



Private Military and Security Industry

Conflict and Post Conflict Societies;
Impacts on State Building and Human Security

June 2007



INTRODUCTION

At the end of 2005, a video showing security guards open fire at civilian cars in Baghdad was posted on the Internet.¹ This video sparked concern that private military and security companies, contracted by Western governments, could be responsible for the deaths of hundreds of innocent Iraqis without being held accountable.² Many other sources also reported the involvement of private contractors in violent incidents.³

Peter Singer, an expert on U.S. private military contractors, notes "not one contractor of the entire military industry in Iraq has been charged with any crime over the last three and a half years, let alone prosecuted or punished. Given the raw numbers of contractors, let alone the incidents we know about, it boggles the mind."⁴

More than at any time in the past, the Pentagon is relying on private contractors to perform crucial tasks once entrusted to the military.⁵ These tasks include combat support, training of security forces, intelligence gathering, interrogation (including the torture at Abu Ghraib) and many others. According to the *Washington Post*, there are about 100,000 U.S. government contractors operating in Iraq (not counting subcontractors).⁶ Furthermore the United States is not the only country that contracts private companies to perform security and military tasks on its behalf; this is part of a global trend of military outsourcing and foreign policy by proxy.⁷

These private military and security companies are often described as 'corporate mercenaries.' Many view them as illegitimate entities,⁸ operating outside a legal framework and lacking any kind of accountability. What is their impact on the human security of local populations with whom they come into contact? How effective are these companies when they are used in the context of state building? These are the main issues to be discussed in this paper.

THE RISE OF PRIVATE MILITARY AND SECURITY COMPANIES

Background

Private military and security companies (PMSCs) started to emerge on a large scale in the beginning of the 1990s, when the end of the Cold War and the ensuing military downsizing in many countries created a vacuum, which PMSCs were eager to fill.⁹ This dovetailed nicely with the neo-liberal revolution, which advocated privatization of public enterprises.¹⁰ The military downsizing also resulted in many highly trained military personnel being made redundant; creating an enormous labor pool of military expertise available to the emerging PMSCs.¹¹ In the former Soviet Union alone, tens of thousands of personnel demobilized from the armed forces and joined increasingly active private firms. To illustrate the enormous growth of this sector, between 1994 and 2002, the U.S. Defense Department entered into over 3,000 contracts with U.S. based private firms at an estimated contract value of more than US \$300 billion.¹²

What Are PMSCs?

The term PMSCs is used here to describe a wide variety of companies usually referred to as private military companies (PMCs) or private security companies (PSCs). PMCs

can be defined as "profit-driven organizations that trade in professional services intricately linked to conflict and warfare."¹³ Their services include combat and combat support, consultation, training, logistic support, maintenance, intelligence gathering (including interrogation) and de-mining operations. The PMC industry consists of hundreds of companies operating in more than 50 countries worldwide.¹⁴

PSCs provide professional services linked to internal security and protection, and operate both domestically and internationally. PSCs operating domestically are mostly concerned with crime prevention and ensuring public order through security and private guard services.¹⁵ Increasingly, they also provide security for multinational corporations, governments, international organizations and NGOs. Services provided include consultation, training, intelligence gathering, securing of key locations and headquarters, protection of critical infrastructures, convoy escort and humanitarian aid deliveries, as well as providing security for VIPs and senior officials.¹⁶

The dividing line between PMCs and PSCs becomes increasingly blurry, especially when the same companies perform multiple functions and are engaged in both security and military services.¹⁷ One of the criteria often used to distinguish PMCs from PSCs is to determine whether their activities are *defensive* or *offensive* in nature. According to this distinction, PMCs are more likely to be associated with activities designed to have a military/strategic impact and to be engaged in combat operations; as well, their employees are usually armed. PSCs on the other hand are primarily concerned with protecting individuals and property. However, many PSCs are now armed as well, and often perform military roles with military consequences.¹⁸

Why Do States Hire PMSCs?

While the questionable argument of cost reduction is often invoked by proponents of military outsourcing, there are other obvious benefits to governments hiring PMSCs. PMSCs assist Western states in the discreet execution of their foreign policy, either through covert or overt operations. In the case of covert operations, it enables them to deny involvement in foreign conflicts and to evade accountability.¹⁹ In the case of overt operations, PMSCs allow governments to circumvent legal obstacles. This was the case for example in 2001, when the U.S. government contracted several PMSCs to work with Colombia's security forces after the U.S. Congress placed limits on the number of U.S. personnel allowed to operate in Colombia.²⁰ In Iraq, PMSCs provide an appealing solution for Western governments confronted with public pressure to reduce and/or withdraw army troops. They can claim the number of troops has been reduced while simply having the same work performed by civilians. In addition, the deaths of employees of PMSCs are not included in the official numbers, thus enabling governments to claim a lower casualty rate.²¹

THE CONTROVERSIAL NATURE OF PMSCS

The State Monopoly on the Legitimate 'Use of Force'

In Western democracies, the monopoly on the legitimate 'use of force' rests with the state.²² The armed forces are under the command of civil authorities who have the ultimate say on how to structure the state institutions that express and defend this monopoly on the legitimate 'use of force,' namely the police and the military.²³ In other words, civil authorities in a democratic society ultimately decide in which situation – and how much – force may be used.

The 'use of force' by state institutions must be in accordance with national and international laws and regulations which provide the legal parameters for the 'use of force.' These laws and regulations include the UN Charter, human rights instruments, international humanitarian law and national military and police codes. They form the basis of a system of legality and accountability and as a result provide civilians with the security that force may not be applied at will but will follow clear rules of procedure and engagement. Force used in this way then becomes *legitimate* (publicly sanctioned).

PMSCs Gain Authority over the 'Use of Force'

The rise of private military actors presents a direct challenge to the notion of a state's monopoly on the legitimate 'use of force.'²⁴ PMSCs provide a range of services normally carried out by national security and military forces. While it is sometimes claimed 'use of force' is only *delegated* to these PMSCs and not *privatized* – implying PMSCs are only proxies for their governments, implementing government policy – PMSCs gain an independent voice (authority) over the physical implementation of 'use of force,' even when acting on behalf or with the approval of states. This takes place in the following ways:²⁵

- (a) When PMSCs are assigned to perform a certain military operation, they gain control over the implementation thereof. They determine how negotiated contracts should be interpreted in practice and decide what kind of force should be used in specific conditions.
- (b) Once these private companies sign a contract abroad, they are likely to use their new leverage to develop long term business relationships and initiate independent business initiatives, including with non-state actors. This increases their authority in defining 'use of force.'

In short, states transfer a significant share of control over defense matters to the private sector through the privatization and outsourcing processes.²⁶ As a result, PMSCs gain authority over the 'use of force,' and this authority is likely to increase over time. Naturally, this development has implications for the legitimate 'use of force.'

What are the Implications of this Development

In a conflict zone like Iraq, it is often impossible to distinguish between combat operations and combat support. There is hardly any perceptible difference between regular soldiers and PMSC employees, who are often armed as well and ready to use force. PMSCs have become independent players in the market for force, liable to instigate human rights violations in the cause of their operations.²⁷ According to one commentator, "there is a normative sense that there is something illegitimate about a state contracting out the right to defend and promote its military and security interests to profit-making actors."²⁸ This raises questions about the legal framework in which PMSCs operate – in other words the legality of PMSCs – and their accountability. Do PMSCs operate in accordance with the rule of law? These are important questions when determining the legitimacy of PMSCs.

PMSCS AND THE RULE OF LAW

International Legal Framework in which PMSCs Operate

International Law Concerning Mercenaries

The terms *private military company* and *private security company* do not exist in international law. However, PMSCs are often compared to modern day mercenaries, a term defined in the First Additional Protocol of 1977.²⁹ According to Article 47, 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.*

In general, it will be difficult to fulfill all of the requirements in order to be termed a mercenary. PMSCs contracted by states are usually not specifically recruited to fight or to take a direct part in hostilities, even though they may end up doing so. In addition, when employees of PMSCs have the same nationality as the state that hired them (and that is a party to the conflict), application of this clause is also precluded.

In any case, the First Additional Protocol does not prohibit the existence of mercenaries. Rather, Article 47 only determines the legal status of a mercenary, and denies such a person the right to be a combatant or a prisoner of war. Other international conventions, such as the convention for the Elimination of Mercenarism in Africa³⁰ and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries,³¹ both of which clearly prohibit the use of mercenaries and related activities, encompass limited applicability and enforceability.³² The result is a total ban on mercenarism does not exist within established, international law.³³

International Humanitarian Law

International Humanitarian Law (IHL), as reflected in the four 1949 Geneva Conventions³⁴ and the two accompanying Additional Protocols of 1977,³⁵ seeks, for humanitarian reasons, to limit the effects of armed conflict and to ease the human suffering caused by war.³⁶ IHL crafts important distinctions between the rights, privileges and immunities of combatants and non-combatants in armed conflicts.³⁷ IHL limits *inter alia* the conduct of military operations under international law, and applies both to states and non-state actors. Employees of PMSCs are thus bound by IHL and face individual criminal responsibility for any war crimes they commit.³⁸

According to Common Article 1 of the four Geneva Conventions, all contracting parties undertake to respect and to ensure respect for the present convention under all

circumstances. This means states cannot escape their obligations under IHL by placing certain tasks in the hands of private companies.³⁹ In fact, they have to ensure that PMSCs, which (a) they deploy in conflict situations, (b) are based in their state, or (c) which are operational on their territory, respect IHL.⁴⁰ States also have the duty to prosecute serious breaches of the Geneva Conventions regardless of where the act took place or the nationality of the perpetrator.⁴¹

The difficulty in applying this body of law is determining the legal status of PMSCs and their employees. According to Phillip Carter, a former U.S. army officer now at UCLA Law School, "they [military contractors] fall into the same grey area as the unlawful combatants detained at Guantánamo Bay."⁴² The legal status of PMSCs is the subject of a separate paper.


International Human Rights Law

The principal international human rights instruments, such as the Universal Declaration of Human Rights,⁴³ the International Covenant on Civil and Political Rights⁴⁴ and the Convention Against Torture⁴⁵ were drafted primarily with states in mind. These treaties grant individuals rights to be free from torture and cruel, inhumane or degrading treatment, but these are generally seen as rights against the state. States are the central bearers of rights and responsibilities under these treaties.⁴⁶

States have a duty to “*respect, protect and to ensure* human rights.”⁴⁷ This means states have an obligation to refrain from arbitrarily interfering with human rights. They are also expected to protect all persons from acts by third parties that could impair the enjoyment of their human rights. These human rights obligations come into play when states hire PMSCs that engage in activities that could potentially affect human rights.⁴⁸

The question also arises whether PMSCs or their employees can be held responsible for human rights violations. Under the international human rights treaties, private parties have no obligations. In a number of states however they may be directly bound by international human rights law through national legislation.⁴⁹

General Principle of Law: Prohibition of the ‘Use of Force’

The prohibition of the ‘use of force’ is one of the cornerstones of international law. It means states are not allowed to use armed force against another state. According to article 2(4) of the UN Charter, "All members shall refrain in their international relations from the threat  use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." There are only two exceptions to this rule: self-defense and force used pursuant to resolutions of the UN Security Council adopted under Chapter VII of the UN Charter.

Obviously states are not allowed to circumvent this prohibition by delegating the ‘use of force’ to PMSCs and this could lead to a serious breach of international law. According to the International Court of Justice, a state will breach the international legal principle of non-intervention against another state by "organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State."⁵⁰ Similarly, states are

not allowed to use PMSCs to interfere in matters within the domestic jurisdiction of another state.⁵¹

Legitimacy of Private Military and Security Companies

The legitimacy of PMSCs entails a public and legal sanctioning of their existence. For PMSCs to be a legitimate entity their operation should be in accordance with the rule of law, and mechanisms for accountability should be in place.

Lack of Transparency and Decreasing Democratic Control

We discussed above that in a proper democracy the state has the monopoly on the legitimate 'use of force.' The army is under civilian democratic control and any military actions abroad require legislative or public approval. This is one of the cornerstones of democracy: a system of checks and balances to ensure compliance with the rule of law, with enforcement achieved through legal or political accountability.

The use of PMSCs by governments for *covert* operations abroad can be dangerous for the health of a democracy. In democracies, the public has a fundamental right to participate in decisions involving military operations.⁵² Such covert operations are kept away from the public eye, leading to a lack of democratic oversight and political accountability. As one commentator notes, "exporting private military services opens the door to foreign policy by proxy, whereby private companies are used to hide the government's fingerprints."⁵³

But also in the case of *overt* operations – i.e. when the outsourcing of military tasks to private contractors is not hidden from the public, such as in Iraq – democratic principles may be compromised in different ways:

- (a) PMSCs allow governments to carry out actions that generally would not gain legislative or public approval.⁵⁴ By using contractors, governments avoid decisions regarding the expansion of regular forces or the use of reserve troops; and circumvent the need for tough compromises with allies or the UN. In addition, deaths of contractors largely stay out of the news.⁵⁵ The result is a lack of transparency in foreign policy.⁵⁶
- (b) When PMSCs operate in war zones, it is difficult to monitor what they are doing exactly, rendering effective democratic control over their actions almost impossible.⁵⁷ Subcontracting by PMSCs makes any oversight even more complicated.⁵⁸ How can oversight be effective if the military often does not know where the private security forces are operating, and the private contractors do not know where U.S. troops are?⁵⁹ The resulting lack of transparency is especially problematic considering the authority of PMSCs over 'use of force.'

In general, information about the activities of PMSCs abroad is hard to obtain and often unreliable. Strict rules of confidentiality often apply to contracts: the US government classifies contractual details as proprietary commercial information, the release of which is exempt under the Freedom of Information Act.⁶⁰ This lack of transparency is a key contributor to the lack of accountability,⁶¹ to which we will turn next.

Accountability of PMSCs and their Employees

Accountability is “being answerable or liable for one's conduct or actions.”⁶²

Accountability can be achieved through good regulatory structures and appropriate enforcement mechanisms.⁶³ One of the main problems associated with PMSCs and their employees is their lack of accountability.

It is the duty of government to maintain disciplined armed forces.⁶⁴ National armies are accountable domestically through the political process and military law. Soldiers and their commanders are all bound by the codes, rules and regulations of the army and the relevant provisions of international law. They are responsible and liable for their actions and may be prosecuted in national courts and the International Criminal Court.⁶⁵

PMSCs are different from national militaries in the sense they are structured solely for commercial profit. Until recently, U.S. private contractors were not subject to military law, except during a declared war (this may change due to a recent amendment to the U.S. Uniform Code of Military Justice; see below). Also, they are not commanded by a military commander, and are often not trained to operate in accordance with IHL. Instead, they are subject to the terms of their contract.⁶⁶

While contracts issued by the U.S. Department of Defense (DOD) are covered by regulations which, among other things, require private contractors to observe applicable international law and properly train their employees and subcontractors, these regulations do not cover contracts granted by other government agencies.⁶⁷ In any case, contractor employees are subject to realistic models of discipline by the contractor itself, or to criminal prosecution by the U.S. Department of Justice.⁶⁸

It is a fact PMSCs have been involved in human rights violations and present a challenge for the protection of human rights.⁶⁹ For instance, employees of Titan Corp and California Analysis Center Incorporated (CACI) were implicated in incidents of torture and abuse at Abu Ghraib prison.⁷⁰ Private contractors of Blackwater and Custer Battles have reportedly been involved in random shootings at innocent civilians in Iraq.⁷¹ Beyond Iraq, AirScan intelligence directed the Colombian air force to drop a cluster bomb on a village in Colombia, killing 18 civilians.⁷² Employees of DynCorp International have been accused of running a prostitution ring which used under-aged girls in Bosnia in 2001.⁷³ On a different level, arms procurement and brokering of small arms and light weapons have become integral aspects of PMSC activities, which in turn also facilitate human rights abuses and breaches of international humanitarian law.⁷⁴

Of course employees of PMSCs may be liable for their actions under IHL, human rights law and the laws of the country in which they operate, but justice may be difficult to enforce in practice. PMSCs often operate in conflict areas where the local government is weak and in a poor position to hold them accountable. Especially when a local government is dependent for its security on a PMSC, it has no incentive to initiate legal procedures. In Iraq, the U.S. government made sure to grant immunity for Iraqi legal process to all non-Iraqi military personnel and PMSC employees for acts performed within the terms of their contracts.⁷⁵ An order to that effect was issued by the head of the Coalition Provisional Authority, Paul Bremer, the day before handing over power to the Iraqi government in June 2004.⁷⁶

In practice, the real extent of PMSC accountability may depend on who is employing them.⁷⁷ However, a contracting state will often not have any political interests to initiate legal procedures either. Why would the U.S. government expose violations of international law by PMSCs and their employees? Such exposure would only raise demands for more transparency in U.S. foreign policy and lead to increased pressure on the U.S. government to change its policy of outsourcing military tasks to private entities. From the perspective of the U.S. government, such a development is undesirable and better avoided.

But there are legal obstacles as well. The application of U.S. law outside U.S. territory is problematic, and the likelihood of prosecution very low.⁷⁸ Even if U.S. civilian law could potentially be applied to crimes of contractors, how will civilian prosecutors in the U.S. gather evidence in the middle of war zones and make determinations of what is proper and improper behavior in conflicts?⁷⁹ Accountability is especially difficult if the employees of a PMSC are not U.S. citizens.

This lack of accountability of PMSCs and their employees led Amnesty International USA to conclude in its 2006 Annual Report the "reliance of the United States government on private military contractors in Iraq and Afghanistan had helped create virtually rules-free zones sanctioned with the American flag and firepower."⁸⁰ It will be interesting to see whether a recent amendment to the U.S. Uniform Code of Military Justice, which allows for private contractors who violate the rules of engagement to be court-martialed, will bring about a change in this lawless situation.⁸¹

IMPACT OF PMSCS ON HUMAN SECURITY

What is Human Security

Human security refers to the "complex of interrelated threats associated with civil war, genocide and the displacement of populations."⁸² It is primarily concerned with the protection, particularly from violence and the fear of violence, of the civil population. However, human security may also relate to threats associated with poverty, lack of state capacity and various forms of socio-economic and political inequity.⁸³

A discussion of human security in the context of military operations should not only focus on observance of the Geneva Conventions and other relevant aspects of international law, but should also address the needs of local populations. A human security approach takes into account the root causes of a conflict or crisis⁸⁴ and aims to engender goodwill on the part of the local population through *hearts and minds* strategies.⁸⁵ There are obvious implications on the human security of local populations stemming from the operations of PMSCs.

How do PMSCs Affect the Human Security of Local Populations

There are many problems associated with the operation of PMSCs in conflict areas. The lack of transparency, democratic oversight and accountability, as discussed above, leads inevitably to a decrease in legitimacy of PMSCs in the eyes of the populations affected by their operations. These people perceive PMSCs as operating outside the framework of the rule of law and showing disdain for human rights

without being held accountable. This culture of impunity leads to resentment and distaste of the corporations generously profiting from war.⁸⁶

This feeling of resentment is only exacerbated by the fact many employees of PMSCs receive neither proper screening nor proper training and instruction in the upholding of human rights and international law standards. According to Laura Dickinson, professor at the University of Connecticut School of Law, of the sixty publicly available Iraq contracts she examined, "none contains specific provisions requiring contractors to obey human rights, anticorruption, or transparency norms,"⁸⁷ nor do they appear to require training concerning the appropriate 'use of force.'⁸⁸ Dickinson also found "an Army Inspector General report on the conditions that led to the Abu Ghraib scandal concluded that 35% of CACI's Iraqi interrogators had no formal training in military interrogation policies and techniques, let alone training in international legal norms."⁸⁹

In its Annual Report of 2006, Amnesty International USA notes civilians working for private military contractors in Iraq and Afghanistan are alleged to have committed serious incidents of abuse, including assault, torture and sexual abuse.⁹⁰ In Iraq, press reports have revealed hundreds of incidents of civilian contractors shooting at Iraqi civilians.⁹¹ At the same time, indictments and convictions of PMSC employees for violations of human rights are rare.⁹²

What is the message conveyed to the local populations? How will local populations perceive the operations of PMSCs? How do PMSCs impact human security?

- (a) The lack of accountability, demonstrated by the immunity from prosecution granted to PMSC employees, is viewed as proof the Western world uses double standards when preaching themes of freedom and democracy in support of Western values. Respect for human rights seems to apply only when it is convenient for Western states but can easily be ignored if political and economic interests so demand. Human rights violations and a lack of accountability lead to a "sense of exclusion and worthlessness among affected populations;"⁹³ a feeling their lives do not really matter.
- (b) The privatization of the military industry signals a blurring of the lines between public and private interests. It is often uncertain whether a state acts out of principles, or simply out of the desire to make a profit. As one commentator notes, "[w]hen private and public lines are perceived to blur it also becomes difficult for states to claim their policy follows a general and justifiable interest beyond that of the specific contract or firm."⁹⁴ This *perception* impacts the legitimacy with which a military operation is viewed. Again, the result will be a feeling of injustice and resentment among the affected populations.
- (c) As PMSCs develop into independent players in the market for force – and engage in extensive lobbying efforts – their interests are increasingly a decisive factor when determining the proper course of action in areas of conflict and crises. As a result, policies will focus on immediate security difficulties and military solutions, in isolation from the social context – i.e. the root causes of a problem.⁹⁵ Social, economic and/or environmental issues simply fall out of the

picture, providing additional proof for local populations that the "West" does not really care.

- (d) Western states which hire PMSCs in effect signal to the local population they are not willing to risk and commit their own troops. This instigates resentment from within the local population who could consider this as an expression of an unwillingness to engage or even a lack of respect.⁹⁶

Perhaps then, it should come as no surprise anti-American feelings among Muslims have reached unprecedented high levels, according to a survey conducted in ten predominantly Muslim countries.⁹⁷

CONCLUSION: PMSCS AND THEIR IMPACT ON STATE BUILDING EFFORTS

The impact of PMSCs on human security should be carefully considered by states who wish to outsource military operations. The implications of the privatization of warfare for state building efforts cannot be underestimated. Human loss and suffering caused by PMSCs breed bitterness and resentment which are directed also against the states with which they are associated.⁹⁸ The local population can not be expected to distinguish between a contractor and a soldier.

According to Larry Cox, Executive Director of Amnesty International USA, "illegal behavior of contractors and of those who designed and carried out U.S. torture policies and the reluctance of the government to bring perpetrators to justice are tarnishing the reputation of the United States, hurting the image of American troops and contributing to anti-American sentiment."⁹⁹ He furthermore notes "by fighting in the name of freedom and democracy while... failing to hold perpetrators – whether they wear military fatigues or civilian clothes – accountable, the U.S. government has diminished significantly its moral standing to criticize human rights abuses."¹⁰⁰

Peter Singer relates the story of a contractor who shot a young Iraqi who got too close to his vehicle. The boy was waiting in line at the Green Zone entrance (Baghdad) to apply for a job.¹⁰¹ With stories like this, how will the United States ever succeed in winning the hearts and minds of the Iraqi people?

The role of public opinion and public support is critical in achieving success in state-building efforts. Such efforts will likely fail if public support is not guaranteed. Of course, there are many factors which determine whether public support can be assured. In this respect, the legitimacy with which an outside (military) intervention is perceived can play an important role. Another relevant factor which influences public support is the outsourcing of military tasks to private entities and PMSCs' negative impact on human security.

PMSCs are often perceived as pursuing private interests only, operating outside the rule of law and without any established lines of accountability. The ensuing resentment among local populations who feel their human rights are being trampled upon does not bode well for any state building efforts. Indeed, the involvement of PMSCs in acts of violence and human rights abuses has been a contributing factor to anti-Western feelings in the Muslim world.

In Iraq, resentment towards PMSCs has helped ignite the insurgency, leading to major instability of the country. The resulting negative impact on human security has in turn caused even more bitterness and resentment among the Iraqi population towards the 'foreign occupiers.' When such feelings of resentment towards PMSCs and the states with which they are associated are omnipresent among populations in a conflict or crisis area, state building efforts are doomed to fail.

¹ To watch the video, go to: <http://www.informationclearinghouse.info/article11157.htm> (accessed May 3, 2007).

² Rayment, S. 2005. 'Trophy' video exposes private security contractors shooting up Iraqi drivers. *Telegraph.co.uk*, November 11. <http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2005/11/27/wirq27.xml&sSheet=/news/2005/11/27/ixworld.html> (accessed May 3, 2007).

³ For example: Fainaru, S. 2007. Four Hired Guns in an Armored Truck, Bullets Flying, and a Pickup and a Taxi Brought to a Halt. Who Did the Shooting and Why? *The Washington Post*, April 15. <http://www.washingtonpost.com/wp-dyn/content/article/2007/04/14/AR2007041401490.html> (accessed on May 3, 2007); Meyer, S. 2006. Iraq: Security Companies and Training Camps. *The Brussels Tribunal*, May 17. <http://www.brusseltribunal.org/SecurityCompanies.htm#four> (accessed May 3, 2007).

⁴ Singer, P.W. 2007. The Law Catches Up to Private Militaries, Embeds. *Defense Tech*, January 3. <http://www.defensetech.org/archives/003123.html> (accessed May 3, 2007).

⁵ Barstow, D. 2004. Security Companies: Shadow Soldiers in Iraq. *New York Times*, April 19. <http://www.nytimes.com/2004/04/19/international/middleeast/19SECU.html?ei=5007&en=98ef1377bf78c19d&ex=1397707200&partner=USERLAND&pagewanted=print&position=> (accessed May 3, 2007).

⁶ Merle, R. 2006. Census: 100,000 contractors in Iraq – Number is 10 times that in first Gulf War, far more than previous estimate. *The Washington Post*, December 5. <http://www.msnbc.msn.com/id/16047618/from/RSS/> (accessed May 3, 2007). The U.S. State Department keeps a list of companies operating in Iraq: http://travel.state.gov/travel/cis_pa_tw/cis/cis_1763.html (accessed May 3, 2007).

⁷ Peterson, L. 2002. Privatizing Combat, the New World Order. *The Center for Public Integrity*, October 28. <http://www.publicintegrity.org/bow/report.aspx?aid=148> (accessed May 3, 2007).

⁸ See for example: War on Want. 2006. *Corporate Mercenaries: The threat of private military and security companies. November 2006*. <http://www.waronwant.org/download.php?id=488> (accessed April 23, 2007).

⁹ Bourne, M. 2004. The Privatization of Security. *Conference on Privatization of Warfare*. Clingendael Institute. June 2. <http://www.ikv.nl/docs/200408111618595200.doc?&username=gast@ikv.nl&password=9999&groups=IKV> (accessed April 22, 2007).

¹⁰ Leander, A. 2006. Eroding State Authority? Private Military Companies and the Legitimate Use of Force. Rome: *Centro Militare di Studi Strategici (CeMiSS)*, 48. <http://se2.isn.ch/serviceengine/FileContent?serviceID=PublishingHouse&fileid=AADBFBF0-1696-74CC-A1BD-1FAE43708D62&lng=en> (accessed April 22, 2007).

¹¹ McDonald, A. 2004. Guns 'n Butter for Hire: Some Legal Issues Concerning Private Military Companies. *Conference on Privatisation of Warfare*. Clingendael Institute. June 2. <http://www.ikv.nl/docs/200409091531239981.doc?&username=gast@ikv.nl&password=9999&groups=IKV> (accessed April 22, 2007).

¹² Singer, P.W. 2004. War, Profits, and the Vacuum of Law: Privatized Military Firms and International Law. *Columbia Journal of Transnational Law*, 42: 522. <http://www.brookings.edu/dybdocroot/views/articles/fellows/singer20040122.pdf> (accessed April 23, 2007).

¹³ Schreier, F. and M. Caparini. 2005. Privatising Security: Law, Practice and Governance of Private Military and Security Companies. *Occasional Paper No. 6: Geneva Centre for the Democratic Control of Armed Forces (DCAF)*: 18.

- ¹⁴ Singer, P.W. 2004. The Dogs of War Go Corporate. *The London News Review*. March 19. <http://www.brookings.edu/views/op-ed/fellows/singer20040319.htm> (accessed April 23, 2007).
- ¹⁵ Schreier and Caparini, *supra* note 13: 26.
- ¹⁶ *Ibid*, 31-33.
- ¹⁷ *Ibid*, 30.
- ¹⁸ *Ibid*, 33.
- ¹⁹ Van Niekerk, P. 2002. Making a Killing: The Business of War. *The Center for Public Integrity*, October 28. <http://www.publicintegrity.org/bow/report.aspx?aid=147> (accessed April 23, 2007); see also O'Brien, K.A. 2000. PMCs, Myths and Mercenaries: the debate on private military companies. *Royal United Service Institute Journal*. <http://www.kcl.ac.uk/orgs/icsa/Old/pmcs.html> (accessed April 22, 2007).
- ²⁰ War on Want, *supra* note 8: 11.
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- ²⁷ War on Want, *supra* note 8: 8.
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- ³⁴ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949 ("First Geneva Convention"), Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949 ("Second Geneva Convention"), Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 ("Third Geneva Convention"), Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949 ("Fourth Geneva Convention").
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- ³⁶ [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/humanitarian-law-factsheet/\\$File/What_is_IHL.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/humanitarian-law-factsheet/$File/What_is_IHL.pdf) (accessed May 13, 2007).
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- ³⁹ Report by the Swiss Federal Council, *supra* note 22: 46.
- ⁴⁰ *Ibid*, 46.
- ⁴¹ *Ibid*, 47.
- ⁴² Singer, *supra* note 21: 12.
- ⁴³ Universal Declaration of Human Rights, G.A. Res. 217A of December 10, 1948.
- ⁴⁴ International Covenant on Civil and Political Rights of December 16, 1966.
- ⁴⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of December 10, 1984.
- ⁴⁶ Dickinson, L.A. 2006. Public Law Values in a Privatized World. *The Yale Journal of International Law*, 31: 397. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=873086#PaperDownload (accessed April 28, 2007).
- ⁴⁷ Droege, *supra* note 38: 2.
- ⁴⁸ In the case of PMSCs which are mandated by states without at the same time also being integrated into the armed forces or the police, the question arises whether they count as state actors and as such must observe the human rights embodied in international law. See Report by the Swiss Federal Council, *supra* note 22: 47.
- ⁴⁹ Droege, *supra* note 38: 1.
- ⁵⁰ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p. 14, para. 191. See also the Declaration on Principles of International Law concerning Friendly Relations and cooperation among States in accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), U.N. Doc A/8028 (1970), para. 1.
- ⁵¹ Cottier, M. 2006. Relevant International Legal Standards: Overview, Use of Force, Mercenaries. *PMC/PSC Workshop. Swiss Initiative*. January 16-17. <http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/intla/humlaw.Par.0018.File.tmp/PMS-CsPraesentationen-RelevantInternationalLegalStandardsOverview.pdf> (accessed May 4, 2007).
- ⁵² Schreier and Caparini, *supra* note 13: 68.
- ⁵³ *Ibid*, 68.
- ⁵⁴ Singer, *supra* note 21: 10.
- ⁵⁵ Some incidents have however received wide international media coverage. On March 31, 2004, four employees of the private U.S. military firm Blackwater operating in Iraq were ambushed when they drove through the center of Fallujah. In images broadcasted around the world, it was shown how their bodies were dragged from their vehicles and subsequently burned. The remains of two of the men were eventually hanged on a bridge. Scahill, J. 2006. Iraq: Blood is Thicker than Blackwater. *CorpWatch*, May 1. <http://www.corpwatch.org/article.php?id=13521> (accessed May 13, 2007).
- ⁵⁶ Singer, *supra* note 21: 10.
- ⁵⁷ Schreier and Caparini, *supra* note 13: 67.
- ⁵⁸ War on Want, *supra* note 8: 13.
- ⁵⁹ Barrett, B. 2005. Iraq: Pentagon Plans New Regulations for Private Security Companies. *The News & Observer*, July 29. <http://www.corpwatch.org/article.php?id=12525&printsafe=1> (accessed May 3, 2007). In a report of July 2005, the U.S. Government Accountability Office (GAO) noted that while coordination between military and security providers in Iraq had improved, some problems still remained: (1) private security providers continued to report incidents between themselves and the military when approaching military convoys and checkpoints; and (2) the military may not have a clear understanding of the role of contractors, including private security providers, in Iraq and of the

implications of having private security providers on the battle space. United States Government Accountability Office. *Rebuilding Iraq – Actions Needed to Improve Use of Private Security Providers*. GAO-05-737, July 2005: 4. <http://www.gao.gov/new.items/d05737.pdf> (accessed May 13, 2007). A subsequent report by the GAO related that, one year later, some of these problems had still not been resolved. For example, private security providers were still entering the battle space without coordinating with the U.S. military, putting both the military and security providers at a greater risk for injury. United States Government Accountability Office. *Rebuilding Iraq – Actions Still Needed to Improve the Use of Private Security Providers*. GAO-06-865T, June 13, 2006: 3. <http://www.gao.gov/new.items/d06865t.pdf> (accessed May 13, 2007).

⁶⁰ Schreier and Caparini, *supra* note 13: 86.

⁶¹ Jennings, *supra* note 28: 43.

⁶² 1991. *The Concise Oxford Dictionary*. New York: Oxford University Press,.

⁶³ Bourne, *supra* note 9.

⁶⁴ Schreier and Caparini, *supra* note 13: 66.

⁶⁵ *Ibid*, 66.

⁶⁶ *Ibid*, 66.

⁶⁷ Amnesty International USA, Annual Report 2006: Overview.

<http://www.amnestyusa.org/annualreport/2006/overview.html> (accessed May 4, 2007).

⁶⁸ *Ibid*.

⁶⁹ Schreier and Caparini, *supra* note 13: 67. See also Amnesty International USA, *supra* note 67 ("Media reports of misconduct involving private security companies are numerous, particularly reports of indiscriminate shootings at Iraqi civilians and U.S. military personnel").

⁷⁰ Amnesty International USA, *supra* note 67.

⁷¹ *Ibid*. See also L. Myers & the NBC investigative unit. 2005. U.S. Contractors in Iraq allege abuses – Four men say they witnessed brutality. *NBC News*, February 17. <http://www.msnbc.msn.com/id/6947745/> (accessed May 14, 2007; includes video).

⁷² Leander, *supra* note 10: 58, 108.

⁷³ War on Want, *supra* note 8: 15.

⁷⁴ Makki, S., Sarah Meek, Abdel-Fatau Musah, Michael Crowley and Damian Lilly, 2001. Private Military Companies and the Proliferation of Small Arms: Regulating the Actors, *International Alert*, 5, 7. http://www.smallarmssurvey.org/files/portal/issueareas/security/security_pdf/2001_Makki_et_al.pdf (accessed on April 29, 2007).

⁷⁵ Coalition Provisional Authority Order Number 17 (revised), *Status of the Coalition Provisional Authority, MNF-Iraq, Certain Missions and Personnel in Iraq*. CPA/ORD/27 June 2004, 17.

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⁷⁶ See also Wright, R. 2004. U.S. Immunity in Iraq Will Go Beyond June 30. *Washingtonpost.com*, June 24. <http://www.washingtonpost.com/wp-dyn/articles/A757-2004Jun23.html> (accessed May 14, 2007).

⁷⁷ Foreign and Commonwealth Office. Private Military Companies: Options for Regulation 2001-02 (Green Paper). London: The Stationary Office, HC 577, February 2002. <http://www.fco.gov.uk/Files/kfile/mercenaries,0.pdf> (accessed April 29, 2007).

⁷⁸ War on Want, *supra* note 8: 13; Schreier and Caparini, *supra* note 13: 84. See also Amnesty International USA, Annual Report 2006: Provisions permitting the U.S. Department of Justice to prosecute civilians contracted by the United States Government.

<http://www.amnestyusa.org/annualreport/2006/provisions.html> (accessed May 4, 2007).

⁷⁹ Singer, *supra* note 4.

⁸⁰ Amnesty International U.S.A., Annual Report 2006: Statement of Larry Cox, Executive Director, May 23, 2006.

http://www.amnestyusa.org/2006/Statement_Larry_Cox_Executive_Director_Amnesty_International_USA/page.do?id=1101439&n1=2&n2=18&n3=782 (accessed April 29, 2007).

⁸¹ Singer, *supra* note 4.

⁸² http://www.humansecurityreport.info/HSR2005_HTML/What_is_HS/index.htm (accessed May 4, 2007)

⁸³ *Ibid*.

⁸⁴ Oxford Research Group. 2007. *What Would Military Security Look Like Through A Human Security Lens? Reconciling the requirements of contemporary operations with the needs of human security*. January, para. 39.

http://www.oxfordresearchgroup.org.uk/publications/briefing_papers/pdf/NATO_ASW.pdf (accessed May 2, 2007).

⁸⁵ Ibid, para. 17.

⁸⁶ War on Want, *supra* note 8: 13.

⁸⁷ Dickinson, *supra* note 46: 403.

⁸⁸ Ibid, 405.

⁸⁹ Ibid, 405.

⁹⁰ Amnesty International USA, *supra* note 67.

⁹¹ Ibid.

⁹² Ibid.. ("While reports of alleged incidents of abuse by civilians have been forwarded to the U.S. Attorney's Office in Eastern Virginia, there have been no convictions and only one indictment, though at least 20 cases were forwarded by the Department of Defense and the CIA to the Department of Justice since the beginning of the conflict in Afghanistan.") See also War on Want, *supra* note 8: 13 ("Of the tens of thousands of PMSC employees who have been active in Iraq, not a single one has been charged with a crime.")

⁹³ Jennings, *supra* note 28: 45.

⁹⁴ Leander, *supra* note 10: 125-126.

⁹⁵ Ibid, 133-134.

⁹⁶ Ibid, 123.

⁹⁷ Gledhill, R. 2007. Anti-American feelings soar among Muslims, study finds. *The Times*, February 21. http://www.timesonline.co.uk/tol/news/world/us_and_americas/article1415550.ece (accessed May 14, 2007); see also Esposito, J.L. and D. Mogahed. 2007. Battle for Muslims' Hearts and Minds: The Road Not (Yet) Taken. *Middle East Policy*, 14: 27.

<http://media.gallup.com/WorldPoll/PDF/Esposito.pdf> (accessed May 14, 2007).

⁹⁸ http://www.oxfordresearchgroup.org.uk/work/middle_east/human_security.php.

⁹⁹ Statement of Larry Cox, *supra* note 80.

¹⁰⁰ Ibid.

¹⁰¹ Singer, *supra* note 4.