

The Role of Private Sector in Outsourced Military and Prison Services: Experience of the UK and Germany

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Abstract

Outsourcing for military support functions has been the subject of increased debate. The private sector generally provides both complex and strategic products to sovereign governments, since it is cheaper, flexible, and more importantly, it gives the military to focus on its missions. Yet, despite the potential advantages of outsourcing, there are some unintended consequences, which bring up questions about the long-term impact of contracting on government strategy and planning. The main purpose of the article is to analyse empirical evidence on outsourcing in military support services as well as private involvement in prison services in the United Kingdom and Germany. Distinctive experience in these fields will be reviewed and presented.

Keywords: outsourcing, national defence, prisons, UK and Germany, private sector.

Introduction

Outsourcing has been a driver in public services and it is widely seen in many parts of government, including education, criminal justice or even defence. Flynn (2012) believes that markets play a critical role in the public sector. It is evidenced, for example, that there are private suppliers who provide complex and strategic products for government, such as modern weapon systems, fighter planes and nuclear submarines. It is argued that private companies are now well equipped in producing defence systems or even know a little bit more about military products. Therefore, the role of the private sector in national security is now being increased. Yet, it is true that as a client, government normally retains regulatory functions and monitors the process, or even replaces the contractor in case of any failure. This rarely occurs though. Especially with military outsourcing, where defence products are usually constructed following a lengthy delay and items by the end of the contract frequently obsoleted, as Astute class submarines in the UK (National Audit Office, 2011). Furthermore, Domberger and Jensen (1997) point out that contracting is based on competition. One objection to this argument concerns purchasing. For instance, there are many suppliers of stationery for schools, and so head teachers can easily identify whether suppliers meet the requirements or not and hence,

whether stationary should be bought directly from only one vender. Alternatively, the poor quality of products or their price might result in switching to another supplier. Blanc-Brude (2013) argues that contracts are written in order to transfer risks with an aim of attaining more cost-effective procurement from the public sector to private companies, as with private involvement in prison services, for instance. It has been known that public prisons are poorly run, whereas private ones are arguably not and that they even spend less budget to maintain inmates. However, as Jing (2010) points out that prison privatization frequently leads to the entrenchment of incumbent contractors and limits the freedom of governments in replacing them. While it may be true that the state frequently resolves problems when the main supplier has failed, this issue is normally tackled by attracting another private actor. For instance, in cases where two companies are competing to deliver infrastructure projects and the first firm is efficient and can control risks and reduce costs while the second is not. State authorities need to delegate the task of operating and building public infrastructure, but do not always know which organisations to give contracts to. If the contract entails transfer of little or no risk, effective companies have a stimulus to imitate ineffective ones at the bidding stage (adverse selection) and make no attempt to control and reduce costs (moral hazard) (Blanc-Brude, 2013). Flyvbjerg and Holm (2003) argue that in such cases, the government must cover any future expenses. Hence, why does the government not elaborate appropriate stimuli schemes within the fixed cost in order to cover any future overruns? Abdi, et al. (2014) argue that the core issue concerns how the government should select the contractor and how incentives might be created for the latter. Moreover, if too many risks are transferred to the contractor, a small number of companies will seek to enter the market and competition might be reduced. Notwithstanding this, the most important aspect of contracting is how the contract is written, agreed and implemented. Flynn (2012) notes that poor contracting may bring ineffectiveness or poor service quality rather than failure, whereas intelligent contracting may lead to innovation, responsive services and more importantly, the enforcement of costs will be downwardly maintained.

1. The nature and the scope of military outsourcing

In the attempt to diminish the costs or extend the reach of public services, many countries have engaged private companies in various areas traditionally overseen by the public sector. Private agents feature in the management of national defence in many states. However, the militaries of the UK and Germany have significant experience of outsourcing, the main transformation and reforms began in the 1990s (Krahmann, 2005). This includes the delegation of activities to the private sector that was conventionally operated by military institutions accountable to the Ministry of Defence (MoD) in the UK and the German Federal Ministry of Defence. The UK has been one of the leaders in this respect, with the Labour

government having dramatically extended the role of the private sector in the provision of international and national security systems. The development of a private military service has been fostered since the mid-1980s. The Thatcher government began this process with the privatisation of the Royal Ordnance, Rolls Royce and Aircraft Corporation (Edmonds, 1999). Later, New Labour progressively improved the use of the private sector with the outsourcing of an increasing variety of military services. In 1998, the flight instructors and simulators for the Hawk Synthetic Training Facility were first outsourced (Krahmann, 2005). State participation in the private area has been recognised as hindering value for money, since it would retain the ability of firms to work according to the market principles. Instead, authorities were told to view companies as partners that must have similar input into how services are supplied (Krahmann, 2005).

Nonetheless, it has often been claimed that the use of civilians in place of military personnel may have a negative influence on the “fighting spirit” and morale of the armed forces (Hartley, 2004). However, civilian contractors have been increasingly involved in military operations in Iraq and elsewhere. Moreover, the UK has created a “new class of reservist, a Sponsored Reserve” (Hartley, 2004). The Sponsored Reserve concept allows the private sector to deliver military support services in conflict situations by accepting parts of their personnel as voluntary “sponsored reservists” (Krahmann, 2005). Moreover, according to the contract that was signed in 2001, one third of reservists must serve in the new Heavy Equipment Transporter (Krahmann, 2005). The contract will outsource the evacuation, transport and deployment of tanks and other heavy transports in international conflict situations. Furthermore, more operations with reservists were planned as ground and air crew of the “Future Strategic Tanker Aircraft for in-flight refuelling”, which costed some £13bn (Krahmann, 2005). Interestingly however, Krahmann (2005) states that these reservists have only been involved in the Armed Forces Mobile Metrological Unit. It is important to note that most contracts produce a tight rapport between private companies and MoD, and such projects normally entail the long-term commitments. Therefore, if a project fails, renegotiation will be fairly expensive.

It cannot be denied that the possession of defence service facilities and technical expertise is retained by companies, hence the defence authority might find it complicated to opt out of such contracts due to deficiencies of staff and facilities that could replace the private firm. Moreover, it is critical that the terms of such military contracts are not public. It is also said that, unlike state regulation, the contracts do not have to be approved by Parliament. Hence, while contracts between private military firms and the government or Sponsored Reserves might provide the authority some control, they give only limited public accountability and lack transparency. It assumes that the private military companies could benefit from the sale of excess capacities to third parties across the globe. In addition to dissemination of dual-use

goods and armaments, there is a risk from the proliferation of military expertise and knowledge, including training and tactical advice, among non-state actors within the country and abroad. Therefore, there is a need to initiate national regulation as a form of governance mechanism to control their emerging private military industries. In response to such challenges, the UK introduced different laws for private policing services. The Private Security Industry Act 2001, for instance, has established the ground for the governance of domestic private security services. Yet, by 2004 it was not yet completely realized and as a result, difficult to evaluate (HMSO, 2001). The Security Industry Authority (SIA) was established by the Act, which has formulated licensing criteria for security guards, door supervisors, wheel-clampers, and events security. It is also noted that the criteria include a criminality check, however a previous conviction does not preclude the license, but will be assessed on a case-by-case form. Moreover, some training on average 30 hours is required too (SIA). As far as private companies are concerned, the Act has a number of requirements which might contribute to the governance of the sector. Yet, such requirements will only address to services offered in the UK. In other words, a different regulation is needed when the British company operates in another country. While the UK government has analysed some of the options for the regulation of private military firms, it is argued, that no progress has been made on the drafting of such control policies. The regulation of mercenaries in the UK has extended, but still remains incoherent and fragmented with various aspects contained in a number of laws.

By contrast, many European countries have looked to Britain as an example for the outsourcing of defence services and have begun to use this approach (Roos, 2000). Germany, for instance, launched the reform known the Bundeswehr with assistance of the private sector in the mid-1990s. The German way of outsourcing has been completely different from that of Great Britain. Although Germany planned to incorporate market tenets into the Bundeswehr, it has been more cautious than its British counterpart. For example, privatisation has only slowly developed. Germany has tried to maintain direct regulation over defence support services through partial or even full state ownership. The main progress began after the signing of the Framework Agreement, which meant that 14 pilot programmes would be privatised (Krahmann, 2005). In these outsourcing projects, the Bundeswehr retained ownership of defence assets, while companies took over operation, training and management services. Yet, the two projects have been successfully implemented, with training for the Eurofighter aircraft and the Army Combat Training Centre (Krahmann, 2005). It can be argued that these projects were similar to the UK's early outsourcing efforts. The major regulator mechanism is the short-term contract with private companies as a service provider. However, the short-term contract, in comparison to akin UK projects, presents a controlling aspect. The intended goal is to prevent the Bundeswehr developing long-term dependence on a single service supplier. In

addition, it can also perform a coercion function due to the continuation of contracts being predicated on the satisfaction of the Bundeswehr. Nevertheless, the German authorities have used a different management approach with respect to the central segments of the Bundeswehr, namely clothing suppliers, information technology and the white fleet. Soon after, they launched a private company, the Corporation for Development, Procurement and Operations (CDPO) (Krahmann, 2005). In contrast to the UK, the entirely state-owned CDPO appears to have been eager to support straight participation in the providing of military services. Furthermore, this body has argued that the Constitution demands a coordination function and control over the private suppliers of military services must be kept by Bundeswehr. Unlike the UK, Germany used joint ventures and corporate shareholders as a way of controlling the private companies, rather than depending exclusively on the terms of the contract. In Germany, strategic concerns were more paramount issues than the cost efficiency. Furthermore, the Higher Regional Court of Dusseldorf stated that companies with a minority public ownership were subject to procurement procedures (Krahmann, 2005). This decision may push the Bundeswehr towards entire privatisation and traditional outsourcing.

2. Prison governance structures and efficiency

On the other hand, private involvement in prison services has been used in many countries in the context of New Public Management theory. There are two different types of private involvement in management of prisons: The French and North-American models (Araujo, 1995). In the North-American version, private companies might participate in all aspects of the prison services, whereas in the French, the state retains the major functions, such as controlling, maintaining and occasionally punishing inmates (Cabral and Azevedo, 2008). Quality outcomes from outsourcing emerge from suitable safeguards that the public sector puts into the contract (Segal and Moore, 2002). There is perhaps some evidence to support the idea that private participation in public services, as in prisons, will result in cost shortening at the expense of quality. Furthermore, correctional maintenance must be assessed in terms of the capacity to circumvent overcrowding, reduce recidivism and restrain violence. It is true that the definitive measure of whether the jails operate effectively is whether jails have a real impact on diminishing recidivism rates among prisoners. It argues that since the first privately managed jail launched in 1992, there is no evidence that outsourced prisons reduce recidivism rates. Hart, et al. (1997) suggest that quality is complicated to enforce and measure, for example with respect to adequate legal and medical assistance of inmates or the use of force within prisons since qualitative issues are barely contractible and compensation for the activities of the jail is fixed and private companies are driven by cost-reduction efforts. In other words, the quality of service improvement is neglected (Cabral, et al., 2013). Drawing on this anticipated quality-cost trade-off, Hart, et al. (1997) argue that in significant dimensions, such

as the quality of workforce and prison violence, prison contracts are notably incomplete. What is more, in many cases private companies are involved in outsourcing, but the public sector also retains some supervision functions. Baun and McGahan (2009) believe that outsourcing might feature a hybrid arrangement. The contracting prison industry and government-business relationship is employed where oversight is only provided by the government in the way that the service conforms to public specifications. For example, in 2012, G4S could have lost its contract for England's first private prison after it was known that the inmates were found to have high levels of idleness and drug use (Travis, 2012). Moreover, Scotland's privately run Addiewell Prison was found to be the most violent jail in the state for both prisoners and staff in 2011 (Mathieson, 2011). Therefore, the question is: to what extent does the private sector adequately operate such complex services?

While both countries use private entities in prison services, the UK is the leader in this direction (Pozen, 2003). In 2001, private jails held about 9.4 percent of the UK's total adult correctional facility population, representing more than 90,000 offenders (Pozen, 2003). The privatisation of jails was achieved by addressing the problem of prison overcrowding. The role of private involvement in prison services is substantial, and signs of abatement are emerging. The Altcourse is the first designed, erected, operated and financed private jail in the UK and was opened in 1997 (Pozen, 2003). In addition to this, in the UK 14 jails were contractually operated by private players, namely G4S, Serco and Sodexo. It has been argued that the quality of private prisons is decreasing to enhance efficiency. The main arguments for this tendency are deficiencies of experienced personnel and high workforce turnover (The National Audit Office, 2003). Therefore, it has been said that the environment in such prisons is less safe than in public jails because of the experience of wardens and officers. However, the Report concluded that the prison service had benefited from private sector participation. It may be suggested that allocated funds for private sectors in both countries were directed away from jail improvement. More precisely, it has been claimed that the private prison has a tendency to set more closed-circuit television (CCTV) in place of security personnel for the purpose of maximising the profit.

It is noteworthy that the UK Government could not find any private operator for the failing Brixton jail. The situation in Germany is rather different, as the German constitution does not allow prisons to be operated entirely by private companies (Wolfgang, 1996). Yet, the massive financial issues entailed by the reunification of the country have pushed the government to develop the idea of having a private sector presence in the building of prisons and to then lease these to the state. In some administrations, prison personnel are to be replaced by security agencies as Serco, which runs five detention facilities in the UK (Benoit, 2013). However, because of the law's limitations direct supervision will be conducted by public servants. As in the UK, overcrowding is the central and most controversial issue in Germany.

In some states, such as Bavaria, Berlin and Thuringia, the jails are overcrowded, whereas in Hamburg has a lot of vacant cells (Boetticher and Feest, 2008).

Conclusion

The preceding examination has provided an insight that these governments have a number of governance mechanisms at hand with which to regulate the increasing outsourcing industry. Most of these mechanisms have a direct impact on the provision of different public services not only in Europe, but also abroad. Yet, whether and how public officials employ these measures really relies on their understanding of the risks involved in the privatisation and the willingness to inhibit the free operation of the market in these sectors. Since, there is frequent a perceived a trade-off between the two.

The paper, however, tried to demonstrate how this issue has been solved in the UK and Germany. The comparison is interesting, since these two states have approached outsourcing in different ways. While the UK government has placed significant trust in the outsourcing of the sector and has only recently reinforced governmental control policies, the German government has been careful to sustain its steering capabilities via public private shareholding and also via stricter legislative regulation.

In the nutshell, these examples also show how government tends to delegate risks to the private sector, even if the contract does not cover future overruns. It may be suggested that the lack of professional personnel could lead to poorly written contracts. For example, military products are usually out-of-date. Why is this? Such contracts are designed for a long-term commitment and normally, the contractor rarely monitors the project. It is crucial to coordinate and update the terms and conditions of contracts in order to prevent future delays and trade-offs. In the case of prisons, the capability of private companies to run prisons must be profoundly questioned not only in these countries, since such practical failures require serious attention by the policy makers and the general public. It is clear that prison outsourcing should be minimised and constrained with an aim of turning to more efficient and fiscally sound measures to diminish prison overcrowding and costs, namely adopting alternative to incarceration and reforming sentencing.

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