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UNDERSTANDING AND INTEGRATING PMSCS INTO THE DEFENCE TEAM TO MEET SSE ASPIRATIONS

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Exercise Solo Flight

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Understanding and Integrating PMSCs Into The Defence Team To Meet SSE Aspirations

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INTRODUCTION

The latest Canadian Defence Policy, Strong Secure Engaged (SSE) elaborates an ambitious plan to be able to project Canadian Armed Forces (CAF) elements along multiple lines of effort across the globe¹. The last time Canada saw a deployment of forces of this magnitude was during the Afghan campaign as part of the initial American-led coalition, contributing to the Global War on Terror (GWT). During that time, the CAF relied heavily on the use of Private Military and Security Contractors (PMSCs) for a variety of security and support tasks. This choice was done out of necessity to fill gaps in the force structure and augment internal capabilities. Initially ad hoc, the military started to rely on PMSC support more and more and by the end of operations there was a draft policy for defence contracting of PMSCs. However, beginning with the decrescendo of combat operations and the eventual end of Canada's contribution to the Afghan campaign, the use of PMSCs decreased and have ceased for certain support and security functions. Since then, the PMSC environment has continued to evolve. With renewed interest in international commitments the CAF will likely have to reinvest in the employment of PMSCs in the near future. This is especially true if the concurrent operations reach the magnitude and duration described in SSE². To better prepare the CAF for expeditionary operations in the near future this paper proposes that PMSCs be integrated into the Defence Team, working closer with the CAF and National Defence. To do so requires both a shift and an update in Canadian defence policy; one that already reflects the current attitude toward operating in the international contemporary operating environment. From a more practical side decisions will need to be made what roles

¹ Department of National Defence, *Strong Secure Engaged; Canada's Defence Policy* (Ottawa: DND Canada, 2017), 17.

² *Ibid.*, 17.

PMSCs can continue to support and what additional roles they can fill in CAF expeditionary operations.

This paper will look at the historic and current PMSC environments, but first provide a common definition for PMSCs that will be used throughout. This will also include some characteristics of modern PMSCs, which importantly differentiate them from mercenaries. This is because PMSCs are now becoming more widely acceptable in the international community, even outside of defence and security establishments. Mercenaries, however, are still considered illegal combatants. Possible PMSC employments for supporting future CAF expeditionary operations, vice domestic operations, within the SSE framework will be the focus of this paper in order to limit the scope. The exception would be the new domains of cyber and space, which transcend national boundaries. To help define operations requirements for possible PMSC support for SSE operations PMSC employment in the Afghan campaign will provide some historical basis for context, followed by more recent changes in the PMSC industry to capture modern factors in the current PMSC environment. With these considerations the role of PMSCs in supporting CAF future operations can be better defined, including opportunities and limitations, within SSE.

DEFINITION AND CHARACTERISTICS

To define PMSC and organizations that fall under that moniker it is important to know what their scope includes. Marco Boggero accurately described the PMSC industry in that “the primary business of PMSCs is not the production and procurement of hardware, typical of the defense industry, but the procurement and delivery of services

both in peace and in conflict zones”³. This helps identify the role PMSCs fill in the larger defence industry and provides the service-based paradigm for the PMSC industry.

The challenge of defining PMSCs is that there is not a standard definition that is accepted between policy-makers or academics⁴. Throughout the 2000s an international group of both state and non-state members worked to create a document to provide guidance and direction on the employment of PMSCs, eventually producing the *Montreux Document*. Even the *Montreux Document* only gives the broad definitions that PMCs are private organizations that provide military services and PSCs are private organizations that provide security services⁵. PMSC encompasses both groups and any companies that provide both services. It also uses the Geneva Convention Protocols to define mercenary⁶. This paper will use David Barnes’ definition, which is a slightly different. He defines a mercenary as a member, if and only if,

1. is not a citizen or resident of the state in which they are fighting
2. is not integrated in a national force
3. fights from a financial motivation
4. is obliquely recruited to avoid legal prosecution, and
5. is organized into a temporary, ad hoc group of individual soldier, and this group has a simplified service objective, such as combat⁷

³ Marco Boggero, *The Governance of Private Security* (Switzerland: Palgrave Macmillan, 2018), 3.

⁴ Bruce E. Stanley, *Outsourcing Security: Private Military Contractors and U.S. Foreign Policy* (Nebraska: Potomac Books, 2015), 3.

⁵ International Committee for 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), 38.

⁶ Article 47 of Protocol I additional to the 1949 Geneva Conventions, applicable in international armed conflicts, describes a mercenary as someone who: (1) is especially recruited in order to fight in an armed conflict; (2) in fact takes a direct part in hostilities; (3) is motivated essentially by the desire of private gain; (4) is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict; (5) is not a member of the armed forces of a party to the conflict; (6) has not been sent by a State which is not a party to the armed conflict on official duty as a member of its armed forces.

⁷ David M. Barnes, *The Ethics of Military Privatization: The U.S. Armed Contractor Phenomenon* (New York: Routledge, 2017), 41.

This will help better clearly differentiate PMSCs from mercenaries, which the *Montreux Document* fails to do, and even allows that some PMSCs personnel can be classified as mercenaries⁸. This creates the dichotomy of acceptance between PMSCs and mercenaries.

To better define PMCs and PSCs, Bruce Stanley has categorized them along functional lines. PMCs “provide services such as technical support, transportation, maintenance, engineering, and logistical support, military consulting services and training”⁹. PSCs “may provide fixed- base security, convoy security, and individual personnel security to supplement professional military forces during a conflict”¹⁰. Some, like Barnes, have even further subdivided the organizations. PMCs were classified as Military Support, Military Consultant, and Military Provider¹¹, based on specialized services they provide. Originally these definitions made sense but many companies have branched out beyond this scope to include new services to meet market demands or bled into the other domain to be able to offer multiple services. For this reason PMSC has yet to be given a decisive definition, and includes companies described as “military firms, military service providers, privatized military firms, transnational security corporations, and security contractors... [any] firms offering security- and military- related services.”¹² What all these entities have in common as PMSCs, and not mercenaries, is that they are corporate entities driven for business profit rather than individual profit¹³. Stanley further delineates the differences using P.W. Singer’s six criteria of organization, motives, open market, services, recruitment, and linkages¹⁴. Through these criteria it is established that

⁸ International Committee for the Red Cross, *The Montreux Document...*, 38.

⁹ Bruce E. Stanley, *Outsourcing Security...*, 2.

¹⁰ *Ibid.*, 2.

¹¹ Barnes, 14.

¹² *Ibid.*, 3-4.

¹³ David M. Barnes, *The Ethics of Military Privatization...*, 14.

¹⁴ Bruce E. Stanley, *Outsourcing Security...*, 4-5.

PMSCs are legal corporate entities, with publicly known commodities and services offered, with a wide range of services and clientele, all of which fall within the military domain. These impose a responsibility on PMSCs that is lacking on mercenaries.

Although the *Montreux Document* does not define in detail PMSCs, it does provide clear definitions on parties involved in the employment of them. This is crucial for policy development among both states and non-state actors within an agreed upon legal framework. There are three main parties described:

1. Territorial States are states on whose territory PMSCs operate;
2. Contracting States are States that directly contract for the services of PMSCs, including, as appropriate, where such a PMSC subcontracts with another PMSC; and
3. Home States are States of nationality of a PMSC, i.e. where a PMSC is registered or incorporated; if the State where the PMSC is incorporated is not the one where it has its principal place of management, then the State where the PMSC has its principal place of management is the “Home State”.¹⁵

PMSC Inception

Although the use of PMSCs to support military operations has existed for several decades, the study of their use has only really grown since the turn of the millennium. Many have focused on the legal aspect of employing PMSCs since there was a gap in laws and policy stemming from the recognition of the difference between PMSC and mercenaries. Although this paper will broach the subject it will not be an in-depth examination of the legality of military privatization for armed contractors¹⁶ and will instead focus on the practicalities of their employment. Some legal knowledge is required, however, to understand their effective employment and why further development of policy is required. The basic assumption that will be used throughout this paper is Max Weber’s notion that the state, and only the state, has the monopoly on the

¹⁵ International Committee for the Red Cross, *The Montreux Document...*, 10.

¹⁶ David M. Barnes, *The Ethics of Military Privatization...*, 2-3.

legitimate use of force.¹⁷ This underpins the argument of what can and cannot be delegated to PMSCs, shaping their legitimate use in the contemporary environment.

The use of private military forces by states in the conduct of land warfare fell out of favour following the Treaties of Westphalia. Private seaborne forces as pirates or the semi-officious privateers continued to exist during the period of colonization to protect the vast expanses of European empires expanding their control but by the 20th Century they too fell into disuse¹⁸. Since this time the term mercenary has carried a negative connotation, often conjuring the image of “everything from individuals killing for hire, to troops raised by one country working for another.”¹⁹ With the exception of some soldiers-for-hire in Africa and Asia, who did nothing to improve the perception of mercenaries, there have been few private military forces operating until the end of the Cold War²⁰. This resulted in the first PMSCs to emerge into the new security environment still tarred with the mercenary brush, even if they were something new.

The rise of this new market for certain privatized military functions is largely due to the need for humanitarian interventions following the Cold War²¹. New regional threats emerged in Africa and the Balkans. Stanley argues that as political leaders sought to reduce their state’s military, most notably the force structure for support, they were left with few options when there was a requirement to mobilize, especially for an unanticipated scope and duration.²² PMSCs become a legitimate and legal alternative. “National military budgets, foreign policy decisions on intervention, military force

¹⁷ *Ibid.*, 5.

¹⁸ David M. Barnes, *The Ethics of Military Privatization...*, 22.

¹⁹ Bruce E. Stanley, *Outsourcing Security...*, 4.

²⁰ David M. Barnes, *The Ethics of Military Privatization...*, 24-26.

²¹ *Ibid.*, 20.

²² Bruce E. Stanley, *Outsourcing Security...*, 3.

structure, and international legal norms are but a few of the areas that are impacted by the phenomenon of privatized security.”²³ Many Western militaries faced this restructuring and downsizing in the 1990s after seemingly emerging from the Cold War victorious. What did not change was the amount of support a military force requires when deploying expeditionarily. Chris Spearin correctly estimates that it is roughly one third of the total forces’ personnel requirement²⁴, or higher depending on the type of mission. When a humanitarian crisis necessitated action, PMSCs became a way to ensure the logistics of forces without having to activate reserves, especially when there is a limit of the number of troops that can deploy as PMSC personnel do not count against it. This is but one reason that, despite the UN Secretary General’s hesitation in 1998 that “the world may not be ready to privatize peace”²⁵, every UN peace operation conducted since 1990 included the presence of PMCs.²⁶

Despite the logistics suffering the most cuts to force structure during the early Post-Cold War period, there was an overall trend to downsizing large conventional military forces. This provided the market with highly trained professional military personnel, no longer employed by their home state, who became some of the first contractors²⁷. Some of the first legitimate firms in the post-Cold War era were integral in several developing world conflicts, supporting weak national governments to defeat rebel

²³ Bruce E. Stanley, *Outsourcing Security...*, 10.

²⁴ Christopher Spearin, “The Changing Forms and Utility of Force: The impact of international security privatization on Canada,” *Naval War College Review* 67, No. 2 (2014): 485.

²⁵ Kofi Annan, “Secretary-General Reflects On 'Intervention' In Thirty-Fifth Annual Ditchley Foundation Lecture”, 26 June, 1998.

²⁶ David M. Barnes, *The Ethics of Military Privatization...*, 20.

²⁷ Stanley quotes Singer’s (2003, 50) supply- demand theory asserts that “massive military demobilizations provided a large pool of labor for the private military firm (PMF) industry and cheapening of start- up capital.” The massive increase in the global level of conflict since the cold war’s end also resulted in a demand for security that most nations were unable to provide (Singer 2003).

insurgencies²⁸. It was due to these first companies providing combatant fighters to foreign governments that the distinction between PMSCs and mercenaries was not made and the guns-for-hire perception still echoes into the contemporary operating environment. Western militaries avoided this practice, with the initial contracting services limited to logistics and limited security, ensuring there was no confusion on the state's authority over the use of power. More recently, they have employed these firms beyond contracting out training and base support services, and have increasingly used them to augment military capabilities on international operations. An important distinction Barnes makes about mercenaries, beyond their lack of an affiliation to a cause, is that they fall outside of state control.²⁹ PMSCs remain bounded by their contract with the state and if they violate them then contracts can be terminated to sever the legitimacy and legality of the PMSCs operations.

Some examples of the services PMSCs provided in the beginning include administration and management, food services, materiel management and distribution, communication and information systems, land equipment maintenance, health services, transportation, accommodation and support, construction engineering services, power supply and distribution, water supply and distribution, waste management, facilities operations and management, roads and grounds, fire services, geomatics support, environmental management, and ammunition support³⁰. Although not the sole source of most of this support, PMSCs did enable national forces' to deploy more combat forces

²⁸ David Perry, "The privatization of the Canadian military," *International Journal* (Summer, 2009): 688.

²⁹ David M. Barnes, *The Ethics of Military Privatization...*, 22.

³⁰ Christopher Spearin, "The Changing Forms and Utility of Force...", 484.

within the troop limitations, also known as a force cap³¹. Regarding the changing core roles for military and increasing number of supporting roles for PMSCs, Boggero cites Elke Krahnmann “governments... argue that the state monopoly on violence refers to the control over the legitimate use of armed force, not its actual exercise” and that the distinction between offensive and defensive security is being refined in “an increasingly narrow definition of direct participation in hostilities that pertains only to offensive action.”³² This was most apparent in conflict areas that were higher risk of violence where there was not an appetite to risk contractors. As militaries became more reliant on PMSCs for service delivery and PMSCs became more versatile, that risk waned and more and more service support could be provided through private means. This became so prevalent that contractors formed “the fourth column, alongside active, reserve, and civilian government employees in the Pentagon’s total force concept”³³. Some PMSCs were even willing to risk greater levels of risk than some of the Troop Contributing Nations of international coalitions³⁴. This was one of the turning points that served to legitimize PMSCs in the international community and an indicator of the longer term role they would go on to fill in the contemporary operating environment.

DEVELOPMENTS FROM AFGHANISTAN

The American-led campaign in Afghanistan as part of the GWT is often examined as a case study for the rise of PMSC support to state forces, and for good reason. Many of the participant states, Canada included, looked to PMSCs to augment their capacity and support their operations. For the United States, their coalition in Iraq is also often tied to

³¹ In addition to the force cap, Stanley also notes two additional factors that influenced the use of PMSCs; host nation support and the permissiveness of the security environment in the target state industry.

³² Marco Boggero, *The Governance of Private Security...*, 63.

³³ Christopher Spearin, “The Changing Forms and Utility of Force...”, 492.

³⁴ *Ibid.*

PMSC analysis since it occurred concurrently and was part of the GWT as well, even if the operational theatres had unique signatures. Point in fact, having two operational theatres was likely a driving force as to why American decision-makers maintained the level of PMSC support since both theatres were competing for the limited resources even the formidable U.S. military had available. In both cases once the initial push to overthrow the incumbent government was complete, the Taliban for Afghanistan and Saddam Hussein in Iraq, the coalitions shifted to three parallel missions. In Afghanistan the missions included a security mission to prevent the military and political resurgence of the Taliban and eliminate residual Al Qaeda threats, reconstruction operations, and programs to train Afghan security forces³⁵. For Iraq, the similar missions comprised a security mission to prevent an armed insurgency among Ba'athist remnants, reconstruction and westernization operations, and the establishment of new Iraqi security services. During this period, contractors in theatre equaled the number of U.S. forces on the battlefield, largely due to the nature of the intervention, limitation of the number of troops, and the scope and duration of the missions³⁶. Because of the scale, length, and number of PMSCs operating in both theatres they make for excellent case studies on the development of the maturing PMSC environment. Additionally, Stanley notes that the U.S. "Department of Defense relies more heavily on contracted support during the post-conflict phases of an operation, particularly when the duration and scale of the operation increases" and that there were mission-specific competencies for which the conventional forces had deficient number, as an even greater impetus to rely on PMSC support³⁷.

³⁵ Bruce E. Stanley, *Outsourcing Security...*, 106.

³⁶ *Ibid.*, 102-103.

³⁷ *Ibid.*, 109.

A marked difference between American and Canadian military planners was the initial scope of PMSC support, both which proved to be incorrect. Americans had planned on surging PMSC support at the beginning of the operation and reducing the number as the operation progressed³⁸. In reality, PMSC numbers remained constant throughout³⁹.

Canadians, on the other hand, had to deviate from their doctrine that contracted personnel remain limited until the theatre risk level is stabilized after the initial entry⁴⁰. For the Afghan mission, PMSC personnel was required early on and ahead of the bulk of Canadian troops to prepare the infrastructure and support systems required to sustain them. Afghanistan opened the aperture of Canadian defence contracting to much broader and extensive contracts supporting expeditionary military operations, as Perry argues it began to include tasks for PMSCs that had once been verboten as “core military functions” relating to the support of operations that were the sole domain of military forces⁴¹. This includes the change of contractors opening theaters, not just supporting once the theatre was deemed stable. One of the early contracts required to support CAF was for strategic airlift (STRAT AIR). Despite the procurement of the capability internally to the CAF during the campaign, PMSC support was still required because of the scope and tempo of operations. However, the integral capability helped rebalance the risk to PMSCs since the CAF had a limited amount when the risk to PMSC was deemed too high. Contrarily, contracted STRAT AIR was not just for Peace Support Operations (PSO) anymore, which had been the case prior to the Afghan campaign.⁴²

³⁸ *Ibid.*, 116.

³⁹ Scott Efflandt, “Military Professionalism & Private Military Contractors,” *Parameters* 44, No. 2 (2014): 40.

⁴⁰ Christopher Spearin, “Canada and contracted war: Afghanistan and beyond,” *International Journal* 69 (2014): 527.

⁴¹ David Perry, “The privatization of the Canadian military...”: 693.

⁴² David Perry, “The privatization of the Canadian military...”: 688.

At the time the Government of Canada (GOC) issued its updated defence policy, the *Canada First Defence Strategy*⁴³ (CFDS) in 2008, PMSCs were providing support of the Afghan mission in four major service categories: logistics, STRAT AIR, theatre aviation support, and site security.⁴⁴ This is significant because only through extensive PMSC support could the CAF maintain and sustain the operational imperatives described in CFDS.⁴⁵ By this point the employment of PMSCs to support expeditionary operations had become widely acceptable, at least to the GOC if not the Canadian population. An extension of the Afghan mission out to 2011 even hinged on further PMSC support.

Beyond enabling troops on the ground, PMSCs also offered another advantage amid the rising costs of the mission. “In a constrained budgetary framework, the forces could improve their support capabilities without recruiting costly additional personnel by relying more on private firms”⁴⁶. Contracts supporting the mission ended with the mission without forcing the CAF the burden of acquiring and maintaining theatre-specific or specialized capabilities to the force structure that would increase annual defence costs. “The potential budgetary advantage of adding capabilities for operations by renting equipment on a contingency basis, instead of buying additional capabilities, with their attendant long-term costs, is apparent⁴⁷.”

The second order effect of contracting specialized support from the market is that CAF personnel were exposed to the latest developments in industry, which is often

⁴³ Department of National Defence, *Canada First Defence Strategy* (Ottawa: DND Canada, 2008).

⁴⁴ David Perry, “The privatization of the Canadian military...”: 691.

⁴⁵ Maintaining 2,500 Canadian Forces personnel in Afghanistan requires a pool of over 12,500. This includes 2,500 personnel in theatre for six months, 5,000 at different stages of training for upcoming rotations and 5,000 recovering following their deployment, affording the soldiers a minimum of 12 months between deployments. About 10,000 additional civilian and military personnel are required in Canada to support the mission.

⁴⁶ David Perry, “The privatization of the Canadian military...”: 697.

⁴⁷ *Ibid.*

not the case when new capabilities are procured through the lengthy GOC procurement process⁴⁸. A prime example of this was for Unmanned Aerial Vehicle (UAV) support. CAF underperforming aged fleet was unable to provide the level of support required by ground troops so more effective UAVs and operators were contracted⁴⁹. Because of the role that UAVs provide, notably for surveillance and targeting, there also had to be modifications in their employment to respect the international conventions to which Canada subscribes⁵⁰. Contractors lifted off, landed, and maintained the vehicle but once airborne CAF personnel assumed control of the operation⁵¹. This type of cooperation needs to continue to be fostered between CAF and industry.

PSMC support in niche capabilities also occurred alongside troops at the tactical level on the ground, to include language and cultural support experts and the use of armed dog handlers for perimeter security and to work alongside military engineers searching for unexploded devices⁵². Again, this exposed CAF members to experience outside their knowledge and training base without the CAF having to bear long-term institutional costs.

The Afghan campaign was not without its issues regarding PMSCs. Even with Canada's prolific employment of PMSCs compared to previous missions, Canada did not conduct regular audits⁵³, despite not having standardized contracting training for contracting officers or the increase in the number and scope of contracts. This meant that evaluating the effectiveness or value of the contracted support was not possible. Beyond

⁴⁸ Christopher Spearin, "Canada and contracted war...": 530.

⁴⁹ *Ibid.*, 529.

⁵⁰ In this case both the Geneva Convention Protocols and the Montreux Document.

⁵¹ Christopher Spearin, "Canada and contracted war...": 529.

⁵² *Ibid.*, 533.

⁵³ David Perry, "The privatization of the Canadian military...": 699-700.

the technical agreement of services provided, there was also the issue of the legal status of PMSC personnel. Contractors in Afghanistan, as part of the American-led coalition, operated under several levels of legal authority,⁵⁴ albeit with limited means of oversight and control. This was complicated further when other TCN contracted PMSCs for support, and even more so when the contractors were from a third country or sub-contracted from another PMSC, or both⁵⁵. This was partially alleviated in 2008 with the introduction of the *Montreux Document*. The document counted initially 17 signatories and has since grown to over 50. It states that

The contracting host nation retains its obligations under international humanitarian and human rights law when hiring private military and security companies and are therefore responsible for the actions of its private contractors – however contractors are not bound to respect international law since they are corporate entities, unlike the parties to a conflict and individuals.⁵⁶

With the variety of PMSCs employed throughout the operational theatre by a myriad of organizations, and not all state or coalition, an important lesson came out of Iraq.

“ [coalition] staffers held an armed contractor coordination meeting to discuss policy, deconflict issues, and discuss mutually important topics. These meetings... became essential to deconflict battlespace and missions.⁵⁷” These meetings also helped foster informal relationships between the coalition and PMSCs that led to better cooperation and an overall more comprehensive situational awareness for the coalition.

⁵⁴ The international order of the laws and usages of war, resolutions of the United Nations Security Council, and relevant treaties; U.S. law ; and the domestic law of the host nation (including the bilateral agreement provisions between the U.S. and government of Afghanistan.

⁵⁵ Contractors were comprised of U.S. citizens (5%), third-country nationals (15%), and local or host-nation nationals (80%) IAW the policy of “Afghan First” that directed U.S. and NATO forces to hire Afghans first, buy Afghan products, and build Afghan capacity.

⁵⁶ Christopher Spearin, “Promising Privateers? Understanding the Constraints of Contemporary Private Security at Sea ,” *The Rusi Journal* 163, No. 3 (June/July 2018): 112-113.

⁵⁷ David M. Barnes, *The Ethics of Military Privatization...*, 15.

CHANGES IN THE PSC LANDSCAPE

Since the trend of employing PMSCs indicates it will only continue to grow, the division of labour between contractors and conventional militaries will also evolve. Christopher Kinsey encompasses it succinctly: “contractors allow the military to concentrate on its core functions, fighting wars, by removing responsibility for the more mundane operations, which are no less important to maintaining operational efficiency, and handing that responsibility to outside agents”⁵⁸. What he doesn’t mention is the aspect of political capital. PMSCs allow for smaller military footprints on the ground, making missions much more palatable for medium-sized countries like Canada. Since PMSCs are not considered as the blood and treasure of nations like national armed forces, there is less political risk in their employment in theatres of operation. This also allows contracting states to wield more influence through directed soft power.

This increased reliance on PMSCs has also transformed the industry market place. Where once the market was more temporary in nature because of limited scale contracts of limited length and small semi-permanent corporate staff⁵⁹, this has given way to larger omnibus companies that are continually expanding their scope. More recent services include military training and assistance to foreign allies, training own state’s armed forces, collect and process intelligence, mine-removal, crime-prevention, and anti-narcotic support services. There is still an element reminiscent of the gunslingers-for-hire of old with some independent contractors but the former Rolodex network is now a vast interconnected database of ex-service personnel, sub-contractors, and technical

⁵⁸ Christopher Kinsey, *Corporate Soldiers and International Security: The Rise of Private Military Companies* (New York, NY: Routledge, 2006), 97.

⁵⁹ David M. Barnes, *The Ethics of Military Privatization...*, 43.

specialists⁶⁰. This has helped increase both reliability and speed of service that state and non-state actors can draw upon. Barnes describes the contemporary characteristics of the PMSC industry as

1. Size and power of today's private sector is unprecedented
2. Globally fewer business operations are owned and controlled by states in the post-Cold War era
3. Rules of global governance in the modern era define more effectively what type of behaviour is permissible
4. Current global information environment (media, connectivity) allows for unprecedented transparency and activism in monitoring commercial actions⁶¹

With this growth there have been equally new challenges. Categorizing PMSCs remains as daunting as ever as they shift and change to suit market demands and adapt to new threats. Permissibility, accountability and regulation are also difficult in the international market with the expanding operations and cross-pollination between PMSCs. To help contracting authorities manage, several key initiatives have been developed.

As previously mentioned, the *Montreux Document* is the United Nations-endorsed directive to help govern PMSC practices. Out of the development of the document, a separate industry-sourced document was also established to provide more detail known as the *International Code Of Conduct For Private Security Service Providers*⁶² (ICoC). While the *Montreux Document* signaled the international community's widespread acceptance that PMSCs were being used worldwide and it captures best practices and responsibilities in the PMSC industry, it is at best recommendations and is not legally binding⁶³. Territorial, Contracting, and Home States choose to subscribe to the recommended guidelines when employing contractors. PMSCs also now find themselves

⁶⁰ *Ibid.*

⁶¹ *Ibid.*, 45.

⁶² International Code Of Conduct Association, *International Code Of Conduct For Private Security Service Providers* (Geneva, Switzerland: Swiss Confederation, 9 November 2009).

⁶³ David M. Barnes, *The Ethics of Military Privatization...*, 47-48.

with canceled or voided contracts if they violate Montreux or ICoC policies incorporated into contracts, which will also have follow-on effects in pursuing other contracts. While the *Montreux Document* and the ICoC each have roots in the respect for human rights principles⁶⁴, Montreux has 73 overarching recommendations and ICoC has 70 articles of obligation that are more focused. The ICoC Association presides of the ICoC. It is composed of a General Assembly of all PMSC member companies, civil society organizations, a board of directors, and a secretariat and a structure based on three key contributors: representatives from governments, the PMSC industry, and civil society⁶⁵. The ICoC has the advantage over Montreux of being a living document that the ICoC Association can more easily update, in accordance with market trends and social demands, however both are lacking in any enforcement measures⁶⁶ which are left up to the participating parties.

States have also adopted their own policies with regard to the employment of PMSCs. From Canada's experience in Afghanistan the draft National Defence Directive on the Selection and Use of Private Military and Security Contractors on Deployed Operations was created.⁶⁷ It is currently in use by GOC departments, predominantly DND, although it still remains in draft form. Notable additions to the service contracts established for the Afghan campaign include explosive ordnance disposal, airfield and aircraft services, mortuary services, and security services. The language of the directive still reflects mid-2000s terminology and should be updated before it is signed into policy,

⁶⁴ Marco Boggero, *The Governance of Private Security...*, 36-38. The Human Rights Principles includes the prohibition of torture, discrimination, human trafficking, and any other cruel or degrading treatment.

⁶⁵ *Ibid.*, 83.

⁶⁶ Daniel Warner, "Establishing Norms for Private Military and Security Companies," *Denver Journal of International Law & Policy* 40 (2012): 113. For the moment, courts have prosecuted very few PMSC personnel for IHL, human rights or criminal violations, although incidents of armed violence by PMSC employees in Afghanistan and Iraq have caused international furor.

⁶⁷ Christopher Spearin, "Canada and contracted war...": 536.

specifically the descriptions of PSCs and PMCs, and the role of military commanders to provide for security of PMSC personnel⁶⁸. Even during the Afghan campaign the role of security was being shared by PMSC personnel providing base security and personnel protective services. The new language should reflect the participation of PMSC in the security plan development.

Non-state actors, such as alliances like NATO and various NGOs, are also increasingly contracting PMSCs. Even the U.N. has acquiesced to the need for PMSC support for humanitarian and political missions, despite it not being widely acknowledged or studied⁶⁹. This has led to a lack of transparency, resulting in poor management of the increasingly lucrative PMSC contracts. Unlike national armed forces participating in U.N. missions, a benefit of using PSMCs is that they draw together niche expertise tailored to the demand rather than forming a general purpose armed force group. However, their motives remain for-profit rather than altruistic and may choose the most efficient manner of delivering service over the most effective due to the fact that there is no common comprehensive UN policy regarding PMSC employment outside of the Montreux guidelines⁷⁰. Spearin notes that “PMSCs are firmly part of NATO’s comprehensive approach⁷¹” even if they are limited to operations defensive in nature. Since Canada actively participates in and contributes to both U.N. and NATO operations, it behooves the GOC to work toward developing rigorous and clear policies when employing PMSCs, even when Canada is not the lead for coalition and alliance missions.

⁶⁸ *Ibid.*, 538-539.

⁶⁹ Ase Gilje Østensen, “In the Business of Peace: The Political Influence of Private Military and Security Companies on UN Peacekeeping,” *International Peacekeeping* 20, No.1 (February 2013): 33-34.

⁷⁰ *Ibid.*, 35-36.

⁷¹ Christopher Spearin, “NATO, Russia and Private Military and Security Companies,” *The Rusi Journal* 163, No. 3 (June/July 2018): 66.

The PMSC market does not just support Canada and its allies; adversaries are actively employing PSMCs as part of the Hybrid Threat in the grey Zone against the likes of NATO's comprehensive approach⁷². Unlike the current Western military forces seeking to preserve the political status quo, actors like Russia and China are challenging in the Grey Zone and through proxy and regional conflicts like Georgia, Ukraine, Syria, and the South China Sea⁷³. Our adversaries also have no issues with pushing past the boundaries of Western employment of PMSCs by contracting them to conduct offensive actions, even if they fall below the threshold of war. In this respect, the "private" part of PMSCs is still a euphemism for "deniable."⁷⁴ This reinforces the need for policies like the *Montreux Document* which makes clear that states cannot deny their employment of PMSCs. "Increased attention should be given to how the CAF constructs security with private actors, what the implications of this are, and how the CAF might best attempt to mould, if not govern, this public/private relationship."⁷⁵

PMSCs & SSE

To better enable SSE it is important to understand its origins. SSE has some marked similarities to the main themes in CFDS, the previous Canadian government's defence policy. Those include personnel growth for both the regular and reserve forces⁷⁶, lines of operation at home in Canada, in continental North America, and international operations abroad⁷⁷, and new long term capital investments⁷⁸. However, CFDS was

⁷² Christopher Spearin, "NATO, Russia and Private Military and Security Companies...", 66.

⁷³ David M. Barnes, *The Ethics of Military Privatization...*, 88.

⁷⁴ Christopher Spearin, "NATO, Russia and Private Military and Security Companies...", 66.

⁷⁵ Christopher Spearin, "Canada and contracted war...": 540.

⁷⁶ Department of National Defence, *Canada First Defence Strategy...* 15, Department of National Defence, *Strong Secure Engaged...* 13.

⁷⁷ Department of National Defence, *Canada First Defence Strategy...* 10, Department of National Defence, *Strong Secure Engaged...* 14

limited to a broad view of the Canadian Defence establishment while SSE is much more detailed. CFDS allowed DND to meet the challenging requirements of the Afghan campaign and adjust to the post-911 international security environment, while also setting the conditions for SSE. As the next step in Defence planning, SSE strikes a different tone from CFDS in that SSE's emphasis is firstly on personnel support, followed by new technology and what were only emerging domains for CFDS; space and cyber. These two efforts are linked as many of the new CAF positions that will be generated are dedicated to the newer domains and more robust personnel support systems, as well as some personnel restructuring that will shift support internally. However, while preparing the CAF for tomorrow, SSE still directs the CAF to be able to support robust expeditionary engagements today that are even greater than during the Afghan campaign.⁷⁹ With this in mind, PMSCs will be even more critical to support CAF expeditionary operations and it is because of this that PMSCs should be institutionalized as part of the "Defence Team"⁸⁰. As involvement in conflict increases there is an equal increase in demand for the private security industry⁸¹. PMSCs were not mentioned at all in CFDS, despite their crucial support and ever-increasing reliance of the CAF. SSE does not explicitly mention PMSCs but does allude to them as part of the "private sector,"⁸² "private businesses,"⁸³ and "public-private-partnerships."⁸⁴ The biggest opportunity for PMSCs is in the list of new initiatives, with one task directly affecting their support contribution: "Implement

⁷⁸ Department of National Defence, *Canada First Defence Strategy*... 4, Department of National Defence, *Strong Secure Engaged*... 13

⁷⁹ Department of National Defence, *Strong Secure Engaged*... 81, Department of National Defence, *Canada First Defence Strategy*... 15.

⁸⁰ Department of National Defence, *Strong Secure Engaged*... 19.

⁸¹ Bruce E. Stanley, *Outsourcing Security*..., 43.

⁸² Department of National Defence, *Strong Secure Engaged*... 22

⁸³ *Ibid.*, 56.

⁸⁴ *Ibid.*, 77.

the first-ever, integrated strategy for human resources to balance the optimal assignment of tasks between the military, defence civilians and the private sector.⁸⁵ This review of the balance of tasks and functions can better integrate PMSCs into Canada's Defence plan. There is also the collaboration described in the future-development concept of Innovation for Defence Excellence and Security (Ideas) that will "bring together academics, industry and other partners to form collaborative innovation networks⁸⁶", to include PMSCs. This is vital to for the CAF since in the contemporary security environment the market has surpassed the military in innovation thanks to the speed of technology.

Perry has argued that "The Canadian military has followed this trend of privatizing military functions⁸⁷", however a better description would be streamlining of core functions and outsourcing key support functions required to support operations. Even as defensive tasks are increasingly delegated to PMSCs, the Canadian military still holds the authority, on behalf of the GoC, as the sole organ to exercise the use of offensive force. In addition to PMSCs performing non-combat activities that frees up soldiers to perform combat missions, PMSCs can provide new capabilities sooner than the military can develop it internally, enabling the military to rapidly deploy it as a critical support capability⁸⁸. PMSCs can also continue to provide expertise in specialized fields in which the military often lacks depth (linguist/translators).

Though progress has been made in developing policy to aid in the governance of PMSCs, there is still a gap in the international legal status of contractors, armed or

⁸⁵ Department of National Defence, *Strong Secure Engaged...* 107.

⁸⁶ *Ibid.*, 77.

⁸⁷ David Perry, "The privatization of the Canadian military...": 688.

⁸⁸ David M. Barnes, *The Ethics of Military Privatization...*, 77.

unarmed, supporting operations. PMSC personnel are sometimes combatants, other times non-combatants, and other times neither and labeled as illegal combatants in accordance with the Geneva Convention Protocols. A POW has certain rights; an illegal combatant has none, would be classified as a criminal and will then be subject to the criminal system⁸⁹. New conventions and terminology are needed, something along the lines of “supportant,” to distinguish contractors in their roles on the contemporary battlefield. This will help ensure PMSCs supporting CAF operations do not have their personnel categorized as mercenaries.

OTHER OPTIONS

For longer than PMSCs have been supporting the CAF, Canada has relied on its allies for support. Although alliances and coalitions are both strategically and politically important, Spearin describes certain frictions when relying on allies for support “the limited usefulness of allies in operational terms means that all actors must resort to the lowest common denominator of operability.”⁹⁰ In addition to tactical issues, strategic concerns arise when certain nations are not seen to pull their weight in coalition operations. Lastly, relying on allies for support may just end up with the CAF being supported by a PMSC contracted by a coalition member, but without the measures for control.

CONCLUSION

After examining current mandates and future developments in the latest Defence policy, there is clearly a need for PMSCs to support CAF operations. To maximize these efficiencies and foster better collaboration, PMSCs should be integrated into the Defence

⁸⁹ David M. Barnes, *The Ethics of Military Privatization...*, 17.

⁹⁰ Christopher Spearin, “The Changing Forms and Utility of Force...”, 491.

Team, much as the Americans have done with their “total force” concept. In parallel, the GOC can better enable PMSCs by developing new policies and protocols in the international community, carrying on the work established in *Montreux* and ICoC. As one of the leading academics in the field, Spearin captures the base requirement that lies before the CAF “Information and doctrine development on these issues are important to ensure that private companies complement, rather than overly complicate and detract from, Canadian Forces’ operations in the contemporary battle space.⁹¹” By helping PMSCs, we help ourselves.

⁹¹ Christopher Spearin, “The Changing Forms and Utility of Force...”, 482

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