



Private Military Contractors: Legitimate Entrepreneurs or New Fashioned Mercenaries

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Abstract

The contracting of private military contractors (PMCs) to render services in conflict domains has been very controversial in recent times, but the persistence of armed conflicts around the world, and the increasing reluctance of stronger nations to commit their military to restoring peace within such areas suggest that they are here to stay. States, intergovernmental organizations, nongovernmental organizations and even multinational corporations have been found to engage PMCs in order to meet their ends of restoring stability to the many States that are becoming dysfunctional due to persistent conflicts. The debate about PMCs has been about proving the legitimacy of their existence, and the justification for contracting wars that should otherwise be an exclusive State function to private companies. In this paper, an attempt is made at proving PMCs as legitimate entrepreneurs and highlighting the need to bring them out of the legal vacuum, which they have been operating in.

Keywords: Private military contractors; Mercenaries; Armed conflict; Legitimacy; Legal vacuum

Introduction

Private military contractors (PMCs) are the latest entrant into the arena of public violence. They are one of the numerous non-state entities whose activities have challenged and possibly undermined the age-long concept of state sovereignty and monopoly of violence. The armed activities of private persons are not novel. These individuals and groups have existed from primordial times, offering their military services and expertise for profit [1]. They were effective throughout the dynasty of Shulgi of Ur, king of Mesopotamia [2]. The ancient rulers of Egypt engaged the Nubians to fight for them [3]. Private warriors were engaged to fight at Kadesh in 1274 B. C. Other great armies of the past, including those of Alexander the Great and the cities-states of ancient Greece employed foreign fighters, who willingly offered their combat efficiency and dexterity for suitable pay [4]. These foreign fighters, also known as soldiers of fortune, were officially tagged 'mercenaries.'

What is new is how some of these armed individuals and groups have transformed and rebranded their operations into modern corporate business outfits, according them national and international status, acceptability and recognition. They enjoy the patronage and respect of governments, intergovernmental organizations (IGOs), non-governmental organizations (NGOs) and multinational corporations (MNCs). A few years back such groups would have been branded mercenaries and forced to go underground.

In recent times, private warriors who offer military and security services for profit form themselves into groups and assume a corporate structure under the phraseology of 'private military and security companies' [5]. Like mercenaries, they undermine the concept of state sovereignty and monopoly of the use of force. But unlike mercenaries, PMCs are not outlaws. In fact, they operate in the open public market and enjoy the recognition, patronage and respect of an ample sphere of the global community.

The need for PMSCs was somewhat limited until 2003 when the US invaded Iraq [6]. Former President George W. Bush undertook military adventures in Iraq and Afghanistan conveniently with the deployment of private contractors without incurring the wrath of the American public. The neoliberal drive to privatize agencies of States further strengthened the boom of the private military market. Right now the services of PMCs are not just sought after by States but also by IGOs,

NGOs and MNCs [7].

The intriguing point, however, is that the dividing line between mercenaries and PMCs appears to be very thin and almost nonexistent [8]. But while mercenaries are pariahs and villains, PMCs are legitimate entrepreneurs with renowned international clients. If mercenaries kill people during armed confrontations, they are liable for war crimes, and for employees of PMSCs who commit a similar act, their sins are easily forgiven. There have been huge reservations by a host of individuals and scholars as to the legitimacy of the involvement of private corporations in States' military/security engagements [9]. Private contractors have participated directly or offered assistance in numerous crimes against civilians and detainees, in particular during the Gulf War, and have also been exempted from the consequences of war crimes [10]. This coupled with the notion of private corporations having the habit of not caring about morals and ethics, but the maximization of profit only further fuel the reservations about their involvements in wars and security issues generally.

The question on the legitimacy of the actions of States, IGOs, NGOs and MNCs in engaging the services of PMCs in conflict resolutions and military/ security activities has been lingering for a while now, and since it is not likely that we will see an end to PMCs soon considering the persistence of armed conflicts all around the world, the need to provide answers to the question of their legitimacy has become more crucial.

Definition of private military companies: an illusory task

There is no authoritative definition of private military companies. This is so because of their complex nature and diverse functions [11]. Singer describes them as business associations that provide military skills and warfare-related services. Baum and McGahan refer to PMCs as lawfully structured profit-making organizations that provide combat zones services for hire. Ortiz observes that PMCs are legally constituted

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international companies that offer services involving the potential use of force. In place of a definition, Percy distinguishes three sources of private violence within the international system. These are mercenaries, combat private military companies and non-combat private military companies. Services provided by them include intelligence, planning, operational support, training, technical skills and combat duties; battlefield services [12]; and military and paramilitary services [13].

The private military industry is a service industry. But unlike other service industries, they render military/security services to a more specific client base, and in various categories. Analysts have sought to differentiate three essential divisions of PMCs depending on the kind of service they offer. According to Singer 2003, PMCs can be classified based on their functional capabilities, namely military provider contractors, consulting contractors and support contractors. Military provider contractors usually partake in hostilities, essentially in tactical areas. The aspect of capability building is vested in consulting contractors, whose main responsibility is to prop up the armed forces of their client. The support contractors are usually engaged in non-deadly assignments to bolster the armed forces. As detailed as singer's classification sounds, PMCs have in recent times engaged in services that overlap the afore-mentioned. PMCs have been seen to be involved in military operational support, military advice, logistical support, security services and crime prevention [14].

The rise to prominence of pmcs

The commercialization and internationalization of violence began with the commercialization of war in Northern Italy in the eleventh century [15]. In the periods after Second World War, the need to fight proxy wars, which majorly characterized the Cold War era, significantly enhanced the need to engage the services of mercenaries [16]. These wars were fought in Asia, Africa, Latin America and the Middle East by nations like the US, France and Britain with the use of private contractors. In Africa, European nations participated in post-colonial wars in countries like Congo and Angola through the use of mercenaries. In the course of the Nigerian Civil War (1967-1970) both parties were alleged to have engaged mercenaries in order to boost their fire power [17].

It was not until around the mid-1980s those PMCs began to gain recognizable corporate structures. According to Kinsey, by the 1980s, PMCs began to change their sanctioned identity in order to harness the emerging benefits and opportunities in several developing countries. Their services became public in the 1990s and open to governments and other clients willing to patronize them in an ample field of military and security projects [18].

During the 1990s, PMCs hit the headlines with their military exploits in several African conflicts, where they were to shift the conflict in favour of their clients (Shearer, 1998). Several factors influenced the emergence of PMCs [19]. Following the end of the Cold War, States came to depend extensively on services provided by private contractors [20]. World powers withdrew from States where they helped to provide security. Weak States entrusted their security to PMCs. Closely associated with the end of the cold war was a reduction in size of armed forces by the super powers. The United States reduced its regular armies by about 30 percent and needed PMCs to implement its military agenda abroad [21]. The Soviet Union (later succeeded by Russia) furloughed a significant number of their troops and sold some hardware in order to revamp its depressed economy. Reduction in the size of armies left many former combatants jobless [22]. Defence budgets were reduced and the gap created by the reduction was filled by PMCs [23]. Advancement in technology has resulted in a tremendous transformation in the nature

and conduct of warfare. Many autonomous and automated weapons are developed and operated by PMCs. One advantage of outsourcing is reduction in cost of war. Engagement of PMCs obviously reduces the economic, legal and political cost of war [24].

Engagement of by States, igos, ngos and others

Private contractors render service to a non-exclusive community of clients including States, NGOs, IGOs and MNCs among others. But States are their main clients [25]. In the course of the Yugoslav War in the 90s, the US-located PMC, Military Professional Resources Incorporated (MPRI) was engaged by the Republic of Croatia to train the Croatian military and transform it into a modern and professional force [26]. The Croatian army had suffered several defeats by the Yugoslav People's Army (JNA). MPRI supported the Croatian army and Defence Ministry only with training in leadership skills and education of military and civilian personnel because the UN Security Council arms embargo of 1991 prohibited weapons transfer, military planning, intelligence services, and strategy or tactics support to all parties in the conflict [27]. The improvement in the Croatian army was spectacular. Shortly after the beginning of MPRI's activities, the Croatian army kicked off an operation against the Serb-held Krajina region of Croatia and made the JNA and its Serbian allies retreat [28]. As Singer observes: "In a shocking fashion, the Croat army revealed that it had transformed from a ragtag militia into a highly professional fighting force." PMCs such as Olive Security, Erinys International, Rubicon and Control Risks Group won lucrative contracts to render security services in Iraq following the eruption of the 2003 Second Gulf War [29].

Weak States and those undergoing internal armed conflicts have found services provided by PMCs exceedingly rewarding [30]. The South African PMCs, Executive Outcomes and Sandline International, for example, intervened successfully in the intra-state conflicts in Sierra Leone and Angola [31]. The need for the services of PMCs was further heightened by their employment by NGOs [32], IGOs such as the UN [33] and MNCs [34]. Corporate bodies have hired them to protect their interests in conflict zones [35]. International organisations like the UN and AU have made extensive use of the services of private contractors [36]. The UN has relied to a large extent on private contractors to secure its staff and equipments in areas of conflict [37]. In addition to the aforementioned entities, patrons of PMCs include private individuals [38]. And this is due to the fact that in the realm of international security many non-state actors are taking on new roles. For example, NGOs provide human security in regards to healthcare, HIV/AIDS education and prevention, crime, and fighting transnational proliferation of arms [39]. All this explains why the functions of PMCs have become more complicated than it used to be. The increasingly unorthodox nature of peacekeeping and humanitarian rescue operations now draft non-state actors into organized warfare and ensuring peace.

Private military contractors can also be said to be playing a very significant role in the reduction of the global unemployment figures. Research has shown PMCs engage more individuals than the number of police officers employed by States [40]. This points to the fact that PMCs have not only become important tools to return order and stability to conflict-affected ambience by assisting the work of national and multinational security forces even in UN peace operations [41], but have also kept millions of individuals in employment and thus reduce the global unemployment figures albeit marginally.

The increasingly indispensable nature of PMCs cannot be ignored; and their engagement by the numerous international clients now appears to be inevitable [42]. The Commission on Wartime Contracting,

a legislative body which was established by the US Congress to study US wartime contracting in Afghanistan and Iraq in 2008 said the United States will not be able to carry out sizable uninterrupted military activities in the absence huge contractor support [43]. The above extract speaks to the increasing relegation of previous State functions, including military operations, to the hands of private institutions.

The concept of classic warfare, which focuses on the nation state as the sole and exclusive possessor of the lawful use of force, has been challenged, particularly in the course of the end of the Cold War [44]. The advent of globalization and the influence of neo-liberal economic models, which are based on the idea that comparative advantage and competition maximize effectiveness and efficiency, triggered the privatization of inherent state functions - among them core security functions [45]. Just as the world has grown to privatize key state functions like education, health and power supply, among others, military/security responsibilities have also been entrusted to non-state entities [46]. Stronger States have grown so much reluctance to intervene in armed conflicts which are peripheral to their direct strategic interests and in contrast to this, the sum of hostilities in weak and failed states have been on the ascendancy [47]. There is an increased need for intervention by the 'big boy' nations in restoring peace to these many failed states, but since they are reluctant to send their military personnel to these risky environments to restore peace, outsourcing this duty becomes increasingly necessary [48].

The lack of resources, the fear of burdens, responsibilities and unforeseeable political consequences as well as the military downsizing especially after the Cold War triggered the reluctance of many governments to intervene in humanitarian crises [49]. Against this background, one of the most persuasive assertions in favour of PMCs is the alleged ability of the private military companies to fill the security vacuum which evolved from the increasing unwillingness of the international community to intervene in crisis-ridden regions, which do not directly affect their economic or political interests. Furthermore, humanitarian catastrophes such as the Rwandan genocide in 1994 made it apparent that the organizational framework of the UN is unwilling or may be incapable of the short-term funding, staffing, effective training, and oversight of peacekeeping missions [50].

Reservations on the role of pmcs in military/security engagements

The involvement of PMCs in combat duties has drawn far-reaching dissatisfaction as many consider making profit their main motivation for providing military and security services, and regard this as illegitimate. Some critics worry that PMCs' quest for profits might serve as incentives in such a way that they may not help to resolve conflicts but rather incite more in order to gain subsequent contracts. According to them, PMCs cannot be accepted as legitimate actors because it cannot be guaranteed that they are not interested in instigating more conflicts in order to reap higher dividends and that their quest for profit does not undermine their ethical standards [51]. PMSCs are often portrayed as wartime profiteers, mercenaries or profit-driven. This portrayal is embodied by labels such as "dogs of war" "coalition of the billing" "guns for hire" or mercenaries which are used in the media and in academic publications.

Some reservations are influenced by the fear of the fact that PMCs might be hired by so-called "illegitimate" clients such as rebels, insurgents, warlords, drug traffickers and terrorist groups. Opponents worry that PMCs might exacerbate conflicts by supporting opposing groups in a conflict or that they might help "illegitimate" actors to overthrow a "legitimate" government [52].

There have also been reported cases of gross human rights violations and other war crimes by PMCs [53]. Crimes committed by PMCs include indiscriminate attack on civilians, intentional killings, damage to civilian property, torture, arbitrary detention and sexual violence [54]. The shootings in Nisour Square in Baghdad in September 2007, which resulted in the killing of 17 Iraqi civilians by personnel of the company Blackwater International is an example of crimes committed by PMCs [55]. Incidents such as sex trafficking and arms trade in the Balkans by employees of the US-company DynCorp International; torture and inhumane interrogations of prisoners in the Abu Ghraib prison in Iraq by personnel of CACI International and Titan; indiscriminate shooting of cars which approached convoys protected by PMCs in Iraq; killing and beating of local miners in Angola, and the usage of fuel air explosives by Executive Outcomes in Angola and Sierra Leone have further aggravated the resentment of many to their activities.

Employees of PMCs have been implicated in war crimes. However, the perpetration of crimes in war is not exclusive to PMCs; even State-sponsored militias have reportedly been guilty of committing war crimes. As Volker Franke and Marc von Boemcken argue, most PMCs display character and behavior similar to those of State armed forces. A prominent case in this context is the abuse of prisoners by US military officers and PMCs employees in the Abu Ghraib prison in Iraq in 2004 [56].

Pmcs: mercenaries or lawful entrepreneurs?

Are PMCs mercenaries or legitimate entrepreneurs? This question has dominated modern discourse and will remain an interesting topic for academic colloquy and scholarly research at both national and international levels [57]. There are different perspectives to this question; a case of different strokes for different folks. The question is significant because mercenaries are prohibited under contemporary international law. Though outlawed, they have been active in conflicts in Africa and some other parts of the world [58].

One of the main criticisms leveled against PMCs is that they are an offspring of mercenary organizations [59]. Like mercenaries, the motivation behind PMCs activities is pecuniary benefit. Chwastiak, describes PMCs as corporate mercenaries. Faite has raised the issue as to whether employees of private companies are mercenaries, and prefers to use the term "mercenary" in a generic sense. Zarate holds the view that PMCs are nothing but a recycled form of erstwhile mercenary organizations [60]. Andreopoulos and Brandle see a line of continuity; and describe PMCs as a modern day form of mercenarism [61]. In his discourse, O'Brien opines that PMCs originated from mercenaries, private militias and warlords. Kalman (2014) objects to the common ancestry ascribed to the two bodies, contending that PMCs are not compatible with the definition of mercenaries proffered in various treaties [62].

Article 47 of 1977 Additional Protocol 1 enumerates six requirements to be satisfied before an individual may be seen as a mercenary. This has been deemed not attainable and will very hardly be suited to employees of private companies [63]. There are flaws in the other two legal instruments relating to mercenaries and "the question whether individuals employed by private companies are mercenaries will most of the time be negative, as these persons will usually fall outside the conjunctive definition provided for in international instruments" [64]. Mercenaries have also been defined as hired fighters who participate in armed conflicts for profit and have no other connection with the conflict.

They are soldiers or security personnel who take part in hostilities merely for monetary or other material gain with no other substantial link to the conflict situation [65]. Mercenaries are normally persons engaged for a particular assignment; and they lack a permanent framework, coherence, principle and any form of vetting. Essentially, their principal business is to fight for their clients. However, personnel of PMCs can be regarded mercenaries if they take direct part in hostilities without being an integral part of the armed forces of the party to the conflict. This has led some scholars to conclude that the main difference is found in the nature of the services that PMCs provide.

The international community strongly abhors mercenaries and their activities [66]. PMCs are also in business to make profit. The issue often interrogated by scholars and analysts relates to the distinction between the two. Private military companies are organized businesses with legal personality and capacity to enter into binding contracts. They advertise and offer their services freely and openly in the international market. Private military companies are permanent and have some degree of continuity. Other characteristics include patronage by diverse and substantial number of clients; capacity to do business with subjects of international law; operational capacity; internal and external regulations and procedures; and a system of vetting among other features [67]. They only take up arms in exceptional situations.

The fluid status of pmcs

The fluidity of the status of PMCs has created a problem of classification as to whether employees of PMCs are civilians or combatants. IHL as an umpire in situations of armed conflicts draws a line between civilians (who should be protected in situations of war) and combatants (those who are active players in situations of armed conflicts). The rather chagrin reality is that PMCs fall under neither of the two afore-highlighted categories and this makes the application of IHL to PMCs rather unclear [68]. The most popular view among scholars is that the larger part of their personnel will be treated as civilians considering the nature of their industry. This offers them protection unless they take direct part in bellicosity.

The Commentary on Additional Protocol I, Article 51 defines “direct participation” as acts of war which by their nature or purpose are likely to cause actual harm to the personnel and equipment of the enemy armed forces. Nevertheless, the concept of “direct participation” has been difficult to describe. This difficulty is intuitively unsurprising, as the permutations of activities that could be interpreted to support hostilities are nearly limitless [69]. At what point in between does one draw the line for activities that constitute “direct participation” and those that do not? Compounding the difficulty is status fluidity: a civilian who directly participates in hostilities loses civilian status, but only for such time as he participates directly. Once the civilian quits direct participation, he regains his civilian status. Although simple in theory, the temporal requirement can lead to fears of a “revolving door” in which a daytime civilian fights during the night, only to return to protected civilian status the next day, and so on and so forth.

There is so much vagueness in international humanitarian law currently as regards indicting PMCs for the human rights violations they commit. The international community's binary classification of actors in wars and armed conflicts has made it really difficult to place PMCs within the framework of international humanitarian law. One private contractor may seem distinctly civilian by providing “ash and trash” duties like maintaining planes or hauling garbage, while another may appear indisputably a combatant by carrying a gun and serving alongside active-duty Special Forces soldiers [70].

The legal vacuum and attempts to regulate the industry

Far-flung dissatisfaction subsists with regard to the operation of PMCs in international humanitarian crisis, and it is majorly fuelled by the legal vacuum in which PMCs operate. Private contractors are alleged to be undermining the lawful application of the use of force by States, while roaming the battlefield with no accountability. They are accused of running rampant and bossing the international crime scene with impunity. According to Boone, by reasons of neglect, international complexity, lack of enforcement and precedents through which to prosecute, many have concluded that PMCs operate in a legal vacuum. There are even practical issues such as gathering evidence from foreign soil which prosecutors have to deal with. As such, any likelihood of creating an effective international regime is greeted with pessimism. While the typical procedure is that the host country would have to manage security companies working within their own territory, PMCs, due to the nature of their work, often operate in war-torn regions with weak judicial systems. Meaning even though there exist a remarkable number of national regulatory and legal mechanisms in which States can call upon to hold PMCs to account, they have rarely been used.

The international level is far more complex. They also currently lack any form of international regulations. In 1989, the UN passed resolution 44/34, the International Convention against the Recruitment, Use, Financing and Training of Mercenaries which provides a six-part description of what makes up a mercenary. In order to qualify as a mercenary, however, the individual needs to fit into all six categories. This working definition is very easy to circumvent, which further proves the legal vacuum in which PMCs operate [71].

This notwithstanding, attempts have been made to regulate PMCs. In 2005, the Commission on Human Rights, a UN agency established the Working Group on the Use of Mercenaries. The mandate extension of the Mercenary Working Group charged it with preparing a draft of international basic principles regulating PMCs. The PMC Draft Convention focuses on regulation of PMCs by State parties, requiring States to ensure that PMCs respect international human rights and international humanitarian law, and also prohibit the use of force by PMCs to, inter alia, overthrow a government, change borders of a State, target civilians, cause disproportionate harm, or provide training to accomplish any of the above. At the same time, it prohibits PMCs from engaging in inherently State functions, including direct participation in hostilities, prosecuting wars, and taking prisoners, among others (Hansen, 2011). The ICRC and the Mercenary Working Group have obviously made effort to treat PMCs as civilians, but since these companies have been reported to, in many cases, participate in direct combating activities there is need for a more robust regulation that factors in the binary nature of PMCs. The ICRC in conjunction with 17 governments produced the Montreux Document, which seeks to provide interpretive guidance on the legal obligations of States relating to PMCs in the absence of a clearly applicable treaty.

Pmcs as legitimate entrepreneurs

With all said, can it be claimed that PMCs are legitimate entrepreneurs? The concept of legitimacy to act in situations of armed conflicts has been defined in a very restricted approach in a way that only State actors are accommodated. But then, considering how indispensable the participation of PMCs in armed conflict situations has been in recent times, there is need to rethink that stance. According to Collinwood, globalization has given economic and political power to actors that are not accountable to citizens since they are not chosen by citizens; do not answer to citizens, nor do they operate within the limits of electoral promises. For example, intergovernmental

organizations like the IMF and World Bank continue to influence States' financial and development policies while private-sector actors like multinational corporations influence States' investment decisions and taxation policies. Hence, it is compelling to argue legitimacy outside the auspices of state actors. It is only legitimate for PMCs to help them meet the ends they seek to achieve.

Christian Reus-Smit makes a more inclusive case for legitimacy, explaining that it is a trait society places on an actor's identity, interests, or practices as well as on an institution's norms, rules, and principles. It is a social concept attached to the "right to act, right to rule, or right to govern" that goes beyond the capacity to do so since rights are socially granted. Since rights are socially granted, private industries are legitimate in their existence and their actions as far as they are sanctioned by society.

In all, Mitchell opines that legitimacy is the generalized perception that the activities of a being are acceptable, proper, lawful, admissible, and justified because such actions taken by an entity accompany a socially organized system of norms, values, beliefs, and descriptions. And since nations, IGOs, NGOs and even MNCs have in recent times incredibly patronized the services PMCs render; it becomes common sense to deduce a reasonable level of societal sanctioning for their services. Entrepreneurs in their basic nature, spot market gaps and feel those gaps with goods or services, and that is what PMCs have done.

It is safer to believe that PMCs are legitimate entrepreneurs not because of the kind of services they render, but because of the caliber of customers and patrons they have. Since actors such as sovereign states, IGOs, NGOs and others keep on patronizing PMCs to aid interventions and in calming crises situations, who would then render their services illegitimate? It becomes obvious that the major reservations associated with PMCs relate essentially to the legal vacuum in which they operate, and their involvement in the commission of war crimes, which are not exclusive to them.

Pmcs' quest for true legitimacy

Just like Reus identifies actors other than the State, PMCs need and seek legitimacy to uphold their identities, interests, and practices. But beyond that, they seek legitimacy to gain the socially sanctioned right to act. Both have applicability as to the reason and manner of PMCs' pursuit of legality and validity in the international system. They desire legitimacy to vindicate themselves and their place as a security provider in the international system and to earn the right to act. Presently, PMCs' right to act is attached to their contracts and the client that procured their services, and they want to gain more legitimacy to act than what that provides. This puts them in a better position to adhere to the rules that will legitimize their actions.

To maintain their status as security provider, PMCs are as concerned with the issue of legitimacy as their client base and even those in the international system that question their use. They have a vested interest in transforming their perception from persons who fight and kill for money to legitimate warriors of repute. Private contractors have a huge incentive to adhere to international and national regulations, firstly, because they seriously seek legitimacy so as to be referred to as legitimate musketeers and not mere war mongers; and secondly, so that they can wage the competition against their industry counterparts. Right now those regulations are vague, and PMCs cannot be crucified for existing in a legal vacuum created by the international system, a vacuum that they are not entirely happy about.

Need for regulation and accountability

Goddar describes the legitimacy of PMCs as de facto and immoral because they function without regulation and accountability. The neoliberal drive to privatize State agencies comes with its own disadvantages and so does the existence of PMCs. The problem is not with the overt profit driven nature of PMCs but rather due to the existent lack of proper regulation of their activities. These are problems that the free market encounters at all fronts, from the privatization of education to the privatization of power supply in developing nations. When there is lack of effective regulation and enforcement of such regulations then there is bound to be extortion, and illegal profiting from private individuals and firms. In the case of PMCs that render services that are 'juridically' unrestricted, it becomes the duty of IHL to make legal regulations that cover them and spell out consequences for whatever human rights violations.

The lack of international regulations for PMCs is such that gives them freedom to change countries i. e. 'melt' and 'reconstitute' should national laws of the said countries be inhibitive of their profit motive. Furthermore the lack of adequate regulation of the private military industry is that they make so much money but live in tax havens. It is understandable that IHL is very difficult to enforce. As Singer contends, even if the legal definitions were not precise, it still suffered from lack of satisfactory procedures to enforce them. Thus, there is need for a collaborative framework that operates between international regulation and enforcement at the national level.

Eyebrows have also been raised as regards the alleged difficulty in ensuring accountability for PMCs [72]. Given the increased use of PMCs in crises and war regions and, along with that, the occurrence of human rights violations, war crimes and crimes against humanity, concerns about accountability, legal responsibility and transparency are becoming particularly fundamental. There has been so much worry as to the legal vacuum in which PMCs operate. The legal vacuum as regards lack of regulation and accountability has undoubtedly tainted the legitimacy of PMCs.

Conclusion

The narrative that only States possess the exclusive right to use violence has been seriously challenged by the modern day existential reality of varying actors in wars and situations of armed conflicts. Non state actors such as IGOs, NGOs and MNCs are beginning to take up new roles of intervening in conflict situations thus employing the services of PMCs. There has been widespread dissatisfaction by many about the involvement of private companies in armed conflicts, arguing that the State possesses exclusive right to apply lethal force. But then, the fact that in recent times many non-state actors have been taking up new roles and also, the persistence of armed conflicts around the world means that PMCs will enjoy permanent and unperturbed existence. What should be discussed is not whether or not the dogma of States' monopoly of violence should be preserved, but rather how to positively channel the energy of PMCs in the right direction of building stable and secure societies. There have been reservations on how PMCs operate in a legal vacuum. At the level of the United Nations, plans to oversee activities of private military companies were considered but no concrete steps seem to have been effectively taken.

This analysis of legitimacy is one that factors in the reality of our neoliberal world where private individuals are taking up functions that were previously the exclusive prerogative of States. Judging from the above, and the kind of customers that patronize their services, PMCs are legitimate entrepreneurs operating in an open field with

little or no regulation. Currently, the international community is seemingly less concerned about regulating their activities and this is where the problem lies. PMCs cannot be liable for the inaction of the international community and the failure of IHL to regulate and define their limits. This points to one fact, and it is that so long as there are wars and conflicts, war crimes are inevitable regardless of whether or not PMCs are involved. The need to regulate and proportionately punish perpetrators of war crimes whether they are private actors or state actors becomes the only feasible battle in winning the fight against wartime violations.

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