



Issue Brief for the General Assembly First Committee Disarmament and International Security

Regulating private military security companies



by: **Davante Parries and Aaron Karp**

Old Dominion University Model United Nations Society

Introduction

Much as the wars and battle being initiated by non-state actors (NSAs), they also are increasingly fought by private actors. These actors are not associated with any specific government or faction. Idiomatically referred to as *mercenaries*, more formally as Private Military Security Companies (PMSCs), these companies conduct security and support operations for civilian companies, governments and sometimes even international organizations including the United Nations. They are at the center of bitter controversies over the future of world order and governance.

Being non-state, these companies sometimes appear to be beyond all law: domestic and international, the law of the home country (the state in which they are legally chartered or the state they work for under contract), and the host government (the state in which they work at any particular moment). International law may be remote, irrelevant or unenforceable. Thus, their actions can be lawless, beyond the normal accountability of deadly actors.¹

The most infamous example of the lack of control over private military security came on 16 September 2007, when American employees of Blackwater Security, guarding a U.S. State Department convoy, panicked and launched a ten-minute machine-gun attack on Iraqi civilians in Baghdad's central Nisour Square, killing 17 and injuring 20 innocent civilians. The accused guards were immediately rushed out of Iraq by their employer, who refused to cooperate with

the Iraqi government. The unprovoked attack was a diplomatic catastrophe for the United States, persuading millions of Iraqis that the United States was not primarily interested in their welfare, pushing more Iraqis to support anti-American insurgents. After eight years, four of the security guards were prosecuted in the United States.²



There also are private military success stories, the best known surrounding Executive Outcomes, a South Africa/United Kingdom chartered firm that defeated the military opposition in Sierra Leone in 1997 and allowed restoration of a legitimate government, although they were widely accused of indiscriminate attacks on civilians, atrocities that led to the closing of the company.³

¹ Jose L. Gómez del Prado, 'The Role of Private Military and Security Companies in Modern Warfare: Impacts on Human Rights', *The Brown Journal of World Affairs*, August 2012.

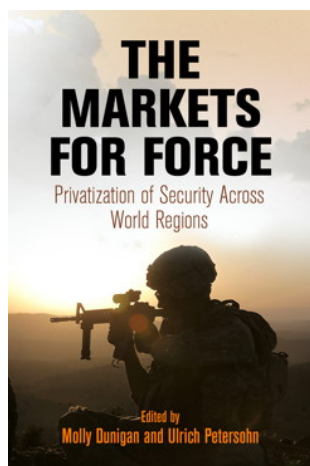
² 'Former Blackwater guards sentenced for massacre of unarmed Iraqi civilians', *Guardian*, 13 April 2015.

³ Thomas K. Adams, 'The New Mercenaries and the Privatization of Conflict', *Parameters*, Summer 1999, pp. 103-119; Peter W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (New York: Cornell University Press, 2007).

Issue Brief for the General Assembly First Committee Disarmament and International Security

For the international community, private security companies raise issues including:

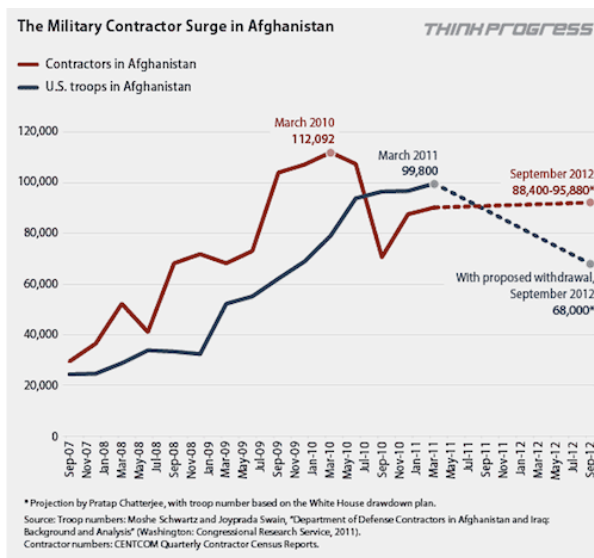
- Fear that private security companies act with impunity and little care for the innocent.
- Legal accountability for combatants who may not be covered by the law of either their home state or host countries (country of operation).
- The risk of excessive force and atrocities against civilians among combatants lacking legal accountability
- The future if state sovereignty and the state's monopoly on legitimate violence.
- Pressure for privatization and adaptability in the face of globalized and highly adaptive security threats.



Background:

Private military and security companies (PMSCs) are the most recent embodiment of mercenary work. There are currently over 30 Private military and security companies (PMSCs) around the world. Most of them are based in English speaking countries. Some of these companies provided services to not only civilian companies but various government organizations. These services range from risk analysis to combat training to detail security engagement. Due to the wide range, it is difficult to describe these organizations as purely combative element. Therefore, it is equally as

hard to regulate and manage the actions and procedures of these groups. Without any standard rules of conduct and a system of punishment, these companies fall into the same problem of UN control as terrorist groups. Being non-state actors, these companies are harder to pressure into conducting themselves in the proper manner befitting a standard state military.



The largest private security firms are focused on domestic security services, usually working as watchmen. They employ millions worldwide and are usually accepted, so long as they adhere to domestic law. Those offering military support services, usually shipping supplies, maintaining facilities, and engaging in other background work are least controversial. Very few firms specialize in lethal violence, in large part because most countries' laws make this impossible. In most countries, deadly force is legal only for state security agencies—police, other law enforcement agencies, and the military—and anyone else using deadly force are liable to be prosecuted for homicide. In the past, private military security firms have operated out of several countries. Some, such as South Africa, have prohibited them.

A few countries—especially the United States and United Kingdom—permit them for specific roles, especially as security guards for their officials abroad. Most governments rely on host

Issue Brief for the General Assembly First Committee Disarmament and International Security

country police and security services for the safety of their personnel in that country. The freedom of foreign security services to use deadly force depends on specific legal agreement with the host country government. For example, for private security guards protecting American diplomats in Afghanistan, their legal status and the limits on their operations armed defined by careful legal agreements negotiated with the government of Afghanistan.

A more recent innovation are floating arsenals, ships that never leave international waters (usually outside all coastal countries 12 mile coastal limits). Because private security forces come under the domestic law of any country they enter, shipping companies pay floating arsenals, which stay at sea and are free to keep to keep weapons they would not be allowed in port. Beyond any country's control, floating arsenals are contracted by shipping firms for protection against piracy. They are also are highly suspect, potentially undarning the regulatory efforts of coastal countries.⁴



A major problem is how to define private security companies. The problem is caused by the wide spectrum of private firms in security business. These range from firms specialized in unarmed watchmen services, to security guards who might be armed, to a large number of private security firms engaged in logistics and support services for state militaries (such as ferrying supplies, maintaining bases and kitchen services), to security services that operate independently outside their home country, even including the use of deadly force.

⁴ 'Floating arsenals: The boats full of guns for hire against pirates', *BBC*, 18 December 2014.

Current situation

The act of states utilizing foreign or non-state actors has been a practice for centuries. For example, both the French and British government have enlisted foreign persons to fight as soldiers in regional and foreign conflicts. However, the usage of such forces has increases in recent years. The United Nations has dramatically increased its use of PMSCs in recent years, hiring them for a wide array of security services and giving them considerable influence over its security policies, as a 2012 report revealed.

PMSCs do not supply the United Nations only with security services; frequently they supply other specialized services such as advice, training, demining, logistics, etc. However, this reliance comes with a price; PMSCs are routinely associated with scandal and misconduct. "People working for private military and security companies (PMSCs) have been accused of engaging in a number of human rights violations including the abuse and torture of detainees, shootings and killings of innocent civilians, destruction of property, sexual harassment and rape, human trafficking in the recruitment of third-country nationals, weapons proliferation, and participation in renditions." Clearly, these allegations have painted a negative image of PMSCs.

Thus, these firms become a kind of double edged sword in global politics. Being non-state actors, they are not bound to international law or UN resolutions. This is an advantage and disadvantage of these companies. While, they allow states to conduct specific operations that normally couldn't be done; the probability that of backlash as a result of the companies' actions is relatively high and unfavorable for all involved. And with PMSCs not readily under legal control, crimes committed during operations can go unpunished.

Private business are the biggest clients for PMCs, especially companies that operate in regions where state security series are weak or

Issue Brief for the General Assembly First Committee Disarmament and International Security

non-existent. The oil industry, which often drills and pumps in regions beyond state authority, and other mineral extraction industries, are the some of the biggest clients of PMSCs to protect their operations. The firms they hire tend to be a combination of former soldiers from their home countries, and militiamen from the surrounding community in the host country.

Some countries have an official preference or policy regarding these operations. They might rely on PMCs because their armed forces are too small, or because they are ideologically committed to privatization, even if this means sacrificing state control.

Others see the use of PMCs as a convenient option. They know these firms act without strict oversight, and turn to them for work the state is legally incapable of, knowing they might violate human rights law and international humanitarian law.

For still others, PMSCs are useful because they can be dispatched without the legal requirement for the use of state armed forces, such as a declaration of war or a UN resolution. They are much more versatile, allowing governments to overcome the requirements of domestic law.

While some governments see advantages in the use of PMCs, others see them as threats to state sovereignty and the rule of law. They fear that PMCs are beyond international law and domestic rules, ignore domestic rules of the host countries where they operate, and are not accountable under the law of the countries from which they originate.

Role of the United Nations

United Nations is dedicated to preserving and promoting peaceful coexistence among its 193 member states, as well as the welfare of the world's 7.5 billion people. Since PMSCs are non-state actors (NSAs), they challenge core principles of the UN and the Charter. Addressing the issue of non-state actors (whether they act in the benefit or harm of

nations) has increasingly been a subject of debate among the UN member states.

An example of the contradictions raised by the issue is the UN approach, which still sees PMSCs as mercenaries, independent soldiers of fortune, a scourge from the 1970s, when the issue was very different. The United Nations also relies on PMSCs today for the security of many humanitarian activities, including disaster relief in conflict-prone regions.⁵

With these issues in mind, the United Nations established a Working Group on Mercenaries to help governments to recognize the need for a legally binding international agreement to regulate the use and activities of private military and security companies (PMSCs) to complement existing regulations.

The costs and benefits of these companies must be weighed carefully. Given the fact that the UN has used some of these organizations in the past, especially for protection of humanitarian work, the UN member states are sharply divided on whether to get rid of them altogether, or to create a hard-fast standard to prevent issues arising in the future.

Proposals for further action

- *Commission a study* by the UN Secretary-General requesting recommendations for further action.
- *Require international approval* of private security forces operating outside their home country. This would forbid their working in other countries without previous clearance and approval by the international community. International consensus would be required first. This would greatly reduce their freedom of operation.

⁵ Colum Lynch, 'U.N. embraces private military contractors', *Foreign Policy*, 17 January 2010; and Darja Schildknecht, 'Robust UN Peacekeeping and Private Military and Security Companies', *Human Security Centre*, 4 May 2015

Issue Brief for the General Assembly First Committee Disarmament and International Security

- *Require an international oversight agency* whenever PMSCs operate, monitoring their work and reporting any irregularities, to insure they comply with the law of the home country and host country, and to facilitate prosecution when they break laws. The rules for such monitoring and oversight would have to be decided, as would how to finance it.
- *Establish preconditions*, rules of the road, stating exactly when PMSCs can operate and when they are prohibited.
- *Prohibit private security operations* outside the sovereignty territory of the licensing country. This is consistent with the UN Charter, which allows states to take the measures they see fit for self-defense (Charter Article 51). But it would prohibit use of private security outside a state's own territory. Only armed forces directly controlled by the state or the United Nations would be allowed. This would restore that state's monopoly on the legitimate use of force.
- *Universal standards* for PMSC licensing, specifying conditions for use of force, and legal accountability

Country positions

The challenge of PMSCs is a classic issue for the General Assembly, characterized by a strong desire on the part of most states to focus on the issues caused by other states, while preserving their own freedom of action.

There is a deep lack of agreement on which way to go. The Non-Aligned Movement (NAM), the dominant UN voting bloc, generally is agreed on an outright ban, although some members increasingly see a role (if carefully regulated) in some circumstances, especially to protect commercial investments from guerrilla or

terrorist attack. A large, informal group led by the European Union and some Latin American countries, want careful oversight. Others, including China, some European Union states, Russia and the United States, want to preserve prerogatives or protect their business interests. This gap explains the lack of progress to date



To overcome this inertia will require farsighted determination and willingness to compromise. Major bloc and country positions include:

China and East Asia: has a massive private security industry, but mostly this is domestic and unarmed, not allowed to use deadly force, which is reserved exclusively for the People's Armed Police and the People's Liberation Army. But Chinese firms abroad, including oil and mineral extraction firms, often rely on private security firms for the safety of their operations. China wants to strengthen national sovereignty, except where it needs freedom to contract. Some other East Asian states often see things the same.

The Europe Union is agreed on the importance of elevating the role of international law, especially the strength of law vis-a-vis private firms, regardless of the nature of those private firms. The EU seeks high legal standards, specific rules, and agreed best practices for their regulation. A partial exception are the countries of Southeast Europe, such as Serbia and Croatia, where the supply of private military services is an important export industry, a legacy of the large military establishments left from the wars of the 1990s.

Issue Brief for the General Assembly First Committee Disarmament and International Security

Non-Aligned Movement: The 120 countries of the largest UN voting bloc, in Africa, East Asia and Latin America, usually are divided and agree mostly on vague compromises. PMSCs are an exceptional issue on which most can agree, especially on their determination to suppress such firms and restore their own national sovereignty. They generally agree that foreign countries where such firms originate must cooperate to reduce the freedom of such firms, take legal responsibilities for their action, and restrict their movements to only host countries where they are specifically welcome.

The Russian Federation is especially interested in the rights and interests of its citizens in their legal work, whether as school teachers or private military security personnel. It is willing to work

with all governments to strengthen national sovereignty and the rights of private firms serving the policy interests of the Russian Federation.

The United States relies on private security companies for numerous military-related and security services, having reduced the budgets of most of its own government agencies. It also seeks to strengthen the rule of law for all countries equally.

Issue Brief for the General Assembly First Committee Disarmament and International Security

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