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Private Military Security Companies

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Exercise Solo Flight

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PRIVATE MILITARY SECURITY COMPANIES. THE USE OF PRIVATE SECURITY CONTRACTORS AND SURROGATES IN FUTURE CONFLICTS, THE WAY AHEAD OR A RECIPE FOR FAILURE?

INTRODUCTION

The origin and history of private military security companies (PMSCs) can be traced back to mercenaries. Since the beginning of the 19th century, mercenaries played an essential role. It was not until the end of the Cold War that the interest and demand in the private security sector increased enormously. The following diagram shows this development as an example:

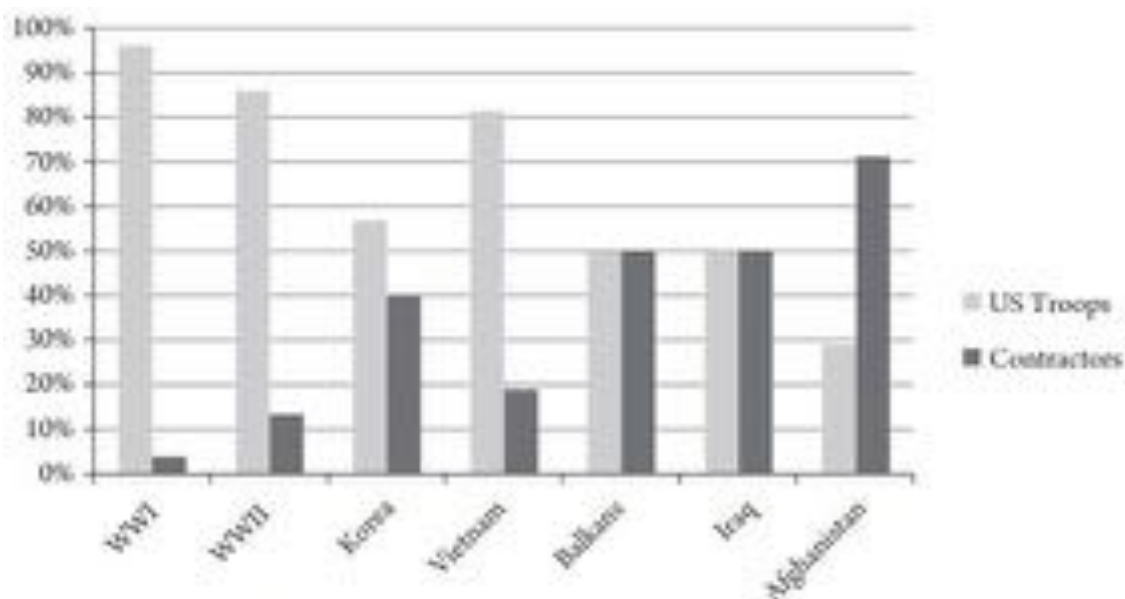


Figure 1 – Ratio between US Troops and US Contractors

The reason for this development was mainly the reduction of the number of soldiers in the western countries, also in post-Soviet countries. Another example for this development happened in South America due to many unemployed soldiers who lost their jobs because of several regime changes, these have switched to the PMSC sector

due to the often poor economic situation for lack of alternatives. In addition, with 9/11 at the latest, the fight against international terrorism became very extensive and took place in countries where there was little or no legal basis for the use of PMSCs. Due to the increase in terrorist activity, the need for PMSCs increased rapidly. The legal framework was rudimentary at the beginning of the increase, and control bodies were not available in sufficient numbers. Thus, over this time, a billion-dollar business and a wide range of tasks and missions for such companies emerged. Since 1990, the U.S. has been a frontrunner in the use of security contractors in international conflicts such as Iraq and Afghanistan. The main reason is economics. It is significantly cheaper for governments to hire and pay PMSCs than to use regular forces. Dr. Sean McFate, former paratrooper and contractor, as well as foreign policy expert at the U.S. National Defense University, has laid it all out in impressive fashion in his book.¹ Another advantage is the responsibility towards such persons working for private companies. They are not subject to the same restrictions as regular soldiers and especially not to the same media attention as the own armed forces. Thus, captured private security personnel are often completely denied or receive no media or social support in their home country, because they are expendable. Captured private security personnel in many conflicts are also not treated under the Geneva Convention and thus are not considered prisoners of war in the classical sense.² A wide variety of terms and abbreviations of private security companies (e.g. Private Military Agencies (PMA), Private Security Companies (PSC)) exist in various sources, but this paper will use exclusively the term Private Military Security Company (PMSC)

¹McFate, Sean. "The Modern Mercenary: Private Armies and What They Mean for World Order" *Oxford University Press* (2014).

² Eckert, Amy. "Outsourcing war: the just war tradition in the age of military privatization" *Cornell University Press* (2016).

and subsume all terms under it. In the following, terms and definitions are delineated and then, using two examples, the development in the use of PMSCs, the motives for their use, and the question of morality and international influence are shown. All these factors illustrate how complex and vast the subject area is and ultimately answer the question about the future handling of PMSCs and whether it is a way ahead or a recipe for disaster.

DIFFERENCE MERCENARIES AND PMSCS

Before going into further detail on PMSCs and their use, it is important to highlight the difference between mercenaries and these companies. According to the International Law of Armed Conflict (LOAC), it is forbidden and therefore illegal to use mercenaries in conflicts. According to the Geneva Conventions, specifically Article 47 of Protocol I of 1949, the following are considered:

1. Is specially recruited locally or abroad in order to fight in an armed conflict;
2. Does in fact take a direct part in hostilities;
3. Is motivated essentially by the desire of private gain;
4. Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;
5. Is not a member of the armed forces of a party to the conflict; and
6. Has not been sent by a State, which is not a party to the armed conflict on official duty is a member of its armed forces.^{3 4}

If not all six criteria are fulfilled, one is not considered a mercenary. In the history of mercenaries, they were considered individuals who did not abide by law and order.

However, this behavior is not a characteristic of private security companies, which is another distinguishing criterion between mercenaries and PMSCs. They operate in a commercial sense and are subject to the requirements of their clients, usually

³ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) entered into force 7 December 1978, 1125 UNTS (1979) 3-608.

⁴ Baker, J., and Canadian Forces College, "Private military security companies (pmc): An indispensable resource or growing security challenge for the CAF", (Toronto, Ont., Canadian Forces College, 2021)

governments, which themselves are subject to their own laws or implement national laws to regulate the use of PMSCs. To what extent the respective government itself is interested in profit and gain, or uses PMSCs to support its own foreign policy and thus achieve more strategic goals, is exemplified in this paper using two nations (USA and Russia). Furthermore, according to the above definition, PMSCs must follow international law. This is because they can also be required under the Geneva Conventions. The most significant and important difference between mercenaries and PMSCs is their commitment to law and order. Both international laws and national laws provide a clear and distinct demarcation between the personnel of PMSCs and mercenaries.⁵ After delineating the terms, the remainder of this paper will not deal with mercenaries and will focus on the use of PMSCs.

STATE FLEXIBILITY

Due to the large subject area on the use of private security companies domestically, this chapter draws a distinction between the use of private security companies domestically as opposed to abroad and international conflicts. The remainder of this paper will focus exclusively on the use of PMSCs abroad. Many countries and governments hire security companies in their own countries to provide order and security, in addition to police forces or the military. In countries such as Guatemala and Brazil, this use takes on disproportionate dimensions. There, these private security forces are allowed to perform all police duties, such as carrying weapons and making arrests. For example, the ratio of private security personnel to uniformed police officers is 6.7 to 1 in

⁵ Baker, J., and Canadian Forces College, "Private military security companies (pmc): An indispensable resource or growing security challenge for the CAF", (Toronto, Ont., Canadian Forces College, 2021)

Guatemala and 4.9 to 1 in Brazil.⁶ Domestic operations differ from region to region and from country to country. In Europe, for example, the scope of operations of private security companies is regulated by stricter laws and the assumption of police duties is limited. This is in contrast to countries in South America or the African continent. In fragile states or countries with high crime rates, governments often have no other option than to hire additional private security due to corruption and violence. In order to maintain or consolidate power, these governments cannot rely on their own security forces, for fear of coups, for example.⁷ Wouldn't it be more sustainable to invest these funds in training and paying the police and in the fight against corruption? In the following sections, the use of PMSCs by both the U.S. and Russian governments will be examined in more detail, the different motivations for the use of PMSCs will be highlighted, and the evolution of the framework in each country and a look at the respective moral and legal developments will be provided. These two countries offer exemplary insights into the range of uses of PMSCs and also highlight the dependence of the types of uses of PMSCs on the policy of governments and their handling of valid international laws.

USA

After the end of the Cold War, the U.S. was by far the main user of PMSCs in foreign and international conflicts. Despite negative experiences over the years, such as little to no control over the awarding and execution of contracts, the number of contracts awarded to PMSCs increased steadily. As an example, the US government has used

⁶ Bruneau, Thomas C. "The US Experience in Contracting Out Security and Lessons for Other Countries." *Revista Brasileira De Política Internacional* 58, no. 1 (2015): 230-248

⁷ Bruneau, Thomas C. "The US Experience in Contracting Out Security and Lessons for Other Countries." *Revista Brasileira De Política Internacional* 58, no. 1 (2015): 230-248

190,000 PMSCs in the Iraq war in 2008.⁸ This contrasts with 200,000 regular members of the armed forces in the same year.⁹ To take a closer look at the economic factor and get a sense of the volume of contracts, one sees \$300 billion in spending in 2013 to fulfill contracts with PMSCs. The U.S. defense budget was \$613.9 billion in total in 2013. This means that the US government has spent the half of the defense budget for the use of PMSCs.¹⁰ The example of Iraq shows the four main tasks of PMSCs: 1. static security: protection of static sites such as residential areas, reconstruction sites or government buildings. 2. Convoy security: convoys, usually for logistical tasks, that travel throughout the country. 3. Security escorts: protection of persons traveling in unsecured areas. 4. Personal security: protective security for high-ranking individuals.¹¹ But what are other reasons and factors for the US government's engagement of PMSCs? Another reason is the lack of specially trained personnel. This shortage sometimes exists because these people are either not available at all or are such a scarce resource that, due to prioritization, these skills are not available in every area of operation. Finally, sometimes the desire for operational flexibility plays a role.¹² However, some personnel statistics speak for themselves and make it easy for the U.S. government to justify the use of PMSCs. For example, the personnel strength of the U.S. Armed Forces was 2,043,705 in 1990, 1,438,562 in 1997, and finally 552,425 in 2009, with two wars being fought simultaneously.¹³ As described earlier, there was initial chaos and little to no oversight

⁸ Congressional Budget Office (CBO), (2008) *Contractors' Support of US Operations in Iraq* Washington, DC: CBO.

⁹ Ibid

¹⁰ "National Defense Budget Estimated for FY 2013", <http://comptroller.defense.gov>.

¹¹ Ibid.

¹² Dew and Hudgens Singer, P.W. "Corporate Warriors: The Rise of the Privatized Military Industry" *Cornell University Press* (2008): 44-70.

¹³ Ibid.

when PMSCs were first deployed. The U.S. government responded to these initial experiences by implementing oversight boards and authorities for both deployment and contracting, with the goal of ensuring more transparency to the government and taxpayers, as well as controlling legal boundaries and punishing violations. The benefits to the U.S. government are undeniable, which is why PMSCs continue to be used due to their enormous economic benefits because they are cheaper, the closing of personnel gaps, and the ability to fulfill missions that require very specialized skills.¹⁴

RUS - WAGNER GROUP

Since the end of the Cold War in 1991, Russia has increasingly used PMCs in a variety of roles and locations around the world, like in Mali, Lybia, Somalia, etc. However, since Russia is a totalitarian state, transparency regarding the use of PMSCs is limited and control is restricted to a few people in the government, which the Russian government denies.¹⁵ The use of PMSCs began in African states in the early 1990s to protect high-ranking individuals and was with Moran Security Group and the Slavic Corps. At least since 2014 and the annexation of the Crimean peninsula and the resulting sanctions by the West, Russia has focused even more on the African continent to generate as many sources of oil, gold, ores, uranium, manganese and diamonds as possible.¹⁶ Thus, it is common practice for Russian PMSCs to offer services to fragile and unstable African governments to assist in the elimination of opposition or perceived terrorist groups. Furthermore, the full range of military support services is offered. All of this is often done in massive disregard of the Geneva Conventions and all applicable human

¹⁴ Ibid.

¹⁵ Federica Saini Fasanotti, "Russia's Wagner Group in Africa: Influence, commercial concessions, rights violations, and counterinsurgency failure", *Washington: The Brookings Institution* (Feb 8, 2022).

¹⁶ Ibid

rights. There are reports of indiscriminate shooting of civilians, rape and molestation, as well as torture and other atrocities. Despite the official ban on mercenaries in Russia through Article 359 of the Russian Criminal Code, implemented in 2018. In recent years, the Wagner Group, funded by oligarch Yevgeny Prigozhin, has received contracts throughout the Middle East and Africa, including in countries such as Syria, Yemen, Libya, Sudan, Mozambique, Mali, and the Central African Republic (CAR).¹⁷ According to recent reports in the Times, the Russian Group Wagner is also active in the current war with Ukraine.¹⁸ These reports are not confirmed, but would fall into the portfolio of the Wagner Group and confirm Vladimir Putin's previous approach. It is said that about 400 members of the Wagner group attempted to assassinate Ukrainian President Zelenskyy in Kiev.¹⁹ What is considered to be reliable information is that after the annexation of the Crimean peninsula, the Wagner group was active in the eastern Ukrainian regions of Donetsk and Luhansk and is said to have fought there against the Ukrainian armed forces over the last few years. There, too, they are accused of unlawful behavior, such as rape and shooting of civilians.²⁰ Since Moscow vehemently denies being involved in the activities of the Wagner group, and since this group consists of many different splinter groups, it is extremely difficult, if not impossible, to prove where and to what extent they are active. Thus, all crimes and unlawful acts are difficult to prove on the one hand and on the other hand can be traced back to the Russian government. Furthermore, sanctions of the EU, the UN and other states against the group Wagner are difficult to implement

¹⁷ Ibid

¹⁸ “What is the Wagner Group, Russia’s mercenary organisation?” *The Economist (Online)*, London (Mar 7, 2022).

¹⁹ Ibid

²⁰ Federica Saini Fasanotti, “Russia’s Wagner Group in Africa: Influence, commercial concessions, rights violations, and counterinsurgency failure”, *Washington: The Brookings Institution* (Feb 8, 2022).

and even more difficult to control. Also the attempt to impose sanctions on African states or to threaten them if they instruct the Wagner Group through the respective government has many restrictions. This is not always clearly recognized and many fragile and unstable governments in Africa rely on the group Wagner to enforce their own interests faster and more effectively, because in parts the trust in institutions like the African Union (AU) or the UN has been lost.²¹

MORAL

Regardless of the PMSCs home country, it is important to note that they have a morally questionable reputation. The focus is often on economic interests and less on democracy, sustainability or human rights.²² The UN is limited in its control of these organizations and their operations. The legal constraints are the responsibility of the respective home country of the PMSCs. Thus, due to waste of money in contracting in the U.S. and previous violations of human rights in Iraq and Afghanistan, more and more oversight bodies have been implemented in the US.²³ Furthermore, laws were enacted to better and more effectively punish misconduct. But even the committees of the USA and the attempt to create a certain transparency for the public, the ordering parties of American PMSCs counteract, in order not to completely lose the decisive advantage to be able to carry out missions in legal grey zones. As well as the lack of traceability for the media and the public if something goes wrong with the orders and missions or rules and laws are disregarded. The Geneva Conventions of 1949 prohibit the use of mercenaries in

²¹ "What is the Wagner Group, Russia's mercenary organisation?" *The Economist (Online)*, London (Mar 7, 2022).

²² Warner, Daniel. "Establishing Norms for Private Military and Security Companies," *Denver Journal of International Law & Policy*. University of Denver Sturm College of Law: Vol. 40 no. 1-3 (2011), 106-117.

²³ U.S. Congress and Administration Consider Responses to "Excessive Uses of Force by U.S. Security Firms." *The American Journal of International Law* 102, no. 1 (01, 2008): 161-162.

conflicts and wars. But the current events in Ukraine, as well as individual conflicts in Africa prove and show that not even regular states such as Russia adhere to such regulations or in any way show a certain morality.²⁴ This also shows that the reputation of the Wagner group often serves Putin as propaganda and intimidates potential opponents in advance.²⁵

INFLUENCE, REPUTATION AND COMMAND AND CONTROL

For commanders of regular armed forces it is a very complex task to lead all units, specialists, large staffs and civilian contractors in operations.²⁶ Since a government usually assigns both soldiers and civilian contractors to carry out a mission, and in these cases the military commanders have overall responsibility, it is essential that they are trained in the management of PMSCs and know what limitations PMSCs are subject to, what the contracts are, what the tasks are that the contractors have to perform and by what means. The management of regular military forces is clearly regulated in laws and regulations, and officers have little or no difficulty with this task due to their training and everyday experience. Since members of PMSCs are also subject to laws but not to military regulations and do not behave like soldiers in various situations, it is difficult for the responsible commander to lead them.²⁷ The contracts are partly not known and as a result there is a lack of knowledge about what PMSCs are allowed and able to do and especially what they are not allowed and unable to do. In addition, some PMSCs act on

²⁴ “5 Countries Where Russia’s Secret Mercenary Wagner Group Have Been Deployed” *Al Bawaba*, London (12 Feb 2019).

²⁵ Federica Saini Fasanotti, “Russia’s Wagner Group in Africa: Influence, commercial concessions, rights violations, and counterinsurgency failure”, *Washington: The Brookings Institution* (Feb 8, 2022).

²⁶ Baker, J., and Canadian Forces College, “Private military security companies (pmc): An indispensable resource or growing security challenge for the CAF”, (Toronto, Ont., Canadian Forces College, 2021)

²⁷ Ibid

their own initiative, which can lead to accidents, such as in 2008 when Master Corporal Joshua Roberts was killed by contractors. A patrol, led by civilian contractors, shot and killed Master Corporal Roberts as he drove by.²⁸ Such incidents are not only unnecessary and tragic, but often trigger a high media interest, which in turn has an impact on the politics of the respective country and its reputation. Other examples include actions, and in some cases war crimes and illegal acts, by the company Blackwater, which has since renamed itself Academi, in Iraq, Somalia and Libya. In Baghdad, members of this company are said to have killed civilians, and in Somalia and Libya they violated existing arms embargoes. Currently the head of the company Erik Price offers evacuations from Kabul for 6500 USD.²⁹ This requires the current U.S. government to spend time and manpower to distance itself from such behavior and avoid political damage. Such offers are contrary to current U.S. foreign policy and also demonstrate limitations in dealing with PMSCs. In nations such as Germany, national laws are stricter and allow the government to more tightly control and regulate the use of German citizens in PMSCs. The disadvantage is that on the one hand the recourse to German PMSCs is limited and on the other hand the economic factor is not very large. This shows how important a detailed consideration of the regulations and laws concerning PMSCs is.

CONCLUSION

The examples presented of the use and handling of PMSCs by the USA and Russia are exemplary for the complexity of this subject area. The cost-benefit factor is extremely high for governments and also partly for private persons or companies. The

²⁸ Perry, David. "The Privatization of the Canadian Military: Afghanistan and Beyond" *International Journal* (Toronto), 64, no. 3 (2009): 687-702.

²⁹ Isele, A., "Profiteur von Krieg und Leid", *nd-aktuell*, 27 August 2021. Afghanistan: Profiteur von Krieg und Leid (nd-aktuell.de)

worldwide industry of private security companies represents a very high economic factor, from which many actors profit directly and indirectly. The armament industry of various nations also benefits from the operations of PMSCs. PMSCs such as the Wagner Group or Academi acquire a large amount of military equipment to adequately fulfill all their missions. For this reason, there is little to no interest in downsizing or even stopping this industry altogether. To the question of whether the use of private security companies and their proxies in future conflicts - is a way forward or a recipe for failure, the answer is a very clear way forward. The experience of various countries, such as the USA, Canada, Great Britain, but also the experience of various institutions with PMSCs, such as the UN, NATO, or the EU, show that the need for action to regulate the use of PMSCs has been recognized and has already been implemented to a large extent. The fact that this industry will not disappear only leads to the conclusion that it is necessary to deal better with this complex of issues and learn from mistakes and experiences. The implementation of laws, regulations and instructions, both at the national and international level, helps to promote the positive aspects and minimize the likelihood of negative outcomes. This applies to contract formulation, administrative activities, and preparation for missions, media relations, political influence and cooperation with regular forces. As in all international matters, there will always be different attitudes towards the use of PMSCs, depending on state forms and governments, and as a result there will always be negative results in their use. Nevertheless, the international community in the form of the UN must understand the future opportunities that may arise, accept the fact that this area cannot be banned, and thus recognize and implement the necessary action.

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