

A New Governance Strategy for Canadian Private Military Policy

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Introduction

On 17 September 2008, the day after the anniversary of the Nisoor Square massacre in which Blackwater USA employees killed 17 Iraqi civilians,¹ the Swiss Initiative and the International Committee of the Red Cross released a document known as the *Montreux Document*.² The document's purpose is to inform states of their legal obligations and to suggest best practices for dealing with private military companies (PMCs). Experts from concerned countries, including Canada, provided their input. Although it is non-binding, the document's significance is that it forms a definitive statement from the international community that the private military industry does not operate in a legal vacuum. In particular, states have legal obligations to control the risk created by the companies and personnel with whom they interact.

Unfortunately, the so-called "best practices" outlined in the *Montreux Document* are too general to implement. In order for states to fulfil the duties it sets out, they must take into account their own geopolitical and economic situation, as well as the unique nature of their interactions with the private military industry. Canada is no exception. For Canada to fulfil its obligations, the government must develop a risk management strategy that works within the confines of Canada's situation. Therefore, the essential questions are: to what extent can and should the Government of Canada intervene in the private military market to ensure that Canadian involvement is aligned with recognized legal obligations as well as Canadian interests and values, while still leaving the industry available for use by the government as a policy tool and by Canadians as a source of economic

¹ Steve Fainaru and Carol D. Leonnig, "Grand jury to probe shootings by guards: Blackwater among contractors facing scrutiny," *Washington Post*, 20 November 2007, A10.

² Swiss Initiative and ICRC, *Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict*, (Montreux: 17 September 2008).

benefit? In order to answer these questions, several elements must be considered. The first is: what changed, both in the short-term and in the long-term, to create present Canadian involvement in the private military industry? The second is: what is the current nature of that involvement? The third is: what are the deficiencies of this involvement in terms of risk control? The fourth is: what, within the scope of the possible, are Canada's policy options for dealing with the problems and reducing the risks inherent in using PMCs? Finally, the fifth is: based on relevant policy tool evaluation criteria, which policy options would be the most useful for the Government of Canada to pursue?

While international relations and civil-military relations theory are crucial to an understanding of PMCs, a productive policy discussion must go beyond scholars' usual deconstruction of Westphalian geopolitics and the Weberian concept of state monopoly on the legitimate use of force.³ Scholars have a tendency to jump from such an exercise straight to examining the merits of various forms of industry regulation. In overlooking policy analysis *per se*, they have left out a discussion of the other two major groups of policy tools that governments can use to change behaviour: information tools and expenditure tools.⁴ Regulation is often a "tool of last instance" because of its relatively high degree of coercion, its high cost of enforcement and its corresponding political difficulties. Our intention is not to disparage the legal scholarship that has been done on both the legal context of the industry and the regulatory options governments have within that framework.⁵ However, regulation is only one among several sets of tools at the government's disposal.

³ This is one of the running themes through Singer's *Corporate Warriors*, e.g. 170.

⁴ For example, Maj. Scott C. Goddard (Maj, RA Inf., Australia), *The Private Military Company: A Legitimate International Entity within Modern Conflict* (Thesis, Master of Military Arts and Science, U.S. Army Command and General Staff College, Fort Leavenworth, Kansas, 2001), 6-7. Even Deborah Avant hastily passes through contracting to get to regulation: Deborah D. Avant, *The Market for Force: The Consequences of Privatizing Security* (Cambridge UK: Cambridge University Press, 2005), 38. Sarah Percy's Adelphi Paper focuses on regulation, leaving out analysis of alternatives to regulation. Sarah Percy "Regulating the Private Security Industry," *Adelphi Paper 384*, The International Institute for Strategic Studies (2006).

⁵ Such as Benjamin Perrin "Promoting compliance of private security and military companies with international humanitarian law," *International Review of the Red Cross* 88:863 (September 2006), 613-636, and Percy's Adelphi Paper.

Consequently, the heart of this investigation and evaluation is the policy analysis of New Governance, thus far unexplored as a means of understanding the private military industry. One of the premises of our examination is that the rise of the private military industry is as much about New Public Management (NPM), that is, governments' uncritical faith in the private sector, as it is about the end of the Cold War, physical, financial, and human capital mobility, and the ambiguity of relevant domestic and international law. Since the federal budget was balanced in the late 1990s, academics, think-tanks, and the government itself began to review just how effective government service privatization had been. Canada's policymaking process is beginning to shift away from NPM to what eminent scholar of policy analysis Lester M. Salamon calls the "New Governance" model, focused on cooperation between government, citizens, and third party actors to deliver effective policy solutions.⁶ Defence policymaking needs to keep pace with this development, and to re-evaluate what combination of public or private sector tools, and what mix of information, revenue, or regulation-based tools is most appropriate for keeping Canadians safe and promoting Canadian values and interests abroad. In essence, since government policies helped to create it, they can help to shape Canada's involvement in the private military industry.

Background

The *Montreux Document* is a response to the precipitous drop in states' confidence in the private military industry after the incident of 16 September 2007, which has created an increased demand for scrutiny of this powerful industry. Yet there are longer-term trends behind the private military industry's rise to prominence. Several of these are outlined in the existing literature, including the so-called Revolution in Military Affairs (RMA) which gave private actors, including terrorists, the

⁶ This is the central theme of Salamon's chapter: see Lester M. Salamon, "The New Governance and the Tools of Public Action: An Introduction," *The Tools of Government: A Guide to the New Governance*, Lester M. Salamon ed. (Oxford: Oxford University Press, 2002).

means to become a military force,⁷ and the end of the Cold War which made large quantities of armament and demobilized troops readily available.⁸

However, there is a vitally important trend which led to the rise in the private military industry that is often overlooked. The controversial trend, explained by Lester Salamon, was a widespread shift in public sector management in developed countries from the Classical management model to NPM.⁹ NPM is a reversal in the framework of the policymaking process, wherein the private sector is no longer seen as the antithesis to public management, but as the ideal model for public management. Public administration was revamped to follow a business model, with the bottom line as the policy driver, and where “efficiency” became synonymous with “effectiveness.” Thus, the darker side of NPM is an uncritical faith in the supposed “efficiencies” of the marketplace and a lionization of non-governmental business models. Defence management in many developed countries, at least in terms of civilian bureaucracy, followed this development.¹⁰

Defence policy in Canada has been in the grip of NPM since the fiscal revolution introduced in 1994-1995 by Paul Martin, then minister of finance. The government saw privatization as a means of competitively reducing Canada’s public military force in light of fiscal constraints, while enabling Canada to maintain military commitments abroad.¹¹ Demobilized personnel and personnel who had suffered pay and benefit cuts in the public forces of Canada and other “NPM governments” had an incentive to form PMCs. The Canadian Armed Forces (CF), a conservative and self-contained

⁷ Singer, *Corporate Warriors*, 62-63 and Avant, *Market for Force*, 224.

⁸ Armaments became so inexpensive that in Uganda, an AK-47 now costs as much as a chicken, and in most African countries a tank costs less than an SUV. Cf. Singer, *Corporate Warriors*, 54.

⁹ Lester Salamon calls the public management paradigm shift “the revolution that no one noticed.” See Salamon, *The Tools of Government*, 1. It is therefore unsurprising that analysts of the private military industry do not tend to discuss it.

¹⁰ A few governments, like the United States, while having nominal restrictions on what could be privatized, began to privatize in all areas, exhibiting this “panacea” mentality of unchecked New Public Management, as explained in Goddard, *The Private Military Company*, 16. Others, like Germany, were more cautious, keeping certain areas off-limits for privatization in practice, as described in Ulrich Petersohn, *Outsourcing the Big Stick: The Consequences of Using Private Military Companies*, Weatherhead Center for International Affairs Working Paper (Boston: Harvard, 2008).

¹¹ Outlined in the defence downsizing White Paper, 1994. The Paper mandated 60,000 troops, and the manning level was set at 54,820 in 2004-2005 during Paul Martin’s second wave of privatization. It was meant to decline to 54,700 in 2005-2006. Now Canada has 107 military occupations, 38 stressed because they are lacking the ideal numbers of personnel. Christopher Spearin, “Not a ‘Real State’? Defence Privatization in Canada,” *International Journal* 60:4 (Autumn 2005), 1100.

institution by nature, was behind the rest of the public service in moving towards a NPM model¹² The CF had little incentive to embrace “third party” entry into military affairs except for tasks which the CF could not perform on their own.

Over time, the private sector business model has become increasingly inappropriate.¹³ Reinventing service delivery is back on the public service and political agenda, including a cooperative attitude between government and private “third parties.” Salamon calls this approach “New Governance,” which entails several shifts in thinking: from programs and agencies to policy “tools” of all sorts, from hierarchies to networks, from competition between public and private to cooperation, from command and control to negotiation and persuasion, and from management to enablement.¹⁴ In the Canadian Forces, where tradition, hierarchy, clear distinction from other organizations, and command and control are the norm, adopting New Governance is challenging. Nevertheless, with the information technology-based RMA and the increase of non-state security threats and non-state security provision since the Cold War, this shift may be necessary.

Special Operations Forces (SOF) around the world are the furthest along in the conversion to New Governance of state military entities. Their relatively horizontal structure and focus on networking with all kinds of organizations and local people enables them to draw on a diversity of tools and to adapt to new situations quickly.¹⁵ High standards of training allow SOF personnel to take full advantage of the GIR, and their networking skills give them access to whatever other

¹² Military forces must be separate from the rest of government and civil society for the preservation of their own integrity and the integrity of democracy. Their disciplined behaviour also tends to rely on tradition, hence their relative resistance to governance model changes.

¹³ While still retaining some of the frugality of the 1990s, the public service has been recently letting go of NPM paradigms such as the “client” model of service delivery. The private sector has also proven a problematic role model in some cases, with the Bre-X, Enron and Nortel affairs showing a troubling lack of accountability.

¹⁴ Salamon, *The Tools of Government*, 9 (Table 1-4).

¹⁵ For a description of Canada’s SOF, see Christopher Spearin, “SOF for Sale: the Canadian Forces and the Challenge of Privatized Security,” *Canadian Military Journal* 8:1 (Spring 2007), 28.

expertise they need. Unfortunately for the taxpayers who pay for their training, these highly-skilled and flexible SOF personnel are also easily able to slide onto the payrolls of PMCs.¹⁶

Although some of the global trends contributing to the rise of the private military industry are out of Canada's control, one important trend can be affected by the Canadian government. It is unlikely that PMCs would have flourished to the extent that they have without the New Public Management mentality of government agencies, which has allowed those agencies to become trusting clients for the industry. If the Government of Canada were to change its approach to the more analytical New Governance model, it would be able to make more controlled and strategic use of privatization.

Salamon's New Governance Approach

While Salamon outlines at least eight kinds of policy instruments, they essentially distil down to three different categories: information tools, revenue tools, and regulation tools.¹⁷ As previously mentioned, the academic discussion of PMCs largely neglects information and revenue tools in favour of regulation tools. Nevertheless, the policy "package" addressing each component has tools from each of these three categories. Information tools can range from internal government intelligence to indoctrination. Revenue tools can range from imposing taxes to the creation of a new government oversight agency. Regulation tools can range from lobbying for an international standard to creating enforced domestic criminal sanctions.

¹⁶ To a certain extent, this may have something to do with the fact that SOF members often found PMCs, and PMCs tend to recruit their leadership staff through personal networks. Cf. *ibid*.

¹⁷ Salamon's instruments include contracting, grants, vouchers, tax expenditures, loan guarantees, government-sponsored enterprises, insurance, and regulation. In our thinking, revenue includes taxation, expenditures, and expenditure items such as contracts and agencies or grants and vouchers (*Tools of Policy Analysis*, 20-22).

Salamon's most useful contribution to PMC policy analysis is his elaboration of criteria for policy tool evaluation.¹⁸ They are as follows:

- *Effectiveness*
- *Efficiency*
- *Equity*
- *Manageability*
- *Legitimacy and political feasibility*

Salamon's framework is one of the neater methods available to analyze the existing and potential tools packages addressing the four aspects of the private military industry in Canada. Once current policy covering a component is laid out, and its strengths and deficiencies assessed, New Governance evaluation shall be used to determine which, if any, of the alternatives to existing policy would be most desirable. While the following analysis is too sweeping and too limited in detailed information to provide the basis for sound defence policy decision-making, it will give an idea of the general policy directions the Government of Canada should take or avoid when deciding how to interact with the private military industry.

The *Montreux Document* identifies three types of states by their respective relationships with private military companies: "Territorial States" in which PMCs operate, "Home States" in which PMCs are incorporated and from which PMC personnel issue, and "Contracting States" that hire PMCs to perform military tasks. Canada is not currently a Territorial State in the sense intended by the *Document*, but it serves both as a Home State and as a Contracting State.¹⁹ The New Governance

¹⁸ *Ibid.*, 22-24.

¹⁹ The *Montreux Document* leaves out a classification which is most important to Canada, what one might call "Client Host States" or states in which private or third sector clients of PMCs are incorporated. Canadian mineral extraction companies have been among the most prolific and visible users of PMCs, and therefore Canadian control over Canadian-incorporated transnationals is an important contribution to the reduction of risk posed by PMCs globally. Canada can influence the contracting practices of private and third sector PMC clients by influencing the contracting practices of these major clients, along the trajectory of the 2006 National Roundtables on Corporate Social

criteria may be used to evaluate Canadian policy addressing Home State issues and Contracting State issues to determine outstanding risks and propose some improvements designed to make better accountable and strategic use of private military resources.

Canada as a Home State

Context

Private military companies are difficult to profile, for no two are identical in services offered, corporate policies, or personnel. However, there are a few general characteristics worth noting. There has been a trend among companies in recent years away from hiring employees to subcontracting individuals or small units for particular contracts.²⁰ Therefore, the permanent staff of these companies normally consists of a small group of company executives and a larger group of head-hunters and procurement staff. Increasingly, companies are looking to save money by hiring less expensive personnel from the armed forces of developing countries.²¹ Furthermore, the competition between companies is becoming fiercer. New entrants penetrate the market every year, many of them subsidiaries of other companies, and many of them small start-up firms, especially from developing countries.²²

The industry also has some enduring characteristics. One of them is a tendency to locate in loose regulatory jurisdictions unless companies have a particular reason not to. This is because personnel prefer to receive salary or contract payments tax free.²³ If they are incorporated in tax havens like the Bahamas, companies usually have offices in major commercial and political centres, such as London or Washington, as well as in combat areas such as Baghdad or Kabul. Most PMCs

Responsibility. Government of Canada. *National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries Advisory Group Report* (Ottawa: March 29, 2007).

²⁰ The “virtual companies” in Avant’s analysis.

²¹ According to Avant, PMC staffers are “mostly retired military or police from countries as varied as Chile, Fiji, Israel, Nepal, South Africa, the United Kingdom, and the United States.” Avant, *Market for Force*, 4. This is a shift from the pool of almost exclusively “elite” public force labour (OECD countries) used prior to 2003.

²² Singer, *Corporate Warriors*, 79.

²³ Goddard, *The Private Military Company*, 32.

are run either by retired generals or by highly trained ex-SOF personnel. Because the United States is such a lobby-intensive jurisdiction, most American companies have retired generals on their executive staff for the appearance of credibility.²⁴ The United Kingdom's companies are primarily run by ex-SAS members. By contrast, Canadian companies tend to be run by civilian entrepreneurs.

Comparatively few significant PMCs are incorporated under Canadian jurisdiction. Toronto-based security consulting firm Globe Risk Holdings is one of the older PMCs in business, having provided security in the Middle East for more than ten years.²⁵ Awarded the first "Peace Prize" from the Foundation for Relief and Reconciliation in the Middle East for its work in Iraq, Montréal-based GardaWorld is not only the fifth-largest private security provider (domestic security included) in the world but also boasts a good humanitarian record.²⁶ It owes its size to a string of acquisitions, including Vance International, an American PMC, and Kroll, a British PMC, both of which put the company on the private military scene.²⁷

In terms of personnel, the global rise of PMCs has created two phenomena. The first is that the opportunists who enlist tend to assume that PMCs offer higher wages and more exciting jobs (an increasingly erroneous assumption),²⁸ as well as more flexibility than the rigid command, deployment, and promotion structures of public forces. The second is that PMCs have provided a new post-retirement employment opportunity for public military retirees.²⁹ This opportunity creates a greater incentive for military personnel to retire earlier.

Canada is by no means immune from these trends. Nevertheless, information on individual Canadians who choose to become employees of a PMC is scarce, due to privacy and employee

²⁴ Avant, *Market for Force*, 136 and 170.

²⁵ John Greenwood, "When danger is your business," *National Post*, 8 December 2006, FP.3.

²⁶ GardaWorld Press Release. "GardaWorld Awarded First 'Peace Prize'," 14 May 2007. Garda has also managed to secure contracts with the UN and other aid agencies.

²⁷ Don Butler, "How a nice Quebec firm found itself in a war zone; Montreal-based Garda claims to be the world's fifth-largest private security company," *Ottawa Citizen*, 4 June 2007, A1.

²⁸ One of the regular posters on <http://forums.army.ca> warns that the \$1000 per day salary is an outdated figure with new developing world competition (not to mention the economic downturn), and that most private military work is uninspiring and thankless guard duty.

²⁹ Spearin, "SOF for Sale," 30.

confidentiality considerations. The CF provides only a relatively small supply pool for PMC recruiters to draw from, compared with the British and especially American military forces. Based on what is known, Canadians provide a small part of the private military labour force, but with their high quality CF training they are sought after by the industry, and may disproportionately be found in leadership roles. JTF 2 members in particular are courted.³⁰

Current Home State Policy and Analysis: Companies

The fact that Canada's companies are mostly founded and run by business people may help to explain why the Government of Canada largely treats PMCs like any other transnational corporation. In addition, the Canadian companies have thus far behaved themselves, if not distinguished themselves through good work and commitment to humanitarian organizations. It is not surprising, then, that the policy package addressing the Canadian-incorporated PMCs does not much differ from other transnational corporations. The government uses three information tools to address the potential risks of any transnational corporation: the Industry Canada database of Canadian-incorporated companies, the disclosure provisions of the *Canada Business Corporations Act (CBCA)*, and the auditing provisions of the *Income Tax Act*.³¹ The Industry Canada database consists of a summary of each registered company's line of work, provides contact information, and posts voluntarily supplied information about size and revenues.³² The *Canada Business Corporations Act* allows directors and shareholders to launch an investigation if they suspect dishonesty or unlawful activities in the company.³³ Sometimes, the results of this investigation must be made public.³⁴

³⁰ Bruce Campion-Smith. "Elite troops quit for fat pay; Private security companies poach secretive JTF2, Colonel defends Canadian Forces' special allowance," *Toronto Star*, 21 November 2006, A8.

³¹ <http://strategis.ic.gc.ca>, *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) and *Canada Business Corporations Act*, R.S.C., 1985, c. C-44, s.20..

³² For example, Globe Risk Holdings at <http://strategis.ic.gc.ca/app/ccc/srch/nvgt.do?lang=eng&prtl=1&sbPrtl=&estblmntNo=234567056939&profile=cmlptPrfl&app=1> (accessed May 22, 2008)

³³ *CBCA*, s.229.

³⁴ *Ibid*, s.235(3).

Useful for the government are the auditing provisions of the Income Tax Act, which allows it to investigate a company's activities and finances.³⁵

Expenditures are minimal and equivalent to those addressing all other transnational corporations. As is, the taxes to which PMCs and all transnationals are subject (income tax, excise tax, and payroll tax among others), have little impact on PMC behaviour. Some PMC activities may be eligible for secured or unsecured financing through Export Development Canada (EDC) financing programs designed to help Canadian companies with projects abroad. PMCs may be able to access the Equity Investments program, but the majority of EDC financing is geared towards goods exports and industrial projects.³⁶ Therefore, this expenditure would have a limited impact. The most influential of the government's expenditures is the money and programs used to support and enforce the information and regulation measures.

PMCs are embedded in the framework of regulations surrounding all Canadian companies engaged in international business. The first is the *CBCA*, which grants companies extra-territorial capacity to carry on business in any jurisdiction outside Canada "to the extent that the laws of such jurisdiction permit."³⁷ The *Act* requires the company to keep a registered office in Canada.³⁸ The company must keep corporate, director, and accounting records for at least the previous two years. All directors and officers must discharge their duties honestly and in good faith with a view to the best interests of the corporation and "exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances."³⁹ The *Act* supports the information tools available to directors and auditors by creating a regulatory offence if officers of the company fail to disclose the required information.

³⁵ Each election shall, "with due dispatch" be examined by the Minister, *Ibid*, s.220 (3.6), and "an authorized person may, at all reasonable times, for any purpose related to the administration or enforcement of this Act, inspect, audit or examine the books and records of a taxpayer and any document" pertaining to the amount payable under the Act. Related property and inventory may also be examined. *Ibid*, s.231.

³⁶ See the classifications and eligibility at <http://www.edc.ca/english/financing.htm?cid=red1197>

³⁷ *CBCA*, s.15(3)

³⁸ *Ibid*, s.19(1)

³⁹ *Ibid*, s.122.

PMCs' activities are also subject to the amendments to the *Criminal Code* outlined in Bill C-45 which imposes revised criminal liability on organizations.⁴⁰ This amendment makes the company responsible for the physical acts of its "representatives," including contraventions of international criminal law.⁴¹ It also requires those "directing the work of others" to take "reasonable steps" to ensure the safety of both their employees and the public.⁴² This means that instead of having to look for particular guilty individuals, if the PMC as a whole is engaged in illegal practices, the entire company can be punished under Canadian criminal law.

The central goal of this policy package is apparently to treat PMCs as equitably as possible in relation to other transnational enterprises, while encouraging ethical practices. The policy scores well on Salamon's scale of effectiveness: PMCs are treated no differently than other Canadian transnational corporations, and there is an appreciable degree of surveillance of the activities and internal workings of the PMCs to provide incentives towards ethical practices. The high automaticity of using the same policy for all, as well as the spot-check style of rendering PMCs to account makes the policy efficient as well. In terms of equity, not only is the policy towards PMCs no different than other transnationals, there is no undue burden or disproportionate laxity imposed upon PMCs. Given the human capital nature of PMCs, they are bound to be more elusive to this system than physical capital-intensive industries, but the same goes for all transnationals that provide mostly services. Management of the policy is relatively simple in Canada. Abroad, this management becomes more challenging in terms of obtaining records, but if a company does not comply with

⁴⁰ Minister of Justice, "Criminal Liability of Organizations: A Plain Language Guide to Bill C-45" (Ottawa: Government of Canada, 2003), 3. The Bill received royal assent on 7 November 2003 and its amendments are scattered throughout the *Criminal Code*, or *An Act respecting the criminal law*, R.S.C. 1985, c. C-46.

⁴¹ "Representative" includes directors, partners, members, agents and contractors, as well as employees (and these must be acting within the scope of their employment at the time of the alleged crime), "Criminal Liability of Organizations," 5. The proof of the corporation party to the crime is that the senior officers involved depart markedly from the normal standard of care that would be expected of them in the circumstances: *ibid.*, 6.

⁴² *Criminal Code*, s.217.1.

disclosure provisions it risks fines or closure in Canada. Because it requires no essential changes to normal policy towards transnationals, this policy is legitimate and politically feasible.

Proposals for Home States to reduce the risk of their PMCs have been multitudinous, from bans to permits to industry self-regulation.⁴³ The most feasible of these alternatives is for the Government of Canada to license Canadian PMCs itself. Licensing, such as that implemented by the United States under the framework of international arms control (specifically ITAR), would have to come with the creation of an oversight body or agency in order to work in Canada. The current American framework does not provide for any follow-up after the licence is granted, which has enabled licensed companies to backslide once they obtain their permits. Such a licensing scheme is effective in separating “legitimate” companies from “illegitimate” companies, at least in a moral sense. However, oversight is difficult when dealing with companies operating abroad. Outside domestic jurisdiction, companies can be too slippery for regulatory bodies to catch, which is likely why the US government does not expend the required resources to oversee the licensees.⁴⁴

Compared with current policy, licensing with proper oversight mechanisms would increase effectiveness by clearly defining and enforcing acceptable behaviour of companies wishing to remain incorporated in Canada while providing military services. It might allow the government to effectively place restrictions on the activities of the private military branch of the large companies without damaging relations with the other branches. Since the policy has a US precedent, it is within the range of legitimate options, and would, depending on its cost, be politically feasible. Nonetheless, the efficiency and the manageability factors would be reduced. Added would be another bureaucratic layer that would have to be maintained in Canada and abroad with the

⁴³ For a fuller discussion of these options, see Percy, “Regulating the Private Security Industry,” 31-59.

⁴⁴ Percy maintains that while obtaining a licence requires the scrutiny of the Office of Defense Trade Controls in the Department of State, once the companies are licensed, they are only overseen by the American embassies of the countries in which services are being provided. The embassies have neither the expertise nor the time to oversee the behaviour of the licensees. *Ibid*, 25-27.

appropriate expertise, which is difficult to come by.⁴⁵ If the policy has not improved the US package, there is little reason to believe it would improve Canada's, considering its smaller defence budget and greater labour shortages. Therefore, even the best of the alternatives would not improve on current policy from a New Governance perspective.

Current Home State Policy and Analysis: Personnel

With regards to PMC personnel who are Canadian nationals, most of the Government of Canada's policy has been directed at stemming the flow of trained Canadian Forces personnel into the private sector, such as the added expenditure in 2006 to increase JTF 2 allowances. Regulatory provisions depend on the background of PMC personnel. If they issue from the CF, they are subject to their terms of employment under military law, especially its discharge provisions, pension regulations, and confidentiality oaths.⁴⁶ If they issue from other public institutions such as the RCMP, those employment regulations apply.⁴⁷ Legally, the Government of Canada has some measure of obligation to extend diplomatic assistance to Canadians abroad, most importantly obtaining extradition for citizens facing punishments that violate the *Canadian Charter of Rights and Freedoms*.⁴⁸ In return, Canadians are supposed to comply with local law to the best of their ability and to adhere to international law. This also applies to PMC personnel.

⁴⁵ Part of the problem for the US is that "the number of qualified contract administrators in the Pentagon cannot meet the demand," even to administer DoD contracts, let alone to police the licensees who conduct business unrelated to government military projects. *Ibid*, 27. This would most likely be the state of things in Canada as well.

⁴⁶ For example, the release vs. desertion provisions in s.30 of the *National Defence Act*, R.S.C., 1985, c. N-5; the pension provisions of the *Canadian Forces Superannuation Act*, R.S., 1985, c. C-17, where a full pension is obtainable after 20 years' service and increases until 35 years' service, s.15, although contributions can be recovered after five years' service.

⁴⁷ Such as the Oath of Secrecy, which is not broken upon discharge from the force, *Royal Canadian Mounted Police External Review Committee Security and Confidentiality Regulations* (SOR/88-397). Also, there are pension provisions in the *Royal Canadian Mounted Police Superannuation Act*, R.S.C., 1985, c. R-11 where pensions can be collected for voluntary retirement after 25 years and are increased every year until 35 years of service, s.10.

⁴⁸ *United States v. Burns*, 2001 SCC 7, [2001] 1 S.C.R. 283 at 52. "The guarantee of 'protection' [of section 12 of the *Canadian Charter of Rights and Freedoms*] imposes an affirmative obligation on the Canadian state to protect against infliction of the death penalty whether by Canada or by any other government." Lawyers agree this provision extends to other "inhumane" punishments.

The goal of the policy package is primarily to prevent the bleed of publicly trained personnel into the private military industry, which it does not accomplish effectively or efficiently.⁴⁹ Its secondary goal is to prevent the misuse of classified government information. The *Montreux Document* is not concerned with these kinds of domestic goals. It is instead concerned with ensuring that Canadians comply with international and host state law. At first glance, the tit-for-tat arrangement seems minimalist. However, again it must be compared with reasonable alternatives.

One precedented alternative is for the government to enact extraterritorial criminal and disciplinary law to keep jurisdiction over Canadian PMC personnel abroad. Australia's legal framework is the obvious model, and the Government of Canada could use the Extraterritorial Operation of Crimes (Overseas) Act (1964), and the Defence Force Discipline Act (1982) as a basis for its own measures.⁵⁰ Nevertheless, extraterritorial law governing conduct, using this model, would require a major shift in the Canadian mindset that would likely be intolerable. Australia was only able to successfully implement these measures because all of Australian criminal law has been extraterritorial for decades, and the public (and lawyers) are used to the idea.⁵¹ The symbolic abridgement of freedom would probably not receive a warm reception in Canada. Furthermore, enforcement is complicated, expensive, and sometimes impossible given criminal burdens of proof. Again, current policy holds up under Salamon's evaluation method. While extraterritorial jurisdiction might be appealing from a *Montreux* risk reduction perspective, it fails on the New Governance efficiency, manageability, and political feasibility criteria.

⁴⁹ The policy gives windfall gains to those JTF 2 personnel who do not intend to leave to take positions with PMCs, and it disregards the fact that a great number of PMC personnel are actually legitimate CF pensioners who have put in their 25 years. It also raises an equity issue *vis-à-vis* the conventional forces which did not receive such an increase. An effective, efficient policy would target the marginal decision to stay on an extra year or two before retirement by calibrating the pension system to reward longer service.

⁵⁰ The former ensures that Australian nationals abroad carry with them Australian criminal liability, while enjoying certain immunities from local laws. The discipline provisions of the latter extend extraterritorially to military personnel and "defence civilians" (s.9) who accompany the ADF. Cf. Donald R. Rothwell, "Legal Opinion on the Status of Non-Combatants and Contractors under International Humanitarian Law and Australian Law," Australian Strategic Policy Institute, 24 (December 2004), 7-9.

⁵¹ Rothwell, 8.

Therefore, the analysis should focus on a branch of policy over which the Government of Canada has control and which exhibits greater outstanding risks. While there is little room to manoeuvre as a Home State, Canada can make significant improvements as a Contracting State.

Canada as a Contracting State

Context

Governments have a long history of military service privatization. Counting mercenaries, this privatization is as old as war itself. If only modern companies are considered, privatization is usually traced back to Pinkerton in the American Civil War. Of late, privatization has been extensive in the most expensive and technical areas of military service and equipment provision, particularly in the world's air forces. Air service privatization has been relatively uncontroversial, except in rare cases when it involves divulging technological secrets to foreign parties.⁵² With the blurring of the lines between "combatant" and "non-combatant" since the Second World War due to increasing need for civilian, notably female, support attached to combat units, privatization found a precedent and has expanded ever since.

Some governments have sought privatization wherever expedient, whereas others have put limits on the levels of permissible privatization. The United States government's high tolerance for privatized service delivery, coupled with a gargantuan defence budget, has made it not only the largest government client, but the largest single client of the private military industry. With billions of dollars in contracts, tens of thousands of support troops, and countless logistics and consulting personnel, the private component of the United States military is now indispensable to its operations.⁵³ At the opposite extreme lies South Africa, with a total legal ban on the industry and

⁵² For example, the Canadian air-space reconnaissance satellite outsourced to a Russian firm. Cf. David Pugliese, "Russia entrusted with Canada's top satellite secrets," *Ottawa Citizen*, 18 January 2006, A1.

⁵³ Ulrich Petersohn has called this high "dependency" which is potentially dangerous for a state's sovereignty: see his *Outsourcing the Big Stick*, 11.

government tolerance of only a few private military activities, let alone contracts initiated by the government itself. The United Kingdom has no formal approach to privatization, but has traditionally been only a minor consumer. However, since it has been stretched thin by commitments in Iraq and Afghanistan, the UK is a growing client.⁵⁴

The Government of Canada's military privatization and use of PMCs has followed a trajectory similar to the UK's.⁵⁵ Nonetheless, with its relatively small public force in relation to its international commitments, and its more wholesale adoption of New Public Management than the UK, the Government of Canada has moved slightly faster than its UK counterpart towards military privatization. Outsourcing began in earnest in the Royal Canadian Air Force in the 1990s, notably aircraft field maintenance and the management of airfields in Kosovo.⁵⁶ Today, use has spread to all three services, and two government departments are important clients of the private military industry: the Department of Foreign Affairs and International Trade (DFAIT), and the Department of National Defence (DND). While other departments such as the Canadian Security and Intelligence Service (CSIS) or Citizenship and Immigration may use PMCs from time to time, the most visible and frequent users are DFAIT and the DND.

DFAIT uses private military personnel for guarding its Embassies and providing personal security details to VIPs, dignitaries, and diplomats. The DND and the CF now use private providers for almost all logistical support, transportation, and information systems, the majority of weapons production and procurement, base construction, base guarding and personal security details, and recently part of the CF's counter-terrorism training. Both departments are practical in their contractor selection. A lot of Canadian firms appear on contracts for the "traditional" areas of logistics, transportation (except for large craft transport, provided by the Russians and Ukrainians),

⁵⁴ Avant, *Market for Force*, 209.

⁵⁵ "The Canadian military has made logistics outsourcing moves similar to those of Australian and British forces. It also has contracted with civilian firms to provide electronic warfare (EW) training and various other air combat support services." Singer, *Corporate Warriors*, 14.

⁵⁶ ATCO-Frontec Website <http://www.atcofrontec.com/> (accessed May 22, 2008).

and information systems. For guarding, mostly British firms are used. American firms tend to provide CF members with training when training is outsourced.

Current Policy and Analysis

In response to criticism and undoubtedly difficulties with its contracts, the Government of Canada has recently implemented several policy measures to rectify the situation. Many of them run along the lines suggested in the “Best Practices” section of the *Montreux Document*. Several information tools the government has put in place respond to suspicions of the media and the Opposition due to the alleged secrecy of the DFAIT and DND-CF contracts for private military services. To respond to contractual difficulties, the government has also implemented nearly invisible information, expenditure, and regulatory measures.

The Treasury Board Secretariat has, for some time, had proactive disclosure mechanisms requiring government departments to publicly disclose contracts over \$10,000. However, the media has recently gained access to more detailed contract information, allowing it to put together a more complete story of government contracting.⁵⁷ The policy attempts to balance security requirements with Freedom of Information requirements, reducing the number of inaccessible documents, but continuing to blank out any sensitive information, particularly with regards to the location and missions of contractors.⁵⁸

Other information tools help to alleviate potential or actual problems with the operation of the contracts. Contracts may be either negotiated or competitively bid with emphasis on negotiated

⁵⁷ Although Mayeda and Blanchfield complain about the government’s censorship of contractor names, the government’s disclosure policy gave them access to extensive information on the awarding, value, and administration of government PMC contracts. See for example: Andrew Mayeda and Mike Blanchfield, “Secrecy shrouds Afghan deals; Defence awards \$1.1M in contracts to business with same name as infamous warlord,” *Edmonton Journal*, 19 November 2007, A1.

⁵⁸ As occurred in two declassified contracts, one from 2005 and one from 2007, between the Government of Canada (Kandahar Provincial Reconstruction Team) the Kandahar city police force. Special thanks to David Perry at Dalhousie University for permitting us access to his copies. The 2005 contract is rudimentary, but the 2007 contract has legally and technically tightened up its language, terms, and conditions for improved operation.

contracts since reputation and security clearance would presumably carry more weight than price alone.⁵⁹ Since DFAIT contracts mostly deal with Personal Security Details and embassy guarding, officials are immediately present to oversee the performance of their PMCs' work. The DND-CF, on the other hand, needs more formal oversight mechanisms. During the life of the contract, new contract provisions introduced between 2005 and 2007 function as information tools to keep the government abreast of what their PMCs are doing.⁶⁰ The first is contractor reporting obligations. The contractor is required to maintain and follow a "Quality Control plan." The second is the appointment of a "Technical Authority" with the jurisdiction to oversee contract performance.

It may seem too obvious to mention, but an important expenditure tool the government controls is the contract remuneration itself. The possibility that it will not be paid in the event of the government's displeasure is a strong incentive for a PMC contractor to behave as its governmental client wishes it to. In addition, the 2007 contract between Canada and the Kandahar City Police writes in a "time is of the essence" clause, meaning that delays give the government the right to terminate the contract, which may promote contractor efficiency. The government has also increased expenditures for its DND-CF contracts in creating more formal mechanisms of contract administration such as the Technical Authority. While the precise nature of this Authority is not known, presumably it contains military experts and professional contract administrators, both of whom are expensive or impose a significant opportunity cost if they are deployed in Afghanistan.

The 2007 contract also contains evidence of new regulatory tools in the forms of contract terms and conditions. A gaping deficiency in the 2005 was rectified with a jurisdiction clause which

⁵⁹ Except, perhaps, for construction projects, where Defence Construction Canada (DCC) has a general policy of opening contracts to competitive bids. The construction industry is also well known to DCC, and construction projects do not necessarily carry the security risks of guarding, technical, and training contracts.

⁶⁰ These measures, in addition to all of the other DND-CF contract provisions mentioned below, are deduced from the 2005 and 2007 contracts with the Kandahar City Police. We are making the assumption that they are slightly modified standard form contracts.

clarified that the law of the province of Ontario was to preside over the contract.⁶¹ Both contracts have provisions for adjudication by the local CF commander, but this would allow an appeal to the Ontario courts. Both contracts require the PMC contractor to obey the orders of the CF command structure, and to follow force protection rules and the rules of the defence establishment. The 2007 contract requires the CF commander to bring orders to the attention of the contractor.⁶² It also charges the employer with stricter supervision requirements and harsher conditions for the termination of employees who impose a security risk. In both contracts, the contractor is required to replace employees who are terminated or who resign. Failure to comply with the conditions of the contract results in its rescission, which means that the government does not have to pay the contractor anything but *quantum meruit*, or fair market value, for work already completed.

Alongside the contracting process, there appears to be a complex protocol in place that governs the interaction between the CF-NATO forces and contractors. As the recent shooting incidents have revealed, there is an advertising program on Afghan television to warn locals, many of whom are contractors operating in military zones, to keep away from and recognize the signals of NATO convoys. Presumably, these same instructions are circulated among the NATO forces. The protocol consists, so far as one can tell, of an order for approaching vehicles to slow down, repeated verbal warnings, then a warning shot before full engagement of the perceived enemy.⁶³

The broader regulatory framework around each department's contracting process is slightly different. The legal status of PMCs contracted by DFAIT is defined by the Vienna Conventions and local law, for example registered guard services for the Canadian embassy in Kabul.⁶⁴ The legal status of DND-CF contracted PMCs is different from the DFAIT contractors, and similar to the legal status of contractors in Iraq who are protected by Coalition Provisional Authority (CPA) Order 17.

⁶¹ Formerly, there was no jurisdiction clause, which meant according to the principles of contract law that the contract's jurisdiction was to be where the contract was signed, in Koblenz, Federal Republic of Germany.

⁶² This partially rectified the imbalance of obligations on the part of the contractor and benefits on the part of the CF.

⁶³ Although CF "warning shots" may kill: cf. "Canadians fire on security vehicle," *Globe and Mail*, 4 April 2008, A12.

⁶⁴ Gloria Galloway, "Accountability of private security forces questioned," *Globe and Mail*, 23 October 2007, A18.

Arrangements between the CF and the Karzai government were signed in December 2005, granting exemptions from local law, parallel to CPA Order 17, to CF soldiers and “Canadian personnel,” including Canadian-hired contractors (if they are not Afghans).⁶⁵ The Arrangement exempts “Canadian personnel” from local tort liability, making it almost impossible for common Afghans to claim damage to property or injuries against Canadian-hired contractors.⁶⁶

The objective of the Contracting State policy package is to ensure that Canada’s use of PMCs is without international incident and befits a democratic government. The package achieves its objective to a certain extent. On one hand, the NATO forces’ protocol for dealing with PMCs is insufficient to prevent friendly-fire incidents and confrontations, and does not take the necessary step of trying to get the two kinds of force providers working together. On the other hand, improvements in contracting, particularly contract administration and oversight, mean that the Government of Canada is now in a much better position to control its PMC contractors’ behaviour and ensure that contracts are executed as safely and efficiently as possible. While there are still some significant loyalty and quality control risks when dealing with PMCs, they are greatly reduced. The disclosure policy is a good compromise between safeguarding secrets and allowing the public to know what is going on.

With regards to efficiency, we have no way of assessing whether it would be more efficient for these pieces of work contracted to PMCs to be carried out by CF and government personnel or not. Because there is no known procedure for determining whether and when to use PMCs as opposed to public forces, and the monetary data necessary to compare the cost of similar public and PMC conducted operations, the use of PMCs may be costing a lot more than it ought to be. Termination of contracts for breaching the time is of the essence, safety, and security conditions of the contract may be efficient if hiring a PMC turns out to be a mistake. However, as is common in

⁶⁵ *Technical Arrangements Between the Government of Canada and the Government of the Islamic Republic of Afghanistan*, 18 December 2005 and *Arrangements Regarding the Status of Canadian Personnel in Afghanistan*, 18 December 2005.

⁶⁶ An Afghan would have to have the knowledge and the resources to file a claim in the Ontario court system.

the private sector upon contract termination, finding someone else to fill the resulting void can cost much more than the original contract. Therefore, the efficiency of the policy package is unclear.

It is always a challenge to manage contracts in a conflict zone. However, the contract administration body, the Technical Authority, put in place gives hope that the DND-CF contracts will be properly managed despite the challenges. With the correct personnel and adequate resources, a quality control team can manage the work so it is performed to the government's satisfaction, in a safe, secure, and timely fashion.⁶⁷ Although highly coercive, the termination clauses giving the government maximum flexibility also help to ensure that the CF can swiftly manage problems before they get out of hand.

Nevertheless, the secrecy of the whole contracting process in particular remains a problem of democratic accountability and thus legitimacy. The unwillingness of the government to report its expenditures on PMC contracts does not allow for the public, the media, or commentators to assess whether or not the use of PMCs by government is justified. Improvement may be accomplished by the interaction of several different policy options. Some scholars have advocated forbidding the current practice of sole-source contracting and breaking up large contracts into smaller parts, in order to reduce dependency and foster competition in the industry.⁶⁸ However, with so many corporate groups and hidden subsidiaries out there, not to mention the ever-changing labour composition of each firm depending on the exigencies of the contract, this is not a likely solution to the risks of dependency. A much better way to reduce these risks is to avoid unnecessary or ineffective contracts. Before contracts are even drafted, procedures and guidelines for making the decision whether or not to contract out a piece of military work should be developed. Deborah Avant provides a pertinent framework for the strategic use of private services. She explains that:

Contracting makes sense if a government knows exactly what it wants and cares more about the ends than the means. Sometimes, contracting can even force

⁶⁷ Of course, having the correct personnel and adequate resources is a large assumption on our part.

⁶⁸ Singer, *Corporate Warriors*, 236.

discipline on the government, leading to a better specification of its goals. On the other hand, if the government cares about means and wants its agents to follow a set of guidelines for how to go about providing a service, civil servants – geared to follow instructions – are superior.⁶⁹

Rationalizing the decision to privatize saves a great deal of trouble over the course of an operation. The procedure is effective in ensuring that the entity performing a particular piece of work is suitable for the job. The policy acts efficiently by avoiding the negative consequences of a mismatch throughout the life of the contract by a proper allocation of resources. Through the use of an objective standard in making the choice, ideological favouritism for public or private could be in some measure avoided, increasing equity. Since the policy acts before the contract is even formed, there is very little management required. Finally, the legitimacy of the contracting process will increase in the public eye if there is a rational decision-making procedure to show to the public.

In order to improve relations between the CF and allied public forces and the contractors, a clearer protocol could be drawn up for interactions between them. It could be based on existing Civil-Military Relations protocols for dealing cooperatively with humanitarian organizations.⁷⁰ Canada has a well developed system of Civil-Military Relations (in Canadian nomenclature, “CIMIC”), which consists of specialized CIMIC operators who have undergone extensive training in how to deal with civilian organizations in conflict zones.⁷¹ The training program could be adapted to include the particular characteristics of PMCs, and trained CIMIC operators could thus serve as advisors on PMC-CF relations. If they become involved with PMC projects in a coordination role, as they have with humanitarian projects,⁷² they could also double as passive oversight. PMC-CF protocols and procedures could be added to the corpus of literature issued to the CF, and can be

⁶⁹ Avant, *Market for Force*, 48. This goes against Petersohn’s assertion, cf. *Outsourcing the Big Stick*, 9, that there is no method of determining a threshold of “reasonable” outsourcing. While he may be correct in a general sense (such as the ineffective US “50-50” Rule), this is a determination the government *has* to be able to make on a project-by-project basis.

⁷⁰ “Just as militaries recently have had to develop a system for working with NGOs and aid groups, so too they should begin to consider how they will deal with PMFs during operations, as they will increasingly encounter them in the field.” Singer, *Corporate Warriors*, 234.

⁷¹ Maj. Graham M. Longhurst, “The Evolution of Canadian Civil-Military Cooperation (CIMIC),” *Canadian Military Journal* 7:4 (Winter 2006-2007), 56.

⁷² For example, in Afghanistan working with ISAF. *Ibid.*, 61.

attached as a schedule to all DND-CF contracts. By using the existing CIMIC policies and procedures as a framework, this improvement could efficiently and effectively address the risk of conflict between PMCs and the CF beyond current warning procedures.

For curtailing the possibility of PMCs tarnishing Canada's reputation, or deserting, as agents of the Crown upon whom Canada depends, some would go so far as to advocate that armed contractors come under the Code of Service Discipline, part of the National Defence Act.⁷³ Since the successful prosecution of Blackwater employee and Canadian citizen Alaa Mohammad Ali under the American Military Extraterritorial Jurisdiction Act (MEJA), which brought Mr. Ali under the Uniform Code of Military Justice and allowed a court martial to proceed against him, similar measures are a possibility for Canada.⁷⁴ However, the legitimacy of the approach is not guaranteed. Although Mr. Ali received a sentence, it was too light for an appeal to be worthwhile. Some of the PMC personnel waiting to be tried under MEJA have committed graver crimes, and there is a chance a case could reach the US Supreme Court. If that were to happen, Congress's decision to allow the court martial to go ahead could be struck down. Therefore, it is best for Canada to wait. Even then, the government may not wish to pursue the option of extending military law to civilians in an extraterritorial setting. Extraterritorial law has limited international legitimacy, and is notoriously difficult to enforce.⁷⁵ Particularly in criminal prosecutions, where evidence must conform to strict standards, legislation like MEJA would rarely result in a conviction.⁷⁶ Pulling the

⁷³ *National Defence Act*, Part III.

⁷⁴ *Military Extraterritorial Jurisdiction Act* [United States], 114 Stat. 2488, Public Law 106–523—Nov. 22, 2000. The preamble states that MEJA is an Act “To amend title 18, United States Code, to establish Federal jurisdiction over offenses committed outside the United States by persons employed by or accompanying the Armed Forces, or by members of the Armed Forces who are released or separated from active duty prior to being identified and prosecuted for the commission of such offenses, and for other purposes.” MEJA was amended in 2006 to specifically include contractors.

⁷⁵ Spearin, “SOF for Sale,” 31. Extraterritorial law is an infringement upon the host state's sovereignty, and can be a dangerous force in weak states, where it undermines *their* legitimacy. MEJA is unique in the world.

⁷⁶ The risk of evidence tampering or damage is very high, particularly in zones where the “fog of war” can obscure what happened. Mr. Ali's case was straightforward, for the incident did not occur in the “fog of war,” and he plead guilty to the minor charge. The prosecution dropped the more serious, and difficult to prove, charge of assault. Associated Press Staff [unattributed], “Contractor convicted in rare court-martial,” *Military Times*, 23 June 2008, web article.

Canadian courts into extraterritoriality would add inefficiency to an already backlogged legal system, and transferring criminal charges from conflict zones to Canada would be institutionally difficult to manage. Patience and continued observation of the American situation is a more advisable path.

Conclusion

Since the Nisoor Square shooting of 16 September 2008, the international community, Canada included, has expressed concern over the risks posed by the private military industry. The clearest statement of these concerns is the *Montreux Document*, released one year later, which emphatically affirms that states have legal obligations in dealing with PMCs and ought to take steps to mitigate risk when choosing to engage with them. Canada must respond by identifying and mitigating the risks of its interaction with PMCs, yet it cannot follow the generic recommendations of the *Montreux Document*, which are devoid of contextual considerations. Instead, the Government of Canada must rationally assess current policy and alternatives in relation to Canada's current circumstances, and it can do so using the New Governance criteria proposed by Lester Salamon.

Evaluation is not the most valuable contribution that New Governance can make to Canadian private military policy. More importantly, New Governance attempts to tap into the potential for strategic collaboration through a multi-faceted evaluation of alternative mixes of public, private, and third sector involvement to achieve a particular policy goal. This attitude can apply to every individual government undertaking, most importantly in the military context to the crucial decision of whether to outsource a particular task or project.

The New Governance approach also requires the government to think about how the public forces can cooperatively interact with other military actors. This requires procedures for dealing with one another and dispute resolution mechanisms, both of which have been started in the context of Civil-Military relations but need to be expanded to include private military organizations. The

Canadian Forces need to open up to collaboration with private military elements along the line of their current training contracts, and a New Governance attitude within them and within the rest of the government will facilitate this development. Put simply, New Governance is about making use of available resources in whatever combination necessary to enhance Canadian security while allowing Canada to remain a law-abiding citizen of the international community.