



DISEC

**ROLE OF PRIVATE MILITARY
COMPANIES IN CREATING
AND SUSTAINING
CONFLICTS IN THE
DEVELOPING**

**UNDER SECRETARY-GENERAL
HILAL GÜLTEKIN**

LETTER FROM SECRETARY GENERAL

Dear delegates,

I would like to give a warm welcome to all of you that come to participate CityMUN 2020. I hope to give you an amazing experience that you can look back on with joy.

Over the course of 3 days in total, you are going to be saving our world. I hope that you take this opportunity to widen your horizon to in a respectful manner, challenge and be challenged and form new friendships. Our team worked so much for you, both academically and organizational. During these 3 days, we hope that you'll be pleased.

We can't wait to see you all in CityMUN 2020. Please don't hesitate to ask me anything via email.

mervekarakulak6@gmail.com

Yours Sincerely,
Merve Karakulak

LETTER FROM UNDER SECRETARY GENERAL

Dear Participants,

It is my utmost pleasure to welcome you to CITYMUN 2020. My name is Hilal Gültekin. I'm more than happy to serve you as the Under Secretary General responsible for the Disarmament and International Security Committee.

In this committee you will be discussing " The role of private military companies in creating and sustaining conflicts in the developing world " Also, please do not forget that this issue has a very important place in the world. Therefore, I wish you all fruitful, cooperative, fulfilling and efficient debates. Hope you can find decent resolutions upon this important issue. I hope you will have 3 amazing days.

You can contact me for inquiries about the guide and conference in general at hilalg365@hotmail.com

Yours Sincerely,
Hilal GÜLTEKİN
Under Secretary General



“The First Committee deals with disarmament, global challenges and threats to peace that effect the international community and seeks out solutions to the challenges in the international security regime. It considers all disarmament and international security matters within the scope of the Charter or relating to the powers and functions of any other organ of the United Nations; the general principles of cooperation in the maintenance of international peace and security, as well as principles governing



disarmament and the regulation of armaments; promotion of cooperative arrangements and measures aimed at strengthening stability through lower levels of armaments. Being the first committee of the general assembly, the mission of DISEC (Disarmament and International Security Committee) is to deal with issues related to disarmament, global issues and to tackle possible threats to international peace. The committee adopted its first resolution in 1946 in light of the events of Hiroshima and Nagasaki bombings. All 193 nations of the UN are eligible to attend the committee.

AGENDA ITEM: THE ROLE OF PRIVATE MILITARY AND SECURITY COMPANIES IN CREATING AND SUSTAINING CONFLICTS IN THE DEVELOPING WORLD

INTRODUCTION

Private military companies (PMCs) are companies that have armed military operatives for hire, the global industry for private armies is worth more than \$ 200 billion. It is identified as an armed party that is unaffiliated to any government and acts independent of any political affairs,



taking action directly on behalf of what the employer wants. Their work may vary from assisting in conflict to protecting officials and natural resources, training militaries or providing logistics. Traces of the first PMC lead back to Captain David Sterling, founder of the British Special Air Forces in 1941. In 1967, he founded the first 20th century private military under the name of WatchGuard International; initially intended to train armies of the Persian Gulf sultanates. During the same time period when the WatchGuard was founded, mercenary and militia activity rose greatly in Africa, along with private parties overthrowing governments and assassinating leaders.

PMCs are similar to mercenaries that have existed for a long time with the only difference between them being the mercenaries are uncontrolled individuals, PMCs are legally regulated and the credit goes back to the 1990s and the end of the cold war, at the time many States around the world started downsizing their militaries, this action created a huge amount of laid-off soldiers whom have been living for a long time under military-life ways disconnected from civilian life. Then private corporations hired these laid-off soldiers and states started outsourcing some of their work to private contractors who were much

more efficient and cheaper and could be utilized to keep such trained individuals outside of the civilian world .

Commonly, states distinguish between Private Security Companies (PSCs) , which provide security and protective services, and Private Military Companies (PMCs) , which provide military support and training.

However, this differentiation in practice is problematic. Due to mergers and acquisitions, a majority of the companies in the sector offers a range of services that is not limited to either security or military purposes, but rather they perform both. In addition, they often provide relevant technologies as well as general support to national armies. Governments also often distinguish between companies that operate offensively and companies that operate defensively. This is misleading as well. First, the distinction between offensive and defensive military action does not exist in international law – both amount to “participation in hostilities”. Second, in practice it is not always possible to tell offensive from defensive behavior. Acknowledging this problem, the Montreux Document, signed by 53 states as well as by NATO, the EU, and the OSCE, defines PMSCs as:

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

OVERVIEW

Private Military and Security Companies (PMSCs) polarise – some demonise them, some believe them to be the future of peacekeeping. Particularly in peace enforcement operations, states are reluctant to send their own soldiers. PMSCs could fill the void. In fact, in recent years the use of private military contractors in armed conflicts has increased considerably. They are employed by states to support their national armies, but also by intergovernmental organizations such as the United Nations. Historically, however, the UN has not been thrilled about this idea, believing that the responsibility to protect must rest with

states. In countries where international interventions are underway, PMSCs are most likely to be employed by governments, international organizations, NGOs and reconstruction firms. The US government arguably is the largest client, with the number of contractors in Iraq and Afghanistan equaling the number of US Army personnel. Other states, among them Germany, the UK, France, the Netherlands, Sweden, Norway and Poland also employ PMSCs as support for their own armies. In addition, international organizations, among them the UN, NATO and the EU, increasingly rely on PMSCs for risk assessments, guarding services, logistics and life support.

There are economic as well as political reasons for this development. States argue that using PMSCs is considerably cheaper than maintaining large armies, where over time paying for obligations such as pensions and disability benefits, as well as military equipment before and after use, may add up. However, outsourcing state competences impacts political accountability and wrongdoing on the part of PMSCs in most cases goes unpunished. This occurs both

because the environment in which PMSCs operate can be difficult to navigate, and because there are gaps in existing legislation. This is compounded by the problem of distinguishing the legal operations of PMSCs from prohibited mercenarism.

1. Reasons for Contracting PMSCs

Both economic and political factors may play into a government's decision to contract a PMSC to support its national army.

After the end of the Cold War, obligatory military service in national armies has increasingly fallen out of fashion, so that national armed forces reduced the number of their personnel significantly. Today, many governments experience a lack of personnel and are therefore unable to provide sufficient troops to sustain international interventions. As a consequence, tasks such as the protection of military or refugee camps, humanitarian missions and local populations are outsourced to PMSCs . As long-term outsourcing of certain military services becomes the norm, many armed 44 forces no longer have the expertise to maintain and operate advanced equipment. This creates

a relationship of dependency between the public and private military sectors.

It is also often argued that PMSCs operate more cost-efficiently than national armies and that private contractors can provide the personnel and equipment that is too expensive for the national armies to acquire and maintain “just in case” . However, there is some evidence against this. Investigations into PMSCs operating in Iraq and Afghanistan suggest that taxpayer money has been wasted on a large scale as a result of corruption, subcontracting and so-called indefinite delivery/indefinite quantity (IDIQ) contracts, which provide for an indefinite quantity of supplies or services for a fixed period of time. Finally, as in most states governments are able to hire PMSCs without involving their parliaments or informing the public, PMSCs are used to mitigate the potential political fallout of unpopular military interventions. This has two political advantages: Executives sidestep the legislature, and its approval process, and thereby may adapt or step up interventions with the help of PMSCs as they see fit. In addition, casualties among PMSC employees are generally not as widely publicized, which creates the impression that interventions have a lower rate of casualties.

had hired South African based PMC Executive Outcome whom owned much more advanced and heavy weaponry varying from helicopters and heavy artillery. After the hiring of Executive outcome the government drove out the rebels and reinstalled law and order.

The US government stands today as the largest contractor of PMCs, having worked with companies such as ‘Kellogg, Brown and Root’ , ‘DynCorp International’ , ‘Fluor’ and ‘AECOM’. The latter two primarily focused on non-lethal activity. PMC engagement is perfectly pictured in the recent US intervention in Iraq and Afghanistan. In both situations, civilian armed contractors have composed the majority of the intervention forces, outnumbering the US armed forces. These companies allowed the US to maintain the war on a geographically distant front for a significant period, extending the lifetime of war status in the area.

In the specific case of the Afghanistan War, reports done by the Congressional Research Service indicate a constant rise in private contractors in Afghanistan, and the Pentagon is unable to identify what they are doing there. As of June 2013, there were about 108,000 private contractors deployed in Afghanistan, equating to about 1.6

contractors for every American soldier. The US is gradually transferring intervention in Afghanistan to PMCs, which reduces their legal liabilities and responsibilities towards the human rights violations taking place in the area. Currently, PMCs play the leading role in the Afghanistan war, acting as the lifeline that is keeping the war ongoing for nearly 20 years.

a) Afghanistan

International PMSCs first arrived in Afghanistan after 9/11. The number of Afghan security firms increased rapidly during this time period as well. Since then, armed PMSC personnel have been implicated in violence against civilians and in extrajudicial killings, as well as human rights abuses, in particular the exploitation of civilians, including extortions, protection rackets, kidnapping, human trafficking, theft and looting. Employees of international PMSCs have evaded criminal prosecution abroad as well as at home. Afghan security firms were found to have been involved in power struggles between competing clans, militias or warlords. Audits also revealed significant corruption, waste and inefficiency.

In 2010, the large presence of armed PMSCs and a number of problems that had emerged with them, leading to a feeling of insecurity among the population, led to their prohibition in Afghanistan. A state-owned successor was created to fill the impending vacuum, but failed to meet the security demands of international actors and was finally closed in 2014. PMSCs have continued to operate in Afghanistan either under exception licenses or to carry out non-armed services.

These problems stem from insufficient transparency, accountability and control by clients, home states, host states and the industry itself

b) Chad and CAR

The European peacekeeping mission EUFOR, who were deployed to Chad and the Central African Republic in 2007, did not employ private security guards but did contract PMSCs for the construction of field camps and for the provision of maintenance services and real-life support.

In this context, EUFOR employed the French state-owned company Economat des Armées (EdA) as its prime contractor. EdA habitually subcontracted services to a small

group of wealthy local wholesalers who were able to dictate prices and achieve large profit margins. This eventually drove family-based suppliers out of business . EdA also paid relatively high wages even to unskilled 50 workers, which resulted in turmoil on the local labour markets .

3. Attempts at Regulation

Past attempts at regulating private military and security contractors have mostly focused on mercenarism, which is prohibited under international frameworks. There are two international conventions aiming to eliminate mercenaries through the criminalization of mercenary activities, known together as the mercenary conventions; the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and the then Organization of African Unity – now the AU – Convention for the Elimination of Mercenarism in Africa . In addition, international humanitarian law (IHL) deals with mercenaries in Additional Protocol I of the Geneva Conventions. Although the definition of mercenaries in all of these documents is very similar, there is an important difference between the mercenary conventions and IHL regarding the consequence of being deemed a mercenary. Provided

that states have implemented the required legislation, under the mercenary conventions persons who fulfill the definition of a mercenary can be prosecuted for the crime of being a mercenary. In contrast, under IHL being a mercenary in and of itself does not constitute a crime, however, if captured a mercenary does not benefit from prisoner-of-war status.

Under Article 47 of Additional Protocol I, a mercenary is any person who fulfills the following six conditions:

- “(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.”

However, this definition has widely been criticized as being virtually “unworkable” as six cumulative conditions have to be fulfilled in order for a person to be considered a mercenary.

CURRENT SITUATION

1. Responsibility and Accountability

What were until recently regarded as responsibilities of the government are now being delegated to private service providers. With this shift, it is becoming increasingly difficult to attribute responsibility. A lack of transparency creates opportunities for corruption—the more so because most military interventions now occur in countries where corruption is rampant .

Also, even in cases of grave breaches of international law and human rights, PMSC employees have usually been able to avoid prosecution. This is due first of all to a political unwillingness to hold private military contractors accountable, however, there are also a number of legal loopholes in international law and international humanitarian law that impede prosecution. It should be noted, that even if PMSC employees were to be deemed civilians, they may nonetheless be prosecuted for violations of IHL. Yet,

the question whether employees of PMSCs are combatants is essential to answer for a number of reasons. First of all, it is important to determine whether PMSC employees may lawfully participate directly in hostilities and, as a consequence, whether they are a legitimate military objective for opposing forces that can be attacked. If no, it follows that PMSC employees who in fact participate actively in hostilities may be prosecuted for doing so, and could even potentially be deemed mercenaries .

According to the Third Geneva Convention, Art. 4A, combatant status may only be attributed to members of

- a) the armed forces,
- b) a military force
- c) a volunteer force of a party to the conflict.

As PMSCs are private companies the whole point of which is to privatize some aspects of military operations, it is inherent to the concept that their employees are not members of the armed forces .

In fact, examples from Iraq demonstrate that states who hired PMSCs tend to emphasize that the PMSCs' employees are in fact civilians, so that states generally do not accept responsibility for their actions . Yet, PMSCs "belong" to the armed forces in the sense that they are contracted to perform services for them, so that they lack the

independence to be considered a militia or volunteer force. Therefore, PMC employees can usually not be considered combatants and may not participate actively in hostilities. It follows also that under IHL, PMSC employees are considered civilians. This distinction is important when discussing PMSCs.

Nonetheless, there are several features of IHL that impede the implementation of regulatory schemes dealing with PMSC employees as combatants. Most importantly, the concept of what actually constitutes direct participation in hostilities is relatively fluent and still undefined. There is also a lack of distinction in IHL between fighting to attack and fighting to defend, so that it would be meaningless to stipulate that PMSC employees are only allowed to fight to defend .

PMSC employees may be extended prisoner-of-war status if they accompany members of the armed forces and provide services such as building bases (GCIII, Art. 4A). It has been argued therefore that PMC employees are “quasi-combatants”, however, such a designation is not provided for under IHL .

There are a number of ways to reaffirm the responsibilities of individuals under IHL. For instance, if PMCs were

construed as state agents, human rights would be legally binding for them. It could further be possible that human rights obligations are directly written into contracts states or state actor conclude with PMCs or even into the national licensing or regulatory schemes under which PMCs are registered.

2. Subcontractors

These problems are exacerbated as governments, NATO and the EU outsource contractor selection, management and control to prime contractors, generally large firms such as KBR, Supreme and Xeless, who subcontract part of their work to smaller firms. This results in long and intransparent subcontracting chains. In Afghanistan, suppliers of military and security services are often three or more levels removed from the original client. As result, international actors have inadvertently funded corrupt or criminal PMSCs, warlords, or even the Taliban. This practice further weakens political and legal accountability. Not all governments and international organizations accept responsibility for subcontractors and oversight and monitoring is often limited to the first level of subcontracting.

3. PMSC involvement in illicit arms trade

One of the services many PMSCs offer is the procurement of arms. The presence of PMSCs in conflict areas has been found to increase illicit arms trafficking, as PMSCs due to their unclear legal status have been able to sidestep national or regional arms embargoes . Where governments are prohibited to sell weapons to certain states, regions or groups, there are no regulations that would ban private contractors from purchasing weapons and re-selling them into conflict zones. This problem is further exacerbated by the general lack of oversight and monitoring mechanisms, corruption, as well as the lack of common international standards for the training and vetting of PMSCs and their employees.

Discussion of the problem

1. Options for Regulation

As of yet, there is no international regulatory framework for PMSCs. There is also no official formula that defines the government's core military responsibilities, which could limit or prohibit the outsourcing of those responsibilities to private companies. Appropriate registration and

licensing systems must be established to ensure that contracts with private actors are fulfilled in a professional manner and in accordance with international law . There are three ways of doing so via international legal regulations, international industry self regulation or national regulations.

a.International Legal Regulations

The status of the individuals, i.e. whether they are civilians or combatants, also determines the rights and obligations of individuals -- civilians enjoy special protection -- and whether violations are to be prosecuted under civilian or military jurisdiction. The problem becomes even murkier when PMCs are not contracted by states, but by corporations, intergovernmental organizations, NGOs or individuals.

The member states are the military arm of the UN. The UN must not have its own military contingents. Currently, the UN employs PMSCs to perform tasks relating to protection of buildings and convoys, risk assessment, training, logistical support and mine clearance, which often are

provided by armed personnel. The distinction between security and military services can therefore often be difficult

The Working Group on the Use of Mercenaries as a Means of Violation Human Rights and Impeding the Exercise of the Rights of Peoples to Self-Determination has reached no consensus on how to regulate PMSCs.

b. International Industry Self-Regulation

During the last few years the private security industry saw an increase in voluntary initiatives. The International Code of Conduct (ICoC), which is based on IHL and human rights, lays out rules for the industry. The ICoC was established in 2010 as a result of a multi stakeholder process involving PMSCs, governments and civil society organizations. Over 700 PMSCs have signed the ICoC but only 87 PMSCs are a member of the International Code of Conduct Association (ICoCA).

c. National Regulations

Many host states have national regulations in place, which regulate the use of certain types of PMSCs. However, in

weak, failing or failed states, where PMSCs are most often employed, it is doubtful whether such regulations can be implemented effectively. Governments are often unable to enforce the law they put in place and hold PMSCs and personnel accountable in case of wrongdoing. The US has a complex regime of regulations in place. During the aftermath of the scandals involving PMSCs working for the US government in Iraq and Afghanistan, the US assed a regulatory system for the contracting of PMSCs by US government agencies, as well as rules for monitoring and oversight and a licensing system for the provision of PMSC services abroad for clients other than US governmental agencies. However, regulation and oversight are split among several different bodies and were found to contain numerous loopholes. The UK has no licensing system in place and the government seems unwilling to regulate PMSCs through governmental contracts. The same goes for Germany, whose regulatory regime is limited to firms that operate within Germany.

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