

Committee: Disarmament and International Security Committee

Issue: The privatization of war

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Introduction

War in the 21st century has nothing to do with what has been known for centuries. In recent years, the way we prosecute warfare has evolved tremendously and developments in the fields of science and technology as well as the need to limit regular army personnel and make profit, have turned governments to private companies providing security and military services. The Private Military and Security Companies (PMSCs) represent a new addition to modern combat and their role is becoming increasingly significant. What is actually particularly interesting is that for the first time in the history of the modern nation state, governments are giving away to private, for-profit companies one of the fundamental and defining characteristics of statehood, the state's monopoly on the legitimate use of force.

These companies although they often operate on foreign soil, conducting military and security operations are not under the liability of international humanitarian law but are rather treated as businesses and they are dealt with under financial terms. At times, they are even granted full immunity for their actions. Consequently, they operate in a blurred line, uncontrollable by the international law and there is a tremendous need to shed light on their functions and establish a common framework under which they should operate as there is no effective system of oversight or accountability governing contractors and their operations.

Definition of Key-Terms

Private Military and Security Company (PMSC)

As defined in the Montreux Document, PMSCs are private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel.

Mercenary

According to the first article of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, a mercenary is any person who is:

1. is specially recruited locally or abroad in order to fight in an armed conflict,
2. is motivated to take part in the hostilities essentially by *the desire for private gain* and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed

forces of that party,

3. is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict,
4. is not a member of the armed forces of a party to the conflict and
5. is not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

Operation “Enduring Freedom”

As found in the archive of United States Department of State (DoS), Operation Enduring Freedom (OEF) was a multinational coalition military operation initiated in October 2001 to counter terrorism and bring security to Afghanistan in collaboration with Afghan forces. OEF operations led to the collapse of the Taliban regime and helped bring a measure of security and stability to Afghanistan for the first time in a generation. The operation in Iraq, which took place without the consent of the UN Security Council with the same objective, was the Operation “Enduring Iraqi Freedom”.

Background Information

Historical background

The use of mercenaries, although now prohibited by international law, was, in the past, widespread. Mercenaries and their functions are related, to an extent, to the way PMSCs operate, despite the fact that they are not to be considered the same. The term mercenary, who basically is a soldier paid to provide his services during wartime, goes back to time. In fact, from ancient ages to the medieval times, mercenaries have been used extensively with examples those of the Chinese, the Greeks, the Egyptians and the Romans. However, during and after the Cold War, the world witnessed rapid change, due to the termination of the balance of power between the United States and the Soviet Union. Gradually, the international community saw the appearance of an increasing number of companies whose field of activity included duties traditionally reserved for the military.

Types of Private Military and Security Companies

There are three distinct types of private companies providing security and military services or one of the two:

1. Non lethal services providers that mainly cater for logistics services, air transport, construction of military bases and refugee camps;
2. Military consulting companies that offer police and military training and strategic advice;

3. Private Military and Security Companies:

- Private *Military* Companies generally work for states, international and regional organizations and provide again military and police training, security sector reform, as well as assistance in defence ministry design;
- Private Security Companies that are tasked with providing armed protection for people, places, and things including politicians, military leaders, buildings, organizations, convoys, etc;
- Private Military and Security Companies (PMSCs), which are a combination of the aforementioned types of companies

Legislative gap

One of main difficulties we are faced with, when dealing with the issue of the privatization of war and the regulation, even the monitoring of PMSCs, is that in the international arena, there is no formal legislation regarding their operations. One of the reasons why the needed legislation has not been introduced is that the international community has yet to fully specify PMSCs' roles, both in armed conflict and during peace time. Although their emergence is not recent, a well-rounded understanding has not been developed yet. What is more, many speculators benefit from that confusion and take advantage of that inability of the international community to act. Such countries are both developed and developing ones.

Developed states

Developed nations that fall into the category above are those that assume peacekeeping roles and wish to maintain stability and serve democracy abroad. They engage in military operations abroad pursuing their national interests and contract PMSCs to do part of the job for a number of reasons to be explained below. PMSCs therefore provide military services such as armed protection and strategic advising.

Developing states

Those are nations where public order can not be maintained and there is very little transparency in the political system. As a result, the elite political class benefits from their contracting to provide services it is unable to provide by itself. The roles of PMSCs in such areas include police and army training, security sector reforms and even advice on proper civil-military relations.

Incidents

The results of the extensive and unmonitored function of PMSCs have been rather disappointing. Particularly during the United States and its allies in "Enduring Iraqi Freedom" in Iraq, operation "Enduring Freedom" of Afghanistan and operation without the consent of the UN

Security Council, there have been numerous situations where non army personnel has committed acts that gravely violate international human rights law.

Nisour Square massacre

On September 16, 2007, employees of Blackwater Security Consulting drove into a square in central Baghdad in a convoy. According to their claims, they were faced with a driver that supposedly, posed a threat to the convoy. Despite their warnings and fearing that the Iraqi police force present had been compromised, they fired, killing 17 and injuring 20 Iraqi *civilians*. The Iraqi side, however, claimed that what had taken place, greatly differed from what the Blackwater employees had said. The government of the United States condemned the incident and vowed to its Iraqi counterparts that it would take the company to court. After a legal battle at the US courts and about 7 years later, Blackwater employees were sentenced to decades in prison. The employees, as proven at the court, had fired, indiscriminately and recklessly at a crowd consisting of innocent civilians that included women and children who were trying to flee, using unacceptably excessive force. Fortunately, those acts were condemned and punished appropriately by the US justice system. However, what the 22 Iraqi citizens who sued also claimed is that the company itself had violated U.S. and international law and “created and fostered a culture of lawlessness amongst its employees, encouraging them to act in the company’s financial interests at the expense of innocent human life.” From this point of view, the suit failed and the company continues operating today under a new name.

Use of child prostitutes at Blackwater’s Baghdad compound

According to allegations by two former employees of the then company Blackwater, its personnel and consequently the company itself was guilty of using young Iraqi girls as child prostitutes in the company’s compound in the protected Green Zone of Baghdad. What is more, it is suggested that its owner and CEO knew and failed to stop such incidents.

Abu Ghraib prisoner abuse

The acts that took place in the Abu Ghraib prison mainly by regular US soldiers are widely known. The rights of prisoners, whether they fall into the category of Prisoners of War (PoW) or not, are explicitly protected by the United Nations Convention against Torture and the Third and Fourth Geneva Conventions. Despite that, prisoners were beaten, psychologically abused, raped, tortured and killed among other “enhanced interrogation techniques” that were possessed. What over

250 survivors of acts of torture at Abu Ghraib and their families claimed as they brought the incident to justice was that PMS companies Titan/L-3 and CACI International were also involved in the abuse of the prisoners. Their appeals were, however, repeatedly denied and their case was not prosecuted.

Major Countries and Organizations Involved

United States of America

The United States is by far the largest consumer of PMSCs' services worldwide, leading the way as it houses the biggest number of such companies. It is not a signatory to the United Nations Mercenary Convention and it rejects the UN's critical attitude towards the use of PMSCs in armed conflict. The United States Department of State (DoS) licenses PMSCs and as claimed by senior political figures, their use is cost effective and beneficial on the ground.

During its war on terrorism, in operations "Enduring Freedom", the USA has contracted PMSCs both in Iraq and Afghanistan with a particularly negative outcome and an international outcry due to violations of human rights and international law, particularly with regard to torture, extrajudicial killings, kidnappings and sexual abuse.

United Kingdom

The official position of the UK is similar to that of the USA. It is not a signatory to the UN Mercenary Convention and in recent years its PMSC industry is second only to the US on the global stage due to the need to downsize its military size.

United Nations

Although the UN has repeatedly been disapproving of the use of PMSCs in armed conflict and has raised multiple questions regarding the transparency of their actions as well as their impact on human rights, through its expert bodies and working groups, it benefits from their services. Specifically, a number of UN peacekeeping operations and UN agencies turn to PMSCs' services to support their missions abroad. As the services of PMSCs vary, it is crucial to realize that the peacekeepers are not substituted by private soldiers but rather the UN benefits from maintenance, risk management and mainly protection services for its missions by the companies. What is, however at stake, is the UN peacekeeping operations' neutrality in the future.

European Union

The EU remains cautious regarding the widespread use of PMSCs but utilizes their services, when and where needed, following the examples of the USA and the UK, always according to the EU Code of Conduct on Arms Exports. The EU Code of Conduct sets specific and strict criteria for arms exports, and, consequently, the sell of weaponry to PMSCs that do not respect those criteria and do not stay up to the necessary standards is difficult. Consisting of a large number of Member States with enormous differences as far as financial means, demographics and even customs and beliefs are concerned, in the future, the contracting of private military companies would facilitate the

creation of an independent all - EU Army. This idea is appealing to the larger Member States who have aspirations of an intervening foreign policy and would simultaneously render the EU a “countervailing power” against the Russian Federation.

Russian Federation

Since the end of the Cold War and the dissolution of the Soviet Union, the Russian Federation has maintained a very strong and large army, serving the interests of the federation, and, has as a result eliminated the use of PMSCs. However in recent years, there have been attempts, mainly by the President, to legalize and benefit from the use of private security and military companies. Two MPs have also drafted a bill that would grant private military companies broad rights, proclaiming though that such companies would operate under the supervision of the Ministry of Defense, which would use them for immediate response to various threats. As the field is dominated by Western companies, Russian geopolitical motives and aspirations can be greatly developed and fulfilled.

Timeline of Events

Date	Description of event
4 December 1989	UN International Convention against the Recruitment, Use, Financing and Training of Mercenaries
19 March 2003	Invasion of Iraq, Operation “Enduring Freedom”
17 September 2009	The Montreux Document
July 2005	The Working Group on the Use of Mercenaries of the UN Human Rights Council is established in July 2005 in resolution 2005/2
23 October 2014	Blackwater contractors found guilty by a US Federal Jury 7 years after the outrageous Nisour Square shooting in Iraq
8 July 2015	According to USA Today, the Pentagon plans to cut 40.000 soldiers from its ranks

Relevant UN Treaties, Resolutions and Events

The Montreux Document

The Montreux Document represents the most recent

attempt of the international community to deal with the issue of the privatization of war. It was published in September 2008 and is the result of an international process launched by the Government of Switzerland and the International Committee of the Red Cross (ICRC) as mentioned on the website of the Ministry of Foreign Affairs of the Government of Switzerland. As its subtitles reads “On pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict”, it tries to draw an explicit picture on the use of PMSCs, their obligations under international law and good practices, all vital for the proper address of the issue. However, it is not legally binding, and, as such, it cannot *control* PMSCs but rather sets suggestions and proposals on their functioning.

UN Convention on the Use of Mercenaries

The UN International Convention against the Recruitment, Use, Financing and Training of Mercenaries adopted in 1989 clearly defines what a mercenary is and outlaws their use in the international community.

UN Human Rights Council - Working Group on the Use of Mercenaries

The HRC established, back in 2005, a working group working specifically with the aim of eliminating the use of mercenaries by private companies offering military and security services and addressing issues where mercenaries are “used as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.” In 2008 its mandate was extended for three years.

Geneva Centre for the Democratic Control of Armed Forces

As listed on their website, the Geneva Centre for the Democratic Control of Armed Forces (DCAF) is an international foundation whose mission is to assist the international community in pursuing good governance and reform of the security sector. It was established in 2000 and its areas of expertise range from parliamentary oversight of the security sector and intelligence governance to private security governance and public-private partnerships and security governance. It cooperates with national SSR stakeholders in different national and regional settings and multilateral institutions, such as the UN and the EU, and, supports security sector governance institutions and actors from both public and private sectors.

Previous attempts to solve the issue

The issue of the privatization of wars is high on agenda of the international community. However there have been very few actual attempts to reach a defining status and properly deal with the question of the roles of PMSCs and their impacts on civil society. The

Montreux Document has tried to address the issue and set a precedent in the discussion of dealing with the privatization of war but due to its non binding nature, it has not achieved much. In its 2010 reports to the UN Human Rights Council and General Assembly, the HRC Working Group on the use of mercenaries recommended a legally binding instrument regulating and monitoring PMSCs' activities at the national and international level.

Possible Solutions

As there is great confusion surrounding the designated field of activity of PMSCs, the UN is called upon to address it, to an extent that does not leave any future opportunities to misinterpret the law or elude its control. An agreement is vital to be reached regarding PMSCs' role in armed conflicts today with clear rules and basic protocols as far as the limits of their activities and their field of operation are concerned. The tasks that those companies are allowed to execute must be clearly defined and even restricted to the least lethal ones. For example, it should be explicitly ruled, whether a PMSC should be able to provide any kind of front-line services, and, what kind of protection it will be able to offer. The degree of weaponry that they will be allowed to possess and operate with, which is closely associated with the activities they will be able to perform, is also another important issue to be specified. As far as that is concerned, the use of military-grade weaponry or ballistic devices should be debated upon and the restriction of their use of weaponry to semi- automatic firearms, pistols and non-lethal incapacitating weapons can be suggested. Finally, there must be accountability of each employee respectively. This can be achieved, for instance, by tagging the weapons of every individual, so that they are identified and linked with every shot fired from their weapon.

It is also crucial to figure out whether and how their activities are going to be placed under the liability of the international law. Those companies need to be accountable to international legislation and their actions in conflict zones must be closely monitored and evaluated independently according to the highest international standards in order to avoid incidents similar to the ones described in the section *Background Information*. NGOs can be used for that purpose. For instance, "Transparency International", which monitors and publicizes corporate and political corruption in international development, can be utilized by asking / forcing PMSCs to supply it with information concerning their clients and the detailed services they provided them.

Certain criteria and special legislation should be established in order to cater for the prosecution of employers and employees when a violation, of whatever law it is decided that they will be placed under, takes place. As far as past violations and the opportunity to prosecute them are concerned, all Member States should decide whether and to what extent, that, will or will not be possible. Specific penalties and punishments should be decided upon, when an employ and the PMSC itself is reportedly violating the law.

needs to be thoroughly reexamined as well and a strict framework needs to be established in order to deal with government - PMSC affairs. As dealing with a private company providing military services may have a dangerous outcome regarding human rights and universally established and respected freedoms, there also need to be thorough criteria for its contracting in private law entity and monitoring of its activities so as to avoid having an uncontrollable private army. Another question that requires an urgent address is the role of PMSCs in UN operations, in particular the peacekeeping ones.

Democratic values and principles must be upheld when dealing with PMSCs similar to all companies, meaning that employers must ensure the respect of their workers' labor rights, cater for their safety and well being to the largest extent possible and not engage their employees in any kind of illegal activities.

As PMSCs are businesses with for-profit goals, the exploitation of weak states should be combated and all their actions should, as mentioned before, be come known to the public and controllable by the international community and its organs.

Further Study

Finally, it would be enjoyable and helpful to watch a short documentary on the rise of private military. You can find the link to VICE's "Superpower for Hire: Rise of the Private Military" below.

<https://www.youtube.com/watch?v=6LaSD8oFBZE>

As the topic is vast and there are numerous sources on the web relating to the privatization of wars, below are some suggested reads for further study that will provide an enhanced and well rounded understanding of the situation to be addressed:

- The Montreux Document (https://www.icrc.org/eng/assets/files/other/icrc_002_0996.pdf)
- Corporate actors: the legal status of mercenaries in armed conflict - International Committee of the Red Cross (https://www.icrc.org/eng/assets/files/other/irrc_863_fallah.pdf)
- Mercenarism 2.0? The Rise of the Modern Private Security Industry and Its Implications for International Humanitarian Law Enforcement - Harvard International Law Journal (http://www.harvardilj.org/wp-content/uploads/2010/09/HILJ_49-1_Gaston.pdf)

Bibliography

<http://www.globalresearch.ca/the-privatization-of-war-mercenaries-private-military-and-security-companies-pmsc/21826>

<https://www.icrc.org/en/war-and-law/contemporary-challenges-for-ihl/privatization-war>

http://www.acmun.gr/documents/guides/GA1_Privatization_of_war.pdf

http://www.huffingtonpost.com/david-isenberg/united-nations-military-contractors_b_1180272.html

<https://www.eda.admin.ch/eda/en/fdfa/foreign-policy/international-law/international-humanitarian-law/private-military-security-companies/montreux-document.html>

<http://www.theguardian.com/world/2003/dec/10/politics.iraq>

http://www.nytimes.com/2010/01/11/opinion/11mon1.html?_r=0

<http://www.un.org/documents/ga/res/44/a44r034.htm>

<http://object.cato.org/sites/cato.org/files/articles/isenberg-private%2520military-contractors-2009.pdf>

<http://www.bbc.com/news/business-11521579>

<http://debatewise.org/debates/2114-the-united-states-is-justified-in-using-private-military-firms-abroad-to-pursue-its-military-objectives/#no4>

<http://www.theguardian.com/us-news/2015/apr/13/former-blackwater-guards-sentencing-baghdad-massacre>

<http://www.bhrd.org/fe/subinfocus.php?id=19>

http://www.harvardilj.org/wp-content/uploads/2010/09/HILJ_49-1_Gaston.pdf

https://www.icrc.org/eng/assets/files/other/irrc_863_fallah.pdf

<http://www.usatoday.com/story/news/nation/2015/07/07/army-plans-to-cut-40000-troops/29826423/>

<http://www.themoscowtimes.com/article.php?id=511056>

<http://www.refworld.org/docid/45377c39c.html>

<https://www.transparency.org>

http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_21.pdf

<http://www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/WGMercenariesIndex.aspx>

http://www.liveleak.com/view?i=97f_1249691173

<http://www.dcaf.ch/About-Us>