Lethal Regulation: State-Corporate Crime and the United Kingdom Government’s New Mercenaries

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Markets for private military security are enjoying a period of sustained growth, during which there has been a repackaging of ‘mercenary outfits’ and ‘private armies’ as legitimate, fully incorporated private military companies (PMCs). This paper presents a critique of the dominant view of the new mercenaries and examines the regulation of private military security currently being proposed by the United Kingdom government, arguing that its purpose should be understood as the facilitation rather than the restraint of those markets. States are playing a formative role in the expansion of private military markets. In contrast to the dominant themes of the literature on globalization, the emergence of those markets should be understood as an expansion rather than a diminution of the coercive and violent capacities of states. Western states are facilitating new modes of delivering terror and violence that are also likely to increase, rather than reduce, the incidence of state-corporate crimes.

INTRODUCTION

The mercenary soldier is currently undergoing an image makeover. The ruthless ‘dog of war’, the ‘soldier of fortune’ or freelance mercenary who will fight anywhere for any paymaster if the price is right is, we are told, consigned to a distant past. Les affreux are now not quite as terrible as they were in the 1960s and 1970s, the heyday of the privately contracted soldier.¹ Rarely do we see the ‘mercenaries’ of today referred to as such. Private

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A debt is owed to Biko Agozino, Courtney Davis, Stuart Lister, Steve Tombs, and Clive Walker for invaluable comments and discussions at various stages of this paper’s development. I am also grateful for the useful advice provided by the journal’s anonymous reviewers.

combat and security outfits are widely known in press reports and in political and academic discourse as ‘private military companies’ (PMCs). They have been reconstituted as respectable businesses that avoid compromising the interests of their domicile states and refrain from illegal or unethical operations.2 Thus, according to United Kingdom Foreign Secretary Jack Straw:

Today’s world is a far cry from the 1960s, when private military activity usually meant mercenaries of the rather unsavoury kind involved in post-colonial or neo-colonial conflicts.3

The present day PMC is more likely to be fully integrated into the economy, incorporated as a legitimate company, and registered for tax reporting and accounting purposes.4 PMCs are now involved in a range of legitimate operations: protecting non-governmental organizations (NGOs) and United Nations (UN) organizations in high profile ‘humanitarian missions’,5 de-mining,6 and protecting other legitimate corporate interests, most commonly in the extraction (mining and oil) industries.7 Those trends are part of a broader trend in the privatization of state military apparatuses. For example, private contractors now provide as much as 80 per cent of British Army training.8 The United States Department of Defence employs more sub-contracted staff now than it retains on the government pay roll.9 The rewards for the new mercenaries are considerable. There are currently at least 90 private military companies operating in up to 110 countries worldwide.10 It is estimated that 8 per cent

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3 J. Straw, ‘Foreword by the Secretary of State for Foreign and Commonwealth Affairs’ in Foreign and Commonwealth Office, Private Military Companies: options for regulation (2001–02; HC 577) 5.


6 Brooks, op. cit., n. 2.


9 Select Committee on Foreign Affairs, Ninth Report, Private Military Companies (2001–02; H.C. 922) para. 8.

10 International Consortium of Investigative Journalists/Centre for Public Integrity (ICIJ/CPI), Making a Killing: the Business of War (2002). The overall number of
of the Pentagon’s budget (or around $30 billion) will be spent on PMCs in 2003/04.\textsuperscript{11} Around 10 per cent of United States military personnel participating in the 2003 invasion of Iraq were civilians employed by PMCs.\textsuperscript{12} The global market value of PMCs is projected to rise fourfold between 1990 and 2010.\textsuperscript{13}

This paper discusses the expansion of the private military sector with particular reference to recent political developments in the United Kingdom. It begins by briefly reviewing recent literature on economic globalization, reflecting in particular upon the notion of ‘state retreat’. The paper then considers the value of the emergent concept of state-corporate crime for developing our understanding of the complex relation between states and corporations. The ‘state retreat’ thesis is then revisited in the contexts of recent trends in military economies and the regime currently being proposed for the regulation of private military markets in the United Kingdom. Finally, the paper discusses some likely connections between the expansion of the private military market and the incidence of state-corporate crimes before offering some more general concluding comments on the reconfiguration of state-ordered power.

GLOBALIZATION, PRIVATIZATION, AND STATE-CORPORATE CRIME

A deluge of books and papers dealing with various themes of globalization has swamped academic literatures in political science, economics, sociology, and social science over the past decade or so. In this literature a great deal of effort has been invested in predicting the decline of the nation state. Much of this work (whether it deals with globalization of ‘risk’, of information, or of the global integration of economies) deals with structural change in relationships between states, corporations, and markets. The fate of the global social order in a great deal of this work rests upon the outcome of a polarized struggle between states and markets.\textsuperscript{14} And markets are apparently winning. State control over key public policy areas has been fatally eroded.\textsuperscript{15}

private contractors providing the full range of supply services to military is likely to be in the high hundreds (Singer, op. cit., n. 4).


\textsuperscript{13} International Consortium of Investigative Journalists/Centre for Public Integrity, \textit{Privatizing Combat, the New World Order} (2002).

\textsuperscript{14} For example, D. Yergin and J. Stanislaw, \textit{The Commanding Heights: the Battle Between Government and the Marketplace that is Remaking the Modern World} (1998).

State sovereignty is gradually withering. Some accounts propose that we are witnessing the end of the nation state as a meaningful unit of participation in the global economy. The tide of globalization thus threatens to sweep away the last vestiges of state authority and sovereignty. To accept this ‘new orthodoxy’ is also to accept that globalization’s tidal wave will cast asunder states that do not embrace strategies of privatization and deregulation. The ever-present fear of capital flight, though mightily exaggerated, has disciplined governments into regulatory subservience. If conditions are not favourable to capital, so the story goes, disinvestment and relocation to a more favourable climate will follow.

1. States’ capacity to govern

Beyond the globalization debate, a process of sovereignty erosion has become a popular theme in social and socio-legal theory. In variations on the same theme, this literature talks of a post-social governance, the myth of the sovereign state, or a ‘neo-feudal’ order where the colonization of new private-public space is subordinating state-ordered power to private interest. Of course, those analyses vary widely in terms of how they formulate this process of sovereignty erosion. What those accounts all have in common, however, is that they point to an undermining of state

16 D. Held, ‘Democracy, the Nation State and the Global System’ (1991) 20 Economy and Society.
20 See S. Krasner, ‘Compromising Westphalia’ (1995) 20 International Security 115–51 for a discussion of different applications of the term ‘sovereignty’ in the context of the nation state. What I mean by ‘sovereignty erosion’ here is the erosion of the degree of control held by central political and administrative institutions in any given nation state over critical state functions such as the management of the economy.
24 We should also note recent work by John Braithwaite, ‘The New Regulatory State and the Transformation of Criminology’ in Criminology and Social Theory, eds. D. Garland and R. Sparks (2000) that reviews some of this literature, although Braithwaite’s description of the new regulatory state is much more ambivalent about the question of sovereign authority.
sovereignty by (amongst other things) the localization and globalization of markets. From above and below the institutional boundaries of the nation state, the ability of states to rule, to make policy, to distribute resources, and so on, is under attack. According to this analysis, we are witnessing nothing less than a transformation of the state’s capacity to govern.

However, when the sovereignty erosion thesis is subjected to sustained scrutiny, it is typically revealed as, at best empirically naïve and, at worst, a thinly fabricated (if widely accepted) modern fable. Despite the current rhetoric of neo-liberal discourse, states remain dominant players in, indeed essential to, the functioning of the global economy. The downward trend in public welfare spending has not been a uniform one, but has been highly differentiated between and within states. Capital is not as mobile as presumed, but varies depending upon the type of capital invested, and mobility is moderated by access to local markets and infrastructure amongst other factors. States continue to set the rules of the market nationally and transnationally, and reconstruct regulatory regimes and infrastructures when markets weaken or collapse. The notion that there is a negative-sum game being played out between states and markets, where the fortune of one rises as the other falls, makes little sense.

Yet there is something happening to the global economy. Accelerated turnover times in production, exchange, and consumption combined with vastly expanded capacities for distribution and commodity circulation since the early 1970s has accentuated the volatility of markets. In order to maintain some semblance of stability, infrastructural and coercive functions of states are made more, not less, necessary by changes in the intensity and dynamism of markets. In capitalist social orders, states and markets have a

28 Tombs and Whyte, op. cit., n. 18.
relationship of interdependence.33 Markets are embedded in states.34 As a result of this structural relation, states seek a dominant role in coalitions with transnational institutions and private sector groups.35 To the extent that there has been an international integration of markets, it has only occurred as a result of the positive intervention of and re-alignment of economies by states.36 In Weiss’s terms, the ‘catalytic state’ possesses an expanding, rather than diminishing capacity to act.37 As opposed to a crude sovereignty erosion thesis, then, we might describe a process of ‘state rescaling’, a contingent process through which the state’s scope for intervention, its institutional boundaries and institutional ensembles are progressively shifting.38 Rather than a transformation of the state’s capacity to act, it is perhaps more accurate to point to a reconfiguration of state-ordered power,39 where in some ‘strong’ states, corporations and public authorities have simultaneously tightened their hold on economic and political decision making.

This narrative of state-ordered power should not obscure or underplay the degree to which people have suffered as a result of state withdrawal from the provision of welfare and basic amenities. The forms of intervention developed by capitalist states are highly partial. State targeting of resources is acutely differentiated across social groups. Under sustained campaigns of privatization, the commodification of water, education, and health provision, for example, has exacerbated poverty and disease for a large proportion of the world’s population.40 From Bolivia to Bosnia, neo-liberal exaltations to ‘privatize or die’ have allowed Western corporations to accelerate their accumulation of wealth and power at the expense of the most vulnerable.41 Yet, rather than simply involving passive withdrawal or the retreat of the state, privatization often requires complex and resource intensive administrative and regulatory structures. Privatization also requires a new set of market rules to be constructed and applied. In this sense, privatization always involves a process of re-regulation.


In so far as the battle to entrench neo-liberal ideas and practices is a hegemonic process, it is a bid for hegemony that is far from resolved.\textsuperscript{42} Indeed, the battle to establish the global reach of western corporations has tended to provoke bitter conflict and resistance over the control of resources, over the ‘market price’ of goods and services, and over the extraction of surplus value.\textsuperscript{43} Perhaps the most visible of those conflicts are the militarized struggles over the privatization and corporate colonization of natural resources. Western industrial sites abroad are frequently surrounded by heavily militarized perimeter zones. As a result, Western corporations now commonly feature in NGO and popular condemnation for human rights abuses that occur inside and outside the factory gate.\textsuperscript{44}

Less visible are the harms produced directly as a result of the intensification of productive and distributive regimes under neo-liberalism. This point is well illustrated by UN International Labour Office figures that indicate that each year there are now up to four times as many occupational health and safety related deaths as there are deaths that result from armed conflict.\textsuperscript{45} Re-regulation and privatization strategies by definition implicate states in the litany of social harms (as well as the social benefits) produced by corporations. In many cases, protections won over many years by workers’ struggles have been discarded or downgraded in the name of globalization.\textsuperscript{46}

2. \textit{State-corporate crime}

A growing body of research now attests to the fact that the criminogenic aspects of state-ordered power are not peripheral, but endemic to the modus operandi of the modern state.\textsuperscript{47} State participation in illegal practices that heighten state capacities is a systemic feature of capitalist social orders.\textsuperscript{48} As part of this body of research, there is an emerging literature that identifies and analyses the phenomenon of state-corporate crime. The preceding


\textsuperscript{45} Guardian, 2 May, 2002.


section argues that states and corporations are interdependent. Indeed the tendency for states and corporations to mutually reinforce each other is a key characteristic of the current stage of international capitalism. By extension, we might expect that as a result of this relationship, where corporate crimes are committed, state institutions will be implicated and vice versa. The concept of state-corporate crime, though still in its infancy, seeks to deal with crimes that are the product of complex relations between states and corporations. At the heart of the concept is a recognition that the new criminogenic opportunities created by neo-liberal ‘globalization’ often arise out of the interplay between state and corporate interests. According to Michalowski and Kramer, state-corporate crimes are:

illegal or socially injurious actions that occur when one or more institutions of political governance pursue a goal in direct co-operation with one or more institutions of economic production and distribution.

The concept is primarily concerned with two aspects of the state-corporate relation. First, that the intersection of corporate and state interests encourages the production of large-scale social harms. Second, that this intersection of interests decreases the likelihood that those harms will be criminalized and punished by the state.

The concept of state-corporate crime, then, proposes that we might view regulatory regimes as constitutive elements of corporate crimes. For this reason, the concept of state-corporate crime is useful for thinking about the subject matter of this paper. The concept allows us to reassess the value of new forms of privatization and (re)regulation, not simply in light of how they restrict access to markets for corporate actors and prevent the production of harms, but also for their ability to encourage or facilitate the production of social harms and crimes via particular forms of regulation. Subsequent discussions in this paper will address the United Kingdom government’s proposed regulation of PMCs from this perspective. For the moment, the paper is concerned with assessing recent developments in the private military market.

49 Tombs and Whyte, op. cit., n. 25.
51 Cited in id. pp. 55–6.
53 Friedrichs, op. cit., n. 50, p. 55.
A political economy of the military-industrial complex lies at the heart of most conventional explanations of expanded private military markets over the past decade or so. The end of apartheid and the clearing out of the barbarous South African Defence Force provided a new source of trained soldiers desperately in need of work. The Executive Outcomes/Sandline network emerged as a major employer of the surplus created by the fall of the apartheid regime. The supply of private military security personnel was also stimulated by the end of the cold war and the resultant demobilization of large standing superpower armies in parts of Africa, North America, Europe, and South East Asia. The United States Army, for example, now has 487,000 active troops, compared with 711,000 in 1991. The rise in the use of PMCs is thus explained as a result of changes in the personnel supply base. Rising demand is also a driving force. Cold war powers have, since the collapse of the Soviet Union in 1991, disengaged from the system of military patronage that prevailed in the Third world. It is argued that weak states are now left isolated and politically destabilized. In turn, the unwillingness of stronger states to commit their military forces in newly volatile environments creates a security vacuum. It is a vacuum that, according to this narrative, has been filled by PMCs.

It has also been argued that the changing character of war – now increasingly based upon low-level conflict – is encouraging the use of small, self-contained forces for hire, ready to respond at relatively short notice, free from the political shackles associated with liberal democracies. A circle of instability is perpetuated, in which relatively weak states do not possess the resources to maintain viable, competent armed forces and are forced to rely upon the private sector for internal military security. The lack of a consolidated state military presence in turn creates space for entrepreneurs in violence, ultimately creating new demands upon states to keep those entrepreneurs in check.

Whilst there clearly is some substance in those explanations of the rise of the new mercenary, they also rest upon a highly idealized account of globalization. The privatization of military security is viewed through a lens

57 Schwartz, op. cit., n. 11.
59 Spearin, op. cit., n. 5.
of market-driven inevitability. Thus, according to commentators such as Shearer, O’Brien, and Howe, states have to acclimatize to this new environment and accept the new mercenaries as a permanent fixture – even as useful allies – in the new post-cold war politics of conflict. To do otherwise, to attempt in some way to prevent the rise of the new mercenary, is both futile, indeed undesirable, given that PMCs can usefully be utilized for maintaining order in weaker developing states. In this literature, the use of PMCs implies variously a threat to the international state system’s ability to control military might, a ‘privatization of violence’, a crisis in state authority, or an erosion of the state’s monopoly over military coercion. In short, a common thread in this literature is the familiar theme of sovereignty erosion.

Just as critical discussions of globalization highlight the active role that states play in supporting and creating the very conditions for the expansion of markets generally, precisely the same point can be made about private military markets. The rise of the private military market does not imply a decline of the political decision-making process. PMCs are hired by governments, sometimes at the insistence of other foreign governments. Or they are hired by governments to destabalize other states. When they are employed by NGOs or corporations, they tend to do so only with the approval of host and domicile governments. In other words, PMCs do not operate in a political vacuum, but are dependant upon the consent of governments for their livelihood.

Post-cold war, a general reduction in personnel has occurred in all of the large armies of the developed world. But this has not been mirrored by a reduction in overall military spending. After a brief period of reductions in global military expenditure following the cold war, this trend is now reversing. In global terms, military expenditure is dominated by the United States of America and a small group of the world’s most powerful states. In the United States, by far the world’s largest military power, the trend has been reversed, initially under the Clinton regime. The current Bush administration is now pushing through record rises in military spending. The United States defence budget in 2004 will be close to $400b, a 21 per

61 Key works by those authors are cited throughout this paper.
63 O’Brien, op. cit., n. 60, p. 80.
64 See Serewicz, op. cit., n. 2, for a critical précis of those perspectives.
66 Perhaps the most influential author cited in this literature is Martin van Crevald, whose book, The Rise and Decline of the State (1999), argues that the changing character of conflict is creating the conditions to challenge a Weberian concept of the state’s monopoly on legitimate violence.
67 The United States defence budget is by far the largest in the world, six times the size of the world’s second biggest spender, Russia.
cent rise in the three years since 2001.68 During the 1990s, United Kingdom
defence spending followed the global downward trend, falling by 25 per
cent, with numbers of military personnel falling by 30 per cent.69 But this
trend is set to resume its cold-war upward climb with the announcement by
the Chancellor of the Exchequer Gordon Brown in July 2002 of an extra £3.5
billion over three years for defence.70 The rise in the share of the market now
open to the private sector must be placed in the context of a recent re-
assertion of state military expansionism particularly in the United States,
Western Europe, Russia, and China.71 This is, though, hardly a ‘global’
trend. The United States accounts for 43 per cent and the top fifteen spenders
account for 82 per cent of the world’s total military expenditure.72

The resumption of accelerated growth in military spending suggests that
there has been no ‘retreat’ (in quantitative terms) evident in the most
economically powerful states. Whether this data can tell us much more in
general terms about a process of sovereignty erosion is another matter. When
the private sector grows in volume, this does not imply an automatic loss of
sovereignty. Neither does state sovereignty – the ability to rule – turn on the
relative economic power of private and public military apparatuses. This is
perhaps most clear in the case of the more powerful Western states where
both appear to be expanding. In states with relatively ‘weak’ economies the
sovereignty debate takes on a very different character. Perhaps the most cited
examples of sovereignty erosion in weak states are in cases where
concessions for mineral or other extractive enterprises have been offered
as a quid pro quo for the defence of mineral or oil industry assets.73 In such
countries, private military corporations have come to enjoy considerable
political leverage, and even control militarily small mineral-rich territories.
It has been claimed that this allows them to acquire ‘the remnants of national
sovereignty itself . . .’.74 Of course, in some ‘weak’ states, political elites
have little more to bargain with than the control over their most important
assets. However, the claim that this type of commercial arrangement
indicates a simple exchange of sovereignty for diamonds, or whatever the

Forces and Defense Spending: Peace Dividend or Underfunding?’ (1999), available
at <www.csis.org/stratassessment/reports/PeaceDividendorUnderfunding.html>; C.
Hellman, ‘Last of the Big Time Spenders’ (2003), table prepared for the Center for
Defense Information, available at <www.cdi.org/budget/2004/world-military-
spending.cfm>.
available from Defence Research Institute, Universities of Lancaster and York.
70 Guardian, 16 July 2002. This figure excludes the huge cost of conducting the March
2003 Iraq invasion.
71 Stockholm International Peace Research Institute, ‘Recent Trends in Military
72 id.
73 Musah and Fayemi, op. cit., n. 55.
74 Sheppard, op. cit., n. 54, p. 138.

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resource might be is mistaken. Sovereignty does not rest upon a contractual relation between corporations and states. No matter how much political and physical distance it may keep from the territories it places under the control of PMCs, the state formally retains its law-making capacity and the capacity to enforce the law coercively in those territories.

State sovereignty cannot simply be transferred by a process of corporate takeover. Nor can it be bought and sold as a commodity, no matter the extent to which state institutions and the apparatuses of government have been commodified. Sovereignty is inscribed in the international state system which, despite its shifting boundaries, continues to support an institutional framework within which the market economy is embedded. Analysing the impact of the rise of the new mercenary therefore requires a rejection of simplified, negative-sum versions of the sovereignty erosion thesis. Instead, the excavation of the mutual benefits that might accrue to state institutions and corporations – the symbiosis of interests – is likely to prove to be a more productive line of inquiry. The current United Kingdom policy debate brings to light an emerging state-corporate military coalition. It is to a discussion of the United Kingdom government’s proposals for reform that this paper now turns.

THE BEGINNINGS OF A REGULATORY SYSTEM IN THE UNITED KINGDOM

The origins of the United Kingdom government Green Paper, ‘Private Military Companies: Options for Regulation’ are in a House of Commons Foreign Affairs Committee report of inquiry into the role of the PMC outfit Sandline International in Sierra Leone. In what became known as the ‘Arms to Africa’ affair, Sandline shipped weapons to Sierra Leone in breach of a UN embargo in 1997. The shipment apparently had received the blessing of Foreign Office officials. It was an ill-advised adventure that has been described by some as the first dent in the United Kingdom government’s much heralded ethical foreign policy, a remarkable achievement, given that Labour had been in government for merely a matter of months. The Green Paper appeared on 13 February 2002 and the government intends that legislation will follow after a prolonged period of consultation with ‘the international community’.

The official position developed in the British government’s Green Paper runs roughly as follows: that given that there are little realistic prospects for the complete abolition of mercenaries, it is safer to bring PMCs into the fold

75 Foreign Affairs Committee, Sierra Leone (1998–99; H.C. 116).
76 Brooks, op. cit., n. 2.
77 Personal correspondence with the UN Department, Foreign and Commonwealth Office, 28 April 2003.
than leave them drifting around unbridled, bereft of a governing framework.\(^{78}\) Thus, according to Foreign and Commonwealth Office Under Secretary of State, Denis McShane, the object is:

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\ldots \text{to keep these companies inside the tent doing their things in a way that that}
\text{we can see what they are up to rather than outside the tent when we have not}
\text{got the faintest idea of what they are undertaking or what activities they are}
\text{performing.}^{79}\]

Perhaps more significant in terms of the impetus behind the Green Paper is the underlying assumption that the growth of the private military sector is not only inevitable, but may actually fulfil a highly useful role. So, it is claimed, a growing number of countries have ‘legitimate needs, but inadequate capabilities’.\(^{80}\) Moreover: ‘[f]or a state under threat from armed insurgents or from criminal gangs … the first requirement is to establish its monopoly on violence.’\(^{81}\) Here (contrary to much of the academic literature), the government is proposing that PMCs may be used to stabilize rather than undermine weak governments’ ability to rule.

Also casting a shadow somewhere behind the regulatory agenda is the promise that there are substantial cost savings to be made. The Executive Outcomes operation in Sierra Leone, for example, cost $35 million for a 21-month engagement. The UN observer force cost $47 million for 8 months and the whole UN Operation UNAMSIL costs about $600 million a year.\(^{82}\) A United Kingdom Foreign Affairs Select Committee report has subsequently noted that ‘the greater use of PMCs in United Kingdom humanitarian and peace support operations might help to reduce military over-stretch.’\(^{83}\) Consistent with neo-colonial strategies of rule, PMCs allow the prohibitive costs associated with a permanent military presence to be minimized.\(^{84}\) In some cases, the costs of security are absorbed by host states, and in some cases, costs are socialized by corporations.

Although the Green Paper outlines seven options for regulation, those options can be thought of as comprising four broad approaches: the status quo; an outright ban; self-regulation (with the onus upon PMCs to demonstrate compliance and notify the government of contracts voluntarily); and finally, some form of licensing regime (where licences are issued to govern either the general terms of a companies operation or, issued for each specified contract).

\(^{78}\) Foreign and Commonwealth Office op. cit., n. 3, p. 20.
\(^{79}\) Select Committee on Foreign Affairs, op. cit., n. 9, examination of witnesses, question 193.
\(^{81}\) id., p. 18.
\(^{82}\) id., p. 12.
\(^{83}\) Select Committee on Foreign Affairs op. cit., n. 9, para. 101.
The tone of the Green Paper and the more explicit indications included in a subsequent government response to the Foreign Affairs Committee suggests that the United Kingdom government is opposed to options 1 and 2, but has declared in favour of some form of options 3 and 4.85 Those options avoid the ‘risk of damage to legitimate security-related business interests by over-regulation’.86 This strategy would maximize the advantages to the companies concerned and to the British government, whilst an outright ban would, according to the committee, provoke capital flight.87 The preferred options appear to be those involving the issue of a general licence for companies supplemented by a licence for each contract. The licensing regime would be combined with the establishment of a voluntary code of conduct that companies would be requested to adhere to.88 This ‘soft-touch’ regulatory mix is likely to prove highly advantageous for a state-corporate military alliance. The rest of this section examines three aspects of this mutual advantage: the enhancement of British industrial competitiveness; the ability to conduct foreign policy by proxy; and the diffusion of legal accountability.

1. Competitiveness

The likelihood of a ‘soft-touch’ regulatory mix is underpinned by the Foreign Affairs Committee and the government fear that more stringent forms of regulation – from a total ban on recruiting mercenaries for combat to a regime requiring government approval of all contracts – restrict the ability of British firms to remain competitive. The PMC market is currently dominated by American and British firms.89 It is clear that the United Kingdom government is keen to ensure that the market position of United Kingdom companies is maintained. Consistent with this imperative, the Green Paper and its supporting documentation is infused throughout with anti-control ‘burdens on business’ rhetoric. Thus, the ‘cost of regulation’, protecting ‘commercial confidentiality’, and minimizing market disadvantage to British companies provide a characteristically neo-liberal ideological backdrop to the document.90 An appended regulatory impact assessment makes clear the government’s determination to maintain the United Kingdom share of military markets:

   An outright ban on the provision of all military services would deprive British defence exporters of contracts for services of considerable value. Since exports

85 Foreign and Commonwealth Office, Foreign Affairs Committee, Private Military Companies (2001–02; Cm. 5642).
86 id., p. 1.
87 Select Committee on Foreign Affairs op. cit., n. 9, p. 101.
89 D. Shearer, Private Armies and Military Intervention (1998).
90 Foreign and Commonwealth Office op. cit., n. 85, pp. 21, 24–6; see, also, the Regulatory Impact Assessment reproduced on pp. 44–6.

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of defence equipment are frequently dependant on the supplier being able to provide a service package, a large volume of defence sales would be lost in addition to the value of the sales themselves... Significant losses could also impact on the defence industrial base to the detriments of our defence capability.91

As the later part of this quote indicates, the British government has identified an umbilical connection between the PMC industry and the weapons industry. Thus, the rehabilitation of the incorporated mercenary firm is regarded as valuable because it is likely to stimulate the defence industry as a whole.92 The development of a healthy PMC market is also useful for British corporations in other industrial sectors. The demand for security protection for United Kingdom companies operating in foreign locations appears to be on the rise. The diversification of, for example, United Kingdom construction and extractive industries into regions where they face local opposition has spawned a series of contracts and joint ventures between those companies and British PMCs.

This prospective regulatory regime should thus be understood in the context of New Labour’s general policy direction. Although there is some debate over the extent to which New Labour has embraced neo-liberalism,93 the structural dependency thesis has from the outset cemented New Labour’s economic policy to a strategy of global competitiveness and capital appeasement.94 The Blair government’s desperation to demonstrate its business-friendliness is exemplified in the imperative that all new government legislation and policy initiatives (including the proposals under discussion here) must first have considered possible obstructions to business success by way of a ‘regulatory impact assessment’. New Labour’s public affection for idealized accounts of globalization should not deflect attention from the substance of the Green Paper. For this document represents nothing less than a blueprint for the expansion of the British state’s military options. Of course the apparatuses upon which this expansion is based will be privately administered. At the same time, a regulatory regime will in some form or other wed the market activities of PMCs to government policy. This analysis suggests that British corporate

91 id., p. 45.
92 It is of relevance to this point that the current United Kingdom government has, throughout two terms of office, consistently refused to legislate against British nationals importing and exporting arms from foreign locations. This pressing need for regulation was once again dismissed in the framing of the 2002 Export Control Act. Parliamentary debates on the Act were infused with references to the need to maximize competitive advantage for the British economy, and the need to protect British jobs. See the series of briefings and documents published by the Campaign Against the Arms Trade, <www.caat.org.uk>.
interests and government foreign policy options will be enhanced by this regulatory process. It is to the latter point that the discussion now turns.

2. Foreign policy by proxy

Historically, PMCs have been used creatively by domicile states to enhance their foreign policy options. The symbiotic relationship between the United States government and its PMCs that we can observe today is certainly in this tradition. Under the United States regulatory system, providers of military goods and services must register with the State Department. Any contracts worth more than $50m must be notified to Congress. Contracts with foreign governments are also arranged indirectly through the Pentagon’s Foreign Military Sales Department without the need for a licence. It has been argued that the use of PMCs has allowed the United States government to claim neutrality, whilst simultaneously monitoring and retaining political influence in difficult-to-reach territories. The United States government retains a ‘hands-on’ role in the deployment of military resources overseas. This form of regulation allows it (acting through state-ordained PMCs) to provide logistics and training services to pariah regimes or counter-government insurgents whilst avoiding the risk of public condemnation that might accompany ‘official’ United States military involvement. It was for this purpose that the United States deployed mercenaries in support of the Contra death squads in Nicaragua in the early 1980s, and indeed in all of the United States’s dirty wars throughout the 1970s and 1980s. PMCs are now commonly contracted by foreign governments on the recommendation or encouragement of the United States Defence Department. Saudi Arabia, Kuwait, Brunei, and Malaysia have all more recently been party to major contracts with PMCs based in the United States. Close institutional state-corporate relationships appear to be significant. MPRI are one of a number of United States PMCs who have former United States Army generals on their payroll. The large majority of employees in all PMCs are former servicemen, having served in the military forces of their domicile states. The corollary of this combination of formal controls and networked hierarchies is that the United States can conduct ‘foreign policy by proxy.’ As Shearer has noted: ‘In many cases the countries are either carrying out foreign policy directly, or at the least working within acceptable

95 See, for example, Sheppard, op. cit., n. 54, p. 138.
96 ICIJ/CPI, op. cit., n. 10.

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boundaries. It is widely known that the British government has informally approved and vetoed contracts between PMCs and host states for some time. In this respect, the proposed United Kingdom licensing regime might merely be formalizing existing practice.

The use of PMCs in this way allows governments to achieve foreign policy goals without the need for approval from legislatures, safe in the knowledge that involvement in or awareness of controversial military operations can be plausibly denied. It is a formula for regulation that encourages lax scrutiny, particularly if regulatory scrutiny is likely to implicate governments. Thus:

Although some processes might be in place, it is unlikely that politicians will insist on close scrutiny of the military activities of private companies, when those activities can easily be disavowed as non-governmental action.

Central to how we understand the management of war and conflict in Western societies at the beginning of the twenty-first century is what Robertson has termed the ‘Mogadishu’ factor. The reluctance of nations to commit their own troops to overseas conflicts and risk public outcry when the body bags come home has become a feature of post-Vietnam warfare. As Michael Mann has observed, it is as if the backbone of the nation state is turning to jelly. Not only has the UN found it increasingly difficult to recruit troops for peace-keeping operations in recent years, but it has also found it difficult to engage those troops in combat. The United Kingdom Green Paper highlights the advantage to UN humanitarian and peace keeping missions of a private security force, both in cost terms, and in terms of overcoming the difficulties associated with securing commitment from member states.

3. Widening the law-accountability gap

The extreme difficulty of securing prosecutions of individuals under international law is one motivation for the government’s regulatory impetus. Moreover, the Green Paper betrays the United Kingdom government’s contempt for an outright ban in its dismissal of the ‘extremism’ of those in

100 Shearer, op. cit., n. 89, p. 37.
103 Robertson, op. cit., n. 97.
106 id., para. 68.
the UN who wish to uphold and promote the UN treaty on the banning of mercenaries. The United Kingdom government has consistently declined to support the UN mercenaries convention. In addition, the government regards the definition of mercenaries found in the Geneva Convention ban unworkable. It is certainly not difficult to find the loopholes in Article 47 of the Geneva Convention. As one cynical observation has it: ‘... any mercenary who cannot exclude himself deserves to be shot – and his lawyer with him.’ PMCs as private agents, also enjoy the shield of corporate personality in relation to international human rights law. At the moment, it is arguable that under the UN Declaration of Human Rights, states are both entitled and obliged to contain within their boundaries any individuals they suspect may be intending to commit war crimes in a foreign country. But in practice this principle of international law has remained largely ignored. Together, those legal anomalies equate to a gaping hole, a law-accountability gap, in the mechanisms of legal scrutiny for PMCs. Yet, government publications fail to consider the possibility of reform at the level of international law. Developing the International Criminal Court (ICC) for this purpose would be one such option (although nationals of non-signatory countries could not be tried). Some legal scholars have suggested reforming the ICC to allow it to deal with corporations that breach international law. Elsewhere, commentators have suggested reframing the Geneva Convention in order to get around problems of definition. It is significant that the form of regulation proposed by the United Kingdom government entails a rejection of the practical use of, and shift away from, international law as a site of legal regulation. It is a shift that is hardly consistent with the globalization thesis, but is rather more consistent with the ‘degradation of international law’ thesis that is currently gathering momentum amongst legal scholars.

Neither has the government’s disillusionment with international law inspired any such suggestions for domestic reform. The Foreign Enlistment Act of 1870 has, according to the government, never actually been used to

107 id., p. 15. The International Convention Against the Recruitment, Use, Financing and Training of Mercenaries, which prohibits individuals from engaging in mercenary activities and makes illegal the recruitment of mercenaries by states for any purpose, came into force in 2001 after being ratified by the requisite twenty-two members. The treaty has struggled to attract support from Western states for its adoption. With the exceptions of Belgium and Italy, no European country has signed.

108 For example, Shearer op. cit., n. 89, p. 18.


110 Robertson, op. cit., n. 97. p. 102.

111 Permanent People’s Tribunal, op. cit., n. 44.

112 For example, Ebbeck, op. cit., n. 98.


114 Under the 1870 Act, it is illegal for any British subject, unless he or she is granted permission by the Queen, to enlist in the armed forces of a foreign state at war with
successfully prosecute those involved in the enlistment or recruitment of mercenaries.\textsuperscript{115} Given that most of the reasons for not using the Act are trivial (for instance, it predated air travel and therefore is aimed at restricting mercenaries leaving the country by sea rather than by air), there is no good reason why the Act could not be amended and re-activated.\textsuperscript{116} And there are other unexplored routes to reform. There currently exists in criminal law the power to sanction British citizens abroad for certain criminal offences, including torture and killing another British citizen.\textsuperscript{117} There is no reason why the relevant legal instruments could not be amended to ensure that British PMC employees can appear before British courts. In other European countries, there have been recent legislative developments that allow corporations to be held to account in the courts of domicile states for crimes committed overseas.\textsuperscript{118}

It seems that in the most likely scenario, legal control will be enacted primarily through a commercial agreement between the government and private contractor. The re-regulation of the PMC market is best understood as a transferral of law\textsuperscript{119} by a catalytic state. It is a process in which both international prohibition treaties and national (criminal) law are displaced in favour of the commercial (civil) contract as the primary form of legal regulation. The locus of regulation is being shifted away from the realm of international human rights law and into the realm of the state/market nexus. Via a process of law transferral, the state is establishing the basis for consolidating its common interest with private military capital. The ultimate sanction retained by the state under the type of regime likely to be implemented by the United Kingdom government will be the power to de-licence or debar non-compliant PMCs from participating in the market. Those firms that transgress the law will not feel the full force of the state’s coercive capabilities. The Green Paper notes that PMCs are unlikely to change sides in the midst of a dispute, because ‘that would in the long run ruin a PMC’s reputation and its business prospects.’\textsuperscript{120} In other words the ‘invisible hand’ penalties generated by the market (the invisible slap on the wrist perhaps) will prevent PMCs from engaging in illegal or unethical acts. Industry sources have, perhaps predictably, concurred. According to Retired Colonel Tim Spicer, formerly head of Sandline:

\begin{quote}
\textbf{a state that is not at war with the United Kingdom. Recruitment of persons for this purpose is specifically outlawed by the Act.}
\end{quote}

\textsuperscript{115} Foreign and Commonwealth Office, op. cit., p. 20.
\textsuperscript{116} Wrigley, op. cit., n. 101.
\textsuperscript{117} C. Walker and D. Whyte, ‘Contracting Out the Night-Watchman State? Private Military Companies’ (2003), unpublished paper available from author on request.
\textsuperscript{120} Foreign and Commonwealth Office, op. cit., n. 85, p. 17.
PMCs are very unlikely to be involved in human rights violations – it is the quickest way to be out of business and en route to the International Criminal Court. On the contrary, PMC training and supervision of military operations can raise the standard of human rights awareness and behaviour. Government forces in some less developed countries can be part of the problem.121

It seems that the punitive swing of the market will be invested with more regulatory weight than the criminal law. It also seems inevitable that the current law-accountability gap will be greatly widened by the likely regulatory settlement. Responsibility for crimes and human rights abuses committed by Licensed PMCs will not fall on the United Kingdom government, irrespective of the latter’s complicity.

AT THE FRONTIERS OF CRIMINALITY

As the introduction to this paper indicates, current United Kingdom government discourse draws a clear line of separation between the ruthless, unsavoury mercenaries of old and their modernized counterparts. The assumption is that PMCs tend to uphold, rather than undermine, the rule of law. PMCs are more likely to act as law-abiding citizens, respecting the limits placed upon their activities by local laws and international standards of human rights. Any residual nervousness about the rehabilitation of the new mercenaries is thus said to be based upon ‘a false, antiquated premise of human rights violations.’122 Maintaining a strict line of separation between the old and the new is equally important for PMCs anxious to refute their status as the type of mercenaries outlawed under the Geneva Convention. Central to claims surrounding the new mercenaries is the assumption that the modern PMC is largely involved in relatively mundane, routine security work, akin to the services provided by domestic private security firms. Thus, a clear distinction should be drawn between companies engaging in activities such as mine clearance, consulting, military training, intelligence gathering, and coast-guarding, and PMCs that engage in active combat. The Foreign Affairs committee notes that despite the inherent definitional problems in drawing a distinction between combat and non-combat activities, this distinction may serve as a basis for a licensing regime.123 It seems that the committee, supported in principle by government, is proposing a twin track regulatory regime with a lower level of scrutiny for ‘non-combat’ engagements.124

Close examination of what the new mercenaries actually do for a living makes it clear that a binary distinction between combat and non-combat is empirically flawed. It is not uncommon for PMCs to be drawn into conflict

121 ‘Memorandum from Lt. Colonel Tim Spicer’, id., p. 3.
122 Spearin, op. cit., n. 5, p. 39.
123 Select Committee on Foreign Affairs, op. cit., n. 9, para. 107.
124 Foreign and Commonwealth Office, op. cit., n. 85, p. 4.
work even though it is not in the terms of the contract. In some locations, PMCs, acting as guards, escorts, or as providers of training or logistical support are drawn into exchanges of fire. PMCs entering conflict zones tend to be prepared for this eventuality. In this sense, they possess an immediate capacity for violence. On other occasions, PMCs may not engage in combat themselves, but do provide the technical means to do so. For example, PMCs guarding oil installations supply local military and police agencies with intelligence and reconnaissance information about activists, trade unionists or ‘insurgents’. PMCs supply military units with weapons. Those services enhance the ability of state military and paramilitary forces to wage war and engage in lethal combat. This type of activity can be described as a proximate capacity for violence. In recognition of the fact that PMCs are contracted for both their immediate and proximate capacities for violence, South Africa’s relatively recent regulatory laws prohibit all assistance of parties to conflicts. The ban covers training, logistical and intelligence support, and the procurement of equipment.

One case that illustrates the centrality of proximate violence to the work of PMCs is that of the company Defence Systems Colombia (DSC), a subsidiary of United Kingdom company DSL (now merged with United States company Armor Holdings). DSC were contracted in the early 1990s to run BP’s security operation in the Casenare region. Under contract with BP, this company is alleged to have trained the notoriously brutal Colombian National Police in counter-insurgency techniques. There is persuasive evidence that the company imported arms to the 14th Brigade of the Colombian army. Moreover, the company has been implicated in providing detailed intelligence to the notorious 16th Brigade that identified members of revolutionary groups and local pro-democracy activists opposed to BP’s presence in Casenare. According to Amnesty International and other human rights NGOs, a series of executions and disappearances conducted by government paramilitary forces have been linked directly to the intelligence information supplied by DSC.

BP’s operations in Colombia, and we might add the use of militarized security in Africa by oil companies such as ChevronTexaco and Elf-Fina

125 The term immediate capacity for violence is used to indicate the capacity for the direct involvement of PMC employees in armed combat, or exchange of fire.
126 The term proximate capacity for violence is used to indicate the capacity for playing an instrumental role in the preparation for, or the commission of, armed operations without PMC employees actually being in command of a weapon or engaging in an exchange of fire.
128 Amnesty International News Service, ‘Amnesty International Renews Calls to Oil Companies Operating in Colombia to Respect Human Rights’ (AMR 23/79/98) 19 October 1998. Despite being the subject of a Colombian government investigation and a highly critical European Parliamentary inquiry, DSC have been retained by the British government to provide bodyguards in Bogota.
Gulf,¹²⁹ have led to a direct targeting of those companies by NGO human rights campaigns. Those campaigns have consistently raised questions in relation to the legality of countering local opposition with torture and extra-judicial punishments, and produced evidence of systemic human rights abuses. In those cases, the security guard ‘non-combat’ work (utilizing PMC’s proximate capacity for violence) has actually attracted some of the loudest accusations of human rights abuses.¹³⁰ Similarly, accusations of involvement in ‘grey-market’ arms dealing centred on PMCs involved in both ‘combat’ and ‘non-combat’ work. There are considerable cost savings to be made by dealing on the grey market, and PMCs have become adept at developing those largely illegal means of procurement.¹³¹

Whether PMCs engage in combat or not – the commodity that they trade in is their capacity for lethal violence. Killing and threatening to kill are the core business activities of this industry. Perhaps the most notorious examples centre around assassination conspiracies. It is widely believed that Israeli and British mercenaries have trained the hired guns of the Medellin cartel in Colombia in the art of assassinating politicians, judges, and journalists.¹³² A small British PMC, Aims Ltd. of Salisbury, Wiltshire, apparently assisted the Turkish government in a plan (ultimately aborted) to assassinate the Kurdish leader Abdulla Ocalan.¹³³

The argument promoted by the United Kingdom government is that the most nefarious activities that PMCs are involved in occur in liminal ‘grey market’ spaces. The best way to guard against extremes of violence and criminality is to create legitimate, regulated market spaces in which to make transparent their core business. There is a rational basis for this reasoning, given that some of the examples referred to above involve the smaller, less visible type of firm. If this logic of incorporation (licensing and regulation = the eradication of undesirable, outlaw elements) holds true, we would expect the United States regime to have few problems with PMCs being implicated in human right violations, illegal trading, and the like. However, if we scratch the surface of the industry in the United States we find little evidence to support this hypothesis.

One of the most high-profile examples we can turn to is MPRI’s engagement in 1995 by the Croatian army during the Balkan war. Although the United States regulatory code prohibits the use of PMCs in combat,

¹³² Robertson, op. cit., n. 97, p. 201.
¹³³ Sunday Times, 22 August 1999.
MPRI’s mission in Croatia raised some doubts around the extent to which this prohibition is actually enforced. MPRI claimed they ‘merely offered advice about the role of the army in democratic society.’\(^{134}\) The company provided training to the Croatian army, an outfit widely regarded at the time as inept and shambolic. Shortly after MPRI’s engagement, the very same army achieved a remarkable transformation and launched a series of highly sophisticated and professional offensives against the Yugoslavian army. Those offensives were followed by the brutal targeting and butchering of civilians in the Krajina area of Bosnia. Subsequently, MPRI were awarded a three-year contract to train and equip the Bosnian army. Their engagement as advisors and trainers to the Croatian army led to questions about MPRI’s precise role in making possible the slaughter that followed in the Krajina.\(^{135}\) Certainly breaches of the Geneva Convention resulted from this phase in the war. According to Amnesty International:

> extrajudicial executions, ‘disappearances’, ill-treatment, harassment and the systematic destruction of houses have been carried out by members of the Croatian armed forces or internal security forces in the Krajina against the civilian population, and in particular against elderly people.\(^{136}\)

This case provides us with another example of the difficulties of distinguishing between combat and non-combat activities, and indeed, the difficulties of distinguishing between legal and illegal engagement of private military force. Equally significantly, it provides us with an example of how acts that would have almost certainly exposed the United States state to accusation of involvement in war crimes were dissipated. And there are many more examples of licensed United States PMCs being implicated in illegal acts, or in breaches of international human rights standards. A series of recent accusations against Dyncorp, the PMC contracted to police post-war Bosnia, relate to human trafficking for the sex industry and the illegal smuggling of arms.\(^{137}\) United States PMC Airscan has also been known to smuggle arms into Southern Sudan as part of an operation to support the rebel SPLA.\(^{138}\) The same company were at the centre of a 1997 military campaign to remove the democratically elected government in Congo-Brazzaville and restore to power an unelected dictator. Airscan have also been implicated in coordinating the bombing of a village in Colombia that killed eighteen civilians.\(^{139}\)

Such operations are conducted with the prior approval of the United States government. Indeed, those contracts are likely to have been initiated

\(^{134}\) Cited in Silverstein, op. cit., n. 99.
\(^{135}\) Brayton, op. cit., n. 102.
\(^{137}\) P. Chatergee, ‘DynCorp Rent-a-Cops May Head to Post-Saddam Iraq’ CorpWatch, 9 April 2003.
\(^{138}\) O'Brien, op. cit., n. 60.
\(^{139}\) Singer, op. cit., n. 4.
by the Pentagon. That is not to say the United States government approved of the methods or of the illegal acts that were committed. The United States did, however, license those companies, and continues to use them for Department of Defense contracts in spite of the fact that evidence of each of those crimes was made public. Since all of the operations noted above were conducted broadly in line with United States government policy aims, we might conclude from those examples that when foreign policy is conducted by proxy, the means matters rather less to governments than the ends.

When private military markets flourish, the opportunity structure for state-corporate crime is enhanced for two reasons. First, because it establishes a regulatory framework that facilitates the expansion of a market in violence that is rarely unambiguously legal. The United Kingdom sector is likely to expand rapidly should the industry be officially recognized through legislation.¹⁴⁰ Second, because it provides for a greatly expanded capacity for states and corporations to become involved in high-risk or politically sensitive conflicts without the repercussions. The selected examples discussed in this paper indicate that even the most reputable and transparent companies in this industry are unlikely to observe the boundaries of law or of international standards of conduct.

The impact of the expansion of private military markets upon the long-term stability of host states is similarly downplayed in the regulatory debate. Some commentators have noted that neo-liberal expansionism in relatively poor countries has culminated in a wholesale ‘criminalisation of the state.’¹⁴¹ This work traces the intimate connections between Western neo-mercantilism, economic liberalism, and state corruption. The rampant march of neo-liberalism has inflicted a crippling anti-protection trade regime upon many African states. It has encouraged, through strategies of privatization, the fragmentation of civil society and has created a breeding ground for civil conflict and state repression. In the neo-liberal race to catastrophe, whole populations have been brutalized by hunger, poverty, and civil wars. Entrepreneurs of violence have found fertile conditions for plying their trade in African states such as Angola, Sierra Leone, and the Democratic Republic of Congo.¹⁴² PMCs undermine the authority of states, contribute to a culture of violence, and disrupt political means of conflict resolution.¹⁴³ Political systems are rarely stabilized after PMCs have intervened in conflict.¹⁴⁴ In this context, it is therefore unsurprising that there has been a collective effort on the part of a majority of African states to outlaw mercenary activity through the Organization of African

¹⁴⁰ Brooks, op. cit., n. 2.
¹⁴¹ J.-F. Bayart et al., The Criminalisation of the State in Africa (1999).
¹⁴² P. Chabal and J. Daloz, Africa Works: Disorder as a Political Instrument (1999); Cilliers and Mason, op. cit., n. 7; Musah and Fayemi, op. cit., n. 55.
¹⁴³ For collections of this research, see Cilliers and Mason, id.; and Musah and Fayemi, id.
¹⁴⁴ Serewicz, op. cit., n. 2, pp. 84–5; Brayton, op. cit., n. 102.

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Unity, whilst support for a ban on PMCs in the West has all but collapsed.

CONCLUSION

If there is a negative-sum power game going on here, it is not being played out between states and markets, but between Western state-corporate power and the rest of the world. The nation state is alive and kicking. The scenario that is unfolding in the PMC market, far from representing an erosion or subcontracting of sovereignty, is better described as a highly unstable process of re-regulation (a transferral of law) by a catalytic state. By seeking an expansion of the state’s capacity to act through private agents, it is clear that the United Kingdom government is pursuing some pretty narrow interests: competitive advantage for British capital overseas (not least corporations that are violently opposed by local populations); the ability to conduct foreign policy ‘at a distance’; and a blurring of lines of responsibility and accountability for state-corporate crimes.

From this perspective, the case study of PMCs presented here warns us against oversimplifying the regulatory relationship between states and markets. Studies of regulation tend to describe this relation in pejorative terms: regulation is something that states ‘do’ to private actors. But regulation is not simply about constraining or limiting the terms on which corporations enter markets. Regulatory regimes build the foundations that enable markets to function and indeed to flourish.

Despite the fragility of the ‘new mercenary’ discourse, legal reform will constitute PMCs as sanitized, legitimate corporations. As Brooks has noted, legislation allows clients and purchasers to use the services of PMCs ‘without having to justify the position of whether the companies are mercenaries or not.’ The opening up of new market spaces in this industry may give the United Kingdom government some control over the private military sector, but regulation is also bound to encourage the types of mercenary activities that are supposed to be consigned to the past. This re-regulated market, as the preceding section suggests, is likely to grant access to private actors to markets that were previously unambiguously criminal.

On current evidence, illegalities and human rights abuses abound in this industry. In the absence of any new criminal legal controls, the expansion of the sector can therefore be read as a move that is likely to encourage rather

146 Brooks, op. cit., n. 2, p. 137.
147 D. Hobbs, P. Hadfield, S. Lister, and S. Winlow ‘“Door Lore”: the art and economics of intimidation’ (2002) 42 Brit. J. of Crim. 352–70. In this paper, a similar point is made in relation to the licensing of nightclub and bar doorstaff under various local registration schemes and, latterly, the 2001 Private Security Act.
than control the incidence of state-corporate crimes. State-corporate crimes committed by PMCs should therefore be understood as having their origins in the infrastructural as well as the coercive capacities of states.

Governments make political choices about the legal and institutional frameworks that regulate markets. Other governments such as Australia and South Africa have in recent years moved to restrict the private military market. The path that the United Kingdom government appears to be navigating at present is by no means the only one. There are alternatives to the violent global expansionism desperately pursued by Western corporations and state institutions. There are alternatives to the rise of a new generation of mercenary soldiers, licensed to protect a world order that exists to benefit a small minority. And there are alternatives to a neo-liberal future that threatens to tear humanity apart.

148 Following Sandline’s ultimately aborted mission in Papua New Guinea, Australia pledged support for the Mercenaries Convention (see Ebbeck, op. cit., n. 98). South Africa’s ban on assisting of parties to conflicts noted earlier in this paper is governed by the Regulation of Foreign Military Assistance Act 1998.