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**American Private Military Companies in the Era of  
War on Terror: An Analysis of Responsibility and  
Accountability**

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## **Dedication**

This work is dedicated to the memory of my late uncle “YAZID”

You were a bright candle in a cloudy era.

## **Abstract**

This dissertation examined the phenomenon of American Private Military Companies and their unprecedented growth in the era of War on Terror, an era that shaped the dynamism of the private military market. Western governments are increasingly relying on the private sector to undertake what used to be inherently governmental. The sensitive nature of these functions did not push officials to provide enough regulatory options and practice more oversight on the booming business. This dissertation also dissected the conventional military normative trends and juxtaposed them to the practices perpetrated by private contractors. By doing so the accordance to those trends was tested and analyzed. In the light of the aforementioned steps, the analysis of every possible legislation and regulation was so crucial; laws at both local and international levels were tested and consequently judged whether they were efficient as regulatory modes or not.

## **Résumé**

Ce mémoire a examiné le phénomène des Sociétés Militaires Privées Américaines et leur croissance énorme dans l'ère de la guerre contre le terrorisme, une époque qui a poussé le dynamisme du marché militaire privé. Les gouvernements occidentaux dépendent considérablement du secteur privé pour entreprendre ce qui était proprement gouvernemental. Le caractère sensible de ces fonctions n'a pas poussé les responsables à fournir des options assez réglementaires et de pratiquer une surveillance accrue sur cette activité en plein essor. Ce mémoire a disséqué également les normes militaires classiques et les a juxtaposé aux pratiques perpétrées par des entrepreneurs privés fournissant des services dans le domaine de la sécurité et de la défense. Ainsi la conformité à ces normes a dû être testée et analysée. A la lumière des étapes mentionnées ci-dessus, l'analyse de toutes les lois possibles et des réglementations étaient si importantes. Les lois sur les niveaux locaux et internationaux ont dû être testées et en conséquence examinées afin de voir si elles étaient efficaces comme modes de réglementation ou non.

## ملخص

اهتمت هذه المذكرة بدراسة ظاهرة الشركات العسكرية الأمريكية الخاصة ونموها الذي لم يسبق له مثيل في عصر الحرب على الإرهاب، وهي الحقبة التي شكلت ديناميكية السوق العسكرية الخاصة. اعتمدت الحكومات الغربية بشكل متزايد على القطاع الخاص للاضطلاع بما كان بطبيعته تقليدياً من اختصاص القوات المسلحة للدول، أما الطبيعة الحساسة لهذه الوظائف فلم تدفع المسؤولين لتوفير ما يكفي من الخيارات التنظيمية وممارسة مزيد من الرقابة على الأعمال التجارية المزدهرة لأنها تعتبر شركات مدنية من النواحي القانونية و التنظيمية. قامت هذه المذكرة أيضاً بشرح المعايير التقليدية العسكرية و بمقارنتها بالممارسات التي يقوم بها المتعاقدون من القطاع الخاص. بذلك كان ينبغي اختبار هذه المعايير وتحليلها. على ضوء الخطوات المذكورة أعلاه، فإن تحليل كل التشريعات والقوانين الممكنة أمر بالغ الأهمية؛ لذلك تم اختبار القوانين على المستويين المحلي والدولي والحكم عليها ما إذا كانت فعالة في عملية التنظيم أم لا.

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### **List of Abbreviations and Acronyms**

AECA	Arms Export Control Act
AID	Agency for International Development
ATCA	Alien Tort Claims Act
ATS	Alien Tort Statute
AVG	American Volunteer Group
CACI	Consolidated Analysis Centers Incorporated
CIA	Central Intelligence Agency
CNN	Cable News Network
CPA	Coalition Provisional Authority
CSS	Combat Service Support
DCSLOG	Deputy Chief of Staff for Logistics
DOD	Department of Defense
GAO	Government Accountability Office
GCC	Gulf Cooperation Council
GWOT	Global War on Terror
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
KBR	Kellog Brown and Root
LIC	Low Intensity Conflict
LOGCAP	Army's Logistics Civil Augmentation Program
MPRI	Military Professional Resources Incorporated
MSP	Military Service Provider
NATO	North Atlantic Treaty Organization
NGO	Non Governmental Organization
NSP	Non-lethal Service Provider
OEF	Operation Enduring Freedom
OIF	Operation Iraqi Freedom
PMC	Private Military Company
PMF	Private Military Firm
PSC	Private Security Company
TOC	Transnational Organized Crime
UCMJ	Uniform Code of Military Justice
WASP	Women Air force Service Pilot
WMD	Weapons of Mass Destruction



## **Introduction**

In recent years, the US government has headed towards a new trend which is that of privatizing military affairs and contracting private military firms to undertake what was inherently governmental. PMCs pose challenges to both security and economy, their liability under the law is one of the strongest controversies. Members of private companies are contracted to fulfill duties of the armed forces. They are armed civilians, the blur in their status opened doors for many atrocities to be perpetrated without being held accountable. They are armed, but they do not comply with army laws and regulations. They are not civilians either for that they are armed and authorized to use deadly force in some cases. Contractors are now undertaking every single military function. Over the last decade things that governments used to do are now undertaken by PMCs, a wide range of functions are contracted to them.

Why is holding PMCs accountable so crucial? This dissertation's aim is to answer questions about the use of this type of industry. The use of private companies to fulfil sensitive functions asserts the need to unusual type of regulations. A problematic issue is constituted through the following questions. Once those companies are operating overseas, which of the laws govern their actions? Is it the American law? Or the law of the hosting country? And once human rights are breached, what regulations fit their legal status at the international level?

The US launched its war on terror doubling its military costs to an unprecedented rate since the Vietnam War. This was a pre-requisite for the private military business to prosper. The war on terror was very productive. It was the most privatized of all wars humanity witnessed so far. Many functions are outsourced to PMCs from the guarding of personnel, facilities, and properties on the one hand to convoy escort and personal detail security on the

other hand. They can also provide unarmed security services such as operational coordination, intelligence analysis, hostage negotiations, and security training.

For state militarism contracting PMCs to conduct the mastery of violence is not something new, the use of privateers in conflicts to which they are not party is a very old practice. History recounts their use three thousand years ago with the Egyptians' control over Syria. Evidences that belonged to approximately the same period proved that King David made use of mercenaries as well. Privateers were vital for both Greek and Roman civilizations. They were crucial to the prosperous life the Persians and the Berbers were having. Soon, free lancers replaced privateers in the late Middle Ages, but the advances in the easy-to-use weaponry explain the shift towards state armies during the eighteenth and nineteenth centuries. In America the use of privateers dates back to the War for Independence. The newly born republic continued relying on privateers during the War of 1812. Americans used profit driven foreigners in the Mexican-American War, the Civil War, WWI, WWII, post Cold War era, and the War on Terror.

Private military companies are the subject of an investigation in this dissertation through a historical analytical methodology that interpret different official governmental and international documents and analyzes the accordance to traditional trends in related issues. As a first step in chapter one, giving a precise definition to this phenomenon is something of a great importance. The definition should go beyond the descriptive meaning of the term because of the nature of these controversial firms and the kind of functions they are actually undertaking. Nine-Eleven was a transformative event and a turning point in global history. The attacks on the Twin Towers announced a new era of military interventionism called war on terror. The burial of many Americans under the dust is something new in scale and character. It had devastating ramifications beyond the thoughts of the American officials themselves.

Along with the bloody ten-year war on terror the US administration of George W. Bush did everything to make this war very productive. Peter Warren Singer, author of *Corporate Warriors: The Rise of the Privatized Military Industry* has set two major reasons for which the private military market becomes very dynamic; the first reason lies within the transformation in the nature of war, in other words why war is conducted? This has created new demands which needed to be fulfilled by the adequate supplies. The second reason is the privatization revolution which he has called a change in mentality and a change in political thinking. The new economic trend asserts that the job is better done by the private sector even when linked to military issues. In this particular part of chapter one an important question is raised, how would such attacks on the WTC invoke the world's most extravagant wave of contracting governmental functions to the private profit driven corporations?

The Americans could not accept the fact of being hit domestically. The public opinion was shocked by the events and consequently ready for any measures of retaliation. The second part of chapter one analyzes and dissects the impact of the policy of fear on the intensity of the retaliation and the reasons behind that. Bush's address to a Joint Session of Congress and the American People on September 20, 2001 is a very important document that needs to be interpreted. Thus discourse analysis is equally applied as a second method in this work. Bush depicted well the situation in which people were confused and frightened by watching the symbol of America's prosperity burning down. This gave Americans the impression that their sacred freedom was jeopardized and that they had to be prepared for a long and open-ended war against an unknown enemy.

The private military industry was fueled by war enthusiasm. Army Secretary Thomas E. White introduced his "Third Wave" plan to the Pentagon, a plan which according to David Isenberg had three major reasons for its implementation: first, to free up military manpower and resources for the global war on terror; second, to obtain non-core products and services

from the private sector to enable army leaders to focus on the Army's core competencies; and third, to support the President's Management Agenda. In April 2003, the "Third Wave" initiative temporarily came to a standstill after Secretary White's resignation. In a benefit and cost dualism the private military business boomed. Their use in this war is certainly unprecedented in both size and scope.

Chapter two of the present dissertation interprets the relationship between the military normative trends and juxtaposes them to the practices perpetrated by PMCs. In this case three major military treatises are to be dealt with, Sun Tzu's *Art of War*, Carl Philipp Gottfried von Clausewitz's *On War* or the Trinitarian war theory as it is called by Van Creveld, and Antoine Henri Baron Jomini's *Treatise on Grand Military Operations* (*Traité de Grande Tactique*). The third part is devoted to the atrocities and breaches of fundamental human rights perpetrated by PMCs. There are some major fundamental human rights that might be violated by PMCs, they are respectively the right to security or the right to life, freedom from torture, the rights of workers or the right to favorable working conditions, and the right to self determination. In the light of all this the most important breaches need to be dissected and tested.

PMCs like any other American companies are tied to all types of laws and regulations controlling their businesses. There are several existing regulatory modes which deal with the issue of holding PMCs accountable. They are divided into two categories, local and international. What are these modes? And how could they be applicable to PMCs? It is an important task to be fulfilled in chapter three for the changing nature of those companies. The first category is divided into sub-categories, regulations of political nature that were introduced centuries ago and others of a military nature. At the international level there are definitive regulations on PMCs, among them there are also many regional agreements which can be applicable to PMCs mainly if the hosting country is a signatory to the convention. The

exploration of the aforementioned regulatory modes leads to the analysis of their efficiency and consequently leads to the result of whether they might be applicable to PMCs or not. Most of those modes have limitations, drawbacks, and shortcomings. This is the last task to be achieved in this research.

The research will attain its aforementioned objectives through an extensive literature review according to a rich set of sources. A set of primary sources that encompass official documents issued by different governmental agencies and departments, Acts of Congress, reports of Congressional committees, army regulations, and international agreements. At this level, the reliance on army regulations and acts of Congress related to PMC issues proves the blur in the legal status private contractors have. The “US Army’s Logistics Civil Augmentation Program” for instance, was first introduced on December 16, 1985 as a regulatory frame that governs private contractors hired by the US government. The regulation’s objective is to pre-plan for the use of PMCs to perform sensitive functions in wartimes to augment army forces. The argument is that the use of PMCs in support operations will release military units for combat missions.

Laws and legislations are very practical in understanding the legal status, they are an integral part of the literature review. Thus digging deep in search of the oldest acts that dealt with PMCs is very crucial in the conduct of this research. The “Alien Tort Claims Act”, also known as “Alien Tort Statute” is one of the oldest American laws that can be applicable to PMCs. The Act which is part of the United States Code was introduced in 1789, it aims at granting jurisdiction to US Federal Courts over civil actions perpetrated by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States. Under this Act PMCs can be held accountable since they violate many laws of nations and mainly US treaties with other countries. The main reasons for which the “Neutrality Act” was passed in 1794 was to make sure that war should not come to the United States by any nation of whom

the United States was at peace because of irresponsible acts of some individuals whose paramount aim is personal profit.

Military regulations and codes dissect to a great extent the liability of private contractors. The “Uniform Code of Military Justice”, also known as UCMJ is applicable to all military members worldwide; students at military academies, prisoners of war, and retired or reserve personnel in some cases, it is considered as the backbone of the military legal system. The manual is very practical when related to private contractors for that it contains a set of procedural criminal laws that are standardized for all US military personal. The “US Arms Export Control Act”, the “US Army Regulation 715-9”, the “Military Extraterritorial Jurisdiction Act”, the “War Crimes Act”, and the “Anti Torture Statute” meet the same requirements to be efficient regulations and build up a PMC legal framework.

International conventions and agreements are also so important in the process. They help in providing an adequate and clear vision about the efforts made by the international community to reach well balanced modes of holding PMCs accountable and bring them in front of international courts in cases of any human rights violations. Thus a major analysis is performed on the original texts of the “Customary International Law”, the “Geneva Convention’s Additional Protocols (Protocol I)”, and the “International Convention against the Recruitment, Use, Financing and Training of Mercenaries” introduced by the United Nations. The analysis of such important sources will help in shaping a good understanding of the phenomenon and thus dissect the shortcomings of the already existing regulatory modes.

Documentaries and videos are an integral part of this work for that they hold recorded and documented evidences about the atrocities perpetrated by private contractors, mainly Robert Greenwald’s *Iraq for Sale*. The documentary contrasts the use of private contractors in Iraq with tier use in previous conflicts. It asserts that the use of PMCs escalated due to D.C. lobbies and connections their CEOs have with some wings of the Republican Party, mainly

the Christian coalition side. Greenwald mentions many cases of abuse, profiteering, and fraud but documented them with testimonies of senior US officers, military experts, former PMCs members including interrogators, and victims of PMCs abuses as shown in the Abu Ghraib abuse photos. As part of the research primary sources, the leaked videos by some former Blackwater agents are very useful in understanding the atrocities committed by PMCs members. There are many videos that serve this aim such as the video titled “Blackwater MD-530F Shooting at Targets below on a Street” from Live Leak website, the “Leaked video: Blackwater / Academia Contractors Randomly killing Civilians”, and the “Leaked Video Shows US Contractors Randomly Killing Civilians”.

The use of academic and press articles in addition to the books of the pioneers in the field of PMCs categorizes and shapes two different viewpoints. The first one is that of military men and politicians who think that the use of PMCs is cost effective. While the second viewpoint encompasses many activists and academics who stress the ‘Cost Plus’ principle that makes the sensitive military functions a mere source of personal profit. The history of one of the world’s oldest professions is clarified in John France’s *Mercenaries and Paid Men: The Mercenary Identity in the Middle Ages: Proceedings of a Conference Held at University of Wales, Swansea, 7th-9th July 2005*. The first account of the industry and its implications is provided in Peter Warren Singer’s *Corporate Warriors: The Rise of the Privatized Military Industry*. The book is an updated version of his classic account on the private military industry that describes the importance of PMCs in the Iraq War. With the emphasis on the PMCs workforce contracted by the Pentagon, David Isenberg dissects their role and their impact on the policy-making procedure in his *Shadow Force: Private Security Contractors in Iraq*. Isenberg’s work explains the blur between private contractors and military commanders, he thematically addresses the problems of protocol and accountability.

The dualism of cost and benefit asserts that PMCs as any other corporations have drawbacks and advantages, yet their advantages are less efficient in regard of their costs economically and politically. Christopher Kinsey in his book *Corporate Soldiers and International Security - The Rise of Private Military Companies* examines the ways PMCs came to be recognized and their impact on the international security. Both Mitchell Macnaylor and Missye Brickell attempted to reach the aforementioned objectives through their respective articles “Filling the Criminal Liability Gap for Private Military Contractors Abroad: U.S. v. Slough and the Civilian Extraterritorial Jurisdiction Act of 2010” and “Mind the “Gap”: Private Military Companies and the Rule of Law”. Jeremy Scahill’s investigative work takes one famous PMC as a case study in his very famous magnum opus *Blackwater: The Rise of the World's most Powerful Mercenary Army*. Scahill uncovers the blur in the controversies the company went through, from a very reliable PMC that the US administration contracted and trusted to a damaged firm that was hit by a series of scandals.

This research aims at mapping out some areas of interaction between the drawbacks and the advantages of the private military industry in a very distilled analysis. It seeks to analyze the effectiveness of the regulatory modes in an attempt to contribute to the efforts made by different political entities, academics, and international organizations to provide a proper understanding to the phenomenon and consequently counter it with the necessary measures.



## **Chapter One**

### **Historical Overview of Privateers**

The birth of Private Military/ Security Companies as influential actors dates back to the end of the Cold War, where great powers felt the need for non-conventional forces to deploy in spots of conflicts. But as a matter of fact the existence of this ‘phenomenon’ goes back to ancient civilizations with different appellations than PMCs. This chapter highlights the different factors that led to their evolution and the dynamism of their prosperity as an unusual type of industry in the era of ‘War on Terror’.

#### **1 – Privateers of Ancient Times**

Governments in modern times have headed towards a new trend which is that of privatizing military affairs and encouraging private companies to conduct what was inherently governmental and always belonged to the domain of the state armed forces. This is not something new for state militarism; the use of civilians and foreigners in wars was a very old practice. Tracing the history of these old practices leads us to ancient civilizations, ‘Mercenaries’<sup>1</sup> was the label those people had for ages; three thousand years at least when the Egyptians tried to control Syria, they were obliged to fight against the Hittites under their strong leader Muwatalli II in the famous battle known as ‘The Battle of Kadesh’<sup>2</sup> which took place in the spring of the fifth year of the reign of Pharaoh Ramses II (Roberts 40). The eleven thousand Numidian mercenaries played a huge role in it, the battle dates back to 1274 B.C. (Velikovsky 35). Ramses II established foreign corps in the Egyptian forces most of them were tribal scouts (Healy and McBride).

Biblical archaeology gives strong evidence that King David made use of mercenaries as well around 1000 B.C. in order to capture Palestine which was dominated for a long time by Philistines due to superior technology, And knowledge control of making iron weapons that

were kept away from the use by others. The Philistines themselves used David's mercenaries to settle an old score with the Jebusites of Jerusalem (Biblical Archaeology Society).

For both Greeks and Romans, their civilizations relied heavily upon the use of mercenaries. The Roman army was composed of Barbarian troops with their unlawful nature; many emperors have used them through history. A *historynet.com* article entitled "Rome's Barbarian Mercenaries" lists several legendary Roman leaders' attitudes towards the Barbarian foreign troops and explains:

No close reader of Caesar could fail to observe that the legendary general was repeatedly saved, even at Alesia, by mounted German mercenaries whom he had hired for his war against Vercingetorix. Subsequently, Augustus established an imperial bodyguard, the *custodes*, composed entirely of Germans. Army recruitment took a similar path. Whereas Italy still supplied 65% of legionary troops during the reigns of Augustus, Tiberius, and Caligula, by the mid-second century the contribution of the Italian heartland had dwindled to less than 1%. Rome had begun recruiting its soldiers from the least civilized areas of the empire—a policy that would remain in place in late Roman times. Recruiters seem to have believed that the best soldiers, the real fighting men, could only be found outside the cities. (Frey)

The Greeks served the Persian Empire better than any other nation. The Persians conquered Greece in 484 B.C. employing the Greeks themselves as mercenaries. The 'Ten Thousands' is Greek mercenary group that was used by Cyrus the Younger, son of Darius II of Persia in 401 B.C. to seize the throne (Fields). Xenophon of Athens might have been the most famous paid soldier of the period, what is really astonishing is that as he was a historian, he told reliable stories that everybody believed. Carthage employed Balearic Islands' shepherds in its war against the Romans as well. In 334 B.C. Alexander the Great of Macedonia invaded Persia and won the famous Battle that took place in the Granicus

River and took its name (Cooper 57). Alexander the Great's reliance on Greek mercenaries was crucial to his success exactly as the Barbarian mercenaries were for Rome's colonial expansion, and the Numidian mercenaries were for the Egyptians.

The use of private soldiers was a common practice among almost all the armies to the point where a whole war was fought and took the name of mercenaries. The Mercenary War was waged by twenty thousand mercenaries formerly contracted by Carthage backed by the Libyans (Shuckburgh 208). Hoyos in his famous book *Truceless War: Carthage's Fight for Survival, 241 to 237 B.C.* describes the situation and the real motives for the mercenary armies. He argues that:

[...] They had their long- delayed arrears from the Carthaginians, for whom they hardly felt much affection. Now a sharp successful revolt offered plunder and enrichment, at Carthaginians Expense again. For one thing, the rebel leaders promised them substantial payments. Beyond that the mercenaries could look not just for money and goods but some of them at least for land and a town or towns. Soldiers at the close of foreign campaigning were often so rewarded! Alexander the Great's city creations, though not for his mercenary veterans only, are well known examples, and Hellenistic Kings often granted land to their ex-soldiers. (77)

Using hired people who are not nationals or integral part of an armed conflict extended to modern times. The Roman practices of using privateers witnessed a wide spread. The Byzantine Varangian Guard was a good example. Hannibal could raise a very strong mercenary army from almost all over the region. For many years he held together a mixture of all nationalities by the force of his personality and leadership skills (Healy 16). For the Normans, William the Conqueror used Flemish soldiers to reach England this is why Magna Carta provided for expulsion from the real life "all alien knights, crossbowmen, sergeants, and mercenaries" (Gulam 15). In Italian city states the 'Condottieri'<sup>3</sup> or warlords offered their men

to whoever would hire them. European feudal rulers relied heavily on mercenary armies throughout the middle Ages (Cooper 576). By the end of the fourteenth century, professional soldiers became so powerful that they began to form extremely lucrative companies which travelled through Europe taking part of the continents bloodiest conflicts.

Free lances were the new form of private companies during the late Middle Ages. The English free company called 'White Company' led by Sir John Hawkwood was very famous. The Welshman Owain Lawgoch, raised a free company and fought with the French against the English in the Hundred Years War (Thomas). England effectively countered Spanish naval superiority in the 16th and 17th centuries through the extensive use of privateers in the New World. Popularly known as 'Sea Dogs', such privateers as Francis Drake and Walter Raleigh plundered Spanish ships in that region and extorted large sums of ransom from Spanish settlements (Smith 106). The British had their Gurkhas, Sikhs, and Sepoys; the French their Foreign Legion, the Dutch their Amboinese; the Russians their Cossacks; and the Japanese their puppet armies in Manchuria, China, Indonesia, and Burma (Johnson 131).

David Killingray, Emeritus Professor of Modern History at Goldsmiths, University of London in his *Guardians of Empire: The Armed Forces of the Colonial Powers, c. 1700-1964* explores the ways in which armies and armed forces were involved in the making, the maintenance, and the loss of overseas empire in Africa, Asia, and Oceania, the Dutch East Indies, the Germans in Africa and the American Empire in the Pacific. Killingray highlights the Europeans need for reliable indigenous soldiers:

The practice of employing indigenous soldiers began in 1620s, when the VOC raised companies of Japanese and Chinese, freed slaves of non-Indonesian origins (*Mardijkers*) and Pampanga from the Philippines. The recruitment of Japanese may seem surprising in the light of later history, but in the early seventeenth century (and before the closing of Japan 1636) this was a rather obvious strategy. As a Governor

General Jan Pietersz Cohen, never at a loss for an apt comment, remarked, the Japanese were the best. (54)

Congressional Quarterly researcher Mary H. Cooper explains that shift in the use of paid soldiers is due to the advances of the easy-to-use weaponry especially the musket which gave advantage because mercenaries were hired for their specialized skills in battles. Rulers could more readily raise large numbers of troops through conscription than by hiring mercenaries. Cooper says that the Enlightenment notions of patriotism and citizenship made military service more appealing than during the era of serfdom (577). The turning point in the status of paid soldiers throughout history was the signing of the Treaty of Westphalia<sup>4</sup> (1648). This practice began to decline when the rise of nationalism and the idea of sovereignty inspired the emergence of the ideals of national honor and patriotic duty; consequentially national armies slowly began to replace mercenary armies (Singer). The mastery of violence was regained by the state militaries as the extreme masters in the global arena.

Most free companies during the seventeenth century served two purposes at the same time, economic and military. They became prosperous during the two hundred years of colonial expansion. Traditional colonizers had such experience, the British, the French, the Spanish, the Dutch, and the Germans all of them used private companies for imperial aims. According to Singer the length of the charter companies' histories is striking, particularly when one compares them to the longevity of most states. The Dutch East India Company lasted 194 years, the Hudson's Bay Company 200 years, and the English East India Company, 258 years (36). Even afterward, the historic continuities of the companies at arms in non-state areas such as Sub-Saharan Africa continued (37). The colonial expansion played a major role in the prosperity of the industry, the transformative and dynamic nature of the market was so crucial for that.

In America, privateers were used in the War for Independence to capture or destroy 600 British ships. The newly born republic continued relying on privateers during the War of 1812, employing them to capture 1,300 ships (Smith 106). During the American Revolution, the British government hired some thirty thousand mercenaries from the German state of Hesse-kassel to help repress the colonists' uprising. Indeed, George Washington's 1776 defeat of the Hessian units was a key victory in the march to independence (cooper 577). Privateers were not only involved in land warfare, they had a legal standing in international law on high seas and were widely used by nations through the 1800s to bolster their maritime forces. They were defined as "vessels belonging to private owners, and sailing under a commission of war empowering the person to whom it is granted to carry out all forms of hostility which are permissible at sea by the usages of war" (Gulam 16). The American Revolutionary War, the Mexican-American War, and the Civil War, all of them witnessed a considerable reliance on privateers.

The industrial revolution played a major role in the decline of profit-driven military providers' activities. Certainly armies grown size and their deployment in battle fields with all their necessary supplies were still a problem. The valuable inventions the industrial revolution brought to humanity solved many tragedies since the latter inspires creativity not only in the field of military industries but in all other fields as well. Christopher Kinsey, a lecturer in the Defense Studies Department, King's College London, examines the impact of the industrial revolution on the military providers' business and says:

Steamships and railroad were able to carry men, weapons, and supplies huge distances on an unprecedented scale. Now a European country was able to deliver the male population of fighting age to the battlefield, and keep it supplied there. As a result countries started to count their soldiers by the million. No wonder then that the use of mercenary armies in war became irrelevant. States no longer needed the additional

services of such groups of men, who in all probability would anyway be drawn into war as citizen soldiers. (42)

## **2 – Private Military Industry in Contemporary Period**

During the twentieth century citizen armies took over the privateers. At the same time, state bureaucracies had developed to a degree where it was possible to recruit, train, pay, and maintain a full-time force (Smith 107). Michael Howard in his *War in European History* explains the change in militaries towards modernity and mentions the regulations organizing them and gives the following example:

The army to contemporary eyes must have looked remarkably archaic but to ours appears no less remarkably modern, Gustavus turned it into an effective long-serving force. Service lasted for twenty years but only one man in ten was called on to serve and the rest were taxed to provide his equipment. So in practice the army [Swedish] was a force composed of long-serving regular troops. Local communities were made responsible for finding their quota of men, but exemptions from service were granted to only sons of widows, to men with brothers already serving, to workers in mines and munitions industries, to the nobility (who served as officers anyway), and the priesthood. (58)

General Martin E. Dempsey, the US Army's 37<sup>th</sup> Chief of Staff who assumed duty on 11 April 2011<sup>5</sup> describes in a US army white paper the military services as “well respected and are highly rated in every poll of public trust”, he arguably assures that “we [US military services] can be justifiably proud of how well the Army and our soldiers are shouldering the heavy burdens they have borne over the past nine years”. Professions use inspirational, intrinsic factors like the life-long pursuit of expert knowledge, the privilege and honor of service, camaraderie, and the status of membership in an ancient, honorable, and revered occupation (2). The four-star general gives a good description of the military compared to

other professions where workers are motivated through extrinsic factors such as salary, benefits, and promotions.

The beginning of the twentieth century was an era of marginalization for the private military industry, citizen armies took over the profit-driven contractors due to the emergence of new notions that helped the states to mature and promote the concept of sovereignty. The responsibility to protect falls on the state. The control of violence was a prestige that would not be granted to anybody else but a bureaucratically strong government, in order to fulfil its duties towards its citizens and thus earning the necessary legitimacy to rule. Governments were convinced that the loss of control over those private military providers would definitely jeopardize their sovereignty and legitimacy.

Major Mark E. Hubbs, a retired US Army Reserve and writer of “Massacre on Wake Island”, was a witness of a massacre that took place a short time after the US entry into World War II,<sup>6</sup> where more than 1150 private contractors were captured by the Japanese in Wake Island, a tiny island in the North Pacific annexed to the United States. On that island served about 1603 Americans among them were 453 US Marine forces, the others were civilian contractors of the Morrison-Knudsen Corporation, part of a cooperative of eight construction companies called the Contractors Pacific Naval Air Bases headquartered in Boise. All of those captured became prisoners of war (POW). The Japanese executed 98 remaining employees in 1943 disregarding their legal status as civilians according to Hubbs.

Among the 16 million Americans who served in the United States military during WWII , few of them were paramilitary civilians who served under some units such as the WASP (Women Air force Service Pilots),<sup>7</sup> gained their militarization from Congress in 1977<sup>8</sup> (Texas Women’s University). Franklin Roosevelt hired a Volunteer Group of fighter pilots (AVG) who were recruited under Presidential sanction and commanded by Claire Lee Chennault. The



group members whose mission at first place was defending China against Japan were paid 500 dollars for each Japanese plane shot down (Raffin).

The 1950s and the 1960s era was that of decolonization mainly in African and Latin American countries. During the war in the Congo from 1960 to 1964 mining firms hired mercenaries to fight in support of the Katanga Secession, these groups were nicknamed “Les Affreux” (the Terrible Ones) or (the Frightful Ones) such as the Irish born commando Mad Mike Hoare and Frenchman Bob Denard who would later lead a series of coups in the Comoros Islands and the Seychelles from 1970s till 1995 (Singer 37). Between 1956 and 2001, about 80 successful coups d’état took place in Africa, 108 failed and another 139 reported coup plots in 48 of the sub-Saharan African countries, most of these were military-led (McGowan). The traditional European colonizers were seeking a lost glory that used to have in the region, by destabilizing the newly independent countries and their governments.

The use of privately owned military firms has become increasingly more visible till it reached its heyday in the post-Cold War era where governments reduced the size of their militaries and outsourced many non-combatant jobs to PMCs. The demand for PMCs in developing countries reached its highest level ever. The Saudi military depended completely on a multiplicity of arms to provide a variety of services such as operating its air defense system to training and advising its land, sea, and air forces (Singer 188). Although many governments of developed countries made it clear that they are not undertaking an interventionist foreign policy except in areas that represent their immediate sphere or areas where they have vital interests, they prefer the use of private expertise in order to avoid all kinds of accountability in matters of human rights abuses and consequently avoid any political cost at both internal and external levels.

During the Cold War era the two belligerents squared off and developed an unbelievable number of paramilitary civilian units in order to face the potential threat of the other camp, the

need for these units was shrank by the end of the world's most dangerous convulsion. Consequently the United States which became the only super power on the global arena started downsizing its extravagant military expertise because the American policy makers felt no longer communist threat. The aftermath of the Cold War gave the United States the moral obligation of intervening in spots of conflicts in order to enforce some principles which it consider unquestionable for the promotion of liberty all over the world,<sup>9</sup> at least these were the declared paramount objectives of the American successive administrations.

Another reason for the unprecedented dependency on PMCs is that most governments faced hard economic times, among the solutions there had to be a downsizing of their militaries. On the one hand going through another world convulsion like the Cold War was unlikely and the downsizing process was inevitable. On the other hand diminishing the size of the nation's army was too risky and the governments had to rely on a new form of military expertise which is that of private contractors. Regional conflicts however increased and became the United Nations main concern; developing fragile states were the appropriate theater for the resurgence of private military providers, thus private military companies have become key factors in contemporary security.

Noam Chomsky in his *Profit over People: Neoliberalism and Global Order* labelled the defining political economic paradigm of our time as 'neoliberalism' and writes: "...It refers to the policies and processes whereby a relative handful of private interests are permitted to control as much as possible of social life in order to maximize their personal profit" (7). Post-Cold War era was a new era of privatization declared by Ronald Reagan and Margaret Thatcher.<sup>10</sup> The ideology which is linked to economic theory saw that the private corporations could be more effective in delivering services than the public sector because of the so-called free market competition. The great powers' non-interventionist attitude made it hard for the UN to deploy competent peacekeeping or peace enforcement forces to countries or regions of

conflict. Consequently the demand for protection was not met by traditional state armies; it had been effectively exploited by PMCs (Spear11). The downsizing of the overall military strength kept shrinking.

In his “The Use of Private Military Firms in the Military Occupation of Iraq: A New Shared Monopoly of the Use of Force”, Paul Bellamy, author and civilian peacekeeper in a UN Peace Mission in Central African Republic gives some important statistics about the size of many militaries across the globe:

In the US, the overall military has shrunk from 2.1 million in 1989 to 1.4 million today, and the US Army from 111 combat brigades to 63, The US National Guard and Reserve from 1.8 million in 1989 to 876,000 today. The Soviet Union/Russian Federation has gone from an army of 5,227,000 in 1987 to 977,000 in 2001. NATO countries did so, that resulted to the UK now has an army that is at its lowest since the Napoleonic wars. France went from a 1987 high of 547,000 to 295,000 now, Germany from 469,000 in 1990 to 284,000, Italy from 389,600 to 200,000, Spain from 274,500 to 160,000, and Turkey from 647,400 to 515,000. (17)

The United Nations started relying on PMCs in some of its peacekeeping operations during the 1990s because of their effectiveness and unsatisfactory performance of UN troops in peace keeping operations notably in Sub-Saharan Africa such as Democratic Republic of Congo, a country with the highest cases of rape against women although it boasts the largest peace operations in the world (Ovie). This period witnessed the most extensive UN peacekeeping operations ever because the atmosphere was that of regional conflicts and genocides in Africa, Eastern Europe, Latin America, and Asia. As the great powers had reduced the size of their armies, undertaking peace enforcement efforts was a very hard task to perform for the UN peacekeeping forces which were affected by the troops downsizing of the Security Council’s influential members such as the US and Russia.

**Map 1: The Global Activity of the Privatized Military Industry, 1991 – 2001.**

**Note: Areas of PMC activity appear in bold.**



Source: Singer P.W. “Corporate Warriors: The Rise of the Privatized Military Industry and Its Ramifications for International Security”

During Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF), military providers were not only backing the military but undertaking and performing functions which were inherently governmental, something which is contradictory to the Abrams Doctrine<sup>11</sup> which urges the administration to maintain a clear linkage between the employment of the Army and the engagement of public support for military operations (Carafano). The only exception for this doctrine was during the Viet Nam War where the reserve components had the upper hand simply because the public opinion did not support that war. The Abrams Doctrine obviously targeted the nation’s consensus on whether going to the war serves the country’s vital interests or not. With the Global War on Terrorism the Abrams Doctrine has to be reconsidered due to the decisive role of the reserve components that had to serve in the US army and this is an additional reason for PMCs to be deployed.

Nine-Eleven was a transformative event and a turning point in global history, Jeremy Scahill, writer of *Black Water: The Rise of the World’s most Powerful Mercenary Army*, described the world on September 10, 2001 as a “very different place”, the attacks on the

(WTC) twin towers announced a new era of military interventionism called War on Terror.

Noam Chomsky in *Nine-eleven* dissects the main causes led to the 9/11 attacks and says: “The horrifying atrocities of September 11 are something quite new in world affairs, not in their scale and character, but in the target. For the United States, this is the first time since the War of 1812 that the national territory has been under attack, or even threatened” (11). The event has marked the extension of the American power beyond the limits of any legitimate national emergency response. Chomsky exposes the devastating outcomes the War on terror would have on the Israeli-Palestinian negotiations.

Wars were vital prerequisites for the prosperity of the private military industry. Along the war on terror bloody ten years the US administration of George W. Bush did every thing to maintain what John K. Cooley, writer of *Unholy Wars: Afghanistan, America and International Terrorism* called the shaky coalition against terrorism. With a wealth of evidence, Cooley uncovers the American flirtation with Islamism and its impact with the unprecedented global war against terror following the murderous attacks of September 11, 2001. Nowadays PMCs represent the final product of an evolutionary process since ages. The critical factor is their modern analytical form; they are hierarchically organized into incorporated and registered businesses working on a global open market and recruiting proficient members and providing its great variety of clients with a wide range of services (Singer 191). The private industry is there to make profit consequently it is tied to all types of laws and regulations that governs and oversees its business.

The second decade of the twenty first century has witnessed new practices linked to private contracting. History had never recorded the use of mercenaries against a tyrant’s own population to linger in power. The Libyan tragedy - Arab Spring -<sup>12</sup> was barely new. On March 4, 2011, a *BBC* website report unveiled the mystery of Colonel Gaddafi’s Sub-Saharan mercenaries that he had unleashed in the country, the report listed witnesses of Tuareg<sup>13</sup>

community members in Mali who said that a large number of Tuareg men had left Mali in the last week to join pro-Gaddafi forces in Libya, a senior elected official said that: “About 2300 have left in the last seven days”. The Libyan opposition forces have found many Africans dead after the retrieval of pro-Gaddafi forces.

*Reuters* went further and said that mercenaries are joining both sides in Libya conflict. The June 2011 report by Mark Hosenball who relied on anonymous US and Western security officials, asserts that Libyan leader Muammar Gaddafi and opposition groups are both hiring private military contractors to strengthen their forces. The report mentioned as well the countries whose PMCs operate on the ground (Contractors working with the Benghazi-based rebels may have come from or been recruited through private military companies in countries such as France and Britain, which play the most active front-line roles in the NATO campaign). The French and the British are not the only European mercenaries working in Libya, Between 300 and 500 European soldiers of fortune, including EU nationals, work for Colonel Gaddafi, Michel Koutouzis said to *Euobserver*. Most of those men are specialists in heavy weapons, helicopter technology and tactics and come from Belarus, Serbia and Ukraine.

The most striking in the use of mercenaries when related to the Libyan issue is that PMCs were involved in an something considered illegal according to International Criminal Court; helping a war criminal who is pursued by the ICC for crimes against humanity to escape. According to *news24*, a group of 19 South African contractors led a failed bid to smuggle the Libyan Colonel Muammar Gaddafi to a country which is a non- signatory to the ICC convention. In the article they were called mercenaries although it is mentioned that they were contracted by a PMC (they were approached by a security company in August to assist in moving Gaddafi out of his hometown of Sirte). The contractors were recruited by Sarah Penfold, a very famous figure in the private military industry who acted in behave of a

company in London. The article said that Gaddafi himself approached the security company requesting assistance.

The ongoing popular uprisings or the so-called “Arab spring” reached Syria in 2011. In March 7, 2012, during a military operation in the city of Homs around 700 gunmen were captured in the former rebel stronghold of “Baba Amr”. The arrested gunmen held different Arab nationalities; Gulf, Iraqi, and Lebanese. There were also Qatari intelligence agents and non-Arab fighters from Afghanistan and Turkey, and some European countries like France as well as CIA, Mossad, and Blackwater agents (RT). Leaked emails from Stratfor, VP for counter-terrorism indicated that the US government contracted a PMC to help the Syrian opposition to overthrow the Bashar al-Assad regime. According to a released correspondence by WikiLeaks the private military company SCG International was contracted to engage the Turkey-based Syrian opposition, its assignment was called “fact finding mission”. The source that leaked the sensitive information was SCG Chief Executive James F. Smith, the former director of Blackwater, now known as Academi (RT WikiLeaked). This operation has many indications; the most important one is that PMCs serve well the hidden agendas of western governments. The US government officially declared that it is not considering the use of force to overthrow the al-Assad regime but largely depending on American PMCs to accomplish the mission.

### **3 – Prosperity of the Industry in the Era of War on Terror**

#### **3.1 – Policy of Fear and its Impact on the Declaration of War on Terror**

Over the last ten years the US launched its War on Terror doubling its military costs to an unprecedented rate since the Vietnam War, this was a pre-requisite for the private military business to prosper. The War on Terror was very productive; it was the most privatized of all wars humanity witnessed so far, contractors were undertaking every single military function. This wave of contracting the mastery of violence was the world’s most enormous one.

Peter Warren Singer, author of *Corporate Warriors: The Rise of the Privatized Military Industry* has set two major reasons for which the private military market becomes very dynamic; the first reason lies within the transformation in the nature of war, in other words why war is conducted? This has created new demands which needed to be fulfilled by the adequate supplies. The second reason is the privatization revolution which he has called “a change in mentality” and “a change in political thinking” (49). The new economic trend asserts that the job is better done by the private sector even when linked to military issues, the new demands that the market has developed over the years has to be met with the necessary means according to the market ‘Supply and Demand’ rule. Several questions are to be answered, the most important one is how would such attacks on the WTC invoke the world’s most extravagant wave of contracting governmental functions to the private sector?

Driven by their need for retaliation for several reasons, the Americans could not accept the fact of being hit domestically. The country had not experienced such attacks since Pearl Harbor<sup>14</sup>, the exclusion of the latter is necessary for that the arena was a naval base in two US colonies and not a part of the American national territory as Chomsky argued, it is noticed that the US territory had not been under attack since the War of 1812.<sup>15</sup> Beside the conspiracy theory and the ‘inside job’<sup>16</sup> scenarios, the nation awakened by fear; the nineteen attackers of Al-Qaeda committed an act of war which led to the death of 2,819 people, with a total number of 115 families who got no remains and 3,051 as an estimated number of children who lost one of their parents (numag.com). The casualties were enormous and the nation’s pride was hit, nobody could believe that America could one day be under attacks which would cause this number of casualties in a single day.

The public opinion was shocked by the events and consequently ready for any measures of retaliation. American officials kept providing people with intelligence data gathered by all federal agencies leading them to the belief that the country is not immune from attack.



President Bush in his speech to a Joint Session of Congress and the American People has declared that “We will take defensive measures against terrorism to protect Americans. Today, dozens of federal departments and agencies, as well as state and local governments, have responsibilities affecting homeland security”. In the same speech he has announced the creation of a Cabinet-level position reporting directly to him, this among many other measures would safeguard the nation against terrorism, and respond to any future attacks that may come.

In his address to a Joint Session of Congress and the American People on September 20, of the same year the attacks took place, President Bush declared his War on Terror. Bush used many opposed terms to influence the American public opinion, the sharp cut he tried to make between ‘We’ or ‘Us’ as Americans and ‘They’ or ‘Them’ as extremists led the public opinion to side with Bush’s ‘absolute good’ against Al-Qaeda’s ‘extreme evil’. Bush depicted well the situation in which people were confused and frightened by watching the symbol of America’s prosperity burning down, the expression “we are a country awakened to danger” characterizes the state of shock, people did not see that coming. This gave Americans the impression that their sacred freedom was jeopardized and that they had to be prepared for a long and open-ended war against Al-Qaeda.

The way Bush constructed his war in the 9/20 speech in congress was dealt with among many other speeches which constructed the War on Terror by Silje Solheim in his Master thesis titled “Either You Are with Us, or You Are with the Terrorists: A Discourse Analysis of President George W. Bush’s Declared War on Terrorism”. According to Solheim, Bush firstly stressed the relation between the ‘Us’ and ‘Them’ and then contrasted and opposed them to each other in an oppositional structuring to have the form of ‘Us’ against ‘Them’. He secondly differentiated the ‘Us’ by constructing an ‘Us’ which was a mix of a particular and a universal national American identity with friends, allies and partners, consequently he would

specify the ‘Them’ and this was greatly achieved while constructing the question “Why do They hate Us?”, and he kept revisiting this contrasted formula every then and now (43).

Another important point that Solheim focused on was the discourse of freedom and fear that Bush brought up in his speech, Bush mentions the American way of life and depicted it as an exceptional one that should be preserved against fear. This American way of life that Bush linked to ‘peace’, ‘security’, ‘justice’, ‘goodness’ and ‘freedom’, was constructed as being the concern of the entire world (45). All this granted Bush a *carte blanche* to react in behave of the nation; the USA Patriot Act of 2001<sup>17</sup> was the most noticeable controversy.

After making the analogy to the ‘Dualism of Manichaeism’,<sup>18</sup> dealing with Bush’s constructed war on terror speech, shows that he immediately framed the situation as a battle between civilization and barbarism. He first constructed the barbarians making them visible; there is a discursive construction of ‘Us’ representing civilization and ‘They’ representing barbarism. Solheim asserts that: “there is no ultimate distinction between the categories: sometimes ‘Us’ as civilization is used to describe the US and sometimes ‘Us’ as civilization is used to denote a larger entity, either the US with its friends and allies or sometimes even representing all of the world’s nations that are defined as civilized by President Bush”. Finally the speech provides clear evidence on how civilized nations deal with the threat coming from the barbaric terrorists and all their sponsor states and sympathizers (69). It is in this part were Bush establishes the duality between the coalition forces and the axis of evil. The insertion of the biblical reference based on the theory of ‘Just War’ leads him to divide the world into two major sections, the defenders of freedom and the enemies of humanity.

Sarah E. Spring and Joseph Clayton Packer from Wake Forest University provides a full analysis of Bush’s Address in their work “George W. Bush: An Address to a Joint Session of Congress and the American People (20 September 2001)” for the (Voices of Democracy 4) in 2009. It is part of a bigger NEH sponsored project (2005-2009) created to promote the study

of great American speeches and debates called ‘Voices of Democracy’. The focus of the study in its six volumes is on the actual words of those who, have defined America’s guiding principles throughout history, debated the great social and political convulsions of the American nation, and defined the identity and character of the Americans. According to the deliberative paramount objectives of the project, the *Voices of Democracy* aims at a better understanding of the nation’s principles and history to promote engagement among humanities students, teachers, and scholars.

When compared to other speech of Bush, the “Address to a Joint Session of Congress and the American People” is quite different for that it has marked the launch of the War on Terror. Post 9/11 first public appearance of the president was on September 14 in a prayer service at the Washington National Cathedral, the same day he traveled to New York where he spoke to a gathering of clergy and rescue workers. Bush responded to a worker who could not hear him by saying: “I can hear you. The rest of the world hears you. And the people who knocked these buildings down will hear all of us soon!” (9/11 Bullhorn Speech). Driven by their fear from the future, the Americans seized well the message, it is in this time were they granted their president the ‘Carte Blanche’.

After redefining the nature of the enemy, the strategy had to be fulfilled by a call to respond. The definition of Al-Qaeda as the nation’s enemy helped justify the ultimatum that he issued to the Taliban regime, Bush thus called on Afghanistan to surrender its sovereignty to the United States. The declaration of Bush’s ‘War on Terror’ was through a strategy which consisted of two halves; international response and a national safeguarding from future attacks. The latter foreshadowed his full support for the 2001 USA Patriot Act, a controversial legislation which looked much like the World War I Espionage Act passed in 1917 and the Cold War’s Espionage and Sabotage Act enacted in 1954 (126). Many specific domestic measures to combat terrorism were proposed in that speech. According to Homeland Security

Act of 2002 placing air marshals on flights would be much more effective for airport security although the hard Congressional debate over it.

A national commission on terrorist attacks upon the United States (also known as the 9-11 Commission) was created by Congress and the signature of President George W. Bush in 2002, as an independent and bipartisan commission. It was chartered to investigate and prepare a full and complete report of the circumstances surrounding the terrorist attacks. It has as well to be prepared for an immediate response to the attacks and provide recommendations to guard against any possible future attacks. After almost three years of investigation the commission released its 26 pages report on July 2004. The report considered the attacks on the twin towers as a shock not a surprise for that the extremists had given a wide range of clues and warnings which aimed at “killing Americans indiscriminately and in large numbers”. This threat emerged over the decade.

The report mentioned all the attacks upon American interests and nationals in and outside the national territory, starting from the 1993 attacks on the WTC towers by Ramzi Yousef and his group which killed six and injured thousands using a truck bomb. In 1995, a plot was foiled by the police in Manila; it was Ramzi Yousef again who planned to blow up a dozen US airliners over the Pacific. These attempts were followed by many successful other ones; two attempts took place in Saudi Arabia, one in November 1995 where Al-Qaeda extremists had killed six Americans in Riyadh, and the other in June 1996 where they had targeted nineteen US servicemen and successfully killed them. In August 1998, the American embassies in Kenya, and Tanzania were attacked. Al-Qaeda members killed 224 people including 12 Americans. In October 2000, it is Al-Qaeda again that could blow a hole in the side of the American destroyer “USS Cole” and killed 17 American soldiers who were on board.

The commission report secondly dealt with the nature of that organization capable of hitting the world's most powerful nation at home, in other words who is the nation's enemy? The executive summary gave a very detailed explanation of the different stages Al-Qaeda went through in addition to its hierarchical leadership and sponsoring sources. In the light of all this and with the hindsight of the threats issued by the extremists, commission members stressed the loopholes which could prevent such attacks including the unsuccessful diplomacy which could not practice more pressure on the Taliban regime, the lack of military options, the problems within the intelligence community, the permeable borders and immigration controls, the permeable aviation security, the improvised homeland defense, and the slow response by the New York authorities and the Congress.

The report provided recommendations to prevent future attacks from taking place; among the measures there was a proposed global strategy with three dimensions: "first, attack terrorists and their organizations, second, prevent the continued growth of Islamist terrorism, and third, protect against and prepare for terrorist attacks". This 'elaborate recommended strategy is based on: firstly, creation of a National Counter-Terrorism Center (NCTC), secondly, appointment of a new National Intelligence director, and most importantly, establishment of a stronger interagency coordination. The commission considered many proposals relating to the future of the domestic intelligence and counterterrorism mission and it called for organizing America's defenses at home.

The revolution in insurgencies worldwide and the GWOT declared by the US led to a situation which Robert M. Cassidy called 'World War X', his book *Counterinsurgency and the Global War on Terror: Military Culture and Irregular War* dissects in a distilled analysis Al-Qaeda and its networks with a particular focus on ideology, he uncovers the challenges experienced before by super powers such as Russia, America, Britain, and France. Cassidy believes that the use of the term 'Long War' emerged in American official documents and that

it is described as the struggle of this generation that shifted from large scale conventional military acts to small scale counterinsurgency acts. A 'Long War' has several characteristics such as being unlimited in time and space. It might as well be protracted and perennial, however this war is seen as a global counterinsurgency that aims at isolating and eradicating fundamentalism (2). The American public opinion however was getting ready for a long war since many believed that this age is certainly the 'Age of Terrorism'.

Cassidy's distilled dissection of the 'Big War' paradigm embraced by military organizations of big powers leads to the belief that since the organizations are great and large they innovate gradually and slowly, that is to say "great powers do not win small wars because they are great powers". Several contradictions are derived from the logic of superior power facing an inferior opponent; the great power provides extravagant resources and technologies, but the adversary that is supposed to be inferior demonstrates a superiority of will shown in his readiness to accept all the costs whatever they are. The dilemma of 'death or victory' is embodied in the controversy between the qualitatively and quantitatively inferior adversary who "fights with limited means for unlimited objectives – independence", and the qualitatively and quantitatively superior adversary who "fights with potentially unlimited means for limited ends – the maintenance of some peripheral imperial territory or out-spot" (21-22). This paradigm tends to be correct when juxtaposed to the important treatise issued by Martin Levi van Creveld, the latter stresses the importance of the size in this matter. Van Creveld called this particular type of war (LICs) or Low Intensity Conflicts.<sup>19</sup>

In *Nine Eleven*, Noam Chomsky answered the crucial question about whether the war on terror is winnable or not. According to him, the US is for many regarded as a leading terrorist state, it was condemned by the World Court for unlawful use of force and then used its veto in the security council to stop a resolution calling on all states to adhere to international law (23). Chomsky stresses the importance of reducing the threat instead of escalating it, something

which President Bush's administration kept doing. Chomsky's best illustration was one of countless examples of reducing the threat, when the IRA for instance set its bombs in London, British officials did not call for the bombing of West Belfast, neither did they call for the bombing of Boston which supported them financially. Instead of that, the authorities took steps to apprehend the criminals (24). There are always proper and lawful means to proceed with crimes; they should be entirely uncontroversial. Many historians depicted the situation in this particular period of time as the old American Wild West.

Answering the question of whether the 9/11 attacks would have a similar effect of the fall of the Berlin Wall which did not claim any victims but changed the geopolitical scene, Chomsky believes that the atrocities of the 9/11 events are something new in world affairs, they are something new in their target not in their scale and character (11). For Chomsky, although it has the primary role in the globalization project, the US does not govern the process. Those programs were opposed by the South, and reached the rich countries in the last few years. There are many reasons for that a worldwide opposition to globalization have been aroused (14). In this same direction Isenberg believes that Utilizing PMCs is on one hand part of the war and on the other hand maintaining a global military hegemony.

Jeffrey Record believes that this discourse of 'war' was embraced as a metaphor to deal with all kinds of enemies, local or foreign. Record dissects that dealing with problems cannot be done by making war on it; administrations have declared wars on poverty, illiteracy, crime, drugs and now terrorism. The word 'war' is the most over-used word in America (2). In European traditions most wars have had clear beginnings and endings, but the line between war and peace is not clear, it has been blurring for the post cold war America for that it is not easy to have conclusive military victories against enemies such as the Taliban and Saddam Hussein regimes (3). With the benefit of a hindsight analysis the war on terror has pulled the

US and its allies to an endless costly war that even the Republican Christian conservatives did not anticipate. The notion of surgical strike was never introduced again.

Record in his book examines the way the US administration postulated the terrorist threat to its national security interests, the threat consists of first, three geographic levels of terrorist organizations, national, regional, and global; second, rogue states, mainly Iraq, Iran, and North Korea; third, Individuals and entities which proliferate WMD to terrorists and rogue states; and fourth, failed states, such as Taliban's Afghanistan, that may not sponsor terrorist attacks abroad but may safeguard and assist those who do. Examining the administration rhetoric and language on terrorism leads to a blur, in issues of whether there are consequential differences between terrorist organizations and rogue states. According to the National Security Strategy, rogue states "brutalize their own people" and "sponsor terrorism around the globe". Rogue states and some terrorist organizations share both hatred to America and a desire to acquire WMD (13). The orientation towards a safe future led the American public opinion to these irrational explanations of the term enemy, using fear as a policy was very lucrative to the private military industry.

### **3.2 – Unprecedented Growth of the Private Military Industry**

The private military industry was fueled by the same enthusiasm that helped deregulate electricity, airline, and telephone-service industries in America. In 2000, George W. Bush was the Republican candidate for the presidential election and he promised to give the opportunity for private companies to compete with government workers for 450,000 jobs. One year later, the workforce contracted with the Pentagon exceeded civilian defense department employees for the first time. According to Isenberg the use of private contractors seemed efficient for the military - a group of temporary, highly trained experts - would cost less than a permanent standing army that drained resources, from pension plans to health insurance.



The year of 2002 witnessed a strong will by the military to rely on the private sector, the then-Army Secretary Thomas E. White introduced his “Third Wave” plan to the Pentagon. It was called ‘third’ because there were two earlier initiatives. The “Third Wave” plan had three major reasons for his implementation: first, to free up military manpower and resources for the global war on terrorism; second, to obtain non-core products and services from the private sector to enable army leaders to focus on the Army’s core competencies; and third, to support the President’s Management Agenda (Isenberg 22). This wave of outsourcing sensitive military functions to the private sector is the biggest ever the war on terror makes the market very lucrative for PMCs. The private military market in this particular era was very dynamic even governments could not intervene to regulate what should normally be reliable to the Checks and Balances system.

In April 2003, the “Third Wave” initiative temporarily came to a standstill after Secretary White’s resignation. The two-year tenure was marked by convulsions with the Defense Secretary Donald H. Rumsfeld. White warned the Department of Defense undersecretaries for contracting army functions to the private sector for that the army lacked the basic information required to effectively control it. In 2004 White’s warning against PMCs was proved to be true. The Army told Congress that it had between 124,000 and 605,000 service contract workers, knowing that its best guess of the size of its own contracted workers was so imprecise; the pentagon was pressed to estimate and provide numbers for the legislative body about the contract employees in Iraq (qtd. in Isenberg 20). In 2004, over 20,000 civilian contractors support Coalition forces in Iraq, this number was expected to increase after the handover of power to the Iraqis according to Secretary of Defense Donald Rumsfeld in a letter to the House Armed Services Committee (Keefe). The private military business boomed in an unprecedented way.

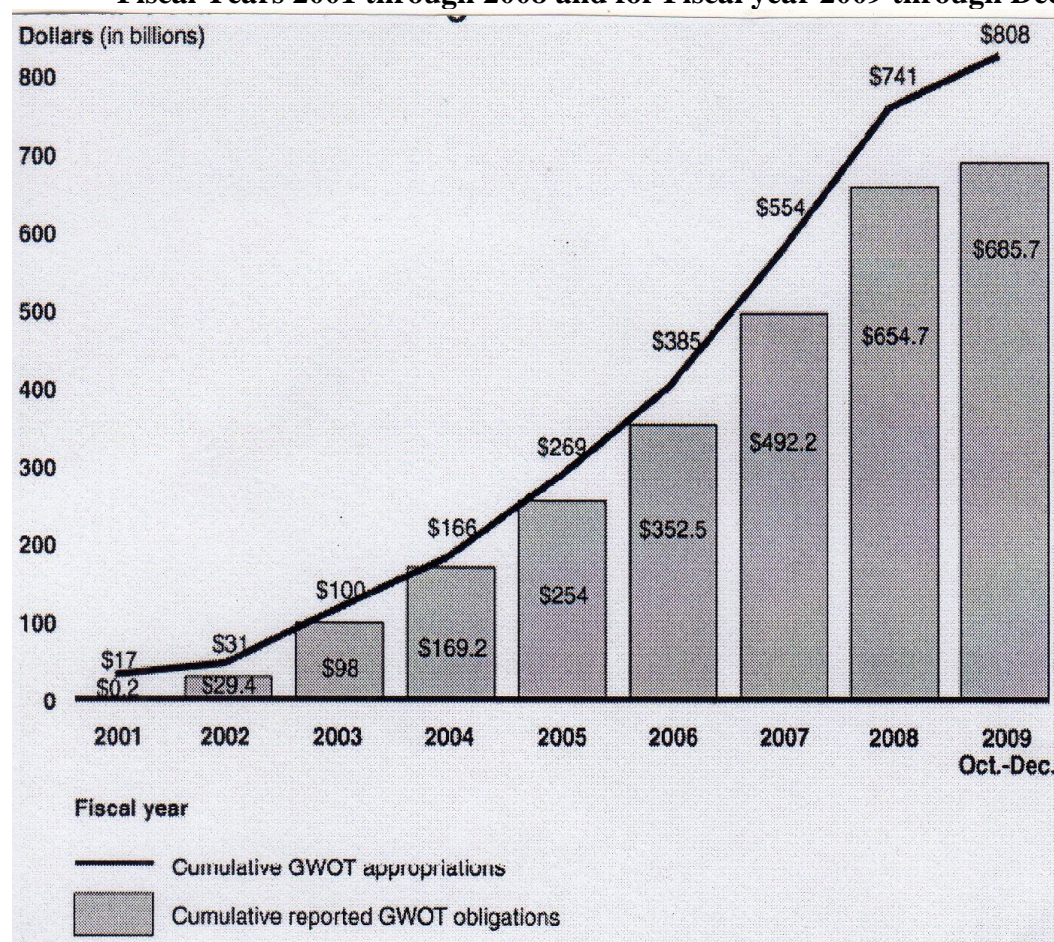
Those who defend the idea of contracting inherently governmental functions to the private sector argue that the private sector is more cost-effective than the public sector. Singer among those believes that the understanding of the industry is limited “theoretically, conceptually, and even geographically” and that most of the writings on PMCs focus on individual case studies and is confined to specific regions. Respecting the market private military industry does not hide the motives which lead to believe that outsourcing increases the cost of military services. Two major reasons are behind this as Isenberg argues. First, the market needs to be transparent and competitive so that clients can pick and choose among different offers. Second, totally transparent bidding procedures should take place before granting any contract. Offers which compete with each other must be systematically compared and the performance of contractors on the contract terms has to be closely controlled and being subject to all kinds of sanctions.

Most of Americans believe that the second-biggest military ally to the war in Iraq is Great Britain. On the grounds PMCs hold that distinction, they became an unregulated and unpoliced shadow army which operates beyond the reach of the law (Keefe). PMCs outnumber the UK military by a factor of ten, the idea of expelling those troops means that the coalition forces are obliged to find a way to fill the voids of 100.000 private contractors. This suggests that PMCs are a smarter and more cost-effective choice in many situations. Waging a GWOT means that the US should be prepared to deliver local solutions to local problems on a global scale. The lack of troops with regional expertise and the cost of maintaining troops in all spots worldwide is another reason. PMCs provide the opportunity for the US to have mission-tailored troops known by their rapidity and cost-effectiveness (Lochbaum). In this case even the counting would be very easy for governments, the US can declare only the actual number of military troops and not that of private contractors.

There was a combination of greed which encompasses high salaries and lucrative contracts with the lack of oversight and legal accountability. This has turned Iraq to a wild-west styled country which attracted many prospectors and profiteers (Keefe). Private contractors were given the right to intervene in areas where governments and most companies feared to go. PMCs can be sent by governments where national troops cannot, thus they give governments the opportunity to deny any direct responsibility (Wallwork 31). Even in the case of a future full withdrawal from Iraq for instance, the US would be still in charge of military tasks thanks to the huge number of contractors deployed there.

During the last ten years PMCs became a familiar picture in Iraq's and Afghanistan's landscape. The use of PMCs in this war is certainly unprecedented in both size and scope. In former Yugoslavia the ratio of deployed contractors was one for each US soldier. The ratio in Iraq represents a turning point not only in the number of contractors but in the sensitive functions they were undertaking such as reconnaissance and target acquisition, intelligence gathering, training of the Iraqi military and police, interrogations and prisoners detainment. Most of PMCs were contracted by the State Department and the US Agency for International Development, but many other ones were not directly hired by the US government because their function was securing and protecting the economic infrastructure of the country and supporting international organizations (Cusumano). The war on terror is characterized by an unprecedented role of the private sector by undertaking what used to be governmental. The private military industry was so out of control.

**Figure 1: DOD's Cumulative Reported GWOT Appropriations and Obligations for Fiscal Years 2001 through 2008 and for Fiscal year 2009 through December 2008**

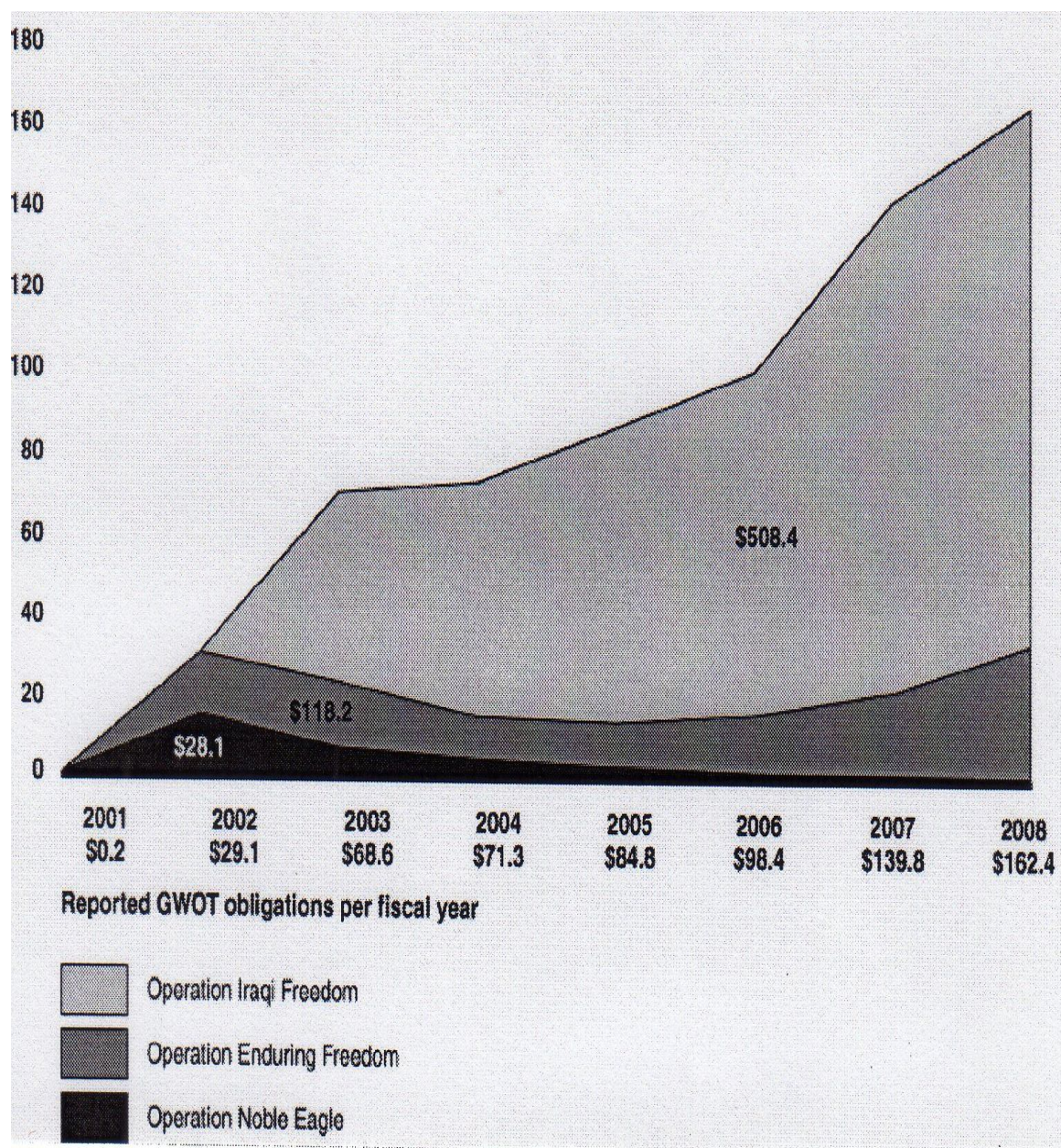


Source: "Congressional Committees Subject Global War on Terrorism Reported Obligations for the Department of Defense"

Figure 1 shows the explosive growth of DOD's Cumulative Reported GWOT. It is worth mentioning that \$533.5 billion from the total \$685.7 billion was part of the Operation Iraqi Freedom. Another \$124.1 billion was for operations in Afghanistan, the Horn of Africa, the Philippines, and elsewhere as part of Operation Enduring Freedom. The \$28.1 billion that remains was for Operation Nobel Eagle and precisely for operations in defense of the homeland (United States Government Accountability Office). This is flagrant evidence on how extravagant the expenditures of the War on Terror are.



**Figure 2: DOD's Reported GWOT Obligations for Fiscal Years 2001 through 2008 by Operation**



Source: "Congressional Committees: Subject: Global War on Terrorism: Reported Obligations for the Department of Defense"

As shown in figure 2, the reported obligations for Operation Iraqi Freedom have increased since its birth in 2001 to reach the top by a total amount of \$162.4 billion. Obligations for Operation Enduring Freedom and Operation Nobel Eagle however have decreased after reaching their heyday in 2002 and 2004 respectively.

**Table 1: Presence of Contractor Personnel during US Military Operations**  
**(After Congressional Budget Office, Contractors' Support of US Military Operations in Iraq)**

<b>Presence of Contractor Personnel During US Military Operations</b>			
<b>Conflict</b>	<b>Estimated Personnel (Thousands)</b>		<b>Estimated Ratio of Contractor to Military Personnel</b>
	<b>Contractor</b>	<b>Military</b>	
<b>Revolutionary War</b>	<b>2</b>	<b>9</b>	<b>1 to 6</b>
<b>War of 1812</b>	<b>n.a.</b>	<b>38</b>	<b>n.a.</b>
<b>Mexican-American War</b>	<b>6</b>	<b>33</b>	<b>1 to 6</b>
<b>Civil War</b>	<b>200</b>	<b>1000</b>	<b>1 to 5</b>
<b>Spanish-American War</b>	<b>n.a</b>	<b>35</b>	<b>n.a</b>
<b>World War I</b>	<b>85</b>	<b>2000</b>	<b>1 to 24</b>
<b>World War II</b>	<b>734</b>	<b>5400</b>	<b>1 to 7</b>
<b>Korea</b>	<b>156</b>	<b>393</b>	<b>1 to 2.5</b>
<b>Vietnam</b>	<b>70</b>	<b>359</b>	<b>1 to 5</b>
-----→			<b>The End of the Cold War</b>
<b>Gulf War</b>	<b>9</b>	<b>500</b>	<b>1 to 55</b>
<b>Balkans</b>	<b>20</b>	<b>20</b>	<b>1 to 1</b>
<b>Iraq Theater as of early 2008</b>	<b>190</b>	<b>200</b>	<b>1 to 1</b>

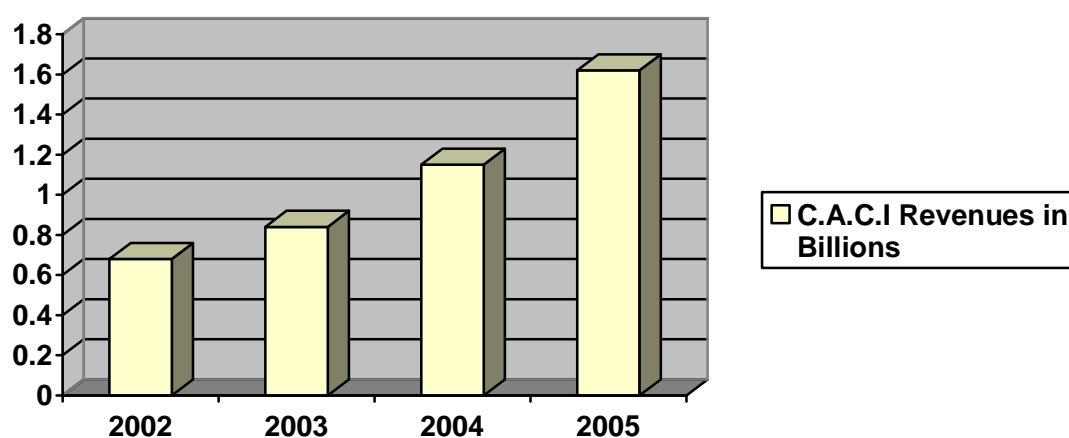
Source: Dogru Ali Kemal. "Outsourcing, Managing, Supervising, and Regulating Private Military Companies in Contingency Operations"

The above table dissects the presence of private contractors during US military operations. It provides statistics for both contractor and military personnel in every conflict that the US has been involved in since the Revolutionary War and gives the estimated ratio of contractor to military personnel. The interpretation of this figure reflects several indications. First, the table shows that the US has been relying on privateers since its early days even though the numbers

are quite different when compared to the late theaters of American interventions. Second, numbers shows stability in the ratio and the use of private contractors swings between 1 to 5 and 1 to 6 in most cases till World War I where the ratio decreases to reach 1 to 24 because of the huge number of military personnel which increases to 2 million soldiers. During World War II the US was under threat once again and the ratio did not exceed 1 to 7 because of the considerable reliance on contractors; numbers show a huge difference between the 85000 contractors of World War I and the 734000 contractors of World War II.

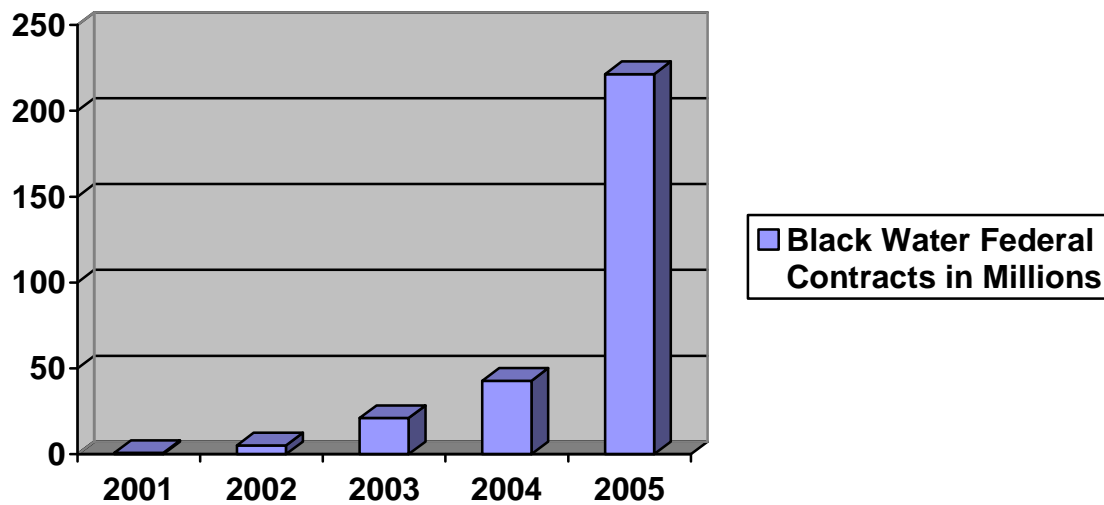
The Korean War knew a ratio of 1 to 2.5 for the first time; privateers started gaining space at the expense of the regular troops. Numbers decrease to the norms they have started with, the 1 to 5 ratio is once again reached during the Vietnam War. The ratio decreases once again during the Gulf War but it soon increases to reach an unprecedented number during the American intervention in the Balkans due to the downsizing of the army and the emergence of the new economic trend of privatizing all kinds of services including military functions, for every American soldier now there is a private contractor. The booming business continues its prosperity to reach the ratio of 1 to 1. The Iraq theater boosted the number of private personnel to 190000 contractors.

**Figure 3: C.A.C.I. Revenues**



Source: Iraq for Sale: The War Profiteers



**Figure 4: Black Water Federal Contracts**

Source: Iraq for Sale: The War Profiteers

**Table 2:**

Company	Number of Americans	Number of Iraqis	Number of Third Country Nationals	Total
Armed PSCs in Iraq	367	849	4,396	5,613
Unarmed PSCs in Iraq	148	834	665	1,646
Total	515	1,683	5,061	7,259

Source: CRS Report for Congress

“Private Security Contractors in Iraq: Background, Legal Status, and Other Issues”

Table 2 dissects the use of PSCs deployed in Iraq. PSCs are divided according to the nature of their undertaken functions whether they are offensive or defensive, PSCs with offensive services should be armed and others with defensive activities should be unarmed. 5,061 contractors out of the whole 7,259 contractors are from third world countries, Iraqi nationals represent 1,683 while the US have only 515 contractors. The above figure results into one important truth which is that of depending on aliens in overseas operations for several reasons. Nationals from third countries are less paid than US due to the high salaries Americans get when compared to other nationals, in addition to the insurance and health care



burden. The legal issues when outsourcing services for US nationals overseas are an additional burden.

**Table 3: Benefits and Costs of Outsourcing via PMCs**

<b>Benefits</b>	<b>Costs</b>
<b>Policy flexibility</b>	<b>Reduced transparency and accountability</b>
<b>Greater military agility</b>	<b>Encourages copycat actions by other states</b>
<b>Minimize US casualties</b>	<b>“Loose canon” effects</b>
<b>Financial savings</b>	<b>Cost overruns</b>

Source: Stranger & Williams. “Private Military Corporations: Benefits and Costs of Outsourcing Security”

In a dualism of benefit and cost, Stranger and Williams introduce the benefits of every aspect of the private military industry as shown in table 3. If policies that govern PMCs are flexible mainly in granting registrations and contracts, the drawback is that PMCs are above accountability, and transparency is far to be reached. It is also noticed that a greater military agility may encourage other states to behave in a similar way. If the government wants to lessen the deaths of American soldiers, the only thing which may change is the status of those Americans from a dead soldier to a dead civilian (contractor). Saving lives is not the only trend because expenditures are also meant to be reduced, but this would definitely cause a cost overrun for the highly paid contracts.

Nowadays the term used by the Obama administration is quite different from his predecessor's; the term for the Obama administration official documents and declarations is ‘Overseas Contingency Operation’. Changing the appellation is not the only measure that is taken to lessen the legacy of Bush's war on terror. The Obama administration intends to reduce the expenditures and the overrun costs of outsourcing many services of the army. President Obama promised to increase the role of government workers in services such as military security and intelligence and practice more oversight on PMCs (Isenberg 15). In this

situation, an important question raises Will the term's radical change in form affect its meaning and practices as well?

The booming private military industry was phenomenal; companies could make fortunes from Congress contracts. The contracting procedure, however, lacks mechanisms of transparency and accountability, authorities that outsourced business to PMCs are safe in Washington and they do not have a direct supervision in the battle fields. What could be positive for the good of military operations holds many fears of human rights breaches and abuses. So, is outsourcing traditional military functions to the private sector cost effective? Can PMCs undertake what is inherently governmental and sensitive? Are the norms of conventional military treatises applicable in the case of privateers? And most importantly what laws govern the practices of those corporations?

## Endnotes

<sup>1</sup> In the third chapter of this dissertation an explanation will be provided for the controversial issue of mercenaries. The term carries negative connotations, in addition to a blur in the distinction between a mercenary and a foreign volunteer. <<http://danishzuby.com/letters/009-2008.12.21-Terrorists%20or%20Mercenaries.pdf>>.

<sup>2</sup> The Battle of Kadesh is the decisive war between the Egyptians and the Hittites for the control over Syria that took place in the spring of the fifth year of the reign of Ramses II. The battle of Kadesh resulted from the defection of Amurru to Egypt. While the Hittites wanted to bring Amurru back into their fold, the Egyptians tried to protect their new vassal. Using Karkemish as a base for their operations, the Hittites decided Kadesh to offer the best opportunities for the coming battle. Muwatalli had called on his allies, among them Rimisharrinaa, King of Aleppo.  
<<http://www.reshafim.org.il/ad/egypt/ramseskadeshcampaign.htm>>.

<sup>3</sup> Condottieri – plural form of Condottiero: A leader of mercenary military detachments (or companies) in Italy from the 14th through 16th centuries in the service of individual rulers and popes. The condottieri became very important in the continuous warfare between the Italian states. In the 14th century most of the recruits were foreign knights, but at the end of the 14th century Italian condottieri began displacing the foreigners. Some condottieri seized power in cities and established tyrannies, like Francesco Sforza in Milan. The condottieri, who plundered and devastated Italy, contributed to the weakening of the country. In the late 15th century, when infantry and artillery became more important than cavalry (the main force of the condottieri), the institution of the condottieri gradually began to disappear.  
<<http://encyclopedia2.thefreedictionary.com/Condottiero>>.

<sup>4</sup> Treaty of Westphalia, a collective name given to the two treaties concluded on the 24th of October 1648 by the empire with France at Munster and with Sweden and the Protestant estates of the empire at Osnabruck, by which the Thirty Years War was brought to an end.  
<[http://www.1911encyclopedia.org/Treaty\\_Of\\_Westphalia](http://www.1911encyclopedia.org/Treaty_Of_Westphalia)>.

<sup>5</sup> General Martin E. Dempsey assumed duty as the Army's 37<sup>th</sup> Chief of Staff on 11 April 2011. During his previous 36 years of service, General Dempsey has served in a variety of professionally rewarding and developmental positions across the Army in both the generating and operating force.  
<<http://www.defense.gov/bios/biographydetail.aspx?biographyid=284>>.

<sup>6</sup> On December 7, 1941, while German armies were freezing before Moscow, Japan suddenly pushed the United States into the struggle by attacking the American naval base at Pearl Harbor, Hawaii. Four days later Hitler declared war on the United States. President Roosevelt called on Congress for immediate and massive expansion of the armed forces. Twenty years of neglect and indifference, however, could not be overcome in a few days.  
<<http://www.worldwariihistory.info/WWII/United-States.html>>.

<sup>7</sup> Between 1942 and 1944, at the height of World War II, more than a thousand women left homes and jobs for the opportunity of a lifetime--to become the first in history to fly for the US military. They volunteered as civilian pilots in an experimental Army Air Corps program to see if women could serve as pilots and relieve men for overseas duty. These women became the Women Air force Service Pilots of World War II, better known as the WASP. Under the determined leadership of Jacqueline Cochran, Nancy Harkness Love, and General Henry Hap Arnold the WASP exceeded beyond all. <<http://www.twu.edu/library/wasp.asp>>.

<sup>8</sup> The amazing experiment using women pilots during wartime almost seemed destined to be forgotten. Then, in the mid 1970s, the Navy announced to the media that, for the first time in history, women would be permitted to fly government planes. The announcement reverberated among the former WASP, and like nothing else, mobilized them to seek recognition. With the help of Bruce Arnold, son of General Arnold, and political help from Senator Barry Goldwater, who commanded women pilots in his squadron, the WASP finally gained their belated militarization from Congress in 1977. <<http://www.twu.edu/library/wasp-history.asp>>.

<sup>9</sup> The end of the Cold War has made the world more disorderly and so has multiplied the opportunities for American military intervention abroad. The end of the global rivalry between the United States and the Soviet Union has also, however, reduced what the American public is willing to pay, in lives and treasure, to support such interventions. That is the lesson of Bosnia, Somalia, and Haiti.  
<<http://www.foreignaffairs.com/articles/50818/francis-fukuyama/us-intervention-policy-for-the-postcold-war-world-new-challenges>>.

<sup>10</sup> It is well known that Ronald Reagan and Margaret Thatcher were close allies and kindred political spirits. During their eight overlapping years in office, the US President and the UK Prime Minister worked together to promote lower taxes, deregulation, free trade, and an aggressive stance against the Soviet Union. <<http://www.heritage.org/events/2007/11/ronald-reagan-and-margaret-thatcher-a-political-marriage>>.

<sup>11</sup> The Abrams Doctrine is widely interpreted as an expression of General Creighton Abrams's determination to maintain a clear linkage between the employment of the Army and the engagement of public support for military operations. Abrams, according to the doctrine, established this bond by creating a force structure that integrated Reserve and Active Components so closely as to make them inextricable, ensuring after Vietnam that presidents would never be able to again send the Army to war without the Reserves and the commitment of the American people. Whether Abrams actually intended to father a doctrine or if his efforts created a unique extra-Constitutional constraint on presidential power is open to debate. <<http://www.fpri.org/enotes/20050203.military.carofano.totalforcepolicyabramsdoctrine.html>>.

<sup>12</sup> Arab Spring refers to the popular uprisings that arose independently and spread across the Arab world in 2011. The movement originated in Tunisia in December 2010 and quickly took hold in Egypt, Libya, Syria, Yemen, Bahrain, Saudi Arabia, and Jordan. <[http://www.sourcewatch.org/index.php?title=Arab\\_Spring](http://www.sourcewatch.org/index.php?title=Arab_Spring)>.

<sup>13</sup> Tuareg are Berber-speaking pastoralists who inhabit an area in North and West Africa ranging from Touat, Alg., and Ghudāmis, Libya, to northern Nigeria and from Fezzan, Libya, to Timbuktu, Mali. Their political organizations extend across national boundaries. In the late 20th century there was estimated to be 900,000 Tuareg. <<http://www.britannica.com/EBchecked/topic/608089/Tuareg>>.

<sup>14</sup> On the morning of December 7, 1941, the Japanese launched a surprise air attack on the US Naval Base at Pearl Harbor in Hawaii. After just two hours of bombing, more than 2,400 Americans were dead, 21 ships had either been sunk or damaged, and more than 188 US aircraft destroyed. <<http://history1900s.about.com/od/worldwarii/a/Attack-Pearl-Harbor.htm>>.

<sup>15</sup> In 1812, the United States declared war against Great Britain. For the previous twenty years Britain had claimed the right to intercept American ships on the high seas, seize their cargoes, and search their crews for British navy deserters. At war with France since 1793, Britain defended these actions as necessary wartime measures; indignant Americans called them violations of their rights as a neutral and sovereign nation. It ended with a treaty that was little more than a cease-fire. <<http://www.shmoop.com/war-1812/>>.

<sup>16</sup> When four planes tragically crashed on September 11, 2001, the course of history was inalterably changed. Yet questions about what actually happened on that fateful day are asked with increasing frequency, even by some top government officials and other respected public leaders. Each of these prominent leaders now claims that there are serious problems with the official government story of 9/11. Some of these highly respected individuals even believe that 9/11 may have been an inside job. It can be very uncomfortable to even consider the possibility that certain individuals within government were involved either in allowing the attacks to happen, or in some way facilitating them in order to forward their hidden agendas. <<http://www.wanttoknow.info/050908insidejob911>>.

<sup>17</sup> Passed in the weeks after the Sept. 11 attacks, the USA Patriot Act was designed to enhance federal anti-terrorism investigations. Sixteen surveillance provisions are set to expire on Dec. 31. The House on Wednesday voted 251-174 to make most of those provisions permanent, with some new safeguards and with expiration dates for the act's two most controversial powers, which authorize roving wiretaps and secret searches of records. But opponents in the Senate said those changes fail to adequately address the civil liberties concerns which those provisions raise. <<http://www.npr.org/news/specials/patriotact/patriotactdeal.html>>.

<sup>18</sup> Manichaeism in Modern Persian a major Gnostic religion, originating in Sassanid. Although most of the original writings of the founding prophet Mani (c. 216-276 CE) have been lost, numerous translations and fragmentary texts have survived. Manichaeism taught an elaborate cosmology describing the struggle between a good, spiritual world of light, and an evil, material world of darkness. Through an ongoing process which takes place in human history, light is gradually removed from the world of matter and returned to the world of light

from which it came. Its beliefs, based on local Mesopotamian Gnostic and religious movements, contained elements of Christianity, Zoroastrianism and Buddhism. <<http://www.crystalinks.com/manichaeism.html>>.

<sup>19</sup> The LICs as part of a major modern military treatises and normative trend would be dealt with in chapter two. The modern military theorist and author Martin Levi van Creveld is marked as one of the greatest military analysts ever.

## **Chapter Two**

### **Conventional Military Normative Trends vs. “New Wars” Carried out by PMCs**

As the use of Private Military Companies has been ascribed to a new military strategy aiming at reaching efficiency and minimizing the costs of war, understanding this new trend would be quite difficult without questioning the traditional treatises on warfare. This chapter highlights a prerequisite meaningful understanding of war theories and dialectically provides analogies with the present time use of private contractors in the Global War on Terror. It also tests the practices of PMCs in accordance to fundamental Human Rights.

#### **1 – Conventional Military Treatises and Strategies on Warfare**

Theories as final products of the human experience are always supposed to address the mind that is troubled in similar situations, they are personal beliefs which were tested throughout ages. Some theorists argue that the military field should be dealt with as a set of empirical phenomena and that all types of military analysis should exceed the approach that simply describes the historical events. Deciphering the enemies’ tactics and aptitudes is not the only normative trend that should be tested and consequently proved or falsified, warfare theories are devised to understand the different aspects which could have an impact on the outcomes.

Questions about perfect war strategies have perplexed great military men throughout history; legendary leaders have experienced many tactics according to their equipments, armies, and terrains of battles. Sun Tzu or Sun Zi, is a Chinese philosopher, warrior, and strategist who became the master of war strategy and affected both Asian and Western politics. During the late Spring and Autumn Period (770 BC- 476 BC), the famed general born to a military family wrote “*The Art of War*”, the masterpiece in military theories. The book according to Xu and Li in their “*Sun Tzu: The Ultimate Master of War*”, is considered as the most outstanding. Xu and Li undoubtedly considered Tzu’s entourage as a major factor

that had shaped his skills as both a warrior and a war strategist, in addition to the warlike time of the Spring and Autumn Period.

The ancient Chinese military treatise on military strategies *The Art of War*, is one of the most successful books in the world. The philosophy introduced in this book is the most influential among China's Seven Military Classics.<sup>1</sup> Tzu's philosophy considers external actors crucial for any strategy; he did not view victory as a well preplanned procedure, but a sequence of unexpected external factors that any leader should have to comply with and respond to whenever they occur. Tzu based his treatise on five constants that should be respected in order to achieve victory: (1) The Moral Law, (2) Heaven, (3) Earth, (4) The Commander, (5) Method and Discipline.

Tzu explains the Moral Law as the inseparable linkage between the ruler and his soldiers, stressing on the importance of loyalty in a sense that loyal troops would devote their lives to protect their ideology. Heaven for Tzu stands for times and seasons, and by Earth he means the perfect understanding of the terrain of battle. The Commander means all the prerequisites for a general to be a leader "from virtues of wisdom, to sincerity, benevolence, courage and strictness". By Method and Discipline, he targets the army's hierarchy and graduation of ranks in addition to the procurements (1). In this equation every component is measured in order not to leave the outcomes for any unprecedented factor.

According to Tzu without a quick and appropriate response to the changing circumstances, no leader can achieve his endeavor. The aforementioned five major elements are not the only key for victories; leaders should simultaneously consider seven key elements with a deep concern as they would be decisive in the battlefield. The elements which can decide the fate of any battle are paramount variables in the equation.

1. Which of the two sovereigns commands the Moral law?
2. Which of the two generals has the most ability?

3. To whom lie the advantages derived from Heaven and Earth?
4. On which side is discipline most rigorously enforced?
5. Which army is stronger?
6. Which side has the most highly trained officers and men?
7. Which army serves rewards and punishments most consistently? (2)

Tzu's treatise is divided into thirteen chapters; each one is devoted to a major aspect of warfare, and the whole is the recipe for a successful leader: (1) Laying Plans. (2) Waging War. (3) Attack by Stratagem. (4) Tactical Dispositions. (5) Energy. (6) Weak Points and Strong. (7) Maneuvering. (8) Variation in Tactics. (9) The Army on the March. (10) Terrain. (11) The Nine Situations. (12) The Attack by Fire. (13) The Use of Spies.

Tzu also went beyond the military stratagems and emphasized diplomatic means as other crucial requirements for the well being of the state, but the essence of his philosophy lies within its elasticity, the theory is still useful nowadays and not only in military affairs but also in politics, market management, and sports. History recounts that the French Emperor Napoleon was an avid reader of Sun Tzu's writings and consequently succeeded in waging wars against Europe. The Communist Chinese leader Mao Zedong defeated Chiang Kai-shek and the Kuomintang thanks to Tzu's treatise (L. Tzu et al. 3). *The Art of War* would influence communist insurgencies all over the world. General Vo Nguyen Giap kept Tzu's aphorisms in mind and was deeply affected by his ideas too (Giap 60). The writings had a universal fame, the five geopolitical regions knew about the treatise.

In 1917, the British officer T. E. Lawrence led an Arab army against the Turkish rule of Arabia and depended on tactics provided by Tzu (Cantrell 4-5). After the Vietnam War, *The Art of War* became the US Marine Corps book of strategy (6). Donald G. Krause provided consulting services and wrote books on competitive strategy implementation and leadership development. One of his best selling is *The Art of War for Executives* in which he taught



executives the external manifestation of what lies inside the human being as principles. Most of Krause's teachings are based on Tzu's book. *The Art of War* is also applicable to other fields including sports. Luiz Felipe Scolari, the Brazilian coach for the 2004 Portuguese soccer national team was committed to Tzu's theories, he used to carry the book with him and quote from it during the team trainings (Xu and Li 3). The applicability of the theory could be generalized to all disciplines.

Centuries after Sun Tzu's philosophy on warfare, the field of military tactics and planning witnessed the emergence of another genius whose contribution to the field was not less than Tzu's. Carl Philipp Gottfried von Clausewitz (1780-1831), a German strategist whose origins are from Prussia and whose doctrine in military affairs has affected many armies worldwide. Clausewitz's theory on warfare emphasized the linkage between a state's political matters and its moral and social obligations. He argues that war is a continuation of policy and that unexpected events which encapsulate the whole situation such as the "Fog of War"<sup>2</sup> can alter the outcomes of any military struggle. The principles of this theory are nowadays used as management consulting services for big businesses.

Christopher Bassford, one of the scholars who dealt with Clausewitz's doctrine, sees the Prussian military theorist as a man of a very complicated nature that mingled between action and thought. He first entered the Prussian army as cadet when he was twelve and quickly experienced war one year later. He devoted himself to education after the withdrawal from the wars of the French Revolution. Military affairs were not his only interest; he showed interest in art and science that would affect his philosophical work. His entry to the Institute for Young Officers in Berlin brought him into close contact with Gerhard von Scharnhorst and other Prussian military reformers who had great influence on him. His success led him to get to know key members of the royal family.

Scharnhorst and many other key figures of the Prussian state argued that the French Revolution had reached its goals and achieved an unprecedented success because it had used all the public sources at the expense of French citizens, and that the Prussian state was capable of doing so if it gave up some of its prosperity and perform some social, political, and military reforms. This argument influenced Clausewitz who undertook the task of social and political reforms in Prussia, but he was never in favor of a social or political revolution like the French one. This political position was harshly criticized by both conservatives and revolutionaries. This position, however, would later on be taught at famous universities and studies centers worldwide as “Primat der Aussenpolitik” The Primacy of Foreign Policy.<sup>3</sup>

In Napoleon’s war against Prussia, Clausewitz was captured and imprisoned for two years. After his release he joined Scharnhorst in his attempt to reform the Prussian army. He resigned from the Prussian army and joined the Russian to fight Napoleon who forced many other Prussian generals to join his Grand Army<sup>4</sup> (Weir 181). Before leaving Prussia he wrote an essay called “The most important principles of the art of war to complete my course of instruction for his Royal Highness the Crown Prince”. The essay referred to as “The Principles of War” was the ground for his magnum opus which was published posthumously in 1832 (Bassford). The famed Prussian analyst did not spend his life theorizing, but also practicing warfare and witnessing its real ramifications.

*On War* was the first book of political-military analysis introduced by a theorist from the West. The American strategist Bernard Brodie believed that the book is “not simply the greatest book, but the only truly great book on war” (qtd in. Bentley 114). According to Raymond Aron, there was a note which would belong to an older version, or simply could be a working note in which he wrote down some questions which appear to be the frame work of his treatise:

Is one war of the same nature as another? Is the objective of the enterprise of war distinguishable from its political end? What is the size of force which must be mobilized in a war? What amount of energy must be deployed in the conduct of the war? What is the reason for the many pauses during hostilities: are they important parts of the latter or real anomalies? Do the wars of the seventeenth and eighteenth centuries with a restricted force, or the wanderings of half civilized Tartars, or the destructive wars of the nineteenth century conform to the phenomenon it self? Or is the nature of the war conditioned by the nature of the relations, and what are these relations and these conditions? (59)

The book uses a dialectical approach and digs deep in explaining the political intercourse between governments and nations. Clausewitz believed that war [not strategy] was not a science guided by rules but a part of the intercourse of the human race since no empirical science nor theory of war can always corporate its truths by historical proof (142). The book was translated to English by several scholars, the version translated by Colonel J.J. Graham in 2008 explains war as “an act of violence intended to compel our opponent to fulfill our will” (27), but makes it clear that war is “...nothing but a continuation of political intercourse, with a mixture of other means” (436). He fundamentally associates war to the social aspect and distinguishes the strategy from the tactics (182). He considers strategy as the art of using the means and the skills, whereas the tactics for him were a science (178). Clausewitz’s ideas were to some extent opposed by other theoreticians, Jomini was one of them.

Clausewitz’s great contemporary competitor in this field was Antoine-Henri, baron Jomini (1779-1869), a Swiss general who served in both French and Russian armies. The General of Brigade of France and Lieutenant General of Russia, held the position of Marshal Ney’s chief of staff and director of the French general staff’s historical section in the Napoleonic Wars (Air War College). Young Jomini started his professional life as a banker, a profession that

did not satisfy his excitement for military affairs; he then joined the French army in 1798. Prior to the Peace of Amiens (1802), he returned to Switzerland where he published his first work on military theory *Traité de grande tactique*. Jomini rejoined the French army and served under Napoleon in the Austerlitz and Prussian campaigns, and then in Spain. His fear from intrigues led him to abandon the Grande Armée and enter the Imperial Russian Army (Bassford). The aforementioned circumstances combined together shaped Jomini's personality and affected his future writings.

Jomini's most famous work *Summary of the Art of War*, was for a royal prince whom he was a tutor exactly like Clausewitz's *Principles of War*. which was for the Prussian crown prince. His dependence to the Czar influenced his attitudes although his wariness from his own revolutionary passions. His writings were characterized by a highly didactic and prescriptive approach depended mainly on detailed geometric vocabulary of strategic lines, bases, and key points (Bassford). Geometrical drawings were not the only elements Jomini relied on; he stressed thirteen important rules as essential for fighting battles. He expresses his view about the best efficient theories on warfare and argues that:

Of all theories on the art of war, the only reasonable one is that which, founded upon the study of military history, admits a certain number of regulating principles, but leaves to natural genius the greatest part in the general conduct of a war without trammeling it with exclusive rules. On the contrary, nothing is better calculated to kill natural genius and to cause error to triumph, than those pedantic theories, based upon the false idea that war is a positive science, all the operations of which can be reduced to infallible calculations. (Tsouras 41)

Jomini's genius in addition to his actual experience of war deeply influenced his treatise introduced in *the Art of War*. He added a new crucial branch to the conventional five ones of which war consists, in addition to, Strategy, Grand Tactics, Logistics, Engineering, and

Tactics, he considers diplomacy in its relation to war as a sixth essential element that should not be neglected since it would in most of the cases affect the outcome of the war (7). For Jomini any nation will undertake war for several reasons and motives such as:

To reclaim certain rights or to defend them;

To protect or maintain the great interests of the state, as commerce, manufactures, or agriculture;

To uphold neighboring states whose existence is necessary either for the safety of the government or the balance of power;

To fulfill the obligations of offensive and defensive alliances;

To propagate political or religious theories, to crush the out, to defend them;

To increase the influence and power of the state by acquisition of territory;

To defend the threatened independence of the state;

To avenge insulted honor;

or, From a mania for conquest. (9)

The American military academies as many other academies worldwide used Jominian principles as a reliable source of military affairs. All graduates of the American military academy of West Point had mastered the use of the Jominian principles from the courses of Denis Hart Mahan, a tutor at the military academy for nearly half a century. “Halckes Elements of Military Art and Science” is a translation of Jomini which was used as a textbook at West Point (McPherson 331). General “Stonewall” Jackson’s Valley Campaign during the spring of 1862 and General Robert E. Lee’s maneuvers during the summer of the same year were Jominian-type successes (Archer qtd in. Rodman 3). The nature of the treatise as a combination of geometric measures and calculations in addition to the tactics, helped famous leaders to shape their battle skills.

## 2 – Tasks Undertaken by PMCs and Accordance to the Normative Trends

Classical military treatises are meant to deal with the different components of warfare which would alter the outcome of any military struggle. Thus this part of the paper probes into the intercourse between the main military theories that have been introduced and PMCs-related issues. This task is significant because it explains the new trends towards involving privateers in what was conventionally known to be governmental, in relation to the old thinking vis-à-vis the mastery of violence.

Sun Tzu's philosophy was introduced according to what was generally accepted by his contemporaries, yet still being useful in the present day struggle over the control of power. His masterpiece, *The Art of War*, falls into thirteen chapters which are considered as thirteen key elements in warfare pre-planning, Tzu stresses five constant factors that govern the procedure. Firstly, the Moral Law, secondly Heaven, then comes Earth, followed by The Commander, and the last factor encompasses both Method and Discipline. He first explains each of the factors independently and emphasizes the importance of Moral Law. Moral Law for him is the unbreakable bond and accordance between the people [soldiers in the context of military decision making] and their leader, so that they will follow him regardless of their lives. This explanation gives strong argument against the use of private contractors or the period common use of mercenary soldiers, for that both loyalty and liability matter in cases where human lives are at stake.

For Tzu, a successful military leader should take into consideration the five 'heads' which govern any battle, thus in cases of inadequacies caused by external factors he will provide immediate responses to any unpredicted component. The fifth head for Tzu is 'Method and Discipline' by both he means the marshalling of the military and the ranking of its officers, without neglecting maintenance, supplies, and the control of expenditures. For the latter, one particular type of private military companies is supposed to fulfill and undertake a wide range

of functions, they are military support companies that have as mission, the providing of all types of support for its customers, from logistical support to arms procurement. Tzu does not clarify which party should carry out this crucial function, he however dissects the nature of this function and most importantly, he explains its contribution to the ramifications of wars.

The marshalling of the military into subdivisions and the graduation of ranks is the basic structure of any regular state army and even many rebels' militias, but it is not the case with 'military provider companies' that provide combat and operational support for their customers. Such firms do not possess subdivisions of a well respected hierarchy.<sup>5</sup> Contractors are usually recruited according to their resumes which make those responsible for the recruitments select the most impressive ones and this will lead to the deployment of the newly recruited members in one subdivision under the authority of one team commander. This fact makes the procedure by which commanders issue orders a very awkward and complex thing. Most of the team members behave in individual ways and cause their teams many organizational problems that end most of the time to losses in lives, mainly of innocent citizenry and rarely of other PMC teams with the so-called 'friendly fires'.

Although Tzu does not explicitly mention the impact of the use of privateers who are not party to a military conflict on its outcomes, an important expression from Chapter 9 entitled "the Army on the March" is obscure and none of the commentators could decipher it. Tzu says in this part particularly "what we can do is simply to concentrate all our available strength, keep a close watch on the enemy, and obtain reinforcements" (32), available strength and reinforcements can hold different meanings for many strategists. In the collectible paperback edition of *The Art of War* that contains the complete translation by Lionel Giles, along with his definitive critical commentary, Giles offers two commentaries by Li Chuan and Chang Yu. For Li Chuan, in that expression Tzu meant that "only the side that gets more men

will win” but the question here is, from where can we get the reinforcements or those more men?

Chang Yu expounds the obscure sentence and says: “When the numbers are even and no favorable opening presents itself, although we may not be strong enough to deliver a sustained attack, we can find additional recruits amongst our sutlers and camp-followers”, in the same direction Yu adds: “concentrating our forces and keeping a close watch on the enemy, contrive to snatch the victory. But we must avoid borrowing foreign soldiers to help us”. According to Giles, in order to consolidate his commentary, Chang Yu quotes Wei Liao Tzu, an influential advisor during the ‘Qin dynasty’ who says that: “The nominal strength of mercenary troops may be 100.000, but their real value will be not more than half that figure” (178). Whether for the necessities of the period or for the preservation of some ideals, Tzu stresses the triumph of moralities and ethics in warfare and consequently rejects and denounces the use of privateers in military conflicts.

Carl von Clausewitz, with his treatise on warfare emphasizes the linkage between the state’s political matters and its moral and social obligations. Along with his argument that war is a continuation of policy, he dresses the issue of PMCs-related tasks explicitly. Clausewitz, in his magnum opus *On War* stresses the role of the Condottieri when he probes to clarify how difficult it is to separate perception from judgment. In Book II entitled “on the Theory of War”, the belief that war is a handicraft is maintained. Clausewitz’s unique conception of war pushes him to believe that war can not be quantified or graphed, and if war is really a handicraft, it is then only an inferior art, and consequently it is subject to definite and rigid laws. This conception kept going on in the spirit of handicraft, the Condottieri use at that time was in accordance with the nature of the thing or satisfactory (71). The practice was part of that era’s social code.



Clausewitz provides examples on the conduct of war in Book III, he alludes to the times of privateers which teaches how the method is entirely linked to the instrument used. For him the condottiere is a “special instrument” falls into a class so totally different from the rest of the national community (91). In Book III also, he introduces the idea and the ramifications of combining the soldier and the citizen in the same individual as one of many measures to nationalize a war, mainly in total wars.<sup>6</sup> For him “the crystals of military virtue have a greater affinity for the spirit of a corporate body than for anything else”, this would never be possible without the individuality of the business (100). The notion of corporate spirit is crucial for any military success, it must exist in almost every army.

In Book IV entitled “Defense”, Clausewitz encompasses the best means of defending locations in cases of incursions. The use of privateers in such situations proved its failure since it would run short and only large standing armies would be able to do so (255). The use of mercenary soldiers was questioned. Clausewitz highlights the reasons led to the explosive growth of the phenomenon and how the economic system of that era led to their prosperity to the point where they were the instrument of the more powerful states (406). The phenomenon kept growing in size.

Clausewitz’s contemporary competitor, Baron de Jomini deals with the phenomenon of Condottieri in his military theory, his *The Art of War* probes into the types of wars fought in that era and clarify their motives. The book reached fame as the definitive masterpiece of professional military education after General Norman Schwarzkopf’s defeat of Saddam Hussein out of Kuwait. The US Seventh Corps’ General relied basically on specific Jominian strategies (Defence Talk). The 2006 edition reproduces Jomini's seminal work, it includes a new introduction and brief chapter-by-chapter commentaries. The book’s seven chapters explain the treatise and the two first chapters highlight the relationship between wars and statesmanship. Jomini introduced his treatise in a wonderful way which provides academic

researchers with a good understanding for the convulsions that could occur between politicians and military men.

Jomini in the first chapter, entitled “Statesmanship in its relation to war” delves into the classification of wars according to their motives and reasons. Article III of Chapter I of the treatise introduces the “wars of expediency”. This type is divided into two kinds; the first one is a war which is fought for the sake of acquiring natural sources for economic and political reasons, the second type is that of wars fought to lessen the power of a dangerous rival or to prevent his aggrandizement (12). Wars of expediency are nowadays known for the label preventive wars and / or pre-emptive wars.<sup>7</sup> This type of wars requires governments to allocate huge resources such as, logistical support, military training, intelligence gathering, combat and operational support, and arms procurement. All these prerequisites are decisive to any military supremacy, the job needs to be professionally done without wasting the time and efforts of soldiers, and thus such functions should be undertaken by private contractors in order to free the combatant soldiers for battles. The type of wars described by Jomini needs unconventional methods and tactics of which PMCs use is an integral part.

The General of Brigade of France and Lieutenant General of Russia, served under both Napoleon and the Tsar of Russia, this practical experience led him to think critically about the importance of having an unbreakable linkage between the leader and his soldiers. This point is one of some rare areas of intercourse with the Chinese strategist Sun Tzu. Jomini considered it an advantage to a country to have its armed forces commanded in person by the Monarch, and a positive thing to the well-being of the state (38). Tzu viewed this issue as a “Moral Law”, which for him was the unbreakable bond and accordance between the soldiers and their leader. This is applicable to the lack of unit cohesion for private contractors, reports from different hot spots confirmed the breach of some fundamental human rights and linked it directly to the lack of coordination between PMCs members. For this crucial idea, Jomini in

his military treatise has devoted a whole chapter entitled “The Command of Armies and the Chief Control over Operations”.

According to Jomini, civic virtues and military spirit should be fostered by their own institutions because the downfall of these virtues will lead to the down fall of the nation. He gives the example of the Roman Empire which had collapsed due to the disregarding of military service as an honor as well as a duty, for him the fall of the Empire was inevitable for that it relinquished that honor to mercenaries (43). The Swiss strategist proposes two major means to encourage this spirit and encounter any other wrong practices such as the use of privateers, he first urges to invest the army with all possible social and public considerations, and secondly stresses the preference that should be given to those who have rendered services to the country. For him the profession of the soldier should be placed above all others, his argument was the early practice of the Mamelukes<sup>8</sup> and Janissaries<sup>9</sup> whose soldiers were bought at an early age and were educated in the idea that they were to die by their standards. The argument was also the English, who enlist their soldiers for a life time period, and the Russians who contract them for twenty five years (44). Contemporary military men consider the profession of a soldier is the most sacred above all other professions, this idea keeps the mastery of violence inherently governmental.

The Marshal Ney's chief of staff considered war as a science and rejected Clausewitz's treatise in which he viewed war as an art. Jomini in his strategies, relied on a detailed geometric vocabulary of strategic lines, bases, and key points. He was in favor of shrinking the number of forces used in order to minimize casualties (Erickson13). The same trend was followed by the post cold war theoreticians who supported the privatization of military issues, with a significant difference in their endeavors. The objectives were to leave the terrains of battles to private contractors, thus governments will avoid the additional expenditures the

regular armies were absorbing without undertaking any combats or operations after the collapse of the Eastern Camp.

Martin Levi van Creveld, is a modern military theorist and author of seventeen books on military history and strategy, among those his *The Transformation of War* was translated into four languages. In his famous treatise he addresses five key issues of warfare; five heads introduced in question forms and consisted five major chapters of his seven chapters' theory. He argues that in the "Trinitarian" war of Clausewitz, the pre-modern war is not described as the future low intensity conflicts (Handel 401). The five heads are: (1) by whom war is fought. (2) What is war all about. (3) How war is fought. (4) What war is fought for. (5) Why war is fought.

The first key issue he introduced deals with what he called Clausewitz's "Trinitarian War" which drew a sharp division between the population, the army, and the government. Clausewitz with his universe stands alone among all other military theorists with the exception of Sun Tzu, his works had been the cornerstone of modern strategic thoughts, and no other theorists could be as influential as him (34). His second key issue deals with the law of war vis-à-vis prisoners, noncombatants and weapons, the third element addresses the strategies of the creation of force and its use. The fourth element emphasizes the two kinds of wars, political and non-political, the latter contains three subtypes according to what they stand for, Justice, Religion or Existence. The fifth head however dissects the reasons of fighting a war, its means and its ends.

Van Creveld in his *The Transformation of War* juxtaposes Clausewitz's "Trinitarian War" to his "Non-Trinitarian War", in other words he juxtaposes Clausewitz's distinction from the affairs of the three paramount components of the nation (population, army, and Government) to his five heads of warfare. The book witnessed the introduction of the "low-Intensity Conflicts" notion. The LICs are conflicts below conventional wars, they are carried out

against non-state actors such as counter-insurgency, anti-subversion, and peacekeeping. For the same notion, military analyst Safwat Zayat uses “police-like missions”. Van Creveld thinks that the spread of irregular small-scale wars will cause state militaries to change form and shrink in size while doing “the day-to-day burden” of defending society against the threat of low-intensity conflicts. When he said “The organizations that comprise that business will, like the condottieri of old, take over the state” he could successfully predict the shift in the mastery of violence from nation state armies to PMCs.

### **3 – Atrocities and Breaches of Fundamental Human Rights Perpetrated by PMCs**

#### **3.1 – Fundamental Human Rights that Need to be Tested**

During the post-Cold War wave of outsourcing military sensitive functions to the private sector the grievous human rights abuse did not exceed accusations of rape in most of the cases. The unprecedented reliance on PMCs in the era of War on Terror witnessed unprecedented cases of dangerous human rights violations, from rape and torture to human lives losses and threat of states’ national security and sovereignty. The wide range of functions outsourced to private contractors would certainly open doors for a wide range of atrocities to be committed. Human rights breaches perpetrated by private contractors are at the core of many academic studies, working groups on the use of mercenaries, and UN consultation meetings on related issues such as, the 1993 World Conference on Human Rights in Vienna, Austria, the 2001 World Conference against Racism in Durban, South Africa, and the 2009 Durban Review Conference in Geneva, Switzerland. The unconventional forces deployed to help stabilizing regions of conflicts are now committing acts that are condemned by the UN Charter.

A definition for the most important human rights that were abused by private contractors is strongly recommended before dissecting any of those breaches. According to the United Nations structures and bodies, human rights are protected on the international scale by the

United Nations Charter and the Universal Declaration of Human Rights in addition to international treaties, customary international law, international humanitarian law, and the two major bodies of the United Nations system. The United Nations bodies that consists of the Security Council, the General Assembly, and the Human Rights Council serves as political bodies since there are other bodies for Treaties which for sure include human rights treaties. Non-governmental organizations and human rights defenders and corporations may also act internationally whenever there are abuses of fundamental rights in addition to a symbolic source to enhance the betterment of human rights which is the Human Rights Day, December 10 is a shared day among the universal community.

According to the United Nations organizational chart, the bodies contain as well the Office of the UN High Commissioner for Human Rights, the UN Parliamentary Assembly, and the Sub Commission on promotion and Protection of Human Rights. The treaty bodies however contains five major committees, three are directly linked to the issue, the Human Rights Committee, the Committee against Torture, and the General Assembly Third Committee. In addition to all this, many thematic issues were introduced as well:

Secretary-General's Campaign to End Violence against Women

Special Representative on Violence against Children

UN Action against Sexual Violence in Conflict

Indigenous People

Children and Armed Conflict

The Holocaust and the United Nations Outreach Program

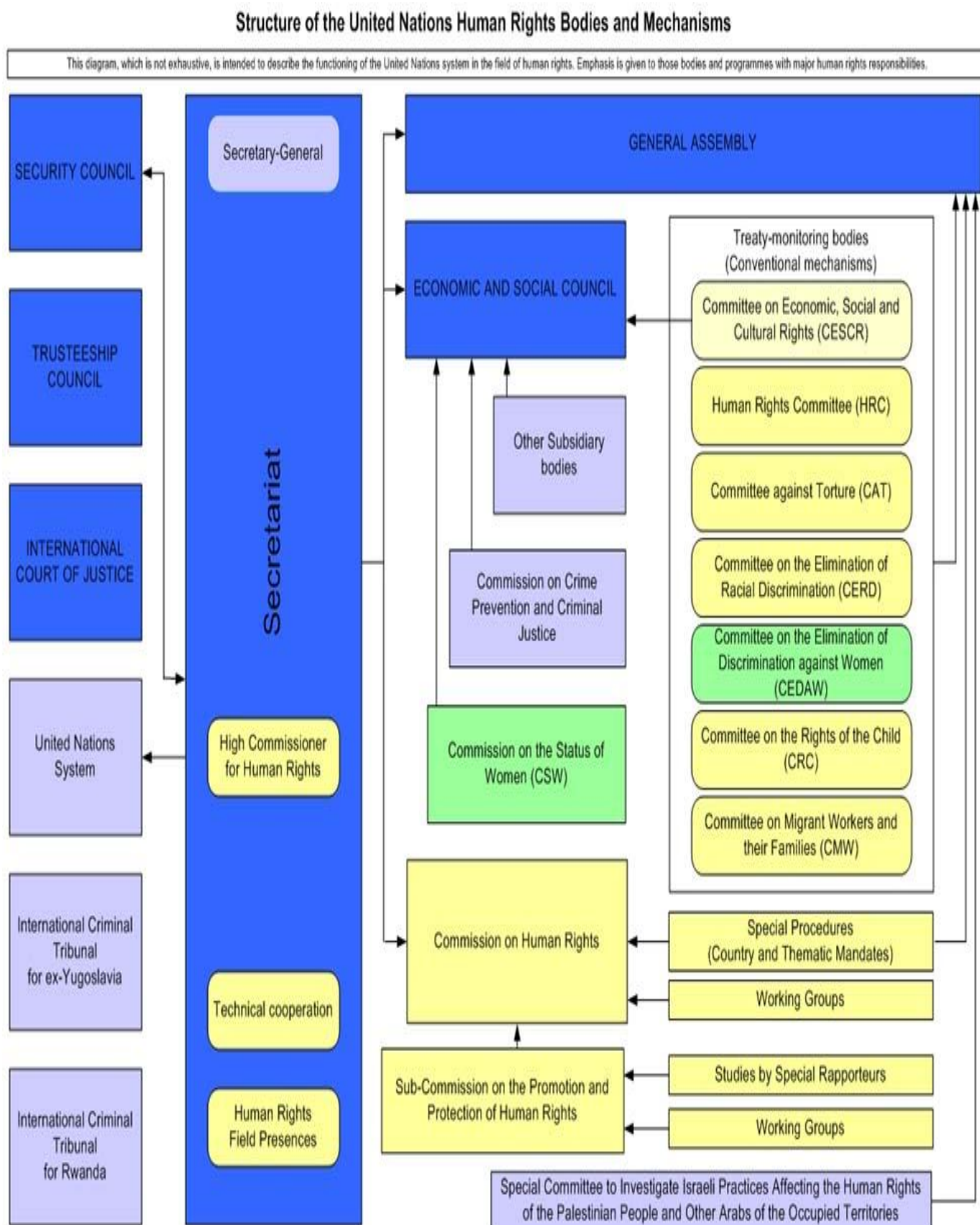
Lessons from Rwanda

Disability and the UN

Special Rapporteurs on Human Rights Issues

Human Trafficking.

**Figure 5: Structure of the United Nations Human Rights Bodies and Mechanisms**



Source: Office of the United Nations High Commissioner for Human Rights

Human rights according to the United Nations definition are “inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status....These rights are all interrelated, interdependent and indivisible”. The rights are universal; it means that they are applicable to human beings wherever they are. They are inalienable, a human being can not give up these rights otherwise he is not going to be human. Human rights are also indivisible and interdependent; nobody can deny you a right under any circumstance but lawful charge achieved to due process. Another important principle for Human Rights is that to be Equal and non-discriminatory.

Before dissecting any type of human rights abuses there should be a clarification and specification of the rights that were breached by private contractors. The analysis of all the types of abuses perpetrated by PMCs shows that the rights and liberties breached the most are respectively, the right to security or the right to life, freedom from torture, the rights of workers or the right to favorable working conditions, and the right to self determination. All these rights were severely abused by PMCs in different deployments and operations linked to the US war on terror, the deadliest ones took place in Iraq the bloodiest scene of this war. It is as well worth mentioning that some breaches are interrelated, the abuse of the right to life for instance can be a ramification of a breach of another right which is freedom from torture. The deniability of the rights of workers may fall into a complicated legal process to deprive the right to a fair trial.

The analysis of human rights breaches leads to a classification of the abuses according to many criteria. Firstly, the company is classified according to the breached right whether the right to life, freedom from torture, rights of workers, right to self determination, the right to a fair trial, or violations of any rule of the American regulatory compliance. Secondly, the kind of victims of any abuse is a major criterion for the classification whether they are innocent civilians, POWs and detainees denied the right for a proper treatment according to the Geneva



Convention, the company's own contractors, or its own clients. The third criterion lies within the area where the abuse took place whether domestically or overseas, the abuses in most of the cases take place overseas even if the victims are American nationals. The companies are the largest in the private military industry such as, Blackwater USA, Halliburton, KBR, C.A.C.I., and Titan Corp.

**Table 4: Human Rights Breaches by PMCs**

<b>Human Rights Breaches by PMCs</b>			
<b>Company</b>	<b>Breached Right</b>	<b>Victim</b>	<b>Area of the Breach</b>
<b>Black Water</b>	<b>Right to Life (Fallujah Deadly Shootings)</b>	<b>Civilians</b>	<b>Overseas</b>
<b>Halliburton &amp; Black Water &amp; KBR</b>	<b>Rights of Workers (Contractors and Drivers Left Alone without Sufficient Security Measures)</b>	<b>Contractors</b>	<b>Overseas</b>
<b>KBR</b>	<b>Regulatory Compliance (Violation of the False Claims Act. Use of Subcontractors without Registration)</b>	<b>Contractors</b>	<b>Overseas</b>
<b>KBR</b>	<b>Regulatory Compliance (Bad Services and Equipments for U.S. Soldiers. Favoritism \$7 Billion no Bid Contract)</b>	<b>Clients</b>	<b>Overseas</b>
<b>Titan Corp</b>	<b>Regulatory compliance (Hiring Unprofessional Linguists for the U.S. Military)</b>	<b>Clients</b>	<b>Overseas</b>
<b>CACI &amp; Titan Corp</b>	<b>Freedom from torture (Torturing Detainees in Abu Ghraib Prison)</b>	<b>POWs &amp; Civilians</b>	<b>Overseas</b>
<b>Halliburton</b>	<b>Regulatory compliance (Violation of the False Claims Act. Contaminated Water for the U.S. Military &amp; its own Contractors)</b>	<b>Clients &amp; Contractors</b>	<b>Overseas</b>

### 3.2 – Major Human Rights Breaches

The most important breach that needs to be dissected is that of the right to life or the right to security. According to Part III, Article 6.1 of the United Nations International Covenant on Civil and Political Rights, every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. This fundamental right was violated by private contractors in several areas around the world. On September 18, 2007, *The Telegraph* reported that the US security company Blackwater killed eight and injured at least thirteen. That was not the exact number of casualties because later on *Reuteurs* revealed Iraqi investigations set up by Prime Minister Nuri al-Maliki confirms that military guards from the US firm Blackwater deliberately killed seventeen Iraqis in the shooting incident in Baghdad and that they should be punished. The Iraqi authorities clearly declared that the murder was deliberate and this is a flagrant breach of the right to life.

On October 4, 2007 an FBI team arrived to Iraq to investigate the shootings and hear from the survivors. According to *CNN World* Abdul Wahab Abdul Razzaq was one of those lucky survivors and witnesses who lived to tell their stories. Abdul Razzaq said that he saw a PMC convoy in Nusoor Square and one of the convoy vehicles hit his car and some contractors threw water bottles and flares toward him. The contractors started shooting when they could not pass through the traffic, Abdul Razzaq was hit three times, but only two bullets could hit him, one in the hand and the other in the leg. Afraid of losing his life he jumped from his car and took a safe shelter till the coming of the police. By that time the convoy left the area. The US soldiers who first came at the area said that there was no evidence that the Blackwater convoy was fired upon, to the contrary the only evidence suggests that the contractors shot cars that were trying to leave the area. The whole story reflects an eccentric act from irresponsible armed people opening fire just because cars did not move.

On April 7, 2012 there were leaked videos on the net showing US private contractors killing innocent civilians. The first video identified 'Leaked video: Blackwater / Academi Contractors Randomly killing Civilians' was leaked by a former member of Blackwater, it shows members of a convoy opening up the doors of their vehicles driving down the streets of Baghdad and firing upon innocent civilians with their AK-47s and running over cars with their Humvees and hitting people. The second video titled 'Baghdad, Iraq, May–September 2005' shows contractors from Blackwater racing through the town of Baghdad and suddenly the door of one vehicle was opened and a gun fired upon the traffic. Another video was taken from a turret of an armed Humvee, one contractor fired from his gun at cars that stopped to let the convoy pass. The next video shows an armored vehicle of the convoy smashed a stopping car to move it from its way. Another leaked tape shows Blackwater helicopters opening fire at targets in the city of Baghdad. The last tape shows a front vehicle struck a woman and one contractor on the car said "oh my God, oh my God, did you see that?" but they did not stop or even call for her help on the radio.

If democracy and human rights are sacred in the US citizens believe that these rights insisted on by the constitution could be jeopardized. The documentary identified as "Blackwater and Katrina – Violations of our Rights" mentions a very awkward situation of using Blackwater contractors in the city of New Orleans. After the Katrina disastrous hurricane<sup>10</sup> in New Orleans the city was under martial law although the martial law does not exist under Louisiana's constitution (Shankman). Jeremy Scahill tells a story of Blackwater guys he met in New Orleans, the contractors were operating without a license that was issued one week later. When he asked them about who sent them there they replied Erick prince the CEO. This story would for sure open doors for some constitutional rights to be abused by private contractors on the American soil mainly with the weapon confiscation operation that took place in New Orleans after the hurricane. If private contractors operated during the

weapon confiscation time who could deny that they could have been part of the whole operation and abuse some citizen's rights? It would be very awkward if irregular private contractors implement the martial law.

Another major human right that was abused by private contractors is freedom from torture. Contractors in Iraq committed the well known atrocities against innocent detainees in Abu Ghraib prison.<sup>11</sup> Hassan Al-azzawi, an Abu Ghraib innocent civilian detainee tells in the documentary Iraq for Sale: The War Profiteers the story of his unlawful arrest. Al-azzawi is an electrical engineer, he was arrested on his way to work and transported Abu Ghraib prison on January 1, 2004. He described the interrogators, according to him one of them was a person wearing civilian clothes and giving orders, he belonged to the private companies. The interrogators put him in a cell, cuffed his hands, and ripped his clothes off in a savage way. One of their strategies was to tie a rope around the penis, and cut off my circulation. He said that to this day he can't have children. Al-azzawi could identify the private companies responsible of that, Titan and C.A.C.I.

Al Haj Ali is another innocent victim who was subject to all types of torture, he was surprised by his arrest and then transported to Abu Ghraib. In his testimony he described the way he was tortured, he found himself in front of military men, interrogators, a group of about eight or ten, they urinated at him and they put their weapons on his private parts, in addition to the beating. He could hear other people screaming for help, from beating and torture, he could as well hear the barking of dogs. According to him when he was in the interrogation cell when someone knocked the door, if he says C.A.C.I. they immediately open the door for him to enter (Greenwald). The third victim of torture is a female anonymous detainee at Abu Ghraib. In her testimony for the documentary Iraq for Sale she explains how they took her from her house with her son who kept telling them that she is his mother. An

American dragged her by her hand and told her that if she does not confess about the terrorists she was working with, he will send her to a place where they will rape her.

Some of the atrocities that were committed by private contractors were documented by photos. *The Washington Post* released tens of photos that show detainees in inhuman situations being tortured by US interrogators. This was a scandal whose ramifications would affect the US administration for a very long time. In 2004, *The Washington Post* published official secret sworn statements by detainees at the Abu Ghraib prison in Iraq. It had withheld some names from the statements for that they were alleged victims of sexual assault.

In a statement for Iraq for sale, Anthony Lagouranis, a former military interrogator in Abu Ghraib said that he did not really expected that he would have to interrogate some one or imagine if he did, it would have been in a conventional war where things would have been very different. This young man who was studying Greek, Hebrew, and Arabic back in the US was getting angry, especially because he knew that a lot of these prisoners that he saw with these injuries from abuse and torture really had not done anything, they were not part of the insurgency, they were just picked up for no reason at all. An Anonymous interrogator in Abu Ghraib said that they had those rules, they were going to follow them, they were going to spend so much time making sure that they were going to follow them so it was better to ignore them because if he did not know about what was going on then he can have a reason and a pretext for deniability. In this Lagouranis argued that he as part of the military personnel knew what their chain of command was, they were forced to memorize and to follow it, but what was the C.A.C.I. chain of command?

Pratap Chatterjee, the executive director of Corp Watch reported the testimony of a C.A.C.I interrogator who revealed the truth about many atrocities perpetrated by his fellows in the company. According to Torin Nelson, he wanted to defend the interrogator profession because of the confusion he saw in the media that was lot of mistaken. Nelson argued that

there are two schools of thought, one which believes that the ends justify the means and it is new, and his own thought that the means justify the ends.

The right to self determination was also breached. Although this right is linked to the context of decolonization it can be applicable in the case of Blackwater deadly shootings in Baghdad. Although the investigations set up by the Iraqi prime minister had determined that Blackwater contractors who shot Iraqi civilians in a Baghdad square sprayed gunfire in every direction, committed deliberate murder and should be punished according to *The New York Times*, the company was back to business the next day. This reveals the hidden relationship between the US and the new regime it has established in the country, such neglect to hold those criminals responsible for the killings of seventeen innocent Iraqi civilians would force Iraqi citizens to accept the new leaders of the country since their lives are jeopardized. The new regime would last longer with the help of PMCs and consequently the right to self determination will be seized.

José L. Gómez del Prado, is a Member Spanish Society for International Human Rights Law at AEDIDH and a member of the UN Working Group on the Use of Mercenaries. He prepared several reports to the United Nations Human Rights Council and the General Assembly. The United Nations Working Group on the Use of Mercenaries is composed from five human rights experts, each of them comes from a different geopolitical region so that they represent the five geopolitical regions of the world. The experts have to present independent view reports to the General Assembly and the Human Rights Council. In one of the working group's meetings del Prado said that private security guards are in a situation where they can violate some fundamental rights and even commit war crimes in low intensity conflicts such as Iraq and Afghanistan. PMCs according to him do not have a clear legal status in war zones, they are not combatants they are civilians but they are armed.

Del Prado believes that PMCs contract people from developing countries like Chile, Peru, Fiji, Nepal, and India where there is a cheap labour. Workers from those countries are forced to sign contracts where they give up their right to use their local courts, they have to go to other courts in other countries. There plenty of testimonies where workers said that if they were sick for instance they had to continue working for that if they replace them they loose money, so they exploit them to the maximum. The analysis of the above statements shows clearly that in addition to the violation of the right to life, the right to self determination, and the freedom from torture, private contractors are violating two other fundamental rights which are the right to a fair trial as contracted workers do not have the right to use their country's courts, and the rights of workers as they are not enjoying favorable working conditions.

Former truck drivers for KBR and Halliburton Ed Sanchez and Bill Peterson tell how they were left alone facing heavy shootings from the resistance in the middle of the Iraqi desert without sufficient military support. Leaving their own drivers in a very dangerous situation that could cost them their lives was not the only abuse PMCs perpetrated, US soldiers' lives were at stake as well. Ben Carter, a KBR and Halliburton former water purification specialist accused his company of exposing troops to contaminated water in Iraq. Once in front of the Democratic Policy Committee Hearing, Carter said that when he tried to notify that the water the troops were showering with was contaminated he was told that the military is none of his concern.

PMCs are not only professional influential actors in the military filed, they are also professional thieves in practicing all types of fraud. Geoff Millard, a US Army National Guard sergeant tells how bad services provided by KBR and Halliburton were. when for instance he stopped taking his laundry to KBR and washed it by himself he was told by his chain of command that he was not allowed to wash his laundry by his own and that I had to take it to KBR to get it washed even though they all knew that they were doing a horrible job,



they were doing it 99 dollars for one bag that it would cost three dollars back home. Troops in Iraq were obliged to queue for hours to get their meals, they were targeted by the Iraqi resistance most of the time when they were getting served food because it is the only time when the troops are gathered in large numbers. KBR refused to go to twenty four hours feeding schedule although the risk of exposing troops in the camps because that would cost them money. The company was also accused by twelve truckers of running empty trucks in the convoys and billing the government for them (Iraq for Sale). Although the perpetrated atrocities and fraud, The Pentagon kept his policy of relying on PMCs above all in what Al Clark called One-stop shopping in cases of granting all military services to Private contractors.

*Reuters* recounted the accelerating death toll for private contractors in the US wars in Iraq and Afghanistan in a July 3, 2007 report, the toll has topped one thousand contractors. Toll of the report was based on the US Department of Labor provided to *Reuters* in response to a request under the Freedom of Information Act and on locally gathered data. When compared to the 3,919 US military deaths in Iraq and Afghanistan according to figures the US Department of Defense since the beginning of the two wars, the ration is one contractor is killed for every four members of the US military. Despite the risks the profession carries with, there is no shortage in personnel.

Although the accelerating death toll of private military contractors in Iraq and Afghanistan there are more applicants to the job then what is really needed. The most astonishing in this situation is that there are many deaths contractors that where not identified and more than that many other deaths were not reported. According to a July 15, 2010 report by the famous news website Salon, armed private military contractors are being killed in action by the hundreds at a rate more than four times that of US soldiers based on figures of a previously unreported congressional study. The report revealed the fact that he Obama administration has increased

the reliance on private military contractors, the Afghans were contracted and were given the dangerous job of guarding aid and military convoys according to the new Congressional Research Service study. Deaths of private contractors go unreported most of the time for that they are civilians not part of the troops whose deaths are declared in a press release describing the circumstances of the death.

In March 2004, the Iraq war witnessed one of the most shocking views for the American public opinion when the burnt bodies of four American private contractors were strung up on a bridge in Fallujah after being shot in an ambush. *The New York Times* reported the news the day the event took place and said that the private contractors were traveling in two sport utility vehicles according to American officials to the contrary of what a story reported by witnesses that said there were four, two got away and two got trapped.

Wesley Batalona, Scott Helvenston, Michael Teague and Jerry Zovko are names of the four private military contractors killed in the ambush, they were hired by the Blackwater USA company which has since changed its name to Academi. The company was accused of exposing its four contractors to high risk without proper and sufficient protection. The confidential settlement resulted to the families' efforts to secure a public investigation into the killings of their sons. Jason Helvenston, brother of Scott Helvenston accused the system of covering up the company while Blackwater spokesman John Procter declined to comment, citing terms of the confidential settlement (*BBC News*). The lawsuit was a real hard fight, it took about seven years to be finally settled.

Blackwater fought for years to keep the lawsuit from being heard in the North Carolina state court for that it feared the punishing jury award. The company argued that the case was prohibited by the employment contract that the four victims had signed. The contract is an 18-page document in which they gave up many of their rights, including the right to sue the company. Blackwater's argument in the case was that private contractors were an integral part

of the war effort that the company should be held immune from responsibility for battlefield casualties under the sovereign immunity principle,<sup>12</sup> which deprive soldiers from the right of suing the government. The case could have been a landmark lawsuit over battlefield accountability (Sizemore). The attempt to use the sovereign immunity principle was a clear indication that Blcakwater was trying to escape any type of accountability. By doing so the company made an analogy between services undertaken by private contractors and tasks performed by the US military, it wanted the same immunity from liability exactly like the regular army but forgot that the army is governed by its own rules mainly the UCMJ which was not applicable to PMCs.

The atrocities perpetrated by private contractors in Iraq and Afghanistan proved that this type of industry needs to be dealt with differently. The nature of their tasks as a sensitive profession need specific regulations and laws, still the most important questions are, what regulations can govern their actions, locally and internationally? Why all this delay in implementing serious and mandatory conventions? Do PMCs serve well the dirty work of western governments? Do they suit their hidden and undeclared agendas overseas? And most importantly should the international community deal with PMCs as a lasting Phenomenon? These and many other questions are to be tackled in chapter three of the dissertation.

## Endnotes

<sup>1</sup> The Seven Military Classics of China were seven important military texts of ancient China which included Sun-tzu's *The Art of War*. The texts were canonized under this name during the 11th century AD, and from the Song Dynasty onwards were included in most military encyclopedias. For imperial officers, either some or all of the works were required reading to merit promotion like the requirement for all bureaucrats to learn and know Confucius' work. There were many anthologies with different notations and analyses by scholars throughout the centuries leading up to the present versions in Western publishing. Qing emperor Kangxi, however, considered them to be "full of nonsense".

<<http://history.cultural-china.com/en/37History8737.html>>.

<sup>2</sup> Uncertainty and unpredictability—what many call the "fog" of war—combine with danger, physical stress, and human fallibility to produce "friction," a phenomenon that makes apparently simple operations unexpectedly, and sometimes even insurmountably, difficult. Uncertainty, unpredictability, and unreliability are always present, but sound doctrine, leadership, organization, core personal values, technologies, and training can lessen their effects. (AFDD 1. p 6)

<<http://www.fas.org/man/dod-101/usaf/docs/afdd/afdd1.pdf>>.

<sup>3</sup> *Primat der Aussenpolitik* (The Primacy of Foreign Policy) involves a set of basic assumptions about the historical process. First of all, it postulates that international relations are conducted quite independently of ideological and societal considerations. The primacy of Foreign Policy not merely allowed the state to override domestic opposition, it also sanctioned agreements with ideological adversaries abroad (Simms3). It is the core element of the realist school of thought. It follows that foreign policy can be conducted effectively only if it appears both unified and coherent, and able to react promptly if necessary. In keeping with the realist view, domestic debate over the power and influence of political parties should affect foreign policy less than other areas of politics (Goetschel, Bernath, and Schwarz 8).

<sup>4</sup> Napoleon's Grand Army: Napoleon built a 500,000 strong Grand Army which used modern tactics and improvisation in battle to sweep across Europe and acquire an Empire for France. But in 1812, the seemingly invincible Napoleon made the fateful decision to invade Russia. He advanced deep into that vast country, eventually reaching Moscow in September. He found Moscow had been burned by the Russians and could not support the hungry French Army over the long winter. Thus Napoleon was forced to begin a long retreat, and saw his army decimated to a mere 20,000 men by the severe Russian winter and chaos in the ranks.

<<http://www.historyplace.com/speeches/napoleon.htm>>.

<sup>5</sup> The lack of hierarchy and unit cohesion for private contractors' ranking and chain of command is one of the limitations that would be tackled in Chapter Three.

<sup>6</sup> Total War, a military conflict in which the contenders are willing to make any sacrifice in lives and other resources to obtain a complete victory, as distinguished from limited war. Throughout history, limitations on the scope of warfare have been more economic and social than political. Simple territorial aggrandizement has not, for the most part, brought about total commitments to war. The most deadly conflicts have been fought on ideological grounds in revolutions and civil and religious wars. The modern concept of total war is traced to Carl von Clausewitz, who stressed the importance of crushing the adversary's forces in battle and described wars as tending constantly to escalate in violence toward a theoretical absolute. The classic 20th-century work is Erich Ludendorff's *The Total War* (1935). World Wars I and II are usually regarded as total wars.

<<http://www.britannica.com/EBchecked/topic/600428/total-war>>.

<sup>7</sup> Preemption has been, and remains, a leading concept of this decade. But despite its ubiquity in public discourse and its policy relevance, it is a source of great confusion. The term is misused, in some cases deliberately one suspects, but it must be admitted that strategic theorists have offered very little worthwhile reading on the subject. Preemption is distinct from prevention and precaution.

<<http://www.strategicstudiesinstitute.army.mil/pdffiles/pub789.pdf>>.

<sup>8</sup> The Abbasid caliphs of Baghdad unwittingly create a group of considerable power in the Middle East. To strengthen their armies, they acquire slaves from the nomadic Turks of central Asia. These slaves, who become known as Mamelukes (from the Arabic *mamluk*, 'owned'), distinguish themselves in the service of the caliphate and are often given positions of military responsibility. Well placed to advance their own interests, they frequently take the opportunity.

<<http://www.historyworld.net/wrldhis/PlainTextHistories.asp?historyid=ac85>>.

<sup>9</sup> Janissary also spelled Janizary Turkish Yeniçeri “New Troop”. Elite corps of the Ottoman Empire's army from the late 14th to the early 19th century. Its original soldiers were prisoners of war, but a system soon was developed (the *devsirme*) wherein Christian youths were levied from Balkan vassals, converted to Islam, and—though paid a regular salary—inducted into the ranks of the sultan's slaves. They were, for the most part, infantry troops conscripted to replace the often-unreliable Turkish tribal cavalry (*spahi*). Strict early rules of behavior, including celibacy, were later abandoned, and the Janissaries became active in court politics. In 1826 they rebelled rather than accept the reform of the army along European lines. <<http://www.britannica.com/EBchecked/topic/300350/Janissary>>.

<sup>10</sup> Hurricane Katrina was one of the strongest storms to impact the coast of the United States during the last 100 years. With sustained winds during landfall of 125 mph (110 kts) (a strong category 3 hurricane on the Saffir-Simpson scales) and minimum central pressure the third lowest on record at landfall (920 mb), Katrina caused widespread devastation along the central Gulf Coast states of the US. Cities such as New Orleans, LA, Mobile, AL, and Gulfport, MS bore the brunt of Katrina's force and will need weeks and months of recovery efforts to restore normality. <<http://www.ncdc.noaa.gov/special-reports/katrina.html>>.

<sup>11</sup> Abu Ghraib is a city in Iraq located to the west of Baghdad. The city also lends its name to a prison, Abu Ghraib Prison, and many people think of the prison when they hear the term “Abu Ghraib.” Abu Ghraib Prison was an infamous location under the control of Saddam Hussein, and it was also the site of a prisoner abuse scandal at the hands of American occupying forces. As of August 2006, the prison is controlled by the Iraqi government. The prison complex was built in the 1960s, and it sprawls across 280 acres (1.15 square kilometers) of land. Five separate complexes are enclosed inside Abu Ghraib Prison, along with support facilities which turn the prison into its own small city. Under Hussein's administration, Abu Ghraib was used to house political dissidents, and reports indicate that prisoners were tortured and killed at the site; at least two mass graves are associated with Abu Ghraib Prison, and there may be more. When American forces invaded Iraq in 2003, they took over the administration of the prison, changing the name to the Baghdad Central Confinement Facility (BCCF) and renovating some areas of the prison to adhere with American military standards. In 2004, several American media outlets broke stories of severe prisoner abuse and torture; the Abu Ghraib scandal attracted a great deal of public attention and shook public faith in the war. <<http://www.wisegeek.com/what-is-abu-ghraib.htm>>.

<sup>12</sup> The idea that the sovereign or government is immune from lawsuits or other legal actions except when it consents to them. Historically, this was an absolute doctrinal position that held Federal, state, and local governments' immune from tort liability arising from the activities of government. These days, the application of sovereign immunity is much less clear-cut, as different governments have waived liability in differing degrees under differing circumstances. Sovereign immunity is treated in two places in the US Constitution. Article III, Section 2 is applicable to questions involving the immunity of Federal officials from lawsuits, suits against the Federal government by a state and vice versa, and suits against the Federal government generally. The division of power between various possible sovereigns -- the state and Federal governments -- is dealt with by the Eleventh Amendment, which discusses suits between states, between states and the Federal government, and so-called diversity cases between citizens in different states. The issues are complex, and the line of Supreme Court decisions in this area is confusing and contradictory. <[http://www.law.cornell.edu/wex/Sovereign\\_immunity](http://www.law.cornell.edu/wex/Sovereign_immunity)>.

## **Chapter Three**

### **To Whom PMCs are Accountable?**

Over the last ten years, as the Americans and other nations have been actively engaged in their war on terror, most of the services that were undertaken by the military were outsourced to private contractors regardless the risks of human rights breaches and violations of conventional international agreements. This chapter is meant to dissect every single regulation and convention on both scales, local and international, and the way it was violated by private contractors. It will also explain all attempts aimed at regulating this business and their limitations as an unusual type of industry.

#### **1 – Typology and Categorization**

Private Military Companies, Private Security Companies, Private Military Firms, or Private Military Contractors these are different appellations for military and business organizations that are closely related to each other in meaning, function, hierarchical structure and financial endeavour. As a first step in this chapter, giving a precise definition to this phenomenon is something of a huge importance since the definition it self is not universally ratified or agreed upon.<sup>1</sup> In this case a precisising definition that goes beyond the descriptive meaning of the term is strongly needed due to the nature of these controversial firms and the kind of functions they are actually undertaking.

Words are used interchangeably in the above appellations for companies, firms, or contractors but there is a notable difference in the case of the two terms ‘military’ and ‘security’. For PMCs (Private Military Companies), the Military Dictionary defines them as private business organizations, which market military training and expertise, and in some cases, personnel and equipment, to foreign clients (e.g. governments of developing nations) usually in a counterinsurgency or internal security situation. Private Military Companies are also defined as corporate entities offering a range of military services to clients. Governments

use these services to make military impact on a given conflict. These services include combat and combat related functions (Gulam). The selection of terms is very important at this level.

Private 'Security' Companies are similar to Private 'Military' Companies but provide defensive security services to protect individuals and property. Gulam explains the difference through the examples of Wackenhut from the US and DSL (part of Armour Group) from the UK which are used by multinational companies in the mining and resource sector, and by international and humanitarian agencies in conflict and unstable areas. An international workshop summary report on the politicisation of humanitarian action and staff security asserts that Private Security Companies are theoretically distinct from Private Military Companies because they are usually unarmed and are concerned with the protection of property and personnel, rather than having a military impact on conflicts. Nevertheless a very thin line separates characteristics and functions of both categories of firms by whether supplying only defensive activities or offensive capacities at the same time.

J.T. Mlinarcik, editor in chief of Regent University Journal of International Law, defines PMCs as businesses that provide governments with professional services intricately linked to warfare; they represent, in other words, the corporate evolution of the age-old profession of mercenaries. PMCs as corporate entities provide a wide range of services such as technical support and energy services, providing information for intelligence agencies, and other logistical and combat operations, in other words from feeding troops to fighting on the front line. While providing these services, those legally established companies will definitely exercise force in addition to their enhancement services although their claim that they only provide defensive services for democratic causes. According to David Isenberg in his *Shadow force: private security contractors in Iraq* a private military firm is "a sign of the confusion and controversy surrounding the idea of private-sector firms carrying out military and security

missions of many different kinds from combat service support and military training to personal protection that hardly anyone uses the term the same way”.

The National Defense Authorization Act<sup>2</sup> for Fiscal Year 2008 defines the functions private security firms are undertaking as the guarding of personnel, facilities, or properties, and any other activity for which personnel are required to be armed. In addition to armed security, many private security contractors also offer a variety of unarmed services which in a number of cases may represent fifty percent or more of the company’s revenues. PMCs can provide armed services like site and convoy escort, or personal detail security, or they can provide unarmed security services such as operational coordination, intelligence analysis, hostage negotiations, or security training. Contracting out basic unarmed services can also make military personnel available for essential combat operations (qtd.in Brickell 4). Private contractors carry out a wide range of sensitive governmental functions.

The exclusion of some military entities is compulsory in order to reach a proper definition for PMCs. Volunteers for instance, if they are not profit-driven and they get in foreign armed conflicts seeking the preservation of some ideals they are excluded according to the Geneva Convention Protocol II. Foreign joint militaries operating according to restricted conventions are not also included in the definition. The Peninsula Shield forces’<sup>3</sup> intervention in Bahrain to suppress protestors is a good example of that, the convention by which it was created insists on the principle of joint and collective defense; if any member is being subject to foreign aggression or internal unrest other members are obliged to send troops to defend it so that the security of all members would be an “indivisible whole” (Shaheen). Such entities have different legal status and consequently they have different legal frames and regulatory options.

Many contractors offer only combat services like protecting convoys, providing protection to highly ranked officials abroad, military expert training, mine clearance and many other



services that used to be inherently governmental including intelligence gathering and combats. Practically speaking, a PMC is a well organized corporation staffed largely by former military personnel undertaking military and security functions, something which is unprecedented in modern times because it used to be exclusively delivered by the public sector; the state army whose main conventional duty is supporting and defending the nation's borders against all enemies, foreign or domestic, and whose members bear the necessary patriotism to do the same according to laws which regulate their actions.

The CRS Report for Congress 2008 on Private Security Contractors in Iraq divided the functions and services provided by private security firms to two major categories: armed services and unarmed services.

Armed services include:

- \* Static security — protecting fixed or static sites, such as housing areas, reconstruction work sites, or government buildings;
- \* Convoy security — protecting convoys traveling in Iraq; security escorts — protecting individuals traveling in unsecure areas in Iraq; and
- \* Personal security details — providing protective security to high ranking individuals.

Unarmed security services include:

- \* Operational coordination — establishing and managing command, control, and communications operations centers;
- \* Intelligence analysis — gathering information and developing threat analysis; and
- \* Security training — providing training to Iraqi security forces. (3)

**Table 5: Categorization of PMCs**

<b>Activities and services provided</b>	<b>Examples of Companies</b>	<b>Main users of Services</b>
<b>Combat and Operational Support</b>	<b>Executive outcomes Gurkha Security Guards</b>	<b>Governments</b>
<b>Military advice and training</b>	<b>DSL, MPRI, Silver Shadow, Levdan, Vinnell, BDM</b>	<b>Governments</b>
<b>Arms procurement</b>	<b>Executive outcomes Sandline International Levdan</b>	<b>Governments</b>
<b>Intelligence gathering</b>	<b>Control Risk Group Kroll, Saladin, DynCorp</b>	<b>Governments</b>
<b>Security and crime prevention</b>	<b>DSL, Lifeguard, Group4 Control Risk Group Gurkha Security Guards Grey Security Coin Security</b>	<b>Multinational companies Humanitarian agencies</b>
<b>Logistical support</b>	<b>Brown &amp; Root, DynCorp, Pacific Architects &amp; Engineering</b>	<b>Peacekeeping organizations Humanitarian agencies</b>

Source: “Privatising Security: Law, Practice and Governance of Private Military and Security Companies”. By Fred Schreier, Marina Caparini. March 2005.

The above table shows a categorization of PMCs according to the services they provide and the activities they undertake; from military advice, training, and Intelligence gathering to logistical support and combats. The table provides as well examples of active companies and their primary customers. What is worthy to be noticed in this table is the kind of services every client asks for, especially governments which ask for the first four services shown in the table which are of a very offensive nature such as combats, operational support, military

training, arms procurement and intelligence gathering. Humanitarian agencies, peacekeeping organizations, and multinational companies however seek different kind of services which appear to be defensive, mainly crime prevention and logistical support.

The best PMCs typology ever is the one provided by Peter Warren Singer in his referential book *Corporate Warriors: the Rise of the Privatized Military Industry*, The book holds a whole part devoted for the organization and operation of PMCs, it gives examples for each category. Singer classifies Companies which carry out fighting functions as ‘military provider firms’ such as Executive Outcomes (101). Companies Specialized in the military consulting sector like MPRI (one of the more prominent firms in the wider private military industry) are ‘military consultant firms’, for the reason that they provide planning and training support without being directly involved in operations against the enemy (119). The third and last category for Singer is that of ‘military support firms’ which are the farthest from combats like Brown & Root Services, their role lies in providing all types of support for its customers (136). The later is the largest sector in revenues and operations.

Doug Brooks’ norms of categorization stress the nature of services provided, he mentions two main categories; Military Service Providers (MSPs) and Nonlethal Service Providers (NSPs). MSPs are legal companies that mainly provide combat operations, unlike (NSPs) which are not involved in combats; they carry out a gamut of legitimate logistical tasks and services including intelligence and mapping services, risk assessments, and mine clearance. Thus brooks emphasizes “Passive PMCs” which do not become involved in lethal operations, and “Active PMCs” which are companies ready to fulfil combat operations on behalf of the state armies.

## **2 – Modes of Enforcing Accountability**

### **2.1 – Local Legislations and Regulations**

Private military companies as any other American companies are tied to all types of laws and regulations controlling their businesses. In the United States any profit-driven business requires registration, licensing, and compliance to the rules that govern its field. Licensing of foreign contracts does not mean that PMCs are away from being accountable to their home states, the US can hold its Nationals accountable to its own laws where ever they are. So what are the laws which regulate the private military market?

The US Army's Logistics Civil Augmentation Program (LOGCAP), was first introduced on 16 December 1985 as a regulatory frame that governs private contractors hired by the US government. The regulation's objective is to "preplan for the use of civilian contractors to perform selected services in wartime to augment Army forces. Utilization of civilian contractors in a theater of operation will release military units for other missions or fill shortfalls" (LOGCAP 1). The regulation was not put into practice until 1992, the year when Secretary of Defense Dick Cheney hired the private company Brown & Root to begin a study about how the US could contract the private sector to carry out support functions which were inherently governmental (Pelton qtd. in Moyer 5). The program gives the US army the ability to be prepared to respond to crises effectively without holding a large army which would cost lots of financial sources in times of peace (6). The Program is a very important piece of regulation that could be applicable to PMCs.

The Alien Tort Claims Act (ATCA), also known as Alien Tort Statute (ATS) is one of the oldest American laws that can be applicable to PMCs. the act which is part of the United States Code<sup>4</sup> was introduced in 1789, it aims at granting jurisdiction to US Federal Courts over (any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States) as it is shown in the original text. Under this act; in 1980, a

Paraguayan man sued a Paraguayan policeman who had tortured his son to death, the landmark known as '*Filartiga vs. Peña-Irala*' took place on the American soil and ended with the conviction of the Defendant according to American laws (Kehrl). Many other victims have since sued individuals responsible for different human rights abuses which took place outside the American territory and committed by aliens, mainly a long list of foreign plaintiffs represented by industrious lawyers (Hufbauer and Mitrokostas 55). The Act suits the needs of overseas contractors mainly those from developing countries.

The ATCA which was introduced soon after the ratification of the US Constitution can be useful nowadays in holding PMCs accountable in federal courts in cases of human rights breaches that could happen in foreign states; any foreigner who was subject to any kind of abuse can sue the private contractors responsible for that. Hufbauer and Mitrokostas in their book: *Awakening monster: the Alien Tort Statute of 1789* argue that the ACTA has become an awakening monster now for that only 21 reported cases under the act happened between 1789 and 1980 but nowadays thousands of third world countries had sued blue-chip corporations such as Toyota, Volkswagen, Nokia, Motorola, General Motors and other companies for different reasons (2).

Although the drafters of the act's main intention was to show European powers that the new nation would not tolerate flagrant breaches of the 'law of nations' in cases where foreign ambassadors and merchants were victims (3), PMCs legal status makes them vulnerable in front of any mistake they commit outside the United States. The effectiveness of the ATCA is threatened by the government contractor defense by granting contractors immunity since they are acting on behalf of the government (Chapman et al. 16). It is no longer surprising to read in the news that the private industry cartel is lobbying for its own protection by attempting to eliminate liability for any breach in customary law. Granting immunity for contractors will be a liability laundering as Micallef called it.

The main reasons for which the Neutrality Act was passed in 1794 was to make sure that war should not come to the United States by any nation of whom the United States was at peace because of irresponsible acts of some individuals whose paramount aim is personal profit with complete neglect of the public good (Meteor 79). In June 5, Secretary Thomas Jefferson informed the French Ambassador to the United States Edmond-Charles Genêt that according to the US proclamation of Neutrality<sup>5</sup> he [Genêt] has to stop recruiting American privateers in the French war (Purcell 89). Genêt jeopardized American neutrality when he started to recruit Americans to man privateering ships in an attempt to help the French navy attack British vessels in the Atlantic Ocean (Hastedt 324). The 1794 Neutrality Act could be a useful instrument in controlling PMCs since it clearly outlaws any participation in military operations conducted by American nationals against foreign nations of whom the US is at peace. The act's first function served in favour of stopping the recruitment of American privateers in foreign conflicts, the case is quite similar to the present situation in which private contractors need to be controlled. Although it was amended several times, the act is still in force and can be used.

The Uniform Code of Military Justice, also known as UCMJ, is a federal law enacted by Congress in 1950 and was immediately signed into law by President Harry S. Truman on June 25 of the same year, only weeks before the Korean War (Morris 122). *Military.com* website asserts that the code is applicable to all military members worldwide; students at military academies, prisoners of war, and retired or reserve personnel in some cases, it is considered as the backbone of the military legal system. The manual covers "the different types of court-martial, treatment and apprehension of prisoners, and the trial process. In addition, rules govern military jurisdiction, legal investigations, discharges, the release and revision of military records, post-trial review procedures, and appeals" (Taylor 399). The Code is criticized for being less fair than the civilian justice according to many analysts.

The word uniform in the code's title refers to the congressional intent to make military justice uniform or consistent among the armed services (UCMJ). The Congressional Code was established under the authority granted to the American Congress by the Constitution which says in Article 1, Section 8:

The Congress shall have Power To lay and collect Taxes,  
Duties, Imposts and Excises, to pay the Debts and provide  
for the common Defence and general Welfare of the United  
States; but all Duties, Imposts and Excises shall be uniform  
throughout the United States;  
  
To make Rules for the Government and Regulation of the  
land and naval Forces. (3)

The UCMJ can be applicable to private contractors as well for that its set of procedural criminal laws is standardized for all US military personal. In this case all legal loopholes would be bridged and PMC members would not be above the law. The Code can be a legal framework for contractors to be under operating units' officers, thus they will be supervised in a way they would never escape criminal accountability. The only issue in this case is the kind of contracts they sign because they are under federal regulations which grant them the status of civilians, the implementation of the UCMJ then needs a strong political will.

The original text of the 1976 US Arms Export Control Act (AECA) authorizes the President of the United States of America to control the import and export of defense articles and services and charges him to exercise his authority. According to the (LII), the Legal Information Institute, Cornell University, if the president wants, he can provide individuals or organizations that wish to export defense articles or services with a license to practice the business. Any business agreements achieved out of the permission granted by the President is outlawed. The aforementioned procedure has to take into consideration several points;

contribution to an arms race, helping in the development of WMD, supporting international terrorism, increasing the possibility of outbreak or escalation of conflict, or prejudicing the development of bilateral or multilateral arms control or nonproliferation agreements or other arrangements.

PMCs are deeply concerned with the (AECA) since the latter controls the export and import of articles and services of the military sector. The activities carried out by the private contractors go under the term (services) in the original text, PMCs then have to respect all the concerns mentioned before in order to avoid any criminal charges due to breaches of their license. The federal authorities have to practice more oversight on licensed companies to preserve the nation's public diplomacy<sup>15</sup> which became insufficient because of the atrocities committed by both regular and private forces abroad.

The Deputy Chief of Staff for Logistics (DCSLOG) is the proponent of The 1999 US Army Regulation 715-9 which is a very important piece of regulation that deals with regulatory procedures for PMCs. According to the original text, the regulation prescribes "policies, procedures, and responsibilities for a disciplined approach to managing and using contracted US citizens whom are deployed to support Army requirements" (1). The regulation represents a framework for US citizens contracted with army to augment its forces in battlefields so that they assume responsibilities in any future conflicts. The A.R. 715-9 is intended for command levels C, D, and E for the Active Army, Army National Guard and the US Army Reserve. As mentioned in section 1, the Assistant Secretary of the Army, provides "oversight and policy determination for Army policy on logistics, maintenance, supply, transportation, logistics automation, and the use of commercial support services" (04).

An additional mode of accountability provided by the US law is the Military Extraterritorial Jurisdiction Act. It was issued to prosecute private contractors for the



commission of criminal acts during their service under the US Government abroad. The law which was first introduced in 2000 and amended in 2004 says:

“§ 3261. Criminal offenses committed by certain members of the Armed Forces and by persons employed by or accompanying the Armed Forces outside the United States.

“(a) Whoever engages in conduct outside the United States that would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States.

“(1) while employed by or accompanying the Armed Forces outside the United States; or “(2) while a member of the Armed Forces subject to chapter 47 of title 10 (the Uniform Code of Military Justice), shall be punished as provided for that offense.

(2488)

Although the Act’s primary aim was the prosecution of private contractors who commit crimes while working for the US overseas, the first prosecution under it was the one of a former Marine Corps Sergeant. On 29 Aug 2008, a *The Telegraph* article entitled “US marine acquitted of war crimes in ground-breaking trial” says that Jose Luis Nazario Jr. is the first former military service member tried under the Military Extraterritorial Jurisdiction Act, Nazario could not be prosecuted in a military court because he had left the Marines, the charge was “fatally shooting or causing others to shoot dead four Iraqi detainees during fierce fighting in Fallujah, Iraq” which took place in November 9, 2004. The former Marine was not found guilty.

In 1996, President Bill Clinton signed what later would be called the War Crimes Act, which aimed at “to carry out the international obligations of the United States under the Geneva Conventions to provide criminal penalties for certain war crimes” (Text of War Crimes Act). In addition to the aforementioned legislation, the Torture Victim Protection Act of 1991 and the Anti-Torture Statute are so important to enhance PMCs’ accountability. The

Anti Torture Statute for instance, was successfully evoked by the Justice Department to indict the son of former Liberian president Charles Taylor in the alleged torture of one of his father's political opponents (*The Washington Post*). PMCs are then tied to these regulations for that they would be tried in cases of grave breaches of human rights as defined in the text of the Geneva Convention and its Additional Protocols “willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly”.

PMCs are subject to all types of laws, regulations, and instructions any American based company should comply with since they are organized businesses. Compliance in the United States is restricted by many laws such as the Sarbanes-Oxley Act.<sup>7</sup> In the US any violation of the compliance regulations might result to criminal or civil penalties. One famous example of PMCs violating American regulations is KBR’s violation of the False Claims Act.<sup>8</sup> David Isenberg<sup>9</sup> wrote in the *Huffington Post* about the lawsuit filed against the company. The United States Justice Department alleges that the company violated the LOGCAP III contract, because when it failed to obtain Army authorization for arming 33 of its subcontractors during the 2003-2006 time period, it allowed their use without registered with the Iraqi Ministry of the Interior. The company however charged the government for the costs of the unauthorized services.

In an attempt to keep private contractors under control, many bills were introduced but never became laws for that the industry Lobbies are very influential. *Govtrac.us* website provides a wide range of Bills and Act introduced to Congress such as the Security Contractor Accountability bill of 2007 that aimed at requiring accountability for contractors and contract personnel under federal contracts but did not receive the sufficient congressional support to be a law. The Commission on Wartime Contracting Establishment Act was introduced by the

Republican John Tierney and other eleven of his colleagues in 2007, it aimed at providing for the study and investigation of war time contracts and contracting processes in Operation Iraqi Freedom and Operation Enduring Freedom but was cleared from the books since it has received not support.

The Transparency and Accountability in Security Contracting Act of 2007 is another bill that was supposed to enforce the legal frame to which PMCs would be held accountable. For a similar purpose, the same sponsor David Price proposed in a previous session the ‘MEJA Expansion and Enforcement Act’ of the same year, but have not been passed into law (*Govtrac.us*). In October 11, 2007, *The New York Times* published report of Alissa J. Rubin and Paul Von Zielbauer entitled “News Analysis; The Judgment Gap In a Case Like the Blackwater Shootings, There Are Many Laws but More Obstacles”, the authors dug deep in the legal loopholes for the case of Blackwater shootings which left seventeen unarmed civilian Iraqis dead. The authors described the private military industry’s body of law as an untested patchwork that had many obstacles which insulated contractors from accountability.

Private contractors’ liability under the law was jeopardized by Order 17 from the Coalition Provisional Authority.<sup>10</sup> A September 2007 *CBSNews* report considered the order as a free pass since it “essentially granted to every foreigner in the country connected to the occupation enterprise the full freedom of the land”. For a government that claims the promotion of freedom and human rights, the order represented a controversy and most importantly, it aggravated the already falling standards of the American public diplomacy. The order in Section 4.2 states that:

Contractors shall not be subject to Iraqi laws or regulations in matters relating to the terms and conditions of their Contracts, including licensing and registering employees, businesses and corporations; provided, however, that Contractors shall comply with such applicable licensing and registration laws and regulations if engaging in business

or transactions in Iraq other than Contracts. Notwithstanding any provisions in this Order, Private Security Companies and their employees operating in Iraq must comply with all CPA Orders, Regulations, Memoranda, and any implementing instructions or regulations governing the existence and activities of Private Security Companies in Iraq, including registration and licensing of weapons and firearms. (5)

The private military industry had been a very lucrative business throughout history, since old times mercenaries played a major role in deciding many civilizations survival. In modern and contemporary times the business had a distinct legal frame which did not really change too much in PMCs practices, the market however shaped their explosive growth. Private military companies as profit-driven organizations were provided with a set of legal texts in an attempt to regulate their contracts domestically and abroad, laws made them at least nominally tied to their governments. Still there are many questions that need answers, the most important one is: what definitive documents can regulate PMCs' activities on the international scale?

## **2.2 – International Conventions**

Private contractors are governed by definitive laws locally and internationally. On the local scale PMCs are regulated by many laws, most of them are concerned with the American Regulatory compliance. Companies are profit driven, they are actively engaged in the field in order to make profit but this field should be restricted by many federal and states laws such as the Sarbanes-Oxley Act which governs and organizes the financial practices on the American territory.

Companies are being dealt with as a different type of industry, it is a military business. Consequently a wide range of regulations that have a military and some times political nature were issued to govern the business. Regulations of political nature were introduced centuries ago such as The Alien Tort Claims Act (ATCA), the first PMC-related law in the history of

the US that was introduced in 1789. The second political regulation that governs PMCs is the Neutrality Act which was introduced in 1794. There are several regulations of a military nature, the Uniform Code of Military Justice (UCMJ) is the most efficient one although it was passed in 1950, earlier than the most explosive waves of military privatization. There are many other regulations of a military nature such as the 1976 US Arms Export Control Act (AECA), the 1985 US Army's Logistics Civil Augmentation Program (LOGCAP), the 1999 US Army Regulation 715-9, the War Crimes Act introduced in 1996, and the Military Extraterritorial Jurisdiction Act of 2000.

Table 6:

Type of activity	Legal and social status	Main users	Main areas of activity
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### I..Private Sicurity Companies

Property Protection			
Protection and surveillance	Legal, often not regulated	Private citizens and Companies	Urban Centers in many parts of the world
Guarding factories, mines etc.	Legal, often not regulated	Multinational Companies	Many Countries
Neighbourhood patrol	Legal, regulated	Private citizens	Urban Centers in many parts of the world
Low and order in public place (subways, malls etc.)	Legal, semi-regulated	Local governments ,shop owners, etc.	Many Countries
Crime prevention and correcting services			
Kidnap response	Legal, regulated, often undesired by police	Private citizens and Companies	Countries with high kidnapping rates
Management of prisons	Legal, mainly regulated	Governments, armed forces	Industrial Countries, post-war societies
Investigation and intelligence gathering	Legal, not regulated	Companies, governments, armed forces	Many Countries

### II.Defense Producers

Weapons Production			
Research and development	Mainly licensed by governments	Military procurement agencies	Industrialized countries
production	Mainly licensed by governments	Military procurement agencies	Industrialized countries
Military Assistance			
Military training	Licensed by governments, occasionally illegal	Governments in developing countries, rebel groups	Developing countries, transformation countries, crisis areas

<b>Export of weapons and components</b>	<b>Licensed by governments, occasionally illegal</b>	<b>Governments in developing countries, rebel groups</b>	<b>Developing countries, transformation countries, crisis areas</b>
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### III.Private Military Companies

<b>Consulting</b>			
<b>Threat analysis, strategy development, advice for armed forces</b>	<b>Regulated, occasionally illegal</b>	<b>Official planning authorities, armed forces</b>	<b>Global</b>
<b>Logistics and support</b>			
<b>Logistics in emergencies and war</b>	<b>Regulated</b>	<b>Defense ministries, humanitarian organizations</b>	<b>Many countries</b>
<b>Mine clearing, refugee camps, infrastructure demobilization, reintegration of soldiers and refugees</b>	<b>Regulated</b>	<b>Humanitarian organizations, UN-agencies, governments</b>	<b>Post-conflict areas</b>
<b>Management of military bases</b>	<b>Regulated</b>	<b>Armed forces</b>	<b>Few governments at home and abroad</b>
<b>Technical Services, Maintenance and Repairs</b>			
<b>Technical services, air control, intelligence gathering, IT-services</b>	<b>Licensed by governments</b>	<b>Armed forces</b>	<b>Many countries</b>
<b>Weapon repair</b>	<b>Licensed by governments</b>	<b>Armed forces</b>	<b>Many countries</b>
<b>Training</b>			
<b>Military training, weapon and special forces training, language training and psychological warfare</b>	<b>Licensed by governments, occasionally illegal</b>	<b>Armed forces, rebel groups</b>	<b>Industrialized and developing countries, conflict areas</b>
<b>Peacekeeping and Humanitarian Assistance</b>			
<b>Logistic for Peacekeeping</b>	<b>Regulated</b>	<b>UN</b>	<b>In crises, conflict and post-conflict areas</b>
<b>Disarmament, mine</b>	<b>UN mandate</b>	<b>UN</b>	<b>In crises, conflict</b>

<b>clearing, weapon collection and destruction</b>			<b>and post-conflict areas</b>
<b>Logistic in complex emergencies</b>	<b>Legal, unregulated</b>	<b>UN agencies, humanitarian organizations</b>	<b>In complex emergencies, refugees camps, conflict and post-conflict areas</b>
<b>Protection of convoys, refugees and humanitarians</b>	<b>Legal, unregulated</b>	<b>UN agencies, humanitarian organizations</b>	<b>In complex emergencies, refugees camps, conflict and post-conflict areas</b>
<b>Combat Forces</b>			
<b>Combat</b>	<b>Mainly illegal, occasionally government-requested</b>	<b>Besieged governments, rebel groups and insurgents, governments wishing a low profile, multinational companies</b>	<b>War-torn societies, developing countries</b>

#### IV.Non-statutory forces

<b>Rebels</b>			
<b>Combat, terror</b>	<b>Illegal</b>	<b>Self-employed, linked to states</b>	<b>Civil wars, failed states, crisis areas</b>
<b>Warlords</b>			
<b>Combat, terror, violence markets</b>	<b>Illegal</b>	<b>Self-employed, linked to states</b>	<b>Civil wars, failed states, crisis areas</b>
<b>Organized crime</b>			
<b>Criminal acts for economic gain</b>	<b>Illegal</b>	<b>Self-employed, linked to states</b>	<b>Countries with high crime rates</b>

#### V.Mercenaries

<b>Combat troops</b>			
<b>Combat</b>	<b>Illegal, occasionally government-requested</b>	<b>Besieged governments, rebel groups and insurgents, multinational companies</b>	<b>War-torn societies, developing countries</b>

Source: Herbert Wulf's Categorization from Privatizing Security: Law, Practice and Governance of Private Military and Security Companies



Table 6 carries many indications within it, the most important one which is recommended for this part is the main areas where the companies are being actively engaged, the type of their clientele, and their legal and social status. The first indication the table holds is the areas in which PMCs are operating, this gives a clear idea about how global the use of PMCs is. The operations are taking place in the five geopolitical zones of the world, all types of countries from war-torn countries to industrialized and developing ones. They are deployed in crisis, conflict, and Post-conflict areas, in failed states<sup>11</sup> and countries with high crime rates. In other words PMCs are deployed all over the world.

The table shows us that PMCs services are required by many types of clients, what is important here are governments. The word ‘governments’ carries different types, governments wishing a low profile for instance are relying on PMCs in undertaking some functions that are illegal such as the deployment of combat forces in some regional conflicts where they do not want to be caught interfering in some sovereign states local affaires. The intervention of Blackwater backed by CIA operatives in the Syrian issue is one concrete example of that. Governments in developing countries are clients of PMCs, they usually ask for military assistance which is occasionally illegal. Besieged governments as well request combat troops usually to oppress local uprisings. The companies provide services for the counter part as well; rebel groups and insurgents are privileged clients for PMCs.

The second category of clients encompasses companies, agencies, ministries, and official authorities. Multinational companies request property protection and combat forces services, military procurement agencies however ask for weapons production services. Both Defense ministries and official planning authorities request consulting and logistical support services. The third category of clients contains many controversies, it contains UN agencies and humanitarian organizations. These two clients, who are supposed to condemn the recruitment,

use, financing and training of mercenaries as it is insisted on by the UN Convention on mercenaries, have been subject to all types of criticism for their practices.

International community is provided with a series of regulatory laws encompassed in the Customary International Law, for the use of armed non-military forces it says:

- \* Under this premise, nations have a duty to prohibit the initiation of hostile expeditions by persons within their territory against other nations.

- \* States have a duty to protect the rights of other States within their dominions; they are required to use due diligence to prevent the commission of criminal acts against other States or peoples.

- \* However, it should be noted that the illegal act is not mercenarism per se, but the act of violating the sovereignty and territorial integrity of a state. International law concerning mercenaries is therefore closely linked to the concepts of aggression and principles of non-interference.

- \* Not only have states been lax in enforcing any of the international and regional regimes against individual mercenaries, but also the fact that PMCs operate in over fifty states, often on behalf of governments, suggests a basis for arguing a norm of their legitimacy and a general acceptance of the phenomenon. There seems to be very little evidence to indicate that mercenaries or the use of mercenaries is illegal in customary international law before the UN came into being. (UN GA 1<sup>st</sup> Committee)

As a response to the accelerating growth of the private military industry, the international community issued many agreements on the use of mercenaries, the most definitive regulations on PMCs are the Geneva Convention's additional protocols (Protocol I), and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries introduced by the United Nations. There also many regional agreements which can be applicable for PMCs mainly if they host country is a signatory to the convention.

**Table 7: International Agreements on Mercenaries**

<b>Regulation</b>	<b>Year of Enactment</b>
<b>Resolution 2548 by the United Nations General Assembly</b>	<b>1969</b>
<b>Resolution Condemning the Use of Mercenaries to Overthrow the Government of any Member State by the United Nations General Assembly</b>	<b>1977</b>
<b>Protocol Additional to the 1949 Geneva Convention</b>	<b>1977</b>
<b>International Convention against the Recruitment, Use, Financing, and Training of Mercenaries. Adopted in 1990 and Came into Force in 2002</b>	<b>1989</b>

Protocol I Additional to the Geneva Conventions of August 12, 1949 was issued on June 8, 1977, it aimed at prevailing peace among all the peoples and preserve all of their rights. Protocol I of the convention consists of six parts, PART. I is devoted to the general provisions and it encompasses seven articles. Part. II is for wounded, sick and shipwrecked persons, it consists of 27 articles. Part. III is for methods and means of warfare combatant and prisoners of war, and it is composed of twelve articles. Part IV deals with the civilian population, it holds a number of 31 articles. Part V addresses the issue of execution of the conventions and of its protocols, this is regulated in eleven articles. The ten articles of Part V dissect the final resolutions.

In the related matter of PMCs, part III, section II is the most important part as it deals with the status of combatants and prisoners of war. In Article 47 Protocol I of the Conventions clearly denies mercenaries the right to be combatants or prisoners of war. In order to unveil any kind of confusion, the Protocol identifies mercenaries as profit driven persons who are

recruited to a fight in a conflict where they do not belong to both adversaries whether locally or abroad. The protocol defines mercenaries as follows:

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.

The second most influential regulation on the international level is the International Convention against the Recruitment, Use, Financing, and Training of Mercenaries that was introduced in 1989. What is noticeable in Article 1 of the Convention is the accordance of the first part with the Protocol Additional to the Geneva Conventions that was issued a dozen years before. The second part however dissects the nature of the conflicts and most importantly their objectives in addition to other characteristics. The Conventions says:

1. A mercenary is any person who:
  - (a) Is specially recruited locally or abroad in order to fight in an armed conflict;
  - (b) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material

compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party;

(c) Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;

(d) Is not a member of the armed forces of a party to the conflict; and

(e) 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.

The International Convention against the Recruitment, Use, Financing, and Training of Mercenaries consists of 21 articles, it was not adopted till 1990 but came into force in 2002.

The second part of the definition says:

2. A mercenary is also any person who, in any other situation:

(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.

Article 10. 2 of the Convention insists on several measures to be taken according the laws set forth when any state party takes a person who comply to all the characteristics of a mercenary into custody. Through known means, the states shall notify the following:

- (a) The State Party where the offence was committed;
- (b) The State Party against which the offence has been directed or attempted;
- (c) The State Party of which the natural or juridical person against whom the offence has been directed or attempted is a national;
- (d) The State Party of which the alleged offender is a national or, if he is a stateless person, in whose territory he has his habitual residence;
- (e) Any other interested State Party which it considers it appropriate to notify.

More than fifty of the world's largest PMCs including DynCorp and Xe Services (formerly known as Blackwater) signed a 16-page code of conduct in Geneva. The Swiss government spearheaded the code that encourages PMCs to limit the use of arms, regulate the arrest people, and not to engage in cruel treatment of detainees (Al Jazeera English). The document was an unprecedented step, it came after many incidents that ruined the reputation of many firms in the business and forced Blackwater for instance to change its name several times from Blackwater USA and Blackwater Worldwide to Xe Services LLC and then to Academi. This code of ethics was a good attempt to self regulation after all the atrocities perpetrated by PMCs, but it is not enough for that it contains no mandatory laws that may govern and regulate the way business is undertaken.

### **3 – Limitations of the Regulatory Modes**

One of the most tiring tasks while writing this dissertation was to deal with the changing nature of the business and the industry but most importantly of the legal status private contractors have. On May 13, 2004, *The Washington post* revealed one of the most controversial situations in which the US military have been involved ever, it is the case of a

Titan Corp contractor who served as an interpreter and was killed in 2003. After his death, the 35 year old Todd Drobnick was awarded the Purple Heart and the Bronze Star, the Army's most heroic honor awarded to American soldiers although he was not one of them. US Army Colonel Gary L. Parrish, assistant chief of staff of intelligence wrote a letter to Drobnick's family in which he said: "He died in the service of his country and the gratitude of his comrades is deep and lasting". The most astonishing is that the army said that there was a mistake; consequently Drobnick's awards and many other battlefield commendations received by private contractors were revoked on the basis that only active duty soldiers can have that honor.

The aforementioned two definitive conventions on the use of mercenaries, Protocol I Additional to the Geneva Conventions and the International Convention against the Recruitment, Use, Financing, and Training of Mercenaries have many limitations. They both were introduced to fight the traditional practices of mercenaries, PMCs tasks however differ from that in their status, in other words they are licensed and registered business according to their binding local laws. Is it correct that PMCs are not part of any armed forces but they were sent by a state on official duty to the contrary of what the International Convention against the Recruitment, Use, Financing, and Training of Mercenaries says in Article 1.2.b

"A mercenary is a person who has not been sent by a State on official duty". Protocol I Additional to the Geneva Conventions does clearly make the distinction in part III section II Article 47. F, where it defines a mercenary as a person who "has not been sent by a State which is not a Party to the conflict on official duty" but it adds "as a member of its armed forces".

PMCs are firms looking for their own profit, the cost plus notion is very important in this context. The more work PMCs get the more money they make. In this situation firms use all their connections to get lucrative contracts. Blackwater practices are good examples that need

to be analyzed, the company was formed by its own owner and CEO Erick prince, the multi-billionaire fundamentalist Christian who contributed and interned in the George W. Bush campaign (NNDB). About Blcakwater Robert young Pelton, Author of Licensed to kill said: "Black water is a classy fast moving sports car in the world of private security companies. Erick prince is the child of a wealthy industrialist who made his fortune wiped visors for cars. He saw how peacekeeping operations were conducted, he thought he had a better idea, he could privatize some of those operations". The company reports 600% growth from 2001 to 2005 (Greenwald). The Blcakwater case is characterized by Wild West-like practices.

D.C. Lobbies were crucial for the survival of Blcakwater, the Crisis communication expert Chris Lehane said to Iraq for Sale that Blckwater relies completely upon funding from the US government. The company had a D.C. lobby called ASG which was part of the republican conservative club,<sup>12</sup> Erick Prince himself has longstanding ties to the conservative movement particularly on the Christian coalition side, he and his family contributed over two million dollars to republican candidates and the Republican Party. Lehane argues that within twenty four or forty eight hours after the Fallujah incident<sup>13</sup> where the four contractors were killed, Blcakwater officials were meeting with some of the most powerful members of Congress who was going to dictate what was going to happen to this company in terms of its funding. These influential Congressmen were John W. Warner, chair of the armed services committee on the Senate side. Duncan Hunter, a Congressman from San Diego who is the chair of the armed services committee on the House side. Rick Santorum, chair of the Republican Senate Conference Committee.

According to Lehane, the Blackwater strategy was very successful, it officials went to Washington and stopped any investigation from taking place, they were able to protect their business. They went out and they retained former high ranking government officials, Cofer Black, who was a high ranking official to the CIA and Joseph Schmitz who was the inspector



general to Pentagon were among them. Such very powerful men were certainly helpful in attracting new business and getting new contracts, within the year after the Fallujah incident they got over two hundred million dollars in new government contracts. Greenwald in his documentary explains how the business got prosperous after the Fallujah incident, Blackwater had received many lucrative contracts. They had built a brand new headquarters, its aviation was awarded a \$ 34.8 Million contract, the company got a \$ 57.5 Million contract in Azerbaijan, and a \$ 33.4 Million for a State Department contract, and a \$ 73 Million for Fema Katrina contract, the ration per day was \$ 243.000.

The Abrams Doctrine that was dissected in Chapter One of the dissertation as the maintenance of a clear linkage between the deployment of the Army and the public support of its operations does not apply in the case of PMCs. The doctrine was introduced to refrain American presidents from going to war without the support of the public opinion and consequently without the Reserve Army mainly after the Vietnam War. In a similar situation presidents are not in need of the Reserve Army for that PMCs are the easy alternative.

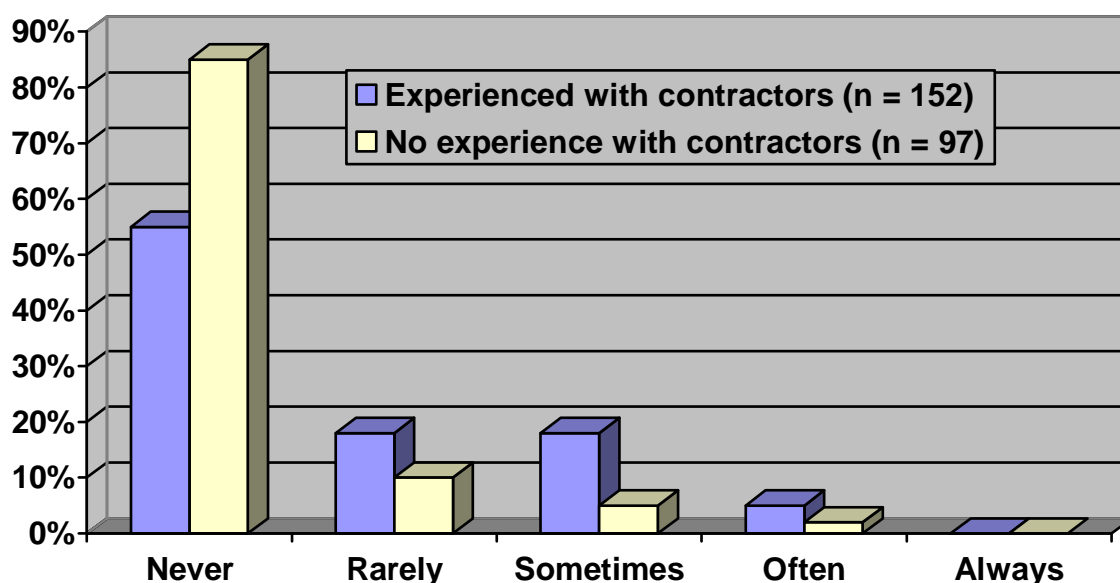
The lack of cohesion and coordination between PMCs and the military is another inadequacy added to the equation. The DOD issued two important surveys related to PMCs practices on battle fields and the way troops see them. The first survey shown in Figure 6 asked troops the following question, during your time in the region during OIF, how often did you have firsthand knowledge of armed contractors performing an unnecessarily threatening, arrogant, or belligerent action? The sample targeted consisted of two types of soldiers, the first type is those who had experience with private contractors, whereas the second type was those who were not experienced with PMCs functions. 55% of soldiers who have experience with PMCs answered never, while 85% of experienced soldiers answered never. The answer of “often” and “always” did not exceed 5% for both experienced and inexperienced soldiers.

20% of experienced soldiers answered sometimes, the ratio was considerable for such dangerous practices.

**Figure 6: Department of Defense Survey**

**Threatening Action**

“During your time in the region during OIF, how often did you have firsthand knowledge of armed contractors performing an unnecessarily threatening, arrogant, or belligerent action?”

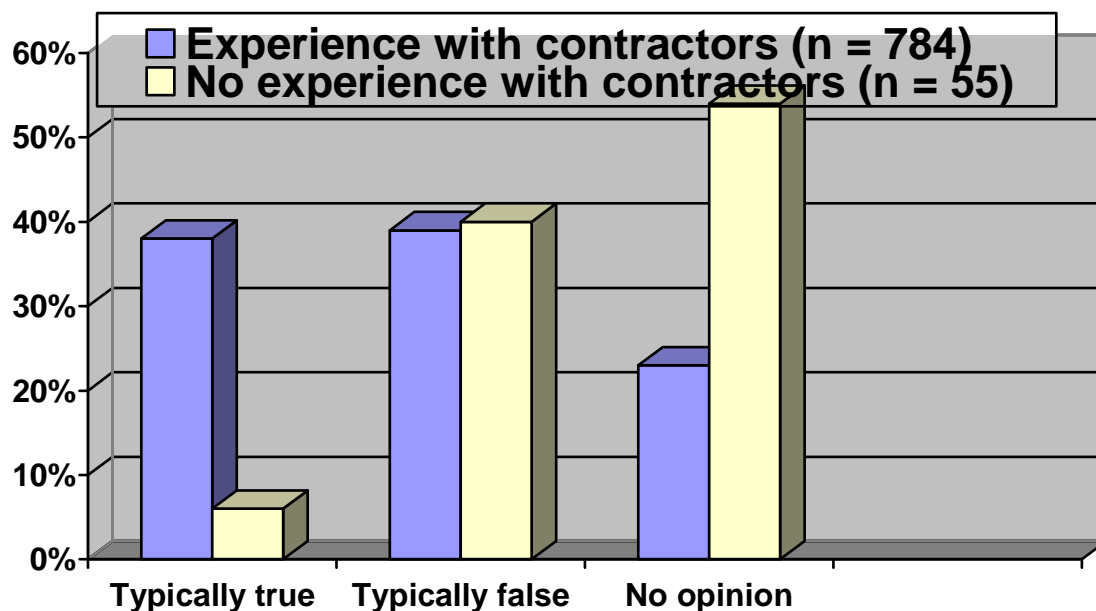


Source: “Private Military Companies in Counter-Insurgency Strategy”

The second DOD survey shown in Figure 7 asked both experienced and inexperienced soldiers whether private contractors are respectful of local and international laws or not. For those who answered “true” the ratio was 38% for experienced soldiers and 6% for inexperienced ones, for those who answered “false” however the ratio was about 40% for both experienced and inexperienced soldiers. 23% of experienced soldiers and 54% of inexperienced soldiers had no opinion about the issue, reflecting an important indication about the sensitivity of the topic when related to international law.

**Figure 7: Department of Defense Survey****Respectful**

“Armed contractors are respectful of local and international laws”



Source: *Hired Guns—Views about Armed Contractors in Operation Iraqi Freedom*. RAND. 2010.

The Coalition Provisional Authority in Iraq made contractors immune from Iraqi law, they are to be subject to local regulations in their countries. The international community should discuss new conventions taking into consideration the blur in the legal status as armed but non-military forces. The ratification of the new conventions is vital for their implementation; they need to be universally ratified unlike the UN convention the Additional protocols to the Geneva Conventions which were ratified only by few countries. The jurisdiction of the International Court of Justice should extend to cover the atrocities perpetrated by private contractors, and all of its warrants should be mandatory. PMCs-related issues are the concern of the whole international community for that it is a matter of sovereignty as Del Prado put it, some countries officially refused to go to war in Iraq but they sent their PMCs such as Peru and Chile.

In 2006, Public Law No: 109-364 was the National Defense Authorization Act of 2007 after being effective, (Paragraph (10) of section 802 (a) of title 10, United States Code (article 2 (a) of the Uniform Code of Military Justice)) was a change in the UCMJ. The change was from “striking war” to “declared war or a contingency operation”, this change was meant to give military commanders more control by placing contractors under UCMJ jurisdiction. As a matter of fact, this change made more problems for that there is no single published guidance that clarifies the implementation of this change precisely, the UCMJ may criminalizes behavior that might not be illegal in civilian life (Mc Naylor).

There are two examples on which American PMCs can be modeled, the British and the South African models. The “Arms to Africa” Affair in 2002 forced the UK Government to introduce a consultative paper that set down a number of regulatory options for PMCs and mercenaries. The options were:

- \*A ban on military activity abroad;
- \*A ban on recruitment for military activity abroad.
- \*A licensing regime for military service on a contract-by-contract basis.
- \*Registration of the UK firm and notification of bids for individual contract
- \*A general license for firms issued to cover listed activities and possible countries of operation; or
- \*Self regulation which is effectively what some companies are already doing.

(Bearpark & Schulz)

The second model for the American PMCs is the South African Foreign Military Assistance Act. The Act prohibited the rendering of foreign military assistance only in few cases that need approval according to some strict criteria as it said in the original text of the act. The Act put the South African diplomacy in some awkward situations. The last incident where the diplomacy was troubled took place in October 2011 where nineteen South African

mercenaries were stuck in Libya after a failed attempt to help Gadhafi escape from Sirte. The South African Defense Department spokesman Siphiwe Dlamini told Beeld that “Any South African who is involved in military matters in Libya would do so illegally and at own risk. They are their own responsibility”. The Foreign Military Assistance Act is very clear in this issue; South African citizens are not allowed to be involved in any foreign military conflict.

In an attempt to avoid a very valid question on the issue of PMCs regulations, Bush dodged a question by a first year student in South Asian Studies when she asked him about the right ways to bring PMCs under a system of law. The student said “My question is in regards to private military contractors, the UCMJ does not apply to these contractors in Iraq. I asked your Secretary of Defense a couple of months ago what law governs their actions...”, here Bush ridiculously interrupts her and said “I am gonna ask him, go ahead ..... help!”, the student replied “I was hoping you answer my question more specific. Mr. Ramsfled answered that Iraq had its own domestic laws which he assumed apply to those private military contractors. However, Iraq is clearly not currently capable of enforcing its laws much less against over an hour you know... American military contractors. I would submit you that in this case, this is one case that privatization is not a solution, and Mr. president how do you propose to bring private military contractors under a system of law?”. Bush answered her question by saying “yea! I appreciate that very much... I was not kidding! I will pick up the phone and say Mr. Secretary I got an interesting question this is what delegation ..... I don not mean to be dodging the question other wise it would be inconvenient in this case ..... I really will ... I will call the Secretary and say you brought up a very valid question, and what are you doing about it ... its how I work, I am! .... Thanks” (Video, Bush Dodges Question).

Taking into consideration the fact that PMCs are a lasting phenomenon, they need to cooperate and adapt to the laws and regulations of countries they operate in. Secretary of Defense Donald Rumsfeld was asked during the committee hearing on Abu Ghraib abuses

whether any of the allegations were investigated, he answered in a shaky voice and said “There ..! My recollections and I think its ok to say this... is that the investigations are on going and that time will tell” (Video, Iraq for Sale). PMCs are very useful and lucrative for governments, regulating their use need a strong political will more than anything else. Governments need to regulate this business locally before it is discussed internationally.

Niccolo Machiavelli in his *The Prince* dissected the negative aspects of using privateers in a very distilled way when he said “The mercenaries and auxiliaries are useless and dangerous, and if anyone supports his state by the arms of mercenaries, he will never stand firm or sure, as they are disunited, ambitious, without discipline, faithless, bold amongst friends, cowardly amongst enemies, they have no fear of God, and keep no faith with men”. PMCs may complicate conflicts they are supposed to ease, they will become another armed party in that area and thus add more intensity to a very hot spot. The industry’s prosperous businesses asserts on one thing, it is that the phenomenon is going to be long-lasting unless it is countered by a strong political will.

## Endnotes

<sup>1</sup> Many critics, including journalists and government officials, have dismissed PMCs as mercenaries, using the term in a derogatory context. PMCs which operate within the constraints of international law and the Geneva Convention would argue that they provide a legitimate service, especially to the governments of poorer nations, whose own military assets are inadequate and who, for political or strategic reasons, have been unable to obtain military assistance from the international community (e.g. UN peacekeeping forces).  
<<http://www.militarydictionary.com/definition/private-military-company.html>>.

<sup>2</sup> The National Defense Authorization Act is a key piece of legislation that sets policies and spending priorities for the Department of Defense every year for the past four and a half decades or so.  
<<http://blogs.wsj.com/washwire/2010/12/22/congress-finally-passes-defense-policy-bill/>>.

<sup>3</sup> Peninsula Shield Force represents the main safeguard against any political unrest or security violations in any GCC member-state. The Peninsula Shield Force is based on the principle of collective and integrated security and defense, with each GCC member-state pledging to protect and defend the mutual security and interests of GCC member-states, as well as their territory and sovereignty.  
<<http://www.asharq-e.com/news.asp?section=3&id=24537>>.

<sup>4</sup> The code of laws of the United States. Also known as the "U.S. Code," it contains 50 titles, each of which covers a subject area such as Agriculture, Labor, and Public, Health and Welfare. As each new law is passed, the relevant sections of the code are modified and updated, both in the printed codes and in the online databases.  
<<http://www.ll.georgetown.edu/tutorials/definitions/usc.html>>.

<sup>5</sup> Whereas it appears that a state of war exists between Austria, Prussia, Sardinia, Great Britain, and the United Netherlands, of the one part, and France on the other; and the duty and interest of the United States require, that they should with sincerity and good faith adopt and pursue a conduct friendly and impartial toward the belligerent Powers.  
<[http://avalon.law.yale.edu/18th\\_century/neutra93.asp](http://avalon.law.yale.edu/18th_century/neutra93.asp)>.

<sup>6</sup> Public Diplomacy is the strategic planning and execution of informational, cultural and educational programming by an advocate country to create a public opinion environment in a target country or countries that will enable target country political leaders to make decisions that are supportive of advocate country's foreign policy objectives.  
<<http://www.publicdiplomacy.org/45.htm>>.

<sup>7</sup> The Sarbanes-Oxley Act came into force in 2002 and introduced major changes to the regulation of financial practice and corporate governance. Named after Senator Paul Sarbanes and Representative Michael Oxley, who were its main architects, it also set a number of deadlines for compliance.  
<<http://www.soxlaw.com/>>.

<sup>8</sup> Federal and State False Claims Acts prohibit any individual or business from submitting, or causing someone else to submit, to the government a false or fraudulent claim for payment. These false claims acts apply to all types of goods, services and government contracting, and have been particularly effective in combating.  
<<http://www.falseclaimsact.com/>>.

<sup>9</sup> David Isenberg is an independent, Washington-D.C. based analyst and writer on military, foreign policy, national and international security issues and the author of *Shadow Force: Private Security Contractors in Iraq*. He is an expert in U.S. defense policy, WMD proliferation, terrorism, homeland security, peace operations, the intelligence community, international arms trade, small arms proliferation, private military companies, biological weapons, and general arms control issues. He has been researching and writing on private military companies for over a decade. <<http://www.cato.org/people/david-isenberg>>.

<sup>10</sup> The Coalition Provisional Authority, or CPA, was the Bush Administration's government for Iraq following the fall of Saddam Hussein and before the Iraqi government regained sovereignty.  
<<http://middleeast.about.com/od/glossary/g/me071201.htm>>.

<sup>11</sup> By its measure a failed state is characterized by a loss of control of its territory or loss of the monopoly on the legitimate use of force. Others define failure as the lack of ability to make collective decisions, or the capacity to deliver public services. Signs that a state is failing might be the over-importance of the black market, failure to

collect taxes, or recurring episodes of large-scale civil disobedience. The definition of a failed state used by the British Department for International Development is broad: “Governments that cannot or will not deliver core functions to the majority of its people, including the poor.” It adds: “The most important functions of the state for poverty reduction are territorial control, safety and security, capacity to manage public resources, delivery of basic services, and the ability to protect and support the ways in which the poorest people sustain themselves.”  
<<http://suite101.com/article/what-is-a-failed-state-a120446>>.

<sup>12</sup> The set of “conservative Republicans” has changed over time, as have the specific set of policies associated with these terms and the general temperament that goes with this. On the first point, we’ve seen the disappearance of Eisenhower Republicans, the Southern realignment and the rise of the religious right, all of which have increased the concentration of dogmatic authoritarians in the Repub party. On the second, the emergence of environmentalism as a major political line of division is probably the most important development. The fact that Republicans/conservative are increasingly anti-science reflects both of these trends. It’s also important to observe that Republican/conservative alignment can’t be explained simply in terms of class, geography and education though all these factors play a role. With a few exceptions (notably including blacks and scientists) a substantial portion of nearly every demographic group votes Republican and self-describes as conservative. So, explanations solely based on (for example) class interests, can’t explain voting behavior without a lot of (self?) deception, and that raises the question of why some people are more easily deceived.  
<<http://crookedtimber.org/2012/03/30/republican-conservatism-an-infantile-disorder/>>.

<sup>13</sup> On March 31, 2004 four Americans working for a security company (Blackwater) were ambushed and killed, and an enraged mob then jubilantly dragged the burned bodies through the streets of downtown Falluja, hanging at least two corpses from a bridge over the Euphrates River.  
<<http://www.nytimes.com/2004/03/31/international/worldspecial/31CND-IRAQ.html?pagewanted=all>>.



## **Conclusion**

PMCs became influential actors in different hot spots almost all over the world. This fact asserts that the phenomenon is going to last for a long period of time. When great powers felt the need for non-conventional forces to be deployed in spots of conflicts they heavily relied on private contractors to undertake the most sensitive functions that were the field of state militaries. The debate centred on the most efficient regulatory modes that could be applicable to this unusual type of industry. It set the platform for the interpretation and analysis of the normative trends to dissect the phenomenon. Regulations have been based on the assumption that the mastery of violence is the states privilege and that it would never be granted to private entities. In the outsourcing process, what is clear is the changing nature of PMCs that asserts the potential for failure.

The analysis on its first part resulted in the description of the changing nature of the industry. The use of civilians and foreigners in wars was very lucrative throughout history. When tracing the history of these old practices, it was apparent that privateers were crucial in the emergence and survival of ancient civilizations. The viewpoint that promoted the use of PMCs based its arguments on the effectiveness of contracting sensitive military functions to the private sector. This viewpoint, however, proved that it is biased since most of its defenders were involved in the business and had their shares in some PMCs. Dick Cheney, Bush's Vice President is one example of that. The second viewpoint is based on field studies undertaken by many academics. This second trend asserts that PMCs have never been cost-effective, to the contrary they were an additional burden for the tax payers.

PMCs have been the subject of many committee hearings in the Congress. Sometimes for investigating accusations of fraud and misconduct of missions, and other times for human rights abuses in prisons and battle fields. The last decade, however, witnessed the most privatized wave of military business. 9/11 rhetoric was depicted by a very strong need to

retaliation. The nation that was awakened by fear is the world's most powerful nation. American officials kept providing people with intelligence data gathered by all federal agencies leading them to the belief that the country is not immune from attack. President Bush's speech to a Joint Session of Congress and the American people has declared the world's most controversial war. This speech was marked by many biblical references in an attempt to win the people's hearts and minds. The war on terror was declared on grounds founded by the policy of fear.

PMCs were to fill the security vacuum after the downsizing of the US army. The biblical reference "Either you are with us, or you are with the terrorists" was the fuel for the international coalition against "terror". In this particular period of time the deployment of private militaries was on its way to boom. The private military industry was fueled by the same enthusiasm to personal gain rather than the public good. According to some reports in 2001 the workforce contracted with the Pentagon exceeded civilian defense department employees for the first time. There was a strong will by the military to rely on the private sector. Those who defend the idea of contracting inherently governmental functions to the private sector argue that the private sector is more cost-effective than the public sector. Singer among those believes that the understanding of the industry is limited theoretically, conceptually, and even geographically and that most of the writings on PMCs focus on individual case studies and is confined to specific regions.

The use of PMCs has been ascribed to a new military strategy aiming to minimize the costs of war. The results achieved in chapter two were through a critical questioning of the traditional treatises on warfare. The deciphering of the enemies' tactics and aptitudes is not the only normative trend that should be tested, the master pieces in this field were dissected as well. Testing Sun Tzu's military treatise and philosophies asserted that when juxtaposing the five constants, (1) The Moral Law, (2) Heaven, (3) Earth, (4) The Commander, (5) Method

and Discipline, to the nowadays PMCs practices the result is a complete failure of such corporations to maintain the aforementioned constants.

The marshalling of the military into subdivisions and the graduation of ranks is the basic structure of any regular state army and even many rebels' militias, but it is not the case with 'military provider companies' that provide combat and operational support for their customers. Such firms do not possess subdivisions of a well respected hierarchy. Contractors are usually recruited according to their previous careers. The use of privateers who are not party to a military conflict alters the outcomes, the nominal strength of mercenary troops does not reflect their real value.

When testing the use of private contractors to Clausewitz's normative trend that emphasized the linkage between a state's political matters and its moral and social obligations the result is that the principles of this theory do not apply in cases where private contractors are used. The unique conception of war shows that war can not be quantified or graphed, the notion of corporate spirit is crucial for any military success. This must exist in almost every army, but it can not exist with PMCs for that war is a continuation of policy and that unexpected events which encapsulate the whole situation can alter the outcomes of any military struggle.

On the counterpart, the analysis of Jomini's 'Wars of Expediency' leads to the belief that this notion fit to the new label 'preventive wars' and 'pre-emptive wars'. This type of wars requires governments to allocate huge resources such as, logistical support, military training, intelligence gathering, combat and operational support, and arms procurement. All these prerequisites are decisive to any military supremacy, the job needs to be professionally done without wasting the time and efforts of soldiers, and thus such functions should be undertaken by private contractors. Having an unbreakable linkage between the leader and his soldiers is very crucial, it is applicable to the lack of unit cohesion for private contractors. Reports from

different hot spots confirmed the breaches of some fundamental human rights and linked them directly to the lack of coordination between PMCs members.

The wide range of functions outsourced to private contractors would certainly open doors to a wide range of atrocities to be committed. Human rights breaches perpetrated by private contractors are at the core of many academic studies, working groups, and UN consultation meetings on related issues. The unconventional forces deployed to help stabilizing regions of conflicts are now committing acts that are condemned by the UN Charter. The analysis of all the types of abuses perpetrated by PMCs shows that the rights and liberties breached the most are respectively the right to security or the right to life, freedom from torture, the rights of workers, and the right to self determination. All these rights were severely abused by PMCs in different deployments and operations linked to the US war on terror, the deadliest ones took place in Iraq, the bloodiest scene of this war.

The interpretation of every possible piece of regulation falls under the analysis of the efficiency of the two types of the regulatory modes, local and international. Locally, the US Army's Logistics Civil Augmentation Program has as an objective to pre-plan for the use of civilian contractors to perform selected services in wartime to augment Army forces. The regulation was not put into practice until 1992, the year when Secretary of Defense Dick Cheney hired the private company Brown & Root to begin a study about how the US could contract the private sector to carry out support functions that were inherently governmental. It is a very important piece of regulation that is applicable to PMCs.

The Alien Tort Claims Act, also known as Alien Tort Statute is one of the oldest American laws that can be applicable to PMCs. The same thing for the ATCA which was introduced soon after the ratification of the US Constitution. It is useful nowadays in holding PMCs accountable in federal courts in cases of human rights breaches that could happen in foreign states; any foreigner who was subject to any kind of abuse can sue the private contractors

responsible for that. The Neutrality Act and the Uniform Code of Military Justice, also known as UCMJ are very effective modes as far as PMCs are concerned although the criticism to the latter of being less fair than the civilian justice according to many analysts.

The 1976 US Arms Export Control Act and the 1999 US Army Regulation 715-9 are less effective than the aforementioned modes. Although the fact that the federal authorities practice more oversight on licensed companies to preserve the nation's public diplomacy, the latter became insufficient because of the atrocities committed by both regular and private forces abroad. PMCs are then tied to these regulations for that they would be tried in cases of grave breaches of human rights as defined in the text of the Geneva Convention and its additional protocols. Many other Bills were introduced in an attempt to keep private contractors under control, but they never became laws for that the industry lobbies are very influential.

The most definitive conventions at the international level are respectively the customary international law, the Geneva Convention's additional protocols (Protocol I), and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. These international conventions, however, have many limitations and shortcomings. The case of the Titan Corp contractor who served as an interpreter and was killed in 2003 was very crucial to the understanding of the PMCs phenomenon. Todd Drobnick case opened doors for the discussion over the legal status for private contractors. Both conventions on the use of mercenaries, Protocol I Additional to the Geneva Conventions and the UN Mercenary Convention have many limitations. They both were introduced to fight the traditional practices of mercenaries. PMCs tasks, however, differ from that in their status, in other words they are licensed and registered business according to their binding local laws.

The modelling of American PMCs to other ones from different countries is strongly recommended. The British and the South African models are the best for this task. The 'Cost

Plus' notion is very important in this context, the more work PMCs get the more money they make. In this situation firms use all their connections to get lucrative contracts. D.C. Lobbies were crucial for the survival of many corporations. The Abrams Doctrine that was introduced to refrain American presidents from going to war without the support of the public opinion and consequently without the Reserve Army proved its shortcomings since PMCs do not need the consent of the public opinion to operate and get contracts. The present day trend of outsourcing the mastery of violence will definitely continue unless it is countered by a strong political will.

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## **Appendices**

### **Appendix A**

#### **Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977**

The High Contracting Parties,

Proclaiming their earnest wish to see peace prevail among peoples,

Recalling that every State has the duty, in conformity with the Charter of the United Nations, to refrain in its international relations from the threat or use of force against the sovereignty, territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

Believing it necessary nevertheless to reaffirm and develop the provisions protecting the victims of armed conflicts and to supplement measures intended to reinforce their application, Expressing their conviction that nothing in this Protocol or in the Geneva Conventions of 12 August 1949 can be construed as legitimizing or authorizing any act of aggression or any other use of force inconsistent with the Charter of the United Nations,

Reaffirming further that the provisions of the Geneva Conventions of 12 August 1949 and of this Protocol must be fully applied in all circumstances to all persons who are protected by those instruments, without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the conflict,

Have agreed on the following:

Part III. Methods and means of warfare combatant and prisoners-of-war

Section II. Combatants and prisoners of war

Art 47. Mercenaries

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.

## **Appendix B**

### **International Convention against the Recruitment, Use, Financing and Training of Mercenaries**

United Nations

General Assembly

A/RES/44/34

72nd plenary meeting

4 December 1989

44/34. International Convention against the Recruitment, Use, Financing and Training of Mercenaries

The General Assembly

Considering that the progressive development of international law and its codification contribute to the implementation of the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations,

Mindful of the need to conclude, under the auspices of the United Nations, an international convention against the recruitment, use, financing and training of mercenaries,

Recalling its resolution 35/48 of 4 December 1980, by which it established the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries and requested it to elaborate at the earliest possible date an international convention to prohibit the recruitment, use, financing and training of mercenaries,

Having considered the draft convention prepared by the Ad Hoc Committee in pursuance of the above-mentioned resolution and finalized by the Working Group on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which met during the forty-fourth session of the General Assembly,

Adopts and opens for signature and ratification or for accession the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the text of which is annexed to the present resolution.

#### Annex

International Convention against the Recruitment, Use, Financing and Training of Mercenaries

The States Parties to the present Convention,

Reaffirming the purposes and principles enshrined in the Charter of the United Nations and in the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

Being aware of the recruitment, use, financing and training of mercenaries for activities which violate principles of international law such as those of sovereign equality, political independence, territorial integrity of States and self-determination of peoples,

Affirming that the recruitment, use, financing and training of mercenaries should be considered as offences of grave concern to all States and that any person committing any of these offences should either be prosecuted or extradited,

Convinced of the necessity to develop and enhance international co-operation among States for the prevention, prosecution and punishment of such offences,

Expressing concern at new unlawful international activities linking drug traffickers and mercenaries in the perpetration of violent actions which undermine the constitutional order of States,

Also convinced that the adoption of a convention against the recruitment, use, financing and training of mercenaries would contribute to the eradication of these nefarious activities and thereby to the observance of the purposes and principles enshrined in the Charter of the United Nations,

Cognizant that matters not regulated by such a convention continue to be governed by the rules and principles of international law,

Have agreed as follows:

#### Article 1

For the purposes of the present Convention,

1. A mercenary is any person who:

- (a) Is specially recruited locally or abroad in order to fight in an armed conflict;
- (b) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party;
- (c) Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;

- (d) Is not a member of the armed forces of a party to the conflict; and
  - (e) 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.
2. A mercenary is also any person who, in any other situation:
- (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.

## Article 2

Any person who recruits, uses, finances or trains mercenaries, as defined in article 1 of the present Convention, commits an offence for the purposes of the Convention.

## Article 3

1. A mercenary, as defined in article 1 of the present Convention, who participates directly in hostilities or in a concerted act of violence, as the case may be, commits an offence for the purposes of the Convention.
2. Nothing in this article limits the scope of application of article 4 of the present Convention.



#### Article 4

An offence is committed by any person who:

- (a) Attempts to commit one of the offences set forth in the present Convention;
- (b) Is the accomplice of a person who commits or attempts to commit any of the offences set forth in the present Convention.

#### Article 5

1. States Parties shall not recruit, use, finance or train mercenaries and shall prohibit such activities in accordance with the provisions of the present Convention.
2. States Parties shall not recruit, use, finance or train mercenaries for the purpose of opposing the legitimate exercise of the inalienable right of peoples to self-determination, as recognized by international law, and shall take, in conformity with international law, the appropriate measures to prevent the recruitment, use, financing or training of mercenaries for that purpose.
3. They shall make the offences set forth in the present Convention punishable by appropriate penalties which take into account the grave nature of those offences.

#### Article 6

States Parties shall co-operate in the prevention of the offences set forth in the present Convention, particularly by:

- (a) Taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories, including the prohibition of illegal activities of persons, groups and organizations that encourage, instigate, organize or engage in the perpetration of such offences;
- (b) Co-ordinating the taking of administrative and other measures as appropriate to prevent the commission of those offences.

#### Article 7

States Parties shall co-operate in taking the necessary measures for the implementation of the present Convention.

#### Article 8

Any State Party having reason to believe that one of the offences set forth in the present Convention has been, is being or will be committed shall, in accordance with its national law, communicate the relevant information, as soon as it comes to its knowledge, directly or through the Secretary-General of the United Nations, to the States Parties affected.

#### Article 9

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over any of the offences set forth in the present

Convention which are committed:

- (a) In its territory or on board a ship or aircraft registered in that State;
  - (b) By any of its nationals or, if that State considers it appropriate, by those stateless persons who have their habitual residence in that territory.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles 2, 3 and 4 of the present Convention in cases where the alleged offender is present in its territory and it does not extradite him to any of the States mentioned in paragraph 1 of this article.
3. The present Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

#### Article 10

1. Upon being satisfied that the circumstances so warrant, any State Party in whose territory the alleged offender is present shall, in accordance with its laws, take him into custody or take such other measures to ensure his presence for such time as is necessary to enable any

criminal or extradition proceedings to be instituted. The State Party shall immediately make a preliminary inquiry into the facts.

2. When a State Party, pursuant to this article, has taken a person into custody or has taken such other measures referred to in paragraph 1 of this article, it shall notify without delay either directly or through the

Secretary-General of the United Nations:

- (a) The State Party where the offence was committed;
- (b) The State Party against which the offence has been directed or attempted;
- (c) The State Party of which the natural or juridical person against whom the offence has been directed or attempted is a national;
- (d) The State Party of which the alleged offender is a national or, if he is a stateless person, in whose territory he has his habitual residence;
- (e) Any other interested State Party which it considers it appropriate to notify.

3. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

- (a) To communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to protect his rights or, if he is a stateless person, the State in whose territory he has his habitual residence;
- (b) To be visited by a representative of that State.

4. The provisions of paragraph 3 of this article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 9, paragraph 1 (b), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

5. The State which makes the preliminary inquiry contemplated in paragraph 1 of this article shall promptly report its findings to the States referred to in paragraph 2 of this article and indicate whether it intends to exercise jurisdiction.

#### Article 11

Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in the present Convention shall be guaranteed at all stages of the proceedings fair treatment and all the rights and guarantees provided for in the law of the State in question. Applicable norms of international law should be taken into account.

#### Article 12

The State Party in whose territory the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

#### Article 13

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in the present Convention, including the supply of all evidence at their disposal necessary for the proceedings. The law of the State whose assistance is requested shall apply in all cases.

2. The provisions of paragraph 1 of this article shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

#### Article 14

The State Party where the alleged offender is prosecuted shall in accordance with its laws communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States concerned.

#### Article 15

1. The offences set forth in articles 2, 3 and 4 of the present Convention shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider the present Convention as the legal basis for extradition in respect of those offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those offences as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.
4. The offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 9 of the present Convention.

#### Article 16

The present Convention shall be applied without prejudice to:

- (a) The rules relating to the international responsibility of States;

(b) The law of armed conflict and international humanitarian law, including the provisions relating to the status of combatant or of prisoner of war.

#### Article 17

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by a request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of the present Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

#### Article 18

1. The present Convention shall be open for signature by all States until 31 December 1990 at United Nations Headquarters in New York.

2. The present Convention shall be subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

## Article 19

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.
2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

## Article 20

1. Any State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations.
2. Denunciation shall take effect one year after the date on which the notification is received by the Secretary-General of the United Nations.

## Article 21

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

In Witness Whereof the undersigned, being duly authorized thereto by their respective Governments, have signed the present Convention, opened for signature at New York on...

## **Appendix C**

### **Convention of the OAU for the Elimination of Mercenarism in Africa.**

Libreville, 3rd July 1977.

## **PREAMBLE**

We, the Heads of State and Government of the Member States of the Organization of African Unity;

Considering the grave threat which the activities of mercenaries present to the

independence, sovereignty, security territorial integrity and harmonious development of Member States of the Organization of African Unity;

Concerned with the threat which the activities of mercenaries pose to the legitimate exercise of the right of African People under colonial and racist domination to their independence and freedom;

Convinced that total solidarity and co-operation between Member States are indispensable for putting an end to the subversive activities of mercenaries in Africa;

Considering that the resolutions of the UN and the OAU, the statements of attitude and the practice of a great number of States are indicative of the development of new rules of international law making mercenarism an international crime;

Determined to take all necessary measures to eliminate from the African continent the scourge that mercenarism represents;

Have agreed as follows:

#### Article 1 - Definition

1. A mercenary is any person who:

- a) is specially recruited locally or abroad in order to fight in an armed conflicts;
- 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;
- d) is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflicts;
- e) is not a member of the armed forces of a party to the conflict; and
- f) is not sent by a state other than a party to the conflict on official mission as a member of the armed forces of the said state.

2. The crime of mercenarism is committed by the individual, group or association,



representative of a State or the State itself who with the aim of opposing by armed violence a process of self-determination stability or the territorial integrity of another State, practises any of the following acts:

a) Shelters, organizes, finances, assists, equips, trains, promotes, supports or in any manner employs bands of mercenaries;

b) Enlists, enrolls or tries to enroll in the said bands;

c) Allows the activities mentioned in paragraph (a) to be carried out in any territory under its jurisdiction or in any place under its control or affords facilities for transit, transport or other operations of the above mentioned forces.

3. Any person, natural or juridical who commits the crime of mercenarism as defined in paragraph 1 \* of this Article commits an Offence considered as a crime against peace and security in Africa and shall be punished as such.

\* Note. - It is the second paragraph of the first article of the African Convention, because the first paragraph deals with the definition of the mercenary and not with the definition of the crime of mercenarism (our note).

#### Article 2 - Aggravating Circumstances

The fact of assuming command over or giving orders to mercenaries shall be considered as an aggravating circumstances.

#### Article 3 - Status of Mercenaries

Mercenaries shall not enjoy the status of combatants and shall not be entitled to the prisoners of war status.

#### Article 4 – Scope of Criminal Responsibility

A mercenary is responsible both for the crime of mercenarism and all related offences, without prejudice to any other offences for which he may be prosecuted.

#### Article 5 – General Responsibility of States and their Representatives

1. When the representative of a State is accused by virtue of the provisions of Article 1 of this Convention for acts or omissions declared by the aforesaid article to be criminal, he shall be punished for such an act or omission.

2. When a State is accused by virtue of the provisions of Article 1 of this Convention for acts or omissions declared by the aforesaid article to be criminal, any other party to the present Convention may invoke the provisions of this Convention in its relations with the offending State and before any competent OAU or International Organization tribunal or body.

#### Article 6 – Obligations of States

The contracting parties shall take all necessary measures to eradicate all mercenary activities in Africa.

To this end, each contracting State shall undertake to:

- a) Prevent its nationals or foreigners on its territory from engaging in any of the acts mentioned in Article 1 of this Convention;
- b) Prevent entry into or passage through its territory of any mercenary or any equipment destined for mercenary use;
- c) Prohibit on its territory any activities by persons or organizations who use mercenaries against any African State member of the Organization of African Unity or the people of Africa in their struggle for liberation.
- d) Communicate to the other Member States of the Organization of African Unity either directly or through the Secretariat of the OAU any information related to the activities of mercenaries as soon as it comes to its knowledge;
- e) Forbid on its territory the recruitment, training, financing and equipment of mercenaries and any other form of activities likely to promote mercenarism;
- f) Take all the necessary legislative and other measures to ensure the immediate entry into force of this Convention.

#### Article 7 - Penalties

Each contracting State shall undertake to make the offence defined in Article 1 of this Convention punishable by severest penalties under its laws, including capital punishment.

#### Article 8 - Jurisdiction

Each contracting State shall undertake to take such measures as may be necessary to punish, in accordance with the provisions of Article 7, any person who commits an offence under Article 1 of this Convention and who is found on its territory if it does not extradite him to the State against which the offence has been committed.

#### Article 9 - Extradition

1. The crimes defined in Article 1 of this Convention, are not covered by national legislation excluding extradition for political offences.
2. A request for extradition shall not be refused unless the requested State undertakes to exercise jurisdiction over the offender in accordance with the provisions of Article 8.
3. Where a national is involved in the request for extradition, the requested State shall take proceedings against him for the offence committed if extradition is refused.
4. Where proceedings have been initiated in accordance with paragraphs 2 and 3 of this Article, the requested State shall inform the requesting State or any other State member of the OAU interested in the proceedings, of the result thereof.
5. A State shall be deemed interested in the proceedings within the meaning of paragraph 4 of this Article if the offence is linked in any way with its territory or is directed against its interests.

#### Article 10 – Mutual Assistance

The contracting States shall afford one another the greatest measure of assistance in connection with the investigation and criminal proceedings brought in respect of the offence and other acts connected with the activities of the offender.

#### Article 11 – Judicial Guarantee

Any person or group of persons on trial for the crime defined in Article 1 of this Convention shall be entitled to all the guarantees normally granted to any ordinary person by the State on whose territory he is being tried.

#### Article 12 - Settlement of Disputes

Any dispute regarding the interpretation and application of the provisions of this Convention shall be settled by the interested parties in accordance with the principle of the Charter of the Organization of African Unity and the Charter of the United Nations.

#### Article 13 - Signature, Ratification and Entry into Force

1. This Convention shall be open for signature by the Members of the Organization of African Unity. It shall be ratified. The instruments of ratification shall be deposited with the Administrative Secretary-General of the Organization.
2. This Convention shall come into force 30 days after the date of the deposit of the seventeenth instrument of ratification.
3. As regard any signatory subsequently ratifying the Convention, it shall come into force 30 days after the date of the deposit of its instrument of ratification.

#### Article 14 - Accession

1. Any Member State of the Organization of African Unity may accede to this Convention.
2. Accession shall be deposit with the Administrative Secretary-General of the Organization of an instrument of accession, which shall take effect 30 days after the date of its deposit.

#### Article 15 - Notification and Registration

1. The Administrative Secretary-General of the Organization of African Unity shall notify the Member States of the Organization of:
  - a) the deposit of any instrument of ratification or accession;
  - b) The date of entry into force of this Convention.

2. The Administrative Secretary-General of the Organization of African Unity shall transmit certified copies of the Convention to all Member States of the Organization.

3. The Administrative Secretary-General of the Organization of African Unity shall, as soon as this Convention comes into force, register it pursuant to Article 102 of the Charter of the United Nations.

In Witness Whereof, We, the Heads of State and Government of the Member States of the Organization of African Unity have appended our signatures to this Convention.

## **Appendix D**

On December 5, 2005, U.S. Secretary of Defense Donald Rumsfeld held a lecture titled “The Future of Iraq” at Johns Hopkins Paul H. Nitze School of Advanced International Studies. During a Q&A session afterwards he was asked a question by graduate student Kate Turner regarding PMCs:

**Turner:** “There are currently thousands of private military contractors in Iraq and you were just speaking of rules of engagement in regards to Iraqi personnel and US personnel. Could you speak to, since the private contractors are operating outside the Uniform Code of Military Justice, can you speak to what law or rules of engagement do govern their behavior and whether there has been any study showing that it is cost effective to have them in Iraq rather than US military personnel. Thank you.”

**Rumsfeld:** “Thank you. It is clearly cost-effective to have contractors for a variety of things that military people need not do, and that for whatever reason other civilians, government people, cannot be deployed to do. There are a lot of contractors, a growing number. They come from our country but they come from all countries, and indeed sometimes the contracts are from our country or another country and they employ people from totally different countries including Iraqis and people from neighboring nations. And there are a lot of them. It's a growing number. Of course we've got to begin with the fact that, as you point

out, they're not subject to the Uniform Code of Military Justice. We understand that. There are laws that govern the behavior of Americans in that country. The Department of Justice oversees that. There is an issue that is current as to the extent to which they can or cannot carry weapons, and that's an issue. It's also an issue, of course, with the Iraqis. But if you think about it, Iraq's a sovereign country. They have their laws and they're going to govern, the UN resolution and the Iraqi laws, as well as U.S. procedures and laws govern behavior in that country depending on who the individual is and what he's doing. But I personally am of the view that there are a lot of things that can be done for a short time basis by contractors that advantage the United States and advantage other countries who also hire contractors, and that any idea that we shouldn't have them I think would be unwise”.

## **Appendix E**

### **Companies' websites**

Aegis, <http://www.aegisdef-webservices.com/>

ArmorGroup, <http://www.armorgroup.com/>

Blackwater, <http://www.blackwaterusa.com/>

CACI, [www.caci.com](http://www.caci.com)

Control Risks Group, [www.crg.com](http://www.crg.com)

Custer Battles, [www.custerbattles.com](http://www.custerbattles.com)

Dyncorp, <http://www.csc.com/industries/government/mds/mds81/265.shtml>

European Landmine Solutions, [www.landmine-solutions.com/](http://www.landmine-solutions.com/)

Erinys, [www.erinysinternational.com](http://www.erinysinternational.com)

Genric, [www.genric.co.uk](http://www.genric.co.uk)

Group4Falck, [www.g4s.com](http://www.g4s.com) ; [www.group4falck.com](http://www.group4falck.com)

Hart, <http://www.hartsecurity.com>

Janusian, <http://www.janusian.com>

Kroll, <http://www.krollworldwide.com>

MPRI, [www.mpri.com](http://www.mpri.com)

NKTS, [www.nkts.co.kr](http://www.nkts.co.kr)

SOC-SMG, [www.soc-smg.com](http://www.soc-smg.com)

Triple Canopy, [www.triplecanopy.com](http://www.triplecanopy.com)