

Human Rights Implications of Private Military and Security Companies

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Abstract

The use of private military and security companies (PMSCs) by the international community has steadily increased. The United States was the first state to use PMSCs extensively in international combat. The United Nations has followed suit, although their methods of hiring PMSCs are much more obscure. PMSC use by the U.S. has shown how numerous human rights abuses by PMSCs and their personnel can be committed with little consequence. The UN's use of PMSC highlights the gray area PMSCs currently occupy in international law. The lack of regulation, accountability, and transparency are troubling if PMSC use continues to grow, especially when it becomes clear that there is little difference between a PMSC and a mercenary organization.

The increased use of private military and security companies (PMSCs) raises concerns about potential threats to human rights, as well as questions about the legality of privatized military operations. The United States in particular has been extensively using PMSC military services and goods abroad. This has resulted in numerous problems for the U.S. as many allegations of PMSC personnel violating civilians' human rights have come out. Despite these issues, the U.S. government continues to contract work to PMSCs. Other countries and organizations such as the United Nations have followed suit. The UN is as reluctant as ever to talk about the extent of the work they contract out to PMSCs and how. This makes it difficult to gauge the frequency with which the UN uses PMSCs and whether it is to the same extent as the United States. With the increased use of PMSCs, a market for military and

security service providers has grown in order to meet the demand from international organizations and states. In this way, PMSCs seek to portray themselves as nothing more than companies, intent on distancing themselves from the mercenary image despite the fact that much of the work PMSCs engage in is military and security work.

Having successfully disassociated themselves from mercenaries, PMSCs currently occupy a legal gray area in international law. The only UN Convention that could potentially be applied to PMSCs explicitly forbids the recruiting, use, financing, and training of mercenaries and – since PMSCs have succeeded in labeling themselves as corporations – this law cannot be applied to them. Any other documents created in regards to the regulation of hiring and use of PMSCs are new and voluntary in nature. As such, they have yet to be tested in their effectiveness, meaning that international law currently lacks any legal capability with regard to PMSCs. To further complicate this problem are questions of how much power and responsibility PMSCs should have as a result of being hired by governments; if they violate humanitarian and human rights law, who exactly should be held responsible? There are also current international norms to consider; states currently have the monopoly on violence internationally, but this norm could be changing with the introduction of PMSCs into international warfare. The repercussions of allowing PMSCs to engage in what was once the work of state militaries remains unclear, but international law is certainly lacking in this case. Until international law fills this gap and can deal with problems that arise from PMSC use, human rights violations are a serious concern.

International regulation, accountability, and transparency of PMSCs are the best solutions to the threats and challenges that these companies present. The use of PMSCs needs to be regulated. If PMSCs and their personnel break international humanitarian and human rights law, they need to be held accountable and prosecuted. The history of PMSC actions must be available to the public so that no PMSCs with extensive human rights abuses can continue to thrive as a company. Governments and

international organizations need to be open about their methods of hiring PMSCs, just as the way PMSCs operate needs to become clearer so that these corporations can be better understood. As it currently stands, the lack of all regulation, accountability, and transparency allows many organizations and states to circumvent any sort of oversight. This needs to stop immediately, and both states and organizations need to recognize that PMSCs may not be all that different from mercenaries. The U.S. and UN need to be willing to change the methods by which they currently engage with PMSCs, for example, and moral and ethical concerns need to be better addressed. None of these changes will be easy or fast, but they are long overdue; PMSC use has already begun to change the nature of warfare, and the consequences are not yet fully understood.

Private Military and Security Companies

PMSCs as they exist today are a relatively new phenomenon. Modern PMSCs came into existence near the end of the Cold War when countries were downsizing their militaries (Andreopoulos & Brandle, 2012). PMSCs took advantage of this reduction in national armies, along with the globalization of the economy, to create a profitable niche and grow into a powerful industry. PMSCs have been particularly involved in the conflicts of Afghanistan and Iraq; military and security functions that were once seen as primarily state-only functions are now increasingly contracted out. This has been seen as beneficial to many governments and organizations because they do not have to send their own people to operate in post-conflict and conflict areas (Gómez Del Prado, 2011).

PMSCs are sometimes broken up into two groups: Private Military Companies (PMC) and Private Security Companies (PSC). The foundation used to create a distinction between the two groups is based on their active involvement in combat and the extent of legitimate control they have. PMCs are seen as private companies that are directly engaged in combat and other related activities, while PSCs typically avoid combat operations and instead engage in activities such as military advice and training, logistical

support, security/policing, and operational and tactical support. The International Code of Conduct for Private Security Service Providers (ICOC) goes a step further and defines PSCs as “any company whose business activities include the provision of Security Services either on its own behalf or on the behalf of another, irrespective of how such company describes itself” (Schweizerische Eidgenossenschaft, 2010, p. 5). The broader term PMSC will be used throughout this paper because the work that PMCs and PSCs engage in often overlaps, thus creating a distinction between these two companies is not beneficial in the long run. Any definition of PMSCs will then need to be broad enough to adequately incorporate the work PMCs and PSCs do. This is why the definition provided by The Montreux Document (The Montreux Document on pertinent international legal obligations and good practices for states related to operations of private military and security companies during armed conflict) will be used to understand what PMSCs are. They are seen as “private business entities that provide military and/or security services, irrespective of how they describe themselves” (International Committee of the Red Cross, 2009, p. 9). PMSCs sell their services to governments locally and internationally (Andreopoulos & Brandle, 2012; Østensen, 2011).

Governments and international organizations hire PMSCs for various types of duties. In the case of the UN, for instance, PMSCs are hired either directly or indirectly though there are numerous instances where PMSCs end up providing support to the UN. The individuals in charge of PMSCs are usually former elite force members, while the employees are either ex-military or law enforcement personnel. The work that PMSCs typically sell are guarding (armed or unarmed), protection of persons and assets, specialized security training and risk mitigation, security audits and assessments, anti-piracy services, logistical support or other support functions like sea, land, or air transport, and other more specialized services (Østensen, 2011). These specialized services can include security sector reform services, intelligence, disaster relief services, kidnap and ransom services, clearance of landmines and other explosives, and providing training and capacity building for future peacekeepers.

The ICOC is, at its core, a code of conduct for PMSCs to follow. Only companies who have signed the ICOC have to commit to being responsible for the support of the rule of law, respect for human rights, and to protect the interests of their clients. The ICOC expands this idea further by stating that those who have signed on recognize the importance of respecting different cultures and individuals PMSCs may come in to contact with during their work. Furthermore, they have a responsibility to respect human rights and also fulfill humanitarian responsibilities towards those affected by their activities. Essentially, the ICOC is taking the initiative toward broader regulations for PMSCs in governance, compliance, and accountability. Most importantly, companies who sign on to this document agree to take certain steps toward full compliance with the ICOC. These consist of either establishing or showing that internal processes exist that meet the requirements of the ICOC's principles and standards. After this is accomplished, companies can then become certified and submit to ongoing independent auditing and verification. But more generally, the ICOC provides PMSCs with specific principles to follow regarding the conduct of their personnel, as well as specific commitments in the areas of management and governance. While this document is not perfect, it does at least set out a list of rules for PMSCs to follow when they conduct their business (Schweizerische Eidgenossenschaft, 2010). Since the document is still relatively new, the extent to which the ICOC is actually improving the transparency of PMSCs and how they conduct their work with and in states is unclear.

The Montreux Document is different in that it focuses entirely on the responsibilities of the state in regards to hiring and using PMSCs. The first part of this document focuses on recalling legal obligations of the states, PMSCs, and their personnel that already exist, while the second part provides states with practices that will promote compliance with international humanitarian law and human rights law during armed conflict. While the ICOC only applies to PSCs, the practices of the Montreux Document can be applied not only to states and PMSCs, but also to international organizations and non-governmental organizations (NGOs). The Montreux Document breaks down the different responsibilities

of the states based on whether they are contracting states, territorial states, or home states. This distinction is important because states will have different interactions with PMSCs depending on their role. The Montreux Document is really nothing more than a reiteration of the legal responsibilities states have in regard to upholding international humanitarian and human rights law, but in the context of their interactions with PMSCs (International Committee of the Red Cross, 2009). While the Montreux Document and the ICOC lack legal power, they are important steps toward creating legally binding regulations for PMSCs.

PMSCs do their utmost to portray themselves not as individual mercenaries, but as corporate entities. At their core, PMSCs represent the corporatization of providing military service. This is why holding PMSCs accountable to the International Convention against the Recruitment, Use, Financing, and Training of Mercenaries is insufficient. The convention focuses entirely on mercenaries as individuals; PMSCs are not individuals, so trying to apply any of these articles to PMSCs is difficult if not impossible. This is why the ICOC and The Montreux Document are so important despite their lack of legal power. The ICOC and the Montreux Document try to define not only what PMSCs do and who their personnel are, but where states' responsibilities lie based on what PMSCs do in their territories. This is important considering what both documents set out to accomplish. Already, ideas about the acceptability of using PMSCs internationally have changed to a noticeable degree. Countries are starting to debate how to interpret what qualifies as inherently governmental functions in the context of the state monopoly on violence. Today, the U.S., United Kingdom, and Germany argue that the state monopoly on violence refers only to control over the legitimate use of armed force and not the actual exercise of it. The difference between having control over the use of armed force versus exercising it is minor, but the implications are huge. If states only need to have control over the legitimate use of armed forces, then the use of PMSCs in such a way would be legal because technically states have control over PMSCs. It also takes away the burden of states having to send out their own armed forces.

In the case of the U.S., direct participation in hostilities now only pertains to offensive actions. States have started making distinctions between offensive and defensive security services. Furthermore, central to many states arguments about PMSC use being acceptable is the argument that PMSCs do not fit the definition of mercenaries detailed in the UN Convention (Krahmann, 2013). Whether states will continue to have the monopoly on violence in international affairs is unclear. What is certain is that without the regulation of PMSCs, they are able to continuously operate despite extensive human rights violations.

Though the use of PMSCs is not a universal standard around the world, it is clear that a market exists which allows these companies to thrive. Those that would see the military services and goods of PMSCs maximized promote the use of these organizations extensively. They believe that PMSCs can be used for peacekeeping efforts, as well as offer help in humanitarian intervention and assistance. The idea behind this argument is that because PMSC personnel are an available pool of highly trained individuals, they can be brought together on short notice for humanitarian efforts (Pattison, 2010). While this all sounds fantastic, it is very questionable whether or not PMSCs would have any interest in humanitarian and human rights contracts. The current trend of PMSC use suggests that they are only good for military action, and many of those same companies having records of human rights abuses. Plus it seems very idealistic to believe that a group of highly trained combatants would understand how to do peace building, let alone have a comprehensive definition of what work qualifies as such. In this way, it seems inefficient (and unlikely) to let PMSCs deal with anything relating to human rights.

United States

The most well known examples of PMSC use are by the U.S. government. The government's extensive use of PMSCs in locations such as Iraq and Afghanistan only came into the public's awareness when numerous allegations arose of PMSC personnel threatening the lives and security of local

populations. Despite these problems, the U.S. continues to use PMSCs to an alarming degree internationally and any resulting repercussions from these allegations have only come about due to public outcry against such crimes. Compared to many of its allies, the U.S. gives PMSCs many freedoms that are not unlike those afforded to a UN peacekeeper. This is made all the more alarming when the extent of the charges against PMSCs contracted out by the U.S. government is examined.

Though some human rights violations by PMSCs hired by the U.S. government are better known than others, it is important to be aware of the frequency with which PMSCs are used during and the number of problems that arose as a result of this frequent use. For instance: Two Armenian women were shot dead when their car came too close to a convoy under the protection of United Resources Group personnel in central Baghdad on October 9, 2007. URG personnel said that they opened fire because they felt threatened when the women's car approached the convoy at high speed and did not appear as if it was going to stop. This same group shot a 72-year-old Australian professor in March 2006. He was a resident of Baghdad for 25 years and, though he drove through the city every day, he allegedly accelerated his vehicle as he approached the guards and did not heed any of the warnings to stop (Gómez Del Prado, 2011).

A PMSC infamous for its various human rights violations is Blackwater. This PMSC no longer exists under the name of Blackwater and has instead changed its name to Xe. In Baghdad's Nisour Square, a massacre perpetrated by Blackwater personnel occurred in September 2007. Seventeen people were killed and 20 others severely injured. Less than two years later, there were a number of civilian casualties from a shooting incident between an Afghan private entity operating as a security company and the Afghan National Police on June 29, 2009. This all took place inside the attorney general's office in Kandahar. On May 5, 2009, two personnel hired to work for the U.S. Army from the PMSC Xe, formerly Blackwater, were involved in an incident in which one Afghan civilian was killed and three others were injured. This occurred because the contractors felt threatened by an approaching

vehicle when they were stopped for a car accident. The personnel had been hired as trainers by a subsidiary of Xe. They were allegedly issued AK-47s despite guidelines from the U.S. Department of Defense (DoD) that specified Xe personnel were not to be armed. Ultimately, a U.S. Senate inquiry found that the subsidiary involved had illegally signed out 500 machine guns from the U.S. military store (Gómez Del Prado, 2011). There are many more examples of misconduct and human rights violations by PMSCs besides just these few, and all the incidents listed either took place in Iraq or Afghanistan.

In Iraq and Afghanistan, human rights violations occurred as a result of PMSC use by the U.S. government. In the Universal Declaration of Human Rights (UNHR), article 1 it is stated that everyone has the right to life, liberty, and security of person (United Nations, 1948). This right is enumerated and expanded upon in the International Covenant on Civil and Political Rights (ICCPR), where in article 6 it states again that every human being has an inherent right to life and that this right shall be protected by law. The ICCPR also states that no one shall be arbitrarily deprived of his or her life (United Nations, 1976). The killing of unarmed civilians by PMSC employees violates that right to life. Or more accurately, PMSCs have arbitrarily denied people their right to live by killing them without legitimate cause. There are potentially other articles within the ICCPR that could be applied, as well, though it becomes a bit difficult because PMSCs are not necessarily acting in the capacity of the state. Contracting governments may also give PMSCs freedoms that in many ways go against some of these conventions, such as the U.S. government has done.

The U.S. government has given permission to allow PMSCs to formally and explicitly use force for purposes other than self-defense. There is currently no international law in place that supports the United States' decision to allow this. The results of this decision have not been favorable, for there are numerous incidents and congressional reports that suggest PMSC personnel are using force preemptively. Instead of acting in self-defense, personnel seem to be shooting first. Since 2005, Blackwater personnel were observed to have fired their weapons at least 195 times. In a majority of the

incidents, the personnel had used their weapons before any hostile fire had taken place. This only reinforces the fact that PMSC personnel are abusing their authority to shoot outside of self-defense. As if this were not enough, the U.S. has sometimes granted PMSCs immunity from local prosecution (Krahmann, 2013). This did change in January 2009, however, when Iraq was on the verge of denying PMSCs operating license on the basis of their committing human rights violations. But before this change took place, under Order 17 of the Coalition Provisional Authority, prosecution of PMSCs in national courts was prohibited. This meant that if prosecution were to occur, the U.S. would have to do it. Any countries where PMSCs worked were forced to rely on the goodwill of other countries, in this case the U.S., to prosecute violations of law. Often nothing happened. Despite this change, it is startling to consider the fact that the U.S. saw fit to give PMSCs the same immunity that UN peacekeepers possess. Importantly, the U.S. was not adequately prepared to handle prosecuting PMSCs for crimes (Gómez Del Prado, 2011). The freedom that the U.S. has sought to afford PMSC personnel had been done so in bad faith, especially with no form of international law to back up their decisions. For the U.S. to explicitly trust PMSC personnel was (and is) a mistake; the freedoms they currently have should be revoked. Though they may be working for the U.S., they are not trained to necessarily respect certain laws and are not fully covered under international law as state actors.

The U.S. has expanded national laws on PMSCs working for U.S. agencies abroad. Two laws in particular are meant to address the concerns that have arisen as a result of the many high profile cases involving PMSCs. The Military Extraterritorial Jurisdiction Act (MEJA) and the MEJA Enforcement Act of 2007 apply U.S. criminal law to personnel who are contracted out to the DoD. This is an important step forward, in part because contractors made up more than 50 percent of the DoD's workforce by March 2011. MEJA does not actually list criminal acts; instead all applicable crimes are found in Title 18, U.S. Code, Part I. What MEJA does is simply state that it is a crime for certain people to commit particular acts while outside the U.S., especially if the acts or actions committed would have been a crime inside

the U.S. These acts also specifically define what the DoD considers contracted personnel. This personnel includes individuals who are employed by the armed forces outside of the U.S. (including those contractors that are employees of any other federal agency or provisional authority) to the extent that their employment relates to supporting an overseas mission of the DoD. While far from perfect, more than 50 individuals have been prosecuted under MEJA since 2012. Out of those 50 individuals, only 25 PMSCs prosecutions have occurred since 2007 (Bateman, 2012). As it stands, the United States seems to be the only country currently trying to increase governmental control over PMSCs. While many of its allies do not seem to use PMSCs to the same extent that the U.S. does, many European countries seem to be increasingly using PMSCs to fight maritime piracy.

International norms could be changing as a result of the U.S. contracting out so many of its international military operations to PMSCs. As it currently stands, only states and their armed forces may legitimately and legally exercise force for purposes of that other than self-defense. Introducing the use of PMSCs into international affairs could mean that the state monopoly on violence in this regard is changing. The norm could become one where the use of armed force by PMSCs is legalized and legitimized through the recognition of the legality of these firms. If the norm of self-regulation continues, companies may be responsible for regulating their own conduct on the ground – which would have serious consequences that include allowing PMSCs to operate in a legal grey zone (Krahmann, 2013).

There have been various legal repercussions against PMSCs who violated human rights while working in Iraq, which provides some hope for human rights protection. Blackwater has received the brunt of these prosecutions, with many of the cases against them either resulting in prison time or the dismissal of officials. Blackwater has even had to pay fines. This said, Blackwater changed its name as a result of all the bad publicity and is doing so again as it adapts to bad public opinion (Hodge, 2011). The founder of Blackwater has also moved on to create a new PMSC (Parks, 2013). In this way, Blackwater

simultaneously does and does not exist. All of this is further complicated by the fact that it is becoming increasingly difficult to figure out what PMSCs were originally called Blackwater. This is likely the goal of these name changes; people will no longer be able to associate the corporation with Blackwater because they can no longer recall which PMSC started under that name originally. So while prosecution has occurred and personnel have been sentenced according, the corporation itself does not seem to have been punished, especially if the former PMSC Blackwater is still allowed to thrive despite the numerous abuses. If the U.S. wants to prevent a future Blackwater, then the government needs to start regulating the use of PMSCs and demanding that PMSCs be more transparent about their histories – and that includes being honest about past contracts and whether human rights violations occurred. Only then can the U.S. hope to ensure that the former PMSC Blackwater is not allowed to thrive and let history repeat itself.

United Nations

The United Nations has been contracting work out to PMSCs for years. Typically, the UN either directly hires PMSCs or states supply PMSC personnel for the UN to use. It is difficult to find out the details of how the UN goes about hiring these companies, as well as what companies are used most widely. Certainly there are numerous examples of the UN hiring or using PMSCs but, if there is any preference toward using one PMSC over another, it is not clear except in the cases where states hire PMSCs for UN use. What can be said about the UN's practice of hiring PMSCs is that there exists no widespread template on how to hire these companies. Despite the rhetoric that exists about the UN being one unified organization, this is often not the case; many organizations that make up the UN follow their own protocols depending on their needs. This makes it hard to judge whether the methods the UN employs to hire PMSC are in adherence with both its mandate and international human rights and humanitarian law.

The United Nations Department of Safety and Security (UNDSS) is responsible for any policies and procedures that the UN would follow to employ PMSCs. The UNDSS is responsible for developing high quality, best-practice security policies, standards and operational procedures across the UN system, including an appropriate degree of standardization. The UNDSS monitors compliance with security policies, standards, and operational procedures while supporting implementation. They are to ensure that the most cost effective provisions and employment of personnel are taken advantage of through centrally directed recruitment, selection, training, deployment, and career development (United Nations, 2005b). There are a few other functions that the UNDSS performs but these are perhaps the most prominent ones that relate to the use of PMSCs. The problem is that many of the procedures the UNDSS has in regards to PMSC are not available for public perusal.

While the UNDSS policies are not available to the public, the UN Field Security Handbook provides a policy about the use of armed guards in one of its annexes. Generally responsibility rests with the host government to provide security, but if for some reason that government is unable to do so then the UN reserves the right to “protect their offices, premises, and personnel by employing security service companies providing armed guards” (United Nations, 2006, p. 123). Requirements are then given on how UN organizations are to go about hiring a PMSC. First and foremost, only PMSCs entitled by local law to have armed guards and that are appropriately licensed and fully ensured can be contracted. Any PMSC to be employed needs the approval of the Under-Secretary General for Safety and Security. This means that all requests must be sent to this designated office and, at a minimum, include a description of the security situation in the country and the threat that justifies the use of services by PMSCs. Requests must also include a description of the premises or persons to be guarded and number of guards to be employed, and a draft contract to be reviewed by the UN legal offices. Other information to be included in the request for PMSC use is complete information about host government response to requests for increased security and a statement that the PMSC is licensed and entitled by local law to be

armed and fully insured. Only after the request for the use of PMSC has been considered and received approval may the contract be signed (United Nations, 2006). So while the information contained within this handbook is rather sparse, it does give some basic information as to what UN organizations should do if they want to use PMSCs. Whether or not this process is actually followed by UN organizations is the real question.

When a UN organization directly contacts a PMSC, they often do so because they want the PMSC to assist in carrying out their mandate. These tasks range broadly and may include helping in day-to-day activities, securing an area, or in planning and developing processes relating to work the UN organization that contracted the PMSC does. UN humanitarian bodies regularly procure the services of PMSCs so that their premises, assets, and staff may be protected. The UN supposedly prefers contracting local PMSCs as opposed to Western PMSCs, though there are numerous examples that suggest otherwise (Østensen, 2013). DynCorp supplied helicopter transport and satellite network communications to the UN-sanctioned International Force in East Timor. At the same time, Defense Systems Limited provided logistical and intelligence support for national contingencies participating in that mission. This same company has supplied security officers to UNICEF in Sudan and Somalia. Pacific Architects & Engineers (PAE) provided support to the UN Mission in Sierra Leone in 2000 and 2003, as well as various logistical services to the UN Mission in the Democratic Republic of the Congo in 2001. UN humanitarian bodies are not the only part of the UN that contracts work out to PMSCs, however. The UN Secretariat has frequently hired PAE to provide vital support in UN peacekeeping operations. PAE was also responsible for running six airports in the Democratic Republic of the Congo for the UN mission there. This included the added service of evacuating UN personnel in 2004 in the face of a riot (Østensen, 2011).

Another way in which the UN ends up working with PMSCs is through indirect contracting. Many of the UN's partner organizations, business partners, and member states rely on PMSCs to perform any

UN-associated specialized civilian tasks. Examples of this came in 2002 and 2004, ahead of the Afghan elections, when Global Risk Strategies played a large role in assessing potential voter registration locations for the Joint Electoral Management Body Secretariat, which was a partnership between UN and Afghan officials. The reason this PMSC was hired was because its personnel were to substitute any UN and Joint Electoral Management Body Secretariat staff in areas that were particularly dangerous. Business partners of the UN are prone to contracting PMSCs to deliver services in difficult areas, purchasing security services, or even subcontracting parts of their assignments to a PMSC. An example of this is when the World Food Programme outsources food transport, they also may hire armed guards to protect the food conveyors (Østensen, 2011 & 2013).

When it comes to states, the U.S. is the most common offender of hiring PMSCs for UN operations. The State Department relies entirely on recruiting police personnel from PMSCs because the U.S. administrative structure does not allow for federal employees to be directly sent to international missions. PMSCs then vet and hire civilian police personnel from state, local, and municipal law enforcement agencies to serve in international missions. For example, in April 2004 DynCorp International was the sole provider of U.S. civilian police to the State Department. What this meant is that every U.S. officer taking part in the UN Civilian Police was in fact a DynCorp employee. So while the UN does contract PMSCs itself, sometimes it must work with PMSCs when states and other partners decide to send PMSCs in their place (Østensen, 2011).

An additional way in which PMSCs participate in UN operations is through military training. PMSCs have acquired an important role in preparing UN forces for operations. For instance, the U.S. Global Peace Operations Initiative was created in 2004 to amend a perceived worldwide shortage of peacekeepers and police officers that had a combination of military and policing skills. The original idea behind the creation of this initiative was to build up foreign military capabilities in weak states so that U.S. military and police deployment would be rendered unnecessary. However, the shortage of

resources to train foreign peacekeepers led the program to shift its focus from directly training personnel to simply training the trainers. Ultimately the training would be outsourced entirely to PMSCs. In 2007, the training program in Africa was provided by Northrop Grummon Information Technology and was renewed again in 2010. Although the emphasis for this PMSC has been on Africa, the program was designed to have a worldwide reach. Thus by 2009, the number of partner countries outside of Africa had reached 31. As a result, over 54,000 million troops had been trained in peacekeeping skills with 45,000 of those being deployed in ten UN missions and seven other missions under the direction of the United States, the African Union, and the North Atlantic Treaty Organization (NATO). PMSC presence in the training of UN personnel suggests that PMSCs may have more influence within the UN than many anticipated (Østensen, 2011).

The extent to which the practice of the UN contracting work out to PMSCs has become commonplace is troubling in that it has happened almost unnoticed. When the UN contracts work out directly to PMSCs, it is unclear what sort of process the PMSC has to undergo to meet UN approval and whether the set of guidelines provided in the UN Field Book is stringently followed. As for indirect contracting with PMSCs, that problem lies more with member states and business partners relying on PMSCs to do work they are either unable or unwilling to do. This suggests that the ways in which the UN relies on outside help needs to change so that both its needs and member states' concerns are addressed. With PMSCs training and tutoring UN troops, the problem of over-reliance on PMSCs becomes apparent. PMSC personnel are able to transfer their skills and professional beliefs to the troops they are training. Personnel essentially define how these troops are going to understand their duties during UN operations and what it means to be a peacekeeper. Any values that these PMSC personnel promote will likely be reproduced by the troops they train. While there are various approaches through which PMSCs can follow to train these troops, as they are able to design the education material that will be used, there are some PMSCs that follow the U.S. approach. This consists of simply training and

equipping forces so that the soldiers become better shooters with newer equipment. This seems to go against the very idea of peacekeeping in that military action is never at the forefront of these missions. Force should only be the last option; so, teaching troops about the acceptability of force makes little sense in the UN context (Østensen, 2011).

Questions of whether PMSCs are morally and ethically acceptable must also be considered. The individuals who work for PMSCs are doing so for profit-driven reasons and are thus no different than mercenaries. This begs the question of whether these individuals have any interest in aiding in peace building and humanitarian aid, since it could be said that their aim is to participate militarily in a conflict. It is important not to disregard the role of monetary gain for PMSC personnel because the amount of money earned is much more substantial for PMSC employees than for regular soldiers. In this way, states and organizations are encouraging soldiers to become mercenaries because the pay is so much better and they never have to leave warfare. To top it off, many personnel are foreign nationals in the countries where they work. Though it is arguable how big of a role the motivation of PMSC personnel plays in the decision-making of these organizations, it would be unwise to not recognize that many employees are in this work for the money (Pattison, 2010).

The way in which PMSCs can affect local communities and their participation in wars can and has been problematic. PMSCs can be used to support unpopular governments or they can assist a state in intervening in another's affairs, which (it can and has been argued) the U.S. government did by hiring and using PMSCs in Iraq. By using PMSCs in this way, they are undermining a people's right to self-determination. Furthermore, there is a lack of culpability for personnel of PMSCs if they fail to fulfill a contract, especially since PMSCs only ask that personnel accept the risk of a dangerous mission. Unlike regular soldiers, PMSC employees are not expected to make the ultimate sacrifice for the good of the mission. So while personnel may agree to take on a risky mission for the monetary gain, they can refuse to engage in a dangerous operation if they believe they may likely die. This means there is the potential

risk of countries not being able to effectively engage in warfare because PMSC personnel do not have to stay (Pattison, 2010).

As it has become clear with the cases of U.S. and UN use of PMSCs, this field has become incredibly specialized. PMSCs often decide whether a contract is met or not and if they want that contract to be renewed or extended. This puts a lot of power in the hands of the PMSC instead of the contractor. Added to this is the inequality that is being created for individuals' access to security. If military services and goods are left to the market, then soon only those who can afford such services will be secure. Already this is made clear with how wealthy countries and organizations send PMSCs to the UN as opposed to their own personnel. This becomes dangerous because states may start to have less of an incentive to provide satisfactory, community-wide provisions of security if PMSCs are available and able to do the job just as well, if not better, than the state (Pattison, 2010).

PMSCs having such a specialized market is dangerous not only because it will allow security to become a commodity that only the wealthy can afford, but also because it relies heavily on PMSCs having continued business. PMSCs have a vested interest in prolonging insecurity and warfare because that means more money in the long term. While PMSCs may not blatantly prolong a conflict (as that would damage their reputations), they certainly could try to make a region as unstable as possible (Pattison, 2010). With the added benefit of PMSCs being able to influence UN decisions by offering suggestions on how to provide security for their personnel and goods, PMSCs are easily able to achieve this end. If the argument of PMSCs being a corporation of mercenaries is not believable, then at the very least PMSCs being corporations that desire to make profit off of their services and goods should be.

This means an inherent conflict exists between PMSCs and human rights and humanitarianism. The UN should not be contracting out work to PMSCs just as states and business partners should not be supplementing their own soldiers with PMSC personnel. The motivations of PMSC are monetary in nature and in no way reflect the ideas and ideals of the UN and U.S. If the use of PMSCs is to continue,

then the reality that PMSCs are corporations that thrive off of warfare needs to be recognized. Warfare and military action of any kind ensures that PMSCs have employment while peace building and human rights work does not provide the same assurance. PMSCs also have the capability to undermine democratic accountability in that they are able to circumvent constraints on the use of force. They can also reduce control on the battlefield or encourage states and organizations alike to engage in military action when it may not necessarily be needed because they have become increasingly invaluable sources of information.

Recommendations

The increasing use of PMSCs internationally is alarming because it suggests that states and organizations see PMSC use as acceptable, and that a normative change has occurred. Now more than ever, a legally binding instrument is needed to regulate the use of these private organizations. The U.S. should be seen as an example of how PMSC use can become a serious problem when allowed almost unrestrained freedom. The UN shows how the extensive use of PMSCs can contradict the ideas of humanitarianism and human rights that the organization was founded on.

First, a definition of what a PMSC actually is needs to be agreed upon internationally. The Montreux Document and the ICOC both have differing definitions and there is no clear international consensus. Or, more correctly, the Montreux document defines a PMSC while the ICOC only defines a PSC. The international community needs to decide if it is in their interest to keep separate definitions of what a PSC is versus a PMC. If a distinction were to be made, it would only serve in the interest of the states and organizations using PMSCs and not in the interest of the people who will be affected by PMSC use. Thus I do not believe that PSCs and PMCs should be seen separately. The definition that the Montreux Document provides is adequate for understanding what corporations qualify as PMSCs. By agreeing on what a PMSC is, the international community can help ensure that states must identify their

contractors truthfully and hold that companies responsible under resulting regulations. Finding a definition that everyone can agree on may be difficult and/or controversial, but without a clear definition the legal grey area that PMSCs currently reside in will continue to exist and grow.

Second, the work that PMSCs can and cannot be engaged in needs to be addressed, as well as who has control over PMSCs and their personnel when they break international law. The main question that needs to be dealt with here is to what extent PMSCs can be allowed to engage in military and security action. Much of the services PMSCs provide start to overlap with those of the government they are in a contract with. Whether this should be allowed to continue or not needs to be addressed. PMSCs are starting to further encroach on what has been typically considered the job of a state. Already norms are starting to weaken in this regard. This is why defining the work that PMSCs are allowed to engage in is significant; it not only clearly defines what states are obligated to do themselves versus contracting it out to a PMSC, but it also does not allow PMSCs to engage in work that may otherwise be questionable. It will also make prosecuting violations of international law easier for states, as they will not be able to claim that PMSCs are responsible for their own actions or ignore unsavory behavior. States have a responsibility to ensure that relevant international standards and laws are respected and, by defining what work PMSCs can and cannot do, states will be able to better guarantee this (International Committee of the Red Cross, 2013).

Third, the procedures PMSCs use to hire their personnel should be available to the public and states should ensure that PMSC personnel are properly trained in international law. With proper training, PMSCs will hopefully be less likely to engage in human rights violations. Or if they do, at least they will be knowledgeable in how they broke the law and the consequences of doing so. This is a problem not uncommon with UN peacekeepers where the peacekeepers are only trained in combat and not in how international humanitarian and human rights law works, and this problem is further compounded when PMSC personnel teach future peacekeepers. Ideally, PMSCs would be in charge of

training their own personnel in international law but, if for whatever reason they failed to, states and organizations should pick up the slack. Before PMSC personnel are put out in the field, states could have them go through a few refresher courses on international humanitarian and human rights law. They could also supply a booklet that provides key summaries. It would be even better if PMSCs ensured that their personnel had at least a basic understanding of the law and culture of the area they were stationed in. This would likely help to further reduce any potential conflicts that arise due to misunderstanding or misreading the situation. Making the hiring process of PMSC personnel public is equally as important as training, since it would take away the mystery of how personnel are hired and what PMSCs look for when hiring. It would build awareness on whether certain PMSCs hire people they should not due to past experiences, as well as whether PMSCs care about the state of mind of their personnel or not. How personnel in PMSCs are being taken care of is important because personnel are a large part of the problem with PMSCs. The role personnel are playing in perpetuating human rights abuses cannot be ignored (International Committee of the Red Cross, 2013).

Fourth, the international community should look toward previous actions for creating international law related to PMSC use. The UN created a working group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination. It was created in 2005 and lasted until 2011. The work that this group engaged in helped to elaborate and present concrete proposals on possible new standards to fill in existing gaps, as well as general guidelines encouraging the further protection of human rights while facing current and emerging threats posed by mercenaries and mercenary-related activities. This group was also to monitor mercenaries and their activities in all forms as well as study, identify sources and causes, emerging issues, manifestations, and trends regarding their activities and their impacts on human rights. Finally, they were to monitor and study the effects on the enjoyment of human rights and the activities of private companies offering military assistance, consultancy, and security services in the international

market, as well as prepare a draft of basic principles that encourage the respect of human rights by these companies for international use (United Nations, 2005a). Part of this working group's mandate dealt specifically with PMSCs and the rising concerns of their use. It could be argued, however, that the first parts of the mandate were equally meant to apply to PMSCs – even if the word mercenary was used rather than PMSC, remember that there is no internationally-accepted definition of PMSC and “mercenary” does accurately describe what these companies do. That aside, the working group created a draft for a convention on PMSCs. Unfortunately nothing really resulted from a draft convention on PMSCs except perhaps the ICOC and the Montreux document which, while not legally binding, are at least attempting to address the concerns of PMSC occupying a legal grey area. But this draft convention does still exist and so the international community should make use of it – even if that necessitates further discussion and debate. There is truly no good reason why the international community has not officially created a legally binding instrument in regards to PMSCs.

Fifth, the international community should also consider the actions of numerous organizations that have made some effort to draw attention to this issue. One of these organizations is the International Red Cross, which was responsible for the creation of The Montreux Document. Another is The Geneva Centre for the Democratic Control of Armed Forces (DCAF). DCAF is an international organization whose mission is to assist the international community in pursuing good governance and reform of the security sector. They provide in-country advisory support and practical assistance programs, develop and promote norms and standards, conduct tailored policy research and identify good practices and recommendations to promote democratic security sector governance. Established in 2000 by the Swiss government, some of their main fields of expertise that relate to PMSCs are parliamentary oversight of the security sector, public-private partnerships and security, and private security governance. DCAF provides services in the field of security sector reform and security sector governance. Tied to DCAF is the ICOC, which was put together by the Swiss government (The Geneva

Centre for the Democratic Control of Armed Forces, 2000). What is most interesting about the movement toward regulating PMSC use is that most of it is coming from Switzerland and the working group of the UN. While there are certainly organizations within the U.S. that are focusing on this issue, they are not doing so to the extent that these organizations are; usually they are limited to the angle of Afghanistan and Iraq. Hopefully, these organizations will continue their work in this area and push for the international community to recognize the reality of what the lack of PMSC regulations means.

The Montreux Document, the ICOC, and the draft convention created by the UN working group should be used to help create a form of international regulation for PMSCs. Already, states are using the U.S. as an example on how not to use PMSCs and so many countries have requested advice on what their actions should be to avoid such a disaster. The recommendations provided are generally not unlike what should be done to ensure that international use of PMSCs does not continue to result in violations of current international standards and laws. It is too late to stop the use of PMSCs, but the international community should at least seriously consider reducing their reliance on these companies until some form of legally binding regulation is created. The U.S. and UN provide us with examples of how relying too heavily on PMSCs can result in immediate or impending disasters.

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