



OUTLAWING MERCENARIES: ESTABLISHING ETHICAL NORMS FOR MILITARY CONTRACTORS

Introduction

In reference to the Geneva Conventions the use of mercenaries could be considered as a use of unlawful combatants. The United Nations Mercenary Convention of 2001 defines a mercenary as a combatant in a conflict, who is paid (compensated) and sent to the conflict by a party other than an involved State as a member of its armed forces. However, an important part of the definition is that a mercenary has to also take part in an act of violence or hostility. Private military and security companies or contractors (PMSCs) are, more often than not, not used for this purpose, therefore some countries like the United States of America or United Kingdom outright reject the definition of PMSCs as mercenaries and continue to let private companies, along with the governments, to use them freely to train or even supplement official government armed forces, to act as bodyguards to key staff and politicians, to escort humanitarian aid convoys and camps and to protect and guard premises. Some U.S. PMSC companies are also used to help train soldiers and reorganize militaries of **foreign** nations such as Taiwan, Bulgaria or Nigeria.

The PMSCs saw a big rise in numbers after the Cold War with the disbanding of over 6 million military personnel from major western powers, when governments looked for a relatively inexpensive alternative to the oversized, over-budgeted conventional military structure in use then. The PMSCs saw deployment in foreign countries as well as at home especially during times of civil unrest and disruption in the wake of disasters, especially following the September 11 attacks.

Overview

To put things into perspective the estimated yearly military expenditure of United States is \$555 billion with another \$159 billion requested for wars in Iraq and the ongoing withdrawal from Afghanistan. In 2011, \$155 billion out of the budget went to maintain an estimated 766 thousand private contractors, however the share of United States in UN peacekeeping operations is "only" about \$1.98 billion. And that is not counting the expenditures on private intelligence organizations, which amount to 29% of the intelligence workforce and 49% of personnel budgets - overall the United States Department of Defense is said to have employed over 1.2 million private contractors in all branches in 2011, and if all the **subcontractors** - the important suppliers for the military, and PMSCs "home" employees such as office workers (lawyers, accountants etc.) are also counted in, then we come up with a staggering 7.5 million workers in the United States alone, who are all supported by federal military contract dollars. And the industry is continuously growing, the enormous rise from the business worth of \$100 billion in 2003 still does not stop as the use of PMSCs, by both the government and the private sector, is growing rapidly as can be seen from the estimated worldwide ratio of 50 military personnel for every 1 contractor in 1990s being compared to current 10 to 1 as the governments around the world find that hiring private contractors is more financially viable than creating and maintaining a standing army.

Problems and difficulties

In October 2007, the United Nations released a two-year study that stated, that although hired as "security guards", private contractors were performing active military duties. However, a spokesman for the American mission to the U.N. office in Geneva said that "Accusations that United States government-contracted security guards, of whatever nationality, are mercenaries is inaccurate". However the former Secretary of Defense Donald Rumsfeld stated that they are not subject to the Code of Military Justice, in accordance with the Military Commissions Act of 2006 this was later revised and changed. Paul Bremer, the Administrator of the Coalition Provisional Authority (CPA) (2003-2004) signed the infamous order 17 giving all Americans associated with the CPA or American government immunity from Iraqi law. This was clearly aimed at private contractors and proved very

controversial decision that caused very heated debates on the topic of PMSCs, although it was defended by some, saying that the previous Iraqi government had no legal documents regarding presence of foreign contractors – who, as they claim, couldn't be treated the same way as members of foreign military. They also argued that this decision was made to protect the contractors from being unfairly tried as mercenaries and therefore the Iraqi government could demand their extradition. However the implied legal immunity, which was amplified by the fact that the contractors weren't forced to abide by the aforementioned American Code of Military Justice, was too obvious and uncomfortable for others.

Since then the legislature on the topic of accountability of PMSCs has advanced quite a bit, but it still remains one of the most controversial military issues. Their financial viability is greatly appreciated and undeniable in the modern world and goes as far as some Non Governmental Organisations (NGOs) hiring PMSCs for escorting and protection services. The future of PMSCs is also secure with the withdrawal of US troops from Iraq. The United States State Department is reportedly planning to more than double the number of its private security guards, to up to as many as 7,000, for the purposes of defending fortified compounds across the country, operate radar facilities and aid civilians. The military is also to provide armored cars, planes, helicopters and unmanned aerial vehicles (UAV drones).

Conclusion

PMSCs and other private contractors, including those specialising in obtaining military intelligence, will most likely continue to expand both in numbers and in areas of operations as countries look for less expensive alternatives to regular armies. Surprisingly enough, even some of the recent UN peacekeeping missions have used the services of PMSCs with a certain degree of success and therefore a question remains, whether the undoubted short term economic benefits outweigh the amount of direct control lost over the private contractors as opposed to the more traditional form of armies, and the certain legislative problems that come from operating with military units other than a state's armed forces. This topic is very complex both in legal and moral sense, and therefore the debates on the topic are always very heated and controversial and we have yet to see a united stance on it from the UN.

Further research

What is your country's position on this topic?

- Did it sign and ratify the 2001 UN Mercenary Convention?
- Are any forms PMSCs legal?
 - If yes, does it approve of, or even rely on the use of PMSCs?
- What is the state of the defense and security there?
 - Do you think that the military could benefit from guidance from private contractors?
 - Is the police force sufficient? Could the government afford supplementing it with PMSCs?

Links and sources

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