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Private Security Companies in Afghanistan, 2001–11

Private Security Companies (PSCs) rose without supervision in Afghanistan after the fall of the Taliban.¹ Attempts to regulate them were thwarted by collusion between weak government officials and powerful companies, until President Karzai issued a decree banning them all within three months. Then the military and diplomatic community took the issue seriously and negotiated a compromise, the effectiveness of which remains to be seen.

Pre-2001 there was no private security industry within Afghanistan. However, the arrival of the coalition forces and the re-opening of embassies in late 2001 brought an immediate influx of 'private security', starting with Blackwater and Dyncorp that came to guard the CIA headquarters and US Embassy respectively. In addition to these international companies, the fledgling (special) forces of Operation Enduring Freedom were establishing small forward operating bases (FOBs) in various locations around the country and using men provided by local 'commanders' to guard their outer security ring. At the time there was no official Afghan army. The commanders were paid directly by the foreign forces and passed on a proportion of this money to their men, thus laying the foundation for the first informal Afghan-run private security 'companies'. It was the lack of capable state forces that initially forced those

looking for security provision to turn to 'the private sector'; this, combined with international PSCs seeking new fields as the US wound down in Iraq and 'surged' in Afghanistan, led to the industry's growth.

There were several early attempts at control: two departments of the Afghan Interior Ministry (MoI) – the Criminal Investigation Department and the Uniformed Police – both started issuing licenses in 2006. The Office of the National Security Advisor asked for foreign advice in controlling PSCs, as they regarded them as a potential threat to national security – as they provided ex-commanders with an opportunity to legitimise their forces rather than submit them to the disarmament processes: the Disarmament, Demobilisation and Reintegration programme (DDR) and the Disbandment of Illegal Armed Groups programme (DIAG). The UN Assistance Mission in Afghanistan (UNAMA) also assisted with early attempts to draw up regulations. Finally the Afghan MoI and the Disarmament and Reintegration Commission drew up guidelines for the registration of PSCs in October 2007. The document stated in the preamble that the guidelines were 'intended to improve transparency, accountability, and the quality of private security services in Afghanistan'.²

¹ This chapter was originally written in December 2010. It was updated by AAN in August 2011.

² The guidelines were 'intended to improve transparency, accountability, and the quality of private security services in Afghanistan. Equally it should serve as a quality assurance for those purchasing private security services, as well as the end-users and the

At this point in 2007 it seemed the trend was towards increasing regulation, based on clear concerns as to the real intent and activities behind many existing PSCs. However, after further internal discussion, the government of Afghanistan, at a Cabinet meeting in January 2008, instead decided on an immediate ban on all PSCs working in Afghanistan. Ten days later at a meeting of the Policy Action Group,³ the internationals said that they 'of course respected the sovereign right of the Afghan Government to enact such a ban', but clearly laid out the consequences: no more NATO or coalition offensive operations and a suspension of at least 50 per cent of aid projects. The government withdrew the ban. A new preamble to the guidelines written in February 2008 included many of the above points but made it clear that the activities of PSCs were only to be temporary: 'currently the government has given conditional permission to hire reliable and professional PSCs that can adhere to Afghanistan's laws and accepted international standards to provide security to the military bases, embassies, and large reconstruction projects, so that Afghanistan's reconstruction process is not disrupted.'⁴

As part of the regularisation process, in May 2008, the cabinet accepted and licensed 39 companies to operate as PSCs within Afghanistan. In August 2009, an additional 13 companies were added to the list. However, there appears to have been little attempt to conduct checks on the companies and who owned them. For instance the son of the defence minister, the son of the chairman of the senate, and other 'connected people' were all

general public. . . . It is paramount that the services should be delivered in a professional way that leaves absolutely no room for abuse. The Afghan Government cannot allow any gaps in assuring the Afghan people that illegal armed groups are neither supported to re-emerge as PSCs, nor linked with any illegal and criminal activities, weapon smuggling and drug trafficking. . . . As a conflict-torn country Afghanistan cannot afford to contend with anything less than strict regulations on the establishment and operations of PSCs. . . . A thorough verification process will identify those PSCs that comply with all the procedural and legal requirements and standards as eligible for obtaining new operating licenses.' Disarmament and Reintegration Commission Draft Guidelines on Regulating PSCs, October 2007.

³ The Policy Action Group was the highest-level coordination group between the Afghan Government and the international community; it was chaired by the National Security Advisor and comprised of Afghan ministers, key foreign ambassadors, the United Nations Special Representative and senior international military.

⁴ Disarmament and Reintegration Commission Draft Guidelines for Regulating PSCs, February 2008.

granted licenses in spite of a clause banning close relatives of senior officials from heading a PSC. A number of PSCs, both local and international, complained about systemic corruption among the MoI officials appointed to oversee the process, including demanding bribes for adding individuals, weapons or vehicles to the lists. The official fees charged raised some US\$3 million in revenue for the Afghan government.

The appointment of Haneef Atmar as interior minister in late 2008 led to a review of the various strategies and to some changing of priorities. After a number of incidents in which PSCs shot dead civilians, Atmar decided upon the establishment of a new 'nationalised' private security force called the Afghan Public Protection Force (APPF), which would replace PSCs and remain under firmer MoI control. Localised APPF units were set up in 2009 and used to guard an Asian Development Bank-funded road-building project in Faryab province, the Indian government-funded Salma Dam project in Herat, and the massive Chinese-contracted Aynak Copper Mine in Logar, as well as two new banks, Azizi Bank and Ghazanfar Bank. The concept was written into the five-year National Police Strategy: 'The Afghan Public Protection Force will provide protection for those facilities for which donors, international agencies, and private sector organisations currently contract PSCs. . . . Subject to Government approval, APPF will gradually replace PSCs in the future.'⁵

This was, however, at odds with the desire of President Karzai who, in his inauguration speech after his re-election in November 2009, had called for the abolition of private security within two years, rather than the five years outlined in the police plan. In August 2010, he went further and called upon donors to stop supporting private security, which he said did not work for the benefit of Afghan national interests but actually undermined the work of the national police and army and fuelled corruption. He then followed this up with a decree (No. 65) banning all PSCs by 31 December 2010.

There then followed a period of confusion with various government ministries, the palace and the international community all trying to apply different interpretations of the decree, since it had stated that diplomatic security and NATO bases would be exempt. A change of interior minister in July 2010 meant that the APPF build-up had been put on hold, and the MoI and donors were concerned that there was insufficient capacity for

⁵ Ministry of Interior National Police Plan 2009–14.

the APPF or police to take on the security done by the PSCs.

A series of meetings with worried parties followed, and the president finally relented and authorised Dr Ashraf Ghani Ahmadzai to undertake detailed negotiations and to plan, in conjunction with the minister of interior, to replace all PSCs with the APPF by March 2012 in line with the wider transition of security authority to the Afghan government. Ghani met mainly with the International Security Assistance Force (ISAF), the US embassy and USAID to hammer out an agreement during March 2011. Ghani also persuaded the president that the seven PSCs that were too closely linked to government officials should be closed and disarmed. (This was finally put into effect in mid-2011, although one, Watan Risk Management, run by the Popal brothers, was eventually granted an exemption.)

The agreement allowed PSCs guarding diplomatic premises and ISAF bases to continue past 2012 (as per the Presidential Decree 65), but manpower in excess of 500 people would have to be part of the APPF manning. Moreover, all other PSC activity, including the guarding of development projects, would have to transfer to the APPF by March 2012, starting in November 2011. Attempts to have a potential 'roll-over for PSCs to March 2013 if the APPF was not ready' were firmly rebutted by Ghani. In essence, the ISAF and the diplomatic community preserved their own interests, whilst sacrificing those of the commercial and development partners. The price NATO had to pay was an undertaking to assist much more with the setting up of the APPF as a state-owned enterprise and to help with training facilities and mentors.

In addition, Ghani insisted that PSCs that had flouted the Afghan tax and visa laws, and ignored the previous regulations, should pay appropriate fines and back taxes, which was partly a way to provide 'seed money' for the new state-owned APPF enterprise. PSCs were assessed and given a finite time to appeal and pay. For most the Mol process seemed fair, and there were few complaints, with some genuine appeals upheld. However, there were some reports that the tax department of the ministry of finance used the opportunity to demand outrageous sums (as high as US\$120 million in one case) with unsubtle hints that, for a generous sum paid into (private) accounts, the overall fine could be reduced considerably. There was also some genuine confusion as some PSCs had 'assumed' that diplomatic contracts were tax-free, whether or not this had been agreed upon with the tax authorities

as required, and thus were faced not only with back-dated tax demands but also huge fines for 'late payments'.

If most PSCs were sanguine about the agreement, the same could not be said for the development and implementing partners. In August 2011 they sent a letter to the new US ambassador stating that they wished to work constructively to help build the APPF, but they had certain 'red-lines', which included a wish to retain a small number of armed expats as an 'inner circle' on projects; they also wished to be included in a review of APPF progress to date. NATO contested this and advanced the argument that the development partners cared more about their profits and would stay whatever happened; the review was to include only Mol, NATO, the US embassy, and US forces. At the time of writing, there was a survey underway by the Overseas Security Advisory Committee of the US embassy to see how many companies would leave if their concerns were not met.

Thus PSCs will continue in a limited form around NATO bases and diplomatic entities. Whether the APPF will be able to take on the security duties for implementing partners remains to be seen, and it may be that a number of companies will leave, thus reducing the client base of the APPF. This would potentially put a large number of armed and trained men onto the streets at a time when the whole transition process is already causing commentators to raise concerns over power groups vying to fill the 'power vacuum' that could be caused by transition. The rise of party or ethnic-based 'local police' groups also fits this pattern and fuels concerns that some elements are preparing for the possibility of renewed internal fighting.

The fact that the president felt the need to issue his decree (and the subsequent reaction) has highlighted the tensions between the Afghan government and donors. How did the situation come to this when there were supposed to be existing regulations?

If one examines the theories of state control and private security, there has been an underlying disagreement between Western donor nations and Afghan officials, with the former regarding private security as a 'norm' that is not only allowable but can even be encouraged as part of the 'market', while the default position of Afghan officials is that private security is at all times less preferable than state-provided security. This divergence of opinion lies at the heart of many subsequent problems. Moreover, when it comes to regulation and the alleged involvement of PSCs in criminal activities,

the Afghan government did attempt to follow international best practices in drawing up the rules; this was initially largely disregarded by the international community who either completely ignored the regulations or negotiated exemptions from clauses that they did not like, such as the 500-man cap.

The international community itself did not have a consistent policy: at the strategic level the diplomatic and military leadership were calling for 'Afghanisation' involving greater cooperation and synchronisation with the views and policies of the Afghan government, while at the operational level contracts continued to be awarded to PSCs, including unlicensed ones, and the ISAF continued to press for PSCs to be allowed to expand in order to fulfil tasks that the ISAF could not do with its own assets. Donors, such as USAID, made little attempt to ensure that the PSCs with whom their implementing partners sub-contracted were of a uniform and acceptable standard. There was minimal supervision of such sub-contracts by either the military or civilian donor communities. The excuse that the internationals used was that because the Afghan Government had licensed the PSCs, it was up to the government to monitor them, yet they knew that the government had limited capacity to do so within the capital, Kabul, and even less outside. The Weberian notion of 'discharge of powers' assumes that the state has adequate supervision over the powers that it delegates to others to perform on its behalf, which was clearly not the case in Afghanistan and which now worries people about how the new APPF will function. (The Asian Development Bank (ADB) started to seek foreign PSC 'management' for their APPF contract in Faryab, which indicated an unhappiness with the overall performance.)

Another source of tension has been the bilateral agreements (such as the USAID protocols with the government of Afghanistan, the US Department of Defence agreement with the Afghan Ministry of Defence, and the NATO Military Technical Agreement), which supersede all Afghan domestic laws and regulations and that grant immunity from Afghan prosecution to the contractors. Indeed, in very few cases have foreign donors or clients followed up on allegations made against the PSCs that they use. There have been a few specific foreign-led or joint investigations, but allegations have generally been left to the Afghan authorities to follow up.

The Afghan government itself has made no real attempts to enforce its own regulatory code, even in areas in which it could: PSC licenses have been

granted for political gain, and blind eyes have been turned to many illegal but powerfully-connected groups offering security outside the capital; even in Kabul corruption has meant that some PSCs get away with crimes whilst others are harassed. The PSCs are not entirely blameless either: whilst many have sought to obey the regulations to the best of their abilities, others have taken the path of least resistance in condoning bribery, obtaining weapons by whatever means possible, sheltering behind the connivance of their clients to break regulations, and generally giving the appearance of cooperation whilst doing as little as possible. When PSC staff has been caught acting illegally, most PSCs have moved as quickly as possible to sack them and distance themselves from the accusations. As usual, the actions of some PSCs have been blamed on everyone in the industry.

Little effort has been made to portray the positive side of PSCs to the Afghan government. Only in the face of the 2010 presidential ban was any attempt made to quantify the extent to which PSCs were vital for the 'success' of Afghanistan in terms of the development, reconstruction and military efforts. This was a failing of the international community, their implementing partners and the PSCs themselves.

A number of the criticisms levelled at PSCs lack foundation: there is no evidence to show that the presence of PSCs prevents the proper build-up of the Afghan National Security Forces (ANSF) or inhibits state-building; numbers of recruits are not a problem; the ANSF has reached its growth ceiling ahead of time; and regulations (if properly-enforced) prevent the recruitment of young people most likely to be wanted. The public evidence is that PSCs are involved in less criminal activity than the police.

Although there was a fairly comprehensive set of regulations, the main problem was that the regulations were not properly enforced; the writ of the central government does not run large in the outlying provinces, and local power-brokers may have different agendas that render control of local PSCs in those areas very difficult. It is clear therefore that the Afghan government alone cannot control PSCs. It is also clear that, despite all the claims of adherence to self-regulation, many PSCs only pay lip-service to codes of conduct. Part of the responsibility should have been and must therefore be borne by the parties contracting with private security, be they governments or private businesses. It is difficult to regulate private deals between commercial entities, but in Afghanistan nearly all the money being spent on security was

donor-granted which meant that sovereign governments could have a say in how that money was spent. They should have insisted on good practice in the hiring of private security by their implementing partners and sub-contractors.

The 2010 recommendation of the USAID inspector general was that all private security contracts need approval from the USAID office and that standards should be applied to such contracts. Similarly the US military set up an Armed Contractor Oversight Directorate in Afghanistan in 2009 in order to bring a level of supervision to all their contracting of private security and move it onto a footing that met both Afghan and US regulations; this was followed in 2010 by the creation of Task Force SPOTLIGHT to exert greater control.

The US remains the largest single user of private security in the country but by no means has a monopoly, and other nations, particularly ISAF troop contributors, continued to contract with unlicensed private security or to claim that existing contracts could not be cancelled or that they were not responsible for the security sub-contracts. When the Afghan government revoked a PSC license, as they did for one PSC in August 2010 when they were caught weapons-smuggling, the international community, rather than supporting such moves and ending contracts with the PSC, argued on behalf of the contractor because they were concerned about the immediate consequences of 'losing' security. On the other hand, the Afghan government failed, as per the regulations, to give the requisite two-month

period to allow the contracting party to make alternative arrangements with another licensed PSC.

The Sarajevo Client Guidelines urge prospective users of PSCs to check backgrounds thoroughly to ensure no links to undesirable groups, human-rights abusers or corruption (such as 'conflict of interest' links to government). The guidelines also say that low cost should not be the prime consideration. These guidelines have been sadly ignored. The ISAF has also ignored advice based on their own intelligence about the undesirable connections of certain PSCs in Afghanistan and has claimed that 'if they are licensed by the government then that is sufficient proof that they are credible PSCs'. By not becoming 'involved', the ISAF worsened the situation and contributed to the frustrations of the president and people of Afghanistan with PSCs.

A properly managed private security industry should have been able to assist in the reconstruction of Afghanistan by filling a security vacuum left by the over-stretched ANSF and international military, and to a large extent it has done so. Had the Afghan government better enforced its own regulations and had the international community taken a more proactive and 'best-practice' approach earlier, then events would not have reached the current more difficult and potentially confrontational point in which the senior Afghan leadership is convinced that private security causes more problems than it solves. This is a lesson to be applied to other post-conflict scenarios.

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ABOUT THIS CHAPTER

This chapter is part of a larger volume called *Snapshots of an Intervention: The Unlearned Lessons of Afghanistan's Decade of Assistance (2001–2011)*, edited by Martine van Bijlert and Sari Kouvo. The volume is a collection of 26 short case studies by analysts and practitioners, each with long histories in the country, who were closely involved in the programmes they describe. The contributions present rare and detailed insights into the complexity of the intervention and, in many cases, the widely shared failure to learn necessary lessons and to adapt to realities as they were encountered.

The chapters and full document can be found on the AAN website (www.aan-afghanistan.org) under publications.

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