Judit Nényei

Security outsourced: is it safe?



GROTIUS E-KÖNYVTÁR
2009

Sorozatszerkesztő
Horváth Jenő

Judit Nényei

Security outsourced: is it safe?

GROTIUS E-KÖNYVTÁR
2009

CONTENTS

Introduction / 5

1. Part One

The private military industry – and the lessons we have learned / 7

1.1. The rise of private military and security companies / 7

1.2 . "What's in a name?" / 9

1.3 . The main characters of the industry / 13

1.4. Activities outsourced / 20

1.5. Who is getting in harm's way? Individual and corporate crimes… / 25

1.6. Legal murkiness is lifting / 29

2. Part Two

Legal background of PMSCs – still in the twilight zone? / 30

2.1. Get rid of them or control them? Attempts to regulate mercenary activities in the 20th century / 30

2.2. Legislation of the 21st century – trying to keep up with the rapidly growing industry / 32

2.3. It will take decades… / 41

3. Part Three

The Contractor and the State / 43

3.1. PMSCs and the new Clausewitzian trinity / 44

3.2. PMSC operations – foreign policy through private means? / 45

3.3. Shadow army? / 46

3.4. PMSCs and other civilians – civil-military relations in danger / 48

Summary

Annexes

Bibliography

List of abbreviations

Introduction

Being a student of modern English literature originally, the art of war seems to be a far cry from my field of studies. However, since I have been working in the Ministry of Defence for many years now, I could not avoid the encounter with the question of the future of the state military. Serving at a time of transition, under the aegis of constant reorganization and down-sizing of personnel and troops, as it was common in several countries after the end of the Cold War, my attention was unavoidably attracted to the thriving private military industry and the outsourcing of military tasks as a general tendency in the Western countries. How can it be possible that private companies not only flourish next to state militaries but are often relied on as providers of essentially military (even combat) services? Why is there a market for them? How about their cost-effectiveness and reliability as compared to those of the regular militaries? And finally: what will be the future of this uneasy competition between the private sector and the state domain?

Also, the human rights challenges posed by the increasing privatization of military and security tasks are immense. Yet in some respects the space for addressing these challenges is opening up. High-profile incidents such as the 16 September 2007 killings involving Blackwater at Nisour Square in Baghdad have put a spotlight on the accountability gap. And never before have so many groups and institutions paid attention to this subject.

This is not the case in Hungary, however. Apart from Krisztián Varga's brief paper, "A védelmi szféra privatizálása, magáncégek napjaink hadviselésében[1]", (which relies mostly on Singer and the Schreier-Caparini study) and Ervin Frigyes's "Magánosítás, katonaság, katonai magánvállalkozások"[2], I have not found any critical work that dealt with the subject in Hungary - although I have to remark here that the privatization of the Hungarian military and military industry is a different phenomenon, not having many common features with the international tendencies, besides, it is still in the formation phase. It would require a separate study, with the special Hungarian circumstances in focus, to analyze and monitor the advance of the PMS industry in the Hungarian military. What is more, one would need a thorough knowledge of the situation in the neighbouring countries in that respect, in order to examine Hungary's case in the geographical, political and economic context. It is not an isolated problem in the US or

[1] Paper presented at the conference *A katonai erõ újszerû alkalmazása a 21. század elején* held on 3 November 2005, and later published in *Hadtudomány*, December 2005, Issue 4. Krisztián Varga's more extensive study on the PMS industry is about to be published in the *Védelmi Tanulmányok* series, under the title of "A biztonság privatizálása, katonai magánvállalatok hatása a nemzetközi viszonyokban". One of its primary aims is to create and introduce a Hungarian terminology for this new field.

[2] published in *Új Honvédségi Szemle*, 2001/5, pp. 111–124.

the UK, either, - it would be even less possible to treat it separately in Central Eastern Europe.

These are not among the aims of this paper – besides, being the employee of the Hungarian Ministry of Defence, I am not entitled to analyse or discuss the situation of the PMS sector, or the recent and ongoing outsourcing procedures in the Hungarian military. On the following pages I shall attempt to give a comprehensive examination of the *international* operation of this industry, its rapid growth after the end of the Cold War, with reference to the ominous cases (such as the Sandline affair, the Abu Ghraib prison scandal, the Blackwater shootings, etc. and with special attention to the events and developments in the years passed after the second Gulf War) that bring the topic into the centre of public attention again and again. Therefore I have turned to the publications of SIPRI, Geneva DCAF, ICIJ, UN Special Rapporteurs[3], Center for Public Integrity, the Brookings Institution, RAND Corporation, BASIC, etc. about the private military industry and the above questions.

I would like to mention here only a few of the most instructive and comprehensive analyses: *Corporate Warriors* and "Outsourcing War" by P. W. Singer[4], "Privatising Security: Law, Practice and Governance of Private Military and Security Companies" by Fred Schreier and Marina Caparini[5], or David Isenberg: "A government in search for cover: PMCs in Iraq."[6] Although approaching the question from different points of view, the vast majority of academic and non-academic writings concentrated on the following issues (with varying emphasis) in the past decade:

- the reasons and dangers of the proliferation of the private military industry; - the troublesome legal status of the private military and security firms, including other problems stemming from legal loopholes;
- suggestions that ought to be implemented in order to make the situation of the industry clear and unambiguous;
- and, obviously, the corresponding and colliding interests of clients, consumers and providers of outsourced military and security services.

In spite of its relative novelty, the above theme is very rich in secondary literature, and the industry is so ramifying and divergent that it would be a hopeless enterprise to provide a thorough analysis, that includes each and every subdivision or point of view, within the framework of a thesis. Therefore I shall focus on the military aspect, especially the outsourcing of core activities.

[3] for example, E. B. Ballesteros former UN Special Rapporteur: *Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination*. E/CN.4/1999/11 and E/CN.4/2001719.

[4] *Foreign Affairs*, March/April 2005.

[5] Geneva Centre for the Democratic Control of Armed Forces (DCAF), *Occasional Paper - №6*, Geneva, March 2005.

[6] British American Security Information Council (BASIC). Paper prepared for *Market Forces: Regulating Private Military Companies*, March 23-24, 2006 conference, Institute for International Law and Justice, New York University School of Law.

Part One

The private military industry – and the lessons we have learned

1. The rise of private military and security companies

Twenty years ago, when the United States of America and the Soviet Union decided to put an end to their gigantic game of noughts and crosses on the face of our globe, few would have thought that as a result of the change we have to re-evaluate our concepts about warfare itself. One of the many unexpected phenomena was the re-emergence of the private military industry. A modern continuation of medieval mercenary[7] bands, individual 'dogs of war' were never completely out of the picture – enough to mention the mercenaries of the 60s and 70s. Led by purely financial motivation, they were willing to fight for any warlord or clan chief in the decolonization process, with no political, ideological or moral considerations whatsoever. Still, they were marginal characters in the theatre of war.

During the past fifteen years the wars in Bosnia, Sierra Leone, Kosovo, Afghanistan, and Iraq were all fought with the help of civilian contractors. The proportion of contracted personnel in Iraq in 2004 was roughly ten times greater than during the first Gulf War. But exact numbers are also at our disposal and they are more shocking than rough estimates. Administration officials claimed that 163,590 contractor personnel were working in Iraq under Defense Contracts, more than the number of US troops there. Of those, 6,467 are armed security personnel, about 1,500 of them American citizens. State Department Security contractors total 1,518, about half of them are Americans. The officials said that many of the rest were British and South African. An additional 32,520 defense contractors are working in Afghanistan[8]. Another source claims that there are 182 000 contractors operating under US Government contracts in Iraq, and 127 000 of them have contracts with the DOD.[9]

What were the favourable circumstances that paved the way for the prosperity of private military and security firms in the early 1990s? Some of them are related to politics, others to market economy:

The end of the Cold War era and of the balance of power resulted in

[7] Mercenaries have always existed ever since written history began – after prostitution and spying, it is considered the third oldest profession.

[8] Senate testimony in February 2008, in: Karen DeYoung: "Democrat calls for Blackwater probe, alleges tax fraud", *Washington Post*, 11 March 2008.

[9] Elsea, J. and Serafina, N., US Congress, Congressional Research Service (CRS), *Private Security Contractors in Iraq: Background, Legal Status and Other Issues*, CRS Report for Congress.

- the downsizing of state militaries parallel to their overstretch;
- the privatization of conflicts (non-state actors in the field: paramilitaries, transnational terrorist groups, drug cartels, armed groups with ethnic and religious motivations, as well as internationally organized criminal enterprises);
- the power vacuum, that removed controls over levels of conflicts and led to the increase of instability (in other words, ended 'block discipline');
- warfare itself has changed: the traditional difference between civilians and soldiers has started to disappear, and this transition was accompanied by easier access to weapons and a boom of arms proliferation.

The privatization revolution, that is,

- the entrance of markets into formerly public sector domains,
- the success of privatization strategies led to the push to outsource as many functions as possible outside government, as a general neo-liberal tendency – the concept of the 'lean' state (Wulf [2006], p. 14.).

These circumstances are themselves a complexity of interconnected factors and in the following Section I shall concentrate mainly on the first.

1.1. The consequences of downsizing and overstretching armies

The change demands attention: the US forces have lost 35 per cent since the peak during the Cold War, while the British military has never been so small since the wars against Napoleon (Singer [2005], p. 4.). The Soviet Union/Russia has reduced its army of 5,227,000 in 1987 to a force of some 977,000 in 2001. All in all, about 7 million-strong active personnel has been removed from the service lists (and payrolls). (Schreier-Caparini [2005], p. 5.)[10]

In the meantime, the burden on state militaries has increased – troops were sent to missions abroad much more often than earlier. The reasons were manifold:

- the increased number of conflicts and civil wars, escalating instability;
- unarmed civilians becoming priority targets instead of being merely random victims (method of deterrence);
- consequently, the rapidly increasing number of refugees and internally displaced persons[11];
- therefore the importance of humanitarian assistance and aid distribution has increased for local political actors in the conflict zones, aid workers themselves becoming targeted and in need of personal and convoy protection.

The result was the increasing reluctance of Western governments to send their own task forces to fragile or failed states, on humanitarian or peacekeeping missions. It was more and more difficult to gain public support and provide the cost for such missions, not to speak of justifying their questionable benefits.

[10] For further information see: Bonn International Center for Conversion (BICC), *Conversion Survey* 2003: *Global Disarmament, Demilitarization and Demobilization*, Baden-Baden, Nomos Verlagsgesellschaft, 2003.

[11] from 2.4 million to more than 14 million refugees and 22 to 38 million internally displaced persons over the last twenty years (data from 2004 (Schreier-Caparini [2005], p. 5.))

Eventually, private military and security companies (PMCs and PSCs, or PMSCs) were more than welcome: in fragile states they could provide security (among other services) and in developed countries they did not burden the public budget (or so it seemed).

Parallel to the reduction of armed forces there was a general demand to increase their level of professionality, flexibility and effectiveness.

A brief digression: due to the above facts, Hungary was not excluded from this process, either. The government hired the US firm *Cubic* to help it restructure its military to meet the required NATO standards. Thus, the more than 200-thousand-strong Hungarian Armed Forces (which was roughly the same size as that of the Austro-Hungarian Monarchy) was gradually reduced to about 33,000, and in the course of the ten years that have passed since Hungary joined NATO in 1999, it has become hardly more than 21,000.

As part of the professionalisation process, all but the core functions were outsourced to private firms: catering, logistical support and maintenance, to mention just a few. Thus the professional armies (consisting by now entirely of contract volunteers instead of conscripts) could concentrate on their chief tasks. Although relatively few PMCs include combat activities in their repertoire, even the core functions are not performed exclusively by state militaries. Training, for instance, which most military experts consider as an organic part of core functions, is outsourced up to a very high percentage (the exact proportion varying from state to state).

Technological development was also in favour of the proliferation of private companies. It was claimed to be more cost-effective to use commercial technology or outsource the complete process of developing new weapon and defence systems. After all, it takes a lot more time to develop high technology and train the necessary personnel within the military than simply hire civilian specialists from the private sector.

In fact, the above phenomenon is not restricted to the British Ministry of Defence or the US Defence Department; other European and transatlantic countries also follow the trend.

1.2. "What's in a name?"[12]

I have already mentioned mercenaries, PMSCs, PMCs and PSCs on the previous pages – but these labels are often misleading and it is not easy to find one's way among them. The simultaneous existence of individual or informal groups of mercenaries seeking monetary remuneration for their services and transnational multimillion dollar corporations with boards of directors, shareholders and head offices makes the picture even more complicated. Also, there is a massive overlap between these activities; security and military services are often provided by the same company or by two subsidiaries of the same corporation. Used in conflict environments, it is difficult to distinguish PMCs from PSCs, although PMCs are associated more with activities designed to have a military impact, whereas PSCs are primarily concerned with protecting individuals and property.

Peter Warren Singer[13], one of the experts on private military industry (even though he concentrates mostly on the US experience), prefers to use the term 'private military

[12] W. Shakespeare, *Romeo and Juliet*, Act 2, Scene 2.

[13] His excellent study, *Corporate Warriors*, was named among the top five books of 2003 in international affairs by the Gelber Prize.

firms' or PMFs in short for both security and military companies. PMFs are "business providers of professional services intricately linked to warfare" (Singer [2004], p. 2.). Fred Schreier and Marina Caparini offer PMCs and PSCs, and I would have followed their typology on the following pages, partly because these are the most commonly used terms in the secondary literature, partly because they are as precise as they can be. However, there exists now a new umbrella acronym for private military *and* security companies (obviously, due to the overlap of activities), PMSCs[14], used especially in IPOA publications, even if it is not yet widespread or its usage is not consistent among critics. Caroline Holmquist, for instance, puts all military *and* security services contracted out as provided by PSCs (Holmquist [2005]). Also, those companies, that provide *core military* capabilities and participate directly in combat activity, are often labelled private security companies – some of them deliberately call themselves so in order to avoid the attention of the media and cover up their activities (for example, Aegis or Erinys International). Journalists and critics frequently equate them with mercenaries (a term that has come to have very negative connotations) or at best 'corporate mercenaries' especially if the topic is the crimes and abuses committed by private contractors. E. B. Ballesteros, former Special Rapporteur of the UN, does so, too:

Today's mercenaries still fight for money, but in the context of global capitalism, some groups are becoming less morally objectionable. The organization of mercenaries into corporations that function like consulting firms has put distance between them and their activities. Moreover, mercenary corporations' increasing efficiency and self-regulation is influencing the way *governments view mercenaries as instruments of state policy*. (Ballesteros [1999], quoted by Schreier-Caparini [2005], p. 9.; my italics - see Part Three, Section 3.2 on the role of PMSCs in foreign policy)

Defence industrial companies (Lockheed Martin, BAE Systems, etc.), which supply weapons or equipment, frequently offer operation, training and maintenance packages to go with them – in that respect nothing differentiates them from PMSCs. Some experts squeeze mercenaries, PMCs and PSCs into the same category:

Mercenaries and private security companies are volunteers usually recruited from third states who are remunerated for fighting in combat units or for conducting special tasks on their own.… While traditional mercenaries are banned under international law, modern private security or military companies usually act on a legalized and licensed basis. They have professionalized and commercialized the business of providing combatants, trainers or advisers, or other forms of operational or logistical support, and are contracted by governments, companies or other non-state actors.[15]

Due to the complexity and overlap in this subject, it is necessary to determine the main characteristics, differences between and identical features of mercenaries and modern private companies (See Table 1.).

Corporate mercenaries are a very old phenomenon, they can be traced back to the 14th century Italian *condottieri*[16]. It may be worth recalling what Machiavelli wrote about them at the beginning of the 16th century:

[14] Although there is no primary evidence, I presume the acronym is Doug Brooks' coinage. See http://www.business-humanrights.org/ Categories/Businessorgs/ Sectoralbusinessorgs/ InternationalPeaceOperationsAssociationIPOA

[15] Alyson Bailes, Ulrich Schneckener and Herbert Wulf: Revisiting the State Monopoly on the Legitimate Use of Force, DCAF Policy paper 24, 2007, p.12.

[16] W. Caferro [1998]: *Mercenary Companies and the Decline of Siena.* Baltimore and London, John Hopkins University Press.

…mercenaries and auxiliaries are useless and dangerous; and if one holds his state based on these arms, he will stand neither firm nor safe; for they are disunited, ambitious and without discipline, unfaithful, valiant before friends, cowardly before enemies; they have neither the fear of God nor fidelity to men, and destruction is deferred only so long as the attack is; for in peace one is robbed by them, and in war by the enemy. The fact is, they have no other attraction or reason for keeping the field than a trifle of stipend, which is not sufficient to make them willing to die for you. They are ready enough to be your soldiers whilst you do not make war, but if war comes they take themselves off or run from the foe…(Macchiavelli [1515], quoted by Schreieer-Caparini [2005], p.17.)

It seems obvious that the image formed about mercenaries has been far from positive - and not at all 'honorable', as Lt. Col. Tim Spicer, founder of *Sandline International* puts it[17] - ever since they appeared on the scene. Their bad reputation did not diminish in the '60s and '70s either – they were participants in (and often promoters of) coup d'etats, human rights abuses, they fought against UN forces in Congo (ONUC, 1960-64), etc. Although present-day PMSCs are trying hard to prove their difference from their predecessors, public perception is still influenced by the former picture (and, deliberately, by the media). The UN Special Rapporteur on mercenaries has held PMSCs responsible for several criminal activities such as trafficking arms, drugs, and in humans and organs, extortion, kidnapping and links with terrorists. (Ballesteros [2001]). Crimes and abuses committed by private contractors will be discussed in detail later in Section 1.5.

Contractors appeared relatively early in the U.S. military as well; they were defined legally as „civilians accompanying the force" (Singer [2004], p.12.). Obviously, a more precise legal definition is necessary today. But precise legal definitions still do not exist for private military contractors.

[17] Tim Spicer: *An Unorthodox Soldier: Peace and War in the Sandline Affair*

Table 1. Comparison of mercenaries and modern PMSCs.

	FORM	RECRUITS	LEGALITY	PRIVATIZATION OF VIOLENCE	SPECTRUM OF SERVICES	PAYMENT	CLIENTS	PUBLICITY
MERCE-NARIES	like other commercial guilds (corporate mercenaries can be traced back to the 14th century), but units operate as **groups of individuals**	veterans of former wars and insurgencies, **non-nationals hired to take direct part in armed conflicts,** may be infiltrated by criminals, terrorists, or guerrillas, adventurers, etc.	**Banned by international law**, namely, the OAU Convention for the Elimination of Mercenarism in Africa, the 1977 Protocol 1 Additional to the Geneva Conventions and the UN International Convention against the Recruitment, Use, Financing, and Training of Mercenaries (1989)	Freelance soldiers of no fixed abode, usually represent **bottom-up** privatization of violence.	offer **direct combat skills** at the small unit level and limited military training. Mercenaries cannot be relied on beyond the short term	rely on the *ad hoc* black-market structuring and payment systems. Payment usually in **cash**.	hired by **non-state armed groups,** aiming to undermine the constitutional order of states.	prefer **denying** their own **existence**
MODERN PMCS and PSCS	**Corporate business form** (often transnational), many are subsidiaries of larger corporations; often tied through financial arrangements to other firms. The corporate structure matters, not the individual.	**Former soldiers from the national armed forces** of the country where they are based. Either only home-country recruits, or a **multinational employee base** from all corners of the world. Screen potential employees for valued skill-sets and tailor staff to specific mission needs.	The majority of them are **legal entities** contractually bound to their clients.	**Top-down** privatization of violence. Their clients seek the confirmation rather than the undermining of order and security. However, when a multinational corporation decides to provide security services for itself, or hires a private military or security firm from its home state or from abroad, it is less apparent whether this is top-down or bottom-up.	simultaneous work for multiple clients in multiple markets/theatres. **Full spectrum** from consulting, training, maintenance and logistics, operational and direct combat support, to post-conflict reconstruction, often by the same firm. Only a few companies are willing to engage **directly in combat or**	usually through private channels of transnational corporations **untraceable** in the entangled complexity of subsidiaries and subcontracts	hired mainly by **governments** and **corporations** to provide military/sec. services. They function as profit-driven businesses seeking the highest bidder; they compete on the open global market.	most of them **publicly advertise their services,** incl. maintaining their own websites; desire for good public relations and a **positive corporate image**

Fred Schreier and Marina Caparini provide perhaps the most apt working definition for modern companies in the industry:

> Private Security Companies (PSCs) are companies that specialize in providing security and protection of personnel and property, including humanitarian and industrial assets. Private Military Companies (PMCs) are private companies that specialize in military skills, *including combat operations*, strategic planning, intelligence collection, operational support, logistics, training, procurement and maintenance of arms and equipment. (Schreier-Caparini [2005], p.2.; italics are mine) [18]

Indeed, if we want to define these companies it is best done on the basis of the services they provide for profit. However, there is no consensus among the critics on how these companies should be categorized. In my opinion, the most practical solution is offered by Singer, who divides them into three basic business sectors: ***military provider firms***, such as *Executive Outcomes*, which offer direct, tactical military assistance to clients (including front-line combat). These services were previously carried out by national military forces. ***Military consulting firms*** provide strategic advice and training expertise, relying on retired and experienced senior officers. *Military Professional Resources Incorporated* (MPRI) is a classic example of such firms. ***Military support firms*** provide logistics, intelligence and maintenance services. Obviously, the financial gain for private companies is the highest in this sector – enough to think of Halliburton and its subsidiaries[19] (Singer [2004], pp. 2-3.).

Singer's categorization is applicable also to private security firms, as Schreier and Caparini point out ([2005], p.38), in the following division: ***security provider firms*** provide security services in destabilized or insecure areas, engage in law enforcement and security operations or fight organized crime and terrorism, either as units or specialists. ***Security consulting firms*** provide advisory and training services, without engaging in law enforcement or security operations, or directly participating in the fight against organized crime or terrorism. ***Security support firms*** provide supplementary security services, such as aid, assistance and technical support.

A detailed summary of further, equally applicable types of categorizations are shown in Annex I.

1.3. The main characters of the industry

Let us now see some of the most prominent, famous - and infamous – companies, that dominate the private military and security market. There are firms among them with long-established reputation and experience, 'dark horses' that have suddenly emerged from obscurity and gained billion-worth contracts due to successful background manipulations, and newcomers (at least nominally) that have come into existence just prior to the Iraqi boom of the industry (the "Iraq bubble", as the companies call it). I wish to emphasize in advance that none of them consider themselves private *military* companies, firms or providers – they claim to provide only security and security-related services. This tendency shows the negative connotations already fixed to PMCs, considered as the inheritors of feudal corporate bands.

---

[18] A similar definition for PMCs is given by D. Brooks. The Business End of Military Intelligence: Private Military Companies. The Military Intelligence Professional Bulletin. July-September 1999, p. 5.

[19] A detailed analysis of Halliburton and its billing practices follow in Sections 1.3 and 1.5.

The first PMC, a British firm called *WatchGuard International*, was founded in 1967 by Sir David Stirling, one of the WWII founders of the British Special Air Service (SAS). It was a company employing former British SAS personnel[20]. WatchGuard International offered security analyses, military training, and personal protection services to government clients, mostly in former British colonies in the Middle East and Africa.

1.3.1. The legacy of the apartheid regime: *Executive Outcomes* and *Sandline International* (now defunct)

EO served as a model company for many South African firms, founded in 1989. It is also a 'model' of how the servicemen and officers of the former apartheid regime were 'saved' from unemployment after the broad cuts in personnel. It was founded in 1989 by Eeben Barlow, a former Lt-Colonel of the South African Civil Cooperation Bureau (CCB), which carried out covert assassinations of government opponents and bypassed UN arms embargos by creating overseas front companies. Of the pool of 2,000 personnel EO claimed it could draw upon for its operations, 70 to 75 percent were from the Buffalo Battalion, the most distinguished South African combat unit since the end of the Second World War[21]. Through the CCB, Barlow gained extensive corporate connections. Executive Outcomes had contracts with multinational corporations such as *De Beers*, *Chevron*, *Rio Tinto Zinc* and *Texaco*. EO was later registered in the United Kingdom. After the breakdown of the 1994 peace settlement, EO fought for the Angolan government against UNITA, and ended the Angolan civil war – for a couple of years. In 1995 it repressed an insurrection led by the RUF[22] in Sierra Leone, rescuing the legitimate government, but the UN forced EO to leave the country before securing a long-lasting peace. Allegations that EO was paid in diamonds and oil- and mineral concessions were the cause that the company got bad coverage in the press – which led to Eeben Barlow leaving the company in 1997. EO with Branch Oil and other mineral related companies worked all over Africa in the 1990s[23]. With the passage of the new anti-mercenary law in South Africa[24] (see also Table 1.), EO closed down on 1 January 1999 (at least officially).

Sandline International, officially registered in the Virgin Islands but founded in London in the early 1990s, was headed by Lt. Col. Tim Spicer, a former SAS officer. It was connected with many links to EO and 'hid' many former EO employees 'under its wings'. It gained ill fame for three scandalous events: the intervention in the civil war in Sierra Leone in the footsteps of Executive Outcomes, its role against the inhabitants of Bougainville, Papua New Guinea and the Liberian rebel attempt in 2003. Tim Spicer

[20] "PMC security is expensive. It costs upwards of $2,000 a day [data from 2004!] for an experienced security guard in Iraq. This high pay has recruited some of the best soldiers in the world drawn from units such as Delta, the Seals, and the SAS. This has caused a reversal, more SAS trained personnel currently serve in UK PMCs than in the SAS itself (this is also probably true for Delta and the Seals too)." according to J. Robb [2004].

[21] Based on data from: Christopher Spearin [2006]: Special operations forces a strategic resource: public and private divides. Parameters, Winter.

[22] Revolutionary United Front, a paramilitary group, notorious for cutting off the arms of civilians as part of its intimidating tactics.

[23] They specialize in the extraction of mineral and oil resources from troubled and failed states.

[24] Regulation of Foreign Military Assistance Act of 1998. On 29th August 2006 the South African Parliament has approved a new anti-mercenary law. The bill called Prohibition of Mercenary Activities and Prohibition and Regulation of Certain Activities compels South Africans to get authorization to enlist in foreign armies or mercenary companies. The bill seeks to close loopholes in the existing anti-mercenary law.

soon left SI, which ceased to exist only in April 2004, after vehemently denying allegations.

1.3.2. PMSCs overseeing PMSCs: *Aegis Defence Services Ltd.*

Aegis is a prosperous London-based British "security and risk management company" with overseas offices in Afghanistan, Bahrain, Iraq and the USA. Its CEO is none other than Tim Spicer from the now defunct SI. He has taken over the job bringing his former colleagues and connection network from SI. Aegis, after a mere two years of rather obscure existence, was suddenly awarded a large and important security contract on May 25 2004 by the DOD. Over 3 years, Aegis was in charge of all security for the $18.4 billion in ongoing reconstruction projects being overseen by the US. As part of the contract, Aegis coordinated the operations of 60 other PMSCs already working in Iraq and their 20,000 men, including handling security at prisons and oil fields. It was a no-risk, cost-plus arrangement that could earn the company up to $293 million.[25] In spite of protests in the media and by other companies Aegis was not only allowed to carry through this 'mission', but in 2007 it has won the renewal of the DOD contract to provide reconstruction security support services in Iraq. This two-year contract, the *largest single security contract* awarded by DOD, is anticipated to be valued up to $475 million[26]. In 2004 the International Peace Operations Association (IPOA) asked Aegis to apply for membership, but the application was rejected by a British competitor. Aegis is a founding member of the British Association of Private Security Companies (BAPSC), a body lobbying for the regulation of the British PSC sector. It is also a member of the Private Security Company Association of Iraq (for IPOA, BAPSC and PSCAI see 1.3.9.).

1.3.3. "Hark, they speak Afrikaans in Iraq!" - *Erinys International Ltd.*

Erinys is a South Africa-UK joint private security company, using former Special Forces personnel, formed in 2002. It provides asset, infrastructure and personnel protection as well as security support and analytical services (risk analysis) to clients from the public and private sectors, oil, gas and mining companies on three continents. Currently it operates in two principal regions: sub-Saharan Africa, and the wider Middle East[27]. Erinys is a founding member of the BAPSC and a member of the IPOA. In the summer of 2003 Erinys won the tender for Iraqi reconstruction and has started to bring the former soldiers and policemen (of Koevoet, Vlaakplas[28], or the 32nd Brigade) of the Republic of South Africa into Iraq. Currently, it is training Iraqis (about 14,000 people) to guard the oil and electric power infrastructure.

[25] Spicer is the author of *An Unorthodox Soldier*, his memoir, and has owned or worked for 4 PMSCs that have either failed or suspended business.

[26] company homepage: http://www.aegisworld.com/index.php/news/5/58.

[27] Compnay homepage: http://www.erinysinternational.com/CompanyOverview.asp. Erinys boasts of having a Code of Conduct and aims to operate in accordance with the legal and ethical framework embodied by legislation which includes the 1949 Geneva Conventions, the Universal Declaration of Human Rights and the Voluntary Principles on Security and Human Rights (2000).

[28] dreaded security police special units in the apartheid era

1.3.4. *Military Professional Resources Incorporated (MPRI)*: the merger of four-stars

Incorporated by eight senior military leaders in 1987, MPRI is headquartered in Alexandria, Virginia, and manages programs throughout the United States and in more than 40 countries overseas. The foundation of MPRI, an L-3 Communications company[29], is connected to a retired Army General, Vernon Lewis. They entered the military service market as post-Cold War conflicts flared up, concentrating on training, simulations and government services. Retired Lt. General Ed Soyster[30] once remarked of MPRI, "We've got more generals per square foot here than in the Pentagon."[31] MPRI is a member of IPOA. In 1994 MPRI was contracted to train the Croatian army in their civil war against the Serbs. The success of the operation led to the Dayton Peace Accords in November 1995. Apart from contracts in Angola and Nigeria, MPRI assisted the US government in delivering humanitarian aid in the former USSR. MPRI has received much of the work from the African Crisis Response Initiative to upgrade militaries in participating countries. The states in the program include Senegal, Malawi, Benin, Mali, and Kenya. In April, 2003, MPRI was awarded two contracts by the Defense Department for work in Iraq worth a total of $2.5 million. As part of the contract, MPRI provides plans to put ex-soldiers to work on public works programs. Without mentioning other major contracts with Nigeria, Angola or Colombia, the latest achievement of the company was in September 2008, when MPRI was one of four firms that won an up to three-year, $300 million contract for "information operations" in Iraq and possibly Afghanistan.

1.3.5. "It's the oil, stupid!" - *Halliburton Company*

Halliburton is one of the world's largest providers of products and services to the oil, gas and military services industries, founded in 1919. In 2003, Halliburton's Pentagon contracts increased from $900 million to $3.9 billion, with roughly 700 per cent. *Kellogg Brown & Root*, a former subsidiary of Halliburton, the largest corporate PMSC in Iraq, provided US forces in the Balkans and in Iraq with barracks, camps, rations, mail delivery, water purification and maintenance for equipment under a contract thought to be worth as much as $13 billion[32]. KBR constructed and operated refugee camps outside the borders of Kosovo and provided logistical support for the 1,200 intelligence officers hunting Iraqi weapons of mass destruction. Halliburton was former Vice President Dick Cheney's previous employer. It is interesting to note that Halliburton was granted massive contract extensions for work in Iraq, despite being in the midst of government investigations. For example, Halliburton was granted a no-bid contract for the supply of fuel in Iraq without even considering the Pentagon's own Defense Energy Support centre, experienced in fuelling to US armed forces all over the world[33].

---

[29] In 2000, they were acquired by L-3 Communications investment firm for $40 million and appeared in the New York Stock Exchange.

[30] Vice-president of operations in MPRI, Ret. Lt-General Soyster is a former head of the Defence Intelligence Agency.

[31] http://www.sourcewatch.org/index.php?title=MPRI.

[32] As Singer points out [2005, p. 2.], this figure is about two and a half times what the United States paid to fight the 1991 Gulf War, and roughly the same as what it spent to fight the American Revolution, the War of 1812, the Mexican-American War, and the Spanish-American War altogether.

[33] The director of the centre was wondering why DoD gave a contract to Halliburton and claimed that it could do a better job. Well, it did not. A gallon of gas soon cost double what the Defence Energy Support Centre would have charged for fuel. (Schreier-Caparini [2005], p. 53.)

After separating from Kellogg, Brown & Root (KBR) in 2007, Halliburton is no longer in the business of providing military logistics support. After the abuses ranging from overcharging for gasoline to billing for services not rendered and tax evasion, I have to remark, that was a wise decision of the company leaders. Whoever is trying to keep an account of the corrupt practices of the company in the future, will have to divide their attention.

1.3.6. The Prince's Empire: *Blackwater Worldwide* (since 2007; formerly *Blackwater USA*)

Blackwater Worldwide is a massive complex of different corporations, including the original private military company founded by Erik Prince[34] in 1997. It offers tactical training, firing range and target systems, and security consulting under the company's subdivisions. According to its website, Blackwater provides "a spectrum of support to military, government agencies, law enforcement and civilian entities in training, targets and range operations as a solution provider". Blackwater's facilities include a man-made lake with stacked containers simulating a ship for maritime assaults. Blackwater received a contract to train U.S. Navy sailors following the attack on the USS Cole in 2000. The company has altogether 29 affiliates.

North Carolina-based Blackwater USA originally had only 150 security personnel in the Gulf Coast region. The company, which provided personal security for the head of the Coalition Provisional Authority and continues to have a large presence in Iraq, began by donating the services of a helicopter crew to help the Coast Guard with rescue efforts. But it since has added commercial clients that either have buildings in the region, such as hotels, or are sending employees there to help with the reconstruction. Blackwater has received nearly 1.25 billion USD in federal contracts from State and other agencies since 2000; most of them are no-bid contracts in Iraq, Afghanistan, and post-Katrina New Orleans from the second Bush administration. The guards were paid 1,222 USD per day in Iraq.

The company recently announced that it would seek to de-emphasize its personal security work in the future (Isenberg [2008]). Presumably, the decision was made due to the combined effects of tax fraud allegations and the infamous Nisour Square incident – although almost a year had passed before official charges were brought against the offenders.

1.3.7. The private giants: *DynCorp, Armorgroup International* and *Group4Securicor*

By 2002 ***Dyncorp***, a private military company, the work of which stretches from Colombia to Kuwait[35], Afghanistan and Iraq, and headquartered in Virginia, was the nation's 13th largest military contractor with $2.3 billion in revenue until it merged with *Computer Sciences Corporation*. CSC, which does missile defence work, had multiplied the worth of its military contracts from 2002 to 2003, from $800 million to $2.5 billion. DynCorp saw its military contracts more than triple from 2002 to 2003, from $800 million to $2.5 billion. DynCorp president and CEO, Herb Lanese, went to great lengths to distance his company from Blackwater after the Nisour Square incident in September

[34] Earlier served in the Navy Seal Special Unit.

[35] Under the Plan Colombia contract, the company has 88 aircraft and 307 employees - 139 of them American - flying missions to eradicate coca fields in Colombia. In Kuwait, DynCorp supports the air force. http://www.warprofiteers.com/article.php?list=type&type=18. downloaded on 11 December 2008.

2007. He seems to have forgotten what serious charges were raised against DynCorp employees (details in Section 1.5.).

ArmorGroup has hundreds of contracts in more than 50 countries. It has built a multi-tasked force that ranges from mine clearance to intelligence to virtual security to protection of vital resource extraction sites. In terms of speed of expansion, it was rated as one of *Fortune's* 100 fastest growing NYSE-listed companies in the US in 1999 and 2000. Singer uses ArmorGroup as a case example of corporate consolidation and global reach in the defence field. "It acquired twenty other companies over the last four years, including the Alpha Firm, a Moscow based company that was basically a privatized version of the former Soviet special forces' 'Alpha' unit" (Singer [2002], p. 84.). *ArmorGroup* protects *Bechtel Group Inc.*, the prime infrastructure contractor in Iraq. ArmorGroup was acquired by Group4Securicor in May 2008. ***Group4Securicor***, now probably by far the largest private security company, was formed in 2004 from the merger between *Securicor plc* and *Group 4 Falck A/S*'s security business and has contracts in over 110 countries. It is the largest employer quoted on the London Stock Exchange, with over 570,000 employees.

I have to insert here that the majority of those staggering business agreements worth billions of USD are either flexible, so-called IDIQ[36] contracts, which means that the company may oversupply the client, or "cost-plus"[37] contracts, when the contractor is interested in keeping the costs high.

1.3.8. The secretive mass of PMSC employees

In certain countries, such as the U.S., the Freedom of Information Act is compulsory and relevant for all - except contractual details. They are considered proprietary information and exempted from the above Act. Therefore it is practically impossible to examine the contracts concluded by PMSCs and their employees. We cannot know the conditions under which these contractors operate. Also, these people are extremely reluctant to talk about the company that hired them: even if they complain about some wrongdoing, they do that under the condition of complete anonymity (especially to the media). First-hand information is difficult to obtain – however, on the basis of the experience gained during the past twenty years about the industry and gathered in critical studies we can set up a scale of employees. At the lower end are the so-called third country nationals: those who are strangers both in the client's and the customer's country. Latin America, such as El Salvador, Colombia or Chile and other less-developed regions serve as a cheap labor pool to recruit people for dangerous jobs. They are paid far less than American contractors, a fraction of it, yet for them it is a good deal. The upper end of the scale is represented by the former soldiers of the elite Special Forces units and commandos: Navy Seals, Delta Force, or Rangers (U.S.), Special Air Service, Airborne Commandos, Nepalese Gurkhas (British), the Alpha Team and other former KGB units (Russian), and I have already mentioned the South African special units. They are highly trained and experienced professionals equipped with special skills and usually speak foreign languages. They are very expensive to hire, although there are firms that can afford to pay the price. This high income makes private service in Iraq so attractive that even active soldiers retire in order to earn more money in the private industry. In the UK this problem is solved by the Army offering its elite troops "unpaid absences" of a year long in order to avoid the danger of losing them for ever. It is not unusual if these special servicemen themselves set up new PMSCs – after all, Erik

[36] Indefinite-delivery/indefinite-quantity contracts
[37] The contractor's profit is a percentage of its costs.

Prince of Blackwater was a Navy Seal, too. Between the two extremes there are average service members made redundant or retired in the years after the end of the Cold War and trying to make a living from their profession. It *is* a very good living, since the average income for contractors at the various PMSCs can be 2-10 times greater than what they would earn in a state military, especially in Iraq and Afghanistan.

1.3.9. A move towards self-regulation? The associations of PMSCs.

It is a positive phenomenon that, due to the experience gathered in the past decade or two, the major PMSCs have gained insight enough to establish organizations that safeguard their long-term interests. These associations will serve the natural selection and operation of market forces in the long run – or, at least, aim to do so.

1.3.9.1. The International Peace Operations Association (IPOA)

Founded in 2001, IPOA is a trade association seeking to increase and legitimize the role of the private sector in military and peace-related services, aiming to create a dialogue with policy-makers in that respect and to inform the public about the activities and role of the industry. Although often accused of bias and lobbying, IPOA advocates transparency, high professional standards and regulation within the industry.

Three weeks after the shootings at Nisour Square, Baghdad on 16 September 2007, Blackwater withdrew its membership from the IPOA, apparently after receiving word that the group was about to start an investigation of the company's conduct. Doug Brooks, IPOA's founder and president, has tried to deflect criticism and protect his member companies from unwanted attention. But other IPOA members' growing dissatisfaction with Blackwater and its behaviour (in Iraq, but also for the unwelcome spotlight it has cast on the entire private military industry) is clearly noticeable. Blackwater, in return, has apparently decided to launch an association of its own: the "Blackwater Peace and Stability Operations Institute". And how is it developing? Well, the latest available note on the website[38] of the Institute is as follows:

> Owing to the intense political focus on all things Blackwater lately, and the potential for excessive media focus and political protests to detract from the purpose of our Global Stability symposium, Blackwater Worldwide has decided to postpone the event until Spring 2008. Please check back later for confirmed dates and schedule.

1.3.9.2. British Association of Private Security Companies (BAPSC)

Andrew Bearpark CBE, who was the former director for reconstruction and infrastructure at the Coalition Provisional Authority (CPA), launched BAPSC in February 2006. The leading UK private security firms realized that it was high time to raise the standards of operation and improve self-regulation within the industry. In contrast to many US firms, most British as well as other European private security providers refrain from services in the frontline of hostilities in conflict-zones, therefore they are referred to as PSCs. Due to the industry's current unregulated nature and lack of transparency, respectable firms have to pay the price for the misconduct of a few individuals. The relationship between PSCs and the armed forces also requires a firm

[38] http://gpsoi.org/

legal basis. Effective cooperation among the members is also a purpose of the association which holds annual conferences on operation and security-related issues.

1.3.9.3. Private Security Company Association of Iraq (PSCAI)

In June 2004, when the Coalition Provisional Authority (CPA) was dissolved, the office within the CPA (the Private Security Company Working Group) that was responsible for all matters relating to private security companies, also ceased to operate. As a bottom-up initiative, the PSCAI was officially formed in August 2004. It is a non-profit organization which promotes transparency, legitimacy, and accountability for the private security industry. An Iraqi firm, the *Falcon Group*, was the first company to join. Now it has more than 40 members.

The PSCAI serves as a mediator between the Multi-National Force – Iraq (MNF-I), the government of Iraq, the Coalition Governments and its member companies. The association's efforts aim to enforce standard rules and regulations as guidelines for conducting private security operations in Iraq. The association is working with the Government in all of Iraq to ensure fair, consistent, and transparent licensing and registration procedures and operational matters including weapons cards and registration, vehicle registration or incident resolution, etc.

1.4. Activities outsourced

In the following section I will describe different tasks that were formerly performed by state militaries and now are disproportionately outsourced.

1.4.1. Combat and combat support

The companies hired for combat activities remind one most of mercenaries. I have already mentioned Executive Outcomes and Sandline International, as the representatives of first-generation PMSCs. Combat was an organic part of their 'missions' in Angola, Sierra Leone, Papua New Guinea or Liberia. The industry was not divided into so many subcategories in the 1990s as they are now, although the main profile of each company was formulated soon after their foundation, mainly alongside the sectors Singer devised (see Section 1.2, p. 10).

Not only Africa, Iraq or Afghanistan are the consumers of the industry. In Sri Lanka, the government has hired PMC pilots to fly helicopter gunships. The famous Nepalese Gurkhas, who served earlier in the Gurkha Brigade of the British Army, are put in charge of territorial defence in Brunei. Others are specialized on arms procurement and supply. After bringing down the iron curtain the trained army personnel of the eastern block were also trying to make their living in the private military and security industry. Professional contract soldiers, ex-Army officers and NCOs from the former Soviet Union defend Kazakh, Armenian and Azeri sites and establishments or fight in Chechnya (together with regular forces). However, combat operations that PMSCs have undertaken are not numerous. As I have already mentioned on p.6, the number of companies willing to engage directly in combat and combat support is relatively small. It is more profitable to stay behind the scene.

1.4.2 Military advice and training

With an array of subcontractors, PMSCs involved are capable of providing most of the services required to field an armed force: advisory strategic planning, force development, research and threat analysis; general staff training, including air and naval operations; training in multi-service, combined operations including intelligence and electronic warfare; and combined arms training for tactical units. Training is evidently *not* considered as a core activity by many defence ministries or departments, even if it provides the key for the future of the forthcoming generations of military officers and experts. In fragile states, where the government cannot guarantee the citizens' security, it is easy to understand why PMSCs are often employed to train government forces and help provide order. Hiring private firms to provide military training is not new, as Deborah D. Avant points out ([2000], p.1.):

> British companies were involved in the Middle East and Africa in the 1950s and 1960s, and the U.S. hired companies to train the Vietnamese forces in the 1960s. During the cold war, private U.S. firms were associated with tasks "too dirty" for the U.S. government.

As a consequence of the downsizing of troops U.S. forces were overstretched and could not undertake the expanded military training in Africa, therefore parts of it have been outsourced to MPRI, *DFI International* and *Logicon.*

A recent example can be *Vinnell* (US), which was training the Saudi National Guard and the new Iraqi army, or *Booz Allen & Hamilton Inc*, which runs the Saudi military staff college.

Also, private companies are hired to help restore the peace in multiethnic conflicts, such as Executive Outcomes, which was training forces in Sierra Leone and Angola, or MPRI, which was training, professionalizing and equipping the Croats to be able to recover Serb-held Krajina in 1995 in "Operation Storm", then training the Bosnian armed forces. The direct connection between training and combat cannot be denied in the above instances.

In 1995 Sierra Leone's president[39] hired the British *Gurkha Security Guards*, then later employed Executive Outcomes to shore up and train its forces. The United Nations, taking the position that the use of private paramilitary forces interferes with the people's right of self-determination, pressured Sierra Leone to terminate its contract with Executive Outcomes. One condition of the 1997 peace agreement between President Ahmad Tejan Kabbah and RUF leader Foday Sankoh included the early removal of EO forces and all foreign troops. Later in 1997 the deposed Sierra Leonean President Ahmed Kabbah hired SI to train and arm his troops to retake the government after a coup.

In developed states, however, the necessity of outsourcing military training, not to speak of its extent, is not immediately self-evident for us laypeople. Let us see a few examples:

The US Reserve Officer Training Corps programs are contracted out to *MPRI* at 217 US universities. *ATAC* provides adversary aircraft and pilots during the US Navy and the US Air Force military training exercises. The US *Blackwater* is training US Navy personnel in force protection, shipboard security, search-and-seizure techniques, and armed sentry duties (Schreier-Caparini, [2005], p. 24). The British Ministry of Defence practically outsourced the pilot training in the Royal Air Force for attack helicopter, light aircraft, Lynx helicopter, and Tornado fighter jets (Krahmann [2003], p. 9.).

[39] Valentine Strasser

Civilian contracts are signed by the MoD to cover about 80 percent of all training within the armed forces. Although Australia and the Western European states have not gone that far yet, outsourcing military training is gaining ground by the hour all over the world.

1.4.3. Peacekeeping

The dilemma Singer poses has never been more topical: "If everything from prisons to welfare has been privatized, why not try turning peacekeeping over to the private market?" (Singer [2003], p. 2.). Indeed, why not? Let us see the potential advantages of outsourcing peacekeeping as compared to the UN doing it. First of all, since the UN is a multinational organization, itself in want of thorough reforms, potential tensions might influence or even hinder the very decision of sending troops to a conflict zone. Once the resolution has been brought, the deployment of national contingents usually takes ages (both in the countries that participate in the operation and on the field of operation itself). Secondly, national contingents of the developing world are usually scantily equipped and poorly trained. Due to the reasons described on pp. 5-6, (Section 1.1.) developed countries have been less willing recently to send their own troops. Thirdly, the costs of the overall deployment and operation are ever increasing, irrespective of the eventual result. The arch-example of the comparative advantages of a UN and a private military intervention in Sierra Leone is frequently cited – see Table 2:

Table 2.

Performer of intervention	**Executive Outcomes** (1995-7)	**United Nations** (1999)
Duration	active combat lasted for weeks	3 years
Costs	US$20 million a year	About a billion US$ yearly
Deployed personnel	battalion size – 300 people	18,000 soldiers
Results	independent elections took place	RUF retook the capital twice, UN could not stop a military coup against the democratically elected president, eventually British troops had to intervene to help out UN forces

So much for UN effectiveness. This example shows how a rapidly deployable, tailored force can take faster and more effective action than the bureaucratic forces of nation states. Ironically, EO was later contacted by the Secretary-General of the UN during the early days of the Rwandan genocide for a possible intervention by the company. EO's services were never used, despite its estimate that it could have saved 200,000 lives from massacre by deploying only 1,500 security personnel at a cost of US$100 million. The idea was dismissed due to the problem of who would actually cover the costs.[40] Another example for a possible PMSC contribution to peacekeeping: IPOA proposed to be hired on behalf of the MONUC peacekeeping operations in the eastern Kongo as early as 2003. It offered to create a "Security Curtain" (demilitarized zone) in the conflict area for something between 100-200 million USD. The authorities have not responded so far. MONUC is still in eastern Kongo with some 17,000 troops, recently facing accusations of total failure - aid agencies say tens of thousands of civilians are roaming the countryside unprotected, in need of shelter, food, water and medical care.

[40] In June 1998 UN Secretary-General Kofi Annan indicated that he considered the possibility of engaging a private firm in separating fighters from refugees in the Rwandan refugee camps, but did not feel the world was ready to privatize peace. Speech given by the UN Secretary-General at Ditchley Park UK, 26 June 1998, Press Release SG/SM/6613. (Schreier-Caparini [2005], p. 132.)

Some of the displaced have accused U.N. peacekeepers of failing to fulfill a mandate to protect them from violence and looting, not just by armed rebel groups but also by Congolese government forces (Charbonneau, [2008]).

Singer suggests three possibilities for privatizing peacekeeping:

1. privatized protection of sites, convoys and aid groups;
2. a hired Rapid Reaction Force within a peacekeeping operation, in which the actual activity of the private forces would require only a short period of time – just for demonstration or actual combat, depending on the situation;
3. complete outsourcing of the whole process of the operation till the situation is stabilized, then hand over control to regular forces (Singer [2003], p. 3.).

However, before making up our minds on behalf of the UN to employ PMSCs for peacekeeping tasks from now on, we must not leave other aspects out of consideration. I have already referred to the fact that PMSCs are wont to overcharge, motivated by profit maximization. Respect of human rights and accountability are also issues that raise concern, in light of the atrocities committed by employees of PMSCs in the Balkans[41], for example. Also, peacekeeping has grown into a complexity of tasks, which makes it necessary to provide special training in advance for the troops involved. Before engaging PMSCs for such missions, the authorities that engage them have to be reassured of their capabilities and preparedness regarding peacebuilding (troop disarmament, demobilization, reconstruction, etc.), neutrality, humanitarian law, or cease-fire monitoring. Furthermore, the ultimate goal of such missions is not only peacekeeping but also the consolidation of the situation in the conflict zone so that the authorities of the state involved in the conflict would be able to govern it and maintain order in the long run, without intervention. Last but not least – who would hire peacekeeping contractors? The Security Council? The General Assembly? The Secretary General? Or another body within the maze of the UN? Who would cover the expenses and from which budget or fund? These questions ought to be answered before reaching any final solution and soon, before another humanitarian crisis in the brimming pots of unrest forces the leading powers of the world to choose.

1.4.4. Intelligence

Nowadays we can pick and choose among the wide variety of intelligence activities: industrial intelligence, surveillance activities, intelligence as part of the GWOT, military intelligence, clandestine operations, etc. The British *Northbridge Services Group Ltd.*, using former CIA and SIS employees and special forces personnel, is providing counterintelligence and intelligence services while Kellogg Brown & Root is doing bug control on US bases in Iraq. But what happens if the work of such US governmental organizations as the CIA, the DIA (Defence Intelligence Agency), the NRO (National Reconnaissance Office) or the NSA (National Security Agency) is outsourced[42]? Strange as it may seem at first sight, the US government spends on foreign and domestic intelligence about 60 billion USD each year, 42 billion USD of which was the cost of activities outsourced to private contractors in 2006. The number of contractors exceeds the CIA's full-time workforce of 17,500. In 2006 it was altogether 5,400 companies that sought to do business with CIA (Shorrock [2008], pp. 6, 13-14, quoted by Johnson [2008]). The activity of NRO, responsible for the maintenance of reconnaissance satellites, is outsourced to contract employees of private companies. It is

[41] See Section 1.5. on the atrocities committed by PMSC employees.
[42] This subsection is devoted mainly to depict the situation in the US.

the most privatized part of the intelligence activity, controlling over 7 billion USD of the entire annual budget (which is about 8 billion). A case-study of such public-private partnerships can be Retired Admiral John Michael "Mike" McConnell, Director of National Intelligence (DNI) since February 2007. Beforehand, he was vice president and director of *Booz Allen & Hamilton's Infrastructure Assurance Center of Excellence*. He was also the former chair of the board of the Intelligence and National Security Alliance (INSA), the private intelligence industry's lobbying arm, of which Booz Allen & Hamilton is a founding member.

One would expect a considerable rise in effectiveness to justify such a degree of outsourcing. However, it is not the case. The NSA was unable to analyze much of the gathered information in 2006. Only 5 % of it was translated from its digital form into text and sent for analysis. The rest was thrown away. The dependence of the government intelligence on private companies makes every phase of intelligence gathering, processing and preserving extremely *vulnerable*. Even one of the most sensitive U.S. intelligence documents, the Presidential Daily Briefing, is prepared in part by private companies, despite having the official seal of the U.S. intelligence apparatus! It is better not to think of how a private company could tamper intelligence and thus influence national or even international policy if its corporate interest requires so. Consequently, the same risks apply to the outsourcing of intelligence tasks as to the privatization of other military and security activities: impunity for abuse, lack of oversight (public or congressional), leakage of classified information and loss of such traditional professionalism that can only be formed in the course of long years of service – but in the service of state and not of corporate institutions. As Tim Shorrock points out, the joining of former intelligence officers to the private sector (and this phenomenon started in the early 1990s) means that the institutional memory of the United States intelligence community now resides in the private sector (Shorrock [2008], pp. 112.)[43]. Patrick Henry, Assistant Secretary of the US Army, suggested as early as in 2000 restricting the use of PMCs in intelligence work, stating that the tactical intelligence gathering could not be contracted because it was "integral to the application of combat power". At the strategic level, contracting out intelligence work poses unacceptable risks to national security (Werve, [2004].).

1.4.5. Maintenance[44] and operation of weapons systems, and logistic support

If we put these services on a scale, the most lucrative contracts appear in the supplies and logistics sector, and the maintenance and control of communication and weapon systems. US forces have to rely on the work of civilian specialists because they are not training troops to operate and maintain the following systems: Guardrail surveillance aircraft, missile defense work (by *Computer Sciences Corporation*[45]); also, in Afghanistan and Iraq contractors operated Predator unmanned aerial vehicles (UAV), datalinks to transmit information and targeted precision weapons. Civilian specialists run the commercial communication system for the US Navy in Southwest Asia and in "Operation Enduring Freedom" and "Operation Iraqi Freedom" contractors maintained sophisticated weapons system like the B-2 stealth bomber, the F-117 stealth fighter, U-2 reconnaissance and K-10 refuelling aircraft, Apache helicopters, guided missile defence systems on certain US Navy ships (Schreier-Caparini [2005], pp. 24-25.). What is more,

[43] Shorrock, *Spies for Hire*, p.112.

[44] Maintenance is provided by arms manufacturers like Lockheed Martin, Raytheon, Boeing, Northrop Grumman, General Dynamics, United Technologies Corp, Science Applications International Corp, L-3 Communications Holdings, Hughes, Rockwell, Textron, etc.

[45] *CSC* owns *Dyncorp*.

contractors maintain special intelligence collection systems on planes. Just imagine what would happen if contractors considered a task too risky and withdrew from the operation claiming that it is not cost-effective for them. With today's sophisticated weapon and support systems, in case of a PMSC failure turning to military members would not be the right answer.

Most PMSCs and their subsidiaries provide logistic support, such as the *KBR Corporation*, which supplies food, laundry and other personal services to US troops in the Balkans and Iraq based on extremely lucrative no-bid contracts. Military support firms were engaged in other missions as well: *DynCorp* and *Pacific A&E* provided logistic support for the UNAMSIL force in Sierra Leone. *MPRI* assisted the US government in delivering humanitarian aid in the former USSR. *Eagle Global Logistics (EGL)* is transporting military vehicles from Germany to Kuwait and Iraq. And as for every major US deployment, logistics is provided by PMSCs. The question arises, what tasks have remained for the US Army Logistical Support Command to justify its existence?

1.5. Who's getting in harm's way? Individual and corporate crimes…

Private military contractors' operations in failing or failed states are often related to scandalous activities either of individual employees or of the whole company. Although the events I shall refer to below are mostly exceptions from the rule, it is worth asking, how it can be possible that the offenders got away with a transfer out of the conflict, both physically and legally speaking.

1.5.1. Human rights abuse and trafficking in human beings (THB)

DynCorp was involved in a sex slavery scandal in Bosnia in 1999, with its employees accused of rape and the buying and selling of girls as young as 12. Dyncorp, hired to perform police duties for the UN and aircraft maintenance for the US Army, were implicated in prostituting the children, whereas the company's Bosnia site supervisor filmed himself raping two women. A number of employees were transferred out of the country, but with no legal consequences for them. On the contrary, those were officially prosecuted and brought to the court who had revealed the incidents and, consequently, were fired. Kathryn Bolkovac, a U.N. International Police Force monitor filed a lawsuit in Britain in 2001 against DynCorp for firing her after she reported that DynCorp police trainers in Bosnia were paying for prostitutes and participating in sex trafficking. Many of the DynCorp employees were forced to resign under suspicion of illegal activity. But none were prosecuted, since they enjoyed immunity from prosecution in Bosnia.

In October 2004, it was revealed that DynCorp contract workers operating in Tolemaida distributed a video in which they could be observed sexually violating underage girls from the town of Melgar. This video was even sold on the main streets of Bogotá. Nonetheless, the Lawyers' Collective of Colombia has not learned of any criminal investigation undertaken in relation to these acts involving minors. According to follow-up work carried out by the Lawyers' Collective through interviewing persons from this community, it was discovered that one of the minors involved in the videos committed suicide some time after the publication of them.[46]

[46] http://colombiasupport.net/news/2007_09_01_archive.html. Downloaded on 12 December 2008.

In the infamous Abu Ghraib prisoner-abuse case all of the translators and up to half of the interrogators involved were private contractors working for two firms, *Titan* and *CACI*. The US Army Inspector General found that contractors were involved in 36 percent of the proven incidents and identified 6 employees as individually culpable[47]. Lieutenant General Paul Mikolashek, on behalf of the Army Inspector General, pointed out that a third of the interrogators supplied in Iraq by CACI had *not* been trained in military interrogation methods and policies at all, although CACI's contract required specific intelligence and technical expertise. The only formal inquiry into PMSC offences on the corporate level was conducted by CACI *itself*, finding nothing wrong, of course. In the case of CACI, Army investigators subsequently reported not only that a CACI employee may have helped write the work order, but also that the Abu Ghraib interrogators had been hired by simply amending an existing contract from 1998 for computer services overseen by the Department of the Interior. In the meantime, eleven low-ranking U.S. soldiers have been convicted of breaking military laws by abusing detainees whose degrading treatment included being held naked on leashes. At present, CACI is claiming immunity from an Abu Ghraib torture lawsuit on the basis that it was working on behalf of the government by supplying interrogators to the U.S.-run prison in Iraq. Titan Corp. successfully used an immunity defence in winning dismissal in 2007 of similar allegations its translators faced in a federal civil case in the District of Columbia; the former detainees are appealing. CACI failed to win dismissal in the same case because the judge ruled that unlike Titan, CACI had its own chain of command that required CACI interrogators to report abuse to the company as well as the military. The case hasn't yet gone to trial. (Dishneau [2008].). Obviously, legal loopholes have made it possible that U.S. soldiers were convicted for the same offence that contractors committed, who had not been qualified for the jobs they were employed to do and have not even been charged for 4 years.

1.5.2. Illegal trade of weapons

Shady and illegal private military activities were present also in Central America. It was alleged that companies like *Southern Air Transport* and *Setco Aviation* facilitated the supply of weapons and ammunition to the Nicaraguan contras after Democrat-ruled Congress cut off aid. Through its subsidiary, DynCorp was also implicated in the Iran-Contra case. In the 1980s, the Contra rebels were trying to topple Nicaragua's leftist Sandinista government. The Contra arms operation and the fact that it had been partly funded by weapons sales to Iran led to convictions of top Reagan administration officials, but no DynCorp employees were held responsible officially.

In 1998, Sandline International was investigated for breaching a UN arms embargo against Sierra Leone while fulfilling a contract to help to restore the democratically elected regime. Sandline had been contracted 'second-hand'[48] by the deposed president and offered exploration rights to Sierra Leonean diamond, bauxite and gold deposits in exchange for helping to restore his government. Sandline went about fulfilling its portion of the agreement by attempting to export 30 tons of small arms to Sierra Leone from Bulgaria, a clear violation of a British recognized UN arms embargo. Sandline insisted that this was done with the tacit understanding and approval of the British Foreign Office. Although Sandline's arms shipment arrived too late to play a significant

[47] There is no unclassified proof available, however, there is a widespread supposition that some of the acts of torture in Abu Ghraib prison were, in fact, committed by members of the Israeli intelligence services, who were placed in the prison via the U.S. independent contractors. See at: http://www.zmag.org/content/showarticle.cfm?SectionID=15&ItemID=5623

[48] by the Indian-born millionaire Rakesh Saxena

role in the counter-coup d'etat that overthrew the government, it nevertheless was in violation of an international embargo. The incident, which became known as the Sandline Affair[49], was investigated by the British Parliament and was a public scandal for SI.

1.5.3. "Trigger-happy" employees

There is no doubt that PMSCs are usually good at their job, but they might adopt aggressive tactics and are 'trigger-happy' when they suspect a threat. The latter is especially true for the Blackwater shooting at Nisour Square, Baghdad in September 2007, but, in my view, this incident had its antecedents in a much earlier event.

The families of the four Blackwater employees ambushed, killed and mutilated by insurgents in Fallujah on 31 March 2004 have sued the company, claiming that the deceased had been sent into danger with a smaller unit than mandated in their contracts. The investigations led by the Committee on Oversight and Government Reform confirmed that the company had ignored multiple warnings about the dangers of traveling through Fallujah, cut essential personnel from the mission, and failed to supply its team with armored vehicles, machine guns, sufficient threat intelligence, or even maps of the area. In the course of the investigation Blackwater consistently delayed and erected impediments. The Fallujah attack and its aftermath raised serious doubts about the management (and CEO, Erik Prince) as well as the employees of Blackwater, since the statements of many Blackwater personnel reveal strong opinions that the Blackwater organization in Baghdad was chaotic and staffed by unqualified individuals (Waxman, Henry A. [2007].)[50].

In the light of the above information need we consider the Nisour Square shooting. The Blackwater Personal Security Detail had accompanied a convoy of U.S. State Department vehicles and was returning to headquarters when a car moved towards their vehicle and did not turn away in spite of repeated warnings by an Iraqi traffic policeman. The Blackwater men started shooting randomly and the incident was resolved only when one of them pointed his own weapon at the last contractor still firing and ordered him to stop. Although Iraqi and Blackwater investigations differed from each other regarding the 'provocation' or the absence of it, US Military reports confirmed the Iraqi government's contention that Blackwater was at fault in the incident. It is obvious that the Blackwater Detail shot first and there were many (17) civilian victims. The incident has caused Iraqi Prime Minister Nuri al-Maliki to call on the U.S. government to end its contract with Blackwater and for the Iraqi government to push for an apology, compensation for victims (8 million per victim, altogether 136 million USD) or their families and for the guards involved in the shooting to be held accountable. As further investigations revealed that was not the only trigger-happy Blackwater incident. In October 2007 the House Oversight and Government Reform Committee released a report stating that Blackwater USA guards have used deadly force weekly in Iraq and have inflicted "significant casualties and property damage". The report found that the guards fired their weapons an average of 1.4 times a week, and according to Blackwater reports its forces fired first in over 80 percent of the cases.[51]

---

[49] Sandline released a long list of corrections to a book published in 2000 by Pluto Press: Mercenaries: An African Security Dilemma. The book traces the maze of relationships engulfing EO, Sandline, etc.

[50] Blackwater's chief executive, Gary Jackson, has confirmed that commandos have been recruited from former forces loyal to Chilean President Augusto Pinochet for work in Iraq.

[51] http://edition.cnn.com/2007/WORLD/meast/10/01/blackwater.report/index.html. Downloaded on 30 November 2008.

The US State Department last year renewed Blackwater's licence to work in Iraq despite opposition from Iraqi leaders, including the Prime Minister. Almost a year had elapsed before charges were raised (on 17 August 2008) against the Blackwater employees involved in the shooting.

1.5.4. "Coalition of the (over)billing"[52]

Overcharging and war-profiteering have always accompanied modern warfare, enough to remember World War I and the paper-soled shoes. Where monitoring is inadequate and intertwining corporate and administration interests result in no-bid contracts there is always the risk of overbilling. There are many such examples, I wish to mention below only the perhaps most infamous. *Kellogg Brown & Root*, a former subsidiary of Halliburton, under a no-bid contract to supply meals for US troops in Iraq, overcharged up to 40 percent (about 1.8 billion USD)[53]. But that was not the only problem. As I have already referred to that earlier, it was revealed in 2004 that while Halliburton was already facing investigations in connection with the meals supplies, the fuel contracts were sufficently 'oiled up'. The company is under investigation for alleged accounting and invoicing irregularities.

Tax fraud is another issue that goes back to lack of monitoring and legal loopholes. At present, Blackwater Worldwide is under federal inquiry for classifying its workers as independent contractors instead of employees. That designation, which the government has questioned in the past, allowed the company to obtain $144 million in contracts set aside for small businesses and avoid paying as much as $50 million in withholding taxes under State Department contracts (DeYoung, Karen [2008].).

1.5.5. Links with terrorists

"If the international community wanted to be successful in fighting terrorism, it would have to look into the actions of mercenaries," said the UN Special Rapporteur on mercenaries (Ballesteros, [2001].). Nothing illustrates that remark better than a recent charge against Blackwater for shipping hundreds of automatic weapons to Iraq without the necessary permits. Some of the weapons were believed to have ended up on the country's black market, while others were possibly transferred to the Kurdistan Workers Party (PKK), a Kurdish Marxist-nationalist group designated a *terrorist organization* by the US, NATO and the European Union. Investigation by U.S. federal prosecutors started when Turkish security forces recovered U.S.-made rifles and pistols from dead PKK militants. Blackwater initially denied the claims and declared them baseless. In early 2007, two Blackwater employees pled guilty to illegally shipping weapons. In November 2008, the U.S. State Department prepared a multimillion-dollar fine on the company. (It is still in the phase of preparation.)

Other cases show that PMSCs are not fastidious about choosing either their employees or their clients, provided that profit jusitifes the choice. Former British Army soldiers were hired who had been jailed for links with Irish terrorists. Apart from democratic

[52] "Coalition of the billing" is Singer's pun of President Bush's lofty expression for the international coalition that supported the invasion of Iraq, the "coalition of the willing".

[53] The auditors said the company might have charged for millions of meals that were never served. Once the Pentagon had cut out *KBR* as the middleman and began dealing directly with *KBR's* Kuwaiti subcontractor *Timimmi*, the cost per meal dropped from about $5 to $3. Source: "US Army to break up Halliburton's Iraq contract", *ISN SECURITY WATCH*, 7 September 2004, citing the *Wall Street Journal*. Available at www.isn.ch/news/sw/details.cfm?ID=9614, downloaded on 12 December 2008.

governments, the UN and humanitarian organizations, clients include dictators, rebel groups, drug cartels, and, prior to September 11, 2001, at least two al Qaeda-linked jihadi groups. (Singer, Outsourcing War [2005], p. 3.).

1.5.6. …and the punishment?

We can conclude on the basis of the above incidents that it may be risky to employ PMSCs by governments because if anything goes amiss the clients (as well as the consumers of their services) may not have the necessary punitive measures or sanction mechanisms. So far, private contractors have either enjoyed immunity from prosecution in a foreign country, or the foreign country has been failing or failed and have had no means to prosecute them. Why is that so? This question can only be answered after considering a whole complexity of issues (and I will do that in the next chapter) therefore in this section I merely refer to the key ideas long urged by academic and non-academic critics of the profession. Legal loopholes should be closed by new regulations, *binding* international conventions and a new and proper definition of the industry should be formulated. The firms ought to compete for contracts, and the private military and security market should not be distorted by government favours to certain companies. Contracts need be given for merit and not for good PR. PMSCs and their employees should be made accountable for their activity, which would enhance their efficiency as well. Also, to prevent such incidents as the Nisour Square shooting or the Dyncorp THB scandal in Bosnia, the companies should adopt strict screening procedures when hiring their employees.

1.6. Legal murkiness is lifting

Attempts have been made to regulate the industry, especially in the most contractor-sensitive place: Iraq. The discussion phase of a new agreement between the U.S. and Iraq is over. When[54] it becomes final, not only U.S. troops but also private contractors will be subject to Iraqi prosecution and Iraqi courts – if they commit *serious* crimes *off duty* and *outside their military base*. Obviously, the latter three conditions provide further legal gaps that could be circumvented, not to speak of other parts of the world where this agreement would not apply even if it were finalized.

The following part of this paper will be devoted to the legal situation of the industry, both at the international and at the national levels. Andrew Bearpark (BAPSC) argues that only a multidimensional approach can achieve a reasonable degree of regulation of the private military and security industry (Bearpark [2007], p. 2.). Change is on its way: new documents are being signed (for example, the Montreaux document[55], signed so far by 17 states) to facilitate accountability and transparency. Clients, customers and providers would all welcome and benefit from measures that clarify the legal situation of the industry.

[54] Muqtada al-Sadr Shi'ite cleric and religious leader refused to accept the agreement, although in August 2008 he demanded a timetable for the withdrawal of U.S. troops. Despite the efforts at disruption, 149 of the 198 members of Parliament voted in favor of the pact at the end of November 2008.

[55] *Montreux Document on Private Military and Security Companies* (PMSCs), signed on 17 September 2008.

Part Two

Legal background of PMSCs – still in the twilight zone?

In this chapter I intend to address the following issues in the context of the private military and security industry:

- anti-mercenary legislation and the failure of its implementation;
- the existence of companies as well as individual contractors in a legal vacuum;
- transparency, accountability and responsibility of PMSCs;
- fair bidding for governmental contracts;
- PMSCs' relation to the military chain of command;
- monitoring and control mechanisms;
- sanctions for crimes committed by contractors.

In the course of discussing these problems, special attention will be given to the efforts to regulate the industry at international, regional and national levels before and after the second Gulf War, and the achievements (or the lack of them) during the last 4-5 years that have passed since the latest major studies[56] were published.

2.1. Get rid of them or control them? Attempts to regulate mercenary activities in the 20th century

2.1.1. Can Africa outlaw mercenaries?

The international community realized the dangers of the use of mercenaries relatively early, in the midst of the national liberation process, and made major efforts to regulate their activities and sanction any offence. The Organization of African Unity (OAU; since 2002 the African Union), being the most motivated to control this phenomenon, created a document, the "Convention for the Elimination of Mercenaries in Africa" in 1972. The problem was how to implement it if it had not come into force. Five years later a new convention was worded, the 1977 OAU "Convention for the Elimination of Mercenarism in Africa". It contained the definition of mercenary activities which were aimed at any of the following: the overthrowing of the government of an OAU member state; to undermine the institutions, independence or territorial integrity of that state; or to block OAU-recognized liberation movements.[57] This list mirrors the deepest worries of the former African colonies during the liberation process. Although the second Convention came into force in 1985, it had not much effect either – hiring mercenaries has become a spreading plague in Africa.

The controversy surrounding South Africa's private military companies (f.e. Executive Outcomes) led to the Regulation of Foreign Military Assistance Act of 1998. It states that no person within South Africa or elsewhere may recruit, use or train persons for, or finance or engage in mercenary activity. Mercenary activity is defined as "direct

[56] Singer's Corporate Warriors and various articles, the Schreier-Caparini study, Isenberg's, Holmquist's and Wulf's works.

[57] Organization of African Unity Convention for the Elimination of Mercenarism in Africa. OAU; Doc. CM/817 (XXIX) Annex II Rev. 3, 1977.

participation as a combatant in armed conflict for private gain." The Act *regulates rather than prohibits* foreign military assistance. Requests to supply such assistance and all arms related materials are scrutinised by the National Conventional Arms Control Committee (NCACC).

2.1.2. Face the fact: legally or illegally, mercenaries do and will exist

The use and recruitment of mercenaries against national liberation movements and sovereign states were condemned by UN Resolutions 2465 (XXIII) of 20 December 1968 and 3103 (XXVIII) of 12 December 1973.

Prior to the 1970 Declaration of the Principles of International Law Applicable to Friendly Relations Between States there existed a legal loophole. Only neutral states were prohibited from permitting the enlistment and recruitment of mercenaries[58]. All other states fell outside the scope of this prohibition. Principle I of the Declaration extended its competence to every state.

A new addition to the Geneva Conventions of 1949, on humanitarian law in times of armed conflict, was formulated in 1977. It provides a legal definition of mercenaries (Article 47 (2) of Protocol I, see Annex III.), whereas Article 47, (1) of Protocol I denies them the status of combatant or of a prisoner-of-war. This Protocol does not aim to forbid the existence and practice of such persons but limits their legal status to warfare. However, as several states, among them the US, the UK and France, did not consider the legal definition in the Convention applicable, it had not much practical use.

In 1989, the United Nations General Assembly completed the International Convention against the Recruitment, Use, Financing, and Training of Mercenaries (Annex II.). In the effort to create a universal law that legislates mercenary activity, it returns to the first document of OAU (1972): it prohibits activities aimed at overthrowing or undermining the constitutional order and territorial integrity of states. Also, it tries to eliminate the supply and replacement of mercenaries, but allows internationally recognized governments to hire them in defence and establishes no monitoring or enforcement mechanisms. It took 12 years to come into force (after the 22nd signature), and as frequently happens with international definitions and legislation, it was obsolete and unapplicable in 2001 when PMSCs were rapidly gaining ground. These modern armed contractors do not fit the legal definition of mercenaries because that definition requires that they work for a foreign government in a war zone in which their own country is not part of the fight; as Singer quotes George Best, "the consensus is that anyone who manages to get prosecuted under this definition deserves to be shot – and his lawyer with him" (Best [1980], p.328., quoted by Singer [2004], p. 531.)[59].

After these rather fruitless efforts, the United Nations General Assembly appointed Peruvian Special Rapporteur, Enrique Bernales-Ballesteros, to investigate the continuing role of mercenaries in global conflict. In his Report, the Special Rapporteur stated that mercenarism did exist and that it was a clear violation of basic human rights,

[58] "Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands including mercenaries, for incursion into the territory of another State." UN Resolution 2625.

[59] Best, Geoffrey [1980]: Humanity in warfare: The modern history of the international law of armed conflicts. London, Columbia University Press, p. 328 n..83. Interestingly, this statement was also made by a PMF executive in a 2001 interview with Singer, without any kind of attribution to another source, indicating that Best's legal lessons have been internalized in the PMF industry. See: Singer, Peter W.: War, Profits, and the Vacuum of Law: Privatized Military Firms and International Law. Columbia Journal of Transnational Law.

sovereignty and of the self-determination of peoples. Apart from urging member states to ratify the above-mentioned International Convention and adopt stricter regulation of mercenary activities, in his Report to the Commission he suggested that a new, more precise legal definition should be worded for mercenaries. He submitted his two Reports subsequently in 1999 and 2001.

2.2. Legislation of the 21st century – trying to keep up with the rapidly growing industry

2.2.1. After 9/11 – daunting challenges

Since the attacks against the World Trade Centre and the Pentagon there has been a dramatic increase in the formation of new PMSCs. The general insecurity felt most in the U.S. but also in the Western states gave the idea to many former officers, NCOs or special operations experts to establish the means of dealing with situations that were going to arise in a post-9/11 world – inside and outside the U.S. The increased reliance on PMSCs in Afghanistan and later in Iraq were partly due to the fact that the DoD (among other US governmental bodies) grossly underestimated the number of troops necessary for these missions and, in order to avoid the failure of the mission, to find a quick solution and to cover the extend of forces from public and media scrutiny, invited the private military and security industry to take its share of the cake. Singer, among others, has pointed out that due to the secrecy that surrounds the industry and the status, number and extent of contracts the DoD did not even know how many contractors were operating in Iraq and Afghanistan (Singer [2004], p. 17.). As I have indicated in Part One, Section 1.1., exact numbers of PMSC employees are now available – it took only four years to count them.

Every single study and article on PMSCs I have read pointed at the unregulated legal situation of the contractors. In 2004-5, when most of the academic writings appeared on the subject, the following challenges awaited anyone who attempted to improve regulations:

- anti-mercenary laws were not applicable to modern PMSCs (even if there were means to implement them), since the definition of mercenaries excluded that their own country could be part of the fight or that they worked for their own government, as was the case in Iraq, for example;
- an updated legal definition for either mercenaries or PMSCs did not exist;
- in case of criminal activity, either the contractors' national legislation granted them immunity, even though an individual's crimes fall under the local nation's legislation (since private contractors are only accountable to their employing companies, that immunity can turn easily into impunity), or the country in which they worked (territorial state) was unable to exercise its right to prosecute them;
- since PMSCs were not part of the military chain of command, they could unilaterally terminate or suspend their contract if they found the situation too dangerous (as happened in Iraq) and withdrew from the conflict zone;
- there were no established international standards based on the coordination of different states – no code of conduct to abide by for companies and contractors, no uniform screening of new employees, nor standardized qualifications necessary to become a civilian contractor, and no norms of licensing, registering and record to become an acceptable company for contracts;

- apart from the UN Special Rapporteur, there was no international or regional monitoring of the industry and its characters;
- furthermore, there was no legal entity at the international level, no UN body that could sanction them – the International Criminal Court had just been created and was untested yet (besides, the U.S. is not a party to the ICC);
- self-regulation for actual crimes was not and is still not sufficient, no sanctions existed except for reducing the company's chances to gain contracts in the future (punishment by the market);
- as for national legislation applicable for PMSCs and individual contractors (where it existed at all), there were legal gaps both at the individual and corporate levels.

2.2.2. Has the picture changed by 2009?

Are there any improvements in meeting the above challenges? Let us examine what has happened during the last 5 years:

First of all, the former UN Special Rapporteur on mercenaries, Bernales Ballesteros, in his last Report proposed a new, modern legal definition which:

(a) Considers the participation of mercenaries in international and internal armed conflicts and in concerted acts of violence against the right of self-determination of peoples;

(b) It is not limited to the mercenary as an individual agent but includes mercenarism as a concept related to the responsibility of the State and other organizations and individuals;

(c) Covers illicit acts such as trafficking in persons and migrants, arms and drug trafficking; terrorism; international organized crime; abduction, etc., as well as actions to destabilize legitimate governments and actions aimed at taking forcible control of valuable natural resources;

(d) Extends responsibility to anyone who recruits, finances, employs or trains mercenaries.[60]

Nevertheless, his proposal approaches mercenaries only from the criminal aspect and does not include (and is unfit for) modern PMSCs. Special Rapporteur Ballesteros, after the expiry of his long mandate (1987-2004), resigned and a new Rapporteur, Shaista Shameem, a Fiji Indian lawyer, was appointed in his place in August 2004. Her mandate is still active.

Second, among the plethora of conferences organized around this issue, I wish to mention only two. Experts met to study the impact of mercenaries in Geneva on 3 December 2004. They discussed traditional and new forms of mercenary activity as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination. Also, *The Privatization of Security and Human Rights in The Americas: Perspectives from the Global South* was the title of a conference held between 31 January – 3 February 2008 in Wisconsin, U.S. Its aim was to create a research network on PMSCs and centered around the phenomenon that while most of the world's leading PMSCs were based in the Global North, much of the work they

[60] Briefings by the Secretariat in relation to the human rights agenda items of the Third Committee of the 58th session of the General Assembly, p. 18. (E/CN.4/2004/15, para. 47).

were hired to do - either on the battlefield or the oilfield - took place in the Global South and that work was also being carried out by recruits mainly from Latin America, Africa, and Asia. Obviously, during the four years that elapsed between the two events, the realization that PMSCs are a more complex phenomenon than just a new form of mercenarism improved.

Third, a UN Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination was established, as a result of Commission on Human Rights resolution 2005/2. It was mandated to *monitor* mercenaries and mercenary-related activities in all their forms and manifestations in different parts of the world, and to *study* the effects on the enjoyment of human rights of the activities of private companies offering military assistance, consultancy and security services on the international market. The Working Group, however, ***has no sanctioning and regulating authority.*** It is composed of five independent experts serving in their personal capacities, and headed by its Chairperson-Rapporteur, José Luis Gómez del Prado (Spain). The other Working Group experts are: Najat al-Hajjaji (Libyan Arab Jamahiriya), Amada Benavides de Pérez (Colombia), Alexander Nikitin (Russian Federation) and Special Rapporteur Shaista Shameem (Fiji). In the course of 2007, the Working Group conducted field missions to a number of countries including Peru, Fiji and Chile; made recommendations to bring national legislation in line with the International Convention against Mercenaries of 1989, and convened a regional consultation on "the effects of the activities of private military and security companies on the enjoyment of human rights" in Panama. The Working Group noted that a growing number of private military and security companies in conflict-ridden areas, such as Afghanistan, Iraq and Colombia, were recruiting former military and policemen from developing countries as "security guards". However, once they engage in low-intensity armed conflicts or post-conflict situations, they become in fact "militarily armed private soldiers". "Militarily armed private soldiers" is a new way of describing mercenaries, who are frequently responsible for human rights abuses.[61] The Working Group will also operate as a complaints mechanism in the future, which will stimulate public awareness and further debates on the issue. The mandate of the Working Group was renewed on 23 March 2008 for another three years, within the Office of the High Commissioner for Human Rights. The new mandate is extended to prepare a draft of basic international principles that encourage respect for human rights by private companies offering military assistance, consultancy and security services on the international market. The Working Group also intends to hold a high-level round-table under the auspices of the United Nations to undertake the discussion of the role of the State as primary holder of the monopoly on the use of force. Such a meeting will facilitate a critical understanding as to the responsibilities of different actors in the current context, including private military and security companies, and their respective obligations for the protection and promotion of human rights.

Fourth, the UN General Assembly finally adopted a Resolution 62/145 on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination on 18 December 2007[62]. Apart from repeating condemnation of mercenary activities, especially in Africa, urging all states to accede to or ratify the International Convention against the Recruitment, Use, Financing and

[61] *Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination*, Document A/HRC/7/7, p. 24, 09 January 2008.

[62] http://www.wilpf.int.ch/PDF/humanrights/GA_Mercenaries_Mandate_2006.pdf

Training of Mercenaries of 1989, there are three passages in this Resolution, which bring in new, crucial elements:

- Article 6. encourages states that import the military assistance, consultancy and security services provided by ***private companies*** *to* ***establish regulatory national mechanisms for the registering and licensing*** of those companies in order to ensure that imported services provided by those private companies neither impede the enjoyment of human rights nor violate human rights in the recipient country.
- Article 10. calls upon states to investigate the possibility of ***mercenary involvement*** whenever and wherever criminal acts of a ***terrorist nature*** occur and to bring to trial those found responsible or to consider their extradition, if so requested, in accordance with domestic law and applicable bilateral or international treaties.
- Finally, Article 11. ***condemns any form of impunity granted to perpetrators of mercenary activities*** and to those responsible for the use, recruitment, financing and training of mercenaries, and ***urges all states***, in accordance with their obligations under international law, ***to bring them***, without distinction, ***to justice***. (my italics)

Article 6. introduces the concept of private companies thus widening the rather narrow scope of international regulations restricted only to mercenaries beforehand. Also, it calls attention to the importance of national mechanisms for registration and licensing, but unfortunately, leaves the *coordination* or *harmonization* of them out of consideration, even though that would mean a significant step towards regional/international mechanisms, which would in turn have more impact on the industry as a whole. Article 10. is worded along the advice given by former Special Rapporteur B. Ballesteros in his Reports, connecting mercenaries with terrorist activities – and in that case, if the connection can be detected they would be treated accordingly, as terrorists. Article 11. tackles the accountability of private contractors who are only accountable to their companies, and are granted immunity in the country, in which they operate. The article "urges all states", not distinguishing between territorial and home states, to bring them to justice. Nevertheless, the difficulties that previously impeded such procedures, are not eliminated: the legal position of third country nationals would be still ambiguous, territorial states might not have the necessary means to prosecute the criminals and the contracts given by the public institutions of home states to PMSCs may still include the contractors' immunity. That immunity, however, does not necessarily mean that they are beyond the reach of the law: in Iraq, for example, the Coalition Provisional Authority issued an order[63] which noted that the contractors' immunity from prosecution "may be waived by the Parent State" (in the revised version: "the respective Sending State"). The real question is, obviously, the willingness of that parent state. Anyway, the CPA has ceased to exist therefore its order no longer applies.

Fifth, heralded as a major achievement and first of its kind**,** the *Montreux Document on Private Military and Security Companies (PMSCs)* was finalized by 17 states and the International Committee of the Red Cross on 17 September 2008. The Document was elaborated in close cooperation with representatives of the civil society and PMS industry. Known as the Swiss Initiative on Private Military and Security Companies it has been an intergovernmental process since 2005, designed to contribute to the intergovernmental discussion on the issues raised by the use of PMSCs. A significant improvement in accountability is the fact that the Document ***makes states directly responsible for the conduct of PMSCs if these enterprises act in a governmental***

[63] Section 5 of CPA Order 17: Status of the CPA, MNFI, Certain Missions and Personnel in Iraq, 27 June 2004.

capacity. The Document contains two parts. Part One recalls pertinent international legal obligations relating to PMSCs. Part Two contains a set of over 70 good practices, that is, recommendations assisting states to comply with their international legal obligations. Recommended good practices include introducing appropriate regulation and licensing regimes to control private military and security companies and enhance their accountability. It is essential to have a staff vetting procedure, to train personnel in humanitarian and human rights law, to draw up standard operating procedures and rules of engagement that comply with the law and to set up internal procedures to discipline personnel who break the law.

Indeed, these measures, especially the latter two, are important in the history of international PMS industry legislation. There are, however, significant impediments in their realization. The UNGA Resolution 62/145 and the Montreux Document, no matter how novel and relevant they may be, ***are not legally binding documents***. It is worth noting that the draft version of Resolution 62/145 was adopted in 2006, and the representatives of the U.S. and the U.K. voted against it. The U.S. suggested that the draft (and the whole issue) should be brought before the Security Council instead of being decided by the General Assembly. The proposal was dismissed which might have been a pity in retrospect, since the Security Council could possibly have devised a method of making the Resolution a legal document of binding force.

There is still no updated legal definition of the mercenary, not to speak of private military and security companies. When it comes to that, it would be advisable to keep mercenary and PMSC activities under different headings, even if some private companies do employ mercenaries; for one thing, they are not the same[64], for another, states that have given (and intend to give) extensive contracts to PMSCs abroad, would be more willing to cooperate in the international regulation and control of these firms if that word "mercenary", so heavily laden with negative connotations, would not appear in the text.

With respect to the *regional* level, the UN Working Group discussed the presentation of UNWG member Alexander Nikitin, of the CIS Model Law "On counteracting mercenarism", which had been adopted by the CIS Inter-Parliamentary Assembly on 19 November 2005. The CIS anti-mercenary law contains a new extended legal definition of a mercenary upon principles corresponding to the recommendations of the former Special Rapporteur B. Ballesteros. The definition includes nationals contracted by foreign actors to undertake mercenary activities in their own countries. The law promotes internal coordination among national ministries to ensure a more comprehensive approach to addressing mercenarism and mercenary-related activity. It acknowledges poor socio-economic conditions as social roots of mercenarism and thus the implications for adopting related measures to combat the problem. The signing states are obliged to notify other states of mercenary activity, and to cooperate with international organizations in issues of counteracting mercenarism.

Within the European Union, several measures have been adopted[65] in the Common Foreign and Security Policy (CFSP) framework that ban or limit *specific* services which

[64] Even though the Chair of the UN Working Group, Mr. Gomez del Prado, said that there were inter-linkages between traditional mercenaries and private security companies, experienced during WG missions to Honduras, Ecuador and Peru, in his Report before the Human Rights Council on 21 March 2007.

[65] (1) EU Council Joint Action 2100/401 of 22 June 2000;
(2) EU Council Regulation 1334/2000 requiring control and licensing of the export of '*dualuse' Goods;*
(3) EU Council Regulation 1236/2005 banning the export of certain goods that 'could be used for *capital punishment, torture* or other cruel, inhuman or degrading treatment;

EU-based PMSCs might provide outside the Single Market. However, they do not regulate - or oblige states to regulate - the export of military and security services in their own right, which makes the majority of PMSC activity nowadays.

2.2.3. Measures taken at the national level

Due to the limited space of the current thesis I cannot aim at analyzing the measures taken by every country involved in mercenary or PMSC activities in the world. I have selected the United Kingdom, Germany and France in Europe, and the U.S. and South Africa outside that (Table 3). Unfortunately, Latin-America has to be left out, even though a whole book could be written only about the regulatory problems of PMSC activities in that region. The states I have chosen provide a good sample of regulating efforts - or the lack of them - to create an effective legal system in that particular field. That is why it was a welcome step when the South African Parliament approved a new anti-mercenary law in 2006. The Prohibition of Mercenary Activities and Prohibition and Regulation of Certain Activities compels South Africans to get authorization to enlist in foreign armies, private military, security or mercenary companies. The bill seeks to close loopholes in the existing anti-mercenary law.

(4) EU Council Common Position 2003/469/CFSP of June 2003 requiring member states to control *arms brokering* taking place from their territory;

(5) the EU Code of Conduct on Armaments Exports adopted at Brussels on 5 June 1998 EU Council Joint Action 2002/589/CFSP covering various actions to curtail the transfer and spread of *small arms and light weapons*. (Bailes-Holmquist [October 2007]).

Table 3

STATES	SOUTH AFRICA	UNITED STATES	UNITED KINGDOM	FRANCE	GERMANY
International Convention 1989	+	-	-	-	+
Regulations on mercenary activities and control of modern PMSCs	**Security Industry Regulation Bill**, 2001 establishing Security Industry Regulatory Authority (SIRA), Private Security Industry Regulatory Authority; Prohibition of Mercenary Activities and Prohibition and Regulation of Certain Activities, 2006	US Arms Export Control Act (AECA) of 1968 (regulates exporting arms and military services) is governed primarily by §2778 of AECA[1]. International Transfer of Arms Regulations (ITAR) articulates the requirements for the export of defense articles and services (implementation of the previous Act)[2]. Military Extraterritorial Jurisdiction Act* 2000 (MEJA)[3]. establishes federal jurisdiction over certain criminal offenses committed outside the U. S. by persons employed by or accompanying the Armed Forces. Military Commissions Act of 2006 Amendment of 2006 to the Uniformed Code of Military Justice extends UCMJ authority to civilians	**Sponsored Reserve** concept, incorporated into **Reserve Forces Act (Part V)**, 1996;Service Discipline Acts and Service Regulations applicable to PMSC employees; Private Security Industry Act 2001	2003 **Mercenary activity a criminal offence under French Law**	**Trade Code** of 1927 (Gewerbeordnung); **special legislation for security service** in 1995 (Bewachungsgewerberecht)
Programs, initiatives and investigations regarding the regulation of PMSCs		US Department of Defense Foreign Military Sales (FMS) program	Private Finance Initiatives (PFI) Better Quality Services initiative (within MoD), "Green Paper", investigating national legislation regulating mercenaries and PMCs		Framework Agreement Innovation, Investment and Efficiency in the Bundeswehr, Association for Development, Procurement and Operations (Gesellschaft für Entwicklung, Beschaffung und Betrieb – GEBB) in 2000.

[1] US Code, Title 22: Foreign Relations, Chapter 39: Arms Export Control: http://www.access.gpo.gov/uscode/title22/chapter39_.html
[2] Code of Federal Regulations, Title 22: Foreign Relations, Chapter I: Department of State, Subchapter M: International Traffic in Arms Regulations.
[3] US Code, Title 18: Crimes and Criminal Procedure, Chapter 212: Military Extraterritorial Jurisdiction, §§ 3261 - 3267 : http://uscode.house.gov/download/pls/18C212.txtor http://www.pubklaw.com/hi/pl106-523.pdf

As for the three European countries in Table 3, the main difference between the privatization of military services in Germany and in the UK is that the German government has relied far less on contractors in the outsourcing of military functions and has kept its control through government ownership. As Krahmann points out, GEBB is fully government-owned and it claims that the German constitution requires that the Bundeswehr preserves a controlling and coordinating function over the private military services, whereas the German MoD is accountable for the operations of contractors. In my opinion, we can conclude that the German solution may serve as a model of strict control for other European countries. After the Sandline affair, the UK has been the first European government to investigate the possibility of national regulation. Its outcome was the controversial "Green Paper". The British MoD is much more given to outsourcing military services, especially training. At the beginning only non-military support and management were outsourced, but with the introduction of Private Finance Initiative programs (which need no parlamentary approval) logistics and training were also offered for contracts. Thus, the clear distinction between civilian and military functions is getting dimmed. At present, the MoD is 'at the mercy' of PMSCs, having no specially trained staff or facilities to replace the contractors if they wish to terminate the ongoing contracts for any reason. Besides, most of the contracting terms are confidential, and lack transparency. France's anti-mercenary law, adopted in 2003, does not take into consideration modern PMSCs and concentrates only on mercenaries in a traditional, limited sense, so national regulation is at a very underdeveloped stage there (Krahman [2005], pp. 3-20.).

2.2.3.1. MEJA and proposed improvements in the U.S.

As for the U.S. regulations, Table 3 shows the currently existing laws that apply to private military and security companies. The Military Extraterritorial Jurisdiction Act (MEJA) of 2000 deserves our attention most since it extends military jurisdiction to territories *outside* the U.S., that is, to conflict zones, wherever U.S. troops are present. However, MEJA gives no authority to prosecute foreign nationals employed by contractors and subcontractors, or U.S. citizens employed as contractors by the United Nations or foreign governments. It *is* a relevant problem, since Erinys International, for example, employs more than 14,000 Iraqi citizens as guards in Iraq.

During the 8 years that have passed since the enactment of MEJA, there were several attempts to improve and extend the scope of it. Three Bills are really worth mentioning, partly because they have already been introduced, which is the first step towards enactment, and partly because they involve suggestions that would close down loopholes in MEJA, especially as far as the contractors in Iraq are concerned. Let us hope that sooner or later they will also be part of the U.S. legislation controlling the PMSC industry.

- ***H. R. 4387: Contractor Accountability Act of 2004*** **(D-MA Bill)** would extend the MEJA to include non-U.S. citizens working as contractors to the U.S. goverment. Also, it would extend the law to contractors with any federal agency, so long as they are "supporting the mission of the Department of Defense."

- ***H.R. 2740: MEJA Expansion and Enforcement Act of 2007*** **(Durbin and Price Bill)**. The Bill "provides that persons who, while employed under a federal agency contract in, or in close proximity to, an area where the Armed Forces are conducting a contingency operation, engage in conduct that would constitute an offense punishable by imprisonment for more than one year if engaged in within U.S. jurisdiction, shall be punished as provided for that offense".

The third Bill especially deserves to be quoted and discussed in detail, as it is very specific and tackles the most urgent and typical problems of the industry:

- ***S. 674: Transparency and Accountability in Military and Security Contracting Act of 2007*** **(Obama Bill)**. The Bill " requires reports to Congress by specified federal officials on information with respect to federal military and security contracts being performed in Iraq and Afghanistan. Requires a separate report from the Secretary of Defense on Department of Defense (DOD) strategy and activities with respect to contractors and subcontractors in support of DOD missions in Iraq, Afghanistan, and the Global War on Terror.

Requires each contract, subcontract, or task order awarded or issued by a federal agency that includes private security functions (covered contract) to require the contractor to provide to the agency contracting officer specified information, including the number of persons to perform the security functions and the hiring and training process for such employees. ***Requires agency oversight in the performance of the covered contract.***

Directs the Chairman of the Joint Chiefs of Staff (JCS) **to *issue rules of engagement*** regarding the circumstances under which force may be used by contractor personnel performing private security functions within the area covered by a contingency operation, and the types of force authorized. Provides for: (1) hiring, training, and equipment standards relating to private security contractors; and (2) coordination and communication between U.S. Armed Forces and contractor personnel.

Provides for the legal status of contractor personnel with respect to investigations and prosecution of abuses by private security contractors. Requires the Federal Bureau of Investigation (FBI), for each theater of operations established in connection with a contingency operation in which contract personnel are carrying out work under a covered contract, to establish a ***Theater Investigative Unit*** to investigate allegations of contractor personnel criminal misconduct." (my italics)

The Obama Bill, introduced on 16 February 2007, would cover, if enacted, such areas that have been unregulated so far: agency oversight, military rules of engagement (RoE) along which contractors could operate, legal status of contractors and even the establishment of a Theater Investigative Unit under the aegis of the FBI to act in that particular theater of operations where criminal misconduct occurred. Among them, agency oversight would increase transparency and accountability, as at present the industry is characterized mostly by confidentiality, and firms frequently retain their right to keep the consideration of contracts secret. Competition between firms makes transparency within the industry difficult to achieve during tendering processes. Agency oversight would significantly reduce the trend of awarding IDIQ contracts, also known as 'umbrella contracts', where a price is fixed in advance to cover an unspecified number and nature of tasks for a certain period, which can be extended. The application of military RoE to contractors is especially important, since PMSCs are still not part of the military chain of command, in other words, they cannot be given orders. Even the contract may be breached because PMC employees are deserting, feeling unsafe or discouraged by unforeseen difficulties and casualties. As the Scheier-Caparini study points out,

> …during the deployment delays in the summer of 2003, the upsurge of violence in April 2004, and the mass of contractor kidnappings of July 2004, US forces in Iraq faced a wave of firms delaying, suspending, or ending operations because they

found it too dangerous, with resultant stresses on the level of supplies and troops' welfare.(Schreier-Caparini [2005], p. 54.).

It would be a gratifying task to follow the fate of the Obama Bill. Since the introduction of that Bill Senator Barack Obama has been elected the President of the United States of America. Known to be in favour of bringing U.S. troops back from Iraq[66], will he return to his former Bill or let it sink into oblivion – together with other campaign promises?

According to the new Amendment of 2006 to the Uniformed Code of Military Justice, civilians employed in a combat zone by the U.S. can be tried by a military court. The provision was intended to close the legal loophole that made it difficult to successfully prosecute such individuals in conflicts where the U.S. Congress had not formally declared a state of war. Also, there is another legislation governing the behavior of PMSCs operating in war zones, the Military Commissions Act of 2006. Both these documents have severe consequences for PMSCs engaging in offensive military operations or violating the laws of the Geneva Convention.

2.2.3.2. No more immunity in Iraq

I have already referred to a pending Status of Forces Agreement (SOFA) waiting to be signed by the leaders of the U.S. and Iraq in Section 1.6. The agreement will end immunity from Iraqi legal process granted for contractors by the above quoted[67] Coalition Provisional Authority (CPA) Order 17. Article 12, (1) says that "[t]he U.S. has the primary legal jurisdiction over U.S. armed forces members and civilian members concerning issues that occur inside the installations and areas agreed upon, and while they are on duty outside the installations and areas agreed upon…", while paragraphs (2) and (3) place U.S. troops and civilian contractors under Iraqi legal jurisdiction "in cases of major and intentional crimes… that take place outside areas and installations agreed upon while troops are off duty."[68] The agreement aims to set down the ground rules for a continuing US troop and contractor presence after the UN mandate for foreign forces stationed in Iraq expires in December 2008 (UNSC Resolution 1511). The above agreement prolongs limited U.S. presence till 2011. As for the logistics contracts in Iraq, the US Government Accountability Office (GAO) has conducted a number of studies on their performance (under LOGCAP) and elsewhere and has found serious deficiencies in the planning, monitoring and oversight of the contracts in Iraq. Federal investigations are still in progress[69] regarding the various abuses.

2.3. It will take decades…

What conclusions can we draw from the overall picture depicted on the previous pages? There are improvements, but basically two set-backs impede effective regulation: the

---

[66] Shailagh Murray: Obama Bill Sets Date For Troop Withdrawal. Candidate Goes Further Than Rivals. The Washington Post, January 31, 2007.

[67] on p. 42, Section 2.2.2.

[68] "An agreement regarding the temporary U.S. presence in Iraq and its activities and withdrawal from Iraq, between the United States and the Iraqi government", version date October 13th, 2008.

[69] US Government Accountability Office (GAO), *DOD's Extensive Use of Logistics Support Contracts Requires Strengthened Oversight*, GAO-04-854 (GAO: Washington, DC, July 2004), <http://www.gao.gov/new.items/d04854.pdf>; and US Government Accountability Office, *High-LevelDOD Action Needed to Address Long-standing Problems with Management and Oversight of Contractors Supporting Deployed Forces*, GAO-07-145 (GAO: Washington, DC, Dec. 2006), <http://www.gao.gov/new.items/d07145.pdf>.

lack of legally binding international, regional and national documents that contain detailed and accurate implementation and sanctioning mechanisms, and the harmonization and coordination of national/regional efforts, to eliminate legal gaps, loopholes and avoid the possibility of creating 'safe havens' for offenders. It is a very time-consuming task at all levels, and no significant change can be expected within the next few years.

In order to facilitate this process, I would recommend that cross-border partnership programmes ought to be established, employing experts from academic, governmental and PMS circles to develop cooperation in the regulatory procedures. The details of these CBC partnerships ought to be made public and the programmes need to be sponsored by the associations of PMSCs and the governments involved. Furthermore, not only international, but interregional cooperation ought to be encouraged, for example, the Latin-American region, where extensive UNWG monitoring has taken place recently, could share the information and experience collected with other regions where the reliance on PMSCs is not yet so advanced, thus further pitfalls could be avoided. These initiatives ought to be, in the ideal situation, both top-down and bottom-up. Also, an internationally accepted and generally approved database ought to be set up, containing only those PMSCs that are appropriately vetted.

Part Three

The Contractor and the State[70]

The Gospel of the State in the Westphalian System (free after the Gospel of St. John):

> Since 1648 the State has gradually become Almighty.
> All things came into being through It, and apart from It
> nothing came into being that has come into being.
> It has created Security, and Security was for the order
> and power of the State. It had the legitimate monopoly of using
> Violence, shining in the Darkness as the single provider of
> Law and Order, and the Darkness did not comprehend it.

In the course of the last couple of hundred years, which we may call the westphalian period or system, a consensus has been created and developed between the state and the citizens. The consensus is that the citizens of the state are disarmed, entrusting the state to protect them and their property. Thus, the development of establishing a legitimate state's monopoly of violence in the process of nation-building has started. The concept of the legitimate state's monopoly of violence includes the elimination of private armies and the disarmament of other armed non-state actors who wish to take the law into their own hands. War and the role of warfare were central in the formation of modern nation-states. However, we have to admit that the state, although it is not failing, has failed us, citizens. Why else would it be possible (and necessary) that private guards protect state-owned (even military) property and VIPs? The state has failed us long ago and the nation-state's monopoly of violence has ended – one of the accompanying phenomena of this process is the proliferation and increasing activity of the private military and security industry. Even though the end of the legitimate monopoly of violence may not lead to the dissolution of the state itself (McColl, [2005], p. 11.), we have to reevaluate our concepts – and our presumptions. The consensus has implicitly ceased to exist. The distinctions between public and private, military and civilian is about to become as blurred as they were before 1648. Furthermore, the perception of democratic nation-building, where an integrated central state provides the public goods of security and welfare, is restricted not only in time (to the period passed since the Peaces of Osnabrück and Münster) but also in space – restricted only to Western countries and more or less completely alien in conflict zones. If we follow the logic of these thoughts to the conclusion, we realize that the modern state as such is an isolated, temporary phenomenon in the global sense. Our age is witnessing the accelerating breakdown of the state's monopoly on violence. The privatization of violence is an integral part of the changes within the state. In failing states this process is fast and easy to observe, but even in the developed ones (especially in multiethnic countries) the danger of particularization is looming large. The privatization of warfare, with the appearance of the private military and security industry, is likely to widen the gap (and at the same

[70] The title was inspired by Samuel P. Huntington [1957]: The Soldier and the State. The Theory and Politics of Civil-Military Relations.

time dim the borderline) between soldiers - formerly the only legitimate agents of violence - and civilians even further.

Instead of the legitimate state's monopoly of violence Herbert Wulf proposes a multi-level public monopoly of legitimate force:

"A system of a segmented, but carefully crafted public monopoly of force with a clear division of labour should be based, in a kind of a 'matryoshka' system, on at least the following four levels of authority:

- the local level, with federalist structures or possibly alternatively traditional forms of shared authority, which offers proven forms of regulating violence with the inclusion of 'zones of peace' and 'islands of civility';
- the national level, with credible and accountable institutions of organised violence and good governance;
- the regional or sub-regional level, with regional organisations engaged in providing security and facilitating peace beyond the various national boundaries; and,
- the global level, through the United Nations, and including accepted international principles and agreed norms and with a legitimate authority to intervene for the protection of people." (Wulf, [2006], p. 35.).

The concept of the above multi-level public monopoly of force seems to me brilliant – in theory. The establishment of these levels of authority would be facing difficult challenges, and not least from the 'authorities' involved, who are far from being prepared (and willing) to answer them at present. Especially at the local and national levels, it is far more convenient for the authorities to leave the establishment and instruments of state-owned monopoly of violence as they are on the surface and hire PMSCs to do the actual job – all the more, if that particular job is overseas (or at least, abroad). Regional- and global-level authorities face the dilemma of whose country (or countries) would provide the means to intervene for the protection of people, and who would finance it – I have already referred to these questions in Part One, Section 1.4.3., in relation to the problem of peacekeeping. However, if an agreement can be reached regarding the above dilemma, and the CBC partnerships I suggested in the last section of Part Two can be realized, it would be less difficult to organize and harmonize them – the *regional and sub-regional level* of providing multilateral security (employing perhaps properly vetted, regionally regulated and controlled PMSCs) and, if necessary, intervention, would be a realistic solution.

3.1. PMSCs and the new Clausewitzian trinity

Carl von Clausewitz writes in his famous book, *On War*, that in the art of warfare three forces drive the course of war: violent emotion, the interplay of chance and probability, and political motive acting on reason (Clausewitz, p. 89). These forces have often been associated with the people, the commander (with the army) and the government (Martin van Creveld [1991]: The Transformation of War; John Keegan [1994]: The History of Warfare[71]) of the state. With the appearance of PMSCs in the theatre of war, the delicate balance of these forces is lost. With the rapid growth of the private military industry, warfare is becoming less the domain of states, and ever more the field for corporate investment, growth, and control (Schreier-Caparini [2005], p. 87). I suggest therefore

[71] The purpose of the famous military historian Keegan's above-mentioned book is to prove that Clausewitz' theory led to the First World War.

that a new, updated trinity ought to be set up to help our investigations further; besides, the words people, army, and government appear nowhere in the paragraph in which Clausewitz defined his famous trinity. Thus, the application of Clausewitz' theory would not be restricted to state-to-state, but can address any form of intra/supra-state conflict. If we consider political reason as primarily the *client*, chance (that is, *any available and adequately organized* armed force – no paramilitary or rebel groups, or warlords' bands) and probability the *provider*, whereas violent emotion the *consumer* of military services (and their consequences), we may easily find ourselves analyzing, let us say, a PMSC operation quenching an ethnic conflict within the framework of a UN/OSCE/EU/etc. contract, to say just an example. In that case neither of the three (client, consumer, or provider) is a state actor. If we insist on dealing with state-level actors, we may formulate another version of the trinity: client – *home state*, where the companies are registered or contracted, provider of services – *PMSCs*, acting on behalf of the home state, yet independently of the public budget, and consumer - *territorial state*, where the PMS services are 'consumed'; in a sense, the provider exports security from the home state to the territorial state. The three driving forces of this new trinity are formed as a result of the interaction between three interests. In order to maintain the delicate balance of the trinity neither the collision nor the perfect coincidence of interests is favourable. The client's or the provider's interest cannot be the same as that of the consumer: the provider's primary aim is *profit maximization*; the consumer wants to establish or reestablish and preserve its *sovereignty*; the client's aim can be a complexity of selfish and selfless goals. It may *try to impose order* or *democracy* – but no success can be predicted in that enterprise (Kaldor [2004]). It can be the *stabilization* or *rearrangement* of international order/balance of power, *trying to gain control* over the territorial state or *obtaining* (mostly economic and/or political) *influence* in the consumer state/territory – frequently through the provider of military services. The arm of the state, in that interpretation, can often be longer, than official foreign policy admits - or international conventions allow.

3.2. PMSC operations – foreign policy through private means?

In other words, is it merely economic reasons which motivate PMSCs in the course of their operations or can we find covert political motivations as well? The Schreier-Caparini study provides a detailed list of close personal connections between PMSCs (directed by prominent former politicians, statesmen, and security officials) and the U.S. government (Schreier-Caparini [2005], p. 70.). The influence of PMSCs in the U.S. Congress and different governmental organizations is tangible: 17 of the nation's leading PMSCs have invested more than $16 million in congressional and presidential campaigns since 1999. The intertwining of interests reached a point of no return years ago, the reliance on private companies in intervention, peacekeeping, and occupation is of such a degree, that no war of any kind could be waged without their participation. It is not surprising therefore, that the close connection between contractors and the government resulted in the so-called "revolving door" system: officials from government organizations move to the private sector and lobby for contracts (for their employers), activizing their connection network. It works vice versa as well: board members of large private corporations are chosen for high-level jobs in the Administration – we are repeatedly reminded of former Vice President Dick Cheney. The move from governmental to private industrial positions and its inverse are smooth, reflecting the nature and intensity of the relationship between the two.

There is another, unavoidable aspect of PMSCs' operations abroad. Even if there is no direct evidence, the outside world might assume that they have some form of approval from the government of the home state. Whether they like it or not, national governments are linked with PMSCs, the activity of the latter affects their reputation abroad and at home, even if the companies employ only third-country nationals in the conflict zone. The international competition between the major firms is influenced (though not determined) by the competition between states – there is a tendency among government offices to approve of a contract (and contractor) if it promotes the influence of the home state as well. Therefore it is all the more necessary to establish a transparent system with clear regulations regarding the industry, to reduce the ground for accusations and conspiracy theories.

It is worth recalling what U.S. President Dwight Eisenhower said just before the end of his mandate (on 17th January, 1961):

> "This conjunction of an immense military establishment and a large arms industry is new in the American experience. The total influence - economic, political, and even spiritual - is felt in every city, every State house, and every office of the Federal government. We recognize the imperative need for this development. Yet we must not fail to comprehend its grave implications. Our toil, resources and livelihood are all involved; so is the very structure of our society. **In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military industrial complex**. The potential for the disastrous rise of misplaced power exists and will persist. We must never let the weight of this combination endanger our liberties or democratic processes. We should take nothing for granted. Only an alert and knowledgeable citizenry can compel the proper meshing of the huge industrial and military machinery of defense with our peaceful methods and goals, so that security and liberty may prosper together.[72]" (my emphasis).

With the growing emphasis on market economy and market rules in the public sector, the winners of the race for military functions can be predicted. The role of the state military will either be reduced to one of the many bidders, or survive as a façade and memento of the legitimate state monopoly of violence.

3.3. Shadow army?

The state military may rightly regard the proliferation of PMSCs as a threat to their livelihood. The facts that

(1) plenty of former officers and NCOs leave public service and enrol at PMSCs, earning many times as more than they did in the employment of the state;

(2) the governments tend to turn to private companies instead of state-owned armies to fulfil tasks that were formerly designated exclusively for the state military;

(3) one of the reasons why governmental contracts are given to private firms is the claim that their employers possess such skills and expertise that do not exist in the state-owned military (but were formerly acquired by the training and experience of officers and NCOs, paid from the public budget);

[72] Eisenhower's Farewell Address to the Nation.

(4) the financial support of the state military is greatly reduced via the "streamlining" of the state and its institutions, whereas huge amounts are spent on contracts with private firms,

result in the erosion of professional pride, of loyalty to government and state institutions, even of patriotism. Many contractors have talked about how, when working in Iraq, they have been approached by military men and women about potential employment opportunities in the private sector.[73]

Several PMSCs boast of being a kind of elite, even superior to the state military, in terms of the skills and equipment they have obtained. Blackwater Worldwide, for example, is proudly claiming that they are the modern equivalent of the ancient Roman Praetorian Guard, held in high esteem and responsible for the Emperor's safety. Jeremy Scahill, author of *Blackwater: The Rise of the World's Most Powerful Mercenary Army*, argues that Blackwater serves in Iraq and Afghanistan as a Praetorian Guard, protecting top authority figures and immune from the usual constraints and regulations on traditional armies. Among other VIPs, Blackwater was guarding leaders of the CPA in Iraq. However, those, who refer to the Praetorians as ideals, seem to have missed some lessons of history at school, because they forget the crimes committed by the Praetorians *against their employers*. In the course of one of these incidents, the Praetorian Guard even sold the Empire. After killing the Emperor Pertinax, the Guard offered it for bidding in 193. Didius Julianus purchased the Empire from the Guard for a vast sum – but could not enjoy his new property for long. Later that year Septimius Severus marched into Rome, disbanded the Praetorians and started a new formation from his own Pannonian Legions. After that time, the Praetorians were not even Roman; they could be labelled "foreign mercenaries" in modern terminology. All in all, there is not much to be proud of.

The neglect suffered by state militaries is a dangerous phenomenon which is able to undermine state security in the long run. In other words, the only thing one cannot demand from PMSCs is the unconditional loyalty to the state. The accurate fulfilment of a government contract cannot be considered as equal to that: it is merely the observation of corporate interests within the frames of market economy. If this trend continues, state armies will exist only in their names and play no functional role in warfare. In the growing shadow of corporate entities the state-owned military is diminishing, becoming less and less significant – even if it does not cease to exist.

The simultaneous presence of state-owned militaries and globally mobile, practically independent, market-oriented PMSCs trained, equipped or headquartered in the same state, may result in the confrontation of these forces at some point on the globe sooner or later. In other words, fellow countrymen (and/or fellow country-women) may end up fighting against each other. That would be another symptom or side effect of the fundamental changes taking place within the state – anything like that would have been inconceivable during the Cold War era. As far as the outsourcing of core military activities and functions are concerned, in a very recent article Singer depicts the privatization of military tasks 'advanced to such an extent in the U.S. that the government seems to ask before any potential outsourcing: "Should the task be done by a private company in the first place?" (Singer [2008]). In spite of the plethora of academic and non-academic studies, experts' advice, warning signs enumerated by think tanks and international organizations, and even introduced bills to keep PMSCs

[73] Liza Porteus: Contractor 'Shadow Army' Adds to Iraq Stress. 17 August 2005, at: http://www.foxnews.com/story/0,2933,161372,00.html.

away from "inherently governmental functions, emergency essential activities or mission-critical activities", the Pentagon intends to replace the teams that train and advise Iraqi army units with private contractors. The disastrous experience gained from the outsourcing of training Iraqi Army battalions to Vinnell (subcontracted to SAIC and MPRI) in 2003 ought to have warned the Pentagon that certain tasks need to be retained with the U.S. military. Apart from being too early for the field unit advisory work to pass to a non-state actor (even if hired by the Pentagon), or as Singer writes, a "non-sovereign entity", and creating long-term relationships (even friendships) between the partner militaries which such advisory work might promote, this enterprise would undermine the proclaimed priority task of the "building up of Iraqi capabilities" in the eyes of the Iraqi people – the message, that the U.S. does not really care, will go deep.

3.4. PMSCs and other civilians – civil-military relations in danger

With the introduction of external, corporate bodies into civil-military relations the reputation of the state's professional armed forces, their roles and functions have been fundamentally challenged - and questioned. The trust and respect the civil society have once felt for the representatives of the armed forces, especially in the U.S. and the U.K., is crumbling, as new, non-state actors appear on the stage and enjoy the implicit (sometimes explicit) preference of governments. Among the several reasons that have been leading to that phenomenon I would like to emphasize only one: Iraq may fairly be called the stumbling-block for civil-military relations.

The general opinion is that the war, initiated by the leading state's military of the world, was outsourced, if not from the outset, then after the first two months of what Mary Kaldor would call the "spectacle war"[74]. U.S. contractor firms working for the Pentagon are subcontracting other companies which are in turn recruiting civilians from Latin America to bear the burden of carrying out a U.S. military mission. In Iraq, U.S. and British firms turned to local and other foreign nationals to fill the demand for personnel, and the proportion of third-country personnel was high. Private security personnel currently include individuals from Fiji, Nepal (Gurkhas), Colombia, Chile, El Salvador, Serbia and Montenegro, Bosnia and Herzegovina. To put it into more general terms, the "winners of globalization" hire people in the "loser countries of globalization" to fight abroad, on the territory of (and against) other similar globalization losers[75]. The U.S. government is trying to avoid paying the political cost of the war in Iraq by transfering it to poor civilians hired from the global South to do part of the fighting - and the dying - in place of U.S. citizens. The question arises: who bears the burden of fighting a war that the United States initiated?

In the near future libraries will be filled with critical works on the different aspects of civil-military relations, and several of them will contain lengthy passages on their changing nature provoked by the proliferation of PMSCs. It is not my purpose to write a thorough analysis of this relationship within the frames of the present paper; I merely wish to indicate how important a topic it is. In the closing section I can only refer to a very recent publication edited by Andrew Alexandra, Deane-Peter Baker and Marina Caparini [2008]: *Private Military and Security Companies: Ethics, Policies and Civil-Military Relations* that deals with this question at length and in depth.

[74] "American Military vs. Cosmopolitanism"

[75] Kaldor [1990], p. 15., quoted by László Kiss J. in: „Az új terrorizmus, avagy a háború metamorfózisa: a „régi" háborútól az „új háborúig"…", p. 210-211.

Summary

After going through the main characteristics, inherent dangers and legal background of the private military industry, and having briefly examined its relationship with the state, the following questions remain to be answered:

- What ***conclusions*** can we draw from the plethora of material thus assembled in the above chapters?
- How would it be possible to ***influence the future of the industry*** to make it most beneficial for every character involved – states, international organizations and PMSCs?
- How could Hungary ***utilize the experience*** of the Western countries in this field without stumbling over the same blocks and falling into the same pits as they did?

The simultaneous circumstances of the end of the Cold War and, as a result, the downsizing of state militaries and the power vacuum that followed in its stead, the dissolution of the Soviet Union and Yugoslavia, the worsening political-economic situation in the sub-Saharan countries, the growing feeling of insecurity in the post-9/11 world, the attack against Afghanistan and the Gulf wars gave a new push to - and an increase of demand for the services offered by - PMSCs. This demand was supported by the privatization revolution typical of the neo-liberal thought, the concept of the 'lean' state and the outsourcing of as many state functions as possible.

Soon after the appearance of the first modern companies private military and security activity has become increasingly complex. A wide variety of firms were formed: former South African combat units (EO, SI and Erinys International), a fine 'assortment' of retired generals of the US Army (MPRI), massive logistics suppliers (Halliburton Company), rapidly expanding 'princedoms' (Blackwater Worldwide), shady groups with a management of 'spicy' reputation (Aegis Defence Services Ltd.)[76], etc. On the one hand, PMSCs were specializing in particular activities, such as intelligence, maintenance or logistics, on the other hand, individual firms were beginning to offer a larger and wider scope of core and non-core military services, ranging from training to security consulting to operational and combat support to post-conflict reconstruction, including even certain peacekeeping tasks, etc., making their categorization a difficult task. Several researchers and critics have created divisions and subdivisions within the industry, of which I have referred to a few (Singer's, Wulf's and the summary of categorizations provided by the Schreier-Caparini study) in Part One, Section 2 (Annex I.). But as small firms were gradually acquired by giant corporations, just like in other fields of business, the full spectrum of services were concentrated within a limited number of companies. This tendency will remain and even accelerate as one of the side-effects of the global financial and economic crisis.

[76] Allusions to Derek Prince (of Blackwater) and Time Spicer (CEO of Aegis).

The interests of the majority of these PMSCs demanded to get rid (or, at least, reduce the number) of those that do not play by the rules – no matter how slow and complicated the development of those rules are. The motives behind the establishment of PMSCs' associations may vary (lobbying, raising the standards of operation, improving self-regulation within the industry, serving as mediators between governments and member companies, promoting accountability, etc.), but the formation of IPOA, BAPSC and PSCAI (and any other still to be formed) is a welcome step towards legitimacy and operational safety of the PMS industry. Still, self-regulation within the associations is not enough – the punishment by the market, the only sanction they accept, does not have the necessary deterring effect.

The boom that made the day for PMSCs had other not-so-welcome consequences. The inadequate outer (and inner) control, monitoring and disciplinary (punitive) measures led to:

- the proliferation of sexual abuse (Dyncorp in Bosnia and Colombia),
- participation in trafficking in human beings in the territories in conflict and in the occupied zones (Dyncorp in Bosnia),
- human rights abuse in prison (Titan and CACI in the Abu Ghraib torture scandal),
- overcharging and accounting irregularities, frauds in invoicing meals supplies and fuel contracts (Halliburton's former KBR, Blackwater),
- unnecessary and wanton use of deadly force inflicting numerous civilian casualties and property damage (Blackwater shootings in Baghdad),
- illegal trade of weapons (SI in Sierra Leone), weapons transfers to terrorist organizations (Blackwater to PKK),

and the list is far from complete. In addition, private contractors were granted immunity from prosecution in Iraq, and although that immunity has recently been withdrawn, very few participants in the above crimes have been prosecuted and even in those few cases there are still no satisfactory (not to say deterring) final verdicts or sentences. Clearly, the legal loopholes and improper bidding procedures (or even the complete absence of any bidding) all contributed to the above misdeeds and abuses.

The roots of imperfect legislation go back to the first attempts to get rid of mercenaries in the '60s and '70s of the twentieth century. The OAU Conventions for the elimination of mercenary activity in Africa of 1972 and 1977 had no effect whatsoever. The UN Resolutions of 1968 and 1973, and a new Addition to the 1949 Geneva Convention on humanitarian law did not fare better, either, due to the lack of common determination and willingness. Condemning mercenary activity was gradually giving way to the intention of creating a universal legislation that applies to it, as the 1989 UNGA International Convention against the Recruitment, Use, Financing and Training of Mercenaries shows, which allows internationally recognized governments to hire them in defence. However, even this scanty supply of regulatory attempts were not applicable to modern PMSCs, since the definition of mercenaries excluded that they worked for their own governments (as PMSCs did in Iraq, for example).

The improvements of the last 5 years give us no reason to feel satisfaction, neither at the international/regional, nor at the national levels. Although the former UN Special Rapporteur on mercenaries, E. B. Ballesteros, has proposed a new, updated definition of mercenaries, on the one hand, it is still not accepted generally, on the other hand, even that does not apply to modern PMSCs. Since his successor, Shaista Shameem, was appointed, there have been no improvements in that respect. She is a member of the UN

Working Group on the use of mercenaries as a means of violating human rights and impending the exercise of the rights of peoples to self-determination, set up in 2005. This multinational Working Group, however, has no sanctioning and regulating authority, only a mandate to monitor and study mercenarism in all its forms and all its effects. Its mandate is extended to PMSCs as well. A new UNGA Resolution on the use of mercenaries was adopted in 2007, which encourages the establishment of regulatory national mechanisms for the registering and licensing of PMSCs, condemns immunity granted to perpetrators of mercenary activities and urges all states, not distinguishing between territorial and home states, to bring the perpetrators of criminal acts to justice, including private contractors. This Resolution, however, does not specify the situation of third country nationals, territorial states might not have the necessary means to prosecute the criminals and the contracts given by the public institutions of home states to PMSCs may still include the contractors' immunity. Furthermore, neither the above Resolution, nor the *Montreaux Document on Private Military and Security Companies* (signed in September 2008), which makes states directly responsible for the conduct of PMSCs if they act in a governmental capacity, are of *legally binding force*.

At a lesser scale, the European Union has no regulations on the export of military and security services in their own right, nor obliges states to introduce applicable regulations, only bans or puts limitations on specific services which EU-based PMSCs might provide outside the Single Market within the framework of the Common Foreign and Security Policy.

Considering the different national regulations examined briefly in my thesis in Part Two, Section 2, it can be concluded that Germany was the most careful in its reliance on PMSCs, because the German MoD is constitutionally made accountable for the operations of contractors. The British MoD was much more willing to outsource military services, especially training, with the introduction of Private Finance Initiative programs, and now it has no specially trained staff to replace contractors if they happen to fail them. In France, the national anti-mercenary law (adopted in 2003) leaves modern PMSCs out of consideration, therefore it is not applicable to them. South Africa introduced the Prohibition of Mercenary Activities which demands official authorization before enlisting in foreign armed forces, mercenary or PMSC companies. The United States has been eager to close the existing loopholes, prompted by the accumulating scandals and negative experience related to PMSCs. Primarily, the Military Extraterritorial Jurisdiction Act of 2000 was regulating U.S. contractors in territories outside the U.S., but several attempts were made to fill the constantly experienced legal gaps in it – so far the most productive Bill has been Senator Barack Obama's proposal in 2007. It requires agency oversight of contracts, transparency and accountability, investigation and prosecution of abuses, provides for the legal status of contractor personnel – if only it had been enacted; but we have good reason to hope that *President* Obama will not leave his former Bill unattended. Apart from that, the Uniformed Code of Military Justice was amended in 2006, by extending the authority of military courts to civilian contractors employed in a combat zone. Hopefully, the long-lamented immunity of PMSC contractors in Iraq will come to an end when a pending Status of Forces Agreement is signed between U.S. and Iraqi leaders.

The relationship between PMSCs, governments that outsource military tasks to them, state militaries and the civilian population needs to be adequately balanced. Recent tendencies show how this delicate balance is tilted in favour of the private contractors, whereas state-owned armies suffer from shrinking financial support, losing both expertise and personnel, and seem to become the "fosterchildren" of the state. The intertwining of interests between the government and the most influential PMSCs, the

reliance on private companies in intervention, peacekeeping, and occupation are of such a degree, especially int he U.S., that no war of any kind could be waged without their participation. PMSC operations abroad have the hindrance of an overall supposition: namely, that they certainly have some form of approval from the government of the home state. Whether they like it or not, national governments are linked with PMSCs, considered as the unofficial means of foreign policy; the activity of private contractors affects governmental reputation abroad and at home, even if the companies employ only third-country nationals in the conflict zone.

We must never leave out of consideration the fact that the privatisation of the military and the military industry is not a phenomenon fixed in time and space - it is rapidly changing, developing and diversifying - new companies are established, enterprises and associations launched but recently become defunct and disappear; it would be hardly possible to place the entire branch under strict and day-to-day control either at the national or at the regional/international levels. Rather, a channel or course needs to be formed – with built-in regulatory mechanisms – into which the regulated and controlled activity of the private military and security companies could be propelled and directed, whereas the less legitimate firms remain outside its banks and are bound to wither. As I have suggested at the end of Part Two, cross-border partnership programmes ought to be established to develop cooperation in the regulatory procedures. The details of these CBC partnerships ought to be made public and the programmes need to be sponsored by the associations of PMSCs and the governments involved. International as well as interregional cooperation need to be encouraged, the Latin-American experience of UNWG monitoring on mercenaries and PMSCs could be shared with other regions where the reliance on PMSCs is not yet so advanced. These initiatives ought to be, in the ideal situation, both top-down and bottom-up. Also, an internationally accepted and generally approved database ought to be set up, containing only those PMSCs that are appropriately vetted. Although the necessity of that database was pointed out by several experts and analysts, no significant steps have been taken in that direction.

In spite of all that, however, it would take a very long time to eradicate the word "mercenary" from the military context and even longer to exterminate it from the media – or at least the negative connotations and experience fixed to it. It may never happen; that is why most companies that aspire to respectability are trying hard to avoid even the suspicion of getting involved in mercenary activities (for example, forthcoming IPOA investigations after the Blackwater shooting in 2007 and the pressure of other member PMSCs resulted in the company's withdrawal from the association).

The extent to which certain military and military-related activities are outsourced is staggering, both financially and politically. Doubtless, the United States and, to a certain degree, the United Kingdom have reached a phase in their relation to the privatization of military tasks which makes it practically impossible for them to turn back in that course. Severing the ties that have been formed between the public and the private spheres of the military during the last score of years would do much more harm than good, especially for the state militaries, strangely enough. The maintenance and control of so many sophisticated weapons systems (just a sample: B-2 stealth bombers, F-117 stealth fighters, U-2 reconnaissance and K-10 refuelling aircraft, Apache helicopters, guided missile defence systems on certain US Navy ships, etc.) are in the hands of PMSCs that a sudden breach with the PMS sector would definitely paralyze their operation.

PMS influence is not so 'advanced' in our country – logistics, maintenance and security tasks (especially property and personal protection) of a limited scope compose the main profile of the PMS industry in Hungary. Yet we have to keenly observe these tendencies

abroad, since the PMSCs I have discussed in Part One, Section 3, are transnational corporations, forever enlarging, increasing the number of countries in which they operate or have subsidiaries – Hungary will not be an exception, either. The transnational expansion of these PMSCs will not stop at our borders – it is looming large before us and it can be kept under control only by transnational (sub-regional and/or regional) cooperation and coordination.

Annexes

ANNEX I – Categorizations of PMSCs

Herbert Wulf	IPOA	British "Green Paper"	US Army
I. Private Security Companies Property Protection and surveillance Guarding factories, mines, Neighbourhood patrol Law and order in public places (subways, malls, etc.) Crime Prevention and Correcting Services Kidnap response, Management of prisons Investigation and intelligence gathering II. Defense Producers Weapons Production, Research and Development Production, Military Assistance, Military training Export of weapons and components III. Private Military Companies Consulting, threat analysis, strategy development, advice for armed forces, Global Logistics and Support Logistics in emergencies and war Mine clearing, refugee camps, infrastructure demobilization, reintegration of soldiers and refugees, Management of military bases, Technical Services, Maintenance and Repairs, Air control, intelligence gathering, IT-services, Weapon repair, Training, Military training, weapons and special forces training, language training and psychological warfare, Peacekeeping and Humanitarian Assistance, Logistic for peacekeeping Regulated Disarmament, weapon collection and destruction, Logistic in complex e IV. Non-statutory forces Rebels: Combat, terror Warlords: Combat, terror, violence markets Organized Crime: Criminal acts for economic gain V. Mercenaries Combat Troops: Combat	Military Service Providers (MSPs) Nonlethal Service Providers (NSPs) Mine Clearance Logistics & Supply Risk Consulting: PA&E Brown & Root ICI of Oregon Private Security Companies (PSCs) Industrial Site Protection Humanitarian Aid Protection Embassy Protection: ArmorGroup Wackenhut Gurkha Security Guards Private Military Companies (PMCs) Military Training Military Intelligence Offensive Combat: Executive Outcomes Sandline International MPRI	Combat and operational support: Executive Outcomes, Sandline International, Gurkha Security Guards Military advice and training: DSL, MPRI, Silver Shadow Levdan, Vinnell, BDM Arms procurement: Executive Outcomes Sandline International Levdan Intelligence gathering: Control Risk Group Kroll, Saladin, DynCorp Security and crime prevention: DSL, Lifeguard, Group 4 Control Risk Group Gurkha Security Guards Grey Security Coin Security Logistical support: Brown & Root, DynCorp Pacific Architects & Engineers	Systems Contractors that support military battlefield operations; provide life-cycle support for weapon and other systems fielded by Program Executive Office (PEO), Program Manager (PM), or Army Material Command managed systems. This support includes specified maintenance and support of equipment deployed with Army forces. External Support Contractors work under contracts awarded by contracting officers serving under the command and procurement authority of supporting headquarters outside the theatre. Their support augments the commander's organic combat service support capability. Theatre Support Contractors are contractors, usually from the local vendor base, providing goods, services, and minor construction to meet the immediate needs of operational commanders.

Annex II.

International Convention against the Recruitment, Use, Financing and Training of Mercenaries. United Nations General Assembly Resolution, A/RES/44/34, 4 December 1989.

For the purposes of the present Convention,[77]

1. A mercenary is any person who:
   (a) Is specially recruited locally or abroad in order to fight in an armed conflict;
   (b) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armedforces of that party;
   (c) Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;
   (d) Is not a member of the armed forces of a party to the conflict; and
   (e) Has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.
2. A mercenary is also any person who, in any other situation:
   (a) Is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at:
   (i) Overthrowing a Government or otherwise undermining the constitutional order of a State; or
   (ii) Undermining the territorial integrity of a State;
   (b) Is motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise or payment of material compensation;
   (c) Is neither a national nor a resident of the State against which such an act is directed;
   (d) Has not been sent by a State on official duty; and
   (e) Is not a member of the armed forces of the State on whose territory the act is undertaken.

Article 2

Any person who recruits, uses, finances or trains mercenaries, as defined in article 1 of the present Convention, commits an offence for the purposes of the Convention.

[77] (untreaty.un.org/unts/144078_158780/16/1/7049.pdf -, 2004. December 19, New York)

Annex III.

According to the **Geneva Convention**, a mercenary is any person who: a) is specially recruited locally or abroad in order to fight in an armed conflict; b) does, in fact, take a direct part in the hostilities; c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party; d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict; e) is not a member of the armed forces of a Party to the conflict and f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces. Protocol Additional to the Geneva Convention of 12 August 1949, relating to the Protection of Victims of International Armed Conflicts, Geneva, ICRC, 1977: Article 47: Mercenaries. Herein after referred to as Protocol I.

Bibliography

Alexandra, Andrew, Baker, Deane-Peter and Caparini, Marina [2008]: *Private Military and Security Companies: Ethics, Policies and Civil-Military Relations*. London, Routhledge.

An agreement regarding the temporary U.S. presence in Iraq and its activities and withdrawal from Iraq, between the United States and the Iraqi government. Version date October 13th, 2008. at: http://www.afsc.org/ht/a/GetDocumentAction/i/69064 (accessed 08 November 2008).

Avant, Deborah D. [2000]: "Privatizing Military Training." *Foreign Policy in Focus*, Interhemispheric Resource Center and Institute for Policy Studies, June, Vol. 5., No. 17. p. 1. At: http://www.fpif.org/briefs/vol5/v5n17mil.html (accessed 13 November 2008).

Bailes, A. – Holmquist, C. [October 2007]: *The Increasing Role of Private Military and Security Companies.* Study carried out within the framework agreement between ISIS Europe and the European Parliament EP/EXPO/B/SEDE/FWC/2006-10/Lot4/09. Brussels. At: http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/sede050508studype385521_/SEDE050508studyPE385521_en.pdf. (accessed 20 December 2008).

Bailes, A., Schneckener, U. and Wulf, H. [2007]: *Revisiting the State Monopoly on the Legitimate Use of Force*. DCAF, Geneva, Policy Paper 24.

Ballesteros, Enrique Bernales (Special Rapporteur pursuant to Commission resolution 1998/6): *Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination*. E/CN.4/1999/11, 13 January 1999. http://www.unhchr.ch/html/menu2/7/b/mercenaries/documents.htm (accessed 12 October 2008).

- (Special Rapporteur pursuant to Commission resolution 2001/3): *Report on the question of the use of mercenaries as means of violating human rights and impeding the exercise of the rights of people to self determination*. E/CN.4/2001719, 10 January 2001. (E. B. Ballesteros read his report at the Fifty-sixth General Assembly, Third Committee, 26th Meeting)

Bearpark, Andrew [2007]: "The Future of the Market." In: Chesterman, Simon and Lehnardt, Chia (eds.) *From Mercenaries to Market: The Rise and Regulation of Private Military Companies*. Oxford, New York, Oxford University Press, 2007.

Briefings by the Secretariat in relation to the human rights agenda items of the Third Committee of the 58th session of the General Assembly, p. 18. (E/CN.4/2004/15, para. 47). Find at: http://www2.ohchr.org/english/bodies/chr/informal/59/interventions.doc (accessed 15 November 2008).

Brooks, Doug and Rathgeber, Shawn Lee. "The Industry Role in Regulating Private Security Companies." *Canadian Consortium on Human Security*, March 2008, Vol. 6 Issue 3 (*Security Privatization: Challenges and Opportunities*).

Charbonneau, Louis [2008]: "UN rejects suggestions it failed in Congo conflict." Reuters, *Reuters AlertNet*, 03 Nov 2008.

Cockayne, James [2008]: "After Blackwatergate: How humanitarians can help professionalize the global security industry." *Canadian Consortium on Human Security*, March, Vol. 6, Issue 3.

Commission on Human Rights. Fifty-eight session. Report of Shaista Shameem, Special Rapporteur on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination (E/CN.4/2005/14). 61 session CHR, 8 December 2004. http://daccessdds.un.org/doc/UNDOC/GEN/G04/167/92/PDF/G0416792.pdf. (accessed 29 October 2008).

CPA Order 17: Status of the CPA, MNFI, Certain Missions and Personnel in Iraq, 27 June 2004. http://www.cpa-iraq.org/regulations/20040627_CPAORD_17_Status_of_Coalition__Rev__with_Annex_A.pdf. (accessed 05 January 2009).

DeYoung, Karen [2008]: "Democrat calls for Blackwater probe, alleges tax fraud." *The Washington Post*, 11 March 2008.

Dishneau, David [2008]: "Defense contractor claims immunity in Iraq torture." *The Seattle Times*, Seattle, 26 September 2008.

Eisenhower's Farewell Address to the Nation, available at: http://mcadams.posc.mu.edu/ike.htm. (accessed 14 December 2008). Partial quotation also by Chalmers Johnson, in: „Mercenaries at work". p. 1.

Elsea, J. and Serafina, N., US Congress, Congressional Research Service (CRS) [2007]: *Private Security Contractors in Iraq: Background, Legal Status and Other Issues*. CRS Report for Congress. RL32419 (CRS: Washington, DC, 11 July 2007), http://fas.org/sgp/crs/natsec/RL32419.pdf (accessed 11 December 2008).

Frigyes, Ervin [2001]: "Magánosítás, katonaság, katonai magánvállalkozások." *Új Honvédségi Szemle*, 2001/5, pp. 111–124.

Holmqvist, Caroline [2005]: "Private Security Companies. The Case for Regulation." Stockholm International Peace Research Institute, *SIPRI Policy Paper* No. 9. http://books.sipri.org/product_info?c_product_id=191 (accessed 30 November 2008).

Huntington, Samuel P. [1957]: *The Soldier and the State. The Theory and Politics of Civil-Military Relations.* Cambridge (Mass.), London, England, The Belknap Press of Harvard University Press.

International Convention against the Recruitment, Use, Financing and Training of Mercenaries. United Nations General Assembly Resolution, A/RES/44/34, 4 December 1989. http://www2.ohchr.org/english/issues/mercenaries/docs/1989UNConvention_English.pdf (accessed 20 October 2008).

Isenberg, David [2008]: "A government in search of cover: PMCs in Iraq." British American Security Information Council (BASIC). Paper prepared for *Market*

Forces: Regulating Private Military Companies, March 23-24, 2006 conference, Institute for International Law and Justice, New York University School of Law.

- [2008]: „Blackwater Worldwide, Wal-Mart of modern war." *The Washington Times*, 24 Aug 2008.

Johnson, Chalmers [2008]: "Mercenaries at work." At: http://www.atimes.com/atimes/Middle_East/JG30Ak03.html. (accessed 30 July 2008).

Kaldor, M. [1990]: *The Imaginary War*. Oxford, Basil Blackwell.

- [2004]: "American Military vs. Cosmopolitanism." Humanitas series lecture in University of California Television, June 24, 2004. At: http://www.youtube.com/watch?v=5iUdDl9y-0Q (accessed 11 December 2008).

Kiss J., László [2006]: "A nemzetközi biztonság új napirendjei, avagy a biztonság metamorfózisa." *Külügyi Szemle*, 2006 ősz/tél, pp. 203-233.

- [2003]: „Az új terrorizmus", avagy a háború metamorfózisa: a „régi" háborútól az „új háborúig". *Globalizálódás és külpolitika*. *Nemzetközi rendszer és elmélet az ezredfordulón*. Budapest, Teleki László Alapítvány, pp. 199-224.

Krahmann, E. [2003]: „Controlling Private Military Companies: The United Kingdom and Germany." Paper presented at the Annual Convention of the International Studies Association, Portland, Oregon, 25 February to 1 March 2003. later published in: *European Security*, vol.13, 2005, No.2, pp.277-295. At: http://eis.bris.ac.uk/~poxek/Krahmann%20European%20Security.pdf, pp. 3-20. (accessed 29 December 2008).

Murray, Shailagh [2007]: "Obama Bill Sets Date For Troop Withdrawal. Candidate Goes Further Than Rivals." *The Washington Post*, January 31, 2007; Page A04. at: http://www.washingtonpost.com/wp-dyn/content/article/2007/01/30/AR2007013001586.html. (accessed 05 January 2009).

Obama Bill, S. 674. 2/16/2007--Introduced.Transparency and Accountability in Military and Security Contracting Act of 2007. http://www.govtrack.us/congress/bill.xpd?bill=s110-674&tab=summary (accessed 19 November 2008).

Perlo-Freeman, Sam and Skönsp, Elisabeth [2008]: "The private military services industry." *SIPRI Insights on Peace and Security*, No. 2008/1 September 2008.

Porteus, Liza [2005]: "Contractor 'Shadow Army' Adds to Iraq Stress." August 17, 2005, at: http://www.foxnews.com/story/0,2933,161372,00.html. (accessed 20 December 2008).

Report of the UN Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination, Document A/HRC/7/7, p. 24, 09 January 2008. (accessed 18 October 2008).

Robb, John [2004]: "A Corporate Superpower?" *Global Guerillas* (online periodical), 11 April 2004. http://globalguerrillas.typepad.com/globalguerrillas/2004/04/a_corporate_sup.html (accessed 02 January 2009).

Schreier, Fred and Caparini, Marina [2005]: "Privatising Security: Law, Practice and Governance of Private Military and Security Companies." DCAF, Geneva, *Occasional Paper 6*.

http://se2.dcaf.ch/serviceengine/FileContent?serviceID=218fileid=3BFA3361-A9F0-9CEB-84E4-A9F99197B29D&Ing=en (accessed 3 August 2008).

Shorrock, Tim [2008]: *Spies for Hire: The Secret World of Intelligence Outsourcing*. New York, Simon & Schuster.

Singer, Peter W. [2003]: *Corporate Warriors. The Rise of the Privatized Military Industry*. Ithaca and London, Cornell University Press.

- "Corporate Warriors: The Rise and Ramification of the Privatized Military Industry." *International Security*, Vol. 26, №3, Winter 2001/2002. pp. 186-220.

- "Lessons Not Learned: Contracting Out Iraqi Army Advising." 12 May 2008. http://www.brookings.edu/opinions/2008/051_iraq_singer.aspx

- "Outsourcing War." *Foreign Affairs*, March/April 2005.

- "Peacekeepers, Inc." *Policy Review*, June/July 2003 (No. 119).

- "The Private Military Industry and Iraq: What Have We Learned And Where To Next?" *DCAF Policy Paper*, November 2004. At: www.dcaf.ch/publications/Publications%20New/Policy%20Papers/PP4_Singer.pdf (accessed 20 October 2008).

- "War, Profits, and the Vacuum of Law: Privatized Military Firms and International Law." *Columbia Journal of Transnational Law*; 2004.

"The Top Contracts. Who Got What in Iraq and Afghanistan, 2004–2006." *Windfalls of War*, Center for Public Integrity. At www.publicintegrity.org/wow/database.aspx?act=toponehundredcontracts

UN General Assembly Resolution 62/145 on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, adopted on 18 December 2007. At http://www.wilpf.int.ch/PDF/humanrights/GA_Mercenaries_Mandate_2006.pdf. (accessed 12 December 2008).

Varga, Krisztián [2005]: „A védelmi szféra privatizálása, magáncégek napjaink hadviselésében." *Hadtudomány*, December 2005, Issue 4.

Von Clausewitz, Carl [1976]: *On War*. ed. and translated by Howard, Michael & Paret, Peter. Princeton, Princeton University Press.

Waxman, Henry A. (Chairman, Committee on Oversight and Government Reform) [2007]: *Incident Reports Fault Blackwater in Fallujah Ambush*. September 27, 2007, http://oversight.house.gov/story.asp?id=153. (accessed 30 November 2008).

Werve, Jonathan [2004]: *Contractors Write the Rules. Army policy governing use of contractors omits intelligence restrictions*. Center for Public Integrity, Washington D.C., 30 June 2004, www.publicintegrity.org/ wow/printer-friendly.aspx?aid=334. (accessed 14 December 2008).

Wulf, Herbert [2002]: *Change of Uniform – but no Uniform Change in Function. Soldiers in Search of a New Role*. in: BICC Conversion Survey, Baden-Baden, Nomos Verlag, pp. 97-98.

List of abbreviations

BAPSC	British Association of Private Security Companies
BASIC	British American Security Information Council
CACI	Consolidated Analysis Centers, Inc.
CBC	cross-border cooperation
CCB	Civil Cooperation Bureau (South Africa)
CIA	Central Intelligence Agency (US)
CSC	Computer Sciences Corporation (US)
DCAF	Geneva Centre for the Democratic Control of Armed Forces
DIA	Defence Intelligence Agency (US)
DNI	Director of National Intelligence (US)
DOD	Department of Defence (US)
EO	Executive Outcomes
GAO	Government Accountability Office (US)
GWOT	global war on terror
ICC	International Criminal Court
ICIJ	International Consortium of Investigative Journalists
INSA	Intelligence and National Security Alliance (US)
IPOA	International Peace Operations Association
KBR	Kellogg, Brown & Root (former subsidiary of Halliburton Company)
LOGCAP	Logistics Civil Augmentation Program (US)
MNF-I	Multi-National Force – Iraq
MOD	Ministry of Defence (UK)
NCACC	National Conventional Arms Control Committee (South Africa)
NRO	National Reconnaissance Office (US)
NSA	National Security Agency (US)
NYSE	New York Stock Exchange
PKK	Kurdistan Workers Party
PMC	Private Military Company
PMSC	Private Military and Security Company
PSC	Private Security Company
PSCAI	Private Security Company Association of Iraq
SAS	Special Air Service
SI	Sandline International
SIS	Special Intelligence Service
THB	trafficking in human beings
UNAMSIL	United Nations Mission in Sierra Leone