

14

Regulating Private Military Companies: States and the Expanding Business of Commercial Security Provision

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The Private Military Company (PMC) is a key phenomenon of the post-Cold War era, in which the erosion of state authority, the trend towards privatisation, the downsizing of the world's armed forces, and the insecurities created by a world economy in crisis, all come together. The spectacular growth of the PMC industry over the last decade, marks a profound change in the traditional state monopoly of the legitimate use of violence. The state's possession of the means of coercion has been integrated in a general trend towards commercialisation; its legitimacy, considered by Max Weber one of the defining criteria of the state, thus is being partly shifted onto the market along with the actual management of security. Like so many other instances of privatisation, this is best understood in the context of a 'new public management' approach to government, which prescribes the outsourcing of public functions to the private sector (Lane, 2000). The state in this new, post-modern constellation is in the process of exchanging traditional forms of authority for a new mode of control and organisation based on the principles of delegation and supervision. However, the arena in which PMCs are active, is the global one – more often than not, in the very areas where state authority has collapsed or is precarious. Regulation is the means by which efficiency and legitimacy may be re-articulated, but in the case of PMCs, this would ideally have to occur outside the jurisdiction of the single state. But neither the patterns of global governance developed among states with highly convergent social structures, nor the unilateral 'imperial turn' undertaken by the United States, seem to hold out an adequate solution here.

It is the argument of this chapter that the particular efficiency dictated and assumed by new public management, in the case of PMCs will remain elusive as long as regulation (the means by which a degree of legitimacy might be restored) is not equally covered by regulation in the country in which PMC activities are undertaken; but here the possibilities for effective monitoring are often minimal or non-existent since these are often states in which authority has broken down.

I will first address the problems involved in defining the PMC, given the highly dynamic, exacting, and spatially flexible nature of contemporary capitalist development; and hence the difficulty of pinpointing regulation to begin with. Secondly, I turn to the national practice of regulation, notably the licensing mechanism used to regulate the American PMC industry – the most prolific, and by consensus, the most effectively regulated in the global PMC business. The chapter concludes that regulation remains a state-level endeavour that only a relative minority of countries are addressing, and unevenly so. If PMCs are no longer dealt with under the conventions against the use of mercenaries agreed by the United Nations and the Organisation of African Unity (now African Union), but are accepted as part of the post-Cold War global political economy, this seems to be the only currently accessible route for bringing them out of the shadows.

The PMC business

PMCs trade in military and security related expertise, but otherwise there is no agreement on how to define them. For our present purposes, I will define PMCs as legally established enterprises that make a profit by either providing services involving the potential exercise of force in a systematic way and by military means, and/or by the transfer of that potential to clients through training and other practices, such as logistics support, equipment procurement, and intelligence gathering. It is a *potential* because the mere presence of a PMC can deter aggressors from considering the use of force a viable course of action. Neither does there have to be an actual or potential military role; a PMC's involvement may as well be directed towards enhancing the recipient's military and security capacities.

Business requires a market and a readily available pool of requisitely skilled labour to succeed. In the case of PMCs, it was the post-Cold War environment that generated these conditions. The market was created by the withdrawal of the superpowers from the periphery of the global political economy. During the Cold War, the stability of many countries depended upon the direct involvement of the super powers or their allies, in their political affairs. Military and security expertise was exchanged for loyalty. The rapid and effective superpower disengagement from the periphery that followed the collapse of the Soviet bloc, created instability in many countries. Upon the apparent failure of some of these states to maintain internal security, PMCs seized the opportunity and thus provided, 'a free market response to a specific need no longer met by governments and international organisations' (Shearer, 1998: 9). Africa was the arena in which the market took shape and where the PMC pushed beyond the experimental stage to become part of the emerging post-Cold War global political economy. Critically, Africa in this process has become the 'forgot-

ten continent'. One way of forgetting, I argue, has been the delegation of control and authority of aspects of the security structure to private contractors in the absence of any other immediate and viable 'public' alternative.

A further consequence of the end of the Cold War was the downsizing of the protagonists' armies. In the case of the United States, the goal was a drop from about 2.2 million active duty personnel in the late 1980s to 1.4 million by 1999 (Department of Defense, 1995: Part V, appendix C). By 2000, the active force was estimated at 1.38 million soldiers, representing 64% of the 1989 total (Department of Defense, 2001: Appendix C).¹ The shedding of military personnel has not been restricted to specific branches of the armed forces. Between 1989 and 2000, the Army, Navy, and Air Force registered reductions of around 35%, and the Marine Corps 12%. This downsizing of the US forces has produced a constant and bountiful source of skilled military personnel of all ranks, and from all sectors. This trend was identifiable, not only in the US and former Soviet Republics, but also amongst their allied states. PMCs, then, found an almost unlimited supply of qualified personnel to fill their ranks. This was not a one-off development, but one fuelled by the periodic release of military personnel from duty once the downsizing had begun.² Indeed, former servicemen in many cases have themselves established private military and security companies. Among a plethora of examples, International Security & Defence Systems was established in 1982 by 'former operatives of I.S.A. (Israeli Security Agency), the MOSSAD and the Defence Forces' (ISDS, 2003); Defence Systems Limited (DSL) was founded in 1981 by a team of former Special Air Services (SAS) personnel (Sheppard, 1998: 135); and Alpha-B was created in 1993 by former KGB officers of the anti-terrorist Force 'Alpha', Group 'A' (Alpha-B, 2003).

The downsizing of the opposing armed forces at the end of the Cold War was not the only reason behind the rise of the PMC. The pressures exerted on governments by neo-liberal ideologies and practices must be at the centre of any explanatory scheme. Neo-liberalism has fostered fiscal austerity and a fundamentalist belief in the primacy of market provision. Accordingly, pressures for an 'efficient' public sector have generated government policies which favour the maintenance of small but specialised forces in the public sector proper, and the increased outsourcing of non-strategic military and security functions to the private sector. This shift has been crucial in the consolidation of the PMC market.

PMCs might also be considered a result of the expansion of the broader security sector over the last two decades. Both the security and the military business satisfy a demand for protection. However, this overlapping of protective functions need not imply that the frameworks established to regulate security firms are effective sanctioning mechanisms for PMCs. Besides the intrinsic military nature of PMC services, the defensive and offensive potential delivered or transferred by PMCs distinguishes them

from security firms. This requires careful consideration at a time when both businesses expand and consolidate rapidly. For instance, many security corporations have expanded their catalogue of services to include the military element absent in the past. One of the strategies followed has been by way of taking over PMCs. Armor Holdings, for example, acquired DSL in 1997 in order to establish ArmorGroup, its service division.³ While the corporation at large is not subject to PMC regulation, the segments of it that offer PMC services are. In turn, PMCs have expanded into the security sector. Among many examples, a joint venture between Alpha-B (see above) and DSL in 1992 created Gorandel Trading Limited, a Russian-based security firm. Six years later, the Gorandel partnership became DSL Euroasia.⁴ Gorandel constitutes an important step for DSL towards a permanent presence in the lucrative Russian security market. Expansion has also prompted PMCs to confront new challenges, such as protection against the increasing threat of maritime piracy and terrorist attacks. Strategic Consulting International (SCI), a company founded by Tim Spicer, former CEO of Sandline International, is one of the companies created to exploit the growing market for protection from maritime piracy. The volatile security environment of the new millennium will undoubtedly create more such opportunities. These opportunities, in turn, reflect upon the adaptability of mechanisms established to regulate PMC activity.

Not only do security firms now offer PMC services (and vice versa), but corporations whose primary market used to be in areas such as communications and defence procurement have also expanded into PMC services. One such firm is the US-based L-3 Communications Corporation (L-3). L-3 was established in 1997 with the aim to become, 'a leading mezzanine company in the defence electronics and communications industry' (L-3, 2002). Today L-3 is listed in the New York Stock Exchange (NYSE). It reported, for the year 2002, revenues of US\$4 billion, and comprises over 40 diversified divisions, one of which is Military Professional Resources Incorporated (MPRI). Even though MPRI preserves its corporate identity and is allowed operational independence, it became a wholly-owned L-3 subsidiary in July 2000 (*Washington Technology*, 2001). MPRI gained notoriety in the 1990s with its involvement in the US-led Train and Equip Program for the Bosnian Federation. As in the case of the security sector, the legal framework sanctioning defence electronics and communications cannot be stretched to provide a regulatory mechanism covering the PMC services now offered by some of these corporations.

The implication of the above is that whilst some multinational corporations possess PMC capabilities, it does not necessarily follow that the enterprise at large is a PMC. In turn, not every function of these corporations should be approached and regulated as if it were a PMC function. Besides L-3, DynCorp fits this criterion. DynCorp is a large and highly diversified enterprise that described itself as one of the 'largest employee-owned tech-

nology and services companies in the United States, providing sound IT, outsourcing and technical solutions for public and private sectors worldwide' (DynCorp, 2002). DynCorp has 10 main divisions and is organised around four areas of expertise: IT systems and solutions, technical services, international services, and medical information services. With annual revenue (for 2002) of about US\$1.8 billion, a US\$6.8 billion contract backlog, and 23,000 employees working in 550 locations all across the globe, in terms of size and capabilities DynCorp can be compared to L-3. Like L-3's MPRI, DynCorp has done some high-profile PMC work. For example, the company has been involved in the Kosovo Diplomatic Observer Mission; the drug enforcement initiative referred to as Plan Colombia; security provision for Hamid Karzai, the post-Taliban President of Afghanistan; and training the new Iraqi police force. Although in the case of L-3 it is easy to establish that MPRI is the subsidiary offering PMC services, in the case of DynCorp, due in part to its complex corporate structure, it is difficult to pin down the PMC function to a specific division, subsidiary or area; certainly DynCorp as a whole is not a PMC. Indeed to further complicate the picture, in March 2003, Computer Sciences Corporation (CSC) completed the acquisition of DynCorp, turning the new venture into one of the largest outsourcing companies in the world (CSC, 2003). Evidently the PMC services offered by DynCorp are subject to PMC regulation, but again its being part of a larger structure has confused matters and obfuscates regulation. Another example of corporations which have a PMC aspect is Northrop Grumman (aerospace), which owns Vinnell Corporation. Vinnell as one of its most lucrative contracts has been training and modernising the Saudi Arabian National Guard. Although Vinnell has PMC capabilities, they also offer services in many other areas outside the PMC perimeter. So the 'PMC' subsidiary of Northrop Grumman is not a pure PMC after all – Vinnell runs Job Corps centres in the US, an education and job-training programme aimed at youth at risk. Further instances of PMCs offering non-military or security related expertise include AirScan, which collaborates with the US National Response Corporation in the eventuality of a major oil spill in US waters (AirScan, 2002).

Even the 'private armies' of which some authors speak, tend to expand into adjacent fields. This is the type of PMC which will occasionally make the headlines – they are the ones who are able to deploy a force at short notice to end a rebellion or restore a government to power, as Sandline attempted in Papua New Guinea and managed to achieve in Sierra Leone. Yet Sandline in the Strategic Communications segment of its catalogue, also promotes assistance in matters including public relations, international lobbying and political analysis (Sandline, 2003). Here the military aspect predominates though, and activities like the upgrading to Western standards of the military and security apparatuses of some states, as MPRI did in the Balkans; or maintaining a certain degree of internal stability in

conflict-prone regions, as the defunct Executive Outcomes succeeded in doing for some time in Angola and Sierra Leone, are examples. These PMCs, assuming roles that clearly contradict and trespass on traditional perceptions of state authority, therefore constitute the most challenging regulatory concern. But as indicated, this applies to only a relative minority of companies. Within the 'private army' category one may then again encounter companies which provide services of a para-military nature such as field medicine. US-based Global Univision offers medical services to clients working in dangerous locations. In their own words, they provide 'special operations medicine and services for medical and special operations' (Global Univision, 2002). Medical attention here is administered by the likes of former Navy Seals, Green Berets or SAS personnel. Global Univision would not qualify for the 'private army' label, but its former military personnel satisfy a demand for specialised medical attention that the regular practitioner would not be qualified to provide.

PMCs, then, come in all sizes and shapes, but regardless of them being independent service providers, subsidiary concerns, or units within large corporations, the regulatory focus is the actual military activity somewhere within the larger structure. Of course PMCs by recruiting former military personnel and taking on tasks previously handled by states, inherit routines in which international law and custom and established military practice already contained; they should not be seen as simply evacuating the legal arena defined by states. Since PMC employees will usually have acquired their trade under the umbrella of the state, expertise tends to be delivered or transferred in accordance with rules established and observed by the respective states. Hence the modes and norms of warfare and law enforcement of the traditional legal regime resonate in the new world of private military and security provision. Adherence to international laws governing war; observance of rules of engagement; the organisation of personnel according to a system of ranks; the delegation of authority through chains of command; the use of prescribed weaponry, tactics and intelligence; and the establishment of commercial relations only with internationally recognised governments and organisations, all belong to this heritage, although in the process of privatisation they may erode or unravel in a variety of ways, certainly when the motive for privatisation is to get away from these rules and established practices. It is here that new forms of regulation are called for. Let me therefore turn to the most salient model of regulating PMC activity, that established by the United States.

Regulation at the national level – the US model

Given the complex embedding of PMC entities within the larger business structures we have seen, regulation must be focussed on the actual PMC activities and be specified by reference to the service being outsourced. This

approach, while not diminishing the tensions that delegating authority generates, allows governments to determine in which form and to which extent they enable private contractors access to the management of the monopoly of legitimate violence of the state. Nossal comments that the problems associated with regulating PMCs nationally have 'led to the view that this activity could be more effectively regulated by international agreement than by a patchwork of national regulation' (Nossal, 2001: 468). But as long as states regard controlling the exercise of legitimate violence their prerogative, PMC regulation, too, will be devised and implemented at a national level. Given existing asymmetries of private military power across borders, changing attitudes towards the use of PMCs, and different political cultures impinging upon the legislative process, international agreement must remain an ideal, while regulation at the national level is a pragmatic responsibility that governments can neglect, but not fail to recognise in the end. National regulation is therefore the inevitable starting point if the anti-mercenary conventions are no longer seen to be applicable.

If the monopoly of violence remains one of the prerogatives of the state, it seems paradoxical that states maintain authority at the same time as delegating it. This paradox can be understood in light of the contradictory pressures state authorities are subject to, negotiating the conflicting demands for the maintenance of state power, and those implied in the neo-liberal attitudes towards public management and global markets. A flexible regulatory mechanism would be one that adequately mediates between these contradictory requirements. With this unstable resolution in mind, attempts at regulation by three of the main suppliers of PMCs are examined below. These attempts illuminate the implications of regulation for the state in the post-Cold War global political economy.

The US government appears to have the most mature relationship with PMCs, and its regulatory regime is 'probably the most developed and comprehensive' (House of Commons, 2002: 27). US legislation concentrates on regulating the export of defence articles and services, whether provided by individuals, PMCs, security firms, defence contractors or any other (legal) persons. Defining the service provider (for example, as a PMC or as a security firm), is not an issue contemplated in the legislation. Thus expansion and consolidation of service providers across sectors, as detailed in our first section, does not affect the enforceability of regulations. It is an adaptive regulatory framework that is updated when required to reflect changes in American foreign policy goals and the international political climate.⁵ Here we see how an effective national regulatory model may spill over to other countries. South Africa emulated the US model with the implementation of a regulatory regime sanctioning PMC activity in 1998. The UK is likely to follow the trend. These countries constitute three of the major suppliers of PMCs. Therefore, their attempts at regulating PMCs are likely to set a precedent for other suppliers that are yet to tackle the issue.

The US regulates PMCs through the Arms Exports Control Act (AECA), which has undergone amendments since it was first implemented in 1968. In 'Subchapter III – Military Export Controls' of the Act it is established that the President:

is authorized to control the import and the export of defense articles and defense services and to provide foreign policy guidance to persons of the United States involved in the export and import of such articles and services (AECA, 2002: 2778).

AECA controls the export of defence articles and services through the International Traffic in Arms Regulations (ITAR). ITAR implements the authority granted to the President to control the export of defence articles and services; an authority that 'was delegated to the Secretary of State [in 1997] by Executive Order 11958, as amended (42 FR 4311)' (ITAR, 2002: 120.1). The US State Department administers that authority primarily through the Office of Defense Trade Controls (ODTC) at the Bureau of Political-Military Affairs, which ultimately manages the licensing of PMCs (Ibid.).

Articles and services eligible for export are established in the United States Munitions List (USML), which is included in Part 121 of ITAR. USML also establishes articles and services that are designated as 'significant military equipment' and 'major defense equipment'. 'Significant military equipment means articles for which special export controls are warranted because of their capacity for substantial military utility or capability' and, 'major defense equipment means any significant military equipment ... having a nonrecurring research and development cost of more than \$50,000,000 or a total production cost of more than \$200,000,000' (ITAR, 2002: 120.7, 120.8). Some categories covered by USML are Firearms, Ammunition, Tanks and Military Vehicles, Protective Personnel Equipment, Military Training Equipment, Military Electronics, Toxicological Agents and Equipment; categories XVIII, and XIX are 'reserved'. Some items deemed 'significant military equipment' are flamethrowers, military explosive excavating devices, tanks, amphibious vehicles, and nuclear radiation detection and measurement devices manufactured to military specifications. As for services, without being exhaustive, ITAR states in section 120.9 (a) that a 'defense service' means:

The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles.

It also covers the 'furnishing of technical data' and 'military training of foreign units and forces, regular and irregular', whether provided in the US

or abroad. Considering that this categorisation does not cover all of the services that some American PMCs have allegedly rendered, it should be noted that subsection (b), the second part of Section 120.9, is 'reserved'. Overall, ITAR incorporates registration and licensing procedures to be followed by persons willing to export defence articles and services. It also establishes definitions, signals general policies and provisions, and deals with violation and penalty issues.

USML and ITAR are not static documents, but are updated and amended to reflect changing foreign policy goals. For example, effective on 17 April 2002 the US Government stated that it was its policy to 'deny all applications for licenses and other approvals to export or otherwise transfer defense articles and defense services to Zimbabwe' (Federal Register, 2002a: 18978). The supplementary information provided in the notice justified such action, stating:

The Government of Zimbabwe has subverted the democratic process through a badly flawed presidential election, a campaign of violence and intimidation against its political opposition, and a blatant disregard for the rule of law and serious human rights abuses.

However, on 23 July 2002 the State Department in Public Notice 4068 incorporated an exception to the policy, authorising, in furtherance of US foreign policy:

the use of the license exemptions at section 123.17 of the ITAR for exports of firearms and ammunition to Zimbabwe when for personal use by individuals (not for resale or retransfer, including to the Government of Zimbabwe) and the firearms will be returned to the United States (Federal Register, 2002b: 48242–3)

Section 123.17 of ITAR describes the nature of the firearms and ammunition subject to exemption. An inspection of the Section suggests that the firearms and ammunition in question would be for personal self-defence, carried probably by concerned US citizens presently travelling to Zimbabwe. The Federal Republic of Yugoslavia enjoyed a similar status during the 1990s. But on 9 January 2002 the State Department amended ITAR, announcing that it was 'no longer the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in the Federal Republic of Yugoslavia (Federal Register, 2002c: 1074–5). In other words, until further amendments are published, US-based PMCs can apply to offer their services in Yugoslavia but not in Zimbabwe.

Any PMC willing to offer its services is required to be registered with the State Department at the ODTIC, paying an annual registration fee of

US\$600 (figure for 2003). The services that PMCs are willing to offer, need to be covered by USML and provided under ITAR terms. Registered PMCs require a licence for every contracted operation they undertake, which in some cases they can apply for online. Among other restrictions, if a contract involves the 'transfer of any major defense equipment valued (in terms of its original acquisition cost) at \$14,000,000 or more, or any defense article or related training or other defense service valued (in terms of its original acquisition cost) at \$50,000,000 or more', special procedures apply (AECA, 2002: 2753). In such cases AECA stipulates the need for the President to submit, 'to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate a written certification ... before a license is granted'. Congress has the capacity to deny a license, i.e. 'unless the President states in the certification ... that an emergency exists which requires that consent to the proposed transfer become effective immediately in the national security interests of the United States' (ibid.).

US legislation pertaining to the regulation of PMCs is even more complex than portrayed here. Other Acts might need to be observed and PMCs are required to liaise with other governmental agencies besides the State Department. Nonetheless, this brief description outlines the basic workings of the licensing mechanism used by the US government to regulate the PMC industry within its jurisdiction.

The path to global regulation? Emulation of the US model abroad

Let me now review whether the adoption of the US licensing system for PMCs represents a viable route for global regulation in this area by examining the attempts at regulation by South Africa and the United Kingdom.

In the case of South Africa, no legislation existed to regulate the booming post-Apartheid PMC business until the Regulation of Foreign Military Assistance Act came into force in 1998. The process that led to the establishment of the Act started to take shape on 8 May 1996, when the Constitution for the Republic of South Africa was adopted. Two years later the Minister of Defence released the Regulation of Foreign Military Assistance Bill, which arose from Section 198 (b) of the new Constitution. In this Section it is stated that

The resolve to live in peace and harmony precludes any South African citizen from participating in armed conflict, nationally or internationally, except as provided for in terms of the Constitution or national legislation (RSA, 1996: 198 (b))

After a brief consideration period the National Assembly's Portfolio Committee on Defence amended the Bill. On 20 May 1998 the Bill, now Act, was signed by the South African President and published in the

Government Gazette, as the Regulation of Foreign Military Assistance Act, Act number 15 of 1998.

The Act not only controls the offering of foreign military assistance by South African citizens as indicated in section 198(b) of the Constitution, but also that offered by foreign nationals within South African territory (RSA, 1998). The Act differentiates between foreign military assistance and 'mercenary activity'. It regulates the offering of the former and effectively bans the latter, which is defined as 'direct participation as a combatant in armed conflict for private gain'. It identifies military assistance as any 'military services or military-related services, or any attempt, encouragement, incitement or solicitation to render' services in the form of certain activities described in the Act. To avoid loopholes which PMCs might take advantage of, the Act also defines as assistance 'any other action that has the result of furthering the military interests of a party' to an armed conflict. Similar to the US framework, the Act establishes a two-step process that anyone wishing to offer or render foreign military assistance is compelled to follow. Firstly, any person wishing to 'offer' assistance needs authorisation from the National Conventional Arms Control Committee. Secondly, if authorisation is granted, subsequent scrutiny and approval of every agreement reached with potential clients for the 'rendering' of assistance is also necessary. The Act was complemented by the Regulation of Foreign Military Assistance Regulations, released by the Department of Defence on 2 October 1998. This piece of legislation sets out guidelines on applications for authorisation to offer and render foreign military assistance.

To a great extent, the pressures exerted by the international community on South Africa to control its PMC industry, notably Executive Outcomes, motivated its attempts at regulation. Besides, an issue of concern for the South African government has been the strategic implications of the involvement of its citizens in African conflicts. Clearly, the involvement of South African PMCs in African hotspots has greater repercussions for South Africa than for Western governments. Even though the licensing mechanism of South Africa bears noticeable similarities with the one used by the US, the implications of regulation and control are not the same. Whilst the US regulates in order to monitor its PMC industry, South Africa does so in order to manage the impact of PMC operations. For the implications of PMC activity for different participants in the global political economy vary. Regulation of PMCs is a universal technical problem; however, it is embedded in asymmetries of power and organisational capacities that result in particular means of regulation and control materialising in each state.

Similarly to South Africa, the British government was prompted to tackle the regulation issue by the high-profile exposure of the involvement of a UK-based PMC in an African conflict; in addition to the need to control a burgeoning industry. British PMCs started to proliferate roughly at the

same time as South African ones, but it was not until the Arms to Africa affair grabbed the headlines that the British government was forced to act. The affair was a result of the apparent breach by Sandline of a weapons embargo imposed by the United Nations on Sierra Leone in 1998. Allegedly, this occurred with the full knowledge of the Foreign Office. On 17 May 1998 the affair reached a climax when Robin Cook, then Foreign Affairs Secretary, announced in the Commons that an independent inquiry 'will commence immediately' (House of Commons, 1998: 610). The *Report of the Sierra Leone Arms Investigation*, as the inquiry is officially known, was published on 27 July 1998. With respect to PMCs, it is noted in the Report that they are, 'on the scene and look likely to stay on it' (Legg and Ibb, 1998: 115-6). Therefore, they are 'entitled to carry on their business within the law and, for that purpose, to have access and support which Departments are there to provide to British citizens and companies' (Ibid.).

In addressing some of the recommendations put forward in the Report, the House of Commons Foreign Affairs Committee requested the formulation of a Green Paper on the regulation of PMCs. On 12 February 2002, the Foreign and Commonwealth Office released the Green Paper, 'Private Military Companies: Options for Regulation'. In the statement announcing its release PMCs are not conceived as 'freelance mercenary soldiers', but enterprises covering 'many different sorts of organisation', from 'respectable and well established names' to 'transient and not always reputable companies' (FCO, 2002b). It also noted that given the high standards of the British armed services, it is not surprising that British companies are active in the business. The statements above show the central tension between legitimacy and efficacy that authorities face when attempting to regulate PMCs. Whilst the state wants efficient management of the means of coercion at its disposal, the means of coercion need also to be legitimate. Hence, regulation seeks to legitimise the role private contractors play in the management of violence in a manner that does not undermine state authority. This instance of the 'bifurcation' of state authority (Palan, 2003) affirms the need for the state in the contemporary global political economy to be flexible and adaptable.

In terms of options for the regulation of PMCs, the Green Paper proposes a ban, self-regulation, or the establishment of a licensing system. The ban could cover either all services or just certain activities deemed by some to be objectionable, particularly, 'direct participation in combat' (FCO, 2002a: 71). The option of self-regulation considers the possibility of PMCs becoming members of or forming a trade association. The trade association would in turn draw up a 'code of conduct for work overseas' and enforce adherence to it by its members (Ibid.: 76). Under the proposed licensing system, any person wishing to render military and security services internationally must obtain a license to enter into contracts. One argument for this option is that it is a flexible approach that would allow the government the

chance to consider 'the nature of the service in question and the political strategic background against which it took place' (Ibid.: 73). In light of the statement announcing the release of the Green Paper, and the engagement of British PMCs in the reconstruction of Iraq, it is doubtful that the UK government would contemplate a total ban on PMC activity. With respect to self-regulation, it is unlikely that a *laissez-faire* approach to such a strategic industry would be allowed to prevail. Therefore, a licensing mechanism is the likely form of regulation when legislation will eventually be passed.

On 26 July 2002 the Foreign Affairs Committee released the Ninth Report of Session 2001–02, *Private Military Companies*. In this, the Committee elaborates on conclusions and recommendations to the government that arose from the consultative debate generated by the Green Paper. The Committee recommends that private military and security companies be required to obtain a general licence before undertaking any activities overseas (House of Commons, 2002: 134). Subsequently, the licensing mechanism for military services proposed should require that 'each contract for a military/security operation overseas ... be subject to a separate licence' (Ibid.: 123). The parallel with the US licensing system is obvious. In fact, the Ninth Report recommends that 'in considering options for regulation, the Government examine carefully the United States government's regime for regulating and monitoring the activities of private military companies' (Ibid.: 28). The Foreign Affairs Secretary, in his Response to the Ninth Report, noted that the Government 'will examine the experience of the United States and other governments, such as South Africa, in more detail' (FCO, 2002c: (c)). It would be premature to specify at this stage the exact form regulation is likely to take. However, it is not overly adventurous to propose that it will bear striking parallels with the licensing mechanisms used by the US and South Africa. It is worth noting that since the UK is likely to be the first European Union member to establish a regulatory framework specifically designed to sanction PMC activity, the framework eventually adopted in the UK might set a precedent for other European (and Commonwealth) countries.

Can we say, then, that in the absence of regulation at the actual global level, the US licensing model holds out the possibility of reaching something akin to it through a step-wise adoption of the American regulatory arrangements? Here we must establish that effective and robust regulation at the national level is not a guarantee that compliance can be enforced beyond the domestic domain. Notably, PMCs can always reincorporate and relocate their base of operations to another country. The problems of enforcing regulation abroad are acknowledged in the Green Paper, where it is noted that 'since the activity which is licensed takes place abroad, it would be difficult to know (or prove) whether the terms of the licence were breached' (FCO, 2002a: 73). The enforceability constraints on extraterritorial regulation and the uneven response by governments in tackling the

issue at all, means that it is likely that for a considerable time to come the exercise of private military force will occur in a regulatory void even though a potential model for broader adoption is available.

A further regulatory problem concerns the monitoring and control of PMCs incorporated in offshore centres, where regulation is at best lax and often non-existent (Palan, 2003). This seemingly intractable problem may provide a fruitful avenue for further investigation of the interactions of the security structure and broader trends in the global political economy.

The overall regulatory situation for PMCs at the global level remains bleak. Yet the licensing mechanism used by the US seems to hold out the only currently viable option to gain ground here. It achieves a good degree of flexibility through itemising activities likely to be offered by the private sector, and works with a selectivity that discriminates between firms authorised to offer and render PMC services. Zarate elaborates on the virtues of licensing mechanisms, noting that 'by regulating the international security market via licensing regimes, the international community would create a market for legitimate SCs [international security companies] while ostracising rogue mercenaries and dangerous SCs' (Zarate, 1998: 153). Notwithstanding this, flexibility at the national level cannot guarantee a balance between efficiency and legitimacy to transcend the origins of its authority unless the receiving country has implemented effective regulation to monitor and control the delivery of PMC services within its own territory. This is the paradox that the bifurcation of state authority in an era of globalising capital generates. The delegation of authority that originates and is sanctioned at the national level, cannot be fully controlled abroad, or globally. Over a decade ago it was inconceivable to think the private sector would play a growing role in the management of the states' monopoly on legitimate violence. The new millennium demands reconsideration of conventional regulatory frameworks in order to address the role PMCs play in the global political economy as state sanctioned coercive agents, filling public and private roles. As I have shown, a myriad of actors in this sector capitalise on the increasing opportunities created by the outsourcing of state authority. The state, in order to control and manage this phenomenon has not sufficiently formalised the de facto bifurcation of authority through regulation. The management of legitimate violence remains the preserve of the sovereign state, but asymmetries of power and control have motivated an uneven response by governments in the regulation of PMCs. Despite regulation at the national level, the transnational dimension of the PMC business and the global scope of the PMC labour market limit the enforceability of national legislation beyond the domestic domain. These contradictions and paradoxes will characterise the exercise and regulation of private military force well into the new millennium.

Notes

- 1 This estimation does not incorporate the 'reserve' and 'civilian' component of the forces. Estimation based on figures in Department of Defense, *Annual Report to the President and the Congress*, (2001) appendix C.
- 2 According to Warren Duffie, in the US 'about 250,000 service members leave the armed forces each year, many motivated by the prospect of greater earnings in the private sector.' (Duffie, 2003).
- 3 Armour Holdings announced on 26 November 2003 the completion of the sale of ArmorGroup to a group of private investors. Armor Holdings, Inc, 'News Release', 26 November 2003. It is likely that further mergers and acquisition will result in changes in the corporate identity of some of the examples provided here by the time this manuscript is published.
- 4 E-mail message from Salimov Andrew, Manager, Alpha-B Ltd., 12 May 2003.
- 5 Israel 'follows a similar procedure' for the regulation of PMCs (Zarate, 1998: 156-7).