

# When nobody guards the guards: The quest to regulate private security companies in Afghanistan

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**Abstract:** Despite the fact that private security companies (PSC) started operating in Afghanistan within days of the fall of the Taliban in November 2001, the government of Afghanistan only recently started to put proper regulation in place, under the UN-supported Disbandment of Illegal Armed Groups (DIAG) programme. An overview of the history of efforts to regulate the private security industry in Afghanistan, including self-regulation, is followed by a snapshot of the current status of the regulation that was passed in early 2008. After outlining the impact the unregulated environment has had on the Afghan context, we discuss problems with the current regulatory process. Key problems we identify include vagueness in areas of the PSC regulation as well as the difficulty of ensuring adequate enforcement.

**Key words:** Afghanistan, security, private security companies (PSCs), disarmament, demobilisation and reintegration (DDR), post-conflict peacebuilding

## 1. Introduction

Even though Afghanistan has a long history with non-state armed actors (such as the *mujahideen* parties and later on the Taliban), the phenomenon of Private Security Companies (PSCs) only appeared with the US-led invasion that ousted the Taliban in 2001. The Americans were the first to arrive, with Blackwater providing specialised security to elements of the US Embassy. Initially, the US military drew the bulk of its local security manpower from local militias controlled by commanders who had opposed the Taliban – a first blurring of the line between legitimised private security and non-state armed groups in Afghanistan. As part of the post-conflict demobilisation and reintegration process, militia members were integrated into the new security institutions, such as the Afghan National Army (ANA) or Afghan National Police (ANP)<sup>1</sup>. However, some militias transformed themselves into local PSCs, or joined international ones, while never fully severing loyalties to their (former) military commanders. This unclear and incomplete integration further blurred the line between armed non-state actors and the privatised security industry.

A continuing deterioration of security across the country (with parts of the South, Southeast and East slipping back into conflict), a weak state security apparatus, the limited reach of international peacekeeping forces, along with aid money flowing into the country, led to a growing demand for privatised

security services, especially among the increasing number of international actors, well-off Afghans and the private sector. Yet, with the line between freelance militias and PSCs blurred, it was increasingly difficult to determine which hired service could be considered a legitimate private security company as opposed to those that perpetuated the power of warlords.

PSCs in Afghanistan today provide a broad range of services including static and mobile guarding and protection services, assistance in poppy eradication and de-mining, logistic and transport services, strategic advice and training. Even President Karzai at one time relied on PSCs for his own security.<sup>2</sup> A recent study (Schmeidl 2007, 2008) attempted to profile the PSC industry in Afghanistan, highlighting the challenges of grasping their numbers and activities. Until very recently, the Afghan government has been unable to regulate (or even run a comprehensive registration of) the PSC industry, their staff, number of weapons, and countrywide engagements. In her study, Schmeidl (2007, 2008) estimated that a minimum of 90 PSCs were operating in Afghanistan, with a staff of 18,500 to 28,000 and about 43,750 weapons. At the time that the present article was written, only 52 companies had lodged a registration under the new PSC regulation – showing the clear problems in defining what a legitimate and recognised security provider may be in Afghanistan. Schmeidl (2008, 11) identified four types of PSCs, with the Afghan share in the market lying at about 44%:

- “exclusive Afghan ownership and management, holding a domestic investment license;
- Afghan co-ownership and management with foreign PSCs, with a domestic investment licence;
- foreign ownership with Afghan partners involved in management, with an international investment license;
- exclusive foreign ownership and management, holding an international investment license.”

Among the foreign-owned companies, most originate from the United States, followed by firms from the United Kingdom, Aus-

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1 “As the 2003 disarmament, demobilisation and reintegration (DDR) program and the building of the ANA removed militias initially on the ministry of defence (MOD) payroll, more commanders moved into the police seeking to preserve their forces and arms” (ICG 2007, 5).

2 First, the US Embassy contracted the US firm DynCorps, and later another PSC, USIS, to train an exclusively Afghan Presidential Protective Service.

tralia, Canada, Germany, Nepal, Turkey, Netherlands, India and Pakistan. The professional experience and approach among the existing PSCs varies widely: from international companies with long standing reputations to newly formed 'offshoot' security companies that were often a mix of *ex-mujahideen* commanders rolling their militia over into PSCs (both local and foreign), and newly formed local PSCs trying to adhere to international standards. All this, coupled with the lack of any official PSC regulation until 2008, created a maze of PSC providers and a large range of quality in services rendered, clearly allowing for 'rogue' companies to dominate a share of the unregulated market.

All of the above lead to confusion amongst the Government of Afghanistan (GoA), international actors, and especially the Afghan civilian population. The GoA and population did not understand the world of private contracting and assumed that most of the people driving around in civilian clothes in armoured vehicles with weapons were international military or personnel of foreign embassies, not private companies or contractors (see also Schmeidl 2007, 2008). This was compounded by the fact that many PSC staff carried US Department of Defense or NATO identification cards. Only gradually did the GoA come to realise the magnitude of PSCs operating in Afghanistan, and not all in distinctly legal and transparent ways.

## 2. The need to regulate PSCs in Afghanistan<sup>3</sup>

A recent study on the impact of PSCs in Afghanistan strongly highlighted the need for regulation given that "unregulated environments have a tendency to encourage bad behaviour and push responsibility and accountability off (sic) to others – as they leave it up to the individual and individual organisations to use their own ethics in observing best practises" (Schmeidl 2008, 37). According to a representative of a PSC, regulation is mainly needed for rogue companies, as companies with their reputation in mind tend to hold their employees up to high ethical standards.<sup>4</sup> Other companies, however, may simply try to cut corners, valuing profit margins over professional behaviour. This situation sheds a negative light not only on the rogue companies or individuals in question, but also on the entire privatised security industry, and all armed actors (even peace-keeping forces) currently operating in Afghanistan.

The main finding of Schmeidl (2007, 2008) was that PSCs are seen in a very negative light in Afghanistan – actually having the reverse effect of their purpose: instead of bringing security, the local population perceives that PSCs contribute to insecurity. The Afghan population overall seemed to have little sympathy for anybody continuing to make money through being armed because of their negative experience with gunmen in the past (Schmeidl 2007, 2008). Having lived under militia rule or militia terror, many find it difficult to comprehend privatised security as a legitimate business sector. Some international humanitarian actors are also uneasy and regard PSCs as a "necessary evil" in an insecure environment (see Schmeidl 2007, 2008; Renouf 2006, 2007).

Schmeidl's study (2007, 2008) highlights four reasons for the association between PSCs and insecurity. First, as noted in the introduction, the lines regarding what is a legitimised PSC are extremely blurred in Afghanistan. The lack of a legal requirement for proper identification combined with insufficient transparency on the side of many PSCs, makes it difficult for the Afghan population to clearly distinguish whom they are dealing with and what kind of rights such actors have, creating a distinct sense of vulnerability and distrust.

Second, in the previously unregulated environment it was the responsibility of individual PSCs to ensure reputable and professional behaviour, allowing for "the cutting of corners, the dropping of standards, and possibly even illegal behaviour" of a few non-reputable companies or individuals within PSCs such as rude demeanour, intimidating people, heavy armament, blocking of roads, dangerous driving, drug-smuggling and other criminal activities (Schmeidl 2008, 23).<sup>5</sup>

Third, a tendency to pass the buck on holding PSCs accountable enhances the perceived impunity of some PSC staff.<sup>6</sup> The Afghan government tends to pass on complaints regarding PSCs to the embassies of relevant companies, expecting countries of origin to deal with misconduct. Embassies, clients and companies in turn expect a code of conduct from PSCs on the one hand, while also expecting Afghan security authorities to deal with complaints and prosecute transgressions on the other hand. For many civilians this translated into nobody wanting to take responsibility (Schmeidl 2008).

Finally, there was a distinct fear (held by the Afghan government and the civilian population) regarding the link between PSCs and local strongmen, both inside and outside the government. Many Afghans argued that strongmen intentionally converted their militias or private armies into PSCs in order to be able to legitimately maintain them as a 'reserve army' (Schmeidl 2007, 2008). The proliferation of local PSCs (especially those owned by family members of high-ranking government officials), was also potentially seen as a way to undermine accountability, intimidate rivals, and use government connections to obtain big international contracts.<sup>7</sup>

5 This is linked to the question of where weapons come from, given the unsatisfactory DDR (Disarmament, Demobilisation and Reintegration) process and the equally disappointing DIAG (Disbandment of Illegal Armed Groups) process that followed.

6 A recent example of a PSC belonging to the son of a Minister losing a contract with an international telecommunication firm and sending armed men to threaten the client concerned, with the Minister in question having his private secretary ringing the client to add further pressure, highlights the genuineness of such concerns. The client company complained to the Government and DIAG process about this.

7 The Canadian CanWest News Service recently determined that a company named „Sherzai“ won a big contract with the Canadian military in Afghanistan (\$1.14 million) for transportation, defence services and research and development. According to our research, there is no known PSC named „Sherzai“ registered anywhere in Afghanistan, but „the company bears the same name as Gul Agha Sherzai, a former warlord who helped Mr. Karzai rout the Taliban from Kandahar six years ago, and who served as the province's governor until 2005 and whose brother was providing men to guard Kandahar Airbase where the Canadians were based.“ A similar contract seemed to have gone to a company referred to as „(General) Gulalai“, another Southern warlord“ (Mike Blanchfield. 2007. *The Ottawa Citizen*, 19 November 2007, available at: <http://www.canada.com/ottawacitizen/news/story.html?id=7f5dd6de-fe30-42f1-8cfd-de5e1a1d4173>, accessed 02 August 2008). The Canadian government is by far no exception, as there are rumours that a local warlord guards the German PRT in Badakhshan, and there are links between the US military and various strongmen in the provinces.

3 This section is a condensed version of a study done for swisspeace (Schmeidl 2007) published as a swisspeace working paper (Schmeidl 2008).  
4 Interview, PSCAA board member, Kabul, 18 June 2008

### 3. Government attempts to regulate PSCs

Despite the fact that PSCs started operating in Afghanistan within days of the fall of the Taliban in November 2001, the GoA only recently started to put proper regulation in place, under the UN-supported Disbandment of Illegal Armed Groups (DIAG) programme. It is difficult to ascertain exactly when the official process of proper PSC regulation and registration began in Afghanistan, as the Afghan Ministry of the Interior (MoI) in charge of this issue has been described as “notoriously corrupt, factionalised, and an increasingly important actor in Afghanistan’s illegal drug economy” (Wilder 2007, xi; see also ICG 2007). In terms of PSC regulation this meant that certain individuals within the MoI may have started to register PSCs as early as 2003 (Schmeidl 2007, 2008), leading to a wide array of PSC certificates from different departments, some of questionable legality serving more to levy ‘fees’ for private purposes than to control PSC activities.

It was not until March of 2005 that the “MoI issued a ministerial directive ordering the Criminal Investigation Unit (CIU) to officially (re)register and control PSCs” (Schmeidl 2007, 23). The MoI, however, never fully stopped ‘alternative’ registration efforts, nor did it address the fact that local police chiefs were able to harass PSCs and extort money at will.

The situation escalated in early 2007, when the robbing of several banks, “alleged to be insider jobs by security firms,” brought the lack of control over PSCs to the attention of the Afghan President, who began to fast-track PSC regulation (Schmeidl 2008, 17). Supported by UNAMA, the MoI produced several draft regulations that were eventually sent to the Ministry of Justice (MoJ) to be checked that they accorded with other laws and international obligations of Afghanistan. Instead, the MoJ introduced changes that made the regulation ‘unworkable’ in the perception of international advisors and several western diplomats involved in the process. This conflict between “extensive regulation” favoured by many individuals within the Afghan government and “essential legislation that could also be adequately enforced” (Schmeidl 2008, 18), coupled with the opinion among some Afghan officials that PSCs were distinctly unconstitutional, brought the law-making process to a near stand-still in late 2007 when the Afghan Cabinet decided to ban PSCs altogether. A compromise was only reached when members of the international community pointed out the effects that this would have on, for example, international military forces relying on PSCs to escort fuel and food convoys, and embassies and international contractors relying on PSCs for close protection.<sup>8</sup> Instead of a law that had to be approved by the Afghan Parliament, an administrative regulation was to be developed by the MoI that would regulate PSCs until proper legislation could be passed.

This regulation, titled *Procedures for Regulating Activities of the Private Security Companies in Afghanistan*, was finally completed

8 USAID estimated that half their development projects would cease if PSCs were banned.

in February 2008 and consists of 40 articles.<sup>9</sup> The third article of the regulation empowers the MoI as “the only authority that regulates activities and other affairs of the security companies throughout the country”. In order to diffuse some of the MoI’s power, the regulation stipulates that a High Coordination Board (HCB) oversees the licensing process and implementation of the regulation, make decisions on areas in which the regulations were unclear, and receive and review complaints (Article 9). Under the directorship of the Minister of the Interior, the HCB consists of several members from diverse departments at the deputy-minister level of the MoI (Article 4), but also one member each from the Ministries of Defence, Foreign Affairs, Finance, Commerce and Industries, as well as the National Directorate of Security (NDS) and the National Security Council (NSC) (Article 8). Additional oversight is provided by the MoI Legal Adviser, the Disarmament Commission, and the United Nations. The diverse composition of the HCB attempts to diffuse the power of the MoI and reduce the risk of corruption and favouritism.

Administrative and technical problems delayed the start of the registration process until April 2008 when all PSCs were invited to a presentation and told what they needed to do to register. Initially some 45 companies expressed an interest in registering under the new PSC regulation, but this was soon reduced to a core of 36 companies both willing and able to fulfil all legal requirements.<sup>10</sup> These companies submitted the necessary documentation by the end of May 2008, but at this stage the MoI had yet to appoint any staff to the new PSC unit supporting the PSC regulation process. A couple of months later another 16 PSCs came forward to try and join the regulation process.

The first act of the HCB (prior to reviewing the paperwork of the individual companies applying for licences) was to review and agree on a set of recommendations made by independent experts and signed off by the Office of the President that sought to clarify some of the unclear areas of the regulation. This step, however, already highlighted some of the problems that have marred the PSC regulation process - vested political interests of HCB members who sought to change or interpret the regulations in a way that would be favourable to their interests or those of their Ministry (e.g. an attempt to insist that all insurance and bank guarantees must be done through local compa-

9 The regulation known as Dalw 1386, as prepared and arranged by the Joint Secretariat of Disarmament and Reintegration Commission for the MoI, states: “In order to fill the existing legal gaps for regulating the activities of private security companies, this procedure and guideline is enacted pursuant to the Private Security Companies draft law which was approved by the Council of Ministers in their meeting on 7 Jan 08 (sic) and which has been submitted to the parliament.” – Article 1: “This procedure is enacted based on Paragraph 4, Article 6 of the Law on Weapons, Ammunitions and Explosives, for the purpose of regulating the activities of security companies in the country in order to fill the legal vacuum until the enactment of the relevant law;” available at [http://www.privatesecurityregulation.net/files/Afghanistan\\_2008\\_PSCInterimRegulations.pdf](http://www.privatesecurityregulation.net/files/Afghanistan_2008_PSCInterimRegulations.pdf) (accessed 2 August 2008).

10 Companies with previous interim registration who showed interest in new registration and hold temporary licenses: *Afghanistan*: Good Night Security Services, IDG, ISS (also known as SSI), Mellat Security International, NCL, Pride Security Services, Siddiqi Security, White Eagle; *Australia*: Compass, TOR; *Canada*: GardaWorld (as Kroll); *United Kingdom*: AEGIS, Armor Group, Blue Hackle, Control Risks, Edinburgh International (Edinburgh Risk), Global, HART, Olive, Saladin; *USA*: EODT/GSC, Four Horsemen/ARC, RONCO, SSSI. Companies without previous interim registration who showed interest in the new registration and hold temporary licenses: *Afghanistan*: ARGIS, Asia Security Group (ASG), Kabul-Balkh Security Services, BSS, CAPS (Canadian Afghan Protective Services), CSG, SOC – Afg, WATAN Risk Management; *USA*: Blackwater, DynCorp, REED Inc.

nies with whom some HCB members had relationships, and an attempt to increase the previously-agreed levels of insurance that each PSC must have). Thus, the HCB needed to invoke a clause in the regulations doubling the amount of time, from two to four months, during which it would consider the initial applications – delaying the process until mid-September 2008.

In this regulatory vacuum, police still arbitrarily harass some PSCs that had launched applications, while other PSCs who have not filed applications (and are thus operating illegally) continue to operate freely. In many ways the PSC regulation may actually fuel internal power struggles, given that the MoI, under whose auspices the PSC regulation lies, “employs the largest number of government officials with links to militias of any ministry” (ICG 2007, 5-6). Arguments continue between the HCB and foreign embassies over what revisions to the regulation are feasible, with the embassies trying to have some oversight over HCB attempts to manipulate the PSC regulation into a tool that serves vested interests over law. This power struggle may continue as the HCB is put to the ‘impartiality’ test in reviewing two pending applications by companies owned by family members of President Karzai and the current Minister of Defence (Rahim Wardak) – something strictly prohibited under Article 20 of the current PSC regulation. This, however, may only be the tip of the iceberg of trying to implement a PSC regulation in Afghanistan, where the ministry in charge (MoI) is considered to be one of the most corrupt in the country and in dire need of reform (Wilder 2007, ICG 2007).

#### 4. Attempts at self-regulation

While the GoA was muddling its way through passing a PSC regulation, several international PSCs, mainly British (Olive Group, ArmorGroup, Kroll, Compass, Strategic SSI, Edinburgh International, Saladin, Blue Hackle, Aegis, VSS and Control Risks Group-CRG) established a self-regulation and best practice association known as the Private Security Companies Association of Afghanistan (PSCAA).<sup>11</sup> A conscious choice was finally made to limit PSCAA membership to international companies only, as there was a fear of local companies with dubious backgrounds trying to join in. While this may discriminate against reputable local companies, it was done in an attempt to keep the PSCAA as neutral as possible, especially as MoI members advised the association to remain international for the time being.<sup>12</sup>

According to an interview with a board member, the mission of the PSCAA is “to conduct representative, monitory and advisory action on behalf of members to provide an environment of trust and understanding that best allows PSC operation in Afghanistan.”<sup>13</sup> An alternative motive for the establishment of the PSCAA was the need for an advocacy body pushing for the rights of PSCs and the need for a PSC regulation in order to protect legitimate PSCs from being harassed by the MoI or

police and solicited for bribes.<sup>14</sup> While the PSCAA does hold regular meetings, it has not yet managed to get its organisation legally registered; something the association only can do once individual PSCAA members are licensed. The PSCAA’s main two lobby items for the future are a) the need for a clean and accountable licensing process, and b) the ability to obtain weapons for PSC staff legally within Afghanistan (the latter is currently not yet regulated).

As local companies were excluded from the PSCAA, they formed a local union for PSCs in Afghanistan (under the leadership of one of the bigger local companies – WATAN Risk Management). The objectives of the local PSC union are similar to those of the PSCAA: to provide a platform for reputable local PSCs to sign up to certain standards and a joint code of conduct, and to provide a joint lobbying body against arbitrary harassment by MoI members and the police.

Both bodies require that members be registered and signed up to a specific code of conduct.<sup>15</sup> Their similar aims and background may lead the two organisations to join forces in the future when the PSC regulation process has levelled the playing field for reputable PSCs to operate in Afghanistan, dividing the ‘rogue’ companies from those with standards.

#### 5. Problems with the current regulation

As the overview of the PSC regulation process has already highlighted, finalising a PSC regulation was only the first step towards regulating privatised security in Afghanistan, with the ‘devil’ clearly lying in the details of day-to-day implementation. This section highlights some of the most pertinent problems so far; some linked to unclear or flawed areas in the regulation and others to well-meaning, but sometimes ill-considered and rushed attempts by the GoA to implement the regulation.

##### 5.1 Licensing Fees

The experience of a previously unregulated environment within a corrupt government structure where in the past PSCs had paid bribes to obtain any kind of letter from the MoI has given the perception to many government officials that PSCs are a convenient cash cow. Thus, current registration fees are high, e.g., international companies have to pay USD 120,000 to obtain a PSC license. While one could argue this is a legitimate fee for for-profit organisations with potentially high profit margins, there are several problems with this argument. First, PSCs are likely to pass this added cost onto their clients; hence it will come out of international assistance to Afghanistan and add to the perception that funds stay at the top of the food chain. In some cases this regulation also contradicts existing bilateral agreements (e.g. most contracts with the US Department of Defence, USAID and the US State Department rule out the payment of any fees or taxes by their contractors or sub-contractors). The US embassy has already tried to exempt US

11 A similar body already exists in Iraq: Private Security Company Association of Iraq (PSCAI).

12 Interview, PSCAA board member, Kabul, 18 June 2008

13 *Ibid.*

14 *Ibid.*

15 Unfortunately, the local union could not be reached for an interview at the time this article was finalised, thus no detailed information on their charter was available.

firms from having to pay licensing fees, which certainly can lead to discrimination among PSC companies and bad blood within the international community.

## 5.2 Vested interests

Certain parts of the Afghan security authorities seem reluctant to see a clear, fair and transparent licensing system work, as it reduces opportunities to extort bribes for themselves. For example, the Criminal Investigation Department of the MoI came to realise that they have to conduct background checks on the 15,000 individual guard applications put forth by PSCs (impossible in the time officially given to them), while at the same time losing the unofficial 'fee' they used to charge for such a background check as it is now part of the registration fee paid to the HCB. Selection of staff has also proven problematic, as during the registration process some senior MoI officials have sought to place 'their' people in positions where they think money is to be made, rather than those with the correct qualifications.<sup>16</sup>

## 5.3 Vague or lacking areas in the regulation

The PSC regulation still includes certain 'vague' areas that are left up to the HCB and the MoI to clarify (Article 9), in addition to creating new bills and work procedures as seen relevant (Article 38). This introduces a great potential for corruption and mismanagement as the HCB may interpret the regulation in their interest. Vague areas include:

- *Article 2: Provisions of this procedure are applicable only to those companies that have been active in the country prior to the enactment of this procedure.* – This rules out the application of new companies, unless the HCB makes a different decision.
- *Article 6: Defining illicit activities, but leaving certain decisions up to the Ministers' Council.* – This again opens the door to corruption or biased treatment of favoured firms.
- *Article 7: A Security Company is obliged to observe the provisions of the valid laws of the country and this procedure.* – Unfortunately, the PSC regulation does not tackle the issue of the legal importation of weapons for PSC staff, and actually prohibits it (see Article 22-7), which is in line with the Law on Weapons, Ammunitions and Explosive (under which the PSC regulation falls). Thus, PSCs must still operate in the black market for weapons or must hire already-armed guards. While the GoA is possibly hoping that this may flush out weapons that managed to by-pass the DDR and DIAG process, as one requirement in the PSC regulation is to register any weapons in the possession of PSCs, it is more likely merely to increase the illegal cross-border arms trade.
- *Article 10: The number of staff of each Security Company shall not be more than 500 people, unless the Council of Ministers agrees to an increased number of staff.* – It is unclear how such an agreement is to be reached, which opens the door to corruption.

Several PSCs that have applied for a license already have a much larger number of staff.

- *Article 14-6: Interpol certificate regarding criminal background is required.* – This possibility does not seem to exist and the HCB had to waive it.
- *Articles 15-4/18-4: PSC companies and local staff need to have a clean human rights record as confirmed by the Afghanistan Independent Human Rights Commission.* – Feasibility of this was not checked with the IHRC, neither in terms of IHRC capacity to provide such a background check, nor the jeopardy for IHRC staff that may have to check PSC staff with militia backgrounds. Therefore, this check has been currently waived by the HCB.
- *Article 20: Senior government and relatives up to the second degree cannot own or be a partner in a PSC.* – A number of PSCs are violating this article; for instance two current pending applications have been submitted by a cousin of President Karzai and the son of the Minister of Defence. It remains to be seen if the HCB is strong enough to deny licenses to such companies, or if the police are willing and able to reinforce closing down such companies.
- *Article 35: PSCs who were found to be in violation of the regulation and are forced to close down have to surrender their weapons to the MoI.* – This article opens the door for corruption and the possibility that the MoI may try to eliminate firms owned by 'rivals,' given that many MoI officials have links to militias (ICG 2007). In the past the MoI has conducted raids against certain local companies, possibly either on political or personal grounds (or both).
- *Annex 1 (6): Preventing civilian casualties and minimise disturbance in public spaces, including: prohibition of blocking routes to public buildings (schools, clinics and mosques); passing through crowded places should be avoided whenever possible; full efforts should be made to avoid establishing PSC offices in dense residential areas.*<sup>17</sup> – These points are phrased vaguely enough so that their application is open to interpretation, again leaving space for corruption.

## 5.4 Enforcement of regulation

The fact that the PSC regulation is, strictly speaking, not a law limits the judicial actions that can be taken against non-compliant PSCs. Instead, the HCB must rely on the use of existing laws. The ultimate sanction that the HCB retains is to withdraw the licence of a PSC and stop all its operations within Afghanistan, but so far the police and MoI have not yet managed to keep unregistered PSCs off the streets.

Some international companies and militaries continue to employ armed local militias rather than hire one of the companies having gone through the proper licensing process and in possession of temporary licences, as there is still no process for

16 The Minister of the Interior, for example decided to appoint a General to head the regulation process who owns a PSC and has a nephew who owns one.

17 In June the Minister of the Interior unsuccessfully tried to require removing all PSC premises in Shar E Naw, Wazir A Khan, Shur Pur, Macrorayan, Shash Darak, and any location "close" to a government ministry/building or ministers' residence. The debate continues over what can be moved, especially if there are premises built to guard clients. If the intention is to remove excess weapons from the city then there are better ways of achieving this.

prosecuting PSCs that have not joined the registration process or to fine clients who work with unregistered PSCs.

The central authorities have little visibility or oversight of what is happening outside Kabul, where most of the violations and illegal acts by PSCs are taking place. This is compounded by the delays in the licensing process with goalposts continuing to move due to 'interpretations' of vague areas in the regulation, and the lack of 'transparency' in the process.

Lastly, a regulation is only as good as its enforcement body, which in this case is in dire need of reform (Wilder 2007, ICG 2007). As noted earlier, the police still harass some PSCs that have begun the registration process, while allowing others that have shown no intent to apply to operate freely.<sup>18</sup> In addition, given the generally negative impression of PSCs, there is a high likelihood that the MoI may use PSCs as a scapegoat whenever their own security forces misbehave.<sup>19</sup>

## 6. Conclusion

As noted earlier, a lasting problem is that with no clear regulation and consistent standards, PSCs must essentially monitor themselves. However, this article has shown that in a situation 'where nobody guards the guards' the potential for corruption and impunity is great. While many PSCs, conscious of their international reputation, try to provide high quality services and train staff professionally, there are what can be termed 'rogue' companies (often described as cowboy-like) with a lack of professionalism and scruples. In an environment without transparency, even a few rogue companies can reflect poorly on the private security business as a whole, as well as international actors in general. Thus, with the exception of corrupt government security officials and rogue PSCs, in fact everybody, including PSCs, could benefit from a transparent and regulated environment.

Yet, the regulatory law only represents the first (and perhaps the easiest) step in achieving a comprehensive PSC monitoring regime. At present, implementation and enforcement of the PSC regulation is crucial. The MoI has yet to prove itself capable of taking on PSC regulation, let alone the greater concept of DIAG. The early days since the issuing of the regulation have highlighted potential problems with enforcement. If not dealt with, these problems can lead to an inefficient regulation and/or create yet another entity (the HCB) that can be used for power games and corruption. Individuals involved in the PSC regulation so far seem more concerned with determining how to make money from the process rather than the strategic goal of keeping rogue companies off the street and creating a more secure environment. As noted earlier, many PSCs that are not part of the registration process seem to continue to practise their craft un-checked and at least two companies that have submit-

ted applications are so connected to government officials that they should be denied a license without any discussion.

The problems with adequately implementing the Angolan PSC law (issued in 1992) highlight the limits of regulations without proper enforcement structures (see Rimli 2008). Thus, if there were a real interest among the international community in regulating PSCs in Afghanistan, the main clients of PSCs and their respective governments should try to put some pressure on the Afghan government regarding proper enforcement, provide some oversight mechanism, as well as refrain from working with rogue companies. In addition, greater consultation with the civilian population as those who will interact with PSC staff on the ground should be encouraged.

In conclusion, it remains to be seen whether the current regulation will make a difference in sorting out the various problems with PSCs in Afghanistan. If the shortcomings and defects of the regulation are not remedied, PSCs, their donors, and the international community might be less and less keen to commit to a flawed and potentially corrupt process, which could ultimately bring the process to a halt yet again. In the interim, donors may want to consider holding clients and PSCs accountable to adhere to *The Sarajevo Code of Conduct for Private Security Companies*<sup>20</sup> and *The Sarajevo Client Guidelines for the Procurement of Private Security Companies*;<sup>21</sup> which are a set of guidelines and principles aimed at improving basic standards of professionalism and service delivery within the private security industry.

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18 For example, on 8 June 2008 a major attack was made against a convoy taking supplies to US troops, and it turned out that the 'logistics' company, was also acting as an unregistered PSC, rumoured to be controlled by the family of Baba Jan, a former military commander of the Bagram area and ex-Police Chief of Kabul. No charges were brought against the 'PSC' and there is no indication that it is attempting to register.

19 For example, bank robberies and kidnappings are normally blamed on PSCs and not police (even though the individuals involved often wear police uniforms).

20 <http://www.seesac.org/reports/Code%20of%20conduct.pdf>

21 <http://www.seesac.org/reports/Procurement%20guidelines.pdf>

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# Die Selbstregulierung privater Sicherheits- und Militärfirmen als Instrument der Marktbeeinflussung

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**Abstract:** Since the beginning of the 1990s, the number of private security and military firms (PSMFs) has grown rapidly. PSMFs are profit-driven companies that sell military, police and intelligence services. Today, PSMFs are charged with the provision of security in war and post-war situations, although PSMF operations may also contribute to greater levels of violence. Hence the need for PSMFs to be more strictly regulated. Most observers discuss existing national legislation and assess its shortcomings. This article analyses the self-regulation of PSMFs by discussing how PSMFs seek to influence the market for their services and the behaviour of their clients.

**Keywords:** Security, privatization, self-regulation, conduct codes

## 1. Einleitung<sup>1</sup>

Spätestens seit dem jüngsten Skandal um die Firma Blackwater im Irak ist die Debatte über die Regulierung privater Sicherheits- und Militärfirmen (PSMFs)<sup>2</sup> neu entbrannt. Zur Erinnerung: Am 16. September 2007 hatten Angestellte von Blackwater während einer Schießerei in Bagdad mindestens 14 Zivilisten grundlos erschossen (vgl. Johnston/Broder 2007). Daraufhin wollte die irakische Regierung Blackwater des Landes verweisen, musste sich aber dem Willen der US-Regierung fügen, die im Irak auf die Sicherheitsdienstleistungen von Blackwater angewiesen ist (vgl. Broder/Risen 2007). Doch nicht nur im Irak, sondern global haben sich PSMFs zu einem bedeutenden Akteur in Kriegs- und Nachkriegssituationen entwickelt.

Unter PSMFs werden hier international operierende Firmen verstanden, die verschiedene militärische, polizeiliche und/oder nachrichtendienstliche Tätigkeiten durchführen. Diese lassen sich in neun Kategorien unterteilen: Beratung, Training und Ausbildung, Logistik, technische Dienste, Minenräumung und Waffenentsorgung, Demobilisierung und Reintegration ehemaliger Kämpfer, Aufklärung, bewaffneter Personen-, Ge-

bäude- und Konvoischutz und Kampfeinsätze.<sup>3</sup> Kunden von PSMFs sind hauptsächlich Regierungen, allen voran die der USA, sowie internationale Regierungsorganisationen (IGOs), Nichtregierungsorganisationen (NGOs) und Unternehmen.

Derzeit gibt es über 300 solcher PSMFs<sup>4</sup> (vgl. Messner/Gracielli 2007: 13), von denen die meisten in den USA und in Großbritannien beheimatet sind. Die hauptsächlichlichen Einsatzgebiete der Firmen sind Kriegs- und Nachkriegsgebiete. In diesen führen PSMFs vermehrt Dienstleistungen im Rahmen von (Wieder-)Aufbau- und Statebuildingprogrammen durch. Kern ihrer Arbeit ist dabei die Bereitstellung von Sicherheit im Einsatzgebiet. Sicherheit wird hier verstanden als die Abwesenheit von oder der Schutz vor existenziellen Bedrohungen, die physische Gewalt beinhalten. Dabei lassen sich zwei zentrale Tätigkeitsbereiche identifizieren, die auch in Zukunft eine wichtige Rolle spielen werden (vgl. Bearpark/Schulz 2007: 240f.; Donald 2006: 45ff.): erstens der bewaffnete Personen-, Gebäude- und Konvoischutz für nationale und ausländische Regierungen, Streitkräf-

Referierter Beitrag.

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2 Andere gängige Bezeichnungen sind: private security companies (PSCs) bzw. private Sicherheitsfirmen, private military companies (PMCs) bzw. private Militärfirmen.

3 In der Literatur finden sich verschiedene Ansätze, PSMFs zu typologisieren. Am häufigsten rezipiert wird die „Speerspitzen-Typologie“ Peter Singers (2006: 156ff.). Danach werden PSMFs entsprechend ihrer Nähe zum Kampfgeschehen bzw. ihrer Position auf dem Kriegsschauplatz in drei Kategorien eingeteilt: Militärdienstleister (Military Provider Firms), militärische Beratungsfirmen (Military Consultant Firms) und militärnahe Dienstleister (Military Support Firms). Eine Zuordnung der Firmen zu diesen drei Kategorien ist jedoch angesichts der Tatsache, dass viele PSMFs sehr unterschiedliche Dienstleistungen anbieten und dabei in mehreren der drei Bereiche aktiv werden, schwierig. Daher wird für die hier diskutierte Frage auf diese Typologie verzichtet.

4 Auf Grund der Intransparenz der Branche (nicht alle Firmen sind offiziell registriert) und der Mobilität der Firmen (Fusionen, Verlegung des Firmensitzes, Namensänderung etc.) kann deren Anzahl nur geschätzt werden.