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THE RISKS AND BENEFITS FOR THE PROVISION OF INTELLIGENCE BY PRIVATE MILITARY COMPANIES: CONSIDERATIONS FOR THE CANADIAN ARMED FORCES DEFENCE INTELLIGENCE COMMUNITY

LCdr Steven Morris

JCSP 43 DL

Exercise Solo Flight

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Section 1 - Introduction

As a Canadian Armed Forces (CAF) Intelligence Officer for the past 12 years and having the privilege of working within various environments from the tactical to strategic levels, I have witnessed firsthand the growing demand for intelligence products and capabilities. This includes an insatiable desire for intelligence assessments and briefings in support of CAF planning efforts and operations, in addition to the requirement for emerging intelligence capabilities such as targeting, cyber, and technical advancements in geospatial, human, and signals intelligence. To date, the CAF has managed this demand utilizing a *rob Peter to pay Paul* approach as there has been limited growth in defence intelligence spending and personnel over the past 20 years. The aim of this paper is to examine the risks and benefits associated with the use of Private Military Companies (PMC), or independent for-profit corporations, for the provision of defence intelligence.

This will be accomplished by addressing the origins and prevalence for the use of PMCs by Western intelligence organizations since the late 1990s. Secondly, I will examine the risks associated with the employment of PMCs in intelligence roles including legal implications, the potential for disclosure of classified information and the individual motivations of private intelligence contractors. Benefits such as flexibility, responsiveness, technical acuity and expertise will also be explored. Upon conclusion, this paper will demonstrate that the use of PMCs within specific areas of the defence intelligence community can be cost effective and

advantageous in overcoming institutional barriers associated with budgetary limitations and force structure challenges. Based on the findings in this paper, I will also include recommendations that the Commander of the Canadian Forces Intelligence Command (Comd CFINTCOM), the CAF functional authority for defence intelligence, should consider with regard to specific areas of intelligence in which the use of the PMCs would be best served.

Section 2 – Origins and Prevalence of PMCs within Western Intelligence Communities

Prior to examining the risks and benefits associated with the use of PMCs in intelligence roles, an explanation of the origins and prevalence of private intelligence contractors will be explored. The use of private intelligence contractors for administrative and logistical purposes, and the maintenance of highly technical collection systems is not a new phenomenon.¹ However, the use of PMCs to perform core intelligence functions such as intelligence gathering and analysis has become increasingly prevalent within Western intelligence communities since the late 1990s.² The growth in the use of PMCs can be attributed to the downsizing of defence establishments at the end of the Cold War, the intelligence demands associated with combating terrorism and technological advancements in the fields of intelligence collection and processing.³ While Australia, Canada and the United Kingdom remain in the nascent stages of PMC engagement, the United States (US) Intelligence Community (IC)⁴ has witnessed a dramatic

¹ Morten Hansen, "Intelligence Contracting: On the Motivations, Interests, and Capabilities of Core Personnel Contractors in the US Intelligence Community," *Intelligence and National Security*, Volume 29, no. 1 (2014): 60-61.

² Armin Krishnan, "The Future of U.S. Intelligence," *Brown Journal of World Affairs* 28, no. 1 (Fall/Winter 2011), 177.

³ Dominick Donald. "Private Security Companies and Intelligence Provision," in *Private Military and Security Companies: Ethics, Policies and Civil-Military Relations* (London, UK: Routledge, 2008), 134-135.

⁴ The term Intelligence Community (IC) refers to 17 separate federal agencies and military organizations that conduct intelligence activities for the United States government. Led by the Director of National Intelligence,

increase during the past 30 years. This is due to the Clinton administration's *National Performance Review* which was implemented in 1994 to increase government efficiency by shifting to a more entrepreneurial-based construct.⁵ While the scope of intelligence outsourcing is difficult to assess due to the classified nature of the contracts, it is estimated that approximately 70 percent of the US IC's work or \$50 billion was outsourced to PMCs in 2006.⁶ The dramatic shift toward a greater reliance on outsourcing has resulted in PMCs being ingrained in every facet of the US intelligence enterprise; a relationship so integral that it is deemed irreversible.⁷ The outsourcing phenomenon is expected to expand internationally as many nations lack the resources or expertise to operate in a threat environment increasingly dominated by information technology and complex intelligence problems.⁸

To this end, if defence intelligence organizations are to successfully address the growing threat, they must fully comprehend the risks and benefits associated with the use of PMCs.

Section 3 – Risks Associated with the Use of PMCs for Core Intelligence Functions

As a relatively new phenomenon, the use of PMCs to conduct core intelligence functions is poorly understood as limited empirical research has been conducted to date.⁹ However, preliminary studies conducted in the US combined with existing findings associated with the use

the IC includes agencies such as the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and the five services of the United States Armed Forces.

⁵ Glenn J. Voeltz. "Managing the Private Spies: The Use of Commercial Augmentation for Intelligence Operations." *Centre for Strategic Intelligence Research*, Discussion Paper Number Fourteen (June 2006): 10.

⁶ "Spies for Hire: The Secret World of Intelligence Outsourcing." C-Span video, 12:01, posted by the "Institute for Policy Studies," 19 May 2008, <https://www.c-span.org/video/?205873-1/spies-hire>.

⁷ Dominick Donald. "Private Security Companies and Intelligence Provision," in *Private Military and Security Companies: Ethics, Policies and Civil-Military Relations* (London, UK: Routledge, 2008), 135.

⁸ *Ibid*, 138.

⁹ Morten Hansen, "Intelligence Contracting: On the Motivations, Interests, and Capabilities of Core Personnel Contractors in the US Intelligence Community," *Intelligence and National Security*, Volume 29, no. 1 (2014): 58.

of civilian contractors by government agencies has identified several legal and policy related risks. Firstly, international law, as defined in the Geneva Conventions and the Law of Armed Conflict (LOAC), clearly prohibits civilians from participating in direct or hostile activity that could cause harm to enemy armed forces or equipment.¹⁰ However, no legal precedent exists for addressing how certain intelligence functions directly or indirectly support combat operations or the targeting of adversaries. For example, the use of PMC contractors in core collection activities such as interrogation and agent or source handling tasks can provide actionable intelligence that directly supports combat operations. PMC personnel can be also used in analytical roles such as the provision of all-source analysis in support of the targeting process or the kinetic or non-kinetic engagement of an adversary.¹¹

To this end, no international legal protection currently exists for PMC contractors engaged in core intelligence functions that have the potential to support the direct or indirect engagement of an adversary.¹² In turn, PMC personnel operating in such mission essential roles would be defined as unlawful combatants under international law. Moreover, if the intelligence provided by PMCs results in collateral damage or inadvertent harm to civilian populations, private intelligence contractors could be liable for LOAC violations.¹³ Such was the case at the Abu Ghraib prison in Iraq in 2004 as PMC personnel assigned to interrogation tasks were involved in extensive human rights violations.¹⁴ To this end and given the inherent legal risks associated with use of PMCs in core intelligence functions, it is paramount that the roles,

¹⁰ Glenn J. Voeltz, "Contractors and Intelligence: "The Private Sector in the Intelligence Community." *International Journal of Intelligence and Counter-Intelligence*, Volume 22, Issue 4 (September 2009): 591.

¹¹ Armin Krishnan, "The Future of U.S. Intelligence," *Brown Journal of World Affairs* 28, no. 1 (Fall/Winter 2011): 184.

¹² Glenn J. Voeltz, "Contractors and Intelligence: "The Private Sector in the Intelligence Community." *International Journal of Intelligence and Counter-Intelligence*, Volume 22, Issue 4 (September 2009): 592.

¹³ *Ibid*, 593.

¹⁴ José L. Gómez del Prado, "Impact on Human Rights of a New Non-State Actor: Private Military and Security Companies." *Brown Journal of World Affairs* 18, no. 1 (Winter 2011): 156.

responsibilities and reporting mechanisms for private contractors be clearly defined in government contracts and supporting policy documents. Furthermore, governments must ensure that contractors are fully accountable for their actions through sound oversight mechanisms and managerial controls.¹⁵ To date, legal ambiguity and effective oversight and accountability practices have been the fundamental risk associated for the use of PMCs in core intelligence functions.¹⁶

Having addressed the legal risks associated with use of PMCs for core intelligence functions in addition to the necessity for sound government oversight and accountability, the threat associated with the disclosure of sensitive information will now be addressed.

Traditionally, espionage against Western intelligence communities has been conducted by foreign intelligence services (FIS) through the use of clandestine operations and undercover agents to acquire information and recruit informants.¹⁷ While such threats remain extant, FIS are now targeting the employees, and information and technological infrastructure of PMCs as a means of obtaining state secrets.¹⁸ Classified as industrial espionage, governments employing PMCs must ensure that such companies, many of them multinational with a plethora of subsidiary companies and extensive subcontracting practices, are properly vetted prior to contractual engagement.¹⁹ The leaking of classified government information and sensitive intelligence techniques by individual contractors is also a potential risk. For example, Edward

¹⁵ Glenn J. Voeltz, "Contractors and Intelligence: "The Private Sector in the Intelligence Community." *International Journal of Intelligence and Counter-Intelligence*, Volume 22, Issue 4 (September 2009): 587.

¹⁶ Armin Krishnan, "The Future of U.S. Intelligence," *Brown Journal of World Affairs* 28, no. 1 (Fall/Winter 2011): 185.

¹⁷ John Keegan, *Intelligence in War: Knowledge of the Enemy from Napoleon to Al-Qaeda*. (Toronto: Key Porter Books, 2003), 297-298.

¹⁸ Armin Krishnan, "The Future of U.S. Intelligence," *Brown Journal of World Affairs* 28, no. 1 (Fall/Winter 2011): 182.

¹⁹ Glenn J. Voeltz, "Contractors and Intelligence: "The Private Sector in the Intelligence Community." *International Journal of Intelligence and Counter-Intelligence*, Volume 22, Issue 4 (September 2009): 602.

Snowden, an intelligence contractor employed by the Central Intelligence Agency and National Security Agency, stole vast amounts of sensitive information and disclosed the information to the public in 2013.²⁰ Referred to as the *Snowden Phenomenon*, Mr. Snowden had no affiliation with any FIS nor profited financially from the disclosure as his motivation was to raise public awareness of government surveillance techniques and privacy issues.²¹ This non-traditional form of disclosure has been attributed to narcissistic behavior, disgruntlement, and a culture of non-restraint and egocentrism particularly predominant amongst younger generations.²² This form of disclosure is deemed more dangerous than traditional FIS leaks as a mass, public disclosure of sensitive information can cause more damage to national security than leaked information contained within a FIS.²³ In conclusion, both traditional and non-traditional risks associated with the disclosure of classified information are significant issues to be considered when employing private intelligence contractors.

A final potential risk associated with the use of private contracting of government intelligence is the motivation of the individual contractor. As Shorrock suggests in his book *Spies for Hire: The Secret World of Intelligence Outsourcing*, private intelligence contractors are primarily motivated by a desire to satisfy their employer or receive financial gain.²⁴ For example, a private contractor working as an all-source intelligence analyst may misrepresent findings or expedite a product in an effort to guarantee further employment or capitalize on an incentive based contract. However, Schaub and Franke conclude in their article, *Contractors as Military Professionals*, that the majority of government intelligence contractors are motivated by

²⁰ Terence J. Thompson, "A Psycho-Social Motivational Theory of Mass Leaking," *International Journal of Intelligence and Counter-Intelligence*, Volume 31, Issue 1 (Spring 2018): 118.

²¹ Ibid, 118.

²² Ibid, 117.

²³ Ibid, 124.

²⁴ "Spies for Hire: The Secret World of Intelligence Outsourcing." C-Span video, 27:35, posted by the "Institute for Policy Studies," 19 May 2008, <https://www.c-span.org/video/?205873-1/spies-hire>.

a desire to “face and meet new challenges” and “help others” vice financial gain.²⁵ Schaub and Franke’s conclusion is consistent with Hansen’s findings which fundamentally challenges the notion that intelligence contractors are motivated primarily by profit or corporate interests.²⁶ That said, there are risks that commercial interests may be prioritized within government intelligence assessments over the interests of the nation, specifically as many PMCs have financial interests in other countries or corporations.²⁷ In conclusion, in order to ensure that the motivation of intelligence contractors remain in the best interests of the state, governments must ensure sound oversight mechanisms and managerial controls are firmly established and thoroughly enforced.

Section 4 – Benefits Associated with the Use of PMCs for Core Intelligence Functions

While a number of risks associated with the use of PMCs in core intelligence functions exist, research within the intelligence discipline and existing findings associated with the use of civilian contractors by government agencies suggests that there are a comparable number of benefits. Firstly, PMCs offer intelligence communities flexibility that can be beneficial in surmounting structural and budgetary limitations or time constraints. For example, governments are able to hire and fire, or lease, private contractors in a more expedient manner than government employees subsequently avoiding slow budgetary or human resource processes.²⁸ Such flexibility also allows governments to acquire provisional intelligence capabilities in

²⁵ Gary Schaub Jr. and Volker Franke. “Contractors as Military Professionals?” *Parameters: US Army War College* 39.4 (2009): 102.

²⁶ Morten Hansen, Intelligence Contracting: On the Motivations, Interests, and Capabilities of Core Personnel Contractors in the US Intelligence Community.” *Intelligence and National Security*, Volume 29, no. 1 (2014): 59.

²⁷ Glenn J. Voeltz, “Contractors and Intelligence: “The Private Sector in the Intelligence Community.” *International Journal of Intelligence and Counter-Intelligence*, Volume 22, Issue 4 (September 2009): 593.

²⁸ Armin Krishnan, “The Future of U.S. Intelligence,” *Brown Journal of World Affairs* 28, no. 1 (Fall/Winter 2011): 178.

support of operational surges and times of war in addition to augmenting permanent staff when shortages of available intelligence professionals exist.²⁹ Secondly, the private sector offers increased responsiveness as they are traditionally more adept at responding to the ever-changing threat and security environment.³⁰ For example, many state and non-state actors are increasingly utilizing social media and the Internet to recruit, plan, and conduct operations or nefarious activity.³¹ Many western governments, including Canada, are susceptible to such threats as they are impeded by bureaucratic processes with respect to the development of new capabilities or the promulgation of policy and oversight mechanisms.³²

To this end, the exploitation of more adaptable market-based strategies that PMCs offer allow Western intelligence communities the flexibility and responsiveness to meet new threats and counter adversarial capabilities in a more efficient manner.

An additional benefit associated with the private contracting of government intelligence is technical acuity and expertise. Since the early 2000s, the private sector has in many instances surpassed western intelligence communities in the research, development and operation of advanced technical, information and communication technologies.³³ This includes advancements in the fields of analytical processing, remote sensing and Internet research and

²⁹ Morten Hansen, Intelligence Contracting: On the Motivations, Interests, and Capabilities of Core Personnel Contractors in the US Intelligence Community.” *Intelligence and National Security*, Volume 29, no. 1 (2014): 76.

³⁰ *Ibid*, 77.

³¹ Canada, Department of National Defence. *Strong, Secure, Engaged: Canada’s Defence Policy*. (Ottawa: Department of National Defence, 2017), 56.

³² Morten Hansen, Intelligence Contracting: On the Motivations, Interests, and Capabilities of Core Personnel Contractors in the US Intelligence Community.” *Intelligence and National Security*, Volume 29, no. 1 (2014): 76-77.

³³ Eric Rosenback and Aki J. Peritz. “Confrontation or Collaboration: The Role of Private Corporations in the Intelligence Community.” Belfer Center for Science and International Affairs, Harvard Kennedy School (July 2009), 2.

database management.³⁴ In fact, Voeltz argues in his discussion paper, *Managing the Private Spies: The Use of Commercial Augmentation for Intelligence Operations*, that in many cases government organizations will likely never reclaim a monopoly in the use of highly technical intelligence capabilities.³⁵ He further suggests that the use of PMCs for such highly technical tasks will likely be the sole option for governments if they wish to maintain an intelligence advantage over many adversaries.³⁶ The private sector is also particularly adept at providing unique skill sets to confront the ever-increasing complexity and variety of intelligence subjects in the 21st century.³⁷ For example, intelligence problem sets now include non-traditional chemical, biological and nuclear delivery systems, biotechnology, human geography, cyber, social media, and the threat imposed by a growing number of non-state adversaries.³⁸ Many of the aforementioned intelligence problems require unique skill sets, advanced degrees or innovative analytical approaches that many government intelligence analysts do not possess. In summary, given the analytical demands and highly specialized nature of adversarial threats in the 21st century, the technical strengths and professional expertise that PMCs can provide is of significant benefit to western intelligence communities.

A final potential benefit associated with the use of PMCs in intelligence roles that needs to be addressed is overall cost efficiency. Cost efficiency for the use of intelligence contractors has been difficult to assess due to a lack of clear accounting in the US and the fact that simple

³⁴ Armin Krishnan, "The Future of U.S. Intelligence," *Brown Journal of World Affairs* 28, no. 1 (Fall/Winter 2011): 179-185.

³⁵ Glen J. Voeltz. "Managing the Private Spies: The Use of Commercial Augmentation for Intelligence Operations." *Centre for Strategic Intelligence Research*, Discussion Paper Number Fourteen (June 2006): 20.

³⁶ *Ibid*, 20.

³⁷ Morten Hansen, "Intelligence Contracting: On the Motivations, Interests, and Capabilities of Core Personnel Contractors in the US Intelligence Community." *Intelligence and National Security*, Volume 29, no. 1 (2014): 76-77.

³⁸ *Ibid*, 77-76.

cost comparisons are not accurate reflections of overall value.³⁹ With respect to the latter, many intelligence contractors fulfill specialized capabilities that some governments do not possess due to budgetary or force structure limitations.⁴⁰ This can include translators, cultural advisors and the development, operation and maintenance of information technology or space-based collection systems. In such cases, it is more cost effective for governments to hire private contractors than to build and maintain such unique intelligence capabilities; many of which are required for temporary use such as surge support to operations.⁴¹ With respect to salaries, private contractors do traditionally earn higher pay than government employees.⁴² However, governments do not have to pay the cost of pensions, health care, training and other benefits associated with government employees.⁴³ While it has been implied that intelligence contracting is uneconomical, research has indicated that the cost of using PMCs within specific intelligence functions can be a cost-effective endeavour.⁴⁴ However, this is dependent on the specific service or capability being provided, the duration and magnitude of the contract, and assurance that the hiring government is exercising sound contractor oversight and controls in an effort to avoid cost and time overruns.⁴⁵

³⁹ Glenn J. Voeltz, "Contractors and Intelligence: "The Private Sector in the Intelligence Community." *International Journal of Intelligence and Counter-Intelligence*, Volume 22, Issue 4 (September 2009): 604.

⁴⁰ Armin Krishnan, "The Future of U.S. Intelligence," *Brown Journal of World Affairs* 28, no. 1 (Fall/Winter 2011): 188.

⁴¹ Andrew Alexandra, Deane-Peter Baker and Marina Caparini, *Private Military and Security Companies: Ethics, Policies and Civil-Military Relations*, (London, UK: Routledge, 2008), 133-134.

⁴² Spies for Hire: The Secret World of Intelligence Outsourcing." C-Span video, 1:03:00, posted by the "Institute for Policy Studies," 19 May 2008, <https://www.c-span.org/video/?205873-1/spies-hire>.

⁴³ Glenn J. Voeltz, "Contractors and Intelligence: "The Private Sector in the Intelligence Community." *International Journal of Intelligence and Counter-Intelligence*, Volume 22, Issue 4 (September 2009): 604.

⁴⁴ *Ibid*, 605.

⁴⁵ Morten Hansen, Intelligence Contracting: On the Motivations, Interests, and Capabilities of Core Personnel Contractors in the US Intelligence Community." *Intelligence and National Security*, Volume 29, no. 1 (2014): 59.

Section 5 – Conclusion

The provision of intelligence by government agencies and military organizations in the 21st century is a complex endeavour as the threat environment is continually growing in complexity. As many Western intelligence communities struggle to modernize due to cultural, budgetary or force structure challenges, the use of PMCs is becoming an increasingly viable option. If the Comd CFINTCOM is to ensure that his organization continues to provide timely, accurate, and relevant intelligence to CAF commanders and Department of National Defence decision makers, the use of PMCs should be considered.

However, the Commander should be fully cognizant of the legal implications and risk of disclosure in addition to the potential challenges associated with the motivational behavior of individual contractors. Such risks must be balanced against the benefits that PMCs can offer such as flexibility, responsiveness, technical acuity and expertise. Given the aforementioned risks and benefits, it is advised that PMCs be employed in low-risk, non-core intelligence functions such as training, database management, policy development and open-source exploitation. Such augmentation will free-up intelligence officers, operators and defence intelligence personnel to focus on the more high risk, core functions such as intelligence collection and analysis. In order to ensure cost efficiency, the implementation of accountability, oversight and managerial controls are paramount if the CAF defence intelligence community is to maximize the private sector.

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