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## PRIVATE SECURITY PROVIDERS: OUTSOURCING RISK OR UNDERMINING DEFENCE

Maj I.C. Plummer

**JCSP 43**

***Exercise Solo Flight***

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EXERCISE *SOLO FLIGHT* – EXERCICE *SOLO FLIGHT*

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## PRIVATE SECURITY PROVIDERS: OUTSOURCING RISK OR UNDERMINING DEFENCE

### Introduction

Private security providers are pervasive in the current operating environments within which national militaries, including the Canadian military operate as well as with international organizations like the United Nations.<sup>1</sup> There are many examples of people and groups being paid for security or security related support services throughout history. This was clearly the case during the formation of the current state system.<sup>2</sup> While they use of contracted services is not new, there is a marked increase in the private security industry over the past sixty years.<sup>3</sup> This has accelerated quickly in the post-Cold War world which saw an increase from an estimated \$55.6 billion to over \$100 billion between 1990 and 2003.<sup>4</sup> There is a corresponding increase in the use of contractors in operational theatres as can be seen in the changes from Gulf War I to Bosnia and finally to Iraq where the ratio of contractors to military personnel steadily increased from 1:58 to 1:15 and finally 1:6.<sup>5</sup> With the downsizing of military forces in the 1990s, there were large numbers, perhaps millions, of former military personnel from which to feed this increase in the private security industry<sup>6</sup>. Canada was not immune to this trend. Canada's initial deployment to Kabul in 2003 saw the use of 400 contractors which were critical to ensure the government's deadline was met.<sup>7</sup> The Canadian Task Force Commander to Kandahar said in 2008 that "many security aspects, that are performed by

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<sup>1</sup> Ase Gileje Ostensen, "In the Business of Peace: The Political Influence of Private Military and Security Companies on UN Peacekeeping." *International Peacekeeping* Vol 20 No 1 (February 2013) 33.

<sup>2</sup> Rita Abrahamsen and Anna Leander, *Routledge Handbook of Private Security Studies* (London: Routledge, 2016), 15.

<sup>3</sup> Adam White, *The Politics of Private Security* (New York: Palgrave Macmillan, 2010), 3.

<sup>4</sup> Deborah Avant, *The Market for Force* (Cambridge: Cambridge University Press, 2005), 8.

<sup>5</sup> David Isenberg, *Shadow Force* (London: Praeger Security International, 2009), 15.

<sup>6</sup> *Ibid*, 1.

<sup>7</sup> David Perry, "The Privatization of the Canadian Military," *International Journal* (Summer 2009): 701.

private security firms which, if they were turned over to the military, would make our task impossible. We just don't have the numbers to do everything.”<sup>8</sup> Private security firms clearly have a place in modern military operations and western militaries are becoming increasingly reliant on them to do business.

There are a variety of terms used to define these companies such as commercial companies providing military services<sup>9</sup>, private military and security companies (PMSC)<sup>10</sup>, mercenary organizations<sup>11</sup>, and private security providers<sup>12</sup> among others. The privatization and commercialization of security related functions and their support have created a diverse number and type of companies. These companies deliver both policing and military services including armed operational support, unarmed operational support, military advice and training, logistical support, armed and unarmed site security, police advice and training, crime prevention and intelligence.<sup>13</sup> In the Canadian context, in Afghanistan this has been described as four elements including logistics and support personnel, equipment, training and defensive security.<sup>14</sup> This paper does not seek to clarify the terms used for the companies which could be contracted by the Canadian military in operations but generally will use the latter defined services as the basis for discussion within the larger context of contracted security services. In order to examine the challenges of continued and potentially increasing use of PMSC in support of

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<sup>8</sup> Ibid.

<sup>9</sup> Marcus Mohlin, *The Strategic Use of Military Contractors* (Helsinki: National Defence University, 2012), 5.

<sup>10</sup> Andrew Alexandra, Deane-Peter Baker and Marina Caparini, *Private Military and Security Companies* (London: Routledge, 2008), 1.

<sup>11</sup> Ibid, 3.

<sup>12</sup> Deborah Avant, *The Market for Force ...*, 8.

<sup>13</sup> Ibid, 17.

<sup>14</sup> Christopher Spearin, “Canada and contracted war: Afghanistan and Beyond” *International Journal* 69 no. 4 (2014): 525.

Canadian military operations three dimensions are discussed, these include the financial, ethical and political aspects of their use.

Canadian Defence Spending is currently at approximately one percent of Gross Domestic Product (GDP) which puts it at half of its stated commitment to NATO.<sup>15</sup> The current liberal government has also recently announced the postponement of approximately \$8.4 billion in procurement which is to be used sometime in the next 20 years.<sup>16</sup> The Prime Minister and the Chief of Defence Staff (CDS) have both pushed back on the view that Canada is not living up to its obligations as part of the NATO alliance<sup>17</sup> and concerning the cutbacks.<sup>18</sup> Currently, the Canadian Armed Forces (CAF) is deployed on five major overseas operations in the Ukraine, Middle East, Central and Eastern Europe and in the Caribbean and Eastern Pacific.<sup>19</sup> In addition to these operations, the CAF conducts operations domestically, such as Search and Rescue, as well as regular training. The Prime Minister also announced an upcoming mission to Mali in a peacekeeping capacity which has since been delayed.<sup>20</sup> It is clear that the Canadian military is busy with international operations and the tempo will likely increase. The financial resources to do so are constrained for the foreseeable future which makes it necessary to use those dollars which are available in the most practical manner.

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<sup>15</sup> Lee Berthiaume, "Canada's Defence Spending among Lowest in NATO despite Increase Last Year," *Globe and Mail*, 13 March 2017.

<sup>16</sup> Murray Brewster, "Billions in defence equipment purchases postponed until 2030s in Liberal budge," *CBC News*, 22 March 2017.

<sup>17</sup> Monique Scotti, "Federal Budget 2017: Lack of Defence Spending Draws Fire," *Global News*, 23 March 2017.

<sup>18</sup> Lee Berthiaume, "Canada's top general says military not hurting for money, defends spending delay," *CBC News*, 30 March 2017.

<sup>19</sup> National Defence and the Canadian Armed Forces, "Operations," last accessed 1 May 2017, <http://www.forces.gc.ca/en/operations/update.page>

<sup>20</sup> Bruce Champion-Smith, "Prime Minister Justin Trudeau defends Canada's delayed peace deployment," *The Star*, 2 March 2017.

The Canadian military has to be accountable in a variety of ways including ethically or as the Governor General once stated the centre of gravity for the profession of arms in Canada is duty with honour.<sup>21</sup> The current Canadian military leadership was serving during the so called “decade of darkness”<sup>22</sup> when the military was not only downsized but lost its legitimacy, in terms of self-governance<sup>23</sup>, post Somalia affair. This was the first occurrence of a Canadian unit being disbanded in disgrace. Much has occurred since then, including the military response to the Manitoba floods and the ice storms of Eastern Ontario and Quebec, which did much to repair the reputation of the military<sup>24</sup>. The current military leadership is well aware of the importance of trust between the government, the military and the people of Canada. The current CDS is focused on Operation Honour, which in many ways deals with ensuring an ethical environment in the CAF and is an example of the importance placed on this.<sup>25</sup> The use of military contractors by the Canadian Armed Forces must be considered with this in mind. Inappropriate actions by contractors of the Canadian military could very well affect the government and or public perception of the organization.

Successive Canadian Governments have laid out their plans for the military whether as the Canadian First Defence Strategy<sup>26</sup> or the Liberal election plan for real

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<sup>21</sup> Government of Canada, “News,” last accessed 2 May 2017, <https://www.canada.ca/en/news/archive/2012/10/general-tom-lawson-appointed-canada-new-chief-defence-staff.html?=&wbdisable=false>

<sup>22</sup> Gloria Galloway, “Hillier decries military’s decade of darkness,” *Globe and Mail*, 16 February 2007.

<sup>23</sup> Robert Smol, “Lament for the Canadian Airborne,” *CBC News*, 3 March 2010.

<sup>24</sup> Micheal Valpy, “Canada’s military invisible no more,” *Globe and Mail*, 23 August 2012.

<sup>25</sup> CBC News, “Gen. Jonathan Vance says sexual harassment 'stops now' Canadian military's new top commander initiates 'Operation Honour' to end sexual misconduct,” *CBC News*, 23 July 2015. and *The Star*, “Positive results on combatting sexual misconduct in military: Vance,” last accessed 1 May 2017, <https://www.thestar.com/news/2017/04/28/positive-results-on-combatting-sexual-misconduct-in-military-vance.html>

<sup>26</sup> National Defence and the Canadian Armed Forces, “Canada’s First Defence Strategy,” last accessed 2 May 2017, <http://www.forces.gc.ca/en/about/canada-first-defence-strategy.page>.

change.<sup>27</sup> In both cases investments are announced for further spending and increased operational tempo. There clearly exists a desire to use the military as a political lever internationally. There has also been a consistent change in the budget allocation to the defence department which demonstrates its size as part of the greater federal budget and the ease with which it can be modified by the government of the day. The Canadian military will likely continue to deploy on operations with the same or diminishing resources. Political pressure will be exerted to ensure this is the case. Western governments, including Canada, have a desire for reducing risk while still receiving the benefit of action on the international stage. This has led to the increased use of Special Forces and air forces which can operate more discreetly or with greater standoff from threats. After a decade in Afghanistan, Canada suffered 158 military deaths<sup>28</sup> which are politically dissatisfying. The current emphasis is for discreet operations, minimal casualties, and low cost while maintaining the benefit of being a contributor to international peace and security. The Canadian military must be able to adapt to the challenge of supporting the government tasked missions with a strained budget and a low tolerance for risk.

It is clear that the Canadian military cannot conduct and sustain international operations currently without contracted support. This type of organisation is here to stay. In order to provide a fulsome examination of the challenges regarding employment of private security companies this paper will review the financial, ethic and political challenges for the Canadian Armed Forces as they relate to private security. The current

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<sup>27</sup> Liberal Party of Canada, "New Plan for Change," last accessed 2 May 2017, <https://www.liberal.ca/wp-content/uploads/2015/10/New-plan-for-a-strong-middle-class.pdf>

<sup>28</sup> CBC News, "Canada's casualties in Afghanistan Faces of the fallen military personnel killed in the line of duty," *CBC News*, May 2014.

literature, much of it based on the US experience, provides examples which will serve to inform Canadian military leadership on these issues. In an era of constrained defence funding there will likely be a push towards increased reliance on private security companies however they are unlikely to provide a panacea. Increased use of private security companies, with their potential cost saving benefit, must be balanced with the potential ethical and political risks they bring. This paper will seek to reconcile these questions within the Canadian context.

### **Financial considerations**

Increased reliance on private military contractors is born out of a lack of military capacity. These functions were formally conducted by militaries such that the cost savings of not having large standing armies has been transferred to the private sector. There will inevitably be a balance point regarding the relationship between national armies and the private sector. This balance will likely vary between nations however both of these points are outside the scope of the discussion here. It is clear that standing armies are expensive and their maintenance is difficult to justify when they are not being used or there is no discernable threat. This was the case in the post-cold war world and the majority of western countries sought a peace dividend by reducing their militaries. In the Canadian context many bases were closed and the regular forces reduced by 32 percent from 88 800 personnel to 60 thousand.<sup>29</sup> An entire Brigade was withdrawn from Germany and corresponding cuts were made to the other elements. To put this in context the current size of the Canadian army, which is the largest element, is 23 000 regular members which is less than the total cuts in the 1990s of 28 800. This also corresponds

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<sup>29</sup> Department of National Defence, Chief of Review Services Audit of Force Reduction Program, (Ottawa: Director General Audit, 1997).



to a drop in spending from close to 2% GDP to the approximately 1% currently.<sup>30</sup> The decline in spending on defence allowed the government to reduce the deficit among other things which was of great benefit to Canada, as a whole. The United States Defense Science Board Report of 1995 suggested that the Pentagon could save up to 12 billion dollars annually if it was to contract logistical support services with the exception of warfighting.<sup>31</sup> There are clearly some cost savings to be had with the contracting of some services and the reduction of a large standing army.

There will be fluctuations in the use of military force based on the operation environment. This is most dramatic during periods of conflict but can also be seen during other types of missions and large scale exercises. In the US for example during the US Army's Task Force XXI Army Warfare Experiment in 1997 1,200 contractors were hired from forty eight different vendors.<sup>32</sup> A similar effect occurred during the Iraq war in 2003 where private security firms provided operational support for a variety of aircraft, tanks, helicopters and ships.<sup>33</sup> The Canadian Army follows a similar variation of higher demand exercise periods with its force generation cycle, culminating in a large scale exercise. It is during these periods of high intensity that more resources and contractors are required. During periods of lower level training the army relies on less contracted support which in turn reduces overall cost.

The increased reliance on contracted services has other unintended financial effects. Military members with specialized training such as intelligence operators and

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<sup>30</sup> Paris, Canadian Defence Spending is less than half of NATO target", Centre for International Policy Studies (blog), 24 September 2015, <http://www.cips-cepi.ca/2015/09/24/canadian-defence-spending-is-less-than-half-of-nato-target/>

<sup>31</sup> David Isenberg, *Shadow Force ...*, 2.

<sup>32</sup> Deborah Avant, *The Market for Force...*, 19.

<sup>33</sup> *Ibid.*

special operations forces personnel are often lured away from the military to the private domain for financial gain. The war in Iraq saw a high demand for specialist intelligence personnel which resulted in an intense competition between the military, CIA and private security contractors.<sup>34</sup> In most cases it is the military which takes the burden of training these individuals, often over many years. There is a hidden cost here borne by the military which is difficult to measure. The loss of Special Forces personnel to higher wages in private industry has resulted in an increase in incentive packages for them to remain serving in the public domain. The United States approved one such package in 2005 for those members who chose to remain in the service.<sup>35</sup> Canada followed suit with additional bonuses for its Special Forces which include, for the highest level operators, land duty allowance for being in a deployable unit, special operations allowance for being in a Special Forces unit and special operations assaulter allowance for the specific specialty. The combination of these allowances nearly doubles the base pay of junior members with this amount steadily increasing the longer the member serves.<sup>36</sup> The increase in the use of private military companies has created a competition for human resources between the military which spends years training specialists, at great cost, which are then targeted for recruitment by the private firms.

One aspect of the push towards the use of private military contractors is the idea that the free market will encourage competition and the military will reap the cost benefits. While this may appear logical on the surface it is not clear that this is the case

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<sup>34</sup> David Isenberg, *Shadow Force...*, 24.

<sup>35</sup> *Ibid*, 27.

<sup>36</sup> National Defence and the Canadian Armed Forces, "Chapter 205 Allowances for Officers and Non-Commissioned Members," last accessed 3 May 2017, <http://www.forces.gc.ca/en/about-policies-standards-benefits/ch-205-officer-ncm-allowance-rates.page> and National Defence and the Canadian Armed Forces "Regular force NCM and Class C Pay Rates," last accessed 3 May 2017, <http://www.forces.gc.ca/en/caf-community-pay/reg-force-ncm-class-c-rates.page>

in reality. There is still academic review required which at least one private contractor identified to a US House Overview and Government Report Committee in 2007.<sup>37</sup> In addition there is evidence that military contracts are not open for competition as one would expect. One American officer noted that over a five year period 40% of military contracts were given out to sole source bidders.<sup>38</sup> This may be due to the specialized nature of the services required and the inherent cost of developing and maintaining those services or perhaps the ability for certain companies to respond to an immediate need. Regardless of the reason, the benefits of a free market have been subverted and the military is not likely receiving the cost savings desired. One last negative financial aspect to the discussion is connected to the aspect of oversight. In the United States multiple investigations into contract management in Iraq revealed billions of dollars lost due to overbilling, waste or fraud.<sup>39</sup> In response, the US Department of Defense created contracting commands as well as other measures.<sup>40</sup> Canada has completed similar if less extensive audits which have revealed similar mismanagement.<sup>41</sup> What is not clear is if the Canadian military with its current fragility has enough capacity to maintain proper oversight of these contracts which could suddenly increase dramatically with an increase in operational tempo.

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<sup>37</sup> David Isenberg, *Shadow Force...*, 21.

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

<sup>39</sup> David Perry, "The Privatization of the Canadian Military...", 699.

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

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

## **Ethical considerations**

Credibility has been identified as a key component of leadership in the Canadian Military and the greater department.<sup>42</sup> In recent years the CAF has been quick to react when the integrity of the organization is put at risk. In many instances senior officers<sup>43</sup>, commanders<sup>44</sup> and commanding officers<sup>45</sup> have been removed. In one case the officer was removed without much initial explanation. In another case the officer was removed due to dishonesty and an illicit relationship in theatre, while in the last case amid allegations of improper relationships with minors there was not enough evidence for a trial and the member is now suing the government. These cases demonstrate the need for the military to have credible leaders and when the credibility comes into question, removal of the officer is initiated immediately with details to be worked out later. Similarly the current CDS, General Vance, took action immediately upon assumption of his duties to address sexual misconduct in the military.<sup>46</sup> Part of his emphasis was in no doubt influenced by his predecessor who had ended his time as CDS with an awkward interview on the subject with CBC.<sup>47</sup> The integrity of the Canadian Armed Forces is critical for its success and must be considered in all aspects of its operations<sup>48</sup>. The ethical use of contracted services is as important to operational effectiveness as the services they provide.

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<sup>42</sup> Vanguard Defence Security Technology, "Credibility A Leaders Centre of Gravity," last accessed 6 May 2017, <http://www.vanguardcanada.com/2009/08/01/credibility-leaders-centre-gravity/>

<sup>43</sup> David Pugliese, "Why a Trial for Vice-Admiral Mark Norman could prove embarrassing to the Liberal," *National Post*, 27 April 2017.

<sup>44</sup> Sidhartha Banerjee, "Brig-Gen Daniel Menard Pleads Guilty to having Affair," *Huff Post Canada*, 21 July 2011.

<sup>45</sup> CTV staff, "Military officer taking legal action against DND over sex assault," *ctvnews*, 5 May 2017.

<sup>46</sup> National Defence and the Canadian Armed Forces, "CDS Op Order Operation Honour," last accessed 6 May 2017, <http://www.forces.gc.ca/en/caf-community-support-services/cds-operation-order-op-honour.page>

<sup>47</sup> CBC news, "Military Sexual Misconduct due to biological wiring Gen Tom Lawson tells CBC news," *CBC*, last accessed 6 May 2017.

<sup>48</sup> Canada, *CFJP 01 Canadian Force Doctrine* (Ottawa: Joint Doctrine Branch, 2009), 4-4.

Ethical concerns about the use of PMSC are principally based around transparency and accountability. Part of this is based simply on their status as private companies when contrasted with national military which are essentially public servants. National militaries are subject to international treaties and laws which regulate their behavior. The 1977 Protocol 1 to the Geneva Convention puts forth six criteria which must be met for a combatant to be considered a mercenary.<sup>49</sup> These regulations are easily bypassed as can be seen with the second criteria for determining if a person is a mercenary. It states that a mercenary is someone that “does in fact take a direct part in the hostilities.”<sup>50</sup> One has only to take a look at Canada’s use of Unmanned Aerial Vehicles (UAV). The first deployed UAVs were to Kabul in 2003 which had some contractors deployed as technical advisors due to the short timelines associated with its purchase. Further expansion of this capability in 2005 was hindered in part due to “legal and liability worries concerning contractor employment on the battlefield.”<sup>51</sup> By 2008 the Canadian Armed Forces was more comfortable with their use in Afghanistan with the restriction that civilian contractors would handle take offs and landings while military personnel would operate the UAVs during flight.<sup>52</sup> Canada did not employ weaponized UAVs so the use of these aircraft in this manner could never have been an issue however they certainly were used to cue other assets such as the afore mentioned weaponized UAVs, other aircraft and artillery onto targets. The civilian contractor in this case was as close as possible to the targeting process against an enemy target. This example also highlights the sliding line of ethical employment of civilian contractors.

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<sup>49</sup> David Isenberg, *Shadow Force ...*, 6-7.

<sup>50</sup> International Committee of the Red Cross, “Treaties, State Parties and Commentaries,” last modified 6 May 2017, <https://ihl-databases.icrc.org/ihl/WebART/470-750057>

<sup>51</sup> Christopher Spearin, “Canada and contracted war...”, 529.

<sup>52</sup> *Ibid*, 529.

Another example is one where private security companies provided armed dog handlers who operated with Canadian Engineers as well as perimeter security forces for Forward Operating Bases.<sup>53</sup> In theory these contractors were used for defensive operations which enabled military forces to conduct offensive operations. According to Canadian joint doctrine, the Land component may conduct offensive, defensive and transitional operations in a short period of time<sup>54</sup> and does not separate these activities in terms of warfighting and non-warfighting activities. The division of labor between these two activities can be regarded in some ways as semantics and clearly has implications regarding whether the private contractors are involved in hostilities. Canadians may have been involved in combat but this was conducted under the purview of a greater stability operation as opposed to war which also blurs accountability.

The private security company, Blackwater, gained a notable reputation due to their performance in Iraq particularly after the deaths of four of their employees in 2004. This incident not only led to the first battle for Fallujah but the issue of lack of oversight of contractors. Another company Aegis would win the bid for the contract to provide the coordination for all contractors in Iraq. DynCorps International, another PMSC who was bidding, protested when they lost the bid with an allegedly \$80 million less cost.<sup>55</sup> Tim Spicer, a founder of Aegis, was allegedly able to exert influence with a former British colleague, Brigadier General Tony Hunter-Choat, who was the head of security for the Coalition Provisional Authority's Program Management Office which set the terms of the contract.<sup>56</sup> This highlights some additionally issues concerning transparency with

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<sup>53</sup> Ibid, 533.

<sup>54</sup> Canada, *CFJP 3.0 Operation* (Ottawa: Joint Doctrine Branch, 2010), 1-5.

<sup>55</sup> Robert Baer, "Iraq's Mercenary King," *Vanity Fair*, 6 March 2007.

<sup>56</sup> Ibid.

contracts. According to one newspaper report the competition for contracts between PMSCs, which should assist in cost savings, was declining from 2000 to 2005.<sup>57</sup> The cause for this decline was not based on professional skill or service delivery but rather on their ability to lobby for government contracts including millions in political campaign contributions.<sup>58</sup> Canada is not immune from political maneuvering by companies bidding for military contracts as evidenced by the current shipbuilding issues.<sup>59</sup> The US example demonstrates how civilian competition is brought closer to the fighting edge of operations rather than at the procurement end.

Oversight of private military contractors is also an issue which reached a critical point during the Iraq war. In one case Andrew Moonen, a Blackwater employee, shot and killed an Iraqi bodyguard while drunk.<sup>60</sup> He was fired by Blackwater and returned to the US only to be hired by another PMSC. The State Department and Blackwater wanted to keep the incident quiet so the new company, Combat Support Associates, was unaware of the incident.<sup>61</sup> The US Government argued later that US Combatant commanders could authorize PMSC to carry weapons in Iraq but that they were not subject to either military or US government prosecution.<sup>62</sup> Since Iraq was not a declared war, by Congress, the military justice system did not apply to military contractors by the letter of the law. Efforts were eventually made to close these loopholes which happened in this case by changing the wording from war to declared war or a contingency operation. The Canadian Armed Forces must remain aware of these issues, regardless of government

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<sup>57</sup> David Isenberg, *Shadow Force...*, 20.

<sup>58</sup> Ibid.

<sup>59</sup> Daniel Leblanc, Robert Fife and Steven Chase, "Vice Admiral Normans e-mail spoke of blatant politics of supply ship contract," *Globe and Mail*, 6 April 2017.

<sup>60</sup> David Isenberg, *Shadow Force...*, 140.

<sup>61</sup> Ibid, 141.

<sup>62</sup> Ibid, 147.

efforts, as indifferent oversight may result in negative results for military operations. Strong oversight and at a minimum an identification of risks to government regarding use of PMSCs is required to ensure the credibility of the Canadian Armed Forces on operations.

### **Political considerations**

The Canadian military is unable to operate without contracted services, particularly so in a theatre of operations. Consideration to their use is more based on which services to focus on and which to retain in the public sector. Generally speaking the Canadian military has sought to retain the “tooth” which is capable of offensive operations at the expense of the logistical “tail”. The use of PMSC in the Canadian context, are more likely to be aligned with the capability gaps. This does not mean that there are not benefits and risks associated with using contracted services. PMSC can certainly augment the military and there are some perceived benefits such as the outsourcing of risks and public scrutiny. Some have argued that PMSC may be the preferred option for UN operations as an example.<sup>63</sup> The political aspects will be limited to the issue of transparency, the effects of the competing demands of private companies and the public view of mission success and regulation.

Private security companies will always have a degree of misalignment with the government aims and public good. Many employees of PMSC are former military members who no doubt maintain an ethos acquired during their years of service. Ex-special forces leaders and operators are specifically chosen for their credibility. These include retired officers such as General Peter Schoomaker and Admiral Eric Olsen, who

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<sup>63</sup> Deane-Peter Baker & James Pattison, “The Principled Case for Employing Private Military and Security Companies in Interventions for Human Rights Purposes” *Journal of Applied Philosophy* 29 no. 1 (2012): 5-14.



were both USSOCOM commanders, and the former head of the SAS Brigadier Aldwin Wight.<sup>64</sup> The likely gains for these companies include recruitment of operators and potential access to former colleagues through established relationships and networks. It is likely that after lengthy careers in the service, former military members would retain much of the national military ethos. There are of course now competing demands as they are now providing a service for money and inevitably become disconnected with their former military as it continues to evolve. One instance of this change in mindset concerns executing the mission. The UN is one organization which hires PMSCs to provide close security protection for senior leaders who can heavily influence the security around these people. As the security personnel are contracted for the security of the person as opposed to supporting the larger UN mission they may be put into conflict with the larger objective. The term “bunkerization” is used to explain this.<sup>65</sup> Another academic describes the issue as “firms may have derived some of their skillsets from the state, but one cannot assume that they in all cases are still serving state endeavors to the letter.”<sup>66</sup> PMSC often provide a variety of services which can also create conflict of interest situations and affect the viewpoint of the mission. In 2004 the UN hired Control Risks Group which was responsible for providing security assessments.<sup>67</sup> As a result of the military background of the employees they produced a much more militarized conception of what was the traditional norm of the UN operations.<sup>68</sup> In another instance in Liberia another company DynCorp was able to, due to manning shortfalls with the US

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<sup>64</sup> Christopher Spearin, “Special Operations Forces & Private Security Companies” *Parameters* 44 no. 2 (Summer 2014): 66.

<sup>65</sup> Ase Gilje Ostensen, “In The Business of Peace...”, 41.

<sup>66</sup> Christopher Spearin, “Special Operations Forces”..., 71.

<sup>67</sup> Ase Gilje Ostensen, “In the Business of Peace...”, 40.

<sup>68</sup> *Ibid.*

embassy it was supporting, assume the role of coordinator for the Liberian government, the UN as well as other stakeholders. As a result of this they were able to steer the process to meet their profit requirements as opposed to strictly supporting mission requirements.<sup>69</sup> These are clear examples of PMSC either intentionally or unintentionally influencing political or mission outcomes for alternative purposes.

The use of PMSC has one, particularly short term, political benefit in common with the increased use of Special Forces. Canadian Special Forces have expanded significantly during the last couple of decades as they have become a force of choice. There exists a level of secrecy and obscurity relating to these forces which make them politically favored forces. Similarly PMSC have characteristics which reduce the level of potential government criticism. Canada suffered 158 deaths in Afghanistan between 2002 and 2011.<sup>70</sup> Most of these deaths, like in the United States, were heavily reported in the news with ever increasing scrutiny from the public. In the case of contractor deaths in Iraq, they were much less likely to be reported. One study by the Project for Excellence in Journalism which examined media coverage of contractor deaths in Iraq, between 2003 and 2007 reported only 7 percent of outlets examined the issue more than once.<sup>71</sup> Essentially this means that a national citizen may die in a conflict zone while working side by side with the military but it will likely not be reported in a significant way.

The obscurity of PMSC deaths is partly based on the transnational nature of these companies. The example of Defense Systems Limited provides some insight into this

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<sup>69</sup> Ibid.

<sup>70</sup> CBC News, "Canada's casualties in Afghanistan Faces of the fallen military personnel killed in the line of duty," *CBC News*, May 2014.

<sup>71</sup> David Isenberg, *Shadow Force ...*, 13.

obscurity. It is a British firm which was bought out by an American company which has offices in over 22 countries.<sup>72</sup> As it was originally a British company it hired a large number of former British special forces. It is possible for any number of these personnel to be employed at the various offices on each populated continent with the possible exception of Australia. These offices allow for the subcontracting of personnel if required to other companies which further obscure the people involved. Lastly, a PMSC may not release information on deaths other than to the immediate family. This is one example of a great numerous of PMSC makes the tracking of Canadian nationals, for example, a challenging task. In this way the secrecy which surrounds SOF is mirrored by the layers of bureaucracy when dealing with PMSC. Politically significant actions or events involving PMSC are less likely to be reported which could aid a government wishing to avoid public scrutiny.

Many of the challenges when dealing with PMSC have been surrounded by an ambiguous legal framework. The Montreux agreement document has as one of its stated aims the elimination of a real or perceived legal vacuum for PMSC.<sup>73</sup> It was a joint project between the government of Switzerland and the International Committee of the Red Cross. It also included consultation with 17 governments, PMSC and other partners to bring PMSC back under an international legal framework and provide some guidelines for best practices. This project is not the solution per se and despite the expansion to over 30 state signatories by 2011, the document has no legal obligations.<sup>74</sup> There are

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<sup>72</sup> Deborah Avant, *The Market For Force...*, 9.

<sup>73</sup> Montreux Document On pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict, (2009, August) 17 5.

<sup>74</sup> Daniel Warner, "Establishing Norms for Private Military and Security Companies" *Denver Journal of International Law and Policy* 40 no. 1-3 (Winter 2011): 110.

additional challenges within the Canadian context which would cause difficulty in fully complying with the Montreux document. These include the change in the vetting of PMSC personnel, the challenge of dealing with increased use by PMSC of host nation personnel for employment and trade implications with the United States among other issues.<sup>75</sup> The implementation of the Montreux document is still relatively new such that its long term effects are difficult to measure in the Canadian context. The scaling down of operations in Afghanistan has also coincided with a corresponding decrease in the use of PMSC. Given the current condition of the Canadian Armed Forces<sup>76</sup>, it is natural to assume that as operations increase in the future, use of PMSC will also increase and Montreux will again become more prominent. Work in the area of PMSC regulation has continued with the UN Working Group on the Use of Mercenaries.<sup>77</sup> Their work has identified a lack of accountability regarding PMSC and human rights violations.<sup>78</sup>

## **Conclusion**

This paper has brought together three major considerations when dealing with PMSC. These included financial, ethical and political considerations which, when reviewed, are not as straightforward as one would like. The financial benefits of not having a large military may be balanced by the competition for personnel between the private and public sector. Private security is becoming in some ways more specialized and less competitive which also undermines the reduction of costs. The outsourcing of formerly military activities also comes with the collaboration with companies with varied

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<sup>75</sup> Christopher Spearin, "What Montreux Means: Canada and the New Regulation of the International Private Military and Security Industry" *Canadian Foreign Policy* 16 no. 1 (Spring 2010): 2.

<sup>76</sup> Bruce Campion-Smith, "Canadian Armed Forces Suffering from underfunding," *The Star*, 2 May 2017.

<sup>77</sup> Jose L. Gomez Del Prado "Impact on Human Rights of a New Non-State Actor" *Brown Journal of World Affairs* XVIII no. 1 (Fall/Winter 2011): 162.

<sup>78</sup> *Ibid*, 162.

ethos. Is there a way to ensure the business practices, and ethos, are compatible with the Canadian military ethos? This may be a challenging task as it involves a layered system of contractor and subcontractors drawing from a global pool of expertise. Each consideration not only affects the others but is intertwined in ways which are not always clear. Political considerations are likely the most critical and one which military leadership should be deeply involved with. The mismanagement of contracts could affect not only the government but the resourcing and support for the military within the government.

Canada has little choice but to continue to use PMSC in future military operations. The military must master their use and be aware of the challenges resulting from doing so. For a military which regularly “does more with less”, PMSC may provide part of the solution to declining budgets and many leaders will push for a greater reliance on them. There are real dangers to this expansion which include to the reputation of the Canadian military in the eyes of its citizens as well as to the missions themselves. The Montreux agreement is a start to invigorating oversight in the industry and Canada’s military should consider not only these international initiatives but holding their contracts with PMSC to an even higher standard. There is no certainty that this agreement currently or in the future, as it evolves, will ensure enforcement of standards or good faith of participants. Canada and its military must consider companies with strong governance and oversight or contemplate not becoming engaged in particular operations. This may mean the military must resist government direction to overextend itself for fear of engaging in contracts lacking transparency. The military as a tool of government does not have a limitless capacity to do this of course, so under periods of strain, military

leaders must be equipped with the background to understand the pitfalls with PMSC, and articulate them as necessary. The skillful use of PMSC will ensure, as it did in Afghanistan, military success which in turn strengthens Canada's credibility but their use is not without risk.

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