

Selling Security: Trade-Offs in State Regulation of the Private Security Industry

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1 Introduction

A hallmark of the modern era has been the state and its monopoly control of force – not just within its territory, but also abroad. States have exercised control over the force that emanates from their territory by marshalling the violent services of their citizens in citizen armies (restricting their use on behalf of other states or non-state actors) and regulating trade in weapons and other instruments of violence (Thomson 1994; Avant 2000; Krause 1992). Increasingly, however, citizens have begun to market their violent services along side weapons systems. In the 1990s private security companies (PSCs), touting themselves as legitimate, law-abiding corporations, sold military and security services to states and non-state actors all over the world. How does the thriving market for force affect states' ability to control force?

A common frame for this question might pit 'hyper-globalists' arguing that the private sale of military services undermines states' control of force against 'skeptics' claiming that states can regulate these sales and use them to their advantage (Held et al. 1999). I argue, however, that this debate misses the more important point. The market for security services has changed the context in which states exercise control over violence, making it harder for states to adopt a strategy that maximizes all dimensions of control at once. In choosing a strategy to manage the market, individual states find themselves making trade-offs between different elements of control.

In the following essay, I first outline three dimensions of state control (functional, political and social) and point to the trade-offs that private security services engender. Particularly, states that maximize functional control (via their influence on the behavior of PSCs abroad) experience changes in political control (the political processes that govern the use of force). A state that maintains political control risks losing functional control. Furthermore, the best strategy for maximizing one part of social control (a state's influence on the values PSCs profess) – purchasing private services – also undermines another part of social control (the notion that states, collectively, monopolize the legitimate use of violence).

I then illustrate this argument with an examination of the three largest exporters of military services, the US, South Africa and the UK. Each dealt

differently with the security services market and faced distinct results.¹ The US strategy has generated effective influence over PSCs abroad and the values they profess, but also opened the way for change in political control, redistributing power over national security goals and policies – and undermined the notion that states collectively monopolize the use of force. The South African strategy has minimized changes in its political processes and maintained the norm that states monopolize the use of force, but at a cost of relinquishing influence over the actions of its PSCs abroad and the values they profess. The British have danced between these two. Though the US strategy has increased its advantage relative to other states, it has experienced changes in its political processes that have important consequences for who gets to decide about the use of force and eroded the norm linking citizenship and military service.

2 Disaggregating the Control of Force

Civil-military relations analysts look at the state's control of force in different ways. Some have emphasized the functionality of forces – and use a force's ability to deploy coercion effectively to defend state interests as the standard by which to measure control (Huntington 1957). In assessing the impact of the sale of private security services abroad on *functional* control, we might ask whether these sales work toward governmental goals and enhance them or work contrary to national aims.

The control of force, however, can also vary in its allegiance to the political structure in place. In its most extreme form, highly functional forces can seize power over the state in a coup, but many analysts have suggested that we should also be concerned about more moderate changes in the political control of force that redistribute power within a polity (Finer 1962; Desch 1996; Feaver 2003). The *political* control of force, then, varies by whether it reinforces or redistributes power or influence among individuals, organizations, and institutions.²

Still others have judged the military's fidelity to the larger social context – arguing that control must be measured by the degree to which the military has achieved a meaningful integration with social values (Janowitz 1960).

1 Though the private security industry is global and many firms hire more than one nationality, I attribute a firm to a particular nation if it is owned or managed by citizens of that nation. For a similar strategy of national attribution see Porter 1990.

2 I am using power in its classic sense – the ability of A to get B to do what he would otherwise not do (see Simon 1953). A political structure sets the terms by which people compete for power and changes in those structures, or evasion of them, redistributes power among political actors.

The *social* control of force can be said to vary by the degree to which the tools that perform security tasks reflect prevailing societal values – of a particular state and of the state system as a whole (Moskos et al. 2000).

3 State Regulation in the Transnational Market for Force

In the modern system state control over force was only consolidated once states eliminated the market allocation of security services (Thomson 1994). This consolidation was linked with ideas about the nature of the modern state and its connection to its citizens, enabled by political coalitions and embedded in state institutions (Avant 2000). Sovereignty thus construed allowed states to harness the services of their citizens to deliver security through state military organizations. It also offered states, collectively, a solution that avoided in the services realm some functional dilemmas that have been pointed out in the literature on the arms trade – where states must weigh the benefits of extending their influence over other states via the export of arms with the potential costs of losing control over the arms and their recipients once they are delivered (Krause 1992; Keller 1995; O’Prey 1995).

As states look increasingly to the market for security services, however, these dilemmas should return. PSCs draw on the skills learned in their state’s military and share skills along with information about effective military organization with their employer state in ways that their home state might want to control. Also, a company’s behavior might affect the reputation of their home state or implicate it in conflicts to which it is not a party. To the degree that a PSC’s activities enhance the capacities of future enemies, are at odds with government policy or implicate the government in conflicts, they risk a decrease in functional control.

This industry, though, is also a mechanism by which states can garner additional wealth and power, and therefore may want to encourage. Trade in services can enhance a state’s influence abroad. A strong security services industry – built in part by exports – can also be used by the home state. Furthermore, commercial sales can influence relationships abroad without necessarily implicating the state – generating a new tool for executing foreign policy. To the degree that PSCs further their government’s policy abroad, bring income home, or advantage other industries abroad, they can offer increases in functional control – again, as would arms exports.

These dilemmas should be exacerbated by particular characteristics within the current market and industry that decrease the usefulness (or increase the costs) of state regulation (Porter 1990). The market’s increasingly transnational character – that is neither supply nor demand fit within state borders – and the glut of supply – if demand cannot be satisfied by one

supplier, there are many others in line – increase the costs of regulation. Meanwhile, the industry’s low capitalization, fluid structure, and the lack of commitment to territory – a PSC frustrated with one state’s regulation can simply move abroad, or melt and reconstitute itself differently to avoid it – decrease the usefulness, of the kinds of authoritative controls often associated with states (Herbst 1999; Porter 1990; Drucker 1994; Feketekuty 1988; Kostecki 1994).

States, however, need not only rely upon authoritative controls. Indeed, the market offers states a different kind of tool for control: consumer demand. If states purchase security services from the market, they can both affect the behavior of PSCs with their procurement and give firms incentives to abide by authoritative controls. When the government is a consumer, PSCs may choose to abide by regulation to preserve their government contracts. Firms may also abide by regulation if they believe that doing so is important to enhance their competitive advantage over other PSCs or to attract other customers.

Market controls operate differently than governmental controls, though. They accord influence to different institutions within government (executive contracting agencies rather than legislatures), and allow an increased level of influence from particular groups outside of government (PSCs and their allies). The conditions most favorable to government influence over the behavior of their PSCs abroad also redistribute power over foreign policy making and enhance the influence of PSCs in the foreign policy process. Furthermore, the more states purchase services from PSCs, the more they undermine the connection between citizenship and military service, which underlies the collective monopoly of states over force. Thus, states face trade-offs between influencing the behavior of PSCs abroad and maintaining the integrity of political processes of foreign policy making, and between influencing professional military values PSCs attend to and maintaining the value surrounding the role of the state in security. Though states may manage these trade-offs in different ways, as with other trade-offs posed by globalization (Palan/Abbott 1996), no state should be able to avoid them altogether.

3.1 The US

The US sees PSCs as a tool to be used for the government’s advantage. The success of this strategy has been enhanced by the US government’s procurement of security services. In the US, PSCs appear to work in concert with US policy and members of the government report satisfaction with their behavior. The mechanisms that government officials use to affect the behavior of US firms, however, accrue mainly to the executive branch and present over-

sight hurdles even there. Furthermore, the participation of PSCs as both contractors to the US and contractors to other governments has opened the way for these companies to reshape agendas within government, affecting foreign policy. The process through which PSCs are used, then, has reallocated power within government and opened additional avenues for private influence over foreign policy. Furthermore, while the US government's segment of market demand has given it influence on the values PSCs profess, the fact that the US government purchases security services from the market undermines the overarching norm that defense is best served through public institutions and increasingly encroaches on the ability of other states to control their citizens.

3.1.1 The Market for American PSCs and the Range of Providers and Services

With threats diminished in the 1990s US forces were downsized, but not reorganized to meet the demands of new engagements (McNaugher 2002). To cope with the resulting stress on US forces, policy makers increasingly turned to private contractors (Graham 1995). Outsourcing proceeded at a rapid pace – by 2001, the Pentagon's contracted workforce exceeded civilian defense department employees (Nakashima 2001).

The US government purchases a wide range of services from PSCs. US contracts, though hardly new, grew markedly in the post-Cold War era and have continued to grow in the context of the war on terrorism – as witnessed by striking revelations that contract interrogators were implicated in the Abu Ghraib prison scandal in Iraq (Hersh 2004). The DoD outsourced large swaths of advice and training – both for American troops and foreign forces (Grossman 1989; Isenberg 1997). It contracts for site security at US bases at home and overseas, for transport, and for logistics support generally (Wynn 2000; Baum 2003). PSCs provide operational support for weapons and other military systems in the US, abroad and during conflicts (Zamparelli 1999). In Iraq, CSC's DynCorp won a multi-year contract to train an Iraqi police force (Arvedlund 2003) and Northrop Grumman's Vinnell won the initial contract to train the Iraqi army, with other companies like MPRI acting as subcontractors (Burns 2003).

Growth in US demand for these services has been complemented by demand for security services from foreign governments. In the mid-1970s Vinnell became the first US firm to sell military training directly to a foreign government, when they signed a 77 mio. USD contract to train Saudi Arabian Forces (Willenson 1975). Since the end of the Cold War, this foreign market has boomed. European and other western states provide one part of this client base. For example, American firms such as Kellogg, Brown and Root (KBR)

and the Carlisle Group have contracts with the British and Australian governments to provide a variety of military support services.³ Non-western states eager for US expertise in defense organization, civil-military relations, and military professionalization offer another layer of demand. For instance, Hungary hired Cubic to help upgrade its military to NATO requirements; Croatia and Equatorial Guinea hired MPRI to provide military advice and training; and the Bosnian defense department contracted with MPRI to train its military under the Dayton Accords (<http://www.cubic.com/>; http://www.mpri.com/subchannels/int_europe.html). The range of services purchased from US PSCs by foreign governments and private entities matches the broad range purchased by the US government.

Finally, after the Cold War a non-governmental market grew as private companies, international organizations (IOs), and international nongovernmental organizations (INGOs) sought to accomplish their goals in unstable territories. Non-state actors purchase a more limited array of services including logistics, site security, crime prevention, and intelligence. ICI Oregon has worked for the World Food Program, and commercial firms as well as for the US government and foreign governments (<http://icioregon.com/>). KBR supported UN operations in Haiti and Rwanda (Nelson 2000). US Defense Systems offers support to the UN as well as to US embassies (Boyatt 1995). Other companies like Total Security Services International specialize in providing services to the private sector (<http://www.totalsecurityservices.com/>).

Many of the same companies that sell services to foreign governments and non-state actors also sell services to the US government and US contracts are lucrative. The fact that PSCs sell similar services to the US government that they sell abroad (combined with the fact that the US government is a very good customer) gives American PSCs a commercial incentive to pay attention to US policy and to stay in tune with government regulatory initiatives.

3.1.2 Regulatory Environment

The International Transfer of Arms Regulations, ITAR, (part of the Arms Export Control Act) governs military services sold to foreign governments.⁴

3 "US Firm to take over state defense group," *Financial Times*, 5 September 2002; "Is Big Business Bad for Our Boys?" *The Guardian* 2 March 2003; <http://www.mod.uk/business/index.html>; http://www.halliburton.com/gov_ops/sl0252.jsp

4 A defense service is defined as assistance, technical data or training related to military units. This regulation does not apply to law enforcement or sales of security advice to private entities. "International Traffic in Arms Regulations," (22 CFR 120-130) as of 1 April 2001 (United States Department of State, Bureau of Political-Military Affairs, Office of Defense Trade Controls).

The legislation was designed specifically to deal with the functional control dilemma outlined above. By regulating what is sold to other governments, the US intended to insure that arms sales would further the government's interest. The clause on services (though originally intended to license training associated with the sale of weapons systems) provided a convenient regulatory structure as security service exports boomed.

Licensing military services exports uses standard tools to enforce general principles – that US PSCs should export only to reliable countries that abide by the norms the US supports. The Department of State's Office of Defense Trade Controls oversees the process. Before a license is granted, the appropriate regional office, political-military bureau, desk officer for the country, and others (such as the Bureau of Democracy, Human Rights, and Labor) are invited to comment. There are different standards for different kinds of services. Lethal training is more closely scrutinized than non-lethal training. In the event that a country with no restrictions wants to buy non-lethal training, the license should be readily approved. On the other extreme, a contract with a country listed on the State Department Embargo Chart should not receive a license. When in-between cases arise, a variety of offices make their case and the Assistant Secretary makes a final decision.⁵ This process appears to fold the export of security services into a regulatory system to insure that exports are consistent with US goals.

The process, though, has often functioned in an ad hoc way – with variation in the offices having input into the process from contract to contract. For instance, when MPRI first applied for a license to export services to Equatorial Guinea, the inter-agency process only included the Africa desk at the Department of State. When it applied for the same license some time later, the Office of Democracy, Human Rights and Labor was also consulted.⁶ Furthermore, there is no reporting or oversight process required by the ITAR.⁷ Though the State Department monitors the behavior of other countries and can freeze contracts (just as it can freeze weapons transfers), routine monitoring by embassy staff may miss a lot. Also, those responsible for overseeing the behavior of PSCs in the State Department do not see themselves as overseers. “When asked whether his office would pursue the employees of AirScan who had coordinated air strikes in Columbia that

5 Interviews with State Department Officials, July 1999.

6 Interviews with State Department Officials, July 1999.

7 Interview with State Department Official, August 1999. Under Section 40A of the Arms Export Control Act, there is a requirement that the Office of Defense Trade Controls monitor the end use of licensed transactions. This, so called, Blue Lantern Program did result in 410 checks in FY 2001 and 71 unfavorable determinations. See “End Use Monitoring Report for FY 2001,” available at http://pmdtc.org/docs/End_Use_FY2001.pdf (retrieved October 2002).

killed civilians, including nine children, one State Department official responded, ‘our job is to protect Americans, not investigate Americans.’ (quoted in Singer 2003a: 239)

What regulation of exports that occurs, occurs through the executive branch. Only if the license is for a contract of more than 50 mio. USD in services is congress notified before the license is approved. Though there has been periodic congressional criticism of PSCs in the wake of particular scandals, most military service exports stay below the congressional radar (Lumpe 2002).

3.1.3 The Control Trade-Off

PSCs express attention to the goals of US foreign policy when describing their sales to other countries. ICI Oregon touts its work for a multinational peacekeeping force in Liberia as working toward stability in the region that enhances US goals (<http://icioregon.com/nomination.htm>). MPRI claims that its contracts with countries like Croatia and Equatorial Guinea carries out US policy at no cost to US taxpayers.⁸ Those working for PSCs say they operate within received standards of civil-military relations and further US interests abroad.⁹ Indeed, PSC employees express beliefs that their work furthers US interests in the world – and free of charge because other countries pay the bill.¹⁰

High-placed government officials profess happiness with PSC behavior abroad.¹¹ Many claim that PSCs give US policymakers more flexible foreign policy tools. The fact that PSCs like MPRI exist opens the way for the US to affect military capacities abroad without sending US forces – or even US money. The ability of the US to license a private firm to train foreign military forces or offer other kinds of security services abroad opens the potential for ‘foreign policy by proxy’ (Silverstein 1997). Many in the executive branch regard this as a net functional gain – a new tool for conducting US foreign policy.

MPRI’s contract with Croatia is an example. When the State Department licensed MPRI to work with Croatia in 1994, the US wanted to change the Balkan game. Senior State Department officials admitted that Croatia became our de facto ally – that arms flowed in despite the embargo and top retired American generals were allowed to advise the Croatian Army (Cohen 1995; Holbrooke 1999). MPRI’s mere presence was evidence of this ‘alliance’,

8 Interview with Ed Soyster and Carl Vuono, 27 October 2000.

9 Interview with General Carl Vuono, 27 October 2000.

10 Interviews with personnel working for MPRI.

11 Based on over 30 interviews at the Pentagon and Department of State between 1998 and 2002.

providing benefits to Croatian President Tudjman in his effort to consolidate political power and boosting Croatian Army morale (Vankovska 2002; Zarate 1998). MPRI's presence also provided Serbian President Milosevic a signal of American commitment to Tudjman – some have argued that Serbs in the Krajina put up less resistance once they realized that Milosevic was not going to back them (Vankovska 2002). In the wake of the contract, Croatian military successes changed events on the ground, enabling strategic bombing by NATO and the Dayton Accords. By licensing MPRI, the US retained its official neutral status all the while changing the strategic context via its PSC.

The use of PSC exports as a foreign policy tool, though, changes the political control of force. First, the influence of the government on these exports is linked to its market demand, and government consumption or private services alone redistribute political control (Avant forthcoming). But the flexible new tool offered by PSC contracts with foreign governments furthers this redistribution. It evades processes that give Congress checks on executive power, giving Congress little information and few tools with which to exert influence. The process also reduces information available to the electorate. The new policy tool is flexible precisely because it operates through different processes.

Second, PSC exports open the way for commercial influence over the policy process (Silverstein 2000). Take MPRI's contract with Equatorial Guinea as an example. When MPRI first requested a license to evaluate Equatorial Guinea's defense department and need for a coast guard in 1998, the regional affairs office for Africa at the State Department rejected the request because of Equatorial Guinea's poor human rights record.¹² Officials from MPRI then visited the Assistant Secretary for African Affairs and congressional members to suggest looking at the license from a different perspective. There are benefits, MPRI argued, to 'engaging' with a country rather than punishing it; in the case of Equatorial Guinea engagement would foster better behavior (fewer human rights abuses) in the future and enhance US (as opposed to French) oil interests, especially given that Equatorial Guinea was going to hire someone, if not MPRI, it could be a less savory company or one less interested in the interest of American companies abroad. These arguments, coming from esteemed, high level (albeit retired) military officers and reflecting a deep understanding of the ins and outs of American defense policy, had an impact.¹³ When the application was submitted again, it was approved by the regional office but held up in the office of Democracy, Human Rights, and Labor. Again, MPRI went to visit and explain their case,

12 Interview with Ed Soyster, MPRI, 1 December 1998.

13 Interview with State Department Official, January 1999.

to the Assistant Secretary, to more members of congress, and officials at Democracy, Human Rights and Labor.¹⁴

In spring 2000, the contract was approved – on the basis of a different set of guidelines than it was originally rejected.¹⁵ One may find MPRI's logic persuasive or not, but the standard for licensing a contract shifted with no new information about the impact of such a contract on Equatorial Guinea's human rights processes and no change in MPRI's contract with them. Some may argue that MPRI simply gave more power to those in government that were arguing for this approach to begin with. This is true, but beside the point. These people were losing the argument before MPRI joined forces. Because US PSCs that sell their services abroad also sell the same services to the US government, there are commercial incentives to stay in step with US policy. This leads PSCs to behave in ways that are satisfactory to US government officials. It also, however, accords more control to the executive branch and opens avenues for government policy by proxy that violates the official US line. Furthermore, the licensing process opens the way for PSCs to influence the standards by which their contracts are judged, thus folding private interests into the making of public policy.

In many cases, American PSCs do abide by American values. American PSCs borrow liberally from US professional military education establishments in their plans and this borrowing encourages (generally) attention to human rights, democratic control of the military and international law. The US control strategy has encouraged this behavior. When a company like MPRI both sells training to the US government and directly to other governments, it is more likely that both sets of training will rely on similar values. Thus, the US strategy – particularly the fact that the US government purchases services from the private sector appears to buy influence over the values to which PSCs ascribe.¹⁶

This strategy, however, also communicates a model for defense that holds a prominent role for the private sector. The US efforts at stabilization in Iraq, e.g., include private sector training for the Iraqi Army, the Iraqi police force, and Iraqi gendarmes, and a private Iraqi force to guard the oil fields. Furthermore, the strategy enhances a new process of military professional development in which PSCs have a significant role in planning, training, writing doctrine, and serving as the conduits for military professionalism. Finally, the US strategy complicates the ability of other countries to control their forces. In Iraq, the US has hired South African PSCs even though South

14 Interview with State Department Official, January 1999.

15 Interview with Ed Soyster, MPRI, April 2000, Interview with Bennett Freeman, Department of State, Office of Democracy, Human Rights and Labor, 24 April 2000.

16 The increasing tendency of PSCs to recruit transnationally may erode this influence.

Africa claims the export of these services to be against their law. The US strategy not only changes the process by which military professional norms are formed, it also portends a different relationship between citizenship, military service, and the state – undermining what has been argued to be one of the central features of sovereignty in the modern era (Thomson 1994; Moskos 2000).

3.2 *South Africa*

The almost simultaneous end of apartheid and the Cold War led to a revolution in the way South Africa approached security. Replacing South Africa's 'Total Strategy' under which the society was militarized, security forces operated with impunity, and vast resources were dumped into the creation of a war machine, the new ANC government in a new international environment endorsed human security (Batchelor/Willet 1998).

Given South African PSCs staffed with apartheid-era personnel, it is not surprising that the relationship between post-apartheid South African governments and PSCs has been tenuous to hostile. As the government undertook the restructuring of its defense forces, there was political uncertainty over the military's new organization and goals. In this context, Executive Outcomes (EO), a company originally set up to train the Apartheid South African Defense forces, began to recruit from the restructuring army, particularly from special operations regiments (O'Brien 2000a; 2000b). EO was attractive to those worried about a politicized working environment in the restructuring army.¹⁷ Though some claim that Nelson Mandela's government facilitated EO's activities as a way of getting otherwise troublesome personnel busy outside of South Africa's borders, others argue that PSC recruitment pulled competent soldiers from the army and put them in private companies rather than transforming their allegiance to the new government (Shearer 1998b; Rubin 1997; McNallen 1995).¹⁸ Regardless, the ANC government had little trust in South African PSCs. The fact that employees of PSCs worked against the ANC during apartheid left some concerned about individuals' motivation and South Africa's transitional, consolidating status left others believing that private security undermined the state at the very moment that it was being reconstructed.¹⁹ By 1997, the government expressed this distrust more clearly as it moved to delegitimize PSC activities.

17 Interview with former South African government official February 2000.

18 Interview with Rocky Williams, ISS, 28 February 2000.

19 Interviews with South African academics, government officials, and former government officials in February/March 2000.

3.2.1 The Market for South African PSCs and the Range of Providers and Services Offered

The ANC government was not enthusiastic about private solutions in general (Hentz 2000). This was partly a response to the apartheid government's use of privatization to "shrink the size of the state the ANC would inherit" (Hentz 2000: 205). This combined with the issues of trust (above) to reduce government demand for PSCs. Despite periodic reports that PSCs might help secure banks from robbery or patrol farms to prevent stock loss along the Lesotho border, PSCs have not looked to the government for contracts (Munnion 1998). To the degree that South African PSCs have pursued work in South Africa, it is with private citizens and businesses (Irish 1999).

The end of the Cold War, however, enhanced international demand for PSCs in Africa. The strategic importance of African countries to the west evaporated – and with it western military assistance. This vacuum has opened potentially lucrative markets to PSCs. Governments needing professional military assistance might purchase it on the market. Not all governments in need could afford services, but PSCs have targeted governments with access to extractive resources, or wealthy commercial patrons who can afford to pay. EO, Lifeguard, Saracen, TransAfrica Logistics, Falconer Systems Pty Ltd, and Ibis Air, for instance (as well as a variety of other PSCs including Sandline and Alpha 5), all have reported links to the Branch Group, which includes diamond and oil conglomerates DiamondWorks, Ltd., Heritage Oil and Gas and Branch Energy (O' Brien 1998). A wide variety of corporations operating in unstable parts of Africa, Asia, and the Middle East as well as INGOs, and IOs, round out the market further. Finally, US actions in Afghanistan and Iraq after the 11 September 2001 terrorist attacks has increased demand for South African PSCs (Tromp 2004).

Many South African PSCs offer services ranging from the provision of troops through advice and training, operational support, logistics support, site security and crime prevention services (Ruben 1997; Shearer 1998b). EO was close to a private army and worked for governments (Angola, Central African Republic, Rwanda and Sierra Leone) as well as mining companies in these countries (Pech 2000). There are other South African PSCs, though, which offer logistics, operational support, advice and training, site security and crime prevention services. Saracen has worked for governments, commercial industry and INGOs conducting operational support, training, logistics, site security, crime prevention and intelligence.²⁰ Southern Cross Security (SCS) provides site security as well as transportation and other logistics support for

20 Interviews with INGO personnel in Washington, January 2000, interviews with journalists and PSC personnel in Pretoria and Johannesburg, South Africa, March 2000.

the INGO community around Sierra Leone to this day. Nicolas, Frederick and Duncan (FDN) contracted with private entities including oil companies in the Sudan and professed a desire to sell its services to governments – even the South African government.²¹ Gray Security aims at commercial security markets in South Africa and protection for mining in Southern Africa.²² Other companies including Lifeguard, Omega Support Limited, Shibata and Strategic Resources Corporation offer similar services (Adams 1999; Misser 1997; Reno 1997; Vines 1999). Particularly after EO's demise PSCs in South Africa became smaller and more specialized, largely offering non-combat services (Howe 2001).

3.2.2 Regulatory Environment

In the early 1990s there was little regularized interaction between the government and PSCs. Some reported that executives from EO did meet with government officials to inform them of its activities. The government acknowledged meetings but denied coordinated action. In the wake of EO's high profile contracts in the mid-1990s, the government embarked on a campaign to 'leash' the dogs of war and passed the Regulation of Foreign Military Assistance Act in May 1998. According to officials, the Act had both a moral and a pragmatic motivation. Morally, South Africa was pledged to have an ethical foreign policy and a human security doctrine, both of which required regulation of PSCs. Practically, it saw EO and PSCs like it as a threat to the stability of the government and its control of its own foreign policy – it needed to keep track of shady activities on the part of enemies of the regime.²³

The legislation claimed to be aimed to “regulate the rendering of foreign military assistance by South African juristic persons, citizens, persons permanently resident in the Republic, and foreign citizens who render such assistance from within the borders of the Republic” (Republic of South Africa 1998). Justifications for refusal of authorizations include any action that may be in violation of international law, South African obligations or interests or may cause human rights abuses, support terrorism, endanger the peace, escalate regional conflicts or “be unacceptable for any other reason” (Republic of South Africa 1998). EO claimed that it welcomed the legislation, and was licensed to provide services in 1998 (Howe 2001; O'Brien

21 Interview with PSC personnel in Pretoria, March 2000. “Oil Companies to Hire Mercenaries to Protect Oil Fields,” Africa News Service, 25 November 1996. In February 2002, NCACC (chaired by Kadar Asmal) announced investigation into NFD's work in Sudan.

22 Interview with PSC personnel in Pretoria, March 2000. “South African security consultant in Angola murdered for food,” Reuters, 10 August 2000.

23 Interview with former South African government official, February 2000; interview with South African academic, March 2000.

2000a, 2000b). By 2000, though, both PSCs and many government officials agreed that the Act's intent was to put companies like EO out of business (Herbst 1999).

The legislation was criticized on many counts. Analysts argue that it is too vague and casts too broad a net, trying to regulate activities that are far from military.²⁴ For instance, 'advice and training' was taken by some to mean security advices in the form of activities conducted by NGOs and think tanks; and 'procurement of equipment' was taken to mean supplies of mundane items (like backpacks) to other militaries (see Republic of South Africa 1998: Definitions, 1., iii., a and v). In 2000, many in the government reported spending their time trying to inform suppliers of these mundane items that they were subject to regulation and reported uncertainty about this issue – even among the regulators.²⁵ Furthermore, the definition excludes "humanitarian or civilian activities aimed at relieving the plight of civilians in an area of armed conflict" (see Republic of South Africa 1998: Definitions, 1., iii., d). Though it sounds sensible, it allows PSCs to deliver services to protect commercial property in conflict zones, potentially allowing a loophole for the participation of PSCs under contract to extractive industries in conflict zones. These are just the kinds of activities that may enhance instability, discourage the consolidation of government control in unstable areas, and prove problematic to South Africa's human security agenda (Berdal/Malone 2000).

Though PSCs have criticized the Act for being unclear, it is more important that they do not trust it to be fairly executed.²⁶ This caused some to aim at markets like domestic security or security for extractive industries abroad and others to break up and either move off-shore or reconstitute themselves clandestinely. Within a year of the bill's passage EO had closed its doors for business (Howe 2001; O'Brien 2000a, 2000b). EO personnel, however, soon appeared in other firms, some new, some old and continued working, for instance, in Sierra Leone.²⁷ Despite significant PSC activity abroad, less than a handful had even applied for an export license as of March 2000.²⁸

Indeed, the most serious criticism of the Act is that it the South African government's heavy-handed approach led PSCs to move further out of governmental influence. According to Kevin O'Brien, "[b]y engaging in dialogue with these private military companies, the government could have successfully co-opted them into legitimate operations. Now, the closure of

24 Interview with Mark Malan, February 2000; interview with South African defense official, 7 March 2000.

25 Interview with defense official, South Africa, 7 March 2000.

26 Interviews with PSC personnel in Pretoria and Johannesburg, February and March 2000.

27 "Can Anyone Curb Africa's Dogs of War?" *The Economist*, 16 January 1999: 41.

28 Interview with South African government official, 4 March 2000.

EO may well signal the end of this effective dialogue and the emergence of much more covert – and therefore much more potentially damaging – firms engaging in entirely unregulated activities outside of South Africa’s borders.” (O’Brien 2000b: 61)

Though the Act extends regulation to all South African citizens and passport holders, enforcement has proved difficult. South Africa did prosecute its first successful case under the Act in 2003 and another in 2004, but these prosecutions seem like a small number when compared to the activities of PSCs (Gosline 2004). As reports that large numbers of South Africans were working for PSCs in Iraq abounded, the government was faced with deciding how to handle the potential contravention of the Foreign Military Assistance Act in a war South Africa did not support.²⁹ The government introduced legislation in 2005 to toughen up the bill but was inundated by criticism (Republic of South Africa 2005a, 2005b; Tigner/Gibson 2005). The new legislation was tabled and set to be discussed again in 2006.³⁰ In short, the regulation of security services is difficult to enforce without cooperation from PSCs.

3.2.3 The Control Trade-Off

The relationship between PSCs and South African foreign policy goals are disputed. As I mentioned earlier, some have argued that having former employees of the SADF employed outside South Africa in the initial years of the post-Apartheid government was a benefit for the ANC government and even claimed that EO carried out unofficial South African policy (Rubin/McNallen/O’Brien 2000; Duke 1996; Zarate 1998). Though it is not clear that EO’s actions were coordinated with the government, many reports suggest that EO informed Mandela’s government of its actions, meeting regularly with government officials and sharing intelligence during its actions in Sierra Leone and Angola, which were consistent with government policy (Harding 1997; Zarate 1998). Before regulation, many South African PSCs appeared to further – or at least not undercut – the ANC government’s foreign policy goals (Duke 1996; Zarate 1998). Though some press reports cited EO abuses of civilians, most reported restraint (Ruben/McNeil 1997). EO claimed to have returned school children and teachers to their homes, demo-

29 According to Kader Asmal, NCACC chairman, “the government has become aware that South African citizens and South African companies may be rendering security and related services in Iraq”. “South Africa: Authorities Target Alleged Mercenaries,” UN IRIN-SA 4 February 2004.

30 See “South Africa: Lekota Conceded Problems in Bill on Mercenary Activity,” Africa News, 9 November 2005; International Comments regarding the South African Prohibition of Mercenary Activity Bill, 2005, <http://www.ipoaonline.org/news/legislative/display.cfm?ID=294>

bilized child-soldiers, allocated medicines and passed out bibles in Freetown as evidence of their attention to international values in accordance with South African foreign policy (Harding 1997; Zarate 1998).³¹

Government officials, however, professed dissatisfaction. Rusty Evans, the Director-General of the South African Foreign Affairs Department in 1996 called EO a “dangerous criminal and destructive force in Africa” (Ashworth 1996). EO posed dilemmas for Mandela’s government as it was seen to undermine governmental authority and South Africa’s new security agenda (Ruben/Cock/McKenzie 1998). Also, EO’s recruiting embarrassed the government and caused it to lose competent soldiers (Milan/Cilliers 1997). The uneasy juxtaposition of PSCs with South Africa’s new security agenda led many to claim that, regardless of their behavior, the very existence of PSCs threatened the government. “The decision to intervene and to take sides in an armed conflict is a political one, whether it is made by an international organization, a regional organization, a coalition of states, or a single state. When private individuals and companies are allowed to make such decisions, the concept of international law loses all meaning.” (Milan/Cilliers 1997) The government’s search for a way to end EO’s participation in Angola, even though it supported the government’s policy demonstrates this concern. The South African government also attempted to persuade its partners in the Organization for African Unity (OAU) to take a position against EO. Next, they passed the Regulation of Foreign Military Assistance Act and they began to prosecute those selling security services abroad. Finally, they have considered toughening their legislation.

South Africa’s strategy, however, had consequences for its control of PSCs. Before the South African government’s passage of the Act, PSCs in South Africa worked to enhance their legitimacy. Many PSCs tied their commercial success to their perceived legitimacy, which the government could have used to coopt PSCs into working for its interests (O’Brien 2000a; 2000b). The government’s strategy to delegitimize PSCs removed this option. Whatever coordination occurred between the government and PSCs in the early 1990s evaporated. Though some PSCs claim to have restricted their activities, selling only site security and crime prevention services and only to private actors, others have simply moved their offices out of South Africa or broken into smaller companies and moved underground (Howe 2001). Companies like Lifeguard, SCS and Saracen now operate from outside South African territory and companies like FND operate more or less underground. PSCs based on retired South African military personnel continue to sell their services, but the government’s influence over and knowledge of

31 Interview with Chris Grove, NFD, 29 February 2000.

their activity is reduced. In effect, South Africa's regulatory strategy led the government to reduce its influence over the behavior of PSCs abroad.

Moreover, while the government's strategy to delegitimize private security exports in South Africa pushed PSCs further away from South African governmental influence, the transnational market demand impeded the government's attempt to put the companies out of business. South African government's strategy alone could not erode the legitimacy of PSCs, particularly when South African PSCs work for IOs, INGOs, and even the US government. Indeed, some South African PSCs have sought legitimacy through appeals to UN and international values rather than to South Africa's values.³² The South African strategy, then, has caused PSCs to look to international forums and values rather than the South African government's values.

South Africa's strategy, though, has maintained the integrity of its political processes. It has reduced the opportunities for PSCs to affect government policy or preferences in South Africa. While executives from EO met privately with South African officials before the Act, they do not have the same access in its wake. PSC officials report feeling that they have little political influence or power.³³ If South Africa considers the use of force abroad, it considers the use of public forces, governed by standard political processes. Foreign policy by proxy is less of an option, but this also means that foreign policy decisions are less likely to reflect PSC interests.

Furthermore, though the government has given up influence over the values to which PSCs adhere, it has preserved the value of public security. Indeed, government officials and academic analysts emphasized just this point.³⁴ By focusing on the 'fact' that PSCs should be seen as they are – as mercenary companies – the South African government preserved its proper role in the defense of the country and its ability to determine foreign policy independently. Efforts to control PSCs, these officials suggest, would also have legitimized their role. Allowing PSCs to operate legitimately, in turn, would work to undermine the government's capacity and the authority of the state. Faced with the choice between a strategy that enhanced their influence over PSCs abroad by legitimating their activity and a strategy that gave up influence for delegitimation, South African officials argued in 2000 that they had made the right choice.³⁵ The South African government saw the political cost of effective functional control as simply too great.

32 Interview with Chris Grove, NFD, 29 February 2000.

33 Interview with Chris Grove, NFD, 29 February 2000.

34 Interview with Rocky Williams, February 2000; interview with Jackie Cock, February 2000; interview with South African defense officials, March 2000.

35 Interview with Rocky Williams, February 2000; interview with Jackie Cock, February 2000; interview with South African defense officials, March 2000.

3.3 *The UK*

British PSCs also flourished in the 1990s, but the government remained aloof. Though it sometimes acted as a booster for British PSCs, the government purchased few of the services its PSCs exported and maintained a long-standing policy of 'plausible deniability' with respect to PSC activities abroad. The coordination of British government policy and British PSCs is thus ad hoc. The British have suffered some guilt by association with their firms, though, and scandals involving PSCs led the parliament to commission a Green Paper on the regulation of mercenary activity, which points toward the US model in its recommendations. Without a government market for the kinds of services they seek to regulate, however, regulation will have a lesser impact in the UK unless the government also increases its consumption of security services.

3.3.1 The Market for British PSCs and the Range of Providers and Services Offered

Though the British government faced challenges similar to those faced by the US in the 1990s, and issued initiatives to encourage private solutions in defense, outsourcing in the UK was more limited.³⁶ In 2000, the Private Finance Initiative (PFI) had led to 26 contracts with an estimated capital value of 1 bio. £ and the government claimed there are no 'no go' areas for PFI in the MoD (UK MoD 1998).³⁷ A sample of government contracts includes the provision of vehicles, the outsourcing of the Army Logistics Agency IS/IT, and the Defence Helicopter Flying School.³⁸ Private companies also work for the Department for International Development (DFID) doing such things as landmine removal and for the Foreign and Commonwealth Office providing security at embassies and commissions abroad.

The MoD has hired PSCs (even foreign PSCs) to run bases and construct particular projects. Though it has not hired PSCs to conduct the range of operational support and training missions as in the US (indeed, reports that battlefield support services were to be open to private competition spawned great angst in 1999), the Blair administration has moved further down this

36 As of 1998, British defense expenditure had dropped 23% in real terms since 1990. (UK MoD 1998).

37 See also "UK Outlines Revised Plans to Privatise Defense Research," *Jane's Defense Weekly*, 26 March 2000.

38 See *Public/Private Partnerships in the MoD: The Private Finance Initiative in Government*, www.mod.uk/commercial/pfi/intro.htm.

path.³⁹ The pursuit of Better Quality Services (BQS) has led to an increase in privatization of defense functions. As of 2003, the UK PFI had increased to 42 projects with an estimated value of 2 bio. £ and the British MoD has increased the scale and scope of commercial involvement in the theater of military operations with its Contractors On Deployed Operations (CONDO) policy and related initiatives (Uttley 2003). Thus, while PSCs offering operational support, training, and even logistics and site security have not looked to the British government as their prime (or even a major) customer, this could be changing.⁴⁰

British military service exports to foreign governments, however, are significant. The trend began in the late 1960s when retired British Special Air Service (SAS) Colonel Sir David Stirling founded WatchGuard International in 1967 to serve the needs of sultanates of the Persian Gulf (O'Brien 2000a, 2000b). Other companies, such as KMS and Saladin, and then Defense Systems Limited (DSL) were founded well before the Cold War's end. Since then, the numbers and activities of PSCs have risen precipitously. Aims Limited, Rubicon International, Sandline, Northbridge, and others have cropped up in the post-Cold War era and aim their services to foreign and private markets. British firms have worked for governments and the private sector in Europe, the Persian Gulf, Africa, Latin America, and Asia (Goulet 2000; Dean 1997; O'Brien 1998; Reno 1997).

British companies export a broad range of security services. Some provide operational support on the battlefield, very close to combat support. Sandline International, which closed its business in 2004, listed the widest array of services and sold military services to states such as Papua New Guinea and Sierra Leone and many others according to company officials.⁴¹ Sandline also boasted of its status as a UN service provider and lists a variety of services that might assist not only the UN but also INGOs.⁴² Defense Systems Limited (DSL) boasts services such as site security, manned guarding to crisis management and security advice and training, to humanitarian support, electronic security, and more. DSL sells to international organizations such as the UN and the World Bank, NGOs such as CARE, and many private companies that operate in the riskiest environments. Other PSCs focus more specifically on a particular market or client base. For instance, Control Risks

39 Interview with Rt. Hon. Bruce George MP, Chairman House of Commons Defense Select Committee, 31 May 2000; Interview with FCO officials, September 1999; interview with MoD officials, September 1999; "Army to Privatise Some Key Units," *The Guardian*, 14 February 1999.

40 Interview with Noel Philip, Managing Director of DSL, London, 2 June 2000; interview with Michael Grunberg, advisor to Sandline, London, 31 May 2000.

41 Interview with Michael Grunberg, advisor to Sandline, 31 May 2000.

42 Tim Spicer's comments, 17 March 2000.

(established in 1975) focused on the private sector market in the 1990s and Crown Agents (a formerly public entity that was privatized in the late 1980s) has sold services mostly to the public sector. These specializations are subject to abrupt changes, however, Control Risks has sold security services to a wide range of governmental and non-governmental entities in the wake of the September 11th terrorist attacks and the wars in Afghanistan and Iraq.⁴³

3.3.2 Regulatory Environment

The British regulatory environment is informal. Laws that regulate the export of arms in the UK do not extend to services. The Defense Export Services Organization in the MoD provides advisory services to companies wishing to export defense products and services. It acts as a booster, facilitating interaction between UK companies and foreign governments, providing advice on a variety of legal, financial, military and political issues, and generally greasing the wheels for British industry in other countries (Spear 1990; Pearson 1983). Because there is no law regulating the export of services, its work does not extend to legal advice (<http://www.dgcom.mod.uk/dgcom/dss/exports.htm>).

In the absence of a formal process, the interaction between the government and PSCs is ad hoc. The MoD Office of Defense Export Services, the FCO, the embassy or commission abroad all serve as points of contact. In many cases, if PSCs coordinate with the government, it is with government officials serving in the field. The communication is not mandated, though, and therefore depends on the initiation of the PSC. Furthermore, communication with one part of the government may not be communicated with other parts. For instance, when Sandline was working for exiled President Kabbah, officials from the company did communicate with the High Commissioner and others on the ground in Sierra Leone. Sandline claims to have advised President Kabbah on arms acquisitions and training the Kamajors assuming approval from the British government (Oxfam 1998). The communication did not reach the FCO in London, however. In the event, Sandline purchased weapons from the Bulgarian Arsenal and arranged to have it flown into Sierra Leone with help from Sky Air Cargo Service.⁴⁴ As the plane landed in the Lungi airport, Nigerian troops operating in Sierra Leone on behalf of ECOMOG intercepted it and impounded the weapons on the grounds that they contravened a UN arms embargo. The disclosure that

43 They are among the 15 “Essential Security Providers” for Iraq. See <http://issues.topikmail.com/gingg/?l=2008>.

44 Arsenal is Bulgaria’s largest state owned arms manufacturer known for the quality of its AK-47 assault rifles. See “FO Muddle Leaves Boss on Firing Line,” Sunday Times, 17 May 1998 (FOCUS).

Sandline delivered arms to Sierra Leone in contravention of a UN and UK Arms Embargo led to a scandal.⁴⁵

The activities of Sandline International and the scandal that erupted over its behavior in Sierra Leone, and the ‘arms to Africa affair’ led the UK to begin a process evaluating whether mercenaries (or military service exports) should be regulated more formally. A Green Paper on this subject was commissioned in the wake of the Sandline Affair in Sierra Leone and released in February 2002.⁴⁶ The Green Paper does not attempt to suggest policy, but puts forth the case for regulation and several regulatory options. Regulation, it suggests, could bring PSCs under government control so as to insure that PSCs do not cut across government interests, assist forces the British government might confront in the future, affect the British government’s reputation or put British lives at risk (UK FCO 2002: 21). Regulation could provide additional benefits by setting guidelines for the industry and establishing a respectable and thus employable industry. It argues that regulation could insure that PSCs operate within British foreign policy, set guidelines for the industry and establish a way of distinguishing between reputable and disreputable PSCs. This would help British PSCs meet the international demand for security services more effectively. (UK FCO 2002: 20–26) The paper lays out options from (1) a ban on all military activity abroad (amending the 1870 Foreign Enlistment Act) to (2) a ban on military recruiting abroad (following up on the Diplock Report of 1967) to (3) a licensing regime for military services to (4) registration and notification to (5) general licenses for PSCs to (5) self regulation, but appears to lean toward some kind of licensing regime. (Norton-Taylor 2002; Newman 2002; Isenberg 2002; Sky News, 13 February 2002; Reuters, 12 February 2002)

A debate about the report and its options ensued, with labor backbenchers calling the proposals ‘repugnant’ while members of the industry hoped for more government support (Waugh/Morris 2002; Rufford 1998). As of early 2006, the British government had taken no action to regulate, ban, or otherwise clarify the British government’s control of security service exports.

3.3.3 The Control Trade-Off

British PSCs generally support British foreign policy goals. Even Sandline’s work for exiled President Kabbah in Sierra Leone reflected British government support – after the coup, Blair suspended the military junta, but personally invited Kabbah to attend the Commonwealth meeting (Rufford 1998). The British High Commissioner to Sierra Leone, Peter Penfold, also maintained close contact with Kabbah throughout the affair. In other instances, DSL, Control Risk, Northbridge, and others have also appeared to

45 “Sierra Leone: Second Report,” Foreign Affairs Committee, House of Commons, Session 1998–99, Vol. I, p. vi.

46 Green Papers lay out broad policy options and the logic behind them.

support British foreign policy goals. And the British government has pushed forward contracts between British PSCs and other countries in specific instances. For example, the British government loaned money to Mozambique so the government could hire DSL to train its soldiers that were assigned to protect Lonhro's tea and sugar estates as well as the rail lines on which they were transported from the Resistancia Nacional Mocambicana (RENAMO).⁴⁷

Government opinion of British based PSCs varies and government officials report mixed levels of satisfaction with their behavior. Some argue that PSCs have been beneficial and promise to be advantageous in the future.⁴⁸ Others are concerned that PSCs implicate British policy and sometimes are a poor reflection on the UK because they are not coordinated or regulated (Beyani/Lilly 2001). And there is a general suspicion of the activities of PSCs (often termed mercenaries) in the UK, partly reflecting British Army views that outsourcing tasks like foreign military training would infringe on their profession.⁴⁹ Also, the practice of retired military personnel selling their expertise on the market has been traditionally frowned upon in the UK.⁵⁰ Many (military and civilian) in the UK view PSCs as less professional. In all, British PSCs do not see themselves as carrying out British policy and neither do British civilians.⁵¹ The fact that British PSCs do not consider the British government a prime customer gives them less incentive to attend as closely to British policy as American PSCs.⁵²

Many British PSCs do have a global presence and worry about how their behavior in one place will affect their reputation in others. They look to international organizations and INGOs as potential clients and claim to abide by international laws and norms. British PSCs claim attention to principles of self-regulation and transparency, and argue that they abide by international law, the rule of law and human rights.⁵³ To the degree that British firms nod

47 Interview with former MoD official, London, 30 May 2000; interview with Noel Philip of DSL, 2 June 2000.

48 This sentiment was expressed in interviews with members of the FCO, MoD and HOC, September 1999 and June 2001.

49 Interviews with British Army and Navy officers, September 1999, June 2000. Though they rarely suggested competition with PSCs would infringe on their turf, several suggested that it would be inappropriate to outsource such a task.

50 Interviews with employees at Sandline and DSL and with officials at MoD, FCO and HOC, September 1999 and June 2001.

51 Interviews with employees at Sandline and DSL and with officials at MoD, FCO and HOC, September 1999 and June 2001.

52 Interview with Tim Spicer (Sandline), March 2000; interview with Michael Grunberg (consultant to Sandline), June 2000; interview with Noel Philip (DSL), June 2000.

53 Interviews with officials at Sandline, DSL, June 2001.

to the normative context in which they operate, however, they tend to mention international norms, not the pursuit of British values or interests.⁵⁴

The strategy has led PSCs to be less clear ‘tools’ for British policy than in the US, but it also restricts the presence of British PSCs in policy circles relative to their American counterparts. To the extent that PSCs affect British foreign policy it is by association. As of yet PSCs do not have the kind of access to government officials or impact on foreign policy processes that PSCs in the US do.⁵⁵ If the British strategy changes, regulation could both increase PSC attention to British foreign policy and boost the market appeal of those that maintain their reputations. Because government purchases span a smaller range of services than do exports, though, it is unclear that British regulation would have the same effect as regulation in the US – unless, of course, there is also an upswing in government purchasing.

4 Transnational Markets and Political Trade-Offs

The market for force complicates state control over the use of force. The transnational demand combined with the service nature of the industry leads states to face trade-offs in their management of private security exports. Though market mechanisms allow some states more influence on PSCs behavior in ways that enhance the tools available to that state and thus functional control, these strategies also alter political processes, redistributing power over the definition of national security goals and policies. Though market mechanisms may aid a state in influencing the values PSCs pursue, their use simultaneously undermines the overarching international norm linking citizenship to military service.

Many of the debates about markets and globalization, mired in arguments about the primacy of the state, have missed the opportunity to examine how global shifts may change the choices available to states. As these cases demonstrate, though the market for force has not undermined state control of force, per se, it has removed any one state’s ability to maximize all dimensions of control at the same time. The best strategy for maximizing relative

54 Interviews with employees at Sandline and DSL and with officials at MoD, FCO and HOC, September 1999 and June 2001.

55 Interviews with employees at Sandline and DSL and with officials at MoD, FCO and HOC, September 1999 and June 2001.

power, also changes political processes, and undermines international norms. How individual states manage this choice has important political consequences that should be of concern to policy makers and citizens as well as academic analysts.