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Promulgation of report Finabel Nr A.24.R

**POSSIBILITIES AND LIMITATIONS OF THE
OPERATIONAL CO-OPERATION WITH PRIVATE
“MILITARY” COMPANIES (PMC)**

DATE OF PROMULGATION : October 2008



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¹ Portugal considers that the term " military " has a very strong institutional charge which is linked to the monopoly of the force of the State. It is also important to refer that this term is associated to the military condition which is an exclusivity of the Armed Forces.

Spain doesn't consider to be convenient the use of the adjective " military " to name this type of corporation. According to several English dictionaries, the word " military " refers to soldiers or Armed Forces. However, these kinds of companies are composed of " civil people " operating in an Operations Theatre in a Conflict Area. For this reason, as a doctrine definition, Spain doesn't accept the term "military" because it causes confusion and the definition always should clearly differentiate national Armed Forces from this type of companies

11. Summary :

Since the late nineties, Private “ Military ” Companies (PMC) have increasingly become a common and widespread actor in all conflicts. Soldiers of fortune have been replaced by well organised and commercial companies of some standing, offering their services to all sorts of clients, governments included.

The use of PMC by third parties is increasing. PMC are more and more perceived as a convenient solution for high risk tasks. Military forces require an understanding of the methods of operation of such companies, in order that at the tactical, headquarters and individual soldiers have clear instructions as to the manner in which they should deal with PMC employees on the ground.

12. Abstract : (same classification as the study)

a. Interest/usefulness of the study

This paper provides a neutral orientation, analysis and inputs for concept development which may help those nations that are still in the process of determining their position and policy with respect to PMC.

b. Main aspects

The private military industry is basically divided into three business sectors, which can be defined according to the following “ low – high end ” taxonomy: military support firms, military consulting firms, and military provider firms. Most PMC are legitimate and honourable, and recognized as such. The debate is primarily focused on military provider firms that deliver armed services.

PMC provide answers to the questions nations and their armed forces are facing. But due to their different nature they also provide concerns. Armed forces are state actors, employed and controlled by the chain of command and the nations of origin. Their goal is to mitigate shortfalls and to solve crises. PMC are private actors, employed and controlled by contract. Their goal is to benefit from shortfalls and crises. Due to these differences there are ethical, moral, control and legal considerations connected to the use of – or cooperation with - PMC. These need to be reflected in national policy and operational directives.

c. Main conclusions

Possibilities and limitations derive both from national policy and higher level orders and guidance on the conduct of the operation. PMC that meet the criteria should be engaged as early as possible, those that are working for a third party primarily through the contracting organisation.

If it is observed or suspected that a PMC does not meet the criteria then forces of Finabel nations should report the observed or suspected misconduct. Action is to be taken if the legal framework for the operation so demands, or on order. Otherwise, pending the outcome of investigation and further instructions they are to continue to monitor and report whilst refraining from engaging with those PMC.

d. Main recommendations

Commanders have to know policy and directives concerning PMC.

They have to know which PMC are active in their area, who they work for, what their legal status is, what their role(s) and responsibilities are and what capabilities and limitations they have.

They need to know who has which authority over the PMC, how this authority is exercised and how to contact the respective authorities. This includes the authority – and limitations – they themselves have to engage with, influence or act against the activities of the PMC if required.

They have to know what obligations and responsibilities they have towards the PMC.

1. INTRODUCTION

Companies of a private nature have been involved in supporting armies and providing them with necessary goods since the creation of formed national military institutions. Since the fall of the Berlin Wall, most NATO nations have decreased the size of their armed forces. These, however, have become increasingly involved in expeditionary operations. The potential overstretch of the armed forces is one of the reasons why Private “ Military ” Companies (PMC) are being utilised. It is unlikely that this is going to be reversed in the near future and PMC adapt to that by increasing the variety of their services. This development and experiences with PMC over the last few decades have caused nations to consider more carefully whether outsourcing is the solution to all problems in all cases. Most nations are still in the process of determining their position and policy with respect to PMC.

This paper does not intend to solve all the ongoing debates related to PMC. It provides a neutral orientation, analysis and inputs for concept development. The orientation addresses the services that PMC can provide and the way in which Finabel nations currently use these services (para 2 – 7). The analysis elaborates on the reasons why nations (might want to) use PMC and what needs to be considered in relation to that; and how to best achieve mutual understanding and a combination of efforts when confronted with the presence of PMC (para 8 – 16). As an input for concept development this study addresses the status PMC should be granted, leading to limitations for cooperation and guidelines for commanders (para 17 – 19). This may help the nations in determining their position and policy with respect to PMC, for eventually the choice to use and associate with PMC is a purely national affair.

2. DEFINITION OF PRIVATE ‘MILITARY’ COMPANIES

In the literature about PMC there is a wide array of definitions of what PMC are supposed to be. In this paper, we try to study the phenomenon of PMC as widely as possible using the following definition:

Private ‘Military’² Companies are the full range of civilian organisations of a private nature involved in the supply of military assistance, consultation, and support which contribute to military operations.

² Portugal considers that the term ‘military’ has a very strong institutional charge which is linked to the monopoly of the force of the State. It is also important to refer that this term is associated to the military condition which is an exclusivity of the Armed Forces

Spain doesn't consider to be convenient the use of the adjective "military" to name this type of corporation. According to several English dictionaries, the word "military" refers to soldiers or Armed Forces. However, these kinds of companies are composed of "civil people" operating in an Operations Theatre in a Conflict Area. For this reason, as a doctrine definition, Spain doesn't accept the term "military" because it causes confusion and the definition always should clearly differentiate national Armed Forces from this type of companies

“ Military ” doesn’t mean composed by military personnel. The employees of organisations of a private nature are civilians with a legitimate contract. Hence, in their native language a number of nations refer to PMC as “ civilian contractors ”.

The contributions PMC provide encompass a vast variety of services as a result of the general description. These services, including armed services, are examined in this study. That does not mean that Finabel nations agree to use or coordinate with all the types of PMC mentioned. This remains a matter of national policy.

Likewise, due to the wide definition mercenary organisations are part of this study. To ignore or “ forget ” their existence would degrade the value of the study. However, it must be clear from the onset that Finabel nations do not approve the employment of mercenaries. Consequently, Finabel nations will not allow any kind of cooperation with companies suspected of providing mercenary services.

Military operations include the preparation, execution and extraction phases of these operations.

The definition does not imply that the scope of this study is limited to operational co-operation with PMC that may contribute to our own military. There are various PMC within a Theatre of Operations. Many will indeed be contracted by our nations. But equally there will be those that are not employed by Finabel nations. These could be employed by the Host Nation, NGOs or other International Organisation for any number of tasks, although they will be mainly security related. These we have no control over and cannot mandate them to do our tasks. This study includes the approach on operational co-operation towards these PMC.

3. CATEGORIES AND CHARACTERISTICS

The private military industry is basically divided into three business sectors, which can be defined according to the following “ low – high end ” taxonomy: military support firms, military consulting firms, and military provider firms.

Military Support Firms. Military support firms provide services like logistics, maintenance, intelligence and engineer support (including explosive ordnance disposal) to armed forces. In an era of downsizing, they have allowed soldiers to concentrate their own energies on combat.

Military Consulting Firms. Military consulting firms provide advisory and military training expertise. Such assistance is used to improve military capabilities. For example, advice from a US firm³ is generally credited with turning Croat militia into an army capable of carrying out “Operation Storm” in 1995 in which Croat soldiers captured the Serbian-held region of Krajina.

³ MPRI

Risk consultants are concerned with minimising the operational risk to clients, the primary focus of this category is crime prevention - delivering security solutions to clients. To achieve this aim, these companies use a number of tools and techniques including country analysis, intelligence, training and incident response. More recently, this category has developed security and justice sector capabilities in order to compete for stabilisation contracts, including the development of DDR programmes, security reviews and audits, and training and awareness (capacity building).

Military Provider Firms. Military provider firms offer direct military assistance to clients. Basically this can be divided into defensive services and offensive services.

- (Armed) Defensive Services

This category includes PMC who provide armed and unarmed defensive security solutions. Weapons aside, these companies differ little to the commercial security companies working solely in Finabel home countries and in most cases focus on the delivery of protection for personnel and assets worldwide, for governmental and commercial organisations as well.

- Armed Offensive Services

At the 'harder' end of the range, this category includes those companies prepared to take on contracts which could have an impact on the security and political environment of the state through violent force. Potentially deployed as force multipliers, PMC personnel conducting offensive operations could be considered mercenaries. Finabel Governments will not contract these companies, or these services.

4. TASKS

There are PMC that are able to execute or to support the execution of one or more, or all of the combat functions defined by NATO⁴. The intention of this paper is not to give a full overview of the tasks executed by PMC, it will merely describe the main tasks and give a few examples.

Logistic support : is provided by the largest number of PMC. The offers cover basically all services in the field of Supply & Services – all the way up to Air-to-Air refuelling – and Maintenance, but also include construction of barracks and (refugee) camps and the provision of secure communications and information capabilities. PMC⁵ were engaged in logistic support for the UN force in Sierra Leone (UNAMSIL) and the Australian forces leading the UN Peacekeeping forces in East Timor in 1999.

⁴ Command, Manoeuvre, Firepower, Protection, Information and Intelligence, Combat Service Support.

⁵ DynCorp and Pacific A&E

An American firm⁶ is providing US forces in the Balkans and in Iraq with everything from barracks, camps, rations, mail delivery, water purification, to the means of repatriating bodies. And another firm⁷ provides secure, multi-user communication and information capabilities to the US military in Iraq.

Maintenance : is provided by arms manufacturers⁸ and many specialized companies. During “ Operation Enduring Freedom ” in Afghanistan and “ Operation Iraqi Freedom ”, PMC employees maintained sophisticated aerial and surface weapons- and other high tech systems. Today, US armed forces already rely on PMC to maintain 28 percent of all weapons systems.

Intelligence, reconnaissance, surveillance, monitoring and translation : is performed by a number of corporations specialized in intelligence, satellite and aerial reconnaissance, photo interpretation, and analysis as well as in SIGINT and MASINT, psychological and information warfare. These PMC have the ability, through a global network of companies and offices, to provide tailored corporate intelligence and analysis services. Based on risk analysis and intelligence work, PMC can provide a global threat awareness and assessment programme for clients, including provision of an extraction plan should there be a requirement to leave a country quickly. Some are specialized in the tracing and surveillance of drug smugglers. An American PMC is handling ground and maritime airborne surveillance in Latin America, Asia and Africa⁹, while others provide intelligence personnel, interrogators, interpreters and translators in Iraq¹⁰. PMC have both recruited and managed US contributions to monitor borders in Croatia and were involved in the Kosovo monitoring force¹¹.

Demining and dealing with UXOs : is handled both by specialist companies and as part of a wider security package. A Danish company is involved in mine action projects on behalf of the UNHCR, the World Bank and the EU¹². American and Korean PMC are involved in battle area clearance, stockpile destruction of ordnance and mine clearing in Iraq¹³. An Israeli firm is engaged in mine and UXO clearance in Croatia and Israel and in mine risk education and consultancy in Albania, Angola, and South Korea¹⁴.

⁶ Kellogg Brown & Root

⁷ Dataline Inc

⁸ E.g. BAE Systems, Lockheed Martin, Boeing, General Dynamics, Hughes, Rockwell, Textron

⁹ AirScan Inc

¹⁰ CACI, MZM Inc and Titan

¹¹ DynCorp and Pacific A&E

¹² Demex Services

¹³ EOD Technology Inc, Tetra Tech Inc, K MAG

¹⁴ MAAVERIM

Advisory services : may cover anything from advice on reforming and restructuring of the armed forces to establishing democratic control over the armed forces; assisting ministries of defence to establish policies, procedures, and decision making for defence planning as well as for the procurement of weapons and equipment; establishing command and control, doctrine and force development; to strategic, operational or tactical planning.

Consulting firms attracted attention in the former Yugoslavia when one of them turned the Croat militia into an army. The same firm conducted civil-military transition assistance in Nigeria, and is still assisting the Colombian MoD with its counter narcotics program¹⁵. Hungary hired a US firm to help it restructure its military to meet the standards required to become part of NATO¹⁶. The Indonesian government hired a firm that specializes in psychological warfare operations, to help it respond to outbreaks of secessionist and religious violence¹⁷.

Another kind of advisory services is that in support of the execution of military operations. To reinforce stability and reconstruction activities PMC may be contracted to provide a range of deployable experts in areas such as civil engineering, security, essential services, port operations and health and safety, which allows transition of responsibility from intervening forces to civilian and indigenous authority. In the area of governance and development PMC offer advisory services to government clients and international organisations on measures to improve governance and justice sectors, including legal reform and (advice on) police training.

Risk consultants provide regional focused risk analysis services, and can offer solutions to provide appropriate risk management measures.

Training services : is a major activity by PMC. The Croatian armed forces were trained by a PMC¹⁸ prior to “ Operation Storm ” whereby the Serb-held area of “ Krajina ” was recovered in 1995. Ongoing programs are, for example, the training of the Saudi National Guard and the new Iraqi army¹⁹ and running the Saudi military staff college²⁰.

Though often linked to capacity building after a crisis, PMC also provide major contributions to the training of standing forces. The Royal Navy conducts most of its shore-based training in partnership with a commercial consortium²¹. In the Philippines, military training and counter terrorism assistance is provided to the government²².

¹⁵ MPRI

¹⁶ Cubic

¹⁷ Strategic Communication Laboratories

¹⁸ MPRI

¹⁹ Vinnell

²⁰ Booz Allen & Hamilton Inc

²¹ Flagship Training Limited

²² Greyworks Security

In the USA a PMC has taken over the US Reserve Officer Training Corps programs at over 200 US universities²³, and the US Navy and Air Force have hired a PMC to provide and fly adversary aircraft during their military training exercises²⁴.

In support of the execution of military operations PMC may provide military and police training for other nations as part of a programme for Security Sector Reform.

(Armed) Defensive services : Force Protection is an important aspect of any military operation. The excessive loss of life during a military operation can lead to the loss of national public support for this operation. Providing sufficient safety for the personnel is labour-intensive and may be outsourced. PMC delivering (armed) defensive services are specialised in providing and or supporting the execution of security tasks. They can provide armed or unarmed protection for facilities and or personnel or give advice how to deal with these matters. These companies may also deliver training packages for clients and prospective PMC employees, which may include training in skill-sets that we would consider sensitive, e.g. SF and CIMIC.

Armed offensive services. The number of major combat operations which PMC have undertaken is limited, as is the number of companies willing to engage directly in combat and operational support. An example of this is a South-African company²⁵ which is known for its support to the Angolan government in its fight against rebel movements²⁶ and in Sierra Leone.

5. ORGANISATION

PMC range from small consulting firms to large transnational corporations. Most operate as “ virtual companies ” which do not maintain a standing organisation but rather draw from databases of qualified personnel and specialized subcontractors on a contract-to-contract basis. This provides a substantial surge capacity, as demonstrated by their response to the simultaneous calls for their services in Afghanistan and Iraq. Maintaining large databases of potential contractors enables PMC of more or less any size to assemble teams to fulfil any of their advertised services at short notice. One of the largest PMC claims its database of 12500 names covers every skill produced in the armed forces and public safety sectors. Very often employees of a PMC have undergone military training and have served in the armed forces.

Most if not all PMC employ only their headquarters and core regional staff on a permanent basis. Other personnel, in particular those deployed on field operations, are usually on short-term contracts, typically measured in weeks to a year, although often rolling forward on a continuous 'as required' basis.

²³ MPRI

²⁴ ATAC

²⁵ Executive Outcomes

²⁶ Unternehmen für den Krieg von Marc von Boemcken in Wissenschaft und Frieden (2006) seite 25.

Beyond regional offices, many PMC judge it representational and operationally necessary to establish offices in nations where they have large numbers of employees or contractors deployed for long periods. Akin to project offices and often tied to ongoing contracts, these are typically staffed by contractors and are more susceptible to closure than their regional counterparts.

In common with most businesses, PMC' headquarters activities usually include management and administrative tasks such as planning, marketing, client relations, contract administration, financial and legal work and public and media affairs, as well as serving as a base for operational and consultancy services such as risk management, security technology, computer forensics and investigations. Some have intelligence analysis units, albeit rarely more than a dozen strong. Regional offices have a similar spread of management, administrative and operational activities, notably on client relations and sometimes including an intelligence element.

6. METHODS OF OPERATION

Most PMC operate as corporate bodies with registered businesses and management organization structures. Their aim is to make profit and to stay in business. Therefore they are, to a high degree, self-regulating and selective. They have a reputation to preserve in order to gain a long-term market share by providing professional legitimate service.

Contract pay provided by PMC is usually high compared to the salary of an equivalent full-time employee and much higher than that of a soldier performing the same task. The high salary has to compensate for the fact in general employees of PMC get only short term contracts and have little job security. The remuneration system of PMC allows greater mission flexibility. Even though salaries are higher, compared to a standing organisation they save costs by employing only those with the skills required for the time required and by avoiding long-term commitments such as welfare, housing or pensions. Some companies have driven down wage bills further by contracting well-trained ex-forces personnel from developing nations, notably Gurkhas, Fijians and others with connections to the British army.

The organisation and payment system of PMC might easily create the image of soldiers of fortune i.e. mercenaries. This is reinforced at intervals by stories about their behaviour. In September 2005, Brigadier General Karl Horst, deputy commander of the Third Infantry Division in charge of security in Baghdad after the 2003 Invasion of Iraq, said this of security firms in Iraq: " These guys run loose in this country and do stupid stuff.

There's no authority over them, so you can't come down on them hard when they escalate force... They shoot people, and someone else has to deal with the aftermath. It happens all over the place. " Statements like these get attention in the media and impact on opinion making. However, they refer to only a small segment of all PMC covered by the definition. The majority are legitimate and honourable.

Most in the sector recognize the requirement to be acknowledged as legitimate and honourable. Many claim that they would not render their services to organized crime, drug cartels, rogue regimes, terrorists, illegal arms traders, and regimes known for flagrant violations of human rights. Most Military Provider Firms claim to provide services under a recognized chain of command structure with disciplinary procedures that conform to the laws and customs of war. Some proclaim on their website that they have subscribed to the Red Cross Code of Conduct and the voluntary Principles on Security and Human Rights.

In the US and the UK PMC have formed trade groups, the " International Peace Operations Association " and the British Association of Private Security Companies (BAPSC). A significant development provided these trade groups receive adequate oversight, for one must be aware that the providers of services close to or over " the edge " – and those that contract them – will always seek ways to legitimise their business.

Eventually the debate and the struggle for acknowledgement is primarily focused on military provider firms that deliver armed services and that operate " close to the edge " in the high end. Considering the scope of the definition it must be noted that most PMC – especially the support firms in the low end – are indeed completely legitimate and recognized as such.

7. PMC EMPLOYED BY FINABEL NATIONS

Though PMC offer every service up to armed offensive services, this does not mean that every nation would be willing to use PMC for all these tasks. Finabel nations honour the principle that the state has the monopoly for the use of force. The actual use of force should therefore not be outsourced. However, some nations do consider the guarding of installations and (civil) government personnel acceptable for a PMC (the guarding of military personnel is not).

Finabel nations currently use PMC for the following while on operation :

Belgium	logistic support, maintenance, translation
France	none
Germany	none while on operations
Greece	none
Italy	none
Portugal	logistic support

Spain	logistic support, maintenance
Netherlands	logistic support, maintenance, translation, guarding installations (outer circle)
United Kingdom	UK Government policy permits UK officials to have free contact with PMC if:

- * The PMC is working directly under contract to the UK Government.
- * The PMC is working directly under contract to other diplomatic missions or International Organisations.
- * Armed Forces personnel on operations have issues bearing directly on the security of UK Government or PMC personnel.
- * An FCO official with consular responsibilities needs to supply a consular service to a UK national employed by any PMC.

8. REASONS FOR THE EMPLOYMENT OF PMC

A reason often mentioned to make use of PMC is cost-effectiveness. PMC offer a range of services but the client pays only for the services it uses. PMC can offer a flexible rapid reaction capability that costs less money than regular troops on standby.

A second reason for the use of PMC is that their use can offer a solution to difficult political situations without governments being openly involved. An example of this is in the war in the former Yugoslavia. Due to the UN weapons embargo it was not allowed to offer military support to any of the parties involved in the conflict. In 1994 the US State Department allowed military advisors to travel to Zagreb to start the “ Democracy Transition Assistance Program ”. This program was meant for training the Croatian armed forces²⁷.

A third reason to use PMC lies in the gap between the increased political ambitions and the decreased size of most armed forces.

- It has become politically less acceptable to maintain huge standing forces. However, the increasingly complex equipment and the increasing demands of personnel employed in the armed forces mean those armed forces need more support elements while their numbers have decreased. The need for support elements is further increased due to the fact that most nations face longer lines of communication than before due to the political changes in the last decades. One way of meeting the ambitions whilst maintaining a proper ‘teeth to tail ratio’ is to outsource support tasks.

²⁷ Privatisierte Gewalt im Jugoslawienkrieg von Boris Kanzler in Wissenschaft und Frieden (2006) seite 22-23.

- The armed forces are expected to always be available and ready. But it takes a huge effort to get soldiers and units fully trained and (combat) ready for the wide variety of (possible) operations areas and threats. From an efficiency point of view, it is wise to allow these soldiers to focus on their primary missions. Additional general duties that distract from the primary mission and require less training could be outsourced to PMC.

Likewise more and more time is required for the education and training of specialists. On the one hand because the increasing complexity of the equipment generates a demand for more specialists. On the other hand because of the rate at which equipment is being replaced in order to follow technological developments. Therefore military specialists are not always available to the armed forces in the numbers required.

- The armed forces are increasingly expected to perform non-combat tasks as a contribution to stability. The capability to execute these tasks is not always available in quantity or quality. PMC can provide those services. An example of this is the need for police during stabilisation missions.

9. CONSIDERATIONS RELATED TO THE EMPLOYMENT OF PMC

PMC provide answers to the questions nations and their armed forces are facing. But due to their different nature they also provide concerns. Armed forces are state owned and therefore state actors, and as such employed and controlled by the chain of command and their nations of origin (Sending Nations). Their goal is to mitigate shortfalls and to solve crises. PMC on the other hand are private actors, employed and controlled by contract. Their goal is to benefit from shortfalls and crises. Due to these differences nations are to consider ethical, moral, control and legal issues when contemplating the use of PMC.

Ethical issues relate primarily to the status of the PMC's personnel. When contemplating employing armed personnel a careful check must be made to avoid allegations of employing mercenaries. Likewise in armed conflict the type of duties must be carefully considered in order to prevent personnel to be considered acting as combatants and consequently lose the protection provided by the Law on Armed Conflict.

In every conflict we face increasingly unsafe situations everywhere as a result of which the adage in the armed forces is every 'soldier a rifleman'. Can we then make use of PMC, knowing that the majority of those are support and consultation providers that usually operate unarmed ?

Moral issues relate to criminal liability and accountability. A Host Nation (and its population) allows PMC on their territory to enable the Sending Nation to achieve its goals. Therefore the Sending Nation is morally (and politically) responsible, especially when the Host Nation has granted immunities to PMC personnel as part of an agreement with the state. When considering the use of PMC the state therefore has to see to it that prosecution in case of (criminal) offences is possible and that claims and compensation mechanisms are in place. When a PMC is dealing with subcontractors – as is often the case – the state is officially not responsible for the acts of this 'third party' but the moral and political responsibility will remain the same.

Control issues relate both to the way the PMC behave in the line of duty and to finances. Armed forces receive directions in the chain of command on the way they are to behave in order to best achieve the long term desired political end state or situation (constraints & restraints, Rules of Engagement, Presence, Posture & Profile etc.). Similar behaviour is expected from PMC but those are not part of the armed forces. Therefore mechanisms to influence the way they behave in the line of duty must be premeditated and laid down in the contract.

It is essential to be in control of performance, as when dealing with any other commercial organisation. First of all, reliability of the service rendered must be under control. Some PMC like manufacturers that provide maintenance services in the home country may not be willing to send their personnel to an operations area. And when PMC deploy with the armed forces, the situation may deteriorate to the extent that they require (more) protection or pull out temporarily or completely. There must be a military capability in place to face such situations. Total reliance on PMC may lead to failure.

Secondly, opportunity knocks when no margins are set, performance standards are not identified or hard to identify or measure and / or the performance is not monitored. An example is the report 'Army should Do More to Control Contract Costs in the Balkans' written by the General Accounting Office of the USA in which a PMC is accused to have charged the US-Army too much in four out of a total of seven contracts²⁸. To stay in control margins, standards and performance checks must be premeditated.

Legal issues clearly are attached to all of the above. Therefore the following paragraphs will explore the legal side more in depth.

10. LEGAL FRAMEWORK FOR PMC

In general the basis for any activity of a PMC is a signed contract between a PMC and a customer. If this contract does not explicitly mention which national law is applicable, the contract is governed by the law of the country with which it is most closely connected. This is presumed to be the country where the party (the PMC) is to undertake the contract. This principle is embodied in Article 4 of the Convention on the Law Applicable to Contractual Obligations²⁹. The national law of exotic places like the United Arab Emirates can therefore be applicable to a contract with a PMC. Therefore PMC are likely to insist on arrangements to be made by the contractor on applicable (criminal) law as a condition for their services. In the case of Finabel nations contracting PMC to provide services for an operation of the armed forces the legal framework of those armed forces may also cover the PMC. This however is not a matter of course.

²⁸ Privatisierung des Militärischen? Andrea Schneiker in WeltTrends (2005) page 138-139.

²⁹ International Business Law second edition by Ray August (1988).

If the armed forces are engaged in “ armed conflict ” they are subject to the Law On Armed Conflict (LOAC) and the Geneva Conventions apply. For the aim of this study the most relevant part of the Geneva Conventions is that they grant the status of prisoner of war not only to the armed forces but also – in short – to members of crews of the merchant marine and civil aircraft of the Parties to the conflict and to persons who accompany the armed forces without actually being members thereof. The latter must be provided authorization from the armed forces which they accompany and be provided with an identity card. Usually it will be no problem to have Military Support Firms and Military Consulting Firms meet the criteria and be recognized as those accompanying the armed forces. For Military Provider Firms it is not that easy. Personnel of (all) PMC are civilians and as such not allowed to act as combatants. When they do they commit a crime which will reflect on the state that has contracted them.

It is important to notice that the status of those accompanying the armed forces not only provides PMC with protection but also turns them into legitimate targets. Roles and responsibilities with regard to safety and protection have to be premeditated when entering contract negotiations.

As stated the above only applies in the case of an “ armed conflict ”. The Geneva Conventions don’t explicitly state what “ armed conflict ” is but in a commentary on article 2 of chapter 1 of the first Geneva Convention, the ICRC mentions : “ Any difference arising between two States and leading to the intervention of members of the armed forces is an armed conflict within the meaning of Article 2, even if one of the Parties denies the existence of a state of war. It makes no difference how long the conflict lasts, or how much slaughter takes place. ”

If there is no “ armed conflict ” most of the signatory states will honour the LOAC and Geneva Conventions but they do not apply officially. The preferred solution to that is to have an agreement made up with the Host Nation regarding the status of the Sending Nations representatives, for the military known as a Status Of Forces Agreement (SOFA). In a SOFA immunities for liability to local law may be incorporated. If so they usually extend to non-local contractors as well. For local contractors it may be agreed that they will enjoy certain immunities during the execution of their duties. However, the Host Nation – provided there is one – may not or only partially be willing to grant these immunities. And part of the agreement may be that in certain cases immunities may be lifted.

Immunities will be granted when the Host Nation is confident that perpetrators will be prosecuted. Nations contracting PMC and negotiating an agreement have to pay attention to that because this is complicated for civilians. While national law is always applicable to armed forces this is not the case for civilians. The extent to which national law has “ grip ” on civilians conducting offences abroad is different for each country and quite often it has no “ grip ” at all. So when armed forces are supported by a national, a foreign and a local PMC four different legal situations may arise following a similar incident.

So it all depends on the existence and contents of an agreement.

When no special arrangements are made local law applies in accordance with the convention mentioned at the beginning.

“ Armed conflict ” or not, in either case states may face allegations of having contracted mercenaries, especially when Military Provider Firms are contracted.

The most widely accepted definition for mercenaries is found in the Protocol Additional to the Geneva Conventions of 12 August 1949 regulating the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 :

Art 47. Mercenaries

1. A mercenary shall not have the right to be a combatant or a prisoner of war.
2. A mercenary is any person who :
 - (a) is specially recruited locally or abroad in order to fight in an armed conflict;
 - (b) does, in fact, take a direct part in the hostilities;
 - (c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;
 - (d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;
 - (e) is not a member of the armed forces of a Party to the conflict; and
 - (f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

All Finabel nations are signatories to the *Protocol I* and *Article 47*. However, not every nation is. So although it is the most widely accepted international definition, it is not definitive. Next to that it has loopholes. For instance, any government wishing to hire foreigners to fight on its behalf merely has to give these soldier citizenship or incorporate them into their national forces – an exemption that was deliberately written into the Protocol.

Finally, it should be noted that being part of the Geneva Conventions the definition applies to “ armed conflict ” only.

A definition that also addresses situations outside ‘armed conflict’ is provided by the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted 1989 and entered into force 20 October 2001 :

Article 1. For the purposes of the present Convention

1. A mercenary is any person who: [relates to 'armed conflict', in combination with Article 3 the definition is the same as in Protocol I]
2. A mercenary is also any person who, in any other situation :
 - (a) Is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at
 - (i) Overthrowing a Government or otherwise undermining the constitutional order of a State ; or
 - (ii) Undermining the territorial integrity of a State ;
 - (b) Is motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise or payment of material compensation ;
 - (c) Is neither a national nor a resident of the State against which such an act is directed ;
 - (d) Has not been sent by a State on official duty ; and
 - (e) Is not a member of the armed forces of the State on whose territory the act is undertaken.

Using the definition of *Protocol I* this Convention also fails to avoid the loopholes of that formulation. Nevertheless, it can be concluded that most PMC do not even come close to meeting the demanding cumulative definition. Even armed PMC such as security services arguably are not to be considered mercenaries. Outside 'armed conflict' they are not likely to be considered acting against the (Host) Nations' Government. Even for 'armed conflict' some nations would argue these PMC act in a form of extended self defence as long as they don't engage in offensive action, and therefore are not civilians taking active part in hostilities.

However, by seeking to make the use of mercenary services illegal, the 1989 Convention could not get around the fact that there were some governments — not to mention international organisations, multinational corporations, and NGOs — which had very good reason for wanting to engage with PMC like Military Provider Firms. Consequently, there has been no great rush to ratify the 1989 Convention³⁰. As a result the position of nearly every country is still defined by national law.

Regardless, adversaries – whether signatories or not – are likely to claim the employment of mercenaries, be it for real or as part of their Information Operation. Nations therefore have to determine and communicate their individual position on mercenaries and do a thorough check on beforehand of services about to be contracted against that position.

³⁰ Global Governance and national interests: regulating transnational security corporations in the post-cold war era, Kim Richard Nossal, Melbourne Journal of International Law.

In the context of what is mentioned above it is impossible to create a generic list of legal rights and duties of PMC. However, a proposal to develop a list or database of common agreed criteria is suggested in 17.

11. PMC AND THE STATUS OF COMBATANT

The terminology combatant refers to a situation of ‘armed conflict’. The parties to a conflict must at all times distinguish between the civilian population and combatants in order to spare the civilian population and civilian property. Neither the civilian population as whole nor individual civilians may be attacked. In reverse civilians are only protected as long as they do not take active part in the hostilities.

Combatants are members of the armed forces who fulfil the following requirements³¹ :

- That they be commanded by a person responsible for his subordinates ;
- That they have a fixed distinctive emblem recognizable at a distance ;
- That they carry arms openly ; and
- That they conduct their operations in accordance with the laws and customs of war.

In nations where militia constitute the army, or form part of it, they are included under the denomination “ army ”.

The 1977 Protocols extended the definition of combatant to include any fighters who carry arms openly during preparation for an attack and during the attack itself, (Protocol I, Art. 44, Sec. 3) but these Protocols aren't as widely accepted as the four 1949 conventions. Although all combatants are required to comply with international laws, violations do not deprive the combatants of their status or of their right to prisoner of war protection if they are captured. (Protocol I, Art. 44, Sec. 2).

PMC are civilian enterprises. Even when recognized as those accompanying the armed forces and if their employees meet the listed requirements they are not part of the armed forces and therefore can not be considered combatants, whatever their outfit and actions. So there is only one condition that can turn them into combatants, and that is when they are being militarized. But for obvious reasons that is not foreseeable.

When employees of PMC start taking ‘active part’ in the hostilities in armed conflict they can not or no longer be identified as civilians (accompanying the armed forces) nor do they turn into combatants. They are civilians committing a crime of violence and having to face trial and punishment according to local laws for illegally participating in the conflict.

³¹ Project of an International Declaration concerning the Laws and Customs of War. Brussels, 27 August 1874' www.icrc.org

In today's world it's not always easy to tell whether someone is taking " active part in hostilities ", in other words when civilian PMC employees operate in or outside the law. What about a person turning live imagery from a " sensor " into target information and passing that information on to a " shooter ", a consultant joining the forces during attacks, or someone making broadcasts for psychological operations ? Nations have to consider this before outsourcing certain services.

12. PMC AND THE RIGHT TO POSSESS, CARRY AND USE WEAPONS

Everybody has an inherent right to self defence. The right to possess, carry and use arms however is governed by national law and therefore different in each country.

In 'armed conflict' the right to use force is reserved for combatants as defined above. Outside situations of 'armed conflict' the right to use force is articulated in the mandate and derived documents and is reserved for those personnel that are an integral part of 'the force'. As in 'armed conflict' this will not easily apply to the personnel of PMC. Whether a PMC would be allowed to carry weapons while executing it's contractual obligations in a certain country then depends on local law and / or the existence of an agreement between the contracting state(s) and that country.

Local law will provide legislation on possession, carrying and use of arms by individuals and organisations such as private security services. This legislation is most often used for the security of Embassies, Consulates and other types of Foreign Affairs missions, but the Netherlands also use it for contracting the local Afghan Security Guard that provides security to military facilities.

If local law does not allow for the possession and carrying of arms this could be made part of an agreement, for instance that the right to use armed force – and thereby also the right to possess and carry arms – is extended to other personnel for acts of self defence.

The only occasion where the contracting party – not the PMC – can decide by itself on possession and carrying of arms is when it has governing powers in the area concerned. Those powers follow from either a mandate – like UNMIK in KOSOVO – or a situation that puts us temporarily in a position equal to that of an occupying power – like the Coalition Provisional Authority in Iraq. In such cases it is important to realise that along with the authority comes the responsibility for the safety and protection of everybody in the area concerned.

Again, the right to carry arms is – and will always remain to be – provided by applicable law. A poorly developed legal system or the absence of governments' executive powers in a certain area will never be an excuse to go outside that law.

13. PMC AND LIABILITY

A PMC is liable for the obligations mentioned in the contract with a client. Which national law applies to the contract depends on the content of the contract (see paragraph 10). A PMC is always liable for the conduct of its employees, even in ungoverned space within a national, sovereign country. As long as they execute tasks that are within the contract the company is held to account.

When employees of a PMC participate in activities that are not mentioned in the contract, they are personally liable for their actions and held to account in accordance with the applicable legal framework. Because of the numerous legal complications attached to contracting domestic, foreign or local PMC for providing services outside the contracting state, applicable law appears to not always have a “ grip ” on offenders or the court finds itself not convenient to handle the case (*forum non conveniens*). As a consequence of this, offences committed by employees of PMC regularly go unpunished. Practise shows that those employees in the worst case get repatriated and/or dismissed.

To which degree an outsourcing party can be held responsible for the consequences of outsourcing will depend on the national laws of the outsourcing party. Usually liability stops at the PMC, but the outsourcing party must be prepared to face claims for compensation. Especially if the PMC and its personnel have been granted immunities as a result of which they can not be tried by local court and trial of the offender by national law is uncertain. Regardless of the obligations according to applicable law there is always the moral responsibility for the PMC’s employer. If this responsibility will have any political and or legal consequences will depend on the national situation.

14. PLANNING AND EXECUTION OF OPERATIONS IN CONJUNCTION WITH PMC

In the complex contemporary crises there is a need to coordinate the activities and effects from a wide range of actors. Only when all actors are engaged and have a common understanding about the long term desired political end state or situation, the lines of operation that lead there, and the contribution each provides to that, our goals are to be achieved. PMC (to be) employed belong to those actors. Where possible their activities should contribute to the operation, not be disturbing or counterproductive. So there is always a need for collaboration, even when the PMC involved is not actually working for us.

The roles and responsibilities of the PMC during planning an execution will identify the intensity of cooperation and the level(s) at which this is to take place. This may vary from planning to execution as it depends on the type of operation and the type of task being outsourced. The staff-level in direct charge of the execution of the tasks that are (partially) being done by a PMC should be the level where the actual cooperation takes place in the execution phase, whilst in the planning phase cooperation will usually be on a superior level due to the organisation of authorities and mandates.

For a PMC the result of the planning phase is a contract. This is the tool to regulate the cooperation between PMC and Forces from Finabel nations. The contractual obligations identify the freedom of operation for the PMC. If Finabel nations want things to be done according to certain methods of operation, these methods should be mentioned in the contract. The contract should also be clear on which department, formation, unit or person of the Forces from Finabel nations will provide them with directions and whom they have to report to. Besides this, the contract should give directions on how the cooperation should be realised. This ranges from information exchange, to combined planning of future activities, to executive oversight and auditing. This may lead to having PMC representation in a unit or HQs or the attachment of staff or (semi-) permanent liaison to a PMC (for instance at nodes along lines of communication). The minimum level of cooperation is information exchange on a regular basis.

Preferably PMC that are (to be) working for us have to be incorporated in the planning phase. It is just not wise to plan on the use of PMC in isolation when they can be available to inform us on their capabilities and limitations and help us identify the best way to use their services and how to integrate those services in the overall plan. That way they can also provide in advance their position on contingency plans of the armed forces; thereby adding to those plans, the extent of the services and (mutual) obligations to be incorporated into the contract and preventing surprises afterwards. A prerequisite is to have a national policy on the general conditions for contracting their services and initial directions on the borders for outsourcing related to the specific operation. Which services can be considered for outsourcing and which not, what is the leeway and where are the borders (ethically, morally, financially) and how is the PMC expected to operate and report ?

At first glance the same would apply to PMC that are not contracted by Finabel nations, but actually the primary counterparts for harmonisation of efforts and information exchange are the organisations that have contracted those PMC. They are the primary actors. And they provide the leverage to influence the conduct of those PMC. A requirement to coordinate directly with their “ subordinate ” PMC will depend on the service those PMC provide, the role they play in the operations area and the way that influences our own operation. As Forces from Finabel nations have no authority over these organisations and their ‘subordinate’ PMC it will depend on our approach whether or not cooperation will actually be achieved and effective. An authoritarian approach, no respect for their business and a lack of ‘give and take’ will undermine chances to create a cooperative relationship. Most organisations are willing to establish some kind of cooperation. However they will want something in return, for instance information and intelligence, threat assessments or support to personnel in case of emergency. Forces from Finabel nations therefore have to decide what can be given in return without compromising security or operational effectiveness.

15. LIAISON WITH PMC

Liaison is an element of cooperation that requires both manpower and physical means such as lodgings, transportation and communications. The requirement to liaise follows from the concept of operation, the method of cooperation with the actors involved and the means of communication. This is to say that it will not be required to liaise to every actor/PMC in the operations area at all times.

Effective cooperation with PMC working for Forces from Finabel nations is described in the previous paragraph. As far as PMC working for other organisations are concerned, our primary liaison requirement will be with the contracting organisations. In specific circumstances there may be a requirement to liaise directly to the “ subordinate ” PMC. This may occur when those PMC operate to a large extent independent of the contracting organisation or the information to be exchanged is of a time sensitive nature. Most reputable PMC (the one’s that governments will employ) are willing to establish liaison with the military. They are prepared to coordinate with the military but, as mentioned before, they will want something in return.

Most nations employ CIMIC-centres outside the secured area of command posts to create a low threshold “ walk-in ” facility for civilians and civilian organisations in the operations area. If no other way of cooperation has been established this centre provides a means for information exchange and the coordination of activities. If such a centre is properly organised and able to deliver it may turn irregular contacts into regular ones.

16. INFLUENCING PMC TO COMPLY WITH OUR INTENT AND RULES

To reach the long term desired political end state or situation the actors in the operations area not only must have a common understanding on what is to be achieved, they also must have a shared approach on how this is to be done. This approach determines our behaviour in general and how activities are to be conducted. For the armed forces it is embodied in the commanders’ intent and translated into behavioural guidelines like Presence, Posture & Profile, constraints and restraints, Rules of Engagement, procedures for handling collateral damage and claims etc. It is in the interest of all actors involved that PMC in the operations area act accordingly.

It is essential that forces of Finabel nations exert a positive influence on PMC as the local perception of the indigenous population does not discriminate between those forces and PMC. PMC will need to comply with the intent of the international community as well as adhering to the rule of law, otherwise it may reflect in a negative way on the Finabel nations and mission success.

For PMC working for Finabel nations compliance should be a condition in the contract, thereby using it as a tool for selection and awarding of the contract as well. The contract should also state what would happen when the PMC does not comply. Fines and/or the termination of the contract might be means to (further) motivate the PMC to comply.

The matter is slightly more complicated in case of PMC working for other organisations. As the forces of Finabel nations have no authority over those PMC they can impose neither rules nor sanctions, meaning the PMC will have to be persuaded to follow our approach. The basic leverage is the shared interest to achieve common goals. In principle it is to be applied through the contracting organisation. Depending on the method of cooperation in some situations it may also be applied on the PMC directly, or on both. It will then depend on the relationship we have with the contracting organisation, the grip it has on the PMC and/or the willingness of the PMC to comply.

The forces of Finabel nations could also exert influence through partner organisations, local authorities or the media. Such an approach has a certain risk of backfiring and must be carefully planned and executed.

Eventually compliance is best achieved if it's not forced upon in one way or another. As stated before, chances to create a relationship of effective cooperation increase significantly when something is offered in return.

17. STATUS TO BE GIVEN TO PMC

Whilst this is a military paper dealing with the military's interaction with PMC at the operational and tactical levels, it is useful to set in context the considerations that national Governments may take when employing PMC.

First of all the contracting state has to consider the services it wants to outsource and balance it against policy, national laws involved and international law in order to determine whether outsourcing those services is desirable and will be within applicable law.

Secondly, in situations other than 'armed conflict' the state has to consider whether applicable law is acceptable. When no arrangements are made local law will be applicable, and that may not be in accordance with the states' values and standards. Ethically and morally in such a situation the state would want to arrange immunities for trial by local law for offences committed by PMC personnel in the line of duty. On the other hand accountability and liability have to be safeguarded, immunities should not lead to the situation that offenders are not tried and punished.

So thirdly the state has to determine which law is preferred to be applicable. That should be the law or laws that both meet our values and standards and has the best (extra-) territorial 'grip' on offenders. That is not by default the national law of the Finabel country or the country of citizenship, so the options must be scrutinized before entering negotiations.

Another option could be to militarise PMC personnel during an operation. Once PMC personnel officially become part of the armed forces national law does have a grip on them. The question to be answered is whether it is feasible – due to legal regulations related to enlisting – and desirable – for the state, the PMC as an organisation and the PMC' personnel.

Finally the state should investigate the nature and reputation of the PMC bidding for the contract. The PMC and its personnel should be known to be reliable and law abiding, thus reducing the risk of breaches of the contract, (operational) security and criminal offences. In fact, it would be best if Finabel nations establish a shared database of legitimate and honourable PMC as well as a database of personnel known not to be reliable. To be entered into the database the PMC would have to be certified against common agreed criteria. Finabel nations should start off with an evaluation of the trade groups that have been established. Once these have proven to meet the standards of Finabel nations they should be used to further determine and promote the certification standards. Certification would have to expire after an agreed timeframe to ensure that PMC are re-examined at regular intervals and the database remains 'current'. In conjunction with the trade groups a kind of disciplinary committee would have to investigate and decide on the consequences of misconduct. Eventually, the combined use of trade groups and certification would increase self-regulation because the market will favour those PMC that have proven themselves to be legitimate and honourable partners.

18. LIMITATIONS ON THE OPERATIONAL CO-OPERATION WITH PMC

Limitations on the cooperation with PMC derive from policy that addresses the ethical, moral, control and legal issues related to contracting PMC. Limitations should follow if the PMC do not meet the Finabel nation's position on these issues as elaborated in this study. Further limitations related to operational security and effectiveness will follow from higher level orders or guidance on the conduct of the operation. As far as co-operation with PMC contracted by Finabel nations is concerned it must be assumed that the PMC meet the nation's position on those issues. Therefore there should be no reason to impose limitations on the co-operation with these PMC other than those specified in the contract and those related to operational security and operational effectiveness.

The same applies to PMC contracted by other nations or organisations that appear to meet the Finabel nation's position, but should the operational situation permit the chain of command is to be consulted prior to contacts being made. The chain of command should be best placed to advise on the suitability of the contact.

PMC that do not have the same contractual obligations or approach to control and cooperation are to be persuaded as explained. This is basically a responsibility for the commander, who might involve the higher level(s) in order to increase leverage. The efforts of the commander should rather be increased to achieve more effective cooperation and a combination of efforts, than limited.

If it is observed or suspected that PMC do not meet the Finabel nation's position on the ethical, moral and legal issues then Finabel nations should not wish to be associated with those PMC. The armed forces of the Finabel nations should report the observed or suspected misconduct.

As the implications are political rather than military, it is the nation's (or coalition's) responsibility to investigate and initiate proper follow up action. The armed forces may be required to assist to that. Action is to be taken by the armed forces if the legal framework for the operation so demands, or on order. Otherwise, pending the outcome of the investigation and further instructions they are to continue to monitor and report whilst refraining from engaging with those PMC.

19. GUIDELINES FOR COMMANDERS FOR DEALING WITH PMC IN OPERATIONAL THEATRES.

First of all commanders should be aware that like any other partner PMC are considered to be legitimate and entitled to conduct their business within the law. They should be treated and supported like any other partner, bearing in mind national policy and derived limitations as described above. In that context :

- Commanders are to be aware of – and combine efforts with – all actors in (and outside) the operations area. So they have to know which PMC are active in their area, who they work for, what their legal status is, what their role(s) and responsibilities are and what capabilities and limitations they have.
- Following that they need to know who has which authority over the PMC, how this authority is exercised and how to contact the respective authorities. This includes the authority – and limitations – they themselves have to engage with, influence or act against the activities of the PMC if required.
- Furthermore they have to know what obligations and responsibilities they have towards the PMC. This may follow both from conditions in contracts and from higher level orders or guidance on the conduct of the operation.
- Next they should determine what services they can offer additionally in exchange for a cooperative relationship. Subsequently, effective cooperation is to be established.
- Cooperation is not to lead to a compromise of operational security or effectiveness, unless there is a benefit that is perceived to outweigh the risk of compromise and the action has been cleared by the chain of command.
- Also, they should be aware of the risk of creating a situation where a verbal contract may be construed or implied by the PMC.
- Commanders should maintain a reliable record of the contacts with PMC and know what to report when, how and to whom. This can vary from general information related to the conduct of the mission, to reporting as an element of executive oversight and audits, to reporting of violations of the contract or applicable law.
- Finally the commander has to adapt these guidelines to the specifics of the mission if required and announce them to his command.

ANNEX 1**ABBREVIATIONS**

CIMIC	Civil Military Cooperation
DDR	Disarmament, Demobilisation and Reintegration
EU	European Union
FCO	Foreign & Commonwealth Office
GC	Geneva Conventions
ICRC	International Committee of the Red Cross
LOAC	Law of Armed Conflict
MASINT	Measurement And Signature Intelligence
MoD	Ministry of Defence
NATO	North Atlantic Treaty Organisation
NGO	Non Governmental Organisation
PMC	Private 'Military' Companies
ROE	Rules Of Engagement
SF	Special Forces
SIGINT	Signal Intelligence
SOFA	Status of Forces Agreement
UK	United Kingdom
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
US	United States
USA	United States of America
UXO	Unexploded Ordnance

ANNEX 2

BIBLIOGRAPHY

After The Bubble, British Private Security Companies After Iraq by Dominick Donald, RUSI (2006)

Die Wiederkehr der Söldner, Private Militär- und Sicherheitsfirmen und gültiges Recht, Oberst M. Pesendorfer in Truppendienst 6/2006 Seite 502.

International Business Law second edition by Ray August. Prentice-Hall Inc. Upper Saddle River, New Jersey (1988).

Unternehmen für den Krieg von Marc von Boemcken in Wissenschaft und Frieden (2006)

Privatisierung des Militärischen ? Andrea Schneiker in WeltTrends (2005)

Privatisierte Gewalt im Jugoslawienkrieg von Boris Kanzler in Wissenschaft und Frieden (2006)

The privatisation of security: lessons from Iraq by Deborah D. Avant in Orbis (2006)

Global Governance and national interests: regulating transnational security corporations in the post-cold war era, Kim Richard Nossal in Melbourne Journal of International Law (2001).

Les forces terrestres et les sociétés militaires privées, MADOC et CDEF, Las Fuerzas Terrestres y las Sociedades Militares Privadas, MADOC y CDEF,

Development, Concepts and Doctrine Centre Joint Doctrine Note 5/07 (Draft) Military Interaction with Private Military and Security Companies.

Ministerie van Defensie, Beleidskader Civiele Dienstverleners in operatiegebieden (2007)