House of Commons

Foreign Affairs Committee

PRIVATE MILITARY COMPANIES

Ninth Report of Session 2001–02
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House of Commons

Foreign Affairs Committee

PRIVATE MILITARY COMPANIES

Ninth Report of Session 2001–02

Report, together with
Proceedings of the Committee,
Minutes of Evidence and Appendices

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Footnotes
In the footnotes of this Report, references to oral evidence are indicated by ‘Q’ followed by the question number. References to written evidence are indicated by the page number as in ‘Ev 12’.
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NINTH REPORT

The Foreign Affairs Committee has agreed to the following Report:

PRIVATE MILITARY COMPANIES

INTRODUCTION


1. In February 1999, our predecessor Foreign Affairs Committee recommended to the Government “the publication, within eighteen months, of a Green Paper outlining legislative options for the control of private military companies which operate out of the United Kingdom, its dependencies and British Islands.” This recommendation followed the Committee’s Inquiry into the involvement of a British-based private military company, Sandline International, in Sierra Leone. Sandline’s involvement resulted in the delivery of arms to Sierra Leone for use by President Kabbah’s forces, in contravention of the United Kingdom’s enforcement of a United Nations arms embargo. As the Committee pointed out, in the Sandline affair “something went very badly wrong.”

2. The Green Paper was eventually published in February 2002, the delay in publication being attributed to the complexity of the issues it considers. In the foreword to the Green Paper, the Foreign Secretary acknowledges the role of our predecessor Committee and describes its recommendation as “a timely and useful suggestion.” In turn, we welcome the publication of the Green Paper. It provides a fascinating and thorough discussion of the issues surrounding the development of private military companies (PMCs), and options for their regulation. We hope that the debate that the Green Paper has prompted leads to the establishment of sound legislation, to ensure that the dangerous, embarrassing and wholly unacceptable events that became known as the Sandline affair are never repeated.

3. We held two oral evidence sessions in June 2002, both of which contributed substantially to our analysis of the Green Paper. On 11 June we heard oral evidence from Lieutenant Colonel Tim Spicer, director of Strategic Consulting International and a former executive of Sandline International; Michael Bilton, a freelance journalist; and David Stewart Howitt, of the Global Dimensions programme at the London School of Economics and Bayard Limited. On 13 July we heard evidence from the Parliamentary Under-Secretary of State at the Foreign and Commonwealth Office, Dr Denis MacShane. We have received substantial written evidence from a range of organisations, which is published at pages Ev X-X. We are extremely grateful to all those who have helped us in our inquiry.

4. The debate about regulating these companies is not only concerned with preventing the damage that an unregulated private military sector may cause. In some circumstances, private military companies may be able to provide security services more efficiently and effectively than states are able to. Such companies have the potential to make a legitimate and valuable contribution to international security. The challenge of regulation is therefore not only to prevent PMCs from inflicting damage, but also to establish how the Government should work with them to maximise the benefits that a properly regulated private military sector can bring.

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2 Ibid., para. 4.
3 Official Report, 2 July 2001, col. 2W.
4 Foreword by the Secretary of State for Foreign and Commonwealth Affairs, Green Paper page 4.
5 In this Report we refer mainly to private military companies, but we include private security companies in this category. As we explain below, drawing clear a distinction between types of company is very difficult, because there is much overlap in the activities that they undertake.
Growth of the private military sector since the end of the Cold War

5. Though the Sandline affair was the immediate trigger for the current debate about regulating PMCs, broader developments in the sector since the end of the Cold War justify a detailed assessment of their role today.

6. One important factor has been the growth in the size of the private military sector globally. The Green Paper discusses this growth at some length, though it notes that “information about private military activity abroad is, perhaps not surprisingly, hard to obtain and is often unreliable.” None of our witnesses was prepared to state very clearly the number of PMCs operating from the United Kingdom now, though Tim Spicer estimated that there are about half a dozen.7

7. It seems clear that international developments arising from the end of the Cold War have contributed to the “supply side” growth of PMCs. Evidence from Kevin O’Brien of Rand Europe8 highlighted the fact that tens of thousands of demobilised soldiers from the former Soviet armed forces have joined private security companies in Russia, of which 12,000 are now registered.9 The Green Paper also notes the effect of the end of apartheid in South Africa on the sector: the “subsequent restructuring of armed forces there, was an important factor in the formation of Executive Outcomes,”10 one of the most well known companies.

8. However, increased demand for private military services has also contributed to the growth of the sector. The United Kingdom’s armed forces were reduced by one third following the end of the Cold War,11 and other countries also attempted to reap the peace dividend in this way. Partly as a consequence of this, there has been an increasing trend towards the outsourcing of functions previously performed by the military. The work of the United States Department of Defense is carried out by 734,000 private sector staff per annum, compared with 700,000 permanent government employees.12 Denis MacShane told us that “the British Armed Forces, like armed forces in other countries and like the United Nations, now rely on private companies to provide training, logistics and security support.”13 This trend is likely to continue.14

9. At the same time, the demand upon states to intervene in situations of instability and human rights abuses is not declining. A consequence of this, as David Stewart Howit: put it, is that “there is a void in the international community’s toolbox or there are tools missing for adequate nation building and stabilising the situation ... in many respects the market is demanding these [private military and security] services and will continue to demand these services.”15

10. We agree with the Green Paper’s conclusion that the growth in the number of PMCs is not a passing phenomenon. The increased size of the sector, the transfer of military and security capabilities—traditionally the domain of states—to private corporations, and the notion that PMCs might be employed in multilateral interventions all raise important new questions about responsibility and accountability for the activities of these companies abroad and the appropriate

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7 Q36.
8 Rand Europe is a research institute based in Cambridge.
9 See Ev 54, para. 5.
10 Green Paper para. 25.
11 See Ev 49, para. 3.
12 See Ev 79.
13 Q121.
15 Q94.
domestic and international legal framework for their operations. We have addressed these questions in our inquiry.

**The changing nature of the private military sector**

11. In the 1960s and 1970s, the private military sector gained a reputation for brutality and exploitation through its involvement in the de-colonisation process.16 This reputation continues to affect perceptions of the sector today and the enduring image of those who work for them is that of the ‘dogs of war’. Private military companies are often “perceived to be operating outside the laws of warfare (an incorrect but oft-cited assumption) and strictly for pay.” Furthermore, the “apartheid background (or, indeed, Soviet Bloc in increasing numbers of cases) of these professional warriors has brought into question their motives for becoming involved in these conflicts.”17

12. The Foreign Secretary, in his Foreword to the Green Paper, argues that “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 and neo-colonial conflicts.” We do not doubt that many of the companies currently providing military and security services to international organisations, private companies and national governments—including our own—do so competently, efficiently and legitimately. We share the Foreign Secretary’s view that one of the reasons for considering the regulation of PMCs is that it may help to “distinguish between reputable and disreputable private sector operators, to encourage and support the former while, as far as possible, eliminating the latter.”18

**Weak states and the threat of international terrorism**

13. In the last decade, the United Kingdom and other Western countries have accepted that they have a moral responsibility to intervene in cases of humanitarian catastrophe or where legitimate states have lost control over their territories. Denis MacShane spoke to us of the need for “all the democracies to accept their responsibilities in this sphere of operations.”19 These responsibilities are now more clearly related to national security than they were before the recent terrorist crisis. The international terrorists who organised the 11 September attacks on the United States used states such as Afghanistan and Sudan to organise training and to gain access to passports, visas and other facilities. Stabilising countries such as these will be important for reducing the threat of international terrorism, and the provision of security is a prerequisite for such stabilisation.

14. The campaign against terrorism is likely to be a long one, and consequently the demands on the United Kingdom’s armed forces are likely to increase.20 As David Stewart Howitt

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16 The 1960s and 1970s had seen decolonization and the recognition of the right to national self-determination. At the same time, concern appeared at the extent to which mercenaries were involved in the decolonization process. The United Nations began to condemn the use of mercenaries and to declare support for national liberation movements, mainly in connection with the independence process taking place in various parts of Africa. In 1968, the General Assembly declared that the practice of using mercenaries against national liberation movements was a criminal act and characterised mercenaries as outlaws. ‘Report of the meeting of experts on the traditional and new forms of mercenary activities as a means of violating human rights and impeding the exercise of the right of peoples to self-determination,’ transmitted by the UN High Commissioner for Human Rights to the UN Commission on Human Rights, 57th session, Geneva, 14 February 2001, E/CN.4/2001/18, page 5.

17 See Ev 49.

18 Green Paper page 5.

19 Q145.

20 See Ev 21. See also Seventh Report from the Foreign Affairs Committee, Session 2001–2002, Foreign Policy Aspects of the War against Terrorism, HC 384, in which we note that many of the necessary instruments in that war are not military in character (see para. 95, p. 29).
pointed out, there is "no spare capacity within the UK armed forces to take on additional long-term security tasks that contribute to nation-building."\(^\text{21}\) The development of a regulatory regime for PMCs would be viewed more positively if, through enabling the Government safely to contract out some of the non-combat roles currently being performed by the armed forces, the pressure on British armed forces could be reduced.

**British Government engagement of private military and security companies**

15. We sought, as part of this inquiry, to learn the extent to which the Government currently engages private companies to perform military and security activities on its behalf. We therefore asked the FCO to supply us with a memorandum detailing "all current contracts between (1) the Foreign and Commonwealth Office, (2) the Ministry of Defence, (3) the Department for International Development, and (a) private military companies, (b) private security companies for activities outside the United Kingdom." We also requested, in respect of each contract, "(i) the name of the company, (ii) the country in which the company is operating under the contract, (iii) the type of work on which the company has been engaged under the contract, (iv) approximate expenditure from public funds on the contract in the last financial year for which figures are available, (v) the duration of the contract and its value over its full life."\(^\text{22}\)

16. The FCO was unable to supply us with this information. They informed us that "Security guards and security management services for many Posts are provided under contract by ... companies that we consider to be private security companies." The reason given for the FCO's inability to supply information about these contracts was that they are "managed locally and details are not held centrally."\(^\text{23}\) The Department for International Development and the Ministry of Defence also have contracts with private military and security companies, but the records for these are also locally managed.\(^\text{24}\)

17. **We conclude that the lack of centrally held information on contracts between Government Departments and private military companies is unacceptable. We recommend that the Government take immediate steps to collect such information and to update it regularly. We further recommend that in its response to this Report the Government publish a comprehensive list of current contracts between Government Departments and private military companies and private security companies, and provides the information requested by the Committee in the Chairman's letter of 18 June to Denis MacShane, which is reproduced in full at page Ev. 44.**


\(^{22}\) Letter from Chairman to Dr Denis MacShane, 18 June 2002, see Ev 44.

\(^{23}\) See Ev 44.

\(^{24}\) Q121 and Ev 44.
EXISTING REGULATORY MEASURES

British legislation

18. The Green Paper states that "Although successive governments have deplored the activities of mercenaries, no effective legislation exists to prevent either their recruitment or their participation in conflict."25 The 1870 Foreign Enlistment Act, which makes it an offence for a British subject to enlist in the forces of a foreign power or to recruit for such forces, has been almost impossible to enforce. The Diplock Report of 197626 proposed that it be repealed or replaced, but no action was taken. It was this weakness of legislation that led our predecessor Committee to recommend a review of options for new legislation for private military companies.27 Its ineffectiveness has been well illustrated more recently by revelations about the recruitment in the United Kingdom of men to train and in some cases serve with Taliban forces in Afghanistan.28 It has been reported that at least 3,000 British-based Islamic extremists have been trained in al-Qaeda and Taliban terrorist camps in Afghanistan.29

International legal instruments

19. The international legal instruments for controlling the negative aspects of private military activity are discussed in the Green Paper. Article 47 of the 1977 Additional Protocol I of the Geneva Conventions, which is set out in paragraph 5, is the most widely used definition of mercenary activity. This definition is employed in the UN Convention against the Recruitment, Use, Financing and Training of Mercenaries, which is the only international treaty applicable to the activities of mercenaries and private military companies.30

20. The NGO International Alert claims that the UN Convention "provides the best starting point for the domestic implementation of international standards prohibiting mercenaries into international legislation."31 The Green Paper discusses the significant problems inherent in the application of Article 47 to the personnel of private military companies.32 The British Government has concluded that the definition used in the UN Convention is unworkable for practical purposes, and has not signed it;33 neither, with the exceptions of Italy and Belgium, have its European partners.

21. The Organization for African Unity has also drawn up a definition of a mercenary; however, the Green Paper argues that this too has severe difficulties in application.34

22. Our predecessor Foreign Affairs Committee, in their report on the Sandline affair in Sierra Leone, noted the shortcomings of the UN Convention, and the Government’s conclusion that the

25 Green Paper para. 61.
26 Report of the Committee of Privy Counsellors appointed to inquire into the recruitment of mercenaries (the "Diplock Report"), HMSO, August 1976.
28 Jihadi groups such as al-Muhajiroun have boasted of recruiting large numbers of British Muslims to fight with extremist groups overseas. See Jason Burke, ‘al Qaeda Britons feared to be back in UK,’ Observer, 2 June 2002.
29 See David Leppard, ‘Bin Laden had 3,000 British fighters,” The Sunday Times, 21 July 2002
33 Green Paper para. 6. On 15 June 1998, the then Foreign Office Minister Tony Lloyd stated: “We have no plans to sign and ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. We have doubts about its legal enforceability in the United Kingdom.” Official Report, 15 June 1998, c16w.
34 Green Paper paras. 7–8.
definition of mercenary used is impossible to employ in British courts. In its Sierra Leone report, the Committee accepted that parts of the Convention definition were "too vaguely drafted" for use in a court of law, but argued that "there is no reason why the definitions used in the UN Treaty need to be adopted verbatim... a tighter definition of mercenary could be adopted in British law so allowing ratification of the Convention." It noted further problems with the Convention, however, some of which related to the recruitment of Gurkhas. The Committee therefore recommended that the Government "reconsider seeking to amend the existing UN Convention against the Recruitment, Use, Financing and Training of Mercenaries but, if this cannot be achieved, that the Government take the lead in initiatives in the European Union, Council of Europe or the United Nations aimed at drawing up a new international legal instrument on the activities of mercenaries."

23. When we asked Denis MacShane about prospects for an international agreement to control PMCs, he replied that "trying to get every country to sign up to a particular policy... is quite difficult. I am nervous of making the best the enemy of the good."

24. While we appreciate these difficulties, we also note the views expressed by International Alert, that "the entering into force of the [UN] convention would represent an important step in the development of a comprehensive framework applicable to mercenaries and would act as an important deterrent to military companies engaging in mercenary activities." We further note that on 3 April 2002 the French Council of Ministers approved a draft Bill (projet de loi) which would impose severe penalties on anyone convicted of directing or organising mercenary activities. The definition of mercenary used in the draft French legislation is very close to that set out in Article 47. This leads us to question whether, if the French Council of Ministers has approved the Article 47 definition of mercenary for their own legislation, this definition is really as unworkable as the British Government appears to believe.

25. A new international agreement to regulate the activities of PMCs would complement and make more effective legislation at a purely national level. We recommend that the Government, as it considers national regulatory measures, also develop a new draft international convention to regulate PMCs which might replace the existing UN Convention against the Recruitment, Use, Financing and Training of Mercenaries. If necessary, the search for a fully international agreement could be incremental, perhaps beginning with the Council of Europe.

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37 We do not accept that the definition of mercenaries in Article 47 of the First Additional Protocol of 1977 to the Geneva Conventions affects the status of the Gurkha Regiment, with particular reference to criterion (c). All of the criteria set out in Article 47 must be fulfilled if an individual is to be defined as a mercenary. Criterion (c) specifies that a mercenary is one who "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." Article 47 is reproduced at paragraph 6 of the Green Paper.
38 Ibid, para. 93.
39 Q171.
41 The Bill would impose "Punishment of seven years imprisonment and a fine of Euro 100,000 for: Directing or organising a group with the objective of recruiting, employing, paying, equipping, or providing military training for a person involved in the activities laid out in Article 436–1" (i.e. for mercenary activities as defined in Article 47).
42 International legal instruments exist for the prosecution of individuals engaged by private military companies. These are discussed in paragraphs 41 to 48 below.
United States legislation

26. The Green Paper outlines other relevant national legislation regimes in Annex B. Of particular significance is the regulatory regime of the United States government. In the United States, arms brokering and the export of military services are covered under the same legislation, the International Traffic in Arms Regulations (ITAR). Under ITAR, registered companies must apply for licences before signing contracts with foreign clients and failure to do so is a punishable offence. Each application is studied by relevant sections in the State Department and by relevant embassies.44

27. International Alert describes the US government’s relationship with PMCs as “perhaps the most mature” in the world, and the regulatory regime as “probably the most developed and comprehensive ... [It] appears to capture the activities of private firms in the US supplying defence services abroad.”45

28. We note the long experience of the United States government in working with private military companies. We recommend that, in considering options for regulation, the Government examine carefully the United States government’s regime for regulating and monitoring the activities of private military companies.

The European Union Code of Conduct for Arms Exports

29. The European Union Code of Conduct for Arms Exports was adopted under the British Presidency in 1998. The considerable progress in developing a co-ordinated EU approach to the export of arms is detailed in the Quadripartite Committee Report on Strategic Export Controls, which noted that the Code was “substantially strengthened” in 2000.46 The Report also noted progress towards the agreement an international code of conduct for arms exports between the European Union and the United States. However, there is no equivalent code in respect of private military services.

30. We recommend that the Government work with European partners towards including the services provided by PMCs in the existing EU Code of Conduct for Arms Exports.

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43 These regulations were created under the Arms Export Control Act.
45 *Regulating Private Military Companies*, p.33.
PROBLEMS OF DEFINING PRIVATE MILITARY COMPANIES

31. A number of labels have been applied to the companies supplying military services. The Green Paper points out that “the terms ‘mercenary,’ ‘private military company’ (PMC) and ‘private security company’ (PSC) cover a wide range of different people, corporations and activities.”  
Doug Brooks, President of the International Peace Operations Association, prefers the term “military service providers” to describe “lawful profit-seeking companies with profit making structures... [providing] the whole gamut of legitimate services that were formerly provided by national armies.”  
Tim Spicer has argued that it is possible to distinguish private military companies from mercenaries: the latter have “no common doctrine ... no common training standards, they’ll work for the highest bidder,” whereas PMCs are “formed bodies that have a sort of corporate entity” and will “only work for the good guys.” This itself raises the question of definition of who are the “good guys”.

32. While there have been numerous attempts to define the different kinds of enterprise which operate in the sector, the Green Paper rightly concludes that, in practice, the categories of company will often merge into each other. Furthermore, all companies evolve according to circumstances, making consistent categorization of them as entities very difficult.

33. Denis MacShane told us that “Britain would like to see not so much a correct definition of what is and is not a private military company [as] what it can and cannot do.” We agree that a more productive approach than distinguishing between acceptable and unacceptable categories of company would be to distinguish between acceptable and unacceptable activities. Some activities could be prohibited in all circumstances. Others, because of their risky and potentially violent nature, need to be regulated. Clarity over which activities are permitted and which are proscribed appears to us to be absolutely essential for any legislative measures.

Defining legitimate and illegitimate activities

34. One option that has been proposed is that PMCs be prohibited from direct participation in combat activities. Defining the point at which a company becomes directly involved in combat is difficult. The problems were highlighted in evidence submitted by Tim Spicer, who described the “complexity of a situation where a security company... is providing expatriate armed guards for a strategic installation, such as an oil well, jointly owned by the local government and an international oil company, in a country where there is a conflict with a rebel movement. If the guards protect the installation with their weapons against the rebels—are they fighting for the Government and thus supporting the war effort?”

47 Green Paper para. 3.
49 Cit. Ev 79.
50 International Alert, for example, defines private security companies as those which are “predominantly concerned with crime prevention and public order concerns: they might provide private guard services for prisons, airports, installations, and private individuals.” Private military companies are defined as those that “operate in conflict situations and supply services that might be considered to be of a military nature, in that they would have an impact on the local conflict.” ArmorGroup state that they are “aware that a great many media reporters and academics earn their living and their educational qualifications through the pursuit of ‘mercenary matters.’” They recommend that the Government “Avoid expending valuable time and resource endeavouring to define terms like of ‘mercenary’ or ‘PMC when a thousand journalists and ten thousand academics will continue to do it for themselves.” See Ev 66.
51 Green Paper para. 16.
52 Q172.
54 See Ev 1.
35. Establishing a prohibition on armed combat operations might be further complicated by the fact that companies are sometimes hired by states to train nationals for the armed forces. Drawing the line between training for military planning and the planning itself would be difficult. National armed forces have been responsible for many of the worst human rights abuses of the last century, and it is possible that at some stage a British company, licensed to conduct military training, might train a national army which then went on to commit such atrocities. The Government would have to consider how to address this question if it chose to prohibit combat activities, weighing the possible costs against the benefits that military training can have on the standards of national armed forces.\(^{55}\)

36. Further, ancillary assistance such as medical support, reconnaissance, battlefield supply and vehicle maintenance is an integral aspect of combat operations. Finding a satisfactory practical and legal definition will be far from straightforward.

37. If the Government were to choose to prohibit participation in combat operations by PMCs, one possibility would be to require a company to be able to demonstrate that any action taken was only in self defence, as a reaction to imminent threats. Kevin O’Brien points out the difficulties of drawing a line between defensive and offensive actions, when he addresses the question of “offensive defence.” By this he means “attacks by opponent forces on areas/individuals/installations protected by a PMC/PSC” leading to the PMC “pursuing the opponent forces away from the site of the attack—or … engaging in pre-emptive offensive measures against opponent forces for defensive purposes.”\(^{56}\)

38. ArmorGroup distinguishes between “legitimate commercial security and/or military support services, and the supply of uniformed and armed soldiers for the expressed purpose of engaging in combat to alter a prevailing political or military balance. It is, after all, the latter that gives rise to public expression of concern.”\(^{57}\) The company has drawn up a code of conduct for its own operations, which specifies that its employees “may not bear arms except for those carried for personal self defence with the agreement of and possession of a licence from the host government.” The code also specifies that the company’s business is “one dedicated to defensive measures.”\(^{58}\) These appear to us to offer the possibility of drawing a workable distinction between combat and non-combat activities.

39. Beyond this distinction between combat and non-combat activities, other PMC operations might be restricted according to an appropriately amended version of the consolidated EU and national arms export licensing criteria against which decisions on the granting or withholding of arms export licences are currently made.\(^{59}\) These Consolidated Criteria (as spelled out in greater detail in the Annual Report on Strategic Export Controls)\(^{60}\) are, broadly—

One: Respect for the UK’s international obligations and commitments (the Government will not issue a licence where this would be incompatible with, in particular, UN

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55 Tim Spicer pointed out (Ev 1) that “training and supervision of military operations can raise the standard of human rights awareness and behaviour,” and we accept that this is true in many cases. See also para. 75 below.
56 See Ev 53.
57 See Ev 66.
58 Ibid.
59 These have been applied by the Government with effect from 26 October 2000.
and OSCE embargoes, EU common positions and embargoes, and non-proliferation agreements).61

**Two:** Respect for human rights and fundamental freedoms in destination countries (the Government will *not* issue a licence if there is a clear risk that the equipment will be used for internal repression; and will exercise *special caution and vigilance* before issuing a licence for relevant types of equipment for use in countries where serious violations of human rights have been established to have occurred).

**Three:** The internal situation of destination countries (the Government will *not* issue a licence for exports which would promote or prolong armed conflicts or aggravate existing tensions or conflicts).

**Four:** Preservation of regional peace, security and stability (the Government will *not* issue a licence if there is a clear risk that the intended recipient would use the proposed export aggressively against another country or to assert by force a territorial claim).

**Five:** The security of the UK and its overseas territories, its European and other allies (the Government will *take account* of the effect of the proposed export on the defence and security interests of the UK and such other countries described, while such considerations *cannot override* the application of the first four criteria).

**Six:** The behaviour of the buyer country with regard to the international community, particularly in relation to terrorism, unsuitable alliances and respect for international commitments and law (the Government, in deciding whether to issue a licence, will *take account* of the record of the proposed recipient country in relation to such factors).

**Seven:** The risk of diversion to undesirable destinations (the legitimate defence and security interests of the destination country, its technical capability to use the equipment, and the efficacy of its export controls *will be considered* before the Government issues a licence, especially in relation to the risk of the export falling into the hands of terrorists).

**Eight:** The compatibility of the arms exports with the recipient country’s technical and economic capacity, taking into account the legitimate needs for security and self-defence (the Government will *take into account* whether the proposed export would seriously undermine the economy or seriously hamper the sustainable development of the recipient country).

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THE DEBATE ON PRIVATE MILITARY COMPANIES

40. The Green Paper summarises some of the arguments and counter arguments put forward in the current debate about private military companies. Some of the sources of concern, expressed by our witnesses and other commentators, may be addressed through regulation. Other problems are less tractable.

Accountability

41. It is the duty of Government to maintain disciplined defence forces. There is a presumption that members of those forces will be citizens of the country concerned, but there are cases when some personnel and/or units may be recruited from abroad (such as the Foreign Legion of the Gurkhas). In these cases, an oath of allegiance is sworn; the forces are subject to a military legal code; their command and control structure is known; and they and their superiors are subject to the Geneva Convention and accountable for their conduct. This does not apply to Private Military Companies.

42. Michael Bilton expressed to us his concern that, regardless of the intentions of those running a private military company, its employees on the ground could not be held to account. In discussing the Sandline International operation in Papua New Guinea, he suggested that the company’s employees were considering the liquidation of some local guides. Mr Bilton pointed out that these guides could have been killed without the company’s managers or anyone else realising: “several hundreds of miles away in the jungles ... something dreadful could have been done. Who was going to be held responsible for this? Who was going to report back and say to [those who were running the operation] that they had to despatch these people?”\(^{62}\) He found it impossible to “see the same levels of accountability [among PMC employees as] that we have with our own soldiers, who ... are licensed because they take an oath of allegiance to the Crown.”\(^{63}\)

43. Tim Spicer argued that enough checks and balances could be established to alleviate this concern. A regulatory regime, coupled with existing international legal instruments, ought to be able hold companies to account for their actions abroad: “If you superimpose national regulation and in some way perhaps as a second step link it to regulation within the United Nations or within the international community, if you take the principles of international law, national law, regulation, media scrutiny, contractual obligations, there are enough checks and balances to ensure that having sorted the wheat from the chaff in terms of who is allowed to conduct these operations, there is enough weight of law to address that particular issue.”\(^{64}\) However, Tim Spicer also accepted that “there is nothing like the sanction of the Armed Forces Act or at a much lower level the manual of military law and other legal balances one has when deploying national forces.”\(^{65}\)

44. International legal instruments, including the International Criminal Court, should in theory apply to PMCs as to national armed forces.\(^{66}\) They should therefore be able to hold PMC employees to account for their actions. However, the Green Paper rightly highlights the

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\(^{62}\) Q49.

\(^{63}\) Q51.

\(^{64}\) Q2.

\(^{65}\) Q2.

\(^{66}\) The provisions of the Geneva Conventions and Statute of the International Criminal Court apply to individuals. Therefore, if PMC employees engaged in combat roles were to commit grave breaches of the provisions of international humanitarian law, they would be liable to prosecution for war crimes. The FCO also states that “mercenaries are subject to the rules of international humanitarian law and are liable to prosecution for war crimes if they commit grave breaches of those rules. Mercenaries should not have protection from prosecution for war crimes that is not available to lawful combatants”. See Ev 44.
difficulties inherent in applying international law to PMCs. It points out that some private companies “have a tendency to mutate”\textsuperscript{67}: unlike states, they can be dissolved or disbanded, and as a consequence their personnel become difficult to trace. David Stewart Howitt also reminded us of the case of the former Yugoslavia,\textsuperscript{68} which demonstrates very clearly the difficulties inherent in bringing war criminals to account.

45. International Alert have also expressed concern at the weakness of measures to hold PMCs to account. They point out that “prosecution and extradition [of those who have committed crimes] presuppose an adequate or corresponding prescriptive domestic legislation in the country which the offence has occurred.” Consequently they argue that “any prospective UK legislation should have an extra-territorial provision, in view of the potential inadequacies of laws in countries where crimes may be committed.”\textsuperscript{69}

46. It appears to us that the incentive to uphold internationally agreed human rights standards in conflict situations is weaker for personnel if they are employed by a PMC rather than a state. In drawing up legislation, the Government needs to consider carefully the appropriate mechanisms for holding PMCs’ employees to account.

47. Denis MacShane discussed with us the possibility that a licensing regime might be designed to ensure that “contracts or licences would not be awarded for activity that in any way could place the company concerned in a position of being likely to commit human rights violations.”\textsuperscript{70} Given the inadequacy of measures to hold PMC employees to account for their actions, we believe that this objective should be central to any prospective legislation.

48. The establishment of a monitoring mechanism might, we were told, help to hold PMC employees to account and serve as a deterrent for bad practices.\textsuperscript{71} We discuss this proposal at greater length in paragraphs 151 to 157 below.

\textit{Sovereignty}

49. Though we note the theoretical possibility that PMCs could threaten the governments that employ them, we agree that it is difficult to see what a modern PMC would have to gain from taking over a state.\textsuperscript{72}

50. More likely, in our view, is that a PMC might act in support of a coup against an established state. The Green Paper appears to discount this possibility, apparently because PMCs were not involved in coup attempts during the 1990s.\textsuperscript{73} We recommend that, before bringing forward legislation to regulate PMCs, the Government consider how to deal with the possible involvement of these companies in the overthrow of established states.

\textsuperscript{67} Green Paper para. 35.
\textsuperscript{68} Q102.
\textsuperscript{70} Q131.
\textsuperscript{71} Q111 and attached footnote by witness.
\textsuperscript{72} Green Paper paras. 37–39.
Economic exploitation

51. The UN Special Rapporteur on mercenaries, Mr Enrique Bernales Ballesteros, has reported concern that some governments facing internal armed conflicts hire security companies to restore order but "do not have the funds to pay for the services of these companies and have to grant them major concessions of mineral and oil resources that account for a valuable share of their national heritage."\(^74\) The argument against the payment of private military companies through these means is that the country is "mortgaging future returns from mineral exploitation."\(^75\)

52. We were interested to hear Tim Spicer's view that a mineral concession is "worthless to a PMC."\(^76\) He explained that "I have a business to run, I have payroll to meet, I have overheads and to turn a piece of paper which is virtually worthless into commercial reality, that is to turn it into a gold mine or an oil well or whatever, takes an awful lot of outlay. It is not just something of value, it is something which may have value once you have spent a lot of money on it in several years time."\(^77\)

53. Nonetheless, we have little doubt that some commercial military and security activity has been paid for through the granting of mineral concessions or other non-monetary methods. David Stewart Howitt expressed to us his belief that the economic attraction of mineral resources in Africa "has been the force behind certain PMCs' activities [there] over the last 30 years."\(^78\) National armed forces have also engaged in this kind of exploitation: senior army officers involved in Zimbabwe's military adventure in the Democratic Republic of Congo are known to have close links with mineral exploitation companies.\(^79\)

54. The granting of mineral concessions to PMCs is unlikely to result in the equitable distribution of the proceeds of such concessions to local communities, and in most cases should be deprecated. However, allowing the proceeds of mineral concessions to remain in the hands of rebels or corrupt governments is unlikely to produce a beneficial outcome for local communities either. The Government will need to consider carefully whether the possibility that PMCs might abuse access to mineral concessions or to other nationally important commercial assets is a sufficiently serious problem to justify the outright banning of such transactions in all circumstances.

A vested interest in conflict?

55. The existence of PMCs does not depend on the perpetuation of 'hot wars.' As Tim Spicer told us, "there is plenty of business to be had in the security field which is non-contentious and is protective and passive and defensive and all the other things which people would wish to see in terms of the application of security for the promotion of stability."\(^80\)

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\(^75\) Green Paper para. 40.

\(^76\) See Ev 1.

\(^77\) Q17.

\(^78\) Q104.


\(^80\) Q15.
56. We note the statement in the Green Paper that the possibility that PMCs might perpetuate conflict is "surely a matter for those hiring PMCs." Better regulation of the sector might help any foreign governments hiring PMCs to ensure that they chose a responsible company. A regulatory body might also set out guidelines for contracting parties, to encourage them to write performance clauses into contracts which would give PMCs an incentive to complete tasks assigned to them. Properly managed regulation should help to ensure that irresponsible companies which do perpetuate armed conflicts are denied the authority to operate from the United Kingdom.

**Human rights**

57. In his 1999 report to the United Nations Human Rights Commission, the UN Special Rapporteur on mercenaries argued that private military companies were "developing their offers more and more aggressively, putting forward arguments for legitimacy based on military efficiency, cheaper operations, their personnel's proven experience." He urged the Human Rights Commission to "remember that mercenaries base their comparative advantage and greater efficiency on the fact that they do not regard themselves as being bound to respect human rights or the rules of international humanitarian law. Greater disdain for human dignity and greater cruelty are considered efficient instruments for winning the fight."

58. PMCs argue that the vetting procedures carried out by reputable companies ought to reduce the likelihood that employees might commit human rights abuses. One such company, ArmorGroup, claim that their own and other reputable companies' vetting procedures would prevent their recruitment of "persons with a colourful past, whose demonstrated personal conduct and morals displayed abroad may be considered unreliable and whose assignment to a client may prove an embarrassment to that client." Tim Spicer also told us that "we do have the ability to vet our employees carefully and to ensure that they behave, in so far as we can, in a way commensurate with what we are trying to achieve and the standards we have imposed. I cannot think of anybody who works for my organisation or is likely to work for my organisation who might transgress and disappear into the depths of Eastern Europe because I would not employ him in the first place if that were where his natural bolt hole was."

59. A regulatory mechanism that examined recruitment procedures and rated companies accordingly should, according to this argument, help to reduce the likelihood that PMCs which employed criminals and other unsuitable individuals were allowed to operate from the United Kingdom.

60. Many in the private military sector have also expressed a belief that commercial interests provide a strong incentive for upholding international law and human rights standards. ArmorGroup claim that its clients, many of whom are national governments, "exert the single most powerful influence over the company’s activity. 'Reputation' has become the key watchword in business and the need to protect a reputation is the prime motivator towards legitimate and ethical performance and service delivery. Loss of reputation is, in ArmorGroup’s business, always followed by a significant loss of business." The Government must acknowledge that the

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81 Green Paper para. 42.
82 Green Paper para. 43.
84 See Ev 70, para. 49.
85 Q23.
86 See Ev 72, para. 56.
loss of reputation in the private military sector could have far more serious consequences than the discrediting of Enron, Andersen, WorldCom and Merrill Lynch. The failure of a PMC operation could lead to the loss of civilian life. The penalties applicable to PMCs that breach Government regulations must therefore be sufficient to deter companies from embarking upon operations which might lead to human rights violations.

61. Denis MacShane appears to be convinced by these arguments. He told us that “any firm of any sort that was accused of committing human rights violations, if those allegations were shown to be true, would never receive any future contract of any sort. So, it would be signing its own business death warrant.” He also argued that “most of the people involved in these activities now are former highly trained professional soldiers who know that their chances of continuing in work are pretty slim if they behave in an unacceptable way.”

62. We are not, however, convinced that the checks and balances that apply to national armed forces can ever be applied with equivalent strength to the employees of PMCs. Though companies’ vetting mechanisms may go some way towards ensuring that the individuals involved in private military operations are appropriately qualified, we also share the Green Paper’s conclusion that “it is not an accident that the business of fighting for money often brings in unattractive characters.” Furthermore, the commercial incentive to refrain from human rights abuses and to uphold international humanitarian law is unlikely to apply where companies are confident that they will not be found out. These considerations strengthen the argument for strong regulation of PMCs.

Underlying problems and stability

63. The Campaign Against Arms Trade argues that the “use of mercenaries would reinforce the idea that military solutions can resolve conflict. Democracy, peace and justice would be better served if the resources which would otherwise be used by the UK government to control or licence mercenary activity are used to give positive support to or impose sanctions on troubled states or regions.” They also argue that tighter controls on small arms, arms brokers and “conflict goods” would “do much to lessen the demand for mercenaries.”

64. In contrast to this view, Michael Bilton was prepared to offer a specific example in which a PMC had stabilized a situation: Executive Outcomes, he claimed, “did much sterling work in Angola [and] stabilized a destabilized situation ... where the oil fields were concerned.” This was also reiterated in the Government’s Green Paper which stated that “although the numbers involved were small—Executive Outcomes never had more than 500 men in Angola and were usually fewer, compared with Angolan armed forces of more than 100,000 men—it is generally regarded as having played a critical part in securing victory for the government forces, the ceasefire and the Lusaka Peace Agreement—shaky as these last two remain.”

65. We agree that the imposition of military force cannot, on its own, solve the political, economic and social problems that contribute to conflict. Employing military force through public or private operations does not constitute an alternative to diplomatic initiatives and humanitarian and development work. PMCs are neither equipped nor trained to address underlying political or economic problems; neither, though, are national armed forces. The point here is that under...
certain circumstances, the establishment or maintenance of order through an increased international security presence, or through enhancing the effectiveness of national armed forces, can help to create conditions under which political negotiations can take place and effective systems of governance re-established.

66. This is where David Steward Howitt sees the potential for employing PMCs, in the absence of an alternative international security presence in many destabilised states. He points out that "Governance systems can only operate if they have revenue streams through which they can service their citizens. The provision of governance, be it health, education, social welfare and security, is something which needs to be provided [in conflict and post-conflict environments]... Where the most effective and constructive use of PMCs potentially lies is in assisting entities, polities and states, in stabilising environments so that stable revenue streams and effective government structures can be established."93

67. Although the services provided by PMCs will not by themselves solve underlying problems in unstable countries, we conclude that the employment of professional, responsible and well regulated PMCs could, in some circumstances, contribute to the establishment or maintenance of relative stability, under which lasting solutions to such problems might be worked out. We further conclude that PMCs may have a legitimate role to play in helping weak governments to secure revenue streams, for example by protecting border points and highways.

Proxies for governments

68. The Green Paper notes that it is "striking how many commentators assume a link between governments and PMCs or mercenaries, often on the basis of little evidence."94

69. The Campaign Against Arms Trade are concerned that "to licence, and thereby condone, the use of armed force by bodies other than publicly accountable military, security and police forces" would give rise to the "danger that, to distance itself, a future Government could use a private company to undertake an activity that many members of the public might find objectionable."95 We recognise and share this concern. The case of MPRI in Croatia, which is cited in the Green Paper, is one example which could be interpreted in this way.96

70. The Green Paper argues that there is "nothing wrong with governments employing private sector agents in support of their interests."97 We agree that, where these interests are legitimate, this is indeed the case. We also agree that "where such links are transparent they are less likely to give rise to misinterpretation."98 Regulation might go some way towards clarifying the role of legitimate private military companies in public and international affairs, and help to ensure that illegitimate companies are never linked to British Government policies.

71. The danger that British based companies might be confused with British government forces or British foreign policy is increased by the tendency of some private military companies to imitate British military names and uniforms. Such imitation poses a danger to the integrity of British

93 Q105.
94 Green Paper para. 51.
95 See Ev 51.
96 Green Paper Box 3, page 13. MPRI, a US private military company, was involved in the training of the Croatian armed forces in 1995. In the same year, the Croatian armed forces undertook Operation Storm, an offensive against Serb forces in Krajina which resulted in substantial loss of civilian life and the expulsion of thousands of Serb civilians. The Green Paper notes that "many people have noted that ... in 1995 Croatian forces performed unexpectedly well."
97 Green Paper para. 52.
98 Green Paper para. 52.
armed forces, and threatens to tarnish their excellent reputation. To reduce this risk, we recommend that the Government prohibit private military or security companies from using names similar to those of British regiments or fighting units, or from the use of any emblem, symbol or distinctive item of uniform similar to those of the British armed forces.\textsuperscript{99}

**Moral objections**

72. We share what the Green Paper calls the “natural repugnance towards those who kill (or help kill) for money ... even if the killing is necessary and is done in a just cause”\textsuperscript{100} and are most uneasy at any notion that the British Government might sanction, through regulation, companies which recruit soldiers to fight other people’s wars for money.

**Double standards**

73. The Green Paper notes that the “debate on PMCs is sometimes conducted as though PMCs are ipso facto bad and national armies good.” It rightly points out that the professional standards of many national armed forces fall far below those of our own, and some have committed grave human rights abuses.\textsuperscript{101}

74. We do not share the view that national armed forces personnel are necessarily better qualified or behaved than the employees of PMCs. However, it is the case that: the ability to track armed forces personnel and to hold them to account for their actions is a powerful deterrent against illegal behaviour. Many of the employees of British based PMCs are former British military personnel who are well qualified to help impart the excellent standards of the British armed forces to those of other countries, thus helping to raise the standards of their armed forces and other security personnel. Improving the security sector of weak states is an important aspect of the international campaign against terrorism.

75. The Government already re-employs former British service personnel to assist with security sector reform.\textsuperscript{102} PMCs can facilitate the transfer of British military training, even when the British Government is not available to pay for it. Regulation which granted licences to companies with such well qualified staff would reward such reputable companies, and help to eliminate those staffed with less suitable personnel.

\textsuperscript{99} We note the statement from the Gurkha International Group of Companies that the term Gurkha “is currently used of soldiers in the Royal Nepalese, Indian and British Armies, as well as of retired British Gurkhas in the Sultan of Brunei’s Gurkha Reserve Unit and of policemen in the Gurkha Contingent of the Singapore Police Force. It is a name much used in Nepal in tourism and commerce”. See Ev 65.

\textsuperscript{100} Green Paper para. 53.


\textsuperscript{102} For example, the Defence Advisory Team, which helps other states to improve the efficiency and accountability of their armed forces, includes retired military officers. Retired military officers have also been hired as consultants, for example to work in demobilisation camps in Sierra Leone and to assist governments with their military and police reform programmes.
THE UNITED KINGDOM’S LIABILITIES AND INTERESTS

PMC actions and British foreign and defence policies

76. Michael Bilton described a “nightmare scenario where a company is licensed by the British Government to undertake training of a foreign army, that the trainers become combatants (as was intended with Sandline’s South African mercenaries on Bougainville), and that massive overkill leads to heavy loss of innocent life. Where would the finger of blame point: the British Government would surely be in the firing line.”

77. The Sandline International operation in Papua New Guinea was opposed by the United Kingdom’s regional Commonwealth allies Australia and New Zealand, as well as by the British Government itself. An important objective of regulation must be to ensure that any operation undertaken by a British-based and licensed company is in line with the United Kingdom’s overall foreign and defence policy objectives.

78. In Tim Spicer’s view, regulation would “lead to much closer understanding and working relationship between national governments or international bodies and the private security sector,” which would decrease the likelihood of conflict between them. We agree that the possibility of conflict between PMCs and government interests lends support to the argument for closer regulation.

Technical co-operation and interoperability

79. During the Sierra Leone operation, British forces personnel aboard HMS Cornwall were involved in the repair of a helicopter owned by Sandline International. This raised questions as to how much co-operation existed between the British Government and Sandline International.

80. Detailed regulation which set down clearly the relationship between private military companies and the Government would help to avoid such confusion in future.

The United Kingdom’s liability for rescuing failed PMC operations

81. PMCs sometimes undertake high risk activities in unstable circumstances. We asked Denis MacShane whether he could envisage British armed forces being deployed if a British based PMC undertook an operation which subsequently went badly wrong. He replied that it was a “tough question upon which I would like to reflect,” and compared it to situations in which “the NHS so often has to save botched up operations of private hospitals.”

82. We have some sympathy with the view expressed in the Diplock Report that “If a man chooses to embark upon an enterprise that is hazardous to himself we do not think that the State is for that reason alone entitled to stop him doing so.” It is, however, possible to envisage circumstances in which some kind of Government involvement became necessary. The Government needs to consider when and how it would react to such situations. One advantage of a tough, contract specific licencing regime, combined with a mechanism that veted companies

103 See Ev 67, para. 10.
104 See Ev 66.
105 Q7.
107 Q137.
108 Diplock Report, para. 11.
for competence, would be that it would inhibit the activities of incompetent PMCs and consequently minimise the likelihood of British forces being pushed into involvement in risky and expensive rescue operations.
POTENTIAL BENEFITS OF A REGULATED PRIVATE MILITARY SECTOR

Support to weak but legitimate governments

83. The UN Special Rapporteur on Mercenaries stated in his December 1999 report to the UN Human Rights Commission that “Anything to do with defending national sovereignty, territorial integrity, the right to self-determination and the protection of human rights is the inalienable responsibility of the state.” He went on to recommend that “the states members of the United Nations be extremely careful in their dealings with private military security companies, especially those that attempt to intervene in internal armed conflicts by supplying mercenaries to one of the parties to the conflict.”

84. States have a duty to ensure the security of their citizens and to maintain internal order. In practice, some are unable to do so. We have some sympathy with Denis MacShane’s view that in “regions in the world where states, democratic states—and Sierra Leone, which you mentioned, was an example—face very serious armed opposition and if there is not the willingness from other states or from the United Nations or from regional organisations to lend effective timely assistance, then those states have the right to appeal for professional help to train up their own soldiers to provide the logistical and some other support to ensure that the state itself can exercise law and order and an absence of violence over its territory.”

Support to international peace operations

85. PMCs already provide extensive support to intergovernmental organisations such as the United Nations, NATO and the European Union. The services they provide include security guarding, logistic support, and de-mining. These are legitimate activities, and the use of PMCs in this area of UN and other intergovernmental organisations’ work is relatively uncontroversial. More problematic is the notion that private military forces might be used for politically sensitive and high profile areas of UN operations, such as peacekeeping and peace enforcement.

86. Denis MacShane suggested to us that the relatively efficient provision of services by PMCs in other areas of UN operations “should be a spur ... to the United Nations to sharpen up/quicken up its operations to show that the UN and other regional bodies can intervene in a timely manner so that the actual, as it were, combat end of private military company activities is not necessary.”

87. The UN cannot ‘quicken up’ its interventions alone, however: the organisation lacks military forces, and so remains reliant on member states to provide peacekeeping troops and other resources. When crises occur, the UN is frequently prevented from taking effective action because member states do not provide troops or other assistance with sufficient alacrity to prevent a crisis spiralling out of control. Another problem faced by the UN is that member states which are willing to provide troops for peacekeeping deployments have sometimes sent them “without rifles, or with rifles but no helmets, or with helmets but no flap jackets, or with no organic transport capability. Troops may be untrained in peacekeeping operations, and in any

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110 Q122.
111 Q146.
112 This may become the case with increasing frequency if the international war against terrorism continues to preoccupy the British Government and its allies.
case the various contingents in an operation are unlikely to have trained or worked together before."\textsuperscript{113} They may also be of variable quality and may sometimes be poorly disciplined.

88. The implications of the UN's failure to mobilise troops for peacekeeping missions in the 1990s were severe. The Carnegie Commission on Preventing Deadly Conflict attempted to demonstrate this. In 1997, the Carnegie Commission, together with the Institute for the Study of Diplomacy at Georgetown University and the United States Army, convened an international panel of military leaders to explore the Rwandan experience and concluded that early military intervention—within two weeks of the initial violence—by a regular force of 5000 could have made a significant difference to the level of violence in Rwanda.\textsuperscript{114}

89. Given the problems the UN has experienced in mobilising and deploying peacekeeping and peace enforcement missions,\textsuperscript{115} the idea of hiring PMC s to do the job has obvious appeal. Kofi Annan stated that he considered using a private firm when skilled soldiers were needed to separate refugees from fighters in Rwandan refugee camps, though he concluded that "the world may not be ready to privatise peace."\textsuperscript{116} General Sir David Ramsbotham,\textsuperscript{117} after taking part in a study on UN peacekeeping operations on behalf of the UN Security Council, concluded that "liaison with the private sector was an essential part of any command and control machinery" but also that "there was a need for the private sector to provide what national contingents could not."\textsuperscript{118}

90. In his evidence for this inquiry, Sir David described a number of projects undertaken by a private security company, DSL, on behalf of the UN. He also described how the UN came close to recruiting DSL to take over the running of refugee camps in Zaire during the Rwanda crisis, "something which it was proving impossible to provide from member state contributions."\textsuperscript{119} His conclusion was that "there are many roles for private sector companies, employing ex-military, that are essential in any peacekeeping or national reconstruction project. The key word in their employment is sustainability. Regular forces have been so reduced, or are so overstretched... that they cannot provide trained and experienced people to conduct what is required."\textsuperscript{120}

91. Tim Spicer claimed that the UN could in future prevent situations such as that which occurred in Rwanda "by the creation of a database or register of private companies, who could either work in the first instance on behalf of the United Nations—whether they wear blue berets or not is a moot point...—in order to allow an organisation like the United Nations a breathing space to follow its necessary procedures before it can deploy a United Nations force." This might also stabilise the situation so that by the time national contingents were recruited from member states and mobilised, the force required "would be a peacekeeping force rather than a peace enforcement force," with a correspondingly lower risk of casualties.\textsuperscript{121}

\textsuperscript{115} The Secretary General's Panel on United Nations Peace Operations concluded that, were its recommendations fully implemented, it would be able to mobilise the resources for a complex peace operation within ninety days of Security Council authorisation. The Report is available at http://www.un.org/peace/reports/peace_operations/.
\textsuperscript{116} Green Paper, para. 57.
\textsuperscript{117} HM Chief Inspector of Prisons for England and Wales, 1995–2001; Adjutant General, 1990-93; ADC General to the Queen, 1990–93; Director of International Affairs, DSL Ltd., 1994–99.
\textsuperscript{118} See Ev 49, para. 4.
\textsuperscript{119} See Ev 50, para. 10.
\textsuperscript{120} See Ev 49.
\textsuperscript{121} Q3.
92. A study undertaken recently at Cranfield University suggests that some UN member states, particularly those from the developing world, are likely to be highly suspicious of proposals to increase the role of PMCs in UN peace operations. "[M]any Member States and staff at the UN take the view that PMCs are immoral organisations, who have traditionally served autocratic and unpopular governments and whose operations are littered with human rights abuses. There is also a perception amongst staff and Member States from the Third World that they are also inherently racist."  

93. Developing countries’ troop contributions to UN peace operations are also a source of income. Some member states might dispute the expenditure of UN funds on private military companies rather than on the current practice, which helps to support their national armed forces.

94. Relevant here, too, is the assertion made in the Cranfield University study referred to above that PMCs have been "exaggerating their own capabilities and they do not currently have the wherewithal to maintain a significant body of troops at a state of high readiness." This suggests that, at least in their current form, PMCs would not have the capacity to prevent disasters such as the Rwanda genocide, even if political resistance did not rule out their employment by the UN.

95. If the Government concludes that private military companies should not be permitted to engage in combat activities, this would probably rule out their employment for the high intensity, peace enforcement end of UN interventions. However, if regulation of the private military sector resulted in the development of a transparent, trusted industry in the United Kingdom, further commercial involvement at the low intensity end of UN peace operations might become increasingly acceptable to member states. If this helped to increase the speed and efficiency of UN reactions, to ensure the enforcement of UN Security Council resolutions, and to prevent further atrocities such as those committed in Rwanda and the Balkans in the 1990s, then such regulation should be welcomed.

Support to humanitarian organizations

96. There may be a role for private security companies in protecting humanitarian organisations operating in unstable environments. International Alert, in their paper *Humanitarian action and private security companies*, note the need for humanitarian non-governmental organisations (NGOs) to guard against violence and especially against local criminal activity, which they describe as "overwhelmingly the greatest threat faced by NGOs." They conclude tentatively that there may be a role for private security here, though humanitarian organisations are faced by the dilemma that "the use, or contracting for the use of armed force by any actor in this context may implicitly or explicitly accept the terms and means of war, legitimise them, mirror them, and perpetuate them."

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122 See Ev 85.
123 See Ev 85. This perception may be an understandable legacy from the experience in the Front Line States in Southern Africa in the 1980s, and so may be less relevant today.
124 See Ev 85.
125 Tony Vaux, Chris Seiple, Greg Nakano and Koenraad Van Brabant, *Humanitarian action and private security companies: opening the debate*, International Alert, London, March 2002, p.28. For example, some NGO personnel in Afghanistan have been left defenceless because ISAF forces are not deployed outside Kabul.
Relief to the United Kingdom’s overstretched armed forces

97. The problem of oversretch of the British armed forces is widely known.127 David Stewart Howitt described the extent to which “demands on major powers and international bodies to respond the issues of governance and security” were likely to grow,128 but also argued that the United Kingdom’s armed forces are “neither intended to carry out long running nation-building operations, nor are they likely to have spare capacity to take on such tasks in the foreseeable future.”129 He pointed out that the success of the British armed forces in deployments overseas was partly a consequence of their great adaptability, but that it was not always necessary to use such adaptable personnel if the tasks to be performed were specific.130 It should also be noted that the experience of British troops in Northern Ireland has made them uniquely suited to peacekeeping tasks.

98. To support his point, David Stewart Howitt cited the imposition of a sanctions regime on the Bosnian Serb Republic, which, in his view, could have been carried out by customs officials in a more cost effective way than through the deployment of national armed forces.131 Sir David Ramsbotham made the same point, arguing that the tasks assigned to the small British contingent in Rwanda—water supply, road repair, provision of communications and the running of a medical clinic—“could have been provided by [the PMC] DSL, using ex-military personnel, not just for six months but for as long as the UK government was prepared to pay. Had that approach been adopted the military infrastructure would not have been affected, and the UK contribution to the rehabilitation of Rwanda could have been enhanced.”132

99. The different personnel structures of PMCs imply that they may be able to perform some tasks more cheaply than can national armed forces. ArmorGroup point out that “In addition to low start-up and running cost … There are no complex pension arrangements to wind up, nor expensive redundancies.”133 Doug Brooks has argued that this makes PMCs “ideal for addressing Africa’s military security problems at affordable prices.”134

100. In this context, the question of PMCs taking on some of the activities currently being carried out by the British forces is an obvious one. However, Denis MacShane was “reluctant to get into the substitution discussion.” He told us that “where there is a direct British interest at stake, I would assume, within the limits of what the Ministry of Defence can deliver—and I think it is delivering an extraordinary amount of men on the ground for its budget—would be the government agency that would carry out this work.”135 He argued that the purpose of regulation is not to seek to increase the extent to which British military activities are contracted out to private companies: “What is under examination in the Green Paper are states far away from Britain that do not have an adequately trained, professionally led and equipped military force who face the need to restore law and order in their own country turning to some outside body.”136

101. We are reassured by Denis MacShane’s answer. We certainly do not believe that the Government should be aiming for further cuts in the armed forces through the greater use of

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128 See Ev 63.
129 Ibid.
130 Ibid.
131 Q86.
132 See Ev 49.
133 See Ev 73, para. 60.
134 Cit. Ev 79.
135 Q145.
136 Q133.
PMCs to perform core defence tasks. However, we conclude that the Government should consider carefully whether the greater use of PMCs in UK humanitarian and peace support operations might help to reduce military overstretch. PMCs might be employed to provide protection for tasks such as tax collection, road building or water and sanitation projects, which is currently performed by UK forces in peace support operations. The creation of an additional cadre of former armed service personnel to perform these non-combat roles might also help to alleviate overstretch. We provide details of this alternative to the employment of PMCs in paragraphs 138 to 141 below.
OPTIONS FOR REGULATION

A ban on military activity abroad

102. Given the evident existence of—and likely growth in—a market for private military services, military companies will continue to exist, and absolute prohibition of the sector in the United Kingdom would simply drive them overseas. We are convinced that a properly regulated private military sector can make a positive contribution to international security. We also share the view, articulated by Denis MacShane in rather negative terms, of the benefits of establishing a transparent relationship with the companies through regulation: "I would rather these things were in the tent, as it were, where we could see in which direction they were aiming rather than outside the tent when we have not got the faintest idea what they are up to until we are splattered with very unpleasant after-effects." 137 **We conclude that an outright ban on all military activity abroad by private military companies would be counterproductive.**

103. We strongly endorse the view, expressed tentatively by Denis MacShane, that one advantage of establishing "a licensing regime...may well be...that contracts or licences would not be awarded for activity that in any way could place the company concerned in a position of being likely to commit human rights violations." 138 The most obvious activity in this category is armed combat. In undertaking armed combat operations, PMC employees are likely to be placed in dangerous situations, in which the likelihood that they might commit human rights abuses is high. The checks and balances which restrain national armed forces personnel in such circumstances do not apply with such effectiveness to PMCs. Banning combat operations would substantially reduce the risk that British based PMCs committed human rights abuses, without fatally undermining legitimate private military and security companies.

104. The prohibition of direct participation in or planning of offensive armed combat operations by private companies would not fatally undermine the sector: as Tim Spicer informed us, there are "plenty of other things than combat or the direct involvement in conflict that private military companies do, including training, defence consultancy and others." 139

105. Neither would the prohibition of combat services prevent companies from providing valuable services to legitimate governments which faced security problems. A well regulated, responsible British company could provide a threatened democratic government with training and support, enabling it to maintain control of its territory through better organization of its national armed forces, without direct participation in combat.

106. Another reason for prohibiting participation in combat is that the potential for a privately organized combat operation going badly wrong is very high. Such operations would necessarily take place in unstable circumstances, and there would be a significant risk that the conflict might escalate beyond what was originally envisaged. Monitoring private companies’ engagement in such operations would be dangerous and difficult. It would be embarrassing for the British Government to endorse in any way such an operation, yet be unable to monitor or control it, and then to discover through the media or other sources that human rights abuses had taken place.

107. **Though the Green Paper argues that “the distinction between combat and non-combat activities is often artificial,”** 140 we conclude that such a distinction can and should
be drawn for the purposes of regulation. We do not underestimate the difficulties inherent in this process.

108. We recommend that private companies be expressly prohibited from direct participation in armed combat operations, and that firearms should only be carried—and, if necessary, used—by company employees for purposes of training or self-defence.

A ban on recruitment for military activity abroad

109. In 1976, the Diplock Report recommended that the Government prohibit recruitment in the UK for service in armed forces abroad.\textsuperscript{141} This option was proposed because it was thought to be more easily enforceable than other measures: “no device of draftsmanship can overcome the practical difficulty of obtaining the evidence to justify a conviction in a criminal court for an offence which consists of acts which the accused is alleged to have done abroad.”\textsuperscript{142}

110. The difficulty of enforcing this option now was highlighted in the a report by International Alert, which states that many private military companies “do not have a fixed set of employees and often have to draw upon networks of ex-servicemen or ‘soldiers for hire’ on the international market.”\textsuperscript{143} Companies can advertise on the Internet, and many recruitments are likely also to be undertaken informally, “over a beer in a bar.”\textsuperscript{144} While some of the larger private security companies have quite detailed procedures for recruiting and vetting employees,\textsuperscript{145} irregular and largely untraceable recruitment procedures are practised by the disreputable end of the spectrum of PMCs—those companies to which regulation should be most carefully directed.

111. The argument that legislation relating to the domestic sphere is the only feasible option, as proposed by the Diplock Report, no longer applies. Since the Diplock Report was published, prosecutions have been successfully brought in a number of areas\textsuperscript{146} despite the fact that offences were committed abroad.

112. We have heard strong arguments which suggest that the private military sector has potential to make a positive contribution to international security. We believe that, through regulation, the Government should be striving not only to restrain the worst excesses but to facilitate the development of high professional standards in the industry. A ban on recruitment for illegitimate military activities abroad (for example, armed combat operations), whatever the difficulties of enforcement, would be entirely consistent with these aims.

113. The Green Paper does not consider the possibility that foreign private military companies might seek to recruit British citizens. One of the main purposes of regulation is to prevent unregulated PMCs from damaging British interests. Prohibiting companies operating out of countries with no regulatory structure for PMCs from recruiting British citizens might help, in a

\textsuperscript{141} Report of the Committee of Privy Counsellors appointed to inquire into the recruitment of mercenaries (the ‘Diplock Report’), HMSO, August 1976.
\textsuperscript{142} Diplock Report para. 40.
\textsuperscript{144} This was how one practitioner described recruitment procedures at the FCO seminar on PMCs, University of Birmingham, 24 June 2002.
\textsuperscript{145} See, for example, Ev 66.
\textsuperscript{146} In his evidence, Denis MacShane mentioned paedophile cases (Q164). The 2001 Anti-terrorism, Crime and Security Act is relevant here. International Alert also note that the Chemical Weapons Act of 1996 and the Landmines Act of 1998 contain provision for extraterritorial powers. International legislation to prosecute war criminals is another relevant example.
limited way, to extend the scope of a British regulatory system abroad, and to protect the United Kingdom’s reputation.

114. We recommend that the Government give very careful consideration to imposing a ban on all recruitment by PMCs for combat operations and other activities which are illegal under United Kingdom law. We further recommend that the Government consider the practicality of a complete ban on recruitment for such activities of United Kingdom citizens by overseas-based or offshore PMCs.\textsuperscript{147}

115. Restrictions currently prevent some civil servants from abusing their knowledge of Government procedures by moving into directly related jobs in the private sector. We can envisage circumstances in which it would be inappropriate for former British service personnel to use their ‘insider’ knowledge in the context of a private military company. We recommend that, to prevent the inappropriate use of knowledge gained through employment in the British armed forces, the Government examine whether restrictions should be placed on former British service personnel who wish to move into related activity in the private sector, such as a ‘cooling off’ period similar to that which applies to former civil servants and government advisers.

\textit{A licensing regime for military services}

116. Under this proposal, legislation would require companies to obtain a licence for each contract for military and security services abroad. For services for which licences were required, companies or individuals would apply for licences in the same way as they do for licences to export arms.\textsuperscript{148}

117. To make this regulatory option feasible, clear guidelines would have to be provided by the Government, to enable the PMC to assess whether or not a project was permissible. If the PMC judged that the project lay within Government guidelines, it would be required to submit an application for a specific licence for the project. In the course of our inquiry, we have discussed a range of activities which are currently undertaken by PMCs, but which could be subject to regulation. These include operational support to armed forces; military advice and training; some forms of intelligence gathering; security and crime prevention services, law enforcement and policing; logistical support; physical (personal and installation) guarding; and securing delivery of humanitarian aid, equipment, cash and other valuables in conflict situations.

118. While the Government is likely to conclude that a ban on these activities is not desirable, it may decide to regulate them to ensure that the companies providing them do not slip into combat roles or damage British interests abroad. The Chairman of the House of Commons Defence Committee, Bruce George MP, submitted a memorandum with Simon H Cooper proposing that the Government “draw up a list of activities that it deemed severe enough to warrant a license. Constant appraisal of this list would then be necessary to ensure that it remained up to date with new developments in the field.”\textsuperscript{149} We believe that this is a sound proposal, which could assist the efficient implementation of this regulatory option.

\textsuperscript{147} We note that on 3 April 2002, the French Council of Ministers approved a draft Bill which would make it an offence to engage in mercenary activities on French territory. The French text of the Bill is available at \url{http://www.senat.fr/leg/pi101-287.html}. The definition of mercenary used in the Bill is very similar to that of Article 47 of Additional Protocol I of the Geneva Conventions, which was ratified by France in October 2001. See also paragraph 24 above.
\textsuperscript{148} Green Paper para. 73.
\textsuperscript{149} See Ev 79.
119. Private military companies are concerned that the requirement to gain a licence for each specific contract might be a lengthy process, and that this regulatory regime would prevent companies from being able to launch operations rapidly. Tim Spicer has argued that “speed and flexibility” are “key values” of PMCs, and that these must not be lost through the establishment of a regulatory system.\textsuperscript{150} ArmorGroup warn that a “poorly conceived or inadequately administered regime could easily cripple speed of response, which is a key value of contracted security services.”\textsuperscript{151}

120. ArmorGroup do not oppose this option, but propose that “Any mechanism established to administer regulation must be the subject of published performance criteria so that a contractor may expect an answer to its application within, say, ten working days.”\textsuperscript{152} Given the record of the existing British Government regime to grant licences to export arms, this seems ambitious. The Quadripartite Committee, in its Report on the Draft Export Control and Non-Proliferation Bill, has noted the “very long delays in reaching a decision on difficult [arms export] licensing applications.”\textsuperscript{153} The Secretary of State for Trade and Industry told the Quadripartite Committee that though most arms export licences were approved within 20 days, delays of eighteen months or more had sometimes occurred. These were not a consequence of administrative problems, but “because of getting intelligence, making sure we get the latest information from the companies concerned.”\textsuperscript{154}

121. Despite the concerns expressed by some in the private military sector that such a system would be unacceptably slow,\textsuperscript{155} we support this option. It would provide a rigorous safeguard, ensuring that no operation would be licensed without detailed prior analysis of its political and strategic context. We believe that, despite the resource costs of establishing such a rigorous regulatory regime, this level of analysis is required to ensure that the actions of companies which have been endorsed by the British Government are not detrimental to the United Kingdom’s interests.

122. We note the proposal by Bruce George and Simon H Cooper that the Security Industry Authority, which was established as part of the 2001 Private Security Act, might be an appropriate licensing body.\textsuperscript{156} The Government will need to examine the extent to which activities and companies which are subject to regulation by this body are also covered by the options discussed in the Green Paper.

123. We recommend that each contract for a military/security operation overseas should be subject to a separate licence, with the exception of companies engaged in the provision of non-contentious services for whom the Government considers a general licence would suffice.

124. We recommend that the Government consider carefully how to ensure that a licensing regime allows companies to operate with the necessary speed without compromising the effectiveness of the vetting process. We propose four measures which might help to speed the process without compromising the required thoroughness of the

\textsuperscript{150} See Ev 1.
\textsuperscript{151} See Ev 68, para. 20.
\textsuperscript{152} See Ev 68, para. 29.
\textsuperscript{155} See Ev 1.
\textsuperscript{156} See Ev 79.
regulatory system. First, clear and regularly updated guidelines should be published.\textsuperscript{157} These would contain information about countries and sectors relevant to the activities of PMCs. This would help to ensure that companies were able to assess their own application thoroughly before submission. Second, the Government might consider grading projects according to their time sensitivity, and establishing a ‘fast track’ procedure for some projects, such as the renewal of an existing licence. Third, the regulatory authority should also give companies a target period for approval or denial of the licence, and a similar time limit for an appeal process.\textsuperscript{158} Fourth, applications by reputable companies with an unblemished track record of scrupulous compliance with the terms of licences could be expedited.

125. Another concern voiced by companies is that a licencing regime might compromise client confidentiality. This was, Tim Spicer warned us, one of the companies’ ‘key concerns.’\textsuperscript{159} Governments hiring PMCs would often be unwilling to disclose the specifics of a contract relating to their national security with any third party, including the British Government.

126. Despite private military companies’ concerns about client confidentiality, we conclude that the need to ensure that the sector is properly regulated overrides the private interests of PMCs and their clients. The Government will, however, have to consider carefully where the balance lies in this respect.

\textit{Registration and notification}

127. The Green Paper describes this as a “light regulatory framework,”\textsuperscript{160} under which companies would be required to register with the Government and to notify it of contracts for which they were bidding. Licences would be granted automatically (or would not be required at all), though the Government would reserve the right to withhold them in some circumstances.

128. We believe that granting automatic licences for projects provided to and carried out under the auspices of the UN, EU or UK Government could be justified, because companies which had been vetted for competence under the Government’s general PMC licensing scheme, and which were providing services to intergovernmental organizations or to British Government agencies, would be very unlikely to compromise British interests in any way. In these instances, the company could be required only to inform the British Government of its intention to fulfil a contract before it was delivered.\textsuperscript{161} The Government might also draw up a list of “states of concern,” to which the export of military services could automatically be banned. Exemptions to the normal licencing procedure might also be applied to contracts for non-contentious services such as the delivery of basic medical equipment to conflict zones. This would save time, free administrative capacity, and thus enable more thorough vetting of controversial project proposals.\textsuperscript{162}

129. We recommend that the Government should consider whether exemptions to the project-specific licensing procedure described above should apply with respect to

\textsuperscript{157} As recommended by Bruce George MP and Simon H Cooper, Ev 79.
\textsuperscript{158} The last suggestion was proposed by ArmorGroup, Ev 66.
\textsuperscript{159} See Ev 1; see also Ev 66.
\textsuperscript{160} Green Paper para. 74.
\textsuperscript{161} This bears some similarity to the US legislation relating to PMCs, which is described in paras. 26-28 above. The proposal was put to us in a memorandum from ArmorGroup; Ev 66.
\textsuperscript{162} In the United States, contracts with NATO countries and Sweden do not require assessments before export licences for arms or armed services are granted. Countries under embargo are automatically rejected. There is also a “presumption of denial” for the provision of military services which would lead to a lethal outcome. See Regulating Private Military Companies: options for the UK Government. Chaloka Beyani and Damian Lilly, International Alert, August 2001, p.32 (ISBN: 1-898702-07-3).
contracts with trusted organizations of which the United Kingdom is a member, such as NATO, the United Nations or the European Union and with responsible governments.

A general licence for PMCs/PSCs

130. The establishment of a general register of PMCs would have important benefits. Firstly, it would help speed the licensing of specific projects. Tim Spicer, ArmorGroup and other practitioners raise concerns about the slowness of Government bureaucracy in granting licences.\textsuperscript{163} If the Government had vetted a company according to its track record and personnel, it would be required to check only the specific project when the time came to grant a licence.

131. Secondly, a register would facilitate the development of a responsible private military sector by rewarding companies which could demonstrate high professional standards, levels of transparency, appropriate staff recruitment and training. It would provide a significant incentive for companies to be transparent and to maintain high professional standards, because failure to meet the standards demanded to join this general register would constitute a clear indictment of a company’s credentials.\textsuperscript{164} This would help to warn potential clients (foreign governments, international organizations, private companies, NGOs etc) against its employment.

132. Tim Spicer proposed to us a process through which companies should go in order to be permitted to operate in or from the UK. The procedure would include vetting of the company with respect to ownership, financial structure, management structure, and qualifications of company personnel (including verification that none had criminal records).\textsuperscript{165} We note that Tim Spicer’s proposal casts an interesting light on his appearance before our predecessor Committee in 1998, when he essayed not to know the structure or affiliates of the company of which he was a director.\textsuperscript{166} David Stewart Howitt suggested that, in order for the company to fulfil regulatory requirements, “anyone to be armed [in a PMC operation] must have served with UK armed forces (or have attended appropriate UK forces training) and have received an honourable discharge; or with specified other armed forces if a full service record is available.”\textsuperscript{167} These are valid proposals, and the Government should consider them carefully. The recent exposures of the ease with which unvetted individuals have been able to gain employment in airport security companies shows the necessity of performing rigorous checks on employees’ backgrounds.\textsuperscript{168}

133. The difficulty associated with this option, as the Green Paper states, is the potential for misjudging a company’s character: the Government might lend credibility to companies of whose operations it knew little or whose character might change.\textsuperscript{169} Methods for monitoring and regulation, including regular reassessment of the company’s record, therefore need to be considered carefully. Both Tim Spicer and David Stewart Howitt proposed that PMCs would be required to reapply for operating licences regularly, perhaps every 2–3 years.\textsuperscript{170}

\textsuperscript{163} See paras. 119-120 above.
\textsuperscript{164} See Ev 66.
\textsuperscript{165} See Ev 1.
\textsuperscript{167} See Ev 21.
\textsuperscript{169} Green Paper para. 75.
\textsuperscript{170} See Ev 1; see also Ev 21.
134. We recommend that private military and security companies be required to obtain a general licence before undertaking any permitted military/security activities overseas.

135. We recommend that, as part of the application procedure for registration, private military companies be required to disclose to the Government in some detail the company structures, the experience of permanent personnel, recruitment policies, and other relevant information. The first application for a general licence should include a thorough check of the company’s history, including its previous activities. If any information requested by the Government were withheld by a company, then a licence should not be granted.

**Self-regulation: a voluntary code of conduct**

136. The Green Paper discusses the benefits of a voluntary code of conduct for PMCs, and highlights the existence of the British Security Industry Association. ArmorGroup support such a code, and point out that the “implications of a breach of a morally justifiable voluntary code will prove to be a major motivator for compliance by any company concerned for its reputation. [A] Publicly broadcast breach will lead to isolation and loss of business for offenders.” After seeing the effects of the Enron affair on accountancy firm Arthur Anderson, companies will be well aware of the need to protect their business by protecting their reputations.

137. We agree that a voluntary code of conduct would help to establish standards of behaviour in the industry, and would help PMC clients to find reputable business partners. The development of such a code of conduct should be welcomed, particularly while legislation is being drafted. However, we conclude that a voluntary code is insufficient to regulate the private military industry, because it would not enable the Government to prevent the activities of disreputable companies which were detrimental to the United Kingdom’s interests.

**An alternative proposal: the re-employment of former armed services personnel**

138. The Green Paper states that the options for regulation that it outlines are not exhaustive.\(^{171}\) We propose here an alternative which is not considered in the Green Paper, but which the Minister told us he is happy to examine.\(^{172}\)

139. Throughout this inquiry, the continuing demand for a range of military and security services has been very evident. The demand comes not only from foreign governments, commercial enterprises and other agencies working in conflict zones, but also from our own Government.

140. We are not fully convinced that the private sector is the only way to fill this ‘gap in the market’ for military services. An alternative—or addition—to the private sector solutions proposed would be the creation by the Government of a publicly funded cadre of former service personnel, who would be familiar with British service discipline, and with working under the Armed Forces Act. This cadre would be capable of carrying out the non-combatant training, logistics and security roles which are currently performed by PMCs. They would be acting under the auspices of Government. Clearly, detailed problems of structure, financing and organisation would have to be considered carefully.

141. We urge the Government to consider this option, which we believe could provide security and military services with great reliability and competence. We note the conclusion of our

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\(^{171}\) Green Paper para. 70.
\(^{172}\) Q180.
predecessor Foreign Affairs Committee in its Sierra Leone Report—albeit relating to limited
evidence on experience in that country—that the “economic benefit which private military
companies and arms traffickers bring is ... marginal.”\textsuperscript{173} Given the costs inherent in
regulating the private sector to perform the tasks discussed in this Report, we
recommend that the Government weigh these costs carefully against the option of
developing a publicly funded armed service cadre to provide on a commercial basis the
tasks currently being undertaken by PMCs.

\textit{Controlling the brokering and trafficking of arms}\textsuperscript{174}

142. Our predecessor Foreign Affairs Committee pointed out that the “illegal part of
Sandline’s operation in Sierra Leone was not, of course, any supply of personnel but the supply
of arms.”\textsuperscript{175} It recommended that the Government “take the lead in initiatives in Europe and/or
the United Nations aimed at drawing up an international legal instrument on trafficking or
brokering in arms subject to embargo.”\textsuperscript{176} It also recommended that national legislation to control
arms trafficking and brokering “be introduced no later than in the next parliamentary
session.”\textsuperscript{177, 178}

143. The then Foreign Secretary, Robin Cook, wrote to the Chairman of the Foreign Affairs
Committee on 18 May 1999 promising that controls on trafficking and brokering of arms “would
be brought in as part of the new primary legislation on export controls envisaged in the DTI White
Paper on Strategic Export Controls.” Legislation, the Foreign Secretary stated, would be
introduced “as soon as legislative time is available.”\textsuperscript{179}

144. Though arms trafficking and brokering is not addressed in the Green Paper, one proposal
called for in this Inquiry was that tightening up arms brokering regulations would enable the
Government to control one of the most damaging private military activities, even without the
establishment of a new regulatory regime. Michael Bilton told us that he was “hugely ambivalent”\textsuperscript{180} about regulation, because he was “not sure that we actually have the mechanisms
to be certain in our own minds that what [PMCs] could be doing is going to be in our best
interests.”\textsuperscript{181} However, he suggested that arms brokering such as that undertaken by Sandline
International in both its Sierra Leone and Papua New Guinea operations\textsuperscript{182} might be controlled
effectively through legislation similar to the US Arms Export Control Act.\textsuperscript{183}

145. Arms brokering has also been raised by the Quadripartite Committee in its Report on the
Draft Export Control and Non-Proliferation Bill. The Committee recognised the “practical
difficulties in seeking to extend controls to activities by UK citizens or companies outside the

\textsuperscript{174} The Government defines trafficking as the “involvement in buying and/or selling goods,” and brokering as “acting as
an agent in putting a deal together between supplier and customer or making the practical arrangements for the supply of the
goods.” Strategic Export Controls, Cm 3989, July 1998.
\textsuperscript{176} Ibid.
\textsuperscript{177} Ibid., para. 96.
\textsuperscript{178} The Government replied that it was “committed to introducing legislation to implement proposals in the White Paper
on Strategic Export Controls” and stated that “The Committee’s support for the introduction of legislation to extend
controls on brokering and trafficking is welcome.”
\textsuperscript{179} Letter from the Rt Hon Robin Cook MP, Foreign Secretary, to Donald Anderson MP, Chairman of the Foreign
Affairs Committee, 18 May 1999.
\textsuperscript{180} See Ev 13.
\textsuperscript{181} Q47.
\textsuperscript{182} Sandline International shipped weapons from a company in Belarus to Papua New Guinea via Bulgaria (Ev 13), and
was involved in the supply of military equipment from Bulgaria to Sierra Leone.
\textsuperscript{183} Q48. ITAR, described in paragraphs 26–28 above, implements the Arms Export Control Act.
UK,” but nonetheless saw “compelling arguments in favour of extending controls on brokering and trafficking to activities outside the country and recommend that controls be introduced on the activities of UK citizens and companies wherever they take place.”\textsuperscript{184} In its response to the Quadripartite Committee’s Report, the Government merely noted this recommendation, and stated its intention to deal with the matter in secondary legislation.\textsuperscript{185}

146. In the dummy secondary legislation relating to the Export Control Bill (2001), the Government has provided for the application of extra-territorial jurisdiction only on transfers to embargoed destinations, transfers of torture equipment or long range missiles.\textsuperscript{186} The trafficking and brokering of small arms, light weapons and ammunition is not covered. At the Report stage of the Bill in the Upper House, Lords Razzall and Joffe sought to extend extra-territoriality specifically to the small arms trade. They argued that the Government’s unwillingness to apply extra-territoriality on all conventional weapons constitutes a violation of its election manifesto commitment to “control the activities of arms brokers and traffickers wherever they are located.”\textsuperscript{187}

147. Lord Sainsbury, defending the Government’s dummy legislation, claimed that the application of extra-territorial jurisdiction to small arms had been attempted by the US, but that it had been difficult to implement. Nigel Griffiths, Parliamentary Under Secretary of State for Trade and Industry, made the same point when this matter was debated at the Committee Stage of the Bill in the House of Commons.\textsuperscript{188} Lord Sainsbury also stated that such extension of extra-territoriality would “risk criminalising the involvement of UK nationals settled overseas in the legitimate export of defence equipment from their countries of residence,” because these individuals might not be aware of the new law.\textsuperscript{189}

148. We find the Government’s arguments against extending extra-territorial controls over the trafficking and brokering of arms unconvincing. We further note arguments put forward by the UK Working Group on Arms (UKWG)\textsuperscript{190} regarding the practicalities of policing small arms brokering: UKWG told the Quadripartite Committee that criminalising small arms brokering by UK national anywhere in the world would have a deterrent effect, and also that enhanced international co-operation against organised crime and the sharing of intelligence would ensure that such a prohibition could be policed.\textsuperscript{191} Since UKWG made this statement, significant efforts

\textsuperscript{185} Official Report, 9 July 2001, col. 570.
\textsuperscript{186} The dummy secondary legislation relating to the trafficking and brokering of arms was published on 9 October 2001 (Dep 01/1714).
\textsuperscript{187} Lords Official Report, 18 April 2002, c.1136; ‘The Export Control Bill Revisited,’ House of Commons Library paper, 13 June 2002, and Times Guide to the House of Commons, June 2001, p.345. Jenny Tonge MP, in the Committee Stage in the Commons, also stated her concern that “the Government’s manifesto commitment was to control the activities of arms brokers and traffickers wherever they were located. There was no intention, in the Labour Party’s manifesto, to limit the legislation to these shores” (House of Commons Standing Committee B, 16 October 2001).
\textsuperscript{188} Jenny Tonge MP argued that “it is now the easiest thing in the world, if a person’s activities as an arms broker are banned in, say, Surrey, for them to nip across to their house in the Caribbean or in mainland Europe and carry on their activities there. It seems extraordinary that the Government should not want to include the activities of arms brokers—wherever they are—in the scope of the Bill.” Jenny Tonge proposed that extraterritoriality should be applied in United Kingdom anti-brokering legislation as it is in the United States. Nigel Griffiths replied that enforcement of such a measure would be very difficult to implement: “We plan through the Bill to crack down on the abuses and abusers within our jurisdiction... [but] it is pointless having a regime such as that of the US... if the enforcement: regime is weak.” House of Commons Standing Committee B, 16 October 2001.
\textsuperscript{189} Lords Official Report 18 April 2002 c.1137.
\textsuperscript{190} UK Working Group on Arms is a coalition of six non-governmental organisations: Amnesty International, BASIC, Christian Aid, International Alert, Oxfam and Saferworld.
have been made to enhance international intelligence sharing to prevent terrorist activity.\textsuperscript{192} In our view, this intelligence co-operation could also be applied to the policing of arms trafficking and brokering.

149. We conclude that improving controls over the trafficking and brokering of arms would curb some of the most damaging activities of private military companies. We further conclude that, because of improved international intelligence co-operation since the terrorist attacks of 11 September, policing such controls should be possible. We recommend that the Government apply extra-territorial jurisdiction to the brokering and trafficking of arms at the earliest opportunity.

150. We are concerned that a private military company could become involved in arms trading, by leaving within the host country arms ostensibly imported for the company’s own use. We recommend that any prospective regulatory regime for private military companies be co-ordinated with the Government’s existing export controls, to ensure that arms used by a PMC in fulfilment of a contract do not remain in a country subject to embargo.

\textit{Monitoring and evaluation}

151. We discussed in paragraphs 41 to 48 above the need for the Government to consider carefully the appropriate mechanisms for holding PMCs to account. A regulatory regime without monitoring would not be credible.

152. The notion that attachés might be made responsible for monitoring companies’ activities has been proposed by Tim Spicer.\textsuperscript{193} Denis MacShane was “not sure that it is a role that defence attachés could or should carry out,” but expressed no alternative proposal for monitoring PMCs: “Whether or not there could be monitors attached, particularly with regard to ensuring that there were no improper or human rights violations, ... is an interesting thought. Whether they could come from some body other than HMG is also an interesting thought.”\textsuperscript{194}

153. Defence attachés have a multiplicity of tasks and may not be resident in all relevant countries. However, in some situations it may be possible for embassy staff, including attachés, to play some role in monitoring the work of PMCs. Embassy staff are frequently in close contact with the staff of UN agencies, non-governmental humanitarian and human rights organisations, national armed forces and national humanitarian and development agencies (including DFID) and with delegates of the International Committee of the Red Cross, all of whom frequently work alongside PMCs and are able to observe their operations. The Government might consider the extent to which these contacts might be used as an informal monitoring mechanism to help the Government to gauge the quality of PMCs’ work overseas.\textsuperscript{195} We recommend that the Government consider establishing an informal appraisal and complaints mechanism,

\textsuperscript{193} See Ev 1.
\textsuperscript{194} Q177.
\textsuperscript{195} It should not be assumed that the staff of humanitarian organisations or UN agencies would be opposed to the work of PMCs, and therefore would prove unreliable witnesses. As the Green Paper points out, it is “striking that a number of those who are prepared to consider a role for PMCs are people who have had experience in humanitarian operations or UN work” (para 56). Those who have worked in international peacekeeping and humanitarian operations should be well aware of the need to maintain security in unstable environments, and of the constraints which prevent national armed forces from fulfilling these security requirements. Many such international staff could be expected to respond in a balanced way to requests for information by the British Government, if doing so would help to regulate the environment in which they work.
which would operate through consultations between UK officials in posts and the organizations operating alongside PMCs in the field.

154. In addition to this, a formal monitoring mechanism is probably also necessary to ensure that British Government regulation of PMCs has credibility and that sanctions against offenders can be enforced.

155. David Stewart Howitt discussed this idea with us, and proposed that a monitoring and evaluation unit be established the primary function of which would be “to monitor compliance with the regulatory ToRs [terms of reference] and report on such issues to the British Government. Its monitoring, evaluation and reporting activities must be systematic and admissible in British and international courts of law.” He suggested that a monitoring and evaluation unit be “staffed by sectoral and regional experts with the appropriate knowledge to scrutinise the activities and conduct of any contracted PMC ... conversant with internationally recognized security best practices and qualified in such fields as human rights, political and economic development, environment etc.”

156. In paragraphs 74-75 above, we note the existence of a large number of highly trained former British armed forces personnel, who would be well qualified to assess the quality and reliability of PMCs working in unstable environments overseas. Such personnel might well welcome the opportunity to use their expertise in this way, albeit on a part-time basis.

157. We recommend that the Government establish as an integral part of any regulatory system an appropriate monitoring and evaluation regime, and make full co-operation with that regime a condition of the granting of licences to PMCs.

Parliamentary scrutiny

158. The Green Paper states that if the Government decided to adopt a licensing or other regulatory regime for the export of military services, “it would be logical for this to be subject to the same reporting requirements vis à vis Parliament as is the case for arms export licences.”

Arms export licences are currently documented in the Government’s Annual Report on Strategic Export Controls, which is submitted to the House of Commons Quadripartite Committee for scrutiny. This Annual Report provides details of arms exports, including the size and composition of the licensed export and the destination country. End users are not specified, for reasons of commercial confidentiality.

159. Bruce George and Simon H Cooper propose that “Parliamentary oversight of the license issuing process would be essential with a number of Parliamentary Committees, individually or collectively participating. The House of Commons Defence Select Committee, the Foreign Affairs Committee or the Home Affairs Select Committee could all have a role to play, either separately or by operating along the lines of the so-called Quadripartite Committee.” We would add to this list the International Development Committee.

160. We conclude that procedures similar to those for Parliamentary scrutiny of arms export licences should apply to any regulation of PMCs, with prior Parliamentary scrutiny being applied to any licence applications that might involve PMCs in the provision of armed combat services.

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196 See Ev 21.
197 See Green Paper para. 77.
198 See Ev 79.
Weighing the costs and benefits of regulation

161. Though the Green Paper does not offer this option, it was suggested to us that the Government might consider doing “very little” or “nothing” to regulate the private military sector. We reject the do-nothing option. As the Sandline affair demonstrated, the dangers of inaction in this area of foreign policy are considerable.

162. In this Report, we propose a strong regulatory regime. We recommend that private military and security companies be required to obtain a general licence before undertaking permitted military/security activities overseas. We further recommend the establishment of a licensing regime which, with limited exceptions, would require companies to seek the Government’s permission before accepting each contract for a military/security operation overseas. We also recommend the prohibition of all combat activities by private military companies.

163. Such a strong regulatory regime would need a substantial enforcement mechanism to ensure its credibility. As we indicate above, this mechanism will have significant costs for the companies themselves and possibly for the Government. We recommend that the Government consider very carefully how to ensure that the benefits of permitting a regulated private military sector to operate from the United Kingdom are not outweighed by the costs of establishing and maintaining a regime for their regulation.

199 See Ev 13.
THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS

(a) We conclude that the lack of centrally held information on contracts between Government Departments and private military companies is unacceptable. We recommend that the Government take immediate steps to collect such information and to update it regularly. We further recommend that in its response to this Report the Government publish a comprehensive list of current contracts between Government Departments and private military companies and private security companies, and provides the information requested by the Committee in the Chairman's letter of 18 June to Denis MacShane, which is reproduced in full at page Ev. 44 (paragraph 17).

(b) We recommend that the Government, as it considers national regulatory measures, also develop a new draft international convention to regulate PMCs which might replace the existing UN Convention against the Recruitment, Use, Financing and Training of Mercenaries (paragraph 25).

(c) We recommend that, in considering options for regulation, the Government examine carefully the United States government's regime for regulating and monitoring the activities of private military companies (paragraph 28).

(d) We recommend that the Government work with European partners towards including the services provided by PMCs in the existing EU Code of Conduct for Arms Exports (paragraph 30).

(e) We recommend that, before bringing forward legislation to regulate PMCs, the Government consider how to deal with the possible involvement of these companies in the overthrow of established states (paragraph 50).

(f) Although the services provided by PMCs will not by themselves solve underlying problems in unstable countries, we conclude that the employment of professional, responsible and well regulated PMCs could, in some circumstances, contribute to the establishment or maintenance of relative stability, under which lasting solutions to such problems might be worked out. We further conclude that PMCs may have a legitimate role to play in helping weak governments to secure revenue streams, for example by protecting border points and highways (paragraph 67).

(g) We recommend that the Government prohibit private military or security companies from using names similar to those of British regiments or fighting units, or from the use of any emblem, symbol or distinctive item of uniform similar to those of the British armed forces (paragraph 71).

(h) We conclude that the Government should consider carefully whether the greater use of PMCs in UK humanitarian and peace support operations might help to reduce military overstretch (paragraph 101).

(i) We conclude that an outright ban on all military activity abroad by private military companies would be counterproductive (paragraph 102).
(j) Though the Green Paper argues that “the distinction between combat and non-combat activities is often artificial,” we conclude that such a distinction can and should be drawn for the purposes of regulation. We do not underestimate the difficulties inherent in this process (paragraph 107).

(k) We recommend that private companies be expressly prohibited from direct participation in armed combat operations, and that firearms should only be carried—and, if necessary, used—by company employees for purposes of training or self-defence (paragraph 108).

(l) We recommend that the Government give very careful consideration to imposing a ban on all recruitment by PMCs for combat operations and other activities which are illegal under United Kingdom law. We further recommend that the Government consider the practicality of a complete ban on recruitment for such activities of United Kingdom citizens by overseas-based or offshore PMCs (paragraph 114).

(m) We recommend that, to prevent the inappropriate use of knowledge gained through employment in the British armed forces, the Government examine whether restrictions should be placed on former British service personnel who wish to move into related activity in the private sector, such as a ‘cooling off’ period similar to that which applies to former civil servants and government advisers (paragraph 115).

(n) We recommend that each contract for a military/security operation overseas should be subject to a separate licence, with the exception of companies engaged in the provision of non-contentious services for whom the Government considers a general licence would suffice (paragraph 123).

(o) We recommend that the Government consider carefully how to ensure that a licensing regime allows companies to operate with the necessary speed without compromising the effectiveness of the vetting process (paragraph 124).

(p) Despite private military companies’ concerns about client confidentiality, we conclude that the need to ensure that the sector is properly regulated overrides the private interests of PMCs and their clients (paragraph 126).

(q) We recommend that the Government should consider whether exemptions to the project-specific licensing procedure described above should apply with respect to contracts with trusted organizations of which the United Kingdom is a member, such as NATO, the United Nations or the European Union and with responsible governments (paragraph 129).

(r) We recommend that private military and security companies be required to obtain a general licence before undertaking any permitted military/security activities overseas (paragraph 134).

(s) We recommend that, as part of the application procedure for registration, private military companies be required to disclose to the Government in some detail the company structures, the experience of permanent personnel, recruitment policies, and other relevant information (paragraph 135).
(t) We conclude that a voluntary code is insufficient to regulate the private military industry, because it would not enable the Government to prevent the activities of disreputable companies which were detrimental to the United Kingdom’s interests (paragraph 137).

(u) Given the costs inherent in regulating the private sector to perform the tasks discussed in this Report, we recommend that the Government weigh these costs carefully against the option of developing a publicly funded armed service cadre to provide on a commercial basis the tasks currently being undertaken by PMCs (paragraph 141).

(v) We conclude that improving controls over the trafficking and brokering of arms would curb some of the most damaging activities of private military companies. We further conclude that, because of improved international intelligence co-operation since the terrorist attacks of 11 September, policing such controls should be possible. We recommend that the Government apply extra-territorial jurisdiction to the brokering and trafficking of arms at the earliest opportunity (paragraph 149).

(w) We recommend that any prospective regulatory regime for private military companies be co-ordinated with the Government’s existing export controls, to ensure that arms used by a PMC in fulfilment of a contract do not remain in a country subject to embargo (paragraph 150).

(x) We recommend that the Government consider establishing an informal appraisal and complaints mechanism, which would operate through consultations between UK officials in posts and the organizations operating alongside PMCs in the field (paragraph 153).

(y) We recommend that the Government establish as an integral part of any regulatory system an appropriate monitoring and evaluation regime, and make full co-operation with that regime a condition of the granting of licences to PMCs (paragraph 157).

(z) We conclude that procedures similar to those for Parliamentary scrutiny of arms export licences should apply to any regulation of PMCs, with prior Parliamentary scrutiny being applied to any licence applications that might involve PMCs in the provision of armed combat services (paragraph 160).

(aa) We recommend that the Government consider very carefully how to ensure that the benefits of permitting a regulated private military sector to operate from the United Kingdom are not outweighed by the costs of establishing and maintaining a regime for their regulation (paragraph 163).
TUESDAY 23 JULY

Members present:

Mr Donald Anderson, in the Chair

Mr David Chidgey
Sir Patrick Cormack
Mr Fabian Hamilton
Mr Eric Illsley
Andrew Mackinlay

Mr John Maples
Mr Bill Olner
Mr Greg Pope
Sir John Stanley

Draft Report (Private Military Companies), proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 3 read, amended and agreed to.

Paragraph 4 read, as follows:

4. The debate about regulating these companies is not only concerned with preventing the damage that an unregulated private military sector may cause. In some circumstances, private military companies may be able to provide security services more efficiently and effectively than states are able to. Such companies have the potential to make a legitimate and valuable contribution to international security. The challenge of regulation is therefore not only to prevent PMCs from inflicting damage, but also to establish how the Government should work with them to maximise the benefits that a properly regulated private military sector can bring.

Amendment proposed, in line 3, to leave out from “cause.” to the end of the paragraph and insert “Some of the evidence provided suggested that in certain exceptional circumstances, private military companies may be able to provide security services more efficiently and effectively than states are able to. Such companies have the potential to make a legitimate and valuable contribution to international security. The challenge of regulation is therefore not only to prevent PMCs from inflicting damage, but also for the Government to consider regulating the industry in face of opposition from the private military companies. A challenge this Government must succeed in.”—(Mr Andrew Mackinlay)

The Committee divided.

Ayes, 1

Andrew Mackinlay

Noes, 4

Mr Eric Illsley
Mr John Maples

Mr Bill Olner
Sir John Stanley

Paragraph agreed to.
Paragraph 5 read, amended and agreed to.

Paragraphs 6 to 9 read and agreed to.

Paragraph 10 read, amended and agreed to.

Paragraphs 11 to 15 read and agreed to.

Paragraphs 16 to 18 read, amended and agreed to.

Paragraphs 19 to 21 read and agreed to.

Paragraph 22 read, amended and agreed to.

Paragraphs 23 to 26 read and agreed to.

Paragraph 27 read, amended and agreed to.

Paragraph 28 read and agreed to.

Paragraph 29 read, amended and agreed to.

Paragraphs 30 to 39 read and agreed to.

Paragraphs 40 to 43 read and postponed.

Paragraph 44 read, as follows:

44. Further definition of the activities that should be subject to regulation may also help to speed legislation. We discuss this in paragraph * below.

Paragraph disagreed to.

Paragraph 45 read and agreed to (now paragraph 40).

A paragraph—*(Andrew Mackinlay)*—brought up, read the first and second time, amended and inserted (now paragraph 41).

Paragraphs 46 to 57 (now paragraphs 42 to 53) read and agreed to.

A paragraph—*(Andrew Mackinlay)*—brought up, and read the first time, as follows:

“In addition PMCs have not only received minerals directly, a way of payment allegedly not of great use to these companies as Tim Spicer has explained, but what they have in some instances been given are the rights to protect companies which exploit these minerals. These companies then have to pay PMCs for their protection. A way in which minerals are indirectly used to finance PMCs.”

Question proposed, That the paragraph be read a second time.
The Committee divided.

Ayes, 2

Mr Fabian Hamilton 
Andrew Mackinlay

Noes, 5

Mr David Chidgey 
Mr Greg Pope
Sir Patrick Cormack 
Sir John Stanley
Mr Bill Olner 

Paragraph 58 (now paragraph 54) read, amended and agreed to.

Paragraphs 59 to 63 (now paragraphs 55 to 59) read and agreed to.

Paragraph 64 (now paragraph 60) read, amended and agreed to.

Paragraphs 65 to 67 (now paragraphs 61 to 63) read and agreed to.

Paragraph 68 (now paragraph 64) read, amended and agreed to.

Paragraph 69 (now paragraph 65) read and agreed to.

Paragraph 70 read.

Motion made, and Question proposed, to leave out paragraph 70 and insert the following new paragraph:

"We conclude that there are very few instances in which we accept that PMCs should have a role in contributing to the establishment or maintenance of stability. We believe there is a need for clear guidelines as to which types of roles PMCs should be entitled to take up in weak states."—(Mr Andrew Mackinlay)

Question put.

The Committee divided.

Ayes, 1

Andrew Mackinlay

Noes, 5

Mr David Chidgey 
Mr Greg Pope
Sir Patrick Cormack 
Sir John Stanley
Mr John Maples

Paragraph 70 agreed to (now paragraph 66).

Paragraph 71 read, amended and agreed to (now paragraph 67).

Paragraphs 72 to 74 (now paragraphs 68 to 70) read and agreed to.
Paragraph 75 read, as follows:

75. The danger that British based companies might be confused with British government forces or British foreign policy is increased by the tendency of some private military companies to imitate British military names and uniforms. Such imitation poses a danger to the integrity of British armed forces, and threatens to tarnish their excellent reputation. To reduce this risk, we recommend that the Government prohibit private military or security companies from using names similar to those of British regiments or fighting units, or from the use of any emblem, symbol or distinctive item of uniform similar to those of the British armed forces.

Amendment proposed, in line 7, after the word “names”, to insert the words “other than Gurkha”—(Sir John Stanley).

Question put, That the Amendment be made.

The Committee divided.

Ayes, 2

Sir Patrick Cormack  Sir John Stanley

Noes, 4

Mr David Chidgey  Andrew Mackinlay
Mr Fabian Hamilton  Mr Greg Pope

Paragraph agreed to (now paragraph 71).

Paragraph 76 (now paragraph 72) read, amended and agreed to.

Paragraph 77 (now paragraph 73) read and agreed to.

Paragraph 78 (now paragraph 74) read, amended and agreed to.

Paragraphs 79 to 98 (now paragraphs 75 to 94) read and agreed to.

Paragraph 99 (now paragraph 95) read, amended and agreed to.

Paragraphs 100 and 101 (now paragraphs 96 and 97) read and agreed to.

A paragraph—(Andrew Mackinlay)—brought up, and read, as follows:

Whilst questioning whether it is practical or right for PMCs to get involved in peacekeeping operations, we accept that keeping up peacekeeping operations can take up and strain military capacities. At the same time we note that if Sandline and other PMCs can recruit ex-military personnel why can the British government not do so too? An example of where such practice takes place is the RUC fulltime reserve. We suggest that the government could establish such a reserve for specific peacekeeping
operations made up of ex-military personnel. For example our troops currently located in Cyprus supporting UNFICYP could be substituted by a contingent of such a reserve force, freeing up the current British military personnel stationed there.

Question put, That the paragraph be read a second time.

The Committee divided.

Ayes, 2

Mr Fabian Hamilton Andrew Mackinlay

Noes, 5

Sir Patrick Cormack Mr Greg Pope
Mr John Maples Sir John Stanley
Mr Bill Olner

Paragraphs 102 to 104 (now paragraphs 98 to 100) read and agreed to.

Paragraph 105 read, as follows:

105. We are reassured by Denis MacShane’s answer. We certainly do not believe that the Government should be aiming for further cuts in the armed forces though the greater use of PMCs to perform core defence tasks. However, we conclude that the Government should consider carefully whether the greater use of PMCs in UK humanitarian and peace support operations might help to reduce military overstretch. PMCs might be employed to undertake tasks such as tax collection, road building or water and sanitation projects, which are currently performed by UK forces in peace support operations. The creation of an additional cadre of former armed service personnel to perform these non-combat roles might also help to alleviate overstretch. We provide details of this alternative to the employment of PMCs in paragraphs * to * below.

Amendments made.

Another Amendment proposed, in line 7, to leave out the words “tax collection”—(Andrew Mackinlay).

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3

Mr Fabian Hamilton Mr John Maples
Andrew Mackinlay

Noes, 6

Mr David Chidgey Mr Bill Olner
Sir Patrick Cormack Mr Greg Pope
Mr Eric Illsley Sir John Stanley
Paragraph, as amended, agreed to (now paragraph 101).

Paragraph 106 read, as follows:

106. Given the evident existence of—and likely growth in—a market for private military services, military companies will continue to exist, and absolute prohibition of the sector in the United Kingdom would simply drive them overseas. We are convinced that a properly regulated private military sector can make a positive contribution to international security. We also share the view, articulated by Denis MacShane in rather negative terms, of the benefits of establishing a transparent relationship with the companies through regulation: "I would rather these things were in the tent, as it were, where we could see in which direction they were aiming rather than outside the tent when we have not got the faintest idea what they are up to until we are splattered with very unpleasant after-effects." We **conclude that an outright ban on all military activity abroad by private military companies would be counterproductive.**

Amendment proposed, in line 12, to leave out the first word "**military**"—(Andrew Mackinlay).

Question put, That the Amendment be made.

The Committee divided.

Ayes, 2

Mr Fabian Hamilton Andrew Mackinlay

Noes, 7

Mr David Chidgey Mr Bill Olner
Sir Patrick Cormack Mr Greg Pope
Mr Eric Illsley Sir John Stanley
Mr John Maples

Paragraph agreed to (now paragraph 102).

Paragraph 107 (now paragraph 103) read, amended and agreed to.

Postponed paragraphs 40 to 43 again read, and inserted (now paragraphs 104 to 107).

Paragraph 108 read, as follows:

108. **We recommend that private companies be expressly prohibited from direct participation in armed combat operations, and that firearms should only be carried—and, if necessary, used—by company employees for purposes of training or self-defence.**

Amendment proposed, in line 2, to leave out from the word "**operations,**" to the end of the paragraph.—(Sir John Stanley).

Question proposed, That the Amendment be made:—Amendment, by leave, withdrawn.
Another Amendment proposed, in line 4, at the end to add the words "Should the Government be unwilling to accept this recommendation, we recommend that any contract involving British private military companies in the provision of armed combat services should require individual licence approval by the Government and be the subject of prior parliamentary scrutiny."—(Sir John Stanley).

Question put, That the Amendment be made.

The Committee divided.

Ayes, 4

Mr Fabian Hamilton  Andrew Mackinlay
Mr Eric Illsley  Sir John Stanley

Noes, 5

Mr David Chidgey  Mr Bill Olner
Sir Patrick Cormack  Mr Greg Pope
Mr John Maples

Paragraph agreed to.

Paragraphs 109 to 114 read and agreed to.

Paragraph 115 read, amended and agreed to.

Paragraphs 116 to 119 read and agreed to.

Paragraph 120 read, amended and agreed to.

Paragraphs 121 and 122 read and agreed to.

Paragraph 123 read, as follows:

123. We recommend that each contract for a military/security operation overseas should be subject to a separate licence. The FCO, working with the Department of Trade and Industry, the Ministry of Defence and the Department for International Development, should be responsible for assessing and approving each licence application.

Amendment proposed, in line 2, to leave out from "licence" to the end of the paragraph and add the words "with the exception of companies of demonstrable responsibility and integrity engaged in the provision of non-contentious services for whom the Government considers a general licence would suffice."—(Sir John Stanley).

Proposed Amendment amended, in line 1, by leaving out the words "of demonstrable responsibility and integrity".

Question put, That the proposed Amendment, as amended, be made.
The Committee divided.

Ayes, 6

Mr David Chidgey
Sir Patrick Cormack
Mr John Maples

Mr Bill Olner
Mr Greg Pope
Sir John Stanley

Noes, 3

Mr Fabian Hamilton
Mr Eric Ilsley

Andrew Mackinlay

Paragraph, as amended, agreed to.

Paragraphs 124 to 128 read and agreed to.

Paragraph 129 read, amended and agreed to.

Paragraphs 130 to 134 read and agreed to.

Paragraph 135 read, amended and agreed to.

Paragraphs 136 to 139 read and agreed to.

Paragraph 140 read, amended and agreed to.

Paragraphs 141 to 143 read and agreed to.

Paragraph 144 read, amended and agreed to.

Paragraphs 145 to 147 read and agreed to.

Paragraphs 148 and 149 read, amended and agreed to.

A paragraph—(Andrew Mackinlay)—brought up, read the first and second time and inserted (now paragraph 150).

Paragraphs 150 to 155 read and agreed to (now paragraphs 151 to 156).

Paragraph 156 read, as follows:

156. We recommend that, to monitor the work of PMCs, the Government consider employing former military personnel to travel with PMCs on their operations abroad for purposes of monitoring and evaluation. We further recommend that the Government consider making participation of and cooperation with such monitors a condition of licence.
Motion made, and Question proposed, to leave out paragraph 156 and insert the following new paragraph:

We recommend that the Government establish as an integral part of any regulatory system an appropriate monitoring and evaluation regime and make full cooperation with that regime a condition of the granting of licences to PMCs.—(Sir John Stanley)

Question put and agreed to.

Paragraph agreed to (now paragraph 157)

Paragraph 157 read, as follows:

157. The establishment of a regulatory measure such as this has important resource and staffing implications for the relevant Government departments. Denis MacShane expressed the belief that the “industries themselves should accept the cost of ensuring that they have the status to do what they want to do.” We agree with the Minister on this point. **We recommend that PMCs be required to pay the costs of regulation, monitoring and evaluation.**

Motion made, and Question proposed, to leave out paragraph 157.

Question put.

The Committee divided.

Ayes, 6

Mr David Chidgey  Mr John Maples
Sir Patrick Cormack  Mr Greg Pope
Mr Fabian Hamilton  Sir John Stanley

Noes, 3

Mr Eric Illsley  Mr Bill Olner
Andrew Mackinlay

Paragraphs 158 and 159 read and agreed to.

Paragraph 160 read, as follows:

160. **We conclude that procedures similar to those for Parliamentary scrutiny of arms export licences should apply to any regulation of PMCs.**

Amendment proposed, in line 3, at the end, to add the words “, with prior parliamentary scrutiny being applied to any licence applications that might involve PMCs in the provision of armed combat services.”—(Sir John Stanley)

Question put, That the Amendment be made.
The Committee divided.

Ayes, 5

Mr David Chidgey  Andrew Mackinlay
Mr Fabian Hamilton  Sir John Stanley
Mr Eric Illsley

Noes, 4

Sir Patrick Cormack  Mr Bill Olner
Mr John Maples  Mr Greg Pope

Paragraph, as amended, agreed to.

Paragraph 161 read and agreed to.

Paragraph 162 read, amended and agreed to.

Paragraph 163 read and agreed to.

Resolved, That the Report, as amended, be the Ninth Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Ordered, That the provisions of Standing Order No. 134 (Select Committees (reports)) be applied to the Report.

Several papers were ordered to be appended to the Minutes of Evidence.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.—(The Chairman.)

[Adjourned until Tuesday 22 October at Ten o’clock.]
LIST OF WITNESSES

Tuesday 11 June 2002

Lt. Colonel Tim Spicer, OBE, Security Consultant and Head of Strategic Consulting International ........................................... Ev 5

Mr Michael Bilton, Freelance Journalist ........................................... Ev 15

Mr David Stewart Howitt, Global Dimensions Programme, London School of Economics and Bayard Limited .......................... Ev 23

Thursday 13 June 2002

Dr Denis MacShane, a Member of the House, Parliamentary Under-Secretary of State, Foreign and Commonwealth Office .......................... Ev 29
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UNPRINTED MEMORANDA

Additional memoranda have been received by the following and have been reported to the House, but to save printing costs they have not been printed and copies have been placed in the House of Commons Library where they may be inspected by Members. Other copies are in the Record Office, House of Lords, and are available to the public for inspection. Requests for inspection should be addressed to the Record Office, House of Lords, London, SW1. (Tel 020 7219 3074). Hours of inspection are from 9.30 am to 5.30 pm on Mondays to Fridays.


3. International Alert: *Regulating Private Military Companies: options for the UK Government*, by Chaloka Beyani and Damian Lily


