

## **The Emergence of Private Military Firms and Their Impact on Global Human Rights**

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### **[ABSTRACT]**

International law has generally been considered by the students of law as a subject with little practical relevance. However, the importance of international law in legal practice is increasingly being recognized in recent years. This may, in great measure, be attributed to the impact of globalization. Great strides in the field of commerce, technology and communication make one doubt whether transnational boundaries are going to disappear. Environmental concerns and human rights issues really transcend state borders and assume global dimensions. International law and international institutions have to play a dynamic role in response to the new challenges. In current situation, the study of international law can no more remain uninspiring.

Arising out of the dying embers of the Cold War, private military firms (PMFs)<sup>3</sup> market their military force and skills primarily to decolonialized States, countries overrun with domestic conflict and unable to provide effectively for their own security needs<sup>4</sup>. As a

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<sup>3</sup> For a general discussion of the term "private military firms," see P.W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry and Its Ramifications for International Security*, Alternate Citation: 26 Int'l Sec. 186. Singer describes PMFs as corporate bodies specializing in the provision of military skills ranging from tactical combat and intelligence gathering to military training and technical assistance. *Id.* at 186. These military firms comprise an emerging industry offering a host of services.

<sup>4</sup> Robert Mandel, *The Privatization of Security*, (2001). Essentially, two classes of private military firms have emerged; while some PMFs contract directly with foreign governments to equip, train, and advise militaries, others serve as proximate instruments of their own government's foreign policy. For a discussion of the distinction between PMFs used to prop regimes and PMFs as proxy foreign policy tools, see Steven Brayton, *Outsourcing War: Mercenaries and the Privatization of Peacekeeping*, 55 J. Int'l Aff.

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result, PMFs amass unchecked power to affect conflict resolution, world economic stability, and geostrategic negotiations. Indeed, as corporations become larger--both economically and politically--corporate managers increasingly engage in decision-making traditionally exercised by politicians<sup>5</sup>. The decentralization of international security from state-organized militaries not only threatens the traditional Westphalian<sup>6</sup> model of state-monopolized force<sup>7</sup>, but also accentuates the inability of international law to hold private actors accountable<sup>8</sup> for their unchecked violation of basic human rights in conflict ridden regions.

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303, 308-12 (Spring 2002). See also David Shearer, *Private Armies and Military Intervention*, Adelphi Paper No. 316 (1998).

<sup>5</sup> Eric W. Orts, *War and the Business Corporation*, 35 *Vand. J. Transnat'l L.* 549, 556-57 (Mar. 2002).

<sup>6</sup> Westphalian sovereignty is the concept of nation-state sovereignty based on two principles: territoriality and the exclusion of external actors from domestic authority structures.

Many academics have asserted that the international system of states, multinational corporations and organizations which exists today began in 1648 at the Peace of Westphalia. Both the basis and the result of this view have been attacked by revisionist academics and politicians alike, with revisionists questioning the significance of the Peace, and commentators and politicians attacking the Westphalian System of sovereign nation-states.

<sup>7</sup> The Westphalian model of state-dominated warfare represents "trinitarian warfare," a principle whereby the government directs the war, a state-controlled army fights the war, and the people suffer.

<sup>8</sup> Ariadne K. Sacharoff, *Multinationals in Host Countries: Can They Be Held Liable Under the Alien Tort Claims Act for Human Rights Violations?*, 23:3 *Brook. J. Int'l L.* 927, 929 (1998).

## 1. INTRODUCTION

With the end of the *Cold War* and the advent of the *War on Terror*, Private Military Companies/Firms (PMFs)<sup>9</sup> have become an ever present part of modern armed conflict and post-conflict reconstruction<sup>10</sup>. They do have no dearth of clients<sup>11</sup>. The implications of this proliferation of private security and military companies for international humanitarian law and human rights are only beginning to be appreciated, as potential violations and misconduct by their employees have come to light in Iraq and Afghanistan<sup>12</sup>. This paper critically examines the theoretical risks posed by private military and security company activity with respect to violations of international humanitarian law and human rights, together with the incentives that these companies have to comply with those norms.

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<sup>9</sup> The companies that comprise the privatized military industry are referred to as private military companies ("PMCs") or private military firms ("PMFs"). Additionally, author and Brookings Institute scholar P.W. Singer organizes the privatized military industry into three sectors: "military provider firms, military consultant firms, and military support firms." Peter W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* 91 (2003). According to Singer, a military consulting firm "provide[s] advisory and training services integral to the operation and restructuring of a client's armed forces" by offering "strategic, operational, and/or organizational analysis."

<sup>10</sup> P.W. SINGER, *CORPORATE WARRIORS: THE RISE OF THE PRIVATIZED MILITARY INDUSTRY* 49 (2003).

<sup>11</sup> Laura Peterson, *Privatizing Combat, the New World Order*, in *Making a Killing: The Business of War* 5, 6 (2002), available at [http://www.icij.org/dtaweb/icij\\_bow.asp#](http://www.icij.org/dtaweb/icij_bow.asp#).

Their various clients include governments in the developed and developing world alike, non-state belligerents, international corporations, non-governmental organizations, the United Nations, and private individuals

<sup>12</sup> Benjamin Perrin, *Promoting compliance of private security and military companies with international humanitarian law*, *International Review of the Red Cross* (2006), 88:613-636 Cambridge University Press.

## **2. AN OVERVIEW ON PMF'S**

### **2.1 WHAT ARE PRIVATE MILITARY COMPANIES/FIRMS?**

PMFs are 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<sup>13</sup>. Unlike the individual dogs of war of the past, however, PMFs are corporate bodies that offer a wide range of services, from tactical combat operations and strategic planning to logistical support and technical assistance<sup>14</sup>.

### **2.2 EMERGENCE OF PMFS**

The modern private military industry emerged at the start of the 1990s, driven by three dynamics: the end of the Cold War, transformations in the nature of warfare that blurred the lines between soldiers and civilians, and a general trend toward privatization and outsourcing of government functions around the world<sup>15</sup>. These three forces fed into each other. When the face-off between the United States and the Soviet Union ended, professional armies around the world were downsized<sup>16</sup>. At the same time, increasing global instability created a demand for more troops. Warfare in the developing world also became messier—more chaotic and less professional—involving forces ranging from warlords to child soldiers, while Western powers became more reluctant to intervene<sup>17</sup>.

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<sup>13</sup> J.T. Mlinarcik, PRIVATE MILITARY CONTRACTORS & JUSTICE: A LOOK AT THE INDUSTRY, BLACKWATER, & THE FALLUJAH INCIDENT, *Regent Journal of International Law*. (2006)

<sup>14</sup> Q&A: Private Military Contractors and the Law, HUMAN RIGHTS WATCH, (Oct. 21, 2004), Retrieved from <http://www.hrw.org/english/docs/2004/05/05/iraq8547.htm>.

<sup>15</sup> Carlos Ortiz, *Regulating Private Military Companies: States and Expanding Business of Commercial Security Provision*, Retrieved from [www.privatemilitary.org/publications/ortiz\\_2004\\_regulating\\_private\\_military\\_companies.pdf](http://www.privatemilitary.org/publications/ortiz_2004_regulating_private_military_companies.pdf)

<sup>16</sup> Jostein Brobakk, Norwegian University of Science and Technology, After the Cold War: Structural changes and Israeli-Palestinian rapprochement, Paper presented at The fourth Nordic conference on Middle Eastern Studies: The Middle East in globalizing world, Oslo, 13-16 August 1998. retrieved from <http://www.smi.uib.no/pao/brobakk.html>

<sup>17</sup> Doug Bandow, Waging War Only When Necessary, (2008), retrieved from <http://www.antiwar.com/bandow/?articleid=12952>

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Meanwhile, advanced militaries grew increasingly reliant on off-the-shelf commercial technology, often maintained and operated by private firms. And finally, many governments succumbed to an ideological trend toward the privatization of many of their functions; a whole raft of former state responsibilities—including education, policing, and the operation of prisons—were turned over to the marketplace.

### **2.3 WORKS UNDERTAKEN BY THE PMFS**

Although the world's most dominant military has become increasingly reliant on PMFs<sup>18</sup>, the industry and its clientele are not just American. To get to Afghanistan, European troops relied on a Ukrainian firm that, under a contract worth more than \$100 million, ferried them there in former Soviet jets. And the British military, following in the Pentagon's footsteps<sup>19</sup>, has begun to contract out its logistics to Halliburton<sup>20</sup>.

Nowhere has the role of PMFs been more integral—and more controversial—than in Iraq<sup>21</sup>. Not only is Iraq now the site of the single largest U.S. military commitment in more than a decade; it is also the marketplace for the largest deployment of PMFs and personnel ever. More than 60 firms currently employ more than 20,000 private personnel there to carry out military functions<sup>22</sup>—roughly the same number as are provided by all of the United States' coalition partners combined.

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<sup>18</sup> The Pentagon has entered into more than 3,000 such contracts over the last decade.

<sup>19</sup> It is estimated that the Pentagon employs over 700,000 private contractors stationed all over the globe. See Greg Guma, *Outside View: Privatizing War*, United Press Int'l (July 7, 2004), available at [http://www.veteransforpeace.org/Outside\\_view\\_privatizing\\_070804.htm](http://www.veteransforpeace.org/Outside_view_privatizing_070804.htm)

<sup>20</sup> Halliburton is a US-based oilfield services corporation with international operations in more than 70 countries. Following the end of the Gulf War, the Pentagon, led by then Defense Secretary Dick Cheney, paid Halliburton subsidiary Brown & Root Services over \$8.5 million to study the use of private military forces with American soldiers in combat zones. It has ever since been in controversy regarding its Private Army.

<sup>21</sup> Olsson Christian, *Private Military Companies in Iraq : a Force for Good?*, (2005) Retrieved from <http://www.libertysecurity.org/article127.html>

<sup>22</sup> These figures do not include the thousands more that provide nonmilitary reconstruction and oil services.

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These large numbers have incurred large risks. Private military contractors have suffered an estimated 175 deaths and 900 wounded so far in Iraq<sup>23</sup>—more than any single U.S. Army division and more than the rest of the coalition combined<sup>24</sup>.

More important than the raw numbers is the wide scope of critical jobs that contractors are now carrying out, far more extensive in Iraq than in past wars. In addition to war-gaming and field training U.S. troops before the invasion, private military personnel handled logistics and support during the war's buildup<sup>25</sup>. The massive U.S. complex at Camp Doha in Kuwait, which served as the launch pad for the invasion, was not only built by a PMF<sup>26</sup> but also operated and guarded by one. During the invasion, contractors maintained and loaded many of the most sophisticated U.S. weapons systems, such as B-2 stealth bombers<sup>27</sup> and Apache helicopters<sup>28</sup>. They even helped operate combat systems such as the Army's Patriot missile batteries and the Navy's Aegis missile-defense system.

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<sup>23</sup> Precise numbers are unavailable because the Pentagon does not track nonmilitary casualties.

<sup>24</sup> [http://en.wikipedia.org/wiki/Casualties\\_of\\_the\\_Iraq\\_War](http://en.wikipedia.org/wiki/Casualties_of_the_Iraq_War)

<sup>25</sup> Alfred van Staden, THE (IR)RESISTIBLE TEMPTATION OF PRIVATIZING SECURITY: A DUTCH PERSPECTIVE, retrieved from

[http://www.clingendael.nl/cscp/events/20080523/20080523\\_cscp\\_speech\\_staden.pdf](http://www.clingendael.nl/cscp/events/20080523/20080523_cscp_speech_staden.pdf)

<sup>26</sup> Report by Global Security, Retrieved from <http://www.globalsecurity.org/military/facility/camp-doha.htm>

<sup>27</sup> B-2 Spirit (also known as the Stealth Bomber) is a multirole heavy bomber with "low observable" stealth technology capable of penetrating dense anti-aircraft defenses to deploy both conventional and nuclear weapons.

<sup>28</sup> The AH-64 Apache is an all-weather day-night military attack helicopter with a four-bladed main and tail rotor and a crew of two pilots who sit in tandem. The main fixed armament is a 30 mm M230 Chain Gun under the aircraft's nose. It can also carry a mixture of AGM-114 Hellfire and Hydra 70 rocket pods on four hardpoints mounted on its stub-wing pylons. The AH-64 is the principal attack helicopter of the United States Army, and a successor to the AH-1 Cobra.

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PMFs—ranging from well-established companies such as Vinnell<sup>29</sup> to startups such as the South African firm Erinys International<sup>30</sup>—have played an even greater role in the post-invasion occupation and counterinsurgency effort. Halliburton's Kellogg, Brown & Root division, the largest corporate PMF in Iraq, currently provides supplies for troops and maintenance for equipment under a contract thought to be worth as much as \$13 billion<sup>31</sup>.

An estimated 6,000 non-Iraqi private contractors currently carry out armed tactical functions in the country. These individuals are sometimes described as "security guards," but they are a far cry from the rent-a-cops who troll the food courts of U.S. shopping malls. In Iraq, their jobs include protecting important installations, such as corporate enclaves, U.S. facilities, and the Green Zone in Baghdad; guarding key individuals<sup>32</sup>; and escorting convoys, a particularly dangerous task thanks to the frequency of roadside ambushes and bombings by the insurgents<sup>33</sup>.

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<sup>29</sup> The Vinnell Corporation is an international private military company based in the United States specializing in military training, logistics, and support in the form of weapon systems maintenance and management consultancy, whose most recent claim to fame is their training of portions of the Saudi Arabian National Guard as a joint Saudi/American owned company called Vinnell Arabia. Vinnell Corporation is a subsidiary of Northrop Grumman Corporation.

<sup>30</sup> Erinys International is a British private security company registered in the British Virgin Islands. The Group operational HQ is in Dubai, UAE and other offices are in Andover, Hampshire (Erinys UK Ltd) and Johannesburg (Erinys South Africa Ltd). Erinys International has subsidiaries in the UK, South Africa, Democratic Republic of Congo and Republic of Congo and associated companies in Iraq and Nigeria. Erinys Group companies provide security and support (for example: communications and logistics) services for personnel and assets, except for Erinys South Africa, which specialises in the provision of ongoing and ad hoc risk evaluations of countries and projects particularly in Africa.

<sup>31</sup> P.W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* 14 (2003); Laura Peterson, *Privatizing Combat, the New World Order*, in *Making a Killing: The Business of War* 5, 6 (2002), available at [http://www.icij.org/dtaweb/icij\\_bow.asp#](http://www.icij.org/dtaweb/icij_bow.asp#).

<sup>32</sup> Ambassador Paul Bremer, the head of the Coalition Provisional Authority, was protected by a Blackwater team that even had its own armed helicopters.

<sup>33</sup> Patrick Radden Keefe, *Iraq: America's Private Armies*, Cornell University Press (2004) Retrieved from [http://www.patrickraddenkeefe.com/articles/media/NYRB\\_20040812.pdf](http://www.patrickraddenkeefe.com/articles/media/NYRB_20040812.pdf).

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### **2.4 PMFS AND LAWS GOVERNING WARS:**

While private, profit-motivated military actors are as old as the history of organized warfare, the international laws of war that specifically deal with their presence and activity are largely absent or ineffective. Particularly with regard to PMFs, what little law exists has been rendered outdated by the new ways in which these companies operate<sup>34</sup>. In short, international law, as it stands now, is too primitive in this area to handle such a complex issue that has emerged just in the last decade<sup>35</sup>.

The earliest formalized international laws of war in the modern state system were the Hague Conventions<sup>36</sup>, established at the turn of the twentieth century. The 1907 Hague Convention on Neutral Powers established certain legal standards for neutral parties and persons in cases of war<sup>37</sup>. However, it did not impose on states any obligation to restrict their own nationals from working for belligerents.

The next major legal regime to deal with private military actors was set up by the 1949 Geneva Conventions<sup>38</sup>. Importantly, its purpose was to create conditions of fair treatment of prisoners of war ("POWs") and establish proper activities in war, not to ban or control private forces<sup>39</sup>. As long as the mercenaries were part of a legally defined armed force<sup>40</sup>,

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<sup>34</sup> Samia K. Aoul et al., *Towards a Spiral of Violence?* (2000), available at [www.miningwatch.ca/updir/Memorandum-final-en.pdf](http://www.miningwatch.ca/updir/Memorandum-final-en.pdf).

<sup>35</sup> Goddard, S. E. , "Governing War: How Laws against Weapons are Made and Broken" Paper presented at the annual meeting of the ISA's 49th ANNUAL CONVENTION, BRIDGING MULTIPLE DIVIDES, Hilton San Francisco, SAN FRANCISCO, CA, USA. Retrieved from [http://www.allacademic.com/meta/p254377\\_index.html](http://www.allacademic.com/meta/p254377_index.html)

<sup>36</sup> Convention (V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land. Retrieved from <http://www.icrc.org/ihl.nsf/FULL/200?OpenDocument>

<sup>37</sup> Convention Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land (Hague V), Oct. 18, 1907, 36 Stat. 2310, 1 Bevans 654, available at <http://www.yale.edu/lawweb/avalon/lawofwar/hague05.htm>.

<sup>38</sup> Geneva Convention Relative to the Treatment of Prisoners of War, available at <http://www.unhchr.ch/html/menu3/b/91.htm>.

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they were entitled to POW protection<sup>41</sup>. International law sought to bring the practice of mercenarism under greater control.

In 1968, the U.N. passed a resolution condemning the use of mercenaries against movements of national liberation<sup>42</sup>. The resolution was later codified in the 1970 Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States ("1970 Declaration")<sup>43</sup>. The 1970 Declaration represented an important transition in international law, as mercenaries became "outlaws" in a sense<sup>44</sup>. However, it still placed the burden of enforcement exclusively on state regimes, failing to take into account that they were often unwilling, unable, or just uninterested in the task<sup>45</sup>.

### **3. PMF'S AND HUMAN RIGHTS**

In 1993, Arthur Walker and Carl Alberts, two of the most highly decorated pilots in the South African Air Force, joined the ranks of Executive Outcomes (EO), a private military firm. Lured by a \$6000 a month salary, these pilots were two of many arriving in Sierra

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<sup>39</sup> Mark Malan & Jakkie Cilliers, *Mercenaries and Mischief: The Regulation of Foreign Military Assistance Bill*, Inst. for Security Studies, Sept. 1997, available at <http://www.iss.co.za/Pubs/PAPERS/25/Paper25.html>.

<sup>40</sup> Which originally meant state militaries, but was later expanded to include any warring parties.

<sup>41</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, (Art. 47), (1978), Alternate Citation: 1125 U.N.T.S. 3

<sup>42</sup> Tom Calma, *Recent Developments in the Recognition of the Right of Self-Determination for Indigenous Peoples*, *Indigenous Law Bulletin*. 2004. Alternate Citation [2004] ILB 70.

<sup>43</sup> Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, Retrieved from <http://www.whatconvention.org/en/conv/0703.htm>.

<sup>44</sup> Refer to International Convention Against the Recruitment, Use, Financing, and Training of Mercenaries (Art. 1), Dec. 4, 1989, 2163 U.N.T.S. 96. Retrieved from <http://www.un.org/documents/ga/res/44/a44r034.htm>

<sup>45</sup> *Messiahs or Mercenaries? The Future of International Private Military Services*, Published in *International Peacekeeping*, Volume 7, Winter 2000, No. 4.

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Leone to support the Valentine Strasser<sup>46</sup> regime, a government recently born from a coup d'état. After signing a contract with the Sierra Leone government, EO moved in with its various supplies: two M117s<sup>47</sup> and an M124 Hind (Russian helicopter gunships), two Boeing 727 supply and troop transports, an Andover casualty-evacuation aircraft, and fuel-air explosives<sup>48</sup>. Immediately, EO began training an elite corps of Sierra Leoneans in the art of war and assisting in putting down the rebellion. Arthur Walker and Carl Alberts, ordered to fly air strikes over the bush in order to drive out the rebels. Unable to distinguish between civilians and rebels, the two pilots radioed back to their commander, asking for guidance. The commander's response: "kill everybody"; the pilots readily complied.<sup>49</sup>

The operations of PMFs in conflict regions have historically been problematic<sup>50</sup>. Lack of transparency, democratic oversight and accountability inevitably lead to a decreased perception of legitimacy on the part of these actors in the eyes of local governments and civilian populations<sup>51</sup>. Increasingly, civilian populations perceive PMFs as showing disdain for human rights, operating outside the framework of the rule of law and without

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<sup>46</sup> Valentine Esegrobo Melvine Strasser is a former head of state of Sierra Leone. He was a junior military officer until 1992, when he became the youngest Head of State in the world when he seized power just 3 days after his 25th birthday. He was the leading member of a group of six young Sierra Leonean soldiers who overthrew president Joseph Saidu Momoh in the April 29, 1992 military coup. Afterwards, the group formed the National Provisional Ruling Council (NPRC), with Strasser as its leader.

<sup>47</sup> The M117 is an air-dropped general-purpose bomb used by United States military forces. It dates back to the time of the Korean War of the early 1950s. Although it has a nominal weight of 750 lb (343 kg), its actual weight, depending on fuse and retardation options, is around 820 lb (373 kg). Its explosive content is typically 403 lb (183 kg) of Minol 2 or Tritonal.

<sup>48</sup> Bombs that remove oxygen from the air upon detonation

<sup>49</sup> Tina Garmon, *Domesticating International Corporate Responsibility: Holding Private Military Firms Accountable Under the Alien Tort Claims Act*. Tulane Journal of International and Comparative Law. (2003 Spring Edn.)

<sup>50</sup> Sidney Blumenthal, Red, white and mercenary in Iraq, 2007, Retrieved from [http://www.salon.com/opinion/blumenthal/2007/10/04/private\\_military\\_in\\_iraq/](http://www.salon.com/opinion/blumenthal/2007/10/04/private_military_in_iraq/)

<sup>51</sup> Report by the Political Affairs Committee. Rapporteur: Mr Wolfgang WODARG, Germany, Socialist Group. *Private military and security firms and the erosion of the state monopoly on the use of force*. Retrieved from <http://assembly.coe.int/Documents/WorkingDocs/Doc08/EDOC11787.pdf>.

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accountability to the state in which they operate or regulation by the state in which the company originates<sup>52</sup>. This culture of impunity leads to resentment of PMFs who profit from war in these regions. The feeling of resentment is exacerbated by the fact that many employees of PMFs receive neither proper screening nor training in understanding or asserting human rights within the frame of established, international legal standards. This fundamental set of rights was defined in the Universal Declaration of Human Rights of the United Nations in 1948<sup>53</sup>. Of the 60 publicly available Iraq contracts, none contains specific provisions requiring contractors to obey human rights, anti-corruption, or transparency norms,<sup>54</sup> nor do they appear to require training concerning the appropriate 'use of force'.

In its 2006 annual report, Amnesty International USA noted that civilians working for private military contractors in Iraq and Afghanistan are alleged to have committed serious incidents of abuse, including assault, torture and sexual abuse<sup>54</sup>. While there have been hundreds of incidents of civilian contractors shooting at Iraqi civilians according to press reports, indictments and convictions of PMF employees for violations of human rights are rare<sup>55</sup>. Similar events have occurred in Africa. In 2006, employees of three private security contractors in Angola – Alfa-5, Teleservice and K&P Mineira – employed by five diamond companies (headquartered in Angola, Brazil, Israel and the US) to guard their operations against illegal miners<sup>56</sup>, were accused of killings, beatings, sexual abuse and torture, as well as using forced labour as a form of punishment.

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<sup>52</sup> Most of the PMFs have predominately originated from the United Kingdom and United States.

<sup>53</sup> Michael Ignatieff, Human Rights as Politics, in Human Rights as Politics and Idolatry, (2003) Retrieved from <http://press.princeton.edu/titles/7119.html>

<sup>54</sup> An Amnesty International Report. Retrieved from <http://www.amnestyusa.org/military-contractors/page.do?id=1101665>

<sup>55</sup> 2006 Amnesty International Report. Retrieved from [http://www.ngo-monitor.org/article/amnesty\\_international\\_report\\_for\\_](http://www.ngo-monitor.org/article/amnesty_international_report_for_)

<sup>56</sup> Rafael Marques, Angola: A New Diamond War, November 9, 2006. Retrieved from [http://www.worldproutassembly.org/archives/2006/11/angola\\_a\\_new\\_di.html](http://www.worldproutassembly.org/archives/2006/11/angola_a_new_di.html)

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The operation of certain PMFs in the resource-rich countries of Angola, Sierra Leone and the DRC (then Zaire) over the last 30 years<sup>57</sup> has damaged their reputations and they are perceived to have had no positive impact in these regions. Allegedly, many of these companies operating in African countries were (and presumably still are) paid with mining concessions and extraction rights. Corporate concessions for mercenary protections are now “business as usual” throughout the continent. There is still a link between mercenaries and the illegal trafficking in diamonds and other gems in Africa.<sup>58</sup> At the same time, some of these PMFs form subsidiaries and develop into corporations controlling multiple-service companies. Groups entangled in a firm’s corporate web find quick deals among industry, mercenaries and arms dealers manoeuvring massive amounts of money, power and weapons<sup>59</sup>. The non-transparent nature of such corporate structures enables these firms to operate away from public scrutiny and to avoid accountability. While the use of ancillary companies may not seem problematic, establishing associates in a diamond or oil region often gives the overseeing company a strong, perhaps dominant, foothold in the economy of that country<sup>60</sup>.

Questions that need to be answered are:

- *What message is conveyed to local populations?*
- *How do local populations perceive the operations of PMFs?*
- *How do PMFs affect human security?*
  
- ❖ The lack of accountability, demonstrated by the immunity from prosecution granted to PMF employees<sup>61</sup>, is viewed as proof the Western (colonial) world uses double standards when preaching ideals of freedom and democracy in

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<sup>57</sup> JULIE BERG, INSTITUTE OF CRIMINOLOGY, UNIVERSITY OF CAPE TOWN, *OVERVIEW OF PLURAL POLICING OVERSIGHT IN SELECT SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC) COUNTRIES*, DECEMBER 2005

<sup>58</sup> Enrique Ballesteros, UN sheds light on murky world of mercenaries, 2001

<sup>59</sup> Ellen L. Frye, “Private Military Firms in the New World Order: How Redefining “Mercenary” Can Tame the “Dogs of War,” (2005).

<sup>60</sup> Damian Lilly, *The Privatization of Peacekeeping: Prospects and Realities*, (2000) Retrieved from <http://www.unidir.org/pdf/articles/pdf-art135.pdf>;

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support of Western values<sup>62</sup>. Respect for human rights seems to apply only when it is convenient for Western states but can easily be ignored if political and economic interests so demand. Human rights violations and a lack of accountability lead to a 'sense of exclusion and worthlessness among affected populations' and a feeling that their lives do not really matter but their oil and mineral wealth are the primary objective<sup>63</sup>.

- ❖ The privatisation of the military industry signals a blurring of the lines between public and private interests.<sup>64</sup> It is often uncertain whether a state acts out of principle or simply out of the desire to make a profit. When private and public lines are perceived to blur it also becomes difficult for states to claim their policy follows a general and justifiable interest beyond that of the specific contract or firm<sup>65</sup>. This perception impacts on the legitimacy with which a security operation is viewed and leaves affected populations with feelings of injustice and resentment<sup>66</sup>.

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<sup>61</sup> Prof. Nicholas Matziorinis, *Private Military Companies: Legitimacy and Accountability*, (2004), Retrieved from

[http://paolonalin.ionmetrix.com/doc/PMC%20Legitimacy%20and%20Accountability\\_LE.pdf](http://paolonalin.ionmetrix.com/doc/PMC%20Legitimacy%20and%20Accountability_LE.pdf)

<sup>62</sup> Anthony Bianco et al., *Special Report: Outsourcing War; An Inside Look at Brown & Root, the Kingpin of America's New Military-Industrial Complex*, *Bus. Wk.*, Sept. 15, 2004, available at [2003 WL 62195579].

<sup>63</sup> Cedric Ryngaert, *Litigating Abuses Committed by Private Military Companies*, *European Journal of International Law*, Vol. 19, Issue 5. (2008)

<sup>64</sup> Marina Caparini, *Applying a Security Governance Perspective to the Privatisation of Security*, (2008) Retrieved from <http://se2.dcaf.ch/serviceengine/FileContent?serviceID=21&fileid=61DC46BD-C483-A612-6FAE-ECD612BFFD3A&lng=en>

<sup>65</sup> Ian Murphy, *A Critical Analysis of Private Military Companies in Peacekeeping and Conflict Handling Situations*, Retrieved from <http://www.plymouth.ac.uk/files/extranet/docs/SSB/Murphyproj.pdf>

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## *The Emergence of Private Military Firms and Their Impact on Global Human Rights*

- ❖ As PMFs develop into independent players in the market for force – and engage in extensive lobbying efforts<sup>67</sup> – their interests are increasingly a decisive factor when determining the proper course of action in areas of conflict and crisis. As a result, policies focus on immediate security operations and military style solutions, in isolation from the social context and root causes of isolated or expanded conflict<sup>68</sup>. Social, economic and/or environmental issues are excluded from the analysis, providing additional justification for local populations to feel that the ‘West’ is less concerned about the human security and human rights of civilians and more about securing access to resources<sup>69</sup>.
  
- ❖ Western states that hire PMFs signal to the local population they are not willing to risk and commit their own troops to help stabilise these conflict regions<sup>70</sup>. This instigates resentment in the local population who could consider it as an expression of an unwillingness to engage or even a lack of respect<sup>71</sup>.

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<sup>67</sup> Duncan Campbell, International Consortium of Investigative Journalists, *Marketing the New 'Dogs of War'*, (2002), Retrieved from <http://projects.publicintegrity.org/bow/report.aspx?aid=149>.

<sup>68</sup> Fred Schreier & Marina Caparini, *Privatising Security: Law, Practice and Governance of Private Military and Security Companies*, (Geneva Centre for the Democratic Control of Armed Forces) Mar. 2005, Retrieved from [http://www.dcaf.ch/\\_docs/occasional\\_6.pdf](http://www.dcaf.ch/_docs/occasional_6.pdf) [hereinafter Schreier & Caparini].

<sup>69</sup> José L. Gómez del Prado, *Global Research, Impact on Human Rights of Private Military and Security Companies' Activities*, (2008), Retrieved from <http://www.globalresearch.ca/index.php?context=va&aid=10523>

<sup>70</sup> *Private Military Companies: Options for Regulation 2001-02: A report by Foreign and Commonwealth Office*. ISBN 0 10 291415 X

<sup>71</sup> Jurgen Brauer, *An Economic Perspective on Mercenaries, Military Companies, and the Privatization of Force*, (2001), Retrieved from <http://www.aug.edu/~sbajmb/paper-cria.PDF>

## [CONCLUSION]

It can undoubtedly be said that the emergence of the PMFs, has not been very good for the human rights of the people of the regions where PMFs have set their foot. The lack of accountability makes sure that the human rights violators go scot free. The only positive aspect of having PMFs is that it reduced the casualty born by the armies. But this definitely does not mean that casualties as such come down. With improper training and sometimes no training at all in the fields of Human Rights and respecting the dignity of a fellow human being, Private Armies are nothing but a modern day version of age old clan of mercenaries.

The concept of Private Military Firms in India is almost non-existent. The only grey region where private firms have some presence is the defence manufacturing sector<sup>72</sup>.

Currently, India's defence budget is close to \$ 40 Billion<sup>73</sup>. With the globalization and growth of Indian industries, the home players have long since been demanding a share out of India's whopping defence budget.

Private industries in India are expected to increase their share of military-related manufacturing deals in the next three years by 30 per cent to around USD900 million,

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<sup>72</sup> Siddharth Srivastava, India's military eyes private options, (2008) Retrieved from [http://www.privateforces.com/index.php?option=com\\_content&task=view&id=1909](http://www.privateforces.com/index.php?option=com_content&task=view&id=1909)

<sup>73</sup> An article by MilitaryPhotos.net, Indian Defence Budget Could Touch US\$ 40 Billion In 2009, (2008), Retrieved from <http://www.militaryphotos.net/forums/showthread.php?t=136122>

Also see, Govt hints at doubling defence expenditure, The Times of India, 11 June 2008, Retrieved from [http://timesofindia.indiatimes.com/Govt\\_hints\\_at\\_doubling\\_defence\\_expenditure/articleshow/3118305.cm](http://timesofindia.indiatimes.com/Govt_hints_at_doubling_defence_expenditure/articleshow/3118305.cms)

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according to a report published jointly by the Associated Chambers of Commerce and Industry of India (ASSOCHAM)<sup>74</sup> and Ernst & Young.<sup>75</sup>

At present, state-owned defense industries in India claim more than two-thirds of all indigenous defense development and construction projects, with private companies receiving the remainder - or USD700 million<sup>76</sup>.

But it should not be totally neglected that in some near future, Indian administration would not find the idea of Private Military Firms enticing. With the growing unrest in the north and the north east regions of the country<sup>77</sup> there have also been a significant rise in human rights violation by the Indian troops themselves<sup>78</sup>. With this unfavorable growth, the last thing the Indians need is a Private Military Firm with the sole objective of making profits.

The emergence of PMFs in India might not take place sooner, but when it does, it will create a new page for itself in the books of Human Rights violations.

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<sup>74</sup> The Associated Chambers of Commerce and Industry of India (ASSOCHAM) is the umbrella body of chambers of commerce in India. Established in 1920, it currently has a membership of over 100,000 companies across the country. The organisation represents the interests of trade and commerce in India, and interacting with the Government of India on policy issues, and liaising with their international counterparts to promote trade between India and other nations. The current president of ASSOCHAM is Mr. Sajjan Jindal.

<sup>75</sup> Ernst & Young is one of the largest professional services firms in the world and one of the Big Four auditors, along with PricewaterhouseCoopers (PwC), Deloitte Touche Tohmatsu (Deloitte) and KPMG. According to *Forbes* magazine, as of 2007 it is also the 7th largest private company in United States. Ernst & Young is a global organization of member firms in more than 140 countries. Its global headquarters are based in London, UK and the U.S. firm is headquartered at 5 Times Square, New York, New York.

<sup>76</sup> Refer to <http://www.india-defence.com/browse/india/0>

<sup>77</sup> R.Upadhyay, North-East Violence - An Overall View, The Manipur Online, 18 Feb, 2006. Retrieved from [http://www.manipuronline.com/North-East/February2006/northeastviolence18\\_1.htm](http://www.manipuronline.com/North-East/February2006/northeastviolence18_1.htm)

<sup>78</sup> SOMINI SENGUPTA, Indian Army and Police Tied to Kashmir Killings, The New York Times, 6 Feb, 2007, Retrieved from <http://www.nytimes.com/2007/02/06/world/asia/06kashmir.html>

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