

The Blurry World of Private Military Companies

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One of the results of the dynamic development of market relations, which also covered the military sphere, was the emergence of private military companies. Private military companies are a relatively new phenomenon with a new quality, the existence of which contributes both to the transfer of armed conflicts into a new legal plane, and creates new loopholes for political actors, through which they solve their geopolitical problems. Private military companies have not only become equal players along with the regular armed forces, but are gradually replacing the latter from the theaters of military operations, and this trend is likely to accelerate more and more, requiring consideration of this phenomenon from both the political and legal sides, which this article will try to do.

Keywords: Private Military Companies, Mercenaries, UN, IHL, Montreux Document, Geopolitics

Abbreviations:

CIA - Central Intelligence Agency

ICoC - International Code of Conduct for Private Security Service Providers

IHL - International Humanitarian Law

MI6 - Military Intelligence, Section 6

PMC/PMSC – Private Military Company/Private Military and Security Company

UN - United Nations

UNDP - United Nations Development Programme

UNHCR - United Nations High Commissioner for Refugees

UNICEF - United Nations International Children's Emergency Fund

US – United States

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The Blurry World of Private Military Companies

History of the Emergence of Private Military Companies

Although at the moment there is no unambiguous definition of the term "Private Military Company", based on their common features, it can be concluded that PMC is a commercial enterprise offering professional services that can be related to the security or protection of various infrastructure facilities or persons, as well as participation in military conflicts, intelligence gathering, strategic planning, logistics and consulting. The largest customers of PMCs are state structures.

Formations of this kind began to dissolve their roots in the 1960s in England and the United States. The first such commercialized group was a private military company created in 1967 by British Army Colonel David Stirling, who is also famous for having founded the SAS (Special Airborne Service) in 1942.² The composition of the PMC consisted of retirees of the same British Special Airborne Service. The main areas of activity included recruiting and training personnel, providing combat and technical support in the fight against terrorist activities, providing military advice, and organizing transactions for the sale of weapons and military personnel to other countries. Plus, it is

known that the British government had direct control over the activities of the company.³

Early on, some of the first private military companies were used to suppress the wave of national liberation movements in Africa, where they proved a formidable force, eventually leading to the UN being forced to ban mercenary activities, which was formalized in the Additional Protocol of June 8, 1977 to the Geneva Conventions of August 12, 1949 for the protection of victims of international armed conflicts, which was not ratified by some countries, including the US.⁴

In the mid-1970s, the US government offered the first contracts to the private military company "Vinnell Corp" owned by the American industrial giant Northrop Grumman. The amount of these contracts exceeded half a billion dollars. The training of the National Guard of the Saudi Army and the performance of security functions on the territory of this country were identified as the main tasks of this PMC.⁵

However, if at the initial stages these companies, and for the most part, were involved in the practical training of officers and employees of the security forces in the host countries, then since the 90s they began to be involved in various armed conflicts along with regular military formations. Similar activity was

ULUSAM

² William P. Crowell et al., *Physical and Logical Security Convergence: Powered By Enterprise Security Management: Powered By Enterprise Security Management*, ed. Eric Cole (Burlington: Syngress, 2007), 51, ISBN: 978-1-59749-122-8.

³ A.V. Manoilo and A. Ya. Zaytsev, "International Legal Status of Private Military Companies," trans. by B. Alekseev, *Herald of the Russian Academy of Sciences*, 2020, Vol. 90, No. 1, page 50. © Pleiades Publishing, Ltd., 2020, DOI: 10.1134/S1019331620010098.

⁴ Kurilev K. et al. (2017) "The Phenomenon of Private Military Companies in the Military and Power Policies of States in the 21st Century," *International Organisations Research Journal*, vol. 12, no 4, pp. 133 (in Russian and English). DOI: 10.17323/1996-7845-2017-04-130.

⁵ Militaryarms, "Chastnyye voyennyye kompanii," <https://militaryarms.ru/armii-mira/chastnie-voennie-kompanii/> (accessed on 25 June, 2021)

observed during the armed conflicts in the territory of the former Yugoslavia.⁶ Probably the most significant example of the active role of PMCs that influenced the course of armed conflicts is the activities of the American private military company MPRI (“Military Professional Resources Incorporated”). Several members of this for-profit organisation, represented by high-ranking retired US officers, were involved in training the highest echelons of the Muslim-Croatian Federation of Bosnia and Herzegovina’s military formations, as well as establishing operational links between the Muslim-Croatian headquarters and NATO command. The success of the offensive operations of the Croatian and Bosnian troops in the spring and autumn of 1995 against the Serbs is a merit of the professionals from MPRI. This company was also involved in the operations of the so-called Kosovo Liberation Army (1998-1999) in Albania, and then in operations in the territory of Macedonia (2000-2001).⁷ Specialists from American private military companies also participated in the training of Georgian special forces before the start of the armed operation in South Ossetia in 2008.⁸ PMCs from different

countries have been spotted on the stage of military theaters in Somalia and Libya.

Although, as noted earlier, the first private military companies were focused mainly on performing work of a defensive nature, over time, the line between defensive and offensive actions began to blur, which ultimately turned PMCs into full-fledged participants in armed conflicts, the presence of which could change the military-strategic balance in favor of the participant or participants in the conflict, whose interests they are designed to protect.

Despite the fact that during the invasion of Iraq in 1991, the number of employees from various PMCs was only 1% of the total number of American troops in the Persian Gulf, by 2020 the situation had changed dramatically. In 2020, the number of military personnel in Iraq was 4087 people, while the number of PMC fighters was 7773.⁹ A similar situation was observed in Afghanistan, where in 2009 there was one private soldier for each soldier of the regular troops,¹⁰ then by 2016 this number changed 3 to 1.¹¹ The graphs below (Figure 1, 2) clearly outline the tendency for private military companies to oust regular military formations

⁶ YU. Mukin, “Ispol'zovaniye grazhdanskikh kontraktnikov i chastnykh vooruzhennykh formirovaniy v sovremennykh konfliktakh,” Pentagonus, <http://pentagonus.ru/publ/4-1-0-670> (accessed on 25, June 2021)

⁷ Militaryarms, “Chastnyye voyennyye kompanii,” <https://militaryarms.ru/armii-mira/chastnie-voennie-kompanii/> (accessed on 25 June, 2021)

⁸ Joel AC Baum and Anita M McGahan, “Outsourcing War: The Evolution of the Private Military Industry after the Cold War,” Rotman School of Management, University of Toronto (February 20, 2009 rev. October 5, 2009): 7.

⁹ Militaryarms, “Chastnyye voyennyye kompanii” (accessed on 25 June, 2021)

¹⁰ Ana Singh, “Soldiers of Fortune: the Rise of Private Military Companies and their Consequences on America’s Wars,” Berkeley Political Review, October 25, 2017, <https://bpr.berkeley.edu/2017/10/25/soldiers-of-fortune-the-rise-of-private-military-companies-and-their-consequences-on-americas-wars/>. (accessed on 25 June, 2021)

¹¹ Thomas Gibbons-Neff, “How Obama’s Afghanistan plan is forcing the Army to replace soldiers with contractors,” The Washington Post, June 1, 2016, <https://www.washingtonpost.com/news/checkpoint/wp/2016/06/01/how-obamas-afghanistan-plan-is-forcing-the-army-to-replace-soldiers-with-contractors/>. (accessed on 25 June, 2021)

The Blurry World of Private Military Companies

using the example of the American contingent of troops in Iraq and Afghanistan.

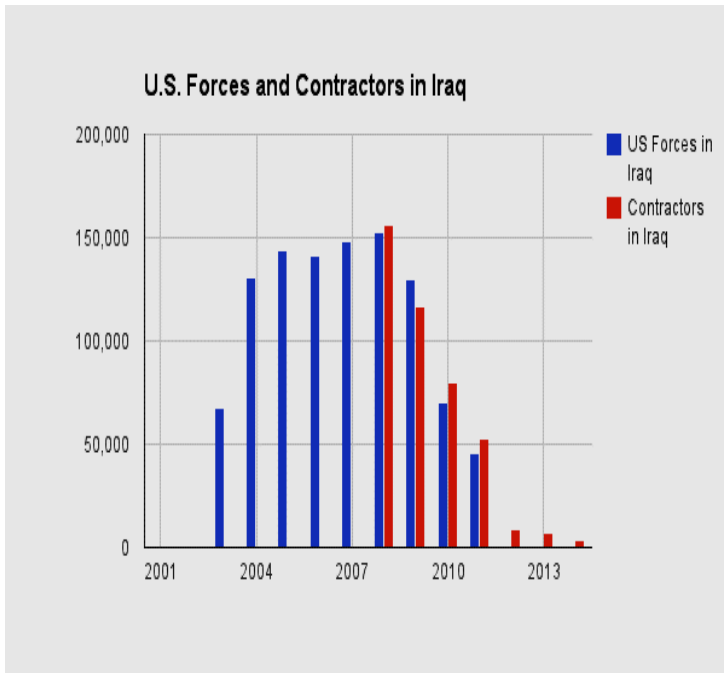


Figure 1 US Forces and Contractor Personnel Strength in Afghanistan, 2001 to 2014.

Source: Sié Chéou-Kang Center for International Security & Diplomacy

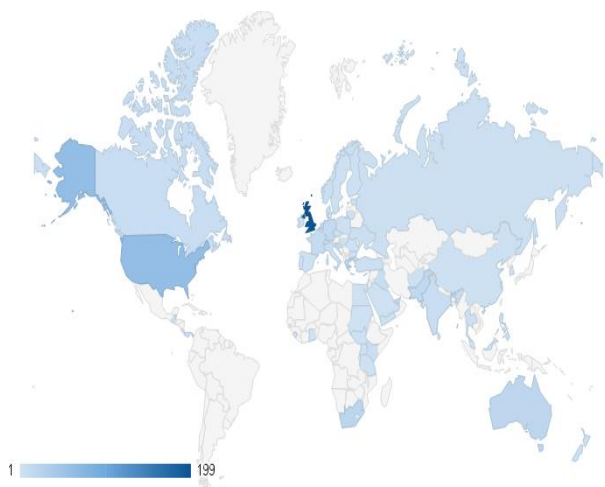


Figure 3 Number of ICoC Signatory Company Headquarters per Country

Source: Sié Chéou-Kang Center for International Security & Diplomacy

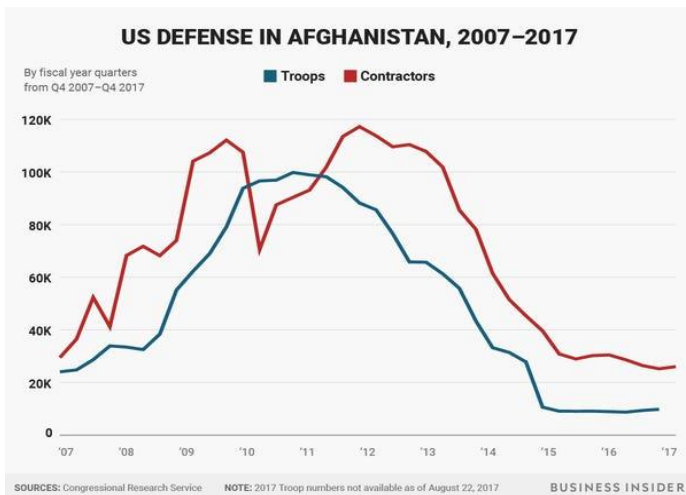


Figure 2 US defense contractors versus US troops deployed to Afghanistan in last decade.

Source: Skye Gould/Business Insider

In terms of monetary turnover, PMCs were expected to generate more than USD 220 billion in revenues on the global market by 2020. The private military and security services market is expected to grow 7.4 percent CAGR (Compound Annual Growth Rate) from 2020 to 2030 and the private military services market will be worth more than US \$ 450,000 by 2030.¹³ In addition, it is

¹² United Nations General Assembly, "Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination," 20 August, 2009, 5.

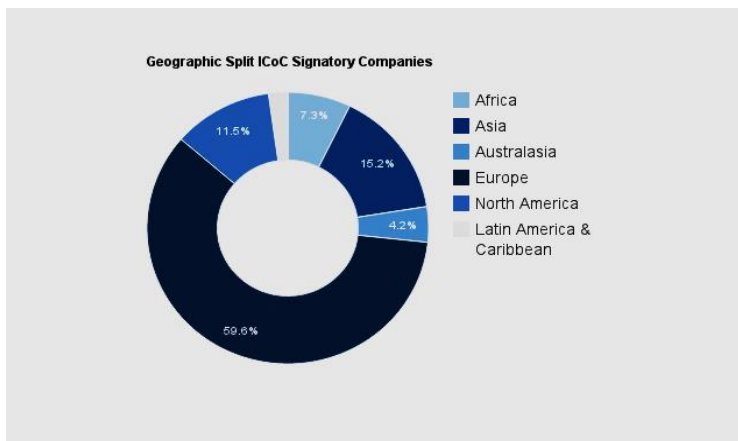
¹³ ASDReports - Market Research, "Private Military & Security Services Market to Total \$457.3 Bn in 2030,"

February 19, 2020, <https://www.asdnews.com/news/defense/2020/02/19/private-military-security-services-market-total-4573-bn-2030> (accessed on 25 June, 2021)

ANALYSIS

worth noting that, as is typical for profitable business structures in the U.S., the practice of merging PMCs into large corporations has become the norm.

However, it is worth considering that despite the growing trend of direct involvement of contractors in combat operations, most of the modern PMCs are still engaged in consulting and logistical tasks.¹⁴



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Figure 4 ICoC Signatory Company Headquarters by Region (updated 1 February 2013) Source: Sié Chéou-Kang Center for International Security & Diplomacy

Reasons for the spread and popularization of PMCs

The end of World War II, after which a huge number of former military personnel, hardened by all the hardships of the war, were unclaimed, served as the main impetus that contributed to the increase in the number of mercenaries and the emergence of the first private military companies in the modern sense of the word.¹⁵

¹⁴ Militaryarms, "Chastnyye voyennoye kompanii," (accessed on 25 June, 2021)

¹⁵ Kurilev K. et al., "Phenomenon of Private Military Companies," 133.

Issue 36 (July 2021)

Processes of globalization and transformation of the world economic system have made a major contribution to the process of mainstreaming of PMCs. The main initiators of the spread of the practice of using private military companies were TNCs, which, having close ties with the bureaucratic circles of Western countries and possessing huge financial resources, began the process of capitalizing such methods to protect their economic interests in the Third World - primarily in unstable and potentially explosive regions of the world, but rich in energy and minerals.¹⁶ Subsequently, it is the firms involved in oil production, transportation services, energy and water supply that will become the main sponsors of contractors.

The main breakthrough in the transformation of these structures in the 1990s into full-fledged private military companies in the modern sense of the word and the strengthening of their role is explained by the end of the Cold War and the reduction in the number of military personnel in the armed forces of both Western countries and the post-Soviet countries. For example, in the United States, there was a sharp reduction in defense spending, the closure of many projects, and, as you might guess, there was a reduction in the size of the armed forces. It was at this point the military leadership began to resort to the structures that are more appropriate to the needs of the time, which were the PMCs. At the initial stages, the range of their tasks was

¹⁶ Valeriy Boval, "Voyna na prodazhu. Vedushchiye chastnyye voyennoye kompanii mira," *Voyennoye Obozreniye*, 20 January, 2015, <https://topwar.ru/66972-voyna-na-prodazhu-vedushchie-chastnye-voennye-kompanii-mira.html>, (accessed on 1 July, 2021)

The Blurry World of Private Military Companies

limited to performing logistics operations, providing technical support and supplies to the country's armed forces. But gradually they began to be attracted already to perform "more serious tasks",¹⁷ since in the early 90s new "hot spots" appeared on the world map.

The growing demand for private military companies has also been fueled by military operations in the international coalition in Afghanistan since 2001 and in Iraq since 2003. Proposals for the signing of contracts came directly from the ministries and military departments of the United States and Great Britain, as well as from UN bodies (UNICEF, UNHCR, UNDP), World Health Organization. Quite often the governments of the occupied countries also resorted to the services of PMSCs.

Of course, such structures, the legal status of whose activities has not yet been finalized, could not exist without the knowledge and consent of the intelligence structures and special services of Western countries. For example, the US CIA and UK MI6 are listed as direct supervisors of PMCs. In the West, the practice of issuing a license to work and concluding contracts with PMCs after it has been approved by the special services has developed. The special services themselves also resort to the services of private military companies, using them as a

cover for special operations, as well as in the implementation of so-called "dirty actions."¹⁸

The issue of involving PMCs in peacekeeping operations is becoming increasingly important, since states do not show any particular interest in providing a soldier from the personnel of the armed forces. To this can be added the fact that the Western voter is not interested in or even against the involvement of his country's military personnel in military campaigns that take place many thousands of kilometers from his/her home.

Another reason for the popularity of PMSCs may be their relevance among the official bodies of state power, which stems from the desire to protect regular troops from solving problems with a dubious reputation, which most likely involve operations with shady, semi-legal or illegal deviations.¹⁹

ULUSAM

The logic of governments outsourcing their responsibilities through privatization can be explained by the fact that in this way they seek to reduce costs through market competition. It is assumed that the dominance of the neoliberal economic model and the increasing privatization of new niches will contribute to the emergence of new types of PMCs and, in general, they will play a more significant role in the conflicts of the future.

Varieties of PMCs

¹⁷ Militaryarms, "Chastnyye voyennyye kompanii," (accessed on 1 July, 2021)

¹⁸ YU. Mukin, "Ispol'zovaniye grazhdanskikh kontraktnikov v sovremennykh konfliktakh."

¹⁹ A.A. Kozina, "K voprosu o statuse i funktsiyakh chastnykh voyennykh kompaniy," in Nauchno-

Tekhnicheskoye i Sotsial'no-Ekonomicheskoye Sotrudnichestvo Stran ATR v XXI Veke, edited by S.A. Kudryavtseva (Khabarovsk: Publishing house FVGUPS, 2018), 297.

According to a widespread classification, PMCs are divided into:

- providing armed services, which means the protection of various objects, escort of especially important persons, personal security, etc.
- providing unarmed services, which include information intelligence, analytics, negotiation, organization of training programs, etc.²⁰

American researcher P.W. Singer gives the following classification of PMCs:

- Military provider firms focus on the tactical environment. PMCs of this type take the most direct part in hostilities. Being on the front line, they can sometimes take full responsibility for the course of combat and control of the situation. Typically, the customers of such companies are those forces or regimes that need additional military reinforcement, thereby using PMCs as a bonus. PMCs of this type are in most cases perceived as mercenaries.

- Military consulting firms provide advisory and training services. Unlike PMCs of the first type, consultants do not take part in hostilities. Their main task was defined as consulting and training the customer's military units, as well as determining the strategic and tactical components. The main difference between these two types of PMCs Singer defines as "trigger finger", and also notes that

consultants sign contracts for a longer period and that their transactions are more profitable.

- Military support firms provide rear-echelon and supplementary services. Like consultants, they do not take part in combat operations. They specialize in meeting the functional needs of the customer: logistics, technical support and transportation.²¹

A number of authors also single out the fourth group of PMCs, specialized in the provision of private security services. The activity of this type of PMC is also significant by the provision of services for the assessment of "risks from military operations, crisis management and security consulting." The protection of facilities and the provision of bodyguards, the clearance of the territory and the training of various army units are also an integral part of their functionality.²²

The practice of using the services of PMCs to combat sea piracy is also widespread, when ships make their trips accompanied by PMC fighters. Hiring PMCs in this case is explained by the fact that it is much more profitable for the shipowner to hire a PMC than to pay the ransom for the ship to the pirates. In addition to security tasks, PMC employees also negotiate the ransom and release of captured sailors.²³

International Status of PMCs

Perhaps one of the most pressing questions today concerns the status of

²⁰ A.V. Manoilo, A. Ya. Zaytsev, "International Legal Status PMC," 50.

²¹ P. W. Singer, *Corporate Warriors; The Rise of the Privatized Military Industry*, updated edition (Ithaca and London: Cornell University Press, 2008) pp. 92-100.

²² A. V.Ovcharov, "Chastnyye voyennyye kompanii v Rossi," *Vestnik Vostochno-Sibirskogo Instituta MVD Rossii*, 3/86, (2018): 86.

²³ Militaryarms, "Chastnyye voyennyye kompanii," (accessed on 1 July, 2021)

The Blurry World of Private Military Companies

persons working in PMCs and how the term "mercenary" corresponds to them. So far, there is no consensus on the question of whether employees of private military companies are mercenaries and whether they fall within this definition. It should be noted that PMCs still do not appear in international law, while the status and position of mercenaries are spelled out in Protocol Additional I of 1977 to the Geneva Conventions of 1949. In accordance with Article 47 of this document,

1. a mercenary shall not have the right to be a combatant or a prisoner of war.

2. a mercenary is any person who:

- a) is specially recruited locally or abroad in order to fight in an armed conflict;
- b) does, in fact, take a direct part in the hostilities;
- c) 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 ranks and functions in the armed forces of that Party;

d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;

e) is not a member of the armed forces of a Party to the conflict; and

f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.²⁴

To date, only 37 countries have joined the additional protocol, including the absence of such leading countries as the USA, Britain, France, Germany, Russia.²⁵

The practice of using the services of mercenaries has been repeatedly condemned at a number of international conferences, UN resolutions and conventions. The resolution of December 14, 1979 notes that "mercenarism is a threat to international peace and security", "that the activities of mercenaries are contrary to fundamental principles of international law, such as non-interference in the internal affairs of States, territorial integrity and independence, and seriously impede the process of self-determination of peoples struggling against colonialism, racism and apartheid and all forms of foreign domination" and that the General Assembly "denounced the practice of using mercenaries, in particular against developing countries and national liberation movements."²⁶

ULUSAM

²⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, prepared by International Committee of the Red Cross (Geneva, Switzerland, May, 2010), page 35, https://www.icrc.org/en/doc/assets/files/other/icrc_002_0321.pdf (accessed on 1 July, 2021)

²⁵ International Committee of the Red Cross, "International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 4 December

1989," https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelecte d=530 (accessed on 1 July, 2021)

²⁶ UN. General Assembly (34th sess.: 1979-1980). 6th Committee 1980, "Drafting of an international convention against activities of mercenaries," New York: UN, 8 Feb. 1980, page 42.

ANALYSIS

Issue 36 (July 2021)

In 1980, the General Assembly established a thirty-five-member Ad Hoc Committee to Develop an International Convention Against the Recruitment, Use, Financing and Training of Mercenaries.²⁷ In December 1989, the UN adopted the Convention on the Prohibition of the Recruitment, Use, Financing and Training of Mercenaries. A difference can be traced between this document and the aforementioned Protocol Additional I, which lies in the fact that here not only a person directly involved in armed conflicts, but also any person who:

(a) Is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at:

(i) Overthrowing a Government or otherwise undermining the constitutional order of a State; or

(ii) Undermining the territorial integrity of a State;

(b) Is motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise or payment of material compensation;

(c) Is neither a national nor a resident of the State against which such an act is directed;

(d) Has not been sent by a State on official duty; and

(e) Is not a member of the armed forces of the State on whose territory the act is undertaken.²⁸

Having examined these documents, one can come to the conclusion that in order to classify one or another PMC employee as a mercenary, it is necessary that this person meets all the specified criteria, which in itself looks problematic. As a result, these definitions can be assessed as “inoperative”. Even if, using the example of American PMCs that took part in the American occupation forces in the Iraqi war cauldron, we can trace the submission of their criminal activities under a number of the above points, this still does not give us the right to extend a single conclusion to all PMCs, for example, to those which operates in the conditions of non-international conflict in other regions of the world.²⁹ However, it is precisely this state of affairs that most of all corresponds to the interests of the PMC employees themselves, since according to the Geneva Convention on the Treatment of Prisoners of War of 1949, mercenaries do not fall under the category of persons with the status of a prisoner of war, which ultimately implies that a mercenary, being taken prisoner, can be killed without trial. Although, under International

²⁷ Kevin Riordan, “International Convention against the Recruitment, Use, Financing and Training of Mercenaries,” United Nations Audiovisual Library of International Law (2021): 2, https://legal.un.org/avl/pdf/ha/icruftm/icruftm_e.pdf (accessed on 1 July, 2021)

²⁸ International Convention against the Recruitment, Use, Financing and Training of Mercenaries. Adopted and opened for signature and ratification by General Assembly resolution 44/34 of 4 December 1989,

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/Mercenaries.aspx> (accessed on 1 July, 2021)

²⁹ Lindsey Cameron, “Private military companies: their status under international humanitarian law and its impact on their regulation,” International Review of the Red Cross Volume 88, Number 863 (September 200): pp. 581-82, https://www.icrc.org/en/doc/assets/files/other/irrc_863_cameron.pdf (accessed on 1 July, 2021)

The Blurry World of Private Military Companies

Humanitarian Law, mercenarism and mercenary activities are not perceived as violations of the Geneva Conventions and their Protocols, and a mercenary cannot be held criminally responsible under international law, he still loses his status as a combatant. A mercenary may be prosecuted under the law of the retaining state both for direct participation in hostilities and as a mercenary if "mercenarism" appears as a crime in the law of that state.³⁰

In addition, the above definition of mercenaries does not fully correspond to the entire variety and specificity of PMCs' activities. Here are **a couple of distinctive points** about the activities of mercenaries and PMC fighters. Firstly, if mercenaries are guided exclusively by participation in military conflicts, the list of tasks of PMC fighters is also diverse in the provision of security, consulting, pedagogical and other types of services. The mercenaries' inventory also lacks defense services provided by PMCs in the gray zone. Secondly, if a mercenary is guided exclusively by obtaining material benefits and is not particularly interested in the victory of one of the parties, then the participation of a PMC fighter can be supported, in addition to material reward, by ideological, ethnic, religious motives and, therefore, be not indifferent to the outcome of the confrontation. Thirdly, PMCs are business structures that can be officially registered and have their own charter. Fourthly, PMCs work on a contract basis with officially recognized governments, are involved in cooperation with the UN and other international organizations. Fifth, despite the undeveloped legal component for PMCs, one can still talk about a certain vague responsibility of PMCs as a legal entity and PMC employees for exceeding their powers and unlawful use of force, as well as the responsibility of the states that order the services of PMCs, states in which created or registered PMCs, and international organizations that involve PMCs in their activities.

Based on the foregoing, we can conclude that today the line between PMCs and mercenaries is very thin, since on the surface there are obvious common characteristics inherent in both of them, while the difference between them lies in the criterion of the legality of participation in an armed conflict when mercenaries are criminals and are held accountable for their activities, while PMCs are not formally and legally such.

There is also a point of view according to which members of completely independent mercenary armies can be considered mercenaries, while co-agents of PMCs, even if they are not part of the regular troops, is still not logical to classify as mercenaries, since they act as an instrument of states and the course their actions must correspond to the interests of the contracting states, which already deprives PMCs of their independence.³¹

ULUSAM

The prospects for relating PMCs to combatants seem quite interesting. It is important to note that the status of a combatant endows the belligerent with the protective mechanisms

³⁰ Lindsey Cameron, "Private military companies status," pp. 577-578.

³¹ A. V. Ovcharov, "Chastnyye voyennyye kompanii: ugovno-pravovoy aspekt," *ENI «Voyennoye pravo»* № 6 (52) (2018): 250

ANALYSIS

defined by the Third Geneva Convention, which is aimed at regulating relations with prisoners of war.³²

The presence or absence of the status of a combatant among PMC employees is also of great importance due to the following points:

1. the clearly defined combatant status will enable the opposing forces to know for certain whether they (PMC) are legitimate targets for an attack;

2. PMC employees can get a final answer to the question of whether they can directly take part in hostilities; and

3. whether they can be held accountable for participation in hostilities.³³

According to Item 2 of article 43 of Additional Protocol I, all persons who are part of the armed forces, except for medical and religious personnel - personnel of the armed forces of states; militias and volunteer units that are part of these armed forces; guerrilla groups that meet certain requirements; the population of an unoccupied territory, which, in the event of an armed enemy approaching, takes up arms to fight it and observes the laws and customs of war - are combatants.³⁴ A distinctive feature of combatants is the right to take direct part in hostilities, being part of the armed forces, during which combatants have the right to take the highest measure of violence - the destruction or murder of the

Issue 36 (July 2021)

enemy. Non-combatants, whose main vocation is to maintain and ensure the combat and spiritual state of the armed forces, have the right to use weapons only for self-defense purposes. In this case, the use of weapons should be directed exclusively against the combatants.

As noted earlier, unlike combatants, non-combatants, if captured, are not subject to the regime of war captivity, and they are not recognized as legitimate participants in armed conflicts. Taking a direct part in armed conflicts, a mercenary is assessed as a person who commits a crime. The actions of individuals who recruit, use, finance or train mercenaries are also considered a crime. Although, in accordance with Article 33 of the Geneva Convention relative to the Treatment of Prisoners of War, while in captivity, non-combatants still have the opportunity to receive medical and spiritual assistance.³⁵

International law can still admit the qualifications of PMC employees as combatants only if they are included in the country's armed forces (one of the prerequisites for obtaining combatant status). However, Article 43.1 of Additional Protocol I does not clarify the formalities of the listing procedure. Therefore, the entire responsibility for the development of legislation to regulate the actions of military units, which should not

³² Médecins Sans Frontières, "Combatants," <https://guide-humanitarian-law.org/content/article/3/combatants/> (accessed on 1 July, 2021)

³³ Lindsey Cameron, "Private military companies status," 582.

³⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, page 32; Médecins Sans Frontières, "Combatants."

³⁵ "Ponyatiya «vooruzhennyye sily» i «kombatant» v mezhdunarodnom gumanitarnom prave," <https://isfic.info/mgp/gumprav07.htm> (accessed on 1 July, 2021)

The Blurry World of Private Military Companies

violate the norms of international law, ultimately rests with the state.

Another way that PMCs will be able to acquire the status of a combatant in armed operations is through their inclusion in volunteer and militia units. However, the following conditions must be met:

- a) have at the head a person responsible for his subordinates;
- b) have a distinctive sign visible from a distance;
- c) openly carry weapons;
- d) comply with the laws and customs of war in their actions.

However, as already noted, states do not rush to vouch for the developed norms to streamline the activities of PMCs, since the main task of using PMCs is to circumvent international law.

Governments tend to view PMC employees as "civilian contractors" rather than combatants.³⁶ Most of the leaders of PMCs and the states using their services claim that such structures are involved in protective activities or are used as an auxiliary force in armed conflicts.

International law classifies PMCs as civilians if they do not directly participate in hostilities. In this case, they are not considered participants in the conflict and cannot be

attacked by the enemy. When PMCs are involved in military operations, they lose their prisoner of war status and can be held accountable.³⁷ At the same time, international humanitarian law has developed a special status regarding gray zones, which is intermediate between civilians and combatants and is designed to cover those who participate in armed clashes without being a member of the armed forces of the country (AP I Arts. 45, 51.3). PMCs, while participating in hostilities, may resort to this paragraph of the Protocol Additional I, although in doing so they lose their status as civilians, become legitimate targets and could be detained and prosecuted on the basis of such participation. Moreover, such participation and actions of PMCs will be perceived as an act of war and judged by the severity of international law.³⁸

ULUSAM

Attempts Made to Regulate the Activities of PMCs

At the beginning of the XXI century, the main initiators of new legal norms aimed at the legal regulation of PMCs were the governments of Great Britain ("Green Paper – 2002")³⁹ and Switzerland, together with the International Committee of the Red Cross ("Swiss Initiative"). This initiative pursues the following objectives:

1. to control the activities of PMCs, create an international secretariat that would

³⁶ Lindsey Cameron, "Private military companies status," 582.

³⁷ A.V. Manoilo, A. Ya. Zaytsev, "Status of PMC," 53.

³⁸ Médecins Sans Frontières, "Private Military Companies. Overview of the Phenomenon," <https://guide-humanitarian->

law.org/content/article/3/private-military-companies/ (accessed on 1 July, 2021)

³⁹ UK Parliament, about "Green Paper," <https://publications.parliament.uk/pa/cm200102/cmselect/cmfaff/922/2061321.htm> (accessed on 6 July, 2021)

ANALYSIS

have the right to prohibit the activities of PMCs in the "aggressor countries" and other states by depriving such PMCs of a license to operate;

2. to take the process of licensing PMCs under international control;

3. establish monitoring of international bodies over the activities of PMCs, as well as to ensure their mediation activities in the development of agreements between the countries owning PMC companies.⁴⁰

These initiatives resulted in the adoption of the Montreux Document in 2008 and the International Code of Conduct for Private Security Companies in 2010.

According to the Montreux Document, agreed by government experts from 17 countries and which is advisory in nature, "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." The document also indicates the rights and obligations of not only such structures, but also the countries of customers, as well as the countries in which

Issue 36 (July 2021)

PMCs operate.⁴¹ However, the Montreux Document is only an outline for an international regulatory framework that may be developed in the future, and is declarative in nature, which is its main vulnerability.

The International Code of Conduct for Private Security Service Providers aims to uphold international humanitarian and human rights law in fragile regions where the rule of law has exhausted itself. The focus of this document is on private military companies, whose actions must be brought in line with the norms of international humanitarian law. It is worth noting that PMCs within the jurisdiction of this code, along with international ones, undertake to comply with national and local laws.

The Code contains provisions on rules on the use of force; prohibitions on certain activities, in particular those concerning torture, discrimination, and human trafficking. An important achievement of the Code is the management policy, which provides guidance to the personnel of private security companies, clarifying the principles on the basis of which recruitment and training is carried out, as well as addressing issues of internal reporting and management mechanisms.⁴² However, this Code, like the Montreux document, is not legally binding and is purely advisory in nature, which ultimately means that they do not introduce any innovations and do not change

⁴⁰ Kurylev K.P., Martynenko Ye.V., Parkhit'ko N.P., Stanis D.V., "Fenomen chastnykh voyennykh kompaniy v voyenno-silovoy politike gosudarstv v XXI veke," Vestnik mezhdunarodnykh organizatsiy Volume 12, Number 4, (2017): pp. 135-136. DOI: 10.17323/1996-7845-2017-04-130

⁴¹ International Committee of the Red Cross, "The Montreux Document," page 9.

https://www.eda.admin.ch/dam/eda/en/documents/aussenpolitik/voelkerrecht/20192511-montreux-document_EN.pdf

⁴² The International Code of Conduct for Private Security Service Providers, <https://icoca.ch/the-code/> (accessed on 6 July, 2021)

The Blurry World of Private Military Companies

the range of validity of existing norms of international law or national legislation.

As an example of another attempt at regulation is the Ad Hoc Working Group established by the UN in 2005. This group was given a broad mandate to regulate and conduct research on PMCs. One of the results of the group's activities was the adoption of UN General Assembly resolution 62/145, calling on countries to develop mechanisms to regulate the activities of PMCs. The adoption of this resolution was preceded by the results of the study of the working group, when it became clear that PMCs operate in a "gray zone", where, as usual, there are no clear legal rules. Another merit of the working group was the development of principles, which were to be the basis for further development of mechanisms of PMCs. These initiatives call for control over the observance of human rights, national legislation, the sovereignty of the country, the right of peoples to self-determination and guaranteed legal acquisition of weapons by PMCs.⁴³ The Working Group also informs governments and other actors about human rights violations, submits recommendations and annual reports describing the situation in the field of activities of mercenaries and private military companies and aimed at improving the situation in this area.⁴⁴

The absence of clear legal norms for regulating the activities of PMCs and a recommendatory character of existing

documents, leads to the fact that the personnel of such structures remain unpunished when they are exposed in criminal activity. It should also be emphasized that bringing PMCs to justice is practically impossible. This state of affairs undermines the foundations of international law, since the impunity of free structures generates all the greater permissiveness. At the same time, in the case of scandals around the PMCs or their gross violations of international law, the state can easily distance itself from them, justifying itself by the fact that it does not interfere in the affairs of "commercial structures."

There is a tendency when states, opposing the provision of minimum protection to "illegal combatants" (those who are not related to the private sector and are not employees of PMCs), try to soften the conditions for PMCs, since the latter are likely to act as instruments to promote their own interests, which can be assessed as hypocrisy on the part of states. And most likely, this can explain the reluctance and disinterest of a number of leading countries in determining the international status of PMCs, since, although services of a protective nature do not contradict the norms of international law, recruiting fighters for their subsequent involvement in armed conflicts grossly violates them.

ULUSAM

We should not forget that PMCs are still commercial entities aimed at reducing costs and increasing profits. Taking advantage of the lack of democratic control, PMCs, to conduct combat operations and achieve their

⁴³ A.V. Manoilo, A. Ya. Zaytsev, "Status of PMC," 52.

⁴⁴ UN Human Rights, "About the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples

to self-determination,"

<https://www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/about.aspx> (accessed on 6 July, 2021)

goals, avoid the high costs and use the harshest, but cheapest methods, which can lead to heavy civilian casualties and exacerbate the situation. Sometimes, in order to obtain additional profits, PMCs deliberately contribute to prolonging the conflict. Such a situation stems from the reality that PMCs are not accountable to the government or officials, but primarily to the founders-beneficiaries, who can be considered the "main lucky winners" in such undertakings.

Advantages of PMCs

First of all, PMCs are an effective tool that allows bypassing the norms of international law, to carry out the geopolitical ambitions of the state. As we have noted, governments resort to the services of PMCs, in particular in cases where the task has an illegal shape, and involvement of the regular army in such "dirty" operations is fraught with violation of international law. If the PMCs are accused of committing a crime, the state can easily deny its involvement and put all the blame on the leadership of the PMC.

The use of PMCs in problematic hot spots helps to avoid losses among the personnel of regular troops, and the deaths of PMC fighters themselves in many cases are not recorded in statistics, which in turn prevents the appearance of information noise in the media, as well as the discontent of ordinary voters-taxpayers. Moreover, citizens are not only not interested in this kind of operation, and sometimes even against the fact that tax revenues from the treasury go to pay for the services of private military companies.

It is no secret that the personnel of PMCs is formed mainly at the expense of former military veterans, who have mountains of military experience behind them. First of all, when choosing, preference is given to former military personnel of the special forces. It can be stated with great confidence that traditional armies are clearly losing out to PMCs in terms of professional training. In addition, the already existing professional experience of PMC employees helps to save budget funds and time that could be spent on education and training.

The fact that the bureaucratic practices within these structures are minimized, and in their mobility they are many times superior to regular military units, suggests that these advantages make PMCs more resistant to the demands of time.

The presence of such structures, as PMCs, provides an opportunity for retired military to "reinvent themselves," to realize their potential in practice and share it. Along with solving the problems associated with unemployment among former military personnel, PMCs also replenish the state treasury by paying taxes.

Disadvantages of PMCs

The modern State, according to Max Weber's much-quoted definition, "is a human community that claims the monopoly of the legitimate use of physical force within a given

The Blurry World of Private Military Companies

territory.”⁴⁵ However, the emergence of PMCs calls into question the state monopoly on the use of physical force. In general, the practice of delegating the right to legitimate use of violence to contractors can undermine democratic control over the use of force, because PMCs can be used by competitors of the existing regime to overthrow it or to organize provocative actions, thus contributing to weakening legal and political instruments regulating the military actions.

The gradual displacement of security and safety functions towards PMCs may threaten the public interest. This conclusion stems from the fact that PMCs will primarily serve the interests of private individuals who are willing to pay for the provision of such services, even if such activities would go against the public will. Such practices have developed in the so-called "failed-state", of which Somalia is an example.

It is also possible when, for purely monetary reasons, specialists from the state security forces join the ranks of the PMCs, and as a result, the state security forces will be deprived of their force potential, which will change in favor of the PMCs. It can also be assumed that the gradual commercialisation of the use of military force may have a negative impact on the patriotic education of younger generations.

Speaking of the disadvantages of PMCs, we are also faced with a picture of high prices, namely, depending on the location of

the operation the cost of services may vary. For example, U.S. private companies operating on the territory of Iraq, received several times more money than their partners operating in relatively more peaceful corners of the world. However, sometimes there are cases in which private military companies make their own profits by taking away important mining and processing facilities from the enemy, a striking example of which is the similar tactics of the Russian private military company Wagner Group.

Another negative practice associated with PMCs is that company members from developing countries are paid many times less than their colleagues from developed countries. A similar situation occurs with the provision of medical services, when the leadership of PMCs neglects the health of members from less developed countries.

ULUSAM

It is also known that PMCs are trying to provide their own personnel with the most modern weapons and do it to an extent that the fighters can perform their tasks fully. However, this state of affairs is an obstacle for some countries in terms of legislative regulation of arms trafficking, which may eventually lead to their illicit trafficking. However, the opposite is also true, which creates the problem of reliability. If the state, acting as a customer, does not provide the necessary amount of logistics to PMCs, and thus tries to minimize their costs, then we should expect that the PMC will act on the

⁴⁵ Max Weber, "Politics As a Vocation," trans. and edited by H.H. Gerth and C. Wright Mills (New York: Oxford University Press, 1946).

battlefield "proportionally", sometimes even refusing to perform particularly complex tasks, or just allocating a meager number of fighters, which are clearly not enough to fully perform the task.

No less significant is the fact that the terms of the PMC contract do not consider all variants of events. Contractors, for which the main motive is material gain, in critical and extreme situations, may act of their own free will, which raises concerns about the issue of control over the PMCs. This dislocation is exacerbated by the fact that PMCs are directly outside the control of military leadership of the country.

Another problem regarding the lack of a clear regulatory framework, threatens the fact that the PMCs personnel may be killed or subjected to beatings in case of their capture. In this case, they actually find themselves in the position of mercenaries. The flip side of the coin is that sometimes PMCs, taking advantage of this gap in the regulatory framework, can resort to illegal activities, a familiar example of which is arms trafficking and killing of civilians by employees of the American company Blackwater during the war in Iraq, the torture of prisoners in Abu Ghraib or another example, related to employees of another American private company DynCorp International, which is accused of human trafficking and torture in Bosnia. After the scandal broke, the company's employees were simply fired. Despite the fact that the U.S. Congress has passed a law under which this kind of offenses will be considered in U.S.

courts, it is still not clear how this practice works.

Conclusion

To date, two types of processes have an evolutionary impact on the development of PMCs: globalization and fragmentation. Speaking about the effects of globalization, it is worth emphasizing that the continuously growing market of private military services has reached such a scale that sometimes some of the giants of this market - companies with huge capital - are no longer the property of a particular state, but began to acquire a multinational character, fulfilling the orders of several countries. Relatively small companies prefer to merge with the most competitive firms. Against this background, we must also talk about growing competition between PMCs and, as a result, the constant improvement of the quality of services.

As for fragmentation, by it we mean the transformation of the world from unipolar to multipolar and "improvement of the geopolitical appetite" of the new world and regional powers. Sometimes, these geopolitical ambitions require military intervention, but such an intervention should have an extremely "sophisticated look", which requires prompt, responsible, efficient and professional performance of the task, which is what PMCs are designed for. Despite a number of the above drawbacks, we must admit that PMCs perform this kind of tasks much better than the army corps. Especially in hybrid conflicts PMCs are turning into almost the only effective means of achieving the goals.

The Blurry World of Private Military Companies

Fragmentation is also manifested in the fact that some of the private military companies, in addition to monetary interests, have an ideological basis - most often of a religious and national nature. That is, as a rule, the staff of such PMCs is formed from representatives of a particular religious or national community. The use of this kind of PMC is dictated primarily by the religious specifics of the area where the company's employees will have to operate. This logic is explained by the fact that those who are familiar with the local mentality and worldview can carry out their tasks better.

And finally, it should be noted that in today's world, there are many cases where the unofficial PMCs actually become a cover for mercenary activities. Moreover, the situation with the observance of international law or local laws by employees of such structures is generally awful. As a rule, PMCs are trying not to allow the leakage of information about themselves and their activities, and employees are required to keep the information confidential and sign the relevant documents of nondisclosure upon hiring. Journalistic investigations on this topic, as usual, are accompanied by information scandals.

Thus, it is safe to say that private military companies today continue to lay a solid foundation for themselves with all their advantages and disadvantages, which cannot but cause concern among the public. Therefore, the question of developing international and national laws that would allow the public to control the activities of

PMCs and force these structures to act in the interests of society, is extremely relevant today.

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