The Challenges of Private Security Sector 
In the New Century

Abstract

Contemporary world is characterized by increasing porosity of borders, privatization of public resources, weakening of central functions of the state and decline of its strength to enforce law, as well as fragmentation of the security sector, which traditionally represented the preserve of the state. Under pressure by many diverse threats, processes and actors, states have lost a monopoly over the organized use of force. The consequence of such a development is that states have ceded their role of the only legitimate provider and guarantor of security to private military and security companies. The emergence of the private security sector within which private non-state providers of security exist independently of the state represents a very significant moment in the development of both contemporary international relations and functioning of states themselves. The private security industry, private security companies and private military companies have created an industrial chain which functions freely on the global market, is organized along permanent and firm corporate connections and is constantly growing and getting stronger.

The first part of this paper will attempt to introduce the private security sector in a comprehensive way. The aim is to theoretically identify actors which make up the said sector as well as its emergence and spread at the global level. Furthermore, we will deal with organization, functioning and the ramifications of the activity of private security industry on international security. The second part of the paper will focus on the current situation in Serbia. This situation is characterized by a lack of a legal regulation comprehensively regulating the private security sector. Private security agencies represent economic actors which operate in accordance with market laws, but they also represent actors in the security sector. Due to their use of force, these companies contribute to an increase or a decrease of citizens’ security. Their activity thus requires detailed and precise legal regulation enabling them to freely operate on the market but at the same time observe standards of human rights.
The emergence of the private security sector

The private security industry has emerged in the early 1990s. The confluence of three crucial factors - namely the end of the Cold War and the vacuum it created in the supply of security; transformation of the nature of warfare; and normative growth of privatization in all sectors - have made room and created demand for the rise of private security industry. The end of the Cold War has led to significant downsizing of national armies and simultaneously to the rise of global insecurity. Such a development has created favorable conditions for private security industry to be supplied with new and increased demand and conditions for its engagement. The end of the Cold War has demobilized over six million soldiers, many of whom have found a new job in the private security sector. As a consequence of the end of the Cold War, more guns and military equipment have found their way into private hands than into the ownership of the state and the number of unstable and conflict-prone areas doubled. To what extent the end of the Cold War has favorably affected the growth of the private security sector is best explained in a statement by one executive working in that sector: „The end of the Cold War has enabled conflicts which have for a long time been frozen or suppressed by superpowers to become rekindled. At the same time, most national armies were downsized and deeply upsetting CNN images of US soldiers killed in Somalia have had a very negative effect on the desire of governments to deal with resolution of conflicts in crisis areas. We have filled that gap.“

The transformation of the nature of warfare and revolutionary changes on all levels of warfare has also had a major impact on the rise of the private security sector. Military operations have become highly sophisticated due to the use of high technologies. To handle highly sophisticated equipment, civilian experts are often necessary for some aspects of management of highly developed military systems. The demands of highly technological warfare have dramatically increased the need for civilian experts who often have to be recruited from the private sector. Furthermore, the past couple of decades are characterized by the normative shift toward privatization of numerous areas that had previously been the sole preserve of the state. The past decade is characterized by privatization of education, healthcare, prisons or the defense industry. Privatization of military industry, promoted by revolution of privatization of all spheres of life, has enabled private firms to become potential and sometimes priority providers of security and military services. The waging of wars of low intensity (resulting in huge number of refugees), an increased importance of providing humanitarian assistance, increased sensitivity of domestic public opinion to deployment of armed forces to conflict areas, as well as aforementioned privatization of public administration (with all its elements) represent factors which have largely contributed to rapid expansion of private security industry (private-public partnership, new public management, private financial initiative).

In the broadest sense, the actors which belong to the private security sector are made up of vast range of people, organizations and activities. Some of them are very important and legitimate, while others are illegitimate and belong to the so-called security gray zone. The private security sector includes mercenaries, volunteers, foreign officials established in national armies, various kinds of private armies and militias, war lords, companies within defense industry sector, private security agencies, private military companies and many other actors. This paper will focus on mercenaries, private security companies and private military companies. It is necessary to make a distinction between private security sector, to which all aforementioned (legal or illegal) actors belong, and private security industry, to which legal actors or those on the brink of legality belong (private military and private security companies with all variations and sub-branches). The volunteers remain outside the scope of this paper because they are essentially difficult to tell apart from mercenaries. The main difference is that their motives are ideological and not financial. Different kinds of armed groups, militias and war


lords represent higher level of organization than mercenaries. They are more organized than small groups of mercenaries and may include larger number of mercenaries who simply fight for the control over certain regions or resources. These groups do not always have to be national or tied to one conflict. They can be transnational i.e. can assist any country able to pay them. The business operation of companies producing military equipment is regulated by other laws. In the case when they deliver military equipment, provide training and consulting, their services are indistinguishable from services of private military companies.

Mercenaries. Nathan defines mercenaries as „soldiers hired by a foreign government or rebel movement to contribute to the prosecution of armed conflict – whether directly by engaging in hostilities or indirectly through training, logistics, intelligence or advisory services – and who do so outside the authority of the government and defense force of their own country.” The Oxford Dictionary defines mercenaries as „a professional soldier hired to serve in a foreign army” The Geneva Convention uses as much as six criteria to define the concept of a mercenary. One of the latest definitions of mercenaries is that: „mercenaries are individuals who fight for financial gain in foreign wars; they are primarily used by armed groups and occasionally by governments.”

The engagement of mercenaries is banned by international law, but the problem is to arrive to a common definition of a mercenary. The states have struggled for decades to define the term, but have not arrived to a common definition that could be fully incorporated into international law. It seems that it is not possible to arrive to an undisputed legal definition of a mercenary, which was confirmed in three international conventions dealing with this problem.

Traditionally, mercenaries are defined as individuals hired to participate in wars not waged by their home states. Their primary motivation is monetary gain rather than patriotism or loyalty to a nation or a state. A mercenary can be an adventurer, but very often they are hard-core murderers, ready to enlist for any cause or organization willing to pay them. Sometimes these are veterans from previous wars or outlaws who seek a new armed conflict to continue to do what they have been doing before – to engage in warfare. Obviously, people do not necessarily become mercenaries only for financial gain but also because of realization that it is the only way of life they are able to lead. The failure of re-education or training programs to provide hope to former combatants often plays a very important role in their possible decision to continue their life as mercenaries. For someone who has spent a good deal of his life fighting, the realization that he does not fit into civilian society and normal life represents the main motive to become a mercenary. Many mercenaries are soldiers without a permanent place of residence, who fight for highly suspect causes if financially compensated. They are mostly inherently ruthless, often incite and prolong the conflict in which they are engaged, are disloyal, unreliable and very easily change sides in the conflict if offered a larger sum of money.

Compared to private military and security companies, mercenaries are temporary ad hoc groups of individual soldiers hired in indirect and roundabout way in order to avoid legal culpability. Since they do not belong to any organization, they lack professionalism and discipline, are not integrated anywhere, do not have any doctrine and their options are severely limited. Essentially, they are not in a position to offer anything else than to be engaged in direct combat as a part of small units and with limited military training. Generally, mercenaries do not have skills, capital, established methods and possibilities to carry out complex multisectoral operations the way private military companies can (table 1).

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3 Ibid, p. 16
10 Schreier and Caparini, ‘Privatising Security,’ p. 16
11 Ibid, p. 16
companies were deployed in Iraq for the first time, but uncertain circumstances. According to Isenberg, most in Iraq quite well, carrying out complex missions in very David Isenberg,13 the PMCs have performed their tasks interventions in Afghanistan and Iraq. According to of private military and security companies following second major wave that brought about the new rise security services to various interested clients. Very quickly they have started to offer a wide range of military and surpluses of military staff and equipment. Private military companies have automatically absorbed perceived this as a big chance and have filled the gap. In many ways reduced their engagement in resolution conflicts.12 Private military companies have quickly they have started to offer a wide range of military and services. They offer a wide range of services to various clients. They have contracts with governments of various countries as well as with international organizations and non-state actors. Their way of financing is the same as with other economic subjects. They are registered legal companies. They are not legal and in most cases their activity is banned by law. The payment of services is not regulated and is mostly made personally and in cash. They are can carry out only one task at a time, their efficiency is questionable and their discipline inappropriate. Private military companies (PMC). The conditions of post-Cold War downsizing of national armies, discount sale of arms and military equipment and neo-liberal privatization that occurred in parallel, have enabled corporations to jump at an opportunity that presented itself with privatization of certain state sectors. With their new initiatives for privatization, states wanted to cut down on military spending and transfer a part of these costs to private industry. The result was that superpowers – traditional actors in regional and inter-state conflicts during Cold War – have in many ways reduced their engagement in resolution of conflicts.12 Private military companies have quickly perceived this as a big chance and have filled the gap. Private military companies have automatically absorbed surpluses of military staff and equipment. Very quickly they have started to offer a wide range of military and security services to various interested clients. After the end of the Cold War, there was the second major wave that brought about the new rise of private military and security companies following interventions in Afghanistan and Iraq. According to David Isenberg,13 the PMCs have performed their tasks in Iraq quite well, carrying out complex missions in very uncertain circumstances. According to Isenberg, most companies were deployed in Iraq for the first time, but have nevertheless managed to deploy staff and carry out tasks in a shorter period of time than it would have taken regular national armies to do so. The term private military company has not appeared in any international document or convention until 2006. One of well-known definitions of PMC is: „a registered civilian company that specializes in the provision of contract military training, military support operations (logistic support), operational capabilities (special forces advisors, command and control, communications, and intelligence functions), and/or military equipment, to legitimate domestic and foreign entities.”14 A more general definition of private military companies is that it is „a company that provides, for a profit, services that were previously carried out by a national military force, including military training, intelligence, logistics, and offensive combat, as well as security in conflict zones.”15 Singer defines PMCs as „business providers of professional services intricately linked to warfare.” On the basis of the aforementioned, we can conclude that PMCs are profit-oriented organizations which offer professional services in terms

<table>
<thead>
<tr>
<th>Private military and security companies</th>
<th>Mercenaries</th>
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<tr>
<td>They are permanent corporative organizations with hierarchical order and clear structure.</td>
<td>They represent temporary, ad hoc groups of individual warriors.</td>
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<tr>
<td>They are registered legal companies.</td>
<td>They are not legal and in most cases their activity is banned by law.</td>
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<td>The companies are marketing-oriented, that is, they aspire to the greatest possible promotion and marketing of their services.</td>
<td>They operate in secrecy and are clandestine about their existence.</td>
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<tr>
<td>Their way of financing is the same as with other economic subjects.</td>
<td>The payment of services is not regulated and is mostly made personally and in cash.</td>
</tr>
<tr>
<td>They offer a wide range of services to various clients. They have contracts with governments of various countries as well as with international organizations and non-state actors.</td>
<td>They have a small number of clients and services which boil down to combat action. They are mostly hired by insurgent and terrorist organizations.</td>
</tr>
<tr>
<td>Organizational structure is such that it enables efficient multi-tasking with engagement of disciplined staff.</td>
<td>They are can carry out only one task at a time, their efficiency is questionable and their discipline inappropriate.</td>
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12 Ibid, p. 20
15 Schreier and Caparini, ‘Privatising Security,’ p. 18
of engaging in armed conflicts, consulting and logistical support. Their basic purpose is to increase and advance efficiency and effectiveness of armed forces in warfare and steer military conflicts in the direction preferred by their clients.

Due to a wide range of their activities, PMCs have diverse fields of specialty or purposes of activity. The manner of their organizing depends on the level of services and armed forces they are able to offer. Singer offers a typology of PMCs, distinguishing between: 1) private military companies which provide military services, 2) private military companies which provide consulting, and 3) private military companies which provide logistical support (see more in Singer 2004).

**Private military companies which provide military services** offer services which directly concern participation in armed conflicts, engaging in combat, directly command over troops in the field or both. The PMCs from this group have been engaged in many conflicts as force multipliers,17 disseminating their staff among military forces of clients in order to ensure leadership and experience in warfare.18 The clients of these companies mostly have a very low level of military possibilities and are confronted with an instantaneous, very dangerous situation. The PMCs such as Executive Outcomes19 and Sandline,20 which offer special combat services, are typical examples of companies from this group.

**Private military companies which provide consulting** mostly offer services of surveillance, training and coaching. They provide strategic, operational and organizational analysis, often related to functioning and restructuring of armed forces. Their ability to acquire much higher level of experience, knowledge and expertise than any standing army represents the primary advantage of engaging these companies in armed conflicts. The main difference between the first and the second type of companies is the „trigger finger“ factor, namely the obligation of consulting firms is to ensure management and training of their client’s armed forces, rather than directly engage in fight.21 Even though firms from this group may reshape their


strategic and tactical environment, the clients bear the final risk at the battlefield. Their clients are mostly in the midst of reconstruction of armed forces or want to transform them in order to increase efficiency. The needs of their clients are not as urgent and do not have to be immediately met as the needs of clients of companies from the first group. Their contracts made are mostly long-term and often more lucrative. The companies which belong to this group are, for example, Levedan,22 Vinnela23 or MPRI.24

**Private military companies which provide logistical support** provide background and technical support and supply armed forces with necessary equipment. Even though they do not engage in planning and carrying out direct military interventions, they fulfill some of the needs of the military, such as logistics, technical support and transportation, which are critical for combat action in the field. Their clients require immediate intervention, but over a longer term (standing armies which require immediate as well as long-term supply).

Most private military companies, regardless of the kind of services they provide, are mostly clearly structured and hierarchically organized and do business as corporative agents, are legally registered and have a wide range of services and clients. They have a reputation they want to preserve in order to ensure long-term market gain, providing legal and legitimate services. Many experts in this area claim that most PMCs would not place their offer in the service of organized crime, cartels which engage in drug trafficking, insurgent regimes, terrorists or arms smugglers.25 In the US, the PMCs have even formed a trade union entitled International Stability Operations Association.26 Most PMCs aspire to provide military services with a recognizable chain of command, disciplined military staff and previously set procedures which observe laws and customs of warfare. Some of them even claim at their web sites they operate in accordance with the International Federation of Red

23 Vinnell Arabia, Saudi Arabian National Guard Modernization Program <http://www.vinnellarabia.net/> [accessed 26 September 2012]
Cross and Red Crescent Societies and The Voluntary Principles on Security+Human Rights.

The private security companies (PSC). Even though the term „private security companies” is used in many countries, there are numerous discussions about its accurate meaning. Goddard defines PSC as „a registered civilian company that specializes in providing contract commercial services to domestic and foreign entities with the intent to protect personal and humanitarian and industrial assets within the rule of applicable domestic law.” A broader definition is that „PSC is a clearly structured and hierarchically organized registered corporative association, offering services of security nature, competing with other such firms to obtain jobs at the market.” The market on which PSCs operate are much more established, bigger and with sharper competition than the market on which PMCs compete. The two main characteristics of PSC are profit orientation and selling services of internal security and protection. Most of these companies are small, focused on prevention of crime and ensuring public peace and order, providing services of private security on the internal market. In many countries such as USA, Great Britain, Israel, Germany, Russia, South Africa and the Philippines, the size of the budgets of PSCs exceeds the budget of public law enforcement agencies. There are few PSCs which are organized as large corporations, sharing the same corporative principles and command structure as PMCs (table 2). The PSCs which belong to this group mostly seek foreign clients and engagement in several states, especially crisis areas.

C. J. Van Bergen Thirion has made a classification of PSC which operate on the internal market on the basis of following characteristics:

- The guarding sector is the largest and most visible component. The regions with the highest level of crime have the largest number of companies which engage in this sort of business. The employees of the guarding sector patrol office buildings, apartment complexes, shopping malls, sports arenas, warehouses, parking lots and other objects and activities requiring security.

- The technical security, information protection and surveillance sector includes installers of alarms, access controls, protection devices and biometric sensors and often intrusion intervention services as well. The surveillance services are mostly provided via monitoring of sensors and surveillance and recording equipment.

- The investigation and risk management sector which is the smallest and comprises private investigators whose engage in a wide range of activities, from dangerous and potentially tragic to mundane and even hilarious. For example, such activities may include matrimonial disputes, labor matters, provision of expertise, private and industrial espionage, counterintelligence activities, overt and undercover missions of espionage and information-gathering, prevention of fraud and market abuse etc. Private investigators have very diverse and constantly evolving roles in prevention and detection of crime and other wrongdoing. Risk management is the least visible of all sectors. It only began to be developed in the past couple of years and is the least problematic from the standpoint of our research. *(Table 2)*

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<th>Table 2: Classification of private military and security companies according to Fred Schreier and Marina Caparini (2005)</th>
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<td><strong>Private military companies</strong></td>
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<tr>
<td><strong>Private military companies which offer services of direct military intervention</strong></td>
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<tr>
<td><strong>Private military companies which provide consulting services</strong></td>
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<tr>
<td><strong>Private military companies which provide services of background support and logistics</strong></td>
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<tr>
<td><strong>Private security companies</strong></td>
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<tr>
<td><strong>Private companies which offer services of physical protection and security of people and objects</strong></td>
</tr>
<tr>
<td><strong>Private companies which provide consulting services</strong></td>
</tr>
<tr>
<td><strong>Private companies which provide technical protection and video surveillance</strong></td>
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28 Armorgroup.com website operated by Network Solutions, LLC [www.armorgroup.com] [accessed 26 September 2012]
29 Scott S. Goddard, ‘The Private Military Company’, p. 34
31 Schreier and Caparini, ‘Privatising Security,’ p. 26
32 Schreier and Caparini, ‘Privatising Security,’ p. 27
At this point one should mention the activities of private intelligence agencies which can also be categorized as PSC. In Western countries their activity is mostly in the legal sphere and abides by the law. The problem of are many parts of South Eastern Europe where private intelligence agencies are connected with members of former security services and cooperate with criminal organizations. A good example is Romania. In Romania operate more than 160 private intelligence agencies, mostly owned by former senior members of the army, the police or state security services. In Russia there over 12,000 such registered “intelligence” agencies. They mostly employ former members of the KGB, GRU and the former Soviet Army. Most of these agencies are in direct collusion with Russian mafia.

The demand for services of PSCs is constantly on the rise due to economic, demographic and political social changes. Concurrently, state reduces its responsibility for public security and transfers it to other subjects. With an intention to ensure full flexibility and the best relationship between price and demand, these functions are increasingly transferred to private security industry. In most Western countries, the owners of private houses, representatives of local communities and the private sector increasingly rely on private security rather than the police financed by taxpayers’ money to protect them from crime, due to downsizing of police forces and a suspicion about the efficiency of the entire criminal justice system. Given such developments, PSCs have become responsible for ensuring public peace and order and protecting public and private property on a wide range of locations. Their fields of activity have been extended to areas of high risk such as nuclear power plants, crucial national infrastructure, banks, embassies and airports. The services which PSC afford extend to operating prisons, enforcing parking regulations, providing witness protection and security in courts, providing security during public events, escort of high-risk transports, including transport of gas, chemicals, prisoners, mental patients, patrolling military bases and training camps, ensuring immigration centers and various other services.

The services provided by PSC in foreign countries include training of police and security forces, protection of critical national infrastructure, guarding convoys and protecting various delegations as well as multinational corporations engaged in demining, energy production and transport. Furthermore, they ensure companies operating ports, railways and airports, carry out airborne surveillance and reconnaissance and undertake other high-risk security operations such as liberating hostages.

The best example of rapid expansion of PSCs is Iraq. The PMC and PSC industry (table 3) in Iraq has contributed more forces than any other member of the coalition. The number of people from this sector is nearly equal to the number of all coalition soldiers except the US combined. Almost all PSCs are on the US payroll directly or indirectly through sub-contracts with companies engaged to rebuild Iraq. Many civilian guards as “independent contractors” are hired by smaller companies which are sub-contractors of major security companies, which are, again, contractors of states who have engaged them. This complex knot of mutual relations in practice often means that governments do not have real oversight over PSC which are on the public payroll. The second aspect of this problem is that in this way states shed responsibility for crimes committed by forces they had engaged. The combination of insecurity, legal irregularity and millions of dollars invested in reconstruction has created a large and powerful market of security services in the conflict zone of Iraq. New security companies aggressively compete for lucrative contracts in this murky environment. (Table 3)

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33 Schreier and Caparini, ‘Privatising Security,’ p. 41
35 Schreier and Caparini, ‘Privatising Security,’ p. 30
Regulating the private security industry market

Some critics of private security industry maintain that this industry cannot be legitimate because it consists of illegitimate actors.³⁷ They advocate placing a ban on the entire private security industry and re-nationalization of security and military competences of the state. The demand for PSC services in the world is growing and a ban on their work is unrealistic. One of the consequences of such a ban would certainly be a decrease of transparency and accountability of the security sector, because this industry would be pushed underground i.e. on the black market. On the other end of the spectrum are opinions that market itself would ensure punishment of “bad” security providers and that regulating their work is thus superfluous. Such an opinion is also unrealistic. It has so far been shown that the invisible hand of the market has not been sufficient to discourage illegal behavior of some companies. Even if it had been, the invisible hand of the market is unable to ensure accountability of these companies.³⁸

The most realistic response to the rapid rise of private security industry should be found in a balance between these two positions (table 4). The need for legal regulation of this area was particularly pronounced during Iraq and Afghanistan wars.


Table 3: DIFFERENCES BETWEEN SERVICES PROVIDED BY PRIVATE SECURITY COMPANIES AND PRIVATE MILITARY COMPANIES

<table>
<thead>
<tr>
<th>Private military companies</th>
<th>Private security companies</th>
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<tbody>
<tr>
<td>Participation in direct combat action</td>
<td>Physical protection and security of persons</td>
</tr>
<tr>
<td>Provision of training and coaching</td>
<td>Physical-technical assignments, video surveillance of objects and installment of technical protection</td>
</tr>
<tr>
<td>Providing consulting and advisory services</td>
<td>Detective and investigative activities</td>
</tr>
<tr>
<td>Background and logistical support</td>
<td>Consulting, training and coaching services provided by organizations which focus on working abroad</td>
</tr>
<tr>
<td>Maintenance and repair of equipment</td>
<td>Securing vital national infrastructure, plants and pipelines by organizations which focus on working abroad</td>
</tr>
<tr>
<td>Demining services</td>
<td>Protection of humanitarian workers and convoys</td>
</tr>
<tr>
<td>Provision of information-gathering, intelligence and reconnaissance services</td>
<td>Intelligence activity by organizations which focus on working abroad</td>
</tr>
</tbody>
</table>

For states and non-state actors to be able to constructively fit the private security industry into a broader system of security management, it is necessary to pay attention to three main points. Firstly, the issue of their accountability should be regulated. Without accountability of individual contractors, the resort to private security industry will continue to raise suspicion. Secondly, the issue of legitimacy is important. If private security industry wants to be actively participating in the construction of state security, state and non-state actors have to accept it as a legitimate actor. Apart from legitimacy, it is necessary to ensure that appropriate action by private security industry be perceived as legal, for example so that their individual actions are sanctioned by the state or other subjects. The legality of private security industry largely depends on whether it possesses necessary level of transparency and democratic standards in areas such as company activity, finance and business operation.³⁹ Thirdly, practical obstacles to effective operation of the private security industry have to be overcome. A system of private-public interaction on the international level has to be developed in this direction. Such a development requires that private security industry actors increasingly work with states rather than against them.

and interests.  

First and foremost, the interests of the „host state“ (the interest of the state in which private security industry operates) and its population have to be taken into account. It especially refers to weak states in which private security actors mostly operate under contracts signed with foreign actors. Secondly, the „home state“ (the state from which an individual company comes from) has to have oversight and control over where, how and for whom a private security actor works. Thirdly, companies which operate in this sector have to incur benefits from having their position regulated and from implementing legal measures. Namely, it is necessary to create such an environment in which companies which do business in accordance with rules are rewarded with market success and those who violate rules are suspended and punished. Only if interests of all actors who act in the private security industry are taken into account can regulation of this area produce the desired practical and normative effects. (Table 4)

The UN approach to regulating the private security sector market

The UN is the main actor responsible for maintaining international peace and security. Clear and unambiguous attitude about private security industry would certainly have an important normative influence even if it were not legally binding. As the highest international authority and promoter of norms, the UN clearly needs to address the new situation bringing about the rapid increase of the number and expansion of the private security sector.

For the start, the UN should regulate the issue of its own use of private companies from this sector. The UN is big users of private security industry in peacekeeping operations. The fact that the largest world organization often engages private companies represent an important incentive for regulating this sector, especially because a lack of accountability of private security industry actors could badly reflect on the UN.

The UN has to make and develop public standards for private security industry that have to be observed when contracts are made. The use of private security industry in peacekeeping operations has to be open and transparent. The first step would be to make a public list of companies that have signed a contract with the UN, specifying their tasks, Table 4: ARGUMENTS THAT CAN BE MADE IN FAVOR OF AND AGAINST ENGAGING PRIVATE MILITARY COMPANIES

<table>
<thead>
<tr>
<th>Arguments in favor of engagement of PMC</th>
<th>Arguments against engagement of PMC</th>
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<tbody>
<tr>
<td>Enable redistribution of resources and cuts in military spending</td>
<td>Defense, security and army are traditionally exclusive competences of the state and their privatization and ceding to PMCs is questionable.</td>
</tr>
<tr>
<td>PMCs are more flexible, effective and efficient in their work.</td>
<td>The question of accountability, both legal and ethical, is posed.</td>
</tr>
<tr>
<td>They are engaged under the auspices of the UN in international peace operations and conflict resolution.</td>
<td>The market is not regulated at the international level</td>
</tr>
<tr>
<td>They provide undisputable contribution to conflict resolution and stabilization of conflict areas.</td>
<td>The issue of loyalty of citizens and their patriotism is pushed into background because PSCs carry out their activities purely for profit.</td>
</tr>
<tr>
<td>They dispose with human resources who enable them to handle highly advanced technical and information tools.</td>
<td>They are not accountable, there is a possibility of obstruction and sale of classified information to a client who offers more money.</td>
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mandates and areas where they are engaged. Such an approach would enable the public to be informed about the companies that are engaged in peacekeeping operations. Furthermore, such an approach would change the general acceptance of an attitude about “classified nature of clients” which currently prevails within the industry and blocks any discussion about accountability of private companies. The company standards should be thoroughly considered. In any case, they should be in accordance with international humanitarian law, observance of human rights, compulsory transparency and accountability of individual contractors and satisfactory training of staff.

The UN should also work on the development of international regulation of private security industry in the case when subjects from this branch conclude contracts with clients which are not UN members. The role of a regulative body for international conclusion of contracts with the private security industry can be assumed by the UN Special Envoy for Mercenaries. The UN regulation should contain a list of firms that have accepted standards, which are “accredited” and which have a certain level of legitimacy. This would be especially useful because it would afford both state and non-state clients a better insight into the work of companies before they engage them. The second possibility is for the UN to assume the role of a foreign reviewer, by sending an independent envoy to establish whether companies adhere to the accepted standards and respect the rules.

The EU context

The private security sector in EU countries has experienced enormous growth. This growth is illustrated by a large number of companies for private security and by diversity of services they provide. The huge increase of the number of employees of these companies is also noticeable. In 1999 the Confederation of European Security Services estimated that there are more than 500,000 employees working for 10,000 companies specialized for securing industrial objects, offices, public buildings, shops, airports as well as for money transport, personal protection and protection of private houses in EU states. Today in the enlarged EU including countries of South Eastern Europe and with constant growth of private security companies, that number equals 52,300 with nearly two and a half million employees. In some EU member states the number of private security sector employees exceeds the number of policemen, while in most states it is nearly equal as the number of members of police forces. It is noticeable that almost all EU member states have regulated this area by internal legislation. In Austria, which numbers some 200 companies (with the proportion of 1 private security industry employee per 523 citizens) and in the Czech Republic, which numbers 5629 companies (with the proportion of 1 private security industry employee per 203 citizens and 1 policeman per 238 citizens), there are no umbrella laws which regulate this area and the operation of companies is instead regulated under provisions of other laws. Partial exceptions are Spain, which numbers 1299 companies of this kind (with the proportion of 1 private security industry employee per 1260 citizens and 1 policeman per 565 citizens) and Sweden with some 250 companies (with the proportion of 1 private security industry employee per 467 citizens and 1 policemen per 522 citizens), since they have specific laws which apply to this area.

The legislations of Germany, which numbers about 3700 private companies (with the proportion of 1 private security industry employee per 484 citizens) and Belgium, which numbers about 1300 private companies (with the proportion of 1 private security industry employee per 170 citizens) and Slovakia (with the proportion of 1 private security industry employee per 314 citizens) represent exceptions in the way this sector is regulated. According to Jap, Sweden qualifies as a country that provides the best conditions in the area of private security industry.

On the EU level a universal and generally accepted definition of private security industry does not exist, or a unique way of regulating of this market in EU member states. However, under provisions of most laws, private security services refer to securing persons, property, organizing money transportation
The situation in Serbia

The privatization of security in Western countries was a result of the requirement that state institutions should do their job more efficiently. It was achieved by privatizing certain functions of public administration. However, in Serbia this occurred mostly for a completely different reason, namely due to a complete collapse of the state and its inability to perform basic functions. In the period between 1990 and 2000, Serbia experienced a massive decrease of industrial production, massive decrease of export, chronic unemployment with grey economy replacing regular market. During the same period Serbia experienced precipitating downfall in the rule of law and efficiency of institutions in charge for ensuring citizens’ security. A particularly large problem was that institutions in charge of citizens’ security were used against them as a weapon of repression by the ruling regime. The state gave organized criminal groups huge freedom and power.

In that period there was practically no activity in Serbia which functioned outside the zone of grey economy. Such situation has instigated a huge rise of private security sector, given that businesses in grey economy do not enjoy the protection of the police and the judicial authorities and turn themselves to private security for protection. The agencies for physical-technical security that emerged in this period were mostly owned by organized criminal groups. The services of security and protection provided by such firms were just a camouflage for criminal businesses. Although not all security firms were at the same time criminal organizations or involved in criminal activities, the prevalence of the firms that which did, has created a deep public perception that lingers to this day that the entire private security sector is deeply criminalized.

Until 1993 there existed a Law in Serbia which regulated engaging private security firms in Republics that had made up former Yugoslavia. Namely, the Law on the System of Social Self-Protection allowed private subjects to provide security services. It regulated the entire area of engaging companies which provide services of private security in conditions of socialist

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49 Unijat, Jelena, Marko Milošević, Predrag Petrović and Sonja Stojanović, Private Security Companies in Serbia - A Friend or a Foe? (Belgrade: Center for Civilian-Military Relations, 2008) p.103


53 Ibid, p. 18
self–management economy. The National Parliament of Serbia abolished in 1993 the Law on Social Self-Protection. Its abolition has created a vacuum in regulation of the security sector. The state security sector did not fill the vacuum and the place was filled by private security agencies which, operating under the laws of the market and due to a lack of legal regulation, did not manage to fit into the security system of Serbia.

Table 5: MAIN CHARACTERISTICS OF THE PRIVATE SECURITY SECTOR IN SERBIA

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>There is no umbrella law which regulates the operation of PSC</td>
<td></td>
</tr>
<tr>
<td>The Interior Ministry does not exercise control and oversight over PSC</td>
<td></td>
</tr>
<tr>
<td>The Interior Ministry is very slow in addressing demands of PSC</td>
<td></td>
</tr>
<tr>
<td>PSC do not observe even existing regulations and legal solutions</td>
<td></td>
</tr>
<tr>
<td>Within the Interior Ministry there is no special body in charge of inspection and oversight over PSC</td>
<td></td>
</tr>
<tr>
<td>There is a collusion between politics and business (practically every major political party has its own PSC)</td>
<td></td>
</tr>
<tr>
<td>There is no central register of PSCs. Even if the Interior Ministry intended to inspect these companies, there are no data specifying who should be inspected.</td>
<td></td>
</tr>
</tbody>
</table>

Serbia is today the only country in South Eastern Europe which has not enacted a law on private security companies. Tens of thousands of people work on tasks of private security in Serbia and unofficially there are about 3000 private security companies. A more precise picture on the number of firms and employees can be obtained on the basis of the register of fire-arms kept by the Interior Ministry, which states that 46,986 pieces of fire-arms are registered with legal persons under Article 17 of the Law on Weapons and Ammunition (however, this number also includes hunting associations and private investigators).54

In a situation when there is no umbrella law precisely and comprehensively regulating the entire sector of private security, operation of private companies in this sector is regulated by several sporadic laws (Law on Labor, Official Gazette of the Republic of Serbia 24/05; Law on Weapons and Ammunition, Official Gazette of the Republic of Serbia 44/98, Law on Amendments to the Law on Weapons and Ammunition, Official Gazette of the Republic of Serbia 39/03, Law on Firms, Official Gazette of the Republic of Federal Republic of Yugoslavia 29/96, 33/96 – corr., 29/97, 59/98, 74/99, 9/2001 – decision by the Federal Constitutional Court and 36/2002, the Penal Code, Official Gazette of the Republic of Serbia 85/05, Law on Protection against Fire, Official Gazette of the Republic of Serbia 48/94, Law on Security and Health at Work, Official Gazette of the Republic of Serbia 101/05, Law on Amendments to the Law on Prevention of Violence and Improper Behavior during Sport Events Official Gazette of the Republic of Serbia 90/07). Although private security firms provide specific types of services, which include use of force and fire-arms, their registration is the same as of all other economic actors. These companies are registered on the level of municipalities and the permits for acquisition and possession of arms are issued by a municipal department of the Republic of Serbia Interior Ministry. Not a single institution in the state keeps a central register of PSC, not even the Interior Ministry.55

The main problem that originated from this situation is that private security organizations either do not apply the regulations or violate them. Namely it is often the case that the fact that the Interior Ministry has not issued a permit to a company employee to carry arms, it is disregarded, although he/she is engaged on very sensitive tasks.56 Such situation is the consequence of a lack of legal regulation of the sector since there is no body the task of which is to oversee, control and inspect the affairs of PSCs.

Almost 10 years ago the first attempt was made to enact a law which would legally regulate the private security sector, but for unknown reasons it was soon abandoned. Since then until now such a law has not been enacted in Serbia. The last attempt of enacting such a law was in 2010, when the Interior Ministry of Serbia, together with the Association of Private Security with the Chamber of Commerce, presented a Draft Law on Physical - Technical

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54 Living with the Legacy - SALW Survey Republic of Serbia (UNDP, 2005), p. 22

55 Jelena Unijat, Predrag Petrović, Marko Milošević and Sonja Sotjanović, Key findings of research and recommendations, in Private security companies in Serbia – Friend or threat? Belgrade:Centre for Civil-Military Relations (2008), p. 28

56 Unijat, Jelena, Marko Milošević, Predrag Petrović and Sonja Stojanović, Private Security Companies in Serbia - A Friend or a Foe? (Belgrade: Center for Civilian-Military Relations, 2008) p.73
Security. The law was sharply criticized both by representatives of firms which provide services of physical-technical security and the non-governmental sector. Most criticism concerned the establishment of an Agency for Private Security Affairs, established by the Serbian government at the proposal of the Interior Ministry, the possibility that criminals can be company owners, the clash of interests between the state and the private security sector, weak inspection and oversight over the private security sector as well as the fact that under the Draft Law the Parliament and the public are afforded no insight into the work of the private security sector.57

Dušan Davidović, director of the Centre for Crime Prevention, underlines that legal vacuum mostly suits individual agency owners who, using strong connections with people from political parties, make good profits. He says that there are firms that have connections with all major parties in Serbia and that they can do whatever they want, which is particularly visible outside the capital city. Those firms get jobs outside tender procedures and can even take over jobs of other firms. He adds that the fact that the law has not yet been placed on the Parliament agenda suggests that the grey zone of the private security sector still has the upper hand and holds the strings in its hands.58

Professor Bogoljub Milosavljević also says that connections between certain political parties and owners of security firms close to politicians are obvious. He also underlines that the use of fire-arms or eavesdropping devices is still not legally regulated in Serbia, as well as surveillance and tracking devices, despite the fact that people from the private security sector carry short and long guns and engage in eavesdropping, surveillance and tracking of people. There is no system of verification, training and licensing employees and it is unknown who and in what way controls their work.59

Even though seriousness of the situation in which private security sector operates in Serbia today would require that a law be urgently enacted, such a law has not yet been passed. Since the Republic of Serbia has ratified the Association and Stabilization Agreement with the European Union, it has to fulfill all ensuing obligations which in this case primarily concern reform of the security sector and faster harmonization of national technical legislation with technical legislation of the EU (Article 77 of the Stabilization and Association Agreement – obligation of the Republic of Serbia to take all necessary measures to gradually achieve harmonization with technical regulations of the Union and European standardization, methodology and procedures of assessment of harmonization) and the principles of the World Trade Organization. Adoption of the said law falls under this obligation since it represents the material-legal basis for performing private security tasks within the system of national security and in accordance with the principle of democratic civilian control which, according to proposed legal solutions, is carried out by accredited organizations. In accordance with the Directive of the European Parliament and the EU Council number 765/2008 of 9 July 2008, they represent the most desirable instrument proving competence of accredited organizations as an important element of democratic civilian control (independence, impartiality, objectivity).60

Concluding remarks

On the basis of the aforementioned we easily conclude that private security industry represents significant element of a security component of every country, as well as the international community. Due to increasing number of international interventions which encompass increasingly numerous ranges of activities – from warfare, to humanitarian assistance, support to peacekeeping operations, post-conflict reconstructions to security sector reform – the need for greater engagement of private security industry is also increasing.

Such a development results in the greater need for oversight, transparency and accountability of actors in the private security industry. A wider range of services they offer, as well as the fact that states, international organizations and private

59 Ibid
corporations increasingly rely on them, suggests that privatization of security is a long-term trend that has deep ramifications for the nature of the state and its monopoly over the use of force.

However, the real risk of irresponsible behavior of the entire security industry are not its activities in home countries (mostly rich countries), but in carrying out tasks in weak and failed states. Local authorities in those countries often lack power or possibility to control these firms. With dramatic growth of the size and influence of private security industry the need for analysis, discussion and innovative legal solutions is also growing. Any sort of response to the phenomenon of private security industry has to take into account the altered nature of international conflicts and be aware of the fact that economic resources are transformed into military ones much faster than before and that non-state actors can finance wars sometimes more successfully than states themselves.

As far as Serbia is concerned, it is of utmost importance to enact a law that would thoroughly and precisely regulate the work of private security industry. It is necessary to acquaint the parliamentary committees in charge of the Judiciary, state administration and local self-government with all characteristics and specificities of the private security industry in Serbia. The right to issue work permits as well as authorization of provision of training, carrying out inspection and monitoring, should all be thoroughly regulated under the law. The question whether the Interior Ministry can participate on the market as a private security industry actor should also be considered. In the case that the Interior Ministry has a right to participate on the market, the aforementioned rights of authorization should be entrusted to an expert association or an independent body. To make regulation possible, it is necessary to prevent the influence of politics or political parties on the private security industry or ensure that this relationship is transparent and legally regulated.

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The Center for Euro-Atlantic Studies – CEAS is an independent, atheist, socially oriented left liberal think-tank organisation, founded in 2007 in Belgrade. With its high quality research work CEAS generates precise analysis in the field of foreign, security and defence policy of the Republic of Serbia. Simultaneously, CEAS publicly promotes innovative, applicable recommendations and creates practical policy whose aims are:

- Strengthening of the socially oriented, left liberal democracy in Serbia*
- Adopting the principle of precedence of individual over collective rights, without disregard for the rights which individuals can only achieve through collective action
- Development of the of the concept of transitional justice and the establishment of mechanisms for its enforcement in the Western Balkans region, exchange of positive experiences, emphasising the importance of mechanisms of transitional justice for a successful security sector reform in post-conflict societies in transition towards democracy
- Acceleration of the processes of Serbian EU integration and strengthening of its capacities for confronting global challenges through collective international action
- Strengthening cooperation with NATO and advocacy for Serbian Atlantic integration
- Strengthening a secular state principle and promoting an atheist understanding of the world
- Contributing to the erection and preservation of a more open, safe, prosperous and cooperative international order, founded on the principles of smart globalisation and equitable sustainable development and the international norm of “Responsibility to Protect”

CEAS fulfils the mentioned activities through various projects assorted in four permanent programmes:

- Advocacy for Serbian Euro-Atlantic Integration
- Security Sector Reform in Serbia
- Transitional Justice
- Liberalism, Globalisation, International Relations and Human Rights

CEAS is an active member of the REKOM coalition which gathers more than 1,800 civil society organisations, individuals from all the countries stemming from the break-up of former SFRY. Among them are also missing persons’ parental and family societies, veterans, news reporters, representatives of minority ethnic communities, organisations for the protection of human rights, etc. The REKOM coalition suggests that governments (or states) establish REKOM, an independent, inter-state Regional Commission for the Establishment of Facts on all the victims of war crimes and other heavy human rights violations undertaken on the territory of the former SFRY in the period 1991-2001.

During 2012 CEAS became an associate member of the international association of expert non-governmental organisations (think-tanks) from Europe and Central Asia – PASOS, which supports the erection and functioning of an open society, especially in relation to issues of political and economic transition, democratisation and human rights, opening up of the economy and good public governance, sustainable development and international cooperation. PASOS now has 40 full and 10 associate members, amongst which is the prestigious European Council on Foreign Relations from London – ECFR, and, until now, only the Belgrade Centre for Security Policy – BCBP, from the non-governmental sector in Serbia.

During the same year, the Center for Euro-Atlantic Studies became the first civil society organisation from the region of South-Eastern Europe to join the International Coalition for the Responsibility to Protect – ICRoP as a full member. The coalition brings together non-governmental organisations from all over the world to collectively strengthen normative consensus for the doctrine of Responsibility to Protect (RtoP), with the aim of better understanding the norm, pushing for strengthened capacities of the international community to prevent and halt genocide, war crimes, ethnic cleansing and crimes against humanity and mobilise the non-governmental sector to push for action to save lives in RtoP country-specific situations. Among the prominent members of the Coalition are organisation such as the Human Rights Watch - HRW and the International Crisis Group – ICG.