

Building Integrity and Reducing Corruption in Defence

A Compendium of Best Practices



CONTENTS

Part I Introduction	1
Chapter 1 The Corruption Curse.....	3
Chapter 2 A Strategic Approach to Building Integrity and Reducing Corruption in Defence...	13
Chapter 3 NATO and the Evolution of the Building Integrity Initiative.....	22
Chapter 4 National Approaches in Support of Building Integrity and Reducing Corruption in Defence.....	31
Part II Corruption Risks and Vulnerabilities in Defence	41
Chapter 5 Personnel Policies.....	43
Chapter 6 Defence Budgeting and Financial Management.....	57
Chapter 7 Defence Procurement.....	72
Chapter 8 Offset Arrangements.....	86
Chapter 9 Opportunities and Risks with Outsourcing, Privatization and Public-Private Partnerships in Defence.....	99
Chapter 10 Utilisation of Surplus Equipment and Infrastructure.....	112
Chapter 11 The Involvement of Defence Personnel and Assets in Economic Activities.....	124
Chapter 12 Integrity Issues Related to Military Operations.....	135
Chapter 13 Combating Defence-related Corruption in Countries with Unresolved Territorial Disputes or Frozen Conflicts.....	148
Part III Building Integrity and Reducing the Corruption Potential in Defence Establishments	163
Chapter 14 The Importance of Integrity Building.....	165
Chapter 15 Regulatory Frameworks.....	172
Chapter 16 The Human in the Loop.....	193
Chapter 17 The Role of Government.....	205
Chapter 18 The Role of Parliaments and Audit Offices.....	222
Chapter 19 The Role of Ombudsperson Institutions.....	234
Chapter 20 The Defence Industry as an Ally in Reducing Corruption.....	250
Chapter 21 The Role of Civil Society and the Media.....	261

Chapter 22 The Role of International Organisations.....	281
Part IV Implementing Integrity Building Programmes.....	297
Chapter 23 Making Change Happen	299
Chapter 24 Cultural Awareness in Implementing Integrity Building Programmes.....	312
Annex 1: Selected Resources	323
Annex 2: TI International Defence and Security Programme	327
Annex 3: Abbreviations	329

Chapter 12

Integrity Issues Related to Military Operations

Corruption accompanies not only the management of the defence establishment in peacetime but also the immediate preparation of forces for operational deployment, the conduct of peacekeeping missions, as well as stabilization and reconstruction operations. Of primary concern in the beginning of the twenty-first century is the prolific use of contractors, in particular the involvement of private military and security companies. Hence this chapter is dedicated to the problem of corruption related primarily to the use of contractors in operations. It also outlines good practices in increasing integrity in the use of private security and military companies in theatres of operations.

Corruption not only demoralizes peacekeepers but also reduces the credibility of national and international peace efforts. Concern about corruption in Afghanistan for example is approaching a point where it directly threatens the success of the Government of Afghanistan as well as the NATO-led mission.

At the present time, the military forces of NATO member nations cannot undertake operations of any sort, for any purpose whatsoever, either individually or in coalition exercises, without the support and active participation of "private military contractors." This rapidly growing dependency of NATO's militaries on the private sector has developed over the past two decades, since the end of the Cold War. This development is counter-intuitive as well as quite astonishing in its extent, inasmuch as the United Nations Convention Against Mercenaries of 1989¹ is commonly understood as intending to inhibit (rather than foster) the growth of private military forces and outlaw their use by UN member nations.

The first response to this apparent paradox is that the private military contractors (PMCs) now critically relied upon to support NATO coalition operations in war zones are not, strictly speaking, "mercenaries" in the technical sense. The UN convention on mercenaries itself characterizes a "mercenary" as an individual hired and employed to bear arms and to serve as a soldier for a government other than his own. The vast majority of PMC employees, by contrast, do not bear weapons of any sort and are also

¹ United Nations General Assembly, *International Convention against the Recruitment, Use, Financing and Training of Mercenaries*, 72nd plenary meeting (4 December 1989), A/RES/44/34.

Box 12.1. Corruption Challenges and Good Practice in Pre-deployment Activities

Countries are often called upon by international organizations to deploy forces in peace operations. On occasion, such decisions are made at short notice, while national forces are not ready for such deployment and need additional weapons systems, communications, individual and other types of equipment in order to meet the requirements of the specific theatre of operations.

Procurement procedures are then implemented under much shorter deadlines, without a proper competitive process. In addition, cost considerations are often belittled by minimal interoperability requirements and “noble concerns” for the safety of the soldier, sailor or airman. Procurement processes, which may already lack integrity under normal procurement conditions, are becoming extremely vulnerable to corruption.

Another vulnerability results from the lack of clear criteria and transparent procedures for selection of the personnel to be deployed, in particular when the remuneration during deployment is several times higher than the normal salary.

Cases when some of the military pays to be deployed or hastily procured equipment is of rather low quality may have a demoralizing effect on the deployed unit.

Most of the good practices—enhancing the integrity in procurement and personnel management as discussed in previous chapters—are applicable here too. These apply particularly to the transparent rules and selection on merit for personnel to be deployed, as well as competitive procurement and sound quality control of procured equipment.

The measure of fundamental importance, however, is to deploy not contingents, i.e. units specially assembled and manned for the particular mission and disbanded upon their return home, but standing organizational units. This measure is even more effective when the country has a transparent defence policy and sound defence planning mechanisms. In such cases deployable units are identified in advance, they have the capabilities required for specific missions and theatres of operations and may need only minimal additional assets and training to be brought up to some requirements, unforeseen in advance.

directly employed by the military services or diplomatic agencies of their own nation, deployed under their own government's auspices to serve on foreign soil.

The critical dependence of NATO's member-nation military and diplomatic personnel upon the private sector does not result from a deliberate policy by member states to privatize their militaries. Rather, in an era characterized by voluntary, non-conscript military services and increasingly severe economic constraints, it has proven increasingly necessary, as well as more cost-effective, to outsource a number of non-combat but mission-critical operations and services to the private sector. These outsourced or “privatized” functions typically range from supplying and preparing food, to providing maintenance and sanitation at military outposts and even to supervising the training of

Box 12.2. Fraud, Mismanagement and Misbehaviour in UN Peacekeeping Operations

A UN task force has uncovered a pervasive pattern of corruption and mismanagement involving hundreds of millions of dollars in contracts for fuel, food, construction and other materials and services used by UN peacekeeping operations, which are in the midst of their largest expansion in 15 years. It identified multiple instances of fraud, corruption, waste and mismanagement at UN headquarters and peacekeeping missions, including ten significant instances of fraud and corruption with aggregate value in excess of US\$610 million.

In addition to the corruption, there are also problems with other forms of misbehaviour. By 2006, nearly 300 UN peacekeeping personnel had been investigated for sexual crimes. 170 peacekeepers, including 17 civilians and 16 police, have been sent home. As a result, in the same year the U.S. and Japan—two of the largest contributors to UN peacekeeping operations—were threatening to withhold funds unless the UN cracks down on corruption.

Sources: "Peacekeeping: Cleaning up Corruption," *Strategy Page* (2 March 2006), www.strategypage.com/htmlw/htun/articles/20060302.aspx; Colum Lynch, "U.N. Finds Fraud, Mismanagement in Peacekeeping," *Washington Post* (December 18, 2007), A06.

host country police and military forces during peacekeeping and stability operations (as, for example, in Bosnia, Kosovo and presently Afghanistan).

At the far extreme of this range of private services, however, is the increasing use of Armed Private Security Contractors (APSCs) to provide security for diplomatic missions and personnel, to protect vital supply convoys and even to guard military installations themselves (for which APSCs serve as sentries or police). As with the larger phenomenon of increasing involvement of the private sector in military operations generally, this reliance on APSCs has not resulted from a deliberate, collective or even well thought out strategic or policy decision by NATO's member nations. Instead, the increased reliance upon private security forces in war zones is largely the result of an extension of conventional domestic practice within those member nations themselves. In most NATO countries, for example, private firms have long been retained to provide guards, sentries and traffic police for domestic or "in-country" military installations as readily as other firms have long been retained on those same military installations to operate the motor pool, provide routine building maintenance or grounds keeping, or to supply, deliver, prepare and serve food for troops in the mess hall.

Thus, the rapid growth of reliance upon the private sector to support NATO military missions abroad can be seen largely as a form of "mission creep." That is, present reliance on the private sector stems from an unreflective extension of customary domestic practices into the international arena, primarily out of necessity or convenience, without much thought for the long-term implications or consequences of extending such practices. Borrowing a phrase from the late philosopher Hannah Arendt, we might

term this the “banality” of the private sector, in marked contrast to the historically malevolent or sinister moral reputation attached (for example, by Machiavelli) to any reliance on mercenary military forces. Whether banal or malevolent, however, this situation is unlikely to change. How might NATO’s military forces and diplomatic missions most adequately cope with this new feature of modern warfare?

Presumed Benefits of the Private Sector

Proponents of this dramatically increased reliance upon the private sector would assert that this public-private partnership in the military realm is beneficial rather than sinister. Indeed, the commercial or corporate sector’s motto of “faster, cheaper, better” seems well suited to providing reliable, quality food and sanitation services for NATO military personnel deployed (often with little advance warning or preparation) in peacekeeping or stability operations, such as a humanitarian catastrophe. This tacit policy serves to increase the number of highly-trained uniformed personnel who are available to engage in the primary military mission of life-saving, peacekeeping, or nation-building, while leaving logistical concerns in the hands of non-military support personnel. Likewise, proponents of the present arrangement argue, the private sector is able to mobilize quickly to provide technologically complex logistical support such as weapons systems maintenance, operational advice and technical consulting. It takes months or even years for military units to recruit, train and deploy uniformed personnel with these requisite technical skills. By contrast, a contract may be “let out” to a private defence contractor to provide skilled technical support personnel during a military crisis with very little lead time.

As an additional economic consideration, military personnel in service to their country enlist, or are commissioned, to serve for a specified period of time. During that assigned period of national service, they are salaried with full benefits whether or not they are actually deployed in military operations. Upon leaving their nation’s military service, such personnel may be entitled to a range of “veteran’s benefits,” from education to health care, for the remainder of their lives. By contrast, employees of a private military contractor are governed strictly by the terms of their employer’s contract. They are usually paid quite generously, but only while deployed on assignment, and are usually responsible for providing their own benefits (such as health care and life insurance) from their salaries. Private employees can be let go or reassigned quickly when the PMC’s primary contract (or the need for their individual services) terminates. There is no lifetime guarantee of residual benefits at public expense.

Finally, advocates of this increasing reliance on a public-private military partnership note that the “irregular” or unconventional military operations (or irregular warfare – IW) in which NATO forces will likely be involved for the foreseeable future—counterinsurgency (COIN), humanitarian assistance, or peacekeeping in failed states—often have

an underlying economic cause. Private contractors based in NATO countries frequently, upon arrival in a “failed state” or an unstable zone of conflict, offer employment to local inhabitants (to cook, clean, provide other labour, and even serve as translators). The use of PMCs during such IW operations thus provides a reliable source of jobs and income to the most desperately impoverished population in the target country, and serves to promote economic stability and heightened security in contested regions of the world. It is for such reasons that military leaders and policy experts generally conclude that contemporary and future military operations are “unsustainable” apart from reliance upon the private sector.

The Ethical and Leadership Challenges

These arguments in support of the present public-private military partnership, however, should not be allowed to minimize a number of complex ethical challenges that this arrangement inevitably has already posed and will likely continue to generate. Ideally, for

Box 12.3. Self-Regulation of Private Military and Security Companies through a Code of Conduct

Codes of conduct (CoC) are self-imposed corporate obligations that impose normative standards that are not part of a company’s original core business. From a corporate point of view, codes of conduct are part of PR work, risk management and a company’s socio-political contributions.

While private military and security companies (PMSCs) are often aware that they are not operating in a legal vacuum, there is often uncertainty as to the rules in force—particularly in conflict regions—and not infrequently a degree of ignorance with regard to international standards. Hence, a code of conduct for PMSCs is a useful tool to overcome shortcomings at the level of regulation and implementation, address third party concerns (like those of activist NGOs) and to protect the interests of corporations.

The aim of a code of conduct for PMSCs is first of all to formulate duties based on international standards of human rights protection and international humanitarian law that businesses must respect. Respectively, a CoC should address the protection of the right to life and bodily integrity, employment rights, particular gender specific duties to respect and bans on sexual violence and exploitation, and a ban on corruption.

The second major component of a CoC is the provision for implementation of obligations, including procedures regarding PMSC accountability and responsibility, monitoring and reporting mechanisms.

Source: Nils Roseman, *Code of Conduct: Tool for Self-Regulation for Private Military and Security Companies*, Occasional Paper #15 (Geneva: DCAF, 2008).

example, the contracts required for provision of specific services to military and diplomatic services should be negotiated transparently, through a fully open and competitive bidding and procurement process designed to assure the highest quality service at the best price. Likewise, proponents of the current system often claim that the terms of compliance specified in the contract itself will provide sufficiently for accountability and oversight, both of the PMC and of the behaviour of its employees. Thus, poor performance or insufficient compliance by the contractor with the terms of the contract, or improper behaviour in the host or client country by a contractor's employees, should serve as grounds for dismissing those employees or terminating the contract with the firm. The existence of these commercial sanctions in the "free market" are often touted as adequate mechanisms to enforce compliance, guarantee satisfactory performance and ensure best practices by all parties.

Regrettably, in actual practice, these "free market" ideals are seldom attained. Transparency in bidding and contract procurement is frequently absent, and the prospects for favouritism, graft, cronyism, bribery and corruption are rife. More often than not, even absent corrupt motives and unscrupulous character, NATO member states simply lack a sufficient number of trained and experienced procurement officers to supervise these negotiations properly. Those assigned to these duties, moreover, even given the highest level of competence and the best of civic intentions, may be rapidly overwhelmed by the size and scope of their task, particularly in the chaotic and compelling circumstances accompanying armed intervention in a failed state, or in the midst of an unfolding humanitarian crisis. The urgent need for a wide range of diverse services in the midst of war does not constitute (to put it mildly) an ideal situation within which to publicize, receive, review and award large and complex contracts in a just and orderly fashion, nor to establish effective external controls and oversight to ensure full compliance.

Even if overworked and overwhelmed government contracting officers are not subjected to bribery and corruption, there are ample opportunities for unscrupulous and even incompetent PMCs, or the occasional unscrupulous employee, to take advantage of these unsettled circumstances. At present, for example, there is no accepted and generally recognized system—certainly not at the international level—for evaluating, registering or licensing private contractors, or otherwise defining or upholding reasonable professional standards of performance on the part of companies and their employees. When errors of procurement are made, or incompetence discovered, there is often little recourse open to the aggrieved parties beyond termination of the contract.

Furthermore, even the very best and most reliable private firms (just as their domestic counterparts do upon occasion) may hire an incompetent or unscrupulous employee. The sanctions available for disciplining inappropriate, unprofessional, or even

criminal conduct are often woefully inadequate and hardly sufficient to serve as a deterrent to malevolent behaviour. It hardly seems sufficient, for example, to punish an employee found to have engaged in criminal conspiracy, kidnapping and human trafficking (as happened, for example, in Kosovo) merely with dismissal and severance of pay and privileges. Yet, under current circumstances, there is little other recourse available. Thus, establishing and sustaining what are sometimes termed the “inherently governmental” functions of contract supervision, oversight and accountability (particularly of individual personnel) in zones of combat constitutes, in actual practice, a formidable challenge.

The allegedly unprovoked and indiscriminate killing of seventeen Iraqi civilian bystanders in Monsour Square, Baghdad, on 17 September 2007 by security guards employed by the former U.S. firm Blackwater Worldwide, constituted a dramatic illustration of the range of problems associated with building integrity and ensuring best practices by private contractors in zones of conflict. That specific incident has been denounced as an example of regrettable indifference and unprofessional lack of concern of private security employees for the welfare of the local populace. Such criticisms, however, altogether miss the most salient feature of that unfortunate incident. The “welfare of the local populace” is, by definition, seldom if ever the principal, or even the proper motive for a private, commercial contractor. Instead, it is concern for the welfare and safety of the customer or paying client that constitutes the overwhelming contractual concern of the APSC and its employees.

This factor underscores sharply the underlying differences of organizational values and intentions between public and professional organizations (such as a democratic nation’s military forces) and private, commercial organizations. The former exist to serve their nation and its legitimate interests. Its individual members, accordingly, in their professional training and orientation, are routinely and extensively socialized into that ethic of public service and sacrifice. Private commercial organizations, by contrast, exist to serve their customers and clients. The welfare of the wider public is guaranteed through their activities only insofar as these commercial firms operate within a well-defined system of legal jurisdiction and accountability – one that, for example, is competent to detect and punish both private firms and their individual employees for their failure to exercise due care, or for criminal negligence. In regions of armed conflict, let alone in failed states, it is precisely these systems of accountability and jurisdiction that have deteriorated. Absent the firm rule of law, the local population is left to rely upon the good will of the private firm, as well as upon the character of its individual employees. When these fail, there is little left for victims in the way of recourse.

Recognizing this dilemma, the professional military forces of NATO member states are imbued with a sense of public service and public accountability. Character education is a hallmark of professional military education within these nations. The goal of

character education and “professional military socialization” is to ensure that individual members of each nation’s military may be empowered to use deadly force when necessary and entrusted to use such force responsibly and economically, and only insofar as is necessary to achieve legitimate national aims. Individual failures in exercising this weighty responsibility—for example, engaging in criminal activities (robbery, rape, extortion or murder), or behaving in a careless, negligent or indiscriminate manner when using deadly force—are accountable under stern military law and discipline.

Nothing could be more different from what might be termed the private sector or “corporate” ethic, which focuses on corporate ambition and achievement within a competitive environment, with “successful performance” judged almost entirely in terms of client and customer satisfaction. Former Blackwater CEO Erik Prince, for example, proudly emphasizes his (former) organization’s immaculate performance record in having never allowed a single client or “principal” to come to bodily harm during nearly seven years of providing security services in highly volatile and extremely hazardous war zones. This is indeed a remarkable and enviable performance record, indicative of the highest standards of competence in providing for client security. That is precisely the service that Blackwater Worldwide, Inc. pledged to provide.

The difficulty, however, is that this record on behalf of its own clients is not the only standard by which to judge the performance of APSCs. Critics from the military perspective complain that this very record of accomplishment itself constitutes a stark problem. The aggressive, militant and belligerent behaviour of APSC personnel, through which such protection to clients is accorded, offends and alienates the local population and, as in Monsour Square, often also threatens them with disproportionate and highly inappropriate risk of harm or death. This is because the welfare of non-contractual third parties, such as the local population, simply doesn’t count in terms of compliance with the contract. Thus, the very success and proficiency of the APSC (as judged by this corporate or contractual standard) simultaneously impedes the military’s larger mission objectives of gaining the loyalty and trust of the local population in a failed state by guaranteeing their safety and security and ensuring the rule of law.

Promoting PMC Best Practices and Building Integrity in NATO Operations

The vast majority of these ethical challenges have been generated simply by the presence of APSCs in zones of combat where legal jurisdiction and accountability have been decidedly ambiguous. APSCs, however, constitute only a tiny fraction of the PMCs operating in conflict zones. The particular dilemma they present, moreover, has been specifically and meticulously addressed in the deliberations of international legal experts under the auspices of the International Committee of the Red Cross (ICRC), as

summarized in the Montreux Document.² That document carefully sets forth proposals to amend legal statutes, clarify and extend appropriate legal jurisdiction over APSCs operating in war zones, remove areas of ambiguity in the interests of all concerned parties and otherwise promote best practices by host and client states. As such, this document should be read and critically pondered by NATO member states, and its provisions for law and best practice with regard to the use of armed private security contractors, insofar as is feasible, should be followed.

Recommendations

C3 and the Comprehensive Approach³ to Operations

Mid-career officers from NATO and allied military services routinely concur that the chief challenge to effective liaison with private contractors in operations is C3, or communication, command and control. Absent clear lines of authority or well-defined operating procedures, commanding officers are forced to rely on proactive individual initiative and engagement with private-sector units operating in their spheres of command. Safe and effective coordination has been found largely to depend on good will and the ability on both sides to recognize and respect common interests.

The current unified approach to military, diplomatic, NGOs and private companies working together in conflict zones should not blind leaders to the complexities of commanding disparate kinds of organizations under a single command “umbrella.” Under that umbrella will be organizations whose underlying missions and corporate virtues are in serious tension. This tension will be resolved only through a unified command structure, with the NATO military commanders at the top of the command hierarchy, in sole possession of the final authority and responsibility for the battle space, subordinating all actions to their command.

Law versus Character

Conventional war, irregular war and counterinsurgency all inherently represent circumstances in which the normal rule of law—and mechanisms for accountability, oversight and compliance—have deteriorated. Under such bleak circumstances, the use of deadly force should be entrusted only to those individuals whose character and whose

² United Nations General Assembly & International Committee of the Red Cross, *Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict* (2008), A/63/467-S/2008/636, www.icrc.org/Web/Eng/siteeng0.nsf/html/montreux-document-170908.

³ *NATO Website*, “A Comprehensive Approach” (March 2009), <http://www.nato.int/issues/comprehensiveapproach/index.html>.

Box 12.4. The Montreux Document on Private Military and Security Companies

Recent years have seen an increase in the use of PMSCs and with it the demand for a clarification of pertinent legal obligations under international humanitarian law and human rights law. The Montreux Document, 17 September 2008, identifies and promotes good practices relating to PMSCs under the following themes:

- *Determination of services*: which services may or may not be contracted out to PMSCs, taking into account factors such as whether a particular service could cause PMSC personnel to become involved in direct participation in hostilities.
- *Procedure for the selection and contracting of PMSCs*: assessing the capacity of the PMSC to carry out its activities in conformity with relevant national and international law; providing adequate resources and drawing on relevant expertise for selecting and contracting PMSCs; ensuring transparency and supervision in the selection and contracting of PMSCs through public disclosure of contracting regulations and of general information about specific contracts; publication of an overview of incident reports, complaints and sanctions; oversight by parliamentary bodies, including through annual reports or notification of particular contracts to such bodies.
- *Criteria for the selection of PMSCs*: ensuring that lowest price is not the only criterion for the selection, taking into account the past conduct of the PMSC and its personnel, financial, economic and management capacity of the PMSC, training of personnel both prior to any deployment and on an ongoing basis on a variety of issues, including on measures against bribery, corruption, and other crimes; the existence of monitoring, supervisory, and internal accountability mechanisms, etc.
- *Terms of contract with PMSCs*: including contractual clauses and performance requirements that ensure respect for relevant national law, international humanitarian law and human rights law by the contracted PMSC.
- *Monitoring compliance and ensuring accountability*: providing for criminal jurisdiction in national legislation over crimes under international law committed by PMSCs and their personnel; considering the establishment of corporate criminal responsibility and criminal jurisdiction over serious crimes committed by PMSC personnel abroad.

The same practices and requirements are applied, as appropriate, where a contracted PMSC subcontracts with another PMSC.

While the Montreux document is addressed to states, the good practices may be of value for other entities such as international organisations, NGOs and companies that contract PMSCs, as well as for PMSCs themselves.

organizational “professional ethic” we can still both trust and hold accountable for failures. This is the core virtue of the military profession. The disintegration of law and order, and the consequent erosion of normal oversight and accountability, pose challenges to the moral character of any individual. The military works carefully to cultivate

the kind of character that can withstand those temptations, remain steady in areas of disequilibrium and thus help restore law and order.

The private or “corporate ethic,” by contrast, is wholly unoriented to this unique problem. By design, corporations rely upon the external oversight of society and the law to keep unhealthy ambitions in check. Hence, we cannot and must not deploy armed private contractors as guards, sentries, or even prison guards inside areas beset by insurgency. Private security contractors should only be rearward deployed (as they are now domestically within NATO member nations) – i.e., only in regions in which law, security and accountability for wrong-doing are not fundamentally in question.

Eroding the Professional Military Ethic

In counterinsurgency operations and in irregular warfare generally, building trust with the local population constitutes NATO’s best weapon. If, on the one hand, private security contractors can perform equally well all the activities that the military understands as its core mission, then why bother to sustain a military force at all? We maintain, in contrast, that there is something distinctive about a professional military ethic that emphasizes “selfless service to the nation and its allies.”

Accordingly, the governments of individual NATO member states should not adopt policies or practices regarding the use of private military contractors or security contractors that diminish, denigrate, or erode that ethic, or otherwise undermine civil-military relations within their respective countries. For core military missions involving irregular warfare, stabilization and reconstruction, or nation-building in particular, NATO’s core professional military virtues of sacrifice and selfless public service must be relied upon as the only proven means of building and maintaining public trust, both within our respective countries, as well as abroad.

Contractors and Humanitarian Interventions

The sole possible exception to the foregoing provision may be during calls for humanitarian military intervention (HI). This is a special case, involving a serious equivocation over the meaning of “defensive operations.” HIs are “defensive operations” in a very different sense than, for example, sentries and prison guards (or even convoy escorts) are deemed “defensive.” In HI, by contrast, defence of innocent victims of genocide involves offensive military action: engaging the enemy, exchanges of fire and active pursuit of aggressors. Absent compelling national interest or even willingness among U.N.-member nations to come to the aid of victims of genocide, the prospects for employing private security contractors deserves consideration.

In general, the organizational “vectors” of public and commercial (private) military organizations do not align well in war zones. HI, however, is an area in which the corporate vector, aimed at protecting the contractual client or principal (in this case, the

potential victims of genocide), may prove surprisingly more effective than the public vector of national military forces (which aim at the defence of their own nation, countrymen and allies).

Inherently Governmental Functions

The widespread debate in NATO diplomatic circles over what is or is not “inherently governmental” seems misplaced. A government’s role is accountability and oversight; its guiding watchword is “transparency” in the public interest. Otherwise, there is no sharply defined public-private boundary. Where the private sector mantra of “better, cheaper and faster” holds sway (as in providing food service, mechanical and engineering expertise and even local language skills), a viable continuing partnership is desirable. The government role here is to improve procurement and contract oversight capacities within a functioning legal framework.

Contractors and Combat Support

Use of private contractors for logistical and combat support seems appropriate, flexible and cost-effective. The role of the government and the military in these instances is to improve the ability to procure, manage and oversee contracts, to provide a legal framework for jurisdiction of private contracting personnel, and to ensure full compliance both with the terms of each contract and with the general rule of law in accordance with the provisions for best practice outlined in the UN/ICRC Montreux Document of 2008. Care should be taken, however, to ensure that reliance on the private sector for these functions does not inadvertently result in a failure (e.g., during an extreme crisis, or in the heat of combat) of private contractors to continue to provide essential combat support (food, fuel, supplies) to military personnel dependent upon them for survival and mission accomplishment.

Contractor Licensing

PMCs and APSCs complain that their industry is rife with unqualified and sub-par organizations and personnel. Their trade associations should work with NATO organizations to develop effective licensing and regulation of contractors, establish minimum qualifications, experience and resources defining eligibility of private firms to engage in competitive bidding for military, defence, or diplomatic contracts, and to dismiss or declare ineligible those individuals or organizations who violate these norms.

Code of Professional Ethics

Likewise, trade associations should be required to convene their members to forge a common code of ethics governing professional behaviour in their various contracting

activities. Adherence to this code would be an essential requirement for licensing and contract bidding eligibility.

Prospects for “Proxy Wars”

Finally, regardless of the policy NATO and its member states adopt toward use of private security contractors, other nations outside the alliance will likely continue to employ and deploy armed PMSCs. There is a concern by the prospects for contractors from one NATO country working at cross purposes with contractors from allied nations, for example, in providing maritime security. Likewise, it is not unrealistic to worry that NATO military forces, or armed private security contractors based in NATO member nations, might one day face a “proxy war” in Africa or Southeast Asia against armed private military contractors from an adversary power.

Preparing Future Military Leaders

Defence colleges and academies should develop courses and resources to address the PMSC and APSC policy issues, especially the leadership and ethics challenges identified above. In so doing, it would be wise to make use of the experiences of both junior and senior officers recently returned from deployment. In many cases, their experiences will outrun resident instructor expertise in our respective military and defence academies. It would also be wise to engage the private sector itself by inviting leading representatives from established private military and security companies to lecture, and to discuss their own experiences and recommendations in the classrooms of defence academies and colleges.