The good, the bad & the ugly of outsourcing security to Private Military Companies (PMC)

Patrick WOUTERS

This compendium was mostly drawn from the author’s doctoral dissertation titled “Defence & Security: to Resource, Insource or Outsource? Sharing the benefits and burdens of global security and stability.”
The activity of Private Military Companies (PMC) during the Balkan wars generated journalistic interest, scholarly research and legislative scrutiny. The interventions of these ‘Corporate Warriors’, as they were called by Singer, raised some intriguing questions, which - arguably - would change the perception of the informed observer on all conflicts since then:

- is it true that the US did not want to mobilize reserves and that a PMC (i.e. Brown & Root) was hired instead?
- did a PMC really ‘educate’ the Croatian army on the U.S. Air-Land doctrine, which then applied it to drive the Serbo-Croats out in a decisive battle, judged by most historians to surpass the combined capabilities of the Croatian and Bosnian Forces?
- did muslims subsequently indeed refuse to sign the Dayton-agreement unless a PMC was contracted out to ‘train & equip’ the military of the Bosnian Federation (allegedly with money of Islamic donors)?
- was the redaction of U.S. doctrine on PMC’s in ops (FM 100-10-2) and Contractors on the battlefield (FM 100-21) contracted out to … private military companies?
- were the governments of ex-Yugoslavian entities receiving direct referrals to PMC’s by acting US Government officials, thus deceiving any notion of competition?

The compelling evidence gathered since then, seems to underscore the conclusion that PMC’s helped to alter the course of the Balkan wars, featuring ex-Generals-with-PhD and ex-Sergeants-with-combat-experience.

This led to the ultimate, albeit rhetoric question: are PMC’s simply an extension of the U.S. Government?

To be sure, the events in Iraq involving one of the most infamous PMC to date – the BLACKWATER Company – seemed to provide an unwavering answer to this query. Although also involved in less notorious activities in support of military and security sector operations in Afghanistan, the company had to change its name and the Obama-administration felt compelled to adhere to the Montreux Document, a set of pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict.

All of the above seems to challenge the foundation of Weber’s theory that the State should retain the ‘monopoly on the legitimate use of physical force’. It is therefore incumbent on legislators, academia, media and even the public to independently apprehend and understand the phenomenon of private security provision in all its aspects and dimensions.

A significant part of that awareness stems from insights on how states are led to surrender part of their sovereignty to other states, multilateral security organisations - or indeed - private companies. And whether their interests are well served by them. The real question about security, according to the former prime-minister of Belgium, J-L. Dehaene, is in this regard how Europe plays its role in the global governance of the future, for if we don’t agree on the answer to that question, then armed conflicts on a wider scale – for instance over natural resources – are only a matter of time.

Hence, the corollaries of these questions expose some new, but important parameters of the problem: what is the right balance between economic efficiency & military effectiveness on the one hand and private profitability & political accountability on the other?

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3 In this particular case, the author found evidence that Military Professional Resources Inc. provided training and equipment for Croats and subsequently for the Bosnians.
4 Which will be designated with the terms ‘insourcing’ and ‘outsourcing’, respectively in the study.
In preparation of a thorough revision of its strategic concept, the North Atlantic Treaty Organisation tried to gain some insights on its ‘Multiple Futures’. In the conclusions of the research project designated with that name, following recommendations alluded to the perspective of a routine reliance on PMC’s in operations:

- Determine whether, and if so, which aspects of security, stabilisation or reconstruction the Alliance would be willing and able to outsource to private military companies (PMC). Doing so will require that NATO develop comprehensive policy on the engagement and relationship of the Alliance with PMCs.

- Develop Alliance standards, procedures as well as national capabilities to conduct security assistance missions, security sector reform, and to ensure cultural awareness among the forces of the Alliance.

The private military industry poses threats as well as opportunities, that should not only be understood by governments, but also by Inter-Governmental and even Non-Governmental agencies. Both the European Union and the United Nations have caught on to the importance of ‘Third Party Logistics’ for future operations, because it frees up military personnel for their core business, can save money when organised on a multinational basis, and - more importantly – because it can compensate for the absence of support assets of the Member States. But that is precisely where the problem seems to have started: continuous reductions and restrictions in force structure may have made the use of contractors compulsory, even for multilateral security organisations, let alone individual nations.

To be fair, war may indeed be too important to be left to Generals, but to paraphrase General Clemenceau’s famous words, it is assuredly too important to be left to balance sheets and corporations.

If Defence & Security can be considered as an insurance policy, the problem is to determine how much one should invest in it: all in excess of the mythical optimum seems unfruitful, but parsimony can be sourly regretted. All told, risk can indeed be mitigated by engaging in multilateral security organisations, but only in the understanding that sharing the benefits of global security and stability also brings about burdens.

Interest in exploring the fault lines of these parameters, together with a deep sense of concern that ill-informed political priorities would surrender public security to private market dynamics, were the main drivers for this study.  

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CHAPTER 1 - The relationship between resourcing, insourcing and outsourcing of Defence & Security

1.1 Introduction & background

Gorbatshov’s perestroika and the subsequent fall of the Berlin wall had a profound impact on the way western societies regarded collective defence. Whilst governments were swift in drawing new plans to re-assign the perceived ‘peace-dividends’ that would allegedly spring from the end of the cold war, defence establishments struggled for more than a decade to face the new security challenges that had globalised, just as most other aspects of civilisation.

In the mean time, NATO was facing implicit votes of (non)confidence by two consecutive U.S. administrations, while the EU finally started thinking about its own security and defence future.

But events in Georgia and Russian posturing in and against Ukraine reversed many perspectives on collective defence less than two decades after harvesting ’peace dividends’ were invoked to drastically reduce defence budgets.

The U.N. – hostage to the uncertainties of its veto-wielding permanent S.C. members – is compelled to tailor its level of ambition to the success of its diplomats at building consensus and the ability of its troop contributors to overcome the obstructionism of actors, whose interests are not served by peace.

As much as the end of the cold war had the potential to ‘give peace a chance’ though, the events of 11 September 2001 reshaped the parameters of global security and stability for at least a decade.

The Balkans, the African continent, Afghanistan and even more significantly Iran as well as Iraq are testing the theory of ‘imperial overstretch’, not merely by the USA but by global security organisations (SecO) collectively.

The war in Iraq has awakened many soldier-scholars, such as General Sir Rupert Smith and General Petraeus, to the real ‘utility of force’ 1 in a modern war, fought among the people, where firepower and manoeuvre must be coupled with the development of civil society and security through close contact with the population 2.

President Bush wanted NATO to uphold western values such as democracy: this global and open ended commitment, however, was not shared by most European strategists, who are uncomfortable with the globalisation of its previously regional sphere of responsibility.

European publics have a totally different perception of their ‘security interests’, the link between terrorism in their cities and problems in Kosovo or Afghanistan.

Yet, as President Sarkozy argued to the U.S. Congress in November 2007: “Europe must now re-engage in the major dossier of its military capabilities … there are more crises than there are capabilities to cope with." But the fact of the matter is that European governments are generally not inclined to spend any political capital on defence by advocating that a part of national wealth (on average, less than 1.7% of their GDP’s 3) or benefits should be ‘sacrificed’ to tackle any security problem beyond the immediate borders of the EU, let alone in Asia or the Middle East.

With the possible exception of the U.S. DOD, almost all military planners have been dealing with a regression of defence budgets in the past decade.

Modern technology brings about a conundrum of its own: will it really allow to do more with less? Granted, averting one-for-one replacement of legacy platforms is made more feasible, but procurement costs have grown exponentially, thus putting more pressure on the defence planners to deliver usable ‘capabilities’. The situation is further aggravated by the rising cost factors for operations, maintenance and personnel, causing structural under-funding of security related budgets. In an uncertain budgetary environment, nations are reluctant to commit forces to multinational operations, which security actors – trying to make their case in terms of usability and relevance – attempt to offset by mutualising costs.

3 European Defence expenditures as percentage of GDP have dropped below 2% since the turn of the century.
Indeed, as the Supreme Allied Commander for Operations (SACEUR) noted, NATO's most significant shortfall may simply be a lack of national will.

In a future security environment where every defence euro, dollar or pound counts, the fact that everyone is not camping around the same campfire puts special emphasis on the much touted assertion 'that duplication of effort has to be avoided'. Conceptual divides between 'hard' and 'soft' security actors can only be avoided through a renewed coordination framework regulating their respective responsibilities in operational theatres.

Internal debate in the EU as well as NATO will undoubtedly focus in coming years on the parameters of usability of forces and ways to render current 'force planning' more relevant by extending its purview to 'integrated' and thus more holistic defence planning.

Much has been said about the notion of 'comprehensive approach', usually to imply that the solution to a security problem can never be 'military alone'. To provide an alternative to this truism though, SecO need to find a way to establish temporary 'crisis governance', which provides the International Community and its governmental-, as well as non-governmental agencies with a conceptual framework to operate in an engagement space, while the military provides a safe and secure environment conducive to stabilisation and reconstruction.

Concepts for 'Effects based thinking' as well as 'Stabilisation and Reconstruction' - building blocks of a comprehensive approach - are finding their way in conceptual military thinking and have become an integral part of doctrine and campaign plans.

Here then is the challenge for a new 'security framework': who will draw the plans for it, who will write the software, who will own the copyrights and who will lease the hardware?

And here are some possible answers: NATO, the EU, the United Nations, an ad-hoc coalition, the OSCE, a Russian-sponsored alternative, all off the above or none of the above.

Ideally, the French re-integrate NATO more than in name, the Americans accept the EU as a reliable partner, the Turks feel accepted in Europe, the Russians indulge in a safety belt around their motherland, the United Nations Security Council re-invents itself by providing legal basis for action rather than old recipes for inaction and the Chinese realise that globalisation is a two-way street ... quod non (at the time of the writing), but any of the above will help.

Ultimately, the only workable solution might prove to be that each of the SecO builds a multi-purpose interface to all (constructive) actors in an engagement space in order to leverage its own capabilities and establish synergies with the others. At the end of the day, however, military capabilities will be indispensable for any solution, whether they are owned and operated by states or by private companies. But the real questions for civil-military cooperation in the engagement space are who leads, who supports, who pays and ultimately who benefits, whether it is through improving his security or his bank account.

1.2 A cascade of occurrences leading to compelled outsourcing

What is the most cost-effective way to provide defence and security for a nation and assert its foreign policy?

a. Invest in its national defence;

b. Seek multilateral partners and invest in joint capabilities (conscious that an equal burden share should be achieved);

c. Pay for corporate allies, since they are the only one can really count on (and investment cost can be foregone);

Perspectives are likely to differ significantly across the Atlantic and even within Europe, while views are steadily evolving as events unfold in the Balkans, Afghanistan and Iraq. More subtle is perhaps the notion that failure to invest in the first approach automatically leads to the second and eventually leaves no other option than the third for a good number of state functions. Hence, the question is why states surrender parts of their sovereignty, security and defence to other states, multinational organisations or even private companies.

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4 Strict military grammar would use the term 'battle space'.

5 This thought-provoking perspective was first expressed by Thomas L. Friedman in an article in the International Herald Tribune of 5 Nov 2009.
The first observations on the impact of the interactions between the hybrid strands of conflict and market forces were made after the Balkan wars and a plethora of African conflicts. Their actors, now branded as 'Corporate Warriors' would re-appear in the gulf wars, 9/11 and Afghanistan to show a two-way influence between conflicts and markets: security requirements levy an incalculable toll on the economy, but - on the other hand - conflicts have given corporate security providers lucrative and profitable business opportunities.

As will be described later on, future security environments will be 'hybrid' and feature incongruous elements, derived from heterogeneous sources. The 'multiple futures' we face will include conventional, irregular, terrorist and criminal forces in mixed modes of operations.

A conceptual framework for the provision of Defence & Security (D&S), respectively from the political, military-strategic, societal and mediatic viewpoint is useful to gain insights. The foresight studies of the future Defence & Security environments conducted by NATO and the EU provide the context to situate parameters as globalisation, climate change, natural resources, demography, urbanisation, information & technology, since they induce the requirements, as well as the military implications, that could be relevant in the coming decades.

Informed by these different angles, an economic perspective provides the most relevant framework to set the scene for historic illustrations on offer and demand of D&S, while a conceptual framework for the procurement of security services can map the revenue flows, that could be relevant to resourcing, insourcing or outsourcing of D&S efforts.

All of this should establish a political rationale to spend adequate resources on Defence & Security, but trying to answer the question of how much should be spent is a difficult endeavour with endogenous as well as exogenous variables and multiple criteria.

Nevertheless, the issues of HOW, HOW MUCH and ON WHAT Defence and Security resources are spent by member states of the European Union, NATO or both can be broached by analysing the defence planning processes that are being implemented, since they make the match between objectives and means. The merits of multinational capability pooling and joint NATO-EU cooperation on capability development are part and parcel of this analysis, since they are said to be preferred solutions to the problem. But are they significant parts of every solution or merely scanty parcels with limited application fields in a constrained resource environment, where the cost-effectiveness of each business case has to be made appraised individually on its merits?

Failing to allocate resources to national defence capabilities invariably leads to security deficits. For weak or failing states, this often results in swift and sweeping loss of sovereignty or a hostile takeover by non-state actors in today’s hybrid security environment. More sophisticated states, on the other hand, will try ‘mutualise’ their security requirements through multilateral Security Organisations as the United Nations, NATO or the EU.

Multilateral funding mechanisms have a variable geometry and support the notion of ‘insourcing’. Taking cues from current management practices, insourcing can be described as the practice that a nation relies on multilateral Security Organisations (EU, NATO, U.N. et alii) to perform a project or task (as opposed to outsourcing it to a Private Military Company), in the understanding that an entity providing services for the benefit of other parts of the organisation is entitled to a financial compensation.

The vision elaborated in the Treaty of Lisbon should lead to convergence from the loose framework of ESDP to a truly Common Security & Defence Policy. Under the assumption that ‘convergence milestones’ should set ambitious, yet realistic goalposts for future policy, analysis shows that convergence targets as ‘shareholdership’ and ‘usability’ of Armed Forces can serve as a beacon through peer pressure. National agenda’s and interests, however, remain determinant for defence investments and international events (in most cases) merely affect the portion of budgets that are ceded to multilateral funding. Furthermore, political will, is necessary to find compelling convergence milestones to focus on multinational acquisition programs more tailored to pragmatic operational needs, to pool forces effectively and to commit them to operations, while sharing the risks more evenly.

Hence, funding mechanisms inherent to intergovernmental arrangements should be complemented, diversified or maybe even replaced by the provision of endowments suited for multilateral integration and conducive to insourcing: a common policy should be animated by innovative (as opposed to wasteful) common funding, for diverging views on how to resource it will ruin its chances of being common.

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That said, the concept of multinational units, the practice of 'commonly funding wars of choice' (i.e. not in self-defence nor in protection of the homeland) as well as the notion of multilateral overextension all deserve close scrutiny.

When collective security mechanisms become anaemic for lack of common funding, though, multilateral calls for action and political decisions are undermined by the fact that recurrent and systematic underinvestment inevitably leads to capability- and force generation shortfalls, that any form of management or burden sharing cannot alleviate. This could be characterised as ‘multilateral overstretch’.

The obvious, but less than innocent treatment for this condition is ‘outsourcing’ to Private Military Companies. While the use of private companies for corporate or logistic functions might be manageable, complementary and legitimate, outsourcing ‘inherently governmental functions’ as the use of force to hired guns manifestly leads to legal, military and political issues.

**1.3 Good, bad & ugly of PMC’s : what to look for ?**

Recently documented cases point to the contours of both undesirable and optimal forms of outsourcing, provide evidence to discern the military, legal and political consequences of outsourcing to Private Military Companies and how they could be mitigated, if the lessons are identified and applied to policy making.

Most observers, in their attempts to clutch the notion of Private Military Companies (PMC), describe them as controversial and secretive, i.e. mostly evading any form of transparency (supposedly unwelcome to their clients, especially if they are government agencies). The Blackwater incidents in provide such a case in point, because they are reliably documented by independent sources and because the U.S. Armed Forces – pushed by the Rumsfeld-paradigm on transformation - have gone way further down the road of private contracting than all other military establishments to date. Secretary of Defense Rumsfeld was adamant on lighter and more mobile armed forces concentrating on their core business, i.e. fighting wars, even if (or maybe because) that meant that outsourcing all the 'softer' tasks to private companies (some of which were in friendly hands) became a necessity, rather than an option. Hence, the Blackwater case will provide an excellent opportunity to research the good, the bad and the ugly of the outsourcing concept, given the American tradition of legislative scrutiny by Congress and the Government Accountability Office. Cognisant of the opinion that check-and-balance mechanisms were severely strained under the Bush-Cheney administration, the case yields excellent lessons (to be) learned by SecO and European defence establishments in the operational, legal and political realm.

PMC’s are said to alter the calculus of stately security and are known to fill any voids left by the more traditional sources of security. Their marketing branches sense incentives to expand in future security vacuities, which are constrained by only very few unpropitious factors. Nonetheless, a growing consciousness by legislators, academia, political and military decision takers might preclude them from gaining a much sought-after aura of respectability by morphing in benign companies, that supposedly only provide security sector training or demining capabilities, thus in effect enabling humanitarian relief.

If the legal and political ramifications of misconduct by Private Security Companies can be very damaging for the ‘outsourcer’, some of the problems cited above are also applicable to Private Military Logistics Companies. Nonetheless, PM(L)C’s can offer positive outcomes: they free up military for their core business and have even become indispensable for some defence capabilities that have been scrapped through successive restructurations and consolidation. Some interesting examples of the provision of military logistic services current practices in the EU and NATO, respectively are facilitated by multilateral organisations as EDA and NAMSA. The United Nations have also engaged in all-encompassing reviews of their outsourcing practices, which – taken together with proposals of the U.S. Government Accountability Office – suggest that significant ground lays still ahead to improve the outcome of outsourcing towards an ideal management model.

Many analyses concur on the fact that contractors have become an integral part of military operations and even foreign policy. While opinions diverge on whether the Private Military Industry itself is the problem, concurrence seems to exist on the fact that good governance can curb the excesses and unrestrained growth of the past few years, an important consideration if one accepts the fact that it is impossible – or even undesirable – to abort public-private partnerships in the security realm.

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7 European Defence Agency and NATO Maintenance and Supply Agency.
Strong academic opinions ⁸ to the effect that outsourcing has been poorly managed and thus inadvertently militarised American foreign policy, might indeed be heeded by European thinkers and decision takers facing considerable growth of Third Party military services, for lack of public capabilities and financed with common funding stemming from ... hamstrung national defence budgets. Even through an adequate management structure however, not all military tasks can be privatised, since activities or functions linked with the state’s monopoly on the (authorised) use of force as well as core military mission-critical functions should be banned from privatisation.

Of interest in latest developments are the inextricable links between political decisions to undertake military operations and the need to resource them, the need to control private companies when their use is unavoidable and formulating possible outcomes for the provision of Defence & Security through a better understanding of the parameters involved.

As a red thread throughout what follows, one could see investing in Defence & Security as an endeavour with three timelines (short, medium and long term), three levels of funding (above par ⁹– on par – under par) and three providers (national, multilateral and private). Similar to the maintenance of a home and its appliances though, choices on one parameter are bound to condition the two others, if one wants to keep warm and dry.

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⁹ Above par Defence Investment can be attributed to the USA, most Gulf States and arguably to Russia, China and India, as will be established later on in the study.
CHAPTER 2 - Conceptual Framework for the Provision of Defence & Security

In this Chapter, a conceptual framework for Defence and Security will be drawn. After articulating the main issue of the provision of resources for D&S, different perspectives will be given on it, respectively from the political, military-strategic, societal and mediatic viewpoint. Drawing from these insights, an economic framework will set the scene for historic illustrations on offer and demand of D&S, while a conceptual framework for the procurement of security services will map the revenue flows, that could be relevant to their resourcing, insourcing or outsourcing.

2.1 Framing the issue: how much (for) Defence & Security and who pays for it?

Weighing S. P. Huntington’s argument that officers are no mercenaries who transfer their services wherever they are best rewarded, but are to consummate the management of violence, the Geneva Centre for the Democratic Control of Armed Forces, captured a convincing rationale to provide adequate resources for the Armed Forces in a comprehensive study on the impact of ‘Privatising Security’ as follows:

The government must give the leadership of the armed forces the resources to accomplish its missions, a certain amount of professional autonomy, and the leeway to make the proper technical decisions for preparing defence and applying violence. To deny this may put domestic stability at risk or provoke external aggression. Thus, the armed forces can either be the bulwark of security or can become a risk to the state and society.

As to the political rationale to spend adequate resources on Defence & Security, a distinguished group of General-officers argued in a recent report that Europeans, to prove their worth, were to improve their own capabilities, barring which America would have no incentive to enter into a transatlantic bargain. ‘To bring about renewal, Europe will have to pay the price of enhancing its capabilities. Once that is under way, then the transatlantic partners can agree on a better balance in sharing decision making and carrying the burden of implementation’, they concluded, with a clear hint to those who publicly loathe American domination on defence matters.

Interestingly, this idea of ‘grand bargain’ between the United States and its allies – or more precisely: fellow-democracies of the moment – was also cast in a recent bi-partisan paper published by The Stanley Foundation as follows:

The essential deal to be struck between the United States and its democratic partners on the use of force must be a true bargain - a two way street. While Washington would commit to involve NATO and its global partners in decisions, the NATO and global partners would commit to bring real capabilities to the table and a willingness to use them when a decision to do so is reached.

The inference seems to be, that deciding to undertake an operation implies the provision of (financial, human & material) resources to run it. The rationale that those who want to sit at the table where decisions on the use of force are taken, will only have as much influence as they can back up with military capabilities AND the will to use them, is of a clarity that true diplomats would find disconcertingly unsophisticated. But it does clearly highlight two rather thought-provoking circumstantial parameters:

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1 The authors were citing S. P. Huntington from his book ‘The Soldier and the State. The Theory and Politics of Civil-Military Relations’.
5 The Stanley Foundation’s Bridging the Foreign Policy Divide project brings together pairs of foreign policy and national security specialists from across the political spectrum: Ivo H. Daalder is a senior fellow at the Brookings Institution and Robert Kagan is senior associate at the Carnegie Endowment for International Peace (but also known as the cofounder of the neoconservative ‘Project for a New American Century’).
6 An interview with one of the authors, Ivo Daalder, on 13 Jul 2009 confirmed this interpretation.
the table is not the one of the United Nations Security Council and those with a shallow purse (for Defence & Security) need not bother to play.

There are those, on the other side of the argument, that will argue that the transatlantic bargain is precisely the reason why too much national resources are being spent on D&S.

From the perspective that every weapon in this world – big or small, conventional or nuclear - is one too much, flows an intellectual and political logic taking umbrage at industrial stakes & lobbies across the Atlantic, that have vested interests in prompt and prolonged military interventions to 'instill or safeguard democracy across the globe'.

This line of thinking led to lower the priorities for Defence, which resulted during the quest for peace dividends after the end of the Cold War in declining budgets. Ill-informed perceptions that the security of our societies is not facing any immediate military threats obviously account for other reasons to lower one’s guard.

Given the recession, that followed the 2008 economic downturn, it is both likely and alarming that some countries will give up their commitment to provide stable Defence budgets compensated for inflation, thus in effect regressing from zero-nominal-growth to zero-real-growth. Compounding this problem even further is the tendency of some political parties to put up hurdles for the expenditure of defence budgets on military capabilities and armament, notwithstanding the fact that they have been voted in a national parliament.

All of this begs the rhetorical question whether transatlantic pressure to spend more on Defence is merely meant as an incentive to buy more sophisticated weaponry [from the U.S.]. Or should Europeans really be more worried about geopolitical stability and close the security deficit they are running since the end of the Cold War? And those budgets that are being spent, should they be used to develop national capabilities or contribute to multi-laterally operated forces?

A benign desire of the American taxpayer to fund European security should not be taken for granted. Nor is a direct link between defence expenditures and geopolitical stability indisputable, for that matter. One school of thought in the U.S., headed by Professor Eugene Gholz, suggests that 'the funds now spent to promote stability in the safest parts of the world should instead be used to pay down the debt, [thus] more effectively reducing the American economy’s vulnerability to foreign disruptions.'

In a paper called 'Paying to keep the peace', seeking answers to the question whether military intervention abroad is necessary to protect American economic interests, he suggests that - in the age of globalisation - the United States should capitalize on its economic flexibility, instead of putting U.S. military efforts into trying to spread stability.

He further argues that policing Western Europe and East Asia is an inefficient way to protect the American economy:

America’s out-of-date alliance commitments to its rich, safe allies cost the nation tens of billions of dollars each year in extra weapons procurement spending, in salary and benefits payments to personnel, and in direct operations costs for foreign deployment above what would otherwise be needed for America’s defense.

Academics and pundits of this school of thought also contend that the globalised parts of the world are already quite stable and that America’s wealthy allies can afford to take responsibility for their own neighbourhoods.

In their eyes - even in the worst-case scenario of a major power war - the increasingly flexible global economy and its natural adaptations would greatly mitigate the costs borne by neutrals. Because the

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8 The notorious ‘anchor’ principle was championed by Johan Vande Lanotte, then Belgian Minister of the Budget, and applied across the Federal budget cycle as a method to reduce deficits by halting the execution of the budget. Given the relative weight of defence spending in the Federal budget (most of the other budgets are devolved to the regions), the application of this principle quite systematically jeopardised a correct implementation of BEL Defence planning. Variants to this principle are applied by some other European governments, albeit in a more considered manner.

9 Dr Eugene Gholz an assistant professor Patterson School of Diplomacy and International Commerce at the University of Kentucky


11 The writer might have added ‘spreading democracy’, but the Bush Doctrine had not taken root at the time of his writings.
global economy is flexible and adaptable, the spill-over costs of war for neutral countries are much smaller than commonly believed.

The cynical, yet thought-provoking conclusion of their assessment is that neutral countries often fare well during war.

Analysis of these conclusions in a broader political context could lead to the erroneous conclusion that resources spent on multilateral defence efforts are NOT necessarily enhancing security. Their final argument bears witness to this constricted interpretation, when they write:

"And if the war on terrorism requires more U.S. military effort in the future, the resources now committed to defend Europe, Japan, and South Korea — both troops and dollars — would be freed up to combat al-Qaeda or other attackers."

If the theory that a country can - certainly if it keeps a neutral status - indeed benefit from instability, is entirely plausible in the context of an economy, that thrives on the wholesale of weapons, these conclusions are nevertheless erroneous for two reasons:

a. because policing and intelligence should be the backbone of counter-terrorism efforts, not military force;

b. because the parameters of the security equation can be entirely different for societies that do not thrive on armament & private military industries or that get involved in the instability given the fact that they are not in a (political and/or geographical) position to isolate themselves from it.

In other words, the U.S. stands to gain a lot of business and risk relatively little ‘territorial security’ by virtue of its geography, unlike countries contiguous to the instability or nations that have no Private Military Companies to either sell, lease or operate weapon systems sought after in conflict regions.

Interestingly, some of these arguments also give weight to the thesis that defence- & security-related industries have shifted part of their focus from designing and selling military hardware to providing the knowhow and software to use force. The role of Private Military Companies in this ‘Revolution of Military Affairs’ will further be researched in the chapter dedicated to the outsourcing of military capabilities.

Arguably, only after 9/11 did the notion of ‘home security’ get substance in American minds, hence a rationale that ‘resources’ should be re-oriented to counter-terrorism was easy to make with this short term historic perspective.

As a recent study of the RAND corporation confirmed though, counter-terrorism is NOT in essence a military task.

Whereas European thinking has mostly considered counter-terrorism – and surely anti-terrorism - as police tasks, the Bush administration – under the influence of Secretary of Defense Rumsfeld - has funnelled huge amounts of resources towards the so-called Global War on Terrorism (GWOT). Between 2001 and 2006, Congress has appropriated about $430 billion to DOD and other U.S. government agencies for military and diplomatic efforts in support of GWOT.

Much as the British Government, rich of its experience in Northern Ireland, has told those who cared to listen, military action should be implemented only in support of law enforcement, not as a uni-dimensional approach to the problem. As can be seen on the graph below, research conducted by the RAND Corporation revealed that only in 7 percent of cases, direct military force led to the end of terrorist groups.

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12 The notion of outsourcing by Private Military Companies (PMC) is the subject of Chapter 4.

13 RMA can be defined as a “discontinuous increase in military capability and effectiveness” arising from simultaneous and mutually supportive change in technology, systems, operational methods, and military organizations.


15 Counter-terrorism refers to offensive strategies intended to prevent a belligerent, in a broader conflict, from successfully using the tactic of terrorism. (U.S and NATO accepted definition retrieved from www.reference.com)

Anti-terrorism is defensive, intended to reduce the chance of an attack using terrorist tactics at specific points, or to reduce the vulnerability of possible targets to such tactics.

The authors found that militaries tended to be most effective when used against terrorist groups engaged in insurgencies in which the groups were large, well armed, and well organized. But against most terrorist groups, military force was usually too blunt an instrument. The analysis also found that religiously motivated terrorist groups took longer to eliminate than other groups, but rarely achieved their objectives and that military force has not undermined Al Qaïda.

**Tab/Fig 1 – Role of Military Force in Ending Terrorism**

Terrorist groups from upper-income countries were also found to be much more likely to be left-wing or nationalist and much less likely to be motivated by religion. Although the United States has employed non-military instruments, e.g. cutting off terrorist financing or providing foreign assistance, in the past, the study makes sweeping recommendations for a more police-oriented and multi-lateral counter-terrorism strategy:

1. adopt an approach based on policing and intelligence as well as cooperation with foreign police and intelligence agencies.
2. minimize the use of military force, since local military forces frequently have more legitimacy to operate and a better understanding of the operating environment than U.S. forces have.

Further recommendations were that U.S. policymakers should discontinue to refer to a 'war on terrorism': key to this strategy is that terrorists should be perceived as criminals, not holy warriors.

As often is the case in U.S. politics, the GWOT-hype should be considered as a platform to rally political energy and Congressional attention on the subject. Achin Vanaik, political scientist and author of several papers on terrorism was quoted with the keen observation that "American neo-conservatives thought they could use GWOT to establish total and lasting U.S. global hegemony, a sort of modern-day Roman Empire which would allow no rival to emerge for decades. Today, they are looking for an exit strategy."

Coincidental (sic) with the sunset of the Bush-administration, the UK Secretary of State for Foreign and Commonwealth Affairs David Miliband declared the war on terror a mistake, appealing to ‘expose the claim to a compelling and overarching explanation and narrative as the lie that it is’. In light of the massive resources allocated to the GWOT, this amounts to an astounding repudiation of a policy his own country had been supporting for more than half a decade.

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18 Borger, J. (2009, Jan 15). 'War on terror' was a mistake. the Guardian.
While the widespread analysis – even by the American public 19 - appears to be that terrorists are winning this war and that it has merely succeeded in antagonising entire segments of Muslim public opinion as well as alienating America’s own allies, the GWOT-construct did have considerable political impact on resources for Defence & Security:

- it has been instrumental in convincing a reluctant Congress to appropriate significant resources to this concept of neo-conservative breath, as evidenced by the previously mentioned GAO-report;
- it was used as the underlying rationale for both the Afghanistan and Iraq wars 20, thus drawing considerable resources away from other defence expenditures;
- but it mis-focused the debate and consequently never gained traction with European constituencies and credibility with political leadership as a motive to increase defence budgets.

In sum, the political analysis of the war-on-terrorism-construct is rather unconvincing: for America, it may have successfully generated political attention and secured huge resource allocations (benefiting the Departments of Defence and Homeland Security) but for America’s allies, both the motive and the perceived net effect on security was less-than-optimal.

Resources for Defence & Security must therefore find their justification in another construct, as will developed hereafter.

2.2 Political perspectives on the provision of Public or Private Defence & Security

Coercive, possibly lethal force used to be the monopoly of the state. Not only are functions across all fields of state activity more and more transferred to the private sector, but there seems to be a general tendency for states to delegate specialized expertise to fulfil certain military and security functions to private companies, thus resulting in a challenge to the legitimacy of this delegation of powers and ultimately, the state’s capacity to act.

The Organisation for Economic Co-operation and Development (OECD) considers 21 Security to be important for improved governance. Inappropriate security structures and mechanisms can – according to its guidelines for Security System Reform (SSR) - contribute to weak governance, to instability and violent conflict.

Academic and governmental sources offer a multitude of definitions for 'the Security Sector'.

The Netherlands Institute of International Relations 'Clingendael' 22 takes the security sector to mean 'all those organisations which have authority to use, or order the use of force, or threat of force, to protect the state and its citizens, as well as those civil structures that are responsible for their management and oversight.'

According to this source, the security sector can presented in three pillars:

(1) Groups with a mandate to wield the instruments of violence – military, paramilitaries and police forces;
(2) Institutions with a role in managing and monitoring the security sector – civilian ministries, parliaments and NGOs; and
(3) Bodies responsible for guaranteeing the rule of law – the judiciary, the penal system, human rights ombudsmen and, where these bodies are particularly weak, the international community.

Accurate as it may seem, this definition does not explicitly mention Private Military and Security Companies (PMC, PSC, PMLC) 23 although they clearly have a role in the Security Sector.

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19 Ibid
20 Once the initial WMD-hunt was proven to be a hoax.
23 Private Military (Logistic) Companies and Private Security Companies will be defined later in the study.
The description of the Security Actors offered by the OECD therefore offers a more encompassing overview of all parties involved:

a. **Core security actors:** armed forces; police, gendarmeries; paramilitary forces; presidential guards, intelligence and security services (both military and civilian); coast guards; border guards; customs authorities; reserve or local security units (civil defence forces, national guards, militias).

b. **Security management and oversight bodies:** the Executive; national security advisory bodies; legislature and legislative select committees; ministries of defence, internal affairs, foreign affairs; customary and traditional authorities; financial management bodies (finance ministries, budget offices, financial audit and planning units); and civil society organisations (civil review boards and public complaints commissions).

c. **Justice and law enforcement institutions:** judiciary; justice ministries; prisons; criminal investigation and prosecution services; human rights commissions and ombudsmen; customary and traditional justice systems.

d. **Non-statutory security forces,** [...] : liberation armies; guerrilla armies; private bodyguard units; private security companies; political party militias.

Security frameworks must use and combine the broad range of diplomatic, legal, social, economic, security and political policy instruments available in order to develop appropriate military and non-military responses to security issues.

The OECD illustrates these synergies with the following conceptual diagram:

**Tab/Fig 2 – Actors and Governance of the Security Sector**

![Conceptual diagram](image)

Source: OECD, Op Cit, p20

The pre-eminence of ‘national security’ having receded in the face of globalisation, the ubiquity of intra-state conflicts has lead to failing states. The international community and public opinion subsequently came to the conclusion that individual and socially framed security is more important than the safeguarding of the state as an institution.

These new security concepts involve ‘societal security’ and ‘human security’, concepts that were outlined by the Geneva Centre for the Democratic Control (DCAF) of Armed Forces, for instance. The former alludes to transnational, sub-national security challenges while the latter encompasses a wide range of threats to the security of individuals and social groups such as anti-personnel landmines, small arms and light weapons, child soldiers, human trafficking.

Future Security environments will be discussed later in this chapter, but it is useful at this stage to further define the constitutive elements of governance and reform of the security sector.

The DCAF considers that the security sector is dysfunctional if it does not provide security to the state and its people in an efficient and effective way or, even worse, if it is the cause of insecurity.

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24 Op Cit, p20

25 SSR = Security Sector Reform, DDR = Disarmament, Demobilisation and Reintegration

A security sector deficient in terms of governance is therefore the point of departure for Security Sector Reform (SSR). Thus, SSR is meant to reduce security deficits (inefficient and ineffective provision of security or even provision of insecurity) as well as democratic deficits (lack of oversight over the security sector) which result from dysfunctional security sectors. Providing effective and efficient security within the state and in the framework of democratic civilian control can be considered to be the main objective and success criterion for SSR.

As posited by Alan Bryden, SSR is directly linked to the privatisation and internationalisation of security 'because it reflects the fragmented monopoly of legitimate force'. Security governance shared – willingly or not – with private actors is therefore but one of the signs of stately governance deficits and the fragmentation of political authority.

In research for the United Nations Development Programme (UNDP) and the Berghof Research Center for Constructive Conflict Management, Nicole Ball discerns two overarching normative elements, which constitute the core of the SSR concept, namely

1. the development of affordable bodies capable of providing security, and
2. effective oversight mechanisms consistent with democratic norms.

The first element aspires at operational effectiveness and efficiency in an austere budgetary environment, while the latter ensures democratic governance.

The task of providing both security (state and human security) and democratic governance is appraised as a significant challenge, even for consolidated democracies and certainly for developing, transition and post-conflict countries. For them, the challenge is indeed even larger given the fact that SSR has to tackle a third objective, namely to address the legacies of an earlier conflict including disarmament, demobilisation and reintegration (DDR) of former combatants. Reform of police, the judicial system, and the build up of mechanisms to control the proliferation of small arms and light weapons and anti-personnel landmines are further considered to be core elements of SSR.

As a growing demand for Security Sector Reform has also been recognised by the EU, it was explicitly taken on board as one of the tasks to be covered by the Civilian Headline Goals 2010 (CHG). The Crisis management capabilities sought in the CHGs should – first and foremost - realise synergies between civilian and military CSDP, the European Commission, and third pillar actors. Other actors in civilian crisis management, which include International Organisations, Regional Organisations and other major actors, e.g. non-EU States and civil society through Non-governmental Organisations and Civil Society Organisations, are also targeted as partners in SSR and other crisis response tasks. Cooperation with or ‘subcontracting’ to PMCs is hence considered as one of the levers that the CHG can operate.

Quite some academic sources see different contextual frameworks for SSR from which they derive challenges and opportunities: a developmental context, an era following the demise of an autocrat and a post-conflict period.

Only some (amongst which this author) recognise however, that consolidated democracies and developed countries, which have secured their internal and external safekeeping, also face a recurrent challenge to reform their security sectors. Emerging security requirements which may result in deficiencies in international security governance should therefore form the basis for an open-ended defence review process which matches resources to risk factors. Arguably, these pressures can lead to serious security deficits, which can only be met by reform and consolidation – albeit from the unorthodox perspective that democracy (and its power of the purse) short changes the security sector, rather than the other way around.

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27 Ibid
32 To be understood as a euphemism for restructuration and - ultimately - reduction of military capabilities
The table below articulates the different elements of a framework for SSR.

**Tab/Fig 3 – Possible contextual frameworks for Security Sector Reform**

<table>
<thead>
<tr>
<th>Key criteria</th>
<th>Developmental context</th>
<th>Post-authoritarian context</th>
<th>Post-conflict context</th>
<th>Democratic context</th>
</tr>
</thead>
<tbody>
<tr>
<td>Key problem</td>
<td>Development deficit</td>
<td>Democratic deficit</td>
<td>Specific security situation</td>
<td>Resource deficits</td>
</tr>
<tr>
<td>General reform process</td>
<td>Transition from underdeveloped to developed economy</td>
<td>Transition from authoritarian to democratic system</td>
<td>Transition from violent conflict to peace</td>
<td>Interoperability deficit</td>
</tr>
<tr>
<td>Nature of External involvement</td>
<td>Development assistance coupled with political conditionality</td>
<td>Accession to multilateral institutions as incentive for reform</td>
<td>Military intervention / occupation; mostly U.N.-led peace support operations</td>
<td>Defence Planning mechanisms</td>
</tr>
<tr>
<td>Key external actors</td>
<td>Development/financial actors: multilateral donors (e.g. OECD, UNDP, World Bank); bilateral donors, non-state actors</td>
<td>Security actors: international (e.g. EU, NATO, OSCE); governments; non-state actors (e.g. IGOs, PMCs)</td>
<td>Security actors: intervention forces; peacekeeping forces under international auspices; non-state actors (e.g. PMCs)</td>
<td>SecO (NATO, EU, U.N., OSCE) and national Governmental Agencies (GA)</td>
</tr>
<tr>
<td>Specific security sector problems</td>
<td>Excessive military spending; poorly managed / governed security sector leads to ineffective provision of security, thereby diverting scarce resources from development</td>
<td>Oversized, over-resourced military-industrial complex; strong state, but weak civil society institutions; deficiencies in implementing SSR policies</td>
<td>Government and civil society institutions collapsed; displaced populations; privatisation of security; possibly pockets of armed resistance; abundance of small arms and anti-personnel mines</td>
<td>Under-resourced Defence Establishments lead to ineffective provision of global security; state security actors are compelled to insure allies or outsource to PMCs</td>
</tr>
<tr>
<td>Possibilities for SSR</td>
<td>Mixed (depending on political commitment to reform, strength of state institutions, role and state of security forces, regional security environment, donor approach to SSR, etc.)</td>
<td>Rather good (strong state institutions, professional security forces, broader democratisation process), even better if external incentives available (e.g. accession to EU or NATO)</td>
<td>Rather poor (weak and contested state institutions, privatisation of security, dependence on peace support / intervention forces)</td>
<td>Multi-national projects, pooling of forces, review &amp; reform of defence planning processes, integration of PM(L)Cs in Mil operations, institutional ties to GA and NGO</td>
</tr>
</tbody>
</table>

Source: adapted from ‘Conceptualising Security Sector Reform and Reconstruction’, Op Cit (author’s emphasis added)

As can be easily sampled from the table above, both the level of resources devoted to security efforts and Private Military Companies play a major role in the Security sector and its reform.

Recent conflicts as Iraq and Afghanistan and more in particular their endgame, cast yet another perspective on this conceptual framework: after conflict termination – or at least its ‘high intensity’ phase – institutional development actors (such as the U.N., the EU, OECD, etc) as well as NGO’s are not able to re-install stately governance for lack of a sufficiently safe and secure environment. This leads to the perverse situation that development funds are available, but cannot be spent for different reasons (e.g. corruption, political friction, narcotics and organised crime, religious upheaval amongst others).

This situation then potentially leads to a string of effects, events, which are not necessarily sequential and are not always clearly discernable for the uninformed observer or superficial media:

- Security Sector Reform stalls or cannot even be started for lack of reliable security actors (e.g. Somalia, Sudan, …) or because financial resources cannot be funneled to the adequate actors;
- Peacekeeping Forces are tied down, are provided inadequate rules of Engagement (as for the U.N. operations in Rwanda in 1999) and cannot pursue their exit strategy, even if they have one;
- Multilateral and national Government agencies as well as NGO’s do not perceive a safe and secure environment to work in, lose their grip on development activities and ... leave the scene (quietly or not);
The good, the bad & the ugly of outsourcing security to PMCs

- Operational commanders are enticed to revert Key Supporting Tasks into Key Military Tasks [33], thus requiring new assets and resources;
- More military forces are conveyed to the theatre (but not necessarily sent for military, financial or political reasons);
- Defence budgets are solicited through national or common funding in one of the SecO that are involved in the theatre, especially if military capabilities are not provided by nations and subsequently have to be outsourced to private companies.

This typical sequence of events leading to security deficits is illustrated below with the situation that developed in Afghanistan. Arguably, it provides a blueprint for any future conflict.

Tab/Fig 4 - Typical string of SECURITY DEFICIT BUILD UP applied to Afghanistan

The development of the Afghan National Security Forces offers a compelling illustration of the intricate links between military operations and stabilisation & reconstruction efforts, a.k.a. the tension between hard and soft power. Consistent with the Afghan Compact [34], an Afghan National Development Strategy (ANDS) was conceived to provide Security Sector Reform [35] for the Afghan National Army (ANA) and the Afghan National Police (ANP). The International Community (IC), represented by the U.N. (UNAMA), dedicated budgetary, materiel and training support necessary to develop national military forces and police services with associated ministerial oversight. The Government of the Islamic Republic of Afghanistan (GIRoA) committed to provide human resources and political will.

Funding is normally channelled through the Afghan Budget and the Afghanistan Reconstruction Trust Fund, administrated by the World Bank. Donor Conferences bring together representatives of 85 countries, UNAMA (United Nations Assistance Mission in Afghanistan), the European Union as well as multilateral donor organisations such as the World Bank and the Asian Development Bank.

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[33] Key Military Tasks (KMT) determine resources that are allocated while Key Supporting Tasks (KST) should be performed within assets and means. If this redesignation is not formally done, a typical example of mission creep will result.

[34] The London conference of Jan/Feb 2006 which defined the political partnership between the Government of the Islamic Republic of Afghanistan (GIRoA) and the International Community (IC)

[35] An SSR strategy was agreed at a Geneva meeting on 17 May 2002.
Coordination and oversight for the implementation of the Afghan Compact is assumed by the Joint Coordination and Mentoring Board (JCMB)\(^ {36}\)

Security Sector Reform is overseen by the [U.S.-led] Combined Security Transition Command – Afghanistan (CSTC-A), which also organises the training and re-equipment of the ANA and the ANP.

In September 2008, the JCMB agreed to increase the strength of the ANA to 122,000 soldiers. The World Bank would complete a costing analysis while the IC stayed committed to provide the budgetary, material and training support necessary to develop the ANA.

NATO was meanwhile involved in two areas: the equipment support and the responsibility for training the ANA through so-called Operational Mentoring and Liaison Teams (OMLT). An ANA Trust Fund was created – initially to cover the transportation and installation of donated equipment, but incrementally, the scope of this ANA Trust Fund was expanded to cover - amongst others - the purchase of required equipment.

With the advent of the Obama administration and the change of focus from Iraq to Afghanistan, a comprehensive concept for NATO training and equipment support to the ANA was developed. At the request of the GIRoA, four general areas were to be covered by this concept:

1. Mentoring
2. Institutional training
3. Equipment
4. Sustainment

At the summit of HoSG in Strasbourg/Kehl in April 2009, it was decided to create an NTM-A, tailored after the NATO Training Mission for Iraq. While the financial mechanism to fund these plans was initially through a set of ‘Trust Funds’, it soon became clear that the NATO-administered trust funds were not being filled by donors. This prompted SACEUR to propose to the Secretary General\(^ {37}\) to apply NATO Common funding as a fill gap for trust funds. Given the shortfalls in force generation for ISAF though, many of the OMLTs slots remain unfilled, which opens the door for contracting of Private Companies, as will be explained later in the study.

This chain of functions and dysfunctions explains how ultimately national Defence budgets are being funnelled towards Private Military Companies. While this can be perfectly acceptable, transparent and accounted for, it can also undermine earnest Security Reform Agenda’s if those hired to teach adequate use of force get involved in ‘shoot-them-up incidents’\(^ {38}\) and jeopardise the legitimacy of a foreign presence. In addition, systematically putting ‘private trainers and mentors’ under contract does raise a debate as to whether (outsourced) Security Sector Reform should be financed with Defence budgets, given the fact that trust funds filled and managed by the IC remain unused for lack of a safe and secure environment. It is clear that building capacity for the ANA and the ANP is a major part of the ‘exit strategy’ of the U.S. and NATO from Afghanistan, but it is also evident that these tasks should be financed with specific budgets dedicated at Government level to avoid that they would mortgage defence budgets to the breaking point.

Private companies that leverage specialized knowledge in military and security-related capabilities have proliferated across borders as a corollary of globalisation\(^ {39}\), thus affecting the sovereignty of the traditional nation-state. The fact that the nation-state’s capacity to provide defence & security to its citizens is in steady decline, can be traced back to a reduced fear of external attack in advanced democracies. This is claimed by some scholars\(^ {40}\) to be suggestive of gradual erosion in citizens’ identification of the state as a focus for loyalty and political identity.

The declining capacity or will of the state to provide protection to its citizens leaves a void that has already been filled up by private security companies in the internal realm of society: those who are able

\(^{36}\) The JCMB consists of 7 representatives from the Afghanistan government and 21 representatives of the international community (Special Representative of the Secretary General (Co-chair), United States, United Kingdom, Japan, Germany, European Union, India, Pakistan, Iran, China, Saudi Arabia, Turkey, Russia, International Security Assistance Force, Coalition Forces, Canada, Netherlands, Italy, France, the World Bank, and Asian Development Bank.). Retrieved from www.unama-afg.org.

\(^{37}\) Letter of SACEUR to the Secretary General of 3 Dec 2008


to pay for it can still enjoy physical and/or electronic protection, while banks and financial institutions consider it merely as a tax-deductible cost (or investment, if they take up shares of the PMC-market). All of this obviously has its effects on society, with the rise of protected residential areas, ghettos with high fences and private security included in the rent. But besides the potential to foster social inequities, the degree to which State and Government vice private companies should have impact on daily life is obviously a highly political discussion.

While some put forward that ‘Civilised people have always hired someone to guard them’ 41, the question is obviously whether one entrusts the Sheriff with the mission or opens a request for bids from the market of hired guns (and uses public money to pay for them).

A trend that started in the U.S. under the Reagan Administration and which has also taken root in Europe in the last decade, is for Governmental Agencies to concentrate on their core business in the face of nearly constant budgetary constraint and consolidation of their establishments: bigger and inefficient government – especially in Europe – is often related to cushiony statutes and social entitlements fervidly fenced off by labour unions. Lack of political will to bring these in line with the market leads therefore often to personnel reductions, that can only be compensated through outsourcing, unless the mission statement is fundamentally reviewed.

The conundrum is that missions for Armed Forces have never been so far, frequent and forceful as in the last decade.

According to the Los Angeles Times 42, this trend has led in 2004 to the situation that - whereas fewer people work directly for the federal government - they are 'shadowed' by a work force of some 6 million contractors, half of them working for the defence sector, leading to a ratio of about 2 contractors for every civil servant or member of the military.

In his landmark manuscript on the ‘Rise of the Privatized Military Industry’ 43 Singer argues convincingly that it constitutes the first occurrence in history that governments of modern nation-states are surrendering one of the essential and defining attributes of statehood, namely the state’s monopoly on the legitimate use of force.

The political omen expressed by Janice Stein 44, a researcher at Yale, carries some weight in this context:

*If security continues to be privatized, the danger is that the collective effect of this dynamic will fundamentally affect the role of the state, which will no longer command the core function of providing security as a public good but will become one of several potential suppliers. A direct result of the erosion of the state monopoly on the means of force and the privatization of public functions will be a consequent shift away from the state as a focal point for political identities.*

It becomes indeed particularly disconcerting when local security actors perceive the profile of Defence & Security officials normally associated with state organs or multilateral organisations to be shadowy and doubtful. Quoted by a British journalist 45, Enes Becirbasic, a Bosnian military official who managed the Bosnian side of projects to build and arm a Bosnian army, expressed his dismay about the less-than-transparent identity of his interlocutors, or rather the ‘mix’ between active duty and ex-general officers advising him on behalf – or as proxy – of the U.S. Government, saying:

*I had some problems with some of the American generals. It's a conflict of interest. I represent our national interest, but they're businessmen. I would have preferred direct cooperation with state organizations like NATO or the Organization for Security and Cooperation in Europe. But we had no choice. We had to use MPRI 46.*

This anecdote clearly illustrates the pervasiveness of conflicts of interest between officers in their national capacity, officials acting on behalf of SecO (e.g. OVSE, U.N., EU or NATO) and marketing

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41 The John Birch Society, dedicated to restoring and preserving freedom under the United States Constitution, holds this view.
44 Op. Cit, p23
45 Traynor, I. (2003, Dec 10). The Privatization of War, $30 Billion Goes to Private Military; Fears Over 'Hired Guns' Policy. the Guardian.
46 Military Professional Resources Inc, a U.S. based Defence & Security Consultancy& Lobbying
managers of Private Security Companies. The commercialisation of warfare brings indeed a change of
identity about in the role that ‘official instances’ play, not only in warfare, but also in the pre- and post-
phases of conflict.

The tightrope on which diplomats, representatives of SecO and military assistants to Sector
Security Reform have to walk with a failed-state-on-its-way-back should not be brought off balance by
private consultants and the sometimes murky interests they serve.

It has further been argued by several academic and political sources that the use of private
contractors is shifting the nature of civil-military relations since it is easier for political leaders to take
states to war. Indeed, Private Military Companies present governments with a more discrete, effective
and indirect means to implement foreign policy with legislative oversight. Political costs involved in using
contractors are said to be lower than calling up reservists to perform the support services.

This thesis will be verified in Chapter 5 on outsourcing to PMCs.

Yet another dimension of the political impact of privatised warfare can be appraised when weak or
failing states turn to PMCs to restore internal stability or conduct counterinsurgency operations against
rebel forces. In such situations of internal conflict, the state has lost its capacity to provide security and
enforce public order. The use of PMCs is alleged to bolster the weak state’s claim to law enforcement
and may even function in a state-building role to the extent that it reinforces the state’s claim to de jure
sovereignty. However, the drawback of hiring foreign PMCs to fulfill basic security functions is that
governments of a weak state may fail to undertake the difficult task of (re)building an effective state
administration, that will deliver services and public goods to citizens and enjoys legitimacy among the
population. Leaders may also refrain from involving their armed forces in an internal conflict to avoid a
challenge to the incumbent civilian government by the Armed Forces.

The services of a PMC in dealing with civil unrest may help the state’s central political authority to
maintain law & order, hence retain civilian control of its armed forces, according to Serewicz, an
opinion endorsed by the DCAF. It may enhance the military capacity of the state, but it may also
complicate the building of civilian oversight and democratic control, thus becoming a threat to the very
state that leased its services. The DCAF further argues that PMCs are take over the roles and actions of
a nation-state’s military on a commercial basis, not being bound by the codes, rules, and regulations that
constrain the military. The private character of employment they proffer, contradicts the fundamental and
inherent measure of legitimacy normally linked to the actions of a nation-state’s military.

It is against the background of questions on how much and - more importantly - how resources are
spent on defence, that the political aspects of a conceptual framework should be seen. It is also
important at this stage to observe that for stable democratic states, these questions apply to ‘the security
sector’, while for failing, failed or post-conflict regions ‘security sector reform’ is the correct context to
situate the issue.

2.3  Military strategic framework for Defence & Security

2.3.1  Military-strategic Trends

As has been established in the preceding paragraphs, a widespread perception is spreading that
many states are no longer able to protect the security and economic prosperity of their citizens in a
globalised world epitomising the fact that the power of the state is eroding. Technology, on the other
hand, enables citizens to be better informed on issues, independent of what the state tells them.

Because the contract between the state and its general public is eroding, citizens are less willing
to fight on behalf of the state, the institutions to which it belongs, or in support of the values the state
claims to stand for. Convincing them to sacrifice a part of their wealth to provide resources for his D&S
requires an ever stronger rationale & explanation.

In the same vein, the United Nations, NATO and the EU are perceived as less capable of coping
with global security challenges. Hence a "virtual alliance" that includes global partnerships may be crucial
to the relevance and effectiveness of any SecO in the 21st century. SecO need to develop a “grand
strategy” for how to preserve the values of their community, while at the same time working together to

International Politics.
48 Serewicz, L. W., Op Cit
sustain a peaceful international order. They must develop coherence in their approach to crisis with limited aims for the challenge will be to manage security risks arising from all over a globalised world.

Heretofore, NATO as well as the EU have been unable to develop a global policy on how and when the use of force would be justified and as a result, they remain mostly confined by the unpredictable limits of U.N. resolutions. Their capacity to act is further limited by a lack of political will to provide robust rules of engagement to an operational commander, thus limiting the perceived necessity for national caveats. This leads to a lack of consensus on the development of a coherent media strategy to explain the security policy to the public at large.

SecO as the U.N., NATO and the EU are facing asymmetric or hybrid adversaries to which they have to adapt:

- rules of engagement are outdated;
- there are no adequate metrics to measure success when fighting adversaries who use asymmetric or hybrid warfare;
- there may be no straightforward military means to "cope" with some forms of asymmetric warfare. Technology may not work;
- actions of soldiers—particularly those regarded as misconduct—can have strategic implications for the conflict;
- training and Security Sector Reform (SSR) are also hybrid in form and function.

A telltale illustration of the possible impact of these trends on the provision of D&S came to the fore when piracy re-emerged as a strategic novelty: both the EU and NATO faced a hybrid and asymmetric threat, against which military capabilities and technology were instrumental, yet imperfect with regard to a long term structural solution. Given inadequate rules of engagement and an international legal framework that does not particularly enable efficient military response, ship owners will in all likelihood be turning to Private Military Companies to protect their trade, while a structural and comprehensive approach will have to be sought through SSR and training of Somalian security forces ashore.

Taken all together, these military-strategic trends will condition the future security environment in which defence planning will need to match capabilities with resources spent. The contours for this Defence Planning Process (DPP) will have to be further contemplated to determine the features and circumstances for the insourcing of defence and the outsourcing of security to private companies.

2.3.2 'Scrutinise the horizon' vice 'setting the scene'

The occult influence of casting an agreed background for future Defence Planning through a thorough review of the Future Security Environment - both from a global and regional perspective - can be illustrated by the Defense Planning Guidance issued in 1992 by the then-Defense Secretary Cheney. In a secret memorandum leaked to the New York Times at the time, Mr. Wolfowitz recommended a set of "illustrative" scenarios for possible future foreign conflicts which postulated "regional wars against Iraq and North Korea, as well as a Russian assault on Lithuania and smaller military contingencies that United States forces might confront in the future."

The combination of such hypothetical conflicts is portrayed to provide a coherent strategy framework in which to equip defence forces and evaluate various force as well as training options. The draft guidance warned that "both Cuba and North Korea seemed to be entering periods of intense crisis - primarily economic, but also political - which may lead the governments involved to take actions that would otherwise seem irrational", adding that "the same potential exists in China."

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50 The notable exception for NATO being the air operation over the Balkans in 1999.
51 Hybrid is an evolution of asymmetric warfare: the latter alludes to the use of different tactics, weapons systems and ethics, while the former involves the combination of conventional and unconventional operations that alternatively use modes of operation typical for state and non-state or failed actors.
52 Defence Planning will be explained in Chapter 3
53 The Defense Planning Guidance is an internal DoD policy statement for military leaders and civilian administrators to instruct them on how to prepare their forces, budgets and strategy for the remainder of the decade.
For the first time since the Defense Planning Guidance process was initiated to shape national security policy, the new draft stated that the fragmentation of the former Soviet military establishment had eliminated the capacity for any successor power to wage global conventional war.

The document qualified its assessment by adding: "we do not dismiss the risks to stability in Europe from a nationalist backlash in Russia or effort to re-incorporate into Russia the newly independent republics of Ukraine, Belarus and possibly others."  

Concerning Europe, the political guidance asserted that "to avoid a competitive relationship from developing, "we must seek to prevent the emergence of European-only security arrangements which would undermine NATO. This will enable the United States to continue to contribute to regional security and stability by acting as a balancing force and prevent the emergence of a vacuum or a regional hegemon."

This political guidance to the U.S. Defence Planning efforts should be seen also in the context of David Callahans interpretation of the post-Gulfwar 2 events by the neo-conservatives that would later serve (the 43rd) President George W. Bush Jr. and shape what would ultimately be known as the Bush-doctrine: frustrated and displeased by the outcome of Gulfwar 2, they articulated a new U.S. grand strategy that aimed to prevent the "emergence of a new rival".

While the primacy of political guidance is an undisputed baseline for military planning in a democratic context, a thorough knowledge and understanding of planning situations & scenarii in appraising a defence & security policy outlook should be the basis of any academic scrutiny. This does not mean that any and all conclusions of military strategic conceptual work should be rejected, if one does not agree with the political groundwork, but it does mean that the influence of political guidance on the final outcome and the sensitivity of the proposals to the working-scenarii should be well understood.

2.3.3 NATO’s Multiple Futures

The Multiple Futures Project (MFP) is carried out by Allied Command Transformation to identify the principal threats and challenges to the Alliance by 2030. In the understanding that the future is not really predictable, it was deemed necessary to identify the future challenges to the Alliance’s security interests.

A detailed analysis of change that would in all likelihood impact the future security environment identified the DRIVERS of change. Some of these drivers are structural in kind, others will affect change in the long term. These drivers can be systematically combined into plausible futures to determine security and subsequently military implications. These futures could be aggregated in four categories that should cover the probable impact of most of the drivers. They were given a tag for easy reference:

1. **Dark Side of Exclusivity** describes how globalisation, climate change and resource scarcity significantly affect the capacity of states;
2. **Deceptive Stability** is about the demographic shift from aging populations and young migrants, resulting in over-attention to domestic concerns, leaving states in a weak position to react to geopolitical risk;
3. **Clash of Modernities** sketches a world where a strong belief in rationalism coupled with technological innovation has enabled advanced network societies to connect horizontally across the globe, but challenged from the outside by impoverished and authoritarian regimes;

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55 As history learned, this analysis was confirmed by the de facto ‘re-incorporation’ in 2008 of South-Ossetia and Abchasia.


57 For consistency in the study, Gulfwar 1 refers to the (1980-1988) Iraq-Iran war, Gulfwar 2 was conducted by (the 41st) President Bush Sr from Aug 1990 to Feb 1991, while Gulfwar 3 was started by (the 43rd) President George W. Bush Jr.


The good, the bad & the ugly of outsourcing security to PMCs

(4) *New Power Politics* takes widespread proliferation of WMD into account, resulting from the growth of wealth spurning more new powers in a fragile balance in which international interaction is undermined by competition for resources and influence.

These multiple futures and the risk conditions they create induce a number of security implications. These answer the ‘so what’ question and will, in turn, yield insights that can subsequently be translated in military implications:

1. The first insight identifies why and how the evolving nature and blurring of the threat will pose new challenges for reaching a consensus on what constitutes an Article 5 response;
2. The second insight reflects on the need for the Alliance to examine its responsibility to act outside NATO’s traditional areas of engagement;
3. The third insight states that readily available advanced technology will enable determined adversaries to attack Alliance vulnerabilities in new and unexpected ways, indicating the need to review our policies, organisation, operating concepts, capabilities, and ultimately our future force and command structure;
4. The fourth insight concludes with a call for enhanced effort to communicate better with international partners and populations.

The military implications point to seven broad ‘Focus Areas’ on what military establishments can do about the security risks:

- adapting to the demands of hybrid threats
- operating with others and building institutions
- conflict prevention, resolution & consequence management
- counter-proliferation
- expeditionary & combat capability in austere environments
- strategic communications & winning the battle of the narrative
- organisational & force development issues

Each Focus Area induced recommendations related to proposed changes in concepts, doctrine & capability enhancement. The Multiple Futures Project examined the common perceived threats to the security interests of the Alliance and determined that the unpredictability and complexity of the future security environment will strain the Alliance’s most powerful tools: strategic unity of values and goals, solidarity among Allies, burden-sharing and commitment to its decisions. Empirically, every military that has transformed successfully has done so by clearly identifying specific military problems that need to be addressed. To this end, the Alliance will have to maintain and improve existing and in some cases develop new capabilities to address the emerging security challenges.

Contrary to the historic perceptions of a uni- or multipolar world, the implications of the insights gained by the study point to the analysis that no nation can meet the challenges alone, which means that the Alliance’s credibility and capability depends on equitable burden sharing and the flexibility to insource tasks to each other.

Both insourcing and outsourcing will be two important features of the way this adaptation process should be articulated, for if collective capabilities fail to meet the emerging security challenges, a non-polar world might be the final outcome. This would mean that the threat of failed states or non-state actors in the foreseeable security environment cannot be met.

### 2.3.4 The future European Security and Defence environment

The EU also scanned it’s future security horizon and published a long term vision in which four main characteristics are anticipated as most important:

1. **SYNERGY**
   - In order to deliver military effects in a more discriminate way, joint forces composed of land, air, space and maritime elements will increasingly use precision firepower, intelligence and focussed logistics, while capabilities of other agencies and actors, including non-governmental organisations, will contribute to the management of conflict.
   - Minimising undesired effects within acceptable levels of risk will require SYNERGIES between these different capacities.

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AGILITY
The concept of AGILITY refers to the ability to achieve rapid force packaging, that can be tailored and swiftly deployed. Military forces will need to operate in a multinational and multilateral environment, working with EU and non-EU Member States as well as with national and international organisations, including the U.N., NATO, and even within ad hoc coalitions. The main parameters of the mission can be characterised as strategic reach for expeditionary operations and strategic agility (i.e. travel strategic distances and enter directly into the theatre of operations) with very short lead times notwithstanding minimal infrastructure to access and traverse the theatre (e.g. few adequate ports, airfields and landlines of communication together with limited or inexistent host nation support).

SELECTIVITY
Essential for future operations will prove to be the selective use of kinetic and non-kinetic means to generate the desired lethal or non-lethal effects. Future forces should be able to tailor the application of force to legal and political constraints, thus minimising undesirable collateral effects. This will require the incorporation of non-kinetic capabilities as computer network attack, electromagnetic or directed-energy, offensive counterspace, military deception and psychological operations.

SUSTAINABILITY
Adversaries may gain time and manoeuvre freedom, if they can impede or deny access of European forces to the operational area. Scale, speed and endurance of European forces may be adversely affected if they are compelled to operate from distant areas. Timely and precise delivery of mission-ready forces, reduced combat support and combat service support footprint in theatre may result from multinational 'sustainment pipelines' a.k.a. 'logistic conduits'.

Interoperability, co-ordination and use of agreed standards will be vital to achieve a unity of effort and purpose towards more cost effective fighter-to-support ratio, the basis for sufficient rotational capacity to sustain operations in long-duration contingencies.

Finally, political sustainability of CSDP operations will be contingent on a conspicuous and continuous focus on force protection.

Similarly to NATO’s analysis of future security environments, this long term vision for CSDP should inform the development of capabilities. Clearly, all four characteristics will affect the level of resources that should underpin this ambitious vision. More in particular though, the requirement for agility will have an impact on multinational cooperation and the insourcing of military tasks to security partners. Finally, ‘sustainability’ can only be achieved through reliance on private companies, ‘third parties logistics’ in CSDP jargon, the subject of Chapter 4 on outsourcing.

2.4  Societal trends of influence on Defence & Security

2.4.1  Globalising trends and their influence on SecO

Globalisation will continue to grow winners and losers. The imbalance between the revenues of developed, emerging and poor countries (as well as within) is likely to persist. Global institutions will become less and less Western, while economic as well as military power is ‘equalising’.

Developed societies and their economies will become increasingly network-centric. There is a lack of consensus among the members of SecO on how best to approach globalisation, hence national defence planning - and procurement horizons in particular - show growing protectionism. Hostility to globalisation is evident by the actions of countries and entities at the rim of SecO as the EU and NATO in response to what they view as Western hegemony. Seen through this lens, the dark side of globalisation - terrorism and the acquisition of WMD - become mechanisms for expressing discontent 61.

Both the EU and NATO’s ability to project power and stability is vulnerable to a lack of solidarity. The most important consequence of globalisation is that it puts change on the political agenda, hence many of the issues that divide North Americans and Europeans stem from different approaches to

globalisation. NATO-EU relations should be enhanced and differences reconciled through and around comprehensive approach, which should take due account of globalising factors.

On the United Nations and its Security Council globalisation has the effect of multiplying and over-extending peacekeeping efforts as will be researched in Chapter 3 on insourcing.

States will remain central actors of global governance, but non-state actors will acquire more influence. International law regarding the use of force will need to adjust to those new realities, reaching an acceptable balance between effectiveness and legitimacy. A thought-provoking, if contentious perspective on globalisation is also that it makes conflict easier and enables non-state actors to take part in armed conflict simply because war is considered affordable.

2.4.2 Future impact of the environment and natural resources on D&S

The world’s leading climate scientists, business leaders, and others studying climate change have concluded that our planet is warming and will continue to do so for decades to come. Consequences of climate change will be particularly severe in developing countries, both in urban and rural areas. By 2030, two thirds of the world’s population is expected to live in water-stressed areas.

The nature, the pace and the consequences of climate change are projected to be significant. Over the coming decades, for instance, the predicted effects of climate change include extreme weather events, drought, flooding, sea level rise, habitat shifts, retreating glaciers and the spread of life-threatening diseases. This has the potential to create sustained natural and humanitarian disasters on a scale beyond those we see today.

Climate change could foster instability in volatile regions of the world and may present significant security challenges to SecO. Opening of the Arctic passage as a result of the receding polar ice and the warming of the sub-Sahara resulting in droughts and subsequent immigration flows are but some examples of the impact of climate change on new security issues. In anticipation of ever increasing demands, it is unclear whether an unimpeded flow of fossil and alternative energy sources, as well as other natural resources in high demand for production processes (such as coltan and other minerals), towards the markets can be sustained. In all likely scenarios, however, their exploitation and thoroughfare to global markets will lead to new security challenges.

All of these phenomena will foster political instability, especially where governments are unable or unwilling to cope with societal demands. Undoubtedly, significant implications to the international security environment and new needs for financial resources to cope with them shall result. Furthermore, corporations that have won exploration or mining permits will be confronted with increasing security challenges, leading to increased hiring of Private Military Companies (PMC) for the protection of their interests. Regular Armed Forces called to these theatres, for instance to separate warring parties or support SSR efforts, will be confronted with these PMCs.

2.4.3 Demographic & urbanisational trends

Population growth will occur almost exclusively in the developing world (5.4 billion in 2007 to 7.9 billion by 2050). 62: 90% of the increase in world population will occur in developing and poorer countries. A large youth bulge, combined with unemployment and under-education, is likely to exacerbate its effects. Sixty percent of the world’s population is expected to live in cities by 2030, with the number of mega-cities (exceeding 10 million inhabitants) increasing from 19 today to 27. The majority of those will be located in developing countries.

All the while, the demography of the developed world will stagnate at 1.2 billion. Furthermore, these trends will have a different impact on Europe than on North-America: Europe’s share between 2007 to 2050 of the gross world product (GWP) will decline from approximately 22% to 12% while the median age will increase from 37,7 to 49,5. This means that the active working population will also decline, leaving fewer workers to support health and social services.

Islamic immigration’s impact on the internal dynamics of Europe will grow and could shape Europe’s relations with the Islamic world.

The combination of costly professional, high-tech forces and defence decreasing European budgets means that new alternatives for coping with these demographic changes must be found: some European armed forces are raising retirement ages and encouraging more women to join.

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62 All prognosis drawn from NADEFCOL’s, Op Cit and the SACT Future Security Environments Study. They were cross-referenced through the PoleStar Project which provides appropriate methods for sustainable development analysis (see http://www.polestarproject.org/) and showed acceptable discordances.
Conversely, in the U.S., the active working population will increase by a third between 2007 to 2050, its share of GWP is likely to increase from 23% now to 26% and the median age will only slightly increase from 35.5 to 36.2. All of this might trigger a need for a different form of burden sharing between the forces of European allies and North American partners, requiring a good understanding and institutional dynamic of insourcing tasks to one another.

Mega-city failure and associated population density affects countless complex social and cultural interactions, that influence human intelligence and open-source information, while increasing the risk of collateral damage. This will require a number of sophisticated capabilities including human and cultural mapping, running of city services and utilities, all prone to contracting with private companies, because they do not belong to the core business of armed forces. Combining very precise combat or peacekeeping operations against asymmetric opposing forces between small military formations and police, civil affairs teams as well as NGO’s in the same environment will require special skills. The complexity of urban environments will degrade or reduce mobility as well as the effectiveness of high-technology weapons, communications systems, and intelligence, surveillance, and reconnaissance. Finally, simultaneous & close contact in this environment with adversaries, allies and neutrals will multiply force protection requirements.

Political and economic attitudes towards insourcing and outsourcing will need to be seen and understood against this background.

2.4.4 Information & technology trends

Global technology diffusion is likely to accelerate, reducing but not closing existing technology gaps between societies. It will empower the individual versus nations/societies. The ‘dual-use’ design of technology, possessing both civilian and military utility, will benefit those less technologically capable, particularly through the production of cheap and novel applications.

Today’s adversaries can enjoy relatively easy access to capabilities similar to those operated by SecO: they can also hire the same services and contract out to the same brand of private companies. Heavy reliance by the western nations on Commercial-Of-The-Shelf software, hardware and equipment means that technological superiority should not be taken for granted. Transformation has not sufficiently prepared the West for military and psychological combat against seemingly weaker actors, who can apply tactics aimed at achieving political gain without regard to human loss.

Development of highly sophisticated information and ‘cultural warfare’ capabilities will spread. The threat of hacking and network manipulation will increase in frequency and intensity as criminals, terrorists and other opponents move to exploit our cyber-vulnerabilities. Military Information & Communication Technology systems will require robust and comprehensive protection, fall-back options that do not depend on commercial bearers and allow unhindered access to exclusive space-based platforms. Military commanders will require technology and skilled operators to conduct cyber-defence and cyber attacks in military and civilian information communities.

Particularly during counterinsurgency operations, military forces must take on a variety of potentially conflicting tasks in parallel, which entices to task sharing with private companies.

The use of all-professional forces and the fact that technology allows peacekeeping or combat operations in distant areas, make that their societies are disconnected from conflict. This disconnect is further aggravated when private companies take over operations normally conducted by professional soldiers, sailors and airmen, a trend exacerbated by the increasing technicity.

2.5 How the media frame the provision of Defence & Security

The expansion of the media in all its forms (traditional tele-visual, the internet, and citizen journalists), will impact across every aspect of life. Fewer and fewer journalists are specialist-reporters with knowledge of the military. They have become targets in the war of ideas and have lost access to important areas of hostility, unless they are embedded with the forces they report on. But media coverage may compromise security, provide comfort to the enemy, and disclose tactics, techniques and procedures used by military forces.

The tyranny of 24-hour news entices a hunger for sensational stories that attract the public’s attention. The long-term nature of modern conflict reinforces this mindset and encourages extremist acts by radicals who wish to influence public opinion. But the CNN-effect (24 hour news media) is being replaced by the YouTube-effect (Diverse and sometimes anonymous postings giving all actors a media voice.). Traditional newspapers – even with their online versions – are being caught in time by ‘bloggers’ that don not bother with the validation by a second source before posting stories that – even if quickly and convincingly proven wrong or exaggerated – can influence public opinions profoundly.
Governments, political parties and administrative organs will be subject to pervasive scrutiny and challenge by individuals and groups. The Strategic and Operational Commanders will rely heavily upon a broad public affairs campaign, that can successfully compete with the messages of opponents in traditional news media and cyberspace. In their essay 63 Towards a Grand Strategy for an Uncertain World - Renewing Transatlantic Partnership, a group of General Officers captured the problem as follows:

As NATO is engaged in operations in Afghanistan – operations which, in some places, are of an intensity that NATO forces have not seen before – one of the discrepancies of our time becomes obvious: some of our armed forces are fighting wars, but the societies from which they come live in peace. [...] Therefore NATO must develop an information strategy that can serve three objectives simultaneously:

- It must influence the world’s perception that NATO is a force for good.
- It must be on the screens before the opponent starts spreading the news, i.e. NATO has to win and maintain information dominance in public relations.
- It must help to win the hearts and minds both of its own nations (for NATO’s just course), and of the people in the theatre of operations.

The nearly continuous information overload has driven viewers to select their news sources and they do so because a broadcast is in a particular language, associated with a particular religious identity, or because it supports a particular ideological or cultural orientation.

Furthermore, Western values no longer dominate the international media: there is no "ground truth" that forms a basis to debate security policy either nationally or internationally.

As part of their marketing, extremists have sublimated violence and extremism on the Internet which is infecting a growing number of young people with extremist ideas. Groups as Al Quaida have outsourced their strategic messaging to tendentious news agencies in a very subtle way.

Conversely, military commanders fail to 'use' the media due to lack of training or political constraints or both. The inability of the military chain of command to keep pace with events, coupled with restrictions levied on public information officers, can inhibit media relations.

The media policy of SecO as the U.N., NATO and the EU is fractured and much less effective than required for today's conflicts. "Managing the message" and avoiding national sensitivities have become more important than developing a common message to explain and defend policies on behalf of the Alliance. Moreover, politicians who address the media may have national, party or personal agendas that undermine the objectives and solidarity of the SecO involved in operations.

Messages should therefore be tailored to a particular audience and sources to disseminate the stories must vary according to emphasis. Another practical consequence may also be to lower expectations for future operations in terms of what those operations are able to achieve.

Particular attention should also be focused on the media coverage of private contractors in an area of operations, especially when their involvement can have political or legal consequences for the state or SecO that hires them.

2.6 **Economic framework for the provision of Defence & Security**

2.6.1 **The laws of offer and demand applied to Defence & Security**

The supply-demand model is a fundamental concept in economics. The price level of a service or good is determined by the point at which quantity supplied and quantity demanded even out.

The demand-curve basically expresses the choices that the customer can make, whilst the supply curve represents the price-options that the provider can determine.

The law of supply and demand predicts that the price level will move toward the point that equalises quantities supplied and demanded as evidenced in the graph by the point where the curves cross. The black dotted line in this graph indicates an equilibrium: the x-axis depicts the quantity being purchased, while the y-axis shows the price paid for the transaction.

Transposing this theory - mutadis mutandis - to the Defence & Security (D&S) world, provides an interesting theoretical framework, that allows a better understanding of defence economics and security parameters.

On the graph below, the curves that express OFFER (blue) and DEMAND (red) for SECURITY show a yearly defence expenditure as a function of the degree of Defence & Security acquired with it.

Tab/Fig 5 - Offer and demand equation applied to Defence & Security

Whilst defence budgets on the y-axis are quite tangible and can be determined in a discrete way, the amount of D&S resourced in a particular budget year (set out on the x-axis) is obviously a subjective and intangible variable. Hence, one should be careful to consider this framework merely as a representation of defence dynamics, not as a Cartesian model.

Nevertheless, sensitivity analysis would show that if resources spent on defence were higher than the market value (in casu: the current security environment), a surplus of security would result. The reverse would evidently mark a more serious outcome: a shortage of security.

A very basic, yet valid question to ask is who are the CUSTOMERS and the PROVIDERS of Defence & Security? The proposed framework accepts - in a first tier - Governments as customers and both Ministers of Defence (on a national level) and SecO (on a multilateral level) as providers.

Interestingly, the offer-demand rationale works just as well - in a second tier - to explain the relationship between the MOD or a SecO and Private Security/Military Companies as providers.

Indeed, when contract services offered by PSC/PMC become ubiquitous in a free market environment, prices and quotes in bidding processes can be expected to shrink. Whether free market mechanisms are allowed to have their effects, however, will be studied in subsequent chapters.

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64 This amount of Defence budget can be expressed as % of GDP/GNI or in current valuta, be it € or $.
65 As with insurance and safety issues, rather than seeking 100% solutions, at a certain point of incremental investment ‘best value for money’ is reached, after which more investment does not yield proportionate security gains: hence a zone of security-surplus.
2.6.2 A theoretical model applied to changing security environments

A change in market equilibrium can occur when either demand or supply shifts: increased demand will result in a new crossing point with a higher price and obviously a higher quantity being provided. Conversely, when supply increases, prices can be negotiated at a lower level and more transactions will take place.

Tab/Fig 6 - Effects of changing security environments on D&S offer & demand

With the current degree of D&S resourcing (current defence budgets indicated by the black arrow) as a starting point, the 'A'-arrow on the left graph shows the effect of a degrading Security environment (depicted by a move to the left from the initial blue supply curve): the price for security rises and a new equilibrium is found, albeit with less security provided. Conversely, the 'B'-arrow depicts an improving security environment, in which more D&S can be resourced at a lesser price.

In a similar fashion and departing from the red demand-curve, the outcome of more benign security environment is predicted to be that less budget will need to be spent, because less D&S is necessary, as evidenced by the 'C'-arrow.

Finally, the 'D'-arrow indicates a situation where more security is needed, which can only be obtained through a higher defence budget or, arguably, a more efficient use of current funding levels.

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66 Read: security equilibrium
Chapter 2 - Conceptual Framework for the Provision of Defence & Security

The table below assays the four cases in point mentioned above in the light of current and changing security environments.

Tab/Fig 7 - The D&S offer & demand conceptual framework in practice

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Source: author's analysis & own appreciation

The list of examples and their historic illustrations is not exhaustive and obviously subjective, but it should illustrate how a rapidly changing security environment can affect the provision of Defence and its 'market' price significantly.

2.7 Procurement framework and building blocks for the provision of D & S

The conceptual framework for the provision of Defence & Security has completely changed as was evidenced by the changes in future strategic environments described earlier.

As a consequence of the evolved security environment and its dynamics for 'offer and demand' explained earlier, the 'business model' of Defence provision must be expected to evolve in the direction of 'privatisation'.

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67 e.g. Certain areas in the Balkan as Slovenia, Croatia, Montenegro and possibly Macedonia/FYROM
68 e.g. Georgia in August 2008, possibly Ukraine over Crimea
69 Peace accords, such as the ones reached by Israel with Egypt and Syria, as well as those that could be brokered by third parties for Palestine, have an important effect on D&S required in the region, providing they are respected.
70 e.g. Nuclear technology commerce by A.Q. Khan, North Korea & Iran's development of fissile material enrichment
71 e.g. Libya and (provisionally) North Korea.
72 e.g. Nagorno Karabah, possibly Bosnia-Hercegovina & Moldova.
73 i.e. the well known trend that the number of ships, armoured vehicles or aircraft that a procurement budget - even corrected for inflation - can buy is in steady decline.
74 e.g. Missile Defence systems, network technology.
75 e.g. President Tadic in Serbia, Kadhafi in Lybia, Ma Ying-jeou in Taiwan, Obama in the U.S.
76 e.g. President Medvedev under Putin’s influence.
77 e.g. South Ossetia and Abchasia.
78 Treaties among security actors, such as the Conventional Forces Europe treaty and the Anti-Ballistic Missile Treaty offer a significant measure of D&S, which is evidently lost when the treaties are revoked, as was the case for both.
79 e.g. the secession of Kosovo from Serbia.
80 High energy prices have a direct effect on the training status of Armed forces, since fuel for flying hours, sea & manoeuvre days draw significantly on defence resources.
81 e.g. Cyber defence, energy security, piracy
In an authoritative paper on the subject Dr. E.S. Savas, a professor in the School of Public Affairs of the University of New York clarifies the link and nuances between privatisation and public-private partnerships:

*Privatization is the act of reducing the role of government or increasing the role of the private institutions of society in satisfying people's needs; it means relying more on the private sector and less on government.*

In his view, privatisation is much more than a financial or managerial action; it is a philosophical position concerning the roles and the relationships of society's private institutions and government, but should also be construed as a simple call to cut back government and regress to a Darwinian state where only the fittest survive.

Public-Private Partnership (PPP), on the other hand, is felt to be a less contentious notion, that refers to an arrangement where government states its need for capital-intensive, long-lived infrastructure and the desired facility is built using a complex combination of government and (mostly) private financing and then operated by a private entity under a long-term franchise, contract, or lease.

Substituting reference to the notion of infrastructure by military services makes the definition offered by Dr. Savas passable to describe the innovative 'business models' used for the provision of Defence & Security, described hereafter.

As a matter of telling example, the danger of a rigid or outdated business model in the face of changing strategic environments was shown by the crisis that hit the American automobile industry in 2008: the 'Big Three of Detroit' (GM, Ford and Chrysler) were carrying forward old designs with poor gas mileage, while Japanese and European constructors – to be fair, under pressure of their environmentally cognisant regulators – have far more challenging design targets.

Just like the iTune and iPod have turned around the music business by selling an electronic version of a tune instead of CD's, the notion of paying for the use of a service instead of the ownership of an asset, should be considered as a revolution for 20th century business models.

A new conceptual framework for the 21st century Defence & Security provision can be characterised as 'Power by the Hour'. In the following paragraphs, it’s potential impact on business models for Defence & Security provision will be researched.

### 2.7.1 'Power by the Hour': a business model for D&S?

In an interesting article, the Wharton School of the University of Pennsylvania, considers 'Power by the hour' a likely future model for purchases requiring service over time.

Customers and suppliers of mission-critical products have been experiencing that the procurement of assets or products is not always adequate, and that the provision of cost effective maintenance and support services throughout the after-sales phase can enhance the customer-supplier relationship.

Wharton researchers contend that a major focus of industry involves re-designing the contractual and implicit relationships between customers and suppliers in the service support supply chain. The overarching notion is that risks and incentives should be more equitably aligned between suppliers and customers than has been possible under traditional "fixed-price" or "cost-plus" contracts.

Two Wharton professors of operations and information management, Morris A. Cohen and Serguei Netessine, have determined that performance-based contracting may also "improve product availability and reduce the cost of ownership by tying a supplier's compensation to the output value of the product generated by the customer."

"Without doubt, this [power by the hour] strategy is fast becoming an important component of the management of after-sales service supply chains, with implications that potentially reach beyond defense and aerospace contracting, and into certain retail sectors.

[...] the optimal contract is really a combination of three things: fixed payment or fixed price, cost-sharing and performance-based compensation."

Beyond traditional maintenance contracts for relatively simple products (like automobiles or electronics), mission-critical services supplied by capital-intensive industries such as aerospace and

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83 Wharton School of the University of Pennsylvania. (2007, Feb 21). 'Power by the Hour': Can Paying Only for Performance Redefine How Products Are Sold and Serviced?, retrieved Dec 14, 2008 from Knowledge@Wharton: http://knowledge.wharton.upenn.edu/article.cfm?articleid=1665
defence weapon systems, which include the maintenance and repair of all classes of sophisticated equipment benefit from this type of contractual approach. In the commercial aerospace sector, the practice of 'power by the hour' has become a standard contract provision for the support of such key sub-systems as aircraft engines and avionics systems.

The authors argue that the adapted business model makes also sense from the economic point of view, since "support and maintenance services can generate up to seven times as much profit as do sales of original products over the lifetime of product use."

Currently, either fixed-price contract \(^{84}\) or a cost-plus contract \(^{85}\) are used for this kind of services.

With a fixed-price contract, however, although all of the risk rests on the supplier, few incentives for a better performance are present. In a cost-plus contract, on the other hand, the risks are actually shared between customer and supplier, but few or no incentives entice the supplier to reduce costs, since his profit margin depends on costs incurred.

The idea of 'power by the hour' is that the results of product use (in other words of value creation) is paid for, not the parts or repair services required to build, lease, restore or maintain a product. This approach is perfectly usable in military applications and was adopted by the U.S. DoD, that branded it 'performance-based contracting'. Another path to avoid the capital cost of military systems and purchase quality services was experimentally developed by the British Government and was dubbed the 'Private Financing Initiative'.

Both notions and their adequacy for military business models will be explored hereafter.

2.7.2 Performance-Based Logistics and Contracting

The essence of Performance-Based Logistics (PBL) is buying performance outcomes \(^{86}\). It is procurement of a capability to support operations versus the individual parts or repair actions. This is accomplished through a business relationship that is structured to meet the operational requirements. PBL optimizes the best public and private sector competencies based upon a best-value determination, evidenced through an appropriate analysis of the provider's product support capability to meet set performance objectives. The major shift from the traditional approach is that instead of buying set levels or varying quantities of spares, repairs, tools, and data, the focus is on buying a predetermined level of availability to meet the operational commanders objectives. As scenarios change and the operational environment evolves, performance requirements may change. Thus, understanding the requirements is a continual management process for the program manager. In order to motivate the contractor to achieve the desired metrics, appropriate contract incentives include award fee, award term, and cost sharing, which promote and facilitate contractor performance.

This model clearly holds merit for the outsourcing of operational logistics, provided it is well applied, managed and supervised.

2.7.3 Private Financing Initiative (PFI): a special path to outsourcing

The PFI approach \(^{87}\) involves the public sector in contracting to purchase quality services, with defined outputs, from the private sector on a long term basis, and includes maintaining or constructing the necessary infrastructure. This is done to take advantage of private sector management skills. Incentives for sound management by industry arise inherently from the private finance held at risk in this approach.

Because PFI is characterised by a long term, whole-of-life commitment by the private sector to deliver and maintain new public infrastructure, it will only be suitable for certain types of investment.

PFI is one of a number of procurement options open to the public sector for modernising infrastructure and involving the private sector in improving public services with its own characteristics, costs and benefits. It should only be used where it is appropriate, in line with Government's commitment to efficiency, equity and accountability. According to the UK Government's rules, there should be no inherent bias in favour of one procurement route over another and this principle must be followed throughout the procurement process.

\(^{84}\) The buyer pays a fixed fee to the supplier to purchase necessary parts and support services

\(^{85}\) The supplier repairs the product and charges full cost plus a premium to the buyer.

\(^{86}\) U.S. DoD Defense Acquisition Guidebook DoDD 5000.01, retrieved 11 Dec 2008 from https://akss.dau.mil/dag/guidebook/IG_c5.3.asp

The central proposition should always be that PFI should only be pursued if it delivers Value For Money (VFM), where VFM is the optimum combination of whole life cost and quality (or fitness for purpose) to meet the user’s requirement. This does not necessarily mean choosing the lowest cost bid.

The value for money assessment process contains three stages:

Stage 1: is an initial assessment undertaken by departments during the Spending Review of whether PFI is likely to provide value for money for a whole programme of investment projects;

Stage 2: is a later assessment undertaken by the Authority working on a project within the PFI programme to assess whether PFI is likely to provide value for money given the individual circumstances of a particular project; and

Stage 3: is an ongoing assessment of the continued competitiveness of the market to ensure that value for money is not compromised once the assessment that PFI is the best route has been made and the procurement commenced.

Throughout program execution Qualitative Assessment will be undertaken by answering questions on VIABILITY, DESIRABILITY and ACHIEVABILITY. Obviously, these assessments will need to take the framework of military operations into account.

2.7.4 Political analysis of Public-Private Partnerships (PPP)

Public-Private Partnerships are set up in several domains and to meet very different societal needs: research & technology, energy, environment, health, public infrastructure, education and welfare, to name but a few. Defence & Security can obviously not be omitted in this list, since the policy implications show a direct link to the sovereignty of the state.

Arguably, this is what distinguishes the latter from the former policy areas and also the reason why the gradation between privatisation and partnerships is crucial in political terms.

In trying to understand political and societal attitudes towards privatisation and PPP, Stephen H. Linter, a University of Texas scholar offers a thought-provoking analysis:

Neoliberals want to privatize the state because it is intrinsically inefficient. Neoconservatives want to privatize because the state is perpetually overburdened and under disciplined; it can control neither its giveaways to the undeserving, nor its appetite for more tax dollars.

The author goes on to argue that from the perspective of enlisting the support of more moderate elements (which are less opposed to state action because they promise lucrative collaboration between the state and private companies), Public-Private Partnerships serve not only a strategic purpose, but a normative as well.

Linter sees at least six distinctive uses of the term Public-Private Partnership, which each invokes certain premises about what the relevant problems are to be solved and how best to solve them. In his view, they can be plausibly related to either neoliberal or neoconservative ideologies.

88 VIABILITY: Is the requirement deliverable as a service and as a long-term contractual arrangement? Can the quality of the service be objectively and independently assessed? Are there good strategic reasons to retain soft service provision in-house e.g. longer-term implications of skill transfer?

89 DESIRABILITY: Can the outcomes or outputs of the investment programme be described in contractual terms, which would be objective, specific and measurable? Bearing in mind the relevant risks that need to be managed for the programme, what is the ability of the private sector to price and manage these risks?

90 ACHIEVABILITY: Is there evidence that the private sector is capable of delivering the required outcome? Does a significant market with sufficient capacity for these services exist in the private sector?

91 The latter is seen as a ‘retreat’ from the hardline ‘privatisation’.

According to this analysis, Public-Private Partnerships can pursue following political objectives:

1. **management reform**, as a quest for efficiency gains;
2. **problem conversion**, as a universal fix for most problems attending public service delivery, valorising commercial activity and market discipline, thus placing government in a supporting & subordinate role;
3. **moral regeneration**, for Neoconservatives that see partnerships as a middle ground between public and private, for Neoliberals as a comprehensive tool for remaking government in the market’s image;
4. **risk shifting**, as a means of responding to fiscal stringency on the part of the government, but assigning the supporting role to commercial interests, not to government;
5. **restructuring of public services** perceived to be out of control, overburdened and overextended;
6. **power sharing**, favoured by Neoconservatives because power sharing can take the teeth out of regulation, making it less rigid, punitive, and arbitrary. For Neoliberals, it merely boils down to commercialising inherently governmental tasks and thus reducing the power of the state apparatus.

Bearing in mind that this political analysis was offered before the Bush-Cheney administration embarked on its military adventures in which Public-Private Partnerships as Blackwater and Halliburton would play such a prominent role and before Neoconservative tendencies culminated in the notorious ‘Bush Doctrine’, its insight in the possible motives or hidden agenda’s favouring PPP and/or outsourcing are all the more valuable.

In this context, it is interesting to fathom the subtle distinctions between Public-Private Partnerships, outsourcing and insourcing.

While the term ‘privatisation’ is commonly applied to the act of contracting for public services, the nomenclature of ‘outsourcing’ is used within the private sector as well, for example, when one company contracts with another for a specific service or function.

The goal of contracting being to generate competition, it does not necessarily imply a private firm. Increasingly, governments are encouraging their own organisations to compete for contracts with private companies. This form of Public-Private Competition is has been called “managed competition” or ‘competitive sourcing’ up to now, but the neologism ‘insourcing’ has also been introduced. It has proved to be a powerful incentive for public agencies - under the threat of privatisation —to improve their performance.

While ‘competitive sourcing’ normally implies competition between private and public sources, one can obviously extrapolate ‘insourcing’ to different sources within government ( e.g. imagery developed by one of several intelligence agencies).

As will be explored in Chapter 3, insourcing can also occur with foreign or multilateral Governmental Agencies as well as between governments, in particular between Defence Establishments.

While literature abounds on distinctions between privatisation, outsourcing and PPP, these differences are often directly linked to the type of partnership. Although the following chapters will extensively put these concepts in context, combining the different academic sources and subsequently applying them to the specific case of Defence & Security provision yields the following comparative glossary.

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93 These examples of PPP will be researched in Chapter 4.
95 e.g. the Central Intelligence Agency, Defense Intelligence Agency or the National Security Agency could compete with Google Earth or any other commercial satellite imagery provider.
The good, the bad & the ugly of outsourcing security to PMCs  

Tab/Fig 8 – Glossary of terminology for the provision of D&S services

<table>
<thead>
<tr>
<th>Terminology</th>
<th>Contextual Definition of Government Agency (GA) actions</th>
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<tr>
<td>Privatisation</td>
<td>Act of contracting for public services, thus reducing the role of government or increasing the role of the private institutions of society</td>
</tr>
<tr>
<td>Public-Private Partnership</td>
<td>An arrangement where government states its need for capital-intensive and long-lived services to be provided through a complex combination of government and (mostly) private financing and then operated by a private entity under a long-term franchise, contract, or lease. Implicit is more than one phase in ongoing contractual relationship which justifies long term private capital investment. Used to avoid negative impact on public borrowing.</td>
</tr>
<tr>
<td>Private Financing Initiative</td>
<td></td>
</tr>
<tr>
<td>Outsourcing (See Chapter 4)</td>
<td>Act of contracting for public (or private) services to GA or directly to citizens on behalf of the Government for a specific service or function from a private institution. GA designs, funds &amp; owns infrastructure or capability. An enduring contractual relationship is possible but not automatic which renders yield of long term private capital investment uncertain. Used to avoid negative impact on public attention.</td>
</tr>
<tr>
<td>Insourcing (See Chapter 3)</td>
<td>Act of contracting for public services from national, foreign or multilateral GA. Compensation can be financial, in kind or through a ‘closed purse arrangement’</td>
</tr>
<tr>
<td>Competitive Sourcing</td>
<td>Competition between private and public sources for the provision of a contract for public services. Contract award follows an evaluation of public and private bids.</td>
</tr>
</tbody>
</table>

Source: own compilation from different sources adapted to D&S

More telling and of greater political consequence than contextual definitions pointing to possible sources of services that could be useful to Defence & Security, is the insight gained by mapping the terrain of Public-Private Partnerships.

This academic research was performed by scholars of the Massachusetts Institute of Technology. In a compilation under the direction of Pauline Vaillancourt Rosenau, the money flows – or rather, the flows of revenue to and from Government Agencies, Profit and Non-Profit Organisations were mapped.

The table below was adapted to the provision of Defence & Security services and illustrates for instance the revenue flow that can occur when Government Agencies (GA) – that normally operate on fiscal revenues - are sought to provide ‘insourcing’ to another national or foreign GA. The map also allows to position outsourcing and PPP, providing tax-money to private ‘for-profit’ companies, such as Blackwater or Halliburton. Finally, the revenue flows of Non-profit Non-Governmental Organisations, that can play a very important role in the engagement space are also depicted.

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2.8 **CONCLUSIONS on the aggregation of a conceptual framework for D&S**

The armed forces can either be the safeguard of security or become a risk to state and society, thus provoking external aggression, if the government does not provide the resources to accomplish its missions and the leeway to make the proper technical decisions for preparing defence and applying violence.

This short answer to the question ‘how much (for) Defence & Security’ is not paraphrased from a pamphlet for zealous neo-conservatives, but from recent scholarly research [99] of the Geneva Centre for the Democratic Control of Armed Forces. It does not answer the question of who pays for it, however, nor what the deeper motive should be for citizens to forbear benefits or tax-cuts with those resources.

For all the academic debate on transatlantic bargains, pressure to spend more on Defence & Security is seen by some as an ill-disguised incentive to buy more sophisticated weaponry (and ‘security’ services, as will be argued later) from the Americans, while others are convinced that Europeans should really share the burden of geopolitical stability and security deficits in regions of the world, where they want to matter with more than words and good intentions.

Evidence does point to the cynical theory that countries with a blooming private military industry (and the PMCs themselves, obviously) fare well during and even more after conflict. On the other hand, the security equation can be such that societies, which are not in a political and/or geographical position to isolate themselves from (post)-conflict, can be entirely destabilised.

The notion that D&S-related industries have shifted from designing and selling military hardware to providing the knowhow and software to use force adds weight to the pervasive and perverse influence of leasing security from private companies, as will be further explored in Chapter 4 of the study. In addition, the dynamics of political energy and allocation of financial resources to D&S is vastly different on either side of the Atlantic: arguably, the hype around the ‘Global WAR On Terrorism’ has been instrumentalised by the neo-cons to convince a reluctant Congress to appropriate huge amounts of dollars, of which a significant portion found its way to private companies, as confirmed by aggrieved GAO-reports. It is fair to say that the Iraq war and even the continuance of operations in Afghanistan might not have been approved and bankrolled by the Congress without the GWOT-rationale, but it surely misfired with European constituencies in getting traction to increase their defence budgets.

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Governance deficiencies are the point of departure for Security Sector Reform (SSR). The development of indigenous Security Forces has been identified – among other military-strategic trends - as one of the key tasks for future stabilisation & reconstruction efforts, in other words soft power to follow up hard military action. The main problem to be dealt with, though, is the need for a Safe & Secure Environment (SASE) for (Non-)Governmental Organisations to benefit from - but also contribute to - better governance.

As shown in the flowchart below, Rule of Law, Governance, economic development & essential services are all pre-conditioned by a Safe And Secure Environment (SASE). The lines of effort for a tentative implementation scheme of a Comprehension Approach were drawn from the most recent edition of the U.S.Army Field Manual for Operations 100. While the intermediate steps along the Lines of Effort are not necessarily sequential in all circumstances, the notion that one can be the pre-condition of another was graphically portrayed, thus emphasizing the fact that any significant societal development (hence, any action by most GA & NGO’s) cannot take root without a Safe & Secure Environment.

Tab/Fig 10 – An Aggregated Conceptual Framework for Defence & Security

A headstrong situation in which development funds cannot be spent because of security & governance deficits, results in the relegation of SSR and other tasks to NATO, the EU or the U.N. Those for which national contingents are not made available are then subsequently outsourced to private companies (which have vested interests in profit rather than exit strategies). This link with ensuing chapters in the study on insourcing and outsourcing was highlighted with textboxes in bold. The colour codes relate to the supported-supporting relationship between CIVIL and MILITARY authorities: for some milestones on the path to a SASE, the military are clearly in the lead, while for other activities, that are essentially civil responsibilities, the operational commander will provide support to local security forces or to civil IO and local authorities.

In the military-strategic realm, both NATO and the EU have conducted foresight studies of their future Defence & Security environments: while the parameters (globalisation, climate change, natural

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resources, demography, urbanisation, information & technology) are well known, the requirements they evoke (i.e. synergy, agility, selectivity & sustainability) as well as the military implications they provoke are inextricably linked to the way Defence & Security shall be resourced, insourced and ultimately outsourced in the coming decades. Given the volatility of media and public support combined with the fact that strategic communication can also be asymmetric, political and legal fall-out of the media coverage of private contractors in an area of operations can have inhibitive consequences for the state or SecO that hires them.

The economic framework for the provision of D&S is best understood in simple terms of supply versus demand. Complex real world historic occurrences can be assayed against a relatively straightforward conceptual framework of offer and demand: threats and opportunities resulting from changing security environments position transformation, restructuration, insourcing and outsourcing in the realm of defence economics. Areas of ‘RISK’ are also identified, resulting from the rising cost of technology and the declining buying power of D&S budgets, precluding the renewal of military capabilities through normal defence planning cycles. Risk is declared in military terms when Armed Forces are assessed to be unable to provide the military capabilities to meet the politically set Level of Ambition (LoA). Authorities are then compelled into insourcing and eventually outsourcing.

Informed by this economic framework and as a consequence of the evolved security environment, the procurement and building blocks for the provision of Defence & Security must be expected to evolve in the direction of ‘privatisation’.

A new business model for the provision of Defence & Security can be characterised as ‘Power by the Hour’. Redesignated as ‘Performance-Based Logistics’ by the U.S. DoD, the idea is that the results of product use is paid for, rather than ownership of the hardware or its maintenance. This approach is perfectly adequate for military applications, as is another path to avoid the capital cost of military systems. A slightly different business model, dubbed the ‘Private Financing Initiative’, was experimentally developed by the British Government, but it should also be seen as a construct to deal with declining resources and the exponential rise of ownership and capital cost of military capabilities.

Whereas there are some subtle distinctions between privatisation, outsourcing and Public-Private Partnerships, depending on public or private statute of the contracting parties, it is important to understand the source, the destination and the final ownership of the revenue flows, to gain insight in the policy and politics of the provision of Defence and Security services. This should also serve the purpose of putting the terms of the debate in perspective on whether instruments of stately power emanating from its monopoly on the use of force should be left in private hands and hostage to the pursuit of profit.

With the conceptual framework for Defence and Security informed by political, military-strategic, societal, mediatic & economic perspectives drawn in this chapter, the basis was provided for a thorough understanding of the parameters of resourcing, insourcing or outsourcing Defence & Security. Complemented by the procurement mechanisms of security services and their associated revenue flows as well as some historic illustrations on offer and demand of D&S, the insights provided later in the study should be facilitated.
CHAPTER 3 - Insource: the common-funding dilemma

3.1 Possible funding mechanisms

Security Organisations as NATO and the Western European Union (WEU) were conceived on the understanding of collective defence, in essence pooling all the means available when under attack. Financial compensation for what was to be a ‘rescue’ operation was never really envisaged, although the notion of burden sharing often coloured political discussions. The rationale was that each ally should ‘resource’ its defence requirements more or less equally in function of its means. This bearing capacity was initially expressed as a percentage of the Gross Domestic Product (GDP).

For the provision of infrastructure (roads, harbours and airfields, ...) critical for military contingencies, a special Programme was created in NATO: the NATO Security Investment Programme (NSIP). It was the bedrock of the system of common funding via a predetermined cost share key.

After the cold war, when expeditionary operations became the norm though, the principle of costs-where-they-fall gained importance. Once a nation takes the political decision to participate in an operation – unlike collective defence, an automatic mechanism – it has to incur all the costs tied to its contribution. The fact that operational tempo – quite paradoxically – rose after end of the Cold War to unseen heights, quickly put political pressure on this simple funding principle.

The primary funding mechanism for Non-Article 5 NATO-Led Operations was revised \(^1\) in 2005, but remains that nations absorb any and all costs associated with their participation in such operations.

Under this revised funding policy, NATO common funding is not to be a default solution for shortfalls in the force generation process and extended common funding should not lead to a further erosion of that process. This principle of nationally incurred costs “lying where they fall” equally applies to non-NATO Troop Contributing Nations, but does not preclude bilateral or multilateral support arrangements.

When forces or assets that are both ‘critical’ and ‘enabling’ on a theatre level cannot be generated however, a situation can occur when an operation, for which the political decision has been taken, cannot be launched or sustained.

SecO confronted with this recurring problem have sought ways to mitigate these shortfalls either through outsourcing (to private companies \(^2\)) or (what could be designated as) insourcing.

To put the recurring problem of CJSOR-shortfalls \(^3\) in context, the previously mentioned ‘Revised Funding Policy for Non-Article 5 NATO-Led Operations’ was agreed by the nations in the NATO Atlantic Council in October 2005 \(^4\).

The revised policy was established with a view to achieve a more equitable distribution of the financial cost of key theatre level enablers by providing common funding, e.g. for Theatre Capability Statements of Requirement (TCSOR), i.e. critical theatre-level enabling capabilities not attributable to a specific nation (‘pooled’, in other words). They are listed a priori in the OPLAN and put under the operational or logistic control of the theatre commander.

These requirements should be provided by lead nations, that take responsibility for assembling and maintaining the required capability from their own and other nations’ forces, but with common funding paying for the deployment, the installation and the running of the provided capability.

While only one activity is explicitly excluded in the extant policy, namely ‘nation building’, an exhaustive list of functions, that can be declared eligible, is provided:

- transportation to and from theatre of equipment;
- deployment and redeployment of personnel (from and to the marshalling area);
- in-theatre Operating & Maintenance cost (including facility maintenance and the cost of locally hired personnel);

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1 Revised Funding Policy For Non-Article 5 NATO-Led Operations, PO(2005)0098.
2 For the purpose of this study, the notion of ‘outsourcing’ is used consistently in relation with Private Companies or NGO’s, while ‘insourcing’ involves defence and/or security related Governmental Organisations.
3 Combined Joint Statement of Requirements, military speak for the list of capabilities judged necessary for the success of the operation. Combined refers to multinational, Joint is the codeword for multi-service, i.e. navy, air force, army and enabling capabilities, such as medical.
4 See also RESOLUTION 337 on ENHANCED COMMON FUNDING OF NATO OPERATIONS, NATO Parliamentary Assembly, retrieved 4 Feb 2008 from http://www.naa.be/default.Asp?SHORTCUT=829
in-theatre infrastructure (including accommodation for Theatre Capability personnel), needed to maintain the minimum military requirement and assuming maximum use of existing facilities;
• demining for the capability footprint;
• static force protection;
• operation-specific additional equipment not ordinarily part of the basic capability or unique to the operation; and
• CIS and intelligence database equipment for connectivity with the theatre NATO HQ.

Facing continuing shortfalls in troop generation for operations, several courses of action were pursued. One was to devise a mechanisms for equalising the burden of putting ‘boots-on-the-ground’. Another was to explore avenues of so-called innovative funding, such as:

- Reimbursement Mechanisms
- Strategic Contracting
- Business Cases
- Trust funding (from Defence or other National Budgets)
- Contributions from other Organisations.

Unsurprisingly, the conclusion of this first political re-appraisal of funding mechanisms was that there exist no simple or quick means for ensuring the provision of critical capabilities for military operations. ‘Absent an increase in defence spending’ – a quite significant premise to make for Ministers – it was recognised that ‘strategic contracting’ (in other words institutional outsourcing) holds the best promise to get value for the funds expended, rather than providing capabilities that otherwise would not be made available.

3.2 The notion of ‘insourcing’

The Webster’s New Millennium Dictionary of English qualifies ‘insourcing’ as follows:

- the business practice of using current personnel or resources for new tasks or projects;
- the practice of keeping tasks and projects within a corporation, especially ones that were previously outsourced;

Insourcing means the retention of a service "inside" the organization, keeping a full-service department intact with a complement of regular staff.

Clearly, the notion of insourcing infers a couple of implications: an inherent tension with outsourcing, the concept of taking on new tasks with organic capabilities and hence the effect of retaining them. Finally, and most importantly, the common business practice that an entity providing services for the benefit of other parts of a corporation is entitled to a financial compensation.

Hence, adapting these notions to D&S realities, the term ‘Insourcing’ would yield the following definition: the practice that a nation relies on a multinational or multilateral SecO (EU, NATO, U.N. et alii) to perform a project or task (as opposed to outsourcing it to a Private Military Company), in the understanding that an entity providing services for the benefit of other parts of the organization is entitled to a financial compensation.

Mutadis mutandis, the general rule in NATO - as in the EU - being that critical and theatre-level\(^5\) capabilities should be commonly funded, they are primarily to be provided by Nations\(^6\) on a reimbursable basis.

Similar to NATO’s common funding, the EU has created a process called ‘ATHENA’ to provide the initial capabilities for the launch of an operation through commonly funded in- or outsourcing\(^7\).

For the United Nations, ‘insourcing’ for peacekeeping operations is normally organised through a system of reimbursement of nations, while common services are generally contracted out to the private sector by DPKO.

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\(^5\) i.e. not attributable to a single nation.

\(^6\) Revised Funding Policy For Non-Article 5 NATO-Led Operations, PO(2005)0098, Par 12.b states that the ‘lead nation’ approach is preferred, assuming overall responsibility for organising and co-ordinating the agreed capability (with the understanding that the capability itself may well be provided multi-nationally, or by framework nations or multinational framework organisations, and that its composition may change over time).

\(^7\) The ATHENA-mechanism is covered in extenso in Chapter 4.
The challenge is to ensure the fulfilment of the Minimum Military Requirement (MMR) for the execution of an OPLAN and/or the sustainment of ongoing operations. A pertinent illustration of the negative impact of typical shortfalls stems from the undersupplied number of Operational Mentoring & Liaison Teams (OMLT) for Afghanistan on the likely duration of the operation and the success of our exit strategy. Public information efforts should endeavour to bring this recurrent problem more prominently to the attention of the political and public opinions: each fielded OMLT subsequently brings an Afghan Army Battalion on line, thus relieving an ISAF unit.

Lacunae in force generation are obviously not new nor confined to NATO, since the EU and the U.N. are faced with the same recurring problem: under-resourced operations.

The founding fathers of Permanent Structured Cooperation in the ToL had the recurring problem of force generation in mind when they asked candidate Member States to undertake, from the date of entry into force of the ToL to "proceed more intensively to develop [their] defence capacities through the development of national contributions and participation, where appropriate, in multinational forces."

Battle groups could be commissioned at short notice, in particular in response to requests from the United Nations Organisation, with their support elements including transport and logistics. These combat formations should be capable of carrying out tasks outside the Union for peace-keeping, conflict prevention and strengthening international security as well as joint disarmament operations, humanitarian and rescue tasks, military advice and assistance, tasks of combat forces in crisis management, peace-making and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including the support of developing countries in combating terrorism in their territories.

3.3 The implications of Insourcing Defence & Security

Since there is a direct link between the scope of political decisions and the size of military requirements, an instrument which provides resource implications of those decisions (or failure to reach them) should be at hand.

The U.N. procedures on Troop/Police Contributors Participating in Peacekeeping Missions provide such a tool and can be easily adapted to EU and/or NATO needs. The U.N.-developed model of dry or wet lease reimbursement of peacekeeping contingents and the incremental cost method is interesting and worthy of multilateral consideration, because it allows comparison between ‘insourcing’ versus ‘outsourcing’ a certain capability.

Additionally, it should be seen as an instrument of standardisation of capabilities leading to better interoperability (since interoperable capabilities will be leased more often than others). Finally, if well managed, it can also improve accountability and - taking into account the correction for ‘mission factors’, political authorities would have at their disposal a tool to ‘measure’ the financial impact of their decisions.

In measuring the political and military implications of ‘insourcing’ military capabilities, analysis predominantly points to the migration from collective defence to expeditionary operations. It is therefore fair to say that the future of common funding and insourcing will show meaningful correlation with the future security environment.

It is interesting to note that ‘Contributions of the willing’ are made possible under the Treaty of Lisbon, since provisions have been adopted to ‘facilitate’ the start-up of an operation by providing an opt-out for funding, while the High Representative of the Union for Foreign Affairs and Security Policy can propose a start-up fund for operations, which can be created with a qualified majority.

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8 within a period of five to 30 days and which can be sustained for an initial period of 30 days and be extended up to at least 120 days.

9 Art 42 of the consolidated EU treaty

10 Tasks added in Art 43 of the consolidated EU treaty, captured as « the most demanding missions »


12 Loc Cit, Par 10: "Wet lease means a contingent-owned reimbursement system where the troop/police contributor provides and assumes responsibility for maintaining and supporting deployed major items of equipment, together with the associated minor equipment. The troop/police contributor is entitled to reimbursement for providing this support."

13 in a NATO forum, a similar - but scarcely publicized - unilateral declaration was made by the Spanish MOD on its refusal to contribute to any funding for new tasks for KFOR after its declaration of independence of KOSOVO, thus effectively opting-out without breaking consensus at 26, heretofore uncharted terrain for NATO. It is remarkable that
If it is true that this mechanism should facilitate an initial Force Generation, it will also put due emphasis on the political decision to intervene militarily: those that decide not to provide troops or assets will pay for those who do (or be seen to default on burden sharing)!

Conversely, investments in the development of national capabilities, would put member states in a better position to 'lease' them to a SecO, thus relieving them of other burden sharing obligations.

Whereas cost-lie-where-they-fall mechanisms in effect allowed for an implicit 'opting-out clause' for those countries that reluctantly went along with intervention in a conflict in order not to breach consensus - the path of insourcing is a slippery one for nations with modest weight in the political balance. Once a multilateral decision is taken for an intervention, those that cannot or will not commit capabilities, will simply be asked to share the bill; notwithstanding the fact that defence planning mechanisms will relentlessly entice them to allocate resources to transformation, another chapter in this study.

A major consideration is that departure from the cost-lie-where-they-fall mechanism will increase the importance of political decision-making and put considerable stress on the consensus rule. Conscious of the importance of agreed ceilings for common funding, NATO has agreed (and confirmed at its Lisbon Summit) that the estimated costs of an operation should be considered as a 'reference amount' and that additional resources should take the form of supplemental allocations, thus not jeopardizing the execution of the normal budget of that fiscal year.

The thesis that common funding for Operations and even for multilateral Defence Investment will compete more and more with national transformational efforts, is one that has considerable merit and that favours the pooling of forces. In the end though, the collective capability of a SecO - and even of several SecO, if institutional cooperation were to find its way - will determine the threshold towards the necessity to outsource.

A consonant argument was developed by Prof Paul Kennedy in 'The Rise and Fall of the Great Powers' significantly antedating the Kosovo, Iraq and Afghanistan conflicts:

The U.S. now runs the risk, so familiar to historians of the rise and the fall of previous Great Powers, of what might roughly be called 'imperial overstretch': that is to say, decision-makers in Washington must face the awkward and enduring fact that the sum total of the U.S.' global interests and obligations is nowadays far larger than the country's power to defend them all simultaneously.

In other words, the U.S. cannot continue to fund its overstretched global interests and obligations alone.

This view was also held by Fareed Zakaria in his insightful analysis of The Post-American World, when he posited that whatever the outcome of Iraq, the costs [had been] massive, [with the result that] the United States has been overextended and distracted, its army stressed, its image sullied.

Both in the post-Iraq case and with regards to the post-ISAF reconstitution of defence capabilities, one could therefore argue that common funding 'multilateralises' the potential for 'imperial overstretch', rendering it less painful, shallower and easier to recover from.

If a wider practice of 'commonly funding wars of choice' may also delay the onset of multilateral overextension, its unavowed zero-sum effect on national priorities - both political and military - may have unintended effects on the Euro-Atlantic relationship and stretch it to the limit. Nations that have a different perception of the security supply-&-demand equation and of the use of military power altogether, will find themselves confronted with unplanned invoices resulting from multilateral political decisions. While some governments earmark dedicated budgets, when committing to
operations, Ministers and Chiefs of Defence in most countries see their budgetary margins usurped by debts incurred by their Foreign Affairs colleagues. Faced with the budgetary realities of widening common funding, pro-atlantists face an ever increasing challenge to counter the (populist) political argument that American Armed Forces 'do the cooking while the Europeans follow to wash the dirty dishes'.

Some will find evidence in this analysis of a two-pillar NATO. In this logic, each pillar - the EU and the US - builds their own capabilities. European Allies would do this through cooperation, pooling of forces and even integration in the context of CSDP. While the idea certainly has considerable merit, it will only fly if the credible and robust capabilities are ready, willing AND able. If it is likely that the ToL might change some of the political logic on defence matters, committing resources to it will remain the litmus test (even if all possible efficiency gains are made in spite of political interferences).

Given that NATO’s Sec Gen has repeatedly expressed disappointment on the lack of progress with regard to defence transformation, some U.S. think tanks and indeed many in the Pentagon, formulate the opinion that NATO’s problems with capabilities are tied to (the lack of) common funding and that they would not be solved without a rethink of funding issues. Innovative ways of funding operations will therefore in all likelihood be branded in the agendas of the three major SecO - the U.N., EU and NATO – in the coming years. In the case of NATO, procurement, ownership and deployment of common assets will prove to be the other side of that coin. Given the poor track record of any SecO regarding truly multilaterally owned assets, however, multinational projects will most probably be the preferred, and in political terms – the only – way forward.

Shared funding for capabilities owned by a group of nations and being insourced for the benefit of one of the SecO, will require innovative political and financial technology though:

- those leasing out will want to prevail on the critical capabilities for their own priorities and seek to charge full costing, to include sunk costs;
- those trying to hire them will ask (and probably regret the lack of) assured access and view incremental cost as correct and sufficient compensation.

The same can be said when a SecO agrees to insource capabilities to another SecO (e.g. NATO to the EU under Berlin plus or to the U.N.). Although outsourcing might bring about some other challenges - as the next chapter will illustrate - parameters as assured access and costing schemes will arguably be the easiest ones to settle on.

As a final consideration, it may be of interest to explore the political consequences of common funding principles taken to the extreme. One could perfectly conceive of doing away with all national defence establishments of members of a particular SecO and simply have them contribute a yearly sum to a multilateral Defence & Security common trust fund. This trust fund would be governed by a political body, similar to the U.N. Security Council, the North Atlantic Council or the EU’s Political and Security Committee.

The corollary of this approach is obviously the need for executive bodies, to which defence and security tasks could be entrusted, either through insourcing, outsourcing or a combination of both. Simply put, the path of insourcing would lead to a supra-national Armed Force, while the road to outsourcing would end in a privately owned & operated Armed Force, with subsequent loss of independence and knowhow.

Taking this line of thinking one step further and in the assumption that the U.N. would govern the effort on a global scale, a totally unrealistic option emerges in the face of the geopolitical competition that has characterised the U.N.S.C. in the last decades and the systematic reluctance of nations to surrender their sovereignty, especially regarding the 'existential' aspects related to security.

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19 Appropriated by Congress in the case of the U.S., the House of Commons in the case of the U.K.
20 An even more incisive version replaces American by Anglospheric.
22 The notion of insourcing is used in this context as opposed to outsourcing, which involves Private Companies
23 Which was admittedly briefly interrupted with the end of the Cold War, the weakness of Russia and China’s fixation on securing raw materials and commodities.
Given the anglospheric aversion for supra-national bodies, the potential for this kind of political arrangement also seems remote in a trans-atlantic format, bringing the rationale back to an inter-governmental alliance, hence leaving the funding dilemma intact.

Remains only the possibility of a 'European army' to be contemplated, an institutional entity to which national sovereignty would be relegated and which would respond directly to a multilateral body, supposedly the European Council.

Every now and then, political think tanks and movements express interest in the idea and build a rationale along following axes:

a. It is necessary to pursue a security and defence policy independent from NATO and implicitly, the United States;
b. It would foster a common European Command & Control arrangement, including planning headquarters, operational commands and logistics centres;
c. It would cost less.

If it is true that the radical approach of a European army would solve the funding dilemma, it remains entirely to be seen whether the EU could offer Defence & Security to the same level, but at a lesser cost; in other words if it could eliminate the duplications and inefficiencies that bother those who favour a supra-national arrangement. Not to mention the fact that its soldiers, sailors and airmen would get the privileges and benefits of European officials, hardly known to enjoy austere income levels.

More to the point, though, the essence of European motives for the creation of a European Security and Defence Identity was captured by Pal Dunay, security expert at the Stockholm International Peace Research Institute:

"The problem is not with NATO as such but how the alliance has become almost a tool box for the U.S."

The EUROCORPS, an affiliation between France, Germany, Belgium, Luxemburg and Spain, is seen by some as a first step toward such a European Army. Somewhat misleading by its nomenclature, the Eurocorps is not an agency of the EU nor a part of CSDP and it does not receive direction and guidance from it. Its multinational funding and command arrangement with a central headquarter and staff, but double- or triple-hatted forces that are not otherwise integrated and do not routinely operate through combined action, do serve however as an indication of the leading edge of multinational initiatives.

At the same time, though, the hurdles to be taken for a supra-national entity as a European army, a construct to which national sovereignty and forces would be surrendered, have become apparent. The ruling issued early 2009 by the German constitutional court leaves precious little room for any further evolution after the implementation of the ToL: the assertion that 'member states must retain sovereignty in the area of military operations, [amongst others]' should be read in conjunction with the affirmation that 'the European Parliament does not constitute an effective control of EU executive power'.

Furthermore, although recent evolutions as Permanent Structured Cooperation, offered by the ToL, clearly substantiate the ambition of pushing this leading edge forward, it is highly unlikely that they will (ever) overcome resistance of the newly acceded EU and NATO members as well as the U.K. and thus lead to a commonly funded European Armed Force.

3.4 The problems of multinational funding and pooling

In the logic of a two-pillar NATO, European Allies – as opposed to the U.S. - would indeed apply funding mechanisms with more reliance on systemic cooperation & pooling of forces. Idealised by scholars and professed by multilateralist politicians, pooling is actually practised quite extensively by...
armed forces, both internally and externally. In order to buy less material and optimise its use for instance, the Belgian Army has developed an internal pooling mechanism, by which – one set is used for pre-mission training, three sets for operations while the rest is being re-conditioned and maintained.

External pooling examples are legio between air forces (e.g. the European Expeditionary Air Wing) and navies (e.g. Admiral Benelux), but have proven cumbersome, given national caveats, language problems and inefficiencies due to regulatory differences. Realising interoperability – political, financial, cultural and military – has proven even more challenging for land forces, because they are more personnel-intensive, but the rising cost of advanced, information-based military technology is forcing the pace of integration. Moving personnel (and their families) abroad entails considerable cost though, which quickly drains economic sense from pooling projects, except for common Headquarters and joint exercises (e.g. the Eurocorps).

The pooling-concept certainly presents strengths & opportunities as was analysed in Annex A and - if circumstances are right – can also yield considerable efficiency gains. This consideration was one of the baselines of the renewed concept for the NRF, supported by the HoSG during their 2009 Strasbourg-Kehl summit: ‘affiliations and framework nation approaches’ would foster better integration between different force elements and ‘niche capabilities’ would be encouraged by an extension of common funding.

On the other hand, well-informed opinion will have to agree with Prof Margaret Blunden when she posited that the integration of European defense is weakening ties between the armed forces and civilian populations, which involves implications for the sovereignty and accountability of national decision-making, particularly of small states.

Per definition, multinational pooling entails a loss of capabilities though, redundant or inefficient as they may be. It is important to be cognisant of the fact that the sovereign option of assured access to this capability is in effect given to another nation or organisation, which should then be compensated in kind or reimbursed in capital.

It is essential to keep in mind that it is a phase of an often irreversible process that ends in outsourcing to privately owned capabilities if one or more of the following conditions are met:

- if the nation to which is insourced decides NOT to provide the service, because it reserves the capability for own purposes or because it differs in political opinion on the adequacy to use it;
- the collective civ-mil capabilities of the partner-nations that make up a SecO are exceeded or the political will to provide it is NOT at hand.

3.5 Conclusions on the Insourcing of Defence & Security

The pinnacle of INSOURCING would be a fully integrated defence, culminating in a supra-national Armed Force. In a virtual ‘closed purse’ environment, participants could choose to contribute:

- soldiers, airmen, sailors;
- constabulary forces;
- military equipment or training;
- logistics;
- stability & reconstruction support;
- security sector reform means;
- combat and/or peace support.

Or none of the above, but then foot part of the bill through a ‘security trust fund’. And maybe this will become the future D&S model of the democratic world, often put in practise by Japan, for instance. To a certain extent, the DPKO of the United Nations could also be characterised as an early, but not fully functional example of this model.

But for the moment, NATO and the EU still work as inter-governmental organisations, at least for D&S matters. The funding model that goes with this inter-governmentalism (i.e. costs-lie-where-they-

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30 Designated in a somewhat disreputable way as ‘le minimum suffisant’, indicating that every combat unit does not receive its material in dotation, but is only equipped when it goes to operations.

31 As opposed to the Cold War logic that every combat unit of each NATO-nation had to maintain its own inventory and keep up 30 day stocks. Given the assumption of an all out conflict opposing the Warsaw Pact to NATO, this logic was certainly adequate, but obviously had to be adapted to expeditionary warfare in which around 10% of an Armed Force is supposed to be ‘sustainable’ in theatre (see Chapter 3 for more details).

32 As documented in Annex A.

It is interesting to note that the American think-tanks that considered internal reforms for NATO in the 21st Century proposed to modify the consensus rule to admit qualified majority voting and allow nations to opt out of participating in an operation, even after having approved it in the NAC (where consensus should remain the rule).

As was mentioned earlier, ‘commonly funding interventions of choice’ is made possible under the Treaty of Lisbon, as a mechanism to facilitate an initial Force Generation. The political corollary should also be clear: those that decide not to provide troops will be invited to finance the operation or face the odium of defaulting on burden sharing!

Insourcing crisis management to the EU has been called the ‘Triumph of Improvisation’ by Nick Witney. A privileged observer as former CEO of the EDA, he describes most of the crisis management activities conducted by the EU as qualified successes, small in scale, improvised in execution and limited in their objectives. As paraphrased below, he identifies five areas for improvement induced by the analysis that they were particularly damaging and structurally deficient:

- CSDP operations have proved inordinately difficult to stand up for lack of volunteers;
- disincentives result from the fact that Athena common funding has been applied to less than 10% of the extra costs for operations, while governments that contributed soldiers and assets, are required to pay costs where they fell;
- CSDP interventions are conducted without a coherent plan and in a strategic vacuum;
- the EU prides itself on its special ability to combine civilian skills and resources for reconstruction and development with military forces for security, yet their command and control is fragmented;
- CSDP operations suffer from ‘corporate amnesia’, a collective reluctance to learn lessons from the weaknesses of an operation to improve further intervention capabilities.

The conclusions are particularly compelling, because the two first are problems entirely similar to the ones NATO is urgently trying to solve, while the three latter are deficiencies where NATO undoubtedly could help to find solutions.

Indeed, the Berlin plus arrangement was designed to put assets, infrastructure, communications and the robust operational planning structure of NATO at the disposal of CSDP in an effort to avert duplication ... or avoid that the EU would seek its own. To improve unity of command, the EU has been consolidating its structure for joint civil and military operations, but its planning capacity would require further consolidation to be able to sustain several coinciding CSDP-operations in complex environments without one of the national operational headquarters (OHQ).

It is a matter of public knowledge that the effectiveness of the Berlin Plus agreement is undermined by the systematic Hellenic-Turkish obstructionism over Cyprus. A reverse Berlin Plus arrangement is the subject of many speculations and could have found an application in Kosovo or in Afghanistan, but didn’t. Short of a reverse Berlin plus, probably a premature blip on the institutional radar, the failure of political and diplomatic efforts to create a coordination framework at the strategic level between KFOR, UNMIK and EULEX in Kosovo, has some negative – and even dangerous – implications on the operational and tactical level, as evidenced by the examples below:

- sharing of operational reserves for Kosovo and Bosnia could not be arranged;
- technical agreements for border management, military support to police operations, sharing intelligence and response to civil disturbance situations were drafted, left unsigned and yet applied unofficially on the terrain.

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36 The military component can be controlled by seven different operational headquarters while the civilians - involving police and judicial experts - receive instructions from other authorities.
If the handling of (post)-conflicts through civil and military capabilities is to be successfully insourced across the EU and NATO, some kind of joint command & control arrangement will have to be organised. Given the re-discovered multilateralism of the Obama-administration and the re-integration of France in NATO, the so-called ‘Comprehensive Approach’ (CA) should get all its chances. Hence, the proof will be in the pudding: is CA possible within a single SecO (e.g. France allowing civilian tasks to be taken up by NATO or, conversely, the U.S. politically supporting military missions under CSDP) or should it best be organised through collaborative links between SecO?

In the former case, a group of nations will decide on action and then choose the best instrument, a model favoured by a school of pundits, but that cannot keep the appearance of avoiding duplication. In the latter case, the Hellenic-Turkish problem will determine whether this can be organised through institutionalised links or merely through informal working links (or not at all).

To confuse the issue even more, the real world might show hybrid solutions already alluded to earlier: German ships enroute with the Standing NATO Maritime Group temporarily re-flagged to the EU’s ATALANTA operation, when entering the Gulf of Aden for Counter-Piracy Operations, while the rest of the SNMG remained under NATO flag. Only common military sense at the tactical level allowed this Kafka-like scenario not to result in chaos, but it leaves little illusions for lofty ‘strategic relationships’ at the institutional level.

Even without this example in mind though, there are strong opinions, who posit that France’s determination to remain independent from the U.S. for military operations is a flawed bases to work on NATO-EU relationships in the first place: Geoffrey Van Orden voiced the opinion that the EU’s emphasis on defence detracts from NATO and complicates NATO’s tasks because of the need for Mil-to-Mil coordination. In his view, the EU should do less better, focussing on civil capabilities.

Thus, a generally held view is also that the ‘Comprehensive Approach’ does require strategic relationships, since in some cases it will not effectively be achieved within a SecO, but rather through cooperation between the EU, NATO and or the United Nations.

In sum, the most pertinent conclusion to draw from this political analysis, is that edge of the insourcing-envelope has two distinct dimensions: reluctance to surrender funding for common use and forces for supra-national command.

Ultimately, Nations will have to be convinced of the merit of the positive spiral engaged by investing in own capabilities, that subsequently can be insourced, rather than the negative spiral compelling them to outsourcing (the subject of the next chapter) and investing in privately owned capabilities for lack of SecO-led force generation.

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38 Certainly of command & control structures and theatre enabling capabilities.

39 (and possibly the reader)

40 This hybrid solution was worked out to avoid that the German MOD would have to re-open a debate on operations with the Bundestag, that had approved Counter-piracy under EU-mandate but had not been asked to approve it under NATO flag.

41 An honourable – but, to be fair, not un-contested – British Member of the European Parliament.


43 His point was proven several months after he voiced this opinion with the counter-piracy example.


CHAPTER 4 - Outsource: operational, legal & political questions

Before pertinent questions can be identified on the subject, in particular regarding its operational, legal & political aspects, it seems appropriate to define, describe and delineate it. After a short historical perspective and taxonomy of outsourcing activities, some basic and generic questions will be addressed, such as why do we need it, what can we use it for and how?

The two big categories of companies, those that provide for outsourced security services and those that deal with logistics will then be subjected to a case study. The policies and practices of multilateral organisations, such as the United Nations, the European Union and NATO, will subsequently be scrutinised. This analysis and the lessons identified from the case studies are then fed into a thought process to draw a path to good governance for the procurement of services from Private Military Companies, before drawing conclusions on operational, legal and political aspects of the matter.

4.1 History and origins of private security and outsourced military logistics

Allegiance to a king or to his money has made the distinction between patriots and mercenaries for centuries. Even the Swiss-guard-close-protection-detail of the pope, taking root in 1506 \(^1\) can be considered as a Private Security Company ‘avant la lettre’, albeit one with an unpublished balance sheet.

During the World wars, private companies were used for logistics and transportation purposes only. Vietnam saw the first application of civilian technical specialists as maintainers of sophisticated weapon systems. The concept of using civilians specialists ‘backstage’, i.e. in principle not for combat functions or even close to the frontline, remained applicable during the cold war.

Tab/Fig 11 – Historical use of contractual services in conflict

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\(^1\) History of the Swiss mercenaries, retrieved 6 Aug 2008 from [http://www.vatican.va/roman_curia/swiss_guard/swissguard/storia_en.htm](http://www.vatican.va/roman_curia/swiss_guard/swissguard/storia_en.htm)
This is not to say that paramilitaries led by warlords and mercenaries were not employed by warring parties and sometimes by legitimate governments, especially in Africa. Of particularly relevance, though, is the contractor-to-soldier ratio as shown on the illustration above: if the trend set in recent conflicts is continued, contractors may even exceed the number of military. The first Gulf War can be considered as the first massive application of Private Companies, routinely embedded in support and maintenance arrangements. It can also be argued that military operations in Bosnia, Sierra Leone, Kosovo, Afghanistan and Iraq could not have been conducted without the help of contractors.

As was captured by the Geneva Centre for the Democratic Control of Armed Forces (DCAF) in a recent paper on the matter:

"Not since the 17th century has there been such a reliance on private military actors to accomplish tasks directly affecting the success of military engagements. Private contractors are now so firmly embedded in intervention, peacekeeping, and occupation that this trend has arguably reached the point of no return."

To understand the origins and the success of private companies, both the viewpoints of demand and supply should be taken into account.

One the one hand, declining budgets compel Chiefs of Defence Armed Forces to shed non-core activities. When these capabilities are then required, outsourcing is often the only option. Since defence establishments cannot afford the 'luxury' of avoiding risk by building own capabilities, often with some buffers and redundancy, they are squeezed into risk management.

On the supply side, the sunset of conscription has professionalised most Armed Forces. To avoid unfavourable pyramids of age in their order of battle, military personnel is often encouraged to leave the ranks and seek civilian career-opportunities. This, together with the downsizing of the armed forces caused by aforementioned budget cuts, floods the job-market with middle age 'specialists' with a security clearance and an inherent sense of discipline, ready to be enrolled by Private Military Companies.

Clearly, where offer and demand for military outsourcing meet, a thriving market has emerged.

### 4.2 Outsourcing vocabulary: a plethora of definitions and categorisations

The Oxford English Dictionary defines Outsourcing as 'the means to obtain goods or a service by contract from an outside supplier'. For official business, it can be defined as the act of 'contracting out' activities to a private company or semi-governmental agency. Since a couple of years, this activity has generated a lot of interest from defence establishments and industry. But outgrowth and excesses have also drawn scrutiny from legislators, journalists and academics.

The most commonly used terminology for actors in the outsourcing arena is 'Private Military Company' (PMC). Although usually used as an overarching term, some authors differentiate it from 'Private Security Companies' (PSC), which are more specialised in protecting humanitarian and industrial assets as well as (very important) persons, rather than providing general 'logistic' services.

Other differentiations might be based on 'hard versus soft' activities or 'active versus passive' postures. A somewhat cynical refinement alludes to (potentially) 'lethal' as opposed to 'non-lethal' service providers.

Equally challenging to pin down are the definitions of 'mercenaries' and private militia's. Hence, as will be discussed further, the historical, financial and legal aspects raised by these notions present more interest than fixating on a workable definition in itself.

In several academic contributions, Peter W. Singer, describes Private Military Firms (PMF) as 'businesses that provide governments with professional services intricately linked to warfare'. He sees PMFs as corporate bodies that offer a wide range of services and distinguishes three types:

- military provider firms (also known as "private security firms"), which offer tactical military assistance, including actual combat services, to clients;

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4 Predominantly military versus humanitarian, stabilisation - or reconstruction-related
5 Combat & combat support versus training & education
The good, the bad & the ugly of outsourcing security to PMCs

- military consulting firms, which employ retired officers to provide strategic advice and military training;
- military support firms, which provide logistics, intelligence, and maintenance services to armed forces, allowing the latter's soldiers to concentrate on combat and reducing their government's need to recruit more troops or call up more reserves.

One author characterizes 'services that involve the potential to exercise force in a systematic way and by military means' as one type of PMC and 'the transfer or enhancement of that potential to clients' as another. Aggregating previous research with observation of recent conflicts and evolutions in defence planning, a 'taxonomy' of OUTSOURCING for Defence & Security needs was undertaken in Annex B and graphically depicted below.

Tab/Fig 12 - Graphical taxonomy of Defence & Security related OUTSOURCING activities

In essence, four types of 'entities' to which military or security-related tasks can be outsourced emerge from the analysis. They can be designated as follows:

1. Private Security Companies (protect against the use of force, defensive in nature)
2. Private Militia's and/or non-state actors (enable use of force, offensive in nature, can significantly impact on strategic situations and regional balance of power)
3. Private Military Logistic Companies (support Defence & Security planning and ops)
4. Military Industrial Support Companies (enable future Defence & Security efforts)

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7 Carlos Ortiz, 'The Private Military Company: An Entity at the Center of Overlapping Spheres of Commercial Activity and Responsibility' retrieved 17 Aug 2008 from www.privatemilitary.org/publications/private_military_companies
8 Taxonomy is the science or technique of classification.
9 By way of illustration, Executive Outcomes (EO) trained Angolan troops and helped fight the UNITA forces of Jonas Savimbi. It was also hired by Sierra Leone to combat a rebellion, and was paid a reported $60 million, with the promise of future revenues from diamond mining. In both places, EO tipped the balance of power toward the government. (Source: http://towardfreedom.com/home/content/view/348/55 accessed on 23 Aug 2008)
10 The EU refers to this concept as Third Party Logistic Support (TPLS)
Closer analysis of the mission types and tasks being outsourced does indeed show two main axes of differentiation, namely:

- the scale of violence involved in the activities
- the timescale of the effects they produce

Some contracts are responsive to an 'urgent operational requirement', can be promptly awarded and generally do not involve a long-term commitment to a particular company, while other affiliations with industrial partners produce long-term effects and require a stable, trustworthy business relationship. Furthermore, as can be seen on the graphical presentation above, one strand of outsourced activities provides the capability for the use of force, while the other is merely intended to transfer this capability, but does not directly involve any application of violence.

Since most companies are active in more than one strand of work and offer very varied services, trying to describe and categorize them presents little academic interest. A classification based on the different mission types, tasks and areas of activity has proven more relevant, than studying the market actors one by one. A further look at the usual customers and an appraisal of the legal status as well as the motives of these players completes the picture.

Many of these companies tender websites with appealing pictures and ethical codes that profess impeccable conduct. An example of such lofty services on offer can be found on the website of the International Peace Operations Association\(^ {11}\) and was reproduced at Annex C. Given their track record though, these websites should be viewed with some degree of scepticism, for the semblance of transparency they attempt to portray amounts to little more than a smokescreen.

It should be noted that - although most companies involved are profit organisations - outsourcing can also occur to semi- or non-governmental organisations and even to non-profit associations. Alternatively, multi-lateral agencies\(^ {12}\) can be used as facilitator and aggregator of logistic services, as will be discussed in a rather generic way in Par 4.5.

At the other end of the outsourcing spectrum however, the growth in demand for and money spent on Security Contractors has been so dramatic, that a probing case study should shed some light on their often opaque functioning and presently unmeasured impact on military operations.

All told, if sharing the benefits and burdens of global security and stability leads to the dilemma between attributing sufficient resources or compelled outsourcing, one should at least have a good insight in the parameters that govern either course of action. To this end, after some basic and generic questions, a paragraph will be devoted to the case study of the real world practices of both Private Security- and Military Logistics Companies.

Subsequently, current practices and policies of multilateral SecO with regard to outsourcing security will be examined.

### 4.3 OUTSOURCING: some basic and generic questions

#### 4.3.1 Why do we need OUTSOURCING?

1. **to adapt to EXPEDITIONARY operations**

   The shift to more expeditionary operations has had significant implications for command and force structures. The deployment of forces to locations at much greater distances than previously necessary, operating along extended and perhaps very limited lines of communications, with little or no Host Nation Support (HNS) or governmental administration, places an emphasis on deployable support capabilities that were less important for territorially-based defence. In addition to deployable combat support and combat service support (CS/CSS) organic to combat formations, such capabilities include assured access to strategic lift and deployable theatre enablers.

2. **to ensure SUSTAINABILITY of operations**

   Operations of any significant duration raise sustainability issues, including those relating to the CS/CSS force elements. To reduce the logistic footprint and the cost of sustaining operations, multinational cooperation in the delivery of support is necessary.

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11. [IPOA website](http://ipoaworld.org/eng/aboutipoa.html)

12. such as the NATO Maintenance and Supply Agency and the European Defence Agency
to allow for FLEXIBILITY in operations
Without prejudging the political and financial desirability of the use of contractor support, it can most certainly allow for the necessary flexibility.
When operating in more than one theatre for example, it can be very valuable in following circumstances:
✓ when military manpower strength in a national contingent or in a certain region is limited by a political decision;
✓ when the required military capability has not been made available for an operation;
✓ when the military capability is not available in sufficient numbers to sustain ops;
✓ when the military capability is required for other missions;
✓ when the use of local contractors supports the agreed Civil-Military Cooperation;
✓ when the use of contractors for certain functions is known to be more cost-effective;
✓ when there is an operational need for continuity and experience that cannot be provided by using military manpower on a rotational basis;
✓ when the operation approaches the desired end-state.

4.3.2 What can we use OUTSOURCING for?
Whereas contractor support will be excluded – at least in appearance - for most combat functions, its application for a range of CS-functions and even more CSS-functions has become ubiquitous, as evidenced below.

Technical services, which are performed by qualified experts to support technical systems or processes, could include:
• logistics;
• set up and maintenance of weapons systems;
• operation and maintenance of communications;
• certain aspects of support to health services;
• technical communications and information systems (CIS) services;
• automated data processing (ADP) support;
• in-theatre technical training and expert advice.

Support services, which provide deployment and sustainment support can take the form of:
• strategic transport; strategic aero-medevac; air-to-air refueling;
• operation of sea/air ports of debarkation and associated maritime/air traffic control;
• fire fighting;
• base camp construction and maintenance;
• fuel storage and distribution;
• infrastructure engineering services;
• elements of deployed primary and secondary health care, medical ancillary services;
• ground transportation as well as recovery, maintenance and repair;
• environnemental services (sanitation, refuse, salvage);
• provision of catering, water and local labour.

Installation security services can be categorised as support, but – as will be seen later in the study – it is preferable to consider them separately from other contractor support for political, legal and indeed operational reasons.

4.3.3 How can we employ OUTSOURCING?
First of all, it is important to note that technical support and system support contractors should be used to augment, rather than substitute for military functions.
Several forms of contractual vehicle can be used, but the legal framework within which these contracts are regulated will obviously show significant differences depending on whether they support national or multilateral efforts.
The U.S. regulations on the matter have largely inspired NATO’s contractor policy and will be studied as a benchmark in subsequent paragraphs. For EU- and U.N.-operations, mostly national regulations will come into play also, since the funding mechanism works mostly through re-imbursement.
In a generic approach though, the vehicles cited below each cater for a specific situation:

- **Lease, partnering, dormant and assured access contracts**
  have the advantages of timeliness (they require no last-minute solicitation) and availability when they are activated, since there are legal assurances of performance. Their disadvantages include the carrying costs associated with binding a contractor to perform at an indefinite time and place. Capabilities that require a significant capital investment could be considered suitable for lease, dormant, preferred use and assured access contracts, because the capital investment would be made by the provider, rather than by the customer. Capabilities that are required from the onset of an operation may be considered suitable for any of a number of forms of contracting that can be arranged in advance.

- **Ready Invitations For Bids (RIFB)**
  are more cost-effective because they incur no such carrying costs. However, the cost advantage of RIFBs must be weighed against the additional time needed to solicit bids and award a contract, and the operational risks that this might entail. Capabilities that are normally outsourced during the course of an operation could be considered suitable for RIFBs.

- **Basic Ordering Arrangements (BOA)**
  are suitable for situations in which there is regular sustained demand for low-value items such as consumables, and they may be appropriate for use in the context of contractor support to operations.

In cases where required goods and services are readily available from the market, purchases may be arranged on-the-spot through ad hoc contracting without prior preparation.

All contractor support options are available for use by nations, and should be considered where appropriate. If aggregate national requirements are of a sufficiently large scale, nations might consider developing partnering arrangements with a commercial provider, who could play a part in support planning as well as in long-term delivery of support services.

### 4.4 Private Security Companies: a case study (on the contours of the problem)

After several incidents had involved Private Security Companies in Iraq and Afghanistan with negative media fallout toward American efforts on both theatres, the U.S. Congress decided to investigate the outsourcing operations by the State Department and the DoD.

Following accounts that Iraq had revoked the license of Blackwater USA, the Democratic Representative and Chairman of the 'Committee on Oversight and Government reform' Henry A. Waxman, released the following statement:

"The controversy over Blackwater is an unfortunate demonstration of the perils of excessive reliance on private security contractors. The Oversight Committee will be holding hearings to understand what has happened and the extent of the damage to U.S. security interests."

The use of PSC's by U.S. authorities presents an excellent opportunity for a case study, because intense scrutiny by the media and auditing instances, such as the Government Accountability Office, highlighted most of the legal, institutional, economic and political issues. Notwithstanding often biased and sometimes unfounded critiques, this painstaking process provides the necessary lessons to draw 'best practices' from. These can ultimately contribute to a regulatory and procedural framework that can optimize the use of contractors by multilateral SecO (NATO, EU, U.N., ...) and minimize their drawbacks as well as negative long term effects on defence establishments.

### 4.4.1 Facts, findings & opinions

Following paragraphs relate the events, the findings of the U.S. congress and other relevant sources as well as analysis and opinions on economic, military and political consequences of the matter. The facts, findings and opinions will be subsequently analysed from a military and political perspective.

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Rationale for the provision of Private Security

In an opening statement of the Congressional hearings of October 2007 Mr. Erik Prince, the CEO of Blackwater USA attempted to pre-empt further scrutiny with the following positive rationale for outsourcing security requirements:\(^{14}\):

Under the **direction and oversight** of the United States Government, Blackwater provides an opportunity for military and law enforcement veterans with a record of honourable service to continue their support to the United States. After 9/11, when the U.S. began its stabilization efforts in Afghanistan and then Iraq, the United States Government called upon Blackwater to fill the need to **protective services in hostile areas**. The areas of Iraq in which we operate are particularly dangerous and challenging.

The company and its personnel are already **accountable** under and subject to numerous statutes, treaties and regulations of the United States.

Not surprisingly, most counter-arguments to this high-flown statement were raised by Democratic Congress(wo)men, generally alluding to 'bad decisions from this [Republican] Administration \(^{15}\) trying to compensate for insufficient troops and going 'on the cheap to get 'private contractors [...] but causing us problems with the Iraqi people'.

Although generally conceding that a rationale can be found to allow private contracting, the need of 'planning for it and staffing it adequately with the U.S. Military' clearly emerged as the mainstream of the interventions.

Blackwater Shooting Incidents

Protective services contracted by the State Department envisage only a defensive use of force. In more than 4 out of 5 shooting incidents, however, the first shots are 'discharged' by Blackwater, thus involving it in more than twice the number of incidents accumulated by the other private security companies contracted by the DoS, Triple Canopy and DynCorp International.

**Tab/Fig 13 - BLACKWATER Use of Force (2005 to 2007)**

<table>
<thead>
<tr>
<th>Reported Years</th>
<th>Total Firing Incidents</th>
<th>Blackwater first fires</th>
<th>Quick draws as % of all engagements</th>
<th>Resulting Property Damage</th>
<th>Resulting Human Damage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>77</td>
<td>71</td>
<td>92.2%</td>
<td>71</td>
<td>7</td>
</tr>
<tr>
<td>2006</td>
<td>61</td>
<td>53</td>
<td>86.9%</td>
<td>52</td>
<td>3</td>
</tr>
<tr>
<td>2007</td>
<td>74</td>
<td>51</td>
<td>69.2%</td>
<td>39</td>
<td>31</td>
</tr>
<tr>
<td>Total</td>
<td>212</td>
<td>175</td>
<td>82.7%</td>
<td>162</td>
<td>41</td>
</tr>
</tbody>
</table>

Source: Committee on Oversight and Government Reform\(^{16}\) of U.S. Congress

To 'discharge a weapon' is a technical, but rather cynical terminology consistently used Blackwater's CEO Erik Price throughout his Congressional hearing.

According to the DoD, between August 2004 and February 2008, all PSCs active in Iraq conducted almost 20.000 convoy operations\(^{17}\). During these convoy operations, in the vast majority of instances firing occurs from a moving vehicle which does not remain at the scene to determine if the shots resulted in casualties.

Statistics, obtained through 437 internal Blackwater reports transmitted to the Oversight committee, reveal an average of 1,35 incidents per week in the observed period.

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\(^{14}\) Statement on recent events in Iraq by Mr Eric Prince, CEO the Prince group and Blackwater USA to the Committee on Oversight and Government reform hearings on 2 Oct 2007, author's emphasis.


\(^{17}\) Hodge, N. (2008). High risk, high return? Iraq has proven the exception rather than the rule for private security contractors, but it has also transformed the industry. Janes Defence Weekly, p 26.
One of the shooting incidents, that caught worldwide media attention occurred on 16 Sep 2007. During an escort mission in Baghdad involving helicopter-borne support, Blackwater operatives reportedly attempting to obtain free passage for the convoy, started firing in alleged 'self-defence'. Evidence of any attackers was never found, but the incident left 11 Iraqi civilians dead and 14 wounded.

Following the incident, U.S. military commanders expressed the opinion that Blackwater guards “had very quick trigger fingers, shoot first and ask questions later” and “act like cowboys”.

State Department oversight and response to incidents

The State Department's responses to Congressional inquiries raise serious questions about how its officials responded to reports of Blackwater killings of Iraqis. In one mediatised incident in December 2006, a drunken Blackwater contractor killed the guard of the Iraqi Vice President. Within 36 hours after the shooting, the DoS itself (not the Department of Justice) allowed Blackwater to transport the contractor out of Iraq. Congressional hearings revealed no evidence that the DoS sought to restrain Blackwater's actions, raised concerns about the number of shooting incidents involving Blackwater or the company's high rate of shooting first, or detained Blackwater contractors for investigation.

Blackwater's assertion that movements and operations are directed by the embassy's regional security officer (RSO) and that it reports on all incidents to the RSO seemed to corroborate with the testimony of Deputy Secretary of State Negroponte. His claim, that 'every incident in which Blackwater fires its weapons is reviewed by management officials to ensure that procedures were followed' was not substantiated by the documents reviewed by the Committee however, a less-than-subtle rebuttal of a high ranking State official by Congress.

Costs to Taxpayers

Congressional analysis shows that contracting PSCs instead of using U.S. troops to provide training or protect embassies officials is expensive.

In the midst of the political turmoil after the recent conflict with Russia over South Ossetia and Abkhazia, the Financial times reported that former U.S. special operations forces would receive 2.000$ a week plus costs as trainers for Georgian Commandos. This amounts to four times more than the normal pay grades of military personnel that could have fulfilled the same tasks.

Similarly, as can be seen on the company invoice depicted below, Blackwater charged the government $1.222 per day for the services of a private security specialist, while Project managers are billed for $1.457 per day.

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19 Hearing of the Senate Committee on Appropriations: The President's FY 2008 Supplemental Request for the wars in Iraq and Afghanistan (Sept. 26, 2007)
Although not directly comparable because of the different scope of non-recurrent and sunk costs for private contractors versus military establishments, these recurrent costs - if spent on a soldier or a midlevel logistician - would yield yearly salaries\textsuperscript{22} of $250,000 to $300,000 per year, about five to six times more than current military emoluments for the same specialities.

As shown in the table below, Blackwater has received over $1 billion in federal contracts from 2001 through 2006, including more than $832 million under two contracts with the State Department to provide protective services in Iraq.

\begin{itemize}
  \item As justification for the exorbitant fees, Blackwater cites financial risks and hidden costs (such as armoured vehicles, aircraft and helicopters), especially when responding to emergency situations 'above and beyond the statement of the contract'.
  \item Other costing elements of employing private security guards are criminal background checks and full psychological evaluation, medical exams, physical tests as well as shooting practice. Before an actual deployment, more than 160 hours of training are spent on techniques, procedures, driving, firearms & defensive tactics.
\end{itemize}

\textsuperscript{22} in the assumption of 200 à 220 workdays per year
Particularly noteworthy for the Representative John Duncan was the finding that Army General Petraeus, the top U.S. commander in Baghdad overseeing more than 160.000 troops, makes less than half the fee charged by Blackwater for its senior manager of a 34-man security team. It led the Republican congressman to the conclusion that “this war has produced some of the most lavish, most fiscally excessive and most exorbitantly profitable contracts in the history of the world.”

Indirect and hidden costs to the Government

Blackwater alleges that it can provide cost-effective services because it can 'avoid paying costs as training, salaries and benefits'.
CEO Prince argues that Governmental Security Forces need more personnel because ‘to stand up a thousand-man [unit, they] actually need a three thousand-man military police brigade [...] because for every person that is deployed, they are going to have two more back stateside, one in training and one in standdown. So we are just reorganizing those skills that the Government has already paid for and putting them back to work.

If it is true that PSC’s can avoid sunk cost factors, Blackwater’s CEO omits a couple of less transparent reasons that explain why they can do so:

(1) some costs like insurance are directly cost reimbursable; hence they are not included in the price setting of services;
(2) Blackwater works (illegally) with independent contractors rather than direct employees which explains why no benefits have to be granted; besides being illegal from a fiscal point of view, these practices would be impossible in countries with a robust social security system;
(3) by his own admission, all his 'independent contractors' are military veterans and law enforcement veterans, many of whom had recent military deployments. Since so many of them have recently left Government service, they have received years of specialized training at the expense of the Federal Government;
(4) according to a statement of Secretary of Defense Gates, contractors are actually poaching the military's ranks, luring service members away with much higher salaries.

The political consequences of these findings could result in significant executive or legislative actions, which will be studied in Par 4.4.3.

Contracting & bidding issues

The first Worldwide Personal Protective Services (WPPS) contract was awarded to DynCorp International with the mission to provide protective services in former Yugoslavia.
The contract vehicle was subsequently used for the benefit of diplomats in the Palestinian Territories as of July 2002 and in Afghanistan for the protection of President Karzai.
The program continued to expand in Kabul for the Ambassador’s Protective Detail and for the Afghan Reconstruction Group in early 2004. In 2005, the program was also activated in Haiti protecting the president of the country and U.S. Embassy personnel.

In early 2004, tasking was initiated for the 'green zone' in Baghdad. Since DynCorp was unable to meet the full requirements of the expanding mission, a sole source contract was attributed to Blackwater, because it was already operating in Baghdad under a Coalition Provisional Authority contract.
According to official DoS statements, contractors were selected through a competitive bidding process for increasing requirements for protective services throughout the world and the current WPPS II contract was awarded in July 2005.

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24 Op Cit, p 55
25 Op Cit, p 181
26 Op Cit, p 111
27 Op Cit, p 112
28 Testimony of Ambassador Griffin before the House Committee on Oversight and Government Reform. Retrieved 1 Aug 2008 from http://www.state.gov/m/ds/rls/rm/93191.htm
DoS utilizes what it calls an ‘umbrella contract’ to task the three qualified companies – Blackwater USA, DynCorp, and Triple Canopy.

While the contract has a firm fixed price ceiling of $1.2 billion per contractor over five years (one base + four option years), the government is billed per manday that the operator is in the country and some items, like insurance, are directly cost reimbursable.

In the course of the Congressional Hearings 29, a recent GAO-report was cited claiming that 51 percent of the Blackwater contracts were no-bid contracts, $493 million were explicitly no competition and $30 million were awards after limiting or excluding qualified bidders.

The table below shows the average yearly WPPS-payments by the DoS per contractor and per theatre (on the left scale) as well as the number of contractor personnel involved per line of work (on the right hand scale).

Tab/Fig 16 - Worldwide Personal Protective Services Contracts for the STATE Department

As shown above, over 1,600 security specialists (not including subcontractors) are contracted on average for an amount in excess of 570 Million $ per annum.

The majority of them are work in Iraq (approximately 90 % in 2006) and statistically 30% are non-U.S. citizens, some of which Iraqi's.

Transparency

Blackwater’s lack of transparency was exemplified during the Committee’s inquiry by its recalcitrance in responding to raised issues. By the Committee’s account, the company consistently delayed and erected impediments to the investigation, using tactics such as erroneously claiming that documents relating to the Fallujah incident were classified, seeking to have the DoD retroactively classify previously unclassified documents, and asserting questionable legal privileges 30.

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29 Op Cit, p 168
Another occurrence during the Congressional hearings illustrated this lack of transparency when the Representative Cooper asked what would prevent Blackwater from offering its services to foreign governments (thus increasing the perception of a mercenary company). The inquiry was prompted by Blackwater’s Company Charter, stating that its services were only offered to the U.S. government, which was confirmed by CEO Prince's statement that he only employs people 'that are former U.S. military and enforcement people, people who have sworn the oath to support and defend the Constitution against all enemies, foreign and domestic.'

Confronted with his own previous assertion that these employees 'are supposed to do what they are told' and the fact that 'they are being employed in support of NATO allies in Afghanistan', Mr. Prince responded as follows:

[…]. There are a lot of countries that need help building out their police departments, giving them more counter-terrorism capability.

In the context of a totally different issue, Blackwater refused to cooperate with an audit by the Department of Labor (DoL) into Blackwater’s potentially discriminatory employment practices. The audit sought initially to determine whether Blackwater had complied with affirmative action and anti-discrimination laws imposed on all federal contractors.

After Blackwater argued that it was not bound by these laws since it classifies its security guards as "independent contractors" rather than "employees.", the company refused to turn over documents requested by the DoL, stalling the Department's inquiry for at least six months.

Significant is also that DynCorp and Triple Canopy, the two companies that share the WPPS II contract with Blackwater, both treat their security guards as employees.

The matter is not only relevant to fiscal evasion, but also to control over and protection of the 'security specialists': legal responsibility, separation (by dismissal or contract termination) and statute as lawful combatant versus unprivileged belligerent (as will be discussed later) are to be seen as corollary of what is at the outset a fiscal artefact.

The findings that - under the Bush-administration - DoS did not make public the identity of the subcontractors who perform security services for reconstruction activities and that the DOD retained information on its contractors and subcontractors, further underscore a systematic lack of transparency related to outsourcing.

Other evidence of 'less-than-transparent' links with Private Companies were brought to the fore by Senator Lautenberg, who discovered that Vice President Dick Cheney as Chief Executive Officer at Halliburton before his election, continued to receive a salary from the company that actually exceeds his pay as Vice President. Although it was reported as 'deferred compensation', the non-partisan Congressional Research Service determined that the payment constituted an "ongoing financial relationship" despite the Vice President’s protestations to the contrary.

Despite the possibility that Halliburton — under Vice President Cheney’s watch — had been deliberately bypassing U.S. sanction law to conduct business with the terrorist regime in Tehran, “this administration, which purports to be waging a global war on terrorism, has given Halliburton contracts exceeding $9 billion to rebuild Iraq.”

Legal Framework

"What laws govern Blackwater?" was the question that Congress asked itself before conducting its hearings on PSCs.

What makes the answers to this questions all the more complex is the specific situation in Iraq where contractors operate under three levels of legal authority:

- the international law and the Laws of Armed Conflict (LoAC) and resolutions of the UNSC;
- the Sending Nation law (in casu U.S. law);
- the Host Nation law (in casu Iraqi law, including orders of the CPA).

Each level will be discussed in subsequent subparagraphs.

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33 Ibid, p 6
International Law

According to the Congressional Research Service, the relevance of the various sources of international law has evolved as the Iraqi Government transformed from an interim government to a permanent body operating under a Constitution. While it is generally accepted - and underpinned by the Geneva Conventions - that civilians accompanying the Armed Forces in the field are entitled to treatment as Prisoners of War, this implies that they cannot participate in any hostilities. A contrario, if a civilian contractor were to 'take part in hostilities', the protection of a 'combatant' would normally not apply. Furthermore, the designation as International Armed Conflict - as opposed to 'internal' conflict - complicates the matter in some cases: failed states and non-state actors can hardly be taken as "High Contracting Parties" in the sense of the Geneva Conventions. Nor can the post-Hussein Iraq be considered as an International Armed Conflict.

To facilitate further interpretation and political analysis, the table below provides some elements to determine scope and applicability of Geneva Convention dispositions.

Tab/Fig 17 - International Armed Conflict matrix

<table>
<thead>
<tr>
<th>International Armed Conflict</th>
<th>Non-International Armed Conflict</th>
</tr>
</thead>
<tbody>
<tr>
<td>Protection</td>
<td>Protection</td>
</tr>
<tr>
<td>'Combatant'</td>
<td>Intrinsic human values</td>
</tr>
<tr>
<td>'Prisoner of War'</td>
<td></td>
</tr>
<tr>
<td>Applicability</td>
<td>Applicability</td>
</tr>
<tr>
<td>regular armed forces</td>
<td>all persons</td>
</tr>
<tr>
<td>paramilitary group under</td>
<td>no distinction (non-)combatant</td>
</tr>
<tr>
<td>Mil Command</td>
<td>Criteria</td>
</tr>
<tr>
<td>carry weapons openly</td>
<td>not (longer) participating in</td>
</tr>
<tr>
<td>distinguish self from</td>
<td>combat</td>
</tr>
<tr>
<td>civilians</td>
<td></td>
</tr>
<tr>
<td>generally obey LoAC</td>
<td></td>
</tr>
<tr>
<td>Exclusion</td>
<td>Exclusion</td>
</tr>
<tr>
<td>mercenary</td>
<td>engagement in hostilities</td>
</tr>
<tr>
<td>'non-combatant' engaging in</td>
<td>submitted to local laws</td>
</tr>
<tr>
<td>hostilities</td>
<td>can be prosecuted</td>
</tr>
<tr>
<td>can be prosecuted</td>
<td></td>
</tr>
</tbody>
</table>

Source: Own analysis and interpretation of the Geneva Conventions

As will be discussed later, the issue is not merely a legal one, as can be seen when trying to apply the definition of a 'mercenary' provided in Protocol I of the Geneva Conventions:

A mercenary is any person who is specially recruited in order to fight in an armed conflict, who takes a direct part in the hostilities, who is motivated by money and is promised substantially higher pay than that paid to other combatants of similar rank, who is not a national of one of the countries involved in the conflict nor a resident of a territory controlled by any of the parties, is not a member of the armed forces of any of the parties, and who has not been sent by another country on official duty as a member of its armed forces. (Protocol I, Art. 47)

A mercenary does not have the right to be a combatant or a prisoner of war. (Protocol I, Art. 37)

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35 Persons who accompany the armed forces such as aircraft crews, supply contractors, laborers and ship crews are all entitled to prisoner of war status if captured. (Convention III, Art. 4, Sec. 4 and Sec. 5)
36 The 1949 Geneva Conventions Common Article 2 defines international armed conflicts as “all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties ... [and] all cases of partial or total occupation of the territory of a High Contracting Party....”
37 Common Art 3 of the Geneva Conventions.
Relevant as it may have been when it was negotiated, analysis of this definition against today’s political realities and security environment raises more questions than it provides answers, as illustrated in the following table.

**Tab/Fig 18 - Geneva Convention 'MERCENARY' interpretation issues**

<table>
<thead>
<tr>
<th>Geneva Convention Phraseology (drawn from text above in bold)</th>
<th>Interpretation issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>recruited in order to fight</td>
<td>does this include Force protection or protective security?</td>
</tr>
<tr>
<td>a direct part in the hostilities</td>
<td>what if only to protect or (self-)defend?</td>
</tr>
<tr>
<td>motivated by money</td>
<td>what if money is second to obedience or loyalty? (see opening statement of CEO Blackwater in Par 4.4.1)</td>
</tr>
<tr>
<td>promised substantially higher pay than that paid to other combatants of similar rank</td>
<td>what if different nationals involved with significantly different living standards (e.g. western versus low-wage contractors)</td>
</tr>
<tr>
<td>not a national of one of the countries involved in the conflict</td>
<td>-is a peacekeeping nation involved in the conflict? -is the U.S. involved party in post-Hussein Iraq?</td>
</tr>
<tr>
<td>nor a resident of a territory controlled by any of the parties</td>
<td>what if failed state-parties or non-state parties are concerned?</td>
</tr>
</tbody>
</table>

Another definition is offered by the United Nations resolution 44/34 on the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries* which entered into force on 20 October 2001. Based on the APGC-definition cited above, it mentions "a non national recruited to overthrow a Government or otherwise undermining the constitutional order of a State; or undermine the territorial integrity of a State, [...] is motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise or payment of material compensation...".

According Art 1.2 of this convention, a person does not have to take a direct part in the hostilities [or] in a planned 'coup d'état' to be a mercenary.

Although this definition and its complement provide some clarification, they remain incognizant of a globalised (un)security in which borders and nationality or citizenship have lost their relevance.

While legal advisors contend that ‘not all foreigners in service of armed forces of other countries should be treated as mercenaries as some may have the approval of their government or for moral or ideological reasons’ 38, the argument can just as easily be reversed: why should the fact that alleged mercenaries bear the nationality of the Government that pays for their services automatically provide them with any immunity?

Further to these objective arguments, the term 'mercenary' clearly carries a negative bias, that may carry through to PMC’s, when comparing their respective characteristic features (as will be done in the conclusions to this chapter).

This was evidenced by several interventions at the Blackwater Congressional hearings, as the excerpt below suggests 39:

*Ms NORTON: However you define mercenary armies, some nations have long used mercenary soldiers to deal in foreign countries with unpleasant tasks. The more dependent we become on contractors, the more we risk falling right off the cliff into a mercenary army that is nothing that you would have responsibility for.*  
*I want to ask you a question or two about your contract with the State Department. Under this contract you employ security personnel as independent contractors rather than as your own direct employees, isn't that right?*  

*Mr. PRINCE: Yes, ma'am.*

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39 Author’s emphasis of interest to the political analysis in Par 4.4.3
The fact that Blackwater simply acts as an integrator of 'independent contractors' diminishes its liability in cases where the company could be held accountable for employing mercenaries: it can then contend that it merely 'subcontracts' to independent individuals who bear the responsibility of complying with rules and regulations in force.

Many of these problems could arguably be mitigated by the implementation of a system of licensing contractors for military outsourcing. As was reported in the Stanford Journal of International Law 40, many governments require that each outsourcing contract be licensed, thereby imposing some form of state regulation and accountability for the terms of employment. According to this academic source, PM(L)Cs 'want to adhere to the policies and interests of their home states, limit their employers to legitimate governments and do not engage in ambiguous civil conflicts in which the population’s loyalty is in question. [They] restrict themselves in this manner so as to avoid the technical classification as mercenaries, which would result if they worked for insurgencies or rogue states, and to avoid intensified government and international scrutiny'.

The author further contends that PM(L)Cs have little incentive to commit wanton human rights violations, since they are outsiders to the conflict and tend to be both apolitical and less passionate than those with personal stakes.

But the confidence that seems to emanate from these cenacles of International Law contending that 'the market tempers and dictates Security Company-behaviour in such a way that most of the negative ramifications envisioned do not materialize' clearly pre-dated the Bush-Cheney administrations' use of Private Security Companies.

Quite contrary to the allegation that in addition to market forces, PM(L)Cs are 'sensitive to international and domestic attention from the press, nongovernmental organizations, regional groups, their employers, and their home states', it would seem that any coercive power in International law would nonetheless be helpful in the matter and that self-regulation should not be overly be relied upon.

As with piracy, the fact that the crime has no territorial dimension seems to be at the basis of the void left by International Law, clearly laid out by the Geneva Centre for the Democratic Control of Armed Forces 41:

International law has yet to define the status of private military and security contractors and, other than the untested International Criminal Court, lacks the actual means to enforce itself without the state. [...] The failure to establish the exact legal status of PMCs and PSCs under international law effectively defers the problems to the national level. However, few states offer clear-cut legislation or effective enforcement mechanisms.

For the ICRC, on the other hand, it is clear that in situations of armed conflict, there is a body of law that applies, namely International Humanitarian Law (IHL), which regulates both the activities of PMC-staff and the responsibilities of the States that hire them 42.

According to the ICRC, the law also places obligations on the governments of countries where these companies are registered or incorporated, and where they operate.

This legal opinion was further developed in the Montreux Document (and hence subscribed to by the most important democratic customers 43 of PMSCs):

Contracting States have an obligation to provide reparations for violations of international humanitarian law and human rights law caused by wrongful conduct of the personnel of PMSCs when such conduct is attributable to the Contracting States in accordance with the customary international law of State responsibility.

42 ICRC. (2008, Apr 17). Interview with Cordula Droege: Getting private military and security companies to respect the law.
43 i.e. USA, Australia, Canada, China, France, Germany, UK, the Netherlands, Spain, Italy e.a.

The Legal opinion is stated in the Montreux Document, Part I, A - Par 7 and 8.
In case of breaches of IHL, the legal responsibility of PMC/PSC staff and of the States that hire them is said to be quite clear, but the ICRC admits that practical difficulties have arisen in bringing legal proceedings when violations have taken place.

Where the law falls short - experts of the ICRC confirm - is in the field of national or international control over the services PMCs/PSCs may provide and of the administrative processes, which they must respect in order to be allowed to operate. There is no international regulatory framework specifically focusing on this industry and its activities.

Although international law bans mercenary activities, their definition has not been transformed to reflect the current environment in which they take place; hence, none is universally accepted. Furthermore, as will be discussed in subsequent paragraphs, international law and the conventions dealing with the notion of mercenaries do not adequately address the use of PSC’s by a sovereign state.

Rather than trying to categorise it through a contested definition, focusing on moral, legal and financial activities of independent or corporate contractors will yield more efficient yardsticks and benchmarks.

Addressing the actions of private contractors rather than their legal status, brings the discussion back to the most important issue raised in the table above: what does taking ‘direct part in hostilities’ mean and how can it be characterised in legal terms?

Oddly enough, despite the serious legal consequences involved, neither the Geneva Conventions nor their Additional Protocols include a definition of the notion. In an attempt to balance opposing interpretations of the Additional Protocol I, the lowest common denominator that expert panels seemed able to reach was that ‘behaviour of civilians must constitute a direct and immediate military threat to the adversary’.

To a certain extent challenged by State practice, it has been suggested though that direct participation not only includes activities involving the delivery of violence, but also acts aimed at protecting personnel, infrastructure or matériel.

Legal literature also documents intense debate on a number of ambiguous situations which for instance do not imply the use of a weapon, such as logistic support activities and intelligence or guarding activities. Experts have further explored legal constructs by describing specific acts, affirmative disengagement from hostilities and membership of Armed Forces versus Organised Armed Groups. At the time of the study though, the constitutive elements of direct participation in hostilities seemed not to have been conclusively established and agreed upon by legal experts.

**Sending Nation law (in casu U.S. law)**

Not less than three levels of jurisdiction can be applied to U.S. Contractor personnel in Iraq:

- the regular Criminal Justice
- the Military Extraterritorial Jurisdiction Act (MEJA)
- the Uniform Code of Military Justice (UCMJ)

Notwithstanding this fact, it would appear that some criminal cases fall outside the reach of any form of U.S. jurisdiction, even though the U.S. is responsible for the consequences of the crime. In broad terms, U.S. Criminal Justice is competent for crimes committed in U.S. facilities (e.g. embassies) or acts (e.g. torture, mutilation, sexual assault, taking hostages) committed by or against a U.S. citizen if the perpetrator can be ‘found’ in the United States.

The MEJA could allow prosecutions of persons ‘employed by or accompanying the armed forces’ or ‘any provisional authority’, if the crime is committed within the special maritime and territorial jurisdiction and is punishable of more than 1 year of imprisonment.

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45 Par 207 of the American Law Institute, (Third Restatement) of The Foreign Relations Law Of The United States, Vol II (1987) reads as follows: "Conduct that violates international obligations is attributable to a State if it is committed by the government of the State or any of its political subdivisions, or by any official, employee, or agent operating within the scope of authority of any of these governments, or under color of such authority."

46 War Crimes Act amended by Military Commissions Act - 18 U.S.C. §2441(d)
Application of the MEJA is hampered however by three factors:

1. the fact that it does not apply to Host Nation residents...
2. ... and that it would only cover contractors for the DoD...
3. ... if the DoD had implemented MEJA in its regulations.

The UCMJ and trials held by Military tribunals apply normally only to service members. In 'time of war', the jurisdiction of the UCMJ covers also civilians serving with the armed Forces 'in the field'. Historical events and constitutional challenges to these rules have qualified Military Jurisdiction (MJ) in several somewhat controversial ways:

- 'in the field' should be interpreted as 'during operations', not merely in the Area of Operations;
- as long as an 'occupying power' - such as the Coalition Provisional Authority in Iraq - has the authority over an area, it is considered that MJ should be applicable;
- legal precedents limit MJ to wars declared by Congress;
- the 2007 National Defense Authorization Act extends MJ to 'time of declared war and contingency operation' as designated by the Secretary of Defense

This Act was voted in the wake of the Abu Ghraib and Guantanamo issues and appears to subject 'civilians serving with the armed Forces in the field' in an indirect way to Military Justice. In all likelihood its application would be challenged however, on the constitutional grounds that there is not sufficient reason to exclude due process guaranteed by the Bill of Rights.

In this context, it is also noteworthy that under the charter presented by CEO Erik Prince, Blackwater employees can be held accountable under the UMCJ when working for DoD. Working for the DoS however, it is for the DoJ to determine which jurisdiction they are under.

**Host Nation law (in casu Iraqi law, including orders of the CPA)**

Two days before he left office, Paul Bremer, the proconsul of the Coalition Provisional Authority in Iraq, in his CPA order n°17 effectively granted immunity from Host Nation Law when he wrote:

> Contractors shall not be subject to Iraqi laws or regulations in matters relating to the terms and conditions of their Contracts [...]

In a strict interpretation of APGC77 Art 47.d, one can consider that while the United States governed Iraq as 'occupying power', any citizen of a Party to the conflict working as an armed guard could not be defined a mercenary. With the U.N. mandate expiring at the end of 2008 and in the light of a handover of power to the Iraqi government, Coalition forces could hardly be considered as continuing Parties to the conflict in Iraq. Unless armed guards declare themselves residents in Iraq, the protections of the CPA order 17 and the APGC would seize to exist. The legal status of all military and contractor personnel was therefore to be secured in a Status of Forces Agreement (SOFA).

In the final version of the Agreement, signed on 17 Nov 2008, the legal status of 'Members of the U.S. Forces' and 'Members of the civilian component' was indeed segregated from that applicable to 'U.S. contractors' and 'U.S. contractor employees'. In its Art 12, the primary right of jurisdiction for the former are attributed to the U.S. 'for matters arising on duty or inside the agreed facilities and areas. Only for 'grave premeditated felonies' committed outside these areas would Host nation jurisdiction be recognised'.
Par 2 of Art 12 unequivocally states however that Iraqi law shall be applicable to U.S. contractors and their employees, although the ensuing Par 6 opens the possibility that any party would waive this primacy of jurisdiction.

**Tab/Fig 19 - Extract of the agreement on the withdrawal of U.S. forces from Iraq and the organization of their activities during their temporary presence in Iraq.**

As will be commented in the ensuing political analysis, U.S.-Iraqi Status of Forces Agreement negotiations were inevitably influenced by cases of perceived misconduct and arguably led Host Nation Authorities to revoke the immunity from local law that private security contractors had enjoyed since 2003.

**The MONTREUX Document**

In the MONTREUX Document – endorsed by more than 30 members of the U.N. - ‘PMSCs’ are defined as private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention and advice to or training of local forces and security personnel.

Actors are further put in perspective with the description of:

- 'Contracting States', i.e. States that directly contract for the services of PMSCs, including, as appropriate, where such a PMSC subcontracts with another PMSC.
- 'Territorial States', i.e. the States on whose territory PMSCs operate, and
- 'Home States', i.e. the States of nationality of a PMSC, i.e. where a PMSC is registered or incorporated; if the State where the PMSC is incorporated is not the one where it has its principal place of management, then the State where the PMSC has its principal place of management is the 'Home State'.

Although explicitly refraining from introducing new legal obligations relevant of customary international law, the document does commend to the attention of other States, international organisations, NGOs, the private military and security industry and other relevant actors, which are invited to adopt those good practices that they consider appropriate for their operations.

**Accountability**

The Wall Street Journal reported the indictment of six of the Blackwater security guards nearly a year after they were involved in the tragic shooting of 17 Iraqis as a long overdue step toward holding contractors legally accountable for actions in Iraq and Afghanistan.

During the preceding Congressional Hearings the statement of Mr. Thierney captured the prevalent opinion:

> *We need more accountability. We need to clarify and update our laws. We need to restore the Government's ability to manage any such contracts. We need to punish corporations that commit fraud or undermine our security. Basically, we need to reconsider which jobs should be private and which jobs should remain in the public sector.*
Citing Brigadier General Karl Horst’s exclamation that “these guys run loose in this country and do stupid stuff”, Chairman WAXMAN concluded the hearings with regard to accountability in current Governmental practices related to outsourcing as follows 56:

“There is no authority over them, so you can’t come down on them when they escalate force. They shoot people, and someone else has to deal with the aftermath. It happens all over the place. Regardless of what a private security contractor does, it is a problem for the United States.”

Evidently, the political consequences of this conclusion will be felt in any subsequent legislative initiatives by the U.S. Congress, lest it lose much of it credibility over the hearings it conducted on the matter.

### 4.4.2 Military analysis

On the utility of outsourcing to the military effort, the tone is set by with following statement by Congressman Tierney:

*Outsourcing [...] seems to increase the costs, not decrease the costs. [...] It seems to be harming the very counterinsurgency effort that General Petraeus seems to want to implement, and we have far too few Government managers to oversee the situation.*

The incidents attributed to Blackwater in the preceding findings should indeed be analysed against the background of the manual on Counterinsurgency written by Gen Petraeus 57 on behalf of the U.S. Army in 2006:

*Counterinsurgents that use excessive force to limit near term risk alienate the local populace. They deprive themselves of support or tolerance of the people. This situation is what insurgents want. It increases the threat they pose.*

Analysis of the Congressional hearings further reveals that Blackwater and other companies conducted their missions in ways totally opposed to the highest military commander’s intent (coincidentally General Petraeus at the time) without reneging their contractual obligations.

Testimony of another counterinsurgency expert, Army Colonel Peter Mansoor 58, about private military contractors confirms this:

*If they push traffic off the roads or if they shoot up a car that looks suspicious, they may be operating within their contract but it is to the detriment of the mission which is to bring people over to our side.[…]*

*I would much rather see basically all armed entities in a counterinsurgency operation fall under the military chain of command.*

The fact that contractors in the Area of Operations (AoO) are not under direct control of the military command obviously goes against one of the first principles of military operations - UNITY of COMMAND - and is therefore not only inefficient and dangerous, but unacceptable, if executive accountability is to be achieved at any rate.

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56 Author’s emphasis  
This attribution of legal liability is confirmed ‘a contrario’ by the analysis on ‘Superior Responsibility’ in the Montreux Document:

**Tab/Fig 20 - Extract of the Montreux Document on Responsibility versus Control**

27. Superior of PMSC personnel, such as
- governmental officials, whether they are military commanders or civilian superior or
- directors or managers of PMSCs.

may be liable for crimes under international law committed by PMSC personnel under their effective authority and control, as a result of their failure to properly exercise control over them, in accordance with the rules of international law. Superior responsibility is not engaged solely by virtue of a contract.

Conversely, as recognised by David Isemberg, checks and balances that apply to national armed forces can seldom be applied with equivalent strength to PMCs employees. Since PM(L)Cs employees are exempt of military command and justice, they are under no obligation to operate at risk and can suspend a contract if - either in financial or physical terms - the situation is judged ‘too risky’. Furthermore, PM(L)Cs face no real risk of prosecution, if they or their employees defect without regard to any military rationale from their contractual obligations.

### 4.4.3 Political analysis

The analysis in this paragraph pertains mainly to the political consequences of the case study on Private Security companies in general and the Blackwater case in particular.

One should remain cognisant of the fact that the Blackwater investigations were conducted in a bi-partisan way, but against a highly tense political backdrop through which the democratic party sensed it could gain the moral high ground on the Bush-administration.

Nevertheless, the Congressional proceedings exposed the most contentious problem areas, thus yielding a wealth of pertinent political conclusions, which constitute a sound basis to identify due process and good governance in the sector.

To be sure, this does not imply that all the highlighted issues should automatically be extrapolated to incriminate the whole Private Security Industry. Comparative analysis, however, did show considerable correlation with reviews conducted by several other nations that have made an extensive use of outsourcing.

The following partial conclusions can be drawn from the case study and will later be integrated with other types of outsourcing:

1. **Outsourcing Private Security circumvents the need for sufficient backing of the Nation.**

   Although major threats have diminished and the U.S. military has been somewhat downsized, ethnic conflicts and "humanitarian" emergencies have boosted U.S. military operations. "In scrambling to meet more requirements with fewer personnel and a more competitive labor market, policy makers have turned to private contractors," notes Deborah Avant, a George Washington University expert. "The current generalized push toward the privatization and outsourcing of government functions only abets this trend."

In the same vein, Congressman Tierney argued during the Blackwater hearings that the all-voluntary professional force after the Vietnam War embodied the so-called Abrams Doctrine: the idea was that the U.S. wouldn’t go to war without sufficient backing from the Nation.

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59 Loc Cit, Part I, F - Par 27
64 Op Cit, p 15
In his view, outsourcing has circumvented this doctrine in that it allows the Administration to significantly increase the force size without any political price being paid.

Analysis shows that - in the absence of outsourcing - the executive power would:

- have had to admit it was wrong in the way it prosecuted the Iraq war originally;
- not have drawn forces out of Afghanistan, a strategic error which reversed the perception of the Taliban that they were fighting an unwinnable war;
- have caused protest when calling up even more National Guards or Reservists;
- have had to rely more on Allies, thus having to share power and surrender control.

Hence, one of the conclusions of the Congressional hearings bears significant political relevance:

"We really need to evaluate our use of private military contractors to determine what roles are appropriate or not for private firms and what must be kept in control of those in uniform or those in public service."

(2) **Outsourcing Private Security offers official DENIABILITY and negates both political and public scrutiny.**

Since neither the DoD nor the DoS were directly involved in the incidents that were attributed to Blackwater, they were in a position to deny any wrongdoing.

With an 'umbrella contract', the perfect tool is available to assign discreet 'task orders' in the twilight of legality. Since a military commander and DoS Regional Security Officer can only issue 'legal orders', an unavowed form of DENIABILITY provided by PSCs can be very valuable in certain circumstances.

Without having to commit perjury at a Congressional hearing or lie to the press, official involvement can subsequently be denied, while 'smoking guns' or written traces that would be uncovered through the Public Information Act can be avoided.

Academic interest or inquiries from other companies are often also eschewed by invoking proprietary information, a claim that frequently covers more than commercial interests.

This modus operandi obviously requires a degree of trust and loyalty between the actors in the field: the DoS handling of the Blackwater incidents (described earlier) could well illustrate such a form of connivance.

(3) **Outsourcing Private Security benefits from open bidding and contractual orthodoxy.**

Interrogated on the contractual arrangements of the Worldwide Personal Protective Services, it is clear that neither Blackwater’s CEO Prince nor Ambassador Griffin (testifying on behalf of the DoS) were entirely candid in their answers to congressional questions.

Although the U.S. Federal Acquisition Regulations System provides a strict regulatory framework, contractual orthodoxy is systematically bypassed to restrict the bidding process to 'familiar-companies-that-are-already-present-in-theatre' and attribute sole source contracts (for nearly half a billion $).

According to official sources as the GAO, more than half of the Blackwater contracts were awarded without any bidding process. Technically, an ‘Indefinite-quantity contract’ is attributed after an open competition for five years with a firm fixed price with a ceiling. Afterwards - under the radar of public scrutiny - certain companies receive more 'task orders' than others.

These stealthy practices can obviously also be applied to other theatres and customers other than the U.S. Government, as will be discussed later.

(4) **Outsourcing Private Security requires a generic international legal framework combined with an inner shell tailored to regional & local circumstances.**

The applicability of conventions and treaties and the definitions they provide quickly become political instead of legal discussions when the assumptions underpinning them are not (entirely) met. Bearing in mind that these assumptions were mostly based on a scenario where one nation-state (or group) attacks another, the realities of failed states and non-state actors complicate the issue.

International law and Conventions - even with Additional Protocols - have not caught up with the political and military realities of the 21st century: convoluted paragraphs on the international versus internal conflicts and definitions of mercenaries raise more questions than answers. Furthermore, they do not provide any usable governance for failing, failed or rehabilitating states (where private companies thrive best).
Negotiated, codified and unevenly ratified\(^{65}\) with 'parties to a conflict' in mind, they fail to position 'peacemaking or peacekeeping' authorities and do not cater for a provisional or transitional authority such as the CPA in Iraq.

The U.S. Federal Acquisition Regulations System policy holds that contracts shall not be used for the performance of inherently governmental functions. While this policy should provide reasonable indication of which functions can be outsourced to companies and under which legal circumstances, some grey zones subside and enforcing the rules 'in the field' are the challenge for U.S. authorities. For most other national and multi-lateral authorities (such as the U.N., EU, NATO), the challenge is even vaster: to fill the legal void!

While these aspects can be regulated with relative ease after a conflict with an Interim Administration, as was done in 2004 in the case of ISAF\(^{66}\), during a conflict, the status of peacekeepers and affiliated contractors is unclear.

In sum, legal grey zones or outright voids can be attributed to following factors:

- three levels of jurisdiction (international, sending and host nation), depending on political appraisals (occupation, internal conflict, failed state, non-state,...?)
- three legal regimes (regular civilian criminal code, extraterritorial of military?)
- multi-national, transnational or a-national actors (both customers and providers)
- a different focus of the prosecution (to enforce fiscal, labour or military laws?)

Of interest as a lesson learned, precedent and relevant jurisprudence are the dispositions of the SOFA agreement\(^{67}\) ultimately reached by the U.S. and Iraqi Government, in particular in how they changed the legal protection of the contractors and their employees:

**Tab/Fig 21 – Changes in legal status applicable to contractors and their employees after the implementation of U.S. Iraq SOFA on 1 Jan 2009**

<table>
<thead>
<tr>
<th>Art / §</th>
<th>Disposition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art 3</td>
<td>With the exception of U.S. Forces, persons may be transferred into or out Iraq only i.a.w. Iraqi law and regulations</td>
</tr>
<tr>
<td>Art 10</td>
<td>Contracting procedures &amp; bidding process extended to Sending Nation, if competitive and constitute best value</td>
</tr>
<tr>
<td>Art 12 § 2</td>
<td>Primary right of justice concerning contractors for Host Nation i.s.o. Sending Nation</td>
</tr>
<tr>
<td>Art 13</td>
<td>Right to carry weapons reserved to Sending Nation Forces(^{68})</td>
</tr>
<tr>
<td>Art 17 § 3</td>
<td>Introduction of professional licenses issued by sending Nation, which should be deemed valid by Host Nation</td>
</tr>
<tr>
<td>Art 21 § 1</td>
<td>“Waiver for claims to claim compensation for damage, loss, or destruction of property, or compensation for injuries or deaths that could happen to [...] either Party” is only valid for U.S. Forces and their civilian component, thus NOT for contracts</td>
</tr>
<tr>
<td>Art 22 § 1 &amp; 2</td>
<td>Detention of U.S. Forces and the civilian component exclusively by U.S. All others to be handed over to competent authorities within 24 hours.</td>
</tr>
</tbody>
</table>

Legal aspects of good governance regarding outsourcing should therefore be considered by the international community and indeed by the SecO that are compelled to make use of them in those cases where national defence establishments cannot or will not provide military capabilities needed to manage a crisis. Further consideration to the importance of a legal framework as a component of governance will be given in Par 4.7.

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\(^{65}\) e.g. the fact that Protocol 1 was not ratified by the U.S. because 'freedom fighters' are not required to obey it.

\(^{66}\) A Military Technical Agreement was formalised through an exchange of letters in Sep 2004 between the NATO SecGen and the Afghan Minister of Foreign Affairs. It granted immunity from prosecution for NATO contractors and made the Law of their ‘respective National elements’ applicable.


\(^{68}\) Although not explicitly addressed, this disposition does not seem to prohibit the right to bear weapons in self-defence.
(5) **Outsourcing Private Security calls for a (much more) TRANSPARENT process.**

The combined sources of the GAO and the CRS draw a pattern of deliberate opaqueness, not only for legal, fiscal and social reasons, but - more importantly - with political motives.

Arguably, the Bush-administration has used outsourcing in Iraq to elude congressional and public scrutiny and reduce the impact of the political and societal opposition in the face of servicemen returning 'in body bags'.

Evidence of this finding transpires throughout the Blackwater-hearings:

> Very little conversation goes into the number of people dedicated to their jobs in the private sector that are being killed or injured on a regular basis. Figures by one account are some nine individuals a week losing their lives in the service of private contracting that are not counted in the figures of casualties reported to the American people.

The lack of transparency in the bidding process and subcontracting structures for Private Security has been highlighted earlier, but equally relevant is the misleading statement intended to 'cloak' the lack of oversight by the DoS, as evidenced by the statement that "... in conjunction with internal company procedures and controls, the RSO ensures that Blackwater complies with all relevant contractual terms and conditions as well as any applicable laws and regulations."

How can the RSO (the Regional Security Officer, a single official on duty) effectively fulfil all these functions without leaving his post? The congressional finding that after-action reviews are either not conducted or not suitably documented, points again to an unacceptable lack of transparency throughout the Private Security process.

It is interesting to note that - as a consequence of the hearings - new legislation was proposed to improve the "Transparency and Accountability in Military and Security Contracting Act of 2007" by the (then) democratic Senator Obama.

These examples of institutionalised lack of transparency sponsored by the Bush-administration arguably take exception from normal U.S. government policies, but Congress has conducted new hearings in June 2010 with the view to take significant legislative steps to restore sound governance regarding outsourcing practices.

Whether this will become an effort across the aisle, supported by the next administration remains to be seen, but the lessons are surely to be learned also by other regulators who take cues on the U.S. legislative process on the matter. Indeed, achieving transparency is a prerequisite for due accountability, both hallmarks of good governance, as will be discussed in the next paragraph.

(6) **Outsourcing Private Security can only achieve accountability through military control and civilian oversight.**

The Federal Acquisition Regulations System (FARS) is intended to achieve the accountability regime that is needed to control political and legal liability for the U.S. Government.

As mentioned before, the FARS holds the policy that contracts shall not be used for the performance of inherently governmental functions.

Thus, "the command of military forces, especially the leadership of military personnel who are members of the combat, combat support, or combat service support role [...] as well as the direction and control of intelligence and counter-intelligence operations" are entirely excluded from any form of contracting.

A further set of functions is generally not considered to be inherently governmental functions, but because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the Government administers contractor performance, a special assessment is to be made.

As will be discussed later in the study, in cases where contractors might be assumed to be official agency representatives (such as PSCs in their security functions), an assessment has to be made on

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69 Op Cit, p 16
71 This is not meant to imply that all Bush-administration policies consistently deviate from standing U.S. Government policy.
72 Involving both Democrats and Republicans and thus more credible, but difficult to achieve in a split Congress (i.e. Democrats commanding the Senate and Republicans leading the House of Representatives.
the degree to which conditions and facts restrict the discretionary authority, decision-making responsibility, or accountability of Government officials using contractor services. This is also required for contractors providing special non-law enforcement security activities that do not directly involve criminal investigations (such as prisoner detention or transport and non-military national security details).

Lack of accountability, for instance caused by the inability of any authority (the customer, national or international judiciary authorities) to discipline errant contractors is exacerbated when the use of (potentially deadly) force is involved. Requiring minimum hiring standards and tightening licensing practices provide ways to tackle this problem from the outset, but the use of independent (sub)contractors - as the Blackwater hearings revealed to be a standard practice - negate many of the preventive measures, that can be put in place.

Other issues involving transparency and accountability, such as cost and billing practices will also be discussed separately. It is clear however that good governance can only be achieved through thorough oversight. For Security related contracts, this oversight must be organised throughout the mission: supervision of planning, preparation, execution, post-action reporting and investigation responsibilities, should be attributed to military or police authorities. These authorities obviously cannot and should not replace the contracting officials, but administrative and financial oversight should be clearly separated from operational supervision.

(7) Outsourcing Private Security carries political fall-out & liability, if not kept in check.

In its analysis on PSCs in Iraq, the Congressional Research Service reached the following unequivocal conclusion 73:

A lack of strict accountability in case of an abuse by a contractor could severely undermine goodwill toward the United States or incur liability on the part of the United States for a breach of its international obligations.

The potential negative impact of unchecked private security operations on military efforts has already been established (see Par 4.4.2), but the political consequences can be of an even bigger order of magnitude. Besides the fact that the use of Private companies can be perceived as signaling weak or lessening commitment versus the deployment of military or police force, foreign policy can be negatively impacted by incidents involving PSCs, as was evidenced by the calls of the Maliki Government to change the legal status of contractors immediately after the Blackwater incidents. This was confirmed at the Congressional Hearings 74 with the comments on the testimony of a senior Military official arguing that Blackwater's "actions are creating resentment among Iraqis that may be worse than Abu Ghraib: if these observations are true, they mean that our reliance on private military contractors is backfiring."

Another good indication of how U.S. foreign policy options were curtailed, are evidenced by sources 75 describing the evolution of the negotiations conducted by the Iraqi and the U.S. Government on the Status of Forces Agreement, pursuant to the sunset of the U.N. mandate at the end of 2008:

- reportedly, at the outset Iraqi officials said the U.S. government demanded the continuation of several current policies: authority to detain and hold Iraqis without turning them over to the Iraqi judicial system, immunity from Iraqi prosecution for both U.S. troops and private contractors, and the prerogative for U.S. forces to conduct operations without approval from the Iraqi government.
- after a visit to Iran's Ayatollah Ali Khamenei and the negative comments of Ayatollah Al Sistani on the loss of Iraq's sovereignty, it was subsequently reported that the Americans recently had changed their position on four key issues: Private contractors would no longer be guaranteed immunity; detainees would be turned over to the Iraqi judicial system after combat operations; U.S. troops

73 Op Cit, p 31
74 Op Cit, p 6
The good, the bad & the ugly of outsourcing security to PMCs

would operate only with the agreement of the Iraqi government; and the Americans would promise not to use Iraq as a base for attacking other countries.

Since the negotiations were secret and although incidents with Blackwater and private contractors in the prison of Abu Ghraib can hardly be identified as the sole sources of the foreign policy concessions that the Bush administration had to make, it seems safe to speculate that they had considerable impact on the ultimate agreement, as documented earlier. Some of the changes can be directly correlated to incidents with contractors, such as compensation claims, the right to carry weapons, the need for a professional license and the jurisdiction as well as detention of U.S. contractor employees.

Albeit in another theatre but nonetheless related to the use of Private contractors were references made by Russia’s Prime Minister Putin in the recent conflict in Georgia, which allowed him to take the moral high ground vis-à-vis the U.S. when he declared 76: “It is not just that the American side could not restrain the Georgian leadership from this criminal act [of intervening in South Ossetia]. The American side in effect armed and trained the Georgian army.”

Indeed, the U.S. European Command was compelled to confirm the existence of the programme after reporters had turned up evidence 77 that Military Professional Resources Inc (MPRI) was contracted to help supplement its own trainers because of a lack of manpower. MPRI had been named (but denied any wrongdoing) in connection to the Croatian military prior to their invasion of the ethnically-Serbian Krajina region, which led to the displacement of 200,000 refugees and was one of the worst incidents of ethnic cleansing the Balkan wars.

Clearly, in both instances, public and political opinions were influenced in an unfavourable way toward the U.S. by the negative fall-out surrounding Private Security Companies.

Historic accounts - especially on African conflicts 78 - contain countless opinions and analyses asserting that mercenaries and PSCs have altered the balance of forces on a local or even regional scale.

Both the Dutch report 79 on Employing PMCs and Peter Singer 80 clearly identify the gap between political ambitions and military capabilities also as one of the rationales for the rise of privatisation of force.

In the course of the Congressional Hearings 81 however, Blackwater’s CEO Prince made a thought-provoking statement, that somewhat broadens the scope of political thinking of some circles on outsourcing:

[...] there might be opportunities for us to support, provide [NATO allies] with training or aviation support or logistics or construction, a lot of other things that allies need, especially as the U.S. is trying to build capacity around the world. There are a lot of countries that need help building out their police departments, giving them more counter-terrorism capability.

Even if this line of thought is expressed publicly only in (neo-)conservative circles, the political ramifications of it should be duly considered, not only on a merely American national scale [as mentioned in subpar (1) above], but obviously on a multi-lateral level.

Indeed - as we are seeing throughout the study - SecO are broadening systematically their reliance on outsourcing.

For NATO for instance, this is very prominently the case with the recurrent proposals of SACEUR to expand capabilities through outsourcing in domains far exceeding support and logistics.

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76 Public declaration on CNN, 29 Aug 2008
77 U.S. military trained Georgian commandos, (Clover, 2008), Financial Times, 6 Sep 2008
81 Op Cit, p 156
Thus, natural political constraints and restraints affecting the calculus with regard to potential 'overstretch' are being circumvented.

The traditionally stepped decision cycle at NATO favours this approach:

- first, the Military Committee (MC) provides advice on proposals of SACEUR or SACT. The most important issue validated by the MC is whether the proposal meets the 'Minimum Military Requirement' (MMR). Considerations include eligibility for common funding and appraisal on resources implications, but remain short of 'affordability' issues;
- after notation or endorsement, the proposals are forwarded to the SecGen;
- after formal advice on 'eligibility' and 'affordability', relevant bodies (essentially the NATO Office of Resources and the Resource Policy & Planning Board) forward the proposal to the NAC.

As has been explained in the previous chapter, once the political decision is reached, the MMR is then offered to the member (and in some cases non-NATO) nations to be filled with national contributions.

Only when shortfalls arise - which is more and more the case in the face of declining defence resourcing and rising political ambitions (Afghanistan, Kosovo, Georgia, ...) - does outsourcing take the floor, a convenient 'deus ex machina'.

(9) **Outsourcing Private Security COST is the key to its added (or subtracted) operational value.**

Reliability & quality issues should be seen in the context of the ultimate motive of PSCs: to make profit.

This was acknowledged in an Evaluation of the Canadian Forces Contractor Augmentation Program that concluded:

> CANCAP provides the CF with **additional operational flexibility** in terms of offering commanders an alternative support option to consider. In practice, it has proven to be a **relevant, responsive and effective tool**, especially when used as intended in a mature, low-risk theatre of operations.

> CANCAP is **more costly** than a military sourcing option. It represents an incremental cost to DND in that it does not reduce military strength, requires DND management overhead, is cost-reimbursable (including contractor overhead such as medical care, insurance, training, etc.), and must allow the contractor to earn a **fair profit**.

Obviously, the contractual vehicle and its clauses on reliability & quality issues together with the long term relationship that a particular PSC endeavours to build with its customer, determine the framework and outcome of the partnership(s).

But one form of 'glue' is sure to be absent: patriotism, discipline, brotherhood in arms and attachment to the flag.

What comes instead was well expressed by Congressman Kucinich when he exclaimed:

> If war is privatized and private contractors have a vested interest in keeping the war going, the longer the war goes on, the more money they make.

Good governance and real added value can only ensue if a strict policy on 'who calls the shots' is enforced in the field.

As alluded to in the paragraph on accountability, this duty should not replace the contracting responsibility, but 'tasking authority in the field' should not in any shape or form be delegated to the contractor himself.

Furthermore, cost-details should be closely related to and commensurate with the tasking that had been attributed, thus precluding double billing and 'self-fulfilling assignment of task'.

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82 Whether this is deliberate or not is left to the appreciation of the reader, but one consideration is that the documents establishing this decision cycle (e.g. the Military Committee directive MC 57/3) pre-date outsourcing practices of any relevance considerably.

83 The MC is composed of Military Representatives of their Chiefs Of Defence, officials of the Ministry of Defence.

84 The NAC is composed of Permanent Representatives of their Nation, officials of the Ministry of Foreign Affairs.

85 Op Cit, p6

86 Op Cit, p 29
The political consequences of the findings regarding indirect and hidden costs to the Government could result in significant executive or legislative actions, as follows:

- inclusion of non-compete clauses (which would bar separating service members from taking up jobs in PMC's within a certain period);
- reimbursement of education & training cost upon anticipated severance;
- revise and change contracting policies with regard to reimbursable costs;
- change legislation to prohibit usage of alleged ‘independent contractors’;
- step up DoL/DoJ investigations into social frauds by PMC’s;
- include a ‘whistleblower clause’ to protect those who report fraud, abuse or other violations by contractors.  

The conclusions of this political analysis are mainly drawn from a case with specifics related to Iraq, a U.S. security provider and U.S. Government agencies.

As some legislators of other users (notably CAN and NLD) have also captured in recent reviews, they provide significant insight in all the potential problems and issues of outsourcing security in a broader and possibly multi-lateral context. It would be advisable for other executive bodies (such as the NAC, the EU PSC and the UNSC) as well legislators (such as the European Parliament(s)) to heed the warning flags raised by the Blackwater case.

Nonetheless, a nuanced look is necessary to safeguard outsourcing options by avoiding undue ‘bureaucratisation’ and red tape the process, for only the U.S. Government - through the scrutiny it routinely conducts - is arguably one of the few actors that can claim awareness on the impact outsourcing has gotten on its security effort.

Blackwater and other PSCs have been diversifying away from physical security into logistics to maintain their market positions. Judging by the changes they have been operating in their business models, it seems evident that they have identified some of the lessons cited above and are hedging their bets on a changing political and regulatory environment.

### 4.5 Private Military Logistics Companies: a case study (on possible ways to handle the problem)

Much as Blackwater USA was the focus of Congressional hearings on PSCs, another company was in the eye of the storm for outsourcing to Private Military Logistics Companies.

Senators Durbin and Lautenberg opened the hearings on Iraq contracting abuses with two key assertions on Halliburton:

- this Administration has chosen to award huge contracts without benefit of a competitive, transparent process [...] and the result has been a steady stream of reports of apparent waste and abuse.
- Halliburton’s record of overcharging, bribery, and accounting fraud recites like a textbook example of corporate irresponsibility. Yet Halliburton has virtually monopolized contracts in Iraq and has collected over $9 billion dollars through its subsidiaries.

In fact, the congressional hearings were only the start of an impressive series of Government Accountability Office reports on contracting practices and possible abuses related to outsourcing. These reports yield valuable information to determine the avenues of improvement and good governance, as summarised in the following paragraphs.

Before researching the possible deformities and complications of outsourcing contracts, it is interesting for the record to brush the ‘desirable’ governance and practices, as intended by the American legislator.

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[87] Clinton, H. (2008, Feb 28). Declaration on co-sponsoring of legislation to ban the use of PSC's, as presidential candidate, Ms Clinton mentioned this legislative initiative.


4.5.1 How it should be done: the Federal Acquisition Regulations System

Benchmarking Private Military Contracting

The Federal Acquisition Regulations System is established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies. It consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR. It should be complemented by internal agency guidance, which tailors regulations to the needs and circumstances of the DoD or the DoS, for instance.

Given the number of contracts and the governance experience of the U.S. Government, this Regulations System, both in its generic parts and in its parts specific to outsourcing, can be considered as a valuable 'benchmark' for good governance of the matter. Furthermore, comparative analysis of NATO’s Strategic Command procurement directives indicate that they have been largely inspired by this benchmark, since most contract types offered by FARS have been carried over.

Analysis and comment on the proposed benchmark system

In widening the scope of the Federal Acquisition Regulations to 'stability operations', the system is adapting itself to a 'comprehensive approach' to operations, just as NATO and the EU are pursuing with their policy on contractor support (see also Par 4.6).

Opening the field for the 'establishment or maintenance of a safe and secure environment' can arguably be seen as a 'passkey' to implicate PMC's in all kinds of military operations. The only caveat in place is the required special assessment mentioned in the FARS-policy concerning the degree to which conditions and facts restrict:

- the discretionary authority
- the decision-making responsibility, or
- the accountability

of Government officials using contractor services or work products.

As will be recalled, this assessment should determine whether concerned functions are 'inherently governmental' and should therefore not be outsourced.

The federally overarching regulation puts the responsibility for the implementation of this important assessment with the Contracting Agency (e.g. DoD, the State Department or - per extension - international organisations such as NATO on behalf of the nations).

The implementation procedure should substantiate possible risks and restrictions for the three criteria and parameters allowing to exclude - or at least mitigate - their possible influence.

The table below offers some of these threats to the implementation of functions which can be in the twilight of government monopoly.

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### Tab/Fig 22 - Opportunities & threats for Contracting implementation procedures

<table>
<thead>
<tr>
<th>To exercise ...</th>
<th>requires ...</th>
<th>but can be (unduly) affected by ...</th>
</tr>
</thead>
<tbody>
<tr>
<td>discretionary authority (i.e. left to one's own discretion or judgment)</td>
<td>• independent oversight • unbiased 'staffing' procedure to judge</td>
<td>• selective perception • group think • hierarchical or peer pressure • underestimating uncertainty • attribution asymmetry 91 • unrealistic security requirements</td>
</tr>
<tr>
<td>decision-making responsibility (i.e. the cognitive process of reaching a decision)</td>
<td>• cognition • diagnosis capability • consultation &amp; coordination • procedure to decide on ✓ bidders ✓ initial contract award ✓ fee allocation</td>
<td>• inertia • recency 92 • wishful thinking • choice-supportive bias 93 • incremental decision making and escalating commitment • competitive faking or forgery ✓ (hidden) subcontracting</td>
</tr>
<tr>
<td>accountability (i.e. liable to being called to account; answerable)</td>
<td>• governance procedures • auditing process • credible enforcement</td>
<td>• lack of transparency • selective search for evidence • premature termination of search for (negative) evidence • repetition bias 94 • incomplete purview ✓ not collocated in-theatre ✓ embellishment before audit</td>
</tr>
</tbody>
</table>

Source: own analysis 95 of FARS criteria enriched with GAO reports

Given the fact that these criteria are considered crucial to the notion of allowing government to outsource them to private companies - thus effectively surrendering its control on them - it is evident that good stewardship will be necessary to safeguard them.

Of interest for legal debate is also the grey zone between the 'Liability' of contractors and the required assessment on accountability of Government officials using contractor services.

A minimalist view to the issue would hold that the contractor's liability, pronounced to be absolute in the light of his obligation to abide by all U.S. and host country laws, should suffice as a guarantee.

A maximalist vision however, will contend that the contracting authority has the responsibility to supervise and - if need be - prevent contractors from causing a liability. In this view, the nation would subsequently have to assume responsibility with respect to its international treaty obligations.

The strength of this interpretation is reinforced by referring to the CPA order n°17 96 decreed by the Administrator of the Coalition Provisional Authority - Paul Bremer - two days before he left office in Iraq:

> [CPA order 17, Section 4, Par 3] Contractors shall be immune from Iraqi legal process with respect to acts performed by them pursuant to the terms and conditions of a Contract or any sub-contract thereto. Nothing in this provision shall prohibit MNF 97 Personnel from preventing acts of serious misconduct by Contractors, or otherwise temporarily

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91 To attribute success to own 'good practice' & blame failures on bad luck and external factors.
92 Tending to place more attention on more recent information and either ignore or forget more distant information.
93 Occurs when memories of chosen and rejected options are distorted to make the chosen options seem relatively more attractive
94 Willingness to believe what we have been told most often and by the greatest number of different sources
95 Definitions taken from Dictionary.com
97 By its own definition the “Multinational Force” (MNF) means the force authorized under U.N. Security Council Resolutions 1511 and 1546, and any subsequent relevant U.N. Security Council resolutions.

The validity of this reference to U.N. resolutions is not universally accepted.
detaining any Contractors who pose a risk of injury to themselves or others, pending expeditious turnover to the appropriate authorities of the Sending State.

Notwithstanding questions as to the legality of this self-declared immunity, the fact that the order provides authority to prevent acts of serious misconduct by Contractors underpins the implicit expectation that Sending State authorities (represented by the MNF personnel) effectively do so. Accountability - it is often argued - has many facets: political accountability will easily be shunned by MOD’s prone to the aforementioned minimalist approach, while administrative accountability will be eschewed by those who see outsourcing as an acceptable process to solve difficult problems without too many difficult questions.

A strong case can be made that this grey zone amounts to a genuine accountability gap.

In the end though, deciding what is or is not a governmental function (and hence can be outsourced or not), is irrefutably a POLITICAL decision, since the liabilities resulting from it will be those of the state.

Indeed, as had already been established for the particular case of PSCs (in Par 4.4.3), a government incurs legal (and implicitly political) responsibility for any agent operating within the scope of its authority.

Arguably, this government can subsequently prosecute criminal or fraudulent activities of its contractors; or suspend the execution of a contract if and when the agent exceeds the scope of its authority.

4.5.2 How it has been done: Private Military (Logistics) Contracting in practice

A benchmark is a standard or reference by which others can be measured or judged. The duty of regulators is to make the benchmark available and improve it where necessary. The responsibility of the executive branch, including military leaders, is to identify the delta between the actual performance and the benchmark and strive to reduce this delta.

The remit of official (and perhaps academic) watchdogs is to document and reflect on ways to improve both processes.

Factors contributing to poor acquisition outcomes and frequently encountered problems with PMC selection and management across timelines were clearly identified by the General Accountability Office and should be heeded for further Logistics contracting endeavours.

Informed by these 'Lessons Learned' a governance model for the management of outsourcing contracts will be built in ensuing paragraphs.

4.5.3 How it can be done: indirect outsourcing via a multi-lateral agency

Outsourcing for operations can be achieved through a multi-lateral agency such as EDA or the NATO Maintenance and Supply Agency (NAMSA).

NAMSA’s mission is to provide cost-effective logistics support to NATO or to its member states, individually or collectively. The objective of this mission is to maximise in times of peace, crisis or war the effectiveness of logistics support to armed forces of NATO states and to minimise costs. To this end, NAMSA’s mission statement requires it to adjust tools & procedures for in-theatre logistics support and address policy issues related to logistics and supply. It is considered as a key enabler for multinational logistics solutions and the use of contracted support.

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98 Can also take the form of a semi-governmental (a.k.a. parastatal) agency or an organisation embedded in the MoD.
According to its yearly reports\textsuperscript{99}, the logistic support services it provides:

\begin{itemize}
\item achieve economies of scale,
\item result in substantial cost avoidance,
\item free military personnel for other tasks,
\item minimise the logistics footprint of theatre forces,
\item potentially lead to more multinational and contractor solutions,
\item but ultimately … cover shortfalls in Force Generation for a particular theatre;
\end{itemize}

Theatre commanders will require the Agency more and more to manage enhanced risks related to this support, which also calls for the development of ‘expeditionary’ operating modes. To this end, the Council approved a directive allowing the deployment of NATO civil personnel into NAC-approved theatres of operations or locations of missions\textsuperscript{100}. The increased risks stemming from expanding activities raise legal issues concerning the ultimate responsibility for transactions carried out by NAMSA on behalf of the member states: the current contracting practice implies that the Agency’s customers assume ALL liabilities and responsibilities resulting from the activities they outsource through NAMSA.

Major in-theatre infrastructure projects include stabilisation & reconstruction activities, such as building bridges in the Balkans and airport facilities (Cfr Kabul International Airport). Support to military operations is exemplified by contracts for construction and repair oversight for an Air Port of Debarkation (APOD) and the provision of Real Life Support (RLS) on behalf of the stakeholders of Kandahar Airfield (KAF)\textsuperscript{101}. In 2007 expenditures for direct support in theatre amounted to 112 MEUR, 12,62\% of its total turnover. With regard to the KAF-project, NAMSA acted as logistics services integrator for an amount of 34,6 MEUR in 2007, slightly less than 4\% of NAMSA’s volume of business.

In addition to placing contracts with industry to satisfy customers’ requirements, NAMSA can also manage these contracts on behalf of its customers.

**NAMSA as ‘outsourced’ contract management agent**

Outsourced contracts are managed by NAMSA activity on behalf of its customers. Very often such contracts involve various levels of maintenance (depot, intermediate, etc) and repair actions. NAMSA can act as a “one-stop shop” for its customers, managing the performance of these contracts and coordinating activities with all those involved.

During and after NATO operations in the Balkans (IFOR, SFOR, KFOR) and Afghanistan (ISAF), a variety of goods and services have been supplied\textsuperscript{102}, either directly by NAMSA staff or through contracts let by NAMSA, including:

\begin{itemize}
\item turn-key construction of containerized and hard structure facilities;
\item camp services, including maintenance, catering and laundry, property leases;
\item office & IT equipment;
\item food supply;
\item fuel supply;
\item de-mining and force protection;
\item engineering works, such as the repair and renovation of roads, bridges and railways, snow and ice clearance and the construction of air and seaports.
\end{itemize}

Concrete examples of NAMSA contracting on behalf of member states are:

\begin{itemize}
\item Strategic Airlift Interim Solution (SALIS is a multi-nationally prepaid contract for flying hours on airlift, 170 flights were performed in 2007)
\item Deployable CIS (through NSIP funding)
\item Supply for NATO Airborne Early Warning Force AWACS aircraft
\item Maintenance and logistics at Kandahar Airfield, Afghanistan
\end{itemize}


\textsuperscript{100} NATO POLICY ON CONTRACTOR SUPPORT TO OPERATIONS - C-M(2007)0004, dated 26 Jan 2007, further discussed at Par 4.6.3.

\textsuperscript{101} The KAF stakeholder nations are USA/GBR/NLD/CAN and FRA, other nations such as BEL outsource on a case-by-case basis.

\textsuperscript{102} http://www.namsa.nato.int/Services/op_logs_e.htm accessed on 17 Jul 2008
Best prices & Industrial return

NAMSO’s stated objective is to obtain the most favourable prices for material and services through international competitive bidding. It also aims to balance the distribution of contracts among all NAMSO member states to the greatest extent possible, compatible with obtaining the best product and the most favourable price.

Tab/Fig 23 – NAMSA Industrial return and cashflows - 2005 to 2007

The industrial return for each state is determined by using a formula that is based on the ratio between the value of contracts placed in the nation and those outsourced over a 3 year period. The aggregate data for the period 2005 – 2007 shown above reveals a positive ratio for DEU, ITA, HUN, GBR and in particular BEL. This indicates that the presence of NAMSA and - as a corollary - the 'outsourcing business' it implies, has a positive return for the economies in which it operates.

NAMSA Trust Fund Projects

NAMSA is also active in the area of Security Sector Reform (SSR) as Executing Agent overseeing the completion of demilitarisation projects in Albania, Serbia, Azerbaijan, Ukraine and Moldova. In 2008 and beyond, other projects – such as Afghanistan, Georgia, Jordan and possibly Kazakhstan will be outsourced to NAMSA by nations participating in ‘ad hoc’ trust funds.

Security Sector Reform is a concept to reform or rebuild a state's security sector, that emerged first in the 1990s in Eastern Europe. It starts where a dysfunctional security sector is unable to provide security to the state and its people effectively and under democratic principles. Even worse, the security sector can be a source of widespread insecurity by itself. In this respect, an unreformed security sector left to its own, represents a decisive obstacle to the promotion of sustainable development, democracy and peace. On the other hand, uncertainty about funding in the ‘SSR-segment’ makes it difficult for an organisation – private or official - to plan and retain highly specialised expertise needed to re-educate emerging security forces, that have often been party to a recent conflict. Under-resourced or poorly led, ‘reformers’ can quickly turn into ‘mercenaries’ with a self-declared mandate and interests.

In sum, demilitarisation and SSR-projects in general can be considered as a significant contribution to local and regional security, if they are well managed and independently overseen, especially when commercial or individual interests are at stake.
4.6 Multilateral policies and practices with regard to outsourcing security

In this paragraph, policies and practices with regard to outsourcing defence & security needs of different SecO will be compared and validated against the findings on outsourcing problems researched earlier in the study.

It is interesting to note how official government websites organise portals to advertise ‘outsourcing opportunities’ to the business communities. In some cases, they are even cited as Point of Contact and Contracting Office for the bidding process on behalf of the SecO involved (see Annex D further discussed below).

Some examples shown at Annex E provide easy ‘roadmaps’ to allow national companies to position themselves favourably in the bidding processes conducted by multi-lateral SecO. Especially the U.S. Department of Commerce slogan ‘Where industry and Security Intersect’ leaves little room for hesitation as to the desirability of providing outsourced security services to anyone who expresses a requirement.

4.6.1 The UNITED NATIONS

Building on its previous work concerning the practice of outsourcing, the 55th session of the General Assembly adopted the landmark Resolution 55/232 on 16 February 2001.

The resolution captures 4 guidelines, 3 goals and 4 criteria on outsourcing practices by the U.N. that - while not exclusively targeted at military operations - obviously will impact on PSC and PM(L)C contracts.

Basic reasons, significant goals & criteria for outsourcing as well as an analysis of the U.N.-status questionis are offered at Annex F.

As a main conclusion of the analysis, it seems fair to say that the U.N. - having agreed to a theoretical framework on outsourcing practices - could significantly benefit from the Management Model proposed in Par 4.7.2 (see Tab/Fig 25).

4.6.2 The EUROPEAN UNION

Seeking an answer to the simple question as to why continuing shortcomings in logistic support were hampering modern military operations, the High Representative for the Common Foreign and Security Policy SOLANA alluded to geographic parameters of a typical Area of Operations (i.e. faraway, inaccessible, variable in size, ...) and the multinational nature of contributions lacking interoperability. The EDA Conference on "Commercialising Logistics?" in 2007 in an effort to set out some beacons for EU policy on outsourcing given the fact that duplications resulting from separate national logistic chains were cited as the main culprit.

An overview on the EU dispositions on outsourcing of military capabilities, the ATHENA mechanisms applied to outsourcing capabilities for EU military operations as well as an analysis of the EU-status questionis are set out at Annex G.

In general, it was found that the EU could indirectly regulate the ‘end-users’ of the services provided by emulating the control of ‘technical assistance’ related to listed military equipment and activities in the European Code of Conduct on Armaments Exports. Although the purview of these measures – in legal terms - would be limited to the PMC based in the EU, the services rendered in or for the EU and the employees of EU-citizenships that provide the services, the political ramifications of such an approach could be expanded, if aid and assistance to beneficiaries of EU-partners were made contingent on similar conduct.

4.6.3 NATO

The Senior NATO Logisticians Conference (SNLC) proposed a policy framework to the NAC which was approved on 26 Jan 2007. The policy offers a set of governance principles and best practices for the use of contractors support to operations and considerations for integrating outsourcing in Defence

103 (United Nations (A/55/301), 16 Aug 2000)
106 NATO POLICY ON CONTRACTOR SUPPORT TO OPERATIONS - C-M(2007)0004, dated 26 Jan 2007
Planning. Furthermore, it unequivocally attributes responsibilities during the preparation-, development- and employment phases of an operation.

The governance principles, attribution of responsibilities and NATO’s current best practices form the basis for the analysis of the NATO-status question on outsourcing offered at Annex H.

Recent operations have undeniably shown a clear tendency toward a systematic recourse to common funding, which eventually hinges on political decision taking.

While extant policy states that NATO common funding is not to be a default solution for shortfalls in the force generation process and extended common funding should not lead to a further erosion of that process, current practices of outsourcing for ISAF and KFOR are generating considerable debate within NATO.

In 2008 alone, over 40 requirements have been outsourced for an amount exceeding 240 M€, while 25 more are in any stage of preparation.

These outsourcing projects can be broadly categorised as follows:

- Physical infrastructures (such as Air Traffic Control towers, perimeter walls, fire stations, operational accommodation, etc)
- Force Protection (such as explosive detection dogs, Improvised Explosive Device (IED) identification and remedial, intruder detection systems, in theatre training teams)
- Communication and Information Systems
- Intelligence support systems

It is interesting to note the correlation between the nations committed to an operation on a particular theatre and the involvement of their national industries through outsourcing.

For instance, in July 2007, ‘ATCO Frontec Europe’ was awarded five contracts to provide multiple support services for up to five years at Kabul International Airport (KAIA) and Kandahar Airfield (KAF) in Afghanistan. More than 350 personnel have been hired and deployed to KAF to deliver these services on behalf of ATCO Frontec for more than 10,000 troops serving NATO’s International Security Assistance Force.

In 2008 approximately 184 M€ were planned for contracting out, of which roughly 27% will be borne by NATO, the rest being reimbursed by those nations using the services (e.g. in excess of 70 M€ for catering services provided by the Swiss based ‘Supreme foods service AG’).

Tab/Fig 24 - Outsourced contracts at Kandahar Airfield, Afghanistan

As can be seen above, in excess of 45% of the non-food outsourced services will have an economic return for CAN and the USA.

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107 NATO POLICY ON CONTRACTOR SUPPORT TO OPERATIONS - C-M(2007)0004, dated 26 Jan 2007
108 ISAF operations are contracted from the ATCO Frontec Europe project office in Darmstadt, DEU, but ATCO Frontec is an Alberta, CAN based company, retrieved 5 Oct 2008 from www.atcofrontec.com/Our+Capabilities/Projects/Projects_KAIA.htm and www.atcofrontec.com/Our+Capabilities/Projects/Projects_KAF.htm
109 Supreme Foodservice has developed and realized individual catering concepts for non-governmental and multinational organizations such as the UN or NATO, as well as for various military contingents abroad, retrieved 5 Oct 2008 from http://www.supreme-group.net
Among the outsourced capabilities for ISAF, two particular outsourcing projects have drawn particular attention because of the considerable costs involved and the fact that they were at the outset fulfilled by U.S. national capabilities:

- In theatre airlift in several ISAF's Regional Commands [RC(S) & RC(W)], formally ensured by U.S. helicopters
- Air Traffic Control at KANDAHAR Airfield

The ISAF helicopter shortfall stems from a requirement of over 200 helicopters, covered by less than 150 provided through CJSOR contributions.

After an extensive staffing and consultation period with the Allies, North Atlantic Council approval was obtained to outsource the 'in theatre' airlift requirement. Following a bidding process with some incidents (one bidder was disqualified on the grounds that air safety conditions would not be met), the contract was finally awarded to the U.S. based Mesopotamia Group. The start date of the ISAF Contracted Air Transport (ICAT) contract was 1 February 2008 and it has a duration of 12-months, with an option to extend for a further 12 months.

Other contracts for rotary wing airlift services with Mi-8 and Mi-17 (see picture above) from Kandahar, Herat and Mazar-e-Sharif have subsequently been appropriated to Skylink Aviation Inc, based in Toronto, CAN.

Notwithstanding the somewhat surprising fact that former Warsaw Pact helicopters are being operated (or subcontracted) in substantial numbers by USA, GBR and CAN companies, the case presented an interesting example of tension between initiatives to INSOURCE versus OUTSOURCE the requirement. The internal debate led to the conclusion that insourcing was the preferred option to enhance the build up of military capability and interoperability. That is, providing the investment was done in a timely fashion to be available for force generation, barring which outsourcing becomes the ineluctable option.

Beside the creation of a special fund to finance projects that would increase helicopter airlift capacity in the short and midterm, a Multinational Contracting Model - with NAMSA as 'hub' - was created. This initiative to insource the requirement is documented at Annex I.

The constructive proposal of the six (former Warsaw Pact) nations to upgrade their older helicopter platforms and offer them for ISAF airlift, also intended as a transformational effort providing longer term capability acquisition and experience building, was clearly perceived to compete with funding that is now being spent on short-term requirements via outsourcing.

Another interesting type of outsourcing concerns so-called 'Contract Guard Services'. One of the first occurrences was initiated for NATO's Training Mission in Iraq (NTM-I) when guard services for the Camp Al-Rustimayah where NATO trainers perform their mission and normally provided through CJSOR fulfilment, could not be further 'insourced' for lack of national military contributions. An invitation for bids

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111 Statement to the NATO's Helicopter initiative workgroup by the Czech Republic on 3 Jul 2008.
was extended to Private Security Companies by the Joint Force Command Brunssum. It is noteworthy though, that the contracting office was the U.S. Department of Commerce as was documented at Annex E.

A similar situation occurred when the national contingent guarding the KFOR HQ in Kosovo could not be replaced. In an effort to preserve the availability of battalions assigned to KFOR for their primary tasks, the possibility of using Private Security Companies to outsource access control and guarding services for HQ’s infrastructure was proposed to Nations (who had turned down the request to insource the same requirement).

Bearing in mind that NATO’s attribution of responsibilities (as documented at Annex H) requires the Operation Commander to ensure security for contractors, it would seem that careful consideration needs to weigh the benefits of using contractor support against the resources required to ensure their protection.

NATO’s Strategic Commanders justify outsourcing by arguing that “military budgets and available resources [being] stretched, NATO may well turn to commercial sources to perform functions that traditionally have been performed by NATO civilians and/or military personnel.”

Clearly, with this rationale, we will see more outsourcing to cover defence & security needs before we see less.

4.7 A path to good governance of Private Military Companies

Rich of the lessons learned through the two case studies conducted earlier and the status questions on current outsourcing practices in multilateral SecO, it now seems appropriate to attempt to draw a path toward best governance practices for the use of Private Security and Logistic services. This will be done by contemplating alternative contracting structures

4.7.1 Alternative contracting structures

The aim of seeking alternative ways of contracting out is obviously to motivate contractor performance and hold contractors accountable for achieving desired outcomes.

While recognising possible shortcomings, the GAO particularly recommends following contract vehicles:

- Award-fee contracts, with the conduct of periodic evaluations of the contractor’s performance against specified criteria, which should yield recommendations on the amount of fee to be paid but: criteria and evaluations tend to be subjective;
- Incentive-fee contracts, with a formula, specified in the contract, that adjusts the fee based on an objective evaluation of the contractor’s performance.

According to the GAO, all agencies involved should review contracts for economy & efficiency.

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114 The different types of contracts are laid out at U.S. Government Federal Acquisition Regulations System website: http://www.arnet.gov.
4.7.2 Improving Acquisition Outcomes through an Outsourcing Management Model

Aggregating and summarizing an impressive bibliography of CRS and GAO reports, a comprehensive ‘checklist’ of good outsourcing practices can be composed. Schematically, this list of good practices should revolve around FOUR main actors, as depicted below.

Tab/Fig 25 – Management model for IN/OUTSOURCED CONTRACTS in Support of OPERATIONS

This management model comprises adequate checks and balances to allow good governance of complex outsourcing, providing sufficient qualified & trained personnel - both officials and private - can be allocated to it.

4.7.3 Providing a legal framework for outsourcing practices

Legal aspects of good governance regarding outsourcing should encompass a universally accepted (thus in effect U.N. sponsored) international legal framework combined with an inner shell tailored to regional & local circumstances. While the outer shell would ensure that no legal voids can subsist and cover the more generic aspects of the contracting process (regardless of the provenance of either customer or provider), an inner shell would cover specifics tailored to the local circumstances where the services are being rendered.

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115 Other than U.S. Governmental reports, almost NO reliable and objective documentation about outsourcing practices and problems is publicly available.

116 As the case study showed in the Blackwater investigation.
The need for clarification of international law in relation to PM(L)Cs was also recognised by David Isemberg in a report\textsuperscript{117} to the British American Security Information Council making a pragmatic assessment of Private Military Companies in Iraq:

\[\ldots\] the biggest obstacle to doing anything internationally is a lack of political will. Most states find PMCs useful for implementing their own foreign and military policies and oppose efforts to restrict, let alone prohibit them. Thus, the most feasible legal changes that can be expected are those that would enhance transparency in the PMC sector and allow for greater regulation. Difficulties notwithstanding, the following options should be considered:

- **Extension of the International Court of Justice to PMC activities.**
- **Negotiation of a new ‘Convention on the Use of Armed Non-Military Contractors by an Occupying Force’;** and
- **Harmonization of national laws to create common standards and to help the development of an eventual universal approach.** The harmonization process could begin among NATO member states.

Analogous to the Agreement on the Status of Forces reached between the U.S. and Iraq, SecO could provide a ‘default’ SOFA-like\textsuperscript{118} arrangement for civilian companies operating in a conflict zone, which would then be adapted by all state actors involved or sponsored by the U.N. in situations where no state-sponsored authority can (yet) be established.

Furthermore, outsourcing contracts should contain safeguards to ensure that both the liability of the State and the civil rights of individuals are respected, in short that the rule of law is upheld.

Given the legal imbroglio documented in previous paragraphs though, and until international legal initiatives can fill the void, it will necessary to go beyond general provisos, but specifically describe which bodies of law and parts thereof will be applicable:

- the level of jurisdiction: international, sending and host nation
- the legal regimes: regular civilian criminal code, extraterritorial of military
- the competent prosecutor and court, in the case of multi-national, transnational or a-national actors (both customers and providers)
- the grounds for liability for different contractual matters, be they military, disciplinary, fiscal, or labour-related

From the commercial point of view, penalty clauses should be included that establish the consequences of a failure to meet service levels and what contractual obligations should survive a merger or bankruptcy of contractor or subcontractors in view of the continuity of services in an operation (e.g. the mandatory handover of the instruments of the contract that are deployed in the theatre).

In order to inform any post-contract litigation, the contractor’s performance and adherence to the formulated legal obligations should always be evaluated and documented at the conclusion of the contract. This practice\textsuperscript{119} could also be the basis for a system of licensing contractors for military outsourcing, considered by some scholars as the most effective way for International Law\textsuperscript{120} to regulate the Security Company market:

*By regulating the international security market via licensing regimes, the international community would create a market for legitimate [Security Companies] while ostracizing rogue mercenaries and dangerous SCs.*

While it is likely that rogue mercenaries and malafide PM(L)Cs would be discouraged and maybe pushed out of a ‘bonafide’ market, organising a transparent and accountable license regime for contractors and their employees would certainly bring about a regulatory and political challenge of its own, given that ‘industrialised’ nations would be seen by ‘developing’ countries to bias the market in their favour.


\textsuperscript{118} Status of Forces Agreement.

\textsuperscript{119} Elaborated upon in the Legal Framework that was researched in Par 4.4.

Lastly, from an ethical point of view, it is absolutely unacceptable that contractors should be allowed, let alone paid, to provide specifications, rules and obligations of outsourcing contracts.

4.8 When & why relying on Private Military Companies should be avoided

Even with an adequate management structure, not all military functions can be privatised. Outsourcing of military support functions to the private sector can be undertaken, but activities or functions linked with any of the following ‘inherently governmental’ responsibilities should be banned from privatisation:

- core military functions;
- ‘mission-critical’ functions;
- actions directly involved in combat operations;
- interrogation of POW or any other activities in which human rights can be violated;
- tasks for which no adequate private sector capability exists or can be expected to be established within the bounds of the legal system of the sending nation nor the international law;
- and last, not least, decision making processes to engage, continue or disengage involvement in a conflict.

Where to draw the line is not easy to define and reveals yet another ‘fault line’ between European and American views on what governmental functions should be. As pointed out by Prof Chesterman, the debate would focus in Europe over whether and which functions should be transferred to private actors, while U.S. attention would frame on whether certain functions should be public in the first place: in other words, whether an exception should be made for functions deemed ‘governmental because they affect life, liberty or property of private persons’. The dangers that may result from privatisation and the functions that are so sensitive that they need to be carried out under clear rules by properly trained and supervised people who will be held accountable, must be kept in mind throughout the conception, planning, execution and disengagement phase of any conflict. A flagrant example of this tension was reported in March 2010, when a government official was accused of ‘using private contractors in Afghanistan to help track and kill militants’, but asserted that all his work had been approved by top American military commanders. The review ordered by Secretary Gates to assess the Defense Department’s information operations will not avert the responsibility of the U.S. Government (unless the incriminated official is proven to have worked outside his mandate in ‘ordering’ the Predator-strikes).

All told, accountability can only be realised if ‘unity of command’ is achieved in the theatre, be it by a civilian or military commander, but one who can pull the contractual strings and does the reporting for billing of services that were requested, authorised and supervised under his authority.

Cost-efficiency of outsourcing to PMCs is entirely contingent upon these factors: rather than trying to formulate absolute evidence or convictions on alleged or possible cost savings, it is important to be cognisant of the fact that the furthest a nation has gone down the cascade of declining resources for D&S, the more onerous and prohibitive it will be to outsource to Private Companies (thus raising the threshold for commitment to operations). Indeed, unless ways are found to insource security tasks via other nations or a multilateral agency as NAMSA or EDA, total reliance on PMCs jeopardizes the independence of nations. Instead of plugging a PMC for a specific limited task in an existing structure, that uses the management model shown above and thus preserves competition, small contingents can become entirely dependent on PMCs.

On the other hand, recent initiatives - like the Montreux Document on ‘pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict’ - could gain enough moral traction to become a benchmark for military

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121 Incredible as it may sound, P.W. Singer reports in ‘Corporate Warriors: the Rise of the Privatized Military Industry’ that the U.S. Department of Defense paid Brown & Root, a subsidiary of Halliburton, $3.9 million to produce a classified report on the provision of logistics by private companies for U.S. forces deployed into potential war zones around the world.

In the same vein, Singer also alleges (Op Cit, p 123) that MPRI was asked to write the U.S. Doctrine for TRADOC for Contractors [...] and Contracting Support in the Battlefield (FM 100-21 and FM 100-10-2).


outsourcing, if a significant number of United Nations member states, and indeed NATO as well as the EU embrace its premises.

That outsourcing has taken on significant proportions can be seen on the graph below, showing the ratio between ISAF theatre costs being directly borne from national defence resources versus costs reimbursed after insourcing and funds for contracting.

**Tab/Fig 26 – Common Cost for ISAF Theatre Capabilities in 2009**

In more generic terms, an assessment conducted end 2008 found that theatre enabling capabilities, which had become critical shortfalls for lack of Force Generation, had almost entirely been provided since the introduction of the revised funding policy for non-article 5 NATO-led operations. According to the assessment, the **enlarged common funding led to the outsourcing of capabilities**, thus becoming an area of concern with regard to the potential loss of national military capabilities critical to NATO. The ensuing recommendation, aimed at avoiding adverse impact on the retention of these national military capabilities, was to **limit as much as possible the use of outsourcing, while recognising that – in some areas – it may well be the only way (or overall the most cost-effective way) to fill certain shortfalls.**

The fact that nearly 60% of the theatre capabilities put at work in a theatre as Afghanistan is provided through outsourcing, lends some credibility to the contention that NATO (including the U.S.) would not be able to sustain operations without the intervention of Private Military Companies. The negative impact of the loss of national military capabilities resulting from systematic outsourcing would be even more significant on EU-led operations, since the pool of forces to draw from is smaller and often lacks specialised theatre enabling capabilities in sufficient numbers for sustainment.

While relatively sobering, this situation can be acceptable for support activities to expeditionary operations, provided it occurs in a transparent way and is fully accounted for. Ideally, multilateral agencies as EDA or NAMSA can be used to provide this oversight, but the administrative overhead of these agencies should also be kept in line.

All told, these considerations focus attention on the inherent tension between insourcing and outsourcing: the former mode invests in publicly owned capabilities – operated by a foreign nation, cooperatively by a group of nations or collectively by a SecO – while the latter invests in Private Companies, that hold allegiance only to capital and shareholders. The notion that commercial practices

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124 So-called ‘theatre-level enabling capabilities’ are a typical example of resource pooling for operations and are eligible for ‘common funding’, both in extant EU- and NATO funding policies.

125 Nations have been seen to refrain from using their services because they perceive the administrative surcharge to be excessive.
have shifted from designing and selling military hardware to providing the knowhow and software to use force adds weight to the salient and perverse influence of leasing security from private companies.

The role of stately Armed Forces in these circumstances should focus on providing leadership, supervision, accountability – and if need be - protection for the contributions of PMCs in operational theatres. It could be argued that a ‘desired mode’ of outsourcing to private companies would result from a ‘healthy practice’ of INSOURCING - not one sought to compensate for security deficits and defaulting on burden sharing - but one striving to optimise multinational capabilities, such as envisaged by the fathers of Permanent Structured Cooperation in the Treaty of Lisbon. While evidence is lacking to prove the validity of this assertion and the causal links implied, it is safe to say that it would require significant capital re-investment in Defence & Security by most European states AND the unfettered authority to manage resources without political interference.

Indeed, military establishments, coerced by politicians and parliaments to ‘manage more efficiently their defence budgets’ will (have to) accept risk and – eventually - go the road of Public-Private Partnerships, power by the hour and (compelled) outsourcing with all their subtle nuances and implications. It is important to recognise and understand the source, the destination and the final ownership of the revenue flows generated by these mechanisms.

The citizen’s contract with the state, as well as the credibility of SecO to all parties of a conflict, should be preserved by avoiding that the state’s monopoly on the use of force is surrendered to private hands and hostage to the pursuit of profit, for lack of other options to safeguard its very survival and security. Meaningful insight in the policy and politics of the provision of future Defence and Security services is crucial to this endeavour.

\[126\] In some cases – and cynically – so they can be axed.

\[127\] They are charted in Par 2.7.4.
CHAPTER 5 - Conclusions on outsourcing security to Private Military Companies

5.1 Operational, commercial, legal & political implications around OUTSOURCING

Some historians contend that mercenaries are second to only one of ancient professions. While the basic premises of the trade (i.e. to provide armed force in exchange for money) have not really changed over the centuries, the societal, geopolitical and legal contours of the security environment in which it thrives definitely have.

When trying to grasp the ‘outsourcing’ landscape, one should focus on three key yardsticks:

- the scale of the violence involved in the activities
- the timescale of the effects they produce
- and whether they provide the capability to use force or merely transfer the capability.

Some will assert that Private Military Companies are merely the ‘front office’ of mercenary groupings: on careful analysis, in the comparative table below, most of the differences pertain indeed only to a ‘corporatisation’, in other words a more modern & businesslike organisation of the trade.

Tab/Fig 27 – Characteristic features of Mercenary- versus Private Military Entities

<table>
<thead>
<tr>
<th></th>
<th>MERCENARIES</th>
<th>PRIVATE MILITARY COMPANIES</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>LEGAL PERSONALITY</strong></td>
<td>Individual</td>
<td>Corporations, Multinational Enterprises</td>
</tr>
<tr>
<td><strong>MOTIVATION</strong></td>
<td>Individual profit</td>
<td>Business profit</td>
</tr>
<tr>
<td><strong>CONTRACTUAL RELATIONSHIP</strong></td>
<td>Money in exchange for temporary loyalty</td>
<td>Employer &lt;&gt; employee or Contractor &lt;&gt; sub-contractor</td>
</tr>
<tr>
<td><strong>CUSTOMER BASE</strong></td>
<td>Uni-dimensional, one at a time state &amp; non-state</td>
<td>Multi-disciplinary, wide array of customers, state &amp; non-state</td>
</tr>
<tr>
<td><strong>IDEOLOGICAL/MORAL BACKGROUND</strong></td>
<td>No moral issue with war no obligation beyond fee</td>
<td>Claim to work by ethical code interested in customer relationship</td>
</tr>
<tr>
<td><strong>ORGANISATION</strong></td>
<td>Ad hoc, loose units</td>
<td>Permanent structure</td>
</tr>
<tr>
<td><strong>LEGAL FRAMEWORK</strong></td>
<td>None</td>
<td>(Mostly) law of Sending Nation &amp; International Humanitarian Law</td>
</tr>
<tr>
<td><strong>OPERATIONAL SCOPE</strong></td>
<td>Limited, no logistics, no engineering</td>
<td>Wide, package services</td>
</tr>
<tr>
<td><strong>GEOGRAPHIC SCOPE</strong></td>
<td>One location, sub-regional</td>
<td>Regional, Global</td>
</tr>
<tr>
<td><strong>HIERARCHY</strong></td>
<td>Limited</td>
<td>Strict</td>
</tr>
<tr>
<td><strong>RECRUITMENT</strong></td>
<td>Oblique, covert</td>
<td>Open, public</td>
</tr>
<tr>
<td><strong>TRAINING</strong></td>
<td>Scant, experience-based</td>
<td>Joint, pre-mission</td>
</tr>
</tbody>
</table>

Source: Adapted from Singer, P. (2003). Op Cit

Arguably though, the only exception, the only real & relevant difference between a 21st century Private Military Company and a mercenary company is the legal standard to which it conforms: in the absence of binding International Law, adherence to “a” national legal framework and the general dispositions of International Humanitarian Law seem to be the only relevant litmus-test as to whether a PMC exceeds the norms & standards of a mercenary bunch with a silver corporate lining.

Privatising and commercialising security services has amplified rapidly through the last few decades, mostly for operational reasons: to allow for more expeditionary, sustainable and flexible military action. The jury is still out on whether whole-life financial cost of those services is lower than conventional military capabilities, not in the least because sunk and hidden expenses clutter the picture on both sides of the balance.

On legal and political costs, an unequivocal verdict was reached though: undoubtedly higher.

In military terms, private companies can often conduct their missions regardless of the theatre commander’s intent without defaulting on their contractual obligations. The first principle of military operations however - UNITY of COMMAND - is dreadfully violated when contractors are not under direct control of the principle security agent on the scene: inefficient and dangerous situations inevitably result.

Additionally, operational security (OPSEC) could be compromised and contractors will need to be provided with a degree of force protection commensurate with the threat level.
As far as the operational planning process is concerned, the need to timely include the use of contractors is clearly recognized and would benefit of the proposed consolidated management model 1.

A methodical use of contractors through the defence and force planning process, on the other hand, may undermine own procurement by nations and their commitment to the Force Generation.

In both cases, special care must be taken that shortsighted budget management does not systematically dedicate scarce defence resources to outsourcing, thus irreversibly losing essential military expertise. Defence and operational planning must remain focused on the acquisition and maintenance of own military capabilities, rather than privately owned capacities.

In commercial terms, the outsourcing process must enable contractors to satisfy their duty of care and liability obligations to their employees, for if these are not factored in, high quality contractors may be deterred of bidding, hence creating the risk that only lower grade companies remain attracted to military outsourcing by hedging their prices with prohibitive and untraceable surpluses. As will be argued further, bona fide contractors must be given a framework conducive to good governance and accountability, while preserving opportunities to obtain reasonable returns on investment and effort.

The suggestion 2 that direct participation to hostilities not only includes ‘activities involving the delivery of violence, but also acts aimed at protecting personnel, infrastructure or materiel’ obviously requires clarification, lest all security guarding contracts – a multi-million-dollar/euro-commerce - would be affected. Taking this rationale one step further: how can the taxpayer be convinced of the necessity to guard, and thus implicitly protect, ‘military installations’ with Private companies? and how can a peacetime HQ or casern be differentiated from an operational HQ in Kabul or close to Pristina?

The only sensible answer in both military and commercial terms, is to make the difference between ‘guard and protection’ duties in a Joint Operation Area (JOA) and out of this area, where potential hostilities might take place. In the former case, the use of weapons by civilians guarding military ‘against hostilities’ is indeed difficult to explain, while in the latter, guarding from intrusion, theft or poaching can perfectly be privatised.

In legal terms, significant jurisprudence seems to stem from the Status of Forces Agreement reached by the U.S. and Iraq at the sunset of the U.N. mandate. Most of the legal and political lessons to be learned from the use of contractors as Blackwater and Halliburton have been sanctioned in a status that offers legal protections exclusively to (military or civilian) members of the Department of Defense. Evidently, the political leeway in the negotiation must have been so curtailed by the incidents with previously mentioned contractors, that the protections normally granted to ‘support personnel’ 3 could not be secured. Not only did this precedent show that foreign policy options can be curtailed and restricted by bad practices of Private Companies, it also prompted members of the trade group for U.S. Security contractors to conclude that business may have become too risky in these circumstances 4.

The opinion of the Geneva Centre for the Democratic Control of Armed Forces 5 that ‘either the law of the state in which the operation is taking place must be enforceable; or the law of the state in which the firm is based must be applicable’ should be put in context, however.

While it seems unlikely that significant progress in International Law on the subject can be expected 6 in the near term, it seems fair to say that the constitutive elements of this SOFA could be used as building blocks for a legal framework to regulate outsourcing for Defence & Security needs.

The value of this framework would indeed lay less in ‘a posteriori’ prosecution of misconduct, than in ‘a priori’ licensing, codifying and forcing compliance with a multilaterally accepted regime for D&S

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1 See Par 4.7.2 - Improving Acquisition Outcomes through an Outsourcing Management Model
3 The Geneva Convention (Convention III, Art. 4, Sec. 4 and Sec. 5) defines ‘support personnel’ as ‘Persons who accompany the armed forces such as aircraft crews, supply contractors, labourers and ship crews’. They are all entitled to prisoner of war status if captured.
4 Doug Brooks, president of the International Peace Operations Association, a trade group representing security contractors: “during the kinetic part of the war we had all sorts of protections. Now that we're in the reconstruction phase, we don't have any.”, retrieved 2 Jan 2009 from http://www.cfr.org/publication/16448/#4
contracts. Clearly, this goes beyond the purview of a single State, the limits of which the U.S. has just established to its own dismay, but could be set forth by SecO as NATO, the EU and the U.N.

In political terms, analysis of recent occurrences has conclusively demonstrated that outsourcing private security has as many profound implications as apparent motives:

− when used to circumvent the need for backing by parliament and public, political check-and-balance mechanisms are often shunted, but seldom for good reasons. Multilateral consultation and support is emptied of its contents, while the need to justify intervention vis-à-vis the international community is voided.

− if the capability-calculus is negative without outsourcing, overstretch will likely follow, either in economical terms (when the taxpayers start asking questions) or in military terms (when body bags start to affect recruitment and public support).

− when misused to seek official deniability, both political and public scrutiny are negated. This, in turn, undermines the credibility of the government and trust between executive branches, since the links closest to the contractor tasking authority will be most vulnerable to media exposure and legal action.

− when justified by budget considerations, outsourcing should go hand in hand with open bidding practices and contractual orthodoxy, for the lack of either will lead to squandering of public money, mismanagement and ultimately shortchange defence budgets, that could otherwise be spent on transforming official Armed Forces, in other words on ‘insourcing’.

− when optimising operational capabilities is the motive, cost management is the key to its added value, since private companies have but one motive: profit. The mechanics of profit being rather simple, either more quantity (i.e. more conflict) or less quality (i.e. less security) are the two most natural culprits of deficient cost management.

− when transparency is being eschewed through outsourcing, it normally follows a political decision by the executive power. Military control and civilian oversight - the only mechanisms that can restore it - will have been curtailed or neutralised. Resulting political damage will induce negative perceptions of both mechanisms and their associated leadership, but history has shown that legal action will usually not address the ones that ordered the stealthiness.

− when accountability is shunned, political and legal liabilities often ensue. International law has it that the conduct of ‘agents operating within the scope of a state’s authority’ is attributable to its government. Transparency and accountability being the main hallmarks of good governance, they can safeguard the sending state of legal complications if they are enshrined in its outsourcing practices. Failing to enforce them however, can significantly curtail the political leeway of that state (as negotiations for a SOFA in Iraq demonstrated).

− the same can be said when outsourcing is used to perform inherently governmental functions. If the sending state fails to prosecute criminal or fraudulent activities of its contractors or to suspend the execution of the contract when the scope of its authority is exceeded, political and legal difficulties are to be expected.

Indeed, beside a generic international legal framework, specific legal arrangements tailored to regional & local circumstances are necessary to harmonise different levels of jurisdiction and a legal framework, that has not adapted to the security realities of failed states and actors that play by their own rules.

To be sure, knowledge of these implications and political will to mitigate their effects can create the framework in which outsourcing security and military logistics do provide added value at reasonable cost, thus safeguarding Armed Forces for their core business. The proven fact that the U.S. Government’s tradition of good governance and sound accountability failed to properly regulate private provision of defence and security functions in Iraq and Afghanistan, cannot be attributed solely to mismanagement of the Bush-Cheney administration though: the rapid pace of outsourcing had clearly outgrown U.S. regulatory dynamics.

Brisk growth of outsourcing also leads to the most thought-provoking development, namely the rationale that NATO’s Strategic Commanders use to justify contracting by arguing that "military budgets and available resources [being] stretched, NATO may well turn to commercial sources to perform functions that traditionally have been performed by NATO civilians and/or military personnel."

Indeed, it takes only one iteration further to consider that outsourcing is the natural follow-up during a prolonged commitment of ‘military personnel of a certain (group of) nation(s)’. Along this line of thinking, coalition partners perform the ‘initial entry’, do the ‘hard fighting’ if any is required, organise logistics and security in the theatre as well as to and from it (through national or
multilateral PSCs and PMLCs) ... and - when overstretch or waning public support emerge on the horizon - hand off to a SecO, which then provides sustainability for the effort (and takes over the bills through common funding).

While several occurrences have been described throughout the previous chapters, putting in perspective some recent examples of this outsourcing-cascade (that have not necessarily been approved and funded) should illustrate this point:

- CIS support for the BALKANS and guarding services for KFOR HQ
- Chartered Air Transport for (virtually all EU- & NATO-led) operations
- NATO Training Team for Security Sector Reform in Kosovo
- NATO Training Mission - Iraq and Guard services of trainers in Iraq
- EUFOR in CHAD followed by MINURCAT2
- C-IED, Police, OMLT and Weapons Intelligence Team training for ISAF
- Intelligence gathering, analysis and targeting in Iraq, Afghanistan (and possibly in Pakistan 7)
- APOD management & Air Traffic Management of KAIA and KAF
- In theatre airlift for ISAF
- NATO Training Mission - Afghanistan for Police and National Army mentoring

Providing policies and practices with regard to outsourcing security are granted sufficient regulatory attention and specific treatment (i.e. not as any-other-contract), specialised multilateral agencies such as EDA and NAMSA seem to provide the best guarantees against undue 'pork-barrel' politics. Furthermore, through a consolidated multinational approach, smaller nations can leverage capabilities, which they would otherwise not have committed and the U.N. is in a better position to seek adhesion from less-developed countries to their peacekeeping endeavours.

But improving outsourcing outcomes requires a 'management model', if not one common to the different SecO, then certainly a trustworthy 'interoperable model', that nations can easily plug into.

Although not legally binding nor introducing a new body of legal articles, the often cited Montreux Document provides both a legal framework and a set of ‘Good Practices for Contracting States, Territorial States and Home States’ 8. Formal partnership 9 to this document by NATO and EU member states would lend this document the moral authority it deserves and provide the much needed common model for outsourcing to Private Military Companies.

Arguably, if the arrangements on Permanent Structured Cooperation in the Treaty of Lisbon 10 are to be realistically fulfilled, groups of nations that will join in initial action within a period of five to 30 days with support elements including transport and logistics, shall only be able to do so if they are supported by contractors and be extended up to at least 120 days if they can subsequently handover to multilateral partners ... and (more) contractors.

All told, one overarching conclusion and recommendation seems to emerge from the analysis:

If you cannot control Private (Military) Companies, don't hire them!

### 5.2 Epilogue

The conclusions of a financial report on the 2008 budget exercise to the North Atlantic Council brought the matter to a sharp focus:

*Outsourcing and civilianisation is increasing. This can be the result of a cost/benefit analysis, reflect the unavailability of military manpower (especially in the area of Command, Control and Communications), or be caused by shortfalls in the force generation process for Alliance Operations and Missions. [...] In all cases this increased reliance on outsourcing and civilianisation effectively shifts costs from individual nations to NATO common funding and places additional pressure especially on the Military Budget.*

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7 Although implied in several news reports (e.g. Thompson, G., & Mazzetti, M. (2010, Mar 27). U.S. official denies using contractors improperly. *The International Herald Trubune*, p. 6), it was not confirmed or sanctioned by official sources at the time of the writing.

8 Loc Cit, Part II.A – II.B and Part II.C respectively.

9 At the time of the study limited to 33 nations, but including major actors as FRA, DEU, GBR and the USA.

10 Article 1 of the Protocol on permanent structured cooperation established by article 42 of the treaty on European Union.
Since the Military Budget in NATO and the Athena-mechanism in the EU are financed by Nations anyway, the bottom line of this assertion is hence that increased reliance on outsourcing and civilianisation effectively shifts the financing mechanism from a ‘contribution-in-kind-scheme’ \(^{11}\) to a ‘disbursement’ mechanism \(^{12}\).

Dependence on outsourcing to Private Military Companies also became painfully clear in the area of Sector Security Reform. Trust Funds were set up for Sector Security Reform in Afghanistan, Iraq and Kosovo (e.g. the Afghan National Police, Kosovo Security Forces and the NATO Training Mission in Iraq) and subsequently not filled with funds or equipment, which then prompted proposals to apply multilateral common funding. Given further shortfalls in force generation, the door for contracting of Private Companies was then opened.

This ‘creeping decision process’ also explains how, ultimately, national Defence budgets are being funnelled towards Private Military Companies, which raises the question as to whether Security Sector Reform should be financed with Defence budgets, often unable to fuel a much needed transformation and restructuration process of national armed forces, as it happens.

NATO’s SecGen – conceding that budgets would not be rising \(^{13}\) - wanted member states to be more efficient in every way: in the type of equipment purchased and in how they used such equipment. “If Europe made better use of its forces and did things more efficiently, it would have a global role to play”, he exhorted to an audience of European pundits. This requires better institutional links between the EU, NATO and ultimately the United Nations. NATO’s subsequent SecGen, Anders Fog Rasmussen, felt compelled to use the same rationale when addressing the Heads of State and Governments at the 2010 Lisbon Summit, but arguably to the same avail, i.e. statements of faith.

In the same vein, Washington-based experts \(^{14}\) opining that – “in the midst of an economic crisis – NATO should not count on any growth in resource availability.” Quite radically for American pundits, they added the conclusion that NATO’s Level of Ambition should be reconsidered. From the sobering, but entirely legitimate analysis, that the two major and six smaller operations, which constituted the Ministerial Guidance for the Defence Planning cycle initiated in 2006, would NOT be within reach in the next decade, they also induce more efficiency and economies within the current budgets.

As evidenced by the study, the rationale of efficiency improvements is equally invoked by most European political parties. As one fraction in the European parliament posited, "before we ask European tax-payers to accept an increase in our defence budgets, we have to show them that we have been successful in spending those €200 billion better and more collectively, namely through the pooling, sharing and joint development of military assets and infrastructures\(^{15}\).” Defence establishments are often allowed to 'streamline' their military business only in as far as political, (sub-)national or economic interests are not negatively affected (too much). One of the most compelling conclusions of the study is however, that they should retain sufficient critical mass to allow them to incorporate, supervise and steer the actions of PMC in operational theatres and through the ensuing Security Sector Reform phase. If neither national armed forces nor multilateral SecO preserve the capability, knowledge base and legal framework to 'encapsulate' corporate security providers, these will fill the vacuum on their own, providing - and as long as - funding is made available.

On the other hand, it is equally important to realise that ‘outsourcing’ has the potential to positively impact the economics \(^{16}\) of Defence & Security on the short term, because it provides more ‘core’ capability by contracting out the ‘corporate’ tail. In the long run, however, it inevitably diverts investment from ‘inherently governmental functions’ and surrenders the sovereignty of the state as well

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\(^{11}\) Inherent to the provision of military capabilities and its cost-lie-where-they-fall corollary.

\(^{12}\) A nation is invited to ‘disburse’ for what it cannot or will not provide in kind.


\(^{15}\) Response of the Socialist Group in the European Parliament (PSE) to the author’s inquiry on the subject.

\(^{16}\) And, arguably, the personal interests of certain politicians, as evidenced by the links between outsourcing and companies as Halliburton and Blackwater.
as its monopoly on force to the private sector. Whether this trend is irreversible barring a significant infusion of resources, both human and financial, remains a matter for debate and further dissertation.

In fine, the study clearly substantiated the contention that providing resources below a certain level for Defence & Security, leads to the consequence that military tasks are insourced to other nation-states or to Security Organisations, which then outsource them, if the required capabilities are collectively not at hand. The assertion that some political or industrial circles might be cognisant of this causal link is a cynical one: if political thinkers see multilateralisation (a.k.a. insourcing) as an intended consequence of reducing defence budgets, they should follow up on their venturesome policies, for private military thinkers might take them to the next level and collect the bonuses from incapacitated defence establishments.

As was shown by the Bush-administration, ‘forward leaning management’ can also provide a direct path to outsourcing requirements, through underinvestment in corporate and supporting activities, thus providing the substrate for a multi-million-dollar industry that proves very versatile. The point was illustrated brazenly by the quote in the Wall Street Journal on Blackwater, rebranded as ‘Xe’ after its 2007 shooting incident leaving 17 Iraqis dead: ‘The company is counting on offsetting that loss of business, for hundreds of millions of dollars a year, with contracts in Afghanistan.’

More and more, the unnerving opinion that a ‘contractor-industrial-complex’ in Washington has an economic interest in foreign expeditions is gaining ground: the realisation that U.S. foreign policy can only achieve its goals with a multinational contractor force or ‘real allies’ adds up to the conclusion that a lack of multinational capabilities can only be made up by hiring private contractors. Q.E.D.

5.3 What the future may hold for the provision of private security

The Obama-administration has reversed governmental guidance back towards ‘insourcing’, reportedly under pressure of the unions and good-government groups calling for ‘a tougher definition for inherently governmental work, largely because of the George W. Bush administration’s push to outsource’. In the Federal Activities Inventory Reform Act, all agencies (and more specifically, the Pentagon), are directed to avoid over-reliance on contractors and to INSOURCE their inherently governmental activities, defined as those ‘so intimately related to public interest as to mandate performance by federal government employees’.

Renewed scrutiny by the U.S. Congress - concerned with many long-standing issues for awarding, managing, and auditing the vital contracts that support logistics, security, and reconstruction missions during U.S. contingency operations in Iraq and Afghanistan - was to follow in June 2010. The hearings revealed significant shortcomings the procurement procedures, poorly defined and poorly executed contracts, inadequate planning, weak provisions for accountability, unnecessary work and costly rework—problems that were reportedly the ‘undermining attainment of national objectives and wasting billions of taxpayer dollar’.

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17 This debate is gaining traction in the U.S. due to the perception that U.S. Armed Forces have become too dependent of private companies and have lost the ability to operate without them. The strongest argument in this vein was made by Prof Allison Stanger, Op Cit.
18 This adequate investment level were called ‘Convergence milestones’ and determined in Chapter 3 of the study.
22 While this definition was welcomed by most observers (including the PMC’s) as clarifying the roles of contractors and federal employees as well as the military, all concurred to convey the Obama administration to develop it further in subsequent legislative proposals. The fact that the Obama-administration felt compelled to re-define the notion also confirms the conclusions of Chapter 4 to the same effect.
These findings were underpinned by recommendations for the Congress and the Obama-administration in a report with the applicable title ‘Contracting in Conflicts: the path to reform’, which captured to a large extent the problems that are encountered in Iraq and Afghanistan as follows:

- Improve U.S. government management of Stabilisation & Reconstruction contracting
- Rebuild, expand and improve the ranks of contracting personnel
- Establish a contingency contracting reserve corps
- Increase transparency and accountability:
  - by increasing scrutiny of contractors
  - by improving the legal and regulatory framework
- Raise standards among contractors
  - by clarifying the proper roles of contractors in conflicts
- Integrate the role of contractors into policy and strategy
- Integrate contractors into command and control
- Change the U.S. government’s culture of contracting
  - by harvesting and applying lessons learned more diligently

The impetus for reform notwithstanding, tensions between President Karzai and the commander of ISAF, Gen Petraeus, would escalate in October 2010, when he accused the United States of ‘exporting killing to Afghanistan by giving contracts to private security companies’. Taking on an increasingly anti-Western tone, the presidential decree required all private security firms to stop operations by December 2010. While attempting to transition to the use of Afghan police and soldiers to protect their military convoys, NATO and other actors asked for additional time to put the ban on PSC into effect, especially with respect to the protection of NGO-operatives. Civilian development organisations in particular, argue that they would not be able to continue work without security for employees, potentially endangering several billion dollars worth of programs and projects.

Private security contractors working in Afghanistan will have to either join the Afghan police force or cease operations by the deadline, according to Karzai’s decree. It does provide an exception, however, for private security firms working inside of compounds used by international groups (such as Dyn Corp and Xe), including embassies, businesses and non-governmental organisations.

But in addition to roads, private security firms in Afghanistan protect airports, guesthouses, businesses, universities and international dignitaries. According to experts, their guards are often better trained than Afghan soldiers and police, raising the question of vulnerability after the decree takes effect and whether the (official) Afghan National Security Forces will be able to fill the security void left by PSC’s. But in any event, the prospect that laid-off PSC operatives would join the Taliban with their skills and inside (procedural) knowledge, can hardly be called a desirable mode of developing the Afghan security equilibrium.

The ingredients of the political debate in which President Karzai – somewhat provocatively - argues that “the money starts in the name of the private security companies in the hallways of the U.S. government, the profits are made and arranged there [and] [it] then goes to private security firms [...] to kill people here” have, of course, a wider interest and impact.

Not only is the point made that the actions of IGO & NGO’s in conflict areas have become contingent on the presence of security providers – official or private – with the thought provoking corollary that part of the funds devoted to development & reconstruction are ‘unproductive’ towards that aim. The unintended, but nonetheless perverse consequence of funnelling moneys to PSC’s is that a considerable part of them are end up in the hands (or bank-accounts) of Taliban warlords, barely disguised as Afghan PSC Chief Executive Officers.

While it is a matter of public record that several companies have been implicated in the deaths of Afghan civilians and have been accused of paying the Taliban for safe passage, it can be considered very likely, according to the same pundits, that transit routes will be impassible, foreign companies will leave

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27 Some sources allude to the fact that Karzai used this ban to counter unrelenting charges of corruption, notably by members of his family and clan.
28 Ibid
Afghanistan, the economy will suffer, and - perhaps most ominously - unemployed security guards will turn to the insurgency in the wake of the ban on PSC's.

Further to the military, commercial, legal & political implications, based on the lessons learned of outsourcing in conflicts, the most recent developments in Iraq and Afghanistan yield new and thought-provoking consequences of outsourcing post-conflict. In a non-exhaustive way, they could be summarised as follows:

- the licensing by local governments acting as Host Nation can become an area of tension with the Sending Nations (that generally foot the bills) and increase the potential for corruption;
- funds for reconstruction and development are required to provide protection to IGO/NGO-operatives and safeguard the dispensation of aid, thus being diverted from their intended purpose;
- reliance on Private Military Logistic Companies becomes a major vulnerability when their services cannot be maintained;
- moneys spent on PMC's are funnelled to local warlords and enhance their capacity building;
- young, healthy and motivated potential security operatives receive better remuneration from PSC and forego enrolling in official Security Forces;
- indigenous PSC-operatives that lose their employment revert to insurgency (with inside knowledge of the official Security Forces and their procedures);

Assuredly, Defence & Security investments deserve a better outcome than keeping the balance sheets of private companies in the green, given the fact that the unit price of military hardware has gone haywire and has weakened business models based on hardware procurement rather than the provision of (military) services. Recent conflicts have shown that the effects that the money-flows related to outsourcing security services can be unintended and uncontrollable. Hence, both insourcing and outsourcing the provision of Defence & Security should remain an option, an enabler and a valuable instrument, not a last resort nor an exit strategy. But ultimately, when it becomes a political and operational liability, resolute action should be taken to reverse and restrict its impact. It requires dauntlessness, understanding and command of the subject.
Annex A – SWOT analysis of MULTINATIONAL CAPABILITY POOLING

(OppORTunities & Threats on reverse page)

<table>
<thead>
<tr>
<th>STRENGTHS</th>
<th>WEAKNESSES</th>
</tr>
</thead>
</table>
| 1. **Niche capability holders are motivated** | 1. **Geographical separation (from homeland) is source of added cost**
| ‘Niche-prone’ thinking is only possible if a nation is reasonably sure that a partner will live up to his promise to provide a capability on which it relies, since partners will also depend on them, call it ‘constructive blackmailing’. | Stationing personnel abroad generates considerable cost, e.g. for FRA-BEL joint flying training, compensation for duty abroad being perceived as insufficient, results in difficulties to station BEL personnel in France. |
| 2. **Insourcing pays off** | 2. **Efficiency suffers from lack of interoperability**
| Multinational capabilities such as strategic airlift or helicopters can be easily ‘insourced’ to a SecO, as developed in Chapter 4. | Systems that cannot operate jointly or communicate in the engagement space lead to inefficiencies and weaken any advantage in pooling. |
| 3. **Higher threshold to under-invest** | 3. **Security arrangements hamper ops**
| When faced with budget deficits, a threshold to seek cuts in multinational projects is likely to exist under pressure from partners. | Protective security arrangements preclude efficient exchange of information, e.g. HELIOS and U.S. National Security Agency imagery. |
| 4. **Less overlap in capabilities** | 4. **Information sharing inefficient**
| As a result of point 1 above. | Information sharing with industry is hampered by national regulations and industrial information is considered as ‘proprietary info’, which cannot be exchanged by nations. |
| 5. **Stable environment for budgeting of cost share** | 5. **Complex bookkeeping**
| e.g. software development for the F16 is a multinationally funded endeavour in which partners decide jointly on required capabilities and provide financial resources in a multi-year financial plan for software development and testing. Thus, industry cannot re-package software which another partner has already paid for, a well-known practice. | Bookkeeping for multinational projects becomes very complex due to exchange rates and contentious determination of the value of services provided to each other (e.g. ATARES, the Air Transport Arrangement for the Exchange of Services between European Air Forces). |
| 6. **Cooperative O&M arrangements** | 6. **Political decision to commit and withdraw**
| Operations & maintenance schemes, e.g. for frigates, MCM/tanks/A400M/NH90 is more efficient, thus cheaper. | e.g. the Eurocorps HQ could not be committed to KFOR because the ESP CHOD considered it as a recognition of KOSOVO authorities. |
| 7. **Collective contracting of industry and private companies** | 7. **Cultural differences**
| Negotiation positions with industry are stronger, poor industry performance receives broader distribution. | Inherent to human interface, but can weaken pooling. |
| 8. **Collective knowledge-base broader** | 8. **Leadership coordination**
| e.g. with stepped introduction of a new weapon system, partners can get early experience even before they own the system (e.g. BEL with A400M). | Unlike integrated command structures (as the NATO Command Structure), leadership has to be harmonised between partner nations, which creates complex hierarchical structures in which individuals take only orders from national superiors. |
| 9. **Common standard operating procedures** | |
## Annex A – SWOT analysis of MULTINATIONAL CAPABILITY POOLING

**Strengths**

1. **ALL nied & Encourages Synergies**
   - e.g. multinational co-operation schemes as Admiral Benelux provide synergies when composing a Maritime Task Force, where one partner can provide a frigate, while another delivers on mine-counter measures or support vessels.

2. **Promotes Political Integration**
   - Commitment of multinational capabilities to an operation requires political consensus and diplomatic support to be effective.

3. **Favours Material Interoperability**
   - Multinational groupings favour the acquisition of interoperable material, such as A400M and NH90.

4. **Incites Human Interoperability & Multi-linguism**
   - Living, training and fighting together naturally incites people to work collectively, sharpens social skills and engenders interest to learn and use other languages.

5. **Provides Opt-out Clause to Eschew BotG**
   - Certain nations attempt to avoid committing Boots-on-the-ground (that can bring back body bags) and thus sharing the burden, by systematically providing Logistics & Support. This practice obviously is not acceptable to nations that take the political risks and suffer combat casualties.

6. **Can Replace Outsourcing**
   - Enabling capabilities that are not available to an operation have to be insourced (see Chapter 4) or outsourced (see Chapter 5).
   - This can be avoided by pooling capabilities that do not necessarily have to be co-located but that can be committed to an operation after ‘force integration training’.
   - Avoiding use of private companies, that cannot be ‘controlled’, safeguards from significant liabilities and cost, as is argued in the rest of the study.

**Weaknesses**

1. **National Standards on Operational Safety**
   - e.g. (foreign) mechanics, that are not certified by the NLD aviation authorities, are precluded from working on NLD aircraft (F16, C130, ...), which was a common practice during the operations in the Balkan in multinational Deployable Air Task Force format, but has now receded due to restrictive regulations.

2. **Dependence on (Under-Investing) Partners**
   - Partners would renege on pooling if capabilities provided by partners were not funded adequately and thus not be available when they depend on them.

3. **Reluctance to Learn & Use Other Languages**
   - While non-native English speakers at staff level can usually function well, combat- combat support- and combat service support at the lower levels is difficult without a common language, e.g. in the Eurocorps 6 different languages (French, German, Dutch, Spanish, Polish next to English, the working language at staff level).

4. **Use of Opt-out Clause Cause Friction**
   - Due to a perception of uneven burden sharing.

5. **Less Redundancy in Capabilities**
   - Redundancy can be crucial when critical capabilities are solicited by coinciding operations.

6. **National Laws on Labour**
   - Disparate national legislations on labour (e.g. number of hours without rest, extraneous work in warm/cold weather, etc) can cause command problems and friction among personnel of partner-nations.

7. **Surrender of Sovereignty Contested**
   - e.g. the handover of Air Policing duties between NLD and BEL was common practice until 11 Sep 2001, after which ‘RENEGADE’ procedures were reverted to national control.

8. **Legal Issues on ROE & Responsibilities**
   - e.g. ROE for anti-piracy are very difficult to govern at the multi-national level, because national liabilities are at stake.
### Annex B - Taxonomy of OUTSOURCING Defence & Security

<table>
<thead>
<tr>
<th>Mission Type / NSA</th>
<th>Main Tasks</th>
<th>Areas of Activity</th>
<th>Status/Motive</th>
<th>Customers</th>
<th>Active Actors/Companies</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Protection</strong></td>
<td>Guard - Alert public POLICE Protection of VIP, humanitarian or military Logistic convoys, Oil &amp; pipeline protection</td>
<td>Civ or Mil AoR's, Combat zones, airports, office complex, shopping malls, parking lots,...</td>
<td>(Legal + illicit)/Profit</td>
<td>Private &amp; Public Companies Citizen (groups), GO &amp; NGO, UN agencies, EU agencies</td>
<td>Group 4, Securitas, Blackwater USA, Dyn Corp, Triple Canopy, Aegis, Global Strategies Sp 2</td>
</tr>
<tr>
<td><strong>Stewardship of public places &amp; infra</strong></td>
<td>Observe, deter &amp; alert public POLICE, riot control</td>
<td>Public infrastructure, Sports events, manifestations, riots</td>
<td>(Legal)/ Profit or Volunteers</td>
<td>GO, NGO, Sports clubs, Public Cie</td>
<td>Trovit UK, BOS Crowd Specialists, Lord's Cricket Ground MCC, The Protector Group</td>
</tr>
<tr>
<td><strong>Prison attendance</strong></td>
<td>Guarding of Prisoners, Ancillary services</td>
<td>Prisons &amp; Prison Camps (e.g. Abu Graib, Guantanamo)</td>
<td>(Legal)/ Profit Mostly regulated</td>
<td>GO</td>
<td>Vanguard Group 4, Wackenhut 5</td>
</tr>
<tr>
<td><strong>Investigation &amp; risk management</strong></td>
<td>Security background checks, Counter-intelligence, Labour &amp; marital matters, interrogation</td>
<td>Civ or Mil AoR's, Combat zones, post-conflict areas</td>
<td>(Legal)/ Profit Poorly regulated</td>
<td>Private &amp; Public Companies Citizen (groups), GO &amp; NGO</td>
<td>CACI, Titan (interrogation@ Abu Graib), MZM Inc</td>
</tr>
<tr>
<td><strong>Anti-piracy</strong></td>
<td>Guard &amp; protect, alert coast guard/navy</td>
<td>Shipping lanes, harbours,...</td>
<td>Idem</td>
<td>Private &amp; Public Cie, GO &amp; NGO</td>
<td>Trident, Satellite Protection Service</td>
</tr>
<tr>
<td><strong>Counter-Narcotics</strong></td>
<td>Fighting illegal drugs, training &amp; mentoring police in counter-narcotic duties</td>
<td>Afghanistan, South America</td>
<td>Idem</td>
<td>U.S. Drug Enforcement Agency, U.S. DoS and DoD</td>
<td>DynCorp, Blackwater 6, SAIC, ...</td>
</tr>
<tr>
<td><strong>Combat</strong></td>
<td>Mercenary services</td>
<td>Civ or Mil AoR’s, Combat zones, e.g. DRC, Angola, Sierra Leone</td>
<td>Illicit profit/ideology Unregulated</td>
<td>Internal or external patrons</td>
<td>Sandline International 7, Executive Outcomes 8 in Sierra Leone</td>
</tr>
<tr>
<td><strong>Insurgency &amp; Counter-Insurgency</strong></td>
<td>Mostly asymmetric warfare, bombing, use of IED</td>
<td>Failing states</td>
<td>Illicit profit/ideology Unregulated</td>
<td>Idem, Opposing factions</td>
<td>TALIBAN, 7 Pillars Partners 9</td>
</tr>
<tr>
<td><strong>Post-conflict</strong></td>
<td>Hijacking, kidnapping, arson</td>
<td>Failed states, war-torn areas during reconstruction</td>
<td>Illicit Profit/ideology Unregulated</td>
<td>Warlords &amp; Opposing factions attempting to reverse outcome</td>
<td>FNLC (Columbia) Executive Outcomes in Angola</td>
</tr>
</tbody>
</table>

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1. As INSECURITY can obviously also be outsourced, some examples relate to activities 'contracted out' to generate or maintain instability and power meddling.

2. The British Global Strategies Group won the contract to protect Baghdad airport (Source: Janes Defence Weekly of 9 Jul 2008).

3. Russian Business Network was allegedly hired by the Kremlin to attack Georgian Government websites during the conflict in 2008 (Source: Travis Wentworth in Newsweek of 26 Aug 2008).

4. Vice-President Cheney was indicted for alleged personal investment in the Vanguard Group, which invests in private prison companies. Source The International Herald tribune of 3 Dec 2008.

5. In the last 10 years, the number of prisoners in private hands in the USA, has grown from 15,000 to 145,000 (Retrieved 23 Aug 2008 from http://towardfreedom.com/home/content/view/348/55).


7. Sandline alleges to be a PMC for 'conflict resolution' (see http://www.sandline.com/site/), but was involved in at least 2 instances in Africa (New Guinea, 1997 and Sierra Leone, 1998) that can only be qualified as combat operations.

8. Executive Outcomes (EO) was paid a reported $60 million to combat a rebellion in Sierra Leone. It trained Angolan troops and helped fight the UNITA forces of Jonas Savimbi. (Source: http://towardfreedom.com/home/content/view/348/55). 

9. 7 Pillars offers help with intelligence, defense strategies, technology, and the waging of IWARS, i.e. countering attacks on critical infrastructures, including guerrilla warfare, terrorism, information warfare, and "more subtle forms of subversion" like propaganda and disinformation. (Source: www.7pillars.com)
<table>
<thead>
<tr>
<th>Mission Type / Outsourcing WHAT?</th>
<th>Main Tasks HOW?</th>
<th>Areas of Activity WHERE?</th>
<th>Status/Motive WHAT FOR?</th>
<th>Customers By WHO?</th>
<th>Active Actors/Companies To WHO?</th>
</tr>
</thead>
<tbody>
<tr>
<td>D&amp;S Consultancy &amp; Lobbying</td>
<td>Defence planning, procurement, Doctrine development, Civ-Mil transition assistance, Standardising Membership Action Plans</td>
<td>Defence Staffs (NATO/EU) Accession countries</td>
<td>(Legal+Illicit)Profit Mostly regulated</td>
<td>GO, NGO, NATO HQ &amp; ACT Defence Establishments UN agencies</td>
<td>Military Professionals Resources Inc, CUBIC 10, Orion Strategies 11</td>
</tr>
<tr>
<td>Pre-mission Training</td>
<td>Simulation &amp; wargaming, language proficiency, Leadership training, Weapons practice, psychological preparation, C-IED</td>
<td>Civ or Mil AoR's, Combat zones, developing countries, reclamation areas, Failing states</td>
<td>(Legal+Illicit)Profit or ideology Poorly regulated</td>
<td>GO, NATO ACT, UN agencies</td>
<td>Al Qaeda, NAMSA, MPRI 12, ATAC, Logicon, Erinys 13, Blackwater USA 14</td>
</tr>
<tr>
<td>Logistic Sp</td>
<td>Barracks &amp; camps, rations, mail, water purification, coronary services, field medicine</td>
<td>Civ or Mil AoR's, Combat zones, e.g. Gulf war, KFOR, ...</td>
<td>(Legal+Illicit)Profit Mostly regulated</td>
<td>GO, NGO, UN agencies Defence Establishments</td>
<td>Kellog Brown &amp; Root in Iraq (Subsidiary of Halliburton), Pacific A&amp;E, Medical Sp Solutions</td>
</tr>
<tr>
<td>Demilitarisation activities &amp; Security Sector Reform</td>
<td>Mine Clearing, mine avoidance tutorial, weapon collection &amp; destruction, IED detection and neutralisation</td>
<td>Weapon System Sunset programs (e.g. cluster weapons), Post-conflict zones (e.g. Lebanon, Angola, ...)</td>
<td>(Legal) Profit &amp; humanitarian Mostly regulated</td>
<td>GO &amp; NGO, UN - EU &amp; NATO agencies</td>
<td>Scandinavian Demining Group (Croatia), US EOD Technologies (Iraq), US Ronco Consulting/POA, NAMSA</td>
</tr>
<tr>
<td>Transport</td>
<td>Airlift - sealift - land transportation - air refuelling</td>
<td>Inter - theatre Intra - theatre</td>
<td>(Legal) Profit Partly regulated</td>
<td>GO &amp; NGO, UN agencies</td>
<td>Skylink, NAMSA, Omega Air Inc, Global Development Four, Setco Aviation</td>
</tr>
<tr>
<td>Operational &amp; technical field Sp</td>
<td>Air Traffic Control - Port Control - Interpreter &amp; translator services, ICT, Sp naval warfare</td>
<td>Civ or Mil AoR's, Combat zones, e.g. Gulf war, KFOR, ... Post-conflict zones</td>
<td>(Legal) Profit Partly regulated</td>
<td>GO &amp; NGO, UN agencies</td>
<td>Air Scan, Titan, NCA, NCSA, US BMD, Thales, ATCO, Dataline Inc, SAIC, Applied Marine Technologies</td>
</tr>
<tr>
<td>Total Management Concepts</td>
<td>Management of Mil base (airbase, camp, naval base or police station)</td>
<td>Civ or Mil AoR's, Combat &amp; Post-conflict zones (e.g. Afghan, Iraq)</td>
<td>(Legal) Profit Partly regulated</td>
<td>GO, UN agencies</td>
<td>ATCO</td>
</tr>
<tr>
<td>Procurement support</td>
<td>Lobbying, prepare procurement decision taking</td>
<td>Defence Procurement Staffs</td>
<td>(Legal) Profit Mostly regulated</td>
<td>European Defence Agency OCCAR, NATO CNAD</td>
<td>Jane's Consulting, U.S. Department of Commerce, lobbying companies</td>
</tr>
<tr>
<td>Research &amp; Development</td>
<td>Manage &amp; conduct (risk mitigating) research &amp; design</td>
<td>Mil industries</td>
<td>(Legal) Profit Mostly regulated</td>
<td>Idem, US Defense Advanced Research Projects Agency</td>
<td>Microsoft, Sun Microsystems</td>
</tr>
<tr>
<td>Export of weapons, spare parts &amp; components</td>
<td>Manage export of weapons and their components</td>
<td>World</td>
<td>(Legal) Profit Licensed by GO or (Illicit) Profit</td>
<td>GO, rebel groups</td>
<td>U.S. Defense Logistics Agency (Foreign Mil Sales), CACI (Consolidated Analysis Centers, Inc)</td>
</tr>
<tr>
<td>Weapon System Training</td>
<td>COTS/MOTS usage tutorial</td>
<td>Armed Forces operating procured weapon system</td>
<td>(Legal) Profit Mostly regulated</td>
<td>Operators of weapon system</td>
<td>Lockheed Martin, Boeing, Thales, L-3 Communications, Raytheon, NAMSA</td>
</tr>
<tr>
<td>Weapon System Maintenance</td>
<td>Repair &amp; maintain weapon systems and other MIL materiel</td>
<td>Idem</td>
<td>(Legal) Profit Mostly regulated</td>
<td>Idem</td>
<td>Idem, NAMSA, United Technologies,</td>
</tr>
</tbody>
</table>

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10 US Cubic was hired by the Hungarian Government to prepare its MAP to NATO (Source: D. Avant, “Privitizing Military Training”, retrieved 17 Aug 2008 from http://www.fpif.org/pdf/vol7/06ifmiltrain.pdf)
12 U.S. ex-special forces employed by MPRI trained Georgian Special Force Commando’s just prior to conflict over S Ossetia & Abchasia, (Source: Financial Times of 6 Sep 2008)
13 Erinys won a contract in 2003 from the CPA for recruitment & training of the 16.000-strong Iraqi Oil Protection Force
14 Blackwater USA is training various groups of Afghanistan’s Ministry of Interior in weapons and tactical operations. This training is in direct support of US Drug Enforcement Agency’s efforts to build a robust and capable narcotics interdiction capability; (Source: retrieved 2 Jan 2009 from http://www.blackwaterusa.com/training/inter_default.asp)
Annex C - Typical example of OUTSOURCING Defence & Security

About the International Peace Operations Association

The International Peace Operations Association (IPOA) is a 501(c)(6) non-profit trade association.

IPOA's mission is to:

- promote high operational and ethical standards of firms active in the peace and stability operations industry;
- to engage in a constructive dialogue and advocacy with policy-makers about the growing and positive contribution of these firms to the enhancement of international peace, development and human security;
- to provide unique networking and business development opportunities for its member companies; and
- to inform the concerned public about the activities and role of the industry.

IPOA is committed to raising the standards of the peace and stability operations industry to ensure sound and ethical professionalism and transparency in the conduct of peacekeeping and post-conflict reconstruction activities.

All member companies subscribe to the IPOA Code of Conduct, which represents a constructive effort towards better regulating private sector operations in conflict and post-conflict environments. It reflects our belief that high standards will both benefit the industry and serve the greater causes of peace, development, and human security.

Some of the services IPOA members provide globally every day:

- Aviation
- Base Support
- Communications
- Consultancy
- Demining and UXO Removal
- Humanitarian Development
- Insurance
- Intelligence
- K-9
- Legal
- Logistics
- Medical
- Products
- Risk Management
- Satellite Tracking
- Security
- Supply
- Surveillance
- Training

Annex D - Example of NATO outsourcing to Private Security Companies


FBO DAILY ISSUE OF SEPTEMBER 04, 2005 FBO #1378
SOLICITATION NOTICE

63 -- NATO Notification of Intent (NOI) to Invite Bids for a Contract Guard Service at Ar Rustamiyah in support of the NATO Training Mission in Iraq (NTM-I)

Notice Date
9/2/2005

Contracting Office
Department of Commerce, Bureau of Industry & Security, Office of Strategic Industries and Economic Security, Defense Programs Division, Room 3876 1401 Constitution Avenue, NW, Washington, DC, 20230

Description
The NATO Allied Joint Forces Command-South (JFC), headquartered in Naples, Italy, intends to issue an invitation for International Competitive Bidding (ICB) to hire a security guard service to support of the NATO Training Mission in Iraq (NTM-I). The selected contract will be responsible for providing security at the Training Education and Doctrine Center at Ar Rustamiyah in Baghdad. The contractor shall be responsible for access control to the compound and NATO buildings, for both individuals and vehicles, and to conduct perimeter patrols of the compound and buildings. This program will be funded by the NATO Military Budget Committee for an estimated two-year cost of 7.8 million EUR ($10.7 million USD) with the potential to be renewed for an additional four years. The bidding procedure will be two envelopes (lowest compliant bid, funded under the NTM-I Budget (CISI: 735001). Partial bidding is not authorized. The classification of this contact is NATO UNCLASSIFIED. The reference for this project is ACO-NAP-05-82 and all correspondence in relation to this procurement shall refer to this reference. The US Department of Commerce will be using as its reference IFIB-ACO-NAP-05-82.

ELIGIBILITY Companies which have performed at least, two contracts in the last three years substantially similar in scope to the requirement described in the solicitation. REQUESTS FOR PARTICIPATION RECEIVED DIRECTLY FROM FIRMS CANNOT BE CONSIDERED. IMPORTANT DEADLINES 1. The final date for the U.S. Department of Commerce to submit a Declaration of Eligibility (nomination letter) on your behalf is 3 October 2005. 2. The Invitation for International Bidding (IFIB/IFB) is planned to be issued and forwarded to those on the Bidders List: September 2005 JFC Naples will email this IFIB/IFB directly to all potential bidders and will post the tender documents on the following website listed below:

http://www.nato.int/shape/community/bidding/IFB/index.htm

Planned Bid Closing Date: November 2005

CERTIFICATION ALL FIRMS WHOSE FACILITY IS LOCATED WITHIN THE UNITED STATES MUST BE CERTIFIED BY THE U.S. DEPARTMENT OF COMMERCE IN ORDER TO QUALIFY TO BID FOR THIS PROCUREMENT. THE U.S. DEPARTMENT OF COMMERCE DOES NOT SERVE AS THE CONTRACTING AGENCY FOR NATO PROJECTS. The contracting entity is Allied Joint Forces Command (JFC) Headquarters (HQ) in Naples, Italy. However, only firms that the U.S. Department of Commerce has certified as eligible will be allowed to bid. A Declaration of Eligibility (nomination letter) will be submitted on their behalf to NATO JFC HQ Naples. Please visit the following website for more information regarding receiving certification and the required Declaration of Eligibility:

http://www.bis.doc.gov/defenseindustrialbaseprograms/OSIES/NATOprograms/index.htm
Annex E - Official sponsoring of OUTSOURCING business

Source: http://www.bis.doc.gov/defenseindustrialbaseprograms/osies/natoprograms/index.htm


Source: http://www.evd.nl/zoeken/showbouwsteen.asp?bstnum=222780&location=&highlight=guard
Annex F - OUTSOURCING in the UNITED NATIONS

Basic reasons for outsourcing

The Secretary General is to ensure that program managers are guided by following motives to outsource:

1. To acquire technical skills not readily available within the Organisation, including accessing state-of-the-art technologies and expertise or acquiring needed flexibility to meet quickly changing circumstances;
2. To achieve cost savings
3. To provide a source more effectively, efficiently or expeditiously;
4. To provide an activity or service not needed on a long-term basis;

Significant goals for outsourcing

With regard to outsourcing, following goals must be considered according to the resolution:

1. To respect the international character of the Organisation;
2. To avoid a possible negative impact on staff;
3. To ensure appropriate management and/or control over the activities or services that have been outsourced;

Criteria for outsourcing

The Secretary-General should furthermore ensure that program managers satisfy all of the following criteria in their assessment of whether or not an activity of the U.N. could be fully, or even partially, outsourced:

1. Cost-effectiveness and efficiency is considered to be the most basic criterion; it should be adequately demonstrated that an activity can be done significantly more economically and, at the very least, equally efficiently, by an external party;
2. Safety and security of delegations, staff and visitors may not be affected by outsourced activities;
3. Outsourcing may only be considered for activities where the international character of the Organization is not compromised;
4. Maintaining the integrity of procedures and processes may not be jeopardised by outsourcing;

ANALYSIS of the U.N.-status questionis

In several resolutions, the General Assembly emphasises its firm commitment to provide fair treatment on as wide a geographical basis as possible to all participants involved in United Nations procurement activities, including outsourcing. This concern for an unfettered procurement process transpires in a series 1 of ‘Comprehensive reports on U.N. procurement activities' and a Resolution on Procurement Reform 2. As these reports and resolutions directly or indirectly mention outsourcing (e.g. Par 35 of A/RES/62/269) one has to conclude that not only the procurement of goods, but also the procurement of services (i.e. merely a descriptive qualification of outsourcing) has raised political concern.

This concern seems justified, since analysis shows that over 5 years procurement of services has risen by 2.801 Million U.S.$, hence by a factor of nearly 2,5 from its 2002 level (corrected for inflation this equates to an 84% increase, as indicated on a 2000 year U.S.$ scale). The U.N. estimates on average 23% of this U.N.-wide procurement is used by the Department of Peacekeeping Operations (DPKO) and the Department of Field Support (HQ of PK-missions).

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Annex F-2

OUTSOURCING in the UNITED NATIONS

Tab/Fig 28 – U.N. Procurement for humanitarian and peacekeeping operations

Accordingly, as shown above, outsourcing as a ratio of total U.N. spending for humanitarian and peacekeeping operations has overtaken the yearly budget for acquisition of goods in 2006.

Further analysis of the cited reports and resolutions reveal concerns – and even regrets 3 - for 'delays in the response of the Secretary General' on procurement governance.

Clearly, (at least some influential) nations have taken conscience of the problems and drawbacks of the U.N. procurement process and want to turn it around, not in the least to optimise outsourcing of security needs.

Excerpts of this reform agenda 4 show interesting correlation with the findings and analysis conducted earlier [see Par 4.4.3 - Political analysis and Par 4.5.2 - How it has been done: Private Military (Logistics) Contracting in practice], as evidenced by its headlines:

- Strategic management of United Nations procurement (i.s.o. case by case management)
  - Enterprise resource planning (setting and abiding by priorities)
  - Sustainable procurement (acknowledging that resources are limited)

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4 These excerpts were structured (for brevity) and commented (for clarity, in italic) by the author.
Optimization of the acquisition and procurement management processes
- Efficient acquisition planning and coordination (ensuring monitoring and compliance of contractors)
- Best value for money principle (whole-life considerations, fairness & transparency)

Strengthening the internal control mechanism of the U.N. procurement function
- Ethics, integrity and conflict of interest (*education and auditing principles*)
- Awarding of contracts and competitive bidding process (*effective and international*)
  - No ‘bundling’ of contracts (to keep bidding open and transparent)
- Independent bid protest system (to preserve opportunities for developing countries)
- Vendor management (through a database with ‘accepted’ vendors, enhances transparency on contract awards per nation/region)
- Subcontracting (given lack of disclosure and compliance with prime contractor obligations)

Governance structure (*specific procedures for peacekeeping with regard to oversight*)
- Human resources management (of contracting, field-management personnel)
  - Training (in ethics, management and (self-)auditing)
- Information technology support (to enhance transparency and strategic management)
- Accountability and delegation of procurement authority (*regarding ALL cost parameters*)

The general tone of the resolutions, evidenced by terminology as ‘the GA recalls’, ‘reiterates’, ‘notes with concern’ or even ‘regrets’, seems to indicate growing frustration at previous inaction of the Secretary General or possibly at recalcitrance of the U.N. bureaucracy to review and adapt its processes. Furthermore, informed observers will recognize insistence on ‘Best Value for Money’ principles as relegation to consistent perceptions of wasteful spending practices of the United Nations.
Annex G - OUTSOURCING in the EUROPEAN UNION

Facts, findings & opinions on Third Party Logistics Support (Source: 2007 EDA Conference)

Of the main conference headlines on TPLS, following are most relevant for further policy determination:

- TPLS can fill gaps in logistics, but not for military operations as such because that causes potential legal, political and ethnical problems;
- TPLS allows focus on core-ops, but cost should be weighed against non-use of military logistics;
- TPLS benefits from a single contractor (with sub-contractors) for all nations providing standardisation, flexibility and short reaction time;

The EDA conference was also the occasion for Chairman of the EU Military Committee to voice concern that outsourcing should not be considered as the passkey for all problems, since protection would have to be provided to the contractors and because it might leave military resources underused. He was joined in his reservations by Lt Gen Damay, who had drawn from the EUFOR mission in DRC that TPLS has not met the required standards and that the contract was not specific enough to allow the TPLC to be controlled 1.

Further provisos were expressed from an unexpected source: the Director of Transport and Procurement for the World Food Program, Amer Daoudi, admitted that his WFP logistics teams were sometimes 'competing' with the private sector, 'who pushed up transport prices damaging local economies and infrastructure, and ultimately jeopardising the mission' 2.

This disheartening picture was completed by testimony of international agencies and NGO unwilling to work together and 'jobs being offered to local people in a crisis zone, with those jobs disappearing once the crisis had ended' 2.

Nevertheless, as Elke Krahmann 3 posited during the expert workshops leading to the previously mentioned Montreux document, a better use can be made of the existing controls for the regulation of PM(S)C, especially for those who export their services (as is mostly the case, given their corporate and transnational nature). Notwithstanding their transnational character and the apparent lack of interest of individual governments, the EU could broaden the understanding and means by which private military forces can be controlled by regulating the service-based contracts and the export of these services, rather than the companies themselves.

Conclusions and take-away for EU policy on outsourcing

For the attribution of responsibilities, following task distribution was proposed as a conclusion of the EDA-conference:

- Military to plan, control and ensure interoperability
- Civilian bodies to perform management
- Joint responsibility for operations
- ATHENA, the EU common funding mechanism, to 'enable the operational commander' should finance the needs for outsourcing through to the 'winding-up phase'.

A need for a STRATEGY towards EU-logistics was clearly felt and should be prepared with following actions:

- the development of EU standards for services to be outsourced to industry
- an investigation into the establishment of a mechanism for pre-planning and early coordination for all the actors to ensure effective support to CSDP-missions;
- the definition of a business model that would include the various types of contracts that could exist with third parties and EU logistics stand-by arrangement;
- a review into the possibility of the establishment of an EU logistics base in the theatre of operations;
- a study into the use of databases and the development of an IT infrastructure that would allow commonality of systems and processes across participating

2 Ibid, p 6
The aim of this strategy with regard to 'commercialising logistics' would ultimately be to 'share logistic activities'.

**EU dispositions on outsourcing of military capabilities**

The legal basis and aspects of EU common funding as a way of insourcing their defence & security requirements are covered through the ATHENA-mechanism. In an Act of the special Committee of 2005, Financial Rules applicable to expenditure financed through ATHENA were established. These rules allow also for the possibility of outsourcing requirements to private companies under certain conditions.

The general principle is that authorisation can be granted for operational common costs incurred during the preparatory phase of a specific operation, which are implemented directly by ATHENA, or related to the operation after the end of its active phase.

Nonetheless, Article 7 of Part II of the Special Committee Act, dealing with Rules on Procurement, authorizes the operation commander that has requested a military capability, which could not be obtained in the force generation process, to propose the outsourcing of this capability.

The Special Committee, after an optional advice from the EU Military Committee, will authorise the outsourcing, which can make use of deviations of normal procurement rules, for instance for secret and special security measures and protection of essential interests of the EU.

Contracting authorities may award contracts by negotiated procedure after having published a contract notice, when no (suitable) tenders or no applications have been submitted, providing at least three candidates have been consulted.

In some specific cases (e.g. urgency due to an operation), sole source procurement is also made possible.

Three separate cases are defined by the Special Committee Act:

- **ATHENA in (autonomous) EU military operations**
  The ops commanders receives a delegation to draw on imprest accounts for a range of capabilities as summarized in the table below. He is responsible for checks before a commitment is made and is held accountable after the operation.

- **ATHENA where headquarters are provided by EU member states**
  In this case, the rules of the State which provides the Headquarter apply and all costs are reimbursed. This framework nation arrangement was used in the EUFOR Chad operation, when the French 'Economat des Armées’ pre-financed the ATHENA expenditures including all outsourcing involved.

- **ATHENA with recourse to NATO assets and capabilities**
  In EU military operations with recourse to NATO assets and capabilities (i.e. following the BERLIN plus arrangement), NATO financial rules shall apply to expenditure financed in common through ATHENA.

The Special Committee Act predefines a number of capabilities that can be the subject of outsourcing in its Annex II. In broad terms, they can be divided in two categories, i.e. capabilities that provide operational or logistic functions versus capabilities that would otherwise be provided by a civil-military operational staff.

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4 EU Special Committee Act 648/05 of 9 Dec 2005  
5 Ibid, Part I, Art 31  
6 Ibid, Part II, Article 11  
7 Ibid, Part IV  
8 Ibid, Part V
The list of capabilities that can be authorised for EU military operations through the ATHENA-mechanism for common funding are listed below:

**Tab/Fig 29 - Authorised ATHENA outsourcing capabilities for EU military operations**

<table>
<thead>
<tr>
<th>Ops &amp; Log capabilities</th>
<th>Staffing capabilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Maintenance and repair services</td>
<td>• Advertising services</td>
</tr>
<tr>
<td>• Land transport services, including armored car and courier services</td>
<td>• Financial services:</td>
</tr>
<tr>
<td></td>
<td>✓ Insurance services</td>
</tr>
<tr>
<td></td>
<td>✓ Banking and investment services</td>
</tr>
<tr>
<td>• Transport of mail by land and by air</td>
<td>• Computer and related services</td>
</tr>
<tr>
<td>• Telecommunications services</td>
<td>• Market research and public opinion polling services</td>
</tr>
<tr>
<td>• Architectural &amp; engineering services</td>
<td>• Research and development services</td>
</tr>
<tr>
<td>• Building-cleaning services and property management services</td>
<td>• Accounting, auditing and bookkeeping services</td>
</tr>
<tr>
<td>• Sewage and refuse disposal services; sanitation and similar services</td>
<td>• Management consulting services and related services</td>
</tr>
</tbody>
</table>

**ANALYSIS of the EU-status questionis**

Judging by the substance of the EDA conference and the thought-provoking approach of most presentations, it would seem that the EU is in the early stages of designing specific policy and guidance toward logistic outsourcing.

Whereas ATHENA provides a special financing mechanism for operations, outsourcing contracts for military logistics, let alone Security or Force Protection tasks, are seemingly appropriated and managed as 'any-other-contract'.

While it can be argued that the EU, given the fact that it emerged as an 'economic community' at its origin, should benefit from considerably more experience with the business of contracting out than other international and governmental organisations (such as the U.N., the WFP or NATO), a specific regulatory and governing system tailored to military outsourcing certainly merits consideration beyond the mere financing arrangements provided by ATHENA.

Indeed, as will be seen further in the study, U.S. Government outsourcing in Iraq has generated significant political and financial fallout, which can be traced back to lack of specific regulation and tailored governance.

Clearly, if the EU wants to undertake complex ESDP/CSDP missions on a regular basis in less-than-permissive environments, considerable regulatory work and policy building initiatives need to be undertaken without further due.

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9 Notably by the NATO Maintenance and Supply Agency, for an analysis of NAMSA, see Par 4.5.3
Annex H - OUTSOURCING in the North Atlantic Treaty Organisation

NATO’s governance principles

- Primacy of Operational Requirements
  Contractor support should be focused to satisfy the operational requirements necessary to guarantee the success of the mission.

- Shared Responsibility
  Nations and NATO authorities have a collective responsibility for planning and implementing contractor support to NATO’s multinational operations (as further discussed in the next sub-paragraph).

- Authority
  The NATO Commander, at the appropriate level, must have sufficient authority and control over contracted resources in order to enable him to receive, employ, sustain and redeploy forces assigned to him by nations in the most effective manner.

- Cooperation
  Cooperation amongst the nations, with NATO and - where applicable - other organisations operating in the Joint Operations Area (JOA), will contribute to the best use of contractor resources, eliminate competition among Troop Contributing Nations (TCN) and encourage competition between providers.

- Assuredness and Quality
  The provision of contractor support for operations must be assured when and where it is required, and meet agreed NATO standards where appropriate.

- Visibility and Transparency
  Visibility and transparency of contractor support capabilities between NATO and nations are essential for effective support of operations.

- Interoperability
  Interoperability of contractor support with military support concepts, doctrines and procedures, compatibility of equipment, and inter-changeability of supplies has a direct impact on mission sustainability and combat effectiveness of forces and should be maximised to the extent possible.

- Legality
  The use of contractors in support of operations must be in accordance with all applicable national, including host nation, and international law. Contractors will not be employed to take a direct part in hostilities.

- Integrity of Force Planning and Generation
  The use of contractors support to operations must not undermine the allocation by nations of capabilities through the force planning process, and their commitment through the force generation process.

NATO’s attribution of responsibilities

- Responsibilities for Identifying Contractor Support Requirements
  The operational Commander is responsible for establishing the support requirements for all phases of an operation, coordinating support planning, and coordinating the provision of support within his area of responsibility. This applies to contractor support requirements as well, but the ultimate responsibility for ensuring contractual support will rest with Nations, individually or through co-operative arrangements, such as NAMSA.

- Responsibilities for Contractor Preparation and Sustainment
  The operational Commander establishes the requirement for the training, deployment, force protection, protective clothing, health and safety of all civilians accompanying the force. With regard to civilians serving on a commercial services contract, the contractor is responsible to ensure the requirements are met and that he can operate in a self-sufficient manner.

- Responsibilities for Contractor Protection
  The NATO Commander will likely need to provide security for them and identify the requirement for equipping and training them for defence against chemical, biological, radiological and nuclear threats. In areas where local medical care is not available, the force may need to provide it.

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1 NATO explicitly cites the loss of Geneva Convention protection for this guidance
2 This is to be construed as ‘the physical security of the contractors in the field’.
Responsibilities for Command and Control
For contractor support under common funding or provided by Nations against a CJSOR or TCSOR requirement, full control will in principle fall to the NATO Commander. Where Nations fund contracts for national or multi-national purposes, command and control responsibilities will be determined through the Transfer of Authority (TOA) arrangement.

NATO’s current practices

Exchange of Information Between NATO and Nations
To effectively employ support assets and allow for redirection of support services in accordance with agreements between the NATO Commander and TCNs, the exchange of information regarding plans for deploying contractors to a theatre and standing contracts in place are facilitated as much as possible.

Operational Security
This risk applies at two levels - operational (knowledge of military plans and intentions) and tactical (local surveillance of military capabilities and activities). The latter risk is considered low in instances when the contractor staff consists of expatriate nationals, but is higher in the case of host-country or third country nationals. Both risks demand management by security vetting and monitoring of this personnel.

Integration, Review and Evaluation of Contracted Support
The deployment of contractors, whether using their own resources or not, must be included in the overall deployment plan and operational plan (OPLAN) in theatre. Senior NATO logistics command staff should conduct regular reviews of all sources of supply to fulfil requirements. During execution, the force C² structure must provide the required interface between the contractors and the echelons supported, so that the contractor is informed of the operational picture as required, and to allow flexibility in the employment of contractors to meet operational requirements. Continuous evaluation of performance through quality assurance methods and occasional auditing should ensure that contractors meet the requirements at the lowest cost. Certification of delivery of services and assessment of non-performances should further guarantee that fraud can be avoided and common funding is well spent.

Legal Status Of Contractors
In an international armed conflict zone, contractors should be treated as ‘civilians accompanying the force’. Their status will be governed by international law and the Geneva Conventions. No assignments, duties or situations should be created by or for contractor employees that will jeopardize their civilian status. Contractors must not take a direct part in hostilities, otherwise they will forfeit their status as civilians accompanying the force. Local hires regardless of nationality may enjoy the legal status accorded by the Geneva Conventions to civilians authorized to accompany the armed forces. In other operations, contractors’ status will be governed by host nation law or applicable Status of Forces Agreements (SOFA). Unless stated otherwise in applicable international agreements (e.g., SOFA or Transit Agreement) contractors will be subject to the law of the nation in which they are operating. Local hires regardless of nationality will be subject to the laws of the nation in which they are operating.

Carrying of Weapons
In principle, contractors will not carry weapons. However, in unusual circumstances weapons needed for self-defence where military personnel cannot provide sufficient force protection, may be authorised.

ANALYSIS of the NATO-status questionis
As was discussed in Par 4.5.3, application of NATO’s Policy On Contractor Support To Operations by the its multilateral Agencies as NAMSA and NC³A (acting as a one-stop-shop), provides good results both for TCN and Non-NATO-Troop-Contributing-Nations (NNTCN).
In order to obtain the best possible terms and conditions, nations can consolidate their requirements into common Requests for Proposals (RFPs). While most TCNs may have their own deployable contracting staffs and may be prepared to act independently in theatre, there is considerable merit in a collective approach. Nations can take advantage of the contracting experience and existing logistic services on a reimbursable basis, without having to ensure aforementioned responsibilities and safeguarding actions to avoid mismanagement and fraud on their own.
The issue of funding is worthy of deeper considerations though.
The primary funding mechanism for NATO operational activities remains that nations absorb the costs associated with their participation (i.e. the cost-lie-where-they-fall principle).
This is the general rule for exercises and Article 5 operations but also largely applies to non-Article 5 CROs. The principle also applies to non-NATO Troop Contributing Nations but does not preclude bilateral or multilateral support arrangements.
Where nations mutually cooperate to deliver a contracted support capability, multinational funding is most likely.
NATO has developed a planning template with a notional timeline, which in principle encompasses competitive bidding, but that can be shortened for sole-source projects.

Tab/Fig 30 - OUTSOURCING template with timeline (in weeks)

<table>
<thead>
<tr>
<th>Weeks</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Endorsement of requirement</td>
</tr>
<tr>
<td>4-12</td>
<td>Cost estimation</td>
</tr>
<tr>
<td>2</td>
<td>Authorisation</td>
</tr>
<tr>
<td>11-31</td>
<td>Contract</td>
</tr>
<tr>
<td>14-52</td>
<td>Implementation</td>
</tr>
<tr>
<td>2</td>
<td>Handover</td>
</tr>
</tbody>
</table>

38 to 104 weeks from theatre requirement to handover of capability to OPS Commander

Everyone of these notional steps can obviously suffer delay, e.g. when political consensus cannot promptly be reached or when complex bidding processes lengthen the cycle. On the other hand, bidding processes, that are conducted only in theatre (i.e. on Kandahar and/or KAIA), as has become the rule rather than the exception, do not leave much room for competitive bidding by ‘outsiders’.
Annex I - Helicopter shortfall initiative

Following recurrent shortages of transport helicopters for ISAF (and also for other operations such as EUFOR TCHAD), both EDA and NATO started with a Helicopter Workgroup. Through information sharing and standardisation, the main aim of the initiative is to:
- improve insourcing additional helicopters from existing fleets, thus improving efficiency of ISAF intra-theatre lift;
- explore the feasibility of common or collective logistics and spare-part management;
- verify the potential of transposing previous multinational approaches as SALIS and SAC to helicopters;
- study future requirements and resourcing of heavy lift, including possible alternatives as precision air drop systems.

1. Specifics of the initiative

Six Nations (BGR, CZE, HUN, LTU, POL, SVK) participated with Mi-family helicopters in their inventories. Major configuration differences are limited to self defence systems, some instruments and radios.

The Mi-series of helicopters have a robust airframe and are ideal platforms for upgrades. National industries are well established in some countries that plan to keep the Mi-family helicopters in service till 2025.

Lack of national funding and capacity to generate adequate Maintenance Support, due to the fact that some nations have only limited capacity, are the main reasons for turning to multi-national cooperation.

Another recurrent problem concerns the training of aircrew, since none of the nations possesses flight simulators for Mi helicopters.

2. Internal and external contract support

NAMSA is fielded at Kandahar Airfield (KAF) and Kabul International Airport (KAIA) for APOD services including aircraft cross-servicing, equipment and vehicle maintenance as well as supply and maintenance. It has also established a Weapon System Partnership (WSP) programs, notably for helicopters of NATO and PfP nations. This program supports supply, maintenance, depot-level overhaul or modification, training support and management.

3. GBR/FRA cooperative Helicopter Initiative: Creation of a MI-User Group

In March 2008, GBR and FRA established a cooperative initiative to provide pooling of monies to assist nations in upgrading their helicopters. One of the initiatives aims at quick generation of a helicopter capability based on former Soviet Mi-Helicopters (NATO designation HIP) that would be upgraded through a TRUST FUND (erected on FRA and GBR initiative, joined by NOR and ICE).

Source: http://www.casr.ca

1 For all the 'politically correct' language about complementarity of EU/EDA and NATO efforts and pooling of forces, both SecO seem to be 'fishing in the same pool', albeit from slightly different perspectives.
2 Similar concepts that were matured to provide Strategic Airlift (See also abbreviations list)
3 The GPS assisted air drop system has already proven to be an alternative capability that could significantly reduce the need for heavy airlift aircraft and helicopters.
Annex I-2  Helicopter shortfall initiative

The mission capable helicopters would then be used to INSOURCE helicopter requirements (i.e. operate through common funding or a trust fund instead of through national funds under the cost-where-they-fall principle.

![Diagram of NAMSA Mi-USER GROUP]


A Mi USER GROUP was created to facilitate the start up of the new service with the aim:

- of sharing MI-HELI know-how
- to perform a joint analysis of support requirements
- to commonly organise pilot training and flight simulator
- to harmonise service policies and logistics (with a spare parts pool)
- to commonly organise support to Customers
- to seek cost savings through support service optimization

4. A multinational Contracting Model

The concept for a Multinational Contracting Model was set up with NAMSA at the hub and spokes involving user nations, Industry and customers such as NATO and the International Community.

![Diagram of Multinational Contracting Model]


This conceptual model could be considered as a benchmark for future 'mutualisation' of weapon system capabilities.

It should be noted that these multi-national user groups (Cr F16, tri-partite Minehunters [BEL-NLD-FRA], A400M and NH90) are most successful when based on a common platform.
## List of Abbreviations

<table>
<thead>
<tr>
<th>ACRONYM</th>
<th>Explanation - amplification - comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(AP)GC(77)</td>
<td>(Additional Protocol to) the Geneva Convention, as revised in 1977</td>
</tr>
<tr>
<td>ACO - ACT</td>
<td>Allied Command Operations - Allied Command Transformation, NATO Strategic Commands</td>
</tr>
<tr>
<td>AGS</td>
<td>Alliance Ground Surveillance (NATO’s AGS program consisting of Global Hawk UAV capability)</td>
</tr>
<tr>
<td>ANSF/ANP/ANA</td>
<td>Afghan National Security Forces, composed of Police (ANP) and Army (ANA)</td>
</tr>
<tr>
<td>AOM</td>
<td>[NATO] Alliance Operations &amp; Missions</td>
</tr>
<tr>
<td>AoR/AoO</td>
<td>Civil or Military Area of Responsibility/Operations (similar to JOA)</td>
</tr>
<tr>
<td>APOD/SPOD</td>
<td>Air/Sea Port of Debarkation</td>
</tr>
<tr>
<td>ATARES</td>
<td>Air Transport ADRangement for the Exchange of Services between European Air Forces</td>
</tr>
<tr>
<td>AU</td>
<td>African Union, involved in Peacekeeping Ops</td>
</tr>
<tr>
<td>AWACS</td>
<td>Airborne Warning and Control System, E3A aircraft of NATO Airborne Early Warning Force</td>
</tr>
<tr>
<td>BotG</td>
<td>[*] Boots on the Ground</td>
</tr>
<tr>
<td>BOA</td>
<td>Basic Ordering Arrangement, a ‘call-off’ capability in which multiple users can draw on a single contractual arrangement with a particular supplier</td>
</tr>
<tr>
<td>C²/C³/C⁴</td>
<td>Command &amp; Control / Communications / Computers &amp; Intelligence</td>
</tr>
<tr>
<td>CA</td>
<td>Comprehensive Approach, a combination of civilian and military measures and collaborative arrangements between different Sec Actors (e.g. EU, NATO &amp; U.N.)</td>
</tr>
<tr>
<td>CBRN</td>
<td>Chemical, Biological, Radiological and Nuclear</td>
</tr>
<tr>
<td>CDM/CDP</td>
<td>[EU] Capability Development Mechanism / Plan</td>
</tr>
<tr>
<td>CEMAC</td>
<td>Communauté économique et monétaire de l’Afrique central, involved in Peacekeeping Ops</td>
</tr>
<tr>
<td>CHOD</td>
<td>[EU] Command &amp; Control / Communications / Computers &amp; Intelligence</td>
</tr>
<tr>
<td>Cie</td>
<td>Company/Companies, commercial entity or part of a Battalion (between 100 and 200 soldiers)</td>
</tr>
<tr>
<td>CIMIC</td>
<td>Civil-Mil Cooperation</td>
</tr>
<tr>
<td>CIS</td>
<td>Combined Joint Statement of Requirements, i.e. a list of required capabilities for an operation of different nations (combined) and services (joint=army, air force, navy, marines)</td>
</tr>
<tr>
<td>CEO</td>
<td>Chief Executive Officer</td>
</tr>
<tr>
<td>CEP</td>
<td>[NATO] Civil Emergency Planning</td>
</tr>
<tr>
<td>CHG</td>
<td>Civilian Headline Goal</td>
</tr>
<tr>
<td>CIS</td>
<td>Commonwealth of Independent States, involved in Peacekeeping Ops or Communications and Information Systems</td>
</tr>
<tr>
<td>COMJFC</td>
<td>[NATO] Commander Joint Force Command e.g. Brunssum (responsible for ISAF) or Naples (responsible for KFOR)</td>
</tr>
<tr>
<td>CMPD</td>
<td>[E.U.] Crisis Management &amp; Planning Directorate, subsumes DGE VIII &amp; IX</td>
</tr>
<tr>
<td>CNAD</td>
<td>[NATO] Conference of National Armament Directors</td>
</tr>
<tr>
<td>CPCC</td>
<td>[E.U.] Civilian Planning and Conduct Capability</td>
</tr>
<tr>
<td>COE</td>
<td>Contingent-Owned Equipment = UN term for leased equipment</td>
</tr>
<tr>
<td>CONOPS</td>
<td>Concept of Operations, in principle approved by EU Council or NAC</td>
</tr>
<tr>
<td>COPS/PSC</td>
<td>[E.U.] Comité Permanent de Sécurité or Permanent Security Committee</td>
</tr>
</tbody>
</table>

`'costs-lie-where-they-fall'` The 'costs-lie-where-they-fall' funding concept entails that nations bear responsibility for all their own expenditures (only those made for critical & theatre-enabling capabilities can be reimbursed, given a Council decision (of the EU- or North Atlantic Council, as applicable). |
<p>| COTS/MOTS | Commercial/Military Off the Shelf, i.e. the practice of NOT designing to Mil Specifications |
| CP | Capability Package, a set of commonly funded measures and activities that provide capability |
| CPA | Coalition Provisional Authority [in Iraq] |
| CRO | Crisis Response Operations (as opposed to Art 5 Collective Defence Operations) |
| CRS | [U.S.] Congressional Research Service |
| CSF | Critical Success Factors, used in operational management; see also KPI |
| CS(S) | Combat Support (in support of infantry and cavalry) and Combat Service Support |
| D&amp;S | Defence &amp; Security |
| DAC | [E.U.] Deployable Augmentee Cadre, for Civilian Crisis Management Ops |
| DCAF | [The Geneva Centre for the] Democratic Control of Armed Forces |
| DDR | Disarmament, Demobilisation and Reintegration, see also SSR |
| DGE | [E.U.] Director General External, under the Secretary General High Representative |
| DJSE | Deployable Joint Staff Element, a forward deployed staff that 'reaches back' to its parent HQ |</p>
<table>
<thead>
<tr>
<th>Abbr-2</th>
<th>List of Abbreviations</th>
</tr>
</thead>
<tbody>
<tr>
<td>DOD / DoD</td>
<td>[U.S.] Department of Defense</td>
</tr>
<tr>
<td>DOJ / DoJ</td>
<td>[U.S.] Department of Justice</td>
</tr>
<tr>
<td>DOL / DoL</td>
<td>[U.S.] Department of Labor</td>
</tr>
<tr>
<td>DOS / DoS</td>
<td>[U.S.] Department of State (a.k.a. State Department)</td>
</tr>
<tr>
<td>DOTMLPFI</td>
<td>Doctrine–Organisation-Training-Materiel-Leadership-Personnel-Facilities-Interoperability (i.e. ACT sponsored acronym used to support Transformational thinking)</td>
</tr>
<tr>
<td>DPKO</td>
<td>[United Nations] Department of Peacekeeping Operations</td>
</tr>
<tr>
<td>DPP/NDPP</td>
<td>[NATO] or [EU] Defence Planning Process, for EU see also CDP</td>
</tr>
<tr>
<td>DRC</td>
<td>Democratic Republic of Congo</td>
</tr>
<tr>
<td>DRR</td>
<td>[NATO] Defence Requirements Review, compiled by the NC³A through operational research</td>
</tr>
<tr>
<td>DSACEUR</td>
<td>Deputy Supreme Allied Commander Europe, responsible for Berlin Plus operations (i.e. EU-led and NATO-supported)</td>
</tr>
<tr>
<td>EBTEAO</td>
<td>Effects Based Approach to Operations, see also CA</td>
</tr>
<tr>
<td>ECAP</td>
<td>European Capabilities Action Plan, often seen in conjunction with NATO’s Prague Cap Catalogue</td>
</tr>
<tr>
<td>ECOWAS</td>
<td>Economic Community of West African States, involved in Peacekeeping Ops</td>
</tr>
<tr>
<td>EDA</td>
<td>European Defence Agency</td>
</tr>
<tr>
<td>ESDP &gt; CSDP</td>
<td>European &gt; Common Defence and Security Policy (after ToL)</td>
</tr>
<tr>
<td>ESS</td>
<td>European Security Strategy</td>
</tr>
<tr>
<td>EULEX</td>
<td>EU mission in Kosovo (Police, Customs, Immigration and Legal officials)</td>
</tr>
<tr>
<td>EUBG</td>
<td>E.U. Battle Group of 1000 à 2000 personnel, similar in function if not in size to NRF (approx. 13,000 Pers in the new NATO NRF concept))</td>
</tr>
<tr>
<td>EUMC/EUMS</td>
<td>European Union Military Committee / Staff</td>
</tr>
<tr>
<td>FARS</td>
<td>[U.S.] Federal Acquisition Regulations System</td>
</tr>
<tr>
<td>FMS</td>
<td>[U.S. DoD] Foreign Military Sales</td>
</tr>
<tr>
<td>GA</td>
<td>[United Nations] General Assembly</td>
</tr>
<tr>
<td>GA</td>
<td>Government(al) Agencies, can be national (e.g. a developmental agency, such as U.S. Aid) or multilateral (such as the ICRC, NAMSA or EDA)</td>
</tr>
<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
</tr>
<tr>
<td>GNI</td>
<td>Global National Income (GNI = Gross Domestic Product plus the net flows of factor income (such as rents, profits, and labor income) from abroad</td>
</tr>
<tr>
<td>GIRoA</td>
<td>Government of the Islamic Republic of Afghanistan</td>
</tr>
<tr>
<td>GWOT</td>
<td>[U.S. expression] Global War on Terrorism</td>
</tr>
<tr>
<td>GWP</td>
<td>Gross World Product</td>
</tr>
<tr>
<td>HAW</td>
<td>[NATO] Heavy Airlift Wing, based at PAPA Airbase, HUN with C-17 airlifters</td>
</tr>
<tr>
<td>HN(S)</td>
<td>Host Nation (Support)</td>
</tr>
<tr>
<td>HoSG</td>
<td>Heads of State &amp; Government</td>
</tr>
<tr>
<td>IC</td>
<td>International Community</td>
</tr>
<tr>
<td>ICT</td>
<td>Information &amp; Communication Technologies</td>
</tr>
<tr>
<td>ICRC</td>
<td>International Committee of the Red Cross</td>
</tr>
<tr>
<td>IDPP</td>
<td>Integrated Defence Planning Processes (NATO’s reviewed DPP)</td>
</tr>
<tr>
<td>IGO</td>
<td>Inter-Governmental Organisation or International Organisation</td>
</tr>
<tr>
<td>IHL</td>
<td>International Humanitarian Law</td>
</tr>
<tr>
<td>IPI</td>
<td>International Peace Institute</td>
</tr>
<tr>
<td>ISAF</td>
<td>International Security Force (NATO in Afghanistan)</td>
</tr>
<tr>
<td>ICAT</td>
<td>ISAF Contracted Air Transport</td>
</tr>
<tr>
<td>(C-)IED</td>
<td>(Counter-) Improvised Explosive Device</td>
</tr>
<tr>
<td>JCMB</td>
<td>Joint Coordination and Mentoring Board, coordinates the implementation of the Afghan Compact</td>
</tr>
<tr>
<td>JOA</td>
<td>Joint Operations Are (similar to AoA and AoR)</td>
</tr>
<tr>
<td>JFC</td>
<td>[NATO] Joint Force Command (North @ Brunssum, NLD and South @ Naples, ITA)</td>
</tr>
<tr>
<td>KAF</td>
<td>KANDAHAR Airfield (in Regional Command South, Afghanistan)</td>
</tr>
<tr>
<td>KAIA</td>
<td>KAbul International Airfield</td>
</tr>
<tr>
<td>KFOR</td>
<td>Kosovo Forces (NATO in Kosovo)</td>
</tr>
<tr>
<td>KMT – KST</td>
<td>Key Military Tasks versus Key Supporting Tasks, KMT determine the means in the CJSOR while</td>
</tr>
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through a (satellite supported) computer network (see also NNEC)
### The good, the bad & the ugly of outsourcing security to PMCs

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<th>Abbr-3</th>
<th>Definition</th>
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<tr>
<td>KPI</td>
<td>Key Performance Indicators, used in operational management; see also CSF</td>
</tr>
<tr>
<td>LoA</td>
<td>Level of Ambition</td>
</tr>
<tr>
<td>LoAC</td>
<td>Law of Armed Conflict (a.k.a. Law of War)</td>
</tr>
<tr>
<td>LoE</td>
<td>Line of Effort (e.g. used for the Comprehensive (CIV-MIL) Approach</td>
</tr>
<tr>
<td>LOGCAP</td>
<td>Logistics Civil Augmentation Program, an outsourcing program for the U.S. Army</td>
</tr>
<tr>
<td>LTR</td>
<td>Long Term Capability Requirements</td>
</tr>
<tr>
<td>[EU] LTV</td>
<td>Long term Vision</td>
</tr>
<tr>
<td>MAP</td>
<td>Membership Action Plan (a roadmap to join NATO's integrated structure)</td>
</tr>
<tr>
<td>MB</td>
<td>Military Budget (the O&amp;M budget of NATO), the counterpart of the NSIP Budget</td>
</tr>
<tr>
<td>MC (#)</td>
<td>Numbered directive of the MC (e.g. MC161)</td>
</tr>
<tr>
<td>MCR</td>
<td>Minimum Capability Requirements, formerly MMR</td>
</tr>
<tr>
<td>MFP</td>
<td>[NATO SACT sponsored] Multiple Futures Project, a foresight study in security environments</td>
</tr>
<tr>
<td>MJ / MEJA</td>
<td>Military Jurisdiction / Military Extraterritorial Jurisdiction Act</td>
</tr>
<tr>
<td>MJO</td>
<td>Major Joint Operations, as opposed to Smaller Joint Operation (SJO)</td>
</tr>
<tr>
<td>MMR</td>
<td>Minimum Military Requirement, will be replaced by MCR in the new Defence Planning Process</td>
</tr>
<tr>
<td>MNF</td>
<td>Multinational Forces, involved in Peacekeeping Ops</td>
</tr>
<tr>
<td>MOD/MFA</td>
<td>Minister(s) of Defence/Foreign Affairs</td>
</tr>
<tr>
<td>MoE</td>
<td>Measure of Effectiveness</td>
</tr>
<tr>
<td>MOU</td>
<td>Memorandum of Understanding</td>
</tr>
<tr>
<td>NAC</td>
<td>North Atlantic Council, the political decision forum at NATO, composed of Permanent Representatives of their Nation, officials of the Ministry of Foreign Affairs with the rank of Ambassador</td>
</tr>
<tr>
<td>NAD</td>
<td>National Armament Director(s)</td>
</tr>
<tr>
<td>NAEW&amp;C</td>
<td>NATO Airborne Early Warning &amp; Control Force Command, operates AWACS aircraft</td>
</tr>
<tr>
<td>NAMSO/NAMSA</td>
<td>NATO Maintenance and Supply Organisation/Agency</td>
</tr>
<tr>
<td>NAPMO/NAPMA</td>
<td>NATO Airborne Early Warning and Control Programme Management Organisation/Agency</td>
</tr>
<tr>
<td>NC²A</td>
<td>NATO Consultation, Command and Control Agency</td>
</tr>
<tr>
<td>NCSA</td>
<td>NATO CIS Services Agency</td>
</tr>
<tr>
<td>NCF</td>
<td>NATO common funding</td>
</tr>
<tr>
<td>NDPASS</td>
<td>NATO Defence Planning Automated Support System</td>
</tr>
<tr>
<td>(N)NEC</td>
<td>[NATO] or [EU] Network Enabled Capability</td>
</tr>
<tr>
<td>NRF</td>
<td>NATO Response Force of approx. 13,000 Pers in its renewed concept, similar in function if not in size to EUBG (less than 2,000 Pers)</td>
</tr>
<tr>
<td>(N)NEC</td>
<td>NATO Network Enabled Capability or [EU] Network Enabled Capability, computer hardware and software to enhance operations</td>
</tr>
<tr>
<td>(NN)TCN</td>
<td>(Non-NATO) Troop Contributing Nation</td>
</tr>
<tr>
<td>NSA</td>
<td>Non-state (or failed state) Security Actor (e.g. TALIBAN)</td>
</tr>
<tr>
<td>NSIP</td>
<td>NATO Security Investment Programme, the counterpart of the Military Budget</td>
</tr>
<tr>
<td>NTM-I &amp; NTM-A</td>
<td>NATO Training Mission for Iraq &amp; Afghanistan respectively, NATO sponsored SSR efforts</td>
</tr>
<tr>
<td>OAU</td>
<td>Organization of African Unity, involved in Peacekeeping Ops</td>
</tr>
<tr>
<td>OCCAR</td>
<td>Organisation Conjointe de Coopération en matière d’Armement</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation for Economic Co-Operation And Development</td>
</tr>
<tr>
<td>OMLT</td>
<td>[NATO led] Operational Mentoring and Liaison Team for Afghan SSR (see NTM-A)</td>
</tr>
<tr>
<td>OPLAN</td>
<td>Operational Plan, in principle approved by EU Council or NAC on the basis of a CONOPS</td>
</tr>
<tr>
<td>O&amp;M</td>
<td>Operations &amp; Maintenance budgets</td>
</tr>
<tr>
<td>OSCE</td>
<td>Organisation for Security &amp; Cooperation in Europe, involved in Peacekeeping Ops</td>
</tr>
<tr>
<td>PARP</td>
<td>[NATO] PIP Planning and Review Process (PIP = Partnership for Peace)</td>
</tr>
<tr>
<td>PBL</td>
<td>Performance-Based Logistics</td>
</tr>
<tr>
<td>P&amp;C</td>
<td>Procurement &amp; Construction budgets</td>
</tr>
<tr>
<td>PC</td>
<td>[EU] Progress Catalogue, an overview of the current status of EU capability development</td>
</tr>
<tr>
<td>PCC</td>
<td>[NATO] Prague Cap Catalogue, often seen in conjunction with European Capabilities Action Plan</td>
</tr>
<tr>
<td>PFI</td>
<td>Private Financing Initiative, an innovative approach to GBR Government procurement</td>
</tr>
<tr>
<td>PG</td>
<td>[*] Political Guidance, the first step of Defence Planning providing – among other parameters – the Level of Ambition (LoA)</td>
</tr>
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</table>
### List of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Definition</th>
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<tbody>
<tr>
<td>PM(L)C/PM(S)C</td>
<td>Private Military (Logistics) Company or Private Military (Security) Company</td>
</tr>
<tr>
<td>pMS</td>
<td>[EU] Participating Member States</td>
</tr>
<tr>
<td>POL</td>
<td>Petroleum, Oil &amp; Lubricants</td>
</tr>
<tr>
<td>POMLT</td>
<td>[NATO led] Police Operational Mentoring and Liaison Team for Afghan SSR (see also NTM-A)</td>
</tr>
<tr>
<td>PPP</td>
<td>Purchasing Power Parity (correction factor to privatize GDP/GNI)</td>
</tr>
<tr>
<td>PPM</td>
<td>Public-Private Partnership, a form of privatization, see also PFI</td>
</tr>
<tr>
<td>PSA</td>
<td>Priority Shortfall Areas, a term used in Defence Planning (see Chapter 3)</td>
</tr>
<tr>
<td>PSC</td>
<td>[EU] Political and Security Committee or Private Security Company</td>
</tr>
<tr>
<td>PESCO</td>
<td>[EU] Permanent Structured Cooperation</td>
</tr>
<tr>
<td>RC(N)(E)(C)(S)(W)</td>
<td>ISAF Regional Command North/East/Capital/South/West in Afghanistan</td>
</tr>
<tr>
<td>RFP</td>
<td>Requests for Proposals</td>
</tr>
<tr>
<td>RIFB</td>
<td>Ready Invitation For Bids are prepared and kept current, but are issued to potential contractors if and when the requirement occurs</td>
</tr>
<tr>
<td>RLS</td>
<td>Real Life Support (i.e. support to in-theatre operations)</td>
</tr>
<tr>
<td>RMA</td>
<td>Revolution of Military Affairs, the predecessor U.S. concept of ‘transformation’</td>
</tr>
<tr>
<td>ROE</td>
<td>Rules of Engagement, in principle approved by EU Council or NAC</td>
</tr>
<tr>
<td>RSO</td>
<td>[U.S.] Regional Security Officer (i.e. State Dept official controlling security operations)</td>
</tr>
<tr>
<td>(N)SAC</td>
<td>[NATO] Strategic Airlift Capability</td>
</tr>
<tr>
<td>SACEUR</td>
<td>Supreme Allied Commander Europe – Chief of ACO – Headquarter at Mons, Belgium</td>
</tr>
<tr>
<td>SACT</td>
<td>Supreme Allied Commander Transformation – Chief of ACT – Headquarter at Norfolk, USA</td>
</tr>
<tr>
<td>SALS</td>
<td>Strategic Airlift Interim Solution</td>
</tr>
<tr>
<td>SecGen</td>
<td>[U.N.] or [NATO] Secretary General</td>
</tr>
<tr>
<td>SecO</td>
<td>Security Organisation (e.g. EU, NATO, UNO, …)</td>
</tr>
<tr>
<td>SJO</td>
<td>[NATO] Smaller Joint Operations, as opposed to Major Joint Operation (MJO)</td>
</tr>
<tr>
<td>SN</td>
<td>Sending Nation (the nation that dispatches a Military contingent or contractors)</td>
</tr>
<tr>
<td>SNMG</td>
<td>Standing NATO Maritime Group</td>
</tr>
<tr>
<td>SOFA</td>
<td>Status of Forces Agreement, legally binding document describing obligations, privileges and legal status of foreign Pers in operations</td>
</tr>
<tr>
<td>SoW</td>
<td>Statement of Work</td>
</tr>
<tr>
<td>SSR</td>
<td>Security Sector Reform, see also DDR</td>
</tr>
<tr>
<td>STANAG</td>
<td>[NATO] STAndardisation Agreement, aimed at interoperability and – ideally – adopted by industry and Alliance Nations, PfP and EU-partners</td>
</tr>
<tr>
<td>TCSOR</td>
<td>Theatre Capability Statements of Requirement</td>
</tr>
<tr>
<td>TOA</td>
<td>Transfer of Authority, a message that turns over control of a national entity (which can be a contractor) to the Commander of an operation sponsored by a SecO or another nation.</td>
</tr>
<tr>
<td>TEU/ToL</td>
<td>Treaty on European Union and Treaty of Lisbon</td>
</tr>
<tr>
<td>TPLS/TPLC</td>
<td>[EU] Third Party Logistics Support or Company</td>
</tr>
<tr>
<td>UAV/UAS</td>
<td>Unmanned Aerial Vehicle/System</td>
</tr>
<tr>
<td>UNAMA</td>
<td>United Nations Assistance Mission in Afghanistan</td>
</tr>
<tr>
<td>UCMJ</td>
<td>[U.S.] Uniform Code of Military Justice</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
</tr>
<tr>
<td>UNIFIL</td>
<td>United Nations Interim Forces In Lebanon</td>
</tr>
<tr>
<td>UNMIK</td>
<td>United Nations Mission in Kosovo</td>
</tr>
<tr>
<td>UNSC</td>
<td>United Nations Security Council</td>
</tr>
<tr>
<td>VFM</td>
<td>Value For Money, a general principle applied in the Private Financing Initiative</td>
</tr>
<tr>
<td>WEU</td>
<td>Western European Union</td>
</tr>
<tr>
<td>WFP</td>
<td>World Food Program</td>
</tr>
<tr>
<td>WMD/WME</td>
<td>Weapons of Mass Destruction (i.e. lethal as CBRN) / Weapons of Mass Effect (i.e. non-lethal as Electromagnetic pulse (EMP) or catastrophic cyber attack)</td>
</tr>
<tr>
<td>WPPS</td>
<td>Worldwide Personal Protective Services</td>
</tr>
<tr>
<td>WSP</td>
<td>Weapon System Partnership (cooperative services for maintenance of weapon systems)</td>
</tr>
</tbody>
</table>

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1 The Treaty of Lisbon amends the existing EU-treaty and is ‘consolidated’ by deposition of ratification instruments. The consolidated version of the new EU-treaty will be used as reference and can be consulted on the website of the EU-council at [http://www.consilium.europa.eu/showPage.asp?lang=en&id=1296&mode=g&name=](http://www.consilium.europa.eu/showPage.asp?lang=en&id=1296&mode=g&name=)
Country Abbreviations

| ALB | Albania | DEU | Germany | HRV | Croatia | NOR | Norway |
| AUS | Austria  | DNK | Denmark | HUN | Hungary  | POL | Poland |
| BEL | Belgium  | ESP | Spain   | IRE | Ireland  | PRT | Portugal|
| BGR | Bulgaria | EST | Estonia | ITA | Italy    | ROU | Romania|
| CAN | Canada   | FIN | Finland | LTU | Lithuania| SVK | Slovak republic |
| CYP | Cyprus   | FRA | France  | LUX | Luxemburg| SVN | Slovenia |
| CZE | Czech Republic | GBR | Great Britain | LVA | Latvia  | SWE | Sweden |
|     |          | GRC | Greece  | MAL | Malta    | TUR | Turkey |
|     |          | LTU | Lithuania| NLD | the Netherlands | USA | United States |

Conventions

- British spelling is used, except for direct quotations of U.S. sources or language.
- Acronyms and abbreviations are explicated after first use of the notion. Plurals are indicated by the letter 's' added to the acronym. Due to the use of slightly differing acronyms by the various referenced authors and sources, inconsistencies may occur, e.g. PMC – PMLC - PMSC
- Unless it concerns direct quotations, European notation of dates (e.g. 29 Aug 2008) and numbers (e.g. 2.000.000,00 means 2 Million)
- Where possible conversion were made to €, K€ (x 100€, thousands), M€ (x 1.000.000€, millions) or G€ (x 1.000.000.000€, billions).
- Except if mentioned otherwise, euros or dollar valuta in current prices were used, time-sensitive tables and figures were converted to year 2000 euros or dollars.
- Country designations are used as defined above.
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