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VIOLENCE FOR SALE: THE EMERGENCE OF THE SECURITY PROFESSIONAL AS A COMPETITOR TO THE STATE MONOPOLY ON THE MILITARY APPLICATION OF VIOLENCE

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ABSTRACT

Since the end of the Cold War, the use of private industry to support states in responding to international security crises has re-emerged. This trend was further bolstered by the global war on terror that materialized in the wake of the terrorist attacks of September 11th 2001. This monograph adds to the existing body of research in this field by considering the implications of private military and security companies and the privately contract armed security personnel they employ as a competitor to the military profession as the accustomed agent exercising force on behalf of the state. A comparative analysis revealed that the private military and security industry does in fact exhibit the hallmarks of a profession: expert knowledge, jurisdiction and legitimacy. In light of the findings, recommendations are made which would see states embrace this changing norm and take ownership of the responsible development of the emerging profession.

Keywords: Private Military and Security Company, Privately Contracted Armed Security Personnel, Profession, Expertise, Jurisdiction, and Legitimacy.

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ABBREVIATIONS

ASIS	American Society of Industrial Security
COBBES	Codes, Best Practices, Benchmarks, and Standards
CPP	Certified Protection Professional
ICOC	International Code of Conduct for Private Security Service Providers
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
IMO	International Maritime Organization
ISO	International Standards Organization
LOAC	Law of Armed Conflict
NGO	Non-Governmental Organization
PCI	Professional Certified Investigator
PCASP	Privately Contracted Armed Security Personnel
PMSC	Private Military and Security Company
PSCAA	Private Security Companies Association of Afghanistan
PSP	Professional Security Professional
SAMI	Security Association for the Maritime Industry
SIA	Security Industry Authority
SOF	Special Operations Forces
UK	United Kingdom
UNCLOS	United Nations Convention on the Law of the Sea
US	United States of America

INTRODUCTION

Public favour and sentiment for the employment of private citizens by a state, as an extension of its military complex, has risen and waned over the centuries like the tides under a privateer's ship. On the one hand, where once mercantile companies, privateers and warriors for hire commonly acted as agents of the state, professional state sponsored militaries arose.¹ The private soldier fell by the wayside and existed on the unsavory periphery, ultimately to be outlawed as pirates and mercenaries. On the other hand, since the end of the Cold War, the use of private industry to support states in responding to international security crises has re-emerged. This trend was further bolstered by the global war on terror that materialized in the wake of the terrorist attacks of September 11th 2001.

This return to favour of what is now known as the Private Military and Security Company (PMSC) has raised significant questions about the appropriateness of its use as an agent of the state, particularly in relation to the application of violence. As a result, a considerable body of literature and research exists which examines how PMSCs have been employed in recent conflicts such as those in Afghanistan and Iraq.² Much of the debate regarding PMSCs centres on how best to regulate the industry and control the parameters under which they are utilized. This monograph will add to the existing body of research by considering the implications of the emergence of the PMSC and the privately contract armed security personnel (PCASP)³ they employ, as a competitor to the military profession as the accustomed agent exercising force on behalf of the state. The contention is that the private military and

¹Janice E. Thomson, *Mercenaries, Pirates, and Sovereigns State-Building and Extraterritorial Violence in Early Modern Europe* (Princeton, N.J.: Princeton University Press, 1994).

²Lindsey Cameron, "Private Military Companies: Their Status under International Humanitarian Law and its Impact on their Regulation," *International Review of the Red Cross* 88, no. 863 (2006): 574.

³A variety of terms can be used to describe the individuals contracted and employed by PMSCs (private military and security contractors, private military and security personnel, private military and security professional). In this instance PCASP was selected as it most accurately reflects the segment of the private military and security industry involved in the application of force.

security industry is evolving into a professional field which will rival the military profession as the accustomed agency applying force on behalf of the state. The implications of this development must be better understood by the state in order to employ PMSCs responsibly.

In considering the role of the PMSC in modern conflict it is important to first differentiate between companies that provide general services to a military force, such as food services, general custodial services etcetera, from those companies who provide actual military or security services. The Montreux Document definition of a PMSC is illustrative of this difference and forms the basis of understanding used in this study.⁴ With this common understanding of what constitutes a PMSC, the following research questions form the point of departure. First, how does the contracting of PMSC personnel differ from the employment of mercenaries? Second, does the use of PMSCs in conflict zones signal the acceptance of the private military and security industry as a legitimate contributor to resolving global security crises? And finally, should purveyors of armed private military and security services be considered a rival to the military profession?

In answering these questions, this paper first provides a brief synopsis of the historical basis for the PMSC, the marginalization of the mercenary, and the establishment of the modern military profession. The analysis then focuses on the work of James Burk entitled *Expertise, Jurisdiction, and Legitimacy of the Military Profession*⁵ as it offers a conceptual model of the military profession. Burk's framework is then used as a barometer against which the private

⁴Switzerland, International Committee of the Red Cross, *The Montreux Document: On Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict* (Geneva: ICRC, 2009), 9. The Montreux Document defines a PMSC as "...private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operations of weapons systems; prisoner detention; and advice to or training of local forces and security personnel."

⁵James Burk, "Expertise, Jurisdiction, and Legitimacy of the Military Profession," In *The Future of the Army Profession*, edited by Lloyd J. Matthews, 39-60. 2nd ed. (Boston: McGraw-Hill, 2005), 39-60.

military and security industry is measured in order to establish its relative status as an emerging competitor to the military profession. In assessing expertise, consideration is given to a recent discourse analysis of PMSCs. In addition, the results of a review of selected PMSC websites are presented in order to demonstrate how expertise is constructed and perceived within the industry. In considering the jurisdiction of PMSCs, the effect of existing laws, regulations, and industry best practices is presented in order to conceptualize the jurisdictional boundaries of the industry. Third, an examination is conducted of the level of legitimacy conferred by the state and other agents on PMSCs. In conducting this analysis, contemporary theories of how organizations build legitimacy are considered, alongside current trends in the industry. Finally, conclusions regarding the implications on the state of empowering PMSCs to act on its behalf are drawn. This leads to recommendations on how states should best embrace this changing norm and take ownership of the responsible development of the would-be profession.

CHAPTER 1 – PRIVATE WARRIORS TO PROFESSIONAL MILITARIES

Before embarking on an examination of the current manifestation of the private soldier, it is important to examine what brought us to this point. In order to gain a fulsome understanding of the changing trends in the application of violence by the state, the works of four contemporary theorists in the field are considered. First, Janice Thomson's thoughts on the emergence of the nation-state and its effects on the use of violence as an expression of sovereignty are discussed. This is followed by the work of Deborah Avant which considers the root causes of the shift from mercenaries to citizen armies. A third perspective, offered by Sarah Percy, frames the discussion in terms of established norms. Finally, the unique perspective of Elke Krahmann on the role of ideological foundations of the state / citizen relationship is incorporated. By considering these perspectives as constituent pieces of a larger puzzle the stage is then set for the establishment of a comparative model for use as an assessment tool of the security industry as a competitor to the military profession.

***Mercenaries, Pirates, and Sovereigns* - Janice Thomson**

In the work *Mercenaries, Pirates, and Sovereigns: State-building and Extraterritorial Violence in Early Modern Europe*, Janice Thomson establishes an important temporal moment in the evolution of the private soldier. It must be appreciated that until the beginning of the 19th century, armed forces were routinely privately hired and employed by sovereigns in protection of their lands and subjects. In effect, until that point, the means of violence by a state was very much a commodity which was available for trade.⁶ Thomson posits that a number of converging factors led to the rejection of the hired soldier as a legitimate form of a state's expression of power. She does this by examining the trends associated with the disappearance of privateers, mercenaries, and mercantile companies as agents of the state.

⁶Thomson, *Mercenaries, Pirates, and Sovereigns...*, 19.

It is important to appreciate that for Thomson, each of the changing trends occurred for specific reasons related to their unique circumstances. No unifying sense of rejection led to discontinuing the use of non-state actors in pursuit of state objectives. Thomson instead argues that to some degree the abolition of private armed forces was an unintentional consequence of burgeoning interstate relations.⁷ It is Thomson's contention, for instance, that mercenaries fell out of favor in the 1790s as a result of the concern that a state's citizens could incur liability on the state by acting as soldiers for hire.⁸ Delegitimizing privateering, however, arose in a somewhat different manner. Thomson points to interstate pressures to stop attacks on neutral shipping as the main impetus for discontinuing the use of letters of marque to authorize privateering.⁹ By doing so, a clear distinction between privateering and piracy was achieved. In essence it was the pirate, not the privateer, who posed the actual threat to state authority of sanctioned violence, and thus needed elimination. Likewise, the use of mercantile companies as proxy extensions of state sovereignty was initially not seen as posing any specific threat to state sovereignty.¹⁰ It was not until the spectre of infighting amongst the companies arose that states sought to limit their autonomy.

Thomson's overall contention, that the shift away from private contracting was at best an unintentional consequence of overarching concern of interstate relations, is an important consideration. The implication being, that shifts in how states view the private application of violence at their behest were not necessarily based on specific sentiments regarding the propriety of their use. The key contribution of Thomson's work, of particular relevance for this study, is

⁷*Ibid.*, 20.

⁸*Ibid.*, 144.

⁹*Ibid.*

¹⁰*Ibid.*, 143.

the position that states abandoned the use of non-state actors as agents of the state in the application of force to achieve objectives was a result of a variety of factors and influences.

From Mercenary to Citizen Armies - Deborah Avant

The work of Deborah Avant expands on Thomson's ideas on the driving factors behind why states began to shun the use of mercenaries in favour of citizen armies.¹¹ The theory she posits is predominantly based on the experiences of the Napoleonic Wars. Avant identifies the success of the French citizen army as the pivotal moment in which states began to identify that armies based on their citizenry were apt to be more successful on the field of battle than an army of hired mercenaries. The subsequent adoption of a citizen-army by the Prussians is held as a model of success that further entrenched the shift away from mercenary based forces.¹²

Closely linked to the perceived superiority of citizen armies were the liberal ideals of the Enlightenment which signified a fundamental transformation in the relationship between the citizen and the state. This transformation resulted in ideas taking hold whereby the people relied on the state for their protection. The citizen's role in filling the ranks of the army in times of need was a consequence of this cognitive shift.

For Avant, battlefield success and liberal ideologies together represent material and ideational changes which allowed for a collaborative realist sociological explanation for the disappearance of mercenaries as the predominant tool of a states military capacity. The duality of this relationship is important for Avant, as neither element is seen as unilaterally effective in driving the change towards citizen armies. This explains why some nations, such as England, did not adopt the new paradigm as quickly as others. In making this point, the case of the American Revolution is presented as an example of a situation involving loss to citizen armies which did

¹¹Deborah Avant, "From Mercenary to Citizen Armies: Explaining Change in the Practice of War," *International Organization* 54, no. 1 (Winter, 2000): 43.

¹²*Ibid.*, 53.

not drive change. This is explained by the lack of wide spread acceptance of Enlightenment ideals in England at the time. She suggests, prevailing sentiments towards class based officer-ship and a perceived lack of public interest in filling the ranks of a citizen based army forestalled change longer in England than in other states.¹³

The work of Deborah Avant more precisely focuses on the causal factors surrounding why states opted to transition away from mercenaries and towards citizen armies. The key takeaway from her work which bears on the discussion here is the nature of the political will on the interpretation of the utility of citizen armies versus their mercenary counterparts.

Mercenaries: The History of a Norm - Sarah Percy

In her work, *Mercenaries: The History of a Norm* Sarah Percy adds normative considerations to the explanations offered by Thomson and Avant.¹⁴ For Percy, normative constructs regarding mercenaries are a contributing factor lying at the heart of why they fell out of common usage and why their presence today is so contentious. The views of Percy should not be considered as antithetical to the shift towards citizen armies as described by Thomson and Avant. Rather, her addition of normative values to the discourse adds depth of understanding to the discussion. In building her argument, Percy suggests that Thomson's analysis underestimates the importance of norms in assessing the balance of power in the interstate relationship which marginalized mercenaries. Specifically, Percy calls into question the idea that states sought to limit their citizens' ability to travel in order to fight for other nations. She suggests that the hiring state played a much larger role in setting the market conditions. For Percy, it was a lack of desire

¹³*Ibid.*, 58.

¹⁴Sarah Percy, *Mercenaries: The History of a Norm in International Relation* (New York NY: Oxford University Press, 2007)

to hire mercenaries that drove the supply and demand balance.¹⁵ This suggests that prevailing norms establish the bridge between the theories of Thomson and Avant. Likewise Percy suggests Avant neglected to adequately explain why states chose to utilize citizen armies in the first place when suggesting their success was a key factor in mercenary marginalization. In addition, the high percentage of mercenaries in Napoleon's armies fighting alongside the citizen soldiers seems to have gone un-explained.

In response to these perceived inadequacies Percy turns to normative theory to explain changes in established practices. Percy traces changes in mercenary usage farther back than Thomson and Avant. Percy sees the shift away from independent mercenary usage by the end of the Thirty Years War (1618-48)¹⁶ as the first true change in the general acceptance of their use. She attributes the changing norms to the growing prevalence of religious ideologies during that era. Morality weighted heavily on the decision to establish lawful regulation on the use of mercenaries. The resultant shift in unregulated mercenaries to state employed mercenaries as described by Thomson is not a trivial variation. By bringing mercenaries under the auspicious of the state, Percy asserted that the normative value of fighting for a just cause could be established.¹⁷ This shift represents a key tenant being discussed here. Changes in accepted usage of members of private society as a constituent part of state power must be viewed in terms of normative values at the time being considered. As state identity further matured through the 18th and 19th centuries, the idea of fighting for a just cause was further refined to the point where foreigners fighting for money were seen as morally unacceptable.¹⁸

¹⁵*Ibid.*, 113.

¹⁶*Ibid.*, 90.

¹⁷*Ibid.*, 92.

¹⁸*Ibid.*, 93.

Projecting forward to the 1960s, Percy identifies the swift rejection by the international community of the resurgent use of mercenaries in Africa as indicative of the persistent nature of the anti-mercenary norm.¹⁹ In discussing the resultant anti-mercenary laws enacted by the international community she identifies competing norms which curtailed their efficacy. While popular acceptance of the anti-mercenary norm demanded action, emergent norms concerning state freedom of action and the relationship of the state and their citizens resulted in an overly proscriptive definition that could be applied in only the narrowest of situations.²⁰

The commonly accepted definition of a mercenary is identified in Article 47 of Additional Protocol 1 to the Geneva Conventions and reads as follows:

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.²¹

It is a commonly held belief that this definition is insufficient in dealing with mercenaries per se, and does not apply to the current realities of the employment by states of PMSCs.²² A key

¹⁹*Ibid.*, 167.

²⁰*Ibid.*, 169. Three main conventions emerged which seek to eliminate the use of mercenaries. They are: Organization of African Unity Convention for the Elimination of Mercenaries in Africa, Article 47 of Protocol 1 additional to the Geneva Conventions; United Nations International Convention against Recruitment, Use, Financing, and Training of Mercenaries.

²¹United Nations. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1). Article 47.2 (New York: UN, 1977), Accessed 23 February 2016.
http://psm.du.edu/media/documents/regulations/global_instruments/international_law/geneva_convention_additional_protocol_eng.pdf.

²²For example see: Sarah Percy, "Mercenaries: Strong Norm, Weak Law," *International Organization* 61 (Spring 2007): 368; or, Elke Krahnmann, "From 'Mercenaries' to 'Private military and security Contractors': The

component of this belief is related to the corporate nature of the PMSC and the difficulty in ascribing motivation of the individual employee with any degree of certitude. Percy goes one step further in her analysis and identifies the current debate on the legitimacy of the PMSC as an offshoot of what she sees as a puritanical adherence to the anti-mercenary norm despite the lack of applicability the term has in the current context.²³ The pejorative nature of the term mercenary and its application to early manifestations of PMSCs in the 1990s has clouded any discussions of the modern PMSC.²⁴ It is the position here that the term mercenary must be rejected as a descriptor of PMSCs and the PCASPs they employ if any meaningful insight is to be gained from considering their prevalence today.

States, Citizens, and the Privatizing of Security - Elke Krahmman

In her work, *States, Citizens, and the Privatizing of Security*, Krahmman focuses on ideological shifts in society to explain changing patterns in how states approach the use of private citizens as an extension of their power projection.²⁵ By tracing shifts from republicanism to liberalism and finally to neoliberalism, Krahmman provides key contextual perspective on the theoretical underpinnings which have shaped the ebb and flow of the state monopoly over the application of violence. To some extent, Krahmman bolsters Avant's position regarding the motivating factors which drove states to experiment with citizen armies in the first place. Krahmman points to Thomas Hobbes' theories of the burgeoning social contract between the state and its citizens in the early 17th century as the origin of the state's responsibility to ensure the security of the people.²⁶ Building on this notion, she suggests Jean-Jacque Rousseau refined

(Re)Construction of Armed Security Providers in International Legal Discourses," *Millennium: Journal of International Studies* 40 no. 2(2012): 352.

²³Percy, *Mercenaries: The History of a Norm...*, 218.

²⁴*Ibid.*, 238

²⁵Elke Krahmman, *States, Citizens and the Privatization of Security*(Cambridge UK: Cambridge University Press, 2010).

²⁶*Ibid.*, 22.

the notion of the social contract by suggesting that it was the consensus of the people to confer the ability to wage war on the sovereign that was the true nature of the relationship.²⁷ Finally, Krahmman contends that the subsequent works of theorists James Maddison and John Stuart Mill formed the basis for what would be competing views of the state/citizen relationship, namely the ideologies of republicanism and liberalism.²⁸

The competing perspectives of liberal, republican, and neo-liberal ideologies are critically important to understanding the how PMSCs are currently viewed and why their use has become more prevalent. First, the Liberalist approach sees the autonomy and freedom of action of the individual as paramount. It views the role of the state as primarily noninterventionist in the daily lives of the citizenry. Instead it focuses security efforts on protecting the rights and property of individuals from exploitation by fellow citizens.²⁹

For Krahmman, liberalist ideals of state/citizen relations existed through the early 19th century, with republicanism beginning to take hold in the later part of the century. These republican ideals hold that the state should play a central role in the security of the population, with a corresponding expectation that the citizenry actively contribute and participate in the provision of this security.³⁰ In essence, this results in a highly centralized provision of security by the state. Krahmman points out that republican trends in the state provision of security are most obvious during the World Wars of the early 20th century. Mixed volunteer/conscript armies, with citizens fighting to protect their state in times of threat, were the norm. Once the conflict ended there was little expectation that citizens would remain in uniform and returned home. This is the essence of the citizen soldier ideal of the republican ideology. Krahmman notes, “The

²⁷*Ibid.*, 26.

²⁸*Ibid.*, 25-33.

²⁹*Ibid.*, 31.

³⁰*Ibid.*, 38.

citizen soldier, although trained in the use of arms, thinks of his or her service as a civic duty, not a career.³¹

The requirement of the Cold War to maintain standing armies strained the validity of the republican ideal. As Krahmman suggests, this opened the door for a transition to what has become known as neoliberalism.³² In contrast to the centralist ideals of republicanism, the rise of neoliberalism was heavily influenced by noted economist Milton Freedman and his ideas concerning an increased role of the free market in matters of the state.³³

In the context of this discussion, two distinct trends resulting from neoliberalism are important. First, by moving away from conscripted armies drawn up to meet wartime needs, the state is in open competition with the marketplace for individuals to fill its ranks. This has an important impact on the notion of soldiering as a profession. Second, under the neoliberal construct the PMSC gains franchise as a competing mechanism of the free market for achieving state objectives. By operating within the legitimate marketplace, a fundamental distinction is made between PCASP and the mercenary. This change in normative values reflects the earlier suggestion of the importance of the prevailing social norms at any given point in time. Equipped with this understanding and appreciation it is clear that in the contemporary sense the two must be viewed as mutually exclusive.

Conclusion

By tracing changing trends in how states have approached their role in controlling the application of violence on behalf of the citizenry three important concepts emerge. Firstly, it is important to recognise that the use of private forces as agents of the state has a long and storied history. These changes arose in concert with the changing nature of Western society. As the

³¹*Ibid.*,43.

³²*Ibid.*, 72.

³³*Ibid.*, 34.

prevailing forms of governance transitioned to sovereign states the relationship between the state and the individual evolved. By then incorporating various forms of political ideology, most notably liberalism, republicanism and more recently neoliberalism, notions of the role of the state in the provision of security took on differing meanings and interpretations over time. By appreciating the current neoliberalist trends of western society towards free market economy and the minimalist role of the state, the emergence of the PMSC in the 1990s and 2000s is more objectively understandable.

Secondly, the strong anti-mercenary norm that finds its origins in the Enlightenment, and the associated rise of moral justification for armed conflict, cannot be underestimated. While the actual definition of a mercenary clearly does not suit the realities of the modern PMSC, the pejorative nature of the term mercenary is extremely problematic to any fruitful discussion of the private military and security industry. Only by understanding the impacts of the anti-mercenary norm on popular perception will it be possible to proceed with an assessment of what an emergent profession centered on the PCASP might mean to the notion of the professional soldier. Reluctance to move beyond the pejorative application of the anti-mercenary norm significantly complicates any such discussion. The key component here is looking at the traits and characteristics of PCASP objectively without allowing extraneous norms to bleed into the assessment unnecessarily.

Thirdly, it was during this long period of societal transition that state established military forces began to take on a more permanent role as a fixture of society. The idea of a standing army was born, and with it, the notion that a citizen could become a professional soldier emerged. This is an important component of the larger discussion here. In essence, the citizen soldier replaced mercenaries as the legitimate agent of violence on behalf of the state. This

transition in common practice is significant because it establishes the precedent for change. By understanding the movement away from hired forces towards state raised and controlled militaries it is possible to conceptualize subsequent transformations as part of an ongoing continuum of variation. The next chapter will discuss the professionalization of the citizen-soldier into the military professional in more detail. It is this construct of the boundaries of the military profession that provides the template for the comparative analysis of the PMSC industry as an emerging professional field in its own right.

CHAPTER 2 - PROFESSIONAL SOLDIER AS A COMPARATIVE MODEL

It is important at this point to gain a common understanding of what constitutes a profession, and by extension the military profession in particular. With this common grounding, a comparative model of what a private military and security profession might look like can be discerned. In framing this model, the basic tenants of professions are discussed. This is followed by the foundational theoretical perspectives of the military profession. Finally, the work of James Burke on the components of the military profession³⁴ are presented as a theoretical framework for a comparative analysis of the prospective private military and security profession, and what has been termed “a new type of international soldier.”³⁵

Considering Professions

The study of professions is a robust academic field with substantial literature unto itself. The intent here is not to conduct an exhaustive review of the theory surrounding the emergence and persistence of professions in society. Rather, presented here are the basic concepts and considerations required to inform the study of the PCASP as occupying space as an emerging professional, comparative to the modern military professional.

The main focal point here is the relative status of an occupational field in the context of broader society. There are two predominant theoretical approaches to the study of professions: philosophical and sociological. First, within the philosophical domain of analysis of professions there are two dominant subcategorizations: Cartesian and Socratic. The Cartesian view essentially holds that a profession is whatever you believe it to be.³⁶ The Socratic approach binds the moral acceptability of an occupation to its prospective status as a profession. This is to say,

³⁴Burk, *Expertise, Jurisdiction, and Legitimacy...*, 39-60.

³⁵Krahmann, *States, Citizens...*, 216.

³⁶Michael Davis, “Is Public Administration a Profession?” *Public Administration Research* 2, no. 2 (2013):

occupations that cannot be carried out in a morally permissible way cannot, from a Socratic perspective, be considered a profession.³⁷ In considering Public Administration as a profession, Michael Davis provides the following Socratic based definition:

A Profession is a number of individuals in the same occupation voluntarily organized to earn a living by openly serving a moral idea in a morally-permissible way beyond what law, market, morality and public opinion would otherwise require.³⁸

In many instances philosophical approaches may be suitable theoretical frameworks for discussion. In fact, the emergence of the citizen soldier and subsequent evolution of a military profession is predicated largely on Socratic notions of a moral ideal.³⁹ While this approach may seem perfectly suited to frame a discussion of private military and security as a profession, a degree of caution must be taken. It is the position here that both Cartesian and Socratic approaches to the discussion at hand are highly susceptible to the anti-mercenary norm bias described above. This is not to say that a Socratic based discussion on the moral imperatives underpinning the employment of the PCASP does not have merit, it certainly does. The difficulty arises in framing an objective discussion without first disassociating the anti-mercenary norm from the broader private military and security realm. In the current reality, such maturation of the difference between the two has not occurred.

Conversely, such objectivity can be achieved by adopting a sociological based assessment. This approach also provides a complementary narrative to the origins of the state/citizen relationship previously discussed. In presenting the foundational sociological theories of professions, Davis notes that there are three varying approaches to understanding the nature of professions. They are socio-economic, socio-political, and socio-anthropological in

³⁷*Ibid.*

³⁸*Ibid.*, 29.

³⁹Percy, *Mercenaries: The History of a Norm...*, 93. See note 17 above.

nature.⁴⁰ This is consistent with the theories of Andrew Abbott, a preeminent theorist on the notion of professions.⁴¹ For Davis, socio-economic based explanations of professions centre on the desire of occupations to garner and control aspects of the marketplace, while working together to achieve a certain degree of monopoly over the provision of the commodity they provide to society. In contrast, socio-political based explanations of professions focus on the state as a controlling mechanism which sets legally binding standards on certain occupations through the establishment of such things as licensing boards. Finally, socio-anthropological based discussions are concerned with the societal function an occupation fulfills.⁴² These approaches are not mutually exclusive, in that some aspects of economic, legal, and anthropological influences can be present in shaping a profession. The analysis here shows that a convergence of factors, particularly economic and political, have profoundly impacted the professionalization of an occupational field that largely existed below the radar of public awareness prior to the events of September 11th 2001. The works of socio-economic theorists provide useful insights to the debate.

For theorists Daniel Muzio and Ian Kilpatrick the interplay between the individual and the organization that employs them profoundly impacts how an occupational field develops into a profession.⁴³ Taking a predominantly socio-economic based perspective, they assert that the bulk of what is considered to be professional activity is increasingly grouped within organizations. Furthermore, these organizations will then experience a degree of friction with other like organizations as they each strive to gain monopoly over the provision of their

⁴⁰*Ibid.*, 28.

⁴¹Andrew Abbot, *The System of Professions – An Essay on the Division of Expert Labor* (Chicago: The University of Chicago Press, 1988), 14. Abbott describes four substantive categories of professions: functional, structural, monopolist, and cultural. These categories encapsulate the same general themes as those presented by Michael Davis.

⁴²Davis, *Is Public Administration...*, 28.

⁴³Daniel Muzio and Ian Kilpatrick, "Introduction: Professionals and organizations – a concept framework," *Current Sociology* 59, no. 4 (2011): 391.

commodity. This notion is particularly germane to the discussion here as emerging competition between the PMSC and the military for monopoly over the provision of violence on behalf of the state is at the core of the thesis being presented. In this context, the PMSC and the PCASPs they employ are intimately linked to one another in the emergence of a prospective private military and security professional field. Muzio and Kilpatrick are not alone in considering socio-economic factors affecting professions.

Jadranka Svarc considers the implications of recent socio-economic events on the workforce in “The knowledge worker is dead: What about professions?”⁴⁴ In his analysis, he posits that the golden age of professions that existed in the 1950s and 1960s has been in steady decline for the last two decades. He attributes this to a marked change in the nature of employment in post-industrial western society with decreased emphasis of the expert knowledge worker and an increase of a service based economy. For Svarc, this fundamental shift in the nature of the workforce places strain on traditional notions of professional occupations.⁴⁵ While some core values and basic tenants of what traditionally constitutes professions persist, Svarc highlights the convergence of the knowledge and service economy as creating space for new understandings of what constitutes a modern profession. This perspective provides weight to the argument that professions are fluid and shift with the changing realities of society at the time being considered. In relation to this discussion, juxtaposing traditional notions of the military profession against the PMSC, considering the realities of the modern service based economy, will prove particularly revealing. To enable this, the foundation of the military professional is presented next.

⁴⁴Jadranka Svarc, “The Knowledge worker is dead: What about Professions?” *Current Sociology* (2015): 1-19.

⁴⁵*Ibid.*, 2.

The Military Professional

The preeminent works on the military as a profession are arguably Samuel P. Huntington's *The Soldier and the State*⁴⁶ and *The Professional Soldier*⁴⁷ by Morris Janowitz. These works, written in the mid-20th century, form the point of departure for Burk's analysis of the military as a profession.⁴⁸ As such, they merit further discussion here.

For Huntington, a profession has three defining characteristics. First, there must be a requirement for unique expertise in a given field. Second, a degree of responsibility exists to perform one's duties when called upon. Third, there is a degree of 'corporateness', or unifying sense of belonging, amongst the practitioners of the field.⁴⁹

Huntington focuses his analysis on the emergence of the officer corps as a professional body. As suggested above, the mercenary was replaced on the battlefield in the 1800s by what Huntington describes as the aristocratic amateur.⁵⁰ He suggests that as states increased their reliance on the citizen soldier, to be called upon in times of crisis, the need for experienced, capable leaders increased. It was the subsequent removal of class based criteria for service in the officer corps and the imposition of educational requirements that drove soldiering towards professional status.⁵¹ In terms of the interaction between the state and the military professional, Huntington highlights the importance of objective civilian control of the military versus a more subjective approach.⁵² This exemplifies the political influence on the creation and control of professions, in this case the military officer. The professionalization of the military occupation

⁴⁶Samuel Huntington, *The Soldier and the State: The Theory of Civil-Military Relations* (New York, NY: Random House Publishing, 1957).

⁴⁷Morris Janowitz, *The Professional Soldier* (New York, NY: The Free Press, 1960).

⁴⁸Burk, *Expertise, Jurisdiction, and Legitimacy...*, 44.

⁴⁹Huntington, *The Soldier and the State...*, 8-10.

⁵⁰*Ibid.*, 21.

⁵¹*Ibid.*, 42.

⁵²*Ibid.*, 84.

through the middle of the 20th century must be considered in context with the predominant sentiment at the time.

For Janowitz, the middle of the 20th century was a period when the distinction between the military organization and civilian military industrial complex was becoming increasingly difficult to discern.⁵³ This should come as no surprise given the highly centralized focus of republican ideologies at the time. Janowitz asserts that the distinguishing feature of the military profession, that establishes it as a unique profession, is that the professional soldier is “...an expert in war-making and in the organized use of violence.”⁵⁴ It was the expert knowledge in the organization and coordination of violent action in the pursuit of military objectives through the turn of the 20th century until the 1960s, which provided the context for the common understanding of the military profession. It is this foundation, along with the systems theory of professions provided by Abbott, which informs the model created by James Burk.

The Burk Model

In attempting to assess the changing nature of the modern military professional, Burk approached his research from four angles: the nature of professions, expertise, jurisdiction, and legitimacy. Firstly, much of the consideration surrounding Burk’s reconceptualization of the military profession centers on the changing nature of expertise in society. This is to suggest that any modern understanding of the military professional needs to incorporate contemporary thoughts on how professions exist. In this instance, where Janowitz saw expertise linked to the violent role of the military, and the application of military science as its foundation, Burk focuses on the declining role of science in defining modern professions.⁵⁵ For Burk, trends which saw a decline in societal acceptance of science as the root of expert knowledge drove the development

⁵³Morris Janowitz, *The Professional Soldier*, 15.

⁵⁴*Ibid.*

⁵⁵Burk, *Expertise, Jurisdiction, and Legitimacy...*, 54.

of his analytical model for assessing changes in the military profession. In defining a profession, Burks states “a profession is a relatively “high status” occupation whose members apply abstract knowledge to solve problems in a particular field of endeavor.”⁵⁶ From this definition Burk extrapolates an analytical model that is predicated on three codependent factors: expertise, jurisdiction, and legitimacy. Burk posits that these three factors, when found in unison, distinguish a profession from a mere occupation.⁵⁷ In conducting his analysis, Burk studied the military profession in three distinct temporal bands: pre-world wars, post-world wars, and post-Cold War. It is interesting to note that these occur in rough coincidence with the other concepts discussed to this point. This parallel strengthens the notion that serious consideration must be given to broader socio-economic factors involved when evaluating why a particular field, in this case the private military and security industry, may be gaining agency in society. By looking at how Burk applied each of his decisive factors to the military profession a baseline can be established which will enable the subsequent discussion of PCASP as a competitor to the military professional.

Secondly, in assessing the question of the expertise of the military professional Burk considers military operations as being based on the science of war. He suggests popular sentiment regarding professional activities in the late 19th early 20th century was highly dependent on having a scientific basis. Success or failure in war at that time was seen as a function of the mastery and implementation of the science of war.⁵⁸ Following the end of World War II, Burk notes that the basis of the profession on the application of military science was challenged by the advent of weapons of mass destruction. The implication being that the sheer overwhelming destructive potential of such weapons challenged the need for the scientific

⁵⁶*Ibid.*, 41.

⁵⁷*Ibid.*, 43-44.

⁵⁸*Ibid.*, 49.

application of military power. Consequently, during this post war period the focus for the military profession shifted somewhat towards broader professional military based education.

Burk asserts that the expertise of the military professional was characterised by this professional military education in conjunction with the foundations of military science through to the end of the 20th century.⁵⁹

Thirdly, the jurisdiction within which the military professional exercises his/her expert knowledge is the next component of Burk's model. In considering the jurisdictional boundaries of the military professional Burk notes that narrowing or precision was applied to the exercise of military power near the beginning of the 20th century. This position is reflective of the earlier discussion of the centralization of military affairs by the state. This refinement of who was permitted by the state to apply expert knowledge of the military sciences effectively excluded non-military entities such as militias, and more germane to this discussion, mercenaries, from the occupational field, and subsequent profession.

Burk highlights that jurisdiction in the context of professions is frequently codified by the state in the form of laws.⁶⁰ When viewed from this perspective the nature of the military profession can be seen as an expression of the socio-political tradition of professions described by Davis.⁶¹ In this instance the bounds of jurisdiction are clearly set by the state. The inevitable conflict over the jurisdictional space predicted by Muzio and Kilpatrick⁶² is evident for Burk in competition amongst the services of the US Military for unique roles post-World War II. In Burk's assessment, this competition still persists to some degree, but was largely resolved by

⁵⁹*Ibid.*, 19.

⁶⁰*Ibid.*, 20. Burk's analysis is based on the United States Military and the US Army in particular. The laws he referred to include the Militia Act of 1903, and the National Defense Act of 1916. While these are specific US Laws their utility in this discussion can be more universally applied as representative of how states codify the establishment of a standing military.

⁶¹Davis, *Is Public Administration...*, 28.

⁶²Muzio and Kilpatrick. *Introduction: Professionals and organizations...*, 391.

trends toward joint military operations, resulting in the marginal coalescing of a single military profession.⁶³

In contrast to internal posturing, it is external threats to the military professional jurisdiction that pose the greatest challenge to the military as a profession. Burk highlights the broadening of military endeavours to encapsulate more roles than traditional notions of warfighting as a driving factor behind competition over their professional space.⁶⁴ It is this outward expansion of the jurisdiction of the military profession that creates the room for the current debate. As the use of military force by the state for non-core combat functions increases, the ability of like occupations to claim complementary jurisdiction gains credence. This leads to the final component of Burk's triad: legitimacy.

Finally, Burk's model addresses the legitimacy of the military profession as a function of public perception. For Burk, it is the prevailing sentiments of society concerning what constitutes expert knowledge that determines the legitimacy of the activity. He points to changing beliefs in the primacy of science as the core determinant of expert knowledge as a precursor to emerging skepticism of professions writ large.⁶⁵ If expert knowledge is not based on quantifiable scientific process then legitimacy can only be achieved through persuasion. In the context of the military profession this persuasive argument often centres on the virtues of altruistic motivations for military service. For Burk, linking legitimacy to altruistic measures for the military profession is problematic in the modern context. He goes so far as to suggest that in the modern liberal western society, the military profession must also frame the narrative of its expert military scientific knowledge in terms of the market economy and not altruism alone.⁶⁶ This suggestion

⁶³Burk, *Expertise, Jurisdiction, and Legitimacy...*, 50.

⁶⁴*Ibid.*, 51.

⁶⁵*Ibid.*, 52.

⁶⁶*Ibid.*, 56.

clearly opens the door even wider for competitors to military expertise to challenge the monopoly of the military on the application of violence on behalf of the state.

Conclusion

In the tradition of socio-economic and socio-political theories of modern professions, Burk's model of the modern military profession provides a useful tool for a comparative analysis. The next three chapters will examine, in succession, the expertise, jurisdiction and legitimacy of the private military and security industry as just such a competitor. By conducting this analysis using the same analytical model employed by Burk, it is possible to evaluate the degree to which PMSCs and the PCASP they employ have encroached on the domain of the military profession. Furthermore, conclusions can be drawn regarding the emergence of a private military and security profession in its own right.

CHAPTER 3 – EXPERTISE

The first step in examining the private military and security industry as an emerging competitor to the military profession is discussing the notion of expertise related to the field. Four distinct factors are considered in exploring the expert knowledge of the prospective private military and security professional. First, is the establishment of the military profession baseline of expertise. This forms the foundation for the evaluation of the PCASP. Second, is a discussion of the unique relationship between the military profession, SOF and the private military and security industry. Third, consideration is given to the role of the PMSC in defining expertise in the wider security realm. This will lead to the fourth factor: the nature in which the industry itself portrays expertise to its client base and the public. From these perspectives flows a determination of what professional expertise in the private military and security field looks like.

Baseline of Expertise - The Military Professional

Burk establishes that the expert knowledge that characterises the military profession is rooted in progressive experiential opportunities and professional military education.⁶⁷ In this sense professional expertise is gained in a longitudinal fashion with senior members of the military profession possessing progressively more expertise than their junior counterparts. This is unlike other professions in which entry threshold expertise requirements exist as a form of check and balance to the attainment of professional status. Examples of such practices would include bar exams for the legal profession and medical board certifications for doctors. In the case of the military professional, expertise is more subjective in terms of when functional expertise is reached.

For theorist Lloyd Matthews, the need to cultivate intellectual development in the military professional is essential to the development of credible expertise. Matthews notes that

⁶⁷*Ibid.*, 45.

“...the profession lives and dies by the vitality of its professional expertise.”⁶⁸ In this instance, vitality is seen as the fostering of intellectual rigour and capacity. He notes formal military education, augmented by professional education at the master’s degree level, is common place among modern western militaries.⁶⁹ This trend can also be seen in the creation of military educational institutions designed to closely resemble the form and structure of mainstream universities.⁷⁰ This trend towards higher level education speaks to the shift away from expert knowledge being linked solely to mastery of military science in the application of violence. Rather, the modern military professional possesses a breadth of expertise which is designed to enable functional mastery over the full spectrum of military endeavours; from war-fighting to managing the organizational bureaucracy. It is interesting to note that this widening of areas of functional expertise presents opportunity for the military professional to transfer their expert knowledge to other fields.⁷¹ The private military and security field is just such a beneficiary of this transfer.

For the purposes of this study then, the military professional is considered to possess expert knowledge in the conduct of a wide array of military endeavours. This expertise extends beyond the management of violence. Expertise is gained longitudinally through military education and experience, as well as formal education at the more senior levels designed to foster intellectual rigour. Using this as a baseline, the expertise of private military and security professionals is considered.

⁶⁸Lloyd J Matthews, “Anti-Intellectualism and the Army Profession” in *The Future of the Army Profession*, edited by Lloyd J. Matthews, 84. 2nd ed. (Boston: McGraw-Hill, 2005): 61-92.

⁶⁹*Ibid.*, 70.

⁷⁰For example see United States Army, “*Army University - Home*,” accessed 17 March 2016, <http://armyu.army.mil>. The vision of the Army University is “...a premier learning institution preparing the best leaders in the world to win in the future security environment” whose goals include recognition as a prestigious educational institution recognized for academic rigor.

⁷¹Matthews, *Anti-Intellectualism...*, 71.

Common threads – SOF and the Private Military and Security Professional

In considering the relationship between the military profession and the private military and security professional, it is instructive to first turn to the expertise of Special Operation Forces (SOF). Considering SOF is advantageous because they possess what can be considered a highly refined degree of military expertise. Consequently they represent a critical pool of highly trained and experienced professionals sought after by PMSCs. In discussing the relative position of the SOF operators in the military professional space, theorists T.O. Jacobs and Michael Sanders suggest they occupy a unique segment of the profession. In making this point they suggest “...professionals are not mass-produced, and organizations of professionals are not conventional.”⁷² The implication being that SOF is even more representative of the true nature of a profession than even conventional military forces. Jacob and Sanders go on to suggest that the specialized nature of SOF expertise and discretion afforded SOF personnel in deciding how they will apply their expert knowledge is strongly correlated with modern notions of knowledge worker based professions.⁷³ This is an important consideration given the previous discussion on the changing face of modern professions. In this context, SOF personnel represent a bridge between military expert knowledge and expertise in the private military and security industry.

Chris Spearin discussed the correlation between SOF expert knowledge and the private sector in his article “Special Operations Forces a Strategic Resource: Public and Private Divides.”⁷⁴ Spearin, in highlighting the tendency of PMSCs to employ personnel with SOF experience, considers expertise transferred from the military to the private sector as a potential source of friction between the two. He suggests that from a strategic enabler perspective, SOF

⁷²T.O., Jacobs, and Michael G. Sanders, “Principles of Building the Profession: The SOF Experience,” in *The Future of the Army Profession*, edited by Lloyd J. Matthews, 2nd ed. (Boston: McGraw-Hill, 2005), 447.

⁷³*Ibid.*, 448.

⁷⁴Christopher Spearin, “Special Operations Forces a Strategic Resource: Public and Private Divides,” *Parameters* (Winter 2006-07): 58-70.

expertise must be viewed in a holistic sense, irrespective of private and public sources.⁷⁵ If the private sector can be turned to as an alternative source for SOF expertise then the monopoly of the state over that expertise is diminished, irrespective of the fact that the expertise was originally generated from within the military sphere. The important role of SOF in bolstering the expert knowledge of the private military and security industry is discussed further in a discourse analysis of PMSC websites.

Defining Expertise in the Security Realm

In addition to understanding the role of SOF in transferring expert knowledge from the military to PMSCs, the wider role of the PMSC in shaping the definition of expertise merits consideration. This concept is closely linked to the role of the organization in shaping its own profession, particularly in the socio-economic tradition. In this sense, the private military and security industry seeks to define a niche of expertise upon which professional legitimacy is built.

The notion of the private military and security industry creating its own definition of expertise was tackled head-on by theorist Anna Leander in her work “The Politics of Whitelisting: Regulatory Work and Topologies in Commercial Security.”⁷⁶ She argues that the private military and security industry has created a pre-requisite to possess a degree of expertise in the application of codes, best practices, benchmarks, and standards (COBBES). Without venturing too far into a discussion of jurisdiction and legitimacy it is important to consider the professional expertise inherent in the ability to manage and oversee a PMSC. The implication here is that the ability to manage the private military and security industry’s COBBES system

⁷⁵*Ibid.*, 59.

⁷⁶Anna Leander, “The politics of whitelisting: Regulatory work and topologies in commercial security,” *Environment and Planning D: Society and Space* 0(0) (2015): 12.

requires an expert knowledge unique to the security professional. Once accepted, this gives rise to the possibility of such expertise being used as the conceptual foundation of a profession.

Leander goes on to hypothesize that changes in how security is managed by the state has empowered the private military and security sector. The general shift away from centralized state control with the adoption of neo-liberal ideologies in the late 1970s opened the door for security expertise to gain influence.⁷⁷ With influence, came the ability to create the sphere of expertise within which the industry would exist. In the US, this ability is manifest in the lobbying power of PMSCs to influence government.⁷⁸ This influence shapes how specialist services such as training and consultation on security matters are perceived. By becoming an integral part of the security discourse at the state level, the security expertise of PMSCs is acknowledged and validated.

Leander and Rens van Munster further highlight the accepted expert status of the PMSC in examining its involvement in the conflict in Darfur. They note that PMSCs, through a security industry lobby, have been able to shape the types of roles PMSCs can fulfill in support of the United Nations (UN) mission to the war torn country. The important implication here is that PMSCs were consulted for their expertise and contributed directly to shaping the response to the security crisis.⁷⁹

The academic foundation of military expertise is not without similar structures in the security industry. ASIS International is an association of security professionals committed to furthering industry knowledge and expertise.⁸⁰ The association plays a significant role in defining security expertise. A key component of ASIS International is the certification program it

⁷⁷Anna Leander, "The Power to Construct International Security: On the Significance of Private Military Companies," *Millennium Journal of International Studies* 33, no. 3 (2005): 820.

⁷⁸*Ibid.*, 815.

⁷⁹Anna Leander, and Rens van Munster, "Private military and security Contractors in Darfur: Reflecting and Reinforcing Neo-Liberal Governmentality," *Copenhagen Business School*, (Presented at International Studies Association Annual Convention, San Diego, CA 22-25 March 2006).

⁸⁰ASIS International, "Who we are," accessed 17 March 2016, www.asisonline.org/about-ASIS

offers. Three unique certifications are offered by the association: Certified Protection Professional (CPP), Professional Certified Investigator (PCI) and Physical Security Professional (PSP).⁸¹ In describing the certification process the association lists “demonstrable proof of experience and professional competence...and...independent validation of an individual’s knowledge, skills and abilities”⁸² as benefits to practitioners and employers alike.

ASIS International also partners with Webster University in St. Louis, Missouri, to deliver a Master of Arts in Business and Organizational Security Management. This graduate level program is designed to provide advanced education to security practitioners and to prepare prospective candidates for CPP accreditation.⁸³ Of interest, some US military members receive advanced standing in this program and complete the degree in conjunction with professional military education.⁸⁴ In essence, there is a linkage between international professional accreditation and advanced academics, supported by military acceptance of the educational value of the security field. This linkage creates space for a claim by the private military and security industry to unique expert knowledge.

Laying Claim to Expertise: Discourse Analysis of the PMSC

Expertise as an essential component of a profession requires some degree of external representation. Possessing expert knowledge in itself is not enough. The expertise must be communicated in such a way that it is acknowledged and accepted as such by the professional field and the external community. Using discourse analysis as a methodological basis, it is

⁸¹*Ibid.*

⁸²*Ibid.*

⁸³ For program details see www.webster.edu/business-and-technology/academics/business-and-organizational-security.html, accessed 17 March 2016.

⁸⁴*Ibid.* see page: www.webster.edu/military/academics/police.html, accessed 17 March 2016.

possible to discern the manner in which expertise is portrayed within the private military and security industry.

Theorist Joakim Berndtsson conducted such an analysis of a PMSC in Sweden. In seeking to determine how PMSCs communicate their expertise, Berndtsson identified two distinct patterns. He posits that the manner in which expertise is portrayed by PMSCs changes depending on the audience, being either public or professionally focused.⁸⁵ His study determined that PMSCs use a specific security based narrative tailored to the audience receiving the message. In this context, when building the public image of security expertise, the PMSC studied by Berndtsson leveraged linkages to established business practices to portray themselves as legitimate and highly professional corporate entities. Security expertise is framed in broad statements regarding specialized risk management capabilities while downplaying association with state entities like the military.⁸⁶ In contrast, when the audience is highly knowledgeable of the security industry, Berndtsson suggests the message portrayed by the PMSC studied changed significantly. In that case, the military experience of employees was highlighted when attempting to establish that the company possessed the requisite expertise to perform the tasks stipulated by potential employers. More specifically, emphasis was placed on the SOF experience of senior executives and key staff who would work on the contract.⁸⁷

Building on the Berndtsson study, the websites of four PMSCs were examined to determine if correlations exist in the portrayal of expertise. Two aspects of the message they communicate were examined in order to assess the manner in which expertise was portrayed in the selected PMSCs. First, the main page and general information pages of the company

⁸⁵Joakim Berndtsson, "Security Professionals for Hire: Exploring the Many Faces of Private Military and Security Expertise," *Millennium: Journal of International Studies* (2012): 4.

⁸⁶*Ibid.*, 9.

⁸⁷*Ibid.*, 16.

websites were assessed for representations of expertise. Second, an assessment was conducted of the personal biographies of key company leadership for indications of individual expertise. The results are as follows.

GardaWorld, based in Montreal Canada, is one of the largest global security conglomerates.⁸⁸ The company provides a wide range of security services, from domestic infrastructure protection to operational support in conflict zones, through an array of subsidiaries. The ‘about us’ tab on the company’s main webpage highlights the company’s status as one of leading providers of security services in the world, with over 48,000 “highly-trained and skilled security professionals.”⁸⁹ In presenting the company to prospective clients, a link to a corporate brochure is provided. The document, entitled “Business Solutions and Security Services for a Complex World,”⁹⁰ provides a comprehensive overview of the company and the services provided. In establishing the corporate identity, GardaWorld leverages linkages to global industry such as clientele from fortune 500 companies, governments, and civil society. Throughout the 36 page glossy brochure the word ‘expert’ was mentioned six times and ‘professional’ seven times. In each instance there was no indication given of the basis of the expertise or professionalism. Rather, the statements were affirmative declarations such as: “our expertise helps them [financial institutions] minimize risks”⁹¹ or “services are provided by specialized security professionals.”⁹² In contrast to expert and professional, the word ‘business’ appears fifteen times. From reading the brochure prospective clients and casual observers are given an impression of the company as a highly successful business which is an industry leader

⁸⁸See company website at www.gardaglobal.com, accessed 20 Mar 2016.

⁸⁹*Ibid.*, www.gardaglobal.com/en/about-us.

⁹⁰GardaWorld, “Business Solutions and Security Services for a Complex World,” (Sept 2013), accessed 20 Mar 2016, www.gardaglobal.com/en/about-us.

⁹¹*Ibid.*, 13.

⁹²*Ibid.*, 29.

in providing highly skilled security professionals. The weight of emphasis is placed on business acumen with security expertise being implied.

The branch of the company that offers the type of security services of interest to this study is GardaWorld – International Protective Services. This branch provides an array of operational support including armed mobile and static security, security consulting, risk analysis, close protection and response to kidnapping and extortion incidents. In contrast to the main corporate page, International Protective Services emphasizes the quality of the individuals employed by GardaWorld. For example, the section describing executive protection identifies the customizable teams as being “...made up of highly trained former US and UK Special Forces professionals...”⁹³ Likewise, the ‘leadership’ page of International Protective Services lists the biographies of prominent members of the organization identified specifically as experts in the security industry. Among the corporate executives are former General Officers, Former British and American SOF personnel, and a former commandant of the British Joint Services’ Command and Staff College.⁹⁴ Those executives leading other facets of the business such as finance and marketing have correspondingly convincing credentials in their biographies to establish their expertise in their respective field. In addition to the leadership team, an International Advisory Board “provides counsel and industry expertise to GardaWorld experts working with clients in high-risk markets around the world.”⁹⁵ This advisory board is chaired by a former Canadian ambassador to the US, and boasts members such as a former commander of US Special Operations Command, a former CEO of Aegis Defence Services, and a Member of Parliament

⁹³See www.garda-world.com/what-we-do/services/close-protection, accessed 20 Mar 2016

⁹⁴*Ibid.*, www.garda-world.com/management, accessed 20 Mar 2016.

⁹⁵*Ibid.*, www.garda-world.com/board-hub Accessed 20 Mar 2016

from the UK⁹⁶ For those looking from the perspective of a knowledgeable client as described by Berndtsson, expertise is very clearly constructed using established norms founded in military or government training and experience.

The Constellis Group is another large security conglomerate which provides a wide array of security services in conflict zones. Headquartered in the US and Dubai, United Arab Emirates, subsidiaries of the Constellis Group include well know PMSCs: Triple Canopy, Academi (formerly Blackwater), Edinburg International, Olive Group, and Strategic Social.⁹⁷ Unlike GardaWorld, Constellis Group presents an initial image as an industry leader in providing operational support based on the expertise of its personnel. In describing the company's ability to operate in dangerous environments, Constellis Group emphasises that it employs "...the industry's most experienced and top trained employees, most of whom are former military or law enforcement."⁹⁸

Much like GardaWorld, Constellis Group prominently lists the names and biographies of key executives on its website. In framing their leadership biography page, Constellis Group indicates its "...team comprises dedicated, seasoned professionals with decades of military, government, and private sector experience."⁹⁹ Among the Board of Directors is a former US Attorney General, a former director of the National Security Agency and Deputy Director of Central Intelligence, a retired US Army Special Forces Green Beret, as well as other highly successful members of industry. While not explicitly detailed as expertise, the inherent stature of the individuals cited creates a degree of perceived expertise that is difficult to ignore.

Interestingly, based on the image presented on its website, Constellis Group seems less focused

⁹⁶*Ibid.*, note – In 2004 Aegis was awarded a \$300M USD Government contract to provide security services in Iraq, the largest contract of its type. Aegis was acquired by GardaWorld in 2015.

⁹⁷Constellis Group, "About," accessed 20 March 2016, www.constellisgroup.com/about/.

⁹⁸*Ibid.*,

⁹⁹*Ibid.*, www.constellisgroup.com/about/leadership/, accessed 20 March 2016

on creating an image of expertise in the business of security. The implication here is the opposite of GardaWorld, in that business acumen is implicit and the expertise of the individual actors is paramount.

In contrast to the major international security conglomerates already discussed, Erinys International is a more regionally focused PMSC. Erinys is a UK. based PMSC which specializes in providing security services in sub-Saharan Africa.¹⁰⁰ A review of Erinys' webpage reveals familiar comments concerning the highly skilled security professionals employed by the company. Emphasis is again placed on the military, police, or public sector backgrounds of the workforce.¹⁰¹ In describing its business model, the company highlights the importance of integrating local and regional expertise. This is a slight modification from the messages communicated by the previous companies examined. That said highlighting regional expertise for a company that offers regionally based services seems logical. As with GardaWorld, no real indication of what 'expertise' means is offered. The inference is that expertise exists in the services provided because the individuals providing the service are expert professionals. In this instance, expertise is not as heavily linked to high profile personalities or elite military service. In contrast, the extensive experience that the management team has in providing unique security services of regional importance, such as in the oil and mining sector, forms the bases of declarative statements of expertise.

Of particular significance in the messaging presented by Erinys is the expertise the company has in managing complex security environments in which public, governmental, and non-governmental agencies operate in unison. In particular, the website indicates "...our management's expertise ranges from protection of small NGO contingents and security of

¹⁰⁰Erinys, "The Erinys Group of Companies," accessed 20 March 2016, www.erinys.net/#/about-us/4531362948.

¹⁰¹*Ibid.*, www.erinys.net/#/our-people/4531362954, accessed 20 March 2016.

diplomatic mission.”¹⁰² These statements highlight the notion of borrowed legitimacy which comes from associating the PMSC expertise with an established entity such as respected NGOs.

Finally, Control Risks is a global oriented security consultancy. This company provides a wide spectrum of security services, ranging from assessing and mitigating risk, to armed security services. These services are provided predominantly to other organizations and businesses operating in high-risk environments.¹⁰³ Expertise in the provision of these services features prominently on the company’s website. Whereas other companies highlight their senior executives under leadership or management tabs, Control Risks categorizes them as ‘our experts.’ This subtle difference shows the emphasis placed on overtly identifying sources of expertise within the company. In reviewing a selection of the 158 biographies listed on the ‘our experts’ page it is evident that expertise is predominantly constructed in the context of COBBES functions with a secondary emphasis on educational background in a varied of advanced fields.¹⁰⁴ Typically, military or law enforcement experience is included in the final paragraph, with no particular emphasis placed upon it.

In addition to highlighting the business acumen of the company’s experts, Control Risks partners with Oxford Economics, an Oxford University Business College venture, to develop risk forecasting based on economic modeling.¹⁰⁵ By aligning security analysis and assessment with prominent academic institutions a clear image of knowledge based expertise is created. Unlike previous examples of expertise presented, Control Risks is drawing linkages to higher education and academia in demonstrating the knowledge based professionalism it possesses.

¹⁰²*Ibid.*, www.erinys.net/#/public-sector-ngos/4532629540, accessed 20 March 2016.

¹⁰³Control Risks, “About Us,” accessed 20 March 2016, www.controlrisks.com/en/about-us.

¹⁰⁴*Ibid.*

¹⁰⁵See www.oxfordeconomics.com/about-us, accessed 22 March 2016.

With respect to the provision of armed security services, Control Risks occupies a unique niche of the security industry. In addition to the standard close protection details, and static / mobile armed security services in high risk environments, Control Risks claims to be an industry leader in the provision of maritime security. The company website notes that it has provided 2,500,000 man-days of armed security and 1,000 days of transit security services.¹⁰⁶ In describing its expertise in maritime security, a number of COBBES based compliance certifications are mentioned.¹⁰⁷ In assuring potential clients of the expertise of its personnel, the Control Risks counter piracy operations webpage concludes with the comment "...the individuals deployed by Control Risks are highly qualified, highly trained, and highly experienced professionals."¹⁰⁸ As with previous sites reviewed, positive affirmations of expertise and professionalism form the foundation of how the PMSC presents itself.

Conclusion

By assessing expertise in the PMSC industry it is evident that a complex multifaceted dynamic exists. Expertise can be seen as a function of transference of experienced personnel from the military, and SOF in particular, who seek alternate employment for a myriad of reasons. Expertise is expressed in terms of managing the business of private military and security as typified by the COBBES functions. Expertise is constructed through association with academic institutions. Finally, discourse analysis of PMSC websites reveals that expertise is represented in varied, yet predictable ways. The two part model suggested by Berndtsson, of the public vs professional image,¹⁰⁹ seems to have validity across PMSCs. In presenting its expertise in this

¹⁰⁶Control Risks, "Counter Piracy Operations," accessed 22 March 2016, www.controlrisks.com/en/services/security-risk/maritime-services/counter-piracy-operations.

¹⁰⁷The specifics of these regulatory mechanisms are discussed in greater detail in the subsequent chapters on jurisdiction and legitimacy.

¹⁰⁸*Ibid.*

¹⁰⁹For Berndtsson, the public image of a PMSC was distinguished by the information readily available to the casual observer, such as via the internet. In contrast, the professional image of the PMSC was defined by the

twofold fashion, PMSCs are able to establish a competitive paradigm with the military. By demonstrating comparable expertise and knowledge to the military professional, augmented by COBBES based expertise, the security professionals' position as a serious competitor to the military profession begins to take shape. That said, expertise is only the first component of Burks' triad. Status as a profession depends on the exercising of expertise within the confines of jurisdictional boundaries.

messaging communicated in bids for services. In this study the professional image presented by PMSCs was determined by examining specific subsets of the information provided to the public aimed the knowledgeable observer or potential client.

CHAPTER 4 – JURISDICTION

The next component of the Burk model to consider is jurisdiction. For Burk, the expert knowledge of a profession must be conceptualized by some binding, definable boundaries that signify the area within which the expertise is applied. In the context of Burk's analysis of the military profession, jurisdiction is represented by the laws of the state which allow for, and regulate, the existence of military forces.¹¹⁰ These laws create the boundaries which define which members of society are authorized to act as a state sanctioned armed force.

Yet, definitive boundaries, such as those established by the state regulation of military forces, are more difficult to discern in the context of the private military and security industry. Three distinct components are discussed in unpacking how jurisdiction affects PMSCs. First, consideration is given to the way in which jurisdiction is set. Next, the content of the jurisdiction is presented in terms of what can be done, and what cannot be done within the established boundaries. Finally, an assessment is conducted of the norms of conduct governing behaviour within the boundaries of the jurisdiction. A clear sense of the private military and security industries operating space relative to that of the military emerges by considering jurisdictional boundaries from these perspectives,

Creating Jurisdiction

The first area of consideration is how jurisdiction is created. As with Burk's model this is largely predicated on the creation of laws and regulations governing certain activities. In the PMSC context this translates into how states regulate their private military and security industry and the applicability of international laws.

¹¹⁰Burk, *Expertise, Jurisdiction, and Legitimacy...*, 50.

Considering State Variance in PMSC Jurisdiction

As an emergent competing professional field to the military, successfully defining jurisdiction for the private military and security industry is critical to attaining legitimacy. Significant impediments to the construction of coherent jurisdictional boundaries for the private military and security industry exist due to variances in how states approach the regulation of PMSCs. Where the jurisdictional boundaries on a military force are typically codified at the state level, the same cannot be said for PMSCs. Some states have highly centralized regulatory mechanisms for the licencing and oversight of their private military and security industry. For example, the UK established the Security Industry Authority (SIA) as a subcomponent of a governmental department to oversee the licencing of all private security personnel as well as providing certification of PMSC compliance with industry standards. The SIA in the UK is a fundamentally different approach than other states.¹¹¹ For instance, in the US oversight and control of the private military and security industry is decentralized and operates below the state level. Due to such variance in how PMSCs are regulated from state to state, a more holistic view is beneficial to understand how jurisdiction is set in the context of PMSCs.

Effect of International Humanitarian Law

Given the role of PMSCs operating in conflict zones, consideration must be given to jurisdiction in the context of established international laws. In order to understand how international laws and regulations apply to PMSCs and the personnel they employ it is instructive to start with the Laws of Armed Conflict, also known as International Humanitarian

¹¹¹For examples see University of Denver, Private Security Monitor, “National Regulations,” accessed 20 April 2016, http://psm.du.edu/national_regulation/index.html. The University of Denver, Sié Chéou-Kang Center - Private Security Monitor, maintains a compressive database of state regulatory practices governing PMSCs. The database includes an overview from 115 states including 22 from Africa, 28 from the Americas, 21 from the Asian Pacific, 33 from Europe, and 11 from the Middle East and North Africa.

Law (IHL). The primary issue that must be addressed when considering the applicability of IHL and the PMSC is the status of the individual. Unfortunately, IHL makes no specific reference to private military and security personnel. This lack of specificity opens the door for misguided attempts to apply anti-mercenary norms to the entire private military and security industry. As Lindsay Cameron notes in an article for the International Committee of the Red Cross (ICRC) entitled “Private Companies and Their Status under International Law,” broad sweeping application of anti-mercenary laws to PMSCs is not appropriate.¹¹² The distinction here is much more important than avoiding a pejorative label. Being deemed a mercenary has some significant consequences under IHL. Mercenaries are not entitled to protection as prisoners of war or status as lawful combatants. Under this pretense, states make individual determinations regarding alleged mercenaries, opening up individual liability for any actions taken if deemed unlawful.¹¹³

The key to understanding the status of PCASP under IHL is related to the notion of direct participation in hostilities. Due to the importance of properly understanding an individual’s status under international law, the ICRC compiled an interpretative guide to understanding the complexities of this specific issue.¹¹⁴ The document, in part, emphasizes the implications of PCASP personnel taking actions that can be construed as direct participation in hostilities. The interpretive guide notes that private contractors should predominantly be viewed as civilians in the battlespace, and as such, are entitled to the protections against direct attack. In instances where PCASP are engaging in direct hostilities, they lose this protection from attack for the duration they are actively participating in hostilities.¹¹⁵

¹¹²Lindsay Cameron, “Private military companies: their status under international humanitarian law and its impact on their regulation,” *International Review of the Red Cross* 88, no. 863 (2006): 578.

¹¹³*Ibid.*, 579.

¹¹⁴Nils Melzer, *ICRC Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law* (Geneva: ICRC, 2009). It should be noted that this document is a guide for interpretation, and not binding or authoritative in any way. Some degree of disagreement of its applicability exists.

¹¹⁵*Ibid.*, 37.

With regards to PCASP who are given specific duties by a party to the conflict likely to result in routine direct participation in hostilities, the guide distinguishes these as a continuous combat functions. In addressing the unique relevance to PMSCs, the ICRC concluded that “private contractors...authorized by the state to directly participate in hostilities on its behalf would cease to be civilians and become members of its armed forces under IHL...”¹¹⁶ The key lesson to be learned from IHL related to PMSCs is that the status of PMSC personnel is not self-evident, and that care must be taken to understand the implications of employing civilians in close proximity to military forces, as well as assigning duties and responsibilities of a continuous combat nature. Depending on the context, a certain degree of IHL jurisdiction exists, which varies depending on the individual’s status.

The Montreux Document

In response to the perceived lack of specific international laws the government of Switzerland, in conjunction with the International Committee of the Red Cross (ICRC), launched the “Montreux Document On The Pertinent International Legal Obligations And Good Practices For States Related To Operations Of Private And Security Companies During Armed Conflict.”¹¹⁷ The Montreux Document provides a series of guiding principles, aimed at states, for the oversight of PMSCs. The Swiss initiative was a collaborative venture amongst seventeen nations: Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland, the Ukraine and the United States of America.¹¹⁸ In describing best practices

¹¹⁶*Ibid.*, 39, note 71. In reaching this conclusion an expert panel drew direct linkages between letters of marque issued to privateers and modern combatant privilege being extended to PMSCs today.

¹¹⁷Switzerland, International Committee of the Red Cross, *The Montreux Document: On Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict* (Geneva: ICRC, 2009).

¹¹⁸*Ibid.*, 9.

for the management and oversight of PMSCs, the Montreux Document highlights the importance of adherence to IHL. The document also identifies PMSC personnel as civilians under such law, variances occurring when participating in hostile actions as described above.

Another area where the Montreux Document places significant focus is on the obligations of the state to oversee the services provided by PMSCs. These state responsibilities are divided into three categories: contracting states, territorial states, and home states.¹¹⁹ The Montreux Document suggests that contracting states retain their obligations under international law, to prevent any and all violations of IHL, including those committed by members of PMSCs that they have contracted to provide military and security services in a conflict zone.¹²⁰ Territorial states are those upon which the PMSC operates. The Montreux Document notes that territorial states are called upon to ensure PMSCs operating in their territories abide by IHL. The document recommends that territorial states should make available copies of the Geneva Conventions and any other relevant laws and regulations.¹²¹ With the rise of large transnational security conglomerates there are situations in which PMSCs are not based in states where the contract was established, or the state where the security services are provided. In these instances, the Montreux Document highlights that these home states also have the same responsibility to ensure that appropriate laws are followed by PMSCs.¹²²

So, under the Montreux Document it is the responsibility of any state involved in the provision of security services to ensure PMSCs operate in a responsible manner consistent with IHL. The overall intent of the Montreux Document is to provide a mechanism by which PMSCs are utilized in a manner that respects the rule of law and ensures that conflicts are conducted in a

¹¹⁹*Ibid.*, 10.

¹²⁰*Ibid.*, 11.

¹²¹*Ibid.*, 12.

¹²²*Ibid.*, 13.

just and lawful manner. The key implication of the Montreux Document is the notion that states with vested interests in the services provided by PMSCs, must take an active part in ensuring the services are provided in a socially responsible and legitimate manner. The fact that the document does not constitute binding international law is, to a large degree, inconsequential if states uphold the basic tenants. This is due to the fact that the document reflects existing responsibilities. It is the commitment of contracting states, home states, and territorial states, to institute the regulatory mechanisms of the Montreux Document that aids in setting jurisdictional boundaries.

Creating the Content of Jurisdiction

The second component of jurisdiction open for consideration is its content. This portion of the discussion is based on the notion of what can be done and what cannot be done within the confines of the jurisdictional boundaries. This essentially lays out the range of acceptable tasks and services which fall within the bounds of acceptable action. This starts with the basic question: what services do PMSCs provide that require, or bump up against, jurisdictional boundaries? The answer lies in the notion of inherently state functions. In providing a definition of an inherently state function, the US Federal Activities Inventory Reform Act of 1998 describes it as "...a function so intimately related to the public interest as to require performance by Federal Government employees."¹²³ Clearly, this places activities such as war fighting squarely within the domain of state responsibility. In speaking of the role of the state, preeminent sociologist Max Weber provided the baseline for this concept when he wrote "[a state] claims the monopoly of the legitimate use of physical force..."¹²⁴ If the legitimate application of violence is considered an act which falls within the purview of the state, through the use of its military, then

¹²³Kate Manuel, "Definitions of "Inherently Governmental Functions" in Federal Procurement Law and Guidance;" *Congressional Research Service Report 7-5700, R42325* (2014), i, accessed 2 Apr 2016, <https://www.fas.org/sgp/crs/misc/R42325.pdf>.

¹²⁴Max Weber, "Politics as a Vocation" in *From Max Weber: Essays in Sociology*. Translated and edited by H.H. Gerth and C. Wright Mills (New York NY: Oxford University Press), 78.

a potential conflict exists *vis-à-vis* PMSCs. The legislation of activities that only the state may conduct is in effect creating the content of the state jurisdiction.

The difficulty arises in determining how best to differentiate between the services the state must provide and those the PMSC can subsume. A 2009 Congressional Research Service report entitled “Inherently Governmental Functions and Department of Defense Operations: Background, Issues, and Options for Congress” provides some fidelity.¹²⁵ Annex C of this report provides a side by side comparison that identifies inherently governmental functions that must be performed by military personnel and corresponding commercial functions that can be contracted out.¹²⁶ With regards to combat operations, the report notes that military personnel must be utilized when employing planned combat capabilities in a disruptive or destructive manner. From a commercial perspective, any support provided by PMSCs must be non-discretionary in nature and directly support military combat operations.¹²⁷

The services that a PMSC can provide in relation to the provision of security to protect personnel, infrastructure, and commodities in hostile areas is significantly broader. From a military perspective, the services that are identified as falling within its exclusive purview are those requiring considerable initiative and discretion in their application, with an emphasis placed on those actions which bind the state to a given course of action. In contrast, services that require little discretion in their application, for example those with clearly defined policies and procedures can be outsourced.¹²⁸ At the heart of this distinction is the freedom of action in

¹²⁵John Luckey, Valerie Grasso, and Kate Manuel, “Inherently Governmental Functions and Department of Defense Operations: Background, Issues, and Options for Congress,” *Congressional Research Service Report 7-5700, R40641* (2009), accessed 4 April 2016, <https://fas.org/sgp/crs/misc/R40641.pdf>.

¹²⁶*Ibid.*, 48-49. Comparison presented is based on US Department of Defense Instruction 1100.22 available at <http://www.dtic.mil/whs/directives/corres/pdf/110022p.pdf>.

¹²⁷*Ibid.*, 48.

¹²⁸*Ibid.*, 48.

deliberately applying force offensively. In this context, PMSCs have no such freedom of action and are empowered to act in a predominantly defensive and reactionary fashion

If inherently state functions are taken as an enduring truism, then the key deduction from the interplay between the military and private sector regarding inherently state functions is twofold. First, destructive planned combat operations remain the jurisdiction of military forces, with PMSCs in supporting roles. Second, security operations requiring significant discretion also seem to reside under the purview of the military action on behalf of the state. The implication here is that a large residual jurisdiction exists, within which the PMSC can provide its services. Just as Burk speculated, this jurisdictional overlap increases the further you move away from the central core warfighting function of the military. The friction between professions, predicted earlier by Burk, arises between the military profession and the private military and security industry when the services to be provided involve the potential application of violence, and the state has latitude to select either the military or a PMSC to achieve the desired goals.

Creating Normative Behaviour within Jurisdiction

The final component for consideration is the establishment of norms of behaviour which govern how the individual is expected to act. Building on the higher order jurisdictional concepts created by IHL, a series of security industry COBBES have emerged that further establish what can be considered as the roadmap for professional conduct within the jurisdictional boundaries of the private military and security industry. Anna Leander describes the effect that COBBES have on the military and security industry as being ‘jurisgenerative’ in nature.¹²⁹ This is to say that the code itself creates a degree of jurisdiction through its creation, implementation, and common usage. For Leander, this newly created jurisdiction is established through two distinct processes.

¹²⁹Anna Leander, “What do codes of conduct do? Hybrid constitutionalization and militarization in Military markets,” *Global Constitutionalism* 1, no. 1(2012): 92. While Leander is specifically speaking of Codes of Conduct in her article, the concepts are applied generally as COBBES for the purposes of this discussion.

First, codes create a *de facto* corporate constitution with legal implications. She notes that “corporate codes are emergent legal phenomena in the constitutionalization of private governance regimes.”¹³⁰ Finding a firm basis in corporate contractual law is advantageous, particularly in the current reality of market based competition for services. The second aspect of Leander’s ‘jurisgenerativity’ of COBBES is related to their militarizing effect. She argues that by establishing a threshold by which a PMSC can be seen to be operating in a manner consistent with norms expected by the state, the larger issue of whether they should be employed is largely forgotten.¹³¹ To the state, the PMSC that upholds accepted COBBES looks and acts in a predictable manner, not dissimilar from what it might expect from its military. This is compounded by the previously mentioned integration of PMSCs into the discourse regarding state security.

From a COBBES perspective then, jurisdictional boundaries define the behavioural expectation of both the organization and the individual. In the corporate sense, obligations to uphold certain practises, and eschew others, builds a legal framework akin to laws governing how militaries are established and employed. In terms of the individual, COBBES set the norms for performance and conduct. Punitive and/or corrective action may then be taken for violations of expected standards of conduct. This is also reminiscent of the imposition of a military justice system to regulate the conduct of soldiers. This is not to suggest COBBES are a comparative equal to either of these examples. Rather, the intention is to demonstrate that COBBES create behavioural norms within the private military and security industry in a similar manner to rules and regulations governing the state military domain.

¹³⁰*Ibid.*, 113.

¹³¹*Ibid.*, 106.

COBBES Example - International Code of Conduct

Whereas the Montreux Document provided general jurisdictional boundaries for how states should view the employment of PMSCs, a companion piece which focused on the PMSCs themselves was also created by the ICRC in conjunction with the Swiss government and international partners. This follow-on document is known as the *International Code of Conduct (ICoC) for Private Security Service Providers*.¹³² The ICoC takes a distinctly different, yet complementary approach, to the oversight of PMSCs. While the Montreux Document focuses on the responsibilities of the state *vis-à-vis* the PMSC, the ICoC turns to the PMSC itself and presents a roadmap for how best to provide security services in a hostile environment in a responsible manner. As it relates to jurisdiction, the ICoC provides norms of conduct which, when followed, signal that a PMSC and its personnel are operating within the accepted industry standards.

The ICoC encourages PMSCs to pledge adherence to the tenants of the code by self-identifying through a signatory process. Originally signed by 58 PMSCs when created in 2010, the ICoC had 708 signatory companies by 2013.¹³³ The ICoC Association, which acts as the governing body of the ICoC, currently has a diverse international membership including the following: six governments, 97 PMSCs, 16 civil society organizations, and 28 observer organizations ranging from academia, corporations and a variety of non-governmental organizations.¹³⁴

The ICoC is comprised of two main sections. The first section discusses best practises for the conduct of personnel employed by PMSCs. Much like the Montreux Document, this section

¹³²Switzerland, International Committee of the Red Cross. *International Code of Conduct for Private military and security Service Providers* (Geneva: ICRC, 2010).

¹³³International Code of Conduct Association, "History," accessed 2 April 2016, <http://icoca.ch/en/history>.

¹³⁴For a full list of all ICoC Association members see: <http://icoca.ch/en/membership>. Accessed 2 April 2016

focuses on the applicability of IHL and private military and security personnel. Broad categories include regulations on the use of force, prohibitions on torture, human trafficking, as well as other violations of basic human rights. The second portion of the ICoC focuses on security industry management best practices. Areas highlighted include the following: selection and vetting, subcontracting, company policies and procedures, as well as firearms training and weapons management. The ICoC goes further and also makes recommendations on general business best practises such as workplace safety, harassment policies, grievances, and liabilities.¹³⁵ From a security industry COBBES perspective the ICoC is a holistic approach to providing structure for how PMSCs should operate.

Case Study - Jurisdiction from the Maritime Perspective

Just as Thomson considered the role of private actors on land and at sea, the same is warranted here. An emerging niche is the provision of PCASP in support to maritime commerce, particularly as a means to counter piracy.¹³⁶ The development of jurisdictional architecture governing the provision of armed maritime security provides a useful backdrop for understanding the functional application of the concepts discussed in this chapter.

From an international perspective the authoritative jurisprudence governing maritime affairs is the United Nations Convention on the Law of the Sea (UNCLOS). As with IHL, PMSCs are not specifically addressed in UNCLOS.¹³⁷ In an effort to establish effective oversight of the use of PCASP on commercial shipping vessels, the International Maritime Organization (IMO) developed and began issuing guidelines in 2008.¹³⁸ A review of the IMO webpage

¹³⁵Switzerland, *ICoC...*, 28-70.

¹³⁶Renee de Nevers, "State Interests and the Problem of Piracy: Comparing US and UK Approaches to Maritime PMSCs," *Ocean Development & International Law* 46 (2015): 153.

¹³⁷Carolyn Liss, "(Re)Establishing Control? Flag State Regulation of Antipiracy PMSCs," *Ocean Development & International Law* 46 (2015): 89.

¹³⁸*Ibid.*, 89.

devoted to ‘Private Armed Security’ reveals that the guidance provided has evolved considerably since its inception. Initially, states and shipping companies were strongly discouraged from using armed personnel on ships. Yet current IMO guidance recognizes that “...the deployment of armed security personnel on board ships has become an accepted industry and flag-state practice in certain circumstances.”¹³⁹ The IMO circular that articulates its position to the international shipping community goes on to note that it is the responsibility of flag-states to ensure that proper regulatory measures are in place to adequately oversee armed security usage.¹⁴⁰ In terms of setting jurisdiction and defining its content, international laws such as UNCLOS establish the boundaries within which the IMO operates. The prevailing sentiment of the IMO towards PCASP reflects changing beliefs governing the range of acceptable services PMSCs provide.

As a means of establishing normative behaviour, the IMO has partnered with the International Standards Organization (ISO) to develop ISO 280007-2015 “Guidelines for Private Maritime Security Companies providing Privately Contracted Armed Security Personnel on board Ships.”¹⁴¹ The expressed intent of ISO 280007-2015 is to allow for third party certification “...in order to demonstrate that they [PMSCs] provide suitable privately contracted armed security personnel services on board ships.”¹⁴²

A variety of other initiatives have sought to establish operating norms on this aspect of the private military and security industry. In an effort to provide further recommendations on how best to counter piracy on the high seas a European Union initiative known as the Maritime

¹³⁹International Maritime Organization, “Private Armed Security,” accessed 6 April 2016, <http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Pages/Private-Armed-Security.aspx>. Flag-State denotes the state of registration of the commercial vessel.

¹⁴⁰International Maritime Organization, “Piracy and Armed Robbery Against Ships: Recommendations to Governments for Preventing and Suppressing Piracy and Armed Robbery Against Ships,” *MSC.1, Circ.1333, Rev. 1* (12 June 2015): 2, accessed 6 April 2016, <http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Guidance/Documents/MS.C.1-Circ.1333-Rev.1.pdf>

¹⁴¹International Maritime Organization, “Private Armed Security,” accessed 6 April 2016, <http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Pages/Private-Armed-Security.aspx>

¹⁴²*Ibid.*,

Security Center: Horn of Africa, published an industry best management practices booklet. The booklet outlines COBBES based actions that can be used by vessels transiting high risk regions. As it relates to PMSCs, provided suitable planning and assessment is conducted, the use of armed security could be considered if military protection is unavailable.¹⁴³ This further strengthens the notion of overlapping jurisdictional content by establishing an either/or paradigm between the services PMSCs provide and those of the military.

From a self-regulatory perspective, the Security Association for the Maritime Industry (SAMI) has developed a set of what it calls rules for the use of force by armed security personnel operating in the maritime environment. The associated publication entitled “The 100 Series Rules: An Internal Model Set of Maritime Rules for the Use of Force”¹⁴⁴ provides a guide intended for use by security practitioners and stakeholders industry wide. Of particular note here is the military like structure of the rules. This is a clear example of where COBBES have a militarizing effect as they seek to establish jurisdiction.

Conclusion

It is evident based on the discussion of jurisdiction and the private military and security industry that a system, albeit complex, does exist. Where Burk’s model of jurisdiction for the military profession was rooted firmly in state legislation governing the establishment of military forces, a more nuanced approach is warranted when analysing PMSCs. Given the inconsistent approaches states have taken to enacting legislation concerning PMSC usage, a more international view is required. While laws and conventions such as IHL and UNCLOS do not

¹⁴³NA, “BMP4: Best management Practices for Protection against Somali Based Piracy,” *Maritime Security Center* (August 2011): 39, accessed 6 April 2016, http://www.mschoa.org/docs/public-documents/bmp4-low-res_sept_5_2011.pdf?sfvrsn=0.

¹⁴⁴Security Association for the Maritime Industry, “The 100 Series Rules: An Internal Model Set of Maritime Rules for the Use of Force,” accessed 6 April 2016, https://100seriesrules.com/uploads/20130503-100_Series_Rules_for_the_Use_of_Force.pdf.

specifically address PMSCs, they do establish a level of responsibility on all stakeholders to ensure that the spirit and intent of the law is upheld. This notion is even more important when PMSCs are directly participating in hostilities. In effect, international and state jurisprudence sets the jurisdictional boundaries of the industry. By considering the role of PMSCs in relation to the notion of inherently state functions, it is possible to see what the content of the industry jurisdiction looks like. In terms of establishing behavioural norms, the creation and implementation of COBBES as a regulatory measure to ensure security services are provided in an acceptable manner has the added effect of creating discernible jurisdiction for the industry. COBBES such as the ICoC establish a series of standards against which prospective employers can validate compliance. COBBES also establish a degree of binding corporate jurisprudence, which further defines how PMSCs must operate within their jurisdictional boundaries. When the cumulative effect of relevant laws, conventions, and COBBES is considered, the possibility of jurisdiction becomes a tangible reality. With the construction of jurisdictional boundary established, consideration is now given to legitimacy.

CHAPTER 5 – LEGITIMACY

For Burk, the final component of his model, legitimacy, is the culminating factor in establishing the military as a profession. As discussed, societal perception is critical in framing the discussion on the legitimacy of the military profession. Favourable perception of military legitimacy is conceptualized as a function of persuasion vice a demonstration of scientific military expertise. He suggests that the cumulative effect of expertise exercised in a well-defined jurisdiction strengthens the persuasiveness of the military's claim to legitimacy. In his discussion, Burk cautions that attempting to base a persuasive argument purely on altruistic reasons for military service may not be as convincing in the modern era, as perhaps it once was.¹⁴⁵ In reaching his conclusions, Burk goes so far as to suggest that bolstering notions of a moral imperative with the language of the marketplace may have more resonance with modern society.¹⁴⁶ In this chapter Burk's baseline of military legitimacy leads into a discussion of how organizational legitimacy can be used to frame the analysis of the private military and security industry.

First, it must be clearly understood that Burk is not debating the legitimacy of the military profession; rather he makes recommendations on how best to strengthen the persuasiveness of the argument to ensure military legitimacy is maintained moving forward. The state of affairs for the private military and security industry is much more nascent, contested and still open for discussion. Given the potential role of individual biases in the perception of what is legitimate and what is not, an objective theoretical model is beneficial in adding structure to the debate.

In this instance, perspectives on the organizational structure of legitimacy posited by Mark Suchman are used to guide the analysis. First, consideration is given to pragmatic

¹⁴⁵Burk, *Expertise, Jurisdiction, and Legitimacy...*, 54.

¹⁴⁶*Ibid.*, 56.

legitimacy. Next, an assessment is conducted of the effect of normative legitimacy on the private military and security industry. Finally, cognitive legitimacy is evaluated as a means of understanding the relative permanence and common acceptance of PMSC usage by state and non-state actors alike. By utilizing established organizational theories to assess legitimacy, a greater degree of fidelity is achieved regarding the relative standing of the private military and security industry as a competitor to the military as perceived by the primary audience, the state.

A Model of Organizational Legitimacy

In his work “Managing Legitimacy: Strategic and Institutional Approaches,” Mark Suchman determined that three general forms of legitimacy exist: pragmatic legitimacy, moral/normative legitimacy, and cognitive legitimacy.¹⁴⁷ Suchman also suggests that there is a continuum of progressively overt actions to attain legitimacy. Initially organizations tend to conform to the expected norms of the environment they are in. Next the organization is apt to seek out other environments where support for their actions is likely. Finally, an organization will actively manipulate the environment to shape beliefs about its legitimacy.¹⁴⁸ By using Suchman’s pragmatic, normative, and cognitive framework, an object assessment can be made of where the private military and security industry sits along the spectrum of legitimacy attainment.

Pragmatic Legitimacy

For Suchman, legitimacy takes on a degree of pragmatism when it is seen as fulfilling a necessary role, in a given context, to the desired audience.¹⁴⁹ Pragmatic legitimacy in the private

¹⁴⁷Mark C. Suchman, “Managing Legitimacy: Strategic and Institutional Approaches,” *The Academy of Management Review* 20, no. 3 (July 1995): 577. Suchman notes that the terms moral and normative are used interchangeably in the literature. He chose to use ‘moral’ in his work, however other theorists using his model in the context of legitimacy in the private military and security industry have chosen to use ‘normative’. As the work of these theorists will be used to build the argument in this paper, normative legitimacy will be used here as well. See: Joel Baum and Anita M. McGahan, “The Reorganization of Legitimate violence: The Contested terrain of the Private Military and Security during the Post-Cold War Era,” *Research in Organizational Behavior* 33 (2013): 3-37.

¹⁴⁸*Ibid.*, 587.

¹⁴⁹*Ibid.*, 578.

military and security industry was considered by theorists Joel Baum and Anita McGahan. In applying Suchman's model, their study frames the pragmatic legitimacy of PMSCs in four mutually supporting approaches: bridging, demonstrating efficacy, claiming efficiency, and claiming necessity.¹⁵⁰ Bridging refers to the practise of leveraging military expertise resident within the PMSC, as a means of creating inherent credibility with prospective audiences. As discussed in chapter three, leveraging military expertise is a critical component of how PMSCs construct their corporate identity. In doing so a degree of bridging occurs.

Demonstrating efficacy and claiming efficiency are also very closely linked to how PMSCs present their expertise. In this instance, the business acumen of the PMSC, particularly as it relates its ability to deliver professional services in a cost effective manner, is paramount. Baum and McGahan suggest this convergence of efficacy and efficiency make PMSCs very appealing to states as an alternative form of military intervention.¹⁵¹ The PMSC contracting bonanza experienced during the recent conflicts in Afghanistan and Iraq are emblematic of this type of supply and demand paradigm.

The pragmatist would also argue the antithesis to the PMSC as an alternative to the military is the idea that the PMSC is the only option. This is expressed as claiming necessity.¹⁵² Privately contracted armed security personnel on merchant vessels are an example of the application of claiming necessity in a pragmatic sense. In instances where security will not, or cannot, be provided by a state in the form of military naval power, merchant vessels turn to the PMSC as the sole option available to them.

¹⁵⁰Baum, and McGahan, *The Reorganization of Legitimate violence....*, 15.

¹⁵¹*Ibid.*, 15.

¹⁵²*Ibid.*, 17.

In addition to Baum and McGahan's notion of the components to pragmatic legitimacy, the concept of legitimacy transference is important to consider. Here PMSCs are seen as borrowing or adopting the legitimacy of the organization that contracted them. Martha Phelps writes "[PMSCs] have become chameleon like in their ability to absorb the legitimacy of the contracting state."¹⁵³ She goes on to suggest this notion of legitimacy transference can be extended beyond the state, and include any organization seen as a legitimate actor on the global stage.¹⁵⁴ From this perspective, the act of contracting not only builds pragmatic legitimacy in-and-of itself. It also presents the possibility of transferring the contracting agencies legitimacy to the PMSC.

Normative Legitimacy

Legitimacy in the normative sense centers on the adherence by the organization to standards of conduct expected by the audience they are serving. Bauman and McGahan suggest that there are four core activities PMSCs display in relation to creating normative legitimacy: reorienting, self-regulating, regularizing, and regulating.¹⁵⁵ These four organizational activities are representative of actions on the part of PMSCs to gain legitimacy as suggested earlier by Suchman.

The first activity, reorienting, involves establishing clear divides between what is perceived as legitimate activities and what is not. Efforts to disassociate PMSCs from the anti-mercenary norm, as suggested by Sarah Percy, are a concrete example of reorienting the normative discourse and create a clear distinction between the two. Additionally, when the activities of PMSCs are viewed through the lens of inherently governmental functions, and the

¹⁵³Martha Lizabeth Phelps, "Doppelgangers of the State: Private Security and Transferable Legitimacy," *Politics & Policy* 42, no. 6 (2014): 828. Phelps used acronym PSC, this was amended to PMSC for consistency.

¹⁵⁴*Ibid.*, 837. Phelps cites examples such as *Medecins Sans Frontieres*, the UN, and the ICRC.

¹⁵⁵Baum and McGahan, *The (Re)organization of Legitimate Violence...*, 21.

overlapping jurisdictional space they create, a sense of clarity regarding accepted roles emerges. At the macro level, this categorization defines the roles and accepted actions of the PMSC in legitimate terms.

The second component of the security industry's construction of normative legitimacy is self-regulation. This is an area where considerable effort has been placed, such as industry centric initiatives including the ICoC, and the SAMI *100 rules*. Here, imposing general regulatory measures which resonate with prospective audiences establishes the correctness of the PMSC's actions in the mind of the audience. On a more functional level, there have been instances in which multiple PMSCs operating in the same conflict zone have banded together to establish a degree of commonality in the provision of their services. Such was the case in Afghanistan in 2006/2007 when a number of PMSCs formed the Private Security Companies Association of Afghanistan (PSCAA).¹⁵⁶ This is a clear example of PMSCs seeking out specific new audiences where legitimacy can be attained. While the efficacy of the PSCAA in shaping the perception of legitimacy in Afghanistan is debatable, the important consideration here is the overt act of self-regulation as a means of demonstrating normative legitimacy. In defending the efficacy of PMSC self-regulation, Deborah Avant recently commented that despite initial reservations, she along with other social scientists and legal scholars, are beginning to see self-regulation as largely successful in legitimizing the private military and security industry.¹⁵⁷

The third component highlighted by Baum and McGahan is regularizing PMSC usage. In this context the PMSC gains normative legitimacy through the act of regular participation in

¹⁵⁶Lisa Rimli and Dr. Susanne Schmeidl, "Private military and security Companies and Local Populations: An exploratory study of Afghanistan and Angola," *Swiss Peace* (November 2007): 26, assessed 1 December 2015, http://psm.du.edu/media/documents/reports_and_stats/think_tanks/swisspeace_pscs_in_angola_and_afghanistan.pdf

¹⁵⁷Avant, Deborah, "People (including me) used to think the private military industry couldn't govern itself. We were wrong," *The Washington Post*. 12 April 2016, accessed 13 April 2016, https://www.washingtonpost.com/news/monkey-cage/wp/2016/04/12/people-including-me-used-to-think-that-the-private-military-industry-couldnt-govern-itself-we-were-wrong/?wpmm=1&wpisrc=nl_cage

military operations.¹⁵⁸ In functional terms, this can be observed through contractual tendencies. This is to say, a correlation can be drawn between a PMSC's normative legitimacy and the prevalence of their use by the state in operations. An examination of force ratios in recent conflicts provides valuable insight. Figures from the US Department of Defense identify that private contractor to soldier ratios changed from 1 to 55 in Vietnam, to 1 to 1 in Iraq, and as high as 1.42 to 1 in Afghanistan.¹⁵⁹ Furthermore, security contractors constituted 25 percent of casualties in Iraq based on 2009 figures.¹⁶⁰ This demonstrates a clear tendency toward increased inclusion of private contractors supporting US Department of Defense operations. What is more, Krahmman suggests such figures represent only the tip of iceberg as they do not account for other US governmental departments or PMSC usage by other states. She states "The USA, NATO, the EU and the UN contribute to spreading the acceptance of armed PMSCs among allies and member-states by hiring these firms..."¹⁶¹ In this context, the act of contracting, by its very nature, creates normative legitimacy.

The final component of establishing normative legitimacy is the establishment of binding regulatory measures governing PMSCs.¹⁶² As discussed, no overarching international legal standard currently exists which governs the actions of PMSCs. That said a key component of the Montreux Document is the call for states to strengthen internal laws regarding the regulation of PMSCs. The pessimist may view this as merely idealistic and unlikely to actually achieve results. However, such a position would fail to consider that the Montreux Document was created by a

¹⁵⁸ Baum and McGahan, *The reorganization of legitimate violence...*, 23. It should be noted these figures reflect all types of contracted personnel, not just PCASPs.

¹⁵⁹T.X Hammes, "Private Contractors in Conflict Zones: The Good, the Bad, and the Strategic Impact," *Strategic Forum* no. 260 (November 2010): 1, accessed 1 December 2015, http://psm.du.edu/media/documents/reports_and_stats/think_tanks/inss_hammes-private-contractors.pdf.

¹⁶⁰*Ibid.*, 3.

¹⁶¹Elke Krahmman, "The United States, PMSCs and the state monopoly on violence: Leading the way towards norm change," *Security Dialogue* 44, 1 (2013): 62.

¹⁶²Baum and McGahan, *The reorganization of legitimate violence...*, 24.

combined effort of the states for which the document is the intended audience. This commitment was reaffirmed in October 2015 during the 32nd International Conference of the Red Cross and Red Crescent when the agenda included a progress update on PMSCs.¹⁶³ The associated report indicates state signatories to the Montreux Document have increased from the 17 to 52. The report indicated that several signatory states had created domestic legislation and called on others to follow suit. This suggests a genuine desire for interested parties to see effective legislation enacted.

One area of particular progress in the advancement of regulation as a function of normative legitimacy is the creation of laws governing maritime security. A recent special edition of the journal *Ocean Development and International Law* was devoted to international variances in the regulation of armed maritime private security providers. The journal presented a variety of different state approaches to the establishment of legitimacy for PMSCs.

The variation in the following two examples is indicative of the flexibility inherent in the construction of legitimacy in the maritime context. First, a comparative study of Scandinavian countries indicates that Denmark, Sweden and Norway have all enacted legislation governing armed security on state-flagged vessels. The study suggests a degree of abdication of actual oversight and control by the state to shipping companies and PMSCs themselves.¹⁶⁴ In this instance, adherence to collaborative IMO/ISO initiatives such as ISO 280007-2015 forms the backbone of the Scandinavian legislation. Secondly, an accompanying piece in the journal compared the regulatory steps taken Germany and Spain in establishing governance over armed

¹⁶³The International Committee of the Red Cross. "International Humanitarian Law and the Challenges of Contemporary Armed Conflicts," *32nd International Conference of the Red Cross and Red Crescent* (Geneva, Switzerland, 8-10 December 2015), 2. Accessed 1 December 2015. <https://www.icrc.org/en/download/file/15061/32ic-report-on-ihl-and-challenges-of-armed-conflicts.pdf>

¹⁶⁴Joakim Berdtsson and Ase Gilje Ostenson, "The Scandinavian Approach to Private Maritime Security Expertise – A Regulatory Façade?" *Ocean Development & International Law* 46, no. 2 (2015): 146.

private maritime security. The findings of the comparative analysis revealed that Germany, through a deliberate development process, created a state centric regulatory architecture based on IMO guidelines.¹⁶⁵ In contrast, Spain leveraged existing 1992 regulations on private military and security companies and applied them to Spanish flagged vessels. This was done under the auspicious of UNCLOS regulations which affirm state laws apply on state-flagged vessels.¹⁶⁶

Of note, the 1992 Spanish legislation was enacted specifically to subordinate PMSCs to the public security apparatus. This was done with the deliberate intent of maintaining the state monopoly on the use of violence.¹⁶⁷ The argument being that by establishing regulation of the industry the state maintains control of its monopoly. This notion was echoed by Krahmman when she wrote “The belief that states are able to control the international use of force by private contractors through contracts and national regulations has contributed to the reinterpretation of the norm of the state monopoly on violence.”¹⁶⁸ The normative effect of regulation not only creates legitimacy, it reshapes the very notion of what monopoly on violence means.

Cognitive Legitimacy

The final form of legitimacy offered by Suchman is what he describes as cognitive legitimacy. For Suchman, this aspect of legitimacy creation rests on two factors: the degree to which the activities of the organization are comprehensible by the intended audience, and the degree to which those activities are taken-for-granted.¹⁶⁹ In assessing cognitive legitimacy in the private military and security context, valuable insight is gained by considering the ideological and normative factors involved.

¹⁶⁵Annina Burgin, and Patricia Schneider, “Regulation of Maritime Security in Germany and Spain: A Comparative Study,” *Ocean Development & International Law* 46, no. 2 (2015): 126.

¹⁶⁶*Ibid.*, 129.

¹⁶⁷*Ibid.*, 128.

¹⁶⁸Elke Krahmman, *The United States, PMSCs and the state monopoly on violence...*, 66.

¹⁶⁹Suchman, *Managing Legitimacy...*, 582-583.

From an ideological perspective, the evolving nature of state/civil relationships helps to explain why and how PMSCs function in relation to the state. In the tradition of Krahnmann's discourse on neoliberalism and the role of the PMSC in the legitimate free marketplace, Carlos Ortiz posits that a new form of civil/state relationship exists. He suggests that private actors are now forming a constituent part of the public services provided by the state, under the auspicious of improving efficiency of government.¹⁷⁰ Using a construct he refers to as new public management, Ortiz posits that the conceptual barrier has been breached between services provided by the state and those provided by the private sector on behalf of the state. He suggests this melange of private-public actors "...presupposes a more optimal alternative than exclusive public provision."¹⁷¹ For the PMSC, this imparts a certain level rationality to their inclusion as part of a states' repertoire of security options.

While Iraq and Afghanistan provide a multitude of examples of states opting to include PMSCs as part of their response package to security requirements, the prevalence of states rationalizing PMSC usage did not originate with these conflicts. A qualitative analysis conducted by Željko Branović sought to build what he termed a private security database. This database consolidated all available data from 1990 to 2007 on the use of PMSCs in failing or failed states.¹⁷² A key finding, of particular importance here, is that PMSC are consistently a component of state intervention in failed and failing states. The distinction between PMSCs operating autonomously and acting as a component of a state's efforts is critical. Branović's database analysis demonstrates in an empirical manner what Ortiz conceptualized as an evolving

¹⁷⁰Ortiz, Carlos, *Private Armed Forces and Global Security* (Santa Barbara CA: Praeger, 2010), 117.

¹⁷¹Ibid., 120.

¹⁷²Željko Branović, "The Privatization of Security in Failing States - A Quantitative Assessment," *Geneva Centre for the Democratic Control of Armed Forces (DCAF) Occasional Paper*, no. 24 (Geneva, April 2011): 2, accessed 1 December 2015, http://psm.du.edu/media/documents/reports_and_stats/think_tanks/dcaf_branovic_the_privatisation_of_security_in_failing_states.pdf.

state/civil interwoven relationship. In this light, the existence of PMSCs as an actor in the global security arena is easily understood as an integral part of legitimate actions of the state. This rationalization of PMSC use forms the core of attaining cognitive legitimacy.

Once rationalized as a predictable component of the international security apparatus, a degree of permanence is observed whereby the presence of a PMSC begins to be taken-for-granted. This phenomenon can be seen in the evolving position of the UN on PMSCs.¹⁷³ Pre-1990s the focus of the UN had been on mercenaries as defined by the ICRC through the Geneva Conventions. This changed significantly in the mid-1990s when UN Special Rapporteur Enrique Ballesteros introduced the term private military and security companies to the UN discourse and sought to link PMSCs conceptually with mercenary activity. Based on pressure from states in both the developed and developing world, Ballesteros modified his stance, but only slightly in 2000 by acknowledging that PMSCs operating as legally constituted businesses had a right to provide security services to prospective clients. A clear effort remained to consider the individuals the PMSC would likely employ as mercenaries.

This remained the trend at the UN until a new Special Rapporteur was named in 2004. Krahmman notes that the new Special Rapporteur, Shasitia Shameen, adopted a more pragmatic approach to PMSCs and began aligning the UN discourse with the evolving normative practices of states.¹⁷⁴ This fundamental change in how the UN views PMSCs was captured in the report from the 32nd International Conference of the Red Cross and Red Crescent, which mentions “discussions are taking place within the UN context on the possibility of elaborating an

¹⁷³Elke Krahmman, *From ‘Mercenaries’ to ‘Private military and security Contractors’ ...*, 356–362. Krahmman provides a comprehensive analysis to the changing UN norm in the work cited. The salient points of that analysis are summarized here.

¹⁷⁴*Ibid.*, 359.

international convention to regulate PMSCs.”¹⁷⁵ The implication here is that over the course of the last 25 years the UN position on PMSCs has evolved to the point where a clear distinction exists between the legitimacy of PMSCs and the illegitimacy of other private actors, such as mercenaries. Through this lens, the PMSC’s right to operate in the security realm is taken-for-granted as predicted by Suchman’s model. Consequently, the focus now is on how to adapt UN mechanisms to best serve this emergent reality. This cognitive shift contributes significantly to building organizational legitimacy.

Conclusion

In concluding this chapter on legitimacy it is important to keep in mind the cumulative effect of the Burk professionalism model. As Burk posits, legitimacy in the modern neoliberal context requires a persuasive argument largely centered in the language of the marketplace. Suchman’s model of organizational legitimacy effectively frames such a discourse. From a pragmatic perspective PMSCs gain legitimacy from the contractual agreement for services. This is achieved in terms of prevalence of use as well as transference of legitimacy. At the normative level, evidence suggests PMSC are overtly seeking to create and abide by regulatory mechanisms. Furthermore, states are also taking deliberate steps to establish laws for the good governance of PMSCs. At the cognitive level PMSCs can be understood as integral components of the modern civil-state security apparatus. This has led to PMSC usage being taken-for-grant as an enduring component of the options open to the state.

As it relates to competition with the military for selection by the state as a service provider, it is readily apparent that PMSCs exhibit characteristics emblematic of organizations

¹⁷⁵ICRC, *International humanitarian law and the challenges...*, 60. The report on International Humanitarian Law and the challenges of contemporary armed conflicts was prepared by the ICRC and released in October 2015 as a lead in to the 32nd International Conference of the Red Cross and Red Crescent which occurred 8-10 December 2015.

that are overtly seeking to build, shape, and improve their legitimacy. This type of overt, legitimacy seeking behaviour is wholly consistent with the socio-economic based conceptualization of professions residing in organizations.¹⁷⁶ This bottom up approach to the creation of legitimacy is complimented by the top down socio-political focus of the state in actively creating the conditions to support the legitimacy of the private military and security industry. In essence, the private military and security industry and the state have both demonstrated a vested interest in establishing PCASP as a legitimate component of the response options available to react to international security crisis.

¹⁷⁶Muzio and Kilpatrick, *Introduction: Professionals and organizations...*, 391.

CHAPTER 6 – CONCLUDING REMARKS

It is readily apparent that a considerable amount of academic rigour has already been applied to the study of the private military and security industry as an actor on the world stage. As presented throughout this research project the constituent parts of Burk's expertise, jurisdiction, and legitimacy model have been the underlying themes of numerous prior scholarly endeavours. This monograph has built on this existing body of research by bringing these varying, yet complementary, areas of academic debate together in a novel way. By conducting a comparative analysis which juxtaposes the private military and security industry as an emerging professional field with the military profession, a degree of convergence between the two professions emerges. In so doing, it becomes apparent that the private military and security industry is evolving into a professional field which will rival the military profession as the accustomed agency applying force on behalf of the state. This is particularly valid in those non-core warfighting regions of inherently governmental functions where the services to be provided involve the potential application of violence, and the state has latitude to select either the military or a PMSC to achieve the desired goals

This determination is grounded firmly in the analysis of how PMSCs have come to occupy such a prominent spot in the international security apparatus. This was achieved by first considering changing norms in the application of violence from the historical context of private actors as agents of the state. This leads to the realization that the predominant ideological stance of society at any given period drives changes in the normative understanding of the role of the state in providing security to the people. From this perspective, the modern neoliberal tendency to acquiesce certain aspects of state control to the marketplace provides a compelling explanation for why PMSC usage has gained agency since the end of the Cold War. At the same time, the

power of the anti-mercenary norm that emerged at the end of the 19th century persists. This interplay between ideology and norms explains the somewhat divisive nature of the PMSC debate.

In addressing the enduring character of the anti-mercenary norm this study took a sociological vice philosophical approach to analyzing the nature of the emergent private military and security professional field. In many instances philosophical approaches may be suitable theoretical frameworks for discussion, particularly in the context of altruistic motivations for service. In this instance, however difficulty arises in framing an objective discussion without first disassociating the anti-mercenary norm from the broader private military and security realm. For the purposes of this study, such debate was set aside to enable the focus of analysis to remain on the socio-economic and socio-political factors at play in establishing professional status. In terms of future research, a comparative analysis that explores the moral and ethical foundations of professions from a more Socratic based approach would serve as a valuable companion piece to this study. In addition, the sociological approach to analysing professions used here tends to focus on the upper echelons of both the military profession and private military and security industry. Additional research is also required to assess applicability in terms of the more holistic notion of the profession of arms.

As Burk suggested, changes in how professions are perceived by society create space for competing professions to infringe on the military's sphere of influence. His prediction holds true when his model is applied to the private military and security industry. By demonstrating comparable expertise and knowledge to the military professional, augmented by COBBES based expertise, the security professional's position as a competitor to the military profession begins to take shape. Furthermore, when the cumulative effect of relevant state and international laws,

conventions, and COBBES are considered, the possibility of jurisdiction becomes a tangible reality. When considering legitimacy it is clear that PMSCs exhibit characteristics emblematic of organizations that are overtly seeking to build, shape, and improve their legitimacy. This type of overt, legitimacy seeking behaviour is wholly consistent with the socio-economic based conceptualization of professions residing in organizations. In addition, states are actively creating the conditions to support the legitimacy of the private military and security industry. In effect, the bottom-up socio-economic approach of the private military and security industry is running in concert with the top-down socio-political efforts of states to establish the legitimacy of the industry.

Finally, the expertise, jurisdiction, and legitimacy model used here sheds light on the fact that PCASPs and the organizations which employ them should now be considered part of an emerging professional field. There are several implications of this determination. First, the private military and security industry should be re-cast as a constituent part of how state and non-state actors may choose to respond to global security crises. This rebranding of the industry would go a long way to disassociating PMSCs from the anti-mercenary norm. Furthermore, the emergence of a professional industry centred on PMSCs should not be construed as a direct threat to the state's monopoly on the use of violence. On the contrary, PMSCs represent another tool in the toolbox for states in addressing international security crises.

As a consequence, purveyors of armed private military and security services should not be considered a rival to the military profession in the pejorative sense. As the socio-economic theory of professions has shown, a degree of friction is expected. In this instance, friction is manifest in the overlapping regions of inherently state functions. It must be remembered that it is the state that decides on the desired option. To that end, the state is afforded a greater degree of

flexibility in response options by raising the level of professional expectations placed on the private military and security industry. This in turn strengthens the ability of the military to provide those unique services only it is suited to perform. By embracing this changing norm and taking ownership of the responsible development of the would-be profession the international community can shape the private military and security industry in a manner which will enable the industries maturation in a way advantageous to all stakeholders.

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