



**DIRECTORATE-GENERAL FOR EXTERNAL POLICIES
POLICY DEPARTMENT**



**THE ROLE OF PRIVATE
SECURITY COMPANIES
(PSCs) IN CSDP
MISSIONS AND
OPERATIONS**

SEDE



DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION

DIRECTORATE B

POLICY DEPARTMENT

STUDY

THE ROLE OF PRIVATE SECURITY COMPANIES (PSCs) IN CSDP MISSIONS AND OPERATIONS

Abstract

While the hiring of Private Security Companies (PSCs) such as Blackwater by the United States (US) has been the most widely reported and debated, the European Union (EU) and its member states are increasingly relying on private contractors in multilateral operations. Among others, the EU has employed private security guards to protect the EUPOL headquarters in Afghanistan, to secure the premises of the EULEX mission in Kosovo and to guard the EUPOL mission in the Democratic Republic of Congo (DR Congo). Due to the growing roles of PSCs in Common Security and Defence Policy (CSDP) operations, the EU and its member states urgently need to consider the possible impact that armed and unarmed security contractors can have on missions and the achievement of mission objectives. This report demonstrates that potential negative effects range from decreased democratic accountability and governmental control to the perceptions of contractor impunity and insecurity among the civilian populations of host states. There is no catch-all solution to these problems, and for many governments the advantages of hiring private security contractors, such as the ability to fill urgent capability and personnel gaps, cost-efficiency and specialist expertise, outweigh the disadvantages. Given the current financial and personnel constraints in Europe, it is likely that the use of PSCs will further increase. It is therefore imperative to develop appropriate mechanisms to address the possible problems of such use before they occur. This report develops five specific recommendations for EU action that would help address risks associated with the increasing use of Private Military and Security Companies.

This study was requested by the European Parliament's Subcommittee on Security and Defence.

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EXECUTIVE SUMMARY

While the hiring of Private Security Companies (PSCs) such as Blackwater by the United States (US) has been the most widely reported and debated, also the European Union (EU) and its member states are increasingly relying on private contractors in multilateral operations. Among others, the EU has employed private security guards to protect the EUPOL headquarters in Afghanistan, to secure the premises of the EULEX mission in Kosovo and to guard the EUPOL mission in the Democratic Republic of Congo (DR Congo). In addition, private companies have been employed by the EU to provide a broad range of support services such as transport and logistics during military operations in Bosnia-Herzegovina, the DR Congo and Tchad.

In most cases, however, PSCs are contracted by individual EU member states to support their national contingents in multilateral operations. The Netherlands hires both armed and unarmed security contractors for their missions abroad. The UK uses armed contractors to provide security for Foreign Office and Department of International Development staff, but its military supplies its own force protection abroad. Germany contracts out security guarding nationally as well as in Afghanistan.

Due the growing roles of PSCs in Common Security and Defence Policy (CSDP) operations, the EU and its member states urgently need to consider the possible impact that armed and unarmed security contractors can have on missions and the achievement of mission objectives. This report demonstrates that potential negative effects range from decreased democratic accountability and governmental control to the perceptions of contractor impunity and insecurity among the civilian populations of host states. There is no catch-all solution to these problems, and for many governments the advantages of hiring private security contractors, such as the ability to fill urgent capability and personnel gaps, cost-efficiency and specialist expertise, outweigh the disadvantages. Given the current financial and personnel constraints of European armed forces, it is likely that the use of PSCs will further increase. It is therefore imperative to develop appropriate mechanisms to address the possible problems of such use before they occur.

The report makes five recommendations for EU action:

- *Recommendation 1:* The Commission and Council should develop a common list of ‘military and security services’ as the basis for common and harmonized policies.
- *Recommendation 2:* EU agencies involved in CSDP should develop common guidelines for the contracting of the military and security services in order to improve the selection, oversight and management of private service suppliers.
- *Recommendation 3:* The Commission should consider a Directive (Internal Market), setting minimum standards for the registration and operations of private security service providers within the EU in order to improve and harmonize current national regulations.
- *Recommendation 4:* The Council should agree on a Decision, requiring national legislation controlling the export of military and security services. The Decision should also require the reporting of military and security service export licences granted by the member states in the EU Annual Report on armaments exports in order to increase public transparency and parliamentary accountability.
- *Recommendation 5:* If no agreement on recommendation 4 can be reached, the Council should consider expanding the range of military and security services included in EU embargoes on specific destinations.

1. INTRODUCTION

The deployment of military and security contractors in multilateral interventions has increased exponentially over the past decades. One of the greatest expansions has been in the use of armed security guards. In Iraq the number of United States (US) armed security contractors more than doubled between 2007 and 2010, rising from 5,481 to 13,232.² In Afghanistan, the number of armed private security personnel even quadrupled from about 4,000 in March 2009 to over 16,000 in March 2010.³ However, these figures only account for US forces employees. According to unofficial estimates there were over 30,000 armed security guards in Iraq and 24,000 in Afghanistan in 2010.⁴

Most guards are employed by so-called Private Security Companies (PSCs), which offer protective services and related consultation. This report focuses specifically on armed security services, including static security, convoy security, security escorts and personal security details. However, it should be noted that PSCs also supply unarmed services, such as operational coordination, intelligence gathering and analysis, and security training.⁵

1.1 Relevance

Several factors account for the proliferation of PSCs in deployed operations in general, and armed security contractors in particular.⁶ One reason has been the massive drawdown of armed forces after the end of the Cold War. In Europe and North America, national militaries have been cut by up to 60 percent.⁷ At the same time, the number of international interventions has increased exponentially due to 'new' transnational threats emanating from failing states, civil conflicts, terrorism and nuclear proliferation. The count of UN peacekeeping missions has increased from 18 between 1948 and 1990 to 51 since the 1990s. The creation of the Common Security and Defence Policy (CSDP) has added to this with 24 European Union (EU) civilian, police and military operations since 2003. Simultaneous operations in a large number of countries have led to a significant overstretch of European armed forces. EU member states have thus been reluctant to take over non-military functions, such as security guarding, with their already limited or otherwise occupied national contingents during joint missions and operations.⁸ Moreover, many European militaries lack expeditionary capabilities because they were focused on territorial defence during the Cold War. PSCs have offered one way to relieve military and civilian overstretch, and supply advanced military technologies at short notice. In addition to the

² M. Schwartz, *The Department of Defense's Use of Private Security Contractors in Iraq and Afghanistan: Background, Analysis, and Options for Congress*, R40835 (Washington, D.C.: Congressional Research Service, 2010), p. 6.

³ *Ibid.*, p. 11.

⁴ *Ibid.*, p. 3; D. Filkins and S. Shane, 'Afghan Leader Sees Plan to Ban Private Guards', *New York Times*, 16 August 2010.

⁵ Schwartz, *The Department of Defense's Use of Private Security Contractors in Iraq and Afghanistan*, p. 2.

⁶ The reasons for the proliferation of PSCs are widely discussed in the academic literature. See for instance, D. D. Avant, *The Market for Force: The Consequences of Privatizing Security* (Cambridge: Cambridge University Press, 2005), E. Krahnmann, *States, Citizens and the Privatization of Security* (Cambridge: Cambridge University Press, 2010), P.W. Singer, *Corporate Warriors* (Ithaca: Cornell University Press, 2003).

⁷ For national figures on armed forces personnel see <http://first.sipri.org/>.

⁸ This point was repeatedly made by Patrick Child, Managing Director for Administration and Finance, European External Action Service, during the European Parliament Subcommittee on Security and Defence (SEDE) Public Hearing 'Private Security Companies in International Crisis Management Operations', 15 March 2011. His assessment is confirmed by the experiences of CSDP military operations in Bosnia-Herzegovina and the Tchad. See pp. 8-9 in this report.

changed demands on European armed forces, many governments believe that PSCs can supply some services more cost-efficiently than soldiers or civilian government employees.⁹ Finally, PSCs can help circumvent troop limitations imposed by national parliaments or reduce the footprint of intervening military forces in host countries.¹⁰

The proliferation of armed security contractors has been a direct consequence of these factors. The guarding of military facilities has been outsourced by a range of countries, including the US, Canada, Germany and the Netherlands. Also the EU hires private security guards to protect its representatives, assets and staff in a range of situations, including offices in Belgium and elsewhere, delegations on visits abroad, and military and civilian personnel in multilateral interventions such as the European Union Police (EUPOL) missions in the DR Congo and Afghanistan.

Notwithstanding its advantages, the growing reliance on PSCs in multilateral interventions remains controversial. The potential negative consequences of using armed contractors have been illustrated by a series of scandals and the reactions of host nations. The killing of 17 innocent civilians by the employees of Blackwater (renamed Xe) in Nisour Square, Baghdad, on 16 September 2007 has been the best-publicised case. The outrage at this incident has been exacerbated by the fact that as of early 2011 none of the involved Blackwater employees has been convicted. Moreover, the Nisour Square case has been by no means an exception. Accusations of random or targeted shootings were raised against several companies in Iraq, including Triple Canopy, ArmorGroup, Zapata Engineering and DynCorp.

In Afghanistan private contractors escorting supply convoys to ISAF bases have been considered responsible for the killing and wounding of more than 30 civilians in a single district over four years.¹¹ A major incident included the killing of the provincial police chief of Kandahar by US contractors. In another case two former workers for Xe were put on trial in the US for a double shooting and the wounding of another unarmed Afghan civilian.¹²

The governments of Iraq and Afghanistan have responded harshly to the perceived impunity of security contractors, albeit with a focus on foreign PSCs. On 1 January 2009 the Iraqi government revoked the immunity granted to private security employees working for the multinational forces, effectively placing them under Iraqi jurisdiction. In Afghanistan President Karzai issued a decree announcing his decision to expel all foreign security firms by early 2011. Karzai has since agreed to a gradual withdrawal of international PSCs from Afghanistan. Nevertheless, both the actions of armed guards and the reactions of the host nations have created significant problems for international military and civilian interventions which rely on contracted security.

1.2 Questions and Structure

In response to the developments and concerns outlined above, this report is structured around five key questions:

- Section 2 examines how the EU and its member states define PSCs and what impact these definitions have.
- Section 3 analyses where and in what functions the EU, its member states and the US have used PSCs to support international missions and operations and why.

⁹ Krahmann, *States, Citizens and the Privatization of Security*.

¹⁰ Examples of national troop limitations are provided on pages 9 and 12 in this report.

¹¹ Schwartz, *The Department of Defense's Use of Private Security Contractors in Iraq and Afghanistan*, p. 19.

¹² K. Houreld, 'Afghan Security Guards: Who Will Replace Them?', *Navy Times*, 26 October 2010.

- Section 4 discusses the advantages and disadvantages of using PSCs in multilateral operations and its impact on conflict management.
- Section 5 investigates to what degree existing legal and regulatory instruments in Europe apply to PSCs in international missions.
- The recommendations suggest how the accountability and control of PSCs in the EU generally and in CSDP missions specifically may be improved.

1.3 Methodology

This study draws on a wide range of primary and secondary sources. Particularly important have been recent reports published by governmental bodies and non-governmental organizations such as the Congressional Research Office, Parliamentary Committees, Human Rights First and Swisspeace. All of these reports draw on primary research and sources not normally open to the public and thus provide up-to-date and accurate information about the use of armed security guards by the EU, its member states and other nations. Supplementary information has been obtained from newspaper articles, the company and government websites, as well as Wikileaks. Personal requests for information have been answered by numerous official and unofficial sources, including mission personnel. Finally, academic books and articles have provided the background for this research. The most important sources are listed in the select bibliography at the end of this study.

2. DEFINITION OF PSCS

Defining private military and security contractors is the first problem that needs to be overcome before common European standards for their use or regulation can be agreed and implemented. So far neither the EU nor many member states have clear definitions of security contractors and their services that could form the basis of common policies for the national use of PSCs in CSDP missions and operations.

A key issue has been whether and how to differentiate between Private Military Companies (PMCs) and PSCs. According to a study published by Finabel, an organization of the chiefs of staff of the land forces of EU member states, 'Private 'Military' Companies are the full range of civilian organisations of a private nature involved in the supply of military assistance, consultation, and support which contribute to military operations.'¹³ Similarly, the UK Green Paper on Private Military Companies contends that PMCs may provide a range of different services, including combat, advice, training, logistic support, monitoring and demining.¹⁴

Other EU member states, such as Spain and Portugal, reject the term PMC out of principle. They believe that the connotations of the state monopoly on violence and of national armed forces inherent in the word 'military' lead to confusion if applied to private businesses.¹⁵ In the documents of many European armed forces, PMCs or PSCs are referred to as 'civilian contractors' in order to distinguish them from soldiers.¹⁶ This preference is also due to the special status accorded to 'civilians accompanying the armed forces' in the Geneva Conventions, in particular their right to prisoner of war status.

The implications of these definitional debates for the political and operational praxis are serious. Politically, the absence of agreed definitions of PMCs and PSCs has allowed some EU member states to obfuscate their use of private contractors in international interventions. In response to parliamentary and public questions some states thus claim not to employ 'military contractors',

Box 1: National Definitions

Germany: The government does not have an official definition of PSCs and PMCs. The government is thus able to claim that the Bundeswehr does not use 'Private Security Companies' in Afghanistan, despite the fact that the Bundeswehr employs a range of military support companies. The German government admits, however, that Private Security Firms supply static security services for its Police Training Centres in Mazar-e Sharif and Faisabad as well as for the German Embassy in Kabul.

United Kingdom: The British government states that it does not contract 'PMCs', although the armed forces use military support contractors extensively in deployed operations. The British military does not hire PSCs for protective services in these operations, but the Foreign and Commonwealth Office (FCO) does, both for itself and other government departments.

¹³ Finabel, *Possibilities and Limitations of the Operational Co-operation with Private 'Military' Companies (PMC)*, A.24.R, 8 October (Brussels: Finabel Coordinating Committee, 2008), p. 6.

¹⁴ UK Foreign Office, *Private Military Companies: Options for Regulation*, HC 577 (London: The Stationary Office, 2002), p. 8.

¹⁵ Finabel, *Possibilities and Limitations of the Operational Co-operation with Private 'Military' Companies (PMC)*, p. 6, fn.2.

¹⁶ *Ibid.*, p.7.

although their armed forces and other agencies are supported by a multitude of military and security support companies (see Box 1). Operationally, the difficulty of distinguishing between PMCs and PSCs relates to the important question of what kinds of companies and/or services should be subject to national and international controls.

Conclusions

At the root of the problem of defining PMCs and PSCs is the fact that the industry defies neat categorizations.¹⁷ A wide variety of companies supply military and security services, ranging from armaments producers to consulting firms. Moreover, companies adapt their services in response to changes in demand. The solution to this problem, advocated by many experts and this report, is to draw up a list of 'military and security services' which should be subject to reporting, regulation and control, irrespective of the kind of company that supplies them.¹⁸ A non-exhaustive list of services, which have been outsourced to private firms in multilateral operations, includes armed guarding and protection of persons and objects; maintenance and operation of weapons systems; prisoner detention and interrogation; intelligence; risk assessment and military research analysis; advice to or training of local forces and security personnel. Further services which might be considered for improved EU reporting, regulation and control can be found in the recommendations at the end of this report.

¹⁷ UK Foreign Office, *Private Military Companies: Options for Regulation*, p. 9; Ulrike Joras and Adrian Schuster (eds.) *Private Security Companies and Local Populations: An Exploratory Study of Afghanistan and Angola* (Bern: Swisspeace, 2008), p. 6.

¹⁸ The views of legal experts from across Europe can be found at: <http://priv-war.eu/>.

3. USE OF PSCS

The use of PSCs in past and current CSDP missions has been limited, so far as can be established from open and unofficial sources. One reason has been the civilian nature of the majority of operations and the low levels of violence in many countries of deployment. This section provides an illustrative overview of some of the roles taken by PSCs in civilian, police and military missions conducted by the EU and key member states, without claiming completeness or representativeness. It also notes some of the reasons that have been given for their deployment in specific interventions. For the purpose of comparison and as a model of how the use of PSCs in CSDP missions and operations might evolve in the future, the section ends with a review of the US government's employment of contractors in multilateral interventions.

3.1 EU Civilian Missions

As of early 2011, the main EU police mission is the European Union Police Mission Afghanistan (EUPOL-Afghanistan). While security outsourcing has not been a major feature of EU police missions, it has gone furthest in Afghanistan. Several factors have contributed to this situation. The first has been the adverse security environment in Afghanistan, which has worsened since the inception of the mission in 2007. The second has been the duty of care of the EU for the protection of its staff in civilian and police missions. In addition, shortages in the personnel supplied by member states have offered business opportunities to private firms in the areas of training Afghan security forces and providing logistical support.

In 2007 and 2008, the mission thus contracted the UK-based company Armor Group to provide hostile environment training for EUPOL staff for around 256.000 Euro.¹⁹ Another preoccupation was to secure EUPOL's headquarters in Kabul, contracted to Hart Security.²⁰ Private security companies also provided close protection for unarmed civilians when moving around, as

Box 2: Civilian/Police Missions

- EUPM, Bosnia-Herzegovina (2003-)
- EUPOL PROXIMA, Republic of Macedonia (2004-5)
- EUJUST THEMIS, Georgia (2004-5)
- AMM Monitoring Mission, Aceh, Indonesia (2005-6)
- EUPOL, Kinshasa, RD Congo (2005-7)
- EUSEC, RD Congo (2005-)
- EUBAM, Palestinian territories (2005-)
- EUJUST LEX, Iraq/Brussels (2005-)
- EUBAM, Moldova and Ukraine (2005-)
- EUPAT, Republic of Macedonia (2006)
- EUPOL COPPS, Palestinian territories (2006-)
- EUPOL, RD Congo (2007-)
- EUPOL, Afghanistan (2007-)
- EU SSR, Guinea Bissau (2008-10)
- EULEX, Kosovo (2008-)
- EUMM, Georgia (2008-)

¹⁹ EUPOL, at: <http://www.eupol-afg.eu/awards.php>.

²⁰ Email communication with Harald Haendel, Chief Spokesperson, EUPOL Mission in Afghanistan, 26. January 2011. Hart Security was also contracted by the General Secretariat of the Council of the European Union to provide training for EU staff deployed to high-risk areas more generally. See Hart Security, at: <http://www.hartsecurity.com/news.asp?rel=1075&showall=true>.

well as VIP protection.²¹

Outside of Kabul, EUPOL staff is generally based within Provincial Reconstruction Teams. The protection of Provincial Reconstruction Teams varies across the different regions of Afghanistan, with NATO troops, the Afghan National Army, Afghan National Police, and also private actors involved. These private actors comprise security firms and militia-type force. Often, no clear line can be drawn between the two latter types of forces.

For police officers working for EUPOL and individual EU member states the issue of protection has been pressing because of the difficulty of concluding agreements with the states leading the respective Provincial Reconstruction Teams as part of ISAF. These teams, due to their own limited capacities, have offered EUPOL police experts protection merely 'within means and capabilities'.²² The main reason for the lack of any formal agreements between ISAF and EUPOL has been the conflict over Cyprus. Turkey is blocking any strengthening of ties between NATO and the EU beyond the Berlin Plus Agreement until the resolution of the Cyprus issue. The US is also not willing to extend systematic protection to EUPOL staff, not least due to Washington's reservations regarding the limited EU police engagement in Afghanistan and its view that EUPOL is not important enough to task US soldiers with the protection of EUPOL staff.²³ Due to the lack of systematic protection, EUPOL is unable to deploy personnel especially to the South and East of Afghanistan

In some cases, individual EU member states have therefore drawn on private security to guard their Police Training Centres. The German Police Project Team, for instance, which is working parallel to EUPOL has hired Saladin Security Afghanistan, a local subsidiary of Saladin Security (UK), to protect its Training Centres in Mazar-e Sharif and Faisabad. In addition, the risk management team of the organizations implementing the German development and stabilization programs of the German foreign ministry used the services of four PSCs: Kabora, LANTdefence, Asia Security Group, and Servcor.²⁴

Other EU member states have relied on PSCs as well. For instance, both the Swedish military and the Swedish Foreign Service have drawn on contractors. Sweden has contracted the Swedish company Vesper Group to protect the Swedish embassy in Kabul. The security coordinators and bodyguards enjoy diplomatic status and are allowed to use force in self-defence only.²⁵

There are also examples of outsourcing from other EU missions. The European Union Police Mission in Bosnia-Herzegovina (EUPM) relied initially on contractors to provide close protection and bodyguard

²¹ Oral Evidence of Chief Superintendent Nigel Thomas, 21 October 2010, in: House of Lords, *The EU's Afghan Police Mission*, Report with Evidence, European Union Committee, 8th Report of Session 2010-11, 16 February (London: The Stationary Office, 2011), p. 26.

²² Quoted in L. Peral, 'EUPOL Afghanistan', in: G. Grevi, D. Helly and D. Keohane (eds.) *European Security and Defence Policy: The First Ten Years (1999-2009)* (Paris: European Union Institute for Security Studies, 2009), pp. 325-338, p. 334.

²³ House of Lords, *The EU's Afghan Police Mission*, p. 45.

²⁴ Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Katja Keul, Omid Nouripour, Tom Koenigs, weiterer Abgeordneter und der Fraktion BUNDNIS 90/Die Gruenen, Deutscher Bundestag Drucksache 17/3559, 17. Wahlperiode, 26 Oktober 2010, p. 3.

²⁵ A. Bergman, *The Regulation of Private Military and Security Services in Sweden*, National Reports Series 02/10, PRIV-WAR, 16 December 2010, p.7, at: <http://priv-war.eu/wordpress/wp-content/uploads/2010/12/nr-02-10-SWE.pdf>

services for some of the mission's officials.²⁶ More recently, the mission no longer drew on PSCs.²⁷ The main reason is the benign security situation in the country. EUPM is also keen to avoid any potential complications with private security providers. BiH authorities provide outer security for the EUPM Headquarters. For inner security, such as the protection of the residency of the Head of Mission, the EUPM draws on its own security personnel. This is done in order to avoid depriving BiH authorities of personnel that these authorities need for more pressing tasks.

In Kosovo, the European Union Rule of Law Mission (EULEX) has also been using PSCs to protect its premises. In October 2010, a contract was awarded to the company Henderson Risk Limited (or rather its Kosovo branch, Henderson Asset Protection), worth 2,350,000 Euro annually.²⁸ Before this, the Kosovo-based company Balkan International was responsible for guarding EULEX.²⁹ Notably, the guards engaged in perimeter control were unarmed and did not have executive competencies.³⁰

The EU police mission in the Palestinian Territories (EUPOL COPPS) has also contracted services with private companies. For instance, for the year 2009 the EU awarded contracts to Page Protective Services, a UK-based company, for guarding and close protection services.³¹ Companies also support the mission in various other areas, including telecommunication and driver training. Such examples notwithstanding, the EU does not generally take systematic recourse to private companies in the Palestinian territories. However, some EU member states, such as the UK, hire companies for training Palestinian security personnel.³²

The EUPOL mission in the DR Congo has been tasked with contributing to the reform of the Congolese police. In 2008 and 2009, the mission contracted the company G4S to protect the mission headquarters and other vital sites.³³ G4S is the only international PSC operating in DR Congo, claiming to be 'the major employer in the private sector' in the country.³⁴

More important than security guarding has been the outsourcing of SSR activities in the DR Congo. However, here it is important to distinguish between the EU and individual member states. The firm PricewaterhouseCoopers has played an important role in reforming the police of the DR Congo, employing largely former police officers for the task. The main driver behind the use of PricewaterhouseCoopers and the largest donor for police reform in the DR Congo in general has been the British Department for International Development (DfID). DfID has granted over half of its funding – £45 million – to PricewaterhouseCoopers. Of this amount, £40 million was destined for police reform

²⁶ C. Holmqvist, *Private Security Companies: The Case for Regulation*, SIPRI Policy Paper No. 9 (Stockholm: SIPRI, 2005), p. 57.

²⁷ Phone conversation with senior EUPM official, 26 January 2011.

²⁸ EULEX, at: http://www.eulex-kosovo.eu/docs/tenders/SecurityGuardingServices2/Award%20Notice_Security%20Guarding.pdf.

²⁹ EULEX, at: http://www.eulex-kosovo.eu/docs/tenders/EULEX2009AwardedContracts_Final.pdf

³⁰ Email communication with a EULEX official, February 2011.

³¹ EUPOLCOPPS, at: <http://www.eupolcopps.eu/sites/default/files/Awarded%20Contracts%20-%202009.pdf>; <http://www.eupolcopps.eu/sites/default/files/Awarded%20Contracts%20-%20August%202010.pdf>.

³² This piece of information is based on background talks with a researcher who has conducted fieldwork in the Palestinian territories in 2010.

³³ EUPOL, at http://eeas.europa.eu/grants_contracts/contracts/awards/2009/2009_eupol_rdc_en.pdf

³⁴ G4S, at: <http://www.g4sdr.com/en-cd/Content%20Pages/Security%20Solutions/>.

and £5 million to strengthen good governance and oversight capacity in security institutions. The British contract makes PricewaterhouseCoopers a much more important actor in Congolese police reform than any EU member state.³⁵ The EUPOL mission has only had a budget of less than 6.5 million Euro (for the period of October 2010 to September 2011), with additional funding from France destined, among others, for the Ecole de Formation de Officiers de Police Judiciaires and the Laboratoire de Police Technique et Scientifique’.

European donors have hired management consultants elsewhere, too. In many cases, advisors were inserted into the relevant institutions, such as interior ministries or police departments. Their tasks included the development or revision of training programs, the modernization of managerial systems in the fields of financial and human resource management, or reforming pay, grading, promotion, disciplinary, or procurement systems. Thus, DfID has signed contracts with private consultants and trainers to support the implementation of British SSR programmes.³⁶ In Jamaica, DfID has contracted the management consultancy company Atos to help reform the Jamaican police force, such as by strengthening management procedures and by promoting community policing. The assistance was provided by former British police officers.³⁷

3.2 EU Military Operations

Since 2003 there have been eight military interventions under the CSDP framework (see Box 3). Private contractors have supplied a wide variety of services to support these operations for a mixture of reasons, including troop limitations, lack of specific capabilities, financial constraints and developmental objectives.

So far, the EU has not centrally funded the contracting of private security guards for CSDP military operations since the inception of the ATHENA mechanism in 2004. However, there are no formal restrictions on the hiring of PSCs for joint operations and the likelihood that they will be employed in future operations appears to be increasing.³⁸ Contributing factors are the overstretch of national armed forces, capability gaps, troop limitations and ideological preferences for the outsourcing of non-core functions. With regards to military operations these factors have meant that member states prefer to supply soldiers for military operations rather than auxiliary

Box 3: Military Operations

- CONCORDIA, former Republic of Macedonia (2003)
- ARTEMIS, Democratic Republic of Congo (2003)
- EUFOR ALTHEA, Bosnia-Herzegovina (2004-)
- EUFOR Democratic Republic of Congo (2006)
- EUNAVFOR ATALANTA, Gulf of Aden (2008-)
- EUFOR Tchad / RCA (2008-9)
- EUTM Somalia (2010-)

³⁵ A. Justaert and S. Keukeleire, ‘The EU’s Security Sector Reform Policies in the Democratic Republic of Congo,’ in: S. Vanhoonacker, H. Dijkstra and H. Maurer (eds.) *Understanding the Role of Bureaucracy in the Defence Policy*, European Integration online Papers (EIOP), Special Issue 1, Vol. 14 (2010), pp. 18-19, at: <http://eiop.or.at/eiop/texte/2010-006a.htm>.

³⁶ E. Cusumano (Undated) *Outsourcing Military Training: The Role of Security Networks in Foreign Military Assistance*, Paper, Florence, European University Institute, at: <http://stockholm.sgir.eu/uploads/Outsourcing%20military%20training%20-%20Cusumano.pdf>.

³⁷ F. Mancini, *In Good Company? The Role of Business in Security Sector Reform* (London: Demos, 2005), pp. 52-53. See also F. Mancini, ‘The Company We Keep: Private Contractors in Jamaica’, in: G. Peake, E. Scheye and A. Hills (eds.) *Managing Insecurity: Field Experiences of Security Sector Reform* (London: Routledge, 2008), pp. 145-164.

³⁸ Information supplied by unofficial sources, 17 February 2011.

functions such as personnel and asset protection.

Already there have been several military operations where there were insufficient numbers of troops to ensure force protection. Operation EUFOR ALTHEA in Bosnia-Herzegovina has generally used military personnel to safeguard installations. The former Integrated Policy Unit camp, for instance, was protected by uniformed military personnel from the Bulgarian Force Protection Company and previously by a Slovakian platoon.³⁹ Nevertheless, not all contributing nations were able to supply the requested numbers of soldiers for such services. Austria in particular had to cut back its contribution to the Force Protection Company because of troop limitations imposed by the government.

Similar problems occurred during operation EUFOR Tchad / RCA (2008-9). Following the withdrawal of the Swedish contribution, which had provided guards at the force headquarter in Abéché, no other country came forward to replace them. Thus, the force headquarters had to seek assistance from the units serving in the field, which were already at the limits of their capacities, namely the Irish, French and Polish battalions.⁴⁰ Under these circumstances it is not surprising if the EU or its member states consider the hiring of private security guards to fill shortfalls in their own deployments.

The EU already hires PSCs for military support services in areas where member states lack technical capabilities or where commercial suppliers appear to be cheaper. The lack of strategic airlift capabilities to transport troops and supplies into theatres of operations has been a long-standing problem in the EU, which will only be filled when the Airbus A400M becomes available. The EU therefore joined the Strategic Airlift Interim Solution (SALIS) programme with NATO in 2004, which provides commercial airlift through a current contract with the Ruslan SALIS GmbH. The SALIS has been used in a number of CSDP military operations, including a total of 176 sorties for EUFOR Tchad. Other commercial support services have included airborne ground surveillance and reconnaissance for EUFOR ALTHEA in Bosnia-Herzegovina and the construction of field camps and the provision of laundry services for operation ARTEMIS in DR Congo.⁴¹ In addition, private contractors have provided logistics support to all troop-contributing nations, including the delivery of fresh rations by Economat des Armées, camp management and intra-theatre lift for operation EUFOR TCHAD/RCA.⁴²

In most cases military support services are contracted by the individual member states involved in CSDP military operations. These states have very divergent policies on what kinds of services may be supplied by private companies in deployed operations. One issue on which they agree is that the actual use of force in military operations should not be outsourced. The private guarding of installations and civil government personnel, however, is acceptable to some members.⁴³

The Netherlands has employed armed security guards for force protection as well as to secure civilian and military installations abroad. Afghan Security Guard (ASG) supplies armed security personnel who work under individual contracts to secure the outer perimeter of Tarin Kowt and Deh Rawod, two Dutch

³⁹ Lt Col D. Krüger, 'AFBiH Take Over Force Protection at Former IPU Camp', *EUFOR Forum*, No.63, February 2011, p. 7, at: <http://www.euforbih.org/images/stories/forum/2011/forum63.pdf>.

⁴⁰ W. O'Dea, Minister, Department of Defence, Ireland (2008) *Dáil debates*, Wednesday, 22 October.

⁴¹ Deutscher Bundestag, Unterrichtung durch den Wehrbeauftragten: Jahresbericht 2006, p. 14.

⁴² B. H. Seibert, *Operation EUFOR TCHAD/RCA and the European Union's Common Security and Defense Policy* (Carlisle: Strategic Studies Institute, 2010), p. 55.

⁴³ Finabel, *Possibilities and Limitations of the Operational Co-operation with Private 'Military' Companies (PMC)*, p.13.

and Australian bases in Uruzgan, Afghanistan.⁴⁴ PSCs also supply security for the Dutch embassy and diplomats based in Kabul.⁴⁵ In addition, the Dutch military has hired contractors for logistic support, maintenance and translation in international operations.

The UK hires armed and unarmed security guards to protect Foreign and Commonwealth Office (FCO) and DfID employees abroad. Sometimes these guards also provide security for EU mission offices and personnel located in the same building, as in Iraq. Until 2009 the UK government spent nearly £200 million on PSCs in Iraq and over £60 million in Afghanistan. Since 2004 contract security for civilian government agencies abroad has been managed centrally by the Foreign Office.⁴⁶ The UK usually relies on a small number of well-established international companies for security guards, including Armor Group, Control Risks Group, Guarda World and Minimal Risks.⁴⁷ The British armed forces do not employ security guards for perimeter or personnel security. However, the military uses private contractors for a wide range of military support functions in deployed operations, including maintenance and logistics.⁴⁸

Germany has contracted PSCs for the guarding of national military installations for decades. In 2006, already 52 percent of Bundeswehr establishments were protected by private security guards and another 13 percent were guarded by both military and private staff.⁴⁹ As noted in the preceding section, Germany is also increasingly relying on PSCs in international operations, including the supply of static security services for its Police Training Centres in Mazar-e Sharif and Faisabad as well as for the Germany Embassy in Kabul.⁵⁰ According to the government, these are the only current deployments of private security guards abroad. However, the Bundeswehr uses contractor support in other areas, including the building of field camps and sanitation system management in Kosovo,⁵¹ maintenance and repair of military vehicles in Kosovo, Macedonia and Afghanistan,⁵² and the catering for its contingents in Bosnia-Herzegovina and Afghanistan.^{53 54}

⁴⁴ The outer perimeter is located at a distance of more than one kilometre from the inner perimeter, which directly encircles the camp. The outer perimeter is approximately ten kilometres long and consists of a physical barrier. The landing strips are located within the outer perimeter.

⁴⁵ Advisory Council on International Affairs (AIV), *Employing Private Military Companies: A Question of Responsibility*, No. 59 (The Hague: AIV, 2007), pp. 24-26.

⁴⁶ Defence Committee, House of Commons, Sixth Report, Session 2004-05, 16 March 2005, Written Evidence, Question 491.

⁴⁷ House of Commons Hansard, *Written Answers for 9 June 2009*, Column 374, at <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090602/text/90602w0021.htm>.

⁴⁸ Krahnmann, *States, Citizens and the Privatization of Security*, pp. 201-205.

⁴⁹ Deutscher Bundestag (2006) Antwort des Parlamentarischen Staatssekretärs Dr. Friedrich Pflüger vom 16. März, Drucksache 16/1043, p. 21.

⁵⁰ Krahnmann, *States, Citizens and the Privatization of Security*, p. 213.

⁵¹ U. Peterson, *Die Nutzung privater Militärfirmen durch US-Streitkräfte und Bundeswehr*, SWP-Studie No. 6 (Berlin: SWP, 2006), p. 18.

⁵² Bundeswehr, 'Bundeswehr als Arbeitgeber für Kfz-Betriebe im Kosovo und Mazedonien', Press Release, 22 July 2002.

⁵³ Deutscher Bundestag, *Unterrichtung durch den Wehrbeauftragten*, Jahresbericht 2006, Drucksache 16/4700 (20 March 2007), p. 14.

Due to a lack of military capabilities, Ireland was forced to contract helicopters with a UK company, Air Partner Commercial Jets, to support its operations with EUFOR Tchad / RCA between 2008-2009. The helicopters were necessary for the operational deployment of troops in EUFOR and to facilitate the rapid movement of supplies, stores and equipment from the Forward Logistic Base in Abéché to the Battalion base in Goz Beida in the South East of Tchad, where the main body of Irish troops was located. In addition, Ireland hired SDV Bollore, a French company, to transport the Irish Army's equipment from Cameroon to the EUFOR Base in Tchad.

Other EU member states that acknowledge commercial support for military operations abroad include Belgium, Portugal and Spain. Belgium uses contractors for logistic support, maintenance and translation; Portugal employs PMCs/PSCs for logistic support; and Spain hires businesses for military logistic support and maintenance.⁵⁵

France, Greece and Italy claim not to use 'PMCs' on deployed operations.⁵⁶ In the case of France, a report from 2009 states that the French government "has repeatedly made it clear it would not subcontract or outsource strategic operational tasks to PMCs, especially in a conflict situation. PMCs' activities during stabilization phases [...] continue to be considered an infringement of the principle of the state monopoly on armed force but are also thought to cause a dangerous blurring in the combatants'/participants' identities."⁵⁷ However, this cautious official stance notwithstanding, there are instances in which France has drawn on private companies to protect perceived national interests, especially in Africa.⁵⁸ Also, it is unclear whether the official reluctance to hire PSCs applies to private security guards. There is no doubt that France at least employs its own company Economat des Armées, which is under the direction of the Ministry of Defence, for logistic support services. The French government also draws on partly state-owned industrial groups, especially Défense Conceil International (DCI),⁵⁹ as part of public-private partnerships, the importance of which is underlined in the 2008 White Paper on defence and national security.⁶⁰

3.3 United States

The US has a long history of hiring private contractors to staff police missions and support military operations abroad. Today, it is the country that uses PSCs most extensively in international interventions, including for logistic support, maintenance and repair, management of bases and contractors, intelligence and interrogation, military and police training, security sector reform

⁵⁴ Peterson, *Die Nutzung privater Militärfirmen durch US-Streitkräfte und Bundeswehr*, pp. 18-19; A. Reimann and S. Weiland, 'Bundeswehr Mandat überdenken', *Der Spiegel*, 7 June 2006; GEBB, *Teamarbeiter* (Cologne: GEBB, July 2007), p. 25.

⁵⁵ Finabel, *Possibilities and Limitations of the Operational Co-operation with Private 'Military' Companies (PMC)*, p.13.

⁵⁶ Ibid.

⁵⁷ V. Capdevielle, *The Regulatory Context of Private Military and Security Services in France*, National Reports Series 11/09, PRIV-War, p. 15, at <http://priv-war.eu/wordpress/wp-content/uploads/2009/08/nr-11-09-fra.pdf>.

⁵⁸ Ibid, p. 11.

⁵⁹ See <http://www.groupedci.com/dci/presentation-dci.php>.

⁶⁰ Défense et Sécurité Nationale, *Le Livre Blanc* (Paris: Odile Jacob/La Documentation Française, 2008), p. 273, at: http://www.livreblancdefenseetsecurite.gouv.fr/information/les_dossiers_actualites_19/livre_blanc_sur_defense_875/index.html.

programmes and security guarding.⁶¹ The extensive use of armed security guards in military interventions, however, is a fairly recent development closely linked to the deterioration of the security situations in Iraq and Afghanistan. According to the US Government Accountability Office, the main reasons for the hiring of PSCs are 'saving money, being able to mobilize quickly and demobilize security personnel, and the freeing up of uniformed personnel to perform offensive combat operations'.⁶²

As in Europe, another reason is political limitations on the deployment of military personnel in foreign interventions. The first major increase of armed security contractors thus could be observed in Iraq after the end of the combat phase in April 2003. It was a direct consequence of the decision of the US government to limit its troops to 300,000, despite the fact that US military leaders had projected that it would require up to 500,000 soldiers to occupy and pacify Iraq.⁶³ Moreover, in Iraq the US Department of Defense for the first time stated that ensuring the safety of the civilian population was not the U.S. military's mission.⁶⁴

The 'security vacuum', which emerged when the security apparatus of the old Iraqi regime collapsed and large-scale sectarian violence erupted, provided a huge market for PSCs. Also, the US government contracted armed security guards for a range of functions. By 2008, the US State Department and the Department of Defense each employed about 6,000 armed security guards.⁶⁵ In the following six months the number of armed security contractors hired by the Department of Defense doubled, peaking at over 13,000 in June 2009.

Typically, the US military has relied on American PSCs for armed guards such as Triple Canopy, MPRI, Threat Management Group, Sabre International Security, EOD Technology, Blue Hackle, and Special Operations Consulting – Security Management Group (SOC-SMG), but it also employs British, regional and local firms such as Aegis Defense Services, ArmorGroup, Olive Group, Hart Group, Safenet Security and Falcon Group.

The expansion of security contracting by the US military has been supported by the decision of the US government to officially endorse the use of 'deadly force' by US security contractors in 2006.⁶⁶ The fully amended DFARS (2009) rule applicable today reads: 'Contractor personnel performing security functions are also authorized to use deadly force when such force reasonably appears necessary to execute their security mission to protect assets/persons, consistent with the terms and conditions contained in their contract or with their job description and terms of employment.'⁶⁷

While in Iraq the US deployment of PSCs increased in response to the worsening security situation and the withdrawal of American troops, in Afghanistan the reverse has been the case. Here the US government increased the number of private security guards from about 5,000 in June 2009 to nearly 19,000 in December 2010, despite raising troop levels from 57,000 to more than 100,000 over the same

⁶¹ A. Stanger, *One Nation Under Contract: The Outsourcing of American Power and Future Foreign Policy* (New Haven: Yale University Press, 2009); Avant, *Market for Force*; Krahnmann, *States, Citizens and the Privatization of Security*.

⁶² Schwartz, *The Department of Defense's Use of Private Security Contractors in Iraq and Afghanistan*, p. 17.

⁶³ US Senate Armed Services Committee, Hearing, 25 February 2003, E. Schmitt, 'Pentagon Contradicts General on Iraq Occupation Force's Size', *New York Times*, 28 February 2003.

⁶⁴ M. Sassoli, 'Legislation and Maintenance of Public Order and Civil Life by Occupying Powers' *The European Journal of International Law*, Vol. 16, No. 4 (2005), p. 663.

⁶⁵ J. Glanz and A.J. Rubin, 'From Errant to Fatal Shot to Hail of Fire to 17 Deaths', *New York Times*, 3 October 2007.

⁶⁶ Department of Defense, *Defense Acquisitions Regulations System (DFARS)*, 2006, 252.225-7040 (b) (3) (ii).

⁶⁷ Department of Defense, *Defense Federal Acquisition Regulation Supplement (DFARS)*, 2009, at: <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>.

time period.⁶⁸ Compared to the number of combat soldiers, armed security contractors made up between 26-34 percent of the US military's 'total armed force' in Afghanistan in 2010.⁶⁹

In addition, the US uses contractors in missions that have police training elements. The primary reason is the lack of a federal police force in the US which could be utilized for such missions. By 2010, the American company DynCorp alone has provided more than 6.000 contract police advisors to CIVPOL (Civilian Police) programs of the US in 11 countries.⁷⁰ The largest police-training efforts to date have been conducted in Iraq and Afghanistan.⁷¹ Contractors also feature prominently in efforts to reform the Afghan Ministry of Interior, including as mentors for senior-level Afghan officials and in the implementation of police infrastructure. By comparison, European mentors constituted less than ten percent of all international mentors within the Ministry of Interior.⁷²

3.4 Conclusions

Although the use of armed security contractors in CSDP missions and operations has so far been limited, the role of PSCs in multilateral interventions is growing (See Table 1). The most important factor driving this development appears to be the mismatch between political ambition and military capabilities, i.e. the overstretch of national armed forces due to multiple simultaneous interventions. For EU operations this has meant that contributing member states have been reluctant to supply uniformed soldiers for perimeter protection and other 'support' functions. PSCs provide a solution to this problem. As the US example shows, PSCs can quickly deploy large numbers of armed guards if the security situation or their clients demand it. Moreover, PSCs offer a large range of services which can help address temporary or long-standing capability gaps such as airlift, logistic support and interrogators.

⁶⁸ CENTCOM , Quarterly Contractor Census Reports, at: http://www.acq.osd.mil/log/PS/CENTCOM_reports.html.

⁶⁹ Schwartz, *The Department of Defense's Use of Private Security Contractors in Iraq and Afghanistan*, p. 17.

⁷⁰ DynCorp International, Press Release, 27 December 2010, at: www.businesswire.com/news/home/20101227005159/en/DynCorp-International-Afghan-Police-Trainer-Honored-National.

⁷¹ M. Bhatia, K. Lanigan and P. Wilkinson, *Minimum Investments, Minimum Results: The Failure of Security Policy in Afghanistan*, Briefing Paper (Kabul: Afghanistan Research and Evaluation Unit, June 2004), p. 18, at: <http://www.ciaonet.org/wps/bhm01/bhm01.pdf>.

⁷² Background talk of CF with international mentor working within the MoI, Kabul, Oktober 2010.

Table 1: Comparison of PSC Use

Actor	Use of PSCs
EU	<ul style="list-style-type: none"> – Civilian and Police Missions – EUPM Bosnia-Herzegovina: close protection, bodyguard services – EUPOL Afghanistan: protection of compounds and international staff, training of Afghan security forces, logistical support – EULEX Kosovo: protection of premises – EUPOL COPPS Palestinian Territories: guarding and close protection services, telecommunications, driver training – EUPOL DR Congo: protection of headquarters and other locations – Military Operations – EUFOR Tchad: airlift, camp management, logistic support – EUFOR ALTHEA Bosnia-Herzegovina: airborne ground surveillance, reconnaissance – ARTEMIS DR Congo: field camp construction, laundry services
EU Member States⁷³	<ul style="list-style-type: none"> – Germany: protection of police training centres and development programmes, airlift, field camp construction, sanitation management, maintenance and repair, catering – Sweden: protection of embassies – Netherlands: perimeter security guarding of bases and embassies abroad, logistic support, maintenance, translation – UK: protection of government personnel and offices abroad; police reform, logistics, maintenance – Ireland: airlift – Belgium: logistics, maintenance, translation – Portugal: logistics – Spain: logistics, maintenance
US	Armed and unarmed security guarding, logistics, base management, maintenance and repair, transport, intelligence, interrogation, translation, police training

⁷³ The selection of countries is based on publicly available information (in English) and neither representative nor complete.

4. ADVANTAGES AND DISADVANTAGES FOR OPERATIONS AND CONFLICTS

The use of PSCs by the EU and its member states outlined above has been too limited to derive any general lessons. In addition, the lack of public transparency and accountability that characterizes the outsourcing of security and its consequences in Europe prevents a systematic evaluation of the impact of PSCs in CSDP missions and operations. This section, therefore, draws strongly on the US experience to discuss the possible impacts of PSCs on multilateral operations and the resolution of conflicts. It examines the advantages and disadvantages of PSCs in recent multinational interventions in seven areas: (1) capability enhancement, (2) efficiency and effectiveness, (3) transparency, accountability and control, (4) coordination, (5) Disarmament, Demobilisation and Reintegration (DDR) and Security Sector Reform (SSR) Programmes, (6) local security, and (7) legality and legitimacy.

4.1 Capability Enhancement

One of the main advantages of hiring PSCs is the ability to fill quickly urgent operational requirements or address long-standing personnel and capability gaps. Some of these gaps have been the result of the changing demands made by multilateral interventions on national armed forces that had been structured towards national defence. A key example is the collective or national contracting of airlift capabilities through the SALIS programme until EU member states can address their own requirements through the Airbus 400M transport plane. However, the majority of contracts are the consequence of armed forces manpower reductions in Europe and North America after the end of the Cold War and the refocusing of soldiers on military 'core' functions such as combat. In CSDP missions and operations, such as EUFOR ALTHEA in Bosnia-Herzegovina and EUFOR Tchad, member states have thus been rather reluctant to supply uniformed soldiers for the protection of offices and personnel as security guarding is no longer regarded a task exclusive to the military. Outsourcing protection, logistic and other 'civilian' support functions to the private sector requires fewer trained soldiers and police forces being deployed for multilateral operations, relieving the overstretch of national militaries engaged in multiple missions.

In addition, limiting the number of troops in international missions can have political advantages such as making it easier to gain national parliamentary approval, reducing the potential number of military casualties and facilitating public support for an intervention. Host states may welcome efforts to decrease the military presence in their countries and hiring local PSCs may benefit their economies.⁷⁴

4.2 Efficiency and Effectiveness

Another advantage can be the superior cost-efficiency and effectiveness of PSCs in some areas of operation. In particular local PSCs can be considerably cheaper because they pay third-world wages. They can also be more effective because they can draw on local knowledge, networks, cultural and language skills. Swisspeace thus reports from a focus group survey in Afghanistan that 'some organisations noted that their own staff members (often local hires) had access to more relevant and better-quality information than corporate security firms could offer, and that many [international] PSPs did not provide value for money.'⁷⁵

⁷⁴ Joras and Schuster, *Private Security Companies and Local Populations*, p. 26.

⁷⁵ A. Stoddard, A. Harmer and V. DiDomenico, *The Use of Private Security Providers and Services in Humanitarian Operations*, Humanitarian Policy Group Report No. 27 (London: Overseas Development Institute, 2008), p. 23.

Not only the nationality of contractors is important, also the type of service plays a role in determining whether PSCs are more cost-efficient than using uniformed personnel. Where civilian tasks are concerned, such as catering, sewage management, IT support, logistics and transport, private firms compete in a free market and can generate economies of scale that help them to supply these functions at a lower price than soldiers.

It is questionable, however, whether the superior cost-efficiency and effectiveness of local over international PSCs, and of businesses over soldiers can be asserted in general. Recent interventions have included many examples of underperformance, corruption and diversion of funds by local and international contractors. An inquiry of the US Senate Committee on Armed Services (2010) into the PSCs hired by the Defence Department in Afghanistan found 'evidence of private security contractors funnelling U.S. taxpayers dollars to Afghan warlords and strongmen linked to murder, kidnapping, bribery as well as Taliban and other anti-Coalition activities. It revealed squandered resources and dangerous failures of contractor performance, including untrained guards, insufficient and unserviceable weapons, unmanned posts, and other shortcomings that directly affect the safety of U.S. Military personnel'.⁷⁶

Specifically singled out for major criticism were international PSCs such as ArmorGroup and EOD Technology. However, also local PSCs contracted by the US military were mentioned in the report, including Golden State Group for lacking a complete list of guards, ammunition and proof that guards had been trained; Afghan Security Guard (ASG) for a lack of in-depth management capability to fully manage complex security guard contracts; and Compass' insufficient control over convoy security operations. Even the DynCorp training programme in Afghanistan has been criticised as ineffective.⁷⁷

Assessments as to whether private contractors are indeed more cost-efficient differ widely. The German Defence Ministry has reported that private guarding of military installations within Germany has been about 49 percent cheaper than the use of military personnel.⁷⁸ By contrast, the US Government Accountability Office has noted that the Department of Defense often awarded security guarding contracts without competition, paying about 25 percent more than for other contracts.⁷⁹ Key factors affecting cost appear to be whether contractors are operating in hostile environments, which drives up prices, and whether clients are awarding contracts on the basis of open competitions rather than lists of preferred bidders.

Another factor raising costs is the exaggeration of security risks by some PSCs. In Afghanistan, observers suggested that 'some firms kept high-risk assessments in place longer than was necessary to justify their continued use'.⁸⁰ Generally, focus groups in Afghanistan 'wondered whether the presence of PSCs was

⁷⁶ Committee on Armed Services United States Senate, *Inquiry into the Role and Oversight of Private Security Contractors in Afghanistan*, Senate, 111th Congress, 2nd Session, Report 111-345, 26 October 2010, p. i.

⁷⁷ P. Chatterjee, 'Policing Afghanistan: How Afghan Police Training Became a Train Wreck,' *TomDispatch*, 21 March 2010, at www.tomdispatch.com/post/175220/tomgram:_pratap_chatterjee,_failing_afghanistan's_cops_/.

⁷⁸ Deutscher Bundestag, Antwort des Parlamentarischen Staatssekretärs Dr. Friedrich Pflüger vom 16. März, Drucksache 16/1043 (2006), p. 21.

⁷⁹ Government Accountability Office, *Contract Security Guards: Army's Guard Program Requires Greater Oversight and Reassessment of Acquisition Approach*, GAO-06-284 (Washington, D.C., April 2006), p. 3.

⁸⁰ Stoddard et al., *The Use of Private Security Providers and Services in Humanitarian Operations*, pp. 23-24.

sending subliminal messages that the security situation in Afghanistan is worse than it is in reality, keeping foreigners in fear and willing to pay for armed guards.⁸¹

Finally, the employment of PSCs in multilateral military and stability operations raises the question of whether the funds expended on them are cost-efficient in the broader context. According to Swisspeace, some Afghan groups believe the contracting for security diverts too much money away from reconstruction and the development of local armed and police forces.⁸² Outsourcing security work risks undermining the state institutions that donors are trying to strengthen because money is directed elsewhere and competent persons decide to work for private companies instead of the police and armed forces due to higher salaries. President Karzai has remarked on the fact that PSCs siphon off qualified local personnel who would potentially otherwise enlist with the Afghan police as one reason for his decision to reduce the number of PSCs operating in Afghanistan.

4.3 Transparency, Accountability and Control

The current lack of transparency, accountability and control of PSCs deployed in many multilateral interventions may be viewed by some governments as an advantage; in particular if it allows them to circumvent parliamentary and public oversight. However, for democracies the widespread absence of effective institutional mechanisms which ensure public information and control over the use of PSCs in national and multinational operations abroad is clearly a major concern.

In the EU, transparency and accountability are undermined by four factors. The first factor, discussed in section two of this report, is the lack of agreed definitions of PSCs, PMCs and their services. This has allowed many European governments to sidestep public or parliamentary questions about their use of private security contractors in multilateral operations by adopting their own interpretations as to what contracts or companies are included under these labels. A second problem is the lack of centralised reporting of government and armed forces contracts for private security services in multilateral interventions. It is often a consequence of the multiple levels and myriad of actors which handle service contracting for international operations, including separate contract management by the Army, Navy and Air Force; by national contracting agencies and mission headquarters in the theatre of operations; as well as by national contingents and multinational organisations such as the EU, NATO and the UN. The US CENTCOM is the only agency to date that supplies a quarterly census of its armed and unarmed contractors abroad. A third factor is the lack of formalised institutions and rights which ensure the regular and detailed information of national parliaments and the Parliament of the European Union about the numbers, costs and functions of PSCs in multinational interventions. In contrast to deployments of uniformed soldiers which are usually subject to parliamentary approval in EU member states, armed security guards may be hired without any restrictions.

Another concern is that even the agencies that hire PSCs sometimes appear to lack control over them and their employees. If the US experience can be taken as an example, the use of armed security guards has particularly serious implications because they involve the potential use of violence in the execution of their contracts. There have been many reports of armed contractors using excessive or random force against civilian populations in Iraq and Afghanistan, despite clear USCENTCOM Rules for the Use of Force (RUF). The RUF stipulate that 'private security contractor personnel are authorized to use deadly force only when necessary in: self-defense, defense of facilities / persons as specified in their contract; prevention of life-threatening acts directed against civilians; or defense of Coalition-approved property

⁸¹ Joras and Schuster, *Private Security Companies and Local Populations*, p. 27.

⁸² *Ibid.*, p. 34.

specified within their contract'.⁸³ In addition, DODI 3020.50 'Private Security Contractors (PSCs) Operating in Contingency Operations' requires the training of private security guards in, among others, the graduated use of force.

In practice, however, many employees of PSCs pay insufficient attention to the RUF. The list of accusations against armed guards is long and not confined to Blackwater. In Iraq, Aegis security guards have been allegedly involved in drive-by shootings; Zapata Engineering employees have been held by the US armed forces for firing on a Marine observation post; Triple Canopy contractors have been dismissed for targeting civilians 'for amusement'.⁸⁴ In Afghanistan, armed guards employed by ISAF or contributing nations have been accused of killing a local police chief, 'killing or wounding more than 30 innocent civilians during the past four years in Afghanistan's Maywand district' and 'regularly fir[ing] wildly into villages as they pass by'.⁸⁵

The negative impact of these actions is exacerbated by the feeling among local populations in Iraq and Afghanistan that contractor incidents are not adequately investigated or punished by the international coalition forces. A survey of Afghan focus groups by Swisspeace observed 'a tendency of passing around responsibilities and accountability on how to deal with complaints about PSCs was observed'.⁸⁶ This tendency, which partially originates in the lack of monitoring and oversight of PSCs by the contracting authorities and the multinational armed forces, is exacerbated by the legal and regulatory questions still open with regards to the operations of armed security contractors in deployed operations (See Section 5.)

4.4 Coordination

In multilateral operations effective coordination between national contingents, international organizations and contractors is essential in order to attain results and avoid exacerbating local conflicts and insecurity. Functional coordination appears to be most efficient where PSCs are hired centrally by the missions and their lead organizations because this avoids duplication and generates economies of scale. Both the EU and NATO have thus developed central contract management capabilities as well as basic guidelines on 'Contractor Support to Operations' in the EU Concept for Logistic Support for EU-led Military Operations and the NATO Logistics Handbook.⁸⁷

In many multinational interventions, however, the majority of PSCs are selected and employed by the national governments and contingents that have taken over specific tasks or regions. With regards to these contractors there still exist considerable weaknesses in international and inter-agency coordination. The disadvantages of decentralized contracting range from disagreements over the roles of contractors to insufficient information about who is responsible for specific PSCs. An example of the former is provided by the EUPOL DR Congo mission where staff members felt sometimes sidelined by

⁸³ CENTCOM, Quarterly Contractor Census Report May 2010, at: http://www.acq.osd.mil/log/PS/p_vault/5A_May2010.doc.

⁸⁴ D. Hastings, 'Iraq Contractors Accused in Shootings', *Washington Post*, 11 August 2007; S. Rayment, 'Trophy' Video Exposes Private Security Contractors Shooting Up Iraqi Drivers', *Telegraph*, 26 November 2005; J. B. White and G. Witte, 'Tension, Confusion between Troops, Contractors in Iraq', *Washington Post*, 10 July 2005.

⁸⁵ Schwartz, *The Department of Defense's Use of Private Security Contractors in Iraq and Afghanistan*, p. 19.

⁸⁶ Joras and Schuster, *Private Security Companies and Local Population*, p. 23.

⁸⁷ European Union Military Staff, *EU Concept for Logistic Support for EU-led Military Operations*, EUMS 3853/11, Bryssels, 4 April 2011.

PricewaterhouseCoopers (PWC) hired by the UK to reform the police.⁸⁸ This was not least because the DR Congo police worked closely with PWC, knowing that the company had much power over the allocation of funding. Also, the timelines and priorities of PWC did not always match those of EUPOL.

With regards to armed security contractors the most serious problem of insufficient coordination is 'friendly fire' between PSCs and the military. This problem is aggravated by the fact that not all private security contractors wear clearly identifiable uniforms or identification cards for safety reasons.⁸⁹ Not only multinational armed forces find it therefore difficult to identify PSCs, but also the local populations.⁹⁰ In Iraq, the US attempted to address the coordination problem through the creation of local Reconstruction Operations Centres (ROCs), managed by Aegis, where mobile security guards could self-report their operations in order to prevent clashes with coalition forces. However, not all PSCs filed their operations or routes with the ROCs, either due to competition with Aegis or because they believed it would undermine their security. The latter problem is demonstrated by the fact that NATO forces in Afghanistan were for several days unable to confirm whether private security guards involved in the shooting of a police chief in Kandahar were employed by ISAF.⁹¹

The US example shows also how some of these coordination problems can be addressed. Following the 2007 Nisour Square incident, the Multinational Force Iraq (MNF-I) created the Armed Contractor Oversight Division (renamed Armed Contractor Oversight Branch in 2009) staffed by government personnel. The MNF-I also issued guidance, making military units responsible for providing oversight of PSCs, including incident reporting, investigations and contract management.⁹² In addition, the MNF-I strengthened the requirements for PSC movement reporting to Contractor Operations Cells managed by the US armed forces, which feed the information to its tactical operations centres.

4.5 Disarmament, Demobilisation and Reintegration, and Security Sector Reform

For Disarmament, Demobilisation and Reintegration (DDR) and Security Sector Reform (SSR) programmes the employment of PSCs entails both advantages and disadvantages. The advantages include the ability to contract staff with special expertise and often considerable experience to help implement DDR and SSR programmes in countries such as Iraq, Afghanistan, the former Yugoslavia, Liberia and the DR Congo. This is particularly useful where sufficient numbers of uniformed personnel with these skills cannot be made available by the lead nations that fund and manage these programmes.

The US has practiced this strategy most extensively with regards to SSR, followed by the UK. However, despite the US government's continued reliance on PSCs for police reform and military training, its experience has not been uniformly positive. In Iraq, the US awarded two contracts for the training of the Iraqi military and police forces respectively to DynCorp and Vinnell, with MPRI and SAIC as its subcontractors.⁹³ Another prime contract went to MPRI for the integration of the newly created Iraqi

⁸⁸ This piece of information is based on background talks with a researcher who has conducted fieldwork in the DR Congo in 2010.

⁸⁹ Joras and Schuster, *Private Security Companies and Local Population*, p. 14.

⁹⁰ *Ibid.*, pp. 21-22.

⁹¹ R.A. Opper, 'Afghan Security Guards Are Blamed in a Gun Battle that Killed a Police Chief', *New York Times*, 29 June 2009. It turned out later that they worked for the US Department of Defense.

⁹² Office of the Special Inspector General for Iraq Reconstruction, *Field Commanders See Improvements in Controlling and Coordinating Private Security Contractors Missions in Iraq*, SIGIR 09-022, 28 July 2009, p. 2.

⁹³ A. Rathmell et al., *Developing Iraq's Security Sector. The Coalition Provisional Authority's Experience* (Santa Monica, CA: RAND, 2005), p. 34; Avant, *The Market for Force*, p. 122.

armed forces into the reconstruction process and for plans for the future Iraqi force structure.⁹⁴ The results, however, were unsatisfactory. In 2004, following delays with the training programme and overall poor performance of the new forces, the US military took charge of the training mission.

Notwithstanding the problems in Iraq, the US also decided to contract DynCorp for the training of Afghan Nation Police forces. Already the award of the contract caused some consternation, given the sex trade accusations against DynCorp police staff hired by the US for the UN mission in Bosnia-Herzegovina. And, again, there has been 'intense criticism regarding the quality of police training they were providing which, among others, reflected also back to the poor quality of staff they hired'.⁹⁵

Although PSCs have also been hired for DDR, such as in Liberia, the main impact of hiring security contractors in conflict regions appears to be in terms of the negative consequences for the disarmament and reintegration of ex-combatants. In particular, local populations and humanitarian actors fear that the growing market for private security guards undermines DDR processes because former militia fighters are able to 're-invent themselves' as security contractors without having to give up weapons or change their behaviour and attitude.⁹⁶

In addition, the remaining links between local security guards and anti-coalition forces in Afghanistan and Iraq have been an issue of concern. As has been noted above, some PSCs such as Armor Group and EOD Technology have hired local guards who continued to support the Taliban. Local PSCs are little concerned about these problems. They benefit from the availability of large numbers of skilled ex-combatants in the country who require little training and come already armed. The latter also solves the problem that only the Afghan government, the foreign militaries and embassies are allowed to import weapons for local use.⁹⁷

4.6 Local Security

While, theoretically, PSCs can also contribute to improving local security, the fact that most private security guards are hired specifically to protect the bases, offices and personnel of multinational civilian and military operations means that they are little concerned with public security. Surveys show that local citizens feel at best that PSCs have no positive impact on their own security because they are only concerned for their clients, at worst they decrease public security through irresponsible behaviour.⁹⁸ This feeling is reinforced by high profile cases such as the Nisour Square incident where Blackwater employees killed 17 Iraqi civilians and wounded another 18 bystanders. According to David Isenberg, there may have been many other instances where civilians have been shot by armed contractors.⁹⁹ Certainly, there have been numerous reports of contractors firing at Iraqi civilians and attacking their property without reasonable cause.¹⁰⁰ Human Rights First reviewed 'scores of cases' from ROC incident reports where private security convoys shot at civilian vehicles which approached too closely, sped

⁹⁴ 'Military Professional Resources Inc.', *Center for Public Integrity*, at: www.publicintegrity.org.

⁹⁵ Joras and Schuster, *Private Security Companies and Local Populations*, p. 34.

⁹⁶ *Ibid.*, p. 23, p. 29.

⁹⁷ *Ibid.*, p. 14.

⁹⁸ *Ibid.*, p. 27.

⁹⁹ D. Isenberg, *A Government in Search of Cover: PMCs in Iraq* (Washington, D.C.: British American Security Information Council, 2006).

¹⁰⁰ J. Finer, 'State Dept Contractors Kill 2 Civilians in N. Iraq', *Washington Post*, 9 February 2006; T. Jackman, 'US Contractor Fired on Iraqi Vehicles for Support, Suit Alleges' *Washington Post*, 17 November 2006; Amnesty International USA, *Annual Report*, 23 May 2006.

down the wrong side of the road and discharged weapons as warning.¹⁰¹ These claims of unnecessary contractor aggression are supported by senior US military officers and the US Government Accountability Office (GAO).¹⁰² The relevant PSCs, however, consider this behaviour routine and 'defensive'.

As an inquiry by the US Special Inspector General for Iraq Reconstruction (2009) revealed, also major international PSCs are not immune to irresponsible behaviour. The report noted 42 negligent discharges of weapons by Department of Defence security contractors between May 2008 and February 2009. EOD Technology was the company most frequently reported for 'negligent discharges' of weapons, followed by SOC-SMG and Aegis Defense Services.¹⁰³ It should be noted, however, that the ranking was skewed by the higher numbers of guards employed by these three companies under Department of Defence contracts in comparison to other PSCs.

In Afghanistan, the mere presence of armed security guards often creates perceptions of insecurity among local citizens.¹⁰⁴ This is partially due to the fact that PSCs have a negative public image and are associated with illegal activities such as 'violent assault, petty theft, extortion, looting, drug trafficking, kidnapping, rape, prostitution, and illegal arms trade'.¹⁰⁵ Most complaints relate to 'bad behaviour' of local PSCs, such as the harassment of civilians, the use of drugs and lack of professionalism. There appear to be good reasons for feeling threatened by the presence of armed security guards, as the examples of ISAF contractors killing local civilians in Maywand district and shooting into villages as convoys drive by illustrate.¹⁰⁶

Such prolonged insecurity not only undermines the ability of intervening states to 'win the hearts and minds' of ordinary civilians, but also the legitimacy of the new government institutions that they are helping to create. A key factor is the inability of local civilians to distinguish between security contractors, militias, police and military forces. Foreign security guards are often equated with multinational intervention forces. As an Iraqi Interior Ministry official observed, 'Iraqis do not know them as Blackwater or other PSCs but only as Americans'.¹⁰⁷ Also in Afghanistan, 'local population in urban and rural areas alike had difficulties in clearly differentiating between PSCs and the existing international military establishment'.¹⁰⁸ Local security guards, on the other hand, were frequently associated with militias which are distrusted and resented by local citizens.¹⁰⁹

¹⁰¹ Human Rights First, *Private Security Contractors at War*, pp. 5-6.

¹⁰² J. Finer 'Security Contractors in Iraq under Scrutiny after Shootings' *Washington Post*, 10 September 2005; Government Accountability Office, *Rebuilding Iraq: Actions Needed to Improve Use of Private Security Providers*, GAO-05-737 (Washington, D.C.: GAO, July 2005), preface.

¹⁰³ Office of the Special Inspector General for Iraq Reconstruction, *Investigation and Remediation Records Concerning Incidents of Weapons Discharges by Private Security Contractors Can Be Improved*, SIGIR 09-023, 28 July 2009, at: <http://www.sigir.mil/files/audits/09-023.pdf#view=fit>.

¹⁰⁴ Joras and Schuster (2008) *Private Security Companies and Local Populations*, p. 28.

¹⁰⁵ *Ibid.*, p. 29.

¹⁰⁶ Schwartz, *The Department of Defense's Use of Private Security Contractors in Iraq and Afghanistan*, p. 19; Joras and Schuster, *Private Security Companies and Local Populations*, p. 34.

¹⁰⁷ Schwartz, *The Department of Defense's Use of Private Security Contractors in Iraq and Afghanistan*, p. 19.

¹⁰⁸ Joras and Schuster, *Private Security Companies and Local Populations*, p. 21.

¹⁰⁹ *Ibid.*, p. 30.

4.7 Legality and Legitimacy

Although PSCs are formally distinct from mercenaries and recognized as legal actors by Western governments, in conflict regions their legality and legitimacy is sometimes questioned or questionable. The failure of some international PSCs to obtain local licences is one of the reasons; others include the weak national and international regulations of these companies and the seeming impunity with which some private security guards are operating in multinational interventions.

Experience from Iraq and Afghanistan illustrates that a significant number of PSCs show little regard for local licensing laws and local governments are unable to enforce their regulations. In Afghanistan, a special committee appointed by President Karzai in 2010 to investigate PSCs in the country thus found that 16 companies had committed 'major offenses', including 'the illegal use of weapons, illegal hiring, vehicle offenses and tax evasion'.¹¹⁰ Ragin Spanta, the Afghan National Security Advisor, further listed 'one company's not registering nearly half of its employees with the government; another company's not registering 444 foreign employees with the Immigration Department; a security firm's registering only two of its 49 armored vehicles; and others' not registering weapons, including heavy machine guns'. Altogether the committee report suggested that nearly two thirds of national and international PSCs in Afghanistan had disregarded national laws and regulations.

Even the multinational coalition forces appear unable or unwilling to exert their legal authority over contracted security guards (see Section 5.5.). The fact that PSCs working for the coalition forces in Iraq until 2009 and in Afghanistan by early 2011 still had immunity from local prosecution adds to public resentments against private security contractors.

Also the companies have difficulties to ensure the implementation of professional standards such as the vetting of local staff because of inadequate public information about criminal records. Since PSCs prefer local employees with relevant experience, the system is biased in favour of applicants with militia or ex-combatant backgrounds.¹¹¹ Afghan PSCs are also accused of providing poor training and lacking a code of conduct. As a result their staff are often considered 'illiterate or having a low educational background, lacking qualifications for the job, and being non-committed and ineffective'.¹¹²

In the eyes of Major General Nick Cater (UK), ISAF Afghanistan Regional Command South, this lack of effective oversight and professionalism has allowed a 'culture of impunity' to emerge.¹¹³ In Afghanistan this includes the seemingly widespread perception among security contractors that they can do as they please, giving free reign to criminal behaviour such as the collection of 'fees' at roadblocks or the running of 'protection rackets'.¹¹⁴ PSCs appear to have little fear of being held accountable for their crimes, whether they are local or international.¹¹⁵

A broader issue is the question of the legitimacy of armed security contractors. Afghans interviewed by Swisspeace 'expressed overall little sympathy for people continuing to make money through weapons. (...) As the civilian population has suffered repeatedly from armed militias, it is difficult for those

¹¹⁰ R. Rivera and S. Sahak, 'Afghan Report Revives Concerns about Scrutiny of Private Security Firms', *New York Times*, 23 January 2011.

¹¹¹ Joras and Schuster, *Private Security Companies and Local Populations*, p. 13.

¹¹² *Ibid.*, p. 34.

¹¹³ Schwartz, *The Department of Defense's Use of Private Security Contractors in Iraq and Afghanistan*, p.19.

¹¹⁴ Stoddard et al., *The Use of Private Security Providers and Services in Humanitarian Operations*, p. 23; Joras and Schuster, *Private Security Companies and Local Population*, p. 30.

¹¹⁵ Joras and Schuster, *Private Security Companies and Local Populations*, p. 24.

interviewed to comprehend the PSCs as a legitimate business sector.¹¹⁶ Many Afghan citizens believed that their government should have the sole responsibility for the provision of security in their country and that 'PSCs were sending a strong message that security is not a public good, but a commodity of foreigners and wealthy Afghans'.¹¹⁷ In fact, some feared that the presence of PSCs is undermining the willingness and ability of the Afghan police and armed forces to take charge of the security situation.¹¹⁸

4.8 Conclusions

The use of PSCs has a broad range of potential advantages and disadvantages for CSDP missions and operations. Among the main advantages are the ability to enhance EU capabilities, in particular in areas where member states lack indigenous resources or are overstretched by multiple interventions; the potential for increased cost-efficiency and effectiveness by hiring local and specially trained staff; the reduction of the military footprint of multilateral operations; the generation of economies of scale and improved coordination through centralized contracting for military and civilian support services; and the provision of employment opportunities for host nations. However, there are also significant disadvantages, especially when there is insufficient transparency, accountability and control of PSCs as appears to be currently the case in many interventions. Major concerns include decreased parliamentary and public oversight and control over deployments; wastefulness and corruption due to weak contractor management; lack of coordination and monitoring of PSCs in the theatre of operations; negative consequences for the disarmament and reintegration of ex-combatants who are able to reinvent themselves as security contractors; public perceptions of insecurity and fear of PSCs who operate with impunity due to weak local and international regulations; and the undermining of trust in new government agencies and their ability to provide public security. Not all of these concerns can be addressed through improved regulation and contractor oversight. Some such as the questions of whether the hiring of private security contractors siphons financial resources and potential recruits off from the development of public police and military forces; whether security should be provided as a commodity; and whether private security guards challenge the state monopoly on violence need to be debated with the broader implications in mind.

¹¹⁶ Ibid., p. 22.

¹¹⁷ Ibid., p. 26.

¹¹⁸ Ibid., p. 32.

5. LEGAL AND REGULATORY FRAMEWORK

Many of the concerns about the use of PSCs in multilateral operations derive from the fact that there are few national and international regulations of PSCs. For the EU, four types of regulations have some relevance: international law and the Montreux Document; EU regulations and policies; national laws; and industry self-regulation. In addition, there is the question of the implementation and enforcement of these laws and regulations, which has a major impact on how PSCs operate in multilateral interventions and conflict regions.

5.1 International Law and the Montreux Document

The place of PSCs within international humanitarian and human rights laws, in particular the Geneva Conventions, has been analysed extensively in the academic literature.¹¹⁹ This literature suggests that most contemporary PSCs are distinct from mercenaries because they do not meet the cumulative definition enshrined in the Additional Protocol I which entails, among others, being hired to fight in armed combat and not being part of any of the armed forces engaged in the conflict. Instead, private security contractors employed directly by the military may have the status of 'civilians accompanying the force', entitling them to prisoner-of-war treatment. Civilian contractors lose this status and their protection against enemy attack under the Geneva Conventions if they 'take directly part in hostilities'.¹²⁰

To further clarify the status of PSCs and the responsibility of the governments that hire them under international law, and to explore the possibilities for improved international regulation, the Swiss government and the International Committee of the Red Cross (ICRC), in 2007, began international talks which have resulted in the signing of the *Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict* by 36 states as of April 2011, including 14 EU member states, namely Austria, Cyprus, Denmark, France, Germany, Greece, Hungary, Italy, Netherlands, Poland, Portugal, Spain, Sweden and the UK. The legally non-binding document includes two parts. Part one reiterates the obligations of states and PSCs under international law, and outlines a wide range of 'good practices' for contracting states regarding the hire, use and oversight of PSCs. Part two proposes a voluntary code of conduct for PSCs (See also 5.4.).¹²¹

5.2 EU Regulations and Policies

The EU has played a critical role in promoting national and regional controls over the provision and export of various military and security services.¹²² Their application to PSCs/PMCs, however, remains

¹¹⁹ The most detailed and up-to-date analysis can be found on the website of the EU Framework Programme PRIV-WAR Project, at: <http://priv-war.eu/>.

¹²⁰ ICRC, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law* (Geneva: ICRC, 2009), p. 38.

¹²¹ Montreux Document, at: <http://www.icrc.org/eng/resources/documents/misc/montreux-document-170908.htm>.

¹²² An overview of security related export controls by the EU can be found at:

<http://www.consilium.europa.eu/showPage.aspx?id=1484&lang=en> and

<http://www.consilium.europa.eu/showPage.aspx?id=408&lang=en>. For a detailed analysis see Elke Krahnmann and Aida Abzhaparova, *The Regulation of Private Military and Security Services in the European Union: Current Policies and Options for Improved Controls*, PRIVWAR Working Paper, forthcoming 2011, at: <http://priv-war.eu>.

¹²² European Union Military Staff, *EU Concept for Logistic Support for EU-led Military Operations*, pp. 30-32

¹²² NATO, *NATO Logistics Handbook* (Brussels: NATO HQ, 2007), pp. 101-106.

limited and, so far, there are no common regulations on PSCs/PMCs registered in the EU and the export of their services abroad. At best, current controls within the EU can serve as an example of various mechanisms that could be used to improve the regulation of the private security industry. The following discussion examines six mechanisms in particular: common EU guidelines on the hiring and use of PSCs; the common EU criteria on armaments exports, the regulation of armaments brokering, technical assistance to embargoed destinations, EU embargoes on military services, and private security services.

5.2.1 Guidelines on the Hiring and Use of PSCs

Current EU guidelines on contractor support defined in the 'EU Concept for Logistic Support for EU-led military operations' are very basic and make no specific recommendations on the hiring and use of private contractors for CSDP missions and operations.¹²³ By comparison, the NATO Logistics Handbook includes recommendations on defining the legal status of civilian contractors, the kinds of operations that appear unsuitable for contractor support, the operational risks and the integration of contractors in operations.¹²⁴ However, also the NATO Handbook lacks guidelines on the selection of appropriate PSCs and minimum standards of management, oversight and transparency, similar to those suggested in the Montreux Document.

5.2.2 Armaments Exports

The EU mechanism most directly relevant to PSCs has been the development of the *Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment*.¹²⁵ The document includes two elements which are of interest to this report. Firstly, the Common Position obliges the EU to produce a consolidated annual report on the arms exports of its member states, contributing to increasing the transparency and accountability of weapons and related service exports. Secondly, the criteria set out in *Council Common Position 2008/944/CFSP* control not only the export of military equipment, but also of a range of services such as brokering, transshipment, intangible transfers of software and technology, and technology required for the development, production, operation, installation, maintenance, repair, overhaul and refurbishing of some items specified in the EU Common Military List. The criteria which have to be applied by member states granting export licenses concern, among others, the likelihood of military equipment and technology being used for internal repression, international human rights violations, the provocation of armed conflict and the aggravation of existing conflicts or if they have the potential of adversely affecting regional stability, promoting international terrorism and crime, or being re-exported to undesirable destinations.

5.2.3 Armaments Brokering

Another mechanism that can be applied to the operations of PSCs is *Council Common Position 2003/468/CFSP on the control of arms brokering*.¹²⁶ The Common Position mandates that 'member states will take all necessary measures to control brokering activities taking place within their territory', but it

¹²³ European Union Military Staff, *EU Concept for Logistic Support for EU-led Military Operations*, pp. 30-32

¹²⁴ NATO, *NATO Logistics Handbook* (Brussels: NATO HQ, 2007), pp. 101-106.

¹²⁵ Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, Official Journal, L335/99 (13.12.2008).

¹²⁶ Council Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering, Official Journal, L156 (25.6.2003).

also encourages member states 'to consider controlling brokering activities outside their territory carried out by brokers of their nationality resident or established in their territory'.¹²⁷ The Common Position is particularly relevant for two reasons. Firstly, it directly pertains to the operations of PSCs and PMCs which have become involved in arms trade. Secondly, the Common Position sets a precedent for the extraterritorial control of security services carried out by national citizens or companies abroad.

5.2.4 Technical Assistance to Embargoed Destinations

A limited range of services that may be provided by PSCs or PMCs is controlled through the *EU Council Joint Action 2000/401 of 22 June 2000* regulating 'technical assistance' related to Weapons of Mass Destruction (WMD), missiles for the delivery of WMD and embargoed destinations.¹²⁸ Importantly, technical assistance as defined by the EU Joint Action covers a wide spectrum of services, including 'technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, training, transmission of working knowledge or skills or consulting services.'¹²⁹ Moreover, the Joint Action 'encourages' member states to 'consider the application of such controls also in cases where the technical assistance relates to military end-uses other than those referred to in Article 2 ... and is provided in countries of destination subject to an arms embargo' thus broadening the potential scope of the regulation to a wide variety of security services.¹³⁰

5.2.5 EU Embargoes on Technical Assistance and Military Services

Already many EU embargoes include prohibitions on the export of technical assistance and/or services related to military activities. As of February 2011, eleven countries were subject to such embargoes: the Democratic Republic of Congo, Côte d'Ivoire, Eritrea, Iran, Democratic Republic of North Korea, Lebanon, Liberia, Myanmar, Somalia, Sudan and Zimbabwe.¹³¹ They increasingly subsume services commonly supplied by PSCs and PMCs, including to 'grant, sell, supply or transfer technical assistance, brokering services and other services related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned' or 'the provision of any assistance, advice or training related to military activities'. Unlike other terms, however, 'military activities' are not defined clearly in EU embargoes, leaving considerable scope for interpretation by national authorities.¹³²

¹²⁷ Ibid.

¹²⁸ Council Joint Action 2000/401/CFSP of 22 June 2000 concerning the control of technical assistance related to certain military end-uses, Official Journal, L159 (30.6.2000).

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ European Commission – External Relations, Restrictive Measures (Sanctions) in Force, 7 February 2011, at: http://ec.europa.eu/external_relations/cfsp/sanctions/docs/measures_en.pdf.

¹³² The UN, however, includes in its definition of 'technical advice, assistance or training related to military activities' also those that relate to terrorist activities, suggesting that 'military activities' are not exclusive to national armed forces. See http://www.un.org/sc/committees/1267/pdf/EOT%20Arms%20embargo_ENGLISH.pdf.

5.2.6 Small Arms and Light Weapons

Also potentially relevant to PSCs is the Council *Joint Action 2002/589/CFSP* which regards the export of small arms and light weapons.¹³³ However, so far, it has not led to any decisions that would have a direct impact on their operations. The decisions which have been passed offer the government of Cambodia assistance in the development of appropriate legislation for the possession, use and sale of small arms and ammunitions and for general disarmament measures,¹³⁴ and involve projects directed at the finding, collection and destruction of small arms were agreed on with regard to Georgia/South Ossetia¹³⁵ and Mozambique (Operation Rachel).¹³⁶

5.2.7 Private Security Services

Finally, the European Court of Justice has established the competence of the EU Commission over PSCs in several rulings which identify private security services as an 'economic sector'.¹³⁷ However, the movement towards common European regulations on PSCs has so far been slow. The European Parliament has been in favour of harmonizing member states' regulations of the private security sector, and the Council adopted on 13 June 2002 a recommendation regarding cooperation between the competent national authorities of member states responsible for the private security sector.¹³⁸ However, the EU Council decided to exclude private security services from the Commission's directive on services in the internal market. Instead, it tasked the Commission with assessing the possibility of presenting a separate proposal for the harmonization of regulations concerning private security services by 28 December 2010.¹³⁹ As of March 2011, however, this proposal was not publicly available.

¹³³ Council Joint Action 2002/589/CFSP of 12 July 2002 on the EU's contribution to combating the destabilising accumulation and spread of small arms and light weapons and repealing Joint Action 1999/34/CFSP, *Official Journal*, L191 (19.7.2002).

¹³⁴ Council Decision 1999/730/CFSP of 15 November 1999 implementing Joint Action 1999/34/CFSP with a view to a EU contribution to combating the destabilising accumulation and spread of small arms and light weapons in Cambodia, *Official Journal*, L294 (16.11.1999); Council Decision 2002/904/CFSP of 11 November 2002 extending and amending Decision 1999/730/CFSP concerning a EU contribution to combating the destabilising accumulation and spread of small arms and light weapons in Cambodia, *Official Journal*, L313 (16.11.2002).

¹³⁵ Council Decision 2000/803/CFSP of 14 December 2000 implementing Joint Action 1999/34/CFSP with a view to a EU contribution to combating the destabilising accumulation and spread of small arms and light weapons in South Ossetia, *Official Journal*, L326 (22.12.2000).

¹³⁶ Council Decision 1999/845/CFSP of 17 December 1999 implementing Joint Action 1999/34/CFSP with a view to a EU contribution to combating the destabilising accumulation and spread of small arms and light weapons in Mozambique, *Official Journal*, L326 (18.12.1999).

¹³⁷ See Court of Justice of the EU, Case Law, Rulings C-114/97 (vs. Spain), C-355/98 (vs. Belgium), C-283/99 (vs. Italy), and C-189/03 (vs. Netherlands).

¹³⁸ Council Recommendation of 13 June 2002 regarding cooperation between the competent national authorities of Member States responsible for the private security sector, *Official Journal*, C 153 (27.6.2002).

¹³⁹ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, *Official Journal*, L 376 (27.12.2006).

5.3 National Regulations in EU Member States

As illustrated above, the regulation of PSCs and the export of military and security services remains very much a matter of the EU member states. So far, however, no EU member state has specific laws controlling the provision of security services abroad. The UK which has the largest number of PSCs in Europe decided in 2010 to rely on industry self-regulation. Even the common EU policies and decisions discussed above have not been implemented in all member states. Since a detailed examination of the legislation in all twenty-seven member states is beyond the scope of this report, the following sections discuss the scope and variance of the national implementation of the preceding EU policies as well as the licensing of national PSCs and some security service exports.

5.3.1 Armaments Brokering

Twenty-one member states had implemented *Council Common Position 2003/468/CFSP* on the brokering of arms, whereas relevant legislation was still in preparation in Cyprus, France, Greece, Ireland, Italy and Luxembourg in 2010.¹⁴⁰ The scope of the national controls, however, differs considerably within the EU. Some countries such as Austria and Denmark regulate armaments brokering only when conducted from within their national territories; other countries such as Finland, Hungary and Slovakia control brokering also if citizens, permanent residents or registered businesses engage in brokering abroad. Some national laws are very complex and detailed; others are very general leaving much open to interpretation. Several countries, including Bulgaria, Hungary, Latvia, Lithuania, Malta, the Netherlands, Slovenia and Spain, have set up national registers for armaments brokers in which individuals or businesses planning to engage in future brokering activities have to be registered prior to applying for a licence, whereas most states require only individual export licences.

5.3.2 Technical Assistance to Embargoed Destinations

Joint Action 2000/401/CFSP on the export of technical assistance related to WMDs and embargoed destinations has been implemented by twenty-three member states, the exceptions being Belgium, Cyprus, Greece, and Luxembourg. Since the form of regulation is left to the individual member states, national legislation within the EU again varies considerably. The variation is particularly wide with regard to technical assistance for embargoed destinations because *Joint Action 2000/401/CFSP* 'encourages', but does not require national legislation on the issue. Whereas Austria, Belgium and Hungary prohibit the export of certain types of technical assistance to countries subject to an arms embargo, others such as the Czech Republic, Bulgaria, Estonia, Germany, Italy, Lithuania, Poland, Slovakia and Spain demand a licence. Finally, Cyprus, Denmark, Finland, France, Greece, Luxembourg, Portugal, the United Kingdom and Sweden do not have specific national regulations for the export of technical assistance to embargoed countries.

5.3.3 Technical Services Related to Controlled Military Goods

As a consequence of historically strict export controls and the necessity to revise national export legislation in compliance with EU accession, most Central and Eastern European member states have more extensive licensing requirements than the West European members. The Czech Republic, Estonia, Hungary, Lithuania, Poland, Slovenia and Slovakia thus have comprehensive national export controls which typically include technical services provided in connection with controlled military equipment,

¹⁴⁰ Eleventh Annual Report According to Article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, Official Journal, C265 (6.11.2009), Table C.

such as development, design, production, adjustment, repair, maintenance and use, under the same licensing laws.

5.3.4 Military Training

Due to the explicit linkage of services to controlled military equipment in *EU Joint Action 2000/401/CFSP*, few member states regulate the export of military training other than training for the use of military technology on the Common List. The Czech Republic, Hungary and Italy, for instance, demand licences for the export of all training related to the 'use' or 'handling' of military equipment. Estonia and Poland regulate the export of training and consulting services related to military goods, including 'technical support related to the development, manufacture, assembly, testing, repairs, transport or maintenance of military goods, or any other relevant service.'¹⁴¹ Only Sweden has a separate regulation requiring export licenses for all 'training with a military purpose.'¹⁴²

5.3.5 Private Security Services

In contrast to export controls, most EU member states have extensive regulations for the provision of private security services within their borders. Prime mechanisms are the national registration and licensing of PSCs and their personnel.¹⁴³ The conditions for a licence, which on average needs to be renewed every five years, vary among the member states. However, all member states require a clear criminal record among PSC management and personnel. Additional conditions include sufficient liability insurance, identification cards with name and photo, and approved uniforms which are not easily confused with those of the police or armed forces. About 60 percent of the EU member states mandate specific training of private security personnel and the passing of an examination.¹⁴⁴ Training can range from basic instruction of between 32 hours (France) and 300 hours (Poland) to complementary and follow-up training, including on the protection of persons, the transport of valuables and the use of firearms.¹⁴⁵ With the exception of Denmark, France, the Netherlands and the UK, most member states allow the carrying of firearms by security personnel with a special permit. Nevertheless, many states limit and request registration of the type and number of weapons held by PSCs, and most mandate after-hour storage in special facilities.

5.4 Industry Self-Regulation

Due to the lack of specific international regulation of PSCs and PMCs, the industry has taken proactive steps towards voluntary self-regulation in order to improve their public image and services. The first international self-regulatory initiative has been the Code of Conduct proposed by the International Peace Operations Association (IPOA), recently renamed International Stability Operations Association (ISOA), a US-based industry association, in 2001. The current revised ISOA Code of Conduct includes, among others, a commitment to respect international humanitarian and human rights laws, ensure

¹⁴¹ Estonia (undated) *National Report of the Republic of Estonia on the Implementation of the United Nations Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, at: <http://www.un.org/disarmament/convarms/BMS/bms3/1BMS3Pages/1NationalReports/Estonia.pdf>.

¹⁴² See Section 10, available from <<http://projects.sipri.se/expcon/natexpcon/Sweden/krigmlag.htm>>.

¹⁴³ CoESS, *Panoramic Overview of Private Security Industry in the 25 Member States of the European Union* (CoESS, 2004), at: <http://www.coess.org/studies.htm>.

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*

transparency and accountability, and acting with 'caution to minimize casualties and damage, while preserving a persons' inherent right of self-defense'.¹⁴⁶

In 2006, it was followed by the creation of the British Association of Private Security Companies (BAPSC) with a Charter including an obligation for members to 'enhance and promote the interests of the industry'. The Charter mentions, for instance, that members should 'provide security designed primarily to deter any potential aggressor and to avoid any armed exchange', 'ensure that all appropriate staff shall have been trained to the standards commensurate with each assignment and in accordance with applicable laws of the appropriate country', and 'decline to provide security services where there is a likelihood of the provision involving criminal activity'.¹⁴⁷

In November 2010, 58 PSCs and PMCs from the UK, US, Africa and the Middle-East signed an International Code of Conduct for Private Security Service Providers (ICoC) at a ceremony convened by the Swiss government.¹⁴⁸ The ICoC, which is based on the Montreux Document, has since been joined by 13 additional companies bringing the total number of signatories to 71 by February 2011. The ICoC includes stipulations regarding a wide range of concerns such as the use of force, detention and apprehending of persons, torture or cruelty, as well as detailed commitments to management such as the selection and vetting of personnel, the training of staff, the management of weapons and incident reporting. The latter reflect largely existing national regulations for PSCs operating in the EU member states. Like the codes of practice by ISOA and BAPSC, however, it is legally nonbinding. The ICoC is therefore attempting to counter arguments that it is ineffective by aiming to develop procedures for the monitoring and enforcement of the code by the end of 2011.

5.5 Implementation of Laws and Regulations

While improved regulation appears to be a logical solution to some of the issues raised with regards to armed security contractors in multilateral operations, the US example demonstrates that it is not without problems. Two problems in particular have limited the effectiveness of national and international laws and regulations: the insufficient monitoring of PSCs in the theatre of operations, and the inability or unwillingness of states to prosecute private security contractors who have broken the law. Frequently both problems are related as legal courts have been forced to dismiss cases against PSCs due to lack of evidence.

Given the current absence of central information about the use of PSCs by the EU and its member states in multilateral operations, it is unsurprising that there have been no high profile cases against PSCs in Europe so far. One of the few known examples of a European PSC being prosecuted for actions abroad has been the British court case against DynCorp for wrongful dismissal of a whistle blower who reported on sex slave trade amongst staff in Bosnia-Herzegovina.¹⁴⁹

The application of international humanitarian law and national criminal laws to PSCs exempt from local prosecution because of SOFAs has been similarly unsuccessful. Usually armed forces and national courts have to believe private security guards accused of excessive use of force that they have acted merely in self defence. One example from the Netherlands suggests that, although a series of violent incidents by Afghan Security Guards (ASG), a company contracted by the Dutch forces in Afghanistan, had been reported to the Dutch authorities 'in accordance with existing procedures', the conclusion was that ASG

¹⁴⁶ ISOA, *Code of Conduct* 12, 11 February 2009, at: <http://ipoaworld.org/eng/codeofconduct/87-codecodeofconductv12enghtml.html>

¹⁴⁷ BAPSC, Charter, undated, at: http://www.bapsc.org.uk/key_documents-charter.asp

¹⁴⁸ ICoC, 2010, at: <http://www.icoc-psp.org/>.

¹⁴⁹ D. MacGrory, 'Bosnia Sex Trade Whistle Blower Wins Suit Against DynCorp', *The Times*, 8 July 2002.

had 'acted in accordance with the existing rules of engagement, which are based on the right of self-defence'.¹⁵⁰

That this example is not unique, but indicative of general practice in international operations, is attested by Human Rights First. Based on a detailed analysis of PSC incident reports submitted to the US forces in Iraq, the organisation finds: 'In most cases involving the use of force against Iraqi civilians, the fact pattern is consistent: if any report is filed at all, either with the Reconstruction Operation Centers (ROCs) or within another reporting system, no official investigation is conducted to vet the company's own findings. In some cases the companies conduct a quick investigation, fire the employees involved, and almost immediately ship them back to the United States or other country of origin.'¹⁵¹

Unfortunately, the situation is not much better where cases against PSCs have been filed in court. In 2010, US courts had to drop several cases against employees of Blackwater, including the charge against Andrew J. Moonen, who killed a guard assigned to an Iraqi vice president. In the same year, a US court also dismissed the flagship case against five former employees who had been indicted on 17 counts of manslaughter in the infamous shooting incident in Nisour Square, Baghdad.¹⁵² In both instances the defendants asserted that they had acted in self-defence after coming under attack and claimed they had been assured immunity by government officials. In short, even where contractors have killed innocent civilians, problems with the availability of witnesses and evidence, government promises of immunity and claims of self-defence have impeded their prosecution in the countries that hired them.

Improved monitoring of PSCs in deployed operations does not always resolve the problem. As the US found out, existing procedures are often ignored or imperfectly implemented in countries such as Iraq and Afghanistan. According to the Office of the Special Inspector General for Iraq Reconstruction, the Multinational Forces I Armed Contractor Oversight Branch (ACOB) successfully tracked 95% of PSC incidents involving weapons discharges between May 2008 and June 2009, an improvement from only 43% observed in a prior report. However, in half of these cases ACOB lacked supporting documents to verify that any action had been taken in response to the incidents and what the results of the investigations were.¹⁵³

Another problem is that states are sometimes unwilling to take PSCs to court. The Dutch government, for example, has asserted that 'For a state to be responsible under international law for an action, it is necessary that the action be attributable to the state.'¹⁵⁴ However, 'The actions of private individuals and companies cannot, as a rule, be imputed to a state.'¹⁵⁵ Also where Dutch PSCs have been granted immunity from local criminal prosecution under a SOFA, the Netherlands does not see itself immediately as responsible. Instead, the government suggests the possibility of waiving the immunity or considering 'the scope for a third state (the country of origin of a contractor or a contractor's

¹⁵⁰ Advisory Council on International Affairs (AIV), *Employing Private Military Companies: A Question of Responsibility*, No. 59 (The Hague: AIV, December, 2007), p. 28.

¹⁵¹ Human Rights First, *Private Security Contractors at War*, p. 16.

¹⁵² J. Risen, 'Efforts to Prosecute Blackwater Are Collapsing', *New York Times*, 20 October 2010.

¹⁵³ Office of the Special Inspector General for Iraq Reconstruction, *Investigation and Remediation Records Concerning Incidents of Weapons Discharges by Private Security Contractors Can Be Improved*, SIGIR 09-023, 28 July 2009, at: <http://www.sigir.mil/files/audits/09-023.pdf#view=fit>.

¹⁵⁴ Dutch Ministry of Defense, *Government response to AIV report 'Employing Private Military Companies'* (The Hague: Ministry of Defense, 20 April 2008).

¹⁵⁵ *Ibid.*

employee) exercising extraterritorial jurisdiction over a case'.¹⁵⁶ The Netherlands are arguably not alone with this interpretation of the current legal situation. In the absence of a single international framework for PSCs, multiple regulations and laws appear to apply, allowing states to evade their responsibility to pointing to others.

Even more controversial has been the failure of the US government to take PSCs to court for violating US export controls on private military and security services. In 2010, the US government instead agree on a \$42 million settlement with Blackwater/Xe as a fine for 'hundreds of violations of United States export regulations,' including illegal weapons exports to Afghanistan and making unauthorized offers to train troops in South Sudan. The suggestion is that the State Department dealt intentionally with the violations as an administrative matter in order to avoid criminal charges against Blackwater/Xe which would have precluded the company from further government contracts.¹⁵⁷

5.6 Conclusions

The current level of national and international regulations of PSCs based in or hired by the EU and its member states is clearly insufficient. Where EU regulations apply, they only address a few select services such as armaments brokering and technical assistance. EU member states have equally weak controls with few countries going beyond the requirements of the Council Common Positions outlined in this section. No EU member state has specific regulations for PSCs that operate outside their national territories. Since international efforts to create regulations for PSCs have only resulted in the reiteration of international humanitarian law and the creation of a voluntary industry code of conduct, based on the Montreux Document, the EU can take a leading role by improving its controls. Such controls should at a minimum require the licensing and registration of PSCs based in the EU, at a maximum it should consider the licensing of contracts for the provision of military and security services outside the EU.

¹⁵⁶ Ibid.

¹⁵⁷ J. Risen, 'Blackwater Reaches Deal on U.S. Export Violations', *New York Times*, 20 August 2010.

6. RECOMMENDATIONS

Due the increased use of PSCs in multilateral operations the EU and its member states urgently need to consider the possible impact that armed and unarmed security contractors can have on missions and the achievement of mission objectives. As the preceding analysis has demonstrated, potential consequences include a wide variety of issues from questions of democratic accountability and governmental control to the basic security of civilian populations in the host states. There is no catch-all solution to these problems, and to many governments the advantages of hiring private security contractors outweigh the disadvantages. Given the current financial and personnel constraints of European armed forces, it is likely that the reliance on PSCs will further increase. It is therefore imperative to develop appropriate mechanisms to improve the oversight and performance of PSCs in theatres of operations.

Five recommendations can be derived from the preceding analysis which would benefit from the support of the European Parliament:

Recommendation 1: Common list of military and security services (Common Service List)

The Commission and Council should develop a common list of 'military and security services' as the basis for common and harmonized policies, which could include the Internal Market, CDSP operations contract management and Council Decisions.

The Common Service List should be modelled on or included in the Common Military List, covered by *Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment*.

The Common Service List should include at a minimum:

- armed guarding and protection of persons and objects;
- maintenance and operation of weapons systems;
- prisoner detention and interrogation;
- intelligence;
- risk assessment and military research analysis;
- advice to or training of local forces and security personnel.

A more extensive list of services could further include:

- | | |
|--|--|
| – armed combat; | – surveillance; |
| – military base guarding; | – management of prisons; |
| – military logistics; | – crowd management; |
| – management of military bases; | – security intelligence collection and analysis; |
| – management of military contractors; | – counter-terrorism services; |
| – military training; | – anti-piracy services; |
| – security sector reform; | – anti-hijack/kidnap services; |
| – military intelligence collection and | |

- analysis;
- military consulting;
- armed protection;
- unarmed protection;
- crisis management;
- security consulting;
- investigative services;
- and cyber warfare.¹⁵⁸

Recommendation 2: Common guidelines for the hire, use and management of military and security contractors in CSDP operations (CSDP Contracting Guidelines)

EU agencies involved in CSDP should develop common guidelines for the contracting of the military and security services identified in the Common Service List, in order to improve the selection, oversight and management of private service suppliers.

A detailed list of best practices which should be incorporated into the CSDP Contracting Guidelines can be derived, in the first instance, from the Montreux Document.¹⁵⁹ These practices include:

1. Procedures for the selection and contracting of PSCs/PMCs
 - Vetting of PSCs by checking of prior service contracts and performance and obtaining references from clients
 - Acquiring information regarding ownership structure and management personnel
 - Public disclosure of contracting regulations and general information about contracts
 - Publication of a summary of incident reports
 - Notification or annual reports on security contracts to parliaments
2. Criteria for the selection of PSCs/PMCs
 - Clean criminal record
 - Standards of vetting and personnel management records
 - Licensed or registered
 - Appropriate rules for the use of force; training in security services, international law, cultural and gender issues; handling of public complaints; measures against bribery, corruption and other crimes
 - Sources, registration and safekeeping of weapons
 - Internal accountability mechanisms and welfare provisions for employees
3. Terms of contract with PSCs/PMCs
 - Clauses on past conduct, financial and economic capacity, possession of licences and authorizations, personnel and property records, training, lawful acquisition and use of weapons, internal organization, and welfare of personnel

¹⁵⁸ Compare 'Priv-War Recommendations for EU regulatory action in the field of private military and security companies and their services', Third Draft, based on the discussions held in Utrecht on 29 and 30 October 2010.

¹⁵⁹ Montreux Document, at: <http://www.icrc.org/eng/resources/documents/misc/montreux-document-170908.htm>.

4. Monitoring compliance and ensuring accountability
 - Establishing corporate criminal responsibility and criminal jurisdiction
 - Including contractual sanctions for underperformance or bad practices
 - Provide appropriate monitoring
 - Agree with host state on status of and jurisdiction over PSCs

Recommendation 3: Directive (Internal Market) setting minimum standards for private security service providers within the EU

The Commission should consider a Directive (Internal Market), setting minimum standards for the registration and operations of private security service providers within the EU in order to improve and harmonize current national regulations.

An 'appropriate legal basis for a harmonizing Directive are Article 114 TFEU (ex-Art 95 TEU) and/or Art. 53 TFEU (ex Art. 47(2) EC) and Art. 62 TFEU (ex Art. 55 EC), which provide legal bases for the freedom of establishment and the freedom to provide services'.¹⁶⁰

These minimum standards should include:

- a clear criminal record among PSC management and personnel,
- sufficient liability insurance,
- identification cards and approved uniforms which are not easily confused with those of the police or armed forces
- minimum training requirements in the use of force or firearms (where permitted), national and international law, and de-escalation of conflicts.

Recommendation 4: Council Decision (CFSP), regulating the export of private military and security services, as defined in the Common Service List, to destinations outside the EU.

The Council should agree on a Decision, requiring national legislation controlling the export of military and security services, identified in the Common Service List. Contracts for the provision of these services outside the EU should be licensed by collective or individual export authorizations. The Decision should also require the reporting of military and security service export licences granted by the member states in the EU Annual Report on armaments exports in order to increase public transparency and accountability.

The legal basis for such a decision is provided by Articles 25 and 28 TEU and can draw on the examples of the Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment and Council Common Position 2003/468/CFSP on arms brokering.

¹⁶⁰ Priv-War Recommendations for EU regulatory action in the field of private military and security companies and their services', Third Draft, based on the discussions held in Utrecht on 29 and 30 October 2010.

Recommendation 5: Council Decisions (CFSP) including military and security services into EU embargoes

If no agreement on recommendation 4 can be reached within the Council, it should alternatively consider expanding the range of military and security services included in Decisions imposing EU embargoes on specific destinations.

Many EU embargoes already contain controls or prohibitions on 'technical assistance' and 'services related to military activities'. By including all or a selection of services on the Common Service List, these embargoes can prevent or control the provision of particularly sensitive military and security services in conflict regions or to undemocratic regimes.

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