national laws of their home country as well as international law.

So, for example, if there was sufficient evidence to demonstrate that personnel employed by a PMC participated in committing atrocities then they (and the company that employed them) would be subject to charges under *existing* war crimes statutes. Not only can one assume that a company identified as having condoned such actions would find that its future potential client base would seriously diminish and the chances of the company’s corporate survival would melt away, but also they would find themselves subject to legal sanction. Therefore, these companies, as well as being self-regulating, have no reason to fear external regulation and monitoring.

#### What benefits would a PMC derive from external regulation?

Whilst most PMCs will argue that they operate ethically and legally, there will be one or two that choose to turn a blind eye to what the UN and developed nations would regard as acceptable practices. The commercial reward being offered by a particular prospective client may simply be too great for the company to ignore, or perhaps the company is a maverick and more interested in working for unrecognised rebel groups rather than legitimate governments. Either way, this rogue PMC would cast a shadow over the reputation and credibility of the sector as a whole. Therefore, there could be considerable advantage to PMCs in accepting some form of regulation simply to exclude rogue companies from the list of “approved” or-

ganisations. After all, those PMCs that wish to maintain their reputation have much to gain from monitoring of the three key elements of their performance:

- Technical competence
- Adherence to the law of armed conflict
- Respect for human rights.

There is a second critical factor and that is the question of demonstrating the intrinsic values of the PMC to a sceptical audience. Whatever a PMC says about its operating principles and however it goes about ensuring that these are adhered to, there will always be a group of detractors in whose interest it would be to discredit the company. The source of this may simply be the PMCs client's military opposition, who would issue propaganda to generate international support, or it may come from some other source which has a deep-seated and intractable aversion to the use of external military force to prosecute even the most legitimate cause, whatever the justification. Either way, by subjecting themselves to some form of regulation, PMCs circumvent any problems of this nature.

As the public debate about PMCs and their legitimacy grows, so many prospective, valid users of their services become increasingly uncertain about international reactions to their possible employ. This uncertainty can be dangerous: as the client prevaricates, their military opponents are perhaps gaining in strength so that, by the time the threat is so severe that they finally decide to "take the plunge" and enter into a contractual relationship with a PMC, the requirement may have increased exponentially and, with it, the cost. Even worse, the client may prevaricate for too long and find the situation is now irreversible. Regulation, and more importantly perhaps, some form of certification, will give a prospective client the comfort that it is employing the services of an internationally acceptable organisation.

Therefore, it can be argued that legitimate PMCs themselves derive little *direct* added value through external regulation. However, the introduction of some form of external oversight would be of great value to a variety of other parties who want to be assured that these companies operate within an internationally accepted framework. Furthermore, such regulation would imply a shared responsibility between the PMCs and the relevant authority.

### National -v- International?

Most PMCs operate from offices and facilities located in developed countries. By their very nature, these countries enjoy the most developed legislatures and already have statutes in place to prevent what would generally be regarded as unacceptable activities being undertaken from within their borders, for example supplying equipment and services to an embargoed regime or to a criminal enterprise, such as drug-running. Breaking these laws will result in heavy penalties for the perpetrators. Some countries, South Africa for example, are on the verge of introducing legislation specifically targeted at controlling PMCs operating from within their jurisdiction.

However, PMCs can become very nomadic in order to evade nationally applied legislation which they regard as inappropriate or excessive. Therefore, what is really required is not so much legislation to control these businesses at the places where they have established their corporate bases but a general set of rules governed by an international body such as the UN or the International Court in The Hague which covers the conditions under which they can

operate. This international oversight has the added advantage of ensuring that there is a level worldwide playing field for the regulation of PMCs as procedures introduced at the national level may be more or less punitive in one environment than in another.

### What form should this regulation take?

Having determined that regulation in some shape or form is a “good thing”, the next step is to examine just what shape or form this should be. There are perhaps two steps to this: (i) identify the options; and (ii) select the optimal combination. The options identified in this paper are listed below:

#### 1 *Registration*

PMCs would subject themselves to a procedural audit process whereby the registration body (perhaps a UN function) conducts an evaluation of the company’s compliance with a pre-determined set of internationally defined and accepted operating practices and also examines the quality of the PMC’s internal procedures. This is akin in many ways to conducting an International Standards Organisation (ISO) review in order to determine whether the applicant qualifies for certification. Such a process can be designed to be wide-ranging and rigorous. It can also be repeated at regular intervals to ensure that a snapshot assessment of compliance is maintained over time. The output from this option would be a certificate issued by the registration body which the PMC can present to prospective clients as a demonstration of the acceptability of the company’s underlying ethos and practices. However, this option in isolation simply confirms compliance and is not an endorsement of the PMC.

#### 2 *Approval*

For want of a better term, this option becomes an extension of option 1. In this scenario, the audit leads to the inclusion of the PMC on a list of “approved companies” maintained by the regulating authority. The authority would have the right to remove, suspend or fine a particular PMC if there was evidence to prove that the company had breached its operating obligations and governing code.

#### 3 *Project Authorisation*

Prior to a PMC accepting an assignment it would have to apply to the regulating authority for permission, setting out basic project details, a justification for its involvement and a statement of the parameters within which it would work. If this authorisation was granted then a certificate would be issued by the regulating entity which could be sighted by the client. This process could be restricted to operational deployments and may not need to cover initial consultancy type assignments, such as overall threat assessments, etc.

Two issues need to be considered here: secrecy and speed. The regulating authority must be willing to undertake this work within the confines of accepted security measures so that the intended mission is not compromised, given the basis of the work to be performed. Secondly, PMCs by their very nature are able to deploy very rapidly and it is often the case that, when a client has decided to take up their services, they are re-

quired in theatre almost immediately. Therefore, any project authorisation process must be capable of operating within this time constraint and not impede the value that PMCs have with their lack of bureaucracy, ability to streamline executive decision making and rapid deployment.

#### 4 *Operational Oversight*

Very few PMCs would object to the attachment of an observer team deployed alongside them in the field. This team would work in the same way as the referees at a football match, ie not interfering with the action, ensuring their own personal safety by avoiding being hit by the ball (or a player), yet having the authority to caution participants if they are in breach of the regulations. Clearly, the analogy is not ideal as, in the case of PMCs and their clients, there are lives at stake and it would be hard to imagine an observer carrying sufficient weight to ensure the removal from the field of personnel who break the ground rules (eg the terms of the Geneva Convention). However, the PMC will be fully cognisant of the fact that their actions are being constantly monitored and will not want to be banned from “playing in another game” in the future or, perhaps, find themselves in front of an international tribunal.

The observer force, by its presence and oversight, can also ensure that criticisms and suspicions often levelled at PMCs, such as unnecessarily prolonging their participation for excessive commercial gain, applying indiscriminate military techniques resulting in unacceptable civilian casualties and collateral damage, or using their presence to exploit mineral resources, can be independently monitored. By being present throughout the deployment and operational planning phases, the observer force will be fully conversant with the overall objectives, chain of command, directives and orders that are issued, and the conduct of operations, thereby creating accountability for all the actions of the PMCs.

Undoubtedly there are other options not considered in this paper, many of which will be variations on the four set out above. However, instead of trying to create a completely comprehensive list, the options considered form the basis for an agenda to debate the issue.

The second question relating to the options posed earlier was the selection of the optimal combination. This is a more challenging task and, to a great extent, it will be difficult to take anything other than a subjective view in this paper.

There needs to be a balance between the extent of oversight required at the international level with that which can be practically managed and that which would be acceptable to PMCs without “switching them off” of the concept. After all, the majority of even legitimate PMCs are quite capable of continuing to operate and grow without the introduction of a regulatory regime and would, in fact, find this to be a burdensome addition to their operating procedures - they will only accept external regulation if it is manageable and adds to, not detracts from, their commercial aspirations and operational effectiveness.

Keeping the objective of simplicity in mind, the proposed optimum is a combination of options 2 and 4: approved PMCs are listed by a governing body and this body also has the *right* to deploy observers in the field alongside the PMCs personnel. The extent and timing of this parallel deployment would be at the discretion of the regulating authority but it would have to

be undertaken in consultation with the PMC and their client so that its presence remains benign, eg applying a maximum ratio of observers to client/PMC forces.

### Who pays?

Most clients are invariably short of funds (especially foreign currency) and may find themselves using the dregs of their already depleted and limited resources to satisfy the financial requirements of the PMC with whom they choose to contract. It would be unreasonable to expect them to contribute in addition to the establishment and operation of a regulatory environment. The PMCs, as explained earlier, do not need the regulatory structure to survive, albeit there are a number of advantages to those that choose to operate legitimately and ethically. By far the greatest beneficiary of the introduction of such a structure is the international community. The annual cost of implementing and managing the concepts set out in this paper are likely to be far less than the cost of even one UN peacekeeping force and, if PMCs continue to take root, the likelihood of their use in the place of an "official" UN-sponsored deployment will continue to increase. Therefore, it would only be just and reasonable to expect the international community to underwrite the regulation of private military companies.

### Summary

In conclusion, on the basis that PMCs have a valid role to play in future conflict resolution, peace enforcement and peace-keeping, together with the protection of humanitarian operations, and given that there still is a degree of unease and suspicion within the international community, there is a clear requirement for some form of oversight and regulation. However, while legitimate PMCs would welcome this, it is a prerequisite that these regulations must not become overly burdensome and prejudicial to the speed of action and operational efficiency of PMCs, which is the hallmark of these organisations.

In order to formulate an accepted and effective series of regulatory processes, it is essential that all involved, ie governments, international institutions (such as the UN, EU and OAU) **and** the PMCs, work in partnership to design and implement the appropriate package of measures.

Sandline International  
28 March 1998