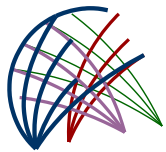


***Private Military and Security Companies:  
Industry-Led Self-Regulatory Initiatives  
versus State-Led Containment Strategies***

**Prof. Raymond Saner**

**Erlangen University**

November 2015



# Multi-polar geopolitical reality



- Transitions from the colonial to post-colonial and from Cold War to post-Cold War resulted in today's **multi-polar geopolitical reality**
- Increasingly **divergent definitions** of diplomacy, sovereignty, and warfare
- Proliferation of **non-state actors** in international relations including in trade, communication, finance, and security (Saner & Yiu, 2002).
- **“Blurring of boundaries”** made it harder to ensure that international humanitarian conventions such as the Geneva Conventions, Human Rights Laws, and the Conventions on the Protection of Refugees are being respected and implemented by the signatory governments.

# Battle of Solferino 1859



# Henri Dunant - Battle of Solferino 1859



Source: ICRC, <https://www.icrc.org/eng/resources/documents/field-newsletter/2013/india-e-newsletter/journey-08-2013.htm>

# World War Two



# Geneva Conventions



- **The core of IHL is the Geneva Conventions. Initial text of 1864, revised in 1906 and in 1929.**
- **Current version was adopted on 12.8. 1949, in the wake of the Second World War, now known as the “four Geneva Conventions”. They have achieved universal ratification.**
  - **First Geneva Convention, 1949**
  - **Second Geneva Convention, 1949**
  - **Third Geneva Convention, 1949**
  - **Fourth Geneva Convention, 1949**

# International Humanitarian Law



(<https://www.icrc.org/en/document/what-international-humanitarian-law>)

- **International humanitarian law is part of international law, which is the body of rules governing relations between States. International law is contained in agreements between States – treaties or conventions –, in customary rules, which consist of State practise considered by them as legally binding, and in general principles.**

# ISIS armed fighters



[http://www.catholic.org/news/international/middle\\_east/story.php?id=56481](http://www.catholic.org/news/international/middle_east/story.php?id=56481)

<http://www.mirror.co.uk/news/world-news/sas-sniper-saves-father-son-6226241>



<http://uprootedpalestinians.blogspot.ch/2014/08/isis-are-barbaric-savages-but-what.html>



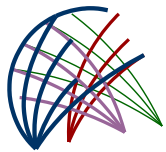
Source: CNN, <http://edition.cnn.com/2014/09/02/world/meast/isis-american-journalist-sotloff/> and Daily Mail, <http://www.dailymail.co.uk/news/article-2737290/James-Foley-American-hostages-held-Syria-ISIS-waterboarded-captivity.html>



# Armed staff shooting civilians in Iraq



Source: Business Insider, <http://www.businessinsider.com/nyt-story-on-blackwater-threat-in-iraq-2014-6?IR=T> and USA Today, [http://usatoday30.usatoday.com/news/world/iraq/2007-09-17-iraq-monday\\_N.htm](http://usatoday30.usatoday.com/news/world/iraq/2007-09-17-iraq-monday_N.htm)

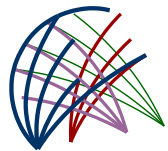


Diplomacy  
Dialogue

# Engagement with Armed Non-State Actors



- *The exclusion of armed groups from the normal treaty-making process, and their subsequent inability to become parties to the relevant treaties, means that **alternative non-legal regimes** have had to be adopted.*
- *These regimes, whether established by the **UN Security Council, the UN Human Rights Council, NGOs, or by national truth commissions**, operate in a grey zone between law and politics: relying on international legal principles for the normative framework, and remaining dependent on political pressures, rather than courts, for the enforcement of these norms. (Clapham 2014)*

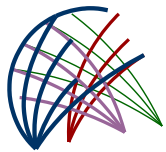


# Increasing use of PMSCs



*In **Saudi Arabia**, US-based PMSCs play a key role in protecting the monarchy from unrest. Until recently BDM, parent of Vinnell, provided logistics, intelligence and maintenance services to the Saudi air force. Vinnell itself trains the Saudi national guard, while Booz Allen Hamilton runs the military staff college. SAIC supports the navy and air defences, and O Gara protects the Saudi royal family and trains local security forces.*

- In **East Timor**, Australian forces leading the UN Transitional Administration peacekeeping force in 1999 depended on logistics outsourced to PMSCs, while the UN employed private intelligence and security firms to assist.*



# Private military industry actors



- **Private Military Companies (PMCs)**
  - offers services such as military base guarding and explosive ordinance disposal
- **Private Security Companies (PSCs)**
  - mostly deals with security consulting and investigative services
- => **Lines between PMCs and PSCs are not always clear cut**, since both types of companies at times offer services in the two subfields - making the identification of main activities difficult to ascertain

# Tensions between military industry actors

- **PMSC industry + Client governments + Supportive NGOs**

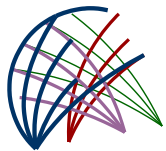
**versus**

- **Other governments and NGOs that want to limit the use of PMSCs in order to ensure continued application and respect of IHL and human rights.**

# Definitions and Use of Private Military and Security Companies



- *Persons or businesses... that provide products or services [to the military] for monetary compensation (US Government)*
- A more precise legal definition of a PMSC **has not yet been agreed upon.**



# State militaries vs PMSC employees



- **State militaries:** legally responsible to the state and society and operate under a strict code of conduct (the Geneva Conventions and 1907 Hague Convention Regulations). Liable under national codes of military justice and regularly scrutinized by public opinion.
- **PMSC employees:** report solely to the principals of their company regardless of their national or ideological background. Function under no consistent sense of loyalty or commitment to a cause.

# PMSC employees vs Mercenaries



- **Protocol I of the Geneva Conventions** lists six criteria that an entity must fulfill to be considered a mercenary, including individuals who are “motivated to take part in the hostilities essentially by the desire for private gain and ... [are] promised ... material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party.”
- Such criteria do not necessarily apply to all PMSCs, particularly to those that deal with logistics or armed security.



# PMSC Industry - Data

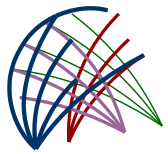
- Information is **scarce** & difficult to find
- Data alternating between being publically available & **highly confidential**
- Companies may be headquartered in one country while holding a **branch or representative office** in another

# PMSC Industry – Contrasting figures



- **Total turnover of CHF 930 million (approximately USD 1029 million) / Hundreds of thousands of individuals employed.**
- **Industry's worth at USD 400 billion / millions of employees and 6500 companies worldwide.**

(Source: Fenazzi 2013)

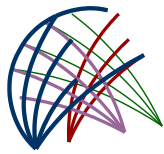


Diplomacy  
Dialogue

# Blackwater employees



Source: Daily Mail, <http://www.dailymail.co.uk/news/article-1205625/Blackwater-worlds-biggest-private-army-faces-terrible-charge--crusade-wipe-Muslims.html> and <https://deeppoliticsforum.com/forums/archive/index.php/t-1134.html>



# 10 Largest PMSCs and Corporate Profiles



Company	Year founded	Legal HQs	Commercial HQs*	No. of employees	Type of Company/ Marketization (US\$ Million)	Revenues (US\$ Million)	ICoC Sign.
<b>Academi</b>	2011	Mclean,VA,USA	Mclean,VA	10'000	Priv.h.Co.	13'500	2010
<b>Aegis Def.Serv.</b>	2002	London, UK	Basel, CH	1001-5000	Priv.h.Co.	500-1000	2010
<b>DynCorp.Int.</b>	1946	Fairfax, VA,USA	Fairfax,VA	27'000	Priv.h.Co.	3'047	2010
<b>G4S</b>	1901	London, UK	Crawley, UK	620'000	Pub.h.Co.	6'325'000	2010
<b>L-3 MPRI Inc</b>	1987	Alexandria,VA,USA	Alexandria,VA	40'000	Priv.h.Co.	500-1000	NA
<b>Vinnell Corp.</b>	1985	Fairfax, VA, USA	Fairfax,VA	1'000-5'000	Priv.h.Co.	50-100	NA
<b>Booz Allen Hamilton</b>	1914	Mclean,VA, USA	Mclean,VA	25'000	Publ.h.Co. 3'540	5'758	NA
<b>Garda World Sec. Corp.</b>	1995	Montreal, CDN	Dubai, UAE	45'000	Priv.h.Co.	1'400	2010
<b>Prosegur</b>	1976	Madrid, E	Madrid,E	150'000<	Publ.h.Co. 3'100	5'031	NA
<b>Kellog,Brown, Root  KBR</b>	1988	Houston,TX,USA	Houston,TX	14'000- 27'000	Publ.h.Co. 3'506	7'420	NA

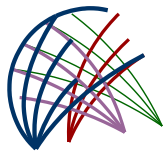
Legend: Priv.h.Co. = Privately held Co. // Pub.h.Co. = Publically held Co.

# 10 Largest PMSCs, Countries of Operation and Past Clients (1)

Company	Countries of Operations	Past clients
Academi	Mexico, Afghanistan, Israel, South Africa, Brazil, Tanzania, Kenya, Puerto Rico, Germany, Somalia, Azerbaijan, Jordan, India, Russia, (West & North Africa)	Include US Navy, the Walt Disney Company, Chevron, Royal Caribbean Cruise Lines, US Pentagon State Department & Intelligence Agencies, Monsanto, Deutsche Bank and Barclays.
Aegis Def.Serv.	New York (USAS), Maputo (Mozambique), Tripoli (Libya), Baghdad (Iraq), Riyadh (Saudi Arabia), Basra (Iraq), Kabul (Afghanistan), Nigeria, London (UK)	Include Italian Foreign Ministry, UN Agencies, London Organising Committee of the Olympic and Paralympic Games, Unnamed Diplomat in Northern Europe and North Africa, Oil/Gas client in Iraq, Nigeria and East Africa, International advisory firm in Yemen, US Department of Defense and Marine Salvage Firm in the Northern Arabian Gulf.
DynCorp.Int.	U.S plus 39 other countries including Iraq, Afghanistan, the Persian Gulf, Bolivia, Bosnia, Somalia, Angola, Haiti, Colombia, Kosovo and Kuwait.	Include US government departments, FBI, CIA, UNCIVPOL, UN Peacekeeping Missions and the African Union.
G4S	Over 120 countries in 6 continents with a higher presence in high growth developing markets.	Include Ernst & Young, Exxon Mobil, Honeywell, IBM, Intell and the London Organising Committee of the Olympic Games.

# 10 Largest PMSCs, Countries of Operation and Past Clients (2)

Company	Countries of Operations	Past clients
L-3 MPRI Inc	80 Countries in 6 continents including Equatorial Guinea and Kuwait.	While specific clients cannot be verified, there is evidence that past clients have included commercial businesses, law enforcement agencies, government and military bodies such as the US Army and various US federal departments.
Vinnell Corp.	Mainly Saudi Arabia and other Middle Eastern states but has operated in Vietnam, Iraq and Pakistan.	While specific clients cannot be verified, there is evidence that past clients have included commercial businesses, law enforcement agencies, government and military bodies such as the US Army and Saudi Arabian National Guard.
Booz Allen Ham.	69 locations across six continents including the UAE and other states in the Middle East and North Africa.	Include US civilian government agencies, commercial organizations, defense& intelligence organizations, international organizations and non-profit organizations.
Garda World Sec. Corp.	Afghanistan, Argentina, Columbia, Haiti, Iraq, Latin America, Libya, Mexico, Nigeria, Pakistan, Somalia and Yemen.	Include companies and organizations in the oil and gas, diplomatic and infrastructure sectors.
Prosegur	17 countries in Europe, Latin America, Asia and Australia.	Include industrial, residential and commercial companies.
Kellog,Brown,Root KBR	Over six continents including Kosovo, Afghanistan, Iraq and Cuba	Include US military and government agencies as well as companies in the energy, petrochemicals, and industrial and civil infrastructure sectors.



# Mapping the Ten largest PMSCs by services offered



Company (N=10)	Categories/Segments of Services						
PMSC	Advising/ Consulting	Armed Protection	Technical Support	Military Training	Surveillance Intelligence	Cyber Security	Logistical Support
Academi	1	1	1	0	1	0	1
Aegis Def. Services	1	1	0	1	0	1	1
Dyn Corp.Int.	1	1	1	1	0	0	1
G4S	1	1	1	1	0	0	1
L-3 MPRI Inc.	1	1	0	1	0	1	1
Vinnell Corpo.	1	1	1	1	0	0	1
Booz Allan Hamilton	1	0	1	0	1	1	1
Garda World Security Co.	1	1	1	1	1	0	1
Prosegur	0	1	0	0	0	0	1
Kellog, Brown, Roor KBR	1	1	1	0	1	0	1
Number of companies engaged in the service segment	9	9	7	6	4	3	10
% of companies participate in the service segments	90%	90%	70%	60%	40%	30%	10%

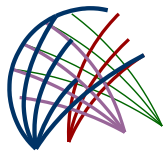


# Self-Regulatory Initiatives by PMSCs (1)



- **First move toward self-regulation was launched in the USA in 2012**
  - ***ANSI/ASIS International Standards***
    - *Founded in 1955, ASIS is a society of individual security professionals dedicated to increasing the effectiveness and productivity of security professionals by developing educational programs and materials.*
- Stakeholders of American PMSC industry, with support from PSC business partners in the UK, requested the **ISO secretariat in Geneva** to circulate an ANSI/ US request for the creation of a new working group in charge of developing an ISO PSC standard.





## Self-Regulatory Initiatives by PMSCs (2)



- New Work Item was labeled **ISO/PSC 284** and a proposal was handed to the ISO membership describing how the drafting of this new standard should be organized. **Basis should be the ASIS/ANSI standard.**
- **“Management System for Private Security Operations: Requirements with Guidance”**; it aims to provide principles and requirements for a Security Operations Management System.
- DIS was approved by the membership and declared valid (10 March 2015). Expected to be available for certification of PSCs in the third quarter of 2015.

## Self-Regulatory Initiatives by PMSCs (3)

- **Speed** at which the new standard has been developed is remarkable: it will only have taken **two years to complete** and likely become available for global certification by the autumn of 2015.
- **No mention is made of “accountability towards international humanitarian law”** and “respect for human rights”. Instead text is formulated as a general suggestion not as a requirement (normally indicated as “shall” in ISO requirement standards).

# Countermeasures by States and International Humanitarian Organizations (1)



- **The Montreux Document**

- Under the leadership of the Swiss government, and in collaboration with the International Committee of the Red Cross (ICRC), the Montreux Document was drafted in 2008 and ratified by 17 countries as the first internationally significant document pertaining directly to PSCs. As of June 2015, ratification has grown to 52 as well as three international organizations, namely the supranational EU, the OSCE, and NATO.

# Countermeasures by States and International Humanitarian Organizations (2)



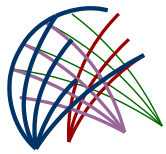
- **ICoC**

- As a second step, an International Code of Conduct for Private Security Providers (ICoC) was elaborated to include PMSCs in order to create an industry mechanism to help PMSCs conduct their business within the boundaries of IHL and human rights. The ICoC is a multi-stakeholder initiative convened by the Swiss government. It aims to define principles and standards of the private security industry based on human rights and international humanitarian law, as well as to improve accountability of the industry by establishing an external independent oversight mechanism.

# Countermeasures by States and International Humanitarian Organizations (3)

- **ICoCA**

- A further step towards institutionalizing the ICoC was taken in February 2013 with the creation of the Association of the ICoC (abbreviated ICoCA). Membership of the ICoC Association consists of States or intergovernmental organizations, private security companies, and civil society organizations – also referred to as the three stakeholder groups. All the member states of the ICoCA also support the Montreux Document, and include states with many PMSC headquarters. The main bodies of the Association are the General Assembly, the Board of Directors, and a Secretariat that is currently supported by DCAF.



# Colliding Regulatory Initiatives (1)



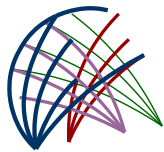
Diplomacy  
Dialogue

Media note titled “**State Department to Incorporate International Code of Conduct into Worldwide Protective Services Contracts**”, 16 August 2013:

- *The Department of State recognizes and appreciates the progress made on the development of the ICoC and the pending establishment of an ICoC Association. As long as the ICoC process moves forward as expected and the association attracts significant industry participation, the Bureau of Diplomatic Security (DS) anticipates incorporating membership in the ICoC Association as a requirement in the bidding process for the successor contract to the Worldwide Protective Services (WPS) program. DS also anticipates that the successor contract to WPS will require demonstrated conformance with the ANSI/ASIS PSC.1-2012 standard (Underlining added by the author).*

# Colliding Regulatory Initiatives (2)

- The preface of the MD reflects the perspective of the ICRC. It is based on the following understanding:
- *1. That certain well-established rules of international law apply to States in their relations with private military and security companies (PMSCs) and their operation during armed conflict, in particular under international humanitarian law and human rights law;*
- *2. That this document recalls existing legal obligations of States and PMSCs and their personnel (Part One), and provides States with good practices to promote compliance with international humanitarian law and human rights law during armed conflict (Part Two).*



# Colliding Regulatory Initiatives (3)



Diplomacy  
Dialogue

The legal situation is neatly reported in a summary of discussions that took place at Chatham House, London, UK:

- *One speaker asked what the position was in a situation of armed conflict. In reply it was noted that PMCs and their personnel were bound by international humanitarian law in the same way as regular military forces, civilians and NGOs etc. If personnel had been formally incorporated into the military/security forces of the hiring State, their position would be the same as the regular forces. If, on the other hand, **they were not so incorporated and nevertheless played a direct part in combat, they would lose any civilian immunity from attack and could be prosecuted for their activities. If they were captured, they would not be entitled to POW status.** It was generally agreed that there was no vacuum in international law. **The problems were ones of enforcement of the law, control and accountability, and of establishing an effective chain of command.***





Source: Wikipedia, [https://en.wikipedia.org/wiki/Henry\\_Dunant](https://en.wikipedia.org/wiki/Henry_Dunant) and [https://en.wikipedia.org/wiki/General\\_Atomics\\_MQ-1\\_Predator](https://en.wikipedia.org/wiki/General_Atomics_MQ-1_Predator)

# Recommendations

- **Include companies that produce lethal high-technology arms in the ICoC**
- **Regularly review states' record of compliance with Geneva Conventions and additional protocols**
- **Give oversight over PMSC-initiated ISO standard to the Montreux Document Forum**

# Conclusion (1)



Private military and security industry is a **booming sector** of the global economy.

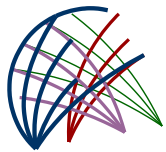
- Regulatory governance has become more **complex**, and the **boundaries** between international humanitarian law and human rights law have become **blurred** due to the **lack of strong oversight** at the horizontal (global) and vertical (national and subnational) levels.
- Some PMSCs have expressed **commitments to the implementation of IHL and international human rights** by signing up to the ICoC and ICoCA.

# Conclusion (2)



- The question remains **how to regulate PMSCs** and ensure the continuous **implementation of the regulatory framework** while also securing that governments are monitored and held accountable to their duties as signatories of the Geneva Conventions, IHL, and human rights.
- There is **no single ideal regulatory avenue for policy-makers**. While contemporary debates surrounding solutions to this problem are based on whether national or international law is the best method, **PMCs and their contracting parties are able to cherry-pick which guidelines and legislation to follow**.

# Int Humanitarian Law IHL



Diplomacy  
Dialogue



- IHL also includes a series of other treaties relating to specific weapons, tactics or protected persons and objects such as:
  - The Convention on the Protection of Cultural Property during armed conflict (1954)
  - The Convention on Biological Weapons Convention (1972)
  - The Convention on Conventional Weapons (1980)
  - The Convention on Chemical Weapons (1993)
  - The Ottawa Convention on anti-personnel mines (1997).
- **WHY NOT ADD A CONVENTION ON THE USE OF PMSCs?**

# Questions for discussion



- A. To whom are PMSCs are accountable to? Only to their clients (governments and their agencies), to IHL and humanitarian rules, or industry based self-regulatory compliance (new PMSC ISO standard)?**
- **B. To what extent can the PMSC ISO standard give PMSCs opportunities to operate within quasi-legal and quasi-regulated conditions without being accountable to IHL and human rights agreements ?**
  - **C. How can quasi-legal and quasi-regulated conditions be better designed to ensure that PMSCs operate under a more transparent legal and regulatory framework?**
  - **D. Should there be a link between the PMSCs and the Arms Trade Treaty?**
  - **E. How could the international governance system be better equipped to deal with PMSCs?**

# Source

- **Saner, R. (2015), *Private Military and Security Companies: Industry-Led Self-Regulatory Initiatives versus State-Led Containment Strategies*, The Centre on Conflict, Development and Peacebuilding, CCDP Working Paper 11, Institute of International and Development Studies, Geneva**

# Thank you



# GC Additional Protocols (2)



- **Additional Protocol (1977) about protection of victims of international armed conflicts.**
- **Additional Protocol II (1977) about protection of victims of non-international armed conflicts.**
- **Additional Protocol III (2005) about new emblem, the red crystal replacing red cross & red crescent.**

# Vietnam War



# Humanitarian Actors



150 years  
of humanitarian action

