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**MASTER OF DEFENCE STUDIES RESEARCH PROJECT**

**The Armed Private Military Company and the Canadian Forces:  
The Next Step in Contractor Support?**

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## ABSTRACT

*This paper examines the main issues related to the use of armed contractors by the Canadian Forces (CF) and argues that these firms could be employed successfully by the CF. A brief history of CF contractor support demonstrates a trend similar to events in other western militaries and that the next potential step will be the introduction of armed private contractors in support of CF activities abroad. The twin demands of high operational tempo and CF expansion have placed enormous demands on the CF. However, trends in the Canadian population demonstrate that the CF will remain short of personnel for the foreseeable future and that armed private military contractors may provide a solution to this demographic crisis. Finally, It's argued that the CF could successfully employ armed contractors in support of operations by redressing the current contractor-client relationship and ensuring that armed contractors are in the direct military chain of command, that they be considered militia for legal purposes and that they are primarily employed on tasks that are considered 'defensive' in nature. A number of recommendations are made, including the promulgation of doctrine, further research into the exact legal mechanisms for employing armed private contractors, exercising the concept during high readiness training of Land Units and further research into the moral and ethical implications.*

## 1.0 INTRODUCTION

There are some countries that use private security firms because they either don't have soldiers – or don't want to use their soldiers for those tasks...I've seen them operating in certain parts of the world, when I was in Croatia and in Bosnia and elsewhere. And I'm very glad to tell you I do not believe it's the government of Canada's intent to ever employ such individuals – armed individuals – carrying out what essentially I believe are soldier's tasks.<sup>1</sup> Lieutenant-General Andrew Leslie

With these comments, the current Chief of Canadian Land Forces seemed to be drawing a “line in the sand” with regard to the use of military contractors in an armed role for the Canadian Forces. General Leslie was commenting on the Army's recent decision to outsource some training, such as driving courses for armoured vehicle crews and other non-combat related instruction to reservists and civilians.<sup>2</sup> The demands of the war in Afghanistan meant that junior officers and non-commissioned officers were in short supply to fulfill the training missions. Private industry stood ready and willing to fill in.

On the surface, this view of the armed private military industry might appear justified. The conflict in Iraq has seen an explosion of private military contractors operating in the battlespace with U.S. and coalition soldiers, Iraqi Army and police, Sunni and Shia insurgents and suspected terrorists. Exact figures on the number of private contractors operating inside Iraq vary, but at its height in 2003 it is estimated that

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<sup>1</sup>Murray Brewster, “A Canadian Force Trained by Civilians,” *The ChronicleHerald*, 2 November 2006, available from <http://thechronicleherald.ca/Canada/542203.html>; Internet; accessed 21 December 2006.

<sup>2</sup> *Ibid.*,

somewhere between 20,000 to 30,000 contractors were operating in the country.<sup>3</sup> This growth has been exponential. The first Gulf War saw the ratio between U.S. soldiers and contractors at approximately 50:1. By the second Gulf War that ratio had increased dramatically to 10:1.<sup>4</sup> These contractors span the spectrum of services provided by the industry, from reconstruction to consulting, advising, support services, logistics and training. Some of these services involve the use of Armed Private Contractors. These companies are not just hired to carry out tasks on behalf of private industry operating in Iraq. A substantial amount of work involves contracts with U.S. government agencies such as the State Department and the Department of Defence. These departments, ill equipped and undermanned to operate in the counter-insurgency climate of Iraq, have turned to private firms to fill the void.<sup>5</sup>

The purpose of this paper is to examine the main issues related to the use of armed contractors by the CF and argue that the CF could successfully employ them in operations. The industry will be described, along with definitions of the various types of companies currently operating in the market and a working definition will be provided for those firms that provide armed contractors – the Military Provider Firm. To provide sufficient background, a brief history of the private military industry will be explored. Then, the various reasons for the post-Cold War explosion of the industry will be examined. A brief history of CF contractor support will be reviewed, including the Canadian Contractor Augmentation Program (CANCAP) and NATO Flying Training in

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<sup>3</sup> Sarah Percy, *Regulating the Private Security Industry*, Adelphi Paper 384 (New York: International Institute for Strategic Studies, Oxford University Press, 2006), 7.

<sup>4</sup> Christopher Kinsey, *Corporate Soldiers and International Security: The Rise of Private Military Companies* (New York: Rutledge Press, 2006), 94.

<sup>5</sup> Gerald Schumacher, *A Bloody Business: America's War Zone Contractors and the Occupation of Iraq* (St. Paul, MN: Zenith Press, 2006), 35.

Canada (NFTC). The recent Land Force decision to contract out some basic occupation training, once considered a 'core' military function, reflects other western armies' experiences. It will be argued that the use of Armed Contractors is simply the next step in a path that other western nations have already gone down. The demographic challenges facing the CF and Canada as a whole will be examined. It will be shown that the CF will, for the foreseeable future, remain short of personnel to do all things being demanded of it by governments that have demonstrated a willingness to continually employ the CF. Armed private military contractors may provide a solution to this demographic crisis. Finally, the legal issues surrounding the use of armed contractors will be explored. Despite some challenges and limitations, it will be argued that there are methods that can be employed that would allow the CF to legally employ armed contractors in support of operations. The CF could successfully employ armed contractors in support of operations by redressing the current contractor-client relationship and ensuring that armed contractors are in the direct military chain of command, that they be considered militia for legal purposes and that they are primarily employed on tasks that are considered 'defensive' in nature.

## **2.0 PRIVATE MILITARY INDUSTRY**

The environment under which the private military contractor works today would likely be significantly different than that of his predecessors, but it would not be totally unrecognizable. Eugene Smith, commenting on the Italian statesman Machiavelli's thoughts on the dangers of the privatization of conflict states, "And yet conflict at the beginning of the 21<sup>st</sup> century is in many ways reminiscent of the Italian philosopher's

time...Niche wars, for instance, are on the rise around the globe, pitting governments and non-governmental forces against each other.”<sup>6</sup> Based on this assessment, the mercenary of yesterday would feel strangely at home in the conflicts of today. The rise in the importance of non-state actors as a source of conflict has been mirrored in the growth of new private firms that participate either directly or indirectly in this new “niche” environment.

This chapter will explore the rise of the private military industry. There are many firms that provide many types of services on the modern battlefield. Some key definitions and terms will first be examined. Also, the types of contractors will be reviewed, and a working definition of those types of companies that provide armed services will be devised. A historical context will be provided, including early mercenary employment examples. Then, some explanations as to why the private military industry has grown will be examined. It will be argued that the triumph of capitalist ideology and the push for privatization, a post-Cold War call for the “peace dividend” and the loss of a superpower checks and balances system on conflict led to the emergence of the private military company.

## **2.1 DEFINITIONS**

Before moving on to trying to describe what the private military industry is, it may help in describing what it is not. Thus, it may be worthwhile to define exactly what a mercenary is. A mercenary is defined by the Concise Oxford English dictionary as

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<sup>6</sup> Eugene B. Smith, “The New Condottieri and US Policy: The Privatization of Conflict and Its Implications,” *Parameters* (Winter 2002-03): 104.

someone who is, “primarily concerned with making money at the expense of ethics” also, “a professional soldier hired to serve in a foreign army.”<sup>7</sup>

Alternatively, a number of legal definitions have arisen. Most importantly is the definition adopted under article 47 of the Additional Protocol I of the Geneva Conventions. A mercenary is any person who:

- (a) is specially recruited locally or abroad in order to fight in an armed conflict;
- (b) does, in fact, take a direct part in the hostilities;
- (c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that party;
- (d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;
- (e) is not a member of the armed forces of a Party to the conflict; and
- (f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.<sup>8</sup>

There are two other international conventions which provide a wider definition of the term mercenary, the Organization for African Unity (OAU, now the African Union) Convention for the Elimination of Mercenarism and the United Nations Convention Against the Recruitment, Use, Financing and Training of Mercenaries. A recent meeting of experts in 2005 discussed, among other issues, as to whether a member of a private military company could be a mercenary under international law. The general conclusion drawn was a person had to satisfy all six conditions of the AP 1 definition to qualify as a

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<sup>7</sup> The Concise Oxford English Dictionary, 11<sup>th</sup> ed, (Oxford University Press, 2006). Available from <http://www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t23.e34977>; Internet; accessed 9 February 2007.

<sup>8</sup> Office of the Judge Advocate General, “Protocol Additional to the Geneva Conventions of 1949, and Relating to the Protection of Victims of International Armed Conflicts, (Protocol 1) - 1977, Article 47(2),” in *Collection of Documents on the Law of Armed Conflict*, 2005 ed., ed. Directorate of Law Training (Ottawa: DND, 2005), 149.

mercenary. Based on this criteria, it was generally agreed that private military companies do not constitute mercenaries under the definition.<sup>9</sup> What should be noted is that the definitions in the texts of AP 1, the African Union and the UN documents were aimed at eliminating the rogue mercenary described later in this chapter by Nossal during the highly politically charged era of decolonization in Africa. These legal definitions were never meant to address the Private Military Company as it exists today.

It is necessary before we go any further in discussing the utility of armed contractors for the CF in getting the right terminology to describe these companies and define what a firm that provides armed services on the battlefield is exactly. This is problematic as there are a myriad of definitions in the literature. However, after examining some potential definitions, one will be chosen to work with for the remainder of this essay.

Most authors seem to agree that the one critical factor distinguishing PMCs from their mercenary predecessors is their modern corporate business structure. Schreier and Caparini describe PMCs as hierarchically organized into incorporated and registered businesses that trade and compete openly on the international market, link to outside financial holdings, recruit more proficiently than their predecessors, and provide a wider range of military services to a greater number and variety of clients. This structure offers clear advantages in efficiency and effectiveness over the previous mercenary model.<sup>10</sup>

These PMCs can operate as stand-alone corporate entities or are often subsidiaries of

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<sup>9</sup> University Centre for International Humanitarian Law. "Expert Meeting on Private Military Contractors: Status and State Responsibility for Their Actions." *Record of a Conference Convened at the International Conference Centre* (Geneva 29-30 August 2005), 23. available from [http://www.ucihl.org/communication/private\\_military\\_contractor\\_report.pdf](http://www.ucihl.org/communication/private_military_contractor_report.pdf); Internet; accessed 19 December 2006.

<sup>10</sup> *Ibid.*, 7.

larger corporate firms. They can run from small, basement run operations to large, complex corporate entities.

One of the other defining characteristics of the industry is that companies/firms are not capital intensive. Most often, when these firms are contracted, they require the client to provide the equipment or procure the equipment on behalf of the client for a fee. The only real overhead for PMCs is the personnel, and even these are a relative bargain from a financial point of view. As Singer points out, labour is relatively cheap as PMCs draw their pool from developing world militaries where wages and prestige are generally low. Additionally, those drawn to the industry from developed militaries are lured by the possibility of combining their public pensions for military services with the wages offered by PMCs, ranging anywhere from two to ten times the salaries of military and police forces.<sup>11</sup>

Schreier and Caparini use the term PMCs to describe entities that are ‘business providers of professional services intricately linked to warfare – corporate bodies that specialize in the sale of military skills.’<sup>12</sup> The problem with this definition is that Schreier and Caparini go no further in breaking down the myriad of companies and the services that they provide, lumping them all under the term PMC.

Doug Brooks, president of the International Peace Operations Association, an umbrella organization for PMCs, provides a slightly different definitional structure for

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<sup>11</sup> Peter W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (New York, Cornell University Press, 2003), 74.

<sup>12</sup> Fred Schreier and Marina Caparini, *Privatising Security: Law, Practice and Governance of Private Military and Security Companies*, Occasional Paper No 6 (Geneva: Geneva Centre for the Democratic Control of Armed Forces, March 2005), 7. available from [http://www.smallarmssurvey.org/files/portal/issueareas/security/security\\_pdf/2005\\_Schreier\\_Caparini.pdf](http://www.smallarmssurvey.org/files/portal/issueareas/security/security_pdf/2005_Schreier_Caparini.pdf); Internet; accessed 18 December 2006.

these corporate firms. He describes those corporations that provide military services internationally as Military Service Providers (MSPs). He then breaks down MSPs into three sub-categories. Non-lethal Service Providers (NSPs) provide logistical and other services in high risk environments that the international community finds more useful than threatening. Under this definition fall companies such as Brown and Root, a major supplier of logistics support to militaries around the world. The next sub-category are Private Security Companies (PSCs), which Brooks describes as providers of armed protection such as industrial site protection, humanitarian aid protection and embassy protection. He distinguishes PSCs from the private security guards common in western nations by indicating that they provide a higher level of armed security, capable of defending against attacks by guerilla forces. He emphasizes, however, that PSCs do not undertake offensive military actions. Examples of PSCs are security companies such as ArmorGroup and Wackenhut. Finally, Brooks describes Private Military Companies (PMCs) as firms that provide services such as military training, military intelligence and the capability to conduct offensive military operations and combat, although not all firms in this category offer offensive combat services.<sup>13</sup> Examples of such PMCs are Executive Outcomes (EO) and Sandline International, which both offered offensive combat capability, while a firm such as Military Professional Resources Inc (MPRI) offers passive services such as military training.

Kevin A. O'Brien frames the definitions he uses within the broader context of the non-governmental military market. He describes four major subdivisions within this

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<sup>13</sup> Doug Brooks, "Protecting People: The PMC Potential," *Comments and Suggestions for the UK Green Paper on Regulating Private Military Services* (International Peace Operations Association, 25 July 2002), 2-3. Available from <http://www.hoosier84.com/0725brookspmcregs.pdf> ; Internet: accessed 8 January 2007.

nongovernmental market: mercenaries; private armies/militias and warlords; private security firms; and private military firms. Private Security Companies are defined as organized and established business that exist in legal and extralegal markets. These types of companies provide such services as personnel and installation protection, security training, and “counter-industrial espionage” to corporate clients engaged in business in regions of instability or conflict.<sup>14</sup> O’Brien describes private military firms as the “ultimate evolution of all the above”, motivated by financial gain, partaking in conflict to which they are not a party, and can be found on the front lines of battle.<sup>15</sup>

It is already clear that consensus on definitions is difficult to achieve in the community that studies the private military industry. From these three examples, the term PMC has two distinct meanings, although Brooks comes closest to describing those types of firms we are interested in, either those that provide armed guard services or are capable of providing offensive combat capabilities. However, it will be useful to explore definitions from several other authors to see if a more precise definitional model exists.

Such a taxonomy of the private military industry is provided by Singer. Given the difficulty in precisely defining the industry, Singer argues that a successful typology of its components must take into account both elements of the industry’s economic and military fundamentals. On the military side, Singer uses a “tip of the spear” metaphor; he organizes the industry by the range of services and level of force that a firm is able to

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<sup>14</sup> Kyle M. Ballard, “The Privatization of Military Affairs: A Look Into the Private Military Industry,” *Paper, The New Hampshire Institute of Politics*, n.p. Available from <http://www.anselm.edu/NR/rdonlyres/5CDDE900-9FC1-4143-9B1C-D4AF85090155/6305/paper1ballard1.pdf>; Internet; accessed 18 December 2006..

<sup>15</sup> *Ibid.*, n.p.

offer.<sup>16</sup> Singer takes this “tip of the spear” ordering of military units on the battlefield (strategic, operational and tactical) and applies this to the ordering and definition of private military industry, leading to three broad sectors:

1. **Military Provider Firms (MPFs).** These firms focus on the tactical environment, providing services at the forefront of the battlespace, which may include engaging in actual fighting and/or direct command and control of field units. MPFs tend to be the most controversial sector of the private military industry because of their ability to provide direct combat services to clients. While these firms often claim to conduct less aggressive activities such as providing security or guarding facilities, they do so in the context of providing military protection from essentially military threats in a war environment. MPFs are also generally the types of firms most targeted for external regulation given the nature of their work;
2. **Military Consulting Firms (MCFs).** Firms that provide advisory and training services related to the operation and restructuring of a client’s armed forces characterize this sector of private military industry. These firms offer strategic, operational and organizational analysis. They do not operate on the battlefield itself, but reshape the strategic and tactical environment through re-engineering the local force. Firms such as MPRI, which offer a range of consulting services to armed forces in the midst of restructuring or aiming for large increases in capability; and
3. **Military Support Firms (MSFs).** Singer describes these firms as those that provide supplementary military services. These firms provide non-lethal aid and assistance, including logistics, intelligence, technical support, supply and transportation. This has been the primary and most lucrative part of the private military industry, as many armies view the activities carried out by this sector as being non-core (aka combat) but still vital to the overall military mission. Many of these firms tend to be part of large, multi-national corporations that either have the MSF as a branch of their organization or provide similar support to private industry before branching out to the military. Examples of such firms include the American giant Haliburton and its subsidiary of Kellogg, Brown and Root or the Canadian example of SNC and ATCO-Frontec.<sup>17</sup>

Singer acknowledges that the typology of these companies is more complex than portrayed. Many of the firms in private military industry operate along the seams of

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<sup>16</sup> Peter W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (New York, Cornell University Press, 2003), 91.

<sup>17</sup> *Ibid.*, 92-99.

these definitions. Many also operate across more than one sub-sector. However, it is a useful definition for attempting to classify what services firms provide. Based on the definitions explored by several authors to this point, Singer's definition of the Military Provider Firm (MPF) is the most useful to the work of this paper. MPF describes armed assistance provided to the contractor, in either the realm of combat or security style operations. No other definition explored captures the provision of these two types of services in one sub-sector. Therefore, MPF will be used for the remainder of the paper to describe the type of private military industry the Canadian Forces should contemplate employing.

## **2.2 HISTORICAL BACKGROUND**

Private interests have always had a part to play in warfare. Much of the literature exploring this subject starts with the employment of the mercenary. The earliest employment of mercenaries can be traced back as far as the Bronze Age, during which pre-antiquity Egypt employed Libyan mercenaries.<sup>18</sup> Employment of mercenaries in the modern age was startlingly familiar, going back to the Renaissance. As James Wither describes, up until the 1800s a large part of Europe's armed forces was supplied by the private sector. Professional soldiers with technical expertise often offered their services on the open market. Also, contractors would organize soldiers into formed units on behalf of paying clients. The most notable of these units were the *Condottieri*, which provided

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<sup>18</sup> Fred Rosen, *Contract Warriors: How Mercenaries Changed History and the War on Terrorism* (New York, Penguin Group, 2006): 45.

military services to the Italian city states of the 15<sup>th</sup> century.<sup>19</sup> In 1776, Frederick II, landgrave of Hesse-Cassel, began negotiating with England's King George III to provide up to 30,000 of his Hessians to fight alongside the British against the rebellious American colonies.<sup>20</sup> These Hessians were completely integrated with the British forces, and in the early part of the campaign were extremely effective as shock troops, pushing General George Washington and his forces continually back. Later, the emerging nation states of Europe hired formed bodies of mercenaries and integrated them into their armies. Then, commercial contractors were also used to feed, equip and sustain troops.<sup>21</sup>

The navies of the time also employed private contractors to a high degree. Privateers were widely used by nations through the 1800s to supplement their maritime forces. Indeed, these privateers had a legal standing in international law. The vessels, belonging to a private owner, sailed under a commission granted to it to carry out all forms of hostility. For instance, England effectively used privateers to counter Spanish naval superiority in the 16<sup>th</sup> and 17<sup>th</sup> centuries. Privateers were also used in the American War for Independence and Americans continued to use them through the war of 1812.<sup>22</sup>

The rise of the charter company system saw private business taking on military functions outside of the state. These companies were licensed to have a monopoly on

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<sup>19</sup> James Wither, *Expeditionary Forces for Post Modern Europe: Will European Military Weakness Provide an Opportunity for the New Condottieri?*, Special Series 05/04 (Conflict Studies Research Centre, January 2005), 1.

<sup>20</sup> Fred Rosen, *Contract Warriors: How Mercenaries Changed History and the War on Terrorism*, (New York, Penguin Group, 2006): 85.

<sup>21</sup> James Wither, *Expeditionary Forces for Post Modern Europe: Will European Military Weakness Provide an Opportunity for the New Condottieri?*, Special Series 05/04 (Conflict Studies Research Centre, January 2005), 1.

<sup>22</sup> Eugene B. Smith, "The New Condottieri and US Policy: The Privatization of Conflict and Its Implications," *Parameters* (Winter 2002-03): 106.

trade, typically in lands newly discovered by European nations. The two most common examples of these types of private enterprises were the British East India Company and the Dutch East India Company. These companies, the English incorporated in 1599 and the Dutch in 1602, gave broad powers that excluded other nationals and companies from trading in the areas they were granted control. More interestingly, while they were nominally controlled by their license back home, they operated with much of the trappings of a state, including the ability to provide their own military protection.<sup>23</sup> For example, the Dutch East India Company had sweeping powers provided to it under the license to trade and monopolize business in a specific region and other powers under property rights and sovereign powers. Additionally, the company's charter provided for broad powers in the area of war.<sup>24</sup> Peter Singer points out that by 1782, the British East India Company's army consisted of some 100,000 men, many of them being mercenaries. This dwarfed the size of the forces in England.<sup>25</sup> As Singer describes, the charter companies were successful because they operated in areas outside the control of the licensing state, where their actions eventually brought order to chaos, thus allowing political control to eventually be established. However, as the political situation stabilized the charter companies weakened. The Dutch East India Company dissolved under the pressures of the Napoleonic Wars and the British East India Company began its own dissolution in the 1830s as the state system started to spread across the globe.<sup>26</sup>

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<sup>23</sup> Peter W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (New York, Cornell University Press, 2003), 34.

<sup>24</sup> *Ibid.*, 34.

<sup>25</sup> *Ibid.*, 34-35.

<sup>26</sup> *Ibid.*, 36.

The above stated rise of mass national citizen armies during the French Revolutionary and Napoleonic era conferred on the Westphalian state system a monopoly on the use of violence and mercenaries fell out of favour. This change to the international system of armed force did not come easily. Deborah Avant points out that states altered the conduct of war by adopting citizen armies and renouncing the use of mercenaries both in practice and law.<sup>27</sup> This change could be generally attributed to two factors. The first was what Avant called the “material” view. This advocated that population growth, territorial expansion, organization and technological changes in military organizations led to the adoption of the citizen army. The second factor could be traced to the thinking that would emerge from the Enlightenment relating to human and civil rights.<sup>28</sup> This new social thinking implied the relevance of political community including the idea that sovereignty rested in the people and therefore the defence of sovereignty was invested in the people as well.<sup>29</sup> Avant points out that nations such as France, Prussia and England adopted this model over different periods of time during the 19<sup>th</sup> century. The adoption of this model could be attributed to other factors such as external shock, (e.g., losing a major conflict) and the degree to which this new thinking challenged the entrenched interests of the political and social elite.<sup>30</sup> The end result of this uneven process was that most modern states made it illegal for their citizens to fight abroad, thus drying up the market for mercenaries. In a somewhat strange twist, the very

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<sup>27</sup> Deborah Avant, “From Mercenary to Citizen Armies: Explaining Change in the Practice of War,” *International Organization* 54, no 1 (Winter, 2000): 41.

<sup>28</sup> *Ibid.*, 43-44.

<sup>29</sup> *Ibid.*, 44.

<sup>30</sup> *Ibid.*, 48-50.

mercenaries that had so enhanced a burgeoning nation's ability to wage war now challenged the legitimacy of the state's control of its citizenry and its monopoly on violence.

This, however, did not completely eliminate the mercenary from the battlefield, but the "legitimate" reputation that mercenaries had enjoyed up until this time had changed to that of the mercenary as a rogue, unethical soldier roaming the world for hire to the highest bidder. This portrayal only deepened in the 20<sup>th</sup> century. Kim Nossal, tracing the transition of mercenaries from the individual "adventurer" to transnational security corporation, provided this portrayal of the mercenary:

They are outdated relics of the past. They are outcasts from the modern world which expelled them or from which they have fled on the lam from an infamous past, a burnt-out adventure, a dead faith. They are all ex-something: ex-SS officers from Germany, ex-CIA pilots from Cuba, ex-students from South Africa or Southern Rhodesia.<sup>31</sup>

What Nossal clearly points out is that the mercenary never completely disappeared from the battlefield and he classifies several types that continue to exist today. The first types are 'resident auxiliaries' such as the Gurkha regiments in the British Army or the French Foreign Legion. The second are 'palace guard' mercenaries, hired to protect the ruling class. An example of these would be the Vatican Swiss Guard. The third kind is what Nossal describes as 'short-term hire'; governments recruit individuals to form an army to fight the community's wars or when one government hires mercenary soldiers to fight another government's war. Finally, Nossal describes what is termed the 'vagabond mercenary'. He distinguishes these from short-term hire by the

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<sup>31</sup> Kim Richard Nossal, "Roland Goes Corporate: Mercenaries and Transnational security Corporations in the Post-Cold War Era," *Civil Wars* 1, no. 1 (Spring 1998): 17.

fact that they are hired by governments not seen as legitimate and are in the fact the model for the current view of the mercenary today.<sup>32</sup>

While mercenaries may have been viewed as distasteful, outdated and an anachronism, during the Cold War period they continued to ply their trade because of their demonstrated ability to alter military outcomes. This was especially true in Africa during the 1960s anti-colonial upheavals. For example, in 1960, a newly independent Congo hired mercenaries to shore up the secessionist regime. This Congo operation brought together a group of vagabond mercenaries that demonstrated a degree of military effectiveness that would later prove attractive to other African leaders.<sup>33</sup> Nossal describes this primarily vagabond mercenary activity through the 1960s, 1970s and 1980s as being dominated by a small number of unorganized, undisciplined individuals, often acting against established governments on behalf of individuals, firms or foreign governments with an interest in violent regime change.<sup>34</sup>

During this period, there were several attempts to provide these vagabond mercenaries with a façade of legitimacy and this was through the creation of security companies. For example, in 1967, David Sterling, the founder of the British Army's Special Air Service (SAS), established a firm called Watchguard (International), Inc.<sup>35</sup> While this may have appeared novel, Nossal points out that private corporate armies were not a new phenomenon (the British East India Company in the 18<sup>th</sup> and 19<sup>th</sup> centuries).

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<sup>32</sup> *Ibid.*, 20-21.

<sup>33</sup> *Ibid.*, 21-22.

<sup>34</sup> *Ibid.*, 25.

<sup>35</sup> *Ibid.*, 26.

What changed in the post-Cold War 1990s was the degree to which these companies ‘corporatized’ their operations. William Reno has called this the privatisation of war.<sup>36</sup> The degree to which these new private security firms seek to conduct business as would any other legitimate corporation would characterize their rise in the post-Cold War period.

### **2.3 PRIVATE MILITARY INDUSTRY POST COLD WAR**

This new breed of MPF now dominates the current international security landscape and will have profound implications for how states conduct armed conflict in the 21<sup>st</sup> century. This next section will describe some of the reasons these firms have burgeoned in the post-Cold War environment. This focuses on the end of competition between the two superpowers, the collapse of state interest in intervening in areas where security interest has waned, the growth of non-state actors and the dominance of a pro-private industry mindset in western nations. Additionally, the broad changes to the nature of warfare, the expansion of global conflict and the rise of the failed or failing state will be examined.

Most academics who have studied the rise of private security firms have developed a relatively consistent view as to the factors that have contributed to their establishment and growth. Nossal, for instance, describes five inter-related developments. The first of these factors is the demise of the superpower contest between the United States and the Soviet Union. This lack of competition reduced the level of importance of national security institutions while nations sought a “peace dividend” at the

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<sup>36</sup> *Ibid.*, 26.

end of the Cold War. Consequently, national militaries experienced a significant downsizing.<sup>37</sup>

Secondly, the demise of the superpower rivalry led to the end of proxy wars and a lack of interest by both the United States and the Soviet Union in regions where they had previously powered considerable resources and energy. Without a significant security competitor the interests of the United States were often now mostly commercial, with security taking a back seat.<sup>38</sup> This allowed regions such as Africa considerable leeway in pursuit of solutions to their own problems.

The third reason for the rise of private security firms can be traced to the collapse of states and the unwillingness of the superpowers to intervene. The great powers, which until 1989 would intervene with military, economic and informational might to ensure that no client regime lost its state monopoly on the use of violence, now no longer supplied these resources. However, this new era of failed and failing states has no less need for intervention and has led to private enterprises presenting a solution for hire.<sup>39</sup>

Nossal's fourth reason is tied to the expansion of opportunities for transnational actors at the end of the Cold War. It is described as the symbiotic relationship between sovereign states and transnational actors, who need each other and work together when the ends coincide. This relationship has led to expansion of non-state actors, both private and public on the international stage. The growth of private military firms can be traced

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<sup>37</sup> Kim Richard Nossal, "Roland Goes Corporate: Mercenaries and Transnational security Corporations in the Post-Cold War Era," *Civil Wars* 1, no. 1 (Spring 1998): 29-30.

<sup>38</sup> *Ibid.*, 30.

<sup>39</sup> *Ibid.*, 30.

to this symbiotic relationship. An example of this is the activities of the firm Executive Outcomes (EO) in Africa in the 1990s.<sup>40</sup>

Finally, Nossal describes a neo-conservative ideological climate within the western world that advocated the efficiency and effectiveness of the private sector over the public sector. This outlook applied mainly to public services such as electricity grids, waterworks and highways but also increasingly applied to the private provision of security services vice its provision by the state.<sup>41</sup>

Other observers and scholars studying the post-Cold War growth of the private security firm provide similar reasons for the phenomenon. Peter Singer states that the rise of the private security industry “is not just a flashback to historic private military agents.”<sup>42</sup> Singer is in general alignment with Nossal when describing the end of the Cold War as the seminal event in the rise of the private military industry. However, Singer also describes other factors that led to the emergence of the industry. The first is the broad changes in the nature of warfare. Singer goes on to describe a massive increase in the levels of global conflict post-Cold War. Like Nossal, this is attributed to the collapse of the bi-polar world model. He then ascribes three patterns to this expansion of global violence: the implosion of states, the explosion of cross border conflict and the growth of the influence of world markets. This market growth has been uneven, and not shared evenly across the world, or demographically either, leading to a large segment of

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<sup>40</sup> *Ibid.*, 31.

<sup>41</sup> *Ibid.*, 31.

<sup>42</sup> Peter W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (New York, Cornell University Press, 2003), 49.

disaffected youth, who are the cannon fodder for organized crime, illegal economy and war.<sup>43</sup>

Another factor described by Singer is the increased role of non-state actors in violence. The loss of the monopoly on violence by states has led to a plethora of groups on the international stage, ranging from terrorist organizations to organized crime. These non-state actors have led to opportunities for private military firms, working for state agents that counter the outlaw groups of agents such as non-governmental organizations that operate in this complex environment.

Singer also talks about the flood of ex-soldiers onto the private market after the peace dividend of the post-Cold War draw-down of forces. This downsizing was dramatic, with Singer arguing that militaries world wide employed approximately seven million fewer soldiers than they did in 1989.<sup>44</sup> This led to an abundance of military expertise available on the open market for the private sector to use.

Along with the flood of people onto the open market, drastic downsizing also led to a flood of weapons. Not only did downsizing in militaries such as the Soviet Union or East Germany offer typical Warsaw Pact weapons at cut rate prices, but relatively high tech weaponry moved from the monopoly of the state into private hands. Additionally, the growth in availability of cheap, light weaponry such as AK-47s has meant that the state no longer had primary control of these means to wage war or keep internal security.

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<sup>43</sup> *Ibid.*, 51.

<sup>44</sup> *Ibid.*, 53.

This had led to the explosion of armed non-state actors, arms dealers and brokers, of which MPFs can tap into to equip their own personnel.<sup>45</sup>

Singer also argues that the decline of the influence of government at the local level has created a climate for Private Security Firms to flourish. The current climate of globalized economies, weakened state authority and an inability to influence items once under the control of the state have left many states unable to live up to their side of the ‘sovereign promise’.<sup>46</sup> This has led to a large number of states, especially in the developing world, which are incredibly weak under the current state construct. Many of these failed or failing states look for outside help in carrying out their responsibilities to their citizens by hiring private military firms. These states also have poorly equipped, poorly trained, corrupt militaries with poor civilian control and oversight. These militaries often have poor command and control, poor maintenance of military equipment and little to no strategic deployment or sustainment capability, thus opening the door to MCFs and MSFs to fill some of these needs.

Like Nossal, Singer also describes the decline of great power willingness to intervene in situations they would have naturally intervened in during the Cold War. As these regions of the world no longer fit into the calculus of great state strategies, they are left to their own devices. A different factor Singer brings to the table, however, is the retreat of the United Nations as a potential stabilizer in the post-Cold War. Singer attributes this to the financial strains on the UN, its lack of organization for fighting wars and the painfully long time it takes to assemble and deploy a peacekeeping force. Additionally, while regional security organizations have to some degree demonstrated

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<sup>45</sup> *Ibid.*, 54-55.

<sup>46</sup> *Ibid.*, 55.

potential to replace the UN as a security guarantor, their focus within their region and limited deployment and sustainment capabilities have opened the window for Private Security Firms to fill the vacuum.<sup>47</sup>

Singer's second criteria is described as the transformation in the nature of warfare. He argues that previously the state required massive armies with large numbers of machinery and equipment to take full advantage. Changes in the nature of warfare and technology mean small groups can now wield huge military power. Singer attributes these changes to several things. The first is the loss of state monopoly on military power. Changes in technology and the financial capacity of organizations other than states to raise and equip armies had allowed well financed non-state actors to act or contract out their actions. This change in technology has meant that MSFs have now become the leader in technologies other than weapons that have military application such as GPS, satellites, information warfare, etc.<sup>48</sup>

The next factor in the transformation of warfare is the requirement to rely on the private sector for increasingly complex technical expertise. In fact, in such areas as informational warfare, private companies may be superior to their military counterparts. Also, weapons systems have become so complex that the ability of state militaries to repair them requires huge financial and training outlays to have qualified uniformed personnel service these weapons. Thus, the expertise of MSFs is highly sought after and readily provided by the private sector.

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<sup>47</sup> *Ibid.*, 56-60.

<sup>48</sup> *Ibid.*, 61-62.

### **3.0 THE CANADIAN FORCES AND PRIVATE MILITARY INDUSTRY**

As a final prologue to examining the possibility of the use of MPFs in support of CF operations, it is worthwhile to examine the recent history of contractor support and assistance to the military. This section will examine two recent examples of contractor support. The first is the more traditional MSF sector of logistics support in the form of the Canadian Contractor Augmentation Program (CANCAP). The second is the relatively newer field of support to training through engagement of MCFs, which support initiatives such as the NATO Flying Training in Canada (NFTC) program. Finally, the Canadian Army has also engaged MCFs to provide elements of basic recruit training to its soldiers. A quick review of these three programs will support the argument that Canada, like many other western militaries, is following a similar path in terms of engaging private military industry in support of the state. This engagement of the private military industry has followed the path of MSFs, followed by the handing over of training to MCFs. The next logical step will be MPFs providing armed services to the CF and other government departments.

This inevitability argument is captured well in the works of Don Snider and Gayle Watkins. While privatized logistics support has been around in the U.S. military and other militaries for some time, the trend towards privatizing training is a recent phenomenon. They argue that in the case of the U.S. military, the ideological drive towards privatization, the post-Cold War downsizing and concurrent increase in operations carried out by the U.S. has led policy makers to increasingly turn to private

contractors to carry out their foreign military training programs.<sup>49</sup> Along with this move towards privatizing foreign military training, initiatives were launched to transfer education and training of recruit and enlisted forces to private, non-military entities. The U.S. Army justified this move into the traditional field of training by arguing that in the midst of downsizing, core capabilities (combat) would be protected by hiring out training.<sup>50</sup>

This downsizing and ideological bent has also led the U.S. to contract out what would be considered core combat functions to MPFs. Iraq has seen an increase in the use of MPFs in support of the U.S. military, and indeed other U.S. government department missions in Iraq. Private military firms have moved from logistics support, to training support, to a small number of firms that have provided armed personnel that operate with troops on the battlefield.<sup>51</sup> Gerald Schumacher describes two types of security contractors operating in Iraq: those contracted by the U.S. State Department and those providing security for other coalition operations. The State Department contractors are highly regulated and all MPFs operated under the authority of the Coalition Provisional Authority (CPA), ostensibly the U.S. Military, at least until the handover of sovereignty to the Iraqi government. As David Isenberg points out, while the Iraqi government is

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<sup>49</sup> Deborah Avant, "Privatizing Military Training: A Challenge to U.S. Army Professionalism?" in *The Future of the Army Profession*, ed. Lloyd J. Mathews, 180-196 (New York, NY, McGraw-Hill Primus Custom Publishing, 2002), 180.

<sup>50</sup> *Ibid.*, 181.

<sup>51</sup> David Isenberg, *A Fistful of Contractors: the Case for a Pragmatic Assessment of Private Military Companies in Iraq*, Report 2004.4 Prepared for the British American Security Information Council (London: British American Security Information Council, September 2004), 20.

now *de jure* in charge since the end of the CPA, its sovereignty is largely in name only.<sup>52</sup> While MPFs as stated only make up a small number of the overall contractors being employed in theatre, they are heavily armed and have been involved in combat.<sup>53</sup> Thus, the U.S. has seen an evolution in contractor support, moving from MSFs to the provision of training both foreign and domestic in areas considered “core capabilities” by MCFs. The final step has seen the employment of MPFs in Iraq, often armed, sometimes involved in the ultimate core capability - combat.

### **3.1 CANADIAN CONTRACTOR AUGMENTATION PROGRAM**

The Canadian military’s experience has been similar to, if somewhat more cautious in its embrace of contractor support compared to its allies. Similar to the U.S., the U.K., Australia and other European Union nations, the first military function to move significantly into the realm of contractor support was logistics. While the CF has used MSFs in the past, such as the Contractor Support Program which ran from 2000 to 2003, a good example of contractor support in use today is the Canadian Forces Contractor Augmentation Program (CANCAP), which came into existence in December 2002.<sup>54</sup> Along with the downsizing of the CF in the post-Cold War 1990s there was a commensurate increase in the rates of deployment of CF members abroad. These two

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<sup>52</sup> David Isenberg, “A Government in Search of Cover: PMCs in Iraq.” *Paper Prepared for “Market Forces: Regulating Private Military Companies,” Conference, Institute for International Law and Justice*, (New York: University School of Law, March 2006), 11. available from <http://www.basicint.org/pubs/Papers/pmcs0603.pdf>; Internet, accessed 19 December 2006.

<sup>53</sup> Colonel (ret) Gerald Schumacher, *A Bloody Business: America’s War Zone contractors and the Occupation of Iraq* ( St Paul, MN, Zenith Press, 2006), 168.

<sup>54</sup> Department of National Defence, *Evaluation of the Canadian Forces Contractor Augmentation Program (CANCAP)* (Ottawa: Chief of Review Services, 2006), 2.

factors combined to put a severe strain on a number of military logistics occupations, which put at risk the ability of the CF to sustain the high operational tempo they were operating under. CANCAP was initiated to provide, “a pre-facilitated theatre support contract with a prime contractor for mature, low-risk theatres where military expertise is not strictly required.”<sup>55</sup> The objectives of CANCAP are as follows:

1. To provide the CF with additional operational flexibility through enhanced support capability;
2. To free up military personnel for employment where their military skills are most needed; and
3. To help preserve support-to-warfighting skills in CF support services.<sup>56</sup>

A partnering of firms SNC Lavalin and PAE won the initial contract and supported the CF in Bosnia as part of the NATO Stabilization Force (SFOR) and the deployment of the CF into Kabul, Afghanistan during Op Athena. The shift of the CF to Kandahar in 2005 saw the contingent relying on in place U.S. contracted support because of the security situation. This has changed with the U.S. drawdown in Kandahar and CANCAP has been employed to support the CF again, although the security situation could hardly be described as a low-risk theatre.

A recent CF Chief of Review Services evaluation of CANCAP concluded that the program was viable in a low-risk environment but its use in high-risk environments warranted measures to ensure the CF mission is not jeopardized.<sup>57</sup> While the report is generally positive in that CANCAP is generally working in accordance with experiences

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<sup>55</sup> *Ibid.*, 1.

<sup>56</sup> *Ibid.*, iii.

<sup>57</sup> *Ibid.*, iii.

of other western militaries, some areas of weakness included a lack of DND/CF policy and doctrine governing the employment of contractors, the inability to define the status of contractors as non-combatants under international law and describing their status as inherently uncertain.<sup>58</sup> The report indicates that while CANCAP has successfully reduced the number of military personnel deployed to both SFOR and ISAF, it has not been a one-for-one replacement. A minimum military requirement has been identified to among other things, support out-of-camp operations, provide camp security and protect CANCAP employees.<sup>59</sup> In the U.S. context, these latter two tasks have to some degree been handed over to contractors in places like Iraq, where contractors provide security inside the Green Zone or provide protection for contractor supply convoys on the battlefield.

What is clear, however, is that under current circumstances, the CF is no longer in a position to deploy on expeditionary operations for an extended period of time without the contracted assistance of MSFs. The crunch created by both down-sizing and high operational tempo in the 1990s has made contracted logistics support all but a certainty. This pressure on the CF would see the drive to leverage private industry expand beyond the MSFs and move into the realm of training. Two recent examples indicate the extent to which this has been implemented in the CF.

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<sup>58</sup> *Ibid.*, 6-8.

<sup>59</sup> *Ibid.*, 13.

### 3.2 NATO FLYING TRAINING IN CANADA

Up to present day, the CF has had experience with privatized training of its personnel. For example, the Land Force has used contractors such as Calian Industries to support simulated training from platoon to brigade level for years. What is new, however, is that MCFs have been engaged to provide support in those training areas often considered “core” such as the training of recruits and basic occupation training. A recent example of this is the CF NATO Flying Training in Canada (NFTC) program. Created in 2000, NFTC is a partnership between the Government of Canada and Bombardier Military Aviation Training. The CF contributes training standards, airbases, airspace and air traffic control. Participating international air forces provide flight instructors and students, while Bombardier provides the equipment, including simulation systems and aircraft, academic and simulator instructors along with infrastructure and equipment maintenance.<sup>60</sup>

This marriage between the CF and industry in providing essential basic pilot and lead-in fighter training reflects what has occurred in other western militaries. This engagement of MCFs to provide this service was again indicative of the hard time the service was having in providing the skilled manpower to conduct the training and in providing the proper equipment to do the job under the shrinking defence budgets of the 1990s. A partnership that had private industry providing much of the technical support and equipment provided relief to the Air Force in the form of a reduction in the number of highly skilled technicians required to keep the planes flying and introduced a new lead-in basic jet, something that was unlikely to occur had the Government of Canada had

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<sup>60</sup> NATO Flying Training in Canada, “Program Concept,” <http://www.nftc.net/nftc/en>; Internet; accessed 14 March 2007.

to purchase the aircraft at the time. The air Force experience with the contracting of MCFs would be a precursor to the Army's move towards a similar solution for their problems.

### **3.3 SUPPORT TO ARMY TRAINING**

This use of MCFs to provide basic occupation training has now extended to the Land Force as well. The Chief of the Land Staff indicated that the high operational tempo associated with deployments to Afghanistan has made it difficult to supply junior officers and senior non-commissioned members to Army training establishments. This means that the Army will rely increasingly on civilian contractors and reservists to train new recruits.<sup>61</sup> Under the program, Calian industries was contracted to provide basic driver training on wheeled support vehicles such as jeeps, five and ten ton vehicles. This will move into a new phase in 2007 with contractors delivering portions of 25 millimetre gunnery training to military students. Contractors will be responsible for classroom instruction and the technical components of the training. The military will still deliver the training that involves field and tactical training. These initial steps in the Canadian Army mirrors to a lesser degree the U.S. Army experience. Certainly for the Army, this relatively new experience will raise some hard questions over how much training can be delivered by MCFs, and how much must be delivered by the Army to ensure control over the military profession. However, MCFs seem capable and willing to address the needs of the Army in the short term and likely into the future.

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<sup>61</sup> Murray Brewster, "A Canadian Force Trained by Civilians," *The ChronicleHerald*, 2 November 2006, available from <http://thechronicleherald.ca/Canada/542203.html>; Internet; accessed 21December 2006.

What has been demonstrated in this chapter is that the use of the private military industry by the CF has been down a path traveled by the U.S. primarily, but other western nations such as the U.K. and Australia have had similar experiences. It first began with contracted logistics support and has moved into training of recruits and basic occupation training, long considered “core” areas by militaries. What remains to be seen is whether this will be a solution to a problem that is viewed by the Army leadership as temporary or whether this becomes a permanent and expanding feature in the CF training system. The CF challenge in dealing with the dual issues of operational tempo and an attempt to expand at the same time mean this pressure will not let up for the foreseeable future and the next logical path to move down would be the use of MPFs to provide armed services to the CF on the battlefield.

### **3.4 THE MOVE TO MPFs**

The previous section demonstrated that western armies in the post-Cold War era have all followed a similar pattern with regard to the increasing privatization of functions once considered the sole purview of the military. The next step was the employment of MPFs to support military and government goals. This has always been the smallest and most controversial areas of operations for private military companies, but saw an explosion of these services during the second Iraq war and in Afghanistan.

David Isenberg points out that MPFs operating in Iraq provide three types of services: close protection for senior civilian officials, non-military site security (buildings and infrastructure) and non-military convoy security. Isenberg argues that most of these MPFs work for organizations other than the U.S. government or the Coalition Provisional

Authority (CPA).<sup>62</sup> This may be slightly deceptive as all private military contractors who work in Iraq must register with and come under the authority of the CPA. This means in effect that they are under the defacto authority of the U.S. Military.<sup>63</sup> While previously mentioned that the CPA has ceased to exist with the return of power to an Iraqi government, there is little control exerted by Iraqis over MPFs working inside the country. In general, the private military companies are either contracted by the U.S. State Department, and others providing security for a myriad of other coalition operations. U.S. State Department rules are strict with regard to these companies hired being American and that the personnel employed by these firms are American citizens. Those firms employed by other U.S. government agencies and other private interests can be any combination of personnel from most any country.<sup>64</sup> CPA rules limit the weapons these MPFs may use to small arms with ammunition as large as 7.62mm. Also, U.S. Army regulations allow MSFs to be armed when required by their combatant commander.<sup>65</sup>

The scope of operations that MPFs were undertaking in Iraq and the reliance the Pentagon had on these firms was large. MPFs were being used to guard reconstruction projects and protect the Chief of the CPA. They were also hired to defend 15 regional

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<sup>62</sup> David Isenberg, *A Fistful of Contractors: the Case for a Pragmatic Assessment of Private Military Companies in Iraq*, Report 2004.4 Prepared for the British American Security Information Council (London: British American Security Information Council, September 2004), 8.

<sup>63</sup> Colonel (ret) Gerald Schumacher, *A Bloody Business: America's War Zone Contractors and the Occupation of Iraq* (St Paul, Mn, Zenith Press, 2006), 168.

<sup>64</sup> *Ibid.*, 168-169.

<sup>65</sup> David Isenberg, *A Fistful of Contractors: the Case for a Pragmatic Assessment of Private Military Companies in Iraq*, Report 2004.4 Prepared for the British American Security Information Council (London: British American Security Information Council, September 2004), 9.

authority headquarters and were entrusted with security in the Green Zone of Baghdad.<sup>66</sup> While these tasks were primarily defensive in nature (protecting people and things), MPFs have been involved in combat. Contractors with the security firm Blackwater engaged in a firefight in Najaf, Iraq, fighting to save the United Nations administrators at the headquarters. Blackwater resupplied their own personnel during the firefight through their private helicopters. A British firm, Hart Security, also found itself engaged in a firefight to protect a local construction project.<sup>67</sup> There are other examples, but these two specific ones indicate that MPFs, within the U.S. context in contemporary Iraq, have now been employed by the U.S. government to carry out tasks for which there are too few troops to do. This may be a trend that Canada cannot remain immune to. Canada has accepted a prominent role in the counter-insurgency fight and reconstruction efforts in Afghanistan, which will put a tremendous strain on the CF, particularly the Army. This type of deployment is likely the shape of things to come for future CF endeavours and stresses on manpower will be the norm.

This chapter has examined the path of privatization within western militaries since the Cold War. The first was the provision of logistics services and the engagement of MSFs. An examination of CANCAP shows that this contracting arrangement is likely permanent and that the CF could not likely support extended deployments abroad without contracted logistics support, despite the fact that conditions in current theatres like Afghanistan are not like those for which the programme was originally intended. Next, the move of MCFs into an area that western militaries once considered a “core” function

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<sup>66</sup> Fred Rosen, *Contract Warriors: How Mercenaries Changed History and the War on Terrorism* (New York, NY, Penguin Books, 2005), 31.

<sup>67</sup> Colonel (ret) Gerald Schumacher, *A Bloody Business: America's War Zone Contractors and the Occupation of Iraq* (St Paul, Mn, Zenith Press, 2006), 167.

was detailed, along with current Canadian examples of the NFTC program and the recent contracting of some basic occupation training within the Canadian Land Forces. It is clear from this that Canada has mirrored the experiences of the other western nations up to the point of employment of MPFs in support of CF operations. The experience of the U.S. in Iraq and the experience of these companies indicate that they are primarily employed in defensive tasks, filling the void caused by a lack of soldiers. The CF must be prepared to examine its options with regard to the use of MPFs. Canada and its military leaders should see the employment of MPFs as the next logical step in the privatization of military force and be prepared to use these firms to assist the CF in its mission and ameliorate the stresses on the military.

#### **4.0 THE CF AND DEMOGRAPHICS: FIGHTING THE UPHILL BATTLE**

As the CF struggles to provide the required numbers of troops to operations such as Afghanistan, there is another recent competing priority that has exacerbated the situation. CF Transformation commenced under the current Chief of Defence Staff, General Hillier, and has been supported by both the previous Liberal and current Conservative government. Under this transformation, the CF is supposed to grow from its current regular force strength of some 60,000 personnel to an end-state size of approximately 75,000 personnel. This has introduced the added strain of supporting an expanded training system with experienced personnel to provide this training while still filling the operational demands abroad and potentially at home. What are the prospects for accomplishing this and how can MPFs potentially fill the void?

This chapter will examine the demographic challenge to the CF that may drive it to the solution of utilizing MPFs to address these shortfalls. The first area to be examined will be the CF dilemma in both fulfilling an operational tempo that will not change for the foreseeable future while expanding at the same time. Next, an examination of the demographics of Canadian society will highlight the changing nature of immigration, the graying of the country and the drastic change in social morays over the last decade. This examination of Canadian society will show that the recruitment prospects for the CF over the long term are dim and that MPFs may provide a partial solution to the problem.

#### **4.1 THE CANADIAN FORCES DILEMMA**

The CF has experienced much turbulence in the post-Cold War era. The desire to reap the peace dividend with the fall of the Berlin wall impacted hard on the CF, along with a requirement by the federal government to get a serious deficit and debt situation under control. Arguably, the government had already cashed in its peace dividend in the late 1960s and 1970s with the significant downsizing of its forward deployed NATO forces in Europe. However, there was more to be squeezed from the Defence Department and even further personnel cuts and slashing of budgets occurred in the 1990s. During this period of austerity, downsizing saw the CF strength decline from approximately 80,000 people to around 60,000 personnel. As the entry of new recruits had slowed to all but a trickle, training institutions underwent similar downsizing of personnel resources. Concurrently, the new world order dawned and operational tempo increased significantly with personnel deployed continually on operations at a pace not seen during the Cold

War. This produced a significant strain on military personnel and their families, which then saw retention becoming a significant issue. It is no surprise that the employment of the private military industry hit its stride during this period as the CF sought alternative solutions to its significant problems.

However, with the deficit largely slain by the turn of the century, the government had decided the time was right to reinvest in the CF. In April of 2005, the Liberal government released its International Policy Statement, *A Role of Pride and Influence in the World*. In it, the government defined its new “3D” approach to international operations with defence, diplomacy and development working in concert to bring stability to failed and failing states in the world. Along with this new “whole of government” approach to the international environment, a new defence policy was put forward. In it, the CF would continue the efforts that had begun to transform it from a Cold War force to a force prepared to operate in the new post September 11<sup>th</sup>, 2001 environment. One of the keys to this new policy was the announced intention to expand the regular force by 5,000 personnel and the reserves by 3,000.<sup>68</sup> In 2006, the new Conservative government indicated to the military that this expansion would increase, looking to bring the regular force from 60,000 to approximately 75,000 all ranks along with increasing the strength of the reserves by some 10,000 people. This was a significant reversal from years of cuts to personnel strength for the institution. However, this expansion would be conducted with the CF carrying on with high operational tempo, especially supporting operations in Afghanistan. The Chief of Land Staff, appearing

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<sup>68</sup> Department of Foreign Affairs and International Trade, *Canada's International Policy Statement: A Role of Pride and Influence in the World: Defence*, (Ottawa: Her Majesty the Queen in Right of Canada, 2005), 3.

before the Standing Committee on National Defence in 2006, noted that while the Army was able to honour its operational commitments, it was unable to expand fast enough and this was generating some stress on the Land Force.<sup>69</sup> Consequently, and as discussed earlier in this paper, MCFs would be contracted to deliver to soldiers some of training given to soldiers in basis occupation training. The operational tempo and increased demand for training under CF expansion has also meant an increased reliance on reservists to support both deployments and the training system. However, the Army commander indicated that the numbers being asked to serve on temporary, full time contracts are putting a strain on the reserve system.<sup>70</sup>

Critics of the employment of PMCs have long argued that the very firms hired to provide relief to the military further exacerbate the personnel drain by drawing highly trained individuals from the military itself. The CF is not immune. It was recently reported that the highly trained Special Forces soldiers of Joint Task Force 2 were abandoning their jobs for the substantial paycheques of private security firms.<sup>71</sup> However, some other opinions on the engagement of private military industry could have the opposite impact on retention of personnel. The U.K. Ministry of Defence argues that contractors can relieve military personnel from routine and mundane tasks, leading ultimately to improvements in the quality of life of soldiers and positive impacts on

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<sup>69</sup> House of Commons, Standing Committee on National Defence, *Minutes of Proceedings and Evidence*, No. 023, 20 November 2006. <http://cmte.parl.gc.ca/Content/HOC/Committee/391/NDDN/Evidence/EV2517643/NDDNEV23-E.PDF>; Internet; accessed 16 March 2007.

<sup>70</sup> *Ibid.*, 8.

<sup>71</sup> Bruce Champion-Smith, "Elite troops Quit for Fat Pay," *The Toronto Star*, 21 November 2006. Available from [http://www.thestar.com/NASpp/cs/Contentserver?pagename=thestar/Layout/Article\\_Pr](http://www.thestar.com/NASpp/cs/Contentserver?pagename=thestar/Layout/Article_Pr); Internet; accessed 21 November 2006.

training and retention.<sup>72</sup> Additionally, retired Colonel Gerald Schumacher argues that the private military industry is given far too much credit for drawing people away from the U.S. Armed forces. He states that today's military members are highly trained, loyal people who can see the pitfalls in abandoning retirement pay and benefits for short term financial gain. Also, he argues that the military has done relatively little to encourage retention and that some direct competition between the military and private industry would be healthy.<sup>73</sup> While the phenomenon of military people departing for employment by the private military industry is real, the effect on militaries is clearly debatable, even to the point of it being viewed as healthy competition that ultimately benefits the uniformed soldier.

What is now clear in the Canadian context is that the contracting of private military companies is being used to partly address the training shortfalls in the Army, at least on a temporary basis. This follows the move of other western nations from contracted logistics support to private support of training, once considered a "core" military function. Consequently, with the move of other western militaries to employ MPFs in support of their operations the strain on the CF to force generate sufficient troops to meet operational commitments into the foreseeable future may be also partially addressed on a temporary or even permanent basis by the employment of MPFs.

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<sup>72</sup> Matthew R. Uttley, "Contractors on Deployed Military Operations: United Kingdom Policy and Doctrine," *United States Army Strategic Studies Institute* (September 2005), 16. Paper on-line: available from <http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB264.pdf>; Internet; accessed 16 April 2007.

<sup>73</sup> Colonel (ret) Gerald Schumacher, *A Bloody Business: America's War Zone contractors and the Occupation of Iraq* ( St Paul, MN, Zenith Press, 2006), 41-42.

## **4.2 THE CANADIAN SOCIETY PROBLEM**

The environment in which the CF has to navigate as a highly visible and traditional element of Canadian society makes the challenges described above all the more difficult. Canadian society today is considerably different from the post-World War II heyday of the 1950s which saw a rapid expansion of the Canadian economy and continuous growth of the population. With a rough population of approximately 14 million people, it was largely white, European (British or French) and traditional in its views when it came to the role of government and armed forces in its society. The passing of time has seen Canada's population grow in ways that had never been previously imagined, but not necessarily in directions favourable to the CF. The ethnic composition of the population has changed considerably. Canadian society is also aging. Finally, changing values in this population means that the CF will have an increasingly hard time in attracting the recruits required to maintain its strength in all occupations. Consequently, the CF will continue to search for private sector solutions to offset these shortfalls. Within this larger Canadian societal context, the MPF may be an option to explore.

Data from the 2007 Canadian census provides some insight into the changes within the Canadian population. The census indicates that the Canadian population is now roughly 31.5 million people. This is a growth of 1.6 million people since the 2001 census. While this growth leads the G8 group of nations, it is still lower than the growth rate from 50 years ago. The key aspect of this population growth is that about two-thirds of Canada's population growth now comes from immigration, while the remaining one

third is due to the birth rate.<sup>74</sup> This low birth rate combined with immigration has led to the aging of the Canadian population. In 1981 the percentage of the Canadian population between zero and 14 years of age was 22.3 percent of the Canadian population. In 2005 that figure was down to 17.6 percent. Conversely the percentage of the Canadian population age 65 and over increased from 9.6 percent to 13.1 percent during the same time period.<sup>75</sup> Given the low birth rates and the bubble of the baby boom generation, this trend will continue and will have huge social implications for Canada in the areas of taxpayer base, labour availability and social services such as health care. It is in this market that the CF will attempt to recruit the numbers required to maintain its strength. The Private Military Industry will likely remain a permanent part of CF operations and will in all likelihood expand given this demographic trend. It may require the CF to contemplate the next evolution, MPFs, if it is to remain a credible tool for the government of Canada into the future. Even rising immigration appears unable to address the problem.

The reliance on immigration for population growth in Canada also indicates further issues for the CF. This rising immigrant population in Canada is highlighted in the 2001 census. The proportion of foreign born Canadians was the highest in 70 years, at 18 percent of the population in 2001. This visible minority population was

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<sup>74</sup> Statistics Canada, *Portrait of the Canadian Population in 2006: National Portrait*, available from <http://www12.statcan.ca/english/census06/analysis/popdwell/NatlPortrait1.cfm>; internet; accessed 14 March 2007, n.p.

<sup>75</sup> Statistics Canada, *Report on the Demographic Situation in Canada: 2003 and 2004* (Ottawa: Minister of Industry, June 2006), 8. available from <http://www.statcan.ca/english/freepub/91-209-XIE/91-209-XIE2003000.pdf>; Internet; accessed 15 March 2007.

approximately four million people, a three-fold increase over 1981.<sup>76</sup> The key factor to examine is the origin of these immigrants. A 1996 Citizenship and Immigration Canada Report indicated that the vast majority of these migrants were coming from non-traditional areas such as Asia. Many of these people were economic migrants, looking for better opportunities in Canada. Many were fleeing countries with oppressive regimes where the police and military were viewed in a negative light by these people. The same report highlighted that refugees seeking asylum in Canada came from such countries as Bosnia-Herzegovina, Somalia, Algeria, Sri Lanka and Iraq.<sup>77</sup> While not impossible to recruit, these populations tend to have a dim view of military service. It is not likely that the first generation immigrants are pre-disposed to consider military service. It will be the second and third generation that may be more effectively targeted for CF service and this will take considerable time. Regardless of whether the population of the country grows by natural birth or through immigration, military service will continue to be a hard sell.

The final factor that will influence the ability of the CF to recruit successfully are the changed attitudes and perceptions of the military by Canadian society at large. Franklin Pinch has identified that during peacetime, the CF rarely enters the public agenda and without an identifiable threat, “national security and defense barely enter most Canadians’ consciousness.”<sup>78</sup> This ambivalence was quantified in the 1970s and

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<sup>76</sup> Statistics Canada, “2001 Census: Release 5 – January 21, 2003,” <http://www12.statcan.ca/english/census01/release/release5.cfm>; Internet; accessed 14 March 2007.

<sup>77</sup> Citizenship and Immigration Canada, *Citizenship and Immigration Statistics: 1996* (Ottawa: Minister of Public Works and Government Services Canada, 1999), 13, 16.

<sup>78</sup> Franklin C. Pinch, “Canada: Managing Change With Shrinking Resources,” in *The Postmodern Military: Armed Forces After the Cold War*, ed. Charles C. Moskos, John Allen Williams and Davis R. Segal, 156-181 (New York, NY: Oxford University Press, 2000), 163.

the 1980s, when fewer than .5 percent of Canadians mentioned defence as a major concern. This trend continued throughout the 1980s. Of greater concern to the CF was the fact that this level of ambivalence was particularly strong in youth and their views of the military as a potential career option and as a retention issue for those already serving.<sup>79</sup> As a bottom line, Franklin Pinch offers a fairly somber assessment for CF recruiters, indicating that, “indifferent or negative public opinion is likely to remain a recurring challenge.”<sup>80</sup> This assessment was made during a period when CF personnel requirements were viewed as low due to downsizing.<sup>81</sup> Add to this the more recent dual demands of high operational tempo and expansion and the manning situation becomes even more aggravated. However, it appears that attitudes among the core group of Canadians the CF would target for military service make them anything but amenable to service.

Some more contemporary work has shed a detailed spotlight on the attitudes of this specific group towards the military. This work reinforces some of the conclusions drawn by Franklin but provides a more thorough explanation of why these attitudes have prevailed. Author Michael Adams has said that,

During the past quarter century, Canada has been transformed by a social revolution, not the Marxist variety...but a peaceful revolution in the structure of authority in our society. It is the shift from an authoritarian pyramid to a “heterarchical”(author’s emphasis) model of how society should interact. Not a hierarchical model either. Pragmatic, flexible and egalitarian.<sup>82</sup>

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<sup>79</sup> *Ibid.*, 163.

<sup>80</sup> *Ibid.*, 164.

<sup>81</sup> *Ibid.*, 164.

<sup>82</sup> Michael Adams, *Sex in the Snow: Canadian Social Values at the End of the Millennium* (Toronto, Penguin Books, 1997), 6.

Adams points out that Canadian character has changed from one that once had a deference to authority to one that is now more characterized by individualism. He argues that Canadians have moved beyond traditional demographic categories of age, gender, religion, social class and ethnicity and have discovered new ways to define themselves in the 21<sup>st</sup> century. Much of this is due to the relative affluence of the Canadian population, access to education, travel and information.<sup>83</sup> He argues that Canadians have moved past the “demographics as destiny” argument and that an increasingly complex and malleable Canadian society has produced a series of 12 social values tribes, each uniquely complex and with its own underlying set of defining characteristics and values. These 12 tribes are divided into three broad groups; the elders, the boomers and generation X.<sup>84</sup> The elders will not be in a position to serve in the CF. The baby boomers are coming to the end of their productive working life. Indeed, many of these boomers form the bubble of a large retirement wave that will soon hit the CF, with large numbers of highly trained people hitting retirement age at the same time. This leaves the generation X group as a valid recruiting target.

Unfortunately, the character traits of this group do not readily or willingly lend themselves to military service. Adams states that the general defining characteristics of this large group include a strong desire for experience-seeking, a lack of worry about the future, a social Darwinism in which they believe they are the strong who will prevail, an abandonment of fear, guilt and duty as a defining characteristic of the elders group and a

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<sup>83</sup> *Ibid.*, 9.

<sup>84</sup> *Ibid.*, 55-56.

penchant for risk taking, often viewed as reckless.<sup>85</sup> On the face of it, these values would seem to be positive in terms of certain values that would make military life appealing. However, there are certain other values Adams describes that are the antithesis of military service. These include an egalitarian view of society, a rejection of traditional hierarchical relationships based on title, age or seniority and a focus on immediate gratification.<sup>86</sup>

The impacts of this division and definition of Canadian society have been studied by the CF. A CROP Research presentation to the CF in 2003 provided some additional facts that may be viewed as troubling in terms of the long term sustainability of personnel strength. Alain Giguere presented the results of an extensive CROP Research poll of Canadians and their attitudes towards the CF. This survey used the same 3SC model employed by Michael Adams in his work above.<sup>87</sup>

To begin with, the overall perception of the CF by the survey audience was generally favourable or very favourable. What was troubling from a CF perspective was that this survey population response was over represented by people aged 60 and over, of low income and low education. Those under represented were less than 30 years old, and had a generally high income and high education. Again, this latter group falls within the potential recruiting target for the CF.

Of potentially even more concern to the CF are the attitudes and socio-cultural make-up of this group. When the sample group of 15 to 39 years olds were asked if they

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<sup>85</sup> *Ibid.*, 102.

<sup>86</sup> *Ibid.*, 103.

<sup>87</sup> Department of National Defence, *Canada's Soldiers: Military Ethos and Canadian Values in the 21<sup>st</sup> Century* (Ottawa: Director-General Land Capability Development, 2004), 3.

had an interest in a career in the CF, only nine percent said they were somewhat interested and only three percent were highly interested. Sixty-six percent of the age group said they were not interested at all. Of those interested, forty-nine percent indicated that they would prefer to pursue a career through the Canadians Forces Reserves vice full time service.<sup>88</sup> The characteristics of this group also indicate that it is over represented by men aged 15-24, of relatively low income and education, and tend to be single, students, unemployed or labourers.<sup>89</sup>

Of the members of the group that displays an interest in the CF, their social values diverge from those of CF members in several important ways. First, this group is characterized as lacking life goals and being alienated from society and its values. Additionally, this group, unlike most of Canadian society, is attracted to violence and views it as a legitimate means of solving problems. This group also tends to pursue happiness before duty, prioritizes personal life over work and in ethical dilemmas, will defer to solutions that provide the best personal outcome.<sup>90</sup> Obviously, the lack of people of military age interested in serving in the CF, along with some unfavourable social values of those that do, must be of concern to the CF. While not impossible to change these attitudes, it does indicate that the CF will continue to struggle with getting sufficient quantities of young people through the door to maintain its current strength and to ultimately expand under transformation.

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<sup>88</sup> The Canadian Forces and Social Change in Canada, *A Presentation by Alain Giguere President, CROP Inc CD-ROM* [CD-ROM] (CROP Research and Marketing , 2003).

<sup>89</sup> *Ibid.*, n.p.

<sup>90</sup> Department of National Defence, *Canada's Soldiers: Military Ethos and Canadian Values in the 21<sup>st</sup> Century* (Ottawa: Director-General Land Capability Development, 2004), 11-12.

In summary, the growth in the Canadian population is now highly reliant on immigration, the vast majority now coming from non-traditional parts of the world. These populations are often fleeing turmoil in their homelands and have a somewhat jaded view of military and police service. Add to this the issue of Canada's aging population and it becomes clear that the CF will have trouble in the long run maintaining its authorized strength or expand to any significant degree. Finally, that segment of the population that would be eligible for military service, the generation Xers, is neither pre-disposed to military service nor does a large part of this group have some of the characteristics that would be considered desirable traits that would make them successful service men or women, without considerable efforts in socialization. Therefore, reliance on the private military industry to meet the CF need will continue and likely need to expand if the military is to remain a viable tool to the government and the country. The use of MSFs to provide logistics support and MCFs to provide training will need to continue to offset these shortages of people. The next step will be to entail consideration of the use of MPFs to augment CF capabilities or to ensure that the CF can sustain expeditionary operations over an extended period of time.

## **5.0 THE CF AND MPFS: THE LEGAL QUESTION**

The next aspect that needs to be examined is the legal or regulatory regime under which MPFs could be employed by the CF. This chapter will begin with an examination of the current domestic and international legal environment under which the private military industry operates, and some of the attempts at regulation of the industry. Next, the current status of MPFs will be examined with respect to humanitarian law and the

laws of armed conflict. Finally, a legal framework will be described that would allow the CF to potentially employ MPFs in support of its operations. This would see the CF addressing the nature of the customer-contractor paradigm and how the CF could ensure that MPFs employed by them are to the greatest degree possible in compliance with International Humanitarian Law and the Laws of Armed Conflict.

### **5.1 THE CURRENT LEGAL CLIMATE**

The legal status of military contractors on the battlefield has become increasingly complicated. Sarah Percy has stated that, ‘if there is a regulatory vacuum regarding PSCs, it exists under current international law.’<sup>91</sup> Other commentators such as Caroline Holmqvist echo this view on the international state of law and regulation but hold out little hope for any action in the short term that would clarify the situation. She points out that the two most cited pieces of international legal documentation are not applicable or address the contemporary private military company. These legal documents are article 47 of the Additional Protocol I of the Geneva Conventions and Organization of African Unity/African Union convention on mercenary activities. Holmqvist, among others, points out that the Private Military Industry are ultimately not subject to these protocols as they do not meet all the tests for being classified as mercenaries.<sup>92</sup> Indeed, these protocols have made it easy for mercenaries and not just private military companies to

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<sup>91</sup> Sarah Percy, *Regulating the Private Security Industry*, Adelphi Paper 384 (New York: International Institute for Strategic Studies, Oxford University Press, 2006), 41.

<sup>92</sup> Caroline Holmqvist, *Private Security Companies: The Case for Regulation*, SIPRI Policy Paper No. 9 (Stockholm: Stockholm International Peace Research Institute, 2005), 44.

avoid meeting the criteria of the definitions and prosecution.<sup>93</sup> Neither Percy nor Holmqvist hold out little hope for any significant change in this legal vacuum in the near future. It is pointed out that it took almost 12 years to get the UN document ratified by the minimum 22 nations and that none of the major western countries are signatories.<sup>94</sup> Additionally, the inability of the international community to establish the legal status of private military companies has led some commentators to believe that only national level legislation or regulation will be effective, especially since national legislation does not require international negotiation, or the requirement to accept the lowest common denominator in order to reach agreement.<sup>95</sup>

Caroline Holmqvist sees two reasons for addressing the regulation of MPFs through national legislation. The first is that regulation by the state affirms their place in the venue of international security relations. The second reason is that she believes that it is at the national level that regulation stands the best chance of success.<sup>96</sup> Amongst the western nations, the United States and the United Kingdom provide two good examples of the state of domestic regulation of the industry, particularly since many of the major PMCs are headquartered in these two countries.

Domestic regulation in the United States has two components. There is a licensing system through which potential PMC contracts get reviewed. This licensing

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<sup>93</sup> Christopher Kinsey, *Corporate Soldiers and International Security: The Rise of Private Military Companies* (New York, NY, Routledge, 2006), 134.

<sup>94</sup> Caroline Holmqvist, *Private Security Companies: The Case for Regulation*, SIPRI Policy Paper No. 9 (Stockholm: Stockholm International Peace Research Institute, 2005), 44.

<sup>95</sup> Christopher Kinsey, *Corporate Soldiers and International Security: The Rise of Private Military Companies* (New York, NY, Routledge, 2006), 134.

<sup>96</sup> Caroline Holmqvist, *Private Security Companies: The Case for Regulation*, SIPRI Policy Paper No. 9 (Stockholm: Stockholm International Peace Research Institute, 2005), 50.

system only applies to those American firms doing business with the United States Government. There is also legislation that deals with the prosecution of contractors for crimes committed while serving abroad. Interestingly, the U.S. uses the same legislation that governs the sale of military arms and services in terms of third parties abroad to regulate MPFs. This legislation is entitled the International Traffic in Arms Regulations or ITAR, which is a subset of the Arms Export Control Act (AECA). The ITAR was modified to deal with MPFs, specifically, ‘the sale of “defence services” or the sale of assistance, technical data or training related to military units.’<sup>97</sup> This legislation is administered through the Department of State. The legislation is the Military Extraterritorial Jurisdiction Act (MEJA), established in 2000. The act was not created to deal specifically with contractors, but with all civilians working with or for the U.S. military in situations where the host nation was unable or unwilling to prosecute these people for crimes. However, the legislation was applied to contractors as the U.S. generally negotiated immunity to local prosecution on behalf of Department of Defense Civilians in Status of Forces Agreements with Host Nations.

There are several problems associated with this legislation. The first is that it originally only applied to contractors employed or working for the Department of Defense. This was later modified but some important U.S. Federal organizations are still excluded. It also took several years after the introduction of the legislation to establish implementing rules which would provide uniform guidance across all the U.S. armed services as to who could arrest and detain civilian contractors. Next, the MEJA only applied to crimes that would garner one year or more of imprisonment, potentially

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<sup>97</sup> Sarah Percy, *Regulating the Private Security Industry*, Adelphi Paper 384 (New York: International Institute for Strategic Studies, Oxford University Press, 2006), 25-26.

leading to contractors being excluded from discipline for misdemeanor crimes, leading to the situation where military personnel are held accountable for misdemeanor offences, but not their civilian counterparts. Finally, prosecutors find bringing extraterritorial cases to court complex and expensive, which had lead to a dearth of such cases actually being pursued.<sup>98</sup> In summary, the U.S. has some advanced domestic legislation related to the control of contractors on operations. It has leveraged and adapted existing legislation by way of the ITAR and broadened the interpretation of the MEJA to include contractors. The U.S. however, is not the only model of domestic regulation.

The UK has been the birthplace in many respects to the modern private military company. However, the state of domestic regulation of the industry is somewhat less advanced than in the U.S. The UK does not currently have legislation which currently covers the private military industry. As a result of the 1998 Legg report which analyzed the Sandline International arms to Sierra Leone scandal, recommendations were made for the British government to commission a Green Paper into the options for regulation of the Private Military Industry.<sup>99</sup>

This Green Paper produced a series of six options for the regulation of the industry: banning military activity abroad; a ban on recruitment for military activity abroad; a licensing scheme for military services; a system of regulation and notification;

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<sup>98</sup> *Ibid.*, 28-29.

<sup>99</sup> Sandline International was involved in shipping weapons to Sierra Leone in violation of a UN embargo in 1997. An investigation revealed that the arms shipments had received endorsement by officials in the Foreign and Commonwealth Office. See: Fred Schrier and Marina Caprini, *Privatising Security: Law, Practice and Governance of Private Military and Security Companies*, Occasional Paper No. 6 (Geneva: Centre for the Democratic Control of Armed Forces, March 2005): 113. available from [http://www.smallarmssurvey.org/files/portal/issueareas/security/security\\_pdf/2005\\_Schreier\\_Caparini.pdf](http://www.smallarmssurvey.org/files/portal/issueareas/security/security_pdf/2005_Schreier_Caparini.pdf); Internet; accessed 18 December 2006.

a general license for companies; and industry self-regulation.<sup>100</sup> Although the Green Paper was published in 2002, the UK has not implemented any of the recommendations.

Development of the private military industry has surpassed the ability of international mechanisms to control this sector. The ability to regulate the industry has defaulted to national domestic law and regulation, with its own unique set of limitations. The UK example, along with the further advanced U.S. state of regulation, demonstrate the pitfalls that Canada must be conscious of when it contemplates the use of MPFs to support CF operations.

To better understand what the CF must do in the legal sphere to employ MPFs in support of operations, it will be useful to understand the current status of civilians under current international law. The first is the status of civilians in relation to the Laws of Armed Conflict (LOAC). The Geneva conventions and Protocols provide for the protection of civilians on the battlefield. Unarmed civilians not participating in combat are to be considered non-combatants. This is a fairly straight forward and understood principle. The second issue is the status of civilians in the employ of armed forces. An Australian study on the status of civilians in armed conflicts points out that Geneva III confers prisoner of war status upon:

Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of armed forces...<sup>101</sup>

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<sup>100</sup> Sarah Percy, *Regulating the Private Security Industry*, Adelphi Paper 384 (New York: International Institute for Strategic Studies, Oxford University Press, 2006), 32.

<sup>101</sup> Rothwell, Donald R, Challis Professor of International Law, University of Sydney, "Legal Opinion on the Status of Non-Combatants and Contractors Under International Humanitarian Law and Australian Law." Opinion on-line; available from [http://www.aspi.org.au/pdf/ASPIlegalopinion\\_contractors.pdf](http://www.aspi.org.au/pdf/ASPIlegalopinion_contractors.pdf); Internet; accessed 8 January 2007..

This definition adequately covers those civilians working for armed forces who are providing unarmed support such as logistics support or the maintenance of complex weapons systems. The third issue is the status of armed contractors under the LOAC. The dilemma that MPFs have created in the legal domain is described by one author, who states that these civilians are no longer just accompanying the force but are carrying weapons, fixing critical weapons systems and carrying out other critical functions. This has created a categorization problem where, ‘Legally speaking, they [military contractors] fall into the same grey area as the unlawful combatants detained at Guantanamo Bay.’<sup>102</sup>

This question of whether PMCs constitute lawful combatants is one of the key questions under International Humanitarian Law (IHL). If MPFs are lawful combatants, then they are entitled to some form of Prisoner of War (PoW) status and can be legally targeted. If they are unlawful combatants, they have no rights under IHL. The Geneva Conventions are specific in that civilians participating directly in hostilities are considered unlawful combatants or unprivileged belligerents. The key issues then are whether PMFs are or are not lawful combatants and what constitutes participating in direct hostilities.<sup>103</sup>

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<sup>102</sup> Peter Singer, “The Private Military Industry and Iraq: What Have We Learned and Where to Next?” (Geneva: Geneva Centre for the Democratic Control of Armed Forces, Policy Paper, November 2004), 12.

<sup>103</sup> Sarah Percy, *Regulating the Private Security Industry*, Adelphi Paper 384 (New York: International Institute for Strategic Studies, Oxford University Press, 2006), 47.

## 5.2 A CANADIAN LEGAL FRAMEWORK

In order to successfully employ PMFs in support of CF operations, the issue is providing a legal framework that provides the maximum protection to the company and its employees as well as ensuring that the state is protected from potential legal action under IHL. To fulfill these dual roles, several issues will need to be addressed. The first is to deal with the unlawful combatant status of PMFs. This can be done through several definitional issues that will change the nature of the contractor-service provider relationship to a more military chain of command relationship. The second method would be to employ PMFs in roles that do not see them participating in direct combat.

A recent gathering of experts sponsored by the University Centre for International Humanitarian Law examined many of these types of questions. One of the questions addressed was under what conditions could PMCs be considered combatants. The participants stated that the PMC members, ‘would have to be seen as constituting “members of the armed forces” of the State under Article 43(2) of AP I, members of the armed forces or militias forming part of the armed forces under Article 4A(1) of GC III, or members of independent, allied militias or “other volunteer corps” under Article 4A(2) of GC III. The crucial requirement was that the group be “under a command responsible” to the Party to the Conflict, along with the definitional issues under Article 4A(2) of GC III and what constitutes independent allied militias and volunteer corps.’<sup>104</sup> Most of the

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<sup>104</sup> University Centre for International Humanitarian Law. *Expert Meeting on Private Military Contractors: Status and State Responsibility for Their Actions*. (Geneva: Record of a Conference Convened at the International Conference Centre, 29-30 August 2005), 9-10. available from [http://www.ucihl.org/communication/private\\_military\\_contractor\\_report.pdr](http://www.ucihl.org/communication/private_military_contractor_report.pdr); Internet; accessed 19 December 2006.

experts participating agreed that under current conditions, PMCs would probably not constitute militias or volunteer corps.<sup>105</sup>

However, this situation could be addressed by putting the PMC “under a command responsible” to it within the definition of Article 43(1) as well as the requirement for the PMC to be subject to some sort of internal disciplinary system. This would allow the state to make the PMC operate in compliance with the rules of IHL as required by Article 43. The CF can address this command and disciplinary issue in its contracting by ensuring the wording of the contract makes the PMF responsible to the state within the meaning of Article 43(1). One expert commented that this contract would put the PMC under the command of the state.<sup>106</sup> Another proposal in this area would be to word contracts to ensure MPFs undertake operations in support of national interests and objectives.<sup>107</sup> This approach is supported by several commentators, including Laura Dickinson, who view contracts as a form of government oversight and accountability. She argues that a contract can be written to incorporate national values, enforcement procedures and compliance measures.<sup>108</sup> Another method of addressing this command responsibility issue would be through domestic legislation, incorporating a MPF into the CF, placing it under the command of the State’s armed forces. This would address the requirement under Article 43(3) to incorporate paramilitary or law

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<sup>105</sup> *Ibid.*, 11.

<sup>106</sup> *Ibid.*, 11.

<sup>107</sup> Dr. Kevin A. O’Brien, “Private Military Companies: Options for Regulation,” *Rand Europe* (Cambridge: 2002), 12-13. paper on-line: available from <http://www.fco.gov.uk/Files/kfile/pmcobrien.pdf>; Internet; accessed 12 December 2006.

<sup>108</sup> Laura Dickinson, *Government for Hire: Privatizing Foreign Affairs and the Problem of Accountability Under International Law*, University of Connecticut School of Law Working Paper Series, paper 53 (CT: University of Connecticut, 2005), 171.

enforcement agencies into its armed forces and notify the parties to the conflict, as well as exercising direct jurisdiction over the MPF and subjecting it to an internal disciplinary system.<sup>109</sup>

Some experts would argue that this is a superfluous approach, as states already have the power to conscript civilians into the armed forces or get volunteers from reserve or militia units to deploy on operations. However, within the Canadian context, conscription has always been a touchy issue to meet military requirements. Additionally, current reserve capacity is barely meeting demand. This would provide a legal method to sustain CF operations abroad with minimal political risk to a government.

Finally, a U.K. approach to the Command and control issue may be of some use to the CF. The Sponsored Reserve (SR) Concept utilizes contractor services normally provided to the state in peacetime are provided on operations by personnel who are on the contractor's staff that are also reservist members of the Armed Forces.<sup>110</sup> The SR programme grew from the U.K. Ministry of Defence 1992 Regular/Reserve Mix Study. This study examined the concept of using civilians with reserve status for operational support functions. The employment of the contractor's employees, who are also trained reservists, as an integral part of the deployed force means they are fully integrated into

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<sup>109</sup> University Centre for International Humanitarian Law. *Expert Meeting on Private Military Contractors: Status and State Responsibility for Their Actions*. (Geneva: Record of a Conference Convened at the International Conference Centre, 29-30 August 2005), 12. available from [http://www.ucihl.org/communication/private\\_military\\_contractor\\_report.pdf](http://www.ucihl.org/communication/private_military_contractor_report.pdf); Internet; accessed 19 December 2006.

<sup>110</sup> Matthew R. Uttley, "Contractors on Deployed Military Operations: United Kingdom Policy and Doctrine," *United States Army Strategic Studies Institute* (September 2005), 41. Paper on-line: available from <http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB264.pdf>; Internet; accessed 16 April 2007.

the military chain of command.<sup>111</sup> While the SR concept has met with limited success in the U.K., this system, or a Canadian version of it, would help address the issue of MPFs being placed under a “command responsible” within the definition of Article 43(1).<sup>112</sup>

Therefore, to meet specific manning demands while under the dual pressures of increased operational tempo and expansion, an option that would see a MPF employed under the command of the CF, would address the legal issues and provide some much needed relief to hard pressed troops. This could potentially be done through proper contracting language between the state and the MPF or through an arrangement that would see the PMF under the chain of military command and under its disciplinary system, either through contract language or through a programme that mirrors the U.K. SR concept, or a combination of both.

The next legal issue to be addressed would be the employment of the MPF. Most current and proposed regulations and legislation advocate banning MPFs from participating in direct combat or direct offensive operations. The participation in direct combat operations creates issues of both the status of MPFs and their employees under IHL and could subject the state responsible for hiring them to liabilities. Most attempts at regulation therefore limit MPF roles to defensive, or security related tasks.

Commenting on the U.K. proposals for regulating PMCs under the Green Paper, a document from Rand Corporation Europe recommends that U.K. companies be prohibited from engaging in offensive operations. It goes on to state that U.K. companies should be allowed to undertake physical security activities (both personal and

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<sup>111</sup> *Ibid.*, 46.

<sup>112</sup> *Ibid.*, 48.

installation) that are defensive or protective in nature. This security of installations should include both military and non-military facilities. This comes to the often difficult issue of what constitutes offensive and defensive military action in the nature of these security activities. The Rand document acknowledges the difficulty in differentiating between these two operations, particularly when PMCs could be involved in issues of ‘hot pursuit’ or ‘offensive defence’. What is recommended is that MPF activities be restricted to being reactive in responding to threats.<sup>113</sup>

The United States Military also provides several useful examples to be emulated. Within the Iraq experience, several controls are in place with respect to the employment of PMCs. The first is that only combatant commanders can authorize the arming of civilian employees for defensive purposes.<sup>114</sup> Secondly, PMCs are not authorized to engage in direct combat operations. They are employed in defensive oriented tasks, such as protecting convoys, protecting military establishments and VIPs. Thirdly, PMCs are subject to the same Rules of Engagement (ROE) as coalition forces.

Thus, a Canadian approach to employment of MPFs that incorporates elements of both the U.K. and U.S. approaches could be useful. Limiting MPF employment to reactive physical security tasks such as guarding of a main base or forward operating base would ensure the state retains active control over offensive combat operations. The ability of commanders to authorize or restrict the arming of MPFs would allow the military to assume control of these tasks if it was deemed necessary or to turn it over to

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<sup>113</sup> Dr. Kevin A. O’Brien, “Private Military Companies: Options for Regulation,” *Rand Corporation Europe* (2002): 11-12. Paper on-line; available from <http://www.fco.gov.uk/Files/kfile/pmcobrien.pdf>; Internet; accessed 12 December 2006

<sup>114</sup> Colonel (ret) Gerald Schumacher, *A Bloody Business: America’s War Zone contractors and the Occupation of Iraq* ( St Paul, MN, Zenith Press, 2006), 72.

MPFs if the military was unavailable. Finally, ensuring that the MPFs are subject to the same ROE as Canadian/coalition forces would ensure consistency in the application of force. Under these conditions, employment of MPFs by the CF could allow substantial savings in personnel by reducing the size of the military contingent in an operation or allow the freeing up of combat arms and support arms units such as infantry, armour and engineers, and logistics which must commit substantial amounts of personnel resources to force protection or physical security tasks. The ability to free those personnel up for their primary tasks of combat or logistics is a combat multiplier to the CF, putting scarce personnel resources to the best use in core military tasks. This approach also minimizes the legal issues associated with the status of the contractor under IHL and the potential liability of the state and thus the company and the military gain from this cooperative regime.

## **6.0 CONCLUDING REMARKS**

This paper has analyzed the requirement for the CF to consider the employment of MPFs as a potential solution to sustaining operations in the 21<sup>st</sup> century. The CF has reached a point in its operations where the subject can no longer be avoided. Indeed, it may be the next, if not inevitable, then inexorable move in the privatization of war.

Defining what a private military company is and does is a near impossible task given the myriad views on the industry. Several broad categories of services have emerged, ranging from pure support services such as logistics provided by MSFs, through training and strategic planning services provided by MCFs, to security services up to and including armed combat, the latter described as MPFs. These companies range from

small, virtual companies to branches or wholly owned subsidiaries of much larger transnational corporations. Where there appears to be a relative agreement among commentators is the reasons for the spectacular rise of the industry post-Cold War. The decline in superpower interest to act in various parts of the world, the loss of state monopoly on the use and means of violence are key factors. Also, the rise of a market oriented global economy and a conservative ideology has led to the axiom that private industry can do things far more efficiently and effectively than what the government or the public trust can do, in what is often considered the last bastion of state control; the conduct of conflict.

The history portion of the paper showed that the term mercenary has been attached to private enterprise in war from the beginning of recorded history. Private enterprise has been involved in the waging of war both before the Westphalian state and what some would consider the current post-Westphalian construct. The Condottieri and Charter companies of the 15<sup>th</sup> and 16<sup>th</sup> centuries were the precursors to the modern day incorporated private military company. The rise of the Westphalian state structure and developing theories on human rights turned the mercenary from an acceptable solution for waging war into a pariah that challenged state authority and legitimacy. What has, however, distinguished the old vision of the mercenary from the current Private Military Company is the degree of business legitimacy they have acquired through extensive incorporation and use of business models to conduct their business to a degree not seen before.

Given this historical picture, the analysis indicates that the CF has a number of pressing reasons to contemplate the use of MPFs to support operations. To begin with, the CF is merely mirroring a trend being followed by other western military services. The largest area that has impacted western militaries is the employment of MSFs. This trend has been mirrored in other countries, primarily the U.S. but also the U.K. and Australia. CANCAP is the Canadian military's expression of this and is being used in relatively high risk theatres such as Afghanistan. Indeed, the CF has reached the point (much like other western militaries) that extended expeditionary operations could not likely be carried out by the CF without contracted support.

Next, private military industry has moved into the realm of providing services in an area that western militaries have often considered a "core" function, that of training recruits and soldiers conducting basic occupation training. This led to partnership with MCFs in the delivery of basic occupation training in such initiatives as NFTC and some aspects of basic Army training. This also reflects the experience of Canada's allies, particularly the U.S. military, which also moved into the realm of contracting out what used to be considered "core" training functions under the purview of the uniformed services.

In keeping with our allies it would appear that the next logical step for Canada is the employment of MPFs in support of military operations. The U.S. experience in this sphere is definitive. Iraq has demonstrated that the U.S. government, particularly the State Department and the Pentagon, have turned to MPFs to fill the gap caused by a shortage of U.S. military forces on the ground to conduct a myriad of personal protection, infrastructure security and convoy escort tasks. These MPFs have been involved in

bloody and deadly combat. The CF is no different than its allies and will not be immune to these personnel shortages, and to carry out all the tasks assigned to a CF commander in theatre, may have to resort to MPFs to successfully accomplish the mission.

In terms of recruiting and retention, there is little to indicate that the CF will be able to generate the number of forces necessary to meet the demands of the post-Cold War environment. An examination of Canadian society as a whole indicates a number of disturbing trends for the CF. The Canadian population is only growing largely through immigration and these immigrants are increasingly coming from what would be considered non-traditional areas of the world where organizations such as the military and the police are not held in high regard and thus have little interest in serving in the CF. Also, Canada's aging population means the available pool of military age people will continue to shrink for the foreseeable future. Through the 1960s to the 1980s, Canada has a documented history of neglect of its Armed Forces in peacetime, especially amongst youth, who are the target recruiting audience.

Canada has also undergone a social revolution in the last decade, eschewing the traditional Canadian characteristics of respect for and deference to authority. This has led to a number of cultural tribes within Canada. Further study of those societal sub-groups indicates that relatively few demonstrate interest in the CF as a career. More troubling, many of those who demonstrate an interest in the CF have personality characteristics that may be undesirable in the current operating environment. Therefore, the prospects of the CF ever having the human resource pool necessary to meet all the demands placed on it by government is very unlikely, and alternate solutions may have to be found if Canada wishes to remain a player on the international stage.

All is not lost however. The legal analysis indicates that there are ways that the CF could legally engage MPFs in support of its mission and Government of Canada objectives. The first is that the CF could meet international legal tests of responsibility and authority by ensuring MPFs under their employ fall within the chain of command, changing the current customer-contractor paradigm. Additionally, the status of civilians employed by MPFs under international humanitarian law and the law of armed conflicted could be solidified by following a proposed U.K. solution of enrolling those MPF personnel hired in the reserves. Finally, the CF would restrict the employment of MPFs to those tasks that are more defensively oriented in nature, leaving active offensive operations to service personnel. While the difference between offensive and defensive may be difficult to describe in some circumstances, from a legal perspective limiting MPF employment to those defensively oriented tasks will protect both the contractor and the state should future legal issues arise. These initiatives would put the CF on a much firmer legal footing when employing MPFs (along with other types of private military industry).

The analysis above leads to a number of recommendations to support the CF moving forward on this issue. The first is that the CF needs to establish doctrine with regard to the employment of not just MPFs, but MSFs and MCFs as well. Employment of these firms is currently done on a case by case, contractual basis and thus there is no common understanding within the CF. Even if the CF decided for various reasons not to employ MPFs in support of operations, it must have doctrine to deal with these firms as will be employed on the battlefield in an increasingly complex multi-national and joint environment. It is not a stretch to imagine situations in the future where CF elements

may have to rely on the services provided by an MPF contracted by another country or even another agency of the Canadian government or come to the assistance of these MPFs who are employed by others. Therefore, doctrine is a pressing requirement.

Secondly, further research needs to be carried out on the exact legal mechanisms that would be required to confidently employ MPFs within the CF context. This paper has highlighted some general concepts that can be employed to ensure the employment of MPFs is done in the most legal fashion possible, but whether this occurs within the framework of amendments to the current National Defence Act or some other form of government legislation or device needs to be explored further.

Third, the mechanisms now exist within the CF to conduct some operational research relating to the employment of MPFs on the battlefield. This could be achieved through utilizing the Canadian Manoeuvre Training Centre in Wainwright, Alberta. This facility is used as final training venue for high readiness Land Forces units and employs a real time, free play enemy along with actors simulating other government agencies and civilians on the battlefield. As a minimum, MPFs should be modeled and represented on the battlefield for the training purposes of the unit preparing to deploy. More specifically, an MPF could be contracted to provide those defensive tasks described earlier in an exercise scenario to examine the concept and see what the advantages, disadvantages and limitations would be for the CF in a situation where lives would not be on the line. Also, whether the employment of MPFs can be rationalized to provide a whole of government approach to their use, rather than the fractured approach that occurs in the U.S. between the State Department and the Pentagon, would be useful to examine.

Finally, this paper did not delve into the moral or ethical implications surrounding the employment of MPFs. It will be left to others to argue the merits or demerits of their use by states and other organizations. However, further research into these moral and ethical implications would be useful in analyzing the question in all its facets, including the impact on the military as a profession. How does this contracting of force affect the status of the military as a profession and the soldier/officer as a professional? Also, where would the employment of MPFs fit within the context of Canadian society and what it will accept in the delivery of defence in the service of the nation? Answers to these questions would shed some light on where the issue goes in the future, potentially leading to some sort of industry regulation in Canada.

In the final analysis, however, it is clear that the CF can no longer ignore the MPF on the battlefield. They are now a part of the increasingly complex contemporary operating environment, along with non-governmental organizations, non-state actors, insurgents, transnational corporations and finally, traditionally state military organizations. The CF will need to learn how to work with them, beside them or even employ them. The analysis in this paper has demonstrated that they are a “tool in the toolbox” that can be used as a potential solution to the chronic problems facing the Canadian military. Unlike the quote from the Chief of the Land Forces that started this examination, the CF will not, for the foreseeable future, be in a position to reject this potential solution out of hand.

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