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## Transformation of the state? Reactions to the privatization of security in Great Britain

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# TranState Working Papers

TRANSFORMATION OF THE STATE?  
REACTIONS TO THE PRIVATIZATION  
OF SECURITY IN GREAT BRITAIN

JUTTA JOACHIM

No. 135

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Staatlichkeit im Wandel • Transformations of the State  
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**ABSTRACT**

Private Military and Security Companies (PMSCs) have increasingly received attention from International Relations scholars. While most of the research has thus far been conducted with the aim to define the actor, assess the consequences of the services they perform for states' monopoly over the use of force, or to evaluate the options for regulation, societal responses to these companies have been largely ignored. Focusing on Great Britain and the consultative processes that have been initiated by the Foreign and Commonwealth Office with different stakeholders on the options for regulating PMSCs since 2001, this paper constitutes a first step in filling this void in the literature. The analysis of the positions of non-governmental organizations, parliamentarians, the government, and PMSCs is insightful in two respects: First, it sheds light on why the British government has thus far refrained from adopting authoritative controls for PMSCs despite the widely shared assumption that some form of regulation is needed. Second, the findings suggest that a transformation of the state is underway at the intersubjective level. PMSCs and privatization processes in the realm of security are increasingly seen as normal and their legitimacy is no longer questioned.

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## **Transformation of the State? Reactions to the Privatization of Security in Great Britain**

### **1. TRANSFORMATION OF THE STATE? PRIVATE MILITARY AND SECURITY COMPANIES<sup>1</sup>**

Since the end of the Cold War, international relations scholars have noted changes within the security domain in three related directions: internationalization, individualization and privatization. Examples of *internationalization* are the growing interdependence between states as well as the pooling of sovereignty within the framework of international or regional organizations. *Individualization, by comparison*, manifests itself in among other things, the movement away from defining security exclusively in terms of the state and towards human security, i.e. the protection of the individual from such threats as environmental pollution, life-threatening diseases or poverty. Finally, the term *privatization* is most often used to describe, on the one hand, the increasing tendency of states to outsource relevant tasks in the provision of security to private military and security companies (PMSCs) as well as the rapid growth of this particular industrial sector. On the other hand, it also refers to threats posed by non-state actors, such as gangs, militias, warlords, or rebels. Of these three developments it is the privatization through PMSCs that is of interest here acknowledging, however, that the transfer of police- and security-related tasks to private companies is also an expression of and spurs both internationalization as well as individualization.<sup>2</sup>

Contrary to most of the literature and research on the subject, which has been devoted to describing the phenomenon and developing taxonomies of PMSCs, this paper is interested in the reactions of public and private actors to privatization. The increasing involvement of private companies in the execution of what used to be exclusive responsibilities of a state, has prompted controversies as to whether privatization undermines, what is considered at the heart of sovereignty—the monopoly over the use of force.

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<sup>1</sup> I would like to thank Andrea Schneiker for invaluable feedback, my research assistant Natalia Dalmer, and the two anonymous reviewers for their helpful comments.

<sup>2</sup> With respect to the relationship between privatization and individualization of security, quite a number of authors suggest that the growing complexity of conflicts due to the presence of warlords or private militias has been a reason for humanitarian organizations to rely on private military and security companies for protection more so than they have in the past (e.g., {Singer, 2006 1758 /id}). Regarding the relationship between internationalization and privatization, the exponential growth of peacekeeping missions, on the one hand, and the lack of resources on the part of both states and international organizations, such as the UN, on the other hand, has spurred the demand for private military and security companies (e.g., Wulf 2005: 51-55).



While some consider PMSCs as a “force multiplier“ that enhances state power by providing additional means for managing increasingly complex security-related problems (e.g., Deitelhoff and Geis 2009) at much lower costs and with greater efficiency, others, by comparison, are deeply concerned regarding the trend towards privatization. In the eyes of several critics, PMSCs weaken rather than strengthen the state. They contribute to a brain drain of military personnel, provide security to only some—namely their clients—, cannot be held accountable, and are increasingly able to influence the direction of foreign and security policy due to their expertise and lobbying power. While the role and position of the state has been of major interest to scholars concerned with the privatization of security, the role and position of other actors have, as of yet, not been systematically researched. Therefore we only have scant knowledge as to whether and to what extent, for example, NGOs, parliaments, or courts support or oppose this trend.

Gauging the responses of public and private actors is important for two reasons: First, it allows for the assessment of the longer-term consequences of privatization. In particular, reactions of NGOs or parliaments, for example, offer insights as to whether the transfer of police and military tasks is supported or opposed by society more generally. In the case of the former, there is reason to believe that the intersubjective fabric of state sovereignty has become more porous, while in the case of the latter, we would expect that it is more or less still intact. Moreover, analyzing the positions of these actors can also be revealing as to why states respond differently to PMSCs, why some have, for example, adopted regulatory measures and others have refrained from them until now or why some prefer certain regulatory frameworks over others (e.g., self-regulation over state-controlled licensing)? Examining the positions of different domestic stakeholders in this respect can prove helpful in shedding light on these questions.

In this paper, I will analyze the debate about regulating PMSCs in Great Britain between 2001 and 2009. The case is particularly interesting. Despite a vivid debate about different types of regulation involving different stakeholders—including the British Association of Private Security Companies (BAPSC), the professional association of British PMSCs—and a growing consensus among them that regulatory measures are needed, no authoritative controls have thus far been adopted. Examining the public debate and the positions of individual actors might offer insights as to why. My findings suggest that in light of the still marginal role PMSCs play in the conduct of British foreign policy, the disagreement among stakeholders as to what kind of regulatory framework is most suited, and the benign image that British companies are able to convey of themselves, the government does not appear to feel the need as of yet to adopt costly measures.

This paper is divided into four sections. The *first* will be devoted to a more general discussion of privatization of security. While different notions of privatization will be

considered, for the purposes of this paper, the term will be used in a rather narrow fashion and be equated with the delegation of security-related tasks to private companies only. The section will provide an overview of their growing importance and the difficulties of developing useful definitions and categories. In the *second* section, the potential negative ramifications of privatizing security are briefly discussed with respect to two dimensions of statehood—security and democracy. Against this backdrop, the *third* and the main section will examine the reactions of public and private actors in Great Britain. The paper will conclude with a brief summary of the findings and offer some explanations for the observed patterns by comparing the case of Great Britain to those of the U.S. and South Africa, where laws regarding PMSCs have been adopted.

## **2. THE NATURE OF THE BEAST: DEFINING PRIVATIZATION AND PMSCS**

The privatization of security is a multifaceted phenomenon. On the one hand, there is a shift from public to private regarding the provision of security. Although the state is still the major actor, many scholars stress that, similar to other policy fields, security is moving from government to governance due to the growing involvement of non-state actors (e.g., Krahnemann 2001; Webber et al. 2004; Kirchner 2006; Dembinski and Joachim 2008). PMSCs are charged with the protection of people and buildings or offer intelligence about conflict zones. On the other hand, privatization can also be observed with respect to potential threats to societies, which are no longer limited to military attacks by another state. Instead, they increasingly originate from non-state actors involving rebels, warlords, suicide bombers, or transnationally organized terrorists. In light of these developments, Herbert Wulf distinguishes (2005: 49) between *privatization of security from below and above*. While the former refers to non-state actors using violence without state authorization and/or for the realization of political or economic goals, the latter, and the most relevant for this paper, captures privatization that is desired and advanced by states through the transfer of military and police-related tasks to private companies.<sup>3</sup>

Private military and security companies (PMSCs) have experienced a heyday in recent years. The following statistics speak to this point: The number of PMSCs operating

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<sup>3</sup> Distinctions such as these are, however, not without problems. Some scholars have pointed out that these distinctions lose their discriminatory power in the case of failed states where governments, or what is left of them, are no longer able to provide security and are frequently faced with competition by private actors who also try to win the hearts and minds of people (Chojnacki 2007: 257). Furthermore, while analytically distinct, privatization from above and below is empirically intertwined. Fiona Terry (Terry 2002) and others (e.g., Cooley and Ron 2002; Lischer 2003) have shown, that humanitarian NGOs are sometimes forced to cooperate with rebels or warlords to ensure that food or medicine reaches those in need.

transnationally today is estimated to be close to three hundred (Messner and Gracielli 2007: 3) with the majority of them, however, headquartered in the U.S. and Great Britain (Rimli and Schmeidl 2007: 16). The profits of many of these companies are said to have nearly doubled between 1990 and 2005 from \$55,6 to \$105 billion (Schreier and Caparini 2005: 2). Moreover, the number of soldiers relative to employees of PMSCs changed from 50 to 1 during the first Gulf War in 1991 to 10 to 1 in Iraq War in 2003 (Isenberg 2004: 7), and a more recent studies suggests that the ratio now is 1 to 1 in Iraq (Advisory Council on International Affairs 2007, ACIV: 5).

Most scholars writing on the subject, attribute the rapid growth of the PMSCs to the end of the Cold War and several related developments (see, for example, Wulf 2005: 51-54; Krahmann 2005b: 250; or Singer 2003:49-70), including (1) the down-sizing of military arsenals in light of the so-called peace dividend; (2) the rising number of inner-state and regional conflicts and affected states no longer capable of providing security for their citizens; and (3) the growing reluctance of European and North American states to engage in international peacekeeping activities in light of decreasing public support and lacking strategic interests. Together these changes created the demand for privatization within states that were increasingly convinced of what P.W. Singer (Singer 2004: 66) refers to the “power of privatization and the privatization of power”, i.e. that enlisting PMSCs would be more efficient and less costly than relying on conventional armies.<sup>4</sup>

Although enlisting the private sector is in itself nothing new, many scholars nevertheless see a difference between privatization today and that in the past. In their eyes, PMSCs differ from mercenaries and, in most cases, do not fit the seven characteristics of the Geneva Conventions regarding mercenaries or the International Convention against the Recruitment, Use, Financing, and Training of Mercenaries (United Nations 1989).<sup>5</sup> Most PMSCs have a corporate structure, are business-driven, are legal, public entities, and offer a wider range of services (from training and logistics to operational support and post-conflict reconstruction). Moreover, they recruit publicly and conclude contracts with a diverse range of clients, including states, international organizations

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<sup>4</sup> According to Elke Krahmann, two separate developments are frequently conflated in the literature on PMSCs regarding the reasons for their growth: the failure of some developing states to provide for their national security and the privatization of military services in industrialized nations in Europe and North America (Krahmann 2005b: 248).

<sup>5</sup> For diverging viewpoints, see, e.g., Abdel-Fatau Musah who perceives PMSCs as “the old poison of vagabond mercenaries in new designer bottles“ (Musah 2002) or Ken Silverstein who perceives the only difference between PMSCs and mercenaries to be that the former “have gained the imprimatur of government for their actions“ (Silverstein 1997: 17).

both governmental and non-governmental, and other companies (Singer 2003: 47). According to Doug Brooks, the president of the International Peace Operations Association (IPOA), the international industry association (Brooks 2000: 11), mercenaries are different.<sup>6</sup> They are “private soldiers that offer military services on the open market to the highest bidder.” They “... thrive in areas of armed conflict where the more legitimate PMCs [private military companies] are usually absent[,]” and “exhibit few of the inhibitions that influence companies to maintain a degree of ethics in their operations.”

In light of these discussions regarding the nature of PMSCs and given the heterogeneity among companies, international relations’ scholars have started to develop categories which could serve as basis for analyzing this new security actor. The most commonly used typology regarding PMSCs is referred to as the “tip of the spear” and was developed by P.W. Singer (Singer 2003), who distinguishes the services that PMSCs offer based on their proximity to combat.<sup>7</sup> Others, such as Robert Mandel, by comparison, differentiate companies based on their reach, form, and function (Mandel 2001: 137). Yet others (e.g., Schreier and Caparini 2005), including industry representatives (e.g., Brooks 2000: 11), prefer to speak of private security companies (PSCs) versus private military companies (PMCs). While private security companies “provide passive security in high-risk conflict environments predominantly to private companies (passive defensive/protective companies),” private military companies offer “more active services such as military training or offensive combat operations, generally to individual states or international organizations such as the UN (active military companies)” (Brooks 2000: 11). Typologies such as these are not without problems, given that companies generally offer more than one type of service and that the boundaries between defensive and offensive, combat and non-combat are much more fluid and ambiguous (e.g., security and military consultant firms which are not directly involved in combat,

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<sup>6</sup> Although the name of the IPOA has now been changed into International Stability Operations Association (ISOA). However, given that the documents and statements of association representatives cited here predate this change, I will continue to use IPOA throughout the document.

<sup>7</sup> Accordingly, (1) *security and military support firms* encompass those that are considered furthest away because they engage primarily in logistical tasks, including communication, transport, maintenance of facilities or equipment as well as accommodation. (2) *Security and military consultant firms* are ones which assist states in their attempts to reform or restructure the military sector but can also be involved in offering strategic or tactical advice to military units or the training of troops. (3) *Security provider firms* specialize in the armed protection of persons or facilities in conflict zones. Compared to the previous two, they are much closer to combat. Although their mandate is defensive, employees of such companies face a much higher risk of becoming part of the ongoing conflict. (4) *Military provider firms* represent the “tip of the spear,” and, contrary to the public image of PMSCs, comprise the smallest segment of the market (Singer 2003: 91-100).

might nevertheless have an impact on military battles by providing strategic and tactical information). Nevertheless, such typologies are commonly used. Companies, for example, employ these categories to secure contracts, to set themselves apart from likely competitors and to divide the market into legitimate, reputable “upscale firms” and “downscale firms” or “flight-by-night companies” (Schneiker 2009: 46; see also Singer 2004). In this paper, the term private military and security companies will be used throughout.

### **3. PMSCs, SECURITY, AND GOVERNANCE FAILURES**

Privatizing military or police-related tasks is often justified by policy-makers with the argument that PMSCs have a comparative advantage vis-à-vis conventional forces because they tend to be more innovative, flexible, pragmatic, effective and cheaper, while allowing state militaries to focus on their core missions.<sup>8</sup> Moreover, according to industry representatives themselves, PMSCs allow their clients to operate in militarily unstable regions that would otherwise be unfeasible (e.g., Brooks 2000: 131). Nevertheless, many scholars have voiced concern about this type of privatization because it can lead to serious “governance failures” (Krahmann 2005a: 277). Two potential failures will be discussed in greater detail: (1) the risk that the formerly public good of security will no longer be sufficiently supplied; and (2) the lack of transparency and accountability.

#### **3.1.(In)Security through PMSCs?**

With respect to the first type of failure, many scholars concerned with PMSCs suggest that privatization means less instead of more security because its provision is limited to select groups (e.g., Loader 1997) and may mean insecurity for those who are excluded. In addition, critics also point out that the protection that PMSCs promise and provide to clients may be insufficient and that companies play an active role in securitization.

Several studies cite examples where PMSCs have used an unreasonable amount of force and explain this by referencing the fact that these companies are profit-driven companies and therefore may be more interested in getting the job done and much less worried about how it is done (Schneiker 2009: 77; Singer 2003). Others contend that PMSCs contribute to insecurity because, contrary to what these companies claim, their employees are inadequately trained or qualified, or because they cooperate insufficiently with military troops, resulting in casualties on both sides through so-called ‘friendly fire’ (Singer 2002). Yet others suggest that PMSCs have even more long-

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<sup>8</sup> With respect to peacekeeping missions, Brooks (Brooks 2000: 131), for example, claims that PMCs can do military tasks “for a fraction of the costs of typical UN operations.”

lasting destabilizing effects. For example, by working with warlords or local militias, security companies may strengthen the political, economic, and military power of these groups and, in turn, undermine the efforts of the government to disarm, demobilize and reintegrate them (Nawa 2006: 1). In the eyes of Anna Leander (Leander 2005: 617), PMSCs contribute to what she refers to as a “Swiss cheese” security coverage full of holes. Because they hire locals, they drain the base of potential military and police personnel. This recruitment practice can, in turn, lead to “ungovernance” (Leander 2002) with PMSCs undermining the legitimacy of public security orders and increasing the likelihood of these orders being contested by violent means.

Various scholars (e.g., Musah 2002; Taulbee 2000) question the ability of PMSCs to ensure peace on a more fundamental level. Since PMSCs, for the most part, offer temporary protection for people and assets, they fail to address the root causes of insecurity or to address other than physical forms of violence. This, according to Lucia Zedner, is not too surprising. Given that the survival of these companies hinges on the existence of wars and conflicts, “it is not in the interest of those who provide, offer or sell security for that state ever to be achieved. In particular, the burgeoning security industry purports to sell something it has no interest in providing absolutely. For the industry to continue to thrive, it must never attain its fictitious end goal“ (Zedner 2003: 157). Moreover, PMSCs may reinforce existing power asymmetries. By granting first and foremost protection to foreign high-ranking executives, they may deepen the rift between privileged rich foreigners and underprivileged poor nationals. Some of these problems are not unique to PMSCs, but have been mentioned in connection with, for example, UN peacekeeping forces or humanitarian NGOs as well. Nevertheless, the implications may be more fundamental given that many governments still appear to be reluctant to apply existing rules, hold PMSCs accountable or punish their misconduct and that PMSCs quite frequently operate transnationally and are therefore able to relocate.

Apart from being potential sources of insecurity, PMSCs may also engage in securitization by naming security relevant issues and problems that stand “above normal politics“ (Buzan et al. 1998; Williams 2003) and, hence, require “extraordinary means“ (Buzan and Waever 2003). As Anna Leander and others have pointed out, security companies are no longer merely technical experts fulfilling governmental contracts, but instead, have become “lobbyists, security advisors and public-opinion-makers” that “shape[...] understandings of and decisions about security” (Leander 2005: 612; Schneiker 2009: 61, 65). PMSCs may influence the perception and interpretation of situations by offering tactical advice or intelligence. Furthermore, PMSCs may also shape understandings of security through their public speeches and publications. The International Peace Operations Association, for example, has founded the Peace Operations Institute (POI), which, according to the association, resembles a “not-for-profit

academic think tank” tasked “to develop practical solutions to the evolving challenges facing modern peace and stability operations” (IPOA 2009; Brooks 2007: 4). Finally, PMSCs contribute to securitization by taking part in efforts to develop regulatory schemes for their own industry. Representatives of the IPOA, for example, testify before the U.S. congress (Cherneva 2007b: 6) or organizes meetings with politicians (Cherneva 2007a: 6). It also participates in an initiative of the Swiss government and the Geneva Centre for the Democratic Control of Armed Forces (DCAF) aimed at the establishment of a global code of conduct for PMSCs, which, according to the organizers, reflects an “emerging consensus on the need to fill normative and accountability gaps through a coordinated industry-driven PMSC standard setting process” (DCAF 2009).

The presence and behavior of PMSCS employees may alter the security situation or force others to change their strategy. Andrea Schneiker points out that humanitarian NGOs delivering aid and working on being accepted by locals might suddenly be perceived as more threatening if they rely on the protection of PMSCs carrying guns (Schneiker 2009: 73-74; see also Speers Mears 2009; Renouf 2007). That PMSCs potentially influence interpretations of threats or how to respond to them may in and of itself not be too surprising given that they provide intelligence and tactical advice. What is, however, concerning to many scholars writing on the subject is that their involvement is highly opaque and that the involved companies can therefore rarely be held accountable.

### **3.2. Problems of Accountability**

Issues related to transparency and accountability have received more attention due to the involvement of companies, in scandals. For example, employees of the company Blackwater were accused of randomly shooting 14 civilians during a patrol in Baghdad, Iraq, in September of 2007, while Sandline International allegedly was involved in selling weapons illegally to the government of Sierra Leone. Although these companies are public, legal entities, the “[t]he vast majority of domestic laws and ordinances across the globe either ignore the phenomenon of PMFs [private military firms], deferring to the international level, or fall well short of any ability to define or regulate the industry” (Singer 2004: 537). The U.S. and South African, for example, do represent clear exceptions to this trend, as both countries have well developed legislation regarding PMSCs.<sup>9</sup> In the U.S., the International Traffic in Arms Regulations Law (ITAR) stipulates which services U.S.-based PMSCs are allowed to deliver to clients in foreign countries and contains a licensing process for those PMSCs wishing to offer such service (U.S. Department of State 2007).

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<sup>9</sup> For a discussion, see, for example, Avant (Avant 2005; Avant 2007a; Avant 2007b) or Caparini (Caparini 2007).

South Africa adopted two pieces of legislation with the intention to delegitimize PMSCs. The first, the Regulation of Foreign Military Assistance Act (RFMA), dates to 1998. It was prompted by scandals involving individual companies, rising numbers of PMSCs residing in South Africa the country, and mounting international pressure (Avant 2005: 158; Schneiker 2009: 97).<sup>10</sup> The Act required PMSCs to obtain a license for its services and their execution, but proved largely ineffective. Only a small number of companies actually registered and obtained licenses (Avant 2005: 432). RFMA was, therefore, replaced by the Prohibition of Mercenary Activities and the Prohibition and Regulation of Certain Activities in Areas of Armed Conflict Act in 2007 which is broader in reach. However, the new legislation is also subject to controversy because it does not only require PMSCs to obtain a license when operating abroad, but also organizations and individuals providing humanitarian assistance (see Schneiker 2009: 98).<sup>11</sup>

Looking at the international level, the situation according to the majority of scholars is even less encouraging since “... as it stands now, [international law] is too primitive in this area to handle such a complex issue that has emerged just in the last decade” (Singer 2004: 521).<sup>12</sup> Relevant international treaties, such as the Geneva Conventions for the International Convention on Mercenaries, are ill-suited because, as mentioned earlier, close to none of the companies in existence meets the seven stipulated criteria defining mercenaries. Nevertheless, a number of recent initiatives are intended to address the problem, including the The Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict adopted in 2009. The document was the result of consultations involving governmental experts and representatives of both civil society organizations and PMSCs which had been initiated cooperatively by the Swiss government and the International Committee of the Red Cross. It obliges states that are party to it to ensure that private military and security companies operating in armed conflicts comply with international humanitarian and human rights law. Furthermore, it also includes a list of some seventy recommendations, ranging from verifying the track record of companies to examining the procedures they use to vet their staff (Confédération Suisse and International Committee of the Red Cross 2009).

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<sup>10</sup> According to Deborah Avant, the rising number of PMSCs choosing South Africa as their host country, posed a threat to the new regime and its publicly professed commitment to human rights and regional security (Avant 2005: 97).

<sup>11</sup> Critics consider the legal act an “overkill” and counterproductive since it may render timely humanitarian assistance impossible (Charles 2006).

<sup>12</sup> For opposing view points, see, for example, Doswald-Beck (Doswald-Beck 2007) or Lehnardt (Lehnardt 2007).



In addition to the Montreux Document, the Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination is worth mentioning here which was established in 2005 under the auspices of the United Nations Commission on Human Rights. The Group replaces the Special Rapporteur on the Use of Mercenaries which had been in existence since 1987. Among other tasks, it is supposed

... to monitor and study the effects of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights, particularly the right of peoples to self-determination, and to prepare draft international basic principles that encourage respect for human rights on the part of those companies in their activities (UN Working Group on the Use of Mercenaries 2010).

Despite these recent initiatives at the international level and legislation in select countries, many scholars remain concerned about issues related to accountability, not least because of the limited reach of the respective laws and regulatory frameworks, as well as problems related to oversight.<sup>13</sup> Given the extra-territorial nature of their business, many PMSCs are difficult to regulate since, according to Peter W. Singer (Singer 2004: 536),

Local authorities in failing or weak states have neither the power nor the wherewithal to challenge these firms. [Contracting s]tates also often lack the necessary eyes and ears on the ground in foreign states to discover violations abroad and it is often quite difficult to detect extraterritorial transgressions.

Furthermore, companies faced with prosecution can relocate to a different country, or close down and reappear as a different firm, as recently has happened with Blackwater International. Faced with investigations following the above mentioned incidence in Iraq, the company shut down its business and reappeared under a new roof as Xe International. In addition, some companies are not even registered as private military and security companies, while others are themselves part of complicated and opaque sub-contracting schemes (Schreier and Caparini 2005: 30). Intransparency is further compounded through a less than perfect competition due to oligopolistic structures and bilateral monopolies, which, in turn, have been the result of long-term contracts. Furthermore, few cases of military outsourcing require, according to Ann R. Markusen, “public/private competitions, and when private contractors win these competitions, the pub-

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<sup>13</sup> For example, the licensing procedure through ITAR in the U.S. does not apply to contracts between PMSCs and the government.

lic sector's ability to compete in the future and its in-house ability to monitor contracts are irrevocably eroded" (Markusen 2003: 478).

Governments and their militaries need the services of private military and security companies because they are no longer able to carry out certain security-related tasks themselves. In 2005, 28 percent of all weapon systems of the U.S. armed forces were maintained by private companies (Schreier and Caparini 2005: 25). Colonel Kevin Cunningham, the then Dean of the U.S. Army War College, stated in 2002 that "[t]he U.S. cannot go to war without contractors" (cited in Avant 2005: 115).

In addition to providing additional capacity to governments, relying on PMSCs gives policy-makers flexibility and allows them to circumvent established processes (Avant 2005: 154). According to a representative of the British security industry attending the annual conference of their British association, the British Association of Private Security Companies, in December of 2006:

Private security companies are not subject to political considerations in the same way conventional armies are. Plus you don't necessarily have to flag up money you spend on hiring mercenaries. It doesn't necessarily appear in the official defence budget. Most importantly, if a private security contractor is killed on active duty, you don't get any body bag pictures on the front pages. That means no bad publicity for the government (Joyce 2007).

However, critics of PMSCs are not only concerned about the ways in which their involvement enables policy makers to side-line established democratic procedures, but some worry even more that as a result power within the government may be redistributed, enhancing the influence of the executive over the legislative (Avant 2005: 155).

Using PMSCs as a policy tool may, however, also enhance the power and influence of the companies themselves. According to Deborah Avant, for example, licensing processes may be a vehicle for companies to influence the standards by which their contracts are judged, "thus opening the way for commercial interests to affect public policy" (Avant 2005: 155). Furthermore, companies may also increasingly be in a position to define and shape professional military norms given that some of them already play a significant role in planning of military strategies, training military and police personal, or the writing of military doctrines. Their ability to do so challenges, in the eyes of some experts on the subject, state sovereignty in a very subtle manner, namely by propagating norms which "portend a different relationship between citizenship, military service, and the state" (Avant 2005: 157; see also Krahnmann 2010).

Given the problems related to transparency, accountability, and security, there have increasingly been calls for the regulation of PMSCs. Governments, together with different stakeholders, have initiated discussions at different levels about authoritative rules, as well as mechanisms through which compliance with them can be assured. In addi-

tion, PMSCs and their associations have taken steps aimed at self-regulation and adopted codes of conduct, committing themselves to human rights and ethical business practices. While a growing number of scholars have assessed the merits and reach of different regulatory frameworks (e.g., Schneiker 2009; Chesterman and Lehnardt 2007; Lilly and International Alert 2002; Avant 2007a), less attention has thus far been paid to the scope conditions of regulation. What explains, for example, the variance among countries as to whether they adopt rules and mechanisms for PMSCs or take part in international efforts aimed at regulation, and, what determines the choice of certain regulatory frameworks rather than others. Looking at a concrete case of the involvement as well as reactions of different actors in regulatory efforts may help to answer these questions.

#### **4. REACTIONS OF GOVERNMENTAL AND SOCIETAL ACTORS: THE CASE OF GREAT BRITAIN**

Great Britain offers an interesting example for gauging the reactions of different actors to privatization. It is considered the “frontrunner of privatization in Europe” (Schreier and Caparini 2005: 110) and, next to the United States, Great Britain houses the second largest number of PMSCs. Although reliable estimates are difficult to obtain, given the lack of an official governmental register,<sup>14</sup> industry representatives and experts assume the number of larger British-based PMSCs that operate internationally to be about forty (UN Human Rights Council 2009: 5). They offer a wide range of services, including corporate investigations, security assessments, training, hostage negotiations, or protection in high-risk areas (UN Human Rights Council 2009: 8).

Many observers agree that in Great Britain the growth of the private military and security industry has been facilitated by the Private Finance Initiative (PFI) of 1992 (see Wulf 2005: 188; Krahnemann 2005b), in response to which outsourcing has become the “first choice method of funding new capital projects” (Schreier and Caparini 2005: 110). By 2002, the British Ministry of Defense had signed over thirty contracts with a value of £1.4 billion and planning more than 90 new projects with an estimated value of £6 billion (Schreier and Caparini 2005: 110). Military interventions in Iraq and Afghanistan contributed further to rising profits of PMSCs. According to a report of the UN Working Group on the Use of Mercenaries, the “revenues of British PMSCs are estimated to have risen from U.S.\$ 320 million before the war in Iraq to over U.S.\$ 1,6

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<sup>14</sup> The non-profit organization International Alert, for example, has tried to identify and monitor a number of individuals and companies, but admits that it “has not been able to make a quantitative estimate of the number of individuals and companies that there are nor the scale of their activities” (Lilly & International Alert 2002: 2).

billion by March 2004” (UN Human Rights Council 2009: 5; see also War on Want 2009: 4).

Contrary to the U.S., where governmental attempts to regulate the security industry have been studied more intensively (e.g., Avant 2005; Schreier and Caparini 2005), British responses have received only scant attention, even though the government has been the first among its European peers to investigate the possibility of national regulation (Schreier and Caparini 2005: 113).<sup>15</sup> In the following pages, I will discuss the responses of four different types of actors: the government, parliament, civil society organizations, and the industry itself. The pattern that emerges is of rather paradoxical nature: Although discussions about regulation of PMSCs have been quite vivid and has involved different stakeholders, little has come as of yet from the consultation process in terms of concrete actions.

#### **4.1. Governmental Responses:**

On February 12, 2001, the British Foreign and Commonwealth Office (hereafter FCO) issued a Green Paper entitled “Private Military Companies: Options for Regulation 2001-02” (Foreign and Commonwealth Office 2002) following a request for more information of the Foreign Affairs Committee of the House of Common regarding a scandal involving Sandline International. Despite an existing United Nations arms embargo and with the knowledge of the British executive branch, the company had been supplying weapons to the government of Sierra Leone in 1998.

In addition to the Sandline scandal, the Green Paper had also been inspired by legislation that seemed ill-suited “[...] to prevent either [PMSCs] recruitment or their participation in conflict” (Foreign and Commonwealth Office 2002: 20; House of Commons Foreign Affairs Committee 2002: 9). One example of this is the Foreign Enlistment Act of 1870,<sup>16</sup> which makes it illegal for British individuals to enlist in the armed forces of a foreign state at war with another foreign state which is at peace with Great Britain without having obtained a license. It already had been found ineffective by the so-called Diplock Committee in 1976 and called for its replacement (United Kingdom 1976). Another example is the Private Security Act which came into force in 2001 and established the Security Industry Authority (SIA). Although it specifies licensing criteria for and supervises domestic private policing services, the Act excludes services related to both strategic training, military logistics, and management as well as the export of military services to overseas customers (Schreier and Caparini 2005: 112). Finally,

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<sup>15</sup> For exceptions, see (Krahmann 2003).

<sup>16</sup> The Act was adopted in the aftermath of the so-called Alabama case involving the outfitting of a British warship for use by the Confederate Forces in the American Civil War (Foreign and Commonwealth Office 2002: 20).

the Export Control Act of 2002 suffers also from problems. While aimed at controlling the provision of technical assistance abroad and the international brokering and trafficking of arms, the Act does not “explicitly concern itself with the regulation of the private military industry” (UN Human Rights Council 2009: 7). Given the problems associated with existing pieces of legislation, on the one hand, and the rising demand for the services of PMSCs, on the other hand, there was, according to one observer, a “broad consensus amongst the industry, analysts and activists of the need of regulation” of PMSCs in early 2000 (Lilly and International Alert 2002: 1).<sup>17</sup>

With the release of the Green Paper, the FCO wanted to stimulate a wide debate on the involvement of PMSCs. Its rationale for doing so was twofold: The FCO not only feared that (1) leaving private security providers to their own devices might reverse the achievements of the past two centuries during which non-state violence had been controlled, but it also was concerned about (2) the adverse effects if private violence were once again to become widespread (Foreign and Commonwealth Office 2002: 20). In particular, the FCO was concerned that the activities of PMSCs could interfere with British foreign policy objectives, may reflect badly on Britain’s international reputation, or may put British lives at risk (Foreign and Commonwealth Office 2002: 21).

The Green Paper considered regulation as beneficial insofar as it would “set guidelines for the industry” and “help establish a respectable and therefore more employable industry” by “marginalis[ing] disreputable companies and individuals” (Foreign and Commonwealth Office 2002: *ibid.*). However, it also identified problems, including the costs related to monitoring and oversight. The paper discussed the pros and cons of five regulatory options: (1) an outright ban of companies; (2) a ban limited to recruiting individuals to take up service abroad in specified armed forces; (3) a requirement of British companies or individuals to obtain a license for contracts for military and security services abroad, (4) a general license for PMSCs for a range of activity possible in a specified list of countries linked and made conditional on meeting certain standards; and (5) self-regulation through membership in trade associations (Foreign and Commonwealth Office 2002: 22-27). Although acknowledging that regulatory measures were not without problems, the FCO considered those problems not insurmountable. In particular, the FCO believed that companies could be prevented from resettling if they were convinced that regulation was in their interest and that the agreed upon standards were

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<sup>17</sup> The Green Paper was also written in response to demands from civil society, parliamentarians, the industry itself, and the United Nations.

fair and reasonable (Foreign and Commonwealth Office 2002: 21).<sup>18</sup> The Green Paper formed the basis of a six-month consultation with representatives of the security industry, government, and civil society during which the different options were discussed.

In 2005, the FCO examined three proposals in greater detail: self-regulation, national regulation through export controls, and a licensing system accompanied by a government register of approved companies. Of these, it favored self-regulation in conjunction with international cooperation to raise the standards for the private security industry. A licensing system, by comparison, was deemed ineffective given the extra-territorial nature of the business. Since most contracts took PMSCs outside Great Britain, "investigation, obtaining evidence and enforcement would all be likely to prove highly complex and difficult." Furthermore, given that most companies "channel[ed] a significant portion of their contracts through overseas subsidiaries ... any attempt to bring these within UK legislation would face serious legal and diplomatic problems" ((Foreign and Commonwealth Office 2009: 12). A licensing system also appeared inappropriate for other reasons. First, British PMSCs, according to the FCO, were not really a problem. On the contrary, the industry was considered to have "a favorable reputation and [to] operate[...] to high standards." Second, such a system may even prove counter-productive, insofar as it "would reduce competitiveness unnecessarily," "create economic distortions," and encourage "the relocation of UK-based PMSCs overseas" (Foreign and Commonwealth Office 2009: 12-13).

It took until 2009 and pressure from both parliament and civil society organizations before the British government launched a new initiative. Conceiving of the PMSCs industry as "essential, inevitable and international" (Foreign and Commonwealth Office 2009: 5) and aiming for the promotion of high standards of PMSC conduct, the FCO engaged in consultations soliciting the views from stakeholders and interested parties (Foreign and Commonwealth Office 2009). Basis for these consultations was a concrete policy proposal put forth by the FCO regarding the regulation of PMSCs in form of a "composite package" combining domestic and international measures. With respect to the former, the government envisioned working closely with the British Association of Private Security Companies (BAPSC) in (1) establishing a code of conduct and (2) make it conditional for contracting companies to either adhere to the agreed upon standards or comparable ones (Foreign and Commonwealth Office 2009: 9-10).

With respect to the international component of the package, the FCO pledged to continue to work toward internationally agreed upon benchmark standards for PMSCs.

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<sup>18</sup> See also Kinsey (2005) who discusses the Green Paper and suggests that regulation should be limited to private military companies, requires a random audit and inspection process leading to punishment in case of misconduct and can only work, if those involved in the field adhere to the highest standards of behaviour.

Conceiving of PMSCs as “a global issue,” which required “a global response” (Foreign and Commonwealth Office 2009: 5), the Office referred to several initiatives which could function as stepping stones and in which the British government has been an active participant. First, together with the governments of Canada, Colombia, the Netherlands, Norway, the United States, and Switzerland, corporations in the extractive sector and human rights organizations, it has been instrumental in bringing about the non-binding “Voluntary Principles on Security and Human Rights” (Lilly and International Alert 2002: 9). Although adopted in December of 2000 primarily with the aim “to guide companies in maintaining the safety and security of their operations within an operating framework that ensures respect for human rights,” the principles also contain clauses regarding PMSCs. One of three sections (section two) outlines guidelines in the case of hiring private security firms, stipulating that “private security should provide only preventive and defensive services and should not engage in activities exclusively the responsibility of state military or law enforcement authorities” (United States and United Kingdom 2000). Second, the British government also took part in the already mentioned multi-stakeholder initiative launched by the Swiss government and the International Committee of the Red Cross (ICRC) and leading up to the Montreux Document.

In sum, the 2009 policy proposal of the FCO differed significantly from the Green Paper released in 2002. It took a clear stance on the regulation of PMSCs, favoring self-regulation through codes of conduct and international standards. Quite a number of stakeholders taking part in the consultations were disappointed because they had called for more stringent measures in the past, among them the Foreign Affairs Committee of the House of Commons.

#### **4.2. The Foreign Affairs Committee of the House of Commons**

Members of the Committee expressed both regret as well as disappointment that in the end “the Government ha[d] proposed a system of regulation for private military and security companies (PMSCs) based on a voluntary code of self-regulation.” Contrary to the FCO, they considered such a code to be insufficient. In the eyes of Committee Members, it would neither prevent the activities of disreputable companies, nor enable the British government to take action in case they proved detrimental to the interests of Great Britain. The position of the members was reflective of an ongoing discussion within the committee regarding PMSCs.

Following the release of the Green Paper, the Foreign Affairs Committee conducted two evidence sessions in June of 2002, to which its members had invited representatives of the security industry, the media, and academia, as well as considered written statements from different civil society organizations (House of Commons Foreign Affairs

Committee 2002).<sup>19</sup> The primary purpose of these sessions had been to obtain more information about the reasons for the rapid growth of the industry, the transfer of military and security capabilities—traditionally the domain of states—to private corporations, and their employment in multilateral interventions about which committee members were deeply concerned. In their eyes, these developments raised not only important new questions about responsibility and accountability for the activities of these companies abroad and the appropriate domestic and international legal framework for their operations (House of Commons Foreign Affairs Committee 2002: 6-7).

Although committee members had hoped to learn more about “the extent to which the Government currently engages private companies to perform military and security activities on its behalf” (House of Commons Foreign Affairs Committee 2002: 8) from these evidence sessions, they were quite frustrated when the respective information was not available. Finding the lack of centrally held data on contracts between Government Departments and private military companies “unacceptable,” they asked in their concluding report for more transparency, demanding of the Government to, first, “take immediate steps to collect such information and to update it regularly,” and, second, “to publish a comprehensive list of current contracts between government departments and private military companies and private security companies ...” (House of Commons Foreign Affairs Committee 2002: 41).

The actions of the Foreign Affairs Committee were paralleled by those of the House of Commons as a whole, which established the Foreign Affairs Select Committee in charge of monitoring the progress made on legislation regarding the activities of PMSCs. While its powers were and continue to be, however, limited, consisting, for the most part, of recommendations ensuring greater transparency and regulation of PMSCs (UN Human Rights Council 2009: 8), reports by the committee, nevertheless, prompted eighty-two members of the House of Commons to sign an early day motion on January 2008. In it, they expressed concern about the “exponential growth of private military and security companies [...] since the invasion of Iraq.” Disturbed by “the substantial rise of reported incidents of civilian killings and human rights abuses by PMSCs guards in Iraq who remain unregulated and unaccountable,” the signatories expressed their deep regret that “there [was] still no United Kingdom legislation regulating PMSCs,” despite the Green Paper and subsequent discussions. They urged “the Government to

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<sup>19</sup> E.g., the Committee heard oral evidence from Lieutenant Colonel Tim Spicer, then director of Strategic Consulting International and a former executive of Sandline International; Michael Bilton, a freelance journalist; and David Stewart Howitt, of the Global Dimensions Programme at the London School of Economics and Bayard Limited. Furthermore, it also heard evidence from parliamentary under-secretary at the Foreign and Commonwealth Office, Dr. Denis MacShane (House of Commons Foreign Affairs Committee 2002).



bring forward legislative proposals for the control of the PMSC sector as an urgent priority” (Anderson 2008).<sup>20</sup> This position was also taken up by members of the Foreign Affairs Committee.

Throughout the consultation process initiated by the FCO, they favored “a strong regulatory regime” (House of Commons Foreign Affairs Committee 2009). Companies, according to Committee members should be subject to governmental oversight. Toward this end, they recommended the establishment of both an informal appraisal and compliance mechanism, which “would operate through consultations between UK officials in posts and the organizations operating alongside PMSCs in the field.” Furthermore, similar to arms exports licenses, parliamentary scrutiny should be applied to any license applications involving PMSCs in the provision of armed combat services (House of Commons Foreign Affairs Committee 2002: 43). Respective companies should be required to disclose details about the company structure, the experience of permanent personnel, recruitment policies, and other relevant information (House of Commons Foreign Affairs Committee 2002: 41).

In addition to governmental oversight, members of the Foreign Affairs Committee also encouraged the government to consider “imposing a ban on all recruitment by PMSCs for combat operations and other activities which are illegal under the United Kingdom law,” and to prohibit PMSCs from direct participation in armed combat operations. While considering an outright ban of military activities by PMSCs as “counter-productive” (House of Commons Foreign Affairs Committee 2002: 41), members recommended that PMSC employees should be prohibited from carrying firearms for purposes other than training or self-defense (House of Commons Foreign Affairs Committee 2002: 42).

Apart from national level action, the Committee also urged the government to work toward international and European solutions regarding PMSCs. With respect to the former, members recommended the replacement of the existing UN Convention against the Recruitment, Use, Financing and Training of Mercenaries with a new convention concerning PMSCs. Regarding the European level, they encouraged, among other initiatives, the inclusion of PMSCs into the existing EU Code of Conduct on Arms Control (House of Commons Foreign Affairs Committee 2002: 41). The proposals of the Committee overlapped to a great extent with those advanced by non-governmental organizations.

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<sup>20</sup> Early Day Motions (EDMs) “are formal motions submitted for debate in the House of Commons. However, very few EDMs are actually debated. Instead, they are used for reasons such as publicising the views of individual MPs, drawing attention to specific events or campaigns, and demonstrating the extent of parliamentary support for a particular cause or point of view” (UK Parliament 2010).

### **4.3. Reactions of Non-Governmental Organizations**

Similar to members of parliament, NGOs taking a stance on PMSCs were for the most part cautious about their involvement in matters related to foreign policy and dissatisfied with the regulatory efforts of the British government. However, their recommendations were far from unanimous. While some favor a ban for PMSCs engaged in combat, others, by comparison are more conciliatory.

The most outspoken organization during the consultations was War on Want established in 1951 with the aim to fight poverty world-wide. Since it began to focus its work on PMSCs, it accuses companies of “making a killing out of the wars in Iraq and Afghanistan and in conflicts around the globe” (War on Want 2009). Therefore, War on Want has been particularly frustrated that the British government has “jettisoned all the available regulatory options in favor of the worst possible alternative: a voluntary code ...” which gives “private military and security companies (PMSCs) a licence to kill.” It calls for robust legislation, including a ban on companies’ involvement in combat and combat support and engages in symbolic actions, including, for example, a protest outside the headquarters of the British Association of Private Security Companies (War on Want 2009).

In addition to War on Want, the organization Rights and Accountability in Development (RAID) has been critical of the FCO’s most recent proposal for regulation. On the one hand, it considers the proposal “unduly influenced by the interests and wishes of the British Association of Private Security Companies (BAPSC)” which, according to RAID, “enjoys high level political contacts.”<sup>21</sup> On the other hand, the organization deems self-regulation insufficient “to control the activities of individuals deploying lethal force or engaged in activities that directly impinge on the human rights of others.” Falling short of effective methods of scrutiny, RAID believes that self-regulation entails the risk that “outsourcing of security functions to PMSCs will continue to be used as a means of shielding governments and their agents from accountability for violations of international law” (RAID 2009: 7).

Furthermore, the Corporate Responsibility Coalition (CORE) founded in 2001 and comprised of 130 non-governmental organizations—including Amnesty International UK, Friends of the Earth, and Action Aid—has joined the debate on private military and

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<sup>21</sup> To lend support to this claim, RAID gives several examples, including Sir Malcolm Rifkind, who prior to him becoming the chairman of Armor Group--the biggest private security company operating in Iraq--had been a former Foreign Secretary and Minister of Defence. Similarly, the president of BAPSC, Andrew Bearpark, had been the Private Secretary to Prime Minister Margaret Thatcher, Press Secretary to the Minister of the Overseas Development Administration (ODA), and from 1991 to 1997 Head of the Information and Emergency Aid Departments of the ODA RAID 2009: 7).

security companies. CORE has called for the establishment of a new dispute resolution body in light of not only “toothless” soft law and regulatory initiatives but also a “domestic liability system which, though well-established, is fraught with difficulty for claimants (especially claimants against multinational corporate groups) and is too easily manipulated by companies seeking to avoid liability” (Zerk 2008: executive summary). Such a body would receive, investigate, and settle complaints against British parent companies relating to subsidiary or supplier abuse in other countries (CORE 2009b: 9). The committee would (1) provide redress for overseas victims of human rights abuses involving British companies; (2) promote appropriate environmental and human rights standards for British companies operating overseas and promulgate best practice, and (3) work with other human rights commissions and relevant bodies to share learning and build their collective capacity to strengthen the effectiveness of redress in developing countries (CORE 2009a).

Finally, organizations, like the British American Security Information Council (BASIC) and International Alert, have taken part in the consultation processes initiated by the government in 2005 and 2009 to discuss options for regulation. International Alert, in particular, has adopted an information strategy and has actively participated in discussions regarding regulation. Contrary to War on Want or RAID, which tend to be critical of the industry as a whole, International Alert is more modest in its assessment. In a report published in 2002, it finds the excessive focus by the media and parliament on the more scandalous cases of PMSCs as unfortunate, since the number of incidents where companies have been involved in combat operations was “limited,” a “one-off phenomenon,” “the result of a particular set of historical factors,” which given pressure from the international community will not be “allowed [...] to continue” (Lilly and International Alert 2002: 3). Unlike the other organizations, International Alert has also been been a proponent of what it refers to as a “multi-dimensional approach.” Through this approach, it seeks “ways of combining some of the features of the different options” outlined in the Green Paper, but which the organization does not support in its entirety: (1) a ban on unlawful participation in armed conflict abroad; and (2) a licensing and authorization system for military services, and (3) the promotion of codes of conduct for security services abroad (Lilly and International Alert 2002: 4). According to the organization, making the home government, i.e. Great Britain, responsible for the activities of PMSCs, is the most appropriate means for holding these companies accountable, whereby the company structure should not—as often is—be seen as obstacle, but, instead, be viewed as a vehicle. Moreover, the principal function of regulation should be to make PMSCs an agent of the state (Lilly and International Alert 2002: 4). As I will show below, the proposal put forth by International Alert has been picked up, at least in parts, by the British Association of Private Security Companies (BAPSC).

#### **4.4. Responses of PMSCs**

Many of the PMSCs in Great Britain have strongly been in favor of regulation and representatives of the industry have actively taken part in the various consultations that the government has conducted. This may, in part, be explained by the self-understanding of the involved companies. According to two representatives, the British security industry differs from that in the U.S. in many respects: “In contrast to many U.S. firms, for instance, most British as well as other European private security providers refrain from services at the frontline of hostilities in conflict-zones,” which is why the government refers to them as private security companies (PSCs) rather than private military companies (PMCs) (Bearpark and Schulz 2007: 240).<sup>22</sup> One reason for this is argued to be cultural: “British companies rely heavily on contracts from the private sector rather than the (or any other) government. Therefore, in Britain, reputation is a central factor in the acquisition of new business and distinguishes a company in a market that is growing and diversifying“ (Bearpark and Schulz 2007: 240).

The self-professed goal of the British Association of Private Security Companies (BAPSC) is “to influence the political process of establishing a firm legal basis for the activities of British companies abroad.” Companies wanting to become members of the BAPSC have to undergo a vetting process performed by external peers prior to their admission and commit to transparency.<sup>23</sup> Once admitted, they are required to follow both the standards provided in the code of conduct of the association as well as the rules of international, humanitarian and human rights law (Bearpark and Schulz 2007: 247).

Representatives of the BAPSC, as well as individual members, have taken part in the FCO consultation (BAPSC 2009). They have also been involved in regulatory initiatives at the international level, such as the process leading up to the Montreux Document, which, in the eyes of association members, enhances the clarity regarding the legal situation of its members during their operations in areas of armed conflict. The comment of a former employee of the company Aegis with respect to BAPSC provides some insights as far as the motives of the industry association are concerned: “Key to

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<sup>22</sup> According to Andrew Bearpark and Sabrina Schulz, the British security industry is characterized by “diversification or expansion“ in roughly four areas: (1) traditional security and risk management for companies operating in conflict, post-conflict, or risk-prone environments; (2) support for post-conflict reconstruction efforts; (3) state-building, supporting and providing humanitarian and disaster relief, and development tasks; (4) provision of personal and convoy security and security sector reform including training of police and military personal (Bearpark & Schulz 2007: 240-241).

<sup>23</sup> Transparency implies that companies are willing “to disclose their corporate structures and their relations with their offshore bases, partners, and subcontractors“ (Bearpark & Schulz 2007: 247).

changing the perception of legitimacy is the BAPSC. It is the vehicle through which the sector as a whole hopes to shape how it is perceived“ (Donald 2006: 34).

Throughout the consultation process and prior to it, Andrew Bearpark, similar to International Alert, has been a proponent of a multi-dimensional regulatory approach (see Bearpark and Schulz 2007), consisting of both national and international components as well as involving the industry through a degree of self-regulation. Since in his eyes there “is no ‘one size fits all’ template to regulate the industries of several countries in exactly the same way,“ regulation at different levels is necessary (Bearpark and Schulz 2007: 240). Nevertheless, Bearpark considers regulation the primary task of national governments, which (Bearpark and Schulz 2007: 244) “must strike a strict balance“ and “take into account the interests of firms.“ Any regulatory framework that puts some firms at a disadvantage is, so Bearpark, “very likely to be circumvented and therefore to become meaningless.“ He, therefore, conceives direct participation of the industry in the development of a regulatory framework the most suitable means to ensure compliance with regulatory schemes (Bearpark and Schulz 2007: 245). In line with Bearpark’s view, the association engages in what some experts refer to as “aggressive self-regulation“ (e.g., Nigel White cited in the Foreign Affairs Committee 2009).

The position of the BAPSC is not exceptional. According to Doug Brooks, the chief executive of the International Peace Operations Association (ISOA), the international association of PMSCs, many companies are in favor of increased regulation of the industry because it can enhance their legitimacy, attract new clients and keep out new competition by imposing a “barrier to entry” (Brooks 2000: 136-137). This is echoed by BAPSC’s Andrew Bearpark and Sabrina Schulz, who consider “regulation [as] a vital issue for the industry” to enhance the industry’s respectability and legitimacy (Bearpark and Schulz 2007: 247). In the absence of codes of conduct or other forms of regulations, it becomes more difficult to distinguish between so-called “good” and “rogue” firms. Hence, scandals involving individual companies can potentially be damaging to the reputation of the entire industry, with “[r]espectable firms [...] hav[ing] to pay the price for the misconduct of few individuals” (Bearpark and Schulz 2007: 243). Given this risk, domestic legislation then can play a role “in separating the marginal organizations whose credo is ‘have guns, will travel for anyone’s money’ from companies with a more responsible ethic” (Taulbee 2000: 17).

While issues regarding the acceptance and legitimacy seem to be a driving force for PMSCs and the BAPSC in particular to take a proactive stance on regulation, there seems to be at least one other motive—the threat of otherwise being regulated. According to one former company representative, the industry “knows that it must regulate itself or be regulated” (Donald 2006: 34). A particularly deterring example, in this respect, appears to be the most recent law adopted in South Africa in 2007. In the eyes of

Dominick Donald, vice president and senior analyst of the company AGEIS, “[t]his is exactly the kind of legislation the British sector would like to avoid” (Donald 2006: 32) because it not only makes it “illegal for South Africans to work abroad in any private security capacity except as ‘freedom fighters,’ but any non-South African contractor or employee of a PSC [becomes] liable for arrest should they set foot in the Republic” (Donald 2006: 32). Given this worst case scenario, self-regulation is viewed as a “pragmatic position.” As long as companies “are helping to drive the process, they can make sure that it allows them to do business” (Donald 2006: 32).

## **5. PUBLIC CONSULTATIONS BUT NO AUTHORITATIVE CONTROLS: POSSIBLE EXPLANATIONS**

Discussions about the regulation of PMSCs have been quite vivid in Great Britain with an active engagement of the various stakeholders. Given that those taking part in the consultations for the most part agreed that some form of regulation is needed, it is surprising that, thus far, little has come of the exchange in terms of concrete measures. In this section, three related explanations are discussed: the costs of regulation, the consultation process, and the relations between PMSCs and government. While each would have to be examined in greater detail, their plausibility is initially assessed by comparing the British case to that of the U.S. and South Africa where laws concerning PMSCs have been adopted (see section 3.2.).

The perceived costs of regulation appear to have at least in part been responsible for the lack of authoritative controls. In the Green Paper of 2001, the FCO expressed worries about, first, a loss of investments if companies moved elsewhere to circumvent legislative measures. Second, it voiced concern that authoritative controls would disadvantage British companies in the global market. And third, members of government were convinced that the costs associated with establishing and maintaining regulatory measures outweighed the benefits since they would do little in terms of keeping less reputable companies from engaging in misconduct. Nevertheless, the cost argument also applies to other countries, such as the U.S. and South Africa, where legislation regarding PMSCs exist. Why did it prevent the British government from taking action, but not others and why did the FCO engage in public consultations in the first place, if it considered authoritative controls as being too expensive? In addition to the perceived costs, the consultation process itself seems to have played a role.

According to industry representatives, the consultations initiated by the FCO “ha[d] been largely driven by political embarrassment” following especially the above mentioned Sandline scandal instead of deep-seated concerns about PMSCs (Donald 2006: 31). Seen this way, the dialogue with different stakeholders might have primarily served the purpose of allowing the FCO to appease, at least for the time being, the crit-

ics of privatizing military- and police-related tasks and to take off the pressure to implement costly authoritative measures. Moreover, while participants were generally in favor of some kind of regulation, they disagreed as to what kind of regulatory scheme would be most suited. While the FCO and the BAPSC preferred self-regulation and some form of international framework, members of parliament and NGOs, by comparison, demanded a government-controlled licensing system for PMSCs and a ban of companies involved in combat and illegal activities (see table 5.1. Stakeholders and Type of Regulation). Although adding an additional piece to the puzzle, comparisons with other countries suggest that the adoption of regulatory frameworks is not necessarily dependent on whether or not certain actors mobilize and whether they agree or disagree.

*Table 5.1: Stakeholders and Type of Regulation*

<b>Stakeholders</b>	<b>Type of Regulation Recommended</b>
FCO	<ul style="list-style-type: none"> <li>• Self-regulation monitored by government</li> <li>• Internationally agreed benchmarks</li> </ul>
Parliament	<ul style="list-style-type: none"> <li>• Ban on recruitment of PMSCs engaged in combat and illegal activities</li> <li>• Prohibiting PMSCs from participating in direct combat</li> <li>• Informal appraisal and complaints mechanism;</li> <li>• Licensing system for PMSCs</li> </ul>
NGOs <ul style="list-style-type: none"> <li>• War on Want</li> <li>• CORE</li> <li>• International Alert</li> </ul>	<ul style="list-style-type: none"> <li>• Ban on companies' involvement in combat and combat support</li> <li>• Establishing dispute resolution body receiving, investigating, and settling complaints against British companies</li> <li>• Multi-dimensional approach               <ul style="list-style-type: none"> <li>◦ Banning unlawful participation in combat</li> <li>◦ Licensing system for military services</li> <li>◦ Self-regulation through codes of conduct</li> <li>◦ International cooperation</li> </ul> </li> </ul>
BAPSC	<ul style="list-style-type: none"> <li>• Multi-dimensional approach               <ul style="list-style-type: none"> <li>◦ Self-regulation through codes of conduct;</li> <li>◦ International cooperation</li> </ul> </li> </ul>

In the case of the U.S., the International Traffic in Arms Regulations Law (ITAR) discussed above, which specifies which services U.S.-based PMSCs are allowed to deliver to clients in foreign countries and based upon which companies are subject to a licensing process (U.S. Department of State 2007), had not been preceded by and was adopted independent of a public debate. Although members of the U.S. Congress have taken various initiatives to tighten existing controls concerning PMSCs in recent years and several NGOs have been quite outspoken in their criticisms, especially with the now

renamed company Blackwater, discussions have until now not materialized in any concerted efforts. Nevertheless, this does not seem to have prevented the executive branch to adopt regulatory mechanisms. What then apart from public pressure, may help to explain a government's position and its willingness to absorb the costs of regulation?

Judging from the British case, the role that PMSCs play in the implementation of foreign policy and the self-understanding of companies appears to be another important factor as to whether or not a government conceives of authoritative control as beneficial. As already alluded to in section 4.4, PMSCs still play a rather minor role in the conduct of British foreign policy. Compared to the United States, where the government is the primary client of PMSCs, accounting for ninety percent of their contracts (Schneiker 2009: 51), the situation in Great Britain is exactly opposite. The majority of the some forty companies residing in Britain secures ninety percent of their contracts with other business actors (Donald 2006: xi) and only four to five companies are regularly contracted by the British government (UN Human Rights Council 2009: 5).<sup>24</sup> These figures correspond to the perceptions that governmental officials have of PMSCs. According to Avant, who conducted interviews with some officials, they do not view PMSCs as a foreign policy tool. Although some officials worry that cases of misconduct involving British-based companies abroad could reflect poorly on the British government, the majority of officials seems to think that PMSCs do not as of yet carry out British foreign policy, a sentiment which is shared by firms themselves (Avant 2005: 173- 174). Hence, explaining the absence of any authoritative rules, with the still negligible role of PMSCs appears to make sense, particularly when paired with the self-professed image of British companies.

As noted above, British companies insist that they differ from their U.S. counterparts. Not only do many companies conceive of themselves as private security companies as opposed to private military companies offering combat-related services, but British PMSCs also claim to be more concerned about their reputation and therefore more prone to abide by international laws and norms (Avant 2005: 174). The pro-active stance of the BAPSC in the consultation process seems to support this point. Overall, PMSCs and the British association seem to have created the impression among policy-makers that governmental regulation is not really needed since companies in Great Britain keep out of dirty business and already do a good job in self-restraint and self-policing.

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<sup>24</sup> According to Donald, this is a function of the fact “that there are very few large-scale UK Government contracts. ... [T]he single largest government contract held by a British PSC is for the U.S. Department of Defense” (Donald 2006: xi).



The role PMSCs play in the conduct of foreign policy and the self-understanding they have of themselves also appears plausible as an explanation when comparing the British case to the U.S. and South Africa, where laws concerning PMSCs exist. According to Avant and others, U.S. policy-makers see PMSCs as an opportunity and as working in line with foreign policy goals and values. PMSCs give policy-makers more flexible policy tools and make it possible for them to conduct “foreign policy by proxy” (Avant 2005: 152). The positive attitude and the trust on the part of governmental officials that PMSCs behave in the desired manner are also reflected in the types of contract that are concluded. Many of them are “blanket orders” that do not stipulate the precise services or the duration of the contract (Wulf 2005: 193) and therefore leave it up to the individual companies how to go about implementation. By comparison, the relationship between the post-apartheid governments in South Africa and PMSCs has been, according to Avant, “tenuous at best, hostile at worst.” The reason for this is the misconduct of companies, such as Executive Outcomes, which have been similar to Sandline International have been involved in scandals and during the period of reconstruction “pulled competent soldiers from the army” (Avant 2005: 158). Observers of the regulatory process in South Africa concur that the two pieces of legislation concerning PMSCs, had been adopted with the aim to delegitimize PMSCs (Avant 2005: 159).

Although each of the various explanations would require further examination, when considered together, the outcome of the consultations and the lack of authoritative controls for PMSCs appear less puzzling. Given the perceived costs of regulation, the divisions among stakeholders regarding the appropriate regulatory framework, the still relatively marginal role that PMSCs play in the conduct of foreign policy, and the benign image that companies are able to convey of themselves, discussing what could be done appears to have been cheaper than committing oneself to some form of legal action.

## **6. CONCLUSIONS**

The case of Great Britain suggests that further research is needed on societal reactions to PMSCs. Studying the reactions of a broad range of actors, contributes not only to a more nuanced picture of how PMSCs are viewed and why we find variation across countries as far as regulation is concerned, but it also allows claims about whether and to what extent the state might be transformed.

In the British context, the different responses of public and private actors confound the picture generally conveyed in the literature that governmental actors are more in favor of privatization while civil society and the general public tend to be opposed. Instead, the stances are less clear-cut. First, the characterization of actors and their perceptions of PMSCs seem particularly problematic in the case of civil society organizations, where great differences exist. While indeed some take an oppositional stance,

conceiving of PMSCs as mercenaries and calling for an outright ban of companies offering combat services, many distinguish between more and less reputable companies, are willing to engage and work with the former and favor some form of regulation. Second, similarly to NGOs, it appears equally problematic to treat the PMSCs industry as a monolithic entity. As illustrated above, British-based companies conceive of themselves as quite different from those in the U.S. Categorizing companies based on services alone appears therefore insufficient. Instead, future research would greatly benefit from taking into consideration both the cultural and normative setting in which PMSCs reside as well as the self-understanding that PMSCs have and the image they convey of themselves. Third, what appears to be the most striking finding, however, is the general tolerance of private military and security companies at least in the British case. Although stakeholders involved in the consultations initiated by the FCO worried about some types of companies, and favored some kind of regulation, they did not seem to question PMSCs as such or the outsourcing of military and police-related tasks to them.

What do these observations tell us about the transformation of the state? If one answers the question as has been traditionally done, by looking at the monopoly of force, there appears to be, at least in the British case, little change. Given that companies still play a relatively minor role in how foreign policy is conducted and that PMSCs do most of their business with other private companies, there seems to be no danger, at least currently, that the state is losing control over how violent means are used. However, if one takes a closer look at how PMSCs are assessed by the different actors, we find evidence for an ongoing transformation and support for a thesis advanced by Peter Singer (Singer 2004: 533), who suggests that PMSCs are increasingly seen as a norm whose legitimacy is no longer questioned. Although governmental officials, parliamentarians, and NGOs differ in their views about regulatory instruments, they all appear to accept PMSCs as a reality.

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