

Private Military & Security Companies and the Pursuit of Legitimacy

Written by Junio Valerio Palomba

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JUNIO VALERIO PALOMBA, OCT 2 2009

Introduction

“Even though private military and security companies are relatively new to international security, they are increasingly being recognized by governments, civil societies and international organizations as *legitimate actors* that can have a positive impact on international security”¹.

This quotation from one of the most eminent scholars in the field of private security constitutes an optimal incipit to illustrate the content and structure of this dissertation.

Private military and security companies represent the subject of this research project and – as Kinsey points out – they are relatively new actors in the field of international relations in general and – more specifically – within the context of international security. Nevertheless, in a relatively small amount of time, they have managed to acquire an incredible gravitas, both financially and in terms of security actors. The current estimated value of the global private security sector is in fact close to \$100 billion and it represents one of the fastest growing sectors of the economy world-wide.² Several PMSC are publicly listed companies, with a working force in terms of hundreds of thousands of people, engaged in a large spectrum of activities all around the World: from the training of police forces, to high-tech surveillance and intelligence analysis.

Increasing recognition by governments, civil societies and international organizations is a direct consequence of this gravitas: interacting with these corporations has become a necessity rather than a choice, as they have gradually taken over the provision of a whole spectrum of security services, from logistics to the training of armed forces, from surveillance to intelligence gathering.

The magnitude of process has automatically triggered a number of questions about the causes and potential consequences of what appears to be an unstoppable process. Issues regarding the legitimacy of the private security business have been among the first to be raised and despite their importance, it is plausible to claim that they have not been addressed accurately.

The provision of private security triggers a number of fundamental questions all related to the notion of legitimacy. The first – outlined by Mandel – is the question of control over the means of coercion, specifically who has, and who should have, *the legitimate authority* to use physical coercion in pursuit of security.³ With a gradual but constant rate, these private corporations are in fact taking over one of the most defining characteristic of the Westphalian state, the provision of security. This has enormous consequences – in theory and in practice – on the very nature and perception of security (as a private commodity as opposed to a private good) as well as on the nature and function of the State itself, since the dispersions of means of coercion challenge the Weberian conception of the state’s monopoly over these means.⁴

The other fundamental issue project is the one proposed by Kinsey, the recognition of PMSCs as legitimate actors – which is also the central argument of this research.

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Numerous scholars have in fact raised concerned or express opinions – as in the case of Kinsey – about the nature of these corporations: some have claimed the illegitimate nature of these corporations⁵; others have advocated the opposite⁶. The majority of scholars agree that PMSC are attempting to become legitimate entities.⁷ The recurrence and redundancy of this claim in the literature – however – comes together with its lack of explanation and empirical demonstration, and as transformed legitimacy in a cliché.

Recognizing this gap within the literature, the intent of the dissertation is to address this fundamental though neglected link between legitimacy and PMSCs. Specifically, it will be argued how through an appropriate theoretical understanding of the notion of legitimacy it is possible to substantiate the claim that PMSCs are trying to become legitimate actors, disentangling this argument from the realm of the assumption and instead demonstrating with substantial empirical evidence how this transition is taking place.

The dissertation will argue how changes within the structure and organization of the market for force can be interpreted as the pragmatic evidence of a continuous path undertaken by most PMSCs toward legitimacy. This concept constitutes in fact a powerful cognitive instrument to interpret some drastic modifications that occurred within the industry in the past 20/30 years, such as the disappearance of combat services. Attempts to distinguish between private military companies and private security companies on the base of the services they provide have been largely proposed and discussed⁸: the choice of employing the nomenclature of private *and* military companies testifies a precise intent to describe this transition from a militarized security to a more defensive approach.

The project will at first situate itself within the existing literature on PMSCs: by doing so, it will discuss the limitations and potential sources of inspiration of those research projects already carried out in this field. In the second chapter, the notion of legitimacy itself will be introduced, explained and connected to the phenomenon of privatized security. In the third chapter, the origins of the private military industry will be analyzed, in the attempt to understand and explain to what extent PMSCs and their activities can be perceived as illegitimate. The fourth chapter will instead focus precisely on the strategies of legitimating implemented by modern PMSCs; the potential outcomes of these legitimizing policies will be discussed in the last chapter.⁹

Chapter One

Literature Review

This first chapter will attempt to present a general overview of the existing literature on PMSCs.

As it will be argued, research on this issue has undergone an increasing trend of complexity, evolving from an initial stage of a priori and superficial evaluations to a more sophisticated analysis. What is missing – however – is a strong theory-based approach to the subject that can explain the evolution and changes in the market for force that have occurred in the last two decades. In this sense, it will be argued how the notion of legitimacy constitutes a optimal conceptual ground to build this research- project and to emphasize the contribution of each section of the literature.

Existing literature on PMSCs and the privatization of security can roughly be divided in three main phases. The first and initial section of the literature on PMSCs develops after the intervention of Executive Outcomes (EO)¹⁰ and Sandline International (SI)¹¹ in a number of African conflicts. This phase is characterized by a huge dichotomy between strong supporters of PMSCs and harsh critics of their activities.

The academic position of the formers is characterized by a strong underlying optimism concerning the ability of PMSCs to arrest conflicts in the Third World. A good example of this position is Doug Brook's paper, "*Write a Cheque, End a War*"¹². In the incipit of this article, the author asks almost rhetorically: "Have mercenaries become Africa's best hope?"¹³. In his opinion, PMSCs represent the best option – both in terms of efficacy and efficiency – to stop the rising number of armed conflicts in the African continent: "All it takes – he affirms – is a willing chequebook and a small one at that"¹⁴.

Analysis of moral and political dilemmas triggered by the employment of PMSCs in conflict or post-conflict scenarios

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is merely introduced and only marginally discussed and – evidently – his evaluation is extremely over-simplified.

Another early advocate of the private security business – though more moderate in his conclusions – is David Shearer, who also suggested the idea that PMSCs could represent an efficient alternative to peacekeeping missions, especially considering the apathy shown by the international community.¹⁵

Abdel-Fatau Musah and J. Kayode Fayemi – on the contrary – are among the earliest and fiercest critics of PMSCs. Their edited book *“Mercenaries – An African Security Dilemma”*¹⁶ introduces numerous claims about the inappropriateness of the deployment of these companies, raising important issues from moral, political and economic points-of-view about the intervention of these modern mercenaries in Africa.

One of the most controversial issues emerges from the alleged relationship between these PMSCs and a number of natural resources extraction companies: O’Brien dedicates a whole chapter to describe thoroughly these links¹⁷ and both Musah and Fayemi’s¹⁸ critics often revolve around this issue. The underlying argument is that the military and commercial intervention of these Western companies in the African continent represents a new strategy for the pursuit of national interests and that PMSCs will become involved only if profitable natural resources are present. ¹⁹

It is important to point out that all these initial claims and allegations made on the first PMSCs have no theoretical background and very little evidence to support them. They are mainly influenced and sustained by *a priori* positions about the advantages / risks of employing private security forces. For instance, in the case of the advocates of the privatization of security, the benefits of a liberal / free-market approach to security represent the main thesis to argue in favour of PMSCs. According to Brook, PMSCs work because they have proven so and because they are cheaper than national armies.²⁰

On the contrary, opponents of PMSCs base their argument mainly on the (neo) colonialist arguments combined with an atavistic fear and repulsion for mercenaries: the numerous devastating campaigns carried out by the so-called “dogs of war” in many African countries during the 1960s and 1970s have somehow distorted the perception of these companies and their business.²¹ Nevertheless, as it will be discussed in the next chapter, the critique of orthodox opponents of the private security sector constitutes the mandatory beginning for the analysis of these corporations from a moral point-of-view.

The second phase is characterized by a more rigorous analytical approach.

P.W. Singer’s *“Corporate Warriors”* represents the first systematic attempt to study and explain the complex and controversial world of privatized security. Singer – in fact – is among the first scholars to provide a detailed explanation of the causes and consequence of the emergence of a new market for force²². Singer’s analysis is particularly useful as it provides the first – and since then most used – taxonomy of the industry, the so-called “Tip of the Spear” typology²³. However, in the attempt to provide a comprehensive perspective, the problem of a lack of a singular and solid theoretical framework emerges. In fact, as the author brings together (too) numerous elements of analysis – i.e. costs/benefit; accountability of decisions; democratic decision-making – he enlarges the spectra of possible points-of-view, therefore impoverishing the depth of the overall analysis.

Instead of developing a sound theoretical structure that might underpin his whole research, Singer borrows a number of different paradigms of analysis from a variety of disciplines – mainly history and economics – which explain only superficially the phenomenon of the rise of PMSC. As a result, the description of the market is very accurate and detailed, but the approach is too heterogeneous to draw any plausible conclusions about the macro-theoretical implications that derive from the growing private security sector.

“The Market for Force” – by Deborah D. Avant – has the merit of recognising this limitation in Singer’s work, providing the first solid theoretical study of the process of privatization of security. Specifically, Avant relies on an institutional perspective, “drawing from distinct ‘logics’ in economics and sociology, underpinned by an interest in institutional mechanisms and how they affect collective outcomes.²⁴” This framework of analysis is characterised by an attempt to combine the control mechanisms of the rational-economists – which focuses on the effect of

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privatisation on screening and selection, monitoring, and sanctioning – and those of the constructivist- sociologists – which instead focus on the promotion of standards, education and socialising²⁵.

The main result of this approach is a more articulated and deep level of analysis. As Avant claims, “the debate between optimists and pessimists about the consequences of privatising security...emphasises only one part of the control problem²⁶”. Instead, by admitting that both positions “ could be right as they focus on different conceptions of control²⁷”, the author abandons a priori theses and focuses her attention on the understanding of how different intervening variables – i.e. the varying capacity of states, the prevailing international value – can affect the outcomes of this re- distributive process of the means of coercion. Despite the criticism it has received²⁸ – Avant’s contribution represents a fundamental step toward a more theoretical and structured investigation of privatized security.

An important *trait d’union* between these two pieces of research lies in the particular attention the two authors devote to the problem and mechanisms of control. If in the first phase of the literature there is only a marginal acknowledgement of the risks and precautions that can be taken to put PMSCs under legislative restraints, both Singer and Avant devote instead a substantial part of their analysis to investigate how rules and regulations can control the process of privatization of security. Even if the solutions they propose are substantially different, it is significant to underline the evolution from a simplistic acknowledgment of the risks in the first phase, to a proactive academic approach for the regulation the market in the second, as this substantiate the initial claim about the increasing complexity of analysis.

In the third phase of the literature is possible to assist to a diversification of disciplinary approaches to the subject, which nevertheless share a profounder commitment to a more conceptual investigation. Research is more inclined to explain and interpret theoretically the phenomenon of privatized security, rather than simply describing it. Two scholars in particular have contributed to the contemporary expansion and deepening of research in this field.

Christopher Kinsey’s “*Corporate Soldier*” is a significant attempt to investigate the British market for force: up to his publication – in fact – most researches had either been concerned exclusively with the American market (Singer) or had simply generalized about global trends (Brooks & Shearer). On the contrary, Kinsey recognizes the importance of the “British experience” in private security and his research covers one significant gap in the literature. Nevertheless, the added value in Kinsey’s research for this dissertation lies in his recognition of the changing nature of PMSCs: as it will be discussed in the course of this research, Kinsey is among the very first scholars to identify a “legitimizing pattern” in the nature of the activities performed by these corporations. As the author argues:

“Even though PMSCs are relatively new to international security, they are increasingly being recognized by governments, civil societies and international organizations as *legitimate actors* that can have a positive impact on international security”²⁹.

One of the most recent and relevant publications in this academic context is the book “*Mercenaries*”, written by Sarah Percy. Though PMSCs are only marginally discussed³⁰, her work is particularly relevant as it represents a very interesting attempt to discuss the role of norms and how they influence the process of privatization of security. Her work will prove to be almost necessary to explain how the mercenary cliché affects the reputation and business strategies of most PMSCs. Furthermore, Percy has also mentioned the topic of disengagement from combat operations by PMSCs³¹, which in represents one of the main legitimizing strategies that will be explored in the third chapter.

What is perhaps more interesting to point out is the fact that in Percy’s book, the theoretical framework represents the core of the analysis: the constructivist approach she adopts is thoroughly described in the first chapter, as it constitutes the theoretical backbone that sustains the empirical section of the book.³² As the author recognizes, the fact that “most writers do not situate their accounts in a theoretical framework”, represents one of the most significant gaps in existing literature³³.

This dissertation aims at grafting onto this research approach, embracing the conviction that only a solid and well-designed theoretical framework can provide an appropriate background for a thorough empirical research³⁴.

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Obviously, the scope and range of this dissertation is more modest than Percy's project. However, this does not compromise the validity of the overall argument, that privatized security and PMSCs are better understood and explained under a theoretical lens. In the specific context of this research project, it will be argued that the notion of legitimacy represents a key-concept to analyze the evolution of the market of force in the last two decades, describing which policies and strategies PMSCs are concretely putting into practice in order to make their business both profitable and respectable at the same time.

From this conceptual standpoint, it is possible to consider the concept of legitimacy as the theoretical *trait d'union* of the literature. Fragments of legitimacy discourses are in fact present in all three phases of the literature.

Shearer speaks in fact of "the prospect that private military companies might gain some degree of legitimacy within the international community"³⁵. Along this line of thought, Singer considers how private military firms— inserted in wider industrial complexes — might gain a "new level of legitimacy"³⁶. Kinsey's explicit interest in the legitimacy profile of British PMSCs has already been mentioned. However, also in Percy's research there is a strong commitment to understand the legacy between mercenaries and contractors from a legitimacy point-of-view, as she recognizes that "despite best efforts of first PMC and later PSCs to present themselves as legitimate business concerns free from the mercenary label, they have been tainted by it."³⁷

Nevertheless, in all these cases, there is no attempt to define legitimacy as a concept or to understand how it is connected to the private security business: in most cases, the word "legitimacy" is just uttered, but the notion behind it and its implications are never explained. This dissertation recognizes these gaps within the literature and the benefits of providing at least a partial analysis of the role of legitimacy as a concept and not as a mere cliché within the private security discourses. Constructing the architecture of this dissertation around this notion will allow a more theoretical understanding of PMSCs, as well as a solid background where to integrate and discuss the empirical findings of the investigation. Furthermore, it will be possible to combine together all these "fragments", benefitting from their partial contribution. Finally, it will be possible to address appropriately underlying questions such as: what does it mean to be a "legitimate" business? Or more specifically, what does it take for private security to be a "legitimate" business?

The most appropriate *incipit* for this project is the description of the theory, therefore understanding what is meant by legitimacy and how can this concept be applied to the analysis of PMSCs.

Chapter Two

This second chapter is divided into two sections.

The first part represents the theoretical core of the dissertation. The concept of legitimacy will be introduced and de-constructed, acknowledging the fundamental contribution of Ian Clark for the development of the analytical framework of this research project.

This will be employed in the second part of the chapter, to collect evidence and demonstrate why and to what extent PMSCs and some of their activities can be defined as illegitimate.

Legitimacy in Theory

In the broader realm of international relations, discourses on legitimacy are generally characterized by a widespread use of the word, without however a corresponding depth in the level of analysis of the concept.

Throughout the last two decades of international relations, discourses on legitimacy have constantly emerged when a crisis was on the horizon: the war in the Balkans; the Operation "Enduring Freedom"; the invasion of Iraq and the very recent conflict in Georgia³⁸ have revolved around questions of legitimacy and the use of force.³⁹

Policy makers and observers have constantly questioned who has and who should have the legitimate authority to

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use physical coercion in the pursuit of security.⁴⁰ Consequently, it is possible to argue that the notion of legitimacy lies at the very centre of international policy making – in general – and it becomes the *incipit* of all those discourses related to the use of force. One would expect such a fundamental notion to be of particular relevance and interests to IR scholars. On the contrary, such an inflationary use of the word ‘legitimacy’ by politicians and diplomats has triggered very little interest in the academic research. ⁴¹

Privatized security and legitimacy have a similar connection. Provision of security and the use of physical coercion are inherently embedded into questions of legitimate authority. As Mandel sustains, “The fundamental underlying theoretical question surrounding the privatization of security is who has, and who should have, *the legitimate authority* to use physical coercion in pursuit of security.⁴²” However, as in the broader case of legitimacy and IR, little attention has been devoted to the understanding and implications of this question, as the chapter on the literature review has argued. What appears to be missing – both in IR and security studies discourses – is an academic commitment to provide a deeper understanding of this notion.

One significant exception is represented by Ian Clark’s work: in fact, his two most recent publications attempt to investigate in depth the nature of legitimacy, as a fundamental concept in the study of IR and as a distinctive feature of its practice.

His first research is a historical excursus, “to trace the development of practices of legitimacy within the bounds of international society⁴³”: legitimacy is hereby presented as key-element in the understanding of the role of history, norms and stability within the international system.⁴⁴ The second research project delves more closely into the originating process of legitimacy, as the author attempts to expand his research for the normative sources of legitimacy within IR practices.⁴⁵ Specifically, Clark is interested in a deeper understanding of the role of world society in creating and shaping international norms⁴⁶. As the author points out, both his researches seek to make a significant contribution to a number of topics within the literature of IR, such as international history⁴⁷.

Within the more limited context of this dissertation, one of the most significant contributions of Clark’s research is his attempt to de-construct and re-define the main normative components of the notion of legitimacy.

According to Clark, “Legitimacy can most helpfully be thought of as that political space marked out by *the boundaries of legality, morality and constitutionality*”⁴⁸.

Spencer argued that element of *legality* represents the ‘procedural’ element of legitimacy, “a legitimacy of formal rationality, in which laws and authority are accepted because of the formal legality attached to them”⁴⁹. On the contrary, *morality* represents the value-rationality, the ‘substantial’ element of legitimacy⁵⁰. These interpretations represent the two most recurrent analytical classification of legitimacy. However, according to Clark, there are also notions of *constitutionality* that have to be taken into account:

“These arise where there are expectations created about political forms of political conduct often within political institutions that are more or less ‘sticky’. Critically, in this case, the norm is based – not upon legal nor moral notions, but upon a sense of *what is politically appropriate*, rooted in expectations rather than in rules.⁵¹”

The constitutional norm introduces an element of non-rationality between the legal and the moral classification of legitimacy: constitutionality is in fact: “the realm neither of legal norms, nor of moral prescriptions. Instead it is the political realm of conventions, informal understandings, and mutual expectations.”⁵²

The analysis developed by Clark in both books is – obviously – much profounder, technical and detailed and it be would too arduous to provide a comprehensive survey of all the numerous aspects and complicated topics that the author develops throughout the two research projects.

Nevertheless, it is plausible to claim that this de-construction of legitimacy represents the backbone of his analysis and – in the context of this dissertation – it provides a basic and solid conceptual map to discuss and address the central research question. Specifically, the normative notions of *legality, morality and constitutionality* will represent

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the three theoretical pillars to ground the analysis of the evolution of PMSCs and their activities. In the following section, the complicated and circuitous path of some of these companies through this 'political space' called legitimacy will be described and discussed.

Tracing an imaginary-conceptual line from the origins of the industry to the actual structure of the market, the dissertation will first try to illustrate which characteristics of the private security industry can be considered to be immoral, illegal and unconstitutional, turning "inside-out" the normative components elaborated by Clark. Following this conceptual line, the second part of the dissertation will instead focus on the transformation process that the market has undergone in the past two/three decades. In this case, it will be possible to interpret these structural changes through the lens of legitimacy, explaining how PMSCs vindicate and shape their business activities according to moral, legal and constitutional restraints.

Nevertheless, before going into the details of the argument, it is also important to point out some of the limitations that emerge from Clark's research, specifically to consider to what extent it is epistemologically feasible and appropriate to adopt entirely his vision of legitimacy in the context of this research project.

Clark's analysis is in fact focused on legitimacy as it emerges from international society and applies to inter-states' practices, whereas this project is centred on legitimacy as it refers to non-state actors, namely PMSCs. Consequently, some of elements of its theoretical framework may not be relevant to this research project.

Specifically, the normative element of constitutionality as such is inapplicable to PMSCs', as it refers to what is considered to be politically appropriate in the conducts of States. Instead of using the term 'constitutionality', which is inextricably linked to the State's apparatus, the concept of 'political acceptability' will be adopted: this in fact still retains its original characteristics – the intrinsic political nature – without however being too entangled into the idea of State.

PMSCs and Immorality

It is analytically appropriate to begin this investigation on the illegitimacy of PMSCs analysing firstly the moral dimension, as this represents the nucleus of the *vexata quaestio* of PMSCs and their business. In its Manichean duality, the moral question reveals in fact those structural elements that are both definitional of the private security industry and of its perceived wrongfulness.

In order to argue why and to what extent PMSCs and their activities are perceived as immoral, it is necessary to trace an accurate genealogy of the norm. To do so, it is unavoidable to delve into those scenarios where PMSCs firstly became involved, as they represent the most appropriate context to interpret the genesis of the private security industry and the reactions it provoked.

The first phase of research in the field of PMSCs provides interesting, though superficial evidence to explain part of the rationale behind the moral norm.

As it has been argued in the previous chapter, this phase is characterized by a very dualistic and oversimplified analysis of these companies. A symbolic motto to describe these divergent academic positions might be one of Doug Brook's articles on PMSCs: "Messiah or Mercenaries?53"

'F. Olonisakijn's research provides a very critical account on PMSCs' intervention in African conflicts, especially within the very delicate context of the Sierra Leonean civil war in 1991. Though mainly descriptive, this analysis contains sufficient elements to outline an initial 'moral profile' of the first PMSCs to enter the business, especially Executive Outcomes (EO) and Sandline International (SI). Opposed to Brook's 'messianic' vision of these two companies, Olonisakijn focuses closely on the 'immorality' of the private security business, pointing out the essence of its unethical nature:

"...Beyond the immediate financial and economic impact on impoverished countries, however, accusations of

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immorality also stems from fears about the long-term impact of mercenarism on security and stability on the African continent. ... Mercenarism must fundamentally be seen as a trade. The activity exists purely for profit and not for any altruistic reasons... ... *Mercenaries, given that they are motivated by profit, can ultimately employ their services on the side of an immoral cause.*⁵⁴

As it is possible to deduce from this quotation, according to Olonisakijn, mercenaries' immorality is rooted in the venial motivation that triggers their intervention and that represents also the nucleus of the private military business: *profit*.

This element is congenital and ineradicable both in the mercenary 'profession' and in the private security business and it represents the most problematic element in the moral perception of these actors, as well as an unbreakable link with mercenaries.

Early abolitionists like Olonisakin tend to fall into a faulty and simplistic syllogism: given that all mercenaries fight for money and since all contractors also fight for money, then all contractors are mercenaries. Clearly, the profit-oriented nature of any business is undeniable and the security business is certainly no exception.

However, the analytical risk of this syllogism is to over-simplify the understanding of PMSCs, ignoring those substantial differences that exist between mercenaries and contractors. Nevertheless, this criticism has to be contextualized and viewed from "an African perspective", in order to be understood and appreciated for its positive contribution for the understanding of PMSCs' immorality. In fact, the moral condemnation of the nascent private security industry cannot be appropriately understood without considering the destructive impact of the numerous mercenary expeditions had in African throughout most of the Twentieth Century. As J.C. Zarate correctly points out: "It is in this historical and current context that the emergence of the international private security company, in its varied forms, must be understood and analyzed⁵⁵".

Throughout approximately 4 decades, mercenary outfits have been involved in more than 50 local conflicts in more than 20 African nations⁵⁶, usually with the intent to promote military coup d'état or to protect Western economic interests. The shocking and criminal conduct of these mercenaries during their campaigns earned their leaders the notorious epithet of *les affreux*, 'the terrible ones': "In short, mercenaries represented everything African states were fighting against: capitalism, in the sense that mercenaries were fighting for money and colonial domination"⁵⁷.

Academic positions of abolitionists like Olonisakijn match this geo-historical scenario: because of the chronological and geographical proximity with the devastating mercenary experience, PMSCs were immediately recognized and branded as a new avatar of *les affreux*. From the abolitionist perspective, PMSCs were not the lesser of two evils, an effective compromise to reduce the hyper-conflictuality that was spreading in many African countries, but as the inheritors the mercenary tradition. Consequently, their activities were not morally defensible.

Nevertheless, the immoral profile outlined by Olonisakijn can be defined as circumstantial, as situational, since it provides a necessary but insufficient explanation for the immorality of the private security business. From the abolitionist perspective, it is possible to deduce only why PMSCs have been perceived as immoral in a given time (1990s) and place (Africa). This explanation is important, as it represents the initial stage of the industry and also because it explains the rationale behind the 'mercenary syllogism', but it is still partial and superficial.

There are in fact deeper philosophical elements that transcend the context of the abolitionists' analysis and that allow a more theoretical understanding of the rationale behind the immorality of the private security business.

Lynch and Walsh in an article cuttingly entitled "*The Good Mercenary?*" investigate the philosophical and deontological roots behind the moral dislike of the mercenary profession.⁵⁸ According to their thesis, the fundamental dishonesty of the mercenary profession lies in its perceived amorality or immorality: mercenaries engage in war and conflicts either with no attachment at all to the cause (amorality), or their motivation is purely opportunistic/financial (immorality). This immoral conduct – they argue – is unacceptable or at least hardly justifiable:

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“ One objection to the morality of the mercenary, and one that often underpins claims of abhorrence, lies in the view that willing participation in organized violence is wrong *period*...It is a commonplace that mercenaries are evil because they receive ‘blood money’. Sometimes there is a talk of ‘the whores of war’. Such epithets point to a common moral criticism of mercenarism; namely, that mercenaries kill for money. *The mercenary’s killing motives are morally inappropriate because they are in a determining sense financial.*⁵⁹”

This argument echoes in part the abolitionist position, which however assumes this moral stand relying exclusively on fragile historic precedents. On the contrary, Lynch and Walsh delve into a deeper understanding of the reasons behind this moral condemnation. According to these authors, moral arguments against mercenaries are to be found within the just war doctrine, specifically within the Thomist tradition, whose constitutive elements are the notions of *just cause* – introduced by Augustine⁶⁰ – and *right intention* – introduced by Aquinas⁶¹. According to this school-of-thought, a belligerent activity can be justified morally only if it is motivated by both these principles.⁶²

If one applies these two normative elements of analysis to the intervention of EO in Sierra Leone, it is possible to recognize that private military contractors were perceived as lacking both a *just cause* to intervene in the conflict – as they were foreigners motivated only by the prospect of eventual mining concessions – and the *right intention* – since their clandestine target was to secure Western economic interests and secure only a fragile peace. Apparently, first PMSCs like EO and SI clashed not only against the scepticism of a few abolitionists or the despicable reputation of *les affreux*, but also against profound and resilient philosophical arguments about the immorality of the mercenary profession, that still today characterizes the conduct of warfare⁶³.

However, the prescriptive content of this moral norm against mercenaries is not only highly sophisticated and resilient, but also circumscribed. In fact, Lynch and Walsh mention specifically the “killing motives” of mercenaries as the essential source of immorality. This aspect of the immoral norm is fundamental to point out that if the private industry as a whole might be perceived as immoral for its profit-orientation, the nucleus – or “added value” – of this immorality can be found in those circumstances when a contractor employs a level of lethal force without an appropriate justification. When a contractor pulls the trigger, the identification with the mercenary is complete: not only in fact, the contractor shares the same immoral motivations, but he engages in the exact same activities. An ethical distinction between the two becomes impossible.

Pulling the trigger for money is the most immoral activity that contractors can engage with: consequently, this is also the *incipit* of every legitimizing strategy. PMSCs – as it will be discussed in the next chapter – need to keep away from those circumstances where the use of force might be required. Furthermore, they cannot justify their activities with a simplistic “business-as-usual” approach, but they need solid moral justifications to vindicate their services.

Concluding this first paragraph, it is possible to claim that the immoral norm represents the “*grundnorm*” of this analysis: as it will be argued in the next chapter, the illegal norm against contractors lays its foundations in these moral arguments against privatized security. In other words, the private security sector is – first of all – perceived as something inherently immoral and – consequently – also as something illegal.

PMSCs and Illegality

This second paragraph will attempt to demonstrate to what extent contractors and PMSCs are perceived as illegal actors. As it will be argued, also in this case it is the cumbersome heritage of the mercenary tradition that affects the perception of the industry. The illegal norm against the private security sector remarks and reinforces the content of the moral norm, delimiting the range of business activities that PMSCs can carry out without incurring into informal sanctions, such as loss of reputation.

The re-explosion of the mercenary business in the early '60s triggered a violent reaction in those African countries that were firstly affected by a military phenomenon that had disappeared from the international arena for over a century. Just to mention one of the most notorious examples of physical repression against mercenaries, one could refer to those former UK paratroopers recruited by Donald Telford and John Banks, who attempted to overthrow the Angolan President. Defeated by the MPLA (Popular Movement for the Liberation of Angola), they were later tried and

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executed in 1976.⁶⁴

Within one year of the Angolan trial, African countries managed to arrange a powerful lobby group within the UN and they succeeded to introduce particular provisions against mercenaries and mercenarism within the Additional Protocol I of the Geneva Conventions (Article 47)⁶⁵.

On a regional level, the Organization of African Unity promoted a Convention for the Elimination of Mercenarism in Africa⁶⁶. The United Nations International Convention Against the Recruitment, Use, Financing and Training of Mercenaries of 1989 represents the apex of this international commitment against mercenaries⁶⁷.

It is beyond the scope of this section to provide a detailed description of the genesis, content and limitations of each international convention: many authors have developed very thorough analyses about benefits and limitations of every treaty and about the legislative consequences that emerge from the establishment of these international regulations⁶⁸. On the contrary, it is relevant to mention these legislative frameworks because by doing so it is possible to depict the content of the illegal norm against PMSCs.

Technically speaking, *there is no international framework that prohibits, or even regulates PMSCs as such*. If on a national level, Governments attempt to license, regulate or ban the private security business in order to cover this legal vacuum, on an international level this legislative deficiency persists, creating an increasing confusion between contractors and mercenaries. As for the moral norm, it is the resemblance or 'ideological proximity' of the two actors and the activities they perform that constitute the fulcrum of the *vexata quaestio* about the legality of the industry.

It is plausible to claim that if the private security industry is internally regulated – at least in some of those countries where there is a strong private security sector – it is also internationally limited, or at least marginally influenced. National regulations – which address directly PMSCs as a distinctive actor – establish rules and norms about what PMSCs can or cannot do. A good example of this national control mechanism can be considered the American prosecution system for non-military personnel, the Military Extraterritorial Jurisdiction Act⁶⁹.

On the contrary, international conventions – which address PMSCs only indirectly – set up a number of legal boundaries that indicate what PMSCs *ought or ought not do*, in order to be perceived as legal corporations. Reference to PMSCs is only indirect, as the juridical subject of these conventions are in fact mercenaries and the mercenary trade, not employers and employees of the private security industry, which had yet to appear on the international scenarios when these protocols were established. The result of these international conventions is a legislative grey area, where the two subjects apparently overlap and where legal constraints against mercenaries influence also to the private security employees.

International legislation against mercenaries has proven to be extremely ineffective: the most apt example is the 1989 UN Convention – initially proposed by the Ad Hoc Committee in 1979 – which came into force only in 2001⁷⁰.

The Gordian Node *par excellence* of the legislation is the definition of mercenary, created in the notorious Article 47 of the Additional Protocol I to the Geneva Convention and founding pillar of the 1989 Convention.⁷¹ Despite its numerous limitations and contradictions⁷², the definition contained in Article 47 and adopted also by the UN Convention maintains a fundamental core of illegality that reflects the moral norm against mercenarism and that establish a perimeter around PMSCs and the services they provide. The fundamental elements that define the illegality of the mercenary profession are:

- The fact that *mercenaries take direct part in the hostilities* (Paragraph (2)(B);
- They are *motivated essentially by the desire for private gain*. (Paragraph (3)(B));⁷³

According to Percy, this is what emerges from the preparatory negotiations within the Working Group on Article 47⁷⁴: originally, the legal norm against mercenaries had to reflect precisely the content and shape of the moral norm. Other elements (such as the foreign nature of the mercenary troops, or the locus of recruitment) were added only

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eventually and contributed significantly to the inapplicability and enforcement of the Article.⁷⁵

As in the case of the moral norm – it is the connection with the realm of actual violence and use of lethal force that marks the boundary between acceptable and unacceptable, between legal and illegal: in order to maintain a respectable business image it becomes imperative for PMSCs to keep out from actual hostilities.

When contractors engage in combat operation, they stop being generic and lawful contractors, or security experts, or professional analysts: they “become” mercenaries, unlawful combatants. Even if mechanisms of enforcement are extremely weak and – as Hampson said, “Only the most foolish or unlucky” could be persecuted under current international legislation⁷⁶, PMSCs and contractors can be sanctioned in terms of reputation and corporate image. The perception that is generated when private security employees are directly involved into combat operations is that unlawful mercenaries are killing for money, not that legal contractors are fighting to restore peace and security.

Some scholars argue that the distinction between combatant and non-combatant status, between direct or indirect participation to hostilities are mere academic disputes: Kwakwa – for instance – claims that “ in terms of the consequences of their actions – however – there is not much difference between the experts who advises the combatant on how to do the killing, and the combatant who does the actual killing.⁷⁷”

On the contrary – as it will be further discussed in the paragraph on legal strategies of legitimation – legal considerations have been relevant for the structure and organization of the market for force, favouring those companies who abstained from engaging in direct hostilities and penalising those that openly relied on the use of lethal force to expand their business activities. To facilitate the “purge” of illegitimate corporations, PMSCs have often appealed to national governments for supplementary legislation in the private security market, with the precise intent to apply a rigid distinction between respectable and disrespectable companies.⁷⁸

PMSCs and Political Unacceptability

This third paragraph will discuss the concept of political acceptability and how it is related to the phenomenon of privatized security. Specifically, it will attempt to argue in which circumstances it becomes unsuitable and problematic for a government to employ or rely on PMSCs. The “Papua New Guinea (PNG) Affair”⁷⁹ represents a good example to demonstrate the significance and magnitude of the political restraints that PMSCs have to take face in order to legitimize politically their business, avoiding dangerous collision with potential clients.

When SI was called to intervene in PNG at the beginning of 1997, the situation for the government was extremely grave. Similarities with the Angolan and the Sierra Leonean civil wars are evident: also in this case, the legitimate government is held hostage by a secessionist group which managed to take control of a substantial part of the territory, jeopardizing the internal sovereignty of the State.

What is most striking about the PNG Affair is the sentiment of political and public outrage triggered by mere contract’s rumours. Opposition grew from branches of the Government itself but also large popular demonstrations in the capital city stalled the deal at first, and then obliged the Prime Minister to resign, basically voiding the contract. As in Sierra Leone and Angola before, allegations were made about links between SI and natural resources extraction companies, fostering the stereotype of the foreign mercenary coming to Bougainville Island to fight for money⁸⁰.

Effects provoked by these allegations on the military establishment and the public opinion were devastating for the political environment. One fundamental problem was represented by the collision with the local military establishment, which – as Singer explains – felt both threatened and embarrassed by the PM’s decision to engage a private military firm⁸¹. Defence Force Commander (DFC) Jerry Singirok was the first to speak out against the plan, condemning it as “a corrupt and wrongful devolution of proper public authority”⁸². This statement sat off a dangerous escalation of accuses between the PM and the DFC, which brought the Country on the verge of a full-scale civil war.

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The retributive/lucrative element connected with the private security business played a fundamental role to foster the crisis and to create the perception that SI' intervention was unacceptable. According to DFC Singirok, it was unfair to invest public resources to contract a private militia: those resources belonged to the national army and they had to be spent on it, rather than on mercenaries⁸³.

In addition, Government's decision to hire a PMSC to stop an internal revolution jeopardized the internal sovereignty and image of PNG, contributing to the idea that the Country could not rely on its own national army, in other words that the State could not provide for the safety of its own people. The negative impact was therefore imposed not exclusively on the reputation of the local military, but on the whole national political establishment. By relying on a private foreign militia, the Government was presenting an image of a Country in dire need of help, incapacitated to negotiate with secessionist rebels or to restore independently its territorial integrity.

When rumours on the financial clauses of the contract were leaked to the public, the popular resentment mounted exponentially, as it was perceived that the Government was "selling off" its natural resources to foreign companies. As Singer points out, the hire of SI was perceived not only as an insult to the professionalism of the national army, but also as an infringement on national sovereignty⁸⁴. Thomson was very accurate in describing this ideological link between weak states and dependency on private forces, when she wrote that: "Today real states do not buy mercenaries⁸⁵".

As it is evident from this scenario, the seriousness of the situation alone could not justify the intervention of a private actor to restore peace and security. PMSCs – therefore – cannot present themselves as the last resort for desperate governments to re-establish the integrity of the State, but on the contrary, they have to represent the best available option on the market. "Hiring private forces" – Percy writes about the PNG Affair – "was a final indication that the state had failed and could no longer provide security for its own citizens"⁸⁶. In other words, they have to create an environment of consensus around their *modus operandi*, and to do so they have to keep in mind the importance of the local military as well as the influence of the public opinion.

On the one hand, it might be argued that the PNG Affair – as well as EO's interventions in Sierra Leone and Angola – illustrates a worst-case scenario, where reliance on private contractors represent the *extrema ratio*, undertaken by a desperate government to preserve the territorial integrity of the State.

On the other hand, it remains to be explained how PMSCs have managed in less than two decades to acquire significant – sometimes fundamental – roles in the market for force, often establishing a dominant position, as in the case of the security sector reform⁸⁷.

As it will be discussed in the following chapter, successful PMSCs have mutated not only on an operative level – choosing more carefully their clients and activities but also on an organizational level – implementing a number of collusive policies with the intent to guarantee that the company is not ostracized or opposed by the military and – more importantly – supported by the political establishment.

Conclusions

The main intent of this second chapter was to instruct an illegitimacy case against the private military / security sector. Having first outlined and described the legitimacy criteria – according to Clark's understanding of this concept – this section has attempted to demonstrate in which circumstances PMSCs have violated this 'political space', as well as the consequences of these violations.

Specifically, the moral norm has explained what is perceived as inherently unethical about the private security business. Integrating the abolitionists' position with the explanations of the Thomist tradition, it has been argued why the mercenary syllogism is still so influential for the reputation of these companies.

Secondly, the legal norm has showed that even if formally there are very few restrictions that limit the private security business, international conventions against mercenaries have a severe thought indirect impact on the

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activities that PMSCs can undertake without incurring into informal sanctions, such as loss of reputation. Lastly, the third paragraph has delved into the complexities of the constitutional norm, with the intent to demonstrate the political problems posed by the massive employment of private security corporations.

Nevertheless, these arguments represent only one façade of the private military industry. Empirical analysis has been centred almost exclusively on those first archetypical industries that have essentially created a market for private security. Being the earliest companies in a brand new market, firms like EO and SI entered the political space of legitimacy without a compass.

As a result, they both incurred into a series of violations of the legitimacy norms and despite their positive contribution in a number of highly insecure scenarios, they have been incapable (or incapacitated) of guaranteeing their permanence in the security market in the long term.

What is left outside this portrait of the private military industry is the “bright side” of the security business; in other words, all those firms that have managed to secure their profits and reputation. It is therefore necessary to integrate this analysis of the security business, describing which steps have been taken by some PMSCs to legitimize their activities. This is precisely the intent and content of the following chapter.

Chapter Three

This third chapter constitutes the argumentative core of the entire dissertation, as well as the fundamental completion of the previous one. Specifically, this section will describe and investigate some of the strategies of legitimation implemented by PMSCs in order to safeguard and promote their business.

If the former section was centred on the issues that arise from the various legitimacy norms, in this chapter the analysis is focused on the solutions that security firms attempt to put in place.

From a theoretical perspective, the analysis will follow the tripartite structure outlined in the precedent chapter. It will be investigated how PMSCs are attempting to transform their image and influence the perception of their activities, avoiding those stigmas of immorality, illegality and unconstitutionality that have influenced so remarkably the genesis of the industry.

The methodological component of this investigation represents an innovative and potentially beneficial instrument of research for the analysis of these corporations and – more generally – for the phenomenon of privatized security. In fact, throughout the examination of these strategies of legitimation, a number of primary sources will be employed. Specifically, the research will rely on those documents – press releases; official statements–published by various PMSCs.

The rationale behind this methodological approach is rather logical: given that this research project is interested in understanding how these private corporations present themselves to the public, it seems necessary to analyze those documents released by the corporations themselves.

For this methodological approach, the Internet has revealed itself as a mine of information on companies' policies and public statements, very often unexplored or unmentioned by researchers and experts in this field. Obviously, these sources of information need to be appropriately interpreted and filtered, in order to distinguish relevant academic details from mere advertisement.

This chapter – with the help of relevant text analysis techniques – will attempt to cover this empirical gap: these websites, the documents and often even the images included, open a window on the public image of these corporations: as it will be argued, often their strategies of legitimation start from the Internet, as legitimacy is also a matter of public appearance and investors relations.

PMSCs and the Pursuit of A Just Cause

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The section on immorality has outlined which fundamental ethical dilemmas PMSCs have to face in the private security market. The two essential components of the moral norm against the private security business are:

- *Engagement in direct hostilities;*
- *Lack of a just cause.*

Any attempt to legitimize the private security business has to start from here, from what has been defined as the *grundnorm* of private security's illegitimacy. PMSCs have to find a genuine justification – beyond mere profit – for their activities and – more importantly – these cannot include the provision of any service that requires the use of lethal force.

It is interesting to notice how primordial attempts to justify the private security business have immediately revolved around the problem of legitimacy and the use of coercion. Specifically, both EO and SI committed themselves – from the very beginning of their business enterprises – to a strict and rigorous 'legitimacy policy', according to which they would provide help and assistance only to *legitimate* governments. EO's mission statement – quoted verbatim – was:

"To provide a highly professional and confidential military advisory service *to legitimate governments.*"⁸⁸In more than one occasion, EO's spoke-persons and managers stated: "EO will only work for democratically elected governments or governments recognized by the United Nations"⁸⁹. SI's was committed to a similar goal, *to offer governments and other legitimate organisations specialist military expertise* at a time when western national desire to provide active support to friendly governments, and to support them in conflict resolution, has materially decreased, as has their capability to do so.⁹⁰

Both EO and SI – throughout their decennial business experience – have worked exclusively for legitimate governments and have always rejected contracts from rogue regimes.⁹¹ The implicit intent of this legitimacy policy was to reinforce the distinctions between contractors and mercenaries, between "dogs of wars" and professionals of security. According to EO and SI's plans, the legitimacy of their employers would act as an umbrella, to shield PMSCs against public and international criticism: by dealing exclusively with legitimate governments, PMSCs hoped to legitimize their business.

As it has extensively been discussed in the previous chapter, this plan failed: despite their commitment, both EO and SI were pushed out of the security business: "*PMCs were too controversial to have the sort of legitimate reputation they desired...92*"

What emerges from the fiasco of both EO and SI is that the fundamental moral problem lied in *what* PMSCs were doing and *why* they were doing it: the provision of combat services was simply publicly unacceptable⁹³. The 'employer-factor' – *who* they were fighting for – was irrelevant in the PMSCs' pursuit of a legitimate reputation.

Consequently, those industries that managed to stay in the market had to re-enforce their strategies of legitimation: more radical policies – such as the *disappearance of combat*" operations⁹⁴ and the *camouflage of profit* – were necessary to guarantee a stable and profitable market in the long run. These policies tackle in fact the core moral accusations of the private security business.

In this respect, it is particularly utile to reflect on the divergent business approaches adopted by SI and Aegis Risk Management (ARM), now known as Aegis Defence Services⁹⁵. Founded by the same entrepreneur – a former Lieutenant-Colonel in the Scots Guards, Tim Spicer – these two corporations and their different policies on combat services represent the most apt example to demonstrate the influence of the immoral norm on "want-to-be-legitimate" security corporations.

Spicer's own words demonstrate manifestly a radical change in policies toward engagement in hostilities. Interviewed in 1999 – few months before leaving SI – Spicer was asked whether or not SI would engage in combat and accompany clients on operations. He answered:

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“Of course we will. I use the analogy of a boat builder. If I built a boat and you paid for it and said to me, ‘Ok, let’s go for a test run’ and I refused, you would be very dubious about that vessel.”⁹⁶

Few years later, he was asked the same exact question about his brand new company, ARM. His answer was negative: on the contrary, “Spicer started the new company...with the explicit intention of excluding combat from the company’s range of services”⁹⁷.

This drastic change in combat policies has affected the entire market, not just Tim Spicer and his enterprise. ArmorGroup (AG)⁹⁸ has enforced a number of policies with the intent to foster the perception that the company is not involved in any combat or aggressive activity. According to Christopher Beese – Chief Administrative Officer of AG –the company “ avoids anything to do with guns: carrying them, supplying them, and training people in using them...The ‘public relations exercise’ involved in providing offensive combat services would be next to impossible”⁹⁹.

In terms of ‘public relation exercise’, it is interesting to analyze how disappearance of combat is also a matter of semantic and semiotic: PMSCs avoid appearing aggressive, choosing very carefully even the nomenclature or the graphic presentation of their services.

Whereas EO would include “belligerent activities” – such as “land, air and naval warfare”¹⁰⁰ – in the list of services provided, vocables such as “war” or even “military” have been suppressed from the register of modern PMSCs.

ARM – for instance – would list on its homepage “friendly activities” such as “Research and Intelligence”, or it would use a vague terminology such as “Security Operations”¹⁰¹. Visually speaking, the firm tends to reassure immediately its potential customers, showing images of young boy, playing with a kite, with a construction site on the background¹⁰². Superimposed on the picture, appears the script “ Securing a better future”. The very name of company – “Aegis” – appeals immediately to a defensive, approach to security.

AG opts as well for a “defensive approach” mentioning services such as “Protective Security”, “Risk Management Consultancy” or “Development and Reconstruction”¹⁰³.

DynCorp International (DI) – one of the largest and most active American PMSC in the market¹⁰⁴–might appear as only marginally involved into security services, which are barely mentioned in the homepage¹⁰⁵. Passing on the screen, it is possible to see pictures of aeronautical engineers, a variety of logistic personnel, but nothing closely related to “aggressive” security¹⁰⁶.

Last but not least, Group4Securicor’ sober website – the World’s largest security services provider, operating in more than 100 countries with over 500,000 employees¹⁰⁷ –might be easily confused with an investment bank or another financial agency, with indications of the share price and links to the London Stock Exchange dominating the homepage¹⁰⁸.

Together with the disappearance of combat operations, PMSCs have also developed massive legitimizing campaigns to vindicate their profit-oriented approach to security and to defend themselves from accusations of being venal corporations that profit from war and destruction. Obviously, denying the profit-oriented nature of these private corporations – which are often listed in various stock exchange markets – would be close to impossible.

Nevertheless, it is plausible to claim that PMSCs have developed a number of public relations initiatives to cover-up or conceal the profit-element which is so intrinsically embedded into any business activity.

Initial attempts have tried to “normalize” the profit-side of the private security market, playing it off as due retribution for professional work: “ There is nothing wrong with soldiering for pay– Spicer writes – During my life as a professional soldier I expected to be paid.”¹⁰⁹

Nevertheless, provision of security and the use of coercion could not so easily be justified as mere “business-as-usual”. PMSCs have therefore strived to develop a public commitment to higher moral causes and values, such as

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self-determination, human rights and – of course – the war on terror. These just causes would in fact provide a solid ethical shield against accusations of mercenarism.

One significant example comes from an article – recently published on ARM's website – which illustrates perfectly how PMSCs carry out their “public relations campaign” against detractors of the private security sector. In this response to a Weekly Standard's article–polemically entitled “Warriors for Hire”¹¹⁰ – Kristi M. Clemens – Executive Vice President of ARM – vindicates vigorously the reputation of the entire industry against brutal accusations of mercenarism, enlisting a number of virtuous PMSC's projects that have contributed to the spread of democracy and democratic values worldwide:

“MPRI {Military Professional Resources Incorporated}¹¹¹ built the armed forces of Balkan democracies emerging from civil war. Dyncorp is doing similar work for the newly elected president of Liberia. Global and Control Risks undertook the voter registration that made possible Afghanistan's first ever democratic elections. And Aegis's support for the U.N. made possible the referendum and general election in Iraq. ... *The reality is that all of these companies—and many others—are just as committed to supporting humane democracy as Blackwater. All strive to be professional, ethical, and legitimate.* In fact, Aegis is eager to see the private security industry regulated by government. Blackwater is a good outfit, and so is Aegis. *Our mission is simple: to assist governments and legitimate multinational organizations with winning the war on terrorism.*¹¹²”

This document demonstrates clearly the effort and the intent to legitimize the entire industry, not just ARM. In Clemens' words there is almost a feeling of “solidarity” for a fellow corporation – Blackwater Security Consulting L.L.C. ¹¹³ – whose reputation has been attacked. It is extremely interesting to see written in plain words how legitimizing strategies work and to assist – in few lines – to the disappearance of combat and the camouflage of profit:

1. Firstly, Clemens rejects and retorts point by point all accusations, those that refer to ARM's contractors employing lethal force with particular duress¹¹⁴;
2. Secondly, there is no mention *at all* of the profit-side of all the virtuous campaigns and missions carried out by various PMSCs: how much these contracts were worth – for instance.
3. Even in a related article about a major contract renewal won by ARM with the American Department of Defence the profit figure almost fades in the background, submerged by the description of ARM's extraordinary contribution to rebuild Iraq. ¹¹⁵,

All that is possible to deduce from Clemens' list is how beneficial, ethical and righteous the impact of PMSCs has been for the development of democracy and the global fight against terrorism.

Another interesting element that emerges from this document is demand for supplementary regulation within the market for force. “In fact – according to Clemens – Aegis is *eager* to see the private security industry regulated by governments.”¹¹⁶ This desire might initially appear as “perverse”: one could argue that no legislation is better, that PMSCs benefit from the (almost) law-free environment that pervades the security market. On the contrary, as it will be argued in the next chapter, PMSCs are indeed eager to see the private industry regulated, because a clear legislation is better than no legislation at all to achieve a legitimate status.

PMSCs and the Pursuit of Legislation

In the section on PMSCs and illegality, it has been mentioned how corporations have understood the importance of acting within the boundaries of law and regulations since the early stages of the industry, as these can act as a powerful dividing line between legitimate businesses and disreputable corporations.

As in case of the moral norm, the fundamental criterion of distinction between legality and illegality lies in the use of lethal force. As PMSCs engage in this kind of activities, they enter a grey area on the edge of international

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humanitarian law, reinforcing the ideological link between mercenaries and contractors, therefore jeopardizing the reputation of the industry.

In the initial phase of the industry, companies have targeted this link by attempting to appear as legal businesses. As Kinsey thoroughly argues, the construction of a legal personality represents one of the first and most important steps in this direction.

“ As business grew it was necessary to conduct it within legal boundaries at all levels, including in the field. As such, employees could no longer be referred to as mercenaries, since to do so would imply the law having been broken in connection with a legitimate business operation. ... During the late 1980s, companies started to adopt a legal personality that would distinguish them from former mercenary armies.”¹¹⁷

As Spicer explains, a legal personality included characteristics such as the permanent structure and presence of the company; the bureaucratic organization and business structure; the existence of assets such as a vetting system, a doctrine and a training capacity¹¹⁸. On the contrary, mercenaries and mercenary organizations were characterized by the lack of all these features.

Nevertheless, these strategies proved to be insufficient – or only partially successful – to refute accusation of mercenarism, as PMSCs were still engaging in direct hostilities. Subsequent attempts to legalize the market for force have aimed at this aspect of the industry: if at first it was necessary to separate between mercenaries and legitimate business operations, the following phase of the market for force required a further distinction between respectable and disreputable corporations. The latter criticized the former properly because of their belligerent, illegal activities.

EO – for instance – has been accused and publicly delegitimized by other companies, such as MPRI. Executive members of this corporation have often underlined the difference between them and EO, pointing out how “MPRI has not involved itself in combat operations to date, only undertaking military training and consultancy contracts”¹¹⁹. EO’s employees were often portrayed as unlawful combatants, whereas MPRI’s contractors were only mere advisors or trainers-which according to company’s policy should always remain unarmed.¹²⁰

As it is possible to deduce from these examples, legislation and regulation in the private security market acts as a filter or – using a more appropriate economic terminology – as a barrier to entry, limiting the access to the market for force only to those corporations that comply with rules and regulations. PMSCs’ appeals for a more regulated market can be interpreted from this perspective, as an attempt to reduce competition and increase profit. According to Percy, “Regulation may serve to make the more legitimate PSCs even more legitimate, while marginalizing their less legitimate competitors”, as the dispute between EO and MPRI clearly demonstrates.¹²¹

Effects on the market for force are two-fold: on the one hand, increased regulation cut off one significant part of the services provided by PMSCs, namely combat services, reducing the supply. On the other hand – however – the number of competitors in the market is also significantly reduced: only those corporations that are capable of differentiating their services – without relying exclusively or massively on the provision of combat troops – can secure their presence and profit in the long run.

The radical structural changes in the market for force demonstrate this trend: services are increasingly heterogeneous, expanding especially in those areas– like surveillance¹²² and post-conflict reconstruction¹²³ – where the use of force is not required or – at most – only potentially required. At the same time, the market is going through a phase of consolidation, where bigger corporations are acquiring smaller and medium firms¹²⁴. As a result of this remodelling of the market, fewer corporations are sharing more profit, demonstrating the validity of Zarate’s argument: legitimate PMSCs can and – as a matter of fact – do profit from regulation of the market.¹²⁵

PMSCs do not oppose a more regulated market, because legislation represents the best way to achieve a legitimate status: even radical supporters of these corporations like Doug Brooks have advocated the necessity, the importance and the benefits that might arise from national regulatory frameworks.¹²⁶

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The confusion and uncertainty created by indefinite or imperfect regulatory regimes – such as the UN International Convention- about what can be unquestionably considered as legal/illegal, contribute to create an environment that in previous paragraphs has been defined as a legislative “grey area”, where borders between licit and illicit are often bogus, but where the general tendency is to consider PMSCs’ behaviour as wrong, often a priori.

Nevertheless, analyzing PMSCs’ activities with an unbiased eye, it is both inappropriate and incorrect to argue that PMSCs’ conduct is illegal. Two examples above all corroborate this thesis: the “Arms to Africa” Affair and the PNG Affair. In the former case, three different investigations held by different bodies within the UK cleared SI and Tim Spicer of any accusations of violating the arms embargo imposed by the UN127.

In the latter case – which has been thoroughly described in the previous chapter – PM Sir Julius Chan and Tim Spicer’s company were both cleared by the respective legal proceedings. The PNG Constitutional Court declared that there was no wrongdoing in the PM’s decision to sign a deal with SI.128Furthermore, an international arbitration panel obliged the new PNG ad-interim government to pay the second half of the 36\$ million contract that former PM Chan had signed with SI.129

Furthermore – even if the analysis is shifted on the single contractor – the actual international framework does not allow any definitive judgment on the illegality of the private military or security employee. Whether it is because regulatory frameworks- both national and internationals – are difficult to be enforced or absent, the essence of the argument does not change: *rebus sic stantibus*, the legal status of these corporations remains undetermined. If on the one hand, they can still be accused of conducting an immoral activity, on the other hand there are no definitive legal instruments to argue that it is also illegal.

The fundamental role of legislation is to guarantee and safeguard the reputation of PMSCs, clearing their legal *and* moral status by establishing definitive borders between licit and illicit. This is the intrinsic rationale behind PMSCs’ appeal for a regulated market: once it has been legally established what they can and they cannot do, they can focus on the former and forgo the latter. As Brooks claims:

“...Such laws would end the uncertainty and allow companies to focus their effort on military services that would thus be officially ‘legitimate’.... There are a number of PSCs that would be willing to compete as PMCs for peacekeeping/peace enforcement contracts should that role become legitimized through national legislation.130”

In this way, both their profit *and* reputation are safe, as they can claim that they are not doing anything illegal: for PMSCs’ it is clearly a win-win situation.

Discussion on the above-mentioned PNG Affair brings back the controversial topic of PMSCs and political acceptability, which will be discussed in the next section.

PMSCs and Political Acceptability

In the section on PMSCs and political unacceptability, by presenting the controversial PNG Affair, it has been demonstrated which problems arise on a constitutional level to justify the intervention of a PMSC. Despite the severity of the security scenario, intervention by a skilful but private military actor was perceived as inappropriate by the population and as unacceptable by the military establishment. These two elements – popular and military reaction –constitutes the core of the “acceptability issue” for PMSCs.

On the one hand, their intervention cannot be justified only by the gravity of the situation: PMSCs cannot present themselves simply as the “last resort”, but as the best available option. On the other hand, relations with the local military establishment have to be collusive, not competitive, as risks of antagonizing members of the Armed Forces are potentially devastating.

It is possible to recognize how moral and legal strategies of legitimation are focused on the supply-side of the industry: recognizing which activities are morally and legally indefensible, PMSCs have shaped the panoply of

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services they offer, eliminating the provision of combat services. These strategies can be defined as “adaptive” to the moral and legal norm on privatized security, which are too resilient to be ignored, avoided or modified.

On the contrary, strategies discussed in this section tend to focus on the demand-side of the industry: by appealing to those characteristics where PMSCs claim to have a comparative advantage relative to the traditional military, the private security industry shapes the market for force to its own advantage, creating its own demand. In this sense, the role of PMSCs can be defined as pro-active, as firms create the necessary conditions for their success, building a supportive environment around their *modus operandi*.

Anna Leander – in her paper “ On the Significance of the Emergence of Private military Companies”¹³¹ – talks explicitly about the increasing capacity of these firms to set the security agenda: some of the cases she presents to argue her thesis can also be interpreted as legitimizing strategies adopted by PMSCs.

One of the most interesting and controversial aspects investigated by Leander is the relation between PMSCs and policy makers. This increased inter-connection between the governmental realm and the private security industry indicates a profound transformation in the way PMSCs operates: as it is possible to evince from Leander’s analysis, security corporations do not limit themselves to the provision of services, acting as mere instruments of various security policies. On the contrary, they climb the “chain of command”, influencing more or less subtly the decision-makers, relying for instance on political strategies such as lobbying.

Leander provides concrete example of how these strategies work, analyzing MPRI’s intense and successful pressure on the US Government about a major contract in Equatorial Guinea.¹³² Influence on policy-makers usually rely on national interest arguments (as in the Equatorial Guinea case) or – more frequently – on the higher efficiency and extreme technicality of private security. Higher efficiency – which is a synonym for lower costs – has been the earliest and strongest argument PMSCs have used to promote private security, exploiting the widespread support for privatization which it is still very much the favoured word in the vocabulary of advocates of the industry. The extreme technicality is a more recent and controversial topic, which is better explained by Leander’s own words:

“ Beyond bolstering their image by contrasting it to that of the public, private actors are also prone to frame security issues as questions of managerial efficiency and technical competence. The firms base their authority in their capacity to offer technologically effective and economically interesting solutions to existing problems...”

PMSCs formulate security problems in terms of efficiency and extreme technicality as to highlight the fact that they represent the best solution to it: as it has been argued, their intent is not to appear as the last option, but as the best possible option.

Another fundamental strategy adopted by PMSCs is the co-optation of influential political members within their establishments and – more importantly – of former officers of the Armed Forces. The intent of this strategy is two-fold. Firstly, by recruiting members of the political élite to be reckoned with, PMSCs secure more political leverage at various levels of the decision-making processes: in other words, they make sure that they have a “privileged interlocutor” within the highest sphere of power that keeps their interests in mind at all times. Although similar to lobbying, this strategy is much more pragmatic and controversial. The example *par excellence* is the actual Vice-President of the United States Dick Cheney, who is also former Chief Executive Officer of Halliburton, by far the largest private logistic provider in the World. Another excellent example is the recent and rampant private career undertaken by Field Marshal and Baron Peter Anthony Inge, former Chief of the General Staff and professional head of the British Army between 1992 and 1994, who is now co-chairman of the Aegis board of directors, together with Tim Spicer.

Secondly, by co-opting former member of the armed forces, PMSCs create a collusive environment where they avoid juxtaposition or contrast with the military. On the contrary, the result of this cooperation is a regime of “profitable continuity”, where an increasing number of high-ranking officials leave their positions within the Army to join PMSC for a much higher salary. In addition, retired member of the armed forces are also joining *en masse* these corporation, attracted by the potential economic benefits. This strategy produces a number of positive externalities,

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which are incredibly beneficial for PMSCs.

Economically, this policy reduces drastically the training-related costs, as all employees are already experienced and have already been trained, sometimes with the highest standards. In terms of reputation, PMSCs can benefit from the stature and esteem that former member of the armed forces might have earned: as Singer points out, “Such officers are more likely to be trusted and respected when selling to foreign clients. Back home they can also call on a pre-existing network of contacts that feed them privileged information and contracts.”¹³³ The possibility of having among the executive members of a security company a former general or a chief of staff increases exponentially the credibility of a PMSC: MPRI – for instance – has established rigorous recruiting policy, according to which they hire exclusively national military personnel.¹³⁴

Conclusions

Taking Singer’s taxonomy of the private security industry as analytical landmark, the description proposed in this chapter differs substantially from the “Tip of the Spear” typology. Paraphrasing this model, it is plausible to claim that the tip has been blunted, whereas the hilt of the spear has become more robust. As a result of different legitimizing strategies, PMSCs have in fact cancelled the provision of combat services – metaphorically and literally – in favour of less controversial commercial activities.

At the same time, PMSCs have increased their effort to vindicate from more ethical grounds the rest of their activities, as the mere construction of a legal personality proved to be insufficient to guarantee a legitimate reputation to the industry.

As it has been described in the last part of the paragraph, PMSCs’ approach to legitimacy issues has not been exclusively passive: on the contrary – exploiting their rising economic power and political gravitas – they have undertaken an extremely proactive approach to the market for force, shaping the demand so as to increase their comparative advantage as opposed to the traditional military.

Nevertheless, as in the case of the second chapter, there are a number of hidden issues and explicit controversies that arise from this analysis and – even if marginally and superficially – it is nonetheless important to point (at least some of) them out in the last chapter.

Limitations, Reflexions & Conclusions

The second and third chapter have described and analyzed two sides of the same coin, contrastive but complementary at the same time. After all, it would have been impossible to argue how PMSCs are trying to be perceived as legitimate, without demonstrating why they are illegitimate in the first place.

Nevertheless, this analytical approach leaves outside some of the most controversial aspects of the private security industry, what could be defined as “the third side” of the coin. It is therefore important to recognize and reflect – even if marginally – on some of the limitations and unanswered questions of this research project.

Problems emerge first of all on a methodological level: on the one hand, the adopted theoretical approach has allowed a broad overview of legitimacy-related issues in the market for force. On the other hand, the idiographic approach adopted in the empirical section of the research project might constitute a limiting factor for the significance of its conclusions. Throughout the dissertation, specific examples have been picked up to demonstrate the validity of specific claims: this method might therefore be considered as too inductive, as if the theory is imposed and not derived from the facts.

This choice can be justified by the intrinsic limitations of a research project that – necessarily – cannot include and analyze a higher number of samples. Limited words imposed a limited number of cases to be argued and this dissertation has opted for those corporations that for their magnitude within the market for force can be considered as representative and significant.

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What is – unfortunately – excluded from the picture are a number of PMSCs that – for a number of reasons – do not take part into this legitimizing process. Influential companies like Blackwater – for instance – have shown a certain degree of disregard for legitimizing practices: whereas they strongly appeal for a larger role of PMSCs within international peacekeeping operations¹³⁵, they also seem to be reluctant to abandon the provision of combat services. Throughout the war in Iraq, in several occasions contractors employed by Blackwater have in fact been accused of engaging directly in hostilities, sometimes to rescue soldiers of the Coalition¹³⁶, sometimes opening fire on unarmed civilians¹³⁷. Therefore, it is important to keep in mind is that – although the majority of PMSCs engaged in strategies of legitimation – pocket of resistance within the industry resist.

Furthermore, even the PMSCs that have been presented cannot be considered legitimate *tout court*. On the contrary, they often foster their legitimizing policies in order to cover even more their illegitimate practices. Simply because PMSCs claim that they are legitimate businesses, it does not mean that they are always acting according to moral, legal or political restraints: MPRI – for instance – despite its policy against the provision of weapons to its contractors, has been repeatedly accused of engaging in combat during its “training” contract with the Croatian Army in 1995¹³⁸. Several DynCorp’s pilots have been involved in combat situations in Colombia, while providing “training” to helicopter crews engaged in the war against drug cartels.¹³⁹ In these circumstances where PMSCs exploit the fog of war and the bogus legal frameworks, it would be perhaps more appropriate to talk about an “invisible” tip of the spear.

Another essential element that has to be reminded is the implicit trigger of most legitimizing policies adopted by (most) PMSCs: *profit*. In the context of this dissertation, legitimizing policies have been interpreted as the result of moral, legal and constitutional constraints. Keeping in mind the validity of the arguments that have been presented, nevertheless it is fundamental to underline that the pursuit of legitimacy, for these corporations, is not a mere public relation activity, with an end itself, but a rational and profit-oriented strategy. Therefore, while analyzing these strategies and results, the intrinsic private nature of these corporations and their ultimate goal cannot be neglected: PMSCs pursuit legitimacy because legitimacy is profitable.

This leads the analysis to another controversial issue, limitations to legitimizing strategies. A fundamental fallacy in the approach advocated by supporters of the private security industry like Brooks lies in the erroneous assumption that legislation will guarantee PMSCs a legitimate status, in other words that legality will lead to legitimacy. As it is clear from Clark’s explanation of the concept, legality constitutes only one element of legitimacy; therefore, even if a more regulated market might substantiate PMSCs’ claims that they are acting within legal restraints, legislation will never solve the moral issues that are so intrinsically embedded within the provision of private security (profit).

Finally, one last word has to be dedicated to the potential consequences that might arise if legitimizing strategies become even more successful. In the course of the dissertation, legitimacy has been analyzed from a theoretical perspective but – *de facto*– PMSCs have already been legitimized *en masse* by the market forces. Continuously supported by an unbreakable faith in the benefits of privatization¹⁴⁰, PMSCs expand their business, re-new their billionaire contracts while the global value of the industry is expected to reach the impressive figure of 202\$ billions in 2010.¹⁴¹ But what about the hidden political costs of this savage privatization? Consequences of an undisputed market for force might not be accused in the short-term: they do – however – trigger a number of controversial issues in the long run. Scholars usually argue on the lack of accountability of private security actors, provoked by the lack of regulation.¹⁴²

Nonetheless, it is also possible to argue how consequences are much more practical. For instance: what is going to be the role of the traditional military in the coming years? Which consequences is it possible to expect from the continuous drawing of PMSCs from members of the armed forces? Is it going to become a mere training-centre, where cadets are formed and then employed by PMSCs? Clearly, this mechanism is not sustainable on the long-term.

Furthermore, even if moral norms managed to keep PMSCs away from combat scenarios, they left the door open for other security sectors, such as intelligence, where risks of a debacle are much higher and where there are also enormous ethical issues regarding – for instance – the privacy of the citizens.

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Concluding, it is possible to claim that the process of legitimization that the majority of PMSCs are undertaking deepens – if possible – the complexity that is already embedded into the issue of privatized security. PMSCs represent a hybrid actor, which draws its legitimacy both from the market and from other international actors and – more importantly – that is capable of adapting to different norms, but also to shape them in their favour. Properly because of this hybrid and mutating nature, it is impossible to give a definitive statement about whether or not their presence in a variety of security scenarios will be beneficial or detrimental.

This research process has attempted to show the evolution of these actors in a limited time frame; it might be an initial step to understand not only where PMSCs are going but also how it is possible to legitimize even further their activities, maximizing the benefits and reducing the risks.

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