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Private Military Companies

Ethics and responsibility

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This Food for Thought paper is a document that gives an initial reflection on the theme. The content is not reflecting the positions of the member states but consists of elements that can initiate and feed the discussions and analyses in the domain of the theme. All our studies are available on www.finabel.org

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INTRODUCTION

The private military industry is subdivided into four sectors, namely: Private Military Companies, Private Security Firms, mercenaries and private militias or warlords. All these organisations operate under the security and defence spectrum. Private Military Companies (PMCs) are corporations that partake in military and security-related tasks in conflict or unstable zones. They are legally established multinational enterprises that are well organised and equipped. On the other hand, Private Security Companies ensure the security of individuals or company premises in hostile environments (Jäger, Kümmel & Ortiz, 2007:41-42). People often confuse PMCs with mercenaries, especially when the reason for their involvement in a conflict is unknown. The Geneva Convention defines a mercenary as a person who is locally or internationally recruited to take part in an armed conflict or fight in a hostile area for personal gain (Jäger, Kümmel & Ortiz, 2007:41-42). On the other hand, militias or warlords are substate actors or transnational organisations who get involved in conflicts for a certain cause and period. Such entities include terrorist organisations and gangs that accept financial and logistical support from anywhere (Jäger, Kümmel & Ortiz, 2007:42). This research will focus on Private Military Companies (PMCs), which are important global actors playing a pivotal role in security and defence matters of the con-

temporary international scene. PMCs can either be contracted by states, non-governmental organisations or individuals to secure their interests in unstable regions. States can hire PMCs to substitute or compensate for their lack of national capability. For instance, in 1994, the Israeli company Levdan was deployed in Congo Brazzaville to replace the former president's military forces. Individuals or organisations contract PMCs for purposes of personal protection, overthrowing governments, protection of natural resources such as oil refineries in Iraq, reconstruction efforts such as, among others, the overseeing of general elections. PMCs' workforce includes security experts, well trained former military or law enforcement state personnel from different countries of origin. Some PMCs possess technologically advanced weapons systems such as the F-117 stealth fighter, the KC-10 refuelling tanker and the U-2 reconnaissance plane among others (Jäger, Kümmel & Ortiz, 2007:46).



Problem statement

As new actors in international security, PMCs challenge the traditional sphere of state influence and authority (Kinsey C., 2006). By offering services that are usually exclusively provided by states, they bring controversy on the sovereignty and legitimacy of states (Jäger, Kümmel & Ortiz, 2007:56). Either way, PMCs have a strategic impact on the management of the state's defence and security functions (Jäger, Kümmel & Ortiz, 2007:59). PMCs are an important source of intelligence to governments and provide them with technologically advanced weapons to restructure their militaries (Jäger, Kümmel & Ortiz, 2007:46). Singer attributes the exponential growth of PMCs to the unwillingness of states to get involved in conflicts creating a gap in the security sector which was filled by these private organisations (Jäger, Kümmel & Ortiz, 2007:43). American and British firms are at the forefront of the private military business and set standards for the global industry. Given that their personnel acquired their skills in states' service, PMCs somehow tend to resonate with the same norms of warfare and law enforcement that states abide by. Therefore, PMCs adhere to national, regional and international laws, rules of engagements with a established chain of command, conventional weapons, and other features. However, in the privatisation process, some PMCs tend to escape such engagements as some of them do not have established vetting procedures for recruiting their employees (Jäger, Kümmel & Ortiz, 2007:60-61). Most of the time, PMCs' directors are former high-ranking military or special forces officers. They employ ex-soldiers who used to work in national armies because of their competence and experience. Careers in national forces are

short, and PMCs offer them a new career perspective with better wages. That's why soldiers don't wait for retirement to start working for a PMC (Rassouli, 2014:17).

An analysis of PMCs' pros and cons is imperative for policymakers to formulate proper regulations and responsibilities for these firms and decide whether their use is essential in supporting humanitarian and national interests in a complex and an ever-increasing hostile world. Arguments in favour of PMCs assert that they cost less, their deployment and response to a crisis are rapid and lessen the public's concern about the use of force. Arguments against affirm that PMCs are motivated by profit rather than commitment, operate outside the military chain of command and their contracts do not cover all contingencies as uncertainties are not envisaged.



Defining a PMC can be controversial, as some corporations do not fall within its definitional scope. Some PMCs have overlapping functions that go beyond offering the so-called military and security services (Jäger, Kümmel & Ortiz, 2007:55). Examples of such PMCs include:

- Medical Support Solutions offering healthcare and emergency medical services.
- Global Development Four managing fleet transportation.
- Chilport and Blackwater K-9 specialising in the training of police dogs.
- Ronco Consulting Corporation specialising in humanitarian assistance, procurement services, financial market consulting, agribusiness and private sector development.
- AirScan's with the expertise of air surveil-

lance.

- EOD Technology with expertise in the disposal of unexploded ordnance.
- Titan Corporation focusing on the supply of foreign-language interpreters for the US Army
- L-3 Communications Corporation specialising in defence electronics and communications.

Although such PMCs do not fall within the definition mentioned above, the persons employed are military personnel and security experts who can react to any unexpected attack, unlike regular practitioners. Furthermore, their deployment usually occurs in active combat zones or unstable regions to complement armed forces (Jäger, Kümmel & Ortiz, 2007:57-66).

CATEGORIES OF PRIVATE MILITARY COMPANIES

PMCs can be analysed differently based on the type of services they offer, contracts signed or the type of force they use. Some of these variations include:

Active and passive

Active PMCs offer combat-related operations such as the support of military bases and the deployment of armed forces in active combat zones to manage clashes. Examples include Sand line International, which deployed forces in Papua New Guinea and Sierra Leone to restore internal stability. Military Professional Resources Incorporated (MPRI) contracted to build up the Bosnian army and guard the Ser-

bian border and enforce the embargo. Passive PMCs services include training in non-conflict environments, managing strategic facilities, transport logistics, risk assessment and intelligence gathering. Sometimes passive services are rendered by civilian experts to enhance the capabilities of military personnel. (Jäger, Kümmel & Ortiz, 2007:57-61).

Independent, hybrids or subsidiary units

PMCs can exist as a standalone, hybrid or subsidiary unit of other corporations. Independent or standalone PMCs enjoy a certain degree of operational independence and fully

operate within the spectrum of military services such as Blackwater. Simultaneously, subsidiary units offer military services but exist as a subdivision of larger firms whose major services do not fall within the PMCs' range of business. An example of a subsidiary unit is the MPRI, which exists as a unit of L-3 communications majoring in defence electronics and communications (Jäger, Kümmel & Ortiz, 2007:58-61). Hybrid firms are mutating in nature as they adapt to the security threat to be faced. They fall in between the definition of PMCs and Private Security Companies. For example, in November 2000, MPRI established the Alexandria group to venture into the public security business. Therefore, in offering premise and personal security, PMCs increasingly overlap with private security firms' services. Such firms exist due to mergers and acquisitions that result in the shifting nature of PMCs' capabilities and sphere of influence (Jäger, Kümmel & Ortiz, 2007:64- 68).

Additional variations

Singer further classifies PMCs as either military providers, consulting firms or supporting

firms based on the amount of force deployed, while Avant classifies them into external or internal organisations, based on their contracts. According to her, external firms are contracted to perform armed and unarmed operational support, offer strategic military advice and logistics support. Internal firms provide armed and unarmed premise security, police advice and training, crime prevention and intelligence (Jäger, Kümmel & Ortiz, 2007:58). The future holds no certainty for the scope and specialisation of PMCs services as they have proven to be complex to categorise. PMCs such as MPRI have expanded their services to include public security by offering military personnel quality education, leadership skills, Ship Analytics and organisational expertise (Jäger, Kümmel & Ortiz, 2007:62). The uncertain and challenging nature of security has allowed for the diversification and expansion of PMCs. For instance, terrorism and marine piracy have made firms like Britam Defence change their operational tactics and start offering air Marshall, land and marine counter terrorism training services (Jäger, Kümmel & Ortiz, 2007:63).



THE RISE OF PRIVATE MILITARY COMPANIES

Private Military Companies have been a growing market since the '90s. After the Cold War, the international system faced multiple shifts in warfare. First of all, the nature of conflicts has transformed from interstate conflicts to intrastate conflicts. Following this major transition, the world entered a period of financial and economic instability in which states need to reconsider their defence and security budget. As a result, the economic and political weakness of states increased the cost of war. Last but not least, security issues evolved, and illegal transnational actors such as terrorist or armed groups became the main threat. Securing the territory, the local resources, the NGOs, the IOs and foreign private companies from intrastate disputes became more difficult (Rassouli, 2014:14).

Over time, the power of PMCs has been considerably amplified. The end of the balance of power, the increased number of transnational actors and the multiple crises the international system faces, generate new security and defence issues for all states. This led to the professionalisation of military services whereby the defence sector experiences a modernisation of armament and reduced national military personnel. Thanks to their rapid deployment in crisis times, PMCs became an important asset for states (Rassouli, 2014:15).

The first PMC to exist was Watch Guard International, established in 1960 by Colonel Stirling, member of the British Special Air Service. Its activities included training soldiers of the Persian Gulf, anti-poaching operations, protection of assets in Mozambique during the civil war, among other engagements (Jäger, Kümmel & Ortiz, 2007:43). The increase in the number of PMCs after

the Cold War was marked by creating Executive Outcomes (EO) in 1989 in South Africa. Eben Barlow, former assistant commander of the South African Defence Force (SADF) and former employee of the South African Civil Cooperation Bureau (CCB), thought of an intelligence training PMC for the SADF Special Forces. The first real demonstration of combat force occurred during the military operation in Angola in 1993. EO captured and defended oil tanks in Kefekwena and Soyo. Thanks to this mission, PMCs proved how useful military skills could dissuade armed threats posed by opposition forces or armed groups. Thanks to the efficiency of this mission, EO renewed their presence in Angola until 1995 and increased the security of the country by training government troops and supplying weapons. In addition to technical and financial benefits, clients gain more geopolitical and influential power in the region where PMCs are intervening on their behalf (Kinsey, 2006:61).

Using PMCs' services, clients increase their operational capability while relieving their responsibility for illicit actions committed during the contract. Since the recourse to PMCs is out of diplomatic control, the companies' main purpose is to satisfy their interests by achieving the objectives they have set for themselves. Missions are mostly commercial transactions; thereby, they are primarily motivated by profit. PMCs are willing to use every means to achieve an objective, despite the moral or legal implications of such actions. Most of the time, the local population doesn't favour the presence of PMCs because of their reckless and negligent behaviour.

They are usually accused of threatening local



people and being aggressive. That is the reason why some question the moral and ethical aspect of using PMCs' services. The moral theory examines human action and whether good intentions are natural or guided by conduct rules. Ethics can be defined as a set of fundamental values shared by society. Together, these ethical and moral codes guide human conduct (Commission de l'Ethique en Science et en Technologie, 2013). Since their mandates are a pursuit of profit, PMCs members do not always respect the law and tend to finish their mission at all costs. In some cases, this results in misconduct that takes time to be addressed.

The best example is the "Nisour Square Massacre" of September 2007. The PMC *Academi*, formerly known as *Blackwater Worldwide*, was engaged in Baghdad to secure US State De-

partment personnel's transportation on official duty. They opened fire on Iraqi citizens claiming the emergence of an imminent threat. Fourteen Iraqis¹ were killed, and many others were wounded. The local population that witnessed the scene claimed the open fire order was unjustified (Human Right Watch, 2007). Only

twelve years after the massacre Nicholas Slaten was sentenced to life imprisonment, while three others to 30 years.

Nevertheless, this sentence was contested, and Donald Trump could even grant a Presidential Pardon to Slaten and the former CEO of Academi, Erik Prince, for defending their employees and the integrity of the company (Lakin, 2019). This particular event brought many other accusations of inadequate behaviour of some PMCs members on mission. For instance, in 1999 DynCorp was accused of sex trafficking in Bosnia-Herzegovina while members of the Central Asia-Caucasus Institute International (CACI) were accused of torturing Iraqi detainees in Abu Ghraib Prison in Baghdad during the 2003-2011 US occupation.

PRIVATE MILITARY COMPANIES AND LEGAL ISSUES

The development and spread of PMCs raise new challenges for national and international

law. This section will concern what kind of problems the use of PMCs generates at na-

1. Fourteen deaths according to the American investigation and seventeen deaths according to the Iraqi investigation.

tional and international levels. The second part of the chapter will focus on PMCs' responsibility regarding their employees' actions and the challenges linked to holding them accountable. Finally, the focus will be shifted to PMCs' use and how their deployment never safeguards the employing State or IO.

The question of legal legitimacy

The first problem is the lack of democratic control over PMCs' use by states, without considering that private companies, international organisations, or persons can employ PMCs.

PMCs' use to conduct missions in foreign territories poses a real threat to the democratic control that a National assembly lawfully detains. For example, the number of PMC contracts under 50 million dollars signed by the US government (like the one employing Blackwater) has dramatically increased. As a consequence, the Congress' control normally required for military contracts exceeding this amount is bypassed (Singer & Wipfli, 2007). This phenomenon started to impact EU Member States. In France, this has been a debated issue since 2012, (Guibert, 2012)

putting into question the army's legitimacy as a traditional power of the political sphere.

Also, the public is rarely aware of such contracts since most of the time, PMCs are involved in national security matters that governments keep secret. PMCs and national forces are extremely interwoven in some cases, forming a more flexible military force than a regular army. Secrecy poses the main problem for democracy since no one can monitor the implementation of security measures. It poses problems from an economic perspective due to the lack of possible appeal procedures and global lack of transparency. Even PMCs frequently accuse each other of unfair competition, conflict of interest and poor workmanship (Kidwell, 2005:13). As PMCs' leaders are mostly former high-ranked militaries or high administration members, they are suspected of using previous private relations to obtain better deals for their companies.

Regarding international law and, more specifically, the UN Charter, PMCs' use in conflict areas raises concerns about the possible hijacking of the Charter's value. International law regulations theoretically tightly restrict the use of armed forces between States (see chapter VI of the UN Charter about the

peaceful settlement of disputes) and frames the use of legitimate defence (article 51 of the UN Charter). Using military forces that do not belong to its regular army corps, a state can interfere in a conflict without risking being held accountable.

International humanitarian law creates more specific standards than international law. IHL applies to



PMCs creating a link of responsibility which implies the involvement of a state. This point will be discussed in detail in the following sections.

The question of the responsibility of PMC

PMCs can sometimes be held responsible for the misconduct of their members. Despite the lack of specific international texts, there is still a form of control over PMCs, which raises another problem concerning PMCs' members' definition.

Regarding international regulations such as The Hayes' Convention of 1907 and Geneva's Additional Protocols of 1949, the first juridical problem lies in the fact that PMCs' members' status is hard to define in the traditional categories of international conflicts participants. Indeed, the UN model developed the idea of a distinction between civilians, fighters and mercenaries.

This distinction implies extended or reduced rights in case of armed conflicts. The civilian status, the most protective one, theoretically keeps people from being attacked during the conflict. The fighter status provides rights, especially concerning the "rights of prisoners" and at the end of the conflict. Finally, the mercenary status is the one that offers the least protection. The placement of PMCs' members within these categories is debated. PMCs' activities are so diverse that they are not always directly involved in armed conflicts as "men with guns", but are mainly providing strategic and logistic support.

Of course, even if they are deployed unofficially, PMCs will always try to obtain the civilian status rather than the mercenary one for the reasons mentioned above. Unfortunately, since they are mostly involved in national

conflicts, international regulations and definitions may not apply. They would probably be considered as *de jure* criminals from a national perspective (Bassiouni C., 2008: 725).

The problem also resides in the central power's lack of control and authority in times of conflict. A recent example of this scenario is the involvement of the Russian PMC Wagner in Libya alongside General Khalifa Haftar against the internationally recognised Government of National Accord (U.S Africa Command, 2020). Technically speaking, this matter remains a national issue, even considering the implications on the international community. The involvement of Wagner's members alongside General Haftar criminalises them under the national law. Still, the official Government can't condemn them in any way, especially if on the winning side. Here the need for specific international regulations becomes evident. It would help recognise PMCs members' involvement in conflicts; additionally, further legislation is required to target, restrain and prosecute abusers.

Nowadays, cases of "organised impunity of PMCs" have raised the attention of the public, such as the ordinance promulgated on June 27, 2004, by Paul Bremer, Administrator of the Provisional Authority on Iraqi coalition which gave immunity to PMCs' members deployed in the Iraqi War (De Gent Pascal, 2013:11). The lack of juridical tools restraining PMCs' actions, sometimes reinforced by legally provided immunity, explains the problems faced in cases such as the "Abou Ghraib Jail" case, involving unpunished mistreatment and torture of prisoners. The problem is that no texts provide a specific definition of PMCs' responsibility for their members' misconduct. The multiplication of scandals revealed by the press made PMCs take a step forward. Since 2010, there has been an autoregulation initia-

tive with “the code of international conduct of PMC enterprises”. With this self-imposed regulation, PMCs wanted to establish common principles, legislative bases and means of control. They quickly understood that it was in their interests to reduce bad advertising and to anticipate real legislation from international public authorities with something not too restrictive.

Despite the lack of specific texts and control framing their actions, PMCs have already been judged and condemned for some cases. The authors of the “Nisour Square Massacre”, evoked before, were found guilty of killing civilians in the 2007 Bagdad’s shooting by an American Court. The fact that the judgement came 12 years after the killing shows a problem controlling PMCs’ actions. This puts into doubt the right to kill that belongs to these companies, due to the abuses that can occur and the difficulty to prosecute perpetrators. A Congress report pointed out that Blackwater’s men in Iraq were implicated in nothing less than 200 incidents, but only a fraction of them were brought to justice (Gomez Del Prado, 2010). Most of the time, these companies avoid tribunals by negotiating with the victims’ families, following a traditional American law scheme. In 2012, Academi (ex-Blackwater), paid a fine of 7.5 million dollars to the US state department’s federal attorney to withdraw the charges against them (Schuler, 2012). Following this deal, the federal prosecutor abandoned other charges against the corporation (charges including giving secret intelligence to foreign powers, lying on weapon delivery to the

King of Jordan and exporting weapons without a licence). For the 2003 “Abu Ghraib Jail” case in Iraq, L-3 Service, the American-based PMC involved in the case, negotiated the payment of 5 million dollars to the victims, escaping once again from prosecution. In 2004, a US defence report revealed that they were torturing people and the scandal, minimised at first, ended with 11 soldiers sentenced to more than 10 years in jail (La Presse, 2013).

As seen before, these companies are making hugely profitable deals with several governments, enabling them to cover the fees for the best lawyers. Considering that judicial action can be difficult in cases involving state interests (Military, intelligence etc.) and actions in foreign territories, economic leverage and influence are putting traditional courts in difficulty.

Concerning the DynCorp affaire in Colombia; this PMC is the main US contractor in South America. Since the 2000s it helped fight against drug cartels, mainly using planes to spread chemicals that destroy coca plantations and implementing the “Plan Colombia”. The problem is that the chemicals used were highly cancerous and caused collateral damage to that area’s civilian Colombian farmers and Ecuadorian civilians living near the border. It



was impossible to sue DynCorp locally as the Colombian State offered immunity for PMCs' actions in a bilateral agreement with the United-States signed on September 17 2003. This is a perverse example of the PMCs' "organised impunity" that also shows that PMC activities can cause damages even if there is no direct use of armed force. Those civilians, helped by humanitarian organisations, tried to file law suits in the United-States, but there are still no clear judicial condemnations for this event (Business & Human Rights Resource Centre, 2017).

One of the main issues is that legal texts target the perpetrators' responsibility (i.e. militaries) while PMCs as moral entities (companies), are quite protected and not directly being held accountable. In addition, the effort to prove PMCs' responsibility, these events can also bound the responsibility of the ones who are hiring them.

The question of the States and the IOs responsibility

A state or an IO can be held responsible for using PMCs and the deployment of their members. Regarding the IHL, there is an obligation of "due diligence" in the use of PMCs for states deriving from the Montreux documents (Bouvier & Sassoli & Quintin, 2003: 102). PMCs cannot be a way for a state to override the legal framework and the humanitarian principles that usually apply to its army. Moreover, few international texts allow developing a doctrine of a state's responsibility for PMCs' behaviours they hired. Looking at the project of "responsibility of States for Internationally wrongful acts"² and its article 5: "The conduct of a person or entity which is not an organ of the State under article 4 but

which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance".

From this article, it appears that a State can see its responsibility extended to a PMC or a PMC's member provided that it has been "empowered by" the State in question. This link remains blurry, but some commentaries or decisions will help define it. The commentaries specify that this link between PMCs and the state is established by the attribution of "public authority prerogatives" (International Law Commission 53rd session, 2001:42). Moreover, article 8 considers a "fact from the state" any act from an entity under its "instructions or control"³. States held responsible for PMCs' operations only according to a single national jurisdiction cannot be held accountable as in the "*Schering Corporation vs Islamic Republic of Iran*" case (ICJ, 1984). The combination of public authority prerogatives and control from the state shows in some cases how the state is using a PMC to reach its goals, allowing an attribution of misbehaviours on its behalf (Human Rights Committee, 1982). The key is to prove the existence of a form of direct control. The other condition does not have to be strictly fulfilled as the Court of Appeal of the International Criminal Tribunal of the former Yugoslavia recalled in the case "*Prosecutor vs Tadic*" of July 15, 1999. Following its observations, forms of control could vary and should be appreciated case by case.

A case that illustrates the issues with attribution of state and PMC responsibility is the contract between Sandline and Papua New Guinea. This PMC helped the PNG govern-

2. Adopted by the UN International Law Commission during its 53rd session in 2001. Text submitted to the General Assembly on December 12, 2001; resolution 56/83.

3. Responsibility of States for Internationally wrongful acts Text, article 8 (2001)

ment in an internal fight against the army of Bougainville, a local armed force. A major issue was that the contract was unveiled to the public due to a conflict between the PMC and the state about the payment that required an International Trade Arbitrage. Papua New Guinea gave almost full power to the PMC, so the country was logically responsible for potential abuses against the enemy army (Dinnen, 1997).

From the IO's perspective, there is an increase in PMCs' use as a new flexible, cheaper and easier way to provide protection and help by having military and strategic support during missions, especially in peace-keeping operations in dangerous countries.

The turning point here is the definition of IO agent, which an IO is traditionally responsible for as the ICJ already pointed out. In the consultative advice about "*reparation from damages suffered under the UN service*" (ICJ, 1949), the ICJ put forward an extensive definition of IO agent. Since the IO is supposed to keep control over its agents, it is supposed to be held responsible for their behaviours.

The series of articles about the responsibility of IOs of 2011 developed by the UN Commission on International Law⁴ defines as agent whoever may be charged by the IO to carry out one of its functions and so, the intermediary of the IO actions (article 2).

EFFICACY / PMCS IN ACTION PMC IN THE MIDDLE EAST AND AFRICA

Region 1: Middle East

The involvement of private military companies during the US engagement in Iraq represented a significant shift in the nature of conflicts. In the year 2016, one in every four military personnel was a private contractor. From 2006 to 2016, there were 238 recorded deaths of privately-employed contractors. Of course, conflict-related data and statistics are very difficult to obtain and likely partial (Crosbie et al., 2019). Because reporting and data results can be so difficult to confirm, there is much speculation into private militaries' accountability and transparency. Many political researchers will attest to the significant involvement and impact of PMCs on the Iraq conflict, but these policy analysts will confirm that through providing essential

services to the international community, they have been underreporting, breaking laws, and blurring the lines of the rules of war (CRS, 2008).

What is unique about contractors working in the Middle East is that they include classic white man post-military career and non-western ex-militants. There is also a very large proportion of sub-contractors who are mostly not westerners. These individuals come from countries like Peru, Colombia, Fiji, and Uganda. For the most part, these contractors are not as experienced as the others but can be hired for a considerably lower price. In addition, many ex-guerrilla fighters from the FARC or even former child soldiers from Sierra Leone are recruited among their ranks (Crosbie et al. 2019).

This is exactly what happened with the Aegis

4. Text adopted by the UN International Law Commission and submitted to the General Assembly (A/66/10) during its report in 2011

company in Iraq just after the US pulled their troops. During the US invasion, Aegis was contracted to supervise the coordination of all PMCs in Iraq:

“So, in the early days of Iraq, it was a gold rush. You had companies coming out of nowhere ... It was really like a cowboy wild, wild west, where nobody had any control. Anybody doing anything with firearms in this country could say they’re a private military company. It was an ATM for these companies” (Professor Sean McFate, Georgetown).

This supervision meant that they were responsible for what could be viewed as the second-largest armed forces in Iraq at the time. But, as time went on and US presence decreased, the PMCs needed to find a way to cut costs. Thus, they hired cheaper soldiers from the developing world. This led to the recruitment of sub-contractors from Sierra Leone and Uganda: they did not expect to be paid as much as fighters from the west would. Maya Mynster Christensen of the Royal Danish Defence College explains:

“From a Sierra Leone government perspective, the Iraq recruitment was considered a quite good deal, in the sense that they could actually take local troublemakers, sending them away to Iraq for a couple of years, and then returning them after two years with money earned from their overseas deployment. This could serve to stabilise security in Sierra Leone” (Maya Mynster Christensen via Aljazeera, 2017).

It is unknown how many former child soldiers have been taking part in these conflicts. Still, it is argued that providing them with financial independence and potential stability, would keep them from engaging in anti-government protest or violence (Collier, 2001). Yet, by hiring these former child soldiers and combatants, no one is protecting them from the traumatic experiences of war and violence. Through this, they will be cementing the soldier identity into their personas, making it difficult, if not impossible, to reintegrate into civilian life (Muggah et al., 2015).

“We pride ourselves on being moral people, trying to do the right thing. What we’re doing is, we’re exploiting people, using young people who’ve been child soldiers, deliberately sinking them into the jaws of combat and further violence. Nothing could be worse for these young people; nothing could be worse for society” (Michael Wessels via Aljazeera, 2017).

The conflict in Iraq was the first time that the US relied so heavily on a PMC such as Aegis (CRS, 2008). The US and private military companies’ operational cooperation was



over a decade long and longer than any other US-led coalition. Nevertheless, death rates of PMCs contractors are considerably high. This can be explained by the simple lack of operational support offered to PMCs in the Iraq conflict. Running operations with little to no backup or intelligence could often lead to ambushes (Crosbie et al. 2019).

Additionally, PMCs were often tasked with extremely dangerous missions such as transportation and convoy management, while roadside bombings and ambushes became a common tactic of opposition forces in Iraq. For example, in the Fallujah attack in which two contractors were killed and publicly brutalised in the city, Blackwater was suspected of negligence. A 2007 House oversight committee report concluded that Blackwater “ignored multiple warnings about the dangers” and failed to supply armoured vehicles, machine guns, sufficient intelligence or even a map (Patterson, 2009) in preparation for a mission into what was considered the hottest area in Iraq. Blackwater rejected accusations, claiming it is a one-sided argument, yet a proving email claims that requests were made for better equipment and technology. In addition to this scandal, Blackwater also was under investigation regarding 11 Iraqis killed while contractors were escorting a convoy across Baghdad (Pleming, 2007).

Camp Doha in Kuwait is a perfect example of operations with the intent of protection and assistance (non-combat actions). This location, entirely built and guarded by private contractors, has been the headquarter of several operations. These contractors provided classic support to essential tasks like transportation, engineering and more. It is worth noting that, despite being non-combative, these roles hold many of the same risks as combat missions. They additionally manned weapons

such as the B-2 stealth helicopter, the Apache helicopter systems, the patriot missile batteries and the aegis defence systems. Training operations were run by Vinnelle, MPRI, and Erinys who partook in the training of the post-Saddam army, the paramilitary and the National Police (Singer, 2004).

Paul Bremer, the head of the Coalition Provisional Authority (CPA) instituted an order titled *Status of the Coalition Provisional Authority, MNF – Iraq, Certain Mission and Personnel in Iraq*. The summary explained that contractors should not be subject to Iraqi law regarding what is instructed via a contractual agreement. It also stipulated that contractors/companies must comply with all applicable licensing and registration laws and regulations to engage in business transactions in Iraq. This bound companies and their employers to all CPA orders, regulations, and memoranda. The CPA, therefore, controlled much of the environment of PMCs and thus the licensing and regulation of incoming weapons and firearms (CPA, Order 17, 2006). Since when in 2006 this provision was instituted there were at least 100,000 private military contractors working for the United States Department of Defence alone (Merle, 2006): this proves that the lines of the rules of war can be crossed and prosecution can become difficult.

As explained in the section on PMCs’ ethical management, these companies can behave like governmental actors. Governments may not be officially controlling certain companies’ missions, but often companies are guided by a national goal. A notable example of controversy over PMCs from a nation representative perspective was with Dick Cheney’s Halliburton firm in Iraq. Halliburton was an oil services and engineering company that earned a contract to provide food, housing, fuel and other logistical support for troops in the

Middle East. This contract was worth about 5 billion dollars. Halliburton was accused of overcharging for food, fuel, and other services and for a short period the military was considering withholding payments. Additionally, Halliburton had a sub company called Kellogg Brown and Root, a construction subsidiary that also signed a large contract with the pentagon. Cheney, who was part owner of these groups, claimed their employment was the only reasonable choice given the nature of the conflict thus continuing to profit off the war (Rosenbaum, 2004).

Region 2: Africa

Not only is Africa a large supplier of private military personnel, but it has been actively involved in many PMC's operations. As a general example, the Kremlin allows for exploiting a loophole in international law that allows private military contractors to pose humanitarian aid personnel: this is most noticeable in Libya, Sudan, CAR, and Madagascar. This goes as follows: Russian actors come in to pay a visit to the country and assess their work. They gain access to ports and air space, locate natural resources and assess security. These individuals then claim the power that these actions give them and call their participation aid. Western governments have such a bad image in most of Africa that their participation in any conflict would be heavily discouraged. This is advantageous to Russian power. The lost trust from the days of colonialism allowed Russia to benefit from an anti-American sentiment, and America's disinterest in Africa. US sanctions in places like Libya are not enough to stop neither financial parent China a nor military-political parent Russia. Essentially, Russia uses its influence to gain power and China to obtain access to resourc-

es. PMCs are an effective tool to undermine American power and hegemony (Borshchovskaya, 2020).

The Wagner Group is one of the most popular PMCs in African states. They are also active in the Middle East, Latin America, Eastern Europe. These Russian mercenaries act as a proxy and offer competitive advantages to states with limited funding, for example allowing them to hire contractors at low prices. The commander Dmitriy Valeryevich pushes a narrative that relies on the history of post-cold war relations to maintain a presence. Libya was one example; the Russian PMC provided a major boost to general Khalifa Haftar's plan to take over Tripoli with his self-styled Libyan National Army. The US claims that the Wagner Group caused the problems in Libya. They claim that Russia is responsible for landmines and improvised explosive devices scattered in and around Tripoli. Since 2017 it has been estimated that there are approximately 800-1000 operatives in Libya (BBC).

AFRICOM verifies with "photographic evidence shows[ing] indiscriminately placed booby traps and minefields around the outskirts of Tripoli with the people of Wagner Group." They additionally claim that this is in violation of the UN arms embargo and that the weapons were only introduced to Libya by the Wagner group. Wagner claims an affiliation with Russia, yet when Russia is accused of not stopping Wagner C., they respond that they have no jurisdiction. It is also proven that Wagner flew to Libya at least 14 MG-29s painted to conceal their Russian origin (AF Times Editor, 2020).

Wagner is also accused of interfering in other countries. In the CAR there were three deaths of Russian investigative journalists in which Wagner is accused of having participated. The

Sudan elections, Ukraine, and Syria, are no strangers to the Wagner Group. AFRICOM claims that the Wagner Group's contributions are affecting and harming innocent civilian lives. Again, Russia claims that their nationals in Libya are neither representatives of Russia, nor are they paid by the state. Wagner, now run by Dmitry Utkin, does have some ties to the Russian state. Utkin is a former GRU, and it is often speculated that Wagner is secretly run by the GRU (BBC, 2020).

The second example is the PMCs' presence in Mozambique. South African regional leaders met to discuss security, especially within Islamic state affiliates taking control of Cabo Delgado. "Solidarity and commitment to supporting Mozambique in addressing the terrorism and violent attacks and condemned all attacks of violent terrorism and armed attacks". Mozambique's president chaired this meeting, hoping to influence better regional coordination in response to Cabo Delgado. The controversy started because some leaders claimed Cabo Delgado's conflicts were a regional problem in the East and not for the whole region.

PMCs are involved where regional support cannot be found, and the government hired groups from Russia and South Africa to assist in the Cabo Delgado area. It is worth noting that several foreign oil and gas firms such as Exxon Mobil and Total have major investment projects in Cabo Delgado. This is likely why it was such a hot spot in the region to be overtaken by Islamic state-affiliated groups.



"There have been several Niche offers made and an acceptance that Mozambique needed to contract Private Military Companies to assist in counterinsurgency efforts" (Chatham house). The PMC's engagement in Mozambique is not meant to be a long-term solution but rather a method to better improve training practices, ensure consistent supply lines and create a much better intelligence collection method.

It will be difficult to build trust as coordination is essential to fix this problem. Historically, coordination between Mozambique forces and Private Military Members has not been ideal. "To the extent that PMC's supported operations have been successful in pushing back insurgents, we have seen them adapt, regroup, and strike again, it is important to note that even as the PMCs operated in Cabo Delgado, the insurgency has grown in capability and sophistication" (Kajja, 2020).

With this example, we see PMCs' inadequacy in aiding states to accomplish their assigned tasks. In Libya, instead of humanitarian aid, civilian lives are at risk due to weapon imports, and in Mozambique, PMCs are not

showing improvements in dismantling insurgent groups.

Analysis

Specific case studies allow us to see the interests and motivations behind PMCs' actions. As state on state conflict reduces and makes room for non-state actors on the insurgent side, there is a surge in the use of contractors for counterinsurgency. This allows for the development of proxy warfare which carries many of the same implications as inter-state warfare. PMCs hold geopolitical significance,

as the individuals employed may hold certain powers and past military experience. Also, PMCs are often tied to a region or state, and thus the actions of such PMC may reveal a relation to a state. For example, many Chinese investors are interested in protecting the Belt and Road Initiative, forming a link between countries along that route and Chinese contractors. These groups' influence often force states to be dependent on such protections. This dependency ensures continued employment of PMCs to "assist" and "protect". To an extent, PMCs' movements along developing states can be seen as a new form of colonialism.

FUTURE CONSIDERATIONS:

The phenomenon of the privatisation of war

Since the 9/11 terrorist attacks in the United States, the changing and increasing nature of threats significantly intensified PMCs power and influence. In 2013, it was estimated that there were more than 1,500 PMCs operating around the world (Gendt, 2013). As a result, in need of protecting themselves, states and non-state actors became reluctant to provide security to affirm their authority. The monopoly of security and defence has slipped into PMCs' hands, whose services are increasingly demanded.

The rise in the use of PMCs led to a new phenomenon: the privatisation of war. It consists of the transfer of public assets or activities to the private sector. States, NGOs, IOs, and private actors have decided to use external and private services to provide security and

defence means.

By engaging private services to ensure the security and defence of a specific site, geographical area, or a population etc., security ceases to be a public right. It becomes a privilege that only the rich can afford. On the one hand, as long as clients can pay, PMCs will accept any kind of mission, even the most dangerous one, with no direct interest. In terms of cost and effectiveness, it is more profitable for clients who don't have to financially maintain their defence and security assets, count any human lives lost on their side or prevent the conflict from getting prolonged. However, this leads to a lack of patriotism in the mission, making the bond between the public opinion and national forces fade away. This rupture can increase the risk of the rebellion of citizens who are more reluctant to the presence of PMCs.

The private sector is, therefore, increasing-

ly predominant in the military industry. In the long-term, the privatisation of security highlighted some issues that can put the international system's stability at risk. First, intra-state disputes can increase. Illegal actors may be tempted to strike a location or a structure that does not have the means to defend itself or pay for its security. States have to safeguard their sovereignty, independence and ensure the protection of their territory. Their national identity, national forces, and influence on the international scene are at stake in defence and security capabilities. For this reason, national forces need to be strengthened, and the defence budget maintained. Finally, this phenomenon's legal framework is essential to allow them to have a specific status in international law and have international guidelines to follow to strengthen the transparency of missions.

The privatisation of war and interoperability in Europe

In 2017, the European Union recorded 40 000 active private security companies employing 1.5 million people. The same year, PMCs generated a turnover of 35 billion euros. Independently, Member States use PMC military services. Still, the EU also contracted PMCs to support civilian and military missions under the Common Security and Defence Policy (CSDP) or to protect European delegations (European Parliament, 2017).

Due to PMCs' expansion and their growing employment, questions on regulation and harmonisation across Europe are at the fore. The EU is progressively committing to the elaboration of a framework on PMCs. In 2008, the European Union (as an international organisation) and 23 European Member States ratified the Montreux Document. This

document deals with legal issues concerning PMCs. The strong commitment of Europe is reinforced by the participation of the Organisation for Security and Co-operation in Europe (OSCE) and the North Atlantic Treaty Organisation (NATO) in the Montreux Document. More so, in 2013, the EU entered the International Code of Conduct Association, which ensures the International Code of Conduct implementation and promotes the responsible provision of private security services. Besides, the European Union participates in developing an international regulatory framework with the Human Rights Council and plays a leading role in promoting national and regional control over the supply and export of various military and security services (European Parliament, 2017).

Agreements and associations mostly focus on PMC regulation, but there are political effects caused by PMCs. The use of PMCs may disrupt the construction of European interoperability.

Faced with new security, economic, financial, migratory, political and cultural challenges, the European Union should improve the interaction between States within the European territory by sharing information, cooperating in all areas, and supporting state initiatives. In unpredictable and unstable times, this is the interoperability needed to strengthen European Defence. The main objectives are to build strong permanent political, military and civilian structures in collaboration with the civilian and military operations under the CSDP (European Union External Action, 2016). However, the recourse to PMCs can slow progress towards interoperability.

PMCs can be hired at a national level or a European level. Since there is no common regulation on PMCs' functioning, there are no common rules for hiring them. A Member

State may use private military services for a specific interest which can diverge from European interests. This interest can be supported on both levels on the international scene, but a mismatch in terms of action and operation could occur. PMCs are only looking for profit, so they will never be involved in the continuity of interests behind missions. Moreover, the lack of transparency in contracts can accentuate the disruption of interoperability efforts.

This phenomenon can be dangerous for European interoperability which could lose credibility, efficiency and coordination. The Sahel region is fruitful ground for PMCs due to ongoing conflicts. Through the United States Africa Command (AFRICOM), 21 American companies use PMCs' services

to gather information, organise a specialised intervention, provide medical and tactical support, deliver meals to armies etc. Russia is also in the region through the Wagner Group. They protect some oil sites and resources or provide weapons to armed groups. Multiple Ukrainian companies, such as Ukrainian Helicopters or Omega Consulting Group, are in the Sahel and provide medical emergency extraction services and soldiers (Kharie, 2019). It becomes urgent for the EU to elaborate and implement a harmonised regulation on PMCs from a legal, political and procedural perspective. National and European politics should be coordinated to avoid discrepancy in their operations which could damage their image. The EU's issues in interoperability regarding the growing use of PMCs need to be carefully evaluated.

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Created in 1953, the Finabel committee is the oldest military organisation for cooperation between European Armies: it was conceived as a forum for reflections, exchange studies, and proposals on common interest topics for the future of its members. Finabel, the only organisation at this level, strives at:

- Promoting interoperability and cooperation of armies, while seeking to bring together concepts, doctrines and procedures;
- Contributing to a common European understanding of land defence issues. Finabel focuses on doctrines, trainings, and the joint environment.

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Finabel contributes to reinforce interoperability among its member states in the framework of the North Atlantic Treaty Organisation (NATO), the EU, and *ad hoc* coalition; Finabel neither competes nor duplicates NATO or EU military structures but contributes to these organisations in its unique way. Initially focused on cooperation in armament's programmes, Finabel quickly shifted to the harmonisation of land doctrines. Consequently, before hoping to reach a shared capability approach and common equipment, a shared vision of force-engagement on the terrain should be obtained.

In the current setting, Finabel allows its member states to form Expert Task Groups for situations that require short-term solutions. In addition, Finabel is also a think tank that elaborates on current events concerning the operations of the land forces and provides comments by creating "Food for Thought papers" to address the topics. Finabel studies and Food for Thoughts are recommendations freely applied by its member, whose aim is to facilitate interoperability and improve the daily tasks of preparation, training, exercises, and engagement.



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