

## **EUROPE AND THE CHALLENGE OF PRIVATE MILITARY AND SECURITY COMPANIES**

### **(What exactly is the challenge?)**

Speaking Notes for Alyson JK Bailes, University of Iceland  
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(Opening courtesies)

We have heard that this is a major and growing challenge for the world but I believe it is also one that Europe and the European Union needs to face up to, for three reasons. First, Europeans are among those who feel the strongest, and quite natural, concerns about restraining possible abuses by private companies and their employees. Second, however, several militarily active European states are among those that have found themselves compelled to outsource private services in support of their armed forces, at home and even abroad, if they are to meet the growing demand for rapid and effective overseas interventions and for defence reform more generally. Countries like France and Britain where many such companies are based also gain profit to their economies. Finally, ESDP has reached the point both of development and of overstretch where the EU organs themselves have to consider using contracted personnel, for instance for protection duties in Kosovo.

Europe also has a special history as the place where the tradition of large state-owned armies was most strongly entrenched from the 18<sup>th</sup> century onwards. We should be on our guard for ways this can shape our attitudes: for instance we may have stronger feelings about the 'unnatural' character of private armies than people in other parts of the world who have never been without them. But our defence authorities may also feel so sure of their own strength that they are confident of controlling the use of private agents with perhaps not quite enough questions asked.

My former institute SIPRI and I myself have been trying to find a more objective standpoint to appreciate exactly what the challenge of control and regulation is: and how the European Union as such can help in ensuring that we explore the best these companies can offer ,while condemning and preventing the worst.

In general terms, the challenge is to find a way of ensuring that law and regulations 'bite' effectively on non-state actors in a field of activity that we have normally reserved for states. As legislators yourselves, you must know that the challenge of applying law is not just to produce a law of good quality, but also to find the power to enforce it, and to ensure the majority are willing to accept and comply with it so that the burden of punishment is not too great.

I would suggest that our Union has a good starting-point to tackle this particular problem, because private military and security companies are commercial entities and regulating commerce is the first task the European Communities were given competence for. We do face a challenge in the continuing reluctance of member states to see the defence industry as such brought under Treaty rules but I shall suggest various ways around that.

Also, as regards the question of consent to legislation and compliance by the majority, we should not ignore the opportunity offered by the fact that many leading European companies are themselves banding together to propose regulatory solutions and to

develop their own codes of conduct. Everyone knows that self-regulation is not enough in a field so sensitive as this for good order and human rights. But a combination of international legal measures, executive quality controls and self-regulation could in theory offer a solution that deserves very serious reflection.

In the paper written at SIPRI we offered two alternative rationales and guiding principles for EU action. You don't have to approve of both of them but we thought we should provide options for both, and they could of course be combined. The first focuses on the task of defining, preventing and where necessary punishing private company abuses. The second focuses on the problem of making sure that where they are used – by individual nations or collectively during EU tasks – they observe high professional standards and deliver the maximum value for money and efficiency.

Here on this slide are the options we found for restraint, where I should start by noting that most of them would depend on having a very clear list of the types of company services to be covered, just as we have a list for the various EU restraints on trade in weapons. The first option has often been discussed already and, I believe, approved in principle by the Court of Justice, namely Community legislation regulating the operation of private security companies within the Single Market. The next two options would be measures drafted in CFSP and would rely on implementation by member states on the one hand to set standards of training, transparency and professional conduct for companies exporting services from their territory, and on the other hand to devise ways of making their domiciled companies responsible and answerable for compliance with relevant international laws on humanitarian matters, arms control and so forth. This last measure is close to the spirit of the Swiss initiative you will be hearing about.

Finally and also much discussed is the idea of adding intangible company services to the EU Code of Conduct on arms exports, over and above the provision of services directly linked to weaponry which is covered already. If preferred, a system of control by national licence could be set up separately from the Code of Conduct, and finally the Union could forbid the export of service as part of - or the main point of - ad hoc embargoes on particular states.

The challenge of making private companies reliable and efficient for our own use could in principle also be tackled by a Community instrument on services provided externally but in our paper we pointed out some technical and political problems with this. Less problematic should be for the ESDP staffs and perhaps the EDA to work out selection procedures, quality tests, model contracts and performance standards for *European and other* private companies when member states are using them, when EU staffs have to hire them direct, and perhaps when they need to be included in contingency planning for EU Battle Groups.

Dear Chairman and members, none of these options would be easy to get consensus on, and it would be hardest of all to explore them all at the same time as I would personally like to see. But this Parliament is not alone in its concern, and I would just like to recall the ideas we expressed at the end of the SIPRI paper: why not campaign, debate and experiment on the issue together with other concerned actors in non-European states, other institutions, NGOs and perhaps – dare I say it – also that part of the industry that claims to have a conscience itself?

