



Research Article

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Private Military and Security Companies: The End of State Responsibility?

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Abstract

The objective of this article is to observe the redefinition of state responsibility based on its interaction with Private Military Security Companies. The boom, consolidation and decline of these companies between the end of the Cold War era and the first decade of the 21st century pose a dilemma to international law regarding State responsibility towards security issues within its territory. The lack of effective international law mechanisms and the political agenda of the States are both limitations for preserving human dignity in institutional and humanitarian fragile contexts. Hence, an interdisciplinary approach must be considered in order to seek an alternative path to this dilemma. This research used empirical data and documental analysis to achieve this objective.

Keywords: Private Military and Security Companies, State responsibility, human rights, international security

1. Introduction

The proliferation of neoliberalism governmentality within hegemonic powers such as the United Kingdom and the United States facilitated the delegation of state functions to the private sector at the end of the Cold War. Strategic State sectors were assumed by private individuals under the premise that efficiency would be guaranteed by compliance with corporate governance.

One of the sectors whose privatization has caused the greatest astonishment is security and defense. The precepts of Adam Smith to preserve the security and administration of justice as the only areas of state domination were reversed by his followers at the end of the twentieth century. The appearance of a new actor such as the Private Military and Security Companies (PMSCs)¹ demonstrates the overcoming of the idea of violence as a monopoly of the State. Despite PMSCs

¹ For Peter W. Singer, the business of private security starts from its definition known as "spearhead". This definition starts from the greater or lesser possibility that the hired personnel get involved in combat or tactical level operations. The PMSC are those that are closest to the spearhead because their service offer includes "direct military tactical assistance, including serving in combat" (Singer, 2006: 106). From the construction of the state of the art of this thesis can be extracted three defining elements about the character of these companies. In the first instance, the PMSC establish a relation of externality with respect to the theater of operations in which they operate (Ortiz, 2010: 48-49, Machairas, 2014: 50). In second instance, the contract as a unit of analysis from which a set of services offered by the PMSC are deduced, such as combat actions, military assistance and training, logistics, commercial security protection, risk analysis, research and intelligence gathering, response to kidnapping (Shearer, 1998: 25-26); heavy weapons management and enlistment of highly trained soldiers (Bjoveit, 2008: 25-29); reconstruction (Ortiz, 2010: 45-46); demining (Brooks, 2000: 130) and use of lethal force (Kinsey, 2003: 10). In the third instance, PMSC have a tactical-strategic vocation of offensive order that differentiates them from other types of private security firms (Cano Linares, 2008: 61, Pattison, 2011: 147, Schreier & Caparini, 2005: 41, Laboire Iglesias, 2012: 76).

are not a completely novel phenomenon, this new type of actor of the international system fulfilled tasks destined exclusively to the States in the precedent centuries. The dispute over the coercive power between the State and PMSCs leaves behind the issue of the responsibility of the former as a sovereign instance. All this leads to the question: How can the actions of the PMSCs redefine the state responsibility?

The objective of this article is to observe the redefinition of state responsibility based on its interaction with PMSC. To achieve this goal, this article will be divided in two parts. The first part will describe the boom, consolidation and decline of Anglo-American PMSCs. In the second part, the responsibility of the different actors to contemplate alternative solutions to this challenge.

2. The Boom, Consolidation and Decline of PMSCs

The first PMSCs emerged as an initiative of British officers and ex-officers during the second part of the Cold War. Companies like *Watchguard International* and *Control Risk Group* can be considered as the first of their kind. A case of special attention was that of *Defense Services Limited* which was founded in 1981, but after being acquired by a US conglomerate in 1997, it changed its name to *ArmorGroup*, a PMSC with offices in 23 countries and among its clients there are private companies, NGOs and States. This company has performed functions as diverse as protecting UN personnel during its mission in the former Yugoslavia, safeguarding the infrastructure of *British Petroleum* from guerrilla attacks in Colombia or training the police force in Basra (Iraq) (Avant, 2013: 429).

Although other hegemonic countries joined in the constitution of PMSCs such as Canada, France, Israel, Australia and Belgium, it is the United States where this industry would be massified. The outbreak of the Persian Gulf War in 1990 helped the US military deploy operations for regional stability using its technical superiority. The use of high technology equipment, logistical demands and other tasks were supplied by ten PMSC (Kurlantzick, 2003: 17).

Two of the favorite fronts of action for the American PMSCs in the following years were the protection of personalities and the advice and training in police operations. On the one hand, the Office of the State Department for Diplomatic Security opted to use private contractors as Specialized Security Personnel (PSS). This office made its first deployment in September 1994 in the Haitian crisis. Soon, other countries such as Bosnia, Afghanistan, Israel and Iraq would join as host sites for these missions. On the other hand, PSMCs like *Vinnell* trained the Saudi security forces (Dionisi, 2005: 90), while in Colombia, others such as *DynCorp* provided their services in counter-narcotics operations such as aerial spraying against illicit crops and accompaniment to air operations of police interdiction (McCallion, 2005, Perret, 2013: 52-53).

During the 90s, the PMSCs of the mentioned powers were present in 42 countries showing adverse results. During this period, two types of company would end up being used as an example of the use of PMSCs both to delegitimize them and to legitimize them. The first type includes the South African *Executive Outcomes* and the British *Sandline International*, which were involved in the events that took place in Sierra Leone in 1995. The first one, for having received payments in diamonds by President Valentine Strasser to contain the rebels of the Revolutionary United Front and the second to disregard the arms embargo imposed internationally to the regime of that country. Continuing with *Sandline International*, in Oceania, the 1997 *Sandline Affair* also showed the gray areas in which this company was acting when Australian media revealed the intention of the president of Papua New Guinea, Julius Chan, to use this PMSCs to resolve by force a civil revolt in the Bougainville region (Adams, 2002; Krahnmann, 2005: 247).

Representing the second type of PMSCs, the participation of the American *Military Professional Resources Incorporated* (MPRI) in the conflict of the former Yugoslavia in favor of the Croatian troops against the Serbs in the "Operation Storm", decisive to redirect the dynamics of the hostilities, and force to a peace agreement, was well received by public opinion and helped to claim the prestige of the PMSCs. In addition, MPRI's strong organizational structure and more transparent corporate governance gave PMSCs a different standpoint, making them closer to respectable transnational companies rather than the "war dogs" of the past (Laboire Iglesias, 2012: 102-103).

While the 90s were a boom time for the PMSCs, the first decade of the 21st century is torn between consolidation and excess. In the Bush administration, the deployment of the defense sector in the interventions abroad was reflected in the accelerated delegation from the military to the civilian. In the first Gulf War the ratio between military personnel and civilian personnel was 50 to 1, in the interventions of Afghanistan in 2001 and Iraq in 2003, private participation increased exponentially until parity between both types of personnel was reached. At the height of the Iraq war, 190,000 contractors working directly for the US government were used (Heinecken, 2014: 629). This turning point reached a peak between 2005 and 2006 when the number of private operators increased by 92% (Ellington, 2011: 142).

Within this framework, PMSCs increased their participation in the security market by adding to the protection of personnel, and the training and advisory tasks involved in securing strategic infrastructure. In March 2000, the US Department of State launched the World Service for Personnel Protection (WPPS) contract. Contract awarded to *DynCorp* to provide protection services in Bosnia, Palestine in 2002 and to install the security scheme of Afghan President Hamid Karzai in November of that same year. In 2004, *Blackwater* won the tender for the protection of personnel of the US embassy in Baghdad while *Triple Canopy* did the same with the diplomatic office in Basrah. These same three PMSCs obtained contracts for the second version of the WPPS, whose estimated value amounted to 1.2 billion dollars for five years for the protection of personnel in several cities in Iraq, Israel, Bosnia and Afghanistan (Isenberg, 2009: 30). *Blackwater* managed to make the most significant contracts of this service as the escort of the leader of the Provisional Authority of the Coalition Paul Bremer and the US Ambassador John Negroponte.

Even though the three PMSCs mentioned were the most emblematic, there were others in charge of complementary tasks. *Zapata Engineering* celebrated a contract with the US Army Corps of Engineers for the management of munitions storage warehouses and mine destruction. *Aegis Defense Services* made a \$ 290 million contract for the coordination of civilian contractors with the Iraqi Ministry of the Interior, and *CACI* provided support from personnel specializing in the management of interrogations in prison centers such as Abu Ghraib. Also, in Iraq, British CMSPs such as *ArmorGroup* and *Control Risks Group* collaborated with the safeguarding of personnel and their mobilization (Nicoll, 2007: 1).

In the Americas, the war against drugs contracted the consolidation of PMSCs in Colombia and its entry into Mexico. With the entry into force of Plan Colombia in 2000 and of the Merida Initiative in 2008, both countries implemented an agreement with the United States to combat the production and trafficking of narcotics. PMSCs such as *Dyncorp*, *MPRI*, *Northrop Grumann* and *Kellogg, Brown & Root* were delegated to tasks of coca crop fumigation, radar monitoring of narcotics trafficking and training of security forces for these purposes (Perret, 2013: 57; McCallion, 2005: 320). In the Colombian case, the narco-guerrilla² phenomenon contributed to a strategy hybridized between high-tech missions (satellite or aerial surveillance) and those of counterinsurgency.

The increase of the prominence of the PMSCs in the 2000s was accompanied by the moment of most critical questioning by its use. While actions such as the escort of members of International and Non-Governmental Organizations helped to clean up their image (Avant, 2005: 156), other multiple situations linked to the violation of human rights opened the question about the role played. The participation of three *CACI* employees in practices of torture against Abu Ghraib prisoners in 2003, the shooting of *Blackwater* personnel in Nisur Square in Baghdad in 2007³, the dismissal in May 2001 of several *Dyncorp* workers for being involved in acts of rape and child prostitution in Bosnia or the direct participation in hostilities of this same PMSC in Colombia are some examples of the excesses perpetrated by these companies in that period (Kurlantzick, 2003: 18; Perret, 2013: 53; Nicoll, 2007: 1, Scahill, 2007: 3-8; McCarron, 2008).

² "narco-guerrillas" are called the confluence of cocaine production and trafficking activities in places with the influence of guerrilla groups in that country. The latter profited from this business charged a heavy duty for the protection of these crops or even for their direct participation in the traffic of this drug.

³ On September 16, 2007 in downtown Baghdad, *Blackwater* personnel transported in a convoy opened fire on civilians without apparent provocation, killing 17 of them.

The delegitimization of the PMSCs in the Bush years provoked a frustrated reaction on the part of his successor. With Barack Obama (2009-2017), the attempt of the political to regain control of the military led to results only in a formal way. On the one hand, the existence of a political will to regulate these companies became apparent when Congress issued in 2009 a WBO circular to establish what would essentially be government functions. In this way, we sought to restrict the use of private contractors in combat, security and in the direction and control of intelligence operations. However, the urgency of this government to constitute a unified approach to action uncovered the shortcomings of the Department of Defense procurement system, demonstrating the conformity of military commanders with the prevailing status quo (Bruneau, 2013: 11-16).

3. Responsibility of the States and PMSCs

Although up to now the discussion presented in this chapter has focused on the PMSCs, its nature and its attempt to classify it, it is evident that for international law the issue of responsibility also falls on the State. Therefore, this section will observe how the theme works in each of them and in their interaction.

In the foreground, there are two concerns that capture the concern about the responsibility of PMSCs: accountability and international legal subjectivity. For accountability there is no specialized body or specific regulations that oblige PMSCs to respond for their conduct. The instruments of international law that seek to curb the behavior of these companies are part of the soft law sources, so that their binding nature is non-existent. In addition, the limited knowledge that pressure groups have about the activities of these companies and the few bases to diagnose the legality of their actions make it more difficult to hold these organizations accountable (Leander, 2010: 485). From the political point of view this is also reflected, since the PMSCs have not been strongly controlled by the countries to which they belong, which in general are great powers. This can be explained to the extent that they respond to their hegemonic interests and support the policies they advance in the countries where they operate (Adams, 2002: 64).

Regarding their subjectivity, the lack of legal status of PMSCs personnel has facilitated them to evade the action of international justice. Bearing in mind that a subject of international law is one who has rights and duties in this regulatory framework such as States or individuals, transnational corporations (within which PMSCs fit) are conceived rather as actors. This means that the individuals working in PMSCs can be called before the international courts, but not the companies themselves. This also makes it impossible for the mechanisms of public international law to pursue and punish them for their corporate capacity (Rousseau, 2014, Huskey, 2012: 203, Barnes, 2013).

Finding little success in the search for responsibility for the PMSCs, there seems to be no other option than to inquire about what happens on the side of the State. In the traditional view of international law, the responsibility of the State involves two axes of analysis: 1) losses and damages suffered and 2) responsibility to the security of other States (Kinsey, 2003: 10). This makes it clear that there would be two types of States that would incur responsibility for not effectively controlling the actions of the PMSCs: The States from which its legal personality comes and those where they operate.

For both types of State, the legal ambiguity that surrounds the world of PMSCs is a factor that both end up taking advantage of and passing, also evading their responsibility. The countries from which these companies come are usually big powers with clear economic and political interests in the places where they operate. For them, delegating to private firms such a sensitive issue as the quest for security in unstable territories is the opportunity to obtain important relative gains without falling into disrepute of being accused of imperialist practices or sacrificing their regular troops. For the receiving states, or rather for their elites, the PMSCs are presented as a valuable opportunity to conjure up destabilizing forces that put at risk their process of economic accumulation and social control. In this way, joint attitudes of each other can be understood in failures such as the failed attempt in 2001 to ratify the Convention against mercenary's recruitment in 1989 (Adams, 2002: 62).

A third front of concern, and perhaps the most complex of all, arises when one speaks of the combination of military power and corporate power. The monopoly of violence by the State and the

democratic control of defense are two precepts inherent in modernity (Machairas, 2014: 50). However, factors such as 1) the use of PMSCs by other legal and illegal actors, 2) the use of PMSCs by highly unpopular and even illegitimate governments and 3) the use of these companies by interventionist States may end up undermining the panorama of human rights in the affected countries. Which is not unlikely because most of the theaters of operations of the PMSCs are characterized by their institutional and humanitarian fragility.

From this combination, Dawn Rothe and Jeffrey Ross warn of this potential complicity through the concept of State-corporate crimes, which can be defined as:

The illegal or socially damaging action that results as a collective product of the interaction between (...) corporation and the State agency ... (this) involves the active participation of two or more organizations, where one is private and the other It is public. It is the harmful result of the interorganizational relationship between business and government (2010: 599).

To conclude, it can be said that the issue of the responsibility of the PMSCs and the States reflects the very asymmetry of the international system, where the great powers use their transnational corporations as extensive mechanisms of their foreign policy to preserve their hegemonic interests rather than seek for international security. Here, international law and its apparent incapacity complete the picture by diluting or making ambiguous any attempt to hold responsible the perpetrators of crimes against humanity.

4. Conclusion

This chapter focused on looking at the rise and decline of mainly Anglo-American PMSCs in matters of international security, especially in the peripheral countries. The violation of human rights and the possibility of putting populations at risk are causes that invoke the establishment of a responsibility of sovereign entities. However, the gray areas of the PMSCs as transnational actors sponsored by the hegemonic interests of the great powers make this task difficult and force the search for new alternatives for the determination of responsibilities in contemporary international law.

The call that is made from here is to engage in a dialogue between the discipline of international law and other knowledge linked to the study of international relations to have a dynamic and holistic view of current realities and the mechanisms that should be used to preserve human dignity.

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