



The legal framework of MMPs: between constraint and ethics

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In recent years, SMPs have been the subject of international processes of legal legitimacy that incorporate a minimum of statutory protection for assets in this sector.

National laws and international texts as guarantees

Faced with the distinction that must therefore be made between private military companies and private security companies - or even ESSDs - international legislation may seem inappropriate since mercenarism is globally condemned by the Geneva Convention (12 August 1949 and Article 47 of Additional Protocol I of 1977), the Organisation of African Unity Convention for the Elimination of Mercenarism in Africa (3 July 1977) and the International Convention against the Recruitment and Use, Financing and Training of Mercenaries (1989).

Admittedly, as of 2003, the United States established a licensing regime for PMCs provided that they are registered on national territory, licences which are issued by the Defence Trade Control Office. On the other hand, in Great Britain, registration of a company as an SMP is done on a voluntary basis only. This gives the impression of legal uncertainty, even though mercenarism in the strict sense has been prohibited since the Foreign Enlistment Act of 1870. In absolute terms, British SMPs are very much intertwined with the Foreign Office and MI6.¹¹

In France, a carefully legislated concept

In France, we reiterate our commitment to the Act of 14 April 2003, which condemns and punishes all acts of mercenarism.¹² - to the Montreux Agreement (2008)¹³ as well as the Code of Good Conduct (ICoC) adopted in 2010 and amended in 2013¹⁴. However, the Montreux Document is to date supported by only about 50 States and three international

organizations, namely the European Union (EU), the Organization for Security and Cooperation in Europe (OSCE) and the North Atlantic Treaty Organization (NATO).

In the early 2010's, the French government suggests changes in the perception of MMPs. In February 2012, two deputies, Christian Menard (PS) and Jean-Claude Viollet (LR), submitted a report to the Defence Committee of the French National Assembly in favour of the introduction of PMS in France.

However, in 2013, the Defence Minister, Jean-Yves Le Drian, in office from 2012 to 2017, announced that there were no plans to use PMCs. This would be tantamount to mercenarism, which is contrary to our republican tradition and our convictions.

Nevertheless, in May 2016, MPs Menard and Viollet, joined by MPs Philippe Folliot (UDI) and Francis Hillmeyer (UDI), tabled an amendment asking the government to draw up an evaluation report on the implementation and supervision of SMP activities. Finally, the amendment is rejected.

However, a constructive step was taken in 2014, with the application of a law on July 1, 2014 by the Ministry of Transport, legalizing the use of contractors for the protection and security of merchant ships against piracy.

In the end, attempts to promote specific units of contractors who would conduct combat operations in the strict sense of the term were quickly dissipated. Some might retort that we have the Foreign Legion wrongly assimilated by neophytes to a foreign corps. However, this elite troop fully belongs to the French Army.

If, in a few decades, the culture of the profession of arms is transformed in France at the same time as the regalian power, it is not impossible to foresee possible recourse to private units against a background of "increased" soldiers being made available. But the increasing interweaving of intelligent and artificial weapons tends to blur the picture and make it unlikely, in one way or another, that a clear approach to the army model will be imposed in one or two generations.

Conclusion

In any case, there are still major questions about the future positioning of PMS in military affairs. Indeed, it is clear that some of them are more likely to become agencies with classified missions, run to defend economic interests against a backdrop of geopolitical rivalries, as can be seen in Africa in particular. Conversely, PSS are better perceived but do not fall into the same register of activities at all, since they are far removed from conventional or specialised military operations.

On the other hand, it is the very nature of a changing executive power that also raises questions. The observable trend of "state within state" is increasing internationally, so how can credibility be ensured? How then can the credibility of counter-powers be ensured in order to avoid the setting up of a battle order of contractors outside the legislative or legal framework, to respond to partisan or strictly mercantile interests? For the reflex of self-control is already a reality in the paramilitary environment where the profiles of the actors of influence reveal the links with the intelligence community and special units of

the French army. Can't such microcosms of expertise also be detrimental to a broader approach to socio-cultural and socio-economic realities, far from the mere art of operative art?

Are we heading towards a decline of nation-states and the development of conflicts between warring entities, such as contractor structures and large commercial companies? We can fear, indeed, the weakening of the rule of law states in the face of supranational entities with only ultraliberal, destabilizing motivations, especially since theThis is all the more worrying as Europe is still unable to find a real foothold on the international chessboard and as our concept of the regalian nation-state is showing tangible signs of growing fragility.

11 In 1998, the SMP Sandline International delivered arms to the incumbent president, Ahmad Tejan Kabbah, in Sierra Leone in violation of the embargo in force at the time. The conclusions of the British parliamentary commission in charge of the investigation showed that the Foreign Office and MI6 had given their agreement and ensured support for this operation.

12 Act No. 2003-340 of 14 April 2003 on the suppression of mercenary activity.

13 Montreux Document on "Relevant legal obligations and good practices for States related to the operations of private military and security companies operating during armed conflict". The Montreux Document finalized and signed on 17 September 2008 is the result of the mobilization, as early as 2006, of Switzerland and the International Committee of the Red Cross (ICRC).

14 The Code of Good Practice insists on the guarantee of respect for human rights and humanitarian law.

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