

Private Military Companies

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**Geneva Centre for the
Democratic Control
of Armed Forces**

This document is part of the DCAF Backgrounder series, which provides practitioners with concise introductions to a variety of issues in the field of security sector governance and reform.

What are PMCs?

Private military companies (PMCs) are businesses that offer specialised services related to war and conflict, including combat operations, strategic planning, intelligence collection, operational and logistical support, training, procurement and maintenance. They are distinguished by the following features:

- Organisational structure: PMCs are registered businesses with corporate structures.
- Motivation: PMCs provide their services, primarily for profit rather than for political reasons.

PMCs vary enormously in size, ranging from small consulting firms to huge transnational corporations. Although PMCs first appeared during World War II, geopolitical changes and the restructuring of many countries' armed forces following the end of the Cold War have spurred rapid growth in the private military industry. Today more than 150 companies offer their services in over 50 countries.

What other terms are used to refer to PMCs?

Terms such as mercenaries and private security companies (PSCs) are often used interchangeably with PMCs.

Until recently, mercenary was the standard term for actors in a conflict that are generally motivated solely by personal gain. The term appears in some international treaties, though these have been criticised for lack of precision because they focus on the motivation for actions, which are difficult to identify, rather than the actions themselves. For instance, many American security contractors in Iraq claim to work as much out of patriotism as for financial gain.

Many firms that specialise in protecting personnel and property as opposed to engaging in combat activities prefer to identify themselves as PSCs. But when protection has a serious impact on the outcome of the conflict, it is difficult to distinguish between combat and protective roles.

Because of such confusion, this Backgrounder focuses on structured businesses that provide combat-related services.

Why is there a market for PMCs?

States, international organisations, NGOs, humanitarian and development agencies, multinational corporations and even individuals can contract military services provided by PMCs.

In the case of states, these companies are often used to compensate for a lack of national capacity. PMCs offer high-tech skills in domains where armed forces can no longer afford to train personnel or create attractive career opportunities. In other instances, PMCs substitute for non-existent capacity. For example, the hiring of the Israeli firm *Levdan* allowed the president of Congo-Brazzaville in 1994 to create a new force to replace military units loyal to the former president.

Other groups use PMCs to help them function in dangerous environments. Some have pointed out that PMCs have potential utility for the UN and other international organisations because their deployment would be subject to less political controversy than a decision to deploy national troops under UN auspices.

Individuals and groups sometimes use PMCs for more insidious purposes, such as the overthrow of governments or the protection of illegal activity.

Are PMCs more cost-effective than the military?

Data on the cost-effectiveness of PMCs is inconclusive. PMC employees can be quite expensive; typical salaries range from US \$ 400-1000 a day. Claims that PMCs are more cost-effective than maintaining standing armies are usually based on the following arguments:

- PMCs can employ individuals that are often paid significantly less;
- governments may not need to provide PMCs with “hidden” benefits such as pensions, health care, living facilities, etc., since these are usually included in the contract;
- PMCs provide the ability to quickly increase force size, without the costs involved in long-term maintenance of military capacity or the “buyouts” that often occur when the military is subject to rapid reductions; and
- by fulfilling essential non-combat operations, PMCs allow armed forces to concentrate on core missions.

The following arguments, however, also need to be considered:

- because they tend to be paid on a per contract basis rather than as a function of the number of soldiers in the field, it is difficult to compare the cost-effectiveness of PMCs vs. the regular military;
- PMC personnel often receive state-provided training as members of national armies; when they leave for better-paying jobs in the private sector, this training is effectively a subsidy for PMC operations;

- standard subcontracting practices, in which a contract may pass through several different firms, can significantly reduce or reverse any gains in efficiency.

Are PMCs as effective as the regular military?

Some analysts argue that PMCs offer operational advantages over regular military forces, such as:

- being rapidly deployable;
- lessening public concerns about the use of force; and
- acting as a counterweight to the local military in states with weak political institutions.

Whether or not these represent real advantages, most analysts hold that PMCs have a number of operational disadvantages relative to regular military forces:

- motivated by profit rather than duty, their commitment is in general considered to be more limited than that of regular military personnel;
- their employees are outside of the military chain of command;
- their contracts cannot cover every possible contingency in advance, thus reducing their combat flexibility and possibly compromising their ability to deal with the unexpected;
- their non-combat personnel lack the cross-training that can augment military capacity in times of need;

PMCs and Iraq

The occupation of Iraq has led to the largest involvement of the private military and security industry in the history of international reconstruction efforts. With over 60 companies employing more than 20,000 private personnel providing military- and security-related services, PMCs are effectively the second largest contingent in Iraq after the US.

The costs for PMCs have been significant, however. As of January 2006, www.icasualties.org listed 309 PMC employees killed in Iraq. Many times more have been wounded.

The extensive use of PMCs has also given rise to serious legal and operational issues:

- Firms have delayed or ended operations because of increasing violence. It was reported that after a *Kellogg, Brown and Root (KBR)* convoy was ambushed in April 2004, scores of *KBR* truck drivers refused to work until security was improved, and many contractors left the country, leaving the military with dwindling supplies in some areas of Iraq.
- The military's ability to retain talented soldiers has been hampered. The US Special Operations Command has formulated new pay, benefit, and educational incentives to try to retain them, while in the UK the armed forces now offer elite soldiers year-long 'sabbaticals' to allow them to serve with PMCs in Iraq.
- Under the former Coalition Provisional Authority, contractors were provided with immunity from Iraqi law. Six contract employees that were implicated in the Abu Ghraib scandal were never brought to trial.
- Companies have operated under cost-plus contracts that can make fraud more probable, as has been alleged in the case of *Halliburton's KBR* division. The US Army has challenged some \$1.8 billion of *Halliburton's* charges for work in Iraq because of insufficient documentation.
- In some cases, contractors appear to have offered inadequate training to their personnel. A US Army report in October 2005 blamed the November 2004 deaths of four *Blackwater* contractors in a plane crash on violations of numerous governmental regulations, including not providing proper in-country training for the pilots. *Blackwater* officials denied these charges.

- some analysts believe that pressure to cut costs in these companies can lead to decisions that risk the lives of their personnel – for instance, after four *Blackwater* contractors were killed in Iraq in 2004, allegations emerged that a fifth soldier to serve as a rear guard was kept from joining the group because of financial constraints; and
- when PMCs fail for any reason, it impairs the ability of regular soldiers to perform their duties.

Why are PMCs relevant to governance issues?

In all countries from which PMCs operate, legislation governing their activities is weak, especially as concerns services provided abroad, and there tends to be a lack of effective oversight.

Governments can use PMCs to bypass constraints imposed by institutional oversight mechanisms (e.g. limits on troops posted abroad imposed by the legislature). Moreover, in many countries, PMCs are not obliged to reveal the extent of their activities or the details of their expenses.

PMC employees are not generally subject to service discipline or trained to conduct operations in accordance with the Laws of Armed Conflict. Furthermore, PMCs can easily dissolve their operations, which can make their personnel difficult to trace in case of legal violations.

How does national law apply to PMCs?

PMC employees can be subject to domestic criminal law and civil liability in the contracting country, the country of operation and in the employee's country of citizenship. However, the absence of rules specifically governing PMCs is an obstacle to enforcement.

There is as yet no model law that could be used as a guide to good practice. Ideally, such a law should specify ways in which the actions of PMCs are subject to executive control, legislative oversight and judicial review. This should include regulations that

- define what constitutes a PMC, including an exhaustive list of services that qualify as combat related;
- subject their activity, both domestically and abroad, to national criminal and civil liabilities;
- regulate all stages of the contract management process, including areas such as subcontracting, financial auditing and public procurement;
- include standard corporate requirements such as business registration, qualifications of personnel and recordkeeping of employee activity; and
- specify the ministry or agency responsible for the oversight of PMCs, for instance, the defence department or customs service, or perhaps a special monitoring body.

Other laws applicable to state security services, such as data and communications privacy regulations, should also apply to private security services.

The US and South Africa take two different approaches.

United States

The US *Arms Export Control Act* of 1968 and subsequent amendments treat the export of security services in the same way as they do the export of goods: they strictly regulate to whom the services are exported, but not the manner in which they are used.

US companies providing military services to foreign nationals in the US or overseas are required to obtain a license from the US State Department under the *International Transfer of Arms Regulations (ITAR)*, which implement the *Arms Export Control Act*.

However, the licensing process itself does not follow a standard procedure. There is no formal oversight once a licence has been granted, nor are there provisions to ensure transparency other than for contracts exceeding 50 USD million, which require congressional notification before being granted.

Responsibility for the enforcement of licensing controls over commercially exported services of US PMCs is primarily with overseas embassy officials (defence attachés), and the Customs Service with regard to arms and other materiel.

South Africa

In 1998, South Africa passed the *Foreign Military Assistance Act (FMA)* regulating the export of security services:

- mercenary activity, defined as “participation in armed combat for private gain”, is forbidden both in South Africa and abroad, though the law does not cover foreign citizens committing offences outside its territory.
- military assistance, defined as military or military-related services, may only be provided by licensed individuals who receive specific approval from the government for each contract.
- the oversight body in charge of licensing is the National Conventional Arms Control Committee, chaired by a minister from a government department having no direct link with the defence industry.

The *FMA* has met with mixed success, including the closure of some South African PMCs and the relocation of others. However, the punishments levied by South African courts have thus far been limited mostly to relatively minor fines.

Owing to the large number of South African citizens working as security guards in Iraq and the fallout of the attempted coup in Equatorial Guinea in 2004 – which involved a number of South African nationals – the government has recently proposed new legislation. The bill on the *Prohibition of Mercenary Activity and Prohibition and Regulation of Certain Activities in an Area of Armed Conflict* (2005) attempts to address all activities of individuals and corporations engaged in armed conflicts that are not official members of armed forces.

The bill seeks to prohibit any participation in private military activities that are not expressly authorised by the National Conventional Arms Control Committee and would endow South African courts with extraterritorial jurisdiction that would apply to any PMC and its employees.

How may international law be applied to PMCs?

A number of treaties and principles of customary law apply to PMCs, though in practice there are few instances of their use:

- **Human Rights:** International human rights treaties provide for individual petitions and reporting systems to which states can refer when taking measures to protect their citizens from human rights violations by local or foreign PMCs.
- **Criminal Law:** The International Criminal Court (ICC) has international jurisdiction for a number of crimes, though this applies only to individuals, not the companies that employ them. Its jurisdiction is also limited to crimes referred to them by the states parties and crimes within the jurisdiction of the states parties. For example, if a state party refused to investigate an employee of a PMC suspected of war crimes that was registered within its jurisdiction, the ICC could initiate its own investigation.
- **State Responsibility:** International customary law, as codified in the International Law Commission's *Articles on State Responsibility* (2001), specifies that states are responsible for the activities of non-state actors working on behalf of the state. A state employing a PMC is consequently liable for its conduct. However, state responsibility only extends to other states, not to individuals.
- **International Humanitarian Law (IHL):** IHL provides clear rules on the combat status of individual employees of PMCs, though only in cases of international and civil conflict. Like official soldiers, employees enjoy prisoner of war status

if they fall under the definition of civilians accompanying armed forces. If they fall only under the definition of civilians taking part in hostilities or of mercenaries, however, they can be prosecuted by the 'enemy' state and do not enjoy the protection of normal civilians.

- **Mercenaries Convention:** The *International Convention against the Recruitment, Use, Financing and Training of Mercenaries* (1989) mandates that states parties have an obligation to adopt the provisions of the Convention in national laws for them to enter into effect. However, the treaty's definition of mercenary is obscure and few states have ratified it.

What international regulations have been proposed for PMCs?

A number of approaches for regulating PMCs behaviour internationally have been proposed.

Some have suggested a **general prohibition on certain activities**. However, critics point out that the PMCs often fulfil a necessary role, and states seem unlikely to outlaw completely the use of any sort of PMC activity.

A second proposal is to create an **international body to regulate PMCs**. However, this implies that states would have to surrender their traditional monopoly on military-related exports, which seems an unlikely prospect.

Others have suggested a **convention to specify minimum standards of oversight and control** including:

- a licensing system with a precise listing of the services delivered by the PMCs, notification prior to bidding and registration of the individuals working for PMCs;

- minimum requirements for licensing in regard to employment of personnel, the company's corporate structure, its competence and its policy toward the law of armed conflict and human rights;
- parliamentary and/or independent oversight of the activities of PMCs; and
- minimum requirements of competitiveness and transparency in the procurement, bidding and contracting processes.

Such a voluntary scheme might be difficult to enforce, but it would have the advantage of ensuring that national authorities would regulate their own PMCs. In addition, it could leave to national interpretation certain details of regulation that might otherwise be obstacles to agreement on an international treaty.

What other measures have been suggested?

Scrutiny by the media and civil society watchdog groups has been one of the most effective ways to control PMC behaviour. This has made many PMCs more image conscious and less prone to committing flagrant violations, but the tendency is by no means universal.

Other measures of PMC self-regulation, including voluntary codes of conduct – such as that of the International Peace Operations Association (IPOA), an industry-run group – could help to control PMCs, though they are no substitute for norms and regulations.

All of the measures above can be seen as complementary rather than mutually exclusive. In any case, PMCs seem destined to remain a part of the security environment for the foreseeable future, and there is clearly a need for improved regulation, whether by national or international means.

Further information

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

Schreier and Caparini, 2005

www.dcaf.ch/_docs/op06_privatising-security.pdf

Rebuilding Iraq: Actions Needed to Improve Use of Private Security Providers

US Government Accountability Office, 2005

www.gao.gov/new.items/d05737.pdf

The Private Military Industry and Iraq: What Have We Learned And Where To Next?

Singer, 2004

www.dcaf.ch/_docs/pp04_private-military.pdf

Discussion Forum

Bonn International Center for Conversion (BICC)

www.bicc.de/pmc/portal.php

International Peace Operations Association

(association of military service provider companies)

www.ipoaonline.org

“Private Warriors” Television Series

Public Broadcasting Service (PBS)

www.pbs.org/wgbh/pages/frontline/shows/warriors

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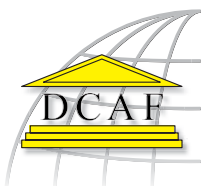
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