

THE INVISIBLE FORCE

A comparative study of the use of private military and security companies in Iraq, the Occupied Palestinian Territories, and Colombia. Lessons for an international regulation.

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// INTRODUCTION

In line with the progressive trend to transfer public services and activities to the private sector (health, education, transport, etc), recent decades have seen the outsourcing of nuclear powers of state sovereignty as sensitive as military and security functions. While the presence of private actors – either mercenaries or contractors – in the military and security arena is not new, the scale and scope of their activities do represent a new phenomenon today. On the one hand, the States rely on private contractors to a greater extent than ever for guaranteeing public safety or supporting their war efforts abroad.

Internationally, in some recent conflicts, belligerent States have employed more private military and security contractors than members of their regular armed forces. At a domestic level, in some countries, private security personnel is already much larger than the active state police. On the other hand, the role played by these non-State actors has evolved greatly: now **private military and security companies (PMSCs) support and even replace soldiers and/or public security officers in a number of situations that include armed conflict, prolonged military occupation, peacekeeping, maritime security missions, stabilisation and reconstruction in post-conflict institutional building, and emergency crisis**. As a result, their role is now far beyond initial private contractors, and in particular involves a wide variety of activities, some of them very sensitive. These include the interrogation of detainees, protection of military assets, intelligence gathering, training and advising of armed and security forces, managing of checkpoints, control of borders and, in some cases, even participation in combat operations.

The PMSC industry is multinational in its human composition as it employs individuals, usually ex-soldiers or ex-militiamen, of multiple nationalities. It is also transnational in nature and moves comfortably in the broader context of multinational companies. Indeed, the private security industry has also grown and consolidated thanks to its contracting by clients other than the States, such as private corporations, inter-governmental organisations and non-governmental entities. The UN Working Group on the Use of Mercenaries defines a private military and security company as “a corporate entity which provides, on a compensatory basis, military and/or security services by physical persons and/or legal entities”.¹ Yet, PMSCs should not be considered as ordinary commercial entities or commodities. On the contrary, they are very sensitive entities because are authorized to use of potential lethal force in environments designed to avoid public scrutiny and where supervision and accountability is legally uncertain and practically difficult.

¹ Military services refer to “specialised services relating to military actions, including strategic planning, intelligence, investigation, land, sea or air reconnaissance, flight operations of any type, manned or unmanned, satellite surveillance, any kind of knowledge transfer with military applications, material and technical support to armed forces and other related activities”. Security services refer to “armed guarding or protection of buildings, installations, property and people, any kind of knowledge transfer with security and policing applications, development and implementation of informational security measures and other related activities”. See UN Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the people’s right to self-determination, (UNWGM), *Draft convention on private military and security companies*, UN Doc. A/HRC/15/25, annex, 5 July, 2010.

During recent decades, PMSCs have been involved in grave human rights violations abroad that have attracted international concern and debate over the legitimacy of PMSCs, the norms that should guide their operations and the mechanisms to monitor their activities. PMSCs have also engaged in corruption and fraud scandals that triggered alarms at an institutional and political level over their transparency and management. Overall, privatization dynamics raise several questions in the field of ethics, politics, law and sociology, the answer to which cannot be constructed in isolation. However, **some of the problems attached to PMSC activity could be addressed by better regulation of the industry.** This issue is currently the object of an intense debate at an international level.

So far, the international response to the phenomenon has not adopted the abolitionist approach which mastered the international regulation of mercenaries.² Discussions are being held around how to regulate and control the activities of these companies and through which legal vehicles. On the one hand, there is pressure for new international and national legislation to regulate PMSCs. This includes a Draft Convention by the UN Working Group on the Use of Mercenaries³ and secondly the establishment, by the UN Human Rights Council, of a specific intergovernmental working group with the mandate to consider the possibility of elaborating an international regulatory framework, including the option of a legally binding instrument, for PMSC activities.⁴ On the other hand, some states and PMSCs have explored best practices and a voluntary code of conduct for private contractors –including a specific oversight body – as part of the so-called Montreux process (Swiss initiative).⁵ Overall, while the public is in agreement that these initiatives are complementary to each other, in practice regulatory efforts at the UN have not achieved substantial progress so far. This is in part due to the pressure by certain Western States and the European Union, who argued that there is not yet sufficient consensus among participant States to start developing a binding international instrument.⁶

2 International law prohibits the recruitment, use, financing and training of mercenaries, but the legal definition of “mercenary” does not typically apply to PMSC personnel. See article 2 of the UN Convention against the Recruitment, Use, Financing and Training of Mercenaries, 1989. Under Additional Protocol I of 1977 to the Geneva Conventions of 1949 (article 47) mercenaries are not outlawed or criminalised but they are not given the protection of combatant status.

3 Id. See, <http://www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/WGMercenariesIndex.aspx>.

4 See *Open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies* <http://www.ohchr.org/EN/HRBodies/HRC/WGMilitary/Pages/OEIWGMilitaryIndex.aspx>

5 *The Montreux Document - on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict*, 2008. The Montreux Document [MD] is a non-legal binding instrument resulting from an international process launched by the Government of Switzerland and the ICRC. It contains a compilation of relevant international legal obligations and good practices for states in relation to PMSCs. https://www.icrc.org/eng/assets/files/other/icrc_002_0996.pdf In 2010 the International Code of Conduct for Private Security Providers [ICoC] was drawn up, and a soft-law instrument developed as a complement to the Montreux Document that contained a set of standards for security companies to respect human rights and humanitarian law. <http://icoc-psp.org/>. See also the Draft Charter for the Oversight Mechanism of the ICoC, and the ICoC Association [ICoCA] established in 2013, <http://www.icoca.ch/>

6 *Summary of the third session of the open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies*, 2 September 2014, A/HRC/WG.10/3/2, para. 46.

The International Institute for Nonviolent Action (NOVACT) is one of the civil society organisations (CSOs) publicly advocating for the adoption of a binding regulatory framework for PMSCs. We consider that regulation of PMSCs is a human rights issue, as security is every citizen's right and activities of PMSCs have potentially far-reaching implications for the human rights of local population of the countries where they operate as well as for their own employees. As noted by human rights advocates, "[w]henever privatization increases the potential for violating human rights and endangering human life, an increased level of monitoring must be demanded and more sophisticated and effective supervision mechanisms put in place, by as many regulatory bodies as needed".⁷ Therefore, we argue that both legal binding instruments and soft-law mechanisms are indeed necessary and should function in tandem.

On the other hand, the debate on the military and security privatization must also include a comprehensive discussion between the States and their civil societies about the ethics of outsourcing and the very concept of security. In this regard, we recall that the primary responsibility to ensure human rights relies on the States, and it is the States' responsibility to protect its citizens and their property on a non-discriminatory basis. Hence the States hold a monopoly on the legitimate use of force and such use must be motivated by public interest and regulated by the rule of law. By definition, private security is driven by private interests to provide military and security services which encourages individualism and inequalities rather than community bonds. **Civil societies must insist that true security requires the rule of law and the construction of solid public security institutions free of corruption and subject to democratic control.** In addition to public security, the States should ensure the exercise of other civil and political rights. In theory, public security should mean that citizens are viewed as subjects with rights, rather than objects.

The debate on the military and security privatization must also include a comprehensive discussion between the States and their civil societies about the ethics of outsourcing and the very concept of security.

Moreover, a deep analysis of the international threats of the XXI century shows how military solutions are ineffective and counterproductive. "Smart" solutions that focus on non-violence, social change and peace-building processes are more effective to deal with these new challenges. Civilian non-violent solutions produce more sustainable results and give more responsibility to citizens facing common challenges.

As part of this advocacy work, NOVACT joined other CSOs and engaged in an international campaign to promote international regulation over PMSCs as well as promoting alternative methods of conflict resolution and peace-building that could lead to the reduction of their use in certain contexts [*ControlPMSC*]⁸. Moreover, it has recently launched an **Observatory Project in order to document**

⁷ Quote. Association for Civil Rights in Israel (ACRI), Deployment of Private Security Guards in East Jerusalem (Excerpts Petition to the High Court), 2011.

⁸ <http://controlpmsc.org/>

human rights incidents involving private security and military personnel. The *Shock Monitor*⁹ is motivated by the identification of a deficit on statistics regarding human rights violations committed by PMSCs as well as the lack of official reporting of their abuses of public authorities and international bodies in a systematic manner. Methodologically, the Observatory is based on a co-operation with international and local researchers from Latin America and Middle East and North Africa. As well as CSOs of the countries under study, which gather information on human rights incidents, committed by PMSCs in their communities.

This paper is part of this work. It aims to compare three cases where PMSCs have long been present: Iraq, the occupied Palestinian territories, and Colombia. The purpose is to recommend specific regulations and to foster a public debate about the legitimacy and the impact these companies have on the prospects for long-term security in conflict and post-conflict countries. As such, the paper does not seek to conduct an exhaustive case study of the evolution of each conflict or the development of the PMSC industry, as this is a study that many academic articles, UN documents and previous NOVACT reports have done before. Rather, the analysis concentrates on providing an overview of the three cases where complex security is still an issue. It will study the role that PMSCs have played in the overall security environment and identify common elements of its development, regulation and impact that allow better regulations of the industry at an international level. To this end, the analysis of each case study follows the same logic and distribution.

Section 1 deals with the outsourcing dynamics that have taken place in each case concerning military and security functions, providing an overview of the main contexts of PMSC operation as well as the evolution of the security situation in the country.

Section 2 describes the national regulatory framework for the use and activities of PMSCs. According to each case, it explores aspects such as licensing, monitoring, identification, supervision, immunity and norms of conduct for private security personnel, and identifies some gaps and deficiencies either in the content of the regulations in force or in their implementation in practice.

Finally, Section 3 assesses the impact that military and security outsourcing policies have had on human rights and that includes direct impact from specific human rights incidents and violations committed by PMSCs and private contractors, as well as from indirect or less immediate impact that occurred from prolonged reliance on PMSCs. It should be noted here that relevant rules of international law are not dealt with in these sections; however, they have been considered in final conclusions in order to assess aspects such as the legality of the use of private contractors in certain contexts, the status of private contractors, or the accountability for human rights violations.

⁹ *Shock Monitor – Observing Private War Impact on Human Rights*, will be presented publicly by the end of 2016.

1/ CASE STUDY: PMSCs IN IRAQ

A. THE USE OF PMSCs: OPERATIONAL CONTEXTS

The 2003 US-led invasion turned Iraq into one of the major theaters of operations of private military and private security companies. During the years of conflict, occupation and aftermath, multinational forces relied heavily on foreign PMSCs to provide military and security services to support their military operations and stabilisation efforts in the country. The U.S. troops departed in 2011, yet they have left behind an important legacy of reliance on private security. On the one hand, PMSCs currently protect diplomatic missions, reconstruction projects and foreign investments such as gas and oil companies throughout the country. On the other, Iraq has also assimilated this policy of security privatization, giving rise to a significant domestic private security industry which is supported by Iraqi politicians and institutions to resolve deficiencies in national military and security apparatuses, provide commercial security, and pursue less-articulated private interests.

Since 2013, in the midst of a sectarian and ethnic division that has lasted for years, and the several political crises between the central government and the Kurdistan region, the emergence and operations of the so-called Islamic State and the security crisis arising thereof has given a *new raison d'être* to the private security industry while the Iraqi military and security forces available resource on repelling the terrorist presence and threats. The following lines provide an overview of the evolution of the private military and security industry in Iraq through these main operational contexts.

PMSCs as a support force for multinational coalition forces

In March 2003, a US-led multinational force invaded Iraq. After the fall of the capital Baghdad in April, the multinational coalition created the Coalition Provisional Authority (CPA) as the transitional government of Iraq. Although US President G.W. Bush declared the “end of major combat operations”, in May that year, anti-occupation and resistance movements, on the one side, as well as armed sectarian groups and foreign militias, on the other, grew throughout the country and the security situation drastically deteriorated. While the CPA dealt with the political situation by transferring sovereignty to an Iraqi Interim Government in June 2004, it failed in its most important obligation as an occupying power, i.e. establishing order and public safety. **The US and British forces did not take any significant action to stop the disorder, trading of arms or looting arising from the conflict and occupation. On the contrary, the CPA adopted a series of short-sighted orders and policies, in particular the blanket dissolution of the military and security establishment of Saddam’s regime without being yet prepared to guarantee security in its place.**¹⁰

¹⁰ See http://www.cpa-iraq.org/regulations/20030823_CPAORD_2_Dissolution_of_Entities_with_Annex_A.pdf. The entities referred to were: the Ministry of Defence, the Ministry of Information, and the Ministry of State for Military Affairs, the Iraqi Intelligence Service, the National Security Bureau, the Directorate of National Security, and the Special Security Organisation. The order included other entities such as the Murafaqin (presidential guards), Himaya al Khasa (Special Guard). The military organisations dissolved included: the Army, the Air Force, the Navy, the Air Defence Force, and other regular military services like the Republican Guard, the Special Republican Guard, the Directorate of Military Intelligence, the Al Quds Force, and the emergency Forces (Quwat al Tawari). The paramilitaries included: Saddam’s Fedayeen, Ba’ath Party Militia, Friends of Saddam-Saddam’s Lion Cubs (Ashbal Saddam). Technically, all these entities were well-trained and led by Iraqi military experts. Had Paul Bremer, head of the CPA, reorganised these entities rather than directly dissolve them, Iraq would have had a proper and well-trained army and security forces in the years following the end of the occupation.

In the midst of this event, occupying forces were only concerned with dealing with their own security and brought an army of private security companies to take on this role.

By the beginning of 2004, a multitude of private contractors, mostly foreigners,¹¹ had appeared on the streets of the main cities of Iraq. Initially it was difficult to distinguish them from other armed personnel, but a series of incidents revealed that they were not official soldiers but civilian contractors working for foreign PMSCs, hired by coalition forces and dozens of foreign companies that feared for the employees in Baghdad. Under contracts signed with the US and UK armies, without any kind of uniform or supervision, PMSCs provided a variety of security services. They protected military convoys of the US army through the highways of Iraq, guarded the residence of the US occupying governor Paul Bremer and other official military buildings, secured the Baghdad airport and its route to the Green Zone and escorted high ranking individuals and visiting dignitaries travelling in unsecured areas. Later on, however, it was uncovered that under the label of “security services”, private security contractors had also acquired important responsibilities in the military field, some of them very sensitive such as the interrogation of prisoners and detainees, intelligence gathering and analysis, operational coordination, operating and managing complex weapon systems, training and advising the new Iraqi military and security forces, and even the engagement in combat operations.

These companies followed the rule of engagement of protecting the client at whatever cost, thus legitimising, without further control, the use of lethal force against the local population when the mission so required.

As the conflict evolved, PMSCs became a private support force used by Anglo-American forces for controlling territory and maintaining order by means of security missions conducted throughout the country.¹² “These operations varied in form, but they all entailed heavily armed individuals, mostly foreigners, acting in isolation from local

communities to protect strategic places, military objectives and distinguished personalities”.¹³ Moreover, these companies followed the rule of engagement of protecting the client at whatever cost, thus legitimising, without further control, the use of lethal force against the local population when the mission so required.

During the conflict and the aftermath, many other foreign entities and personalities, including NGOs, media agencies, constructors’ contractors and other private enterprises and individuals, also

11 According to their nationality, private military and security contractors include: American, Australian, Austrian, Bosnian, British, Bulgarian, Canadian, Chilean, Colombian, Croatian, Dutch, Egyptian, French, Salvadorian, Fijian, German, Honduran, Hungarian, Indian, Iraqi, Japanese, Jordanians, Lebanese, Macedonian, Mozambique, Nepali (Gurkhas), New Zealand, Ugandan, Peruvian, Pakistanis, Philippine, Polish, Portuguese, Romanian, Russian, South African, South Korean, Swedish, Turkish and Ukrainian. See Palou-Loverdos [dir.] and Armendáriz, L. [author], *The privatization of warfare, violence and private military & security companies (PMSC): A factual and legal approach to human rights abuses by PMSC in Iraq*, 2011, pp. 40-41.

12 For instance, when a US army helicopter crashed near to the Iraqi city of Fallujah in 2003, it was a US PMSC who took control of the area and carried on the rescue operation. Another US PMSC, USIS, was hired to assist the Regional Security Office in Baghdad by “investigating incident scenes; interviewing witnesses, collecting and analysing evidence, testifying in judicial and administrative proceedings, analysing incidents for compliance with policy, laws and regulations, maintaining case files and tracking the status of investigations, and...providing other investigation-related services”. See Fisk, R., *The Great War for Civilization: The Conquest of the Middle East*, Fourth Estate, 2005. Also, Isenberg, D., “When a contractor isn’t good enough”, *United Press International*, 17 October 2008, http://www.upi.com/Top_News/Special/2008/10/17/Dogs_of_War_When_a_contractor_just_isnt_good_enough/UPI-38301224276591/print/

13 Dawood, I., “Stop outsourcing Peace: control the use of private military and security companies (PMSCs)”, in *Voices from the South- The Karibu Foundation*, E-Newsletter, April 2013.

hired private security workers to secure their personnel and facilities and/or design security plans for their safety. Overall, that was how private security became one of the major – and foreign – businesses in the Iraq post-Sadam.¹⁴ However, the presence, massive use and the exceptional role that PMSCs played in Iraq was rooted in the policy of military and security privatization embraced by the US and British governments, and the character of the PMSC industry as well as its performance can only be understood if establishing this connection.

Firstly, until the US troops departed from Iraq in 2011, the majority of PMSCs operating in the country were based in the United States or the United Kingdom; in other words, the US and the UK have been the home states of most PMSCs working in Iraq. **Yet, by the time American and British companies were moving to Iraq and assuming important responsibilities, national regulatory systems of their activities abroad were either weak or non-existent in their country of origin. In addition, the licensing processes for exporting their services were too exposed to firms' lobbying actions and lacked sufficient democratic oversight and public control.**¹⁵

Secondly, the US and the UK have been the main clients and contracting states of PMSCs in Iraq. Foreign PMSCs arrived in the country accompanying coalition military forces and major security contracts have been signed with them. US and UK Departments of Defence (DoD) have been their main clients throughout the initial conflict and those that followed. **By 2007, private security contractors outnumbered regular troops deployed by the US and UK respectively in Iraq.**¹⁶ Even after the withdrawal of US troops in 2011, the US has remained one of the main clients of foreign PMSCs through other governmental agencies such as the Department of State (DoS) and the USAID.¹⁷ For instance, the US embassy personnel in Baghdad are protected by some 200 Marine Corps security guards and contractors who work from a \$10 billion 5-year Worldwide Protective Services contract that the US DoS signed with eight PMSCs in 2010, including former US DoD contractors like DynCorp International and Triple Canopy.

Moreover, the use and expansion of contractors' responsibilities beyond traditional logistic services was a policy chosen in particular by these two states. There were different groups of private contractors serving in Iraq, in particular, according to their role: catering, logistics, consulting, construction, security, etc. Out of all of them those providing armed security, that carried heavy weapons and performed quasi-military roles, were almost exclusively contracted by the US and UK armies. Not all States that have been part of coalition forces or which currently have diplomatic presence in Iraq have followed this policy of military and security privatization. Some countries, such Germany or Spain, do not outsource military functions and still protect their embassies and facilities through their own official security personnel.

¹⁴ It should be noted, however, that during many years the exact number of PMSCs operating in Iraq has been difficult to determine due to the lack of official registration and license systems. See Armendáriz, L., *The privatization of warfare*, op. cit., at 34.

¹⁵ See DeWinter-Schmitt, R (Ed.) et al., *Montreux Five Years On: An Analysis of State Efforts to Implement Montreux Document Legal Obligations and Good Practices*, Washington College of Law-Centre for Human Rights and Humanitarian Law, 2013. Available at,

¹⁶ Compared to the first Gulf War, the proportion of contracted personnel is claimed to be 10 times greater. See, Schreier, F., Caparini, M., *Privatising Security: Law, Practice and Governance of Private Military and Security Companies*, Geneva Centre for the Democratic Control of Armed Forces (DCAF), Occasional Paper N° 6, March 2005, p. 1-2.

¹⁷ Report of the United Nations Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of people's rights to self-determination, Mission to Iraq, A/HRC/18/32/Add.4, 12 August 2011, paragraph 7. Hereinafter UNWGM-Mission to Iraq [2011].

As publicly defended by military and security officials, the rationale behind the reliance of PMSCs responded to several factors such as their rapid deployment, high technical expertise lacking in the armed forces, a military strategy that allows soldiers to concentrate in core military roles, or the advantage of being more cost efficient in the long term. Yet, as seen in Iraq, the use of PMSCs also amounted to an instrument of foreign policy, which enabled contracting states:

- to circumvent political constraints and democratic control over the use of force (as parliaments were not involved in the decision over this privatization policy nor were notified about the deployment and activities of contractors abroad);
- to avoid critics from their citizens towards deploying troops in a popular war (as contractors casualties are not numbered among official casualties figures, and thus, are not informed by governments of public opinion);
- and importantly, evade their responsibility for the acts committed by PMSCs (since private contractors are not recognized as official members of armed forces or as state agents, which complicates the attribution of state responsibility and makes the application of domestic laws difficult, in particular, to contractors' activities in foreign states).

PMSCs as a tool for internal security in the Iraq post-Sadam

As of 30 June 2004, the US transferred full responsibility and authority to a new Iraqi Interim Government and dissolved the CPA. The Interim Government gave the consent for the presence of multinational forces which remained in the country as stabilisation forces fighting against armed opposition groups and supporting the maintenance of security in cooperation with Iraqi armed and security forces. In 2005 the first free elections in Iraqi history took place and a new Iraqi Constitution was adopted by referendum.

All the federal Iraqi governments that were established since 2004 also failed to take effective measures in restoring security and order for the Iraqi population. Iraqi political leaders applied a discriminatory and repressive policy against their opponents and the social demands of Sunni regions that further exacerbated sectarian violence and social division in the country. The Shia versus Sunni violence was the main driver of the disastrous 2006–2008 sectarian civil war in Iraq and has remained a critical security issue in the country, particularly in regions of central Iraq, due to the continuation of the policy of marginalisation by the subsequent central governments from 2006 to 2014.

Moreover, since their inception, the new Iraqi army and security forces were poorly selected by the CPA – selecting recruits among non-Sunni affiliated militias, mostly formed abroad, on a quota basis following the de-Baathification order, and the subsequent federal governments and ministries did not solve this issue or deal properly with the military capacity and discipline of the new Iraqi armed and security forces. On the contrary, Iraqi forces were poorly trained and significantly corrupted, composed of militias that, in the field, followed the orders of their former leaders and appointed officers who obtained their ranks due to their political affiliation rather than their military experience and merits. Moreover, they were expanded with what is known as “ghost personnel” – registered

members who received official salaries but were non-existent on the ground.¹⁸ As a result, and despite years of training and a great military expenditure on the Iraqi ministries of defense and interior, Iraqi forces proved to be qualitatively ineffective, lacked the loyalty to the institution they served, and were not only unable to maintain order and security by themselves but also an important cause of the violence in the country.¹⁹

In this atmosphere, a lack of trust in public security grew among the population and the need for a more coherent and dependable force became increasingly urgent, resulting in an increased demand and reliance on private security companies. On the one hand, during the years before the departure of US troops, private clients such as shopping centres, hotels, visiting investors, oil and gas companies, etc, all depended on and employed PSCs. This commercial security was mostly provided by foreign PMSCs - often the same that supported multinational forces - and local private security companies that were composed by retired Iraqi police officers or former soldiers from the dissolved army. Overall, and despite the requirement that all PMSCs should be registered by June 2005, many PMSCs have been said to work without a license and, due to this situation, the Iraqi government and institutions were unable to monitor the actions and behaviour of both foreign and local PMSCs.²⁰

On the other hand, in a similar vein than Western entities, **Iraqi institutions and politicians started at some point to employ private security for personal and institutional protection and some of them even created their own security companies, giving rise to the emergence of an Iraqi national private security industry.**²¹ As in the case of foreign PMSCs, the use of Iraqi private security companies was supported in order to compensate for the unavailability or the deficiencies of public military and security apparatuses, yet, as years went on, they also became a tool for political control and an important source of the violence, corruption and insecurity in the country.

Initially, Iraqi institutions did not conduct strict vetting of their private security employees beyond their political affiliation, and some of the Iraqi PMSCs have been said to be comprised of a collection of different sectarian militias and former armed groups and engaged in illegal actions and crimes. For instance, Iraqi PSC Al-Nimrood was created by former vice-prime minister Al-Jalabi (2005-2006) and was composed of members of his former militia the Free Iraqi Fighters. Al-Nimrood's contractors were allegedly paid from the Ministry of Defence's budget and were allegedly engaged in robberies, blackmailing and confiscation actions, which finally led to the close of the company.²² Also, Iraqi PSC Al-Murabid was owned by the previous Iraqi Ministry of Interior (2003-2004), Nouri al-Badran,

¹⁸ Loveday Morris, "Investigation finds 50,000 'ghost' soldiers in Iraqi army, prime minister says", *The Washington Post*, November 30, 2014. See also, Saad N Jawad, Iraq from occupation to the risk of disintegration, *Arab Contemporary Affairs*, Vol.9, no. 1, January 2016.

¹⁹ On this issue, see Allawi Ali, *The Occupation of Iraq; winning the war, losing the peace*, Yale University Press, 2007; Dodge Toby, *Iraq from War to A New Authoritarianism*, IISS, London, 2012, p. 120.

²⁰ Armendáriz, L., *The Privatization of warfare*, op. cit, pp.34-36.

²¹ Among the Iraqi public officials who have employed PSCs for their protection are Dr. Azhar Turaihi, *Secretary of the Council of the province of Najaf*, and Mr Sajid Abdul Amir Al Hinbaki, member of Diala Governorate Council.

²² Intefadh Qanbar, who was the mouthpiece and the second person of the National Iraqi Congress and head of its satellite channel, recently revealed in the Iraqi and Arab media that when Jalabi became Vice Prime Minister in 2005 he was allocated a regiment of 200 soldiers from the Iraqi army for his own protection. He also said that this regiment, which was always receiving its salary from the Ministry of Defence, was in 2006 made the nucleus of Jalabi's private security company al-Nimrood. [http://www.nimrood.net/index_eng.html]. He added that this company committed many crimes which included robberies, violations of human rights and confiscating properties, to Jalabi's knowledge. He also said that al-Nimrood was closed down by the previous Prime Minister al-Maliki, but the company resumed its activities under a new name with continued monkey business. [<https://www.youtube.com/watch?v=jhLaYj2kbuQ>]

and was accused of illegal acts such as extortion, blackmailing, and terrorist activity. The company has been said to cooperate with Iraqi police officers who allegedly used official cars and uniforms to perform several crimes.²³

In a similar vein, since the 2010 elections, there have been several scandals in which the Iraqi government accused their political opponents of using their private bodyguards to commit and support terrorist acts and activities. Some of them have been prosecuted under the Iraqi Anti-Terrorism Law [2005]²⁴ which reportedly became an arbitrary tool used by the Al-Maliki government during his second term for intimidating opponents and controlling the political process.²⁵

At the same time, incidents have also been reported of the involvement of private security personnel working for government officials in intimidating people such as journalists.²⁶ Some sources also accused private security companies of being directly involved in the armed attack that targeted the Iraqi ministry of justice in March 2013. Allegedly, the main objective of the operation, which was preceded by many car bombs, was to destroy files of people accused of carrying out terrorist activities. It was reported that security cameras showed that the cars and people who carried the attack were part of a convoy of a security company.²⁷

Moreover, in their search for profit, some Iraqi security companies have been accused of purposely damaging the security situation in certain areas - including by placing bombs in the roads - in order to increase their contracts and get deals with foreign companies working there. Also, competition between Iraqi security companies became so intense that it resulted in mutual accusations of carrying out armed attacks and bombing in order to gain contracts and deprive their direct competitors by damaging their reputation. Consequently, critics insist that some of the Iraqi PMSCs, especially the ones in southern provinces like al-Basra, are directly involved in disturbing peace and security in the country and have greatly contributed to the violent situation and the lack of security in Iraq.²⁸

23 Al-Murabid was suspended in 2014 due to charges of illegal practices and corruption. See *al-Mustaqbal news*, February 10, 2015; <http://www.almustaqbalnews.net/187241>

24 The Iraq Anti-Terrorism Law N° 13 [2005] was based on article 7 of the 2005 Iraqi Constitution that states: "1. Any entity or program that adopts, incites, facilitates, glorifies, promotes, or justifies racism or terrorism or accusations of being an infidel (takfir) or ethnic cleansing, especially the Saddamist Ba'ath in Iraq and its symbols, under any name whatsoever, shall be prohibited. Such entities may not be part of political pluralism in Iraq. This shall be regulated by law. 2. The State shall undertake to combat terrorism in all its forms, and shall work to protect its territories from being a base, pathway, or field for terrorist activities." http://www.iraqinationality.gov.iq/attach/iraqi_constitution.pdf According to article 4 of the Anti-Terrorist Law "Anyone who committed, as a main perpetrator or a participant, any of the terrorist acts stated in the second & third articles of this law, shall be sentenced to death. A person who incites, plans, finances, or assists terrorists to commit the crimes stated in this law shall face the same penalty as the main perpetrator. 2nd . Any one, who intentionally covers up any terrorist act or harbours a terrorist with the purpose of concealment, shall be sentenced to life imprisonment." http://www.vertic.org/media/National%20Legislation/Iraq/IQ_Anti-Terrorism_Law.pdf

25 This was the case of the former Vice President Tarek al-Hashemi and his son-in-law Ahmed Qahtan who, in November 2011, were accused by then Prime Minister Nouri al-Maliki of ordering their bodyguards to prepare and carry out terrorist attacks. They were prosecuted and convicted in absentia under the Iraqi Anti-Terrorism Law. The United Nations Assistance Mission for Iraq (UNAMI) reported several irregularities during the judicial process. See UNAMI - Report on Human Rights in Iraq: July - December 2012, June 2013, at 15. Also, in December 2012, the then Iraqi Finance Minister Rafe al-Essawi was accused of harbouring terrorists; his 10 bodyguards were arrested and his offices were raided by police forces. He finally left Baghdad and took refuge in Al-Anbar region. Duraid Adnan and Tim Arango, "Arrest of a Sunni Minister's Bodyguards Prompts Protests in Iraq", *The New York Times*, December 21, 2012.

26 See A Gulf Centre for Human Rights (GCHR), "Bodyguards of the National Security Advisor attack a group of journalists", February 18, 2015; available at <http://www.gc4hr.org/news/view/918>

27 Mohammed, Jassim, PMSCs and its involvement in terrorist activities in Iraq, published documented research, Al-Iraq Alyoum journal, May 2013. Available online at: <http://www.iraqalyoum.net/news.php?action=view&id=19786> www.iraqalyoum.net [last accessed on Feb.2016]

28 Wali, Zuhæer, the New World observes the war's of security companies in Al-Basra province, *New World journal*, available online; [in Arabic]

By the time the US announced in 2009 that its forces would withdraw from Iraq in 2011, discussions still revolved around the question of whether Iraqi forces would be prepared to take sole responsibility of the security in the country. Discussions also revolved around whether foreign PMSCs should be departing the country as well - having developed a bad reputation in previous years due to scandals such as the 2006 shooting of one of the Iraqi former Vice President Adil Abd-al-Mahdi's guards, and the 2007 killing of civilians in Nisour Square. In the end, PMSCs were not included in the US departure decision and many have remained in the country. It seems that due to the lifting of military contractors' immunity under the 2009 US-Iraq SOFA Agreement, some foreign PMSCs - namely those working for the US DoD - decided to leave. Others, however, stayed and have created subsidiaries or simply changed their names and managers to become Iraqi-registered PMSCs (though their genuine domestic nature is highly questionable).

As noted above, foreign PMSCs currently protect some foreign diplomatic embassies and missions in Baghdad and Erbil, reconstruction projects along the country, and provide security and advisory services to private commercial clients such as oil and gas companies. The Iraqi government has also contracted some foreign PMSCs: for instance, the British PMSC G4S holds a long-standing contract with the Iraqi Ministry of Transport to provide security at Baghdad International Airport. It should be noted that the foreign British and US companies that protect the Green Zone in Baghdad, where the main diplomatic embassies and foreign institutions are located, used to treat all the people working in the zone in the same way: ministers, parliamentarians, high officials and service employees. This caused high officials like ministers and parliamentarians to complain to the previous Prime Minister, Nouri alMaliki, about the harassments they were subjected to by these companies. As a result, during his second term in office (2010-2014), al-Maliki reportedly issued an order which ended the work of all the foreign companies and gave away their job to three battalions of the special Iraqi forces.²⁹

The signals and final departure of foreign troops also gave the definitive boost to the Iraqi PMSC industry and, by 2011, the UN Working Group of Mercenaries announced that according to figures provided by Bagdad Ministry of Interior, Iraqi PMSCs formed the great majority of PMSC licensed in Iraq; namely, 89 out of the total of 117 registered in 2011.³⁰ Furthermore, in terms of nationality, the proportion of Iraqi private security personnel dramatically increased during the year of US departure, with 23,160 Iraqi employees out of the 35,000 fully registered compared to 45,000 of Iraqi federal police. Therefore, despite the high military expenditure on the rebuilding of Iraqi security forces, Iraq is one of the countries which is dangerously close to having a similar number of private security personnel as active police.

The arrival of fighters of the so-called Islamic State for Iraq and Levant - ISIL (also known as ISIS or Daesh)- in 2013, and their success in occupying Mosul, Tikrit and other cities in Iraq in 2014 (mainly due to the collapse, retreat or rout of the local official forces) showed the lack of loyalty and the shaky foundations on which the Iraqi federal forces had been built. Moreover, from a political perspective, the aggressive repression of Sunni protests and their marginalisation over the years could also explain the passive way in which the population of these cities received the uprising of the ISIS forces

²⁹ Al-Hashimi Wathiq, Interview with a head of Iraqi Strategic group, Iraqi Prime Minister Office, July 2015.

³⁰ UNWGM-Mission to Iraq [2011], pp. 7-9.

in Iraq. And once again these events have propelled PMSCs to the back seat of the security picture. During the 2014 ISIS crisis the US refused to get involved by deploying military troops on the ground but finally agreed to help by sending a limited number of military advisers, speeding up the supply of ammunition and by continuing to train the Iraqi armed forces. Apparently, part of this military training was to be provided by US private security contractors, although this information could not be verified. Also, evacuation processes that have arisen from the arrival of ISIS that have taken US military contractors out of sensitive areas in Iraq have been conducted by US and Kurdish private security companies.³¹ **According to sources, the use of PMSCs in this emergency environment was recommended by US consulting firms which advise foreign companies working in Iraq on several aspects of their operations, including security planning.**³² **Recent media information has also revealed that some of the leaders of ISIS would have been trained in the past by private companies and the US and British intelligence services.**³³

In summary, more than thirteen years have passed since the 2003 US intervention and one lesson seems to have been learnt: no more US troops and military casualties in the field. In line with the previous events, more insecurity still means in Iraq more military expenditure and an important business for PMSCs; in a nutshell, more weapons and private security as a way of solving challenges to internal security and weak governance.

PMSCs in the Kurdistan region: a tool for economic development

In contrast to the rest of the country, the Iraqi Kurdistan obtained an acceptable level of security in 2003 which is still maintained, while a growing PMSC industry has also materialised in the region in recent years. The 2005 Constitution granted the Kurdistan region a high degree of autonomy within the new federal political system, and, importantly, recognised Kurdistan's exclusive right to provide its own internal security and the Peshmerga as the lawful army of Kurdistan.³⁴

Practical implementation of this security system was developed vigilantly by the Kurdistan Government [KRG]. The Kurdish armed and security institutions were consolidated, being capable of maintaining security and, generally speaking, allowing the region to attain an acceptable degree of stability. Moreover, during the years of total autonomy, the KRG ventured a trial of a neo-liberal model of economic development which has enabled the region to achieve a certain level of prosperity in terms of public infrastructure and services such as roads or universities, while at the same time promoting foreign private investment in a number of sectors such tourism and oil and gas services. **It is within this neo-liberal economic context that the use of private security has rapidly grown in recent years, in the form of both foreign and Kurdish security companies.** For instance, Kurdish private security guards are visible in a number of hotels, amusement parks, tourism complexes and shopping malls in Erbil and other big cities. Also, oil and gas companies are important clients of

³¹ Dan Lamothe, "U.S. companies pulling contractors from Iraqi bases as security crumbles", *The Washington Post*, June 12, 2014 [last accessed January 7, 2016]. According to the article, the evacuated individuals included U.S. citizens who are currently working under contracts with Iraq's central government in support of the Pentagon's foreign weapons sales program.

³² Id.

³³ See "U.S. State Department and Blackwater trained ISIS Colonel", posted by Carol Adl in YourNewsWire.com, <http://yournewswire.com/u-s-state-dept-and-blackwater-trained-isis-colonel/> [last accessed January 7, 2016].

³⁴ On this issue see, Jawad N., the Iraqi Constitution: Structural flaws and political implications, Middle East Centre, LSE, Series no. 1, November 2013. p. 16.



Kurdish PMSCs throughout the region, and there are several Kurdish companies, such as *Ster Security*, that provide security consulting and planning services for new foreign investors in cooperation with foreign PSCs. In the province of Duhok, private security companies have been seen to provide different services including cleaning and maintenance, protection and escort services, as well as surveillance and transportation of valued goods and materials, such as coins and treasures, from one province to another within the borders of the region or abroad, especially to Baghdad (in which case they should comply with the regulations on PMSCs issued by the Baghdad Ministry of Interior).³⁵

It is within this neo-liberal economic context that the use of private security has rapidly grown in recent years, in the form of both foreign and Kurdish security companies.

According to sources consulted, a total of 118 PMSCs were registered and licensed under the Kurdish Ministry of Interior as of December 2015. However, cases of private guards protecting commercial establishments have been discovered, such as the well-known Bazari Nishtiman in Erbil,

who apparently work for public officials and are non-registered or do not have a license. Furthermore, personnel of certain companies, such as the Kurdish PSC Manager Security Company that operates in Duhok, reported they had not been receiving their salaries in recent months.³⁶

B. NATIONAL REGULATORY FRAMEWORK

During the period of occupation (2003 - 2004), the CPA approved a series of regulations, or CPA orders, some of which applied to PMSCs and their activities. Order 17 governed the status of multinational forces and PMSCs, among others, which extended to private military contractors' immunity from the jurisdiction of the Iraqi courts. The Memorandum 17 (2004) established guidelines for the registration, licensing and regulation of these companies and Order 3 related to weapons control. On the whole, and besides the question of the legitimacy of these orders regarding PMSCs, CPA regulations failed to create an early and robust regulatory system for PMSC activities. This is demonstrated by several facts:

1. Most abuses committed by PMSCs between 2003 and 2009 have gone unpunished due to the immunity granted under Order 17, which prevented the prosecution of foreign contractors before Iraqi courts without first ensuring jurisdictional avenues for their prosecution at home and contracting States of the companies;
2. Many PMSCs operated for years without being registered and licensed under Iraqi authorities because licensing systems were not fully operative or were not properly implemented until 2006 - 2007; and
3. several incidents revealed faults and weakness, to say the least, in vetting, monitoring and reporting procedures, including proper rules of engagement for real control of the use of force and weapons.

³⁵ See below Section on National Regulatory Framework

³⁶ Information gathered in 2015 by field workers of the NOVACT Observatory of PMSC & Human Rights.

Despite the CPA being dissolved on June 30 in 2004, most of these regulations have remained in force to this day because they have not been rescinded or amended by a national legislation using the force of law, as it was provided for by the transition agreement and later on by the Iraqi constitution. In 2008, the Iraqi Cabinet drafted a law for private security companies that was discussed in parliament but which has been pending for processing and approval since then. **The draft law explicitly provided that it should be considered as an amendment to Order 17 of the CPA. Consequently, under Iraqi Law, CPA regulations still constitute the main legal basis for regulating the activities of PMSCs. The UNWGM has reiterated on several occasions that the CPA regulations, in particular the Memorandum 17, do not constitute a solid and adequate legal basis for defining the status and regulation of the activities of PMSCs in the country.**

The absence of a national legislation on PMSCs that emerges out of consensus of all Iraqi political parties and in cooperation with other stakeholders, is key to understand the unclear, uncovered and lack of control and supervision of PMSCs' activities. In particular:

The issue of PMSC accountability and the current status of CPA Order 17.

In 2009, Iraq and the US signed a new agreement on the presence and status of US military troops, also known as SOFA, that partially lifted the immunity of certain contractors, e.g. security contractors working for the US Department of Defence. To the extent that the agreement was submitted and approved by the Iraqi parliament it can be considered as a partial amendment of the CPA Order 17. However, since, according to its wording, the scope of the SOFA only explicitly applies to US DoD contractors, it is unclear whether it applies to PMSCs that are contracted by other US agencies, such as the US DoS, USAID or the CIA, and consequently, jurisdictional issues regarding these contractors can still be regulated by Order 17.

Since the adoption of the SOFA, the UNWGM has demanded further clarification of this issue several times, yet neither the Iraqi nor the US authorities have clarified it. It is certain that a British contractor was prosecuted and sentenced to prison by Iraqi courts in 2009.³⁷ Instructions issued in 2009 by the Ministry of Interior of the Kurdistan region (KRG Mol) explicitly state that PMSC personnel are subject to all criminal, civil law and administrative provisions currently in force in Iraq, and reiterate the obligation of the Kurdish government to investigate and prosecute those suspected of human rights violations "when it is required by national or international law".³⁸ In this regard, however, there is not yet an Iraqi law on PMSCs and, on the other hand, it is a recognised rule under international law that diplomatic and consular missions *and their personnel* enjoy jurisdictional immunity in the host country. Taking into account that the US policy in this regard – as applied in other countries, such as Afghanistan – has been to extend the diplomatic immunity of technical and administrative personnel to security contractors, it is uncertain whether such an agreement and privilege exists in the case of private contractors providing diplomatic security to the US embassy in Iraq.

³⁷ This was the case of Daniel Fitzsimons, a British contractor employed by the PMSC ArmorGroup (now G4S), who was sentenced to 20 years in prison for the murder of two fellow contractors and injuring an Iraqi security guard, following an argument between the three men in Baghdad's Green Zone in August 2009. Mr. Fitzsimons was diagnosed of post-traumatic stress disorder by the British army prior to his employment. For details, see Armendáriz, L., *The privatization of warfare*, op. cit., p.93

³⁸ Private Security Company (PSC) Requirements for Iraqi Kurdistan, Revised February 2009 [on file with the author].

The issue of PMSC license and oversight.

CPA Memorandum 17 (2004) constitutes the legal basis upon which the license system has been developed in Iraq. It basically requires the registry of the company before the Ministry of Trade (business license) and the subsequent license before the Ministry of Interior (Mol) (operational license) according to basic criteria. As internal security has been a responsibility shared by the Kurdistan Regional Government and the Baghdad Government, the license system has been separate for the Kurdistan region and the rest of Iraq, so that a company wanting to operate in the whole country needs to be double licensed respectively by Baghdad and KRG Mol. In this regard, although basic requirements for licensing are common in the two systems, some differences exist, arising from the ability of the ministries to issue administrative instructions that supplement the provisions of Memo 17. The Mol regulations address practical issues of the activities of PMSCs and are periodically updated, the latest version issued – to the best knowledge of the authors – in August 2014 (Baghdad Mol) and in February 2009 [by KRG Mol].

To a large extent, Mol instructions constitute the main national regulation of PMSC operations, yet they lack the force of law and its breach only involves the suspension or revocation of the license, and a financial fine. Private contractors who commit human rights violations have to be prosecuted according to the provisions of the 1969 Iraqi penal code and other relevant laws due to the absence of a formal legislation on PMSCs.

Overall, Mol regulations have notably improved the criteria for licensing and, therefore, the overseeing of PMSCs. For instance, they established stricter control over hiring foreign staff, which requires several authorisations, and introduced vetting procedures for local employees who were not specifically considered under CPA regulations. Moreover, both systems require the identification of contractors and uphold a previous requirement for PMSCs, demanding the use of specific uniforms, vehicle identification stickers and an identification card for mobile security personnel. Nevertheless, due to the different security and political situation between the Kurdistan region and the rest of Iraq, the content as well as the implementation of Mol instructions notably differed, ultimately affecting the control that exists over the activities of PMSCs in the two regions. On the one side, KRG guidelines are much clearer and more exhaustive than those issued by Baghdad Mol, both regarding the sort of activities that cannot be outsourced to PMSCs and the use of weapons and human rights standards of behaviour for PMSC and their employees. On the other side, Baghdad regulations concerning implementation have frequently changed, which has led to a lack of predictability regarding the criteria required for PMSC licensing. Moreover, difficulties were also reportedly linked to political instability; in particular, to the fact that no Minister of Interior had been appointed for more than one year after the March 2010 general elections, thus affecting the issuance of license for longer periods of time and the renewal of licenses and weapons permits.³⁹

Finally, a point that should be mentioned with regard to license process is the provision of certain administrative privileges to PMSCs working for embassies and diplomatic and consular missions. In particular, these KRG instructions give diplomatic PMSCs exemption from demonstrating compliance

³⁹ See UNWGM-Mission to Iraq (2011), para. 42. Indeed between 2010-2014 the Ministry of Interior was run by the Prime Minister as Acting Minister, and also by a Vice Minister.

within the required criteria for obtaining a license if the diplomatic or consular mission does it on their behalf. In this case, a diplomatic statement serves as a formal document that guarantees the company satisfaction with the requirements. Although the Baghdad Mol instructions do not explicitly state such prerogative, it is likely that the procedure will be the same, as the UNWGM has already reported allegations that PMSCs working for the US Department of State were exempt from certain requirements during the licensing process.⁴⁰ In this regard, as this exception only applies to companies performing diplomatic security services and does not extend to the company performance of commercial security services, it amounts to a biased distinction between two categories of PMSCs: those hired by public clients on the one hand, and those contracted by private clients on the other. Overall, this seems to continue in line with the policy used during the occupation period of granting certain benefits and privileges for companies employed by governmental, and in particular, US clients.

C. IMPACT ON HUMAN RIGHTS

Since the re-emergence of modern PMSC industry after the Cold War, the Iraqi conflict has represented probably better than any other case the risks and impacts that military and security outsourcing can pose on human rights. Some of these risks are inherent to PMSC activities, such as the use of lethal force, while others are derived to a great extent from the lack of adequate regulation of their activities; namely, the absence of monitoring systems in the field, unclear rules of engagement, or the lack of contractors' vetting, training and contracting procedures. In Iraq these risks were not given due consideration and as a result this policy of military and security privatization has had both direct and indirect negative impact.

The direct impact included, first and foremost, a series of human rights violations committed by PMSCs against the Iraqi population. In particular, a series of high-profile incidents during the conflict involving certain PMSCs raised concerns about the bad behaviour of contractors' activities. These included the mistreatment of prisoners by personnel of PMSCs Titan/L-3 and CACI at the Abu Ghraib prison in 2003, the deadly shooting of Raheem Khalif Hulaichi, the bodyguard of the Iraqi Vice-President, Adil Abdul-Mahdi, on Christmas Eve in 2006, and the 16 September 2007 shooting incident in the Nissour Square neighbourhood of Baghdad.⁴¹

Due to their particular prominence and the widespread political and media repercussions, these cases attracted major public attention and are often mentioned as examples of the negative impact of these companies on human rights. Yet, **several studies further showed that these incidents were not isolated events and that a pattern of human rights violations relating to the use of force against Iraqi population could be established.** For instance, a US congressional memorandum revealed that *"between January 2005 and September 2007 alone, Blackwater employees were involved in 195 incidents involving firearm discharges. In the overwhelming majority of these incidents [84 per cent], they were the first to fire".*⁴²

⁴⁰ UNWGM-Mission to Iraq [2011], para. 40.

⁴¹ See for details on these incidents, Armendáriz, L., *The privatization of warfare*, op. cit., pp. 48-58.

⁴² *Memorandum to the members of the Committee on Oversight and Government Reform*, US House of Representatives – Additional information about Blackwater USA, 1 October 2007, page 6. See also, Armendáriz, L., *The privatization of warfare*, op. cit., pp. 48-57.

Moreover, **this pattern of violations also included less high-profile incidents which did not result in civilian deaths and injuries, such as driving recklessly and provoking car accidents, damages to property, abuse of force, and generally behaving in a culturally insensitive manner towards the local population.** For instance, a common action of private contractors in early years of their presence in Iraq was to point their guns towards people at checkpoints or while driving through crowded areas. Thus, in the opinion of Iraqi scholars: *“contractors and mercenaries have been the main problem in Iraq, and not the inherent violence in Iraqis themselves... together the military [US] and the contractors often took part in killing and wounding civilians in incidents, situations where occupation troops on patrol manning checkpoints or escorting vehicle convoys have opened fire on men, women, and children they considered a threat”*.⁴³

Although to a lesser extent, the direct impact of PMSC activities also extended to private security contractors themselves as they have been subject to abuse by their own companies as well. In particular, a number of incidents have been documented of questionable recruitment practices and contractual irregularities, some of which have even led to accusations of human trafficking. For instance, the lack of vetting procedures by PMSCs is best illustrated by the case of Daniel Fitzsimons, a former British Army paratrooper who fatally shot two colleagues and injured a third Iraqi private guard in 2009, despite having been diagnosed as suffering from post-traumatic stress disorder, and thus previously discharged from the British Army. Likewise, in their search for profit, PMSCs have often neglected security and put their employees in dangerous or vulnerable situations that could have disastrous consequences. For example, in 2004 in Fallujah, four private contractors working for the US PMSCs, Blackwater, were killed, allegedly because of a lack of safety precautions that the company was supposed to provide.

Significantly, many of these incidents, especially those of civilian abuse, went unnoticed due to the lack of reporting mechanisms, or because they could not be properly reported and investigated because private contractors frequently left the scene or did not display an identification badge or logo. Indeed, **a common complaint made by human rights and civil society organisations is that due to their inadequate supervision and the near-complete failure to investigate incidents, it is impossible to properly document the events to determine how many civilians were killed or wounded in these incident.**⁴⁴

In terms of accountability, the combined effect of the immunity clause contained in CPA Order 17 and the failure to prosecute PMSC employees in home countries led to impunity for most human rights violations against Iraqi civilians committed by PMSCs between 2003 and 2009. Only in a few cases, such as Nissour Square, have contractors been recently brought to trial, while the remaining cases have gone unpunished due to the lack of jurisdiction.⁴⁵ Regarding company liability, in cases

⁴³ Zangana, Haifa, *Private security contractors in Iraq; the lifeline of neo-colonial rule*, Route Irish, London, 2011, p.172.

⁴⁴ On the contrary, the number of contractors' casualties has been progressively documented by private bodies and watchdogs, although they are still not reported by public authorities as military casualties.

⁴⁵ In 2015, the four employees of formerly [EP: “the company formally known as?”]Blackwater were sentenced to prison for the Nissour Square case. See official statement by US Department of Justice, <http://www.justice.gov/opa/pr/four-former-blackwater-employees-found-guilty-charges-fatal-nissour-square-shooting-iraq> Also, Matt Apuzzo, “Ex-Blackwater guards given long terms for killing Iraqis”, *The New York Times*, April 13, 2015, http://www.nytimes.com/2015/04/14/us/ex-blackwater-guards-sentenced-to-prison-in-2007-killing-of-iraqi-civilians.html?_r=0 [last accessed January 7, 2016]

where victims filed civil claims in US courts for contractors' abuse, a series of defence doctrines have been claimed which challenge the application of US civil-action legislation in practice.⁴⁶ As a result, as the UNWGM have repeatedly reiterated that the victims of such violations and their families are still waiting for justice and reparation. Also in this regard, it is important to note that while some PMSCs acquired bad reputations due to these events by attracting public attention and prompting the Iraqi and US authorities to take measures to tighten control over PMSCs, in many cases they simply changed their names and are still awarded contracts to support the US and other foreign clients in operation overseas.

Fortunately, after the Nissour Square case and, in particular, since the lifting of foreign contractors immunity in 2009, a reduction in the number of incidents with civilian casualties involving PMSCs was registered. This improvement in the human rights record of PMSCs was confirmed after the departure of US military troops in 2011, with no incidents publicly reported that year. On the whole, this would illustrate the connection between regulation and deterrence, and seems to also confirm the link between contractors' abuse and military services, as most of the incidents that have been documented since 2003 involved PMSCs working for governmental and, in particular, military clients such as the US DoD. Indeed, according to the UNWGM, the decrease in the number of incidents *"could be attributed to several factors: the decrease in their military-related activities in Iraq [especially in mobile protection], stricter regulation by the Iraqi authorities and efforts by the United States to tighten control over its private security contractors operating in Iraq."*⁴⁷

Since the UNWGM's last visit to the country in June 2011, no official record has been published specifically that focuses on human rights incidents involving PMSCs. The MoI, both in Baghdad and the Kurdistan region, is the public authority that must be notified of any incident or crime related to activities of licensed PMSCs. In this regard, this research team has submitted requests for information regarding incidents involving PMSCs but has received no answer so far. Nonetheless, private sources mentioned that *"[a] statement of the MoI in 2011 revealed that 12 non-registered PSCs in the Karada district in Baghdad were found to be involved in the kidnapping and killing of civilians. Baghdad Operation's Command has noted that the assailants in a majority of armed attacks in Baghdad were wearing PSC uniforms"*.⁴⁸

The UNAMI Human Rights Office is the main international body that monitors the human rights situation throughout the country and investigates any alleged violations committed by anyone, no matter who. Until recent years, UNAMI reports included a specific category of abuse or violations allegedly committed by private security companies but this methodology has changed, particularly since the withdrawal of US troops in 2011 and the trigger of the ISIS crisis. Certainly, some reports have documented incidents involving private bodyguards while in others the organisations explained that in a number of cases, it has been impossible to identify the perpetrators of violations committed, thus classifying these events as violations or abuse committed by unidentified perpetrators. However,

⁴⁶ See section on the United States in DeWinter-Schmitt, R (Ed.), *Montreux Five Years On: An Analysis of State Efforts to Implement Montreux Document Legal Obligations and Good Practices*, Washington College of Law-Centre for Human Rights and Humanitarian Law, 2013, pp. 90-110.

⁴⁷ UNWGM-Mission to Iraq (2011), para 54.

⁴⁸ Zangana, Haifa, *Private security contractors in Iraq; the lifeline of neo-colonial rule*, Route Irish, London, 2011, p.177

we consider that, in the midst of the ISIS crisis and the related military operations, PMSC operations are not given due attention and, again, monitoring and reporting of their actions is left unattended.

Due to the lack of statistical facts, in 2014 NOVACT launched a pilot project of an Observatory of PMSC & Human Rights [Shock Monitor] which has monitored the activities of PMSCs in Iraq, among other countries, and documented the human rights incidents that have been reported or are allegedly associated to them - in particular, since the withdrawal of US military troops in 2011.⁴⁹ Although results are still scarce and the Observatory team could not verify a number of incidents, nonetheless we can confirm that while the number of incidents involving PMSCs has decreased substantially since 2009, some abuse has still occurred. In particular, the Shock Monitor has documented 14 incidents linked with PMSCs and their contractors that occurred between 2011 and 2015.⁵⁰ Most of these incidents [12 out of 14] involved Iraqi PMSC and/or Iraqi private guards or bodyguards, many of whom were working or employed by Iraqi politicians or public institutions. Documented incidents include one case in which private guards participated in the repression of a demonstration,⁵¹ one case in which private bodyguards attacked a group of journalists,⁵² five cases in which private guards abused their power and/or arbitrary used force against Iraqi citizens,⁵³ an episode of violent confrontation between the manager of a private security company and some of its employees due to allegations of attempts of wrongful dismissal of employees⁵⁴ and a specific incident in which private body guards of a public official were allegedly involved in the kidnapping of a UN representative in Diyala governorate.⁵⁵ The team of the Observatory is currently clarifying whether public official investigations have been conducted for these cases.

There is a group of incidents, which did not involve human rights violation but have been documented due to their implications. In particular: one case of alleged recruitment and use of PMSCs in a political campaign, one case of alleged robbery within a property under protection and several cases of a PMSC working without license. Additionally, the UNAMI has reported cases related to the alleged involvement of private bodyguards in terrorist attacks although it also referred to irregularities in the judicial processes concerning these cases.⁵⁶ Finally, while most of the current documented incidents related to Iraqi PMSCs, some of them are still associated to foreign PMSCs.

49 To this end, a three-day workshop was held in May 2015 for human rights defenders and members of civil society organisations focused on monitoring and reporting incidents involving private security companies.

50 All of the incidents and sources - at least 2 different sources are required - are in file with the authors and systematised in the Observatory's database.

51 Suleimaniya, October 8, 2015.

52 Baghdad, February 18, 2015.

53 Three of these incidents took place at Chavi Land Park in Suleimaniya, in March, May and October of 2015, and involved the abusive treatment of citizens by guards working at the security company Blue Water Company that provides guarding services in different areas and installations of the park. Another incident occurred at a fish shop in Najaf on November 11, 2013, and involved arbitrary use of force by bodyguards working for an Iraqi politician against the owner of the shop who ended up severely injured. The fifth incident took place at Majidi Land Park, Kasnazan, Erbil, on May 29, 2015, and involved an argument between guards of the park, working for the PSC Hiwa Group Security, and a citizen whose lands had been requisitioned in order to construct the park. The argument resulted in both the guards and the citizen being injured and the latter being arrested.

54 Al-Basrah, August 9, 2015.

55 Diyala's provincial capital Baquba, April 26, 2015. The UN representative name is Amer Had Abdullah. Sources include a complaint made by Mr. Amer Had's wife to the President of the Supreme Judicial Council on September 13, 2015. On the incident see "UN employee abducted in Iraq", *Yahoo news*, April 27, 2015, <http://news.yahoo.com/un-employee-abducted-iraq-231515744.html> (last accessed on February 29, 2016)

56 UNAMI - Report on Human Rights in Iraq: July - December 2012, June 2013, at 15.

For example, a recent media report has uncovered the alleged involvement of the British-Danish PMSC G4S in offering bribes to senior Iraqi government officials in order to access passengers and flight information when it was in charge of the security of Baghdad's international airport.⁵⁷ Also, in the midst of the ISIS crisis in June 2014, private security contractors reportedly engaged in gunfire incidents during the evacuation process of companies' contractors working in the US-Iraq military sales program.⁵⁸

This turns us to the issue of the indirect impact that the increased reliance on PMSCs has had on Iraq. In this regard, a very perceptible impact during the years of conflict has been the increased loss of trust in public security and its authorities and institutions. Not only have Iraqi authorities not properly reacted to regular abuses of force and disregard by foreign private security contractors, but also now Iraqi politicians have funded, with public money, their own private contractors to protect them as well as to control people.

As a result, Iraqi citizens still see armed personnel everywhere and fear them in their own communities, but do not benefit from more security or protection. Moreover, another major consequence of security outsourcing has been an erosion of the concept of security as a public right and a sharp turn in the peace discussions. As an Iraqi commentator and human rights defender noted, **"[t]he discourse today in Iraq concerning peace is totally different from what it was before 2003. Then, the state had clear and full responsibility for security, even if under the Saddam regime it fell far short of respect for human rights and freedoms. Today, the message has become security whatever the price: more weapons, huge walls of cement, more checkpoints and greater profits for the PMSCs."**⁵⁹ Therefore, we can only agree with his conclusion: *"We must insist that true security requires rule of law and a reduction in arms. Security is every citizen's right and should not be purchased with government funds for only a select few. Short-term security provided in aggressive ways by private contractors undermines the authority of the state and erodes confidence in the rule of law. PMSCs cannot turn Iraqi communities – or communities anywhere – into places of lasting peace."*⁶⁰

⁵⁷ See Hammurabi News Agency, http://www.hammurabi-news.com/viewcontent/?c_id=12506 TO BE CONFIRMED

⁵⁸ Dan Lamothe, "U.S. companies pulling contractors from Iraqi bases as security crumbles", *The Washington Post*, June 12, 2014 [last accessed January 7, 2016].

⁵⁹ Dawood, I., "Stop outsourcing Peace: control the use of private military and security companies [PMSCs]", in *Voices from the South- The Karibu Foundation*, E-Newsletter, April 2013.

⁶⁰ Id.

2/ CASE STUDY: PMSCs IN THE OCCUPIED PALESTINIAN TERRITORIES (OPT)

A. THE USE OF PMSCS: OPERATIONAL CONTEXTS

“Occupied Palestinian Territories” is the term usually used to describe the territories of the West Bank (including East Jerusalem) and the Gaza Strip which were occupied by Israeli forces in the 1967 Six-Day War.⁶¹ In 2004, the UN International Court of Justice concluded that despite several agreements made between Israel and the Palestinian Liberation Organisation since 1993, some of them including the transference to Palestinian authorities of certain powers and responsibilities in the West Bank, these events did not alter the situation and that “*all these territories [including East Jerusalem] remain occupied territories and Israel has continued to have the status of occupying power*”.⁶² Moreover, while in September 2005 Israel completed the unilateral Gaza Disengagement Plan and declared the end of its military rule in the strip, the international community still considers Gaza a territory occupied by Israel due to the continuing control exercised by Israel over virtually every aspect of daily civilian lives. As a result, and although Israel has contested this status as well as its human rights obligations in these territories, the occupation of Palestine has – after almost fifty years – taken the shape and endured repercussions of a protracted occupation under the international law of occupation.

As an occupying power, in the last two decades Israel has engaged in a process of outsourcing military and security functions in the oPt, a combination of an already sensitive situation of a protracted occupation with the multi-dimension phenomenon of privatization. This process has accelerated since the Second Intifada of the Palestinian in 2000 and has accompanied other security policies, such as the construction of the Wall within the West Bank. Overall, the outsourcing policy applied in the oPt has followed, in some aspects, the policies of Israel within its own territory and can be considered an extension of it through the adoption of military orders and by means of amendments of applicable Israeli laws.

On the one hand, the rationale of outsourcing mainly came about from a revision of the prominent role and functions granted to the Israeli Defence Forces (IDF). As in other States, outsourcing began with the delegation of non-military services such as catering, transportation and other logistic services, then continued with the construction of military systems, including the separation Wall, and finally included the delegation of some of its functions of maintenance of public order and security in the oPt.⁶³ On the other hand, like within Israel, **the outsourcing policy has consisted of a combination**

⁶¹ In the following years, legislative and administrative actions were undertaken by Israel to change the status of the City of Jerusalem, until in 1980 the Israeli Parliament (Knesset) passed a basic law on the status of United Jerusalem as the capital of Israel. As a result, East Jerusalem was formally incorporated into the Municipality of Jerusalem and since then Israel applies its national law to the whole city, denying the status of East Jerusalem as an occupied/administered territory. See *Law and Administration Ordinance [Amendment No. 11] Law, 5727-1967*.

⁶² ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* [Advisory Opinion] [2004], ICJ Rep 136, para. 78.

⁶³ See Seidman, G. on this process, “From Nationalization to Privatization: The Case of the IDF”, *Armed Forces & Society*, Vol. 36, No. 4, July 2010. It should be noted that in addition to the prominent role of the IDF, a sophisticated Israeli defence industry was developed during the decade between 1950 and 1960, including arms and technology enterprises. Although not part of the IDF, the military-industrial corporations

of both a dynamic of privatization, i.e. the delegation of functions to private security companies, as well as what it is known as “civilianization”, i.e. transference of certain responsibilities to non-military bodies, such as the police, but also to private individuals and civilian communities such as settlements.⁶⁴

Today, the presence of PMSCs is now visible in a number of contexts in the oPt:

1. Management and guarding of checkpoints: The process of outsourcing in checkpoints began in 2003, when the Israeli government decided to initiate the construction of the Wall, but it started to materialize in January 2006. It included both civilianization – through the creation of the Crossing Authority, and the involvement of bodies other than the IDF – as well as privatization. By 2011 most of the 34 border checkpoints had been outsourced to private security companies. The overall role of private security companies⁶⁵ and their activities may vary depending on the checkpoint; namely its location, the organisational structure and the supervisory authority in charge. There are two main categories of private security contractors operating in checkpoints: 1) security guards, who bear weapons and “secure” the place [included in this category are the shift managers that supervise the other security guards] and 2) the inspectors who conduct all the stages of the “security check”, handling almost all interactions with the people crossing the checkpoints, and who are also skilled in the operation of scanning systems.
2. Protection of private and public establishments in the West Bank: This includes the guarding of commercial establishments such as major supermarket chains, and public institutions, such as police stations, as well as the supply of escort services to other official bodies. For instance, the staff of the Israeli Ministry of Social Affairs and Social services have been protected by PSCs during their activities across the Green line.
3. Guarding specific locations and establishments at settlements and industrial zones in the West Bank: PSCs generally provide guard services at the settlement gates, private establishments inside the settlements and at control posts located at the entrance to industrial zones.⁶⁶ In principle, they are employed by settlement authorities. Overall, their role is minor compared to the responsibilities of settler guarding teams [see below].
4. Protection of construction sites along the Wall: the Wall is the largest military infrastructure

were mostly government-owned and had the IDF as their primary client and *raison d'être*. Yet, to the extent that these companies mainly manufacture weapons and other military systems but do not deploy human resources in the oPt, they are not studied in this paper.

64 Armendáriz, L., *Private Military and Security Companies (PMSCs) and contractors in the Occupied Palestinian Territories*, NOVACT, 2015.

65 It should be noted that the private security companies operating at checkpoints are contractors that provide various subcontracted services in addition to security and surveillance, including cleaning and maintenance. These companies also provide transfers by armoured truck, protect various sites [schools, hospitals, shopping and industrial centres, etc.], accompany hikers and school field trips, employ armed guards with various levels of training to protect goods and persons, and carry out consulting and installation of electronic detection and surveillance system. See Havkin, S., “The reform of Israeli checkpoints: outsourcing, commodification, and redeployment of the State”, *Les Etudes du CERJ No.174 bis*, May 2011.

66 The term industrial zone, also known as industrial park, refers to an area planned for the purpose of industrial development. Thus, manufacturing and other kinds of business and factories are present there. In the West bank industrial parks are geographically very close to border checkpoints and managed by Israeli companies which enjoy certain financial advantages such as tax incentives, low labor inspection levels and cheap labour. See Havkin, S., op. cit., at 17

project completed by occupation authorities to date, and thus, it has required the participation of a number of contractors. According to sources, “[as] of 2007, 700 different subcontractors, around 60 planning offices, 53 major construction companies, 5 wire-fence companies, 11 civilian security companies, and about 34 producers of surveillance and communications were on the payroll”.⁶⁷ Private security companies work as sub-contractors employed by construction contractors to protect their personnel and machinery.

5. Guarding specific places in the old city in Jerusalem, the Light Rail Train (JLRT) and Jewish settlements in East Jerusalem. Outsourcing of security functions dates back to the beginning of the 1990s, when private contractors were employed to guard the home of the then housing minister Ariel Sharon in the Muslim Quarter of the Old City. In 1991, the Jewish organisations ELAD fostered the establishment of a settlement in the Palestinian neighborhood of Silwan, and subsequently, filed a judicial petition by getting the funding of its security through private security. Although at the time the State’s attorney expressed their opposition to transferring security responsibilities from the Israel Police to PSCs, the initiative was finally embraced. Over the years, the provision of private security through the Agency of the Ministry of Housing and Construction became the default official policy for both the housing minister’s new residence and the Jewish settlements in East Jerusalem”.⁶⁸ In 2011, sources announced the deployment of 350 to 370 security guards to protect approximately 2,500 Jewish residents in these neighborhoods. As of 2014, it was reported that the Israeli Ministry of Housing employed two private security companies to guard 70 Jewish compounds located within Arab neighborhoods in East Jerusalem at an annual cost of NIS 67 million.⁶⁹ On the other hand, the JLRT began its operation in 2011. The route crosses the city and passes through the Palestinian neighbourhoods where Israeli settlement enclaves are located. Since the commencement of its operations, the Israeli Jerusalem Municipality has monitored stations and as part of a unit established which includes surveillance and control technological systems, has contracted private security company services for guarding the carriages and stations.

Most of the private security companies (PSCs) currently operating, or which have operated in the oPt are of Israeli nationality. They work under a general license issued by a statutory committee which is valid in Israel as well. As of August 2012 there are 380 private security companies registered with a valid license, although only a few have been said to adhere to the strict preconditions required by tenders for operation in contexts such as checkpoints or settlements in East Jerusalem.⁷⁰ Furthermore, as required by Israeli legislation, individuals working as private security guards must “be a citizen or a permanent resident of Israel”. Since military experience is usually among the conditions required by

⁶⁷ <http://www.stothewall.org/downloads/pdf/companiesbuildingwall.pdf>

⁶⁸ See Excerpts from ACRI Petition to the High Court: Deployment of Private Security Guards by Housing Ministry to Guard Settlers in East Jerusalem is Unlawful. <http://www.acri.org.il/en/wp-content/uploads/2011/10/E-Jlem-Petition-Security-guards-ENG.pdf>

⁶⁹ Elhanan Miller, “Supreme Court defends private security in East Jerusalem”, *The Times of Israel*, January 7, 2014, <http://www.timesofisrael.com/supreme-court-defends-private-security-in-east-jerusalem/>.

⁷⁰ The first official tender for bids for the management of checkpoints was issued in May 2005, initially choosing 5 companies: *Mikud Security, Ari Avtaha, Hashomrim guarding and security group (S.B. security), Madi’in Ezrachi and Sheleg Lavan*. After the second tender in 2008, only 2 companies were chosen for handling security, *Madi’in Ezrachi and Sheleg Lavan*. This seems to still be the situation today. Tender requirements included a two-year revenue of NIS 100 million and the employment of at least 500 employees. With regards to East Jerusalem, *Madi’in Ezrachi* was the first and is still the [EP – the only?] PSC through which the Ministry of Housing provides security services in East Jerusalem. *Illit security* is the company which trains the guards for the Ministry of Housing.

tenders for candidates to work as private security contractors, it is common that students and young people that have just finished their compulsory military service are employed at the checkpoints. Sometimes they are even still doing military service in the reserve, which seems to contradict the very nature of civilianisation applied in this context.

To the best knowledge of this author, operations of foreign PSCs are minor in the oPt and have been mainly observed for escorting diplomats and other distinguished international personalities whilst they are undertaking missions in the territories. Yet, some foreign PMSCs like G4S have created subsidiaries in Israel and offer security guard services at settlements gates and commercial establishments in the West Bank. Moreover, foreign PMSCs have also signed contracts with the Israeli Ministry of Defence and other Israeli authorities for the provision of military and weapon systems as well as surveillance and security equipment which is used in prisons and military installations along the Wall the West Bank.

Depending on the context of where they operate, PSC activities comprise the typical tasks of surveillance and guarding services, as well as more bureaucratic tasks such as entrance verification and passing permits in checkpoints. However, in some contexts their activities have been vested with an important component of law enforcement which includes the exercise of policing powers such as the use of force, body searches and seizures, and the conduct of arrests and detentions in certain circumstances. In this regard, the role of private security companies is statutory, conceptualised as defence against terrorist activity and infiltration rather than against ordinary crime and violence, and thus, their services are increasingly used in practice to protect the Israeli population and interests detrimental to Palestinian rights and their protection. This has turned all Palestinians into potential terrorist threats, suffering from severe and routine abuses.

As noted above, another particular feature of the privatization process in the occupied territories is that Israel has delegated security functions not only to private companies but also to settler civilian groups in the West Bank. This policy is rooted in a military doctrine called “regional defence,”

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which predates the establishment of the State of Israel [when civilian forces based in Israeli frontline communities were charged with supporting army forces during military confrontations or invasions by foreign armies] and, since 1971, was extended to settlement communities in the West Bank by means of military orders. Under this

policy, most settlements have been allowed to have their own security forces, which include a civilian security coordinator” [CSC] and a 12-member guarding unit, even their own police station.⁷¹ **These**

⁷¹ For an historical and legal overview of this process see Yesh Din, The Lawless Zone. The transfer of policing and security powers to the Civilian Security Coordinators in the settlements and outposts, June 2014.

quasi-militia forces are mostly composed of residents of settlements and outposts⁷² in the area and are formally contracted by settlement authorities, yet they are armed, trained and financed by the Ministry of Defence and the Israeli army. Indeed, they are subject to military law and are considered “agents” guarding settlements in Israeli army’s behalf and under its supervision; however, the Ministry of Defence does not consider them as official employees. As of 2013 there were 265 CSCs employed in the West Bank.

Certainly, the CSCs are not the typical “corporate” security guards employed by a private security company and may bear more resemblance to militias or civilian-defence forces. Yet, **they hold a contractual relationship either with the local administration of the settlement with funding of the Ministry of Defence or with the Ministry of Defence itself,⁷³ and therefore, they should be regarded as “private security contractors” or “private security agents” as well.** In contrast, it should be noted that this is not exactly the case for members of the settlement guarding teams, who are not formally employed by the settlements but are instead subject to compulsory service and liable to a fine if they refuse to perform guard duty.⁷⁴

B. NATIONAL REGULATORY FRAMEWORK

The use and activities of private security companies, on the one hand, and settlement guarding teams, on the other, are regulated by a complex set of laws. This legislation comprises both Israel national laws and military orders and is applicable according to the location and the contexts where private security services are provided. Additionally, activities of PSCs are governed by governmental tenders that select the companies for operation in certain contexts and/or by the contractual relationships with the clients. As a whole, the existing regulatory framework creates a puzzle of regulations that differentiates between the provision of private/civilian security in settlements and the rest of oPt, on the one hand, and in the different contexts within the oPt – East Jerusalem, checkpoints, settlements, construction sites along the Wall, private establishments, etc, on the other. Moreover, legislation in force regulates aspects such as licensing and the powers and areas of responsibilities of PSCs and settlement guarding teams. However, norms concerning their training, rules of engagement and supervision are vague or remain classified.

For the sake of clarity we provide a separate commentary for the regulation of PSC activities and settlement guarding teams [West Bank].

Private security companies

In order to operate in the oPt, both PSCs and private security personnel must possess a valid license which is granted by a statutory committee established under the *Law of Private Investigators and Guard Services* [1972]. Only licensed PSCs are allowed to participate in the respective governmental

⁷² Outposts are settlements built without official authorisation but with the support of the Israeli government.

⁷³ In particular, according to Ministry of Defence instruction in 2010, two types of employment contracts can be used for the CSCs: a contract signed with the executive of the settlement, without employer-employee relations between the coordinator and the Ministry of Defence, i.e. “collective employment”, which is the modality mostly used in practice; and a personal contract signed with the CSCs establishing employer-employee relations between the coordinator and the Ministry (“personal employment”).

⁷⁴ See Military Order No. 432 concerning Guarding in Communities [1971]. For a commentary, Yesh Din, *The Lawless Zone*, op. cit. at 11; Armendáriz, L., PMSCs at the oPt, at. 56.

tenders that select companies for operating in contexts such as Jewish settlements in East Jerusalem and checkpoints in the West Bank, and only guards with a valid personal license and weapons permit can work on them. The 1972 law provides general requirements for establishing a private security company and working as a private guard (age, Israeli residence, etc), and the committee can refuse to grant a personal license on the grounds of public security and the personal record or behaviour of the applicant. However, the law lacks specific provisions concerning the training, norms of conduct, and supervision of private security employees and, in practice, does not have a real effect on the operational aspects of PSC activities in the oPt. Rather, specific conditions for the activities and conduct of PSCs in these contexts are governed to a large extent by governmental tenders and/or by the contractual relationships with the respective clients and institutions, both remaining classified.

Additionally, *military order No. 1401 concerning security services* [1993] requires a permit by a competent [military] authority in order to arrange and contract security services in the West Bank. As the definition of security services is identical to that of the 1972 law –including services of protection of persons and property as well as the installation and maintenance of alarm systems and other security equipment – this operational authorisation would be required, in principle, for PSCs protecting commercial establishments and construction sites along the Wall in the West Bank, although we were unable to confirm this fact. Again, the order does not include reference as to what are the norms of conduct and supervision for security providers but simply states that operating without a permit or violating the “terms of the authorisation” given by the military commander is punishable with a three-year prison sentence, a fine of NIS 250,000, or both. Yet, the terms and conditions of this operational permit are unknown for the public and local population.

The definitive regulatory prompt for the use and activities of PSCs came in 2005 with the adoption of the *Powers for Maintaining Public Security Law*. This law primarily addresses the provision of security services within Israel but it was also extended to security services in checkpoints through the amendment of the 1996 *Law on Implementation of the Interim Agreement regarding the West Bank and Gaza Strip*. As a result, it constitutes the main legal basis under which PSCs and their employees perform security services in Jerusalem and at checkpoints in the West Bank.

Within Israel, the law significantly extends the powers that private security personnel had until then, giving them the same status as soldiers, police agents and public officers, i.e. legal authority to demand that individuals identify themselves, to conduct body or property searches and to proceed with detention by the use of reasonable means. Notably, the law also expands the scope of their activities, as the powers granted to them are supposed to be used in “order to maintain public security against terrorist activity and violence” rather than to ordinary criminal activities. Subject to the authorisation of Ministry of Internal Security, the implementation of the law within Israel has resulted in the designation of “specific locations” where any private security personnel may operate under the law, such as malls, shopping centres, banks, police stations, or areas under regional government jurisdiction.

In principle, all PSCs working in Jerusalem operate under this law as well. However, in the case of PSCs working specifically in the settlements in East Jerusalem, initial employment came through the

agency of the Ministry of Housing and Construction and has perpetuated without a firm legal basis.⁷⁵ In practice, this has not only created an irregular basis for their operation but also facilitated that they enjoy broader responsibilities than those given to other private security guards, exclusively protecting Jewish settlers and treating Palestinian residents as a security threat. As noted by a petition filed by Israeli organisation Association for Civil Rights in Israel (ACRI) to the Israeli High Court of Justice in 2011:

“While all private security guards in Israel operate under the same specific law, it should be stressed that security guards in East Jerusalem are given various responsibilities that are far broader than those exercised by guards stationed at the entrances to malls and restaurants. Firstly, East Jerusalem security guards are employed for the express purpose of protecting one national-ethnic group to another. Secondly, they regularly use a broad range of powers, including the authority to use physical violence and fire live ammunition. Thirdly, their authority is not limited to one specific gated compound [as Article 3 of the law concerning the protection of public security limits other guards], and they are required amongst other duties to accompany Jewish residents and their visitors through neighbourhood streets and to ensure the safety of visitors coming both to and from the cemetery on the Mount of Olives.”⁷⁶

Moreover, according to the 2005 law, private security personnel in Israel must wear specific identification and uniforms and their supervision must be under the overall guidance of the police. However, in the case of **PSCs working at settlements in East Jerusalem, deficiencies and lack of implementation have also been observed concerning this, ultimately preventing the possibility of prosecuting PSCs for their misconduct and aggressive behaviour.** In particular, as described in the above-mentioned petition:

“[b]ecause the guards are not part of the police force, supervision over them is extremely deficient. As such, it is unclear which body is authorised to handle complaints about improper security guard behaviour, which body will examine these complaints, and according to what rules and norms the delinquent should be judged. East Jerusalem security personnel do not wear uniforms that differentiate them from entirely private security personnel operating in the neighbourhood, and, despite the clear obligation established by law, they do not wear identification tags with their names on them. Thus, the ability to prosecute a rogue security guard and bring him to justice is extremely limited. It is impossible to bring him before a disciplinary tribunal or write a letter for his personal file as is the norm regarding to police officers. Bringing an indictment against such a guard, as a private civilian, is only possible when there is adequate legal evidence against him.”⁷⁷

⁷⁵ ACRI, Deployment of Private Security Guards in East Jerusalem [Excerpts Petition to the High Court], 2011. “In 2005, then Housing Minister, Isaac Herzog, convened a public committee under the direction of Maj. Gen. [res.] Ori Orr and charged it with the task of “examining the matter of the security of residential compounds and neighbourhoods in the Old City and in East Jerusalem through the agency of the Ministry of Housing and Construction.” Upon completion of its work, the committee made the unequivocal recommendation that responsibility for security of these areas should be returned to the Ministry of Internal Security and to the Israel Police. Yet shortly after the government voted on a resolution to implement the recommendation, it chose to revoke its previous decision and instead adopt the opposite resolution, thus preserving the status quo [Government Resolution 1073 from 21.1.2007]. Though this form of resolution requires the government to present it to the Israeli parliament, such a step was never taken, leaving the resolution incomplete and the policy itself lacking a firm legal basis.”

⁷⁶ Id, at p. 2.

⁷⁷ Id, at p. 3.

With regard to checkpoints, the application of the law is also inconsistent. The powers of PSC personnel in checkpoints are more limited than those authorised to them within Israel. In particular, private security personnel may demand identification and search the property and vehicles of persons passing through the checkpoints, but in order to conduct body searches, the supervision of the public authority responsible for the checkpoint, i.e. the soldier, police or public officer, is required. Likewise, refusal of passage of an individual is conditional to the authorisation of a public authority. In short, this means that **private security personnel are allowed to conduct routine security management tasks while any incident or altercation will prompt the presence and direction of the responsible public authority in charge of the checkpoint.** In practice however, due to the complex network of state agencies participating in the operation and management of checkpoints, supervision of PSC activities remains unclear and deficient. In principle, the administrative hierarchy and the respective responsibilities of the governmental bodies are regulated by a classified decision of the government security cabinet. However, observers have noted that, in practice, there is juxtaposition and blurring of functions between these bodies, which contributes to the dispersion of authority and makes it difficult to attribute responsibility in cases of abuse.

On the other hand, in the context of checkpoints, the authority to grant powers to private security personnel lies with the Minister of Defence who is also expected to guide and monitor the training of private security personnel. However, it is not clear to what extent it exercises this responsibility, and indeed, some of the training is itself outsourced to private companies specialising in security training.⁷⁸ In these regard, it should be noted that private security personnel are instructed in their rules of engagement (RoE)⁷⁹ in these training courses. In principle, training courses are designed according to the specific activity that they are contracted to perform, the training plan determined by each body that they are designed to serve as security guards and the required training level and the procedures defined by governmental tenders. Consequently, some PSC employees operating in the oPt are trained according to instructions set out by the Israel Police, in the case of Jerusalem and certain checkpoints, while others must undergo military training according to rules defined by the IDF. In this regard, however, neither the content of the training plans nor the specific RoE that applies to them is known by the public and the latter remains classified.

Overall, this makes it really difficult to discern whether the RoE delineated for PSC activity in the variety of contexts of occupation where they operate should be classified as: 1) techniques for the use of force in self-defence, which is regulated under national law; 2) rules for the use of force in combat operations during armed conflict, which are governed by international humanitarian law [conduct of hostilities paradigm]; or 3) rules for the use of force in law enforcement operations, derived from human rights laws. Certainly, the content of the 2005 legislation regulating the powers of private

⁷⁸ Ronen, Y., op. cit. at 446.

⁷⁹ RoE are rules of behaviour addressed to military forces and individuals regarding the use of force and the employment of certain capabilities. They define the circumstances, conditions, degree and manner in which force, or actions which might be construed as provocative, may be applied. See, *NATO ROE Manual MC 362-1*.

RoE should not be confused with national or international prescriptions authorising or prohibiting the use of force in particular circumstances [self-defence, conduct of hostilities in armed conflicts, law enforcement operations]. Rather, the RoE delineate the amount of force and provide protocols and techniques for using force and firearms in these circumstances in order to comply with the prescriptions. For instance, recourse to "escalation of force" techniques [warning shots, shouting, etc.] is a RoE that should be used in policing operations. See, Cole, Drew, McLaughlin, Mandsager, *San Remo Rules of Engagement Handbook*, San Remo: International Institute for Humanitarian Law, 2009, 70-71.

security employees seems to indicate a law enforcement approach, i.e. only allowing private guards the “use of reasonable force, and thus RoE similar to those of the police. Yet, there is still ground for discussion as to whether certain activities delegated to private security contractors in the oPt, particularly at checkpoints but also in settlements and at construction sites along the Wall, may lead them to become involved in military operations in certain circumstances, even if the activities are performed in the spirit of law enforcement. This is a problematic aspect of PSC activities in times of armed conflict and occupation which is further exacerbated in the case of the oPt by the lack of a clear regulation.

Settlements’ civilian security personnel

The figures of the Civilian Security Coordinator and settlement guarding teams were created in 1971 by military Order No. 432 concerning *Guarding in Communities [Judea and Samaria]* but several amendments to the Order have progressively expanded the original powers of CSCs as well as the geographical area where they exercise their responsibilities.⁸⁰ At present, CSCs are responsible for all aspects of security in settlements and outposts, including the supervision of the private security companies in the settlements.

Military orders have granted these civilian guards quasi-policing powers, including those of detention, body searches, seizure of an object, and the arrest of a person by using “any reasonable means” if they have “reasonable suspicion” or “reasonable grounds to assume” that this action will prevent danger to human life. These powers are broader than those assigned to original frontline communities while at the same time requirements for their identification are less stringent: settlement guards must carry a guard certificate and an identity card, but military orders do not require them to wear a tag identifying themselves by name, as is required of Israel Police personnel [including Border Police] or other officials enjoying policing rights in Israel. Moreover, according to military orders, CSCs are subject to the Military Justice Law [1955] to the extent that, although they are not soldiers, they do work on the army’s behalf. They also must undergo military training in the framework of a CSC course as a condition of employment, and must apply and receive special permission for bearing IDF weapons. However, they are not recognised as official employees by the Ministry of Defence and their status under international humanitarian law, in particular as potential “militias”, remains far from clear.

Overall, this military legislation has broadened the powers of settlement guards towards a role of law-enforcement without properly ensuring their supervision or clear procedures for exercising their functions. As the Israeli human rights organisation Yesh-Din, that has monitored the activity of these actors, remarks: “[t]he diffusion of responsibility between the three authorities involved in the employment of the CSCs [The Ministry of Defence, regional defence officers, and the settlements’ authorities] that prevents the supervision and control of the appointment and ongoing functioning of the CSCs and the members of the guarding squads”.⁸¹ Moreover, although they are subject to military training, none of the relevant bodies involved in the employment of CSCs and guards has

⁸⁰ For an account of these amendments see Armendáriz, L. PMSCs in the oPt, op. cit. at. 56-58. Notably, relevant military orders include Order No. 1628 concerning *Powers for the Protection of Public Security (2009)*, which replicates Israeli legislation on Powers for Maintaining Public Security (2005) in settlements in the West Bank.

⁸¹ Yesh Din, *The Lawless Zone*, op. cit. at 29.



prepared a document of routine standing orders summarising the procedures and commands relating to their work, and orders concerning the issuing of army weapons do not include provisions for their use but are limited to providing that CSCs must obey “all the army commands”. As a result, a series of incidents show that CSCs and their guarding militias have often used armed force in a manner that reflects a wide discretion in interpreting the existence of a potential threat, severely harming Palestinian rights.

C. IMPACT OF HUMAN RIGHTS

The policy of privatization and civilianization of security functions in the oPt has had an impact on several aspects of the life and rights of Palestinian population. This impact is two-fold. On the one hand, private security companies and settlement guarding teams alike have been involved in a series of human rights incidents against Palestinian civilians. On the other hand, this outsourcing policy also has an immediate effect on the situation of occupation because private security companies and settlement guarding teams are used by Israel to perpetuate the settlement project and the construction of the Wall, both in contravention of international law.⁸²

Reports by human rights organisations give an account of daily incidents involving private/civilian security personnel against the Palestinian population. These incidents have been reported in all of the contexts where they operate, though are notably superior in number in the context of settlements in the West Bank and East Jerusalem.

Overall, they reflect a broad discretion in the exercise of their powers, existing confusion regarding their rules of engagement, and lack of or insufficient supervision by public authorities over their activities. Moreover, in this nature, documented incidents involve a deprivation or violation of several fundamental human rights, including the right to life, freedom from cruel, inhuman or degrading treatment, non-discrimination, the right to liberty, the right to peaceful assembly, the right to

The policy of privatization and civilianization of security functions in the oPt has had an impact on several aspects of the life and rights of Palestinian population. This impact is two-fold. On the one hand, private security companies and settlement guarding teams alike have been involved in a series of human rights incidents against Palestinian civilians. On the other hand, this outsourcing policy also has an immediate effect on the situation of occupation because private security companies and settlement guarding teams are used by Israel to perpetuate the settlement project and the construction of the Wall, both in contravention of international law.

privacy and the right to private property; but they may also amount to violations of international humanitarian law, particularly in the context of settlements, to the extent that they are committed against protected persons under the law of occupation.

It should be noted that some international human rights bodies have echoed the negative implications that civilianisation and privatization of security functions have on human rights of the occupied Palestinian population. In particular, in 2012, among the list of issues prior to the submission of Israel’s fourth periodic report, the UN Human Rights Committee (HRC) asked Israel to

⁸² For an approach EP – change “approach” do you mean introduction? to this issue under international law, see Armendáriz, L., PSCs in the oPt, op. cit., pp. 64-89.

provide “updated information on progress achieved in reducing violent acts by Israeli settlers” in the following terms:

“Can the State party comment on the information that violent acts from settlers against Palestinians have taken place with the acquiescence and sometimes active involvement of members of the Israeli Defense Forces? In view of ongoing reports that settlers are not prosecuted or punished for their violent acts at Palestinians, please update the Committee with detailed information on how the State party has conducted investigations, how many settlers have been prosecuted and punished and on the remedies provided to victims.”⁸³

As with regard to other issues concerning the oPt, Israel did not answer this question on the grounds that the International Covenant on Civil and Political Rights (ICCPR) does not apply in the oPt. In its concluding observations, the Committee regretted “that the State party continued to maintain its position on the non-applicability of the Covenant to the Occupied Territories” and reiterated that “the Covenant applies with regard to all conduct by the State party’s authorities or agents adversely affecting the enjoyment of the rights enshrined in the Covenant by persons under its jurisdiction regardless of the location”.⁸⁴ Moreover, the Committee expressed its concern at both persistent reports of excessive use of lethal force by the Israeli security forces as well as reports of violence by Israeli settlers in the West Bank, and reminded Israel to “ensure that prompt, thorough, effective, independent and impartial investigations are launched into all incidents involving the use of firearms by law enforcement officers, including [...] private security personnel contracted by [Israel]”, and “into all incidents of violence by private actors against Palestinians and their property” in settlements in the West Bank (including East Jerusalem), in order to prosecute perpetrators and, if convicted, punished with appropriate sanctions, and victims are provided with effective remedies.⁸⁵

In order to report further on the issue, the following paragraphs provide a brief overview of relevant examples illustrating the direct impact of PSCs and settlement defence forces on human rights according to the contexts where they operate.

Crossings

NGO Machtson Watch, which monitors the conduct of State authorities at checkpoints, has noted that one of the major effects of civilianisation and privatization is the diminished sense of accountability of checkpoint personnel. It is argued that the civilian management of the crossings [governmental or, at the lower levels, private] considers itself a ‘service provider’, which operates as a commercial enterprise and is less cognizant of its responsibility towards the population in view of its formal powers. This results in a rigid approach in circumstances where military authorities have in the past been more forthcoming.⁸⁶ With regards to the conduct of PSCs, the following incident may serve to illustrate this point:

“September 2007. Reikhan Barta’a checkpoint. An elderly Palestinian woman [78 years old] died on her way to the hospital after having been delayed by PSC employees operating the

⁸³ See UN Doc. CCPR/C/ISR/Q/4, 31 August 2012, para. 18.

⁸⁴ See UN Doc. CCPR/C/ISR/CO/4, 21 November 2014, para. 5.

⁸⁵ Id. paragraphs 13 and 16 respectively.

⁸⁶ Ronen, Y., “Israel Going Private, op. cit., at 441-442.

checkpoint for approximately 3 hours. Her son tried to rush her to the hospital in Jenin but he was stopped by checkpoint employees.”⁸⁷

The operation of PSCs in the context of checkpoints has also raised concerns regarding questionable hiring procedures, poor working conditions and abuse against the labour and other rights of PSC’s employees. As an example:

- *“A PSC employee was allegedly wrongfully dismissed for having participated in a labour conflict against the company. According to sources, ‘The Union representative of the dozens of employees involved was called in by the manager who asked him to sign a document forbidding him, among other things, from talking to the media. [...] the document was held to be so confidential that the employee [...] did not even have the right to show it to his attorney. The fact that he had consulted a lawyer prompted an inquiry, and indirectly, his dismissal’”.*⁸⁸

Finally, a series of incidents have brought to the fore the uncertainty regarding the rules of engagement applicable to private security personnel operating in checkpoints and crossings. Some of these incidents show the use of excessive and disproportionate force by PSC guards, which in some cases was tantamount to the summary execution of assailants or suspected assailants.⁸⁹ Furthermore, reports also illustrate questionable procedures applied by PSCs and Israeli public authorities for dealing with and investigating incidents, such as denial of medical assistance. In particular:

- *“June 2009. Erez checkpoint, Gaza Strip. An unarmed individual [later found to be an Israeli national, apparently mentally unstable] arrived at the checkpoint, and began to climb the fence into Gaza. The private security forces called on him to halt, but he did not heed their calls and proceeded to climb the fence. The private security forces opened fire. They hit the man in the leg’s main artery, causing him to bleed to death. It is not clear whether the order to shoot was given by the PSC senior officer or by the IDF commander. The use of force was questioned as the person was running away from Israel and therefore, he did not constitute a direct threat. According to IDF and the Defence Ministry, ‘while the incident was undoubtedly irregular, an initial probe shows that the force’s actions were impeccable. Certain sources, however, reported that other military authorities suggested that the “the shooting was aimed at avoiding the potential kidnap of an Israeli citizen by Palestinian forces”, known as the Hannibal Procedure”.*⁹⁰

⁸⁷ Sources: 1] Gideon Levy, “Twilight Zone / Charlie’s angels”. Haarezt [August, 2007]: accessed July, 18, 2014, <http://www.haaretz.com/weekend/magazine/twilight-zone-charlie-s-angels-1.228555>; 2] Gideon Levy, “Meanwhile in the West Bank”. Haarezt [December, 24, 2007]: accessed July, 18, 2014, <http://www.haaretz.com/print-edition/opinion/meanwhile-in-the-west-bank-1.235795>. 3] Harvard University Program on Humanitarian Policy and Conflict Research [HPCR], Policy Brief: *Private Security Companies in the oPt: An IHL perspective*, March 2008 p. 4.

⁸⁸ Sources: 1] Havkin, S., “The reform of Israeli checkpoints, op. cit, 2011, p. 17. 2] related-source: Jonathan Lis, “Netanyahu calls to investigate working conditions for government bodyguards”, *Ha’aretz*, April 18, 2012, <http://www.haaretz.com/news/national/netanyahu-calls-to-investigate-working-conditions-for-government-bodyguards-1.425068>

⁸⁹ Sources: 1] Havkin, S., “The reform of Israeli checkpoints, op. cit, 2011, p. 17. 2] related-source: Jonathan Lis, “Netanyahu calls to investigate working conditions for government bodyguards”, *Ha’aretz*, April 18, 2012, <http://www.haaretz.com/news/national/netanyahu-calls-to-investigate-working-conditions-for-government-bodyguards-1.425068>

⁹⁰ Sources: 1] Ronen, Y., “Israel Going Private”, op. cit., p. 447-448; citing sources 2] Hanan Greenberg, ‘Israeli climbing fence into Gaza shot dead’, *Ynet* [July 12, 2009]; last accessed on January 21, 2016.

- *“October 23, 2015, Al-Jalamah crossing, northeast of Jenin. Private security guards guarding the crossing killed a Palestinian child [17] while running towards the first barrier of the crossing. According to investigations and statements of witnesses of the Palestinian Centre of Human Rights (PCHR), the child was present along with other peddlers in the place where they used to stay selling chocolate-coated marshmallow treats. At approximately 11:00, he suddenly ran towards the first barrier of the crossing. The security guards noticed him and opened fire. The child fell to the ground; however, the Israeli forces denied the Palestine Red Crescent Society’s (PRCS) paramedics access to the area. Soon after, the victim’s corpse was pulled inside the crossing and the security guards stopped the traffic. According to witnesses, the child was visibly unarmed, so guards could have used less lethal force and arrested him”*.⁹¹
- *“October 31, 2015. Al-Jalamah crossing, northeast of Jenin. Private security personnel guarding the crossing killed a Palestinian child [17], who was running towards the checkpoint entrance. According to PCHR’s investigations, the guards stationed at the watchtower shouted at him to stop, but he started saying “Allah Akbar”. Although according to witnesses interviewed, he was not carrying any weapons or sharp tools, one of the guards fired around 8 live bullets at him, so he fell to the ground. The guards pulled his body around 100 meters towards the crossing gate and left him on the ground. They prevented PRCS ambulances from approaching the victim who died at the scene. After two hours, the corpse was given to the Palestinian Military Liaison that transferred him to Dr. Khail Soliman governmental Hospital in Jenin.”*⁹²

Settlements in East Jerusalem

PSCs operating in East Jerusalem are employed for the stated role of protecting one national-ethnic group from another, i.e. Israeli settlers from the Palestinian residents of neighbourhoods of Jerusalem. Considering that all of them are legal residents of Israel and are entitled without any discrimination to equal protection of the law, the use of private security companies constitutes a discriminatory policy against Palestinian residents.

Private security personnel behave in an abusive manner that infringes several fundamental rights of Palestinian residents such as the freedom of movement (through daily closure of streets) and their right to privacy (by placing security cameras in locations directly viewing Palestinian private domains). Moreover, PSCs have often used physical and armed force under their own discretion, resulting in constant clashes between security guards and Palestinian residents including a number of events of deadly shootings. Overall, the daily presence of private guards in these crowded neighbourhoods has resulted in a tense environment and the fear and anxiety of the Palestinian population.

On 31 October 2011, the Association of Civil Rights in Israel (ACRI) and Palestinian residents of East Jerusalem filed a petition to the Israeli High Court of Justice demanding the end of the

⁹¹ Information based on research and monitoring conducted by Palestinian Centre for Human Rights (PCHR-Ramallah) for the *Observatory on PMSC & Human Rights* (NOVACT). On file with the author.

⁹² All details and information on file with the author. NOVACT Observatory PMSC & Human Rights, in co-operation with the PCHR (Ramallah).

deployment of private security guards. The petition included a review of a list of violent incidents, including one in which a resident of Silwan was shot to death in September 2010 and another in which the resident was seriously wounded when shot in the leg in June 2010.⁹³

The following are further examples of incidents involving PSCs in this context:

- *“August, 2007. Jerusalem Old City. A 29 year old Israeli Arab national grabbed a pistol from a private security guard in Jerusalem’s Old City and ran away. During the chase he was allegedly shot and killed by another private security guard in response. Ten other persons were also injured by shots fired. The incident was captured on video by the security cameras that monitor the streets and alleyways of the area. Witnesses reported and the video showed that [the person] was fired at several times while lying dead on the floor, an action that is technically considered as a “kill confirmation procedure”, i.e. a procedure entailing shooting from a short distance to ensure that the potential perpetrator is dead. However, the police conducted a criminal investigation concluding that the security personnel acted professionally and in accordance with the procedures. Later on, criminal charges against the guards were dismissed by the Jerusalem Magistrate’s Court. In subsequent proceedings filed by the family of [the person] against the National Insurance Institute [NII], the Haifa Labour Court ruled that the NII failed to prove the incident was indeed terrorism and, therefore, the state agency was compelled to resume monthly payments made to the widow and her family”⁹⁴*
- *“June, 2010. Silwan neighbourhood / Bir Ayoub neighbourhood, East Jerusalem. Israeli settlers and armed guards, together with a large force of Israeli police and special units, fought against young Palestinian residents in the Bir Ayoub neighbourhood of Silwan using live fire and stun grenades against them. During the incident, settlement guards assaulted a photographer while he was trying to film the events. Also, a 29-year-old resident was shot in the leg/foot on his way to evening prayers by guards. Never questioned by police, the resident was nevertheless recognised by the National Insurance Institute as a terror victim.”⁹⁵*
- November 10, 2015, Old City Jerusalem. Settler security guards opened fire at Mohammed Abed Ali Nemer (37, a resident of al-Eisawiya village) at the al-Mesrara Street, opposite to al-Amoud Gate in the Old City. As a result, he sustained several bullet wounds from a close range and was then taken to Hadassa-EinKerem Hospital in West Jerusalem where he died. Israeli forces claimed in a statement that Nemer was following two security guards after they finished escorting a Jewish family. The two guards alleged that he attempted

⁹³ ACRI, Deployment of Private Security Guards in East Jerusalem [Excerpts Petition to the High Court], 2011.

⁹⁴ Sources: 1] Breaking News, World, “Palestinian dies in Jerusalem shooting” [August 10, 2007] <http://www.smh.com.au/news/World/Palestinian-dies-in-Jerusalem-shooting/2007/08/10/1186530611509.html> ;

2] Etgar Lefkovits, The Jerusalem Post, “Doc’s talk” [August 12, 2007]. http://docstalk.blogspot.com.es/2007_07_13_archive.html;

3] CNN Wire, “The CNN Wire, Friday, August 10”. CNN News [August 11, 2007]: accessed July, 18, 2014, <http://edition.cnn.com/2007/WORLD/europe/08/10/friday/index.html>

⁹⁵ Sources: 1] Elhanan Miller, “Supreme Court defends private security in East Jerusalem”, *The Times of Israel*, January 7, 2014; <http://www.timesofisrael.com/supreme-court-defends-private-security-in-east-jerusalem/>; 2] Monitoring Jerusalem, Jerusalem Centre for Woman Women?, Issue 8, June 2010; <http://www.j-c-w.org/reports/monitoring10june.pdf>

to stab one of them with a knife he pulled out, so they responded by opening fire at him and neutralised him. However, owners of stores in al-Mesrara area refuted the Israeli story and explained that the aforementioned person was walking in the street, which is full of stores and restaurants, and settler guards surrounded him and opened fire at him for no reason. They also stressed that they did not see whether he had a knife with him. Following the incident, Israeli forces raided the house belonging to Nemer's family in al-Eisawiya village. They searched the house, damaged its content and detained and interrogated Nemer's father and two brothers for few hours. The family asked the Israeli police to show a video of the incident in order to prove the real succession of events but the petition was rejected."⁹⁶

· "November 29, 2015. Al-Wad Street in East Jerusalem's Old City. Israeli border officers and settlers guards allegedly opened fire at Basim 'Abdel Rahman Mustafa Salah (38, resident from Nablus) after he stabbed an Israeli soldier. He was shot by more than 11 live bullets so immediately died at the scene. An eyewitness said to a PCHR fieldworker in Jerusalem that he heard the sound of shooting when he was in his house near the scene. When he went out, he found a young man in his mid-thirties lying on the ground and covered in blood. His green ID card was beside him because the Israeli soldiers took it out from his clothes. The eyewitness said that he heard from one of the residents that an Israeli police fired more than 7 bullets at the young man, and then a settler guard came and fired another 4 bullets at him. The eyewitness further explained that Israeli ambulances, the police and intelligence officers arrived and closed the street, but that the ambulance crews gave first aid to one of the Israeli soldiers but did not give any medical attention or treatment to 'Abdel Rahman so he bled to death."⁹⁷

Finally, it should be mentioned that *"since October 2015 there have been dozens of assaults on civilians and members of Israel's security forces. These assaults have taken the form of stabbings, car-rammings and gunfire in which Palestinians killed 16 civilians and three members of Israeli security forces. By 11 December 2015, 71 of the assailants had been shot dead by members of the security forces or civilians.⁹⁸ While the wave of violent assaults gave Israeli security forces the right to protect the public and use force to prevent or repel the attack, according to sources, "in at least some of the cases, firing at the assailants did not cease even after they no longer posed any danger. Some were injured and lying motionless on the ground when they were shot dead. In other cases, the very use of live gunfire seems excessive. Some cases were summary executions, without the benefit of law or trial."⁹⁹*

Construction sites along the Wall

The primary task of PSCs is to protect construction contractors and their machinery, yet private security contractors have been allegedly involved in cases of repression of peaceful Palestinian

⁹⁶ Information based on research and monitoring conducted by Palestinian Centre for Human Rights (PCHR-Ramallah) for the *Observatory on PMSC & Human Rights* [NOVACT]. On file with the author.

⁹⁷ Id.

⁹⁸ http://www.btselem.org/gunfire/20151216_cases_of_unjustified_gunfire_and_executions

⁹⁹ Id.

demonstrations against the Wall. Furthermore, a series of events illustrate a wide discretion in the use of reasonable means of force, abuse of powers and considerable confusion regarding the applicable rules of engagement. The following are some relevant incidents that occurred in this context:

- *“February, 2005. Village of Bitunya, Ramallah and Al-Bira governorate. A private security guard shot and killed by gunfire a 14-year-old boy who was throwing stones at an Israeli vehicle driven by private security guards at the barrier”*¹⁰⁰
- *“July, 2005. Village of Beit Liqya, Ramallah and al-Bireh Governorat. A 15/17-year-old boy was shot dead by the private security guard protecting the construction of Wall. Apparently, the incident occurred during a demonstration against the Wall. The child was shot in the chest by live ammunition. Other children tried to approach their friend to evacuate him, and were met with more gunfire as soldiers shot in their direction. Over an hour later a Red Crescent ambulance was allowed access to him - by which point he had bled to death”*.¹⁰¹
- *“May 2007. Fence near the West Bank settlement of Efrat. Four security guards protecting the Wall fired at a group of five journalists who tried to approach people demonstrating against the fence near the settlement of Efrat. Fifteen minutes after the incident, army and police forces arrived at the scene According to sources, it was a peaceful demonstration. One of the journalists reported that security guards did not warn them first, but just opened fire. Journalists managed to escape the incident unharmed, but stated that were also verbally intimidated and threatened by private guards. According to military sources, a Defence Ministry security guard fired one shot in the air”, and “a guard was slightly injured by stones hurled at him and two protestors were arrested”*.¹⁰²

Light rail train (Jerusalem)

Violent confrontations between private security personnel guarding the train and Palestinian passengers frequently occur. In certain periods, private guards have prevented Palestinians from boarding the train, and cases have also been reported of private guards using pepper spray on Palestinian passengers. Most of the incidents documented took place in the East Jerusalem neighbourhoods and involved the use of armed force by the guards. For example:

100 Sources: 1) Statistics, *“Palestinians killed by Israeli civilians in the Occupied Territories”*. B’Tselem - The Israeli Information Centre for Human Rights in the Occupied Territories [2011]: accessed July, 18, 2014; <http://www.btselem.org/statistics/fatalities/any/by-date-of-death/wb-gaza/palestinians-killed-by-israeli-civilians>; 2) International Solidarity Movement, *“List of demonstrators killed during protests against the Wall”* (December, 2010). Accessed July, 18, 2014; www.palsolidarity.org; 3) Haitham Sabbah, *“20 Palestinian fatalities at demos against the apartheid wall”* Sabbah Report (April, 2010). Accessed July, 18, 2014;

<http://sabbah.biz/mt/archives/2010/04/14/20-palestinian-fatalities-at-demos-against-the-apartheid-wall/>

101 Sources: 1) ISM News Relay, *“Child shot dead today and another in critical condition one year after ICJ decision”*. Occupation Magazine (July, 2005): accessed July, 18, 2014, http://www.kibush.co.il/show_file.asp?num=5547. 2) ISM News Relay, *“No More Shooting - Today, Saturday July 9, at 19:00, we will demonstrate in Tel Aviv in front of the Ministry of Defence, Kaplan Street.Occupation”* Magazine (July, 2005): accessed July, 18, 2014, http://www.kibush.co.il/show_file.asp?num=5550. 3) International Solidarity Movement, *“Child shot dead today and another in critical condition one year after ICJ decision”*. Scoop (July, 2005). Accessed July, 18, 2014, <http://www.scoop.co.nz/stories/W00507/S00185.htm>. 4) Office for the Coordination of Humanitarian Affairs, *“Protection of Civilians - Weekly Briefing Notes 6 - 12 April 2005”*. Accessed July, 18, 2014, <http://www.ochaopt.org/documents/WBN100.pdf>.

102 Sources: 1) Ali Waked, *“Separation fence guards shoot at journalists”*. Ynet News (May, 2007): accessed July, 18, 2014, <http://www.ynetnews.com/articles/0,7340,L-3403082,00.html>; 2) MM/BGH, *“Journalists come under Israeli fire”*. PressTV. Accessed July, 18, 2014, <http://edition.presstv.ir/detail/fa/10615.html>; 3) HPCR, Private Security Companies in the oPt, op. cit., p. 4.

- *“May 2015. The French Hill train station located north of the Old City of East Jerusalem. An Israeli guard at the light rail opened fire at Palestinian young man [35] while present on the rails, as a result of which he was wounded in the leg and taken to Hadasa Hospital to receive medical treatment. According to investigations conducted by the Palestinian NGO Palestinian Centre for Human Rights, Israeli forces claimed that the guard opened fire to prevent the Palestinian’s attempted stabbing. On the following day, during a hearing held by the Israeli Magistrates Court in Jerusalem, it was discovered that the Palestinian youth did not intend to stab anybody and did not have any sharp tools, but was only holding his belt in his hand after he was searched. At the time of writing, the victim was at the Hadasa Hospital receiving medication and the hearing was held in absentia”.*¹⁰³
- *November 10, 2015. Light rail train station in “Pisgat “Zeev” settlement, north of East Jerusalem. A light rail security guard opened fire at Ali Ehab Hassan Ali [12] and Mo’awiya Ahmed Hassan Ali [14], claiming that they attempted to carry out a stabbing inside the light rail. As a result, the first child sustained several bullet wounds, because of which he was taken to Hadassa–EinKerem Hospital in West Jerusalem, to receive medical treatment. The other child was arrested by Israeli police who surrounded the whole area and stripped off his clothes to search him. The Israeli Police spokeswoman, Luba Samri, claimed in a statement, “[t]wo Jerusalemite boys between 12-14 years old, from Shu’fat refugee camp and the Beit Hanina neighbourhood, had used a knife and a pair of scissors to stab a light rail security officer, whose injuries ranged between minor and moderate. However, the officer was able to open fire at one of them in such a way as to neutralise him. It was found out later that one of the boys, who was injured and had been receiving medical treatment at hospital, was less than 12; therefore, he is below the age of criminal accountability. The other boy [14], who tried to escape before passengers caught and held him until the police arrived, has been interrogated about the details and circumstances of the attack.”*¹⁰⁴

Settlements in the West Bank (the conduct of Civilian security coordinators)

Civilian Security Coordinators work under the supervision of military authorities and are subject to military law. However, as they are contracted by settlement authorities and are themselves residents in the settlement, they represent settlers’ interests and are ideologically aligned with the settlement project. Israel NGO Yesh-Din has reported several incidents in which CSCs have used their powers to expand the territories of settlements and outposts by protecting illegal construction, facilitating the seizure of land and goods, and denying Palestinian farmers access to their land. Although the coordinators’ commitment to the settlement philosophy has occasionally led to friction between them and the army, some incidents have also occurred either with the connivance of military authorities and soldiers, who have refrained from confronting the CSCs and the settlers, or due to negligence in their supervision, which has perpetuated their unpredictable performance and criminal activity. The following incidents illustrate this negative impact:¹⁰⁵

¹⁰³ Information based on research and monitoring conducted by Palestinian Centre for Human Rights (PCHR-Ramallah) for the *Observatory on PMSC & Human Rights* [NOVACT]. On file with the author.

¹⁰⁴ *Id.*

¹⁰⁵ All incidents are cited in Yesh Din, *The Lawless Zone. The transfer of policing and security powers to the Civilian Security Coordinators in the settlements and outposts*, June 2014, pp. 37-43

- *“April 2005. Settlement of Petza’el. The Civilian Security Coordinator (CSC) of the settlement shot and killed a Palestinian who approached the hothouses of the settlement in order to relieve himself. Following the incident, the CSC was convicted of negligent manslaughter and sentenced to 200 hours of community service”.*
- *“April 2007. Settlement of Givat Havot, Hebron (West Bank). A security guard protecting a settlement beat a 16 year old Palestinian when he was shepherding with his father and brother on the land near the settlement. He was later arrested along with his father as the security guard alleged that they threw stones at him and that he was forced to open fire into the air in self-defence. Father and son were detained at the Gush Etzion Interrogation Centre [Bethlehem]”.*
- *“February 2010. Settlement of Har Bracha. A security guard from the settlement shot and injured Palestinian shepherds grazing hundreds of metres from the settlement fence”.*
- *“December 2012. Settlement of Carmei Tzur. The CSC attacked farmers from the village of Beit Ummar who were attempting to farm a plot under their ownership situated approximately one kilometer from the settlement”.*

3/ CASE STUDY: PMSCs IN COLOMBIA

This chapter sets out to explore the role that national and transnational PMSCs have played in Colombia's low-intensity armed conflict, as well as their potential relevance in a post-conflict scenario. It will start with key introductory historical issues relevant for the understanding of the operational contexts where these profit-driven, non-state actors operate, and those in which they could potentially expand operations. The operational contexts where these corporate players operate are rife; however, this paper focuses on three: 1) role of PMSCs in US-Colombia bilateral military cooperation programmes with anti-narcotic and anti-insurgency focuses; 2) the protection and security policies of foreign extractive corporations operating in conflict-affected environments; and lastly 3) this paper explores the underexplored ways in which Colombia is steadily turning into a main global supplier of cheap (albeit well-trained and highly skilled) labour for the globalised neoliberal private military and security industry. Later, this chapter will discuss Colombia's relatively developed legal framework regarding PMSCs in Colombian territory, identifying some regulatory and monitoring gaps at a national level. Lastly, the paper tackles the impact of PMSCs on human rights, accountability and reparation mechanisms in the aforementioned operational contexts, in the light of the on-going government-led efforts to repair victims. To summarise, drawing upon previous experiences in Central America and Western Africa, the chapter closes by analysing and drawing attention to the various roles that PMSCs could potentially play in a post-agreement settlement with the FARC – if no serious attention to the threat that they pose is given so far.

Introduction

The peace talks in Havana between the Revolutionary Armed Forces of Colombia (FARC), Latin America's oldest guerrilla group, and the Colombian government, have raised hopes that the continent may eventually see an end of the 51-year old armed conflict. According to the 2013 General Report published by the National Centre for Historical Memory, the internal armed conflict has claimed the lives of approximately 220,000 people (81.5% of whom are civilians) has forcibly displaced more than 5 million people, and over 50,000 people have disappeared. The General Report states that war crimes and crimes against humanity were committed by the conflict's three main perpetrators: Colombia's National Army, government-sponsored counter-insurgency paramilitaries, and insurgent guerrilla groups.¹⁰⁶ The Colombian government, led by President Juan Manuel Santos, has declared that a final agreement with the FARC should be reached by late March 2016. However, as in most post-conflict situations, Colombia is hugely prone to entering a period of instability and insecurity in rural areas hitherto controlled by the insurgent group. In such a scenario, the private military and security industry would likely expand and reinforce its operational capacity in Colombia's highly complex and volatile environment. From Angola to Bosnia to Guatemala, PMSCs have played a decisive role in the post-conflict context. Colombia might not be an exception.

Colombia's GDP remains heavily dependent on natural resources (i.e. oil, gold, emerald, coal etc)

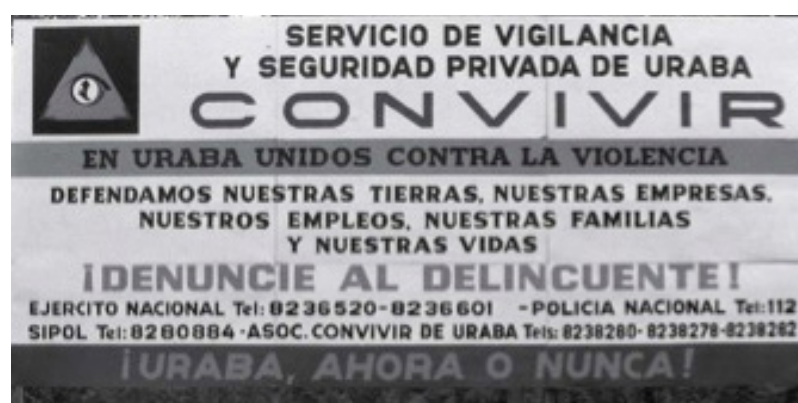
106 Bello, Martha Nubia, *¡Basta Ya! Colombia: Memorias de Guerra y Dignidad*, Bogotá: Centro Nacional de Memoria Histórica, 2013.

located in rural areas where hitherto the Colombian state has had limited operational capacity, and where consequently non-state armed actors – mainly the FARC – have played a central regulatory role. For decades the FARC and the National Liberation Army (ELN), Colombia’s second largest guerrilla group, have prevented or regulated the exploitation of natural resources in rural areas where the Colombian Armed Forces have had little control. In reaction to this, farmers, local entrepreneurs and transnational corporations have historically looked for alternative sources of security in risky environments. As Singer persuasively argues, **“the almost complete absence of functioning state institutions has meant that outsiders have begun to assume a wider range of political roles traditionally reserved for the state. Among these is the provision of security.”**¹⁰⁷

In line with this, back in the mid-nineties, Colombia witnessed the boom of private-led efforts to provide security to facilities and communities located in rural areas in response to growing guerrilla activity. This national network of cooperative neighbourhood watch groups were known as Special Vigilance and Private Security Services (CONVIVIR is its acronym in Spanish) and were actively supported by the Colombian government – particularly by the then governor of the Antioquia region and then president of Colombia Álvaro Uribe Vélez. The community-based quasi-vigilante groups functioned as private providers of security services in conflict-affected areas and worked hand to hand on intelligence coordination activities with the National Security Forces. The army’s inability to cope with the security risks and threats in Colombia’s rural areas drove landlords, farmers and peasants alike to rely on the CONVIVIR as security providers. Their members were allowed to carry weapons, developed quasi-military roles, and were central to quelling left-wing insurgency.¹⁰⁸ Following huge national and international pressure, in November 1997, Colombia’s Constitutional Court announced several restrictions for the CONVIVIR, and by 1998 most of them had their licence revoked.¹⁰⁹ For rights organisations such as Human Rights Watch, the CONVIVIR formed the basis for the nascent Autodefensas Unidas de Colombia (AUC) – the America’s most violent right-wing paramilitary group.¹¹⁰

A huge banner promoting the CONVIVIR in the banana-rich Urabá region

[Source: Radio Macondo]



¹⁰⁷ Singer, Peter. 'Corporate Warriors: The Rise and Ramifications of the Privatised Military Industry', *International Security* 26(2001): 186-220, accessed January 6, 2016. [page number pending]

¹⁰⁸ Rugeles, Gustavo. Las CONVIVIR que se volvieron organizaciones paramilitares. Las dos orillas. December 1 2013. <http://www.las2orillas.co/las-convivir-se-volvieron-organizaciones-paramilitares> [Last accessed 1 February 2016]

¹⁰⁹ Cepeda, Iván and Uribe, Alirio. *Por las sendas del Ubérrimo*. Bogotá: Ediciones B, 2014.

¹¹⁰ Human Rights Watch. 'War Without Quarter. Colombia and International Humanitarian Law'. New York: Human Rights Watch, 1998. <https://www.hrw.org/legacy/reports98/colombia/> [Last accessed 1 February 2016]

Even though CONVIVIR virtually disappeared in the late nineties, academic research suggests that the number of PMSCs operating inside Colombia steadily rose between the period 2002-2010. The rise coincided with the right-wing government of President Uribe.¹¹¹ In the same time period, Colombia witnessed multiple scandals involving transnational corporations such as the Occidental Petroleum Company, Chiquita Brands International, the Drummond Company, BP, paramilitary groups and private contractors as well as mass human rights violations. The names of Anglo-American firms such as Defence Systems Limited, or the Israeli-owned Silver Shadow, began to make noise in human rights circles. The controversy of Israeli involvement in Colombia's armed conflict reached its peak when Israeli mercenary Yair Klein, former lieutenant colonel in the Israeli army and founding director of the now extinguished PMSC Spearhead Ltd, was formally accused by a tribunal in the Colombian city of Manizales on charges of training of right-wing paramilitary groups.¹¹²

Furthermore, as the Colombian armed conflict was going through its worst chapter, US military aid to Colombia began to skyrocket and, again, PMSCs were under public scrutiny as it became well-known that multiple American private contractors were making huge profits in Colombia. The so-called Plan Colombia – the controversial US military and diplomatic aid initiative aimed at combating left-wing guerrilla groups and drug cartels – involved the contracting of US PMSCs. As this chapter will discuss, the involvement of US contractors over Álvaro Uribe's counter-insurgency dirty war ranged from aerial fumigations of coca plantations to training of airplane and helicopter pilots.

More recently, however, public debate on PMSC involvement in Colombia's internal armed conflict has shifted. Whereas before discussions revolved around their work *inside* Colombian territory, today the steadily rising participation of Colombian mercenaries in wars across the Middle East is at the heart of the debate. From the 2003 US-led invasion of Iraq to the ongoing Saudi-led anti-Shi'ia campaign in Yemen, Colombian mercenaries have been a constant presence. The deployment of mercenaries in the Gulf region provides ample evidence that Colombia is and will continue to play a role in the globalised neoliberal private military industry.

Having said this, a peace agreement with the FARC does not necessarily mean that PMSC involvement in Colombia's resource-driven conflict will end. Conversely, the breakdown of hitherto FARC-sustained rural local orders, the violence produced by the implementation of peace-building activities, the post-demobilisation life situation of thousands of ex-combatants, and the violent struggle to capture legal and illegal rents in natural resources-rich areas, will certainly create new demands for this booming industry.

A. THE USE OF PMSCS: OPERATIONAL CONTEXTS

PMSC participation and US-sponsored anti-drug and anti-insurgency strategies

Colombia is the world's largest cocaine producer, among the top five recipients of US-military aid, and has one of the America's worst human rights records. In July 2000, president Bill Clinton

¹¹¹ Duque, Roldán María Isabel. *La seguridad privada en Colombia. Un análisis del comportamiento durante la puesta en práctica de la política de seguridad democrática del gobierno de Álvaro Uribe Vélez (2002-2010)*. Medellín: Universidad de Antioquia, 2012.

¹¹² Verdad Abierta. 'Sentence Expires Against Yair Klein'. Leading article, June 27, 2012. <http://www.verdadabierta.com/jefes-de-la-auc/4088-sentence-expires-against-yair-klein> [Last accessed 2 February 2016]

Mejía, David. 'Plan Colombia An Analysis of

legalised a bill that amounted to over \$850 million to ‘deepen democracy and to fight Colombia’s feared drug cartels and guerrilla groups’, in a hugely contested military aid package known as ‘Plan Colombia: Plan for peace, prosperity and the Strengthening of the State’ or simply Plan Colombia.¹¹³ Over seventy per cent of the funds available for the aid package, however, were designated for military purposes and most of the money ended up in the pockets of US arms manufacturers and PMSCs with different specialised skills including consulting, advisory, training, and operational services.¹¹⁴ Sixteen years after the contested aid package came in place, there is ample evidence to show that a military solution for the drug war did not work in Colombia’s conflict-ridden areas. However, research suggests that the aid initiative did enormously favour US private military contractors and their affiliates, and that it paved the way to the privatization of warfare in the country.

Under Plan Colombia, the conflict-ridden South American nation saw an unprecedented boom of PMSCs operating in its territory, the anti-narcotics drug war was radically militarised, and the need for high-tech expertise created new domestic demands. As Singer convincingly argues, *‘the requirements of high-technology warfare have also dramatically increased the need for specialised expertise, which often must be drawn from the private sector’*.¹¹⁵ Perhaps one of the most contested aspects of Plan Colombia, and the one with major private military participation, was the aerial fumigations of coca crops with glyphosate and a number of herbicides that have not yet been disclosed. DynCorp, a Virginia-based PMSC, holds the most important contract and *‘its tasks include participation in illegal cultivation fumigations, training, air transport, aircraft maintenance, reconnaissance and search and rescue operations’*.¹¹⁶ Aerial fumigations took place, particularly though not exclusively, in rebel-controlled areas across Colombia’s southern jungles. Fumigation airplanes, mostly constructed by US military manufacturers, and flown either by US pilots or Colombian pilots trained by US PMCs – were obliged to fly at predetermined low altitudes in order to ensure that the glyphosate was sprayed with greater precision over the coca or poppy crops. In practice, however, the glyphosate spreads all over the sprayed area affecting legal crops, water sources, biodiversity, and, more alarmingly, peasants’ and indigenous people’s skin and health.

In 2015, the World Health Organisation (WHO) went as far as to classify the herbicide as ‘probably carcinogenic to humans’, opening an intense debate in Colombia on the continued use of the aerial sprayings. Colombian far right pro-US anti-narcotics advocates such as ex-president Uribe and Colombia’s General Inspector Alejandro Ordonez, led the pro-aerial sprayings debate despite ample evidence of its human costs. Research has proven that the network of powerful private lobbying stakeholders, including PMSCs such as DynCorp and the herbicide’s producer, the multinational agrochemical manufacturer Monsanto, is largely accountable for the persistence of a privatised military practice that destroys the livelihoods of millions of Colombia’s poorest people. Later on, this

113 Mejia, David. ‘Plan Colombia An Analysis of Effectiveness and Costs’, Washington DC: Brookings, 2015. <http://www.brookings.edu/~media/Research/Files/Papers/2015/04/global-drug-policy/Mejia--Colombia-final-2.pdf?la=en> [Last accessed 26 January 2016]

114 Chomsky, Naom. *Hegemony or Survival: America’s Quest for Global Dominance*. New York: Henry Holt and Company, 2003.

115 Singer, Peter. ‘Corporate Warriors: The Rise and Ramifications of the Privatised Military Industry’, *International Security* 26(2001): 186–220, <http://www.brookings.edu/~media/research/files/articles/2002/1/01us-military-singer/20020128.pdf> [Last accessed January 6, 2016.]

116 Perret, Irene & Perret, Antoine. ‘Colombia: Regulating Private Military and Security Companies in a ‘Host State’’. In *Multi-level Regulation of Military and Security Contractors*, edited by Christine Bakker and Mirko Sossai, 411–430. Oxford: Hart Publishing, 2012. [page number pending]

chapter will discuss the social impact of such practices on the daily lives of the peasantry, and the limited regulation that grants impunity to the PMSCs involved.

Security and protection policies of transnational corporations

Over the last twenty years, the aggressive institutional promotion of free-trade policies has attracted direct foreign investment primarily into the Colombian energy, fruits and mining sectors. Subsequently, the presence of transnational oil, fruits and mining companies has steadily increased in conflict-affected rural areas where the central state has had limited territorial control. The Colombian Armed Forces' inability to face all the security risks and threats amid a massively volatile security environment, has driven transnational companies to seek non-state armed actors, the security and safety services that the Colombian government can often not provide. Hence, non-state armed actors have been central in providing the security and safety conditions that transnational corporations need to operate in rural Colombia. By 'security and safety policies', this paper refers to the set of corporate procedures and regulatory efforts aimed at mitigating security risks, and at protecting the firm's facilities, production and employees at any cost. By non-state armed actors this paper refers to left-wing guerrilla groups, right-wing paramilitaries, and, of course, PMSCs.

As Collier and Bannon persuasively argue in their 2003 World Bank funded comparative study on extractive companies and armed conflict, the higher a country's dependency on natural resources exports, the higher the risk of armed conflict. Their study states that over the late nineties, extortion and kidnapping of employees of foreign extractive companies became the third largest source of income for Colombia's largest guerrilla groups – the FARC and the ELN. In 1999, the two guerrilla groups received over \$550 million from extortion and kidnapping combined. As in the Sudan and the Philippines, they argue that rebel control across pipelines located in contested territories was hugely profitable.¹¹⁷ This context laid down fertile conditions for the expansion of right-wing paramilitary groups and PMSCs in risky environments, and it largely explains the centrality of non-state armed actors in the security and safety policies of extractive companies.

It can be argued that **rebel sabotage of pipelines, kidnappings and other conflict-associated threats were contested by extractive firms in two different forms: either by establishing strategic and often overt alliances with right-wing paramilitaries¹¹⁸ or by hiring private security services.** For instance, back in 1998, UK-based rights groups disclosed classified material regarding controversial security policies of the British Petroleum Company (BP) in the Colombian Andean region. BP was among the major shareholders in the Ocesa consortium, a crude oil pipeline that connected the oil-rich Colombian Andean region with the coastal city of Coveñas. According to a 1998 investigation, BP paid the London-based PMSC Defence Systems Limited to protect its £25 billion oilfields with former Special Air Service soldiers. Afterwards, the article exposed how the Israeli PMSC Silver Shadows strategy to protect the oil pipeline included *'armoured attack helicopters, the direct supply of anti-guerrilla special weaponry and ammo, night-vision goggles, small robotic spy planes (drones) and*

¹¹⁷ Collier, Paul and Bannon, Ian. 'Natural Resources and Violent Conflict. Options and Actions'. Washington: The World Bank Group, 2003. [pp 25, write it properly. Pending]

¹¹⁸ For rigorous academic assessments on the links between extractive companies, Colombia's Army and the AUC check: Romero Vidal, Mauricio. *La economía de los paramilitares. Redes de corrupción, negocios y política*. Bogotá: Debate, 2011.

secure communications equipment.¹¹⁹ The Israeli initiative known as the Turn Key Project, however, was channelled through Colombia's Army 14th brigade, a task force 'with the worst human rights records in Colombia's dirty war. Lawyers have proved the involvement of a brigade commander and officers in one of Colombia's worst massacres in Segovia in 1988 where more than 90 men, women and children were attacked and 43 of them were killed.'¹²⁰ Again in 1996, Silver Shadow and the 14th brigade were investigated for the killing of 14 civilians across the oil pipeline. The incidents were closely related to BP's security policies. Rights groups persuasively argued that by arming the 14th brigade for oil field protection purposes, PMSCs contributed to the intensification of political cleansing operations against perceived guerrilla member across the pipeline. Accusations by Amnesty International went even further by arguing that the Israeli private contractor provided military training for paramilitaries working hand-in-hand with the 14th brigade.¹²¹ Scandals linking private military contractors, right-wing paramilitaries and extractive companies have been common in the coal, emerald, gold, oil and fruits sectors.

Colombia as a supplier of personnel for the private military and security industry

This chapter has explored the myriad ways in which foreign PMSCs have played a significant though often invisible role inside Colombian territory. However, recent fact-based journalistic research has demonstrated that Colombia is increasingly becoming a global supplier of ex-soldiers for PMSCs. The recruitment efforts by PMSCs of ex-soldiers battle-tested in anti-guerrilla warfare to fight wars outside Colombia, is the third and last operational context that this chapter looks at.

On November 25 2015, The New York Times published an article on the presence of Colombian mercenaries in the United Arab Emirates (UAE) and their involvement in the ongoing Saudi-led campaign in Yemen. According to the article, over 400 Colombian mercenaries were recruited in Colombia through a company connected to Eric Prince –former Navy SEAL and founding director of Blackwater today Academi. Colombian soldiers were trained in the UAE-based Zayed Military City, and are currently fighting Houthies in Yemen.¹²² Nonetheless, this is not the first time that Colombian mercenaries have provided cheap labour force to a PMSC nor the first time that Colombian ex-colonels have seen themselves involved in a foreign war.

Back in 2003, Colombian mercenaries hired by the PMSC Blackwater participated in the US-led invasion of Iraq. As a 2007 Foreign Policy investigation stated, the reliance on Latin American security contractors over the Iraq war was huge: 'of the estimated 30,000 contractors employed by private military firms (PMFs) in Iraq, about 10,000 come from countries other than the United States and Britain. No less than 1,200 Chileans, 1,000 Peruvians, 700 Salvadorans, and hundreds each from countries like Colombia, Honduras, Guatemala, and Nicaragua have taken up security work in Iraq.'¹²³ One can argue that the heavy reliance on Latin American mercenaries is due to multiple reasons, let

119 Gillard, Michael, Gómez, Ignacio, Jones, Melissa. 'BP hands 'tarred in pipeline dirty war.' The Guardian, Oct 17, 1998. <http://www.theguardian.com/world/1998/oct/17/1> (Last accessed 2 February 2016)

120 Op, cit pp2.

121 Op cit pp3.

122 Hager, Emily B. and Mazzetti, Mark. 'Emirates Secretly Sends Colombian Mercenaries to Yemen Fight.' The New York Times, Nov 25, 2015. http://www.nytimes.com/2015/11/26/world/middleeast/emirates-secretly-sends-colombian-mercenaries-to-fight-in-yemen.html?_r=0 (Last accessed 02 February 2016)

123 Mani, Kristina. 'Latin America's Hidden War in Iraq'. *Foreign Policy*, Oct 2, 2007. [pp number pending]

alone Latin American unemployment rates apart. Firstly, Colombian ex-soldiers have top-tier training in guerrilla warfare and dirty war counter-insurgency strategies. Secondly, Colombian ex-colonels and other high-ranking officials, many of them current CEOs of local PMSCs, are exceptionally well connected with top US Army officials through years of training in US military schools including the School of the Americas. But lastly, and most importantly, the security conditions in South America have undoubtedly improved, armies have shrunk in size, and there is an important number of well-trained ex-soldiers that Latin American governments prefer to see working for a private military contractor rather than hanging out in their streets.¹²⁴ In other words, from Guatemala to Chile, civil wars and authoritarian regimes coupled with heavy military spending resulted in robust armies and thousands of well-trained soldiers that today are no longer needed as they were in previous decades. Cold War and post-Cold War military policies created a generation of Latin American ‘well-trained soldiers’ that today find no place in society. Dealing with this ‘surplus’ of military personnel is not an easy task. In fact, President Santos’ recent high-politics move at the UN which aimed to send thousands of Colombian ex-soldiers on UN peace-keeping missions abroad, can be understood as a way to get rid of the surplus of military labour that Colombia will hopefully no longer need.¹²⁵

B. NATIONAL REGULATORY FRAMEWORK

In a Weberian fashion, the Colombian 1991 Constitution establishes that the state has the full monopoly of the use of force within Colombian territory. However, Decree 356 enacted in 1994, introduces numerous state regulations and delegates the Vigilance and Private Security Superintendence [VPSS] as the government body in charge of monitoring PMSCs in Colombia.¹²⁶ This government-led regulatory attempt delegates the VPSS as the body in charge of defining the scope of work for PMSCs, limits their operational freedom, sets different regulations depending on whether or not they use weaponry, and grants or revokes licenses for such firms. Years later in 2009, a law reform was pushed forward by a number of congressmen, which attempted to modify and further develop the content of the aforementioned decree. As Cabrera and Perret’s 2011 quantitative analysis on the privatization of security services in Colombia convincingly suggests, government-driven attempts to regulate both foreign and local PMSC are insufficient. The overseeing and monitoring mechanisms of a heavily centralised regulatory organ - namely, the VPSS - are extremely poor; laws do not take into account the power to bring war of these firms in Colombia’s vast rural areas and regulations on the use of weapons for private contractors are insufficient. In addition, decrees do not have the same power as laws.¹²⁷

Since 2009, multiple regulatory efforts have been pushed forward by Colombian congressmen.

124 In the case of demobilised paramilitaries, similar conclusions could be drawn despite limited public information on their post-demobilisation trajectories. The author of this chapter found a 2010 unclassified report of the UN Working Group on the Use of Mercenaries which quotes a 2009 statement issued by the Working Group on former Colombian paramilitaries hired to protect property over the Honduran 2009 coup d’état. More information available at: <http://www2.ohchr.org/english/issues/mercenaries/docs/A.HRC.15.25.pdf>

125 One can argue that if the Santos Administration effectively manages to put an end to Colombia’s largest insurgent group, the size of the National Army is very likely to shrink, leaving thousands of uniquely trained soldiers unemployed and available for the global private military industry. On the insurgency side, tough post-demobilisation life situations might similarly take FARC ex-combatants down similar paths.

126 Official website: <http://www.supervigilancia.gov.co/?idcategoria=1706#> [Last accessed 26 January 2016]

127 Perret, Irene & Perret, Antoine. ‘Colombia: Regulating Private Military and Security Companies in a ‘Host State’’. In *Multi-level Regulation of Military and Security Contractors*, edited by Christine Bakker and Mirko Sossai, 411-430. Oxford: Hart Publishing, 2012. [pp number pending]

However, those attempts have not always been driven by human rights concerns, but, arguably by private interests in amplifying the power of PMSCs following global privatising trends. Most recently in April 2015, the Second Commission of the Colombian Senate held a debate on a potential statute to further regulate PMSCs operating in Colombia.¹²⁸ Launched by congressman Mauricio Lizcano and supported by congressman Iván Cepeda, one of Colombia's top human rights advocates, the ground-breaking set of regulatory norms was approved in an initial debate. Plenary debate and approval by the Senate, Colombia's upper legislative chamber, are pending and compulsory prior to the president's final approval. Reactions against this project already exist. Former Ministry of Defence and current Colombian ambassador to Washington, Juan Carlos Pinzón, sent a memo rejecting the project's chapters whereby foreign capital would be banned in multiple operational realms of PMSCs. Pinzón considers that the law project entails an excessive unjustified discrimination against foreigners.¹²⁹ It is the fourth occasion that a similar regulatory restriction faces furious opposition, particularly by those close to Colombia's military and security industrial complex.

The proposed statute contemplates further regulatory powers for the VPSS, would maintain and even reinforce the 1994 restrictions on foreign capital participation in human surveillance and activities related to security services, and would grant further labour rights for PMSC employees.

One of the main reasons why Colombia's national regulatory framework regarding PMSCs remains profoundly inefficient and contested is precisely because an important number of PMSC employees arrive legally armed by bilateral military accords and enjoy absolute impunity.

Interestingly in the scope of this paper, the new statute would prohibit PMSC armed operations in rural and conflict-affected areas, and would ban PMSC interference in conflicts over labour or land rights, or in tensions generated by social unrest.¹³⁰ The latter restriction would be of paramount importance if

PMSCs are ever directly or indirectly given faculties to quell organised or spontaneous social protest. If such a scenario ever materialises, civil-military relations will suffer deep transformations.

In spite of recent robust regulatory efforts, Colombia's national legal framework still exhibits profound protection gaps – particularly when PMSCs are enabled to operate within Colombian territory through bilateral military agreements. Plan Colombia is an example of this. IR expert Mary Kaldor persuasively argues that in new wars, military powers such as the US are extremely reluctant to sacrifice national soldiers' lives in remote battlefields. This has driven military powers to outsource the act of killing and other war-related activities to third parties such as PMSCs. One of the main reasons why Colombia's national regulatory framework regarding PMSCs remains profoundly inefficient and contested is precisely because an important number of PMSC employees arrive legally armed by bilateral military accords and enjoy absolute impunity.

Over the last fifty years, Colombian and US administrations have signed multiple bilateral agreements which directly or indirectly grant immunity to US citizens from the jurisdiction of

¹²⁸ Valero, Daniel. 'Intentan prohibir inversión extranjera en seguridad privada.' *El Tiempo*, April 7, 2015. [pp pending]

¹²⁹ Previous source [correct quoting pending]

¹³⁰ Colombian Senate Website. 'Aprobada regulación de la seguridad privada y prohibición de cigarillos a menores.' Leading article, April 8, 2015.

Colombian courts. Treaties go back to Alberto Lleras Camargo's presidency when Law Number 24 of 1959 was enacted, allowing the Colombian government to conclude contracts or conventions with international actors, with the objective of ensuring technical assistance or a supply of elements for the execution of plans or programmes with different focuses. Later on in 1962, a cutting-edge diplomatic move entitled General Convention on Economic Aid and Technique directly granted privileges and impunity to US personnel engaged in special missions in Colombia. The latter convention was ratified and further developed through a bi-national agreement under Uribe's and Bush's presidencies. The bilateral immunity agreement signed in 2003 "*completes and extends the immunity of US citizens, and the PMSC contractors working in Colombia to the international justice system*".¹³¹ By 2011, the year in which the aforementioned study was published, similar immunity laws had been applied to 102 states providing exemption to US citizens from prosecution by the International Criminal Court.

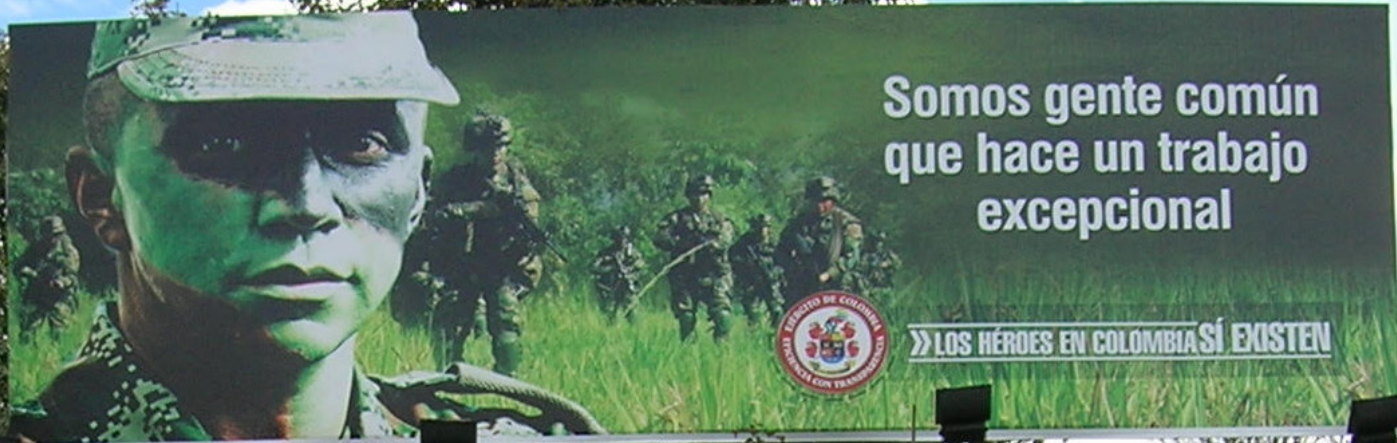
To summarise, if the aforementioned statute is eventually approved by the Colombian Senate, the country would reach a set of norms that would certainly mitigate some regulatory gaps. The 1992 regulatory decree, nonetheless, is insufficient and a law enacted by Colombia's legislative power is absolutely necessary for a strict regulation. However, if the US-Colombia bilateral agreements that grant impunity to mainly US PMSCs and citizens are not thoroughly revised, no local legal regulatory efforts will be able to cope with the risks and threats that this booming industry pose for this South American conflict-driven nation. Henceforth, national regulatory efforts must be developed *in tandem* with the bilateral agreements signed and ratified between Bogotá and Washington.

C. IMPACT OF HUMAN RIGHTS

In contrast to the previous case studies, where numerous facts-based documents provide ample evidence on the lamentable impact PMSC operations have had on human rights in conflict-affected environments, the Colombian case remains largely understudied. Arguably, difficulties in measuring impact on human rights and accountability issues regarding PMSCs in Colombia are informed by two main factors: misrecognition and lack of official records. Firstly, PMSCs are not recognised by the Colombian government as the main war-related actor, and very few civil society or rights organisations are actually aware of their clout. Given the fact that PMSCs have historically operated behind façades of legality (i.e. military aid packages), their personnel have not been officially acknowledged as active war-related actors. Secondly, the Colombian government does not have an official record of casualties or victims produced by PMSCs, and any records on environmental damages induced by their activity.

The Unity for Victim Integral Assistance and Reparation – Colombia's government institution responsible for registering, assisting and repairing war victims, does not have a disaggregated numerical record of victims produced by PMSC-related activities. By the end of 2015, over 7 million victims were registered in the UARIV's Unique Register of Victims (RUV is its acronym in Spanish); however, official statistics only acknowledge victims of left-wing guerrillas and the National Armed forces and their right-wing paramilitary allies. Similarly Colombia's Ombudsman Office lacks such records. The literature and websites explored by the researchers of this chapter suggest that the VPSS

¹³¹ Perret, Irene & Perret, Antoine. 'Colombia: Regulating Private Military and Security Companies in a 'Host State''. In *Multi-level Regulation of Military and Security Contractors*, edited by Christine Bakker and Mirko Sossai, 411-430. Oxford: Hart Publishing, 2012. [page number pending. Source quoted over 3 times – check manual's indications]



is the only governmental body in charge of monitoring PMSCs. Yet the focus of the VPSS is primarily administrative and no documents regarding human rights or accountability issues were found on their website until late January 2016. Indeed, the lack of both official records and acknowledgement that PMSCs are active combatants in Colombia's low-intensity conflict hinder efforts aimed at measuring human rights violations committed by these actors. Nonetheless, some general and case-specific human rights violations drawn from available fact-based documents are extremely useful and could certainly inform future regulatory efforts. The human rights violations and accountability issues that will be explored in the coming paragraphs are related to the specific operational contexts that the paper examines.

Regarding private US military participation in anti-narcotic activities, there are concerning issues of sexual violence, drugs and weapons trafficking, and forced displacement caused by environmental damages. The Colectivo de Abogados José Alvear Restrepo (CCAJAR), a Colombian human rights organisation, drafted a claim against PMSC DynCorp for the Tribunal Permanente de los Pueblos. This 64-page report raises the issue of sexual violence against girls and women committed by US private contractors near the Tolemaida Air Base – a military facility with a strong presence of DynCorp contractors and US soldiers. A recently published historic document, commissioned by the negotiating table in Havana, supports CCAJAR's accusations by demonstrating that between 2003 and 2007, at least 54 minors were abused by US private contractors and soldiers, many in or near the Tolemaida Air Base.¹³² In previous years, DynCorp employees were involved in cases of human trafficking and sexual slavery in Bosnia.¹³³ The document targets the case of a 12-year old girl who was raped by US military contractor Michael J. Cohen after being drugged. The family of the minor received death threats and was forced to leave the town. All US contractors, the report concludes, were not charged for sexual abuse because they are legally covered by the multilateral immunity agreements previously discussed in this chapter.¹³⁴ Moreover, the same report addresses the 2005 controversy in which two Tolemaida-based US soldiers captured who intended to smuggle 30,000 shells for right-wing paramilitaries were in the nearby town of Carmen de Apicalá. At least four cases of US contractors involved in cocaine and heroin trafficking are cited in the report. In all cases US contractors were not prosecuted, given the strict military impunity accords signed and ratified by Bogotá and Washington.

On the other hand, DynCorp is the US contractor in charge of the aerial sprayings of glyphosate to eradicate coca and poppy crops. Their actions have produced severe environmental damages in the sprayed areas, including the contamination of water sources and legal crops. Numerous studies have demonstrated that aerial fumigations with the Monsanto-produced herbicide are among the main reasons for forced displacement in a country that until the Syrian civil war had the largest number of internally displaced people, according to statistics from the United Nations High Commissioner for Human Rights (UNHCR).¹³⁵ Coca growers, however, are severely underprotected. Peasants displaced

132 Vega Cantor, Renán. 'La dimensión internacional del conflicto social y armado en Colombia. Injerencia de los Estados Unidos, contrainsurgencia y terrorismo de estado.' In *Contribución al entendimiento del conflicto armado en Colombia*. Bogotá: Comisión para el esclarecimiento de la verdad, la convivencia y la no repetición, 2015. Pp 569

133 Simm, Gabrielle. *Sex in Peace Operations*. New York: Cambridge University Press, 2013, pp 88.

134 Colectivo de abogados José Alvear Restrepo. 'Acusación contra la transnacional DynCorp. Audiencia sobre diversidad zona Cacarica para el Tribunal Permanente de los Pueblos – Sesión Colombia'. Bogotá: Colectivo de Abogados José Alvear Restrepo, 2007. Pp 8

135 Vargas Meza, Ricardo. *Fumigación y Conflicto. Políticas antidrogas y deslegitimación del estado en Colombia*. Bogotá: TM Editores 1999.

by the armed conflict per se – namely death threats, landmine issues, risks of forced recruitment, land issues etc – are protected by Law 1448 of 2011. Yet peasants who are displaced by aerial fumigations do not get the benefits established by this law because they are considered part of the illegal drug business. Under Plan Colombia, peasants who voluntarily decide to stop growing illegal crops get economic and technical support from US and Colombian funds mainly channelled through the United Nations Office for Drugs and Crime (UNODC) and USAID. Nonetheless, research conducted by the Dutch Transnational Institute demonstrates that the limited funds available for illegal crops substitution are insufficient. In the Colombian regions of Caquetá, Putumayo or Cauca – three of the top coca producers – the lack of roads and internal markets block any local efforts to commercialise legal crops such as fruits or vegetables.¹³⁶ The environmental damages produced by DynCorp’s aerial fumigations have forced thousands of peasants and coca growers alike to migrate to Colombia’s growing urban ghettos. Organised protests by coca growers against aerial fumigations – commonly known as ‘paros cocaleros’ – have been quelled with excessive military force by various administrations since Plan Colombia came into action. Interestingly, however, aerial sprayings are geographically focused in areas with strong guerrilla activity. As Parenti’s brilliant analysis on environmental changes and rising violence has illustrated, climate-driven transformations and warfare go hand-in-hand.¹³⁷

US profit-driven anti-narcotic strategies are not the only cases in which corporate players see themselves involved in human rights violations. The security policies of extractive corporations similarly remain largely contested for their human rights violations. For example, in 2005, a group of Colombian peasants instituted a lawsuit against BP in the English High Court alleging environmental damages caused by a BP-led oil consortium in Colombia. This case was previously discussed in this chapter. The claimants argued that the construction of the pipeline was clearly favoured by the militarisation of the region, which included government-supported paramilitary groups and the arming of the 14th brigade, with both a UK and an Israeli PMSC involved. Plaintiffs further claimed that legitimate social protest against the consortium was severely repressed by armed actors and this intimidation did not allow them to denounce the contamination of water supplies, soil erosion, and animal deaths produced by the oil pipeline. In July 2006, the parties met in Bogotá and reached a negotiated settlement which included the establishment of an Environmental and Social Improvement Trust Fund that would help peasants who live along the pipeline. The exact amount of the reparations, however, was not disclosed – thus NOVACT’s team is unable to qualify them as effective solutions.¹³⁸

Colombian corporations have also been involved in similar issues. In late November 2015, an environmentalist and rights NGO called Movimiento Rios Vivos denounced Empresas Públicas de Medellín and their private security supplier SERACIS for alleged abuse against the peasantry in nearby Hidroituango – Colombia’s largest hydroelectric project. The London-based Business and Human Rights Resource Centre publicly published a letter on their website in which the L-NGO requests the VPSS to investigate and sanction SERACIS’ local manager for an illegal aggression against a social

¹³⁶ Jelsma, Martin. ‘Vicious Circle. The Chemical and Biological ‘War on Drugs.’ Amsterdam: Transnational Institute, 2001.

¹³⁷ Parenti, Christian. *Tropic of Chaos. Climate Change and the New Geography of Violence*. New York: Nation Books, 2011.

¹³⁸ Business and Human Rights Resource Centre. ‘BP lawsuit [re Colombia].’ <http://business-humanrights.org/en/bp-lawsuit-re-colombia> [Last accessed Feb 02 2016] Leading Article. No date available.

leader.¹³⁹ The letter further suggests links between SERACIS and the Colombia's Battalion Bajés, and raises concerns of private security contractors' involvement in anti-protest activities in conflict-affected rural areas.

Lastly, a few comments regarding the recruitment practices of PMSCs in Colombia and human rights violations are necessary. Over the last decade, Colombian media denounced various cases in which ex-soldiers recruited by PMSCs suffered multiple abuses once they got to their destination.¹⁴⁰ The lack of national regulation regarding the recruitment of ex-soldiers, plus the complicity of the American and Colombian governments, raises grave concerns regarding a practice that has multiple similarities with human trafficking. In fact, a 2011 NOVACT report on the privatization of warfare in Iraq targets the lack of protection that dozens of Colombians are subjected to when they were sent to work in Iraq. The report states that '[...] *there is information about cases where PMSCs neglected to provide their personnel with basic needs such as access to medical services when employees were injured and forced them to keep on working. These and other recruitment practices of PMSCs have raised additional concerns of human trafficking. In fact, while these conditions prompted some employees to break their contracts and return home, in other cases employees who complained to have been threatened, mistreated and arbitrarily detained, were prevented from leaving the country. This happened, for instance, to a contingent of Colombian employees hired by Blackwater in 2005, who upon their arrival in Iraq realized that their salaries were almost three times lower than had been promised in their contracts and, after complaining, had their airplane tickets taken away and were forced to stay in Iraq*'.¹⁴¹ Upon return, the mercenaries provided compelling testimonies and denounced the lamentable housing situation, the psychological pressure, and the widespread insecurity they had to cope with in Iraq. ID Systems, the PMSC in charge of recruiting the Colombian mercenaries for Blackwater (today Academi) insisted that the 35 ex-soldiers were not deceived and that the working conditions in Iraq were as they had agreed on prior to departure. Amid the controversy of this case ID Systems manager Gonzalo Adolfo Guevara was killed in Bogotá. Today ID Systems works as Fortox Security Group.

As part of this policy paper, NOVACT conducted a 46-minute phone interview with 29-year old Jorge Prado Bolero, a Colombian mercenary who worked in Herat (Afghanistan) as a private military contractor. During the interview, Jorge says that money was the main motivation to join a PMSC. As part of the recruitment process Jorge had to take an English language test, go through different panel interviews, was tested in private shooting facilities in Bogotá,¹⁴² and had to undergo a long process in order to get an American visa. According to his testimony, the PMSC issued a letter for the US Embassy in Bogotá whereby it stated that the Colombian citizen was going to be trained in military facilities in North Carolina. Jorge did get the visa, went through a rigorous training with other Latin

139 Business and Human Rights Resource Centre. 'Colombia: ONG denuncia supuesta agresión de ejército y vigilancia privada de EPM contra opositores a hidroeléctrica Ituango.' <http://business-humanrights.org/es/colombia-ong-denuncian-supuesta-agresi%C3%B3n-de-ej%C3%A9rcito-y-empresa-de-vigilancia-privada-de-epm-contra-opositores-a-hidroel%C3%A9ctrica-ituango> [Last accessed Feb 02, 2016] Leading Article. Dec 1, 2015.

140 Semana. 'Atrapados en Iraq'. Leading article, Aug 19, 2006.

141 Arméndariz, Leticia & Palou-Loverdos, Jordi. 'The privatization of warfare, violence and private military and security companies'. Barcelona: NOVACT 2011.

142 Jorge insisted that the 'shooting facilities' were private. However, it has been proven that on multiple occasions this part of the recruitment process took place in facilities owned by the Colombian army in northern Bogotá. See: <http://www.elheraldo.co/nacional/mercenarios-fueron-entrenados-en-bases-militares-colombianas-semana-22328> [Last accessed Feb 2 2016]

American mercenaries at Academi's facilities and eventually travelled to Afghanistan.

Excuse me, sir, but do you know how to join the French Legion?

Interview with a Colombian mercenary

[Source: NOVACT 2016]

Fragment [...]

Jorge Prado Bolero (JBP): Well, as soon as I got my visa approved by the US Embassy in Bogotá they sent me to this beautiful training camp in North Carolina. When I took the flight I was told I was going to be trained and tested by Academi –they are the best! But you know, ‘gringos’ are very strict, we were a bunch of 25 guys from different countries but mostly from El Salvador, Colombia and Peru. Out of 25 guys just 7 passed and the rest went back to their countries. I was one of the winners! ‘Gringos’ know that Colombians are the best now! Days after, they sent me to the United Arab Emirates – you know, everything goes through Dubai. It was a very long flight though but my company sorted it out. You know, ‘gringos’ are very strict and they organised my flights properly...

NOVACT Team (NT): That was a long journey! I bet it was your first time abroad, right? How was it there though? Did you fly straight from Dubai to Kabul? Were you based in Kabul?

JBP: No, I was sent to Herat... And those Taliban, Jesus Christ! They are real monsters. You know, when you fight the FARC you think they are evil, but Taliban are even worse...

NT: Really? Why is that? I don't know much about the Taliban, why are they worse than the FARC?

JBP: Because they are not afraid of death! They want to die for religion! Those guys are crazy!

NT: Well, it seems that you know them really well now [spoken with some cynicism]. But how was life there? Where did you live? What did you eat? Was it like you expected?

JBP: It was like a five-star hotel, sir. We lived in this high security compound, we had our own chefs and cleaners, and there was a supermarket inside the compound! With delicious American products –Americans eat very, well, you know them...

NT: Sure, so you were living with other mercenaries, right? Where they all Colombians? And did you manage to have any interaction at all with Afghans?

JBP: It was very multi-cultural, that was the best bit! There were mercenaries from El Salvador, Chile, Peru and Colombia, mainly. There were very few Afghans working there, most of the cleaners were from India, Pakistan and Bangladesh. Funny guys... We taught them Spanish, just bad words, and they loved it! [He laughed and mimicked presumably one of the cleaners saying ‘bitch’ in Spanish].

NT: And what about the Afghans? Did you meet any at all? Did you learn any Daari words?

JBP: Yes! I learned one word. You know, there is one important word that the company teaches you on day one. You have to say that word if an Afghan approaches you. If she or he is less than 20 metres away from you, you just say ‘boro!’ and they leave. If you say ‘boro!’ and they don't leave you have to shoot at them.... They wear these belts with explosives inside, you know...

NT: Wow.... Everything sounds very intense, I bet field missions were pretty tough too, plus it seems to me that you guys had some lessons on ‘Afghan culture’, right? Did any of your colleagues die while you were there?

JBP: Yes, a Peruvian guy, poor him...

NT: Indeed. And did they send the body back to their family in Peru?

JBP: What? That would be too expensive! ‘Gringos’ are very strict, you know... In those cases they send the ashes to the family [he laughed].

NT: Why are you laughing though? This is a serious issue.

JBP: Because only god knows if those are your ashes –they might have put any ashes in a box in Lima and just give them to his parents [laughed]. That's what my older colleagues said!

His story shows that the Colombian and US governments do know the reality and furthermore

shows that the recruitment process is not exclusively focused on one company. Conversely, **NOVACT concluded that the recruitment process in Colombia is heavily decentralised and benefits a broad chain of actors that includes language centres issuing certificates on 'military jargon', middle-men helping mercenaries with their paper work, embassies and retired high-rank officials.** In the end, private contractors see little more than \$1,300USD per month from the billionaire business – a business in which even the human rights of potential human rights violators are violated.

As this chapter previously discussed, there is ample evidence to suggest that in many Latin American countries, the transition from a conflict to a post-conflict context often leaves thousands of well-trained soldiers unemployed. Large numbers of lower-middle class, unemployed young men with a solid military training often pose a threat to society. As Colombia prepares for peace, many wonder about the future of

As Colombia prepares for peace, many wonder about the future of Colombian soldiers who were trained to wage a war that might soon come to an end. In this scenario, and relevant to the scope of this paper, it is hugely likely that PMSCs will increase their attempts to capture and export 'Made in Colombia' ex-soldiers.

Colombian soldiers who were trained to wage a war that might soon come to an end. In this scenario, and relevant to the scope of this paper, it is hugely likely that PMSCs will increase their attempts to capture and export 'Made in Colombia' ex-soldiers. The debate on whether the Colombian government should regulate the recruitment practices of Colombian ex-soldiers or not goes beyond the scope of this paper. However, there are serious human rights issues that the Colombian government should indeed consider as this operational context of PMSCs exhibits clear similarities with dynamics that characterise human trafficking and other forms of transnational organised crime.

// CONCLUDING REMARKS AND RECOMMENDATIONS

The 2003 US-led invasion turned Iraq into one of the major theaters of operations of private military and private security companies. Thirteen years have passed but while foreign military troops have departed, reliance on PMSCs continues, now also in the form of a significant domestic private security industry which is supported by Iraqi politicians and institutions in order to solve deficiencies in the capabilities of Iraqi armed groups and security forces or as a way to enhance a model for economic development. The war in Iraq also brought about a new era for the industry. Besides scenarios such as Afghanistan, PMSCs also gained relevance during this decade in Israel, a major U.S. ally. Although, due to Israel's permanent situation of emergency, and the Israeli PMSC industry is "made in Israel for Israel", the policy of outsourcing has also been replicated in occupied Palestinian territories under its control. Moreover, though not fully explored in this report, Israel is also the home state of a huge industry of PMSCs exporting military and security services abroad and in national countries of individuals engaged in private military and security activities in foreign countries such as Colombia. At the same time, Colombia is also a territorial state where a massive PMSC industry is active, including major U.S. PMSCs operating under Plan Colombia against drug trafficking, as well as an exporting state of Colombian private personnel to in-conflict or post-conflict states like Iraq or Yemen.

The first conclusion of this paper is therefore the **reaffirmation of the use of PMSCs as an instrument of foreign policy which may enable states to intervene in internal affairs of foreign countries while at the same time circumventing domestic and international controls on the use of force.** Moreover, the comparative analysis of these three cases also confirms some contextual elements that characterise the PMSC industry as well as the dynamics of military and security outsourcing that should be taken into account in order to properly regulate this phenomenon. Firstly, the transnational nature of the PMSC industry and the services provided by PMSCs; secondly, the diverse typology of states that exist because of their relationship with PMSCs – namely contracting states of PMSCs, territorial states where PMSCs operate, home states in which PMSCs are based, and states of nationality of the private personnel employed by PMSCs abroad; and thirdly, the different contexts in which PMSCs provide their services which include armed conflicts and occupation but also other complex and less-defined scenarios such as the so-called war on drugs and the war on terror.

Recommendations:

- Considering the transnational nature of PMSCs and the challenges to the application of domestic laws for international PMSCs operating in foreign states, national legislation alone is insufficient to adequately cover and control the effects of the industry worldwide. In this regard, a comprehensive regulatory approach is needed which comprises both national and international legislation on PMSCs activities. An international convention could establish institutionalised procedures for the international registration of PMSCs and for registering imports and exports of military and security services based on information provided by - States.

- Due to the multiplicity of contexts in which PMSCs operate, a regulatory framework focused exclusively on activities of PMSCs in situations of armed conflict leads to legal ambiguities and regulatory gaps concerning the status and the rules of engagement of PMSCs and their personnel, and ultimately, to a legal vacuum for many of their activities. A specific international law instrument should be adopted to set down norms explicitly designed to regulate PMSCs. An international binding instrument could be applied to all situations where PMSCs operate, regardless of whether the situation is considered to constitute an armed conflict, and provide common rules for the use of force according to human rights standards.
- The diverse typology of states that intervene in the dynamic of military and security outsourcing makes an all-inclusive legislation necessary to disseminate and establish responsibilities of states vis-à-vis PMSCs according to the specific relationship between the state, the company and its employees. An international convention reached jointly by all states of the international community would be the ideal instrument to affirm the principle of state responsibility to regulate, supervise and control the activities of PMSCs and to set up concrete obligations of all states with regards to worldwide PMSC industry.

States are the main clients of PMSCs in the three countries analysed but are not the only ones. In Iraq and Colombia, and to a lesser extent in the oPt, a significant use of PMSCs is observed by [transnational] private corporations such as oil, gas, construction and mining companies. In this context, PMSCs supplement the inability or deficiency of state institutions in the provision of security or simply are just another tool for reinforcing neoliberal policies of economic development. That is precisely why public supervision over their activities tends to be weak, as they frequently operate in areas of the territory where the state has limited control and are employed under layers of sub-contracts that lack public transparency and management. Moreover, while PMSCs may work under licenses issued by governmental institutions, they often operate according to safety procedures and security policies designed exclusively by the contracting corporation without state intervention.

Recommendation:

- Private corporations that contract PMSCs should require by contract that the conduct of any subcontracted PMSC is in conformity with relevant national law, international humanitarian law and international human rights laws, including the assessment of past conduct of the PMSCs and by requiring that PMSC personnel pass specific training programs adapted to the services to be performed.
- Territorial states should ensure that security procedures and policies designed by private corporations give due consideration to human rights standards and are informed by adequate rules of the use of force. They should establish periodical inspections of the company within the framework of the license procedures for PMSCs.

Similarities are also present in two of the cases studied with regard to the dynamics of outsourcing; namely, the delegation of security responsibilities to private citizens and communities in addition to privatization through the hiring of PMSCs. This happened in Colombia with the creation of the national network of community-based vigilante groups known as CONVIVIR, and in the occupied Palestinian territories by means of the application of the Israeli “regional defence doctrine” which allowed settlements in the West Bank to have their own private guarding forces comprising their own settlers [“Civilian Security Coordinators”]. In both cases this amounted to a government-supported delegation of policing powers and the exercise of quasi-law enforcement functions in areas affected by conflict. On the whole, this raises several concluding concerns: firstly, the fact that the erosion of the State’s monopoly on the legitimate use of force is diversifying to a wider category of non-State actors, shifting the role of the State from a monopoly provider to that of a mere manager of the legal context. Secondly, the question of what is and should be the status of these private/civilian security groups, as they operate armed security services in the context of armed conflict and occupation but are not recognised as official military or police personnel. In this sense, this question should be framed around the discussion of the status of PMSC personnel who do not typically fall under the definition of mercenary but do not fit easily in the category of civilians either. Thirdly, in the particular context of security outsourcing in settlements, the fact is that, through the delegation of policing powers to settler groups and PMSCs, Israel is not only failing in its obligation as an occupying power to ensure public order and safety is provided to protect the Palestinian population but also contributes to perpetuating a grave violation of international humanitarian law, which is the transfer by the occupying power of its own population into the occupied territory.¹⁴³ While the policy of employing Civilian Security Coordinators and their guard teams is presented by Israel as a measure of military necessity and self-defence of settlement communities, Israel cannot use private police, either settler guarding teams or PMSCs, to protect illegal settlements or to allow their expansion in the West Bank. A similar argument applies to the use of PMSCs in settlements of East Jerusalem: although Israel does not treat Palestinian residents as “protected persons”, the status of East Jerusalem remains one of an “occupied territory” and the extension of national laws with the aim of allowing PMSCs to protect these settlements legally supports a violation of international law and is also unlawful.

Reminder: States must refrain from contracting private companies or individuals for tasks or activities that are incompatible with its international obligations, such as the prohibition of annexation of occupied territory or the transfer of a civilian population of the occupying power into the occupied territory. Likewise, States must refrain from delegating functions to private agents which national or international law reserve exclusively to state authorities, including but not limited to law-enforcement functions. In any case, States retain their obligations under international law even if they contract PMSCs or other private agents to perform these functions. In the particular case of occupation, this means that the occupying power still has obligations towards the occupied population: it has to ensure public order in the occupied territory and ensure the population’s safety.

¹⁴³ See article 49, paragraph 6 of the IV Geneva Convention of 1949. According to ICRC commentary to provision: “[s]uch transfers worsened the economic situation of the native population and endangered their separate existence as a race”.

Recommendations:

- An international convention is an adequate means to reach a consensus in the grey area between functions that are permitted to be outsourced to PMSCs but should be regulated, and functions that belong to the State and cannot be privatised.
- The status of private security agents other than PMSC employees should be clearly established under national law, and be coherent and compatible with norms of international humanitarian law.
- The fact that PMSCs personnel are not usually “mercenaries” is also an important argument for the adoption of a new instrument to deal with this new type of non-state actor.

National regulatory frameworks in the three countries under examination, while diverse in their approach to PMSCs, also present common deficiencies in the regulation of the activities of PMSCs. On the one hand, while several regulatory instruments are in place for PMSCs in these countries [laws, military orders, decrees, ministry guidelines, tenders for bids, etc], each of them amount to comprehensive legislation using the force of law and covering all relevant “elements for regulating PMSC activity”.¹⁴⁴ On the contrary, rules for PMSCs are dispersed in several regulatory instruments; some remain classified [such as rules of engagement in the oPt] or are subject to constant variation [such as criteria for licensing in Iraq] – all of which give rise to legal uncertainty.

1. In Iraq, for example, there is not yet a formal legislation for PMSCs, and former military orders adopted during the occupation period [2003-2004] still form the main legislative framework for their operations in many ways. Additionally, military orders have been supplemented by regulations issued by the Ministries of Interior, but due to the different security situation and political stability in the Kurdistan region and the rest of Iraq, current Mol regulations are notably diverse in the two regions. Furthermore, Mol instructions do not have the force of law and do not clarify important elements concerning PMSC activity such as the accountability for foreign PMSCs.
2. In Colombia, there are several laws concerning the role of the *Superintendencia de Vigilancia y Seguridad Privada [SVSP]*, the central body that controls the activities of PMSCs, but the legal statute for PMSCs, *Estatuto de Vigilancia y Seguridad Privada*, is set by a governmental decree does not have the force of law. Recently, a draft law has been submitted by some politicians but has not yet adopted by parliament.

¹⁴⁴ The following elements which are currently used by the UNWGM in its research on national legislation concerning PMSCs may serve as a guideline for the regulation of PMSC at the national level: [a] scope of the legislation; [b] licensing, authorisation and registration; [c] selection and training of personnel; [d] permitted and prohibited activities; [e] rules on the acquisition of weapons; [f] use of force and firearms; [g] accountability for violations and remedies for victims; and [h] ratification of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.” See UN Doc. A/HRC/30/34, 8 July 2015, para. 16.

3. With regard to the oPt, there is an amalgam of regulatory guidelines for PMSCs which are applied according to the territory and the context where they operate. For instance, Israeli national legislation and governmental tenders for bids apply to security companies working in East Jerusalem and checkpoints in the West Bank, Gaza Strip and Jerusalem, military orders and permits sanction the operations of PMSCs in settlements and private establishments in the West Bank and, the conduct for PMSCs working along the Wall in the West Bank seems to be regulated by contractual relationships with construction contractors.

Recommendation:

- The monopoly over the use of force is a State prerogative and responsibility. Regulation on the use and activities of PMSCs should be established by law and not by administrative regulations adopted only by the government or executive agencies.
- Military orders adopted during periods of occupation are not an adequate tool to define the general framework for the use and conduct of PMSCs, and should be replaced as soon as possible after the occupation ends.
- National legislations on PMSCs should be comprehensive, covering all the relevant elements for PMSC activities, including accountability and monitoring mechanisms, and not only be limited to formal requirements for granting operational licenses.

On the other hand, the content and implementation of the regulation in force, i.e. the law in paper and in practice, can be summarised as follows: broad powers, insufficient supervision, and unclear rules of engagement. Certainly, in some contexts in Iraq and Colombia, regulations impose restrictions on the sort of activities that can be outsourced to PMSCs, for instance, The Ministry of Interior's instructions in Iraq state that "[t]he primary role of PSC is deterrence [and] as such, no PSC or its employees will engage in any type of law enforcement activity". Colombian regulation has a similar approach in the sense that PSCs cannot encroach on the police's sphere of action. In practice, however, due to the lack of effective public supervision or because private security personnel cooperate with public authorities in crime prevention or support the police in events of emergency or social unrest, PSCs do exercise quasi-policing powers, such as the use of force, body search or detention, in their areas of activity.

Moreover, monitoring mechanisms for PMSCs or their implementation still remains an unresolved matter in the three countries analysed. In Colombia and Iraq, there are reports on companies operating without license and it is uncertain whether incidents of abuse other than high-profile cases are properly handled by public authorities. In the case of PMSCs in the oPt, the fact the private security personnel are not part of the police is making their supervision difficult in contexts such as East Jerusalem, while in other contexts such as checkpoints, due to the complex network of state agencies participating in their management, there is a dispersion of authority and supervision of PSCs activities remains unclear and deficient.

Recommendation:

- It is the authorisation to use armed force, even in a defensive manner or in a law-enforcement role, coupled with the lack of clear rules of engagement and proper supervision, which make contractors' activities a potential threat to human rights. Even if States have chosen to outsource certain security functions, they still have an obligation to prevent misconduct by PMSCs. In this regard, precise regulation governing the use of force and firearms, and adequate training in the use of gradual and progressive force is required in order to preserve physical integrity and other fundamental human rights of persons interacting with private security personnel.
- Lack of oversight and enforcing mechanisms in weak territorial States is another important reason to establish an international framework ensuring the monitoring and prosecution of PMSCs.
- An international convention would provide some standardised rules of engagement for PMSC personnel taking into account the diverse contexts where PMSC operate and reached out of consensus of all states. Additionally, according to their respective responsibilities vis-à-vis PMSCs, territorial, contracting and home states of PMSCs should designate monitoring authorities and establish oversight mechanisms over the activities of PMSCs. National oversight bodies should be coordinated and cooperate in case of human rights incidents.
- An international convention could create an international committee that would monitor the measures taken by State parties with regard to their monitoring obligations set forth in the convention. According to this, the co-operation with local and international CSOs will be essential to collect data about the impact of PMSCs on Human Rights in a specific country.

Finally, the effectiveness of regulatory frameworks adopted for PMSCs at a national level should also be assessed in relation to bilateral agreements concluded between territorial States and home states of PMSCs, in particular the United States. There are three different sets of agreements which are relevant in this analysis. Firstly, in Iraq, and to a greater extent in Colombia, the conclusion of military agreements granting immunity before national courts to private military contractors working to the U.S. military has been common practice. Additionally, private security contractors that protect U.S. embassies abroad would enjoy jurisdictional immunity in the host country as technical and administrative personnel of the embassies and consulate missions, as seems to be the case in Iraq. Lastly, the U.S. has signed a number of bilateral agreements seeking to ensure the non-surrender of US personnel — including both US nationals and foreign contractors working for the United States — to the International Criminal Court;¹⁴⁵ signatories' countries include Colombia and Israel.

145 See on this matter, Coalition for the International Criminal Court, <http://www.iccnw.org/?mod=bia>

As noted in this report, these immunity clauses have had devastating effects in terms of accountability of PMSCs and their personnel. In Iraq, the combined effect of the immunity clause contained in CPA Order 17 and the failure to prosecute PMSC employees in home countries led to impunity for most of the human rights violations against Iraqi civilians committed by PMSCs between 2003 and 2009. Similarly, the immunity granted to US PMSC personnel under the Plan Colombia has prevented their prosecution for grave cases of sexual violence committed against Colombian women and girls.

Recommendation:

- In order to achieve an effective regulation of PMSC activities, the validity of the use of immunity clauses or agreements that prevent accountability of contractors should be reconsidered. Given the transnational nature of the PMSC industry and the right of victims of human rights violations to effective remedies, the conclusion of immunity agreements that shield prosecution of foreign PMSCs before domestic courts without further guaranteeing prosecution in the countries of origin of PMSCs results in impunity for their actions and lack of redress for victims, all of which contradicts international obligations of States to investigate, punish and redress human rights and humanitarian law violations.
- Immunity clauses and provisions preventing contractors from surrendering to international or foreign courts are in conflict with State obligation and/or faculty to exercise universal jurisdiction over international crimes as well as in conflict with the obligation of cooperation for States that are party to the ICC Statute. While the rule of jurisdictional immunities of States and their properties is a general rule of international customary law, its extension to private foreign contractors amounts to a questionable relinquishment of another quintessential state authority, which is the exercise of criminal jurisdiction, and should be subject to public discussion at a national and international level.

Sadly, the worst part of these misleading policies of outsourcing and the lack of proper regulation of PMSCs has always been for the local population of the states of operation. Iraqis, Colombians and Palestinians have all suffered grave abuse at the hands of private contractors. As described in this report, this abuse violates a wide list of fundamental human rights such as the right to life, right to security, the prohibition of torture, cruel, inhuman or degrading treatment, the prohibition of the arbitrary deprivation of liberty, the right to peaceful assembly, right to property, right to privacy, and the right of victims to effective remedies. Some of these incidents have received media attention and international solidarity while others are endured by victims in silence with little public support and no remedy. In this regard, the present research confirms the existing difficulties in measuring the human rights impact of PMSC activity. In our opinion, this is informed by several factors: firstly, in some cases such as Iraq the local population does not trust the police and the criminal justice system, which results in a reluctance to report incidents to public authorities or even to NGOs due to the fear of reprisals. Secondly, in the case of Israel and the oPt, there is a lack of implementation or unjustified exemptions regarding the requirement of identification for private security guards which complicates the process of accurately reporting incidents and human rights violations by citizens

and NGOs. Lastly, despite the important functions that private security companies have performed throughout the years of conflict and post-conflict, there is still a lack of official recognition on the part of governments and some international bodies of the role of PMSCs as war-related agents and/or as security elements to be considered in transitional processes. Consequently, there is still a deficit in official reporting and statistics of human rights incidents involving PMSCs as well as the number of casualties or victims produced by their activities.

Recommendations:

- Private security personnel should always carry some visible identification and their means of transport should also be distinguishable.
- Human rights agencies within relevant national ministries should be in charge of official reporting of incidents and statistics involving PMSCs and work in cooperation with police, judicial authorities and civil societies for gathering information regarding the impact of PMSC activities in the country and following up existing cases of abuse in order to guarantee the provision of effective remedies for victims.
- The United Nations country missions are encouraged to consider private military and security personnel as a specific category of non-state actor and periodically report on incidents allegedly committed by PMSCs and their personnel.
- Co-operation with international and local civil society organisations is essential in order to obtain factual data about the impact of the activities of PMSCs on human rights. In this regard, we highly recommend supporting the monitoring of efforts and mechanisms developed by these organisations for registering, documenting and systematising human rights incidents involving PMSCs.

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About NOVACT-International Institute for Nonviolent Action

NOVACT-International Institute for Nonviolent Action promotes international peace-building actions in conflict situations. The Institute has been created through the collective effort of those active in international civil society to contribute to a peaceful, just and dignified world.

Understanding nonviolence as a transformation strategy, NOVACT strives to achieve a society based on human security and real democracy, free of armed conflicts and violence in all of its dimensions.

In cooperation with its international advisory committee and its network—composed of experts, human rights defenders and civil society organizations in the Middle East, North Africa, Europe and America—NOVACT supports non-violent movements which are working for social change and developing civilian peace intervention mechanisms to protect vulnerable groups in conflict situations.

As a committed, political, independent agency, NOVACT promotes peace initiatives, training programs and action-oriented research to advocate for national and international public policies and regulations that guarantee human security and the effective protection of human rights and fundamental freedoms.

With its headquarters in the Mediterranean city of Barcelona, NOVACT is an initiative of Nova-Social Innovation, which is registered as a non-governmental organization and is recognized by the United Nations. The Institute raises funds from committed citizens and public institutions.

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About the Shock Monitor – Observing Private War Impact on Human Rights

Since the end of the Cold War the private military and security industry has experienced an increasing expansion at the national and international level. While the industry has been the subject of abundant analysis, NOVACT has identified an important deficit of documentation and information on the direct impact that activities of private military and security companies [PMSCs] have on the human rights of local populations and the staff of these companies, i.e. specific human rights incidents.

The Shock Monitor aims to respond to this deficit by documenting, systematizing and analysing human rights incidents involving PMSCs and private security and military personnel [contractors] in Colombia, Iraq and the Occupied Palestinian Territories.

NOVACT is working on the expansion of the Observatory to other regions such as Africa. To this end, the Observatory cooperates with a network of field researchers and research centers in the above-mentioned countries to obtain factual data on the operations of PMSCs and their impact on the human rights of local communities.

Shock Monitor will be presented publicly by the Fall of 2016





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