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**Private Military-Security Companies as Illegitimate Actors
in the International Security Environment**

Master's thesis

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Abstract

This research paper is focusing on the private military-security companies (PMSC-s); these are entities that profit from the offering of military and security related expertise that until recently were considered the prerogative of the state and were provided only by state military, police and intelligence agencies. The services private military-security companies offer are wide ranging and cover tasks in the areas of combat, training, support, security, intelligence and reconstruction.

Because of the increasing debate about the legitimacy of the private military-security companies this study was constructed. Main focus of this paper is to understand the international legal status afforded to the private military-security companies that provide front-line support services to their clients. Therefore, the companies this paper is focusing on are those that have provided front-line support services; most known are Executive Outcomes, Sandline International and Balckwater Worldwide (now Academi). It is important to understand that only current international legislations and conventions that deal with private violence are discussed, nevertheless, some national laws will be discussed as well, so we could understand little bit more about the difficulties of regulating and controlling private military-security industry.

This study concludes that operations of private military-security companies that provide front-line support services are not legitimate because there is no international law that gives them legitimacy to carry out those kinds of operations, it does not matter that military-security industry has constructed their own view of legitimacy. Besides, all the operations of PMSC-s are carried out in a vacuum of effective regulation and accountability at the international and national levels. This is a big problem for all the actors in the international stage and must be solved quickly.

Acronyms

AFRC	Armed Force Revolutionary Council (Sierra Leone)
BP	British Petroleum
BRS	Brown & Root Services
BOSS	South African Intelligence Office
CDC	Center for Disease Control (USA)
CIA	Central Intelligence Agency (USA)
DHS	Department of Homeland Security (USA)
DSL	Defense Systems Limited (aka ArmorGroup)
DOD	Department of Defense (USA)
DOS	Department of State (USA)
EAf	Estonian Air Force
ECOMOG	Economic Community of West African Monitoring Group
ECOWAS	Economic Community of West African States
EIC	(English) East India Company
EO	Executive Outcomes
FCO	Foreign and Commonwealth Office (UK)
FSB	Federal Security Service (Russia)
GSA	General Services Administration (USA)
G4S	Group 4 Securicor
ICC	International Criminal Court
IO	International Organization
IPOA	International Peace Operations Association
IT	Information Technology
ITAR	International Transfer of Arms Regulations
KBR	Kellogg Brown & Root
L-3	L-3 Communication Corporation
LOAC	Law of Armed Conflicts

MI6	Secret Intelligence Service (UK)
MPLA	Movement for the Liberation of Angola (translated from Portuguese)
MPRI	Military Professional Resources Incorporated
NATO	North Atlantic Treaty Organization
NCACC	National Conventional Arms Control Committee (South Africa)
NGO	Non-Governmental Organization
NPM	New Public Management
OAU	Organization of African Unity
OSCE	Organization for Security and Co- operation in Europe
PMSC	Private Military-Security Company
PR	Public Relations
RUF	Revolutionary United Front (Sierra Leone)
SAS	Special Air Services (UK)
SCI	Strategic Consulting International
SRC	Strategic Resources Corporation
UK	United Kingdom
UN	United Nations
UNITA	The National Union for the Total Independence of Angola (translated from Portuguese)
US	United States of America

Introduction

“If a prince holds on to his state by means of mercenary armies, he will never be stable or secure. Mercenaries are disunited, ambitious, undisciplined and disloyal. ... In peacetime you are plundered by them, in war by your enemies. The reason for this is that they have no other love nor other motive to keep them in the field than a meager salary, which is not enough to make them want to die for you. ... As a result, these *condottieri* have conducted Italy into slavery and disgrace.” (Machiavelli 2005: 43, 46)

Like we see, the discussions and critique about private soldiers and their organizations are not something that has been revealed in the end of Cold War by the Western researchers, it has been the research topic for more than six hundred years. Of course thanks to the creation of all citizen armies and nation states in the middle of 19th century the analytical topic about the need, efficiency, morality and control of private soldiers had its “hibernation” period but because of the re-emersion of these soldiers in the Cold War period this topic is again an issue. After these soldiers emerged from the “shadows” their importance and necessity has only increased but who are these private soldiers?

These soldiers have been called by many names during their existence and it is not as accurate as it seems to call mercenaries and their organizations, before the last decade of 20th century, corporate. Yes, they had some sort of organizations but the corporate structure and efficiency with it is something entirely new and describes this new private violence that has emerged from the “ruins” of Cold War. These new entities are known as private military-security companies (PMSC-s) (the use of this term is explained thoroughly in subchapter 1.2.1). Private military-security companies are profiting from the offering of military and security related expertise that until recently were considered the prerogative of the state and were provided only by state military, police and intelligence agencies. The services private military-security companies offer are wide ranging and cover tasks in the areas of combat, training, support, security, intelligence and reconstruction. Whereas some tasks might involve the possibility of exercising force, as in case of armed protection, a large proportion of them, such as the provision of risk advice and intelligence support, are not intrinsically lethal; nevertheless, all the services PMSC-s provide involve knowledge of the use of lethal force and belong to the hybrid public-private culture now permeating the state monopoly of violence (Ortiz 2010: 6).

All the corporate entities are criticized in some point because their actions might not be moral and/or transparent enough for the public to understand or approve, as we have seen in

the case of investment banks and brokerage firms in Wall Street, however, those are not even closely as criticized and controversial as PMSC-s. The debate about private military-security companies bifurcates along the two equally strong lines; some see PMSC-s as genuine and legitimate commercial enterprises, others, on the other hand, see them as mercenaries and/or profiteers of the worst kind. For supporters, they are flexible and cost-effective alternatives to state soldiers and police, facilitating commercial activity into otherwise unviable market and even seen as potential peacekeepers.

Critics, however, see them as agents that undermine state authority, intending to capture the natural riches of the developing world for the benefit of multinational corporations and ultimately they are seen as the agents fostering underdevelopment and conflict.

So, it is crucial for us to understand, are today's private military-security companies' actions indeed legitimate undertakings or are they just another form of mercenary operations. This is the main question I am trying to answer in my research paper. It is understandable that there is significant reluctance to legitimize the operations of PMSC-s because we are instinctively oppose to relinquish the state's role as the provider of security. However, this kind of "protectionism" is extremely short-sighted. Thanks to the changes in the international security environment and in the society, states are not able to solve "new threats", like international crime, terrorism, environmental hazards and proliferation of weapons of mass destruction, by themselves, so it is quite understandable that increasingly stronger economic sector is providing the "helping hand" to the states and other entities that might need security services in this post-Cold War world. But still states must have political legitimacy over military affairs because if the state is undercut or marginalized in the respect, there is a risk that one of the traditional cores of security governance – states' collective and general control of the use of force – will be destabilized, affecting not only the state actor but the entire international system (Ballesteros 1999: 50). For the role of the state in the military affairs to be maintained in the face of a privatization of security, the use of private security and military service providers needs to take place within agreed structures and processes designed to safeguard legitimacy and accountability in military affairs (Holmqvist 2005: 8). Unfortunately, at present these structures are too weak to control security industry and this is one of the reasons why private military-security industry has to protect itself against accusations of being illegitimate and closely connected with mercenary operations and that's why people are very cautious when they deal with private security providers. So, it is impossible to go forward with the private security debate if we do not find an answer to this question.

After the Cold War military operations changed, states had to deal with not only conventional military operations that national armies were trained and ready for but operations, like humanitarian interventions, peace enforcement/keeping, security providing and so on. This was not what national armies and security agencies were prepared for. So, because of this change and the inadequacy of the states to deal with those new operations satisfactorily, private military-security industry emerged. The structure and capabilities of modern PMSC-s parallel the range of operations within the spectrum of modern conflicts (Goddard 2001: 1), however, majority of companies in this industry are not providing services on the forefront of the battle-space (engaging in actual fighting either providing front-line units or specialists and/or direct command and control of field units) but provide logistics and technical support (BRS, KBR), gather intelligence (Global Linguist Solutions), provide security (Vinnell Corp.) and train military and security personnel in different countries (DynCorp). Besides those, there are many more different services that private military-security industry can and is providing for its clients. So, the majority of the contracts in this industry are intended to support extant military operations and training regimes. Those contracts do have strategic affect, it is folly to think otherwise, but they are not as significant force multipliers as companies that provide actual fighting forces and/or command personnel. These “active” companies have been structured so they can conduct military style operations that can deliberately transform the security environment within which they are contracted to operate (Goddard 2001: 2). Most known companies within this framework are Executive Outcomes (EO), Sandline International, Strategic Consulting International (SCI) and of course Blackwater Worldwide (in December of 2011 it changed its name to Academi).

This research paper will focus on private military-security companies that conduct “active military assistance that have a strategic impact on the political and security environments of the countries in which they operate” (Isenberg 2000: 13), this mainly because those companies’ operations are accused of being closely connected with mercenary activities in the Cold War and even earlier historic periods. Also we have to analyze the international legal status of the PMSC-s and the effects and ramifications of using them to increase security.

So, because of that my research question is: Are private military-security companies that conduct active military assistance operations legitimate force multipliers in the 21st century conflicts? Legitimacy is understood in this paper as actions that are accordance with recognized and enacted world bodies of international law (Holmqvist 2005), so, these are conventions and legislations that control and legitimize international conduct in conflicts and/or security enforcement environments around the world. Thus, it is not so much about

combat active PMSC-s rightful legal status why we need to find an answer to the research question (nonetheless it is important), because those commercial entities have understood that this uncertainty does not actually affect their fiscal performance but we need the answer because this kind of disorder may cause situations where actors of international system may just ignore the rules and point out that rules they ignore are somewhat deficient for the new international situation they are in. This might destroy the international legal system that has been a hallmark of interaction in international system. So, we do not only need to find out if PMSC-s are legitimate, we need to know how operations of private military-security companies are effectively regulated and controlled and whom can we held accountable for actions and conduct of PMSC-s?

The main purpose of this paper is to analyze extant international legislations/conventions and most significant national laws that deal with mercenaries and their activities in order to determine the comparative status of active military assistance operations conducted by private military-security firms. Still, mainly I will focus on the international conventions and legislations because those are documents that deal mostly with mercenary activities, however, some national laws will be discussed quite extensively, so we could understand little bit more about the difficulties of regulating and controlling private military-security industry.

This thesis has structured on an analytical rational in concert with deductive and inductive reasoning and the conduct of research incorporates the spectrum of objective issues at the international realm, devolving to subjective issues from within the private military-security industry itself and associated vested interest groups (clients). The analytical data will be presented like this: firstly, I will seek to discuss the current framework and structure of enacted international legislation and convention that deal with mercenaries and their activities; of course I will discuss some of the main differences between PMSC-s and mercenaries because it seems that they are not the same thing. This framework will be crucial to the construct of the thesis because it will establish the bases for further contrasting and analysis between mercenaries and private military-security companies. Secondly I will seek to determine the current legal status of private military-security companies, using again international legislation and conventions that deal with mercenary activity and/or define the term “mercenary”. This will answer the primary question of the paper. Finally, I will discuss the difficulties that accrue when we start regulating this military-security industry and what kind of methods different parties have used to control the activities and operations of PMSC-s; of course some accountability problems will be discussed. This analysis will answer our secondary question of the paper.

This paper is divided into four chapters. All of the chapters are connected with each other, so we could find the answers to our questions more effectively.

First chapter deals with origins of the PMSC-s, it shows where actually these entities (PMSC-s) are coming from and from what historical entity they have developed into actors we know them today. Then I will define private military-security companies and show why there is not a universal definition for this industry (manly why different researchers have not managed to agree with one universal definition) and of course some of the main and most used categories of military-security industry will be mentioned and described. Finally in this chapter I will discuss some of the most important issues that have made the growth of this industry possible. Second chapter is dealing with the differences between the private military-security companies and mercenaries, of course there are some similarities and connections but they do not equate. The third chapter is the most important, in there I am attempting to find an answer to my research question and find out what is the legal status of private military-security companies. And finally, in the fourth chapter I am looking at different regulatory methods we can use to regulate and control military-security industry, of course accountability issues are looked at. Besides some workable recommendations will be offered how we could control and regulate this industry.

The significance of this thesis, hopefully, is that it will determine and articulate an objective measurement of the contemporary extent of international legitimacy for the private military-security companies that conduct active front-line support operations and other supporting roles on the theater of conflict. This measurement of international legitimacy will in turn enable a stronger, clearer, and informed national positions, which can be used in future debates within the international realm as to the proper roles and associated ramifications of using PMSC-s.

1. Private Military-Security Companies – Origins, Definition and Its Growing Rise of Significance

Before I can start analyzing what are today's private military-security companies we must understand how they have evolved into these commercial entities and from where these commercial private structures originate. Are these structures European (Western) in their nature or are they something that was developed in Asia like so many other things we have started to regard in the West as our own, like gunpowder, compass, paper, printing-press mechanisms, bureaucracy and *et cetera*. To understand the origins of those commercial and military-security entities we must understand their genealogy first and only after that we can start defining this phenomenon.

Thanks to the Iraq War this phenomenon became widely known and it is not a surprise because Iraq was the place that introduced private contractors to the majority of Western citizens. It was estimated that about 20 000 contractors were in Iraq already in 2003 (The Economist 06.07.2012), and this number is only increased over the years, besides many PMSC-s were actively involved with operations against insurgents in places like Fallujah, Al Najaf, Baghdad and so on (Ortiz 2010). Mass media focused extensively on those operations and the personnel behind them; thus, making many PMSC-s quite well known (Blackwater might be the best example). However, like I already noted, this phenomenon is not something entirely new nor exclusively connected with modern asymmetrical conflicts. So, it is crucial for us to find out how these entities developed into actors we see them today?

1.1 The Origins of Private Military-Security Companies

Like we already saw in the introduction, the privatization of violence is not a new phenomenon; it was widely practiced until the 19th century. As kings and princes tried to extend their control over new tracts of land and sea corridors, the feudal system of military service prevented them from raising the required large armies, so this constraint led them to employ mercenaries (Smith 2002-03: 105). The early Europeans use of organized mercenaries was in the form of private bodies in the 14th century known variously as Free Companies. These companies developed in time in Italy into *condottieri* (meaning literally, military contractors), who offered their services to the highest bidder. (Smith 2002-03: 105 – 106) This

system developed permanent companies of armed personnel that were hired out for specific periods of time for Italian city-states or monarchs in and near Italy. Of course many areas of Europe had their own *condottieri* systems but most important is that all of them were doing their business in small areas near today's Central and Western Europe, no global reach or contact with non-European countries. The commonality of the practice resulted in the term *condottieri* transcending its specific use and becoming an alternative means of reference to conventional mercenary (Ortiz 2010: 15). That is why some commentators have argued that there is a historical parallel between PMSC-s and Free Companies developed by *condottieri* system. Unfortunately those Free Companies did not have the structure or the global reach to be the historical embryos of today's private military-security firms.

In early 17th century private trade in Europe found a new form of expression in collective capitalism, which materialized in part by formation of joint-stock trading companies. Those companies were sanctioned by governments through charters. A charter stipulated the rules for the constitution and governance of a company and granted monopoly power in a certain area. (Ortiz 2007: 12) The main motivation for their creation was the exploration of the profitable trade in spices, sugar, tea, silk, china, and many other goods from the Indies. The term, Indies, was used actually to describe remote lands far away from Europe; predominantly in the East but after colonizing the Americas the term West Indies was developed by merchants to describe South-America and the Caribbean. This new form of enterprising introduced the idea of incorporation, with stockholders supplying the capital needed for companies to operate and companies, which assumed a unified identity, was managed by courts of directors and sanctioned by public charter (Ortiz 2007: 12). Most well known countries who positioned themselves at the forefront of this new charter system were, naturally, England and United Provinces (the Dutch Netherlands) but this system was emulated by other European countries as well and used to sanction mercantile operations in all over the world. In those days it was very common to create a terminable stock for the overseas trading companies, these stocks lasted only for single or seasonal trips overseas but in some cases the duration of stock allowed companies to exist for substantially longer periods of time. (Ortiz 2007: 13)

Surely charters were constantly modified and because of that the companies were also modified and reorganized constantly. There were only a few overseas trading companies which "became permanent, anonymous associations of capital, comparable to modern business corporations" (Steensgaard 1981: 247). The Dutch East Indies Company and the

English East India Company were the ones that transformed into those types of commercial entities in the 17th century.

In this century we can recognize also a gradual emergence of modern financial institutions because formation of trade companies demanded a creation of a financial market in which its stock units could be bought and sold easily, and the development of techniques for trading and speculating in these stocks (Davis 1973: 185). First stock exchange was created in the United Provinces but quite quickly London followed and “from the mid-seventeen century onwards, shares were being traded ... at prices which fell or rose according to the company’s reports of profit and the declaration of dividends” (Braudel 1985: 106).

The public sanctioning of trade monopoly and the private use of force are two defining features of the overseas charter system. An important justification given for monopoly rights deals with the costs that the companies had to incur in developing the infrastructure needed for distant trade. While a monopoly could not be maintained without the use of force, the expenditure in the maintenance of private armies and navies and the development of overseas military infrastructure (forts and garrisons) served also as a justification for monopoly trade rights of those companies. These company strongholds were not only important for the protection of company agents but they were also protecting the trade routes against interlopers (unlicensed competitors) and against restless natives in the Indies. (Ortiz 2007: 15) Of course force was not only used against the restless native tribes or pirates and privateers but it was a necessity to gain control over established merchant networks. Steensgaard (1981: 251) brings out two most important criteria’s for the survival of the overseas trading company: their ability to defend their privileges and their ability to protect and enlarge their capital. It is understood that these companies relied heavily on force and had little or no concerns with public relations or the rules of war regulating combat in Europe. For example, in the case of the island of Banda in the Indonesian Archipelago (owned by the Dutch East Indies Company), private forces, paid by the company, killed every single male over the age of fifteen that they could get there hands on, reducing the population from 15 000 to 600 in 15 years (Kramer 2007: 26 – 27).

It is quite obvious that these overseas trading companies enjoyed a good degree of autonomy from their respective governments, “which allowed them to ascribe themselves functions more closely associated with the institution of the modern state, prominently the right to maintain armed forces” (Ortiz 2007: 16). Like in the case of the English East India Company (EIC) who had three administrative areas in India (Presidencies of Bombay, Madras and Bengal) each maintaining their own army with its own commander-in-chief. These armies

were paid for out of the Company's Indian revenues and together were larger than the British Army itself. All the officers were British and had their education and training from the Company's military academy in England, however, vast majority of the Company's troops were natives (called "sepoys"). (Kramer 2007: 25) Not only having larger armies than their home nations, these companies paid no attention, only when it suited their economic interests, what their governments were saying and doing at home. For example EIC supported the Shah of Persia in seizing Hormuz from the Portuguese and for that got trading privileges such as being free of customs and getting a share of custom duties paid by other companies, meanwhile, in Europe British government tried to ally with the Portuguese against Spain (Kramer 2007: 26). As the companies were allowed to maintain private forces and had the right to conclude treaties with foreign powers, "the distinction between the company as a private body of enterprise and as a public authority enjoying more or less sovereign powers was actually somewhat lost" (Klein 1981: 23). Ortiz argues that "this is a distinctive feature of PMSC-s, which like their early modern precursor partakes in both public and private roles". As private enterprises, PMSC-s seek to maximize profits and market share and by delivering services that enter the arena of the monopoly of violence of the state, so they assume a public role as well. (Ortiz 2007: 17) This is the one of the unifying features that connects today's PMSC-s with those overseas trading companies developed by the charter system but it is not the only one.

The company model adopted by the English and the Dutch set a standard for European merchants in general, and in the process, their companies defined the basic features of the overseas trading company (Ortiz 2007: 17 – 18). These companies were first who built a modern management and accounting structures and by doing that they came to resemble multinational corporations. Blusse and Gaastra (1981: 8) praise the corporate model of those companies, noting that it "was a most impressively organized structure, which, through the combination of good information, policy and execution of affairs, were indeed very similar to today's multinationals". Although there is not a standard definition for multinational corporations, it is understood that regardless of size, multinational needs to operate in a foreign country. Based on this point there should be no reason not to regard companies such as Dutch East Indies Company and EIC as precursors to multinational corporations and if these companies can be regarded as precursors to multinational corporations, there is no reason not to regard their smaller counterparts in the same way. (Ortiz 2007: 19) Of course some might say that many of these overseas trading companies had no continuity of capital, they

existed for a relatively short period of time, but in today's world, thanks to mergers and stock market speculations, many multinational corporations have a short life span as well.

Being a contextualized part of the evolution of mercenary practices, today's PMSC-s are being historically linked with "Free companies" of the *condottieri* system. However, the Free companies of the *condottieri* system lacked a multinational business character that is necessary to establish a link with private military-security companies. (Ortiz 2007: 22) This system was a phenomenon largely confined to the Italian peninsula and had no global reach, however, overseas trading companies of the charter system had not only a global reach and force needed to have a link with today's private military-security firms but they were controlled, managed and owned by rules of modern multinational corporations and that is why they are the historical embryos of private military-security companies.

Now we know where today's private military-security companies originate, so, it is a lot easier for us to find a working definition that could describe those entities in the modern security environment. However, an attempt to subdivide and categorize these private actors is extremely problematic and it has been much debated issue. Nevertheless, it is important to understand different classifications developed for this industry because through that we can much easily show that there are only few companies in this industry that are clearly placed in some of those categories, majority of them must be placed on the borderlines.

1.2 Definition and Classifications Developed for the Military-Security Industry

The emergence and astonishing growth of private military-security firms is clearly one of the most noteworthy developments in national and international security environment of the past three decades. They can provide a range of services commercially, up to and including military force, which have long been a privilege of national militaries and other national security structures.

Nonetheless, there growing importance to the world's security structure, the unified definition of private military-security firms is still under dispute by researchers. The problem is that the firms, participating in the private military-security industry, neither look alike nor do they even serve the same markets; they vary in their market capitalization, number of personnel, firm history, corporate interrelationships, employee experience and characteristics and even their operational zone may differ considerably (Singer 2003: 88). However, the

single unifying factor, what connects all of those companies in private military-security industry, is that all the firms within it offer services that fall within the military domain. But even these services themselves are quite diversified. While firms such as EO and Sandline offer direct combat service, Saladin Security and ArmorGroup (mostly) offer military training and assistance, located primarily off the battlefield; Levdan offers assistance with military weapon procurement (where to get weapons one needs), while MPRI provides consulting and strategic analysis (how to employ such weapons in the most effective manner). Asmara and Network Security Management bid services in the secretive field of intelligence, while Kellogg Brown & Root operates in the more innocuous privatizing of military logistics (laundry, catering of soldiers and construction of bases). (Singer 2003: 88) For many researchers this kind of disorder inside the military-security industry is causing the theoretical problems in debates and because of this they have attempted to develop typologies of PMSC-s (discussed later in the subchapter). But still what are private military-security companies?

Like I already said private military-security companies do not have one unified definition (yet) but still there are many researchers who have tried to define the industry. Of course there are those whose definitions are too narrow, suitable only for describing one aspect of this industry, like Anna Leander (2004) who describes PMSC-s as firms who sell and mediate military services. It's true, these firms do deal within military domain but the problem with this definition is that it does not describe all the companies working in the military-security industry and by using this definition many members of this industry will be left out and that by itself creates disorder and problems for commentators trying to understand the industry. Much better and more accurate definition for the PMSC-s is given by Carlos Ortiz, who defines private military-security companies as "legally established enterprises that make a profit by either providing services involving the potential exercise of force in a systematic way and by military means, and/or by transfer of that potential to clients through training and other practices, such as logistics support, equipment procurement, and intelligence gathering; ... neither does there have to be an actual or potential military role, a PMSC-s involvement may as well be directed towards enhancing the recipient's military and security capacities" (Ortiz 2004: 206). This definition does not only show that PMSC-s are in the military domain but it describes the different services they provide for their customers and the different methods they use. So we can see that this definition is able to describe the realities of today's private military-security industry.

All of these companies are organized like other commercial businesses or firms; they are formally incorporated, and although not exactly paragons of transparency, they produce

corporate literature, attend international conferences, maintain Web sites, and trend to be affiliated to defense or security professional associations (Ortiz 2010: 6). It is quite common for those firms to be headquartered close to centers of power such as Washington D.C. and London but they do maintain their offices in strategic locations throughout the world, like in Middle-East, Africa etc.

The other thing we should not forget is that most of the field staff in the industry tends to be multi-skilled. A single person, especially one retired from Special Forces, may have the necessary knowledge and skills to carry out more than one type of security task and those individuals tend to move around the industry much more than other types of industry employees (Kinsey 2006: 10). That is why companies have the ability to cover a wide range of activities while actually remaining within their core competencies.

The definition developed by C. Ortiz should not be one of many but it should be the one that everybody in the industry and in the academic world can refer to because it does not only explain what private military-security firms are and what they are doing, that is so different from other commercial enterprises, but he shows in his definition the reality of how it is being done.

There are many different typologies created by researchers, mainly because they want to explain the realities and scopes of those companies that work within the military-security industry but do these typologies really work when we assess them in the real world?

There are quite many attempts made at classifying PMSC-s as groups, rather than thinking about them on case-by-case bases. The most typical analytic division has been to distinguish firms by the general level of their activity. Some firms have been termed “passive” in their operations and others “active”. This kind of classification is being used by many researchers and companies to describe their activities, for example if a company is engaging in combat operations or is seizing territory (like EO in Angola or in Sierra Leone) it is placed in the “active” category, whereas a company defending territory or providing training and advice (like MPRI) is placed in the “passive” category. (Singer 2003: 89)

Unfortunately, this kind of categorization has been unsuccessful from either an analytical or theoretical perspective. The original bases for dividing companies into “passive” or “active” came actually from convenience, rather than as taxonomy designed to yield explanatory and predictive implications (Krahmann 2010). The major problem with this kind of categorization is that firms are conceptually interchangeable as are their results because there is no difference what kind of firm you hire, is it “passive” or “active”, it still has significant strategic effect and might alter the entire course of the war. Another problem with this

categorization is that it is quite complicated to categorize different firms objectively because different people understand the operations firms undertake quite differently, one person's active firm is another's passive one, and that itself might lead to the problem.

For example, firms, such as ArmorGroup or Southern Cross Security, which offer area defense and installation security in conflict zones, are often conceived as "passive"; both of these companies do not size territory or attack enemy forces, they simply create a zone of security around client's assets. However, both their operations and the impact that their hiring might cause can be described by some other researcher as very active because these contractors are not simply security guards in the domestic conception. Such companies' stake out the control of zones and fend off military attacks, sometimes using military-style force and thanks to the nature of those wars or conflicts, the facilities that such firms deploy to guard are often strategic centers of gravity (like diamond-mines or oil fields that serve as primary funding sources for the fighting sides) and because of that their hire and resulting defense of these sites is actually perceived as aggression by the other side. (Singer 2003: 89)

Some theorists try to circumvent this difficulty by determining the passivity of a firm by whether its employees are armed or not. It does set a clearer line of differentiation but regrettably it does not work because "the passive-active division is still the crux of the system" (Singer 2003: 90). Even without this passive-active division, it would be impossible to argue that some firms are more "passive" because their employees are not armed when we live in the world where a person pushing a computer button can be just as lethal as another person pulling a trigger, whether a company's employees actually operate weapons or not does not determine their ultimate role or impact in a conflict. In the instances of both Croatia and Ethiopia, private consulting and training were crucial enabling factors to successful, war ending military offensives but these firms that offered those services were defined as passive, simply because their employees were unarmed and too high-level to be wasted on the battlefields (Singer 2004a: 534 – 535).

Other attempts at dividing the industry have used boundaries drawn from general political science. One of this kind of delineating line was whether the firm was purely international or domestic in orientation (Singer 2003: 90). Unfortunately this kind of division in today's world is absolutely artificial and folly because it ignores not only the multinational characteristics of this industry but also companies' rapid ability to transfer and recreate themselves across state borders. A firm that is considered international one day can close its office and reopen its business as domestic in its orientation in the next day, much in the manner that Executive Outcomes did (Singer 2003: 90).

Another potential classification system is drawn from offence-defense theory; that is whether the firm's services are designed to bolster or to deter aggression. However, when we apply this classification system to the military service industry, this theory quickly suffers the same problems as passive-active distinction. (Singer 2003: 90 – 91) The only way to classify firms, in this system, is to analyze every company case-by-case bases because their classification depends on the specific case company is working on because today's PMSC-s are able to cover a wide range of activities and again the objectivity problem emerges since one person might see an aggressive activities and other defensive.

The most known and important typologies for the military-security industry are developed by Peter W. Singer and C. Kinsey. I am describing them quite briefly, however, it is important for the reader to understand those different categories because many of them are being used extensively to describe the industry. It happens that authors sometimes use a single category to describe the entire private military-security industry; however, one category can not describe this complex industry sufficiently. So, maybe this is why we do not have a clear academic understanding of this industry?

1.2.1 Typologies Developed for the Industry

Singer argues that to get read off this passive-active dilemma, in the military-security industry, we have to recognize the duality that is at the very nature of this industry. At its base level, the industry is driven by both military and economic fundamentals and to create working typology those fundamentals must be taken an account. In the military context, the best way to structure the industry is by the range of services and the level of force firms can offer for there clients. To make it more understandable Singer uses a "Tip of the Spear" metaphor. Traditionally, units in standard armed forces are distinguished by their closeness to the actual fighting (the "front line") that result in implications in their training level, unit prestige, roles in the battle and so on. For example, a soldier serving on a front-line infantry unite (so called the "tip") has significantly different training experience and career prospects then a soldier serving in command or logistics support unit. (Singer 2003: 91)

Using this concept, military organizations break down into three broad types of units linked to there locations in the battle: those that operate within the general threat, those on the threat of war, and those in the actual area of operations, that is the tactical battlefield. If we organize private military-security industry by the services offered by equivalent military unit types, it more or less mirrors the distinction made among firms within general corporate industry. The

type of services that a firm offers and where they are located within the client's organization is how one categorizes normal business outsourcing industry and these outsourcing firms are broken down into three broad types: service providers, consulting firms and non-core service outsourcing. Thus, the tip-of-the-spear distinction (by military unit location) "is analogous to how outsourcing's linkage with business chains also breaks down". This actually shows the utility of a typology drawn from both contexts. So that is why Singer organizes private military-security industry into three broad sectors: Military Provider Firms (they focus on the tactical environment, in military sense they are units that are on the front-line), Military Consulting Firms (these companies provide military training, advice and active protection support (bodyguards) to their clients, the difference with previous "sector" is that MCF employees are not part of the combat operations; most typical examples are MPRI, Vinnell Corp. and DynCorp) and Military Support Firms (these companies provide supplementary military services, including non-lethal aid and assistance, including logistics, intelligence, technical support, supply and transportation; typically, firms who operate within this category either have expanded into the military support market after reaching a level of dominance in their original business adventure elsewhere or found it to be an external area where they could maximize previously established commercial capabilities. For example, Brown & Root Services (BRS) originally focused on domestic constructions for large-scale civilian projects but has since found military development support and logistics a profitable area in which to leverage its prior expertise and resources). (Singer 2003: 91, 95, 97 – 98)

So by classifying PMSC-s with this typology, Singer hopes and believes that we can explore not only variation within the industry but also the variation in firms' organization, their operation and impact. Broader statements can be made about overall firm types, rather than being forced to rely on simple judgments that only apply to one specific firm (Singer 2003: 91 – 92). However, there are some problems with his typology but I will discuss about that after I have described the second most significant typology developed for private military-security industry.

Kinsey on the other hand argues that private military-security companies can be differentiated along two axes: the means they use to secure their objective, ranging from lethal to non-lethal, and the object of their protection, ranging from private to public. It is important to understand that the axes represent only the international environment because most of the private military-security companies operate globally. His axes is not intended to operate on a scale of numbers (using the numbers to determine the level of private and public interest and lethality), instead the firms are plotted in relation to each other and three controlling agents as

“ideal types”. The controlling agents for the vertical axis are conventional police, paramilitary police and the army. These controlling agents represent different levels of non-lethal and lethal means (conventional police is seen as representing largely non-lethal means, the army maximum lethal means and paramilitary police is occupying the center of the axis). Public private partnership represents the controlling agent for the horizontal axis, occupying the middle of the axis. The horizontal axis represents the object to be secured. At the private end, the object represents anything from a private property, a commercial building, an oil refinery, to a mine and so on. At the other end, public authority is understood to mean the defense of the state [state is understood as a legal territorial entity composed of a stable population and a government (Dunne, Schmidt 2008: 92 – 93)]. The vertical axis represents the means of securing the object represented on the horizontal axis. The bottom of the vertical axis is represented by non-lethal means employed by companies to meet their contractual obligations (these are the unarmed guards found in the shopping malls in many Western countries) and top end of the vertical axis is represented by lethal force, again employed by companies to meet their contractual obligations (firm employs techniques used by army fighting a war). (Kinsey 2006: 10 – 11)

Kinsey develops six different categories companies fall into; besides, these categories are even more accurate and more distinctive than categories developed by Singer. However, only four of them are known and used extensively, so, I will only examine those four because others are not significant and so much used by the academic community or by the military-security industry itself.

Private Military Companies (PMC) provide military expertise, including training and equipment, almost exclusively to weak states or failing governments facing violent threats to their authority. They provide local forces, which may be poorly trained and lacking in military competence, with customized offensive capabilities that may have strategic or operational advantage necessary to suppress non-state armed groups. They do this by playing an active role alongside the client’s force, acting as a force multiplier and they can even deploy their own personnel into a conflict but under strict guidelines that sees such a deployment come within their client’s chain of command. These companies provide business packages that contain all the elements their client’s require to retain the military advantage over rival forces. Since they are corporate bodies, they adopt business practices including the use of promotional literature, a vetting system for staff and a doctrine, normally represented in the form of company policy or culture. They are able to draw on the same support that all businesses can draw on, for example financial, legal, marketing and administrative support.

Still their personnel structure is not always clearly identifiable since companies usually retain only a very small permanent staff to run the office and manage the contracts. The majority of their workforce is drawn from networks of ex-service personnel, whose details are held on a database. PMCs occupy the top right-hand quadrant although this is not a common occurrence and has only really occurred in Africa. (Kinsey 2006: 12, 14 – 15)

Proxy military companies represent a subset of PMCs. A good example of a proxy company is MPRI, the difference with PMCs is that company has a close working relationship with its own government (aligning with government's foreign policy), and the company does not allow its employees to be armed or take part of the combat operations. MPRI has taken on training roles as well as giving military assistance to foreign governments on behalf of the US Defense Department and it does not work for business corporations or other private interests. (Kinsey 2006: 15) These companies occupy the bottom right-hand quadrant of the Kinsey's axes.

Private Security Companies (PSC) have similar corporate characteristics and control structures as PMCs but it is only partly true, while confusion over these two groups is easy to understand given the fact that both groups are founded by former soldiers, carry guns and adopt a tactical approach to their work. Each of these groups maintains ethical policies and attempt to interfere as little as possible in the political arena of the country it works for. The main difference between PMCs and PSCs is the range of services they provide. The tasks PSCs undertake range from countering fraud, risk assessment of insecure areas on behalf of companies evaluating investment prospects, armed guards to protect government and commercial installations and persons, security advisers for multinational corporations operating in the more volatile areas of the world and so on. (Kinsey 2006: 16) For example, Defense Systems Ltd (DSL) has a contract to train local Colombian forces and is protecting British Petroleum Exploration Colombia (BP) oil installations (The Guardian 15.04.2011). DynCorp has been the information technology department for countless government agencies including the Security and Exchange Commission, the CDC, the Federal Aviation Administration, the Department of State and just about every three-letter national security, law enforcement and defense-related agency (Ballard 2007: 51). PSCs are occupying the bottom left-hand quadrant of the axes and in that quadrant the security is a private commodity that can be purchased by anyone able to afford it.

Creating a category for Commercial Security Companies (CSC) is an attempt to differentiate between PSCs and the large publicly owned security companies that provide uniformed and normally unarmed guards for commercial, governmental and international organizations

around the world (Kinsey 2006: 18). For example, Group 4 Securicor (G4S) is a multinational corporation operating in 100 countries and employs as many as 340 000 full and part-time employees. They have used their size, corporate structure and financial position to establish new roles for the security industry. G4S pioneered the private contracting of detention facilities and prisons and they are also involved with immigration services, fire services and ambulance services. (Group 4 Securicor 15.04.2011) As PSCs so do commercial security companies occupy the bottom left-hand quadrant.

These two typologies, especially Kinsey's, are helpful for every commentator who wants to understand the different aspects of military-security industry, however, those typologies are conceptual frameworks rather than fixed definitions for each and every firm in the industry. Some companies are clearly placed in these sectors, like G4S or BRS, but majority of firms in this industry lie at the sector borders or offer a range of services within various sectors. For example, ArmorGroup is able to supply military training and assistance, logistical support, security services, geopolitical risk analysis and if asked crime prevention services through industry contacts, while the market for the company includes both commercial and governmental customers (Shearer 1998: 25 – 26). ArmorGroup is not only company with this kind of operational range, all the companies in this industry have the flexibility to move between different categories of services if they feel it would benefit their financial position in the long term. Nowadays it might appear that majority of companies are settled, however, in reality they are still carrying out operations and provide services there categorization would not support. For example, British company Babcock, deals mainly with engineering support for private sector but nevertheless it oversees the management, maintenance and repair of the UK's Vanguard-class nuclear-submarines and their Trident nuclear-missiles (Krahmann 2010: 8). Large and known companies even use subsidiaries or other smaller companies to deal with contracts they can not publicly obtain. For example, Saracen Uganda, EO subsidiary, was set up to provide security protection for Branch Energy's gold mining operations while EO itself was under the investigation in South Africa (Kinsey 2006: 29) or like L-3 Communication Corporation (L-3 deals mostly with IT systems, communications and so on) that has acquired about 60 different companies (one of which is MPRI) all from different categories and with different capabilities (Ortiz 2007: 66) or like DynCorp International together with McNeil Technologies set up Global Linguist Solutions, which is the key supplier of translators and interpreters for the US Army Intelligence and Security Command (Ortiz 2010: 50). Like I have shown we can describe this industry with different terms and typologies but they all point to the same phenomenon and if we analyze the reality of this industry it is quite clear

that those categories developed are not as absolute then they might look and because of that it is more convenient to use the term private military-security companies (PMSC-s) like Ortiz (2010: 7) does because it is the easiest way to describe the reality of this industry.

The post-Cold War era changed dramatically how Western countries projected military power. No longer is war just the prerogative of states. Of course it does not mean that state militaries are being marginalized or they are somehow obsolete, their role in warfare is being transformed and the reason for such change is more to do with efficiency, technology and shifting social perceptions of the role of state militaries in our new century (Kinsey 2006). For example, in the first Gulf War (1991) the ratio of US troops on the ground to private contractors was 50:1, by the second Gulf War (began in 2003) that figure had increased dramatically to 10:1 [some agencies even suggest 6:1 ratio (CBO 2005: 13; CBO 2008: 13)], as it was for the interventions in Bosnia and Kosovo (Kinsey 2006: 94). So, what were the issues that made this extraordinary growth of significance possible for military-security industry?

1.3 The Growth of Private Military-Security Companies

The expansion of the PMSC market is a result of a number of issues that have changed the way we now think about warfare. They are in part the result of a set of historical links with the past that has made outsourcing easier than if the link had not existed at all. For example, UK PMSC-s are the successors of the private violence what was used to support governments foreign policy during the Cold War (Africa's wars of independence and revolutionary wars in Middle-East) meanwhile US government has even longer history of using the corporate world to assist its military (Kinsey 2006: 95), and surely it is self-evident to everybody that these corporate entities in the US were not in their early days selling military services but maybe military hard-wear or canned foods for the Army. However, nowadays there are many other more recent factors responsible for the growth of the industry.

One of the most important factors that have made this kind of growth possible is changes in the international situation. During the Cold War many states aligned themselves with one of the two superpowers, by doing that those weaker states could provide means they needed to protect themselves against internal subversion or external invasion. The demise of Soviet Union left those states which had relied on its support without a donor, while the United States no longer had any interest to stand behind states that fought against communist agenda

(socialist freedom fighters etc.) or might otherwise align themselves with the Soviet Union. So number of fragile states, especially in Africa, where the government possessed only tenuous legitimacy and limited coercive power, were forced to look for the other sources of security services. (Alexandra 2008: 89) The private military-security companies were first and maybe the only choice for those weak governments because changed geo-political situation exteriorized old ethnic tensions and power struggles and showed that those weak governments could not handle them alone.

This new type of organized violence that consumed Africa in 1990s and even reached Europe, mainly to Balkan states, is called according to M. Kaldor a „new war“. The “new war” is very different from wars conducted between European states in the last three centuries because those wars were fought between states over the rights of certain territories. “New wars” however are motivated by very different reasons; these wars are about identity politics, opposing groups are fighting for control of the state by eliminating people from society according to the basis of their identity. On the other hand some see “new wars” simply as a result of rational economic calculations; internal conflict is being escalated to war, so international trading networks could control through rebels and/or warlords trading of high-priced raw materials. (Sheehan 2008: 221 – 222) The motivations for violence are not the only divergence with “new wars” and wars in the past, also “new wars” are conducted quite differently then wars from the history books because “new wars” are not fought on battlefield between opposing armies wearing uniforms. Instead, the battlefield is everywhere: cities, towns and countryside. Also the behavior of fighters in the “new wars” are rather different then soldiers who fight for a state military. Soldiers in the state military are fighting according to the laws of war; they can not commit atrocities against civilians, prisoners and destroy property for their own amusement, however in the case of “new wars” there are no rules telling a combatant how he should behave, because of that atrocities, like mass killings and systematic rape, against civilians are normal and enabled in the “new wars”. In this type of war not only the less well off people may become the victims of violence but all social groups within the society are affected. Because the laws and rules that govern the society are undermined, governments can not protect there poor and rich alike. An inability to enforce the law also affects multinational corporations; they can either pull their employees out or risk their lives if they carry on operating inside those countries. Thus, for many wealthier social groups in the developing world, private security has taken over as the primary source of protection and they are not alone; leaders of weak states have used PMSC-s to retain control of strategic resources (such as diamonds, oil and exotic timber) that in turn enables them to

marginalize threats to their rule by denying opposing strongmen revenue to purchase weapons. Also international organizations, intergovernmental agencies, multinational corporations, government agencies and even charities have come to rely on the security skills displayed by PMSC-s, so they can operate in “new war” areas while also protecting their employees and assets. (Kinsey 2006: 52, 54 – 56)

Since the end of Cold War, we have witnessed great reductions in military personnel. The United States alone reportedly downsized about 35 percent between 1989 and 2000 from the Army, Navy and Air Force only Marine Corps was spared (they had to reduce only 12 percent of their personnel). British Army reduced its military about 31.8 percent after the end of Cold War. However, the British or American reductions were not even closely as severe as South African. After the end of apartheid in 1994 entire South African military was reorganized; elite apartheid era units were disbanded and the new South African National Defense Force was integrated with troops from different liberation movements all around South Africa (all most none within those units had any military education). (Ortiz 2010: 52 – 53) It is not surprising that exactly those elite ex South African forces represented the spear-head of the private military-security industry in the 1990s (most famous are EO and Sandline International). Not only reductions in the military helped to grow private military-security industry, at the same time when militaries were downsized many state security and intelligence agencies (CIA, MI6, BOSS, KGB/FSB, Mossad and many more) were cutting down their expenses and because of that many specialists in possession of rare skills and knowledge were let go; however, not only large downsizing programs after the Cold War helped PMSC-s recruit specialists, for example many Israeli defense and intelligence officers were recruited into the industry in early 1990s but Israeli Army was not downsizing its manpower (Ortiz 2010: 53). So what was the other motivational tool used by the companies?

This motivational tool is the most common and is used actively today as well; it is of course money, monthly payments (salary) to be exact. During the downsizing period, many state militaries and agencies had to endure budget cuts and salary reductions, so this was one of the reasons why those who were not let go left their old state jobs and started to work in private sector. This problem for the states is actually increased because of the economic collapse of 2008. Many skilled and educated officers are leaving for better wages and this is not only seen in Western countries but all over the world. For example, contractors who were hired to train Iraqi police were earning up to three times what regular police officer were making in the United States and wages for South Africans were even higher (police officer in the United States is paid approximately \$50.000 yearly, in Iraq contractor for similar work gets about

\$150,000) (Ortiz 2010: 54 – 55). Of course this example is taken when private military-security industry had an Iraq “boom” but the industry policy is that contractor in the field is paid about three times (not always) more than he/she would make when he/she is a member of the state operational force but of course everybody is not employable.

Two set of factors generally determine employability and pay rates. The first relates to the source of the military, law enforcement or intelligence expertise. The second is associated with the level of skills and this focuses on parameters such “as the rank reached, the type of force or unit a recruit used to belong to, the specific functions performed, the equipment and weaponry mastered, field experience, security clearance level, accountability record and so forth”. Accordingly, former members of the Special Forces are always in demand and command comparatively high wages. Although the supply of any demand for particular services at any given time can raise or lower recruitment standards and pay rates; still many times the employer’s assessment of potential recruits boils down to nationality issues but not always. (Ortiz 2010: 54)

The other important factor why PMSC-s are growing is connected with technology. The increasing reliance on technology by Western militaries, particularly the US military, has made it very difficult for some sectors in the military to function without civilian support; operating and maintaining this sophisticated technology requires a level of expertise beyond that which is taught in the military colleges. For example, weapons systems like Aegis missile defense system and Patriot missile batteries, along with unmanned aerial vehicles (UAV) and B2 bombers, to mention only some of the high-tech weapons available for NATO, all need civilian technicians to work (Kinsey 2006: 96). At the same time NATO is not the only one who increases its reliance on high-tech weaponry, all the industrial countries are incorporating new technologies to their defense and it looks like it will not reverse any time soon. Since the majority of research and development in fields such as IT is undertaken in the market place not by the military but by corporations, increases the military’s need for civilian technicians even more over the next decade. Of course military can create their own colleges for educating their personnel about new technologies but it will cost lot more than just contracting private firms to manage this type of technology.

So by talking about costs I have found another important factor why PMSC-s are gaining more ground. The cost issue is very important especially now when Western world is struggling to solve its financial problems and manage its “humanitarian” wars. However monetary efficiency is not a new idea for lowering state expenditure; the introduction of neo-liberal economic ideas during the Reagan and Thatcher era was based on an assumption that

the free market could deliver public services more cost efficiently (Kinsey 2006: 96). In light of this, many public services were sold off to the private sector and the military were not left out of the process. Nowadays most of non-core functions and high-tech support is contracted from private firms to lower the costs for the military. However more budget cuts states militaries conduct the more private firms we will see operating in military affairs in Western state militaries but it is not all bad because like one MPRI official said, “we don’t need to spend all that money and effort training a fine combat soldier and have him peeling potatoes in combat” (Fineman 5.05.2011). If we are talking about costs we are not always talking about money, of course it is much efficient for the state to get qualified people to work in its military for less money (state does not have to spend money for their education) but the main reason, in my opinion, why many Western countries are willing to contract private firms, especially US, more and more is because of the shifting structure of modern society.

The concern over the use of lethal force to save strangers reflects an increasing determination by some Western governments to shape the global security environment, while accepting the reality that today the public will not tolerate troop casualties as it has done in the past. The body bag syndrome, as it is sometimes called, has increased the pressure on governments to find alternative means of carrying out security operations, especially where national interests are not directly at stake. For that job private military-security companies are ideal because it allows governments to take the credit when things go well but to avoid taking the blame should things go wrong. Of course the need for state military remains, like we have seen in Afghanistan, Iraq, Libya and other places. The thing what will be new is the close connection and adhesion between state military and PMSC-s.

Private military-security companies have been accused of being closely connected and linked with mercenaries time and time again. However, those kinds of accusations are made mostly emotionally and are not based on proper evidence but it does not mean that those accusations are somehow cast aside. Because of this kind of emotional over simplification debate about military-security industry is in stalemate and because of this states have not been able to construct and/or agree about general rules that can govern and control the industry world wide. So, it is extremely important to understand the differences between mercenaries and private military-security companies.

2. Differences between Mercenaries and Private Military-Security Companies

Today the word “mercenary” has a quite belittling meaning associated with it, despite being referred to as the world’s second oldest profession. It has had negative connotation for long time now, however, before 1960s it was not seen by the international community as a big legal problem because thanks to arise of nation states and their armies privatization of violence came to an end and with it mercenary profession.

In the second part of 19th century the old trading companies were emerged with states, so they lost there autonomy and with that their private forces because new stronger nation states had no reason to outsource colonial territorial management and control because they had developed strong bureaucracies and the illusion of patriotism to control there colonial empires and the natives. The industrialization of war also sought to concentrate military power under the authority of the state because the immense destructive capability of modern weapons needed to draw on the huge male population if the state was going to war.

The earliest formalized international laws of war in the modern state system were the Hague Conventions, established in the early 20th century. This convention in 1907 on Neutral Powers established certain legal standards for neutral parties and persons in case of war but it did not impose on states any obligations to restrict there citizens from working for belligerents. In fact, any national who chose to hire themselves out to a foreign power had committed no international crime and was to be treated as any other soldier serving in the military. The only proviso for them was that if they were fighting in a war they could not claim neutrality protection of there home state. (Convention Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land 5.04.2011) This reluctance to control the actions of individuals was based on the philosophic distinction that held at that time: governments and individuals were considered to be two mutually exclusive spheres (John Stuart Mill’s ideas about individual and state) (Singer 2004a: 526). This kind of norm gradually disappeared because states understood that the actions of individuals can have major influence on interstate relations. The other major legal agreement about private military actors before the 1960s was the 1949 Geneva Convention. It created the conditions of fair treatment of prisoners of war (POW) but it did not ban nor controlled the private forces; so as long as mercenaries were part of a legally defined forces (actually meant being a member of any

armed paramilitary party), they were entitled to POW status and protection (Singer 2004a: 526 – 527).

Because of the postcolonial experience in 1960s, the general feeling towards mercenaries began to turn more negative. Different mercenary units directly challenged many new state regimes in Africa, as well fought against United Nations (UN) in Congo and in other places (Singer 2004a: 527). So, international law sought to bring the practice of mercenarism under greater control and in 1968 the UN passed a resolution condemning the use of mercenaries against movements of national liberation. This resolution was later codified in the 1970 Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States and in this declaration UN declared that every state has the duty to prevent organization of armed groups for incursion into other countries (Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations 5.04.2011). This new declaration actually represents a great advancement of international law because mercenaries became “outlawed” in a sense, however, in practice this law was not enforced because states were often unwilling, unable or just uninterested to force it (Abraham 1999: 92).

“As commercial enterprises PMSC-s may in a straightforwardly technical sense be considered mercenary organizations” (Alexandra et al 2008: 2). However, they differ from traditional mercenary forces considerably and before we can start analyzing the specifics of PMSC-s we must understand what the differences with mercenaries and PMSC-s are. Like always press is the one who all too often conflates private military-security companies with mercenaries but there are a number of features which differentiate the two.

The most important among these features is the corporate nature of private military-security companies, mercenaries however operate outside the law. The First Additional Protocol to the Geneva Convention (established in 1977) defines mercenaries on the bases of six cumulative characteristics:

- (1) They are specially recruited locally or abroad in order to fight in a armed conflict;
- (2) They take a direct part in the hostilities;
- (3) They are motivated essentially by the desire for private gain and are promised, by or on behalf of a party of the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of the party;
- (4) They are neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;

- (5) They are not a member of the armed forces of a party to the conflict; and
- (6) They are not been sent by a state which is not a party to the conflict on official duty as a member of its armed forces

(Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts 5.04.2011).

However, this Additional Protocol does not legislate against mercenary activity; it only acknowledges the existence and practices of such persons within warfare (also this document excludes mercenaries from the category and rights of recognized combatants and prisoners of war) and of course it defines mercenaries' legal status (Goddard 2001: 32 – 33). Yet, the Additional Protocol is the only universal international provision in force that contains the definition of mercenary (Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination 26.05.2011). Besides, additional explanatory remarks have been added to the Additional Protocol to highlight exceptions to the requirements you need to meet, to be regarded as a mercenary in a legal sense. These exceptions enable a broader interpretation of the cumulative requirements but also a means with which to legally nullify the applicability of some of the mandatory requirements (Goddard 2001: 33). These are:

- (1) Volunteers are excluded who enter service on a permanent or long-lasting bases in a foreign army, irrespective of whether as a purely individual enlistment (French Foreign Legion) or on arrangement made by national authorities (Swiss Guards in the Vatican);
- (2) Foreign advisors and military technicians are excluded even when their presence is motivated by financial gain. This distinction was included to recognize the very technical nature of modern weapons and support systems that may necessitate the presence of such persons for their operation and maintenance. “As long as these persons do not take any direct part in hostilities, they are neither combatants nor mercenaries, but civilians who do not participate in combat” [International Committee of the Red Cross. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1)];
- (3) This subparagraph is centered on individual remuneration and parity in payment between mercenaries and nation-state combatants. The focus of this condition is directed against the “freelance” mercenary at the individual level. No detail is made

against corporate payments that are in turn finalized in individual bank accounts in foreign countries; and

(4) Persons are excluded who have been formally enlisted into the armed forces of the nation-state that they are contracted to operate within

(Goddard 2001: 33 – 34; Gulam 2005: 10 – 11).

So, it seems that this definition for mercenaries is quite broad enough to understand who is mercenary in the legal sense and who is not, however, this definition works only when a person can satisfy all six requirements listed in Additional Protocol, this unfortunately means that nobody can be convicted of being a mercenary because it is extremely difficult for any prosecutor to prove that defendant satisfies all of the requirements that is needed to be a mercenary. Thus, “any mercenary who cannot exclude himself from this definition deserves to be shot – and his lawyer with him” (Wrigley 12.03.2012).

Another legal document that defines “mercenary” is the 1977 Convention of the Organization of African Unity (OAU) for the Elimination of Mercenarism in Africa. The difference with the Additional Protocol to the Geneva Convention is that the Convention seeks to legislate against mercenary activity, outlining responsibilities and obligations of member states towards the prohibition, prevention and judicial prosecution of mercenary related military activity. However, this Convention has the same inherent weakness as the Additional Protocol; the requirements of mercenary are verbatim to those of Additional Protocol, requiring that all six conditions be satisfied for the definition to be met. So, a failure to satisfy one requirement is again sufficient to prevent the definition from being met. Besides, this Convention is not universal; it is limited firstly to member states within the OAU and secondly to those states that have signed and ratified the Convention. (Goddard 2001: 34 – 35)

In addition to those legal documents UN produced the International Convention of 1989 against the Recruitment, Use, Financing, and Training of Mercenaries. The intent of this Convention was to establish universal law beyond the definition contained in the 1977 Additional Protocol by specifically legislating against mercenary activity (Goddard 2001: 35). The Convention, containing 21 articles, seeks to:

- (1) Reinforce the existing definition of a mercenary;
- (2) Establish and define offences under the Convention for the recruitment, use, financing or training of mercenaries;
- (3) Establish and define mercenary actions;
- (4) Establish and define the role, responsibilities and obligations of States;

- (5) Establish and assert the judicial responsibilities of States and referral of matters to the International Court of Justice if required; and
- (6) Establish universal law after the thirtieth day following receipt of the twenty second instrument of ratification or accession with the UN Secretary General (Goddard 2001: 35 – 36; International Convention against the Recruitment, Use, Financing and Training of Mercenaries 18.04.2011).

Nevertheless, there is a quite a big problem with this UN treaty. It does not matter that treaty came into force in September of 2001, when Costa Rica became the twenty-second country that signed and ratified it; main problems did not disappear. This Convention has done little to improve the legal confusion over private military actors in the international sphere, despite its intent to clarify matters. A number of commentators found that the Convention, which lacks any monitoring mechanism, merely added a number of vague, almost impossible to prove requirements that all must be met before an individual can be termed a mercenary. So, it contains most, if not all, of the same loopholes as Additional Protocol. (Gulam 2005: 13 – 14) Besides, if we start looking at the states that have ratified this Convention we will see that no major Power Houses of international community (US, China, Russia, France, UK, Germany etc.) have ratified this Convention or even attempts to ratify it. So, this should tell us a lot where this Convention is going, moreover, it shows us a wider lack of international political will pertaining to international legislation concerning mercenaries.

It does not matter that all of the international legislation documents are all most useless if we need to prosecute mercenaries; in straight legal sense mercenaries are unlawful entities without official combatants' rights or status. So, they can be called bandits or even terrorists, if needed. In addition to this, mercenary forces are mostly composed on an *ad hoc* basis and for illicit purposes. They are volatile, dangerous and they are little concerned about their long-term reputation and compliance with different laws. (Krahmann 2010: 6) Hence, there can not be any official connection with today's private military-security companies and mercenary organizations.

By contrast, private military-security companies are legal businesses with permanent structures, headquarters and management. Although there are some regulation gaps in the industry, private military-security firms are subject to corporate and contractual law, sector regulations and national and international legislation in Europe and North-America. (Chesterman, Lehnardt 2007) It is specifically the incorporation of these businesses that has facilitated compliance with public laws and regulations through the assignment of corporate responsibility to private owners or executive boards (Krahmann 2010: 7).

Some of the critics might say that how can I talk about self-regulations in this industry when all major companies have immunity from local criminal prosecution granted to their personnel in countries where their “warriors” are working. Again this is not a problem because having immunity in some Third World country does not stop companies for being charged in the US or in Europe. There are many cases where PMSC-s are being sued over negligence and tax evasions (like Blackwater Worldwide) (Scahill 2007). Thanks to the negative publicity Blackwater Worldwide had to change its name (to Xe Services LLC and again in 2011 to Academi) and Blackwater is not the only company who have suffered the consequences of reputation loss, such as CACI whose share value declined by up to 13 per cent after the US Army began investigating into accusations that some of CACI’s employees were implicated in the abuse of inmates at the Iraqi Abu Ghraib prison (BBC 5.04.2011). So we see that private military-security contractors are very concerned about there reputation because there conduct and the way they are doing business is effecting there share values on the stock market and there annual profits.

Another difference with mercenaries and private military-security contractors according to Singer (2004a: 532) is that mercenaries are recruited specially for one type of job (concrete conflict, like a conflict in Iraq or in Libya) and after they have fulfilled there contracts they leave. Military-security firms however recruit employees for lengthy periods or work on contracts not tied to any specific conflict. For example, EO moved from fighting in Angola to Sierra Leone and from there to Democratic Republic of Congo and always using the same fighting force. Unfortunately Executive Outcomes and its personnel is not the standard of PMSC-s because the majority of firms in the industry offer services that are inherently military in nature but do not participate directly in hostilities, for example they offer military training and advisory services or provide logistics. (Singer 2003) Of course I agree that majority of private contractor firms are not taking part of direct fighting like EO did in there African campaign but arguing that PMSC-s are not taking part of hostilities by not shooting anybody is a over stretch for any researcher.

Well, we can agree that advisors or a logistics engineers do not shoot a gun but so rarely do generals. Nevertheless, generals “take part in the hostilities”, as the expression in the laws of war goes because they are giving direct commands (for example, to shoot at the enemy, which is more or less equivalent to pulling the trigger themselves), they are part of the “chain of command” (Alexandra et al 2008). The war effort as U. Steinhoff (2008: 22) says is not only borne by these kinds of chains of commands but also by contractual arrangements. Like workers in an ammunition factory, they are not under a military command and do not take

there orders from the “chain of command” but if they disobey their superiors they will find themselves under a military tribunal. All the same, ammunition factories and their staff are seen under laws of war as legitimate targets because they are, obviously, part of the war effort (making ammunitions for soldiers on the front lines). This holds true, and even more, for military advisors, especially if their advice is crucial for the fighting army. As long as no armed conflict is going on, a hired foreign trainer, logistics engineer or advisor in the army is not taking part in any hostilities because there is no violent act of war. However if the hostilities re-emerge, his training, logistic support and advice is a part of the army and therefore he is taking part in hostilities. Since their contribution to the war effort is often far more dangerous to the enemy than a front-line soldier shooting with his rifle and they are also far more important from a moral point of view, it is impossible to deny their involvement in direct hostilities and to the war they are contracted to participate in. (Steinhoff 2008: 22 – 23)

The last main difference with private military-security contractors and mercenaries is that unlike the black market, word-of-mouth recruiting forms used earlier by mercenary groups (such as the veiled classified ads etc.), public application processes are used by most PMSC-s and they work from established databases that attempt to cover the available employee pool. All the companies screen potential employees for valued skill-sets and tailor their staff to specific mission needs. (Singer 2004a)

So I have shown that it is impossible to say and argue that PMSC-s are just modern mercenary groups created by the new geo-political era following the end of Cold War, of course there are some similarities and connections but they do not equate. By understanding differences with private military-security firms and mercenaries we can discard some of the moral problems we might face when talking about PMSC-s. Of course, if PMSC-s are going to be enfranchised members of the international environment there should be more efficient regulations world wide (unfortunately current regulations are not working as they should) and control mechanisms for this industry and for the personnel working there.

Now is the time to discuss about the legal status of private military-security companies, however, the term “private military-security company” does not exist within any current international legislation or convention. So, it is quite difficult to understand what kind of legal status PMSC-s have and are their actions in a legal point of view altogether legitimate?

3. Legal Status of Private Military-Security Companies

It is surely known by everybody by now that PMSC-s are active in every major continent in the world, they have taken part in civil wars (Angola, Sierra Leone), “humanitarian” interventions (Bosnia, Kosovo), wars of aggression (Iraq) and anti-piracy missions (cost of Somalia); they have fought for governments, provided assistants and support to rebel (freedom fighter) groups, supported and protected international organizations and NGO-s and fought for the interests of international business conglomerates (Kinsey 2006: 111; CorpWatch 24.03.2012; Avant 2005: 9, 16 – 18). However, they are still associated with mercenaries, especially those companies that provide front-line support services to their clients. This is a continuous problem for the PMSC-s because there is no legal status for the term “private military-security company”; it does not exist in international legal system. Unfortunately for PMSC-s, the nearest comparable term is that of mercenary (Goddard 2001: 32). Nonetheless, companies continue to challenge this designation. Through their PR-campaigns and legal staff private military-security firms assert that they can fulfill honorable motives and contest just causes, moreover, they can be a stabilizing influence for legitimate foreign governments and other legitimate clients, not the destabilizing influence associated with traditional mercenary activity. It is the corporate structure and professionalism with military expertise that PMSC-s have publicly highlighted in an attempt to dispel any comparative measurements against traditional and negative connotations associated with mercenaries (Ortiz 2010). Still, all the money and PR-champagnes can not change the fact that PMSC-s operate in a legal vacuum (according to international humanitarian law). So, are “active” (companies that provide front-line support services) private military-security companies operations legitimate or have they just been tolerated because of their necessity?

The most significant limitation of current international legislation and convention is that it is outdated. There is no universal law that has been developed for PMSC-s and improved parallel with the growth of this industry. Also, current legislation only defines mercenary status; it does not say anything about what actions might be regarded as illegal and punishable. So, current universal law can not be applied effectively against the diversity of contracted operations conducted by legally registered corporate entities for legitimate foreign governments and other legitimate clients. (Goddard 2001: 37) This is mainly because

international community has failed to recognize growing importance of PMSC-s or they do not actually see the need to develop universal legislation for them, yet.

The First Additional Protocol to the Geneva Convention is the only universal legislation, like we saw in previous chapter, which deals with private violence; it defines the term “mercenary” that is the closest term to the private military-security company in international legal system. Other international legal documents (OAU and UN Conventions) have tried to establish criminal law; however, they do not work. They have utilized the Additional Protocol definition of a mercenary as a basis of their documents (of course this is not the only problem with these documents and I discussed those problems in previous chapter), the original limitations and weaknesses contained within the Additional Protocol are further exacerbated within these two Conventions (Goddard 2001: 37 – 38). So, that is why I do not deal with those Conventions, only with Additional Protocol and its most significant limitations. These limitations are:

- (1) The lack of a generally acceptable and operational definition of the concept of mercenaries for application within modern warfare;
- (2) The cumulative and concurrent requirements to satisfy the definition of a mercenary;
- (3) The narrow focus on the status of the individual conducting an action, as opposed to a wider focus on the act of direct intervention in armed conflict as a combatant; and
- (4) The lack of any fundamental differentiation between corporate entities conducting military-style operations and traditional freelance style mercenaries

(Goddard 2001: 38; Solis 2010: 123).

Yet, the most fundamental weakness is that if you do not satisfy all six requirements of the mercenary definition, it can not legally come into force. Those limitations are used extensively in military-security industry to fight against accusations and prove to the world that their actions/operations are not similar to the mercenary activity, even if previous chapter already showed that it is very difficult to equate those two with one-another, however, legitimacy problem still remains.

Executive Outcomes was one of the first companies in military-security industry that exploited the exception in Additional Protocol (mentioned in previous chapter) that enables foreign advisors and military technicians to be excluded from the definition of being a mercenary.

EO was established in 1989 after the white-dominated South African government was replaced with Nelson Mandela’s African National Congress and many senior officers of South African Defense Forces were let go. Using links to South African military community and

officers who still remained active, new company quickly won a contract to train new Special Forces units of the completely renovated South African military. Also EO won a contract from diamond mining company De Beers to investigate diamond thefts. (Davis 2002: 124) However, these are not the contracts that made this private company famous. In early 1993 EO was contracted by the Angolan government to fight UNITA (*Uniao Nacional para a Independencia Total do Angola*) rebels that had in that time control over four-fifths of the country and because of the seriousness of the situation Angolan government agreed to pay \$40 million a year to EO, half of the fee was for weapons and equipment purchases and the remainder for EO's expense (Davis 2002: 128). In Angola EO understood that they need to find a way to distinguish themselves from mercenaries, so through PR-campaigns and lawyers they showed that their most active participants in Angola were just trainers and military technicians (Adams 25.06.2012). It was easy because thanks to the Angolan governments' money and request EO created an air force with all the technical support this kind of military branch needs to operate effectively. So, it was not so difficult to show that its personnel in Angola were only there for training and maintaining planes, of course this was not entirely true because these trainers were allowed to carry out preemptive strikes against rebel units (Adams 25.06.2012). Besides, the situation for reporters and activists against the EO was made even more complex because of the location of their success. Angola had led the world charge against private violence only twenty year earlier and had signed the 1989 UN Convention against mercenary activity (Davis 2002: 131); also EO had been extremely successful in support of a legitimate government and thanks to the EO's involvement previously ignored peace accord was finally signed. So those journalists, activists and politicians against EO had no "ammunition" to criticize EO's activities in Angola and because of that EO's reputation improved even farther. That is why EO became a "poster-boy" of the military-security industry and its methods were widely copied by other companies in this industry.

Similarly, Sandline International has exploited the wide parameters of the Additional Protocol. According to one of the exceptions, foreign citizens that are formally enlisted into the armed forces of the nation-state that they are contracted to operate within are not considered to be mercenaries.

Sandline International was established in early 1990s and its purpose is to offer governments and other legitimate organizations specialist military expertise at a time when Western national desire to provide active support to friendly governments, and to support them in conflict resolution, has materially decreased, as has their capability to do so. Sandline is

incorporated in Bahamas but has representative offices in London and in Washington D.C. (Sandline International 25.04.2012) Like, EO in Angola, so did Sandline start to think about its reputation. In Papua New Guinea according to Tim Spicer (former CEO of Sandline International) all the Sandline people were appointed to Special Constables and were subject to same laws, rules and regulations that governed any other government servant, Sandline in Papua New Guinea was not operating as private army; besides he argued that Sandline is always enrolled in the forces, police or military, of the client country (Spicer 1999: 24). Of course, it is hard to believe, especially when this was the company that was accused of smuggling illegal weapons to Sierra Leone (it will be discussed later).

Despite the little differences in their legal tactics, both companies (EO and Sandline) and many other private military-security companies have also exploited the parameters that talk about financing. No client of private military-security company is entering into contractual agreement with the employee of this industry, payments are made directly to the company (it is always for the total package of services provided by PMSC to its client) and companies are the ones that decide the amounts (according to contracts made between company and employee) and pay wages to their employees; therefore it is very difficult to make any effective and succinct comparison concerning the rates of payment between contract employees and personnel within the armed forces of the host nation (Goddard 2001: 40).

In addition to the framework of the legislation itself, another fundamental limitation is the distinct lack of political will for legislation to be actively incorporated into force within the international realm. This problem exists because very few major powers have interested in promoting these laws and conventions that deal with this problematic and unregulated issue in the international realm, of course because PMSC-s have been utilized by governments within the West as discrete and measured exponents with which to execute foreign policy. (Goddard 2001: 41) Besides, not only governments have started to use PMSC-s extensively to achieve their aims, many other entities in the international environment use and protect military-security industry because world is not as safe as it was in decade ago.

The UN Convention, we mentioned in previous chapter, is focused on a mercenary actions that are perceived to be a means of violating human rights and impeding the exercise of the rights of peoples to self-determination. This focus has centered on events in Africa and other parts of the Third World. Nobody considered the potential, when this document was written, that discrete relationship can exist between a PMSC and its national government and their other legitimate clients in other parts of the world. (Goddard 2001: 41)

The government of the United States has a quite intimate and overt relationship with US based private military-security companies. Many worlds' biggest and well known private military-security companies reside in US, however, US government always stated that it has no official and legal control over privately owned and operating companies. According to one of the State Department officials PMSC-s are as free to sell their services as US car manufacturers selling their cars (Solis 2010). However, PMSC-s are not as free as it first seems (of course US car manufacturers need a business license too and government is the one that writes them), all of their operations over seas need a license from the Department of State. Therefore all PMSC-s that reside in US and provide services over seas are in fact operating with the consent of the US government. It is exactly this linkage to government that has led some academic quarters to assert that private military-security companies have "quietly taken a central role in the exporting of security, strategy and training of foreign militaries--it's a tool for foreign policy in a less public way" (Brown 12.06.2012). Even some of the companies have affirmed this suspicion. One of the companies' spokespersons (MPRI) told that US government (referring to Clinton administrations "Plan Columbia") is using PMSC-s to carry out American foreign policy; "we [private military-security firms] certainly do not determine foreign policy, but we can be part of the US government executing its foreign policy" (Garza, Adams 12.06.2012).

Another perspective is that the development of PMSC-s has enabled governments to commit to foreign crises while avoiding the publicly sensitive issue of potentially sustaining troop casualties on missions other than war-fighting (Goddard 2001: 42). This kind of convenience may and will give governments the leverage they need to overcome the political reluctance to become involved in situations where risk is high for its troops and objectives are very hard to sell to its domestic electorates because government can deploy private contractors and deny any involvement with them. For example in 1998, DynCorps was awarded a contract to provide civilian verification monitors to the NATO monitoring group in Kosovo while other contributing nations provided officers from their armed forces (Goddard 2001: 42).

Most known private military-security company that is very closely connected with US government is Blackwater (now Academi). This company was formed in 1997 by Erik Prince in North Carolina, to provide training support to military and law enforcement organizations. It got its first governmental contract after the bombing of the USS Cole off the coast of Yemen in 2000, company had to provide safety for the sailors of the US Navy and train there anti-terrorist crews on ships to spot and destroy suspected terrorist boats that might attack US ships and its personnel. (Academi 15.07.2012) After that Balckwater became a consistent

partner of the US government, supporting and protecting its officials in Afghanistan and Iraq [for example in 2003 Blackwater attained one of its major contracts when it won a \$27.7 million no-bid contract for guarding the head of the Coalition Provisional Authority Paul Bremer (Blackwater USA: Building the 'Largest Private Army in the World 15.07.2012)], equipping its military and federal agencies in different crises zones [Blackwater also was hired during the aftermath of Hurricane Katrina by the DHS, as well as by private clients, including communications, petrochemical and insurance companies (Sizemore 15.07.2012)] and so on. Overall, the company has received over \$1 billion in US governments contracts (Blackwater's rich contracts 15.07.2012). Most of the contracts are somehow connected with Iraq but not all of them, for example Blackwater employees were helping to command and control different rebel units in East Libya, besides they were evolved with not only training rebel units but actively fighting against Gaddafi's regime as well (Libya: blood bonanza for contractor 17.07.2012). Already from the beginning of Iraq war Blackwater was accused of committing many crimes against civilians and it is not surprising because its employees have been involved in 195 shootings incidents; in 163 of those cases Blackwater personnel fired first, however, nobody has prosecuted the company or its personnel (some have been fired but nothing more), maybe because like Erik Prince points out, his company and its employees followed the orders of United States governments officials, who have frequently put Blackwaters personnel in harms way (Blackwater boss grilled over Iraq 17.07.2012).

Of course Blackwater is not the only company that has been used by the US government. In 1996 MPRI was contracted to equip and train the Bosnian Croat-Muslim Federation to fight and protect itself against other forces in the war of disintegration of Yugoslavia (Kinsey 2006). Actually, unstated central issue was that because of the neutrality of the US government it could not send any troops or equipment to Bosnian Croats because it would significantly damaged US reputation and made the US officially part of this conflict; so, MPRI was contracted by the US government to go and discretely execute US foreign policy (Goddard 2001: 43). Same kind of contract was given to MPRI some years later, again US government had no solid arguments to sell its military expansion plans to the public, and so, it again used private contractors. In Colombia MPRI has to provide training and equipment to the Columbian military, so they can fight the rebels and drug traffickers; besides that MPRI employees have to provide mission support services as well, this means that their personnel has to go and fight along side with Columbian army (Ortiz 2010). It is understandable that by using private contractors US government is saving some money and lives of its military and

other security agents (because of the body-bag syndrome in the society it needs to reduce casualties) but at the same time achieves some of its foreign policy objectives.

Also the government of United Kingdom (UK) exercises practical judgment in how it has categorized the legal standing of PMSC-s; it has especially happened with Sandline and its involvement in Sierra Leone (Goddard 2001: 44). When the conflict started in Sierra Leone in 1991, Sierra Leonean government had no power to stop RUF that immediately began a program of intimidation and fear, they attacked everybody (farmers, miners, villagers etc.) killing, raping and mutilating (arms were amputated with machetes, people burned alive) people. Because of governments ill-equipped, poorly led army Sierra Leonean president J. Momoh turned to Britain for help, Sierra Leone had been for many years' British protectorate and navy base in West Africa, however, military aid was turned down by the British government. (Davis 2002: 133) British government had exactly the same problems as did the US government. So because of that UK government stated that if some legitimate government needs to use private contractors it should have the chance because those companies can provide security and professional staff to reform ill-equipped militia into modern fighting force (Guru-Murthy 18.07.2012). Again the central issue of the acceptance of the PMSC-s involvement in those kinds of conflicts is the role they play in lessening the requirement for direct intervention by less committed but more capable nation-states (Goddard 2001: 44). So, by not sending its troops to fight UK's government could stay neutral but at the same time covertly increase its influence in Western Africa and elsewhere because British nationals were the ones that introduced EO and Sandline to those African and other Third World nations that needed military professionals to protect their countries.

Both countries domestic law also reflects a stance that is alternate to the intent of the Additional Protocol and the UN Convention, they only prohibit the recruitment of mercenaries and the actual conduct of mercenary activities (Sheehy et al 2009: 137) but PMSC-s are not mercenaries, they are privately owned commercial entities.

Besides legitimate governments many other legitimate entities are contracting the help from private military-security companies. International organizations like UN, OSCE, World Bank and etc. have hired private military-security companies to help them achieve there goals in under-developed countries and these organizations are not alone because NGO-s and many charities have understood that they need security if they are working in those insecure environments like Iraq, Afghanistan, Congo, Sudan and so on. Of course IO-s and NGO-s have different reasons why they hire PMSC-s to help them with there work. For example in 2004, the director of Care International in Iraq was kidnapped and murdered; at least dozen

people involved of mine clearance in Afghanistan have been assassinated; in Philippines at least three Red Cross workers were kidnapped in 2009 and it has only worsened, because those days when humanitarians were respected by both sides are long gone and as the field becomes more dangerous, it is understandable that NGO-s and charities require risk advice and management from PMSC-s to get there relief workers to the distressed areas and protect them and there equipment (Ortiz 2010: 87). IO-s on the other hand understand outsourcing little bit differently then NGO-s or charities, of course their workers need security as well and they are as vulnerable as relief workers from NGO-s but motives are regrettably connected with costs. The UN approved budget for peacekeeping to June of 2009 (from 1st of July 2008) was \$7.1 billion: about twice the amount spent in 1993, which back then was considered unprecedented (United Nations General Assembly 16.02.2012). There were about 91 000 Blue Helmets involved in 16 ongoing peacekeeping operations around the world in 2009 (Ortiz 2010: 85), and if we are considering international situation today it is quite probable that this figure will increase even further. However, not only UN is connected with peacekeeping and peace managing operations in the world. There are many IO-s besides UN that deal with developing countries and war thorn areas of the world, for example OSCE has about 20 field operations in Europe and former Soviet republics, including Bosnia and Herzegovina, Kosovo, Moldova and Georgia (Ortiz 2010: 86), and of course not only UN but many others have financial troubles to maintain and set up their operations. The problem is not only the increasing costs to conduct humanitarian operations but thanks to the financial crisis many Western countries have reduced their annual payments to organizations that deal with relief and/or peacekeeping and peace managing. So, many IO-s have started to look for alternatives and/or partners to reduce their costs to their members but at the same time they still want to achieve their operational objectives.

It is understandable that they found their partners from private military-security industry because the delivery of services in high risk environments requires military or security expertise to accomplish the contracted tasks and PMSC-s are only ones (with the exception of states) that are capable of providing such services to their clients. Although humanitarians are among the fiercest critics of the industry and their increasing role in the relief business, however, they have understood that without PMSC-s they are not capable of helping the people in need in the Third World or in places that have suffered some kind of catastrophe. Actually it is not the first time that PMSC-s have started to work closely with the humanitarian organizations. But before 21st century private military-security firms were not taken seriously because humanitarians were not capable of understanding how PMSC-s can

help locals in the war zone. EO was the first that showed that they can help locals' even more than humanitarian organizations from the West. In Angola and Sierra Leone EO purified water for the local villages and built local medical facilities where locals could receive medical attention and medicines that were too expensive for humanitarian organizations to deliver. Of course EO was not doing this just because they felt good about it; it was a tactical maneuver to get locals to support their troops. Besides, in April 1994 EO produced plans for UN to intervene in the Rwanda conflict as the genocide started to unfold, they only asked about \$100 million for six-month operation, unfortunately UN rejected the plan and spent (after genocide) nearly half a billion dollars during its assistance mission for Rwanda. (Ortiz 2010: 89 – 91, Kinsey 2006: 129 – 130) Of course it is futile to speculate whether EO would have been successful but it shows that PMSC-s were prepared to undertake humanitarian relief missions already in early 1990s.

It is understandable why different NGO-s and IO-s that once were critical of private military-security companies operations now have become supporters of this industry, of course mainly because of practical and fiscal reasons but we can not forget the decreased interests and capabilities of states. However, it does not mean that they have forgotten the legal problems of private military-security companies.

The measurement of international legitimacy afforded to PMSC-s evolves from their legal status in accordance with the 1977 Additional Protocol. The private military-security companies and nation-state governments have exploited the inherent limitations and weaknesses within the outdated framework of this legislation and governments are not the only ones, like we saw in this chapter. These legally registered corporate entities selling military expertise have produced their own understanding of legitimacy because of the absence of a definitive legal determination within the international realm and they are further reinforced by their legitimate clients (from national governments to NGO-s and legally registered multinational corporations). (Goddard 2001: 47) It seems that operations conducted by private military-security companies that provide active military assistance are somewhat legitimate, this because PMSC-s services are been sold only to legitimate clients that provide by using those services some legitimacy to the providers of those services. However, in strict legal sense, private military-security companies and their activities can not be regarded as legitimate; it can be achieved only when the entity is legally defined in a proper universal legislation. Unfortunately, military-security industry has not had this proper legal acknowledgment (Sheehy et al 2009). Nevertheless private military-security companies are the cornerstones of our international security environment because no legitimate actor in the

international community is ready to discard private military-security industry and the services they provide.

So, we have seen that in the strict legal sense PMSC-s operations (especially those that provide front-line support services) are not legitimate but does this mean that there is no workable regulatory system that can regulate those commercial entities and can we find someone that is accountable when international rules of conduct and/or laws are broken?

4. Regulating Private Military-Security Companies

Regulation is a controversial topic and even the meaning of “regulation” is disputed in legal and political sphere. This controversy comes from the philosophical commitments it reflects, not only with respect to economics, social policy and social philosophy but also because of the views of constitutionalism it entails. As to the first set of disputes, scholars and legislators committed to neo-liberal views see any regulatory methods as an attack against the free-market; however, scholars and legislators who prefer social democracy believe that markets, like many other parts of society, function better with some level of regulation. The other controversial issue with regulation is connected with constitutional law, which governmental branch should control and supervise the regulations. (Sheehy et al 2009: 110 – 111) Despite all of this controversy and dispute, one thing is clear, total free market in private military-security industry would be same as a Hobbes all-out war of all against all, while at the opposite extreme, total governmental control of all aspects of security matters, is as problematic and may harm its citizens. So, the regulatory methods for private military-security industry should place us somewhere in the middle of this scale.

Because of the “arms to Africa” affair governments started to understand that private military-security industry needs some kind of official regulations, of course, this affair in Africa was not the only reason but it is one of the most known because of the press coverage and government investigations.

In 1997 Sierra Leonean democratically elected President T. Kabbah was removed from power and exiled by a coup. Regardless of new government, AFRC (Armed Force Revolutionary Council), Kabbah was still regarded in international community as the legitimate head of state. Because of this in August of 1997 the leaders of ECOWAS (Economic Community of West African States) imposed sanctions on petroleum products, arms imports and international travels to AFRC and through UN Security Council Resolution 1132 United Nations had also adopted sanctions on weapons and other military equipment, petroleum and its products to the country. However UN Resolution 1132 was not explicitly clear who were the parties in the conflict that had to be embargoed. The problem with the resolution was its formulation, it only referred to Sierra Leone not to the parties involved in the conflict and because of this mishap this resolution could be construed in number of different ways. So, thanks to the formulation of the resolution, what talked about the geographical Sierra Leone, not about the parties involved in the conflict, Kabbah started to

build up its new fighting force to repel the AFRC/RUF junta from Freetown and the Kono diamond mines, for that he needed professional help. Shortly after the resolution was accepted and functioning Kabbah met with the representative (gentleman from London) from Sandline International and asked military assistants. The contract with Kabbah and Sandline International stated that Sandline would train and equip the new Civil Defense Force and provide assistants on operations, also Sandline equipped and helped ECOWAS troops that supported Kabbah's government in exile. So in early 1998 Sandline International transported about 1,000 AK 47s, mortars, light machine-guns and ammunition from Bulgaria to Lagos, where aircraft was refueled with ECOMOG's (Economic Community of West African Monitoring Group) assistance for the next sector to Lungi airport. The method Sandline used to broker the weapons was not the typical method used for illegal transfers of weapons. At no stage did the company appear to hide the transfer of weapons from anybody, so for Sandline International everything in their contract with Kabbah was legal. (Kinsey 2006: 74 – 77, 79)

However, according to the UK's government Sandline International was violating UN Security Council Resolution 1132 by transporting arms to Kabbah's supporters. Yet this affair was not as simple as it looked at first. For the British government UN Resolution 1132 was clear, it applied to all parties to the conflict and because of that the scope was geographical instead of being specific. However, the confusion over the meaning of the resolution was further exacerbated by the way in which the FCO (Foreign and Commonwealth Office) glossed over its meaning to its own Parliament, the media and to the exiled government of President Kabbah. Even in their official telegrams and daily bulletins the FCO officials only referred to the Junta not to Kabbah's exiled government and because of that only the Junta was mentioned to be under the embargo at the Commonwealth Heads of Government Meeting in October 1997. Furthermore, UK's Minister of FCO stated during the debate in the House of Commons in March 1998 that UN Resolution 1132 was against the AFRC/RUF junta not against Kabbah's government. The legal problems came when Parliament officially made the violation of the embargo an offence, punishable by up to seven years in prison but the official document Parliament approved was not the original UN Resolution 1132 but draft from Order in Council (legal council in the UN that clarifies the resolutions) that defined the parties in the conflict, so according to this document both the junta and Kabbah's government were under the embargo. So when this affair came public, thanks to the reporters, British government's senior officials and politicians were accused of violating the embargo with Sandline International and because of that governmental investigation was initiated. (Kinsey 2006: 75 – 77, 80 – 81) In the end Sandline International and senior civil servants were exculpated but

governments now understood that some regulatory methods must be engineered to regulate the private military-security industry to avoid those kinds of accusations, protect involved corporations and governments and reduce critics “ammunition” against private military-security industry.

From legal perspective, the PMSC is not different from any other business corporation in that it has the same structure, rights, duties and obligations. It is controlled by the board of directors, has shareholders who hope to receive dividends from corporate profit and engages in activity solely for the purpose of making a profit (Sheehy et al 2009: 35). So, is it possible to regulate PMSC like we do with other business corporation?

First, before starting to use corporate law for regulating private military-security company’s activity, we must understand the various rights and duties of the business corporation and its participants. Of course, there are number of different ideas and ideologies that tell us how the corporations must be regulated, some theories even suggest that any corporate regulation is against economic free market and freedom of choice, so it will be extremely difficult to examine all of those regulative ideas, thus we should only examine the laws that regulates the activities of corporate participants. Those main corporate participants are the directors and shareholders. Yet, we must understand that corporations have the same rights and protections as people but, unfortunately, thanks to the insufficient corporate law, they are without clear responsibilities (as you will learn next); as a result, they operate freely and unrestrained, especially financial giants controlling the power of money at the public’s expense (Lendman 16.12.2011).

Every jurisdiction has its own set of laws dealing with directors’ duties but some reasonable generalizations can be made; directors have two basic duties in the main common law and civil law jurisdiction: a duty of loyalty and the duty of care. The duty of loyalty is a fiduciary duty, meaning that it requires good faith in its execution and breach of fiduciary duties may give rise to the broader equitable remedies then those available under contract. The directors are constrained to act as fiduciaries focused on the economic well-being of the company, without regard of shareholders, employees and other civilians. The duty of loyalty precludes for example, self-dealing and requires directors to avoid conflicts of interests, it is a jurisprudential doctrine based on trust rather than economics. The duty of care is a non-fiduciary duty, associated with general law principles or statute. It is a duty to use due and proper care in the execution of one’s responsibilities, it does not, however, require the directors be correct in there decisions, even if they had all the information saying that the direction they are taking is wrong and harmful for the company. Indeed, the Business

Judgment rule is specifically designed to protect directors from liability for decisions taken which prove to be unsuccessful and the only way to punish those directors is with a fine or by replacing them, of course if prosecutor can prove that directors have broken some major law with their activity they can be sent to prison but it is not an easy task. In the terms of PMSC, this duty and the Business Judgment Rule would lead one to suggest that the matter before the director is limited in consideration to the economic good of the company. A decision, for example, to move the business of the PMSC to provide front line tip-of-the-spear service to governments, multinational corporations and so on, adds no special liability to the director for whatsoever harm or social costs that may ensue. The net effect of these narrowly focused duties is that directors, unlike military personnel, have no incentive to consider the potentially lethal outcomes of strategic decisions. (Sheehy et al 2009: 43 – 44)

Shareholders rights and duties are, in contrast with directors, quite constrained. Still there are some means available for the shareholders to direct the company's strategy; they can vote for directors, residual claims and of course they have some limited liability but this limited liability means that they would be liable solely for the amount of capital they were willing to put at risk, so by this legal innovation, shareholders have no liability for the actions or obligations of the corporation, regardless of whether those obligations are to voluntary creditors or to involuntary tort victims. In the terms of PMSC, the shareholder has little to fear and considerable reason for hope because thanks to dramatic growth of the industry and the limited liability of the corporation. (Sheehy et al 2009: 45)

Since the inception of corporations, various parties have sought to control them, however, it has never fully achieved, and even the most totalitarian regimes have to recognize the independence of these commercial entities. It is understandable, because of the intensely political nature of the corporate regulation debate; there are many conflicting ideas about corporate regulation; for example, some free-market believers reject any regulatory methods for economic entities and others, more critical about unregulated free-market, believe that this is the only way to protect the society against the greed of commercial corporate entities (Sheehy et al 2009: 53). So, this is why corporate law is concerned with the regulation of the internal structure of the corporation, the rights and duties of shareholders and directors. Unfortunately these regulations, like we have seen, are not adequate to protect us against corporate misbehavior and the Western corporate law needs to be improved to achieve the Common Good. Of course there are some very good recommendations, for example, every commercial corporation has to give its government the "Golden Shears", these shears permit the government to maintain some fundamental controls over a corporation but these shears are

simply voting shears and do not have equity rights, so the government does not have to think about the money and profits when it votes; secondly, we should set standards to be required from corporate directors, these standards would require knowledge of more than business or military matters (like in the case of PMSC-s), they should understand the laws governing war and human rights and apart from those laws they should know environmental and moral concerns their profit margins may cause for the society at whole; thirdly, we may issue the law that changes the board composition, namely every corporation needs to have a non-business personnel, humanitarian or governmental representative, to ensure at least compliance with the minimal norms of international law (Sheehy et al 2009: 60, 63 – 64). Regrettably those are only recommendations not the laws. So, we have seen that corporate law is not the best mechanism for regulating PMSC-s and it is understandable because today's corporate law could not even sufficiently regulate ordinary corporate entities and trusts. For example, in the Enron bankruptcy case, hundreds of investors lost their money but the Wall Street financial institutions, like J.P. Morgan Chase, Merrill Lynch, *Deutsche* Bank etc., not only knew about the misconduct of Enron but they themselves designed some of the fraudulent documents to profit from Enron's misbehavior and in the end no investment banker got in trouble when it came out and banks did not have to pay any of their profits back to the investors that they knowingly defrauded. (McLean, Elkind 2003). Yet, some kind of regulatory method must be used to regulate PMSC-s.

It is quite understandable that lot of citizens instantly believe that states must have the responsibility to regulate commercial corporate entities but we have seen that even if they regulate they might not get the outcomes they wished. So, before we look at the most known state regulation acts, we should look at the self-regulation in the private military-security industry.

Self-regulation is not a new idea (it has been used by other industries for years); however, it is a model that has become increasingly popular for a number of reasons. Participants in the industry are deemed to be the most knowledgeable about the challenges and proper practice of their particular occupation and hence argue that they are in the best position to design implementation and administration of the regulation. Furthermore, it is considered to be cheaper because government does not only avoid the cost involved in creating the regulation, it also avoids the costs of funding administration of the regulation. (Sheehy et al 2009: 112) Besides that, industries themselves are quite keen to self-regulate because of number of reasons. Firstly, it helps industry deal with industry-wide problems such as problems with public image; distinguishes its goods and services from competition; helps defeat undesirable

pending government regulation; helps to marginalize consumer collective actions and helps develop cooperation with different companies inside the industry to enhance profits from limiting competition in the market (Gunningham et al 1998: 159 – 163).

One of the main problems with the private military-security industry is its image; the problem is that public is not accepting the industries legitimacy claims and activities of PMSC-s. Nevertheless, using the public relations “wizards” industry has significantly improved its image by emphasizing its potential benefits. They have used different methods, like naming there industry association International Peace Operations Association (IPOA), at the same time they are emphasizing there support to humanitarian ends and condemning “Ruthless Humanitarianism” (humanitarian aid and peace only through political process); they have even emphasized loyalty to national foreign policy and to patriotism. Despite some problems with there image, they have been extremely successful with distinguishing there services and goods from there competitors (mercenaries and government) and cooperating among themselves. Therefore, by doing that they have enhanced the safety of their members’ employees in the field and obtaining larger contracts by coordinating the supply of services. So, when questions about regulation appeared in the debate, IPOA itself became the main supporter of the regulation because its members knew that the growth and unregulated nature of the PMSC industry is causing governments, the public and users of security services to become nervous. Of course industry quickly used its associations to construct voluntary regulatory code of conduct for its members and sponsored the development of Voluntary Principles on Security and Human Rights which governs the dealings with PMSC-s. (Sheehy et al 2009: 112 – 113)

So, it seems that through self-regulatory methods private military-security industry has the ability to control its member’s behavior because the code of conduct constructed for PMSC-s does not change when company changes its legal jurisdictions, for example moves from US to Kuwait. Is this the regulatory method we have been searching for and can this self-regulation work for private military-security industry?

Problems, however, with self-regulation is that it must address three particular challenges to be successful. First self-regulation tends to be inappropriate and ineffective the larger the group and furthermore, self-regulation tends to be difficult and/or ineffective unless consumers or peers can identify and punish breaches of code (Purchase 2004: 81 – 82). Finally, self-regulation is only appropriate in that “minority of cases in which industry interests and public interest are sufficiently coincident for self-regulation to be a viable regulatory strategy” (Gunningham et al 1998: 159). Unfortunately, problem here is that

private military-security industry, with its self-regulatory methods, is unable to be accordance with those three principles. So, what are the problems? First of all, private military-security industry wishes to avoid any kind of prosecution of its members. Besides that, the industry is extremely large. It is quite complicated to say how many PMSC-s there are because there are no solid databases but some claim that there are several hundred companies globally, operating in over one hundred countries on six continents (Singer 20.12.2011).

Thanks to the nature of its business, it is a secretive industry and because of the lack of information, it is not a good candidate for self-regulation at all and as to the coalescence of public interest and private interest one must note that while one party wants free peace and safety, the other party is prepared to engage in violence for profit. Even further, there is no industry body that has an enforcement mechanism with a degree of independents and substantial penalties to back those voluntary regulations that industry has developed. For example, the most widely used Code of Conduct in the industry is IPOA's (the largest association of the industry), however, like most voluntary industry codes, it is written in very general terms and is not enforceable in any meaningful way. There is no complaint mechanism in the Code, which decreases the likelihood that any breach of the Code will be reported. There is also no mention of a compliance officer or a regular audit process and if the member breaches the Code then the only sanction they face is being dismissed from the IPOA. So, if the private military-security industry wishes to implement an effective voluntary regulatory regime it will need to revise the Code by removing the words "to the extent possible and subject to contractual and legal limitations" and introduce a requirement to abide by international law and international humanitarian law and that Code would need to be further amended such that members would be prohibited from entering into a contract that is contrary to the Code. It is simply not acceptable for PMSC-s to argue that they are effectively self-regulated if they are not obligated to follow international humanitarian law and human rights or not to abide by their code of conduct if it conflicts with their contractual obligations. Unfortunately, even the Voluntary Principles on Security and Human Rights, developed by governments, international corporations and NGO-s but sponsored by the industry, could not help the case for self-regulation inside the private military-security industry because like the Code, it is written with no attempts to draft clauses that could be interpreted in a legal sense and of course it has no enforcement mechanisms or sanctions found in the text. (Sheehy et al 2009: 114 – 118) So, again we see that this regulatory method is not suitable for private military-security industry and that is why we need the compulsory regulation for this military-security industry.

Those specialists who are arguing against state regulation of PMSC-s place great emphasis on the fact that PMSC-s are subject to the same laws as every other citizen, who works for the state, same state that is governed by the Rule of Law. So, by that logic, PMSC-s are already regulated by states as any other corporate citizen. However, we saw that this kind of corporate regulation is ineffective and it does not only work for PMSC-s, also, it does not work for any corporate entity (especially multinational business conglomerates). Furthermore, those people that are opposing PMSC regulation would argue that the time and cost involved in establishing an effective PMSC regulatory regime is unjustified both in terms of the risk posed by PMSC-s and the benefits that will accrue to the state; they even emphasize the markets ability to regulate, through its competitive forces, constraints and incentives (Sheehy et al 2009: 120). However, those people against regulation of PMSC-s should know that companies themselves and the IPOA is calling for regulation, maybe because through government regulation there right to exist is acknowledged. Companies know that regulated industry is good for business but it is important not do let governments regulate too much of their industry.

The arguments in favor of greater state regulation of PMSC-s can be reduced to simple propositions: first, some states are concerned that private military-security companies can be involved in unsanctioned acts of violence or aggression. Governments need to look only to the recent past to document a huge quantity of inappropriate PMSC activities, like Sandline's offensive operation against Bougainvilleans in Papua New Guinea (Dorney 1998), or CACI's and Titan's interrogation and abuse scandal in Abu Ghraib (Banbury 20.12.2011), that has caused anger and embarrassment for the states and has challenged its ability and duty to protect life, maintain security and even uphold sovereignty. Of course, governments are worried about unregulated PMSC industry based in their territory because it poses a risk to the state and/or its citizens. The risk could be limited to international condemnation for providing safe haven to rogue PMSC-s or could be more far reaching, for example, where private military-security company is threatening states internal sovereignty. So, because the PMSC-s are operating within the state there is pressure, domestically and internationally, for that state to move preemptively to impose regulatory controls over those PMSC-s that fall within its jurisdiction. (Sheehy et al 2009: 120)

Even the UK government (notorious for its close involvement with the business in question) noted that there were two primary arguments favoring regulation of the private military-security industry in their Green Paper from 2002; the first was the need to keep non-state violence under control and the second was the recognition that the nature of the transactions

entered into by PMSC-s are atypical commercial transactions with the potential to impact the stability of a country or region, so, according to this, regulation is necessary for PMSC-s to hold them accountable for their actions (Green Paper 20.12.2011).

Researchers, unfortunately, are divided over the efficacy of national regulatory efforts. J. Zarate believes that regulation at the national level is important for securing accountability of PMSC-s. He has noted that private military-security firms tend to be based in militarily advanced countries; so, on the practical level, this allows private military-security companies ease of access to military expertise and networks of retired military officers and on the strategic level, it allows PMSC-s to claim some form of state endorsement as the state has either tacitly agreed to the PMSC-s operation within its territory or it has expressly regulated the private military-security firms headquartered in relation to its contacts. So, if a state has introduced a regulatory regime to control PMSC-s then it should be able to exert a degree of control over the activities of PMSC-s incorporated and headquartered within its territory. (Zarate 1998: 76 – 78) Other researchers, like P. W. Singer, believe that regulation at the national level is doomed to fail; he notes that the ability of private military-security companies, as corporate entities, to dissolve, reform and move across borders with minimal effort makes them extremely difficult to control by states but there are other impediments to effective state regulation; firstly, the difficulty of defining precisely what the PMSC is and what it is about PMSC-s that is in need of regulation and secondly, the practical difficulties of designing and enforcing regulation that requires extraterritorial applications. Despite his skepticism about PMSC regulation generally, Singer notes that among the choices national regulation of private military-security firms offers hope of superior legal definition and enforcement. (Singer 2004a: 524, 534 – 537)

States advocating the regulation of PMSC-s need to clearly articulate which elements of the work undertaken by PMSC-s requires regulation. Before this task can be tackled it is necessary for a state to identify its regulatory objectives: Does it want to prohibit all private combat soldiers or perhaps all armed soldiers who are doing anything other than guarding an object or person? This type of regulatory focus would help address the issue of mercenarism but again definitional problems and disappearing difference with companies in the industry makes this focus problematic. Alternatively, a state could choose to tackle PMSC-s generally by controlling the type of contracts companies are permitted to enter into, so, the states will have to delimit the appropriate realm of activity for PMSC-s and then decide on the appropriate criterion for regulation. The criterion for regulation could include one or more of the following aspects of PMSC activity: The nature of the PMSC services being rendered, the

identity of the customer retaining the PMSC and their motive for retaining the private military-security companies services, the suitability of the PMSC providing the services or the physical location in which the PMSC services are rendered and of course the control of potentially lethal force. This latter criterion is the most important because the infliction of violence is the main matter of concern and hence potentially the critical activity for regulatory focus. The efficacy of the respective regulatory criteria would depend on the state's ultimate regulatory objective and most importantly, its political will (we talked about the lack of it in previous chapter). (Sheehy et al 2009: 126)

So, in the next section we will look at the ways number of states have approached the issue of PMSC regulation, however, we should not hope that state regulation is much more effective than other methods we talked about because thanks to the lobbyists of the industry and national interests these state regulations are much weaker than they should be.

The US Arms Export Control Act of 1968 regulates both arms brokering and the export of military services. This Act now constitutes the primary law in the US establishing procedures for the sale of military equipment and related services. All US companies who are offering military advice to foreign nationals in the US or overseas are required to register with and obtain a license from State Department under the International Transfer of Arms Regulations (ITAR), which implement the Arms Export Control Act. The Government may refuse to issue a license if it believes that company is not upholding the high standards of the USA. (Green Paper 20.12.2011) One of the criticisms directed against the US licensing regime is that, pursuant to the ITAR, Congress does not need to be informed of a contract in advance of the issuance of a related license unless the contract is valued at over \$50 million and the other problem with this regime is that once the company receives a license there are very limited oversights or reporting requirements. A further drawback of licensing regulatory schemes is that some may interpret the issuance of a license as evidence of state sanction for a particular PMSC activity, (Sheehy et al 2009: 130 – 131) and these people are quite right because states very often are using private contractors for obtaining their foreign policy objectives (I talked about this extensively in my previous chapter). Besides, it is not difficult at all for private military-security company to get its license from the US government, even if the US government is not discretely involved with the client.

Of course this licensing system could be more effective tool against PMSC misbehavior. It should be more transparent and monitored more effectively but in the absence of more effective national legislation in other states, this US model is often held up as a good example of PMSC regulation. By concentrating on exports it offers some control of private military-

security firms that are operating in weak states that are unable to exercise any effective control and it sets some minimum standards for PMSC-s operating from US but it must be acknowledged that those standards are unfortunately nothing more than the whims of the president in power. (Sheehy et al 2009: 131)

As outlined in the Green Paper, the UK government has considered regulating PMSC-s in a variety of ways. Proposals have included enacting a complete prohibition on their activities, imposing a licensing regime on the provision of military services or permitting the PMSC industry to self-regulate through a voluntary code of conduct (Green Paper 20.12.2011). However, in the end, Foreign Affairs Committee recommended that Britain needs to develop a limited form of regulation that would not disrupt the “legitimate” activities of the PMSC industry. This kind of light regulation of private military-security industry allows UK to suggest that it is cleaning up the industry while at the same time benefiting from the widespread availability of unfettered PMSC-s. It is quite understandable, as some commentators suggest, that UK benefits directly from a close working relationship with disreputable private military-security companies and other British firms (like BP), that need these disreputable private military-security firms to further their business interests. Of course it is quite hard to prove but this might be the reason why UK government prefers light regulation and has not yet prosecuted and convicted any of PMSC-s involved with scandals, like “arms to Africa”. Regardless of speculative motives, the UK preference for light regulation fits well with the neo-liberal ideology that seeks to leave the market to regulate itself. (Sheehy et al 2009: 137)

The military-security industry in South Africa is a multimillion dollar business and there are about 4000 citizens currently working in the industry, some believe that this number is closer to 20 000. Given the apartheid history of South Africa and the pool of available military and security personnel, the statistic is not particularly surprising. To respond to this South African Parliament adopted a law regulating private military-security companies in 1998: The Regulation of Foreign Military Assistance Act 1998. Anyway, in 2005 South African government started their deliberations on a replacement law (The Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Bill), (Sheehy et al 2009: 132 – 133) but it is not yet in effect.

With the Act of 1998, all companies and individuals were prohibited to take part in combat operations for private gain, it also prohibited the recruitment, training and financing of mercenaries. The legislation established a license-base regulatory scheme; a person or company wishing to provide military related services has to first register with National

Conventional Arms Control Committee (NCACC), obtain governmental approval and then receive authorization to enter into a specific contract with the third party for the provision of these services. The decision on whether to approve the license lay with the Minister of Defense who acted on advice from NCACC. The strength of the Act is that it bans mercenary activities and regulates the provision of foreign military and security services abroad but this Act has an enormous weakness, it bites off more than it can chew; in the process of regulating those offering “foreign military assistance” it is in fact regulating all manner of service providers operating in the armed conflict situation, some are not even connected with security services. Besides that this Act has no effective parliamentary oversight, so, it is easily corruptible. Apart from this, large numbers of PMSC-s in South Africa and their employees have ignored the Act and it has not stopped preventing South African citizens and companies from providing a range of military services in Iraq and elsewhere. Of course this Act has never secured a legal conviction. (Sheehy et al 2009: 133 – 134)

The new Bill (will replace the Act of 1998) prohibits mercenary activity as well but in this Bill the mercenary activity is defined broadly, it includes not only participation for private gain in an armed conflict but also recruiting, training and financing a combatant in an armed conflict and it does not matter if you are participating directly or indirectly in armed conflict. The Bill now seeks to regulate PMSC-s by dictating when juristic persons, citizens or those permanently living in South Africa (foreigners when they commit offences within South Africa) can provide military/security assistance or service in conflict area. Furthermore, because of the tendency of PMSC-s to pose as humanitarian organizations the Bill also regulates humanitarian assistance offered by South Africa in conflict area. However, this new Bill is as toothless as the Act of 1998 because both of these legislations do not have an effective “big stick” to prosecute the individuals or companies that have breached the Act or will breach the new Bill. (Sheehy et al 2009: 134 – 135)

So, we see that those national regulatory systems are not very effective against the giants of the industry but despite that they still produce some minimum regulatory control and help the national and international legal institutions to produce more effective regulatory methods; there are some very good recommendations how we could control and regulate the private military-security industry but before we talk about those recommendations, we should talk about international law. Maybe the new international regulatory system can produce the effects we did not see in the industry or national level?

There has been number of documented abuses connected with PMSC-s, in the case of Abu Ghraib, various international norms were violated, including the Convention against Torture

and the 1949 Geneva Convention which prohibits governments from taking such actions, however, the ambiguous legal status of PMSC-s under existing international law offers leeway for countries to not only bend but also occasionally breach their international legal obligations, thus threatening the very fabric of international legal order (Dickinson 2005: 152 – 153). Rights and duties that exist between the military and its contractors constitutes an uncertain, legal gray zone and so substantially reduces the potential for military to observe international legal obligations, the main problem is that the command and control, essential for military operation in the theater of conflict, is unclear with regard to private military personnel. As in the case of Iraq, commanders do not often know what the daily actions of firms are in their zones of responsibility. (Sheehy et al 2009: 143) In short, the difficulty with PMSC-s is that thanks to their wide range of services it is extremely difficult to create international regulatory system to control, observe and punish the companies that breach international law. However, there are some international conventions that can be used to regulate some aspects of private military-security industry (laws that govern the behavior of combatants in war) but it is not enough. Like we already showed in our previous chapters international humanitarian law does not mention the term “private military-security company” only “mercenary”. This, however, leaves wide legal openings and private military-security companies are extremely clever and skilled to exploit them. Besides without political will (from major governments) and effective insistence for universal convention against unregulated PMSC-s (from international organizations, NGO-s and charities) there will be no improvement for this case on international stage. So, it might look like that there is no regulations for PMSC-s in the international level.

However, it is well established rule of international law that breaches of international law committed by individuals classified as state organs will engage state responsibility, even if forces exceed their authority and acts are performed privately (Sheehy et al 2009: 158). Besides, according to industries understandings of legitimacy (discussed in previous chapter) every client that contracts services from private military-security companies is liable and accountable of any action conducted by the companies, it is impossible for clients to deny their involvement. However, in the real world nobody has ever been convicted of breaking the rules and misbehaving in operation conducted by PMSC-s (neither clients nor companies). For example, in 2007, the US government investigated the accusation that Blackwater employees are smuggling illegal weapons into Iraq, of course no charges were filed (MSNBC 24.07.2012). Thus, it shows that national and international levels are very closely connected, it might not be the better regulatory system but in the end it might provide prosecutors legal

“ammunition” to punish the misbehaviors, if not legally then commercially, by making the company’s stock plummet.

It is understandable that there is no easy formula for regulating PMSC industry. So, various forms of regulation will likely have to exist. State regulation would likely be most effective if there were a statutory regulatory body; this body should be wholly independent of the private military-security industry lobby. It would be tasked with regulating and administering the industry and have responsibility for overseeing the vetting of personnel and directors, it would be charged with the development of further regulation, the investigation of complaints and incidents, the conduct of independent spot audits and the provision and re-sourcing of observers. It will be important to keep a clear space between the self-regulatory body and the legislative scheme and regulatory agency for the obvious danger of regulatory capture inherent in close industry-regulator relations. Given the clear danger to the people from PMSC activity, the protection of the people must always be given priority over PMSC interests and communication between a regulator and PMSC must always be open to public scrutiny. (Sheehy et al 2009: 139 – 140) Singer, however, suggests some kind of international body that will operate under the auspices of the UN as designed and informed by governments, the academy, NGO-s, and the firms themselves could establish the parameters of the issues and lay out potential forms of regulation, evaluation tools and codes of conduct because he believes that PMSC-s have the opportunity to escape local regulations, so, it needs international body to be effective. This body would be charged with auditing PMSC-s and their contracts to prevent PMSC-s from being retained by unsavory clients or engage in actions contrary to public good. This body would have the power to demand operational oversight and appoint observers who would be tasked with ensuring the LOAC and contract terms are not breached and furthermore, Singer recommends that this body should not only punish misbehaviors with market remedies but with full legal power and to achieve this PMSC-s should submit to host state jurisdiction or be submitted to universal jurisdiction of the ICC. (Singer 2004b: 17 – 22; Singer 25.12.2011) Of course those recommendations are not yet governing the military-security industry but hopefully in near future they will be implemented but we should understand that this industry is still in developing stage and that means that regulatory methods that might work today might not work for the military-security industry tomorrow.

Conclusion

It does not matter if private military-security companies conduct legal or illegal operations; they have established themselves as important actors on the international stage. As with any international system, the provision of private security is closely related to the structure of the security sector as a whole and the key factors that define this context in today's international system are military downsizing, technology, monetary efficiency and political expediency. (Kinsey 2006: 151) Besides, I am sure that it is self-evident to everybody by now that these actors are not disappearing any time soon. It would require a change to the nature of the international system and even then, certain parts of the industry, particularly IT companies that service advanced weapons systems, will in all probability remain.

Like we saw in this paper, there is only one universal legislation that deals with private violence, however, it only defines the term "mercenary" and does not mention any actions that might be considered somewhat close with mercenary activity. This only legislation is the 1977 First Additional Protocol of the Geneva Convention of 1949. Of course, there are other international documents, like 1989 UN Convention against mercenary activity and OAU document, but they are not working, mainly because they have the exact same inherent definitional weaknesses as Additional Protocol, besides these documents are ignored by every major state in the world (UN Convention is not even ratified by the Power Houses of international community and if we look at the current situation they will probably never ratify it or at least not in this form) So, only document that has even some legal power is the Additional Protocol. However, this legal document is outdated and it is not usable to determine the definitive legal status of those post-Cold War private commercial entities we call private military-security companies. Therefore, all the today's private military-security companies are flourishing and conducting international contract operations within a vacuum of effective and applicable international legislation that truly defines and establishes their international legitimacy (Goddard 2001: 80).

Private military-security companies have this legitimacy problem because there are no legal documents that deal with them, so, it is hard to get some legitimacy if you are not mentioned in any of legal documents. This situation is occurred because many national governments have balked all the effective means to create universal legislation that deals with PMSC-s, mainly because this obscure situation benefits them and probably military-security industry as well (more governmental contracts). This situation includes those Western governments who

seek to exploit the opportunity to utilize selective PMSC-s for the discrete execution of contentious aspects of their national foreign policy as well as those nations who seek to contract PMSC-s for assistance in effecting their own integral national security (Goddard 2001: 80). Of course states are not alone. Thanks to the increasing significance and use many others, like international organizations, NGO-s and so on, have started to ignore the problem of legitimacy and because of that they do not demand, as loudly as they should, universal convention that could effectively define, control and regulate the activities of private military-security companies. Therefore, it is not surprising that private military-security companies (legal corporate entities that provide military and security services for commercial gain) have created their own understanding of legitimacy. According to them, legitimate clients that use their services provide legitimacy to their operations and for them. Unfortunately, this kind of PR trick (helped by industries legal professionals) does not change the fact that there is no international law that gives them any legitimacy. So, in strict legal sense PMSC-s are in fact illegitimate actors in the international stage and therefore their operations are illegitimate as well.

Regulation is very controversial and problematic topic, especially when we talk about private military-security companies. However, not only activists and researchers are dealing with the questions of regulation and control. Because of the problems private military-security companies face with legitimacy, they have understood that legitimacy problem can be “buried” if they can produce some regulatory and control system for themselves (of course it should be the system that industry controls). Even states have seen the benefits of regulation because it does not only protect governments’ officials and the industry but it will be a popular move for voters, of course too much regulation and control is not good for anybody. Therefore, it is not surprising that industry has started to talk about self-regulation. Industry has even produced a Code of Conduct for everybody working in military-security industry; however, there is no compliant mechanism in the Code, which decreases the likelihood that any of breaches of Code will be reported to proper authorities, besides there is no mention of a compliance officer or a regular audit process and if the member breaches the Code then the only sanction they face is being dismissed from the IPOA (industries association). So, self-regulation method is insufficient without a framework of international or national regulation. Unfortunately, there is no effective international legislation (like we saw already); it needs collective international will for it to exist, however, it does not exist, yet. So, effective international regulation will remain at its current impasse, waiting for better times and substantial international dialogue and consensus. Lacking any effective international

regulation, the final tier of regulation rests at the national level (Goddard 2001: 82). There are many good methods that states use, however, they are too weak and too easy to manipulate to work properly and regulate military-security industry effectively. So, PMSC-s are not effectively nor consistently regulated at either the international or national levels. However, real potential in the forms of accreditation, certification, and effective legislation does exist at both the international and national levels for this current situation to be reversed (Goddard 2001: 83), political will has to be achieved and it is not only the obligation of the states; all the clients of this industry have to understand that the situation we are in can not last.

Same problems are with the accountability, it seems logical that clients that contract services with companies share the accountability. This idea has been widely accepted, however, no company or its client has ever been properly convicted (they have been accused and fined and some of the employees have been fired for misbehaving) of any crime made in the operational environment. Nobody holds this industry accountable for its actions, however, it is not hopeless, it only requires will; unfortunately it is not yet beneficial for the major players of the international environment to have clarity about accountability.

It seems that private military-security companies have not lost their momentum because of their legitimacy problem; they have grown to be one of the most significant actors in the international stage. However, they will always be accused of being mercenaries (of course it is not true, there are significant differences between them and mercenaries) and they will never be equal to other legitimate actors in the international stage until proper universal legislation that defines them is ratified and in force.

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Kokkuvõte

Sõjanduse- ja julgeolekuga seotud eraettevõtted kui õiguspäratud toimijad rahvusvahelises julgeolekukeskkonnas

Külma sõja lõpp tõi endaga kaasa tohutuid muutusi: ei muutunud ainult geopoliitiline struktuur ja jõuvahekorrad maailmas, vaid esile kerkisid ka uued toimijad, kes küll eksisteerisid Külma sõja viimastel kümnenditel, kuid olid riikidest sõltuvad ja ei omanud suurt mõju üleüldisele julgeoleku keskkonnale. Alles pärast Külma sõda leidsid nad endale kindla koha rahvusvahelisel tasandil. Tänu sellele, et superriigid oma endised „liitlased” vähearenenud riikides mahajätsid, puhkesid 1990-ndate mitmel pool konfliktid, mida hakati teadusringkondades kutsuma „uuteks sõdadeks”, erinevus siinjuures eelmistest sõdadest seisneb identiteedi poliitikas. Omavahel konflikti sattuvad rühmad ei sõdi sellepärast (vähemalt mitte ainult), et saavutada kontrolli suurema ja/või parema territooriumi üle; konflikti põhjuseks on rahvuslik, usuline jne. küsimus ning ainus võimalus võita on vastane täielikult likvideerida. Sellepärast pole ka ime, et seesugust sõda iseloomustab ülemäärane jõhkros (mass tapmised, süstemaatiline vägistamine jne.) mitte ainult lahinguväljal, vaid kõikjal konflikti piirkonnas. Üksi jäetud, idablokk oli kokkuvarisenud ning Lääsi huvipuudusel ükskõikne, olid vähearenenud riigid sunnitud abi otsima uutelt tegutsejatelt rahvusvahelisel tasandil, kelleks olidki sõjanduse-ja julgeolekuga seotud eraettevõtted. Tegemist on ettevõtetega, kes pakuvad kleintidele teenuseid, mis on seotud sõjanduse-ja julgeolekuga, nende hulka kuuluvad võitlusüksused, treening, toetust pakuvad üksused (õhujõud, meditsiiniüksus jne.), kaitse, julgeoleku tagamine, luureteenus, isegi ülesehitus tööd ja logistika ning palju muudki. Carlos Ortizi definitsiooni järgi on sõjanduse-ja julgeolekuga seotud eraettevõtted need ettevõtted, kes on seaduslikult loodud ja teenivad kasumit pakkudes oma klientidele sõjalist ja julgeoleku süstematiseeritud teenust, samas ei pea neil ettevõtetel olema aktiivset militaarset rolli, siiski peavad nad olema suutelised oma kleindi sõjalist ja/või julgeoleku võimekust tõstma ning tagama (Ortiz 2004: 206).

Julgeoleku erastamine ei ole midagi uut, seda on tehtud juba sajandeid, kuid pärast rahvusriikide loomist ning kodanike armeede esilekerkimist 19. sajandi keskel antud ärimudel haihtus. Siiski ei saa me sõjanduse-ja julgeolekuga tegelevaid eraettevõtteid seostada ajalooliste palgasõduritega ega nendegagi, kes Külma sõja perjoodil Aafrikas ja mujalgi tegutsesid. Erinevus siinkohal tuleneb sellest, et sõjanduse-ja julgeolekuga tegelevad

eraettevõtted on ärid, kellel on kindel struktuur, juhtkond, töötajaskond ning peakorter, samas kui palgasõdurid seisavad väljaspool seadust ning on sunnitud sellepärast oma tegutsemist varjama. Samuti ei ole palgasõdurid huvitatud oma maine hoidmisest, sest niikuinii oled oma tegevuse pärast kurjategijaks tembeldatud. Siiski ei ole lihtne kedagi lihtsalt palgasõduriks olemise pärast vangi panna, sest definitsioon on väga kindel ning isik peab vastama kõigile esitatud tingimustele. See eest meid huvitavad eraettevõtted on vägagi huvitatud, et nende maine oleks positiivne, sest maine rikkumine toob kaasa lepingute üles ütlemise ja üleüldise majandusliku kahju (usalduse kadumine mõjutab tugevalt ettevõtete aktsiate hindu börsil). Nagu juba eespool sai öeldud, tänapäevased sõjanduse-ja julgeolekuga tegelevad eraettevõtted ei ole saanud alguse palgasõdurite organisatsioonidest (Vabad kompaniid), mis said alguse 14. sajandil. Neil kompaniidel puudub seos tänapäevaste eraettevõtetega, kes sõjandus ja julgeoleku teenust pakuvad, mitte ainult sellepärast et neil oli väga piiratud haare ja teenused, vaid kogu nende struktuur ja ärimudel oli täiesti erinev. Sellepärast ongi leitud, et antud eraettevõtete ajalooliseks embrioks on 17. sajandil tegutsemist alustanud kaubanduskompaniid (näiteks: Briti Ida-India Kompanii), kes mitte ainult ei loonud sarnase struktuuri, juhtimiskorralduse ja ärimudeli, vaid pakkusid tänapäevastele kompaniidele sarnaseid teenuseid, nagu näiteks kaitset, võitlusüksusi, luuret, sõjatehnoloogiat jne.

Hoolimata sellest, et need kompaniid on kasvanud ühtedeks mõjuvõimsamateks toimijateks rahvusvahelisel tasandil, ei ole nad probleemidest priid. Peamiseks probleemiks ongi neil ettevõtetel nende legitiimsus ehk tegelikult selle puudumine. Rahvusvahelise õiguse seisukohalt pole neid üldsegi olemas, sest termin „erajulgeoleku ettevõte” ei esine kusagil rahvusvahelise õiguse dokumentides. Samuti on kõik praegused õiguslikud dokumendid, mis tegelevad vägivalda erastamisega ajale jalgu jäänud ehk kaotanud igasuguse võime kuidagigi reguleerida kaasaegset julgeoleku keskkonda. Siiski püüavad sõjanduse-ja julgeolekuga tegelevad eraettevõtted läbi PR-kampaaniate tõestada, et neil on õigus ja seaduslik alus oma teenuseid müüa legitiimsetele klientidele. Nendeks klientideks pole mitte ainult õiguspärased valitsused, vaid ka rahvusvahelised organisatsioonid, mitte-riiklikud organisatsioonid, hargmased korporatsioonid ja heategevusorganisatsioonid. Tänu just erajulgeoleku ettevõtete klientidele on rahvusvaheline õigusruum ilma konventsioonita, mis määratleks ära sõjanduse-ja julgeolekuga tegelevate eraettevõtete tegevuse ning õigusliku staatuse. Peamiseks põhjuseks on poliitilise soovi puudumine. Mõjuvõimsatel riikidel (USA ja teised Lääneriigid) puudub huvi sellepärast, et erajulgeoleku ettevõtete abil on nad võimelised täitma salaja oma välispoliitilisi eesmärke, sest alati ei ole võimalus seesugustel riikidel saata oma lahingüksusi või riiklike nõuandjaid kriisipiirkondadesse, probleemiks võiks olla näiteks

sisepoliitiline jõuetus „müüa” uus välispoliitiline eesmärk oma valijaskonnale. Teised legitiimsed klendid on aga samuti süüdi praeguses olukorras (erajulgeoleku ettevõtete tegutsemine legitiimsus vaakumis), tänu sellele, et nad on suurendanud märkimisväärselt sõjanduse-ja julgeolekuga tegelevate eraettevõtete kasutamist (kompaniide kasutus on just suurenenud rahvusvaheliste organisatsioonide ja mitte-riiklike organisatsioonide seas, sest erajulgeoleku ettevõtted ei taga neile vaid efektiivset kaitset ja logistilist toetust kriisipiirkondades, vaid vähendavad oluliselt ka kulutuste suurust, mis kuluks kriisipiirkondades tegutsemisele ning inimeste palkamisele). Seesugune sõltuvussuhe on toonud endaga kaasa olukorra, kus valjuhäälsed kriitikud on muutunud klientideks, kes enam ei ole nii valjuhäälsed erajulgeoleku ettevõtete kriitikud ega rahvusvahelise konventsiooni (mis defineeriks ja reguleeriks erajulgeoleku ettevõtteid) nõudjad. Tänu seesugusele ebaharilikule olukorrale on sõjanduse-ja julgeolekuga tegelevad eraettevõtted loonud endajaoks uue legitiimsussüsteemi, selle järgi annavad just õiguspärased klendid, kes erajulgeoleku ettevõtteid kasutavad, neile ja nende operatsioonidele legitiimsuse (legitiimne klient, kasutades erajulgeoleku ettevõtte teenust, tunnustab selle ettevõtte seaduslikkust ehk legitiimsust). Kahjuks ei muuda seesugune „trikitamine” fakti, et erajulgeoleku ettevõtted pole mainitud üheski rahvusvahelises konventsioonis, mis omakorda tähendabki, et ranges õiguslikus tähenduses pole ükski erajulgeoleku ettevõtte ega tema operatsioon õiguspärane.

Antud tööstuse regulatsiooni puudulikkus on olnud probleemiks juba aastaid ja seda on tunnistanud ettevõtted isegi. Probleem seisneb selles, et nii tavaline äriõigus kui ka tööstuse enses regulatsiooni meetodid pole piisavalt tugevad, et ettevõtteid piisavalt efektiivselt kontrollida, samuti on tänasel päeval ebapiisavad riikide eneste õigussüsteemid, rahvusvahelisest õigusest rääkimata. Muidugi on mingisugused seadused loodud, kuid nad reguleerivad ainult väikest osa tööstusest ja pole võimelised karistama neid ettevõtteid, kes reegleid rikuvad. Loodetavasti lähiaastatel valmib rahvusvaheline konvensioon, mis antud olukorda kuidagigi parandab. Sellegi poolest ei tohi me ootama jääda, vaid peame nõudma, et riigid ise siseriikliku õigusloomega antud olukorda parandaksid.

Sellest hoolimata, et erajulgeoleku ettevõtted on rahvusvahelise seaduse alusel õiguspäratud on nende mõju pidevalt kasvanud, pole maailmas kriisi ega konflikti, kus me ei kohtaks mõnda erajulgeoleku ettevõtet. Siiski ei ole need ettevõtted võrdsed teiste legitiimsete toimijatega rahvusvahelisel tasandil, kui pole vastu võetud ja ratifitseeritud rahvusvahelist konventsioon, mis mitte ainult ei defineeri meile erajulgeoleku ettevõtet, vaid määratleb ära reeglid, mida see tööstus ning tema liikmed peavad järgima koos oma klientidega.