

Impact in human rights of private military and security companies' activities

José L. Gómez del Prado

UN Working Group on the Use of Mercenaries

There has been a remarkable expansion, in the last 20 years, of private military and security companies providing services in zones of low-intensity armed conflict and post-conflict situations such as Afghanistan, the Balkans, Colombia, the Congo, Iraq, Somalia or Sudan. These transnational private companies can provide logistics, combat or combat related security training and intelligence as well as tactically military capability in the middle of a war zone. Three groups of countries may be involved in the activities carried out by transnational PMSC: exporting countries supplying private military and security services; importing countries demanding such services, and states of PMSC staff nationality, often from developing countries furnishing cheap labor to the transnational private military and security companies. Thousands of citizens from developed and developing countries from all parts of the world have been recruited and are working for these private military and security companies. In Iraq there are more than 180 PMSC providing services to the multinational forces employing 48 000 “private security guards”. In Afghanistan it is estimated that there are some 60 PMSC employing between 18 000 and 28 000 employees. Parallel to this international privatization of warfare, there has also been an increased demand for private security and protection of property at the domestic level all over the world, both in developed and developing countries. A very fast growing industry, estimated to yield between \$100 and \$120 billion annually.

The distinction between the activities and functions which are public and those which belong to the private sector has been increasingly blurred by the expansion of this new industry. Public and private activities are intermingled and extremely difficult to identify, particularly in an area that has traditionally been considered to be inherently governmental: security. Security is understood in its two State dimensions: at the domestic level, which is supposedly to be guaranteed by the police, and externally by an army reputedly to be capable of defending the territory and the national sovereignty. Within this context, it should be borne in mind that the concept of “collective security” enshrined in the UN Charter is based on the principle of the sovereignty and the effective control and regulation of the legitimate use of force of each of the 192 Member States of the world Organization.

The globalization of the world economy, the shifting from centralized government to diffused “governance” or “ungovernance”, the downsizing of regular armed forces of States, all over the world are some of the causes behind the rapid development of the privatization of violence. In today’s “failed states”, the globalization of the economy has operated hand in hand with the “bottom-up” privatization of violence. Traditional inter-State wars with clear front lines have almost disappeared; instead, we witness low-intensity armed conflicts; a widespread use of light weapons; and the privatization of military functions and asymmetry of the parties in the conflict.

The outsourcing of a number of basic functions traditionally carried out by national armies or police forces, known as the “top-down” privatization, has blurred the borderlines between the public services of the State and the private commercial sector creating a dangerous “grey zone”. In situations of armed conflict the employees of transnational private military and security companies, contracted as civilians but militarily armed, operate in these “grey zones”. The status of these persons is elusive as to whether they are combatants or civilians. The development of

private military and security companies has produced a new type of private soldiers operating in war torn countries and high-risk insecurity areas under murky legal restraints. These new modalities have absorbed the use of traditional individual mercenaries.

Private “guards”, “private soldiers” or “private contractors” perform military and quasi-military tasks in situations of armed conflict such as Iraq. PMSC employees often find themselves working in a situation of armed conflict where they are constantly exposed to “great risk and immediate danger” in a “hostile environment” including but not limited to “the threats inherent in a war situation” as indicated in the contracts they sign.

Recruited by PMSC these individuals often operate with limited oversight or army control. Most of them are neither nationals of one of the parties to the conflict nor residents of the country in conflict. Although they were not “specifically recruited to take part in hostilities”, neither did their contracts specify either that they would receive military training and would be militarily armed. Recruited in their respective countries from all over the world as “private security guards” to provide protection, most of them have in fact taken part in internal low-intensity armed conflicts. Most of them are not members of the armed forces of a party to the conflict and they have not been officially sent by their respective States. All of them have been essentially motivated by private gain. Although these are characteristics of the mercenary-related activities and modalities of the conflicts of the twenty-first century, they are in fact, extremely difficult to prove. These situations together with the loopholes in international law permit PMSC to operate in a grey zone.

The distinction between humanitarian non-profit organizations and corporations working for pecuniary gain is also an area which is being blurred by PMSCs. In conflict or post-conflict areas, such as Afghanistan and Iraq, where PMSCs sometimes provide security details and protection work to humanitarian NGOs, it has become difficult for the population as well as government officials to distinguish one from another. Humanitarian and aid-type assistance risk becoming associated with an intervening force and PMSCs which may be perceived as biased. It is paradoxical to see that reconstruction and infrastructure building in post conflict situations which need to be implemented in the long term are more and more given to PMSC whose commercial motivations drive them to obtain the maximum profit in the shortest-term possible.

The perception of PMSCs by the Afghan local population, for example, indicate that employees of PMSCs may contribute to insecurity by perpetuating a “culture of war”, and raise concerns as to the lack of transparency blurring responsibility and accountability of PMSCs and their employees. The local population in Afghanistan also appears to consider that PMSCs are diverting needed funds for reconstruction to pay private security companies, which thus paradoxically may in effect prevent the stabilization of peace in the country.¹

¹ Swisspeace, “The Impact of Private Military and Security Companies on the Local Population in Post-Conflict Countries. A Comparative Study for Afghanistan and Angola”, Bern, 2007 and also Antonio Giustozzi, “The privatization of war and security in Afghanistan: future or dead end?”, *Economics of Peace and Security Journal*, vol. 2 (1): 30-34, p. 31.

Private military and security companies blur their activities and elude responsibilities through a network of affiliates for financial purposes to not pay taxes by registering in financial havens but also to deceive local populations which are against their activities.

“Private contractors” working for PMSCs may commit abuses and human rights violations while fulfilling their activities in situations of violent or low-intensity conflict.

The potential for human rights abuses in such situations is an ever present threat, and it is nearly impossible to hold PMSC employees accountable for their actions. In a conflict area with active hostilities fought in the heart of cities with unclear distinctions between combatant and non-combatant, it is impossible to distinguish defensive from offensive roles. PMSC personnel in Iraq are involved in exchange of fire with insurgents on a daily basis. Security provisions necessarily involve military engagement. There is no perceptible difference between regular soldiers and the private contractors protecting convoys (transporting ammunitions and fuel), material, buildings or persons. Providing security in such an environment necessitates being armed and ready to shoot, often under uncertain circumstances where combatants and civilians are difficult to separate.

As observed in many incidents, PMSC employees can use excessive force and shoot indiscriminately resulting in civilian casualties. There are cases where PMSC employees have used forbidden arms or experimental ammunition prohibited by international law². Private contractors often circulate without identification and drive in unidentified sport utility vehicles (SUVs) with tinted glasses and no plates, behaving similarly to the infamous death squads. In Afghanistan and Iraq, the two countries with the largest presence of PMSC staff, the population is confused and finds it extremely difficult to distinguish employees of different companies from state forces.

Reports indicate erratic behavior of PMSCs employees in Iraq with mottos such as: “what happens here to-day, stays with us today”. It has also been alleged that “private security guards” would also detain Iraqis without authorization.³ According to coinciding different sources, on 16 September 2007, in Al-Nisour Square in the neighborhood of Mansour in Baghdad, security contractors protecting a United States Department convoy, which was allegedly attacked, opened fire on civilians killing 17 persons, using security company helicopters firing into the streets, resulting in civilian casualties and injuries. The security firm Blackwater claimed that its personnel came under attack by “armed enemies” and fired back in self-defense. Iraqi authorities

² The information on the use of forbidden ammunitions was provided to the UN Working Group on the Use of Mercenaries (UN document A/HRC/7/7) by a former military who had been employed as “security guard” in Iraq by a PMSC. There are reports of use of armour piercing-limited penetration (APLPs) ammunitions, which are blended metal bullets which go through steel and anti-bulletproof vests and that instead of passing through a human body they shatter creating untreatable wounds. Also see, Scahill, Ibid p. 78. In March 2007, the United States military barred the Crescent Security Company from bases in Iraq after it was found with weapons prohibited for private security companies. Also see: Steve Fainaru, “Cutting costs, Bending Rules, And a Trail to Broken Lives”, *The Washington Post*, 29 July 2007.

³ This is in addition to scores of gangs active in major Iraqi cities, *Iraq Today*, <http://warnewstoday.blogspot.com/> visited on 20 August 2007

and witnesses claim the security personnel opened fire unprovoked. In October 2007, an oversight panel of the United States House of Representatives released a report indicating that Blackwater employees had been involved in at least 196 firefights in Iraq since 2005, an average of 1.4 shootings per week. In 84% of those cases, the report stated, Blackwater employees opened fire first, despite contract stipulations to make use of force only in self-defense.

Unfortunately, the case of Blackwater is not an exception. Other PMSC have been reported to be involved in such incidents, in particular the killing of four women in Kirkuk and the involvement in a shooting of employees of another PMSC protecting a convoy, in central Baghdad, which left two Iraqi women dead.⁴ This type of incidents involving PMSC has been prevalent in the reconstruction of Iraq since its 2003 occupation: other PMSC have also been involved in similar incidents.

Outsourcing military and security functions has an inherent danger in losing State control over the use of force. In Iraq, by Order 17 issued by the Administrator of the Coalition Provisional Authority on 27 June 2004, contractors are immune from prosecution. PMSCs often operate outside government control and with limited effective oversight from State organs. They provide services from interrogation to strategic intelligence in a field that is a key aspect of waging war and may not only cause torture and inhumane treatment but violate rights such as freedom of movement and privacy.. When involved in crimes or human rights violations, these private security guards have not been sanctioned or brought before a court of justice, as exemplified by the involvement of contractors in torture and shootings against civilians in Iraq.

The employees of two PMSCs who were involved in human rights abuses in the prison of Abu Ghraib in 2003 have never been subject to external investigations nor legally sanctioned, despite assurances given by the Government of the United States of America. U.S. Army records would indicate that CACI and Titan translators and sub-contractors worked, in 2003, at Abu Ghraib prison when human rights abuses were perpetrated. Although the violations were carried out mostly by military police, several private interrogators have also been accused of torture.

“Private contractors” can also be the victims of human rights abuses, since they often find themselves in vulnerable situations, with contractual irregularities, exploitation, arbitrary detention and other restrictions on their human rights and labour rights.

[Would it be correct to say that this information was obtained through investigations of the WG on the use of mercenaries? Yes]

There is also the deceptive recruitment and exploitation of nationals from developing countries to work for these PMSC in situations of violence and armed conflict such as Iraq. When “private contractors”, or “private soldiers” sign their contracts they commonly waive a number of rights, including their right to seek legal recourse against the subsidiary company which has selected and contracted them, or the company which employs them “including even where loss, damage, personal injury or death is caused or contributed to any manner by the company”.⁵ They do not

⁴ Report of the UN Working Group on the Use of Mercenaries, doc. A/HRC/7/7 Add. 1. paragraphs 6 and 7.

⁵ Report of the UN Working Group on the Use of Mercenaries, docs. A/HRC/4/42/Add.1, paragraph 33 and A/HRC/7/7/Add. 2 paragraphs 27 to 30.

assess the effects of such clauses and the resulting challenges in terms of compensation and jurisdictional uncertainties.

Transnational PMSCs, their national subsidiaries, subcontracted companies or private employment agencies select, recruit and train former military and policemen as “security guards” from all over the world to be sent to zones of low-intensity conflict. In order to find their “discount soldiers”, private military and security companies have established networks in developing countries to recruit militaries and paramilitaries. PMSCs having obtained a contract from the United States State Department or the Department of Defense generally subcontract with one of its affiliates to do the job. From there, the PMSC affiliate looks to its network of international contact companies in developing countries where else where the manpower is cheap and professional. The PMSC maintain informal relationships with what are known in the trade as “briefcase recruiters”—individuals with connections to the local paramilitary scene. These men find the recruits and funnel them back up the chain, till, finally, they are deployed alongside U.S. forces in Iraq and Afghanistan. A series of contractual layers have, thus, been established difficult to disentangle

In general, the individual engaged signs a contract with a company which is not registered in his country which he discovers once he arrives in the zone of armed conflict. To this labyrinth there is the additional complexity of layers of insurance brokers and insurance companies to obtain a compensation for an injury or the death of a private contractor. Often, private security companies registered in the United States do not make the contract under the United States Defense Base Act with an insurance broker as they are under obligation to. It has also been reported that insurance brokers would only pay immediately 30 per cent of the claims and the rest of the claims not until an administrative tribunal compels them⁶.

In other instances, the contracts are signed under fraudulent conditions in order to avoid domestic jurisdictions, either immediately upon departure or upon arrival in the country of destination. Once performing security work in Iraq, many third country nationals have experienced contractual irregularities and poor working conditions, including excessive working hours, partial or full non-payment of salaries, ill-treatment and the neglect of basic needs such as access to medical services. In some instances, the insurance policies were faked or could only be enforced in the United States. In other cases where the “private guards” or “private contractors” had been injured they were pressured to continue to fulfill their work duties even with the help of crutches. If injured or killed, the claims presented by these private security guards or their families are often denied, or they find difficulties to obtain health care or compensation. A number of these third country nationals injured in Iraq, for example, are still waiting for the compensation they had been promised. “Private contractors” are often targeted by Iraqi insurgents and become cannon fodders of the armed conflict. As of August 2007, over 1,000 private contractors would have died since 2003, according to figures of the United States Department of Labor, and more than 8,000 injured.

At the international level the outsourcing of functions which were till not long ago inherently governmental and which are now being carried out by private companies offering military assistance, consultancy and security services have not only effects on the enjoyment of human

⁶ Report of the UN Working Group on the Use of Mercenaries, doc A/HRC/7/7 paragraph 40.

rights but also blurs the situations where these non State actor operate with regard to such important issues as transparency, monitoring, responsibility and accountability.

These new emerging non-State entities transcend the power of Governments and are eroding the traditional concept of sovereignty and the monopoly of the use of force. PMSCs the main aim of which is profit-making do not provide a sound basis for long-term stability. As has been recounted by a former British SAS who worked in Iraq for a private military company, the more Iraq descended into chaos and anarchy, the more reconstruction funds have been diverted into the pockets of private military companies. Contracting out externally logistical, training and operational elements have become integrated parts of modern military tactics and strategy.

States should establish appropriate red lines regarding what types of military and security activities, in the fields of logistics, training and direct operations in low intensity armed conflicts and post-conflict situations should be banned and what can be contracted out. Once the functions that can be contracted out externally have been defined and limited, national regulations for these cases should be established as well as the adoption of legislation and mechanisms for the control and monitoring of these activities. The control should include a system for the registration and provision of licenses, as well as a set of sanctions containing clauses affirming respect for human rights and international humanitarian law and incorporate the obligation to provide quality training to the staff, including training on human rights standards. An effective system for selection and investigation of contracted personnel should also be established incorporating a compulsory system of periodic review. However, given the transnational nature of the activities provided by private military and security companies, principles and measures will need to be also adopted at the regional and international levels.