

The legal status of private military contractors

This month's newsletter addresses the issue of private military contractors (PMCs) and private security companies (PSCs) and the debate over the legal status of their employees under international humanitarian law.

PMCs are private military companies that operate in conflict zones. They offer military skills and expertise in areas such as combat operations, strategic planning, intelligence collection, operational support, logistics, training, and procurement and maintenance of arms and equipment. PSCs offer security and protection of personnel and property, including humanitarian and industrial assets.

The downsizing of armed forces worldwide after the collapse of the Warsaw Pact and the development of many new conflicts, increasing demand for military manpower and expertise, fuelled the rapid growth of PMCs and PSCs in the 1990s. Post-Cold War Western security strategies called for a restructuring and professionalization of armed forces. Following the trend toward "outsourcing," many military organizations gave up their non-core activities, such as the defense of infrastructures and the protection of individuals, leaving the field to PMCs and PSCs.

The enormous number of PMC and PSC employees - when combined, they outnumber UK troops - contracted by the Bush administration, multinational corporations and even nongovernmental organizations in Iraq has sparked a discussion over their status under international humanitarian law as outlined in the Geneva Conventions. This debate is insofar significant, as the status of the PMC and PSC employees defines their rights, obligations and accountabilities.

Article 3 of the Geneva Conventions distinguishes between people who actively take part in armed conflicts, combatants, and those who do not, civilians. But, what constitutes "active participation in hostilities" and can a weapon-carrying individual still be called as a civilian? Or, is a PMC or PSC employee actually a mercenary, as defined in the UN Mercenary Convention?

Academics, politicians, nongovernmental organizations and the judiciary have debated over the definitions given by the Geneva Conventions and failed to come up with clear conclusions regarding the status of PMC and PSC employees. Even though most are generally classified as civilians, since they are not part of a belligerent armed force, they increasingly take over core military tasks, such as the protection of civil authority buildings and politicians. In doing so, PMC and PSC employees become quasi-legitimate military targets, losing their civilian status when called upon to actively engage in hostilities.

The ambiguity of the legal status of the PMC and PSC employees blurs the line between civilians and combatants in international humanitarian law, thereby initiating a development that may lead to

a greater disdain of the laws of war. This newsletter provides more information on the current debate on the legal status of PMC and PSC employees, its implications for the regulation of warfare and the enforcement of the Geneva Conventions.

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1.1 GOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

International Committee of the Red Cross (ICRC), Geneva, Switzerland

The ICRC is an impartial and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of war and internal violence and to provide them with assistance. The organization's website offers the full text of the Geneva Conventions and their Additional Protocols as well as general background information on international humanitarian law.

Department of Defense Instruction Number 3020.41: Contractor Personnel Authorized to Accompany the US Armed Forces, by the US Department of Defense, Washington

This US Department of Defense Instruction, issued on 3 October 2005, provides the authoritative and comprehensive roadmap of policy and procedures applicable to contractor personnel authorized to accompany the US Armed Forces. The Instruction states that under applicable law, contractors remain civilians and thus are entitled to prisoner of war status if captured during armed conflict.

International Convention against the Recruitment, Use, Financing and Training of Mercenaries, by United Nations Office of the High Commission on Human Rights (OHCHR), New York, US

The UN Mercenary Convention, as it is also known, came into force in October 2001 and criminalizes the mercenary profession. The text of this UN Convention offers a definition of the meaning of the term "mercenary."

1.2 NONGOVERNMENTAL ORGANIZATIONS

Q&A: Private Military Contractors and the Law, by Human Rights Watch (HRW), New York, US

HRW is an organization dedicated to protecting human rights around the world. They investigate and expose human rights violations and hold abusers accountable. HRW's stand in the debate on the legal status of PMC and PSC employees is outlined on this website.

1.3 RESEARCH AND ACADEMIA

University Centre for International Humanitarian Law (UCIHL), Geneva, Switzerland

The UCIHL is a center for the study of international humanitarian law. The center is supported by the International Committee of the Red Cross and the Swiss Federal Department of Foreign Affairs. The UCIHL convened an expert meeting and later published a report on the issue of "private military contractors: statue and state responsibility for their actions."

Private Military Companies

This autumn 2006 issue of the *International Review of the Red Cross* discusses PMCs, PSCs and their employees' status under international humanitarian law at large. The quarterly is published by the International Committee of the Red Cross and Cambridge University Press. It is a forum for debate on international humanitarian law and humanitarian action and policy during armed conflict and other situations of violence.

Privatizing Security: Law, Practice and Governance of Private Military and Security Companies

This occasional paper, published by the Geneva Centre for the Democratic Control of Armed Forces (DCAF) in March 2005, analyzes the consequences of military outsourcing for humanitarian law and military governance. DCAF encourages and supports states and non-state governed institutions in their efforts to strengthen democratic and civilian control of armed and security forces. The center promotes security sector reform in accordance with democratic standards.

Humanitarian Law and Direct Participation in Hostilities by Private Contractors or Civilian Employees

This paper, published in the *Chicago Journal of International Law*, examines civilian employee and private contractor involvement in Operation Iraqi Freedom. The author turns to the issue of when civilians can be classified as "directly participating in hostilities," thereby losing their civilian status and becoming both lawful targets of attack and prosecutable for their actions. The *Chicago Journal of International Law* is an interdisciplinary forum for discussion and analysis of international law and policy issues.

International Humanitarian Law and the Regulation of Private Military Companies, by the Basel Institute on Governance, Basel, Switzerland

This paper assesses the status of PMC and PSC employees under international humanitarian law and provides suggestions on how to regulate the military contractors. The paper was presented in February 2007 at the conference "Non-State Actors as Standard Setters: The Erosion of the Public-Private Divide," organized by the Basel Institute on Governance. This institute is an independent non-profit organization devoted to interdisciplinary research and policy advice in the areas of public, corporate and global governance, including self-regulation.

1.4 MEDIA AND INTERVIEWS

Hired guns walk uneasy legal path, by the Daily Times, Lahore, Pakistan

This July 2005 news story offers quotes from ICRC legal advisor Emanuela-Chiara Gillard on the issue of PMC and PSC employees' legal status under international humanitarian law.

Private contractors - the US' controversial prison interrogators, by ISN Security Watch, Zurich, Switzerland

This article, published in 2004, discusses the Abu Grahیب abuse scandal. It explains how it is possible that PMC employees responsible for the abuse of prisoners may not be held accountable for their felonies.

Privatized wars' need new laws, by the BBC, London, UK

This article brings together quotes from Claude Voillat, the Red Cross' deputy head of operations in the Near East and Peter Singer of the Brookings Institution in Washington on the issue of PMC and PSC employees and the Geneva Conventions.

Privateforces.com

This website offers a reference and starting point for further studies on the subject of military contractors. It also maintains a link list of news articles concerned with legal aspects of PMC's and PSC's.