

### Contracting out to Private Military and Security Companies

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Nikolaos Tzifakis





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**Keywords:**

private military companies, private security companies, outsourcing security services, defense, policing, public goods, government, accountability

## List of Abbreviations

DoD	United States Department of Defense
ILC	International Law Commission
LLC	Limited liability company
MNCs	Multinational corporations
PMCs	Private military companies
PMSCs	Private military and security companies
PSCs	Private security companies
USTC Holdings	United States Training Center Holdings

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## Executive Summary

Today, the global trend for contracting out the supply of military and security services is steadily growing. Security is being transformed from a service for the public or common good into a privately provided service. The largest private companies in the field have developed more advanced know-how and greater material and human resources than the security agencies and armies of many sovereign states. In this respect, several analysts have made observations on the restructuring of public–private relations in the domain of security. They note that what is actually taking place is a broader shift from vertical, centralised government to horizontal, fragmented security governance.

The implications of outsourcing security services to private agencies are not a priori positive or negative. Ultimately, everything boils down to the way public and private actors deal with the questions of ‘when’ and ‘how’ to go about contracting out security services.

With regard to the ‘when’, states should determine their ‘inherently governmental functions’ and keep these functions out of the market’s reach. They should also entrench their independent decision-making capacity in order to select the most appropriate solutions to deal with their security issues. More importantly, states should continue to struggle to protect the safety of their people, irrespective of the latter’s ability to purchase security services in the market. A combination of public and private security would not necessarily be detrimental to the public interest if states stopped retracting resources and operational objectives in response to the expansion of the private security supply.

With respect to the ‘how’, states should attempt to mitigate some of the shortcomings in the operation of the private market for security services by taking the following steps:

- preventing supply from determining its own demand;
- launching competitive bids for every single contract and striving to obtain several offers;
- refraining from awarding cost-plus contracts for services whose outsourcing is primarily intended to increase cost efficiency;
- avoiding contracting out services to corporations that enjoy a monopoly in the market;
- paying greater attention to post-award contract management by substantially increasing the capacity and authority of oversight institutions;
- avoiding transferring contract supervision to private agencies; and
- calculating the cost of contract management when considering the option of outsourcing services.

Moreover, states should increase the accountability of the global private security industry by taking the following measures:

- effectively regulating the activity and the operation of private military and security companies at both the national and international levels, in line with the recommendations of the UN Working Group on the Use of Mercenaries;
- reversing the climate of general impunity that prevails in several locations where the private security sector thrives (for instance, in post-conflict countries);
- explicitly stipulating the responsibility of prime contractors for subcontractor activities;

- demonstrating zero-tolerance concerning serious cases of misconduct involving corporations or individual contractors; and
- excluding, or altogether eliminating, recurrently and seriously negligent or unscrupulous corporations (and their affiliates) from future contracts.

## Introduction

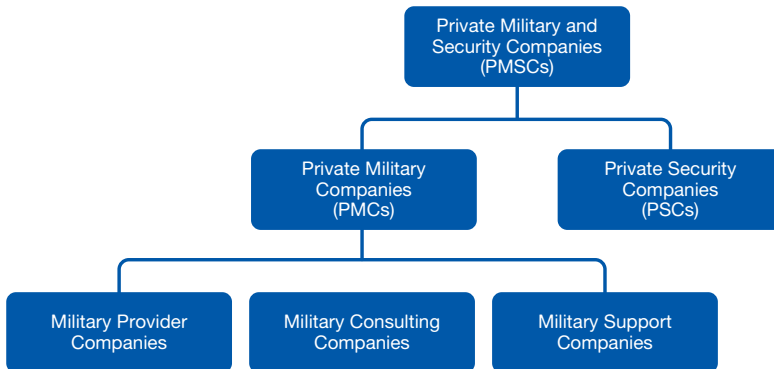
The private security service sector has experienced spectacular growth since the end of the Cold War. The steady increase of the industry's global turnover was maintained even during the international financial crisis (2008–9) due to the impressive expansion of the market for this type of service in emerging economies. The global security service market was worth \$138.6 billion in 2007 and was estimated at \$152.5 billion in 2009 (Freedonia 2008, 6; 2011, 5). The future of the sector looks very bright despite the decision of the United States Department of Defense (2010, 55) to gradually reduce its reliance on support service contractors to pre-9/11 levels. According to Freedonia (2011, 4), the global market for private security services will continue to grow at 7.4% annually, reaching \$218.4 billion in 2014. Much of the sector's growth will be stimulated in the leading emerging economies where it is projected that the turnover will increase at double-digit rates.

### Typologies and Classifications

Private military and security companies (PMSCs) form a very diverse sector. In terms of activities, this sector comprises private agencies performing a great variety of tasks ranging from supporting combat operations to language interpretation. The most common analytic division is between private security companies (PSCs) and private military companies (PMCs) (Brooks 2000, 129; Abrahamsen and Williams 2007, 239). In many respects, this analytical scheme reproduces and mirrors the division of state security services between the police and the military. The first category, PSCs, specialises in the provision of protection services for assets and/or people. Their clients

mainly include international organisations, multinational corporations, non-governmental organisations, small and medium-size enterprises, and individuals. The second category, PMCs, comprises the firms that participate in actions such as military operations, stabilisation and post-conflict reconstruction, and security sector reform. In recent years PMCs have been increasingly contracted by states and international organisations to perform tasks such as training, restructuring and modernising armies and police forces; gathering and analysing intelligence; securing military communications; operating technologically advanced military systems; providing military transportation and protecting strategic targets; clearing minefields; and interrogating prisoners. Considering the broad range of roles that PMCs may perform, several analysts propose a further analytical subdivision of them based on the extent of their involvement in military operations (see figure 1). For instance, Singer (2001/02, 201) distinguishes between military provider firms, military consulting firms and military support firms. Military provider firms engage 'in actual fighting or direct command and control of field units, or both'. Military consulting firms offer advice and training services, providing 'strategic, operational, and organizational analysis'. Singer explains that the critical difference between these two types of firms is the 'trigger finger' factor, that is to say, whether they directly engage in combat. Finally, military support firms provide 'rear-echelon and supplementary services', filling functional needs such as logistics, technical support and transportation (201–2). Obviously, if military provider firms occupy one end of a continuum of PMCs based analytically on their lethality, the other end would include corporations specialised in such tasks as the distribution of development assistance and logistical support.

Figure 1 A Typology of PMSCs in Terms of services



The sector of private security service providers is also very diverse in terms of size. It encompasses both local, small-sized enterprises and multinational giants listed on international stock exchanges. Among the PSCs, G4S, the sector's largest corporation, operates in more than 120 countries and has more than 625,000 employees (G4S n.d.b). It proudly claims to be the second-largest private employer in the world (G4S n.d.a). G4S had annual revenues of £3 billion in 2004; the rapid growth of its operations during the following years led to an increase in its yearly turnover to £7.4 billion in 2010 (Hemscott Group n.d.). Securitas, the second-largest PSC in the world, operates in 45 countries and employs more than 280,000 people (Securitas n.d.). Securitas offset the slowdown of its operations in North America in 2008–9 (due to the economic recession) by consolidating its position in other regions. In 2009–10, Securitas (2010, 49; 2011, 69) expanded its global presence, acquiring 30 smaller companies in both developed and emerging economies.

Overall, the PSC sector has become so important that in states as different as the US, the UK, India and Bulgaria, the number of PSC contractors is much greater than the number of employees in the respective state security agencies (Abrahamsen and Williams 2009, 2).

In the case of PMCs, MPRI, a subsidiary of L-3 Communications specialising in the provision of military training services, operates offices in 40 locations in the US and in several countries around the world (MPRI n.d.a). MPRI officials have in the past boasted about the fact that their company could muster more (retired) generals than the American army actually has in its service (Leander 2005a, 609). And DynCorp International, to name another PMC, has offered a large variety of services including logistics and contingency support; guarding operations; and the recruitment, training and deployment of more than 6,000 peacekeepers and trainers to 11 different countries. In 2010, DynCorp International registered revenues worth \$3.4 billion. This was impressive growth of 32.2% in comparison with 2009 and was largely due to increased contingency operations and higher demand for secure aviation transport in Iraq and Afghanistan (DynCorp International 2011, 3). To grasp the impact of PMCs, it is worth mentioning that during the 1990s, American PMCs alone trained armies in more than 42 countries around the world (Avant 2002, 1).

The tendency of large PMSCs to hand over the implementation of contracts to subcontractors provides for an additional differentiation of corporations with respect to their position in the 'contract chain'. As McCoy (2010, 677–8) explains, the US administration awards large contracts for services to be provided in Iraq and Afghanistan to major American companies, called 'prime contractors' or 'primes'.

These companies forward the contracts to US-based subsidiaries or to international affiliates, frequently based in the Middle East. The latter usually subcontract companies in recruiting countries such as India and the Philippines. And the actual execution of the contract is sometimes carried out by another tier of subcontracted companies that is based in the location of deployment. Given that the primes do not commonly face any restriction concerning the number and tiers of their subcontractors, the contract chain can sometimes look much more complex (e.g. five tiers of subcontractors) (Cha 2004, A01). The extent to which large corporations work through subcontractors is apparent from the fact that 29 of the top defence contractors (i.e. including the major defence companies in 2008) in the United States had at least 1,194 offshore subsidiaries (United States General Accounting Office 2010a, 5).

Owing to the globalisation of the market for the supply of security services and the heterogeneity of the industry in terms of function, size and role, states may engage in different types of relationships with PMSCs. The need to regulate the activities of the industry has led to attempts to classify these relationships as well. According to the UN Working Group on the Use of Mercenaries (2010, 25), there are four different types of relationship between states and private suppliers of security services. Contracting states are those that 'directly contract with PMSCs for their services, including, as appropriate, where such a company subcontracts with another PMSC'. States of operation are the countries where PMSCs operate. Home states are the ones in which PMSCs are registered. Last, third states are states 'other than the contracting, home States or States of operations whose nationals are employed to work for a PMSC'.



The very idea of classifying PMSCs is for some analysts pointless given the diversity in and volatility of the industry. Corporation closures, mergers and acquisitions are indeed very regular occurrences. Likewise, the retraction, expansion or redirection of the activities of PMSCs is frequently determined by the contracts that they secure and/or the prevailing trends in the demand for certain services. Hence, the assignment of permanent labels to PMSCs might be impossible. However, different types of PMSCs pose different normative and policy questions. Furthermore, on a more theoretical level, the above classifications and conceptual constructions provide a common language, a kind of toolkit, that is essential for the formulation of hypotheses and arguments aiming to comprehend the radical changes that are taking place in the domain of security. The rest of the study draws on the above classifications and typologies to problematise the implications of the private supply of security services.

## The Argument and Structure of the Study

The commodification of security is according to all indications a rapidly growing trend in the international system. The burgeoning of the private security industry is driven by the increased interest of both public (e.g. states and international organisations) and private actors (e.g. NGOs, MNCs and individuals) to contract out security-related services. In this context, the question of whether public and private actors should outsource security services seems to be of little relevance.

This study is informed by a conviction that the implications of outsourcing security services to private agencies are not a priori positive or negative: everything

boils down to the questions of when and how a public or private actor contracts out security services.

With regard to the ‘when’, the short answer has two parts: when it does not concern, inherently governmental functions, and when there is a good reason to do so. One definition of ‘inherently governmental functions’ maintains that they are ‘intimately related to the public interest’ (Luckey et al. 2010, 7). The vagueness of the definition is not accidental. What every state might reserve for itself is ultimately context-specific. As Hood (1997, 123) puts it, it depends on ‘what values the state takes as basic’. Each state might draw the line at a different point beyond the apparent exclusion of outsourcing such functions as war-making. To illustrate, Petersohn (2010, 539) explains that while the US is informed by a *Lockean* tradition of liberalism and relies greatly on market solutions, Germany is inspired by a *Rousseauian* tradition of liberalism and has less confidence in market forces. In this respect, it might be futile to prescribe to states where they should stop outsourcing services. Having said that, this study does not imply that states should simply resort to the external supply of security services from private actors for every non inherently governmental function. Outsourcing has frequently appeared to be a not-so-optimal solution in terms of cost efficiency or effectiveness. States should therefore always have a clear rationale for privileging market solutions for the supply of security services.

This study pays particular attention to the question of how states should contract out security services. It argues that many of the problems stemming from the outsourcing of security services are related to shortcomings in the operation of the private market for this type of service.

The study analytically divides and presents these shortcomings into three categories of problems:

- I) inefficient contract management,
- II) the widespread impunity of corporations and contractors in cases of improper conduct and serious crimes, and
- III) the lack of an international regulatory framework.

The first section discusses the main factors that seem to have contributed to the growth of the contemporary private market for security services. It refers to changes in international and domestic conditions such as the emergence of a trend to downsize police and military expenditures. It also presents the alleged comparative advantages of the private security industry.

The second section demonstrates that security is being increasingly transformed from a public or common good into a largely private good. This section shows that a combination of public and private provision of security could be advantageous if states do not follow the path of reducing resources and limiting operational objectives as the private security supply expands. Moreover, the study warns about the political externalities that the uncontrolled commodification of security might generate.

The next section brings to light the most important deficiencies that have been recurrently observed in the contract management practices of states in the sector of security services. These deficiencies include the awarding of non-competitive contracts, excessive reliance on 'cost-plus' types of contracts and inefficient post-award contract oversight. As a result, the outsourcing of security services has frequently ended up being much more costly than originally expected.

Finally, the fourth section shows that, in the private security sector, impunity prevails at both corporate and individual levels. It refers to serious cases of misconduct involving crimes such as human rights violations. It also presents some multilateral efforts that have been developed to codify international rules and articulate principles that might somehow regulate the operation of PMSCs. The section argues that inter-state disagreements on rule-setting reflect different levels of reliance on market solutions for security services.

In sum, this study analyses various issues that have arisen to date from the operation of the market for PMSCs and presents some thoughts on how to make the practice of privatising aspects of security provision more beneficial to the public interest.

## The Driving Forces Behind the Growth of the Private Security Market

Many factors seem to have contributed to the growth of the private security industry. For analytical purposes, these explanatory factors can be divided into two categories: first, the changing international and domestic conditions that have stimulated the growth of the demand for security services, and second, the alleged comparative advantages of the industry.

## The Enabling Conditions

The growth of the private market for security services can be explained by reference to various enabling factors. First is the change in the global demand for and supply of security forces (Singer 2001/02, 193). The collapse of state structures in many weak or failing states and the outbreak of numerous conflicts have led to multiple calls from incumbent regimes, dissidents, NGOs and even MNCs (that have, for instance, invested in the extraction of natural resources) for the dispatch of external armed contingents to different locations around the world. Nevertheless, Western powers have been reluctant to get entangled in conflicts where no major national interests are at stake (Brooks 2000, 132–4; Shearer 1998, 70). For some analysts, this is due to casualty aversion in Western societies. Others refer to the unpreparedness of traditional armed forces to operate in environments such as low-intensity civil wars (Brayton 2002, 308). In any case, a gap has emerged between the demand for and supply of external armed forces that has been filled by the rise of the private security sector.

Many analysts also suggest that there is a strong correlation between the post-9/11 growth of the private security industry and the military interventions in Afghanistan and Iraq. According to a recent study, these wars (and the subsequent post-conflict stabilisation efforts) cost the US alone between \$3.7 and \$4.4 trillion from 2001 to 2011.<sup>1</sup> Unsurprisingly, the war expenses of the DoD were the ‘largest single component’ of the

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<sup>1</sup> These figures exclude several categories of costs such as promised reconstruction aid to Afghanistan and additional macroeconomic consequences (Eisenhower Study Group 2011, 6–7).

economic costs (Eisenhower Study Group 2011, 6–7). Undeniably, the services supplied by contractors were a large proportion of the overall cost. This is why it has been argued that a private security bubble has resulted (Donald 2006). Although one cannot deny the effect of the global war on terror on the growth of the industry, we should keep in mind that the private security sector keeps expanding despite the fact that the US has begun to disengage from Afghanistan and Iraq.

Another group of explanations for the rise of the private security sector focuses on the transformation of the public police forces and the military in many Western countries in line with their overall effort to reduce public expenditures. The reform of public police forces began in some states as early as the early 1980s. Loader (1999, 375–6) explains that the public police forces changed their rhetoric and their practices at this time, integrating the imperatives and the vocabulary of the market (i.e. managerialism, consumerism and promotionalism). In addition, many countries privatised or outsourced security functions such as prisons, immigration control and airport security (Krahmann 2008, 393). Abrahamsen and Williams (2009, 4) remark that states also began to place greater emphasis on the development of crime control techniques based on efficiency, surveillance and spatial design. And Garland (1996, 452) suggests that some states developed ‘responsibilization strategies’ (using terms such as ‘activating communities’, generating ‘active citizens’ and ‘help for self-help’) in order to bring about action on the part of private agencies and individuals. As a result, not only did states pass the supply of many of their police services to the private security sector, they also encouraged the expansion of the industry’s activities at the level of society.

As far as military reforms are concerned, most countries in Europe and North America made substantial cuts to their defence budgets following the end of the Cold War. They downsized their armies and demobilised entire units, generating a surplus of military expertise, part of which was directed towards the private security industry. The market's very competitive remuneration rates attracted the attention of both demobilised and active officers, alarming some states about the danger of 'brain-drain' to their armed forces (Spearin 2005, 247).

Contemporary militaries are not only smaller in size, they are substantially different in terms of organisation and composition. Petersohn (2010, 540) suggests that the template of the armed forces has shifted from the model of self-sufficiency to the model of 'core competency': the armed forces are nowadays concentrating on their core competences and they outsource most other aspects of their operations to private providers. Moreover, for their capital assets, they resort to new procurement methods such as private finance initiatives and public-private partnerships (Krahmann 2005, 253). Altogether, the transformed militaries rely more and more on the private security industry for the acquisition of military resources and the performance of security functions. Not surprisingly, the United States Department of Defense (2006, 75) *Quadrennial Defense Review Report* incorporated the contractors into the military's total force and presented them as a constitutive part of its 'warfighting capability and capacity'. Subsequently, private contractors have outnumbered US troops in both Afghanistan and Iraq.

## The Alleged Advantages of the Private Security Industry

Supporters of the work of the private security industry advance a series of arguments to make the case for the outsourcing of this type of service to private agencies. First, they stress the opportunity offered to states to make substantial cutbacks to their public expenditures. More precisely, in times of peace, states can avoid the cost of training and maintaining large standing armies because, if they ever need extra military capabilities, they will be able to seek them directly in the private market (Fredland 2004, 210–15). Moreover, when developed countries contract PMSCs to carry out tasks in third regions, it brings down operational costs substantially. This is because private security service suppliers may subcontract tasks to local (or third country) workers at lower wages than they would have paid to nationals of the contracting countries. The largest PMSCs have indeed taken extensive advantage of labour cost differences among nationals of different countries and have assembled in most operations ‘highly globalized’ workforces (McCoy 2010, 676). Suffice it to say that US and coalition citizens currently represent around 8.8% of all PMSC contractors in Iraq and merely 2.8% of all private contractors in Afghanistan (United States Central Command 2011, 3). Overall, the argument of saving money is indeed very powerful at present, given the global economic crisis and the struggle of many states to find ways to scale down their large deficits and debt burdens.

Furthermore, it is claimed that the human resources of PMSCs include military veterans acclaimed for their professionalism, excellent qualifications and experience. Owing to the fact that private contractors have economic rather than ideological motivations, they are allegedly even



less likely to purposefully harm civilians than state actors. PMSCs also help restore public order and security and combat crime with their work. In cases of failed (or failing) states, the deployment of private security contractors represents a very credible alternative to reliance on local security forces that might have received poor professional training or have developed a track record of human rights violations and excessive use of violence (Leander 2005a, 609–10). In this type of setting, private contractors provide protection for the deployed internationals (e.g. UN personnel and NGO workers) and facilitate the immediate distribution of relief assistance (Brayton 2002, 321). The forces of private companies may also feature higher operational readiness, coherence and efficiency than the ad hoc multinational missions of international organisations that deploy slowly and often are then tormented by internal conflicts among their national components (Bures 2005, 540–1). In addition, PMCs claim that they can even be used in cases where the international community lacks the will, cohesion and readiness to act to prevent the outbreak of humanitarian disasters (Bures 2005, 539). They cite as a paradigmatic case the failure of the international community to prevent the genocide in Rwanda in 1994. According to Shearer (2001, 30), ‘if a private force, operating with international authority and within international law, can protect civilians, how moral is it deny people protection just because states can’t or won’t find the forces to do it?’

The forces of PMCs can moreover deploy in conflict-ridden regions for longer periods than state militaries usually do. While governments are frequently under domestic pressure to withdraw their forces from high-risk environments in third countries as soon as possible, PMCs do not face similar restrictions (Brayton 2002, 318).

As a result, the latter provide a practical solution for medium-term tasks in post-conflict settings. Interestingly, PMCs also provide governments with the cover of 'plausible deniability', the option to avoid taking responsibility for the undesired consequences of those companies' operations (Mandel 2001, 132).

Proponents of outsourcing security services to private suppliers also assert that the latter can make the difference because of the level of expertise they provide. They remark that the success of military operations today is directly correlated with the use of sophisticated technological systems, for which the majority of military personnel does not have the appropriate training. For example, the US has relied on PMCs for the maintenance and use of state-of-the-art weapon systems, such as the Predator and Global Hawk unmanned aircrafts (Mobley 2004, 24). Similarly, a state's participation in specific international actions of post-conflict reconstruction is related to its ability to send civilian experts (e.g. civil engineers), who are otherwise not required in the armed forces. PMCs can also be very efficient due to the practice of hiring regional expertise. Mobley (2004, 24) recalls that some private companies operating in Iraq employed a large number of individuals who were familiar with the region and contributed to tasks ranging from extinguishing oil-well fires to building projects.

In the area of military organisation and training, private companies expand states' capabilities to protect their territorial integrity. They also provide advice on improving civil-military relations and, in this way, make an important contribution to the process of democratisation (Singer 2001/02, 217). In addition, a study of the work of DynCorp in Liberia demonstrated that PMCs are capable of generating

innovative ideas for the reform of an army instead of uncritically introducing the ‘ill-fitting’ procedures and practices of other countries. As McFate (2008, 647, 652) explains, this is a feature of the work of PMCs that stands in sharp contrast with the way the US ‘train and equip’ programmes are implemented. The latter typically strive to apply the inappropriate template of the US Army to the militaries of other countries. Moreover, in terms of military support services (e.g. logistics), outsourcing to private enterprises allows states to dedicate a larger part of their military staff to the deployment of war capabilities, resulting in a more combat-ready and professional force (Leibstone 2007, 6).

Finally, the private security industry asserts that it is flexible enough to quickly come up with reliable solutions for the management of new or escalating threats. For instance, the recent increase in incidents of piracy in Somalia prompted some private security corporations to advertise specially tailored anti-pirate protection services. Although many analysts expressed concern that the armed protection of merchant ships might lead to the escalation of violence, some shipping firms have indeed contracted this type of service (Bennett 2010).

In essence, it is claimed that the sector of private security service suppliers is growing precisely because states have left vacant a ‘pressing security gap’ that needs to be filled (Mandel 2001, 132). Contractor corporations arise to satisfy a market need. Hence, if the companies in question did not exist or were outlawed, illegitimate agencies would enter the market to provide the required services (Leander 2005a, 610). Moreover, it is suggested that the actions of PMSCs do not challenge or question states and their sovereignty. States maintain some control over the sector of private security.

They represent the largest clients in the market and they are in some cases even co-owners of contractor corporations. Many PMCs will indeed avoid taking on a contract if their home countries vehemently disapprove. PMSCs should therefore be seen as mere 'tools' at the disposal of states, international organisations, NGOs, enterprises and citizens for the protection of their safety (Leander 2005b, 806–7). The next sections scrutinise the merits of this claim.

## Security as a Good, and Political Externalities

The private supply of an increasing number of security services has consequences for the essence of security itself. It affects the type of good that security is and raises the following questions: Who appropriates the benefits of privately supplied security services? What are the political implications of the transformation of security into a commodity?

### Security as a Good

To comprehend the content of the changes that the privatisation of security brings about, we should briefly turn the discussion to the economics. The public goods literature suggests that there are four main types of goods: public, private, common and club goods. A public good has two main features: it is non-excludable and non-rival in consumption. While the public good's non-excludability

implies that no-one can be denied access to its benefits, its non-rivalness means that its use by one or more individuals does not diminish its availability for consumption by others (Buchanan 1999, 48). The most commonly referred to example of a public good is probably national defence.

Private goods have the exact opposite features: they are excludable and rival. Samuelson (1955, 350) illustrates the properties of private goods with bread, 'whose total can be parcelled out among two or more persons, with one man having a loaf less if another gets a loaf more'. Private goods are tradable and their supply and price depend on the operation of market mechanisms.

Presumably, a large number of goods and services fall between the two ends of the spectrum. Most non-excludable goods are indeed rival in consumption: the more benefits that are appropriated by one party, the fewer will be available to others. These are 'common goods' and the fact that access to them is open to everybody usually raises concerns about congestion. The most widely cited example is non-renewable natural resources whose overuse is described as 'the tragedy of the commons' (Hardin 1968).

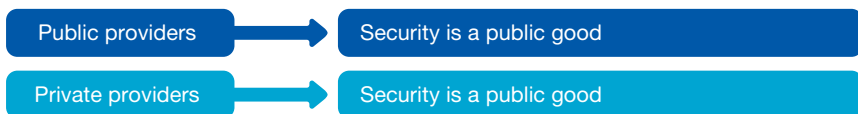
Similarly, non-rival goods may be excludable. These are the 'club goods' whose membership (and 'optimal sharing group') is larger than 'one person or family but smaller than an infinitely large number' (Buchanan 1965, 2). An illustration of club goods is the services and products reserved only for club subscribers.

Arguably, both public and private providers can supply excludable, rival and non-rival goods. However, private actors find it difficult to supply non-excludable goods.

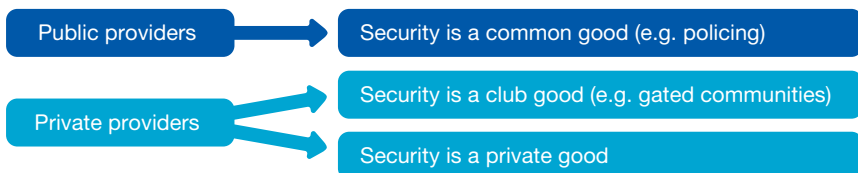
This is because private companies cannot overcome the ‘free-rider problem’, the possibility that some of the beneficiaries of a good or service might be reluctant to contribute towards its costs (Buchanan 1999, 83). States, however, can finance the supply of common and public goods through taxation (Olson 1965, 13–14).

The conceptual analysis of different types of goods demonstrates that national security from external military threats is a paradigmatic case of a public good. Each sovereign country indiscriminately protects its entire population from external military aggression. And the security each inhabitant enjoys within the territory of a state does not subtract from the level of protection offered to all others. The recourse of states to the outsourcing of services in the domain of national security does not greatly change the picture. To the extent that PMSCs are contracted to contribute to a country’s defence efforts, they do not affect the non-excludable and non-rival nature of national security (see figure 2).

**Figure 2 National Security as a Good**



**Figure 3 Sub-state or Individual Security as a Good**



Things are somewhat different in the case of protection services (i.e. policing) at the sub-state and individual levels. As Engerer (2011, 139) remarks, if security is interpreted as a 'tangible good' (i.e. as an actual provision and not as an intangible feeling), police protection services will not qualify as a pure public good. They should instead be considered as a common good. Notwithstanding that police forces strive to protect all residents from threats to their security, they cannot deploy officers everywhere to instantly prevent the occurrence of crime. The fact that the concentration of police force in one location reduces the available resources for deployment elsewhere implies that police protection is a rival good. Furthermore, in contrast with state-level security, protection services at both the sub-state and individual levels are contracted out by both public (e.g. states, international organisations and local governments) and private actors (e.g. NGOs, MNCs, local businesses and individuals). When the contracting parties are private agencies, security provision is excludable: its beneficiaries are specific groups (e.g. gated communities and shopping centres) or individuals. As a result, rather than being a common good, security protection can be simultaneously a club and a private good (see figure 3).

The combination of public and private policing services is not a priori a positive or negative development. If the public police services continue unabated their efforts to protect people and their property, the additional contracting of privately supplied security services will enhance the overall level of security. However, in many places, public police forces have reduced their services (and limited their operational objectives) as the private security industry has grown in size and responsibilities. As a result, an entirely different mixture of services composed of common goods

and club and private goods has taken shape (Engerer 2011, 142). The supply of marketable and excludable security services has expanded at the expense of the supply of non-excludable services designated to protect the entire public. This implies that the differences in security provision, according to the wish and the ability of the people to afford privately supplied services, have been accentuated (Loader 1999, 374–7). What is more, the fragmentation and individualisation of security provision (owing to its excludability) has not allowed the beneficiaries to share the cost of protection (Krahmann 2008, 394).

Krahmann (2008, 382–3) highlights another negative aspect of the transformation of security into a largely excludable marketable commodity. The aims of protection have changed. If security is managed as a public or common good, policing will strive to prevent the appearance of a threat. Nonetheless, if security is perceived as a club or private good, policing will concentrate either on deterring the materialisation of the threat that is within the realm of possibility (e.g. by increasing the cost of carrying out the threat), or on the management of its consequences. Hence, the provision of protection as an excludable good focuses on the consequences rather than the causes of insecurity. Krahmann (2008, 393) explains that ‘private companies rarely engage in prevention because it is difficult to prove that their efforts have been successful’. In any case, if some people are able to deter human-initiated threats to their physical security and their property, the probability that all the others become the target of aggression will be increased. Therefore, the lowering of the level of policing as a common good coupled with the growth of the perception of policing as a club and private good have seriously aggravated the insecurity of those lacking the resources to pay for privately supplied services.



## Political Externalities

The commodification of security generates important spillover effects not taken into account by the market. First of all, it releases states from at least part of their responsibility to provide protection to their citizens. Admittedly, since the 1980s some states, such as the UK, have attempted to encourage action by private agencies and individuals through so-called responsabilisation strategies. These strategies did not imply a 'simple off-loading of state functions'. Although the responsabilisation strategies facilitated the growth of the private security sector, they represent in Garland's (1996, 454) words 'a new form of governance-at-a-distance'. States assumed an additional set of 'co-ordinating and activating roles' with the aim of improving the efficiency of their security institutions. In this respect, the responsabilisation strategies were an attempt to supplement public policing with private services. The contemporary substitution of public security provision with excludable privately supplied services, on the other hand, reduces the importance of state policing (Crawford 2006, 112). At both the transnational and sub-state levels, the people are regarded as consumers of security services, free to search the market for the most suitable solution for their protection. Loader (1999, 384–5) asserts that the transformation of citizens (endowed with the right to state protection) into consumers implies that policing is disassociated and alienated from 'questions of democracy, equity and justice'. In this regard, security is gradually becoming depoliticised; from a major political question it becomes a technical one that is subject to a private solution (Abrahamsen and Williams 2009, 5).

In the case of extraterritorial operations, the private security industry presents the depoliticisation of security

as one of its advantages. The PMSCs claim that they offer technical solutions and do not carry any 'political baggage' into the field of operations. However, this process of depoliticisation does not absolve the practice of outsourcing the supply of security services from any political consequences. First of all, the recourse of a state to outsourcing security services may be interpreted as indicating a disinclination to send out its own forces (Spearin 2005, 245). Moreover, as Olsson (2007, 347–8) points out, although the PMSCs portray themselves as 'apolitical technicians of pacification', their deployment is frequently considered illegitimate and is resisted by the local populations in states of operation.

The implications of the depoliticisation of security are also noticeable at the level of national security. In the US, for instance, successive administrations have utilised the outsourcing of security services as a method of circumventing Congressional opposition to certain policies. The practice of contracting out security services has in this way contributed to strengthening the executive at the expense of the legislative branch of government. The absence of debate in the legislature reduces the media coverage and public disclosure of the outsourcing of security services. A case in point is the information publicly released about the casualties in the operations in Afghanistan and Iraq. According to the results of an 18-month-long investigation by ProPublica, 2010 was 'the first time in history that corporate casualties have outweighed military losses on America's battlefields' (Miller 2010). Yet, most of the contractor deaths are not reported in the United States. This is because the DoD does not issue press releases about the deaths of contractors and the US media displays little interest in these incidents given that

the overwhelming majority of security contractors in these locations are not US citizens.

Leander (2005b, 820–1) plausibly claims that security issues are debated beyond the public realm (and out of the reach of the civil component of the state and of civil society) in a ‘restricted sphere’ that includes the executive, the military, the secret services and PMSCs. Thus, it is feared that private security service providers are granted a disproportionately large role in the determination of the content of security discourses and the corresponding policies. This is because, aside from their advertising campaigns, the PMSCs can exploit the additional opportunities offered by their operation as interest groups and their participation in intelligence gathering and analysis, as well as their consulting services in the fields of law enforcement and military organisation and training.

In terms of lobbying, the link between PMSCs and politics was documented long ago. The most widely known case is probably that of the ties of Dick Cheney with Halliburton (the private corporation of which he was chief executive before running for Vice President), an issue that was discussed during the 2004 US presidential elections (Rosenbaum 2004).

With respect to intelligence gathering and analysis, the role of private contractors has grown substantially over time. According to some estimates, 70% of the US intelligence budget currently goes to services supplied by around 70,000 contractors (a quarter of whom are engaged in core intelligence activities) (Voelz 2009, 587). PMCs participate in the filtering and assessment of incoming information and thus affect the way different questions are processed and framed for policymaking.

Interestingly, the training programmes outsourced to PMCs represent an additional avenue that may be exploited in order to influence the prevalent assumptions and thinking about national security. Olsson (2007, 354) notes that private firms are frequently allowed to determine the content of the training programmes and, similarly, shape the values whose protection should take priority. Moreover, the tactical and technical training of PMCs largely determines the range of possibilities that state security institutions have at their disposal to respond to certain situations in the future (Leander 2005b, 817; Olsson 2007, 354). If we add to the picture the rest of the consulting services that private firms supply—MPRI, for instance, provides ‘wide ranging doctrine development support’ to the US army (MPRI n.d.b, 1)—we can see that PMSCs have various ways to exert influence on the assessment, prioritisation and management of threats by states.

The participation of private security service suppliers in the articulation of security discourses and in the selection of relevant policies is worrying. This is because the supply of security services is allowed to create its own demand (Leander 2005a, 612). Arguably, private companies want demand for their services to expand in order for them to survive and develop within the free market. Therefore they have a motive to exaggerate the challenges to security or even contribute to the securitisation of new threats, only to claim that they alone have the necessary tools to manage them (Krahmann 2008, 390–3). Similarly, these companies may contribute to the downplaying of threats for which they have no services and show preference for their own tools to face other problems (regardless of whether they are suitable or not) (Leander 2005a, 611–13).

To sum up, the depoliticisation of national security contributes to the legitimisation of security discourses with technical, military and managerial content and to the increased militarisation of security policies. The risk here is that problems requiring political solutions may not be properly resolved or, even worse, may be exacerbated due to the selection of policies necessitating the employment of military or police means (Leander 2005b, 824).

## Contract Management and Cost Efficiency

Many of the anticipated advantages of contracting out security services presuppose that the market for these services operates smoothly. However, this is usually not the case. The previous paragraphs have illustrated how the supply of services might influence the generation of its own demand. This section elaborates on some additional problems in the operation of the private security market.

First, states often do not allow the competition among companies to work to their advantage and grant no-bid contracts to PMSCs. A study by the Center for Public Integrity found in 2004 that only 40% of all US DoD contracts had been conducted under 'full and open competition' in the preceding six years (Makinson 2004). A state may decide to sign a no-bid contract for several reasons. It might be concerned with preserving the reliability and continuity of supply (Avant 2004, 22; Mobley 2004, 31), or it may want to avoid the transaction cost of a competitive

bid. In either of these cases, the bidding company would not particularly worry whether its offer is competitive in terms of market price. There is always the danger that a rival company may protest the no-bid procedure and seek compensation from the contracting state. For instance, DynCorp International filed a protest in December 2009 against the decision of the US DoD not to call for a competitive bid for the contract for civilian police training in Afghanistan (Business Wire 2010). The United States General Accounting Office (2010b, 9–10) examined the case and upheld the protest.

A state may also resort to awarding a no-bid contract when it needs a service for which there is only one provider in the market. According to the Center for Public Integrity, this is indeed the main cause for 67% of all non-competitive contracts awarded by the US DoD (Makinson 2004). A good illustration is the outsourcing of the operation of specific high technology systems. Arguably, when a private company occupies a monopoly position in the market, states are dependent on its services and are very vulnerable to any disruptions to supply (Mobley 2004, 25–6).

The private security market does not only function improperly when states do not call for competitive bids. As Avant (2002, 2) remarks, when private companies compete for long-term contracts they often bid low, knowing that if they get the contracts they can later exceed the cost of the services. PMSCs frequently adopt this type of opportunistic behaviour when the contracts are awarded on a ‘cost-plus’ basis. In this type of contract, the contractors are paid for all of the costs incurred plus an additional amount for profit. In the case of ‘fixed-price’ contracts, the contractors provide a firm price for their services that will not normally be subject

to adjustments if the cost of the services increases (i.e. the contractors may even find themselves providing services at a loss). Although cost-plus contracts minimise the possibility that contractors compromise on the quality of the supplied services out of cost considerations, their main drawback is that they provide no incentive for cost efficiency, and they require increased oversight to avoid abuse (Makinson 2004).

The most important problems with the outsourcing of security services are indeed related to poor contract oversight by public institutions. More often than not, this happens in extraterritorial operations. Admittedly, it is extremely difficult to properly review all contracted actions and identify every small-scale problem or fraud. In Iraq alone, the US executed 34,728 contracts or grants amounting to \$35.9 billion between the onset of the war and June 2011 (Special Inspector General for Iraq Reconstruction 2011, 43). In this type of operation, private security service suppliers should be given some leeway in the implementation of contracts so that they can cope with the uncertainty of conflict/post-conflict environments (Krahmann 2008, 809).

However, it is one thing to claim that states should encourage PMSCs to bring innovative thinking to their work; it is an entirely different matter to observe that states do not possess the necessary resources to properly supervise the execution of all contracts. Contracting states have not recruited a sufficient number of suitably trained officers, nor have they established appropriate procedures to allow them to efficiently oversee the implementation of the actions they outsource to private companies abroad. In the case of the US, for example, the Commission on Army Acquisition and Program Management in Expeditionary Operations (2007,

30) made some startling findings. In the 1992–2006 period, the dollar value of US army contracts increased by 331% and the number of army contract actions increased by 654%. However, not only did the US refrain from increasing its army acquisition personnel at a commensurate rate, it even substantially reduced the relevant bureaucracy during the same period. While in 1990 the US Army's contracting personnel consisted of approximately 10,000 people, it was downsized to approximately 5,500 people in 1996 and has remained constant since then (Commission on Army Acquisition and Program Management in Expeditionary Operations 2007, 30).<sup>2</sup> Not surprisingly, only 38% of the total US Army acquisition/contracting staff deployed in theatre operations are certified for the positions held (Commission on Army Acquisition and Program Management in Expeditionary Operations 2007, 28). In Afghanistan, for example, contracting personnel 'with no engineering background' were frequently sent to oversee construction projects and could not ascertain whether the buildings they oversaw conformed to the drawing plans' technical specifications (United States General Accounting Office 2011b, 6). Presumably, the lack of competence of the officer charged with overseeing a contract could potentially be exploited by the contracted company. Furthermore, in some instances, the army officers did not efficiently administer the privately supplied services because they were unaware of all deployed contractors, or did not know the extent of their authority over the work of the latter (Mobley 2004, 27–8).

The US has apparently paid insufficient attention to the management of its contracts. In September 2009, the

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<sup>2</sup> Indeed, the US Army's acquisition personnel was reduced by another 2.6% between 2001 and 2008 (United States General Accounting Office 2011b, 6).



United States General Accounting Office (2009, 2) reviewed 69 audits of the Defense Contract Audit Agency and found that in 65 of them there were serious ‘deficiencies that rendered them unreliable for decisions on contract awards and contract management and oversight.’ In addition, the US Army increasingly outsources contract oversight to private corporations. However, the Army has also not developed any mechanisms to check whether oversight contactors properly supervise the work of the contracted security service providers (Smith and Bauman 2011). More worryingly, in some cases contract oversight has even rested on self-evaluation: private firms have been allowed to set contract prices, define performance evaluation criteria and assess their own activities (Leander 2005a, 613). As one analyst claims, elsewhere in the private sector, such a practice would be ‘a certain recipe for overcharging and inefficiency’ (Leander 2005b, 821).

Contract oversight is additionally complicated by the imperative of avoiding any disruptions to the supply of services in the critical domain of security. A good case in point is what happened in 2004, when a US Army contracting official who was overseeing the implementation of the KBR contract in Iraq determined that the corporation had not provided credible data or records for expenses of more than \$1 billion. The army officer decided to withhold 15% of payments and the performance bonuses (2%) until the company properly justified the expenses. KBR argued that if it did not receive full payment, it would have to cut back on services. The US Army subsequently removed its contracting officer from the case and replaced him with a private consulting firm, RCI Holding Corporation. The latter overlooked the DoD audit and deemed that the KBR spending was justified. Although the US Army denied that the officer’s removal had anything to do with the KBR case,

it is worth citing what Jeffrey P. Parsons, Executive Director of the Army Contracting Command, said about the case: 'You have to understand the circumstances at the time .... We could not let operational support suffer because of some other things' (Risen 2008).

In this context, some PMSCs have had the opportunity to commit various kinds of fraud, waste, abuse and mismanagement. Many companies have routinely exceeded the cost foreseen for their services and some of them have on several occasions overcharged contracting states. For instance, the United States Department of Defense Inspector General (2011, 17) estimated that the US paid \$160 to \$204 million more than a price or cost analysis would justify for the supply of fuel in Iraq. In addition, the Special Inspector General for Iraq Reconstruction (2011, v) disclosed that he questioned almost 40% of the reviewed expenses of Anham LLC.

Moreover, companies have sometimes charged states with expenses that were not included in contracts. For example, Supreme Foodservice charged the US \$454.9 million for services to the airlift fresh fruit and vegetables to Afghanistan even though the airlift was not required in the contract (United States Department of Defense Inspector General 2011, 17). A less costly though far more embarrassing example is the charge that Blackwater (according to two of its former employees) billed the US State Department for the salary of a prostitute, hired to provide services to the company's male employees in Kabul (Isenberg 2010).

In other cases, companies have been accused of providing superfluous services. For instance, in Kosovo

KBR installed electricity backup capacity at all of the US military bases even though only some facilities needed such capability (Krahmann 2005, 260). Furthermore, companies occasionally attempt to reduce the cost of their services with actions that endanger the success of operations. Mobley (2004, 27) recalls that from 2001 to 2002 Airscan utilised unencrypted commercial television relays to transmit US military intelligence data. Hence, anyone with a normal satellite TV receiver could watch US surveillance operations as they were taking place. What is more, at times PMSCs have completed their work but delivered outcomes of questionable quality. For example, KBR has been accused of delivering 'highly polluted' water to the US Army in Iraq (Petersohn 2010, 534).

Another dimension of poor contract oversight has to do with the personnel of the contracted PMSCs. The operation of the global contract chain with its multiple tiers of subcontractors means that states do not know who is providing services on their behalf. Interestingly, contracting states may also lose sight of the type of duties that contractors are carrying out. According to a study by the United States General Accounting Office (2011a, 19) conducted in 24 US Army command and headquarters sites, there were 2,357 contractors carrying out inherently governmental functions, 1,877 contractors supplying unauthorised personnel services, and 45,934 contractors performing activities closely associated with inherently governmental functions at these locations. The first two categories of functions should not be carried out by contracted personnel; the latter requires vigorous oversight and management.

Ineffective contract management renders highly questionable the economic benefits of outsourcing security services. The Project on Government Oversight (2011) has attempted to build a database of all cases of misconduct by the 100 major DoD contractors (i.e. including defence industry firms) since 1995. Relying on public records and excluding cases of undisclosed settlements or of settlements where the financial terms were unclear, the 'Federal Contractor Misconduct Database' has identified 835 instances of misconduct with costs collectively amounting to more than \$26 billion. This is a price that no contracting state has ever agreed to pay. On the other hand, vigorous contract oversight is not cost-free. And the cost of contract management is rarely calculated when a state considers outsourcing certain services (Avant 2002, 2).

Several reports have challenged the argument that outsourcing security services is almost by definition the most economically beneficial option. With respect to private military services, outsourcing seems to be less costly mainly when it concerns simple and repetitive tasks requiring low-skilled labour. However, when the tasks are more complex, contracting out security services is frequently a more expensive option (Petersohn 2010, 536). In the case of private security services, recent reports have questioned the cost savings of privatising prisons. A study of the Arizona Department of Corrections revealed that private prisons are less expensive owing to the fact that they 'cherry-pick', selecting to house only relatively healthy inmates (Oppel 2011).

Finally, from a different perspective, many analysts have suggested caution in contracting out to the market the supply of all types of security services. The provision

of security should not be left 'at the mercy of any change in market costs and incentives' (Singer 2003). Arguably, PMSCs are primarily motivated by profit like any other private corporation. And their contracts with states are not governed by military law. In this respect, they may be tempted to pull out of an operation that turns out to be unprofitable; they may want to avoid endangering their corporate assets; and they may attempt to cut corners on essential aspects of operations (Shearer 1998; Carbonnier 2006, 408). The previous paragraphs have highlighted a few cases in which PMSCs sought to maximise profits with no consideration whatsoever of public interest. The next section turns to cases of misconduct involving the illegitimate use of violence and human rights violations.

## Impunity and Regulation

### Illegitimate Violence, Human Rights and Impunity

A large part of the criticism directed at PMSCs is the result of media revelations of incidents in which their employees participated in acts of human rights violations or other criminal activities. In Iraq, for example, PSC employees repeatedly used excessive violence, not even hesitating to open fire on and kill non-belligerents. In one incident on 16 September 2007, Blackwater employees unjustifiably opened fire in Baghdad and killed 17 civilians, seriously injuring 20 more (Johnston and Broder 2007). Another notorious case is the participation in the 1990s of Dyncorp employees in a network trafficking young women (and girls as young as 12 years old) in Bosnia and Herzegovina (Payne 2002).

These incidents have revealed that in some cases recruiting procedures were problematic and resulted in nightclub bodyguards, for example, being hired by private companies (Spearin 2005, 249). Arguably, the operation of the global contract chain renders thorough vetting very difficult. As McCoy (2010, 680) explains, the assembling of a global workforce inhibits the effective investigation of the criminal background of every contractor. There is no such thing as a global database of criminal activity. And the domestic legislation of many states does not permit the release of the criminal records of their citizens to third parties. Yet, some PMSCs have gone so far to reduce the cost of their operations that they have endangered the success of their missions. For instance, an investigation of the United States Senate Committee on Armed Services (2010, xi) revealed that among ArmorGroup's contractors in Afghanistan there were 'warlords . . . engaged in murder, bribery, and anti-Coalition activities'. Interestingly, Doug Brooks, President of the International Stability Operations Association, wondered, 'Where are they going to get guys who have never smoked hashish, who have never worked for the Taliban or who have never considered joining the Taliban?' (Hodge 2010). Indeed, since November 2009 the US has demanded that all contracted PMSCs in Afghanistan should recruit at least 50% of their employees from the people residing within a 30-mile radius of the location requiring security (Pincus 2009).

News reports have also disclosed that PMCs frequently provide inadequate training for their personnel. For instance, in Afghanistan it is reported that there are widespread 'failures to meet training standards' among PMSCs with respect to the use of weapons, the law of armed conflict and the rules for the use of force (United States Senate

Committee on Armed Services 2010, vi). The emphasis of many PMSCs on ‘flexible, short-term contract labor’ means that they do not have much incentive to invest in the training of their employees (McCoy 2010, 681). It is no surprise, therefore, to hear that occasionally the labour force of PMSCs is deficient in preparation, cohesion, discipline or capabilities.

What is more disturbing is that, in the case of the vast majority of criminal acts that take place in third countries, the perpetrators are not prosecuted and justice is never rendered (Leander 2010, 468). This is for several reasons. First, on top of the fact that the national courts of contracting countries have no jurisdiction over the territory of other states, PMSC employees frequently enjoy a status of immunity in the areas in which they conduct their operations (Carbonnier 2006, 410). Further, private security service suppliers have demonstrated little eagerness to assist local authorities investigating charges of human rights violations against their employees. According to Singer (2003), this happens because private security contractors do not want to ‘scare off’ either their clients or prospective employees. The best-known example of a corporate cover-up is the way Dyncorp managed the revelations that some of its employees in Bosnia and Herzegovina were involved in human trafficking. Not only did the company transfer the implicated contractors out of the country in order to protect them from prosecution by the local authorities, it also fired its employees who uncovered the evidence about these crimes (O’Meara 2002, 48).

Many private companies also attempt to avoid being subject to the national jurisdiction of states that have

strict laws regulating their activity. As already explained, transnational PMSCs commonly form joint ventures with local subcontractors and do not get directly involved in the implementation of the contracts that have been granted to them. Some private companies transfer their registered offices offshore, selecting locations with the most favourable conditions for their operation (United States General Accounting Office 2010a). Other companies are formed for the implementation of specific contracts and are not interested in constructing an image that will help them bid for future contracts (Leander 2005a, 614).

A good case in point is Blackwater Worldwide. Following the Nisour Square incident of September 2007 (in which 17 civilians were killed), Blackwater created 31 subsidiary companies to obscure its identity and continue to bid for US contracts. Paravant, XPG and Greystone are all Blackwater affiliates that have won US State Department and CIA contracts (Risen and Mazzetti 2010b). In February 2009, Blackwater even renamed itself 'Xe' and announced that it would shift its focus from protection services to training activities (Collins 2009). Many further accusations of improprieties, and new charges and criminal investigations against Blackwater/Xe forced its president, Erik Prince, to announce in June 2010 that he would put the company up for sale (Porter 2010). In the meantime, not only did the US award new contracts to Xe and its affiliates, it even settled with the company in an 'administrative manner' (i.e. by fining it rather than pressing criminal charges) several of the serious illegal activities of the latter (Risen 2010b). The disregard shown by the US for a series of criminal charges against Blackwater/Xe— for murder, violations of weapons law and bribery (Risen 2009, 2010a; Risen and Mazzetti 2010a)—and its uninterrupted outsourcing of services to



the company has given the latter a 'practical legitimacy' and constitutes explicit acknowledgment of its status in the market (Leander 2010, 474). The company may occasionally receive a fine and some of its officers may eventually be convicted, but no accusation, no matter how serious, risks expelling the company from the market. Xe was eventually sold in December 2010 to USTC Holdings (*Agence France-Presse* 2010), but Prince did not leave the business. In May 2011, he appeared in Abu Dhabi, working 'to oversee the effort and recruit troops' of Reflex Responses, a PMC that has been contracted to 'conduct special operations missions inside and outside' the United Arab Emirates (Mazzetti and Hager 2011).

Private companies have also sometimes breached the terms of their contracts with their employees and, in a few extreme cases, they have followed practices reminiscent of human traffickers such as the confiscation of their contractors' travel documents (McCoy 2010, 681–5). In December 2008, it was revealed that a subcontracted company of KBR in Iraq kept about 100 contractors from India, Nepal, Sri Lanka and Bangladesh confined for three months in 'windowless warehouses'. The company's explanation is worth mentioning: it asserted that it had met some unexpected 'obstacles' with the services it was contracted to do and that it was in the meantime keeping its employees in a compound to protect them from the dangers of a war zone (Ashton 2008; McCoy 2010).

The very volatile nature of the contemporary market for force does not seem to prevent PMCs from offering their services to non-recognised or illegal (e.g. secessionist or terrorist) organisations, thereby promoting international insecurity and instability, and by extension laying the

foundations for more demand for their services. Singer (2001/02, 213) uses the term 'rogue firms' to depict the companies that are ready to sign these type of contracts and refers to the case of Hod Hahanit, a PMC that trained Colombian paramilitaries who were later implicated in political assassinations and the bombing of a civilian plane.

The frequent impunity of PMSCs and of their employees is largely due to the insufficient regulatory framework provided by international law (de Nevers 2009, 174). As Shearer (1998, 77) explains, '[t]he most accepted definition of a mercenary, found in Article 47 of the 1977 Additional Protocols to the Geneva Conventions, is so riddled with loopholes that few international-law scholars believe it could withstand the rigors of the courtroom.' What is more, only 32 states have ratified or acceded to the 'International Convention against the Recruitment, Use, Financing and Training of Mercenaries' of 4 December 1989. The Convention entered into force on 21 October 2001. However, no major home country of private security service suppliers (e.g. France, the UK and the US), or country where contractors have been massively deployed (e.g. Afghanistan or Iraq) figures among the party states to the Convention.<sup>3</sup> In any case, as José L. Gómez del Prado (2010), a member of the UN Working Group on the Use of Mercenaries, notes, employees of legally registered PMSCs who are contracted to work legally in third countries are not considered to be mercenaries under international law. Therefore, a possible increase in the number of states that accede to the Convention will not suffice on its own to remedy the legal vacuum in which the PMSCs operate.

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<sup>3</sup> For the list of the countries that are party to the convention see ICRC (2005).

The vast breadth of roles and activities that these companies perform further complicates the regulation at the international level of the private security service supplier sector. Contemporary international humanitarian law identifies only two categories of persons in conflicts: combatants and civilians/non-combatants. Hence, a whole range of actors operating in a grey zone between these two categories should necessarily fit into one of them (de Nevers 2009, 171–2). The issue here is not only to ensure the accountability of the employees of PMSCs. As Carbonnier (2006, 409) warns, the blurring of the civilian/combatant distinction in the conduct of hostilities may ‘weaken in practice the protection to which civilians are entitled’.

### In Search of Norms and Regulations

In recent years, some interesting attempts have been made to codify international rules and articulate principles that more or less explicitly impinge upon the operation of PMSCs.

The first initiative concerns the decision of the International Law Commission (ILC), within the framework of the elaboration of the ‘Draft Articles on Responsibility of States for Internationally Wrongful Acts’, to stipulate that states should also be held responsible for unlawful undertakings of private agencies working on their behalf (UN General Assembly 2001, 2). The ILC adopted the Draft Articles in August 2001 and the UN General Assembly approved them shortly thereafter. While some countries have been supportive of the idea of negotiating a multilateral convention on state responsibility, others have expressed scepticism that such a process might imperil the fragile compromise reached in the Draft Articles’ final text

(Crawford and Olleson 2005, 959–71; UN General Assembly Sixth Committee 2010). Hence the UN General Assembly has not taken any decision on the final form of the Articles.

The second initiative was undertaken by the UN Human Rights Council's Working Group on the Use of Mercenaries. The latter presented a 'Draft of a Possible Convention on Private Military and Security Companies' in July 2010. It stipulates that states are responsible for the activities of PMSCs in their territory (article 4) and it suggests a list of functions that states 'cannot outsource or delegate to PMSCs under any circumstances' (UN Working Group 2010, 25). Moreover, it urges that every state party to the treaty should 'develop and adopt national legislation to adequately and effectively regulate the activities of PMSCs' (article 12). The major home countries of PMSCs expressed their opposition to the Draft Convention, arguing that there was no need for such a binding document. The UN Human Rights Council (2010, 2) decided by a majority of votes to establish 'an open-ended intergovernmental working group' that would consider 'the possibility of elaborating an international regulatory framework'. Optimists may argue that the way has opened for the elaboration of a legally binding treaty. However, even if such a treaty is concluded, it will be of limited utility if the states where the private security industry thrives do not adopt it (White 2011, 150).

Another interesting initiative was launched in 2006 by Switzerland in cooperation with the International Committee of the Red Cross and was embraced by 17 countries, including the US, the UK, Afghanistan and Iraq (i.e. the countries which are most closely linked to the private security industry). The consultations—which included representatives of civil society and private

security contractors—were concluded on 17 September 2008 with the adoption of the Montreux Document. This document consists of two parts. Part one recalls the duties of PMSCs and of their personnel, as well as the ‘pertinent international legal obligations’ of states according to international law. Part two provides guidance and assistance to states by outlining a set of good practices for their relationship with PMSCs. Nonetheless, the Montreux Document (United Nations 2008, 3) unequivocally states that ‘[n]either parts are legally binding, nor are they intended to legitimize the use of PMSCs in any particular circumstance’. As a result, Gómez del Prado (2009, 445) depicts the document as ‘a promotional declaration of intentions’. He also remarks on the strong influence of the industry’s lobby as well as on the placement of most of the burden of responsibility on the states of operation. Similarly, Cockayne (2009, 427–8) warns of the danger ‘that the Montreux Document will provide states with a fig-leaf to hide the absence of more rigorous efforts to regulate this industry’. The adoption of the Montreux Document has indeed provided justification for the US and many European countries to express opposition to the Draft Convention of the UN Working Group on the Use of Mercenaries. Hence, the Montreux Document and the Draft Convention run in parallel, attracting the support of different groups of states that diverge in terms of their perspectives on the regulation of PMSCs (White 2011, 150).

The fourth initiative aiming at regulating the sector of private security service suppliers has come from the industry itself. On 9 November 2010, 58 PMSCs asserted that they endorsed the Montreux Document and signed an ‘International Code of Conduct for Private Security

Service Providers' (ICoC 2010, 3). In the following months, dozens of companies followed suit and signed the code (266 companies as of 1 December 2011 [ICOC 2011]). Interestingly, the signatory companies agreed to establish an external independent 'governance and oversight mechanism' that would certify compliance with the Code of Conduct and would audit and monitor their work in the field. However, the code underscores that it does not create any legal obligations for the signatory companies (ICoC 2010, 4–6). In addition, nothing compels all PMSCs to accede to the code. Certification by the governance and oversight mechanism will certainly enhance the credibility of a private security service supplier. Yet lack of certification will not necessarily push a company out of the market if it offers adequate services at very competitive rates (Krahmann 2005, 262). Therefore, the industry's own code of conduct cannot provide a realistic alternative to the necessary regulation at both the national and international levels of the operation of PMSCs.

Notwithstanding the individual merits of each of the above initiatives, the different philosophies underpinning these processes bring to the light the existence of substantial differences among states. At the risk of oversimplifying a complex picture, it might be argued that countries closely affiliated with the private security industry (i.e. contracting states and states of operation) have been reluctant to support the sector's international regulation. Still, these states have so far been the main recipients of the negative consequences linked with the non-regulation of the market.

## Concluding Remarks and Policy Recommendations

Contracting out the supply of military and security service is today a solidly growing trend worldwide. States and international organisations have emerged as the industry's largest clients, seeking to outsource an increasing number (and type) of security services. Not surprisingly, the largest private companies have developed more advanced know-how and greater material and human resources than the security agencies and armies of many states within the international system. The spectacular growth of the private security sector has caused a restructuring of public-private relations in the domain of security. It also raises questions about the preservation of the state's claim to maintain a monopoly on the legitimate use of physical violence. According to Krahnmann (2005, 255–7), the functional differentiation of security functions and the fragmentation of military resources and capabilities between public and private actors has transformed the PMSCs from service providers to partners of states in the definition and implementation of policies. This development is perceived to signify a broader shift from vertically centralised government to horizontally fragmented security governance.

This study's starting point was that the implications of outsourcing coercive force to private agencies are not a priori positive or negative. The relationship of state sovereignty to private power should not be perceived as a 'zero-sum game' (Abrahamsen and Williams 2007, 238). Nor does the expansion of the private security sector necessarily represent a challenge to state power. The state system

indeed generated the enabling conditions for the growth of the private security industry. As a result, what is required is that states rapidly adapt to the new reality, to maximise the benefits and minimise the dangers of the opportunities offered by the availability in the market of private security services. In other words, states should concentrate on the 'when' and 'how' concerning the contracting out of services in the domain of security.

- The uncontrolled commodification of security might *in extremis* raise serious questions even about the quality of a state's democracy. States should determine their own inherently governmental functions and keep them out of the market's reach. They should carefully avoid providing PMSCs with unrestricted access to information and procedures that lie beyond legislative scrutiny. In any case, states should entrench (and insulate from external interference) their capacity to select the most appropriate solutions to deal with their security needs.
- Although security has been by and large transformed into a commodity, states ought to continue to handle it as a non-excludable good. An often-neglected aspect of the modern state's ascendancy is the conclusion of a social contract with its people. The state has historically been vested with control of the means of coercion in its territory in exchange for its firm commitment to make every effort to protect the life and liberty of every one of its citizens. Having said that, states should stop reducing resources and operational objectives in response to the growth of the private security industry. States ought to keep striving to protect the security of their people, irrespective of the latter's capacity to purchase this type of service in the market.



- A combination of publicly and privately supplied security services might be constructive under certain conditions. Where possible, states should favour policies for the prevention of threats as opposed to policies for the management of their impact, which usually fail to effectively protect all those in danger (Krahmann 2008, 382–7). In this effort, states must not hesitate to develop synergies or partnerships with PSCs. Examples of public–private sector synergies such as those to reduce crime in the centre of Cape Town in South Africa, to protect diamond extraction in Sierra Leone and to guard oil drilling and transport facilities in Nigeria can be a paradigm for other similar forms of cooperation (Abrahamsen and Williams 2007, 2009).
- Many problems stemming from the outsourcing of security services are related to shortcomings in the operation of the private market for this type of service. Hence, states should ensure the smooth functioning of market mechanisms. First of all, supply should not be allowed to determine its own demand. It should not be possible that the same companies (or their affiliates) that take part in the collection, analysis and assessment of intelligence information on imminent threats then be tasked with the implementation of recommended security policies. In addition, states should always request competitive bids and strive to obtain more than one offer. Competition should be allowed to work. What is more, states should think twice about contracting out services to corporations that enjoy a monopoly in the market. Presumably, the implications of any disruption to the supply of security services will be very grave in cases where there are not several providers in the market and where states themselves no longer maintain a backup

capacity. Furthermore, states should avoid awarding cost-plus contracts for services when outsourcing is primarily intended to increase cost efficiency. More importantly, states should pay greater attention to the post-award management of their contracts. They should substantially improve the capacity (and the leeway for action) of their oversight institutions. The supervision of the implementation of private contracts should not be transferred to private agencies. Contract oversight might indeed be designated as an inherently governmental function. Apart from possibly giving rise to conflicts of interest, hiring private contractors to oversee other contractors is of questionable utility. This is because the work of the former would eventually have to be submitted to public oversight as well (Smith and Bauman 2011). In any case, the cost of vigorous contract management should be taken into account when a state considers the option of contracting out services.

- Moreover, states should deal with the challenges that stem from the globalisation of the private security market. First, states should establish a regulatory framework for the activity and the operation of PMSCs at both the national and international levels. This is something that most PMSCs demand too in anticipation that their legitimacy will be entrenched (Brooks 2000, 137). In addition, states should adjust their contracting practices to meet the requirements of the operation of a globalised multi-tier contract chain. They should explicitly stipulate in their agreements with prime contractors the responsibility of the latter for the activities of their subcontractors. Impunity should no longer be tolerated at either the corporate or individual level and misbehaving PMSCs should not be rewarded with new state contracts.

To conclude, states share the chief responsibility of shaping the development of the private security sector by establishing the necessary procedures, institutions and rules. The way states designate (or neglect to designate) public–private relations in the domain of security will eventually determine the role of PMSCs in global security governance.

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The global trend for contracting out the supply of military and security services is growing. Security is being transformed from a service for the public or common good into a privately provided service. The present paper by Nikolaos Tzifakis argues that the implications of outsourcing security services to private agencies are not a priori positive or negative; proper regulation of private military and security services is important. The author recommends that states should determine their 'inherently governmental functions' and keep these functions out of the market's reach. States should attempt to mitigate some of the shortcomings in the operation of the private market for security services by preventing supply from determining its own demand. States need to avoid contracting out services to corporations that enjoy a monopoly in the market. Instead, they should open competitive bids for all private security contracts.