

# From Sandline to Bottom Line: The Regulation of PMSCs in the UK

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**The UK is the state of registration for a large number of land-based and maritime PMSCs. How compatible is the UK regulation model for PMSCs with international norms, especially those concerning human rights?**

**Author's note:** *this commentary draws upon work found in a previous article written by the author – ‘Regulation of the Private Military and Security Sector: Is the UK Fulfilling its Human Rights Duties?’ in (2016) 16(3) Human Rights Law Review 585-599.*

There are a large number of Private Military and Security Companies (PMSCs) registered in the UK. In 2011 the Security in Complex Environments Group (SCEG) was appointed by the UK government as its partner for the development

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and accreditation of standards for the UK private security industry when operating overseas. SCEG is a special interest group within Aerospace Defence and Security (ADS), a trade organisation advancing the UK aerospace, defence, and security industries. SCEG lists nearly 60 UK-registered PMSCs as members. Separately, 21 UK-registered PMSCs are currently listed as members of the International Code of Conduct Association (ICoCA), set up in 2013 to oversee the implementation of a non-binding international code for private security companies, although a much larger number of UK PMSCs, over 150, had signed up to the International Code of Conduct for Private Security Providers of 2010. This emerging system of national and international self-regulation was a political choice by the UK government based on free-market thinking and limited resistance to a powerful and profitable industry.

### **Options for Regulation**

The post-Cold War peace dividend, which led to a surplus of well-trained former armed forces personnel, combined with the damage done to the UK's reputation in the late 1990s by Sandline International, led to some soul searching about the regulation of the overseas operations of an emergent private military and security industry. Sandline was a private military company with a previous history of involvement in conflicts in Africa, headed by former British Army Officer Tim Spicer, that had breached a UN and UK arms embargo against Sierra Leone by supplying arms to President Kabbah. The recommendations of the Legg Report of 1998, that the government consider introducing a system of licensing for PMSCs operating out of the UK, were a direct outcome of the 'Sandline Affair'. The UK Foreign and Commonwealth Office's (FCO) [Green Paper](#), 'Private Military Companies: Options for Regulation' of 2002, provided a thoughtful examination of the reasons for growth of the

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industry, including a convincing rationale for regulating what was at the time still a fledgling industry:

**“ Bringing non-state violence under control was one of the achievements of the last two centuries. To allow it again to become a major feature of the international scene would have profound consequences. Although there is little risk of a return to the circumstances of the 17<sup>th</sup> and 18<sup>th</sup> centuries when privateers were hard to distinguish from pirates, and Corporations commanded armies that could threaten states, it would be foolish to ignore the lessons of the past. Were private force to become widespread there would be risks of misunderstanding, exploitation and conflict. It would be safer to bring PMCs and PSCs within a framework of regulation while they are a comparatively minor phenomenon. ”**

In outlining the options for regulation, the Green Paper clearly favoured a system of government licencing over a system of self-regulation based on a

voluntary code of conduct. [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) of 2008, a non-binding document agreed to by a number of countries (mainly those with a PMSC industry such as the UK or those that were hoisting significant number of contractors such as Iraq), also expressed a preference for a licensing system. The Montreux Document identifies existing legal obligations incumbent upon states in their relationships with PMSCs when either acting as the host state, home state (state of registration) or contracting state, but it did not take the form of a binding treaty. It also recommends good practices for governments to adopt when engaging with PMSCs, but there is no supervision or enforcement of any aspect of the Document.

Given this support, the creation of a system of licensing seemed likely, particularly as such a regime had been introduced for UK domestic private security operators in the 2001 Private Security Industry Act, after a period of ineffective self-regulation. Indeed, when considering the Green Paper later in 2002 the Foreign Affairs Committee stated that, while self-regulation would establish better standards of PMSC conduct, it would not by itself prevent rogue or disreputable UK companies from acting against or, indeed, damaging UK interests or policies. Therefore, the Committee recommended a mixed system of general and specific licences.

However, the UK's experience with contractors during its involvement in conflicts in Afghanistan from 2001 and Iraq from 2003 had significant effects. By the time the government came to reconsider the matter in 2009, a much more powerful PMSC industry in terms of reach, capability and lobbying influence, combined with a new climate of austerity following the financial crisis

beginning in 2008, to push the Conservative-led government rapidly towards the least burdensome, least interventionist and, moreover, least expensive option of self-regulation.

Despite further consultations revealing concern with a system of self-regulation, when the government re-engaged with the issue of regulation, it proceeded to create a system in which government backing for a national system of self-regulation was keyed into voluntary international codes. Concerning the latter, the UK government has been a keen supporter of the Montreux Document 2008, which provides a non-binding framework for states, as well as the [International Code of Conduct for Private Security Providers of 2010](#). The latter contains a set of standards for security companies to respect human rights and humanitarian law, and which provides for a non-binding international form of self-regulation for the companies themselves. On the other hand, the UK has opposed any form of binding treaty requiring states to legislate for the regulation of PMSCs as proposed by the UN Working Group on Mercenaries, an item that has been on the agenda of the UN's Human Rights Council since 2010.

## **Flaws in Self-Regulation**

### *Ignoring the Rogue Traders*

In 2009 the FCO optimistically [estimated](#) that in time 90% of PMSCs would opt-in to a system of voluntary self-regulation. Even if this happened, it would still leave 10% of unregulated rogue companies, potentially trading on their willingness to engage in shady operations rather than on their corporate social responsibility. A voluntary system may raise standards in the industry as a

whole but it ignores the central point of regulating the industry: to deter and punish those most likely to commit abuses.

*Nemo Judex in Causa Sua (no-one should be a judge in his own cause)*

Self-regulation in its pure form means that the industry is essentially being given the task of acting as a judge in its own cause. This basic injustice has been partly addressed in the regime within the UK by creating a national system of monitoring, inspection and enforcement through SCEG, separated from the industry association (ADS). This has also been duplicated at the international level, with PMSC membership of the International Code of Conduct being separate from the system of monitoring and enforcement in the hands of the ICoCA. At national level, the SCEG consists of a mixture of PMSCs, with some legal and insurance industry membership, as well as representatives from the FCO and the Department of Transport. At the international level, the ICoCA comprises states (Australia, Norway, Sweden, Switzerland, UK, US), civil society and industry representatives, with equal representation of the three pillars in the Board of Directors. Clearly it is not solely a case of the industry judging the actions of its members, but a truly independent body would not include the industry at all.

Under the voluntary system put in place in the UK, the auditors comprise individuals from bodies accredited by the UK Accreditation Service (UKAS) as being able to measure the management, performance and activities of PMSCs against [national](#) (PSC1 US National Standard, 2012), and [international standards](#) (ISO 18788/28007, 2015), and these individuals and bodies are presumably approved because they are independent of PMSCs.

*Limited Sanctions for Non-Compliance*

Sanctions are limited, the main one comprising exclusion of a non-compliant PMSC, a sanction that ultimately does not stop the company in question from trading, as shown by the US experience of transition from ostracised 'Blackwater' (responsible for the 2007 Nisour Square lethal shooting of 17 civilians in Iraq), to the renamed 'Xe Services' in 2009, and then to 'Acedemi' in 2011.

### *Applicable Standards?*

The question of what standards are to be applied is not as straightforward as the documents (International Code of Conduct, PSC and ISO standards) suggest; that this system will be upholding human rights, humanitarian law and other applicable principles of international law. Given that these laws are not directly applicable to PMSCs, indeed most are designed to cover states not business actors, there is a certain amount of picking and choosing, adapting and interpreting, of standards. This is found at the international level, where the International Code of Conduct (ICoCA) covers some human rights but not others; and in the adoption of PSC1 (2012) as the national standard and ISO 18788/28007 (2015) as the international standards. These standards are not formulated in inter-governmental fora where the development and application of international norms normally take place. PSC1 was formulated by ASIS (an organisation for security professionals), and approved by the American National Standards Institute (ANSI); while ISO 18788/28007 was produced within the International Organization for Standardization (ISO), a non-governmental international organisation consisting of national standard-setting bodies.

### *Failure to Close the Accountability Gap*

The UK government shows limited willingness to engage with its positive responsibilities under international law to ensure that private actors within its jurisdiction respect relevant national and international laws in foreign countries in which they operate. Arguably, the government's presence on both the SCEG at national level and the ICoCA at the international level may address this deficiency, but its critical scrutiny of the practices of PMSCs in these fora is difficult to ascertain or gauge. In any case, it is certainly not as robust as a system of licencing that would require all UK-registered PMSCs to demonstrate to the licensing authorities due diligence in vetting, training, deploying and controlling personnel in conflict zones and other fragile situations. This must be backed up by a system of penalties and fines on companies and their directors for breach of the licence conditions and, ultimately, punishment for individual contractors committing serious crimes over which the UK authorities can, despite government protestations to the contrary, exercise criminal jurisdiction.

The rapid implementation of soft voluntary standards that might have been expected does not appear to have materialised as the number of certified UK registered companies is low (at just over 40 land and maritime PMSCs according to the SCEG [website](#)). This means that a majority of UK-registered companies remain unregulated. Given that such companies often operate in unregulated spaces in other countries, there remains a major accountability gap. In these circumstances it is very difficult to see how the government's backing for a system of voluntary self-regulation for UK-registered PMSCs, no matter how sophisticated the system appears to be, has worked to close this gap.

*Image credit: chuck holton/Flickr.*



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