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Armed forces, civil society and democratic control: concepts and challenges

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Part one: CONCEPTS

1. INTRODUCTION

IPB's programme - Disarmament for Development

The International Peace Bureau launched in 2005 a new programme called Disarmament for Development, designed to link the rapid rise in global military spending with the growing difficulties on the path towards sustainable development. Military spending not only has an opportunity cost for sustainable development (money spent on the military is money that is not available for on development programmes), but it also has disastrous effects on it through weapons - such as small arms, landmines and cluster munitions - that seriously compromise efforts in this direction. IPB therefore advocates reductions in defence budgets and the adoption of a 'human security' approach, as it is the people, and especially the most vulnerable populations, that need to be protected, rather than the state as such (a national security approach). This means there must be a control over the military and defence spending by the people concerned (everybody!), particularly as every single taxpayer contributes to the military budget.

Democracy, civilians and civil society

We believe as many others that democracy is theoretically the best manner to achieve such a control. As we all know, 'democracy' etymologically comes from the ancient Greek and means 'rule by the people'. It is self evident that if the people rule, they will rule in people's interest. As not everybody can be in the position of ruler, democracy is usually a representative form of government, where the rulers represent the people. In reality however, there is the risk that these representatives depart from their original mandate and tend to use their power to defend their own interests or the ones of a particular group, a trend that is accentuated by the links between economic and political power. There are legal provisions (such as the separation of powers) to counter this trend, but we believe that the existence of a vibrant and active civil society and its implication in governmental affairs is another necessary condition for democracy to be, as Abraham Lincoln described it in his famous Gettysburg Address (1863), a "government of the people, by the people, for the people"¹. The key role of civil society in consolidating and sustaining democracy is now widely recognised² through the literature on the subject.

Security, civilians and civil society

Security has always been and remains a key function, if not the key function, of any state, primarily because the survival of the state itself is at stake, but also because citizens rely on their state to provide for their security³. To carry out this function, states exercise the monopoly over legitimate violence through different

¹ Quoted from the Gettysburg Address to be found at http://en.wikipedia.org/wiki/Gettysburg_Address

² Caparini, Marina (2003) *Civil Society and democratic oversight of the security sector: a preliminary investigation*, DCAF, p.1, http://www.dcaf.ch/civsoc/proj_governance.pdf

³ Here is the idea of the social contract as first suggested by Hugo Grotius (1583-1645). The social contract consists of implied agreements by which free people join to form nations and maintain a social order. Individuals submit themselves to a common authority renouncing some of their liberties in order to see their rights protected.

armed groups, mainly the military, the police (and other internal security forces such as gendarmerie and paramilitary groups), plus intelligence services and more recently private military and security companies. For these forces to operate in accordance with the needs and interests of society, we would argue that they must be under the control of representatives of that society. This is an application of the very essence of democracy to the security sector.

2. DEMOCRATIC CIVILIAN CONTROL OF THE MILITARY

In this paper, we will look at how the control of the armed forces does and should take place in democratic societies, with a special focus on the role of civilians and civil society. We will therefore define what we understand by the concepts of civilian and civil society, before looking at the different components of the process leading to an armed forces intervention, namely security and defence policy, budgeting, procurement and command. This will allow us to identify how democratic civilian control of the armed forces can best be exercised and at what stages.

By doing this, we will also identify where pressure can be exercised on budget and resource allocation decisions, although we believe that claims for the reduction of defence and security spending must go hand in hand with pressures for changes in defence and security priorities. Such changes could best be achieved by a redefinition of the armed forces' mandate, based for instance on a distinction between different types of interventions (legitimate and illegitimate ones) and a reconsideration of the quantity and quality of troops and arsenals. While this second aspect is not the priority topic of this paper, we will keep it in mind when examining the different arguments.

Civilians

What we are concerned about in this paper is the risk that the armed forces may deviate from their original mandate to protect the nation, its people and its interests. We unfortunately know that there are many cases in history where the armed forces were used to carry out quite unpopular policies, or even intervened internally to strangle protests (often ending up in civil wars) or to oppress ethnic minorities (sometimes leading to genocides). As we outlined in the second paragraph, there is a risk that the rulers (the ones also controlling the armed forces) use their power to defend interests that are not those of the nation. But there is also the risk that the armed forces escape from that control and become an autonomous force capable of opposing to the political authority (military coups sometimes leading to the establishment of military dictatorships - e.g. Chile '73, Liberia '80, Pakistan '77, '99 and 2007, Thailand 2006...) ⁴. Inside the armed forces, there is a perception of security and defence issues that might be quite different from that of the common people. In that sense, it is very important that the armed forces be controlled by people that are not part of them, making sure that they operate in the pursuit of the society's interests. Such people are called civilians, a civilian being **a person who is not a member of the armed forces**. This rather simple

⁴ In Turkey, the army is firmly opposed to fundamentalism. It has played quite a role in maintaining a democratic and secular State in line with Atatürk's republican heritage. It led various military coups in '60, '71, '80 and '97.

definition allows us to make a clear distinction between members of the armed forces and everybody else when looking at where the decision-making power lies. In that sense, the political leaders and stakeholders, be they members of the executive, the administration or the parliament, are civilians.

Civil society

The term civil society is widely used and has become quite popular in political analysis and the media⁵. However, it is often used (at least in the public debate) without being clearly defined, and it often gets the connotation of the more general word ‘society’. However, when we are looking for ideas about security and defence affairs in the public sphere (outside the state where decisions on these issues are taken), we cannot just take a picture of the society at one moment and look for the ideas and conceptions that are to be found. The formulation of ideas and public claims is a dynamic process, where individuals exchange information and ideas through different channels, and try to articulate them around an institutionalised structure in order to give them voice.

There are myriad definitions of civil society, and even different interpretations of these definitions. We will therefore choose one that suits our approach. The following definition has been established specifically in regard to the relevance of civil society to the defence and security sector: “Civil society refers to voluntary associational groupings in a society, and the public expression of the interest, priorities, grievances, and values around which those associations are based”⁶. We understand that definition as an attempt to establish a specific category of groups articulating public ideas, as distinct from political parties (a state institutionalised structure monopolising the competition for the access to political power) and private businesses and their associations (because they represent private and profit orientated interests). Civil society, political parties and the private sector together constitute the non-governmental sector. Our definition thus includes all kinds of non-profit NGOs, charities, community groups, social movements, faith-based organizations, women’s associations, academic institutions and think tanks.

In a democracy, the political leaders are vested with the democratic legitimacy because they are elected (directly or indirectly) by the people who thereby express the popular will. Political parties play a fundamental role in the formulation of that popular will and its channelling to the governmental level. This however does not necessarily mean that they (the political leaders and the political parties) represent the popular will during their whole mandate and on every issue⁷. Civil society allows for a certain continuity in the expression of that popular will beyond the partisan landscape and the mere electoral cycle, as well as enabling it to be expressed on particular issues and not just a global political orientation. Whereas some civil society groups do have a global societal perspective (like political parties), many civil society groups in fact concentrate on very specific issues or

⁵ For an overview of some of the most common definitions of the term civil society, and a debate over its contribution to democracy, see: Scholte, Jan Aart (2007) “Global Civil Society – Opportunity or obstacle for democracy?” in *Development Dialogue*, Dag Hammarskjöld Foundation, Uppsala, Sweden, No. 49, November 2007, pp. 15-27

⁶ Caparini, Marina and Philipp Fluri, *Mapping Civil Society in Defence and Security Affairs: An Agenda for Research*, DCAF Civil Society Programme, p.1, http://www.dcaf.ch/civsoc/proj_mapping.pdf

⁷ Idem, p.2

events. A vibrant civil society is a good indicator of a healthy democracy⁸, and it seems that it is a result of changes in expectations concerning democracy. “People in consolidated democracies today tend to have higher expectations of governmental accountability, legitimacy, and inclusiveness than in previous generations”⁹.

The relation between the civil society and the state is quite complex, as it is not just an oppositional one. Some groups are clearly in an oppositional position to the governmental line (pressure groups such as anti nuclear, disarmament or radical peace groups) or even defend anti-democratic views (like fundamentalist, racist or terrorist groups). Others are in a much more complementary relationship with the state as far as they provide expertise and advice in specific policy areas that can be very useful to the leaders (groups such as think tanks, research institutes or university departments). There is no doubt that the State (but also international organizations) has much influence on the development of the civil society. A State can either engage in dialogue and exchanges with it and include civil society perspectives in the decision making process, or on the other hand not be receptive or even not tolerate it.

3. THE PROCESS LEADING TO AN ARMED FORCES INTERVENTION

For the armed forces to intervene in a particular case, there must be a final decision of actually proceeding to an armed intervention. However, the very existence of armed forces and all the related organisational aspects, the elaboration of a security and defence strategy (when to intervene) as well as a deployment strategy (how to intervene) and all the necessary resource allocation decisions implicate a lot of people going far beyond the mere military staff, many interactions between all these different kinds of people, lots of decisions and gigantic resources. We will go through a very simplified scheme of the different stages of the process leading to an armed forces operation in order to see who the key people and institutions are. While it is very difficult to generalize on these subjects, we will do our best to pick out some trends to help us in our analysis.

National Security Policy¹⁰ (NSP)

⁸ In explaining the emergence and rise in scope of the civil society in modern democracies, many authors argue it is a reaction to the failings of democracy in politics. There is no doubt that the situation of democracy nowadays is unsatisfactory in various aspects (it might well be “the worst form of government except all others that have been tried”, as Sir Winston Churchill expressed it). But we think that enormous changes in the quantity and rapidity of information diffused on an expanding number of issues and to an enlarged circle of people have played a more important role in the emergence of modern civil society than the failing of democracy in politics, which is not a new phenomenon as such.

⁹ Caparini, Marina and Philipp Fluri, *Mapping Civil Society in Defence and Security Affairs: An Agenda for Research*, DCAF Civil Society Programme, p.2, http://www.dcaf.ch/civsoc/proj_mapping.pdf

¹⁰ Most of this paragraph is taken from *National Security Policy* (2005), Backgrounder, Geneva Centre for the Democratic Control of Armed Forces (DCAF), 5p.
<http://www.dcaf.ch/publications/kms/details.cfm?lng=en&id=18417&nav1=4>

In the Westphalian conception of the state¹¹, which defines the present international system of states, the state does provide for the security of the state and its citizens, every state has a plan of how it will do this. Whereas most states will outline at least the very basics of their NSP, there is not one single manner to do it (both in terms of content and form), and part of it will always be kept secret as full transparency would make the state too vulnerable. Basically, a NSP is an analysis of all threats to national security (often focusing on external threats more than on domestic threats) and ways of facing them. It allows for a coherent understanding and implementation of security issues by all actors involved in national security.

What is of much more interest from our perspective is how and by whom a NSP is formulated. Being a policy, it is formulated according to a standard policy cycle including initiation, drafting, reconciliation and approval. As such, *it is thus essentially a matter for the executive*. The legislature (as a decisional entity) will in some cases have some power at the very initial stage of asking or reviewing of the NSP, or at the final stage of approving it, be it just by taking note of a new NSP or the need for a formal approval. However, in terms of content of a NSP, it is always the executive that plays the key role.

The executive represents the governing party or party-coalition that has been elected on the basis of its manifesto/program. This document is the basis of the governments' program, and contains considerations about foreign and security policy amongst many others. Some of these might be very specific items about particular issues (like reduction of the military budget, limitation of arsenals of a particular type, abolition of nuclear weapons ... or their opposite) or situations (like putting an end to a particular conflict or starting a new one). In that sense, governing political parties have quite an influence on the ideological background to the NSP as well as its content, although it is unfortunately well known that many governments do not realize all the promises they made during the electoral campaign. This has to do with the fact that there is no mechanism for electors to hold their representatives accountable for the implementation of their program apart from not supporting the same representatives or political party at next elections.

Concerning the elaboration of the NSP, it is also the executive that designates the drafting body, which can be a specific security organ, a standing or an ad-hoc committee or even the cabinet itself, as well as its working procedures. The executive thus has the power to decide who to include in the drafting organ, and thereby determine what actors will have the possibility to directly have an influence on the drafting procedure. "This committee usually consults widely with governmental security actors such as ministries of defence, intelligence agencies, representatives of the armed forces, legislative committees and increasingly with ministries not traditionally associated with the security sector, such as those of agriculture, transport, health, immigration and financial management bodies"¹². So

¹¹ The Westphalian conception of the state (relating to the 1648 Peace of Westphalia) is based on the concepts of nation-state and sovereignty. A sovereign nation-state is self determined, has a territorial base and does not tolerate the implication of external actors in internal issues.

¹² *National Security Policy* (2005), Backgrounder, Geneva Centre for the Democratic Control of Armed Forces (DCAF), p.4.

far, we can see that **most of the people involved are civilians, but they are all governmental actors**. Some of these committees “may also consult with non-governmental actors, such as political parties, media, civil society and academia”¹³. However, this is not the rule, and the committee will only consult with non-governmental actors able to provide expertise on a particular issue that the committee sees as relevant for its work. The reconciliation procedure, to get a final document that is as representative as possible of the views of the government and actors involved in the security sector, is quite similar to the drafting procedure in terms of actors involved, although the scope of actors consulted might be broader than during the drafting procedure in order to get a more general feedback.

Defence budgeting and procurement¹⁴

Whereas defence budgeting is the process by which financial resources are allocated to the ministry of defence for its functioning and the execution of the NSP, defence procurement concerns the process by which equipment and services¹⁵ are provided for that purpose. Together with spending on specific military and other defence and security engagements, they represent the total defence spending. Both of these processes basically function according to the principle *the executive proposes and the legislative disposes*, although practices vary greatly from one country to the other. This means that whereas it is always the executive that proposes the budget and asks for procurement or special funds in to cover the perceived needs, it is the parliament’s role to possibly amend (depending on the country) and finally to approve it. **Here, parliaments play a much more important role than on policy matters**, and this has to do with its fundamentally democratic function. As representatives of the people, they are supposed to ensure that the public’s interests are taken into account. In budget matters, they prevent misuse of public funds, provide for transparency in resource allocation and ensure that the public is informed. They also play a predominant role in overseeing the execution of the budget through audits, inquiries, hearings and reports. Whereas it is still the executive that retains the overwhelming influence on budget and procurement, parliaments can play (depending on their effective power) quite a role in reflecting changes in priorities and perceptions among the public. In order to really fulfil this function, parliamentarians should be receptive to these changes by staying accessible to non-governmental actors, particularly civil society.

The private sector and its trade associations manage to be quite influential in defence budgeting and procurement matters although not formally involved in the process. The defence industry in particular is highly dependent on government expenditures, and therefore tries to influence defence budget and procurement decisions. Because of the sector’s impact on the national economy¹⁶, and its

¹³ *National Security Policy* (2005), Backgrounder, Geneva Centre for the Democratic Control of Armed Forces (DCAF), p.4

¹⁴ This paragraph is based on two *backgrounders* from the Geneva Centre for the Democratic Control of Armed Forces (DCAF): *Parliament’s Role in Defence Procurement* (2006) and *Parliament’s Role in Defence Budgeting* (2006)

¹⁵ Here, ‘equipment’ refers to material that is intended for military use only (from weapons to ammunitions, trucks, food and clothing). ‘Services’ concerns all kinds of activities necessary for the armed forces operational capabilities (from food service and logistical support to intelligence collection and analysis)

¹⁶ An argument often used to support spending on the defence sector is its positive impact on job creation. However, a study by the Institute for Policy Studies showed that in the US, public dollars invested in health care,

significant financial resources (see *Table 1* below) allowing it to finance campaigns, governments and parliaments are sensitive to the sector's interests. Furthermore, parliamentarians often try to allocate government spending for projects that are intended primarily not only to serve particular but also local interests. This phenomenon, known as 'pork-barrel' politics, is however difficult to trace precisely, but attempts to establish figures show it is very significant¹⁷.

Table 1 World's top 10 Defence contractors (2006)

Rank	Name	Country/ location	Defence revenue (in million US\$)	% of total revenue
1	Lockheed Martin	U.S.	36'090	91
2	Boeing	U.S.	30'800	50.0
3	BAE Systems	U.S.	25'070	93.0
4	Northrop Grumman	U.K.	23'649	78.4
5	Raytheon	U.S.	19'500	96.1
6	General Dynamics	U.S.	18'769	78.0
7	EADS	Europe	13'202	25.4
8	L-3 Communications	U.S.	9'989	80.1
9	Finmeccanica	Italy	9'057	55.0
10	United Technologies	U.S.	7'652	16.0

Source: DefenseNews.com

Here again, we can see that **most of the people involved in defence budget and procurement matters are civilians, but that civil society is not formally involved at all**. However, compared to the NSP process, defence budgeting and procurement processes are more 'democratic' since they involve negotiations between executives and parliaments and thus a share of power. This is especially true as the executive is the voice of the most powerful political group in a country, whereas the parliament represents all the people (or at least all the major political groups).

Military chain of command

The military is characterised by a strong hierarchical structure and the obligation for every member of the armed forces to submit to its superiors and to execute the orders he has been given. In democratic states, the highest position in this chain of command is always the highest constitutionally established civilian authority, vested with democratic legitimacy¹⁸. In these states, the commander in chief of the armed forces is the head of the State (the president in the United States and France, the chancellor in Germany or the monarch in the United Kingdom), meaning the armed forces cannot engage in armed conflict without his/her

education, mass transit and construction create more jobs than investing an equivalent amount in the military. For education and mass transit, twice as many jobs would be created. It is available at <http://www.ips-dc.org/reports/071001-jobcreation.pdf>

¹⁷ Citizens Against Government Waste is an organization that establishes every year a 'Congressional Pig Book Summary', which is an exposé of the major pork-barrel politicians and projects in the US (available at http://www.cagw.org/site/PageServer?pagename=reports_pigbook2007). Estimates for the 2007 spending on pork projects in the defence sector are of US\$10.8 billions.

¹⁸ This is a fundamental provision of the Organization for Security and Cooperation in Europe (OSCE) *Code of Conduct on Politico-Military Aspects of Security* (Art. 21), to which some of the biggest military powers are parties (including the United States of America, the United Kingdom, France, the Russian Federation and Germany).

approval. The next authority in the chain of command is the head of the ministry or department of defence (secretary or minister of defence), who supervises and is responsible for the work of a defence council (national security council in the US, defence council in the UK, military command council in Germany). These councils have a very restricted number of members (from 6 up to 20) and deliberate in high secrecy. The first non-civilian authority in the chain of command (the highest ranking military officer) is usually part of this council, where he represents the armed forces. This person (chairman of the joint chiefs of staff in the US, chief of the defence staff in the UK, chief of staff ‘chef d’état-major des armées’ in France) is responsible for the implementation of the decisions taken by the defence council by the different service branches of the armed forces (usually army, navy and air force). What we can see from this overview is that **in democratic states, the armed forces are under the command of a civilian authority**, and this is an absolute necessity for the armed forces to operate in accordance with the interests of the voters. What we can also see is that **civil society does not intervene at any moment in this chain of command**. However, we did not expect it to do so, as this is essentially an executive and operational matter. We believe that is on the policy and resource allocation aspects where civil society is able to exert its influence, as this is where changes in the priorities can take place and claims for budget reallocation addressed.

Parliamentary Oversight

As we have already mentioned, we believe that in terms of accessibility, accountability and representativity, parliaments are much better off than the executives. For them to be involved in the security and defence sector is thus a democratic necessity, and an opportunity for civil society to have some influence on it. Although we have seen that security and defence is primarily a matter of the executive, parliaments also have a significant role to play, particularly in setting the legal parameters, adopting the budget and overseeing the sector’s activities. There are notwithstanding some prerequisites for them to fulfil their mandate. First of all, the constitution must clearly define parliament’s mandate and power, and provide for effective means to exercise it. Secondly, parliaments must have broad access to clear and detailed information, as many policy areas require a very high level of knowledge and expertise. There is inevitably a trade-off between transparency and secrecy, but at the parliamentary level, the first should prevail over the second. Thirdly, and this cannot be regulated, there is the need for a strong will among parliamentarians to represent the people’s positions and to hold the government accountable for its decisions and actions. This would inevitably include formal consultations between parliamentary committees and civil society actors on a regular basis, as it is the case in Switzerland¹⁹.

4. RECOMMENDATIONS

What we have noticed by rapidly going through the process leading to an armed forces intervention is that people with influence on matters of defence and

¹⁹ In Switzerland, legislative committees established by the parliament for the drafting of a specific law, consult widely with civil society and other non-governmental actors to get a general feedback of the prevailing positions on the issue. Analysts explain it as being a strategy to avoid particular groups opposing a referendum to the final draft law, as any law voted by the parliament might be submitted to this procedure (some are automatically), thereby delaying or even cancelling its implementation.

security are all part of state institutions, be it the legislative or the executive. Civil society is not involved at any decisional level, and it is not offered many possibilities to intervene in the governmental debate. Civil society and other non-governmental actors are almost formally excluded from the budgeting and procurement process. This however does not mean that they cannot have any influence, as illustrated by the case of the defence industry. We will therefore make some recommendations about how the decisions on these issues could be more democratic (in terms of accessibility, representativity and share of power), with special attention to the role civil society can play.

- **lack of formal civil society implication** → since civil society is an important channel for the expression of the popular will, it should also be able to give it voice. While we do not think there is a valid argument for more formal inclusion of civil society in the decision making process, the only way to influence it is to influence the people involved in it, and that is what many civil society groups actually tend to do²⁰. Efficient **lobbying of parliamentarians and key executive individuals and institutions** presupposes a good knowledge of the issues as well as of their agendas and individual sensitivities. This is directly linked to the overall transparency of the decision making process as well as the availability of complete and detailed information.

- **lack of parliamentary power** → the power of parliaments is theoretically defined by a constitutional text that can be changed only with great difficulties and according to a specific procedure. This theoretical power varies from one country to the other reflecting cultural and historical elements. However, **the effective power of parliaments depends also much on parliamentary practice and the parliamentarians' aptitude and attitude**. One of the parliaments' primary functions is to hold the government accountable for its decisions, but this will only be possible if parliamentarians are truly willing and committed to do so. In many areas, decision making is highly specialized and requires a very high level of knowledge and expertise. This again means **that parliamentarians must have access to adequate information and recourse to competent experts**. Therefore, civil society can exert some influence if it can provide this needed expertise, as for instance some think tanks do.

- **lack of executive and parliamentary accountability** → parliaments and executives represent the people, who designated their members directly or indirectly through the elections. These members normally hold their mandate until the next elections. As we already mentioned it, the point is that between these elections, it is difficult for the people to hold them accountable for what they do in regard of what they promised. The best existing institutionalised accountability mechanism is the share of power between the executive and parliament²¹, but there are also different means to exert pressure on these individuals, although they have no obligations to cede. **Lobbying them and making public incoherencies**

²⁰ Some civil society groups however do not have any interest in influencing the decision process since they hold fundamentally incompatible or extremist positions.

²¹ When there is a constitutional possibility to dissolve the parliament, it is only the head of the state (top executive official) that has the power to decide so. Equally, and only when constitutionally established, the executive can be forced to leave office by the parliament.

between their promises and actions or their implication in particular issues is one of them. Another one is the pressure the political party they belong to can exercise on them if they deviate from the parties' ideological line. This is particularly the case in some countries where the party discipline is strong, such as the United Kingdom, Canada, Australia or India. Therefore, by introducing particular elements in the political parties' programmes, civil society can exert a different type of influence that will probably be more effective, although more difficult to achieve.

- **lack of transparency and public awareness** → a key element for members of the executive and parliaments to make the right decisions is the availability of sufficient, adequate and detailed information. But it is also equally important for the public to have access to good information, particularly about the issues on the political agenda and the behaviour of its representatives. Although there is no doubt that some information is confidential and should remain accessible only to a restricted number of people, most of the information necessary for the political debate is to remain accessible to the public. Whereas the media unmistakably plays a key role in the diffusion of information to the public, civil society has a fundamental role to play in raising public awareness on particular issues. Transparency and an independent media are crucial in a healthy democracy. Civil society can use this information and canalise it around its specific claims and views. It is through mobilization that its voice will be heard.

Part two: CHALLENGES

Now we have undertaken this general overview of how the armed forces are in theory democratically controlled by civilian authorities and what the role of civil society is in that aspect, we will analyse in more detail two specific sectors of the armed forces that are particularly challenging in this regard. One is a trend in modern warmaking, namely the outsourcing by the military, but also more generally by states, international organizations and even NGOs, of military and security functions to private companies that specialize in these kind of services. We call these Private Military and Security Companies (PMSC). The second one is the sector of nuclear weapons, where stakes are so high that many of the principles we outlined face many obstacles in their application.

I. PRIVATE MILITARY AND SECURITY COMPANIES (PMSCs)

“Private contractors are now so firmly embedded in intervention, peacekeeping and occupation that this trend has arguably reached the point of no return”

Schreier, Fred and Mariana Caparini²²



1. Introduction

What are PMSCs?

Private Security and Military Companies (PMSCs) are businesses that specialize in providing security and military services and skills. There are various designations²³ that stand for a wide range of companies offering assistance in a multitude of areas from fighting operations and logistical support to strategic planning, intelligence services, training and much more. These companies range from small national based firms with only a few employees to transnational corporations with thousands of staff capable of forming entire battalions. They are active not only during conflict periods and directly on the battlefield, but are also involved in all kinds of pre- and post-conflict activities.

Who works for them?

PMSCs hire different types of people according to the type of services they provide. Profiles needed range from engineers, computer specialists and technicians to drivers, managers and all manner of consultants as well as fighters and instructors. Because these companies work for the military and quite often in conflict-related

²² In Schreier, Fred and Marina Caparini (2005), *Privatising Security: Law, Practice and Governance of Private Military and Security Companies*, Geneva Centre for the Democratic Control of Armed Forces (DCAF), Occasional Paper n°6.

²³ Private Military Companies, Private Security Companies, Private Military Firms, Private Military Contractors, Military Service Providers, Private Military Industry... are as much designations used in the media and the literature to designate the same phenomena. We chose to call them Private Military and Security Companies (PMSC) since this label includes all kinds of businesses offering services on the market that have traditionally been carried out by states in the sectors of defence and security.

situations, former military staff and soldiers offer a very attractive recruiting pool. Given that these people already have relevant knowledge and combat experience, and are often offered much more income than in the regular armed forces²⁴, the opportunity of working for PMSCs can be very attractive for them. There is a direct link between the downsizing of the regular armed forces and the rise of PMSCs (especially in the aftermath of the Cold War).

In fact, the practice of hiring people to fight battles goes back far, as history can tell. These so called “mercenaries” (see below) are basically individuals fighting for whoever paying the highest price. They acquired quite a pejorative connotation of ruthless and disloyal people, willing to fight anywhere. The present situation is however slightly different, as the concern is not any more one of individuals, but one of entire companies, real private businesses with their own resources and well established organisation. Whereas mercenaries are fighters forming temporary and ad-hoc groupings, these businesses offer a much wider range of services including combat services amongst many others.

Mercenaries

Mercenaries are individuals taking part in an armed conflict who are essentially motivated by profit and do not show much concern for who or what they are fighting for. It is one of the world’s oldest professions. Be it in ancient history (Egyptians and Greeks), the Middle Ages (feudal armies all over Europe) or modern history, there are many cases of rulers hiring individuals to supplement their troops. The best and most complete definition of a mercenary is probably to be found in the 1st Additional Protocol to the Geneva Conventions of 1977:

Art 47. Mercenaries

1. *A mercenary shall not have the right to be a combatant or a prisoner of war.*
2. *A mercenary is any person who:*
 - (a) *is specially recruited locally or abroad in order to fight in an armed conflict;*
 - (b) *does, in fact, take a direct part in the hostilities;*
 - (c) *is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;*
 - (d) *is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;*
 - (e) *is not a member of the armed forces of a Party to the conflict; and*
 - (f) *has not been sent by a State*

In fact, “the private military market was delegitimated by the end of the 1800s for both material and normative reasons. The practice of hiring foreign soldiers was universally condemned and legislated against, culminating in the Geneva Conventions that withdrew from mercenaries the legal protections that soldiers enjoyed in warfare” (Singer, 2006, p. 42). There is also the International Convention

²⁴ While regular US or UK infantry soldiers get paid an average of 70 US\$ a day, PMSC in Iraq typically pay their employees from 500 up to 1’500 US\$ a day (War on Want, *Corporate Mercenaries*).

against the Recruitment, Use, Financing and Training of Mercenaries of 4th December 1989, although there only are 30 State parties²⁵ not including any of the members of the UN Security Council nor any other big power. The point is that PMSCs and their staff do not strictly belong to the category of mercenaries although some of their employees might have been individual mercenaries in the past.

How many, how big, how much worth?

Nowadays, there are hundreds of PMSCs around the world operating in more than 50 countries worldwide²⁶, but estimates of the exact number of such firms, the staff they hire and the amount of money they receive from the contracts they get vary greatly. What remains clear is that the figures are high and on the rise.

Whereas the ratio of military personnel to private contractors was 50/1 during the Gulf War (1991), it rose to 10/1 at the beginning of the war in Iraq in 2003 before reaching 2/1 in the case of this same conflict according to a 2007 internal Department of Defence census (meaning the real ratio could be even higher)²⁷. “In 2006, the Director of the Private Security Company Association of Iraq estimated that 181 of such private security companies were working in Iraq” (Singer, 2007). The USA is the country with the largest number of such companies, and there also exist trade associations such as the International Peace Operations Association (IPOA) to defend the sector’s interests. Another country with quite a few such companies is the United Kingdom, but others like Canada, South Africa, Israel, Germany, France, the Netherlands and Norway, to name only a few, do also have such companies. As PMSCs get contracts mostly with governments, but also with International Organizations, NGOs and media organizations, worth millions of dollars²⁸, experts say that **the combined annual revenue of the whole industry worldwide could be around US\$100 billion** (figure for 2003), and that it would probably reach (at least) US\$200 billion by 2010²⁹.

2. Outsourcing in the Security Sector: Challenges posed by PMSCs and how to address them

“For all the focus on contractors as a private market solution, the costs that they hope to save were political in nature”

²⁵ State parties to the Convention are: Azerbaijan, Barbados, Belarus, Belgium, Cameroon, Costa Rica, Croatia, Cuba, Cyprus, Georgia, Guinea, Italy, Liberia, Libyan Arab Jamahiriya, Maldives, Mali, Mauritania, Republic of Moldova, New Zealand, Peru, Qatar, Saudi Arabia, Senegal, Seychelles, Suriname, Togo, Turkmenistan, Ukraine, Uruguay and Uzbekistan (as of 4th December 2007).

²⁶ *Corporate Mercenaries: the threat of private military and security companies*, War on Want report, October 2006, 28 p.

²⁷ Singer, Peter W., *Can't win with 'em, can't go to war without 'em: private military contractors and counterinsurgency*, Brookings policy Paper n°4, September 2007, 21 p.

²⁸ From June 2004 to August 2006, Blackwater was paid US\$ 230 million by the Bush administration just to provide diplomatic security overseas (J. Scahill, *Mercenary jackpot*, The Nation, 28 August 2006 in War on Want report, 2006)

²⁹ Avant, Deborah (2005) *The Market for Force: The Consequence of Privatising Security*, Cambridge University Press, New York, p.9, as quoted in Born, Hans, Marina Caparini and Eden Cole (2007) *Regulating Private Security in Europe: Status and Prospects*, DCAF Policy Papers n°20, p.1

During recent years, there have been various incidents raising one after the other the problematic issue of the privatisation of the security sector. Be it the killing of 17 Iraqi civilians in Baghdad on September 16th 2007 by Blackwater agents (see below) or the overbilling by Halliburton in 2004 in its contracts with the US government to provide fuel to troops in Iraq, to name just two well known ones, these events are only the visible signs of a common practice challenging the traditional concept of armed forces.

Case study : Blackwater in Iraq

The shootings by Blackwater private security company on September 16th 2007 in Iraq, resulting in the death of 17 civilians and the wounding of 13, raised once again the problematic issue of PMSCs. Blackwater said it reacted “lawfully and appropriately” to an attack on a U.S. convoy, although the Iraqi Interior Ministry says Blackwater’s agents opened fire first and at random after mortar rounds landed near the convoy. This came at a time when in the U.S. the popularity of the war in Iraq was at its lowest level since it began.



There have been reactions both from the governments and civil society. The Iraqi Government announced the suspension of Blackwater’s license and said it will review the legal status of all private security firms working in the country. In the U.S., a hearing of Blackwater’s CEO Erik Prince has been undertaken at the Congress as Secretary of State Condoleezza Rice promised to the Iraqi Prime Minister a

through investigation into what happened. Mr Richard Griffin, a representative of the State Department, has also been submitted to the procedure. There have been complaints from US army generals and officers about Blackwater’s agents’ outrageous behaviour, which is opposite to the army’s policies. Codepink, a women’s peace action group, went to protest at the company’s office and the State Department in Washington to call for their expulsion from Iraq. This action is part of the global movement calling for the end of the war in Iraq.

Although Blackwater resumed its work in Iraq after a short three-day suspension, this particular story raises more general concerns about the effects of contracting PMSCs on military objectives, political issues and diplomatic relations. There are staggering amounts of taxpayers’ money involved in these contracts (\$678 millions on Blackwater alone since the Iraq war began), and these companies often maintain very good and close relations with extremely influential political and military personalities.

Since the Westphalia Treaty of 1648, States are the ultimate owners of authority and are responsible for their own security (a traditional conception that is largely questionable) and that of their people (a newer more human-centred conception). To do so, they claim the monopoly over the use of coercive force: internal forces such as police or gendarmerie to respond to internal threats and military forces to respond to external threats. These forces are controlled by the State, accountable to it for their actions and they engage the State's responsibility. There are specific national and international legal instruments defining their mission and limiting their actions as well as judicial procedures ensuring their observance.

Privatisation and the security sector

Since the 1990s, the phenomenon of privatisation affecting most developed States reached the security sector. Basically, privatisation is the externalisation of functions carried out by the State or by State owned companies (such as postal services, transport, electricity, telecommunications...) to private companies. This practice opens new competitive markets that are believed to improve the quality and the price of the services provided and so allows for more flexibility. But there is also the risk of precariousness of services, exclusion of certain beneficiaries as well the emergence of new monopolies.

Privatising the security sector began at the end of the cold war in a period of globalization and demilitarization. It allows downsizing of armed forces and more professionalism in services. But at the same time **States lose their monopoly over the use of coercive force and become dependent on such companies**³⁰. This complicates the overview, control and accountability of/in the security sector³¹ as well as creating confusion for the public.

Legal limbo

The problem with private military and security companies is that **they are not subjected to the same regime as regular armed forces**. In fact, they operate in a deeply unclear legal context since they are not part of regular armed forces. In regard to international treaties relevant to conflict and war³², they are neither protected "non-combatants" since they are armed and act on behalf of the government, nor "lawful combatants" as far as they do not wear regular uniforms and do not answer to a military command hierarchy. Legally, such companies are bound only to national legislation and are not subjected to military codes of justice. This is quite problematic as this legislation most often is that of the contracting State, so political will to try them in court in the case of an incident will be quite low.

Private companies for public security

Besides this legal aspect, the problem also lies in the intrinsic nature of these companies. Being private businesses, they work on the basis of contracts and are **profit orientated**. In this perspective, their objective is to get contracts and to fulfil them well in order to get others. They have different agendas and do not

³⁰ Singer, Peter W., *Can't win with 'em, can't go to war without 'em: private military contractors and counterinsurgency*, Brookings Policy Paper n°4, September 2007, 21 p.

³¹ Small, Michele (2006), *Privatisation of Security and Military Functions and the Demise of the Modern Nation-State in Africa*, ACCORD Occasional Papers, Vol. 1 N°2, 44 p.

³² The four Geneva Conventions of 1949, its two Additional Protocols of 1977 and The Hague Convention of 1907.

have the same goals and loyalties as the institutions contracting them, nor are they exposed to the same concerns. As the contractors never get complete information about their motivations and intentions, misunderstandings can result. Moreover, in modern wars success depends very much on the troops' ability to win people's trust and support, an issue that PMSCs seem to show very little concern for. We could add to this some basic constraints of outsourcing, be it the transaction costs involved in this kind of procedure or the need to establish extra audit mechanisms.

3. What can be done?

In order to fully address the PMSCs issue, we have to identify what can be done. First of all we must know how to face these challenges as **self-regulation of the sector is certainly not the solution**. But then we also have to take a position on the question of whether PMSCs should be used for a public service in such a core function as security or not, and if some do think they should, then a debate has to take place on what type of services they are allowed to provide.

Let us list the challenges we have pointed out and propose some responses. We will distinguish between a first set of measures that have to be taken to regulate the current situation, and a second additional set of measures that we believe are essential in order to truly address the core problem in the longer term.

First set of measures: Strengthening control over PMSCs

- **Lack of regulation at both national and international levels** → there is a **need for new legal bases to regulate PMSCs activities**. It is parliament's role to promulgate **laws** to regulate the sector just as there are laws regulating any other sector. There is no reasonable argument to exclude the sector from legal regulation. In the view of the centrality of defence and security in the priorities of a state, the argument is rather the opposite one and should allow for a very strict and detailed regulation. Furthermore, governments should negotiate an **international treaty** on the specific issue of PMSCs and not just on mercenaries (ref. International Convention on Mercenaries, 1989), as this designation became quite obsolete. As any international treaty, it would be binding for signatory states and would work as a general framework containing minimal conditions that have to be observed when hiring PMSCs. In that sense, such a treaty would not only be constraining for states, but it would also provide them with possibilities to address violations committed by PMSCs on their territory. Whereas the chances for an international treaty on the issue to be negotiated are quite low, we believe it is at the national level where regulation can best take place.

- **Lack of overview/accountability procedures** → in order to control PMSCs, it is necessary to clearly know what they do and how they do it. This includes two steps: firstly, when having recourse to PMSCs, their mandate has to be clearly established for every single operation, and secondly, their work has to be monitored at every stage. Therefore, **strict licensing requirements, specific codes of conduct as well as special control and reporting procedures have to be introduced**. As far as such measures can only be established by law, it is again parliament's role to make steps in this direction.

- **Lack of transparency** → public awareness of PMSCs issues must be enhanced and detailed information concerning the frequency and significance of the use of PMSCs must be made available. Appropriate media coverage of PMSCs issues³³ is a key element in that sense. But there also is the need for a commitment to more transparency from the governments. Whereas some states don't even provide clear information on their defence budget, there are hardly any states revealing figures of PMSCs use. Another aspect of the lack of democratic control is the role played by PMSCs executives in the decision making process. Be it because of their relations to all kinds of officials both in the government and the military, their past positions or their economic power, some of them greatly influence the policy towards PMSCs and even the broader defence and security policy. A clear separation of powers (legislative, executive and judicial) is vital for the democratic functioning of any society. Similarly, it is also very important that the public and private sector remain separate.

- **Lack of political will** → in the view of the three elements discussed above, this is probably the main problem when addressing the challenges posed by PMSCs. If there were a strong political will to really control and hold accountable all PMSCs when being contracted, this first set of measures would probably not have been discussed. The point here is that contracting PMSCs to carry out military functions allows the state to keep political costs of any conflict-related engagement low. The alternatives to contracting PMSCs are either asking for additional regular military forces or trying to persuade allies to engage. Whereas the first alternative strongly affects public support for the war effort, the second implies compromises in terms of command and engagement modalities (Singer, 2007). Voters need to pressure their representatives for a commitment towards a transparent, honest and truly representative engagement in politics, including military affairs. Spending enormous amounts of public money in contracting PMSCs in order not to lose political support is not in accordance with such a core assumption of democratic governance.

Second set of measures: debating the use of PMSCs

Besides all the issues discussed above, a broader debate on the use of PMSCs by governments has to be undertaken. We see two alternatives:

- **PMSC armed engagement on the battlefield is undesirable** → the most problematic aspect of PMSCs engagement is probably when taking place directly on the battle-field. In this context and as discussed above, PMSCs do not respond to the military chain of command and have other concerns than the regular armed forces. As such, they represent a danger for civilians as they often go unidentified and their actions are quite unforeseeable. They can also harm military and political interests of the people contracting them, especially in the case of counterinsurgency operations³⁴ where success depends much on the ability to win the trust of local population. On a more conceptual level and regarding the

³³ As mentioned in Singer's 2007 report, according to a study by the Project for Excellence in Journalism called "A media mystery: Private Security Companies in Iraq", only less than 1% of the war coverage by the US press concerns or mentions PMSC.

³⁴ Singer, Peter W., *Can't win with 'em, can't go to war without 'em: private military contractors and counterinsurgency*, Brookings Policy Paper n°4, September 2007, 21 p.

functions of a state, we argue that the monopoly of legitimate violence with all the responsibilities implied must remain a strictly public one. This is why private companies should not be allowed to participate in combat operations. A solution here would be to limit PMSCs to strictly logistical or supportive functions

- **PMSCs should not be used at all to provide public security and defence** → whereas the core argument here is basically the same as in the previous point, it goes a little further. As defence and security are the most basic functions states need to provide for, they should be carried out exclusively by public agents, not only in direct combat operations but in all kinds of related activities. It is not sustainable to spend public money on private companies in order to contribute to the security and defence of all. This policy would allow for a clear and unitary organisation of armed forces with a same regime applicable to all of them.

II. DEMOCRATIC CONTROL OF NUCLEAR WEAPONS?

‘So long as any state has nuclear weapons, others will want them. So long as any such weapon remains, there is a risk that they will one day be used, by design or accident. And any such use would be catastrophic.’

Weapons of Mass Destruction Commission, 2006³⁵

The challenge

In the view of their unprecedented and incomparable destructive power, nuclear weapons play a key strategic and political role, and hold a prominent place in international security concerns. Nuclear weapon states consider them as indispensable to defend their sovereignty (an argument that obviously doesn't help the cause of non-proliferation), and have usually conceived their use as the ultimate resort in the case of a threat to the very survival of the state³⁶.

As the stakes are so high, nuclear weapons policy has always been developed under high secrecy. ‘Even in advanced democracies, the balance between secrecy and openness has arguably tilted in a way that largely exempts national decisions on nuclear weapons capabilities from normal democratic controls’³⁷. We argue that it is precisely because the stakes are so high that principles of democratic civilian control should strictly apply. A nuclear attack on a nuclear weapon state would immediately result in retaliation strikes and a rapid escalation that would have disastrous consequences not only for both parties, but for the whole planet³⁸. Citizens not only of nuclear weapon countries but also of any other country in the world need to be well aware of the imminent and fateful risks the existence of nuclear weapons embody. Civil society therefore has a very crucial role to play in discussing nuclear issues, and raising them in the public and the political debate. We will quickly look at facts about nuclear weapons and their regulation, before going through the nuclear weapon decision making process to see who makes the decisions on which issues, why secrecy is so high and what roles civil society should play.

Facts

Approximate figures for the number of nuclear warheads deployed or in reserve worldwide vary between 27 000 and 31 000³⁹. They are now in the decrease since

³⁵ *Weapons of terror : Freeing the World of Nuclear, Biological and Chemical arms*, The Weapons of Mass Destruction Commission, final report, Stockholm, Sweden, 1 June 2006, p.60

³⁶ There are however changes in this conception, linked to the newly developed applications of low yield tactical and earth penetrator nuclear weapons. In a report released on 21st January 2008 by five of its most senior former military officers and strategists, NATO is considering pre-emptive nuclear strikes as a key option to halt the imminent spread of nuclear and other weapons of mass destruction (*The Guardian*, 22nd January <http://www.guardian.co.uk/nato/story/0,2244782,00.html>).

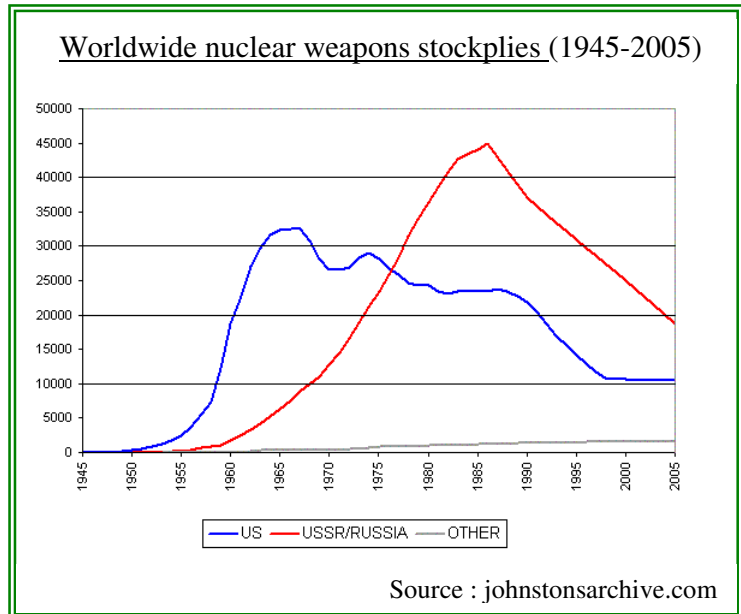
³⁷ Born, Hans (2007) *National Governance of Nuclear Weapons : Opportunities and Constrains*, Policy Paper n°15, Geneva Centre for the Democratic Control of Armed Forces (DCAF), p.2

³⁸ It is commonly assumed that a large scale nuclear war would bring about worldwide devastation as a consequence of the nuclear winter it would cause.

³⁹ Figures vary due to the uncertainties of the status of some weapons (i.e. whether deployed, non-active or dismantled).

1985. 96% of these nukes are in the hands of the two biggest nuclear weapon states: US and Russia. The total yield of all these weapons is approximately 5 000 megatons, which is about 200 000 times the explosive yield of the bomb used on Hiroshima⁴⁰.

There are 9 known nuclear weapon states. Five of them are defined as such by being parties to the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (Non-Proliferation Treaty, NPT), namely the USA, Russia, France, the United Kingdom and China. Three of the remaining de facto nuclear weapon states conducted nuclear tests, namely India in 1974, Pakistan in 1998, and North Korea in 2005⁴¹. Israel maintains high opacity on its nuclear weapons program, and although it is widely believed to possess nuclear weapons, it never actually confirmed or denied it.



International regulation

Since they were first (and fortunately last) used during the closing days of World War II by the USA on two Japanese cities on August 1945, nuclear weapons remain highest in the hierarchy of weapons in terms of destructive power. Due to their devastating immediate and long term effects, and the post WWII rise in tensions between the USA and USSR leading to the ensuing arms race, the international community became rapidly concerned about the nuclear weapons issue. In order to limit both the proliferation of nuclear weapons to other countries and the environmental effects of nuclear testing, a variety of treaties have since been negotiated, although there is still no nuclear weapons ban treaty.

The 2 major treaties regulating nuclear weapons issues are the 1963 **Partial Test Ban Treaty** (prohibiting all nuclear weapons test detonations except underground) and the 1968 **Non-Proliferation Treaty**⁴² (puts restrictions on the signatories' activities so they can transfer non-military technology to other members without the fear of proliferation). Another major treaty is the **Comprehensive Test Ban Treaty** adopted in 1996 requiring all states parties 'not to carry out any nuclear

⁴⁰ Ware, Alyn, *Nuclear Stockpiles*, <http://www.nuclearfiles.org/menu/key-issues/nuclear-weapons/basics/nuclear-stockpiles.htm>

⁴¹ North Korea withdrew from the Non-Proliferation Treaty in 2003, and in 2005 claimed to possess functional nuclear weapons. It reported a successful test on October 2006, although most experts and intelligence officials believe it was only partly successful, the yield of the bomb being lower than 1 kiloton.

⁴² There are only 4 States that are not parties to the NPT, and this is particularly inconvenient as they are all de facto nuclear weapon states (India, Pakistan, Israel and North Korea)

weapon test explosion or any other nuclear explosion’⁴³ (civil or military), but it unfortunately never entered into force as some countries whose signature and ratification is required for the Treaty’s entry into force never did or refused to do so. There are also various other specific bilateral treaties such as SALT I&II and START I (limiting numbers and types of weapons between the US and the Soviet Union) and a few other regional Treaties establishing **nuclear weapon free zones** (notably in Latin America and Caribbean, many African countries, Central Asia, South-East Asia and the Pacific).

In 1996, the International Court of Justice issued an *advisory opinion on the legality of the threat or use of nuclear weapons* by request of the United Nations General Assembly. The decision was that although there was no ‘prohibition of the use or threat of nuclear weapons as such ... (it) would generally be contrary to the rules of international law applicable in armed conflictHowever, ... the Court cannot conclude definitely whether ... (it) would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake’. **It has thus never been definitively established that nuclear weapons are illegal.**

Nuclear weapons decision-making⁴⁴

Nuclear weapons decision-making is not just about who is in the position to ‘push the red button’ to launch a nuclear attack. As we have already seen more generally for the armed forces, it is a process comprising various stages, people and resources. Nuclear weapon decision-making ranges from acquisition, maintenance and upgrading, to nuclear strategy, plans for use and chain of command. Let us quickly go through these various stages in our democratic civilian control perspective focusing on opportunities for civil society.

- **acquisition:** although acquisition of a nuclear weapon is a very political decision in nature (although especially in the cases of China and Pakistan political and military power are closely intertwined), the decision of acquisition has hardly ever been subject to a public debate. ‘No country has yet acquired nuclear weapons after a meaningful public debate on whether to do so, and parliamentary knowledge, not to speak of oversight or control, of the basic acquisition has been minimal’⁴⁵. The ‘Manhattan project’ (1939-1945) that led to the construction of the first nuclear weapon in the US was run under highest secrecy as a response to the fear that Nazi Germany was developing nuclear weapons for its self. Although in all nuclear weapon states the decision to acquire a nuclear weapon as such was thus made by civilians, it was limited to the very inner core of the executive, and it was only made public once the weapon was operational.

⁴³ Comprehensive Nuclear Test Ban Treaty, 1996, art. 1

⁴⁴ Most of this paragraph is taken from Born, Hans (2007) *National Governance of Nuclear Weapons : Opportunities and Constrains*, Policy Paper n°15, Geneva Centre for the Democratic Control of Armed Forces (DCAF), 18p. and Slocombe, Walter B. (2006) *Democratic Civilian Control of Nuclear Weapons*, Policy Paper n°12, Geneva Centre for the Democratic Control of Armed Forces (DCAF), 26p.

⁴⁵ Slocombe, Walter B. (2006) *Democratic Civilian Control of Nuclear Weapons*, Policy Paper n°12, Geneva Centre for the Democratic Control of Armed Forces (DCAF), p.8

- **maintenance:** as with any type of armed forces and arsenals, the question of if, how and how much to modernise and strengthen them is a crucial one. Once the possession of nuclear weapons was revealed and after a certain time, secrecy declined in a few cases, notably in the US and to a lesser extent in the United Kingdom, whereas it remained very high in most of the others (especially in Israel as they even still don't acknowledge possessing such weapons). Parliamentary discussion and oversight of nuclear weapon maintenance thus remains very limited in almost all cases.

- **nuclear weapon strategy:** nuclear weapons strategy is about how the country perceives its nuclear weapons in regard to national security. As such, basic principles of nuclear weapon policy should thus be part of the national security policy (NSP), but this is not the case in any nuclear weapon state. Although such a strategy always exists, it is highly confidential and known by only a very few top executives. The US is probably the most transparent state in that aspect, as there are quite explicit official statements on the nature of the force and nuclear weapon policy. There are also some official statements both in the United Kingdom and France, although much less explicit. The other nuclear weapon states hardly say anything more than acknowledging possession of such weapons (except Israel that does not even do that).

- **operational planning:** operational planning is about how the nuclear weapons are to be used to implement the nuclear weapon strategy in the case a nuclear strike is considered as necessary. It thus includes nuclear weapon storage and deployment prescriptions as well as targeting plans in relation to the objectives (military and political) that are to be achieved. All these plans must take into account the intense time pressure under which such decisions would have to be made within, as well as the adversary's efforts to prevent such an attack. It is kept absolutely secret, as its revelation would make the nuclear weapon force extremely vulnerable. As a military strategy consideration, it is elaborated at the level of the national security organs, in consultation with the military establishment.

- **command structure:** the command structure concerns what authority is able to launch a nuclear attack, and how to carry it out. While extremely simple in principle, the nuclear weapon command structure is of utmost importance and highly complex on a technical level (balance between 'the need for assurance of no use without authority against the need for certainty of use when authority is given'⁴⁶). This stage of the nuclear weapon decision making is the only one where principles of democratic civilian control applies, as it is always the most senior political leadership that is at the top of the command structure and at the same time is the only one capable of launching a nuclear attack. The nuclear weapon command structure is similar to the military chain of command we identified in the first part of this paper (highest political authority → head of the ministry of defence → security council → joint chief of staff).

⁴⁶ Slocombe, Walter B. (2006) *Democratic Civilian Control of Nuclear Weapons*, Policy Paper n°12, Geneva Centre for the Democratic Control of Armed Forces (DCAF), p.10

This summary indicates that it is the executive that plays the most central role in control of nuclear weapons. The head of state, together with the head of the ministry of defence, a couple of senior security officials and some executive agencies, monopolise almost all decisional power on nuclear weapon issues. The scientific-industrial-military community is also highly influential, although its formal decision power is rather limited. Everything relative to nuclear weapons requires extremely specialized and extensive knowledge, organizations and infrastructures. As they are unique and operate on highly technical matters under deep secrecy, they enjoy a rather large autonomy. 'Control of the various military-industrial complexes is a fundamental challenge to democratic (or indeed any) political control of a military establishment, but nowhere is the problem as acute as in the case of nuclear weapons'⁴⁷. The role of parliaments in nuclear weapon issues is extremely remote, and even almost non-existent in most of the cases. There is no share of power between the executive and the legislative, and this fails to comply with the most basic principles of democracy.

Whereas civil society does not have any influence at the decision making level, it has however contributed to stimulating the debate on nuclear weapon issues. Especially in the US, but also in the United Kingdom and France, peace movements have sensitized public opinion about the risks inherent to the existence of nuclear weapons and the need for their abolition. Some think tanks are also quite active on nuclear weapon policy, although it is rather difficult for them to have substantive impact. Some other civil society groups and particular political parties have however also had quite an influence in pushing national nuclear weapon program further than it would otherwise have been.

Recommendations

We will now make some recommendations about how nuclear weapon decision-making could be more democratic, and how civil society could have more influence on nuclear weapon policy, especially through its fundamental role in raising public awareness.

- **lack of transparency** → we have seen that a fundamental characteristic of nuclear weapon decision making is the very high level of secrecy that prevails, which means that all the information on nuclear weapon policy is highly confidential. However, for parliamentary and the public to be able to discuss nuclear weapon issues, **there clearly is a need for more accessible information**. The type and specificity of information needed for parliaments and the public is certainly not the same. Parliaments need more detailed, precise and complete information (both about costs and policy), whereas the public should at least at least know the global costs and the governments' basic position on when a nuclear attack would be considered. If parliaments would have access to more information and discuss nuclear weapon issues, the public would probably also be better informed.

- **lack of parliamentary oversight** → nuclear weapon decision making, funding and policy almost completely escape parliamentary oversight. Parliaments, in their

⁴⁷ Slocombe, Walter B. (2006) *Democratic Civilian Control of Nuclear Weapons*, Policy Paper n°12, Geneva Centre for the Democratic Control of Armed Forces (DCAF), p.14

function as a legislative body, have to set clear legal prescriptions for what information they must have access to, and use their powers to obtain it (such as hearings and the establishment of special monitoring organs, especially for the scientific-industrial-military community). Given that it is on budget matters that parliaments exert most of their influence in the defence sector, **the funding of nuclear weapon programmes should definitely also be submitted to the normal budgeting procedure as part of the defence budget.**

- **lack of public awareness** → the public is poorly informed about and definitely not aware enough of nuclear weapon decision making, nuclear weapon policy and the immense, acute and imminent⁴⁸ threat the existence of nuclear weapons represent. The lack of information is one problem, but there are many others such as the lack of diffusion of this information, the lack of education about the real dangers of nuclear weapons, and the lack of public and free discussions and debates on nuclear weapon issues. **In this area, civil society undoubtedly has a very crucial role to play, and although there have been and still are some remarkable movements and campaigns not only in nuclear weapon states, but almost worldwide, there is a mobilization potential that must be taken advantage of.** A claim that in a few countries has proven to stir up public debate and engagement on nuclear weapon issues is the **deliberate and unilateral decision not to develop nuclear weapons**, such as in Japan or in Germany, although this has also occurred under big pressures from part of other countries. Whereas the perspectives for an international treaty banning the production, possession and use of nuclear weapons seem quite low, such public debates in more countries might have quite a strong impact on the international community.

From the existence of nuclear weapons to a nuclear weapon free world

As we all know, there is no international treaty banning nuclear weapons, although there is some kind of a consensus that the world should get rid of them. Despite the Non-Proliferation Treaty, some disarmament agreements and specific international bodies to discuss, negotiate and monitor nuclear weapon issues (Conference on Disarmament, International Atomic Energy Agency...), there has been very little progress towards nuclear disarmament, and the spread of nuclear weapons has not yet been stopped. Scenarios of further proliferation waves, especially to weak, undemocratic and rogue states are particularly frightening, as well as would be the possession of such weapons by terrorist groups. We therefore are deeply convinced that nuclear weapons should be definitely outlawed, and that the world should be free of the permanent threat of a nuclear disaster. We will therefore resume some of the main recommendations of the Weapons of Mass Destruction Commission about Nuclear Weapons. The Commission is deeply convinced that prevention of the proliferation of nuclear weapons and reduction of the threat and the number of existing nuclear weapons must be pursued and remain the main priorities, and that these are only means to achieve total elimination of nuclear weapons.

⁴⁸ Of about 30 000 nuclear weapons existing worldwide, 4 600 are on high alert status (ready to be launched at a few minutes notice) – see Ware, Allyn, *Nuclear Stockpiles*, <http://www.nuclearfiles.org/menu/key-issues/nuclear-weapons/basics/nuclear-stockpiles.htm>

- **stronger implementation of the Non-Proliferation Treaty:** since the NPT has been extended indefinitely in 1995, all states parties should make effort to comply and make others comply with their engagements, and fully cooperate with the IAEA in the monitoring of the nuclear fuel cycle.
- **ratification and entry into force of the Comprehensive Test Ban Treaty:** this treaty would put a definitive end on all kinds of nuclear weapon tests and other nuclear explosions. If it entered into force, it would seriously limit further developments of nuclear weapons by nuclear weapon states and the development of nuclear weapons by non-nuclear weapon states, as test explosions are a key step in the design, development and refinement of nuclear weapons
- **ending the production of weapons-usable fissile-material:** the negotiation of a fissile material cut-off treaty (currently under discussion at the Conference on Disarmament) would not bring about disarmament, but it would stop the fresh supply of plutonium and highly enriched uranium necessary for the production of nuclear weapons.
- **revision of national nuclear and security policies:** a clear no-first use policy by all the nuclear weapon states would reduce the risk of a sudden nuclear attack resulting from a pre-emptive strike. Possessing nuclear weapons while asking non-nuclear weapons states not to rely on nuclear weapons for their security is obviously contradictory. It is through a redefinition of national security, planning for defence without nuclear weapons and continued, strong and open dialogue accompanied by careful, sensible and practical measures between nations that nuclear weapons may eventually be outlawed.

CONCLUSION

The armed forces are the state's instrument to provide for its security and that of its citizens. They thus play a very key function. But as we have seen through our study, they present various challenges to very basic principles of democratic governance, especially in terms of transparency and accountability. The answer to these challenges is obviously not a simple one, and it requires a strong commitment, collaboration and engagement among all political elites, both at national and international levels. But since this is not always the case, civil society undoubtedly has a very crucial role to play in facing these challenges. Raising public awareness and providing expertise to actors engaged in defence and security matters seem to be the most effective means.

Although it is often extremely difficult to precisely tell who is doing what and at what stage, we hope this study may contribute to a better understanding of the decision-making process in the defence and security sectors, especially in regard to the possibilities for civil society to engage in and exert influence on it. In the view of the constant and alarming rise in global defence spending and the increasing competition over resources generating tensions within and between countries during the coming decades, it is more than ever necessary that civil society actors become aware of their role and mobilise around these issues in order to avoid further escalations, conflicts and wars.

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