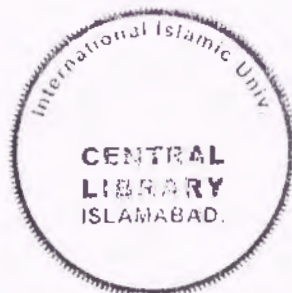


بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

*"IN THE NAME OF ALLAH WHO IS MOST BENEFICENT AND MOST
MERCIFUL"*





Accession No TH17069 *WMA*

NIS
341.67
FAP

Private military companies - law and legislation
Private security services - " "
" " companies - International Law
Human Rights Law

Approval sheet

**Participation of Private Military and Security Companies in an Armed Conflict : With
special reference to African States**

By

Fatima Zehra

**Accepted by the Faculty of Shariah and Law, International Islamic University Islamabad
(IIUI) in partial fulfillment of the requirements for the award of the Degree of L.L.M
(International Law)**

Master's (L.L.M) Committee :

Supervisor

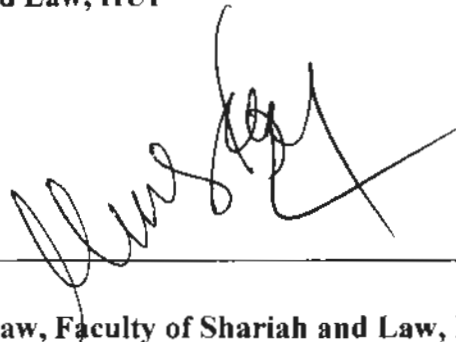
Miss Ambreen Abbasi



Assistant Professor, Faculty of Shariah and Law, IIUI

Internal Examiner

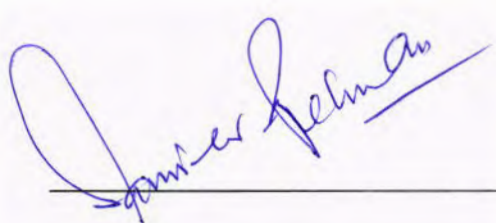
Dr. Muhammad Mushtaq Ahmad



Associate Professor / Chairman Dept. of Law, Faculty of Shariah and Law, IIUI

External Supervisor

Mr. Sami-ur-Rehman



Senior Lecturer, Department of Law, Bahria University Islamabad

Acknowledgments

All the Praise is for Almighty Allah, who is the Sustainer of the worlds, the Compassionate, the Merciful, and may His everlasting blessing & peace be on Muhammad, the last of His Messengers!

First of All Innumerable Thanks to ALLAH ALMIGHTY, for giving me strength, courage and resources to accomplish this work. Also Thanks to our Holy Prophet (P.B.U.H) for enabling us to recognize our Lord and creator.

I was extraordinarily fortunate in having Assistant Professor Ma'am Ambreen Abaasi as my supervisor. I could never embark and started all of this without her guidance. Thank you for your great support throughout the dissertation, for always being available, for your patience and motivation.

A debt of gratitude also owed to Ma'am Sadia Tabbasum and Sir Mushtaq Ahmed for their guidance and knowledge which they transferred to us and for all those meaning full discussion during LL.M classes, which helped me a lot in the compilation of this research work.

My completion of this work could not have been accomplished without the support of my family, and friends. My heartfelt Thanks to my parents without them I'm nothing. Bundle of Thanks to my siblings Saira, Obaid, Madiha and Wajiha who really helped me in the compilation of this research work. Special thanks to my friend Madiha for advices, suggestion of work and the support that made me enthusiastic. I would also like to appreciate my friends Rabbia and Moheer who always used to back up me and kept me motivated.

Last but not least, thankful to my entire family members, teachers, friends and colleagues for their moral support. Special thanks to my parents, who had been a great source of determination for me to achieve my goals in life.

God bless them all!

Fatima Zehra

Table of Contents

Acknowledgments	i
Abbreviations	iii
Abstract.....	v
Thesis Statement	vi
Statement of the Problem.....	vi
Research Questions	viii
Outline of the Thesis	viii
Chapter 1: Development of the idea Private Military and Security Companies	1
1.1 Introduction and Historical Developments.....	2
1.2 Private Military Companies.....	5
1.3 Private Security Companies.....	6
1.4 The roots: PMSCs and the mercenary issue.....	6
1.5 Growth of private military and security companies and the world wide lawful reaction..	10
1.5.1 Prior to 1945: The Rule of Objectivity.....	10
1.5.2 Post 1945: Reactions of U. N.	11
1.5.3 1970s: Luanda Draft Convention and Additional Protocol I.....	12
1.5.4 1980s/1990s: U.N. Convention on Mercenaries and Termination of the Cold War... 	13
Conclusion:	14
Chapter 2: Outsourcing, Liabilities and Regulation of PMSCs in Armed conflicts.....	16
2.1 Introduction.....	16
2.2 Regulative Principles in International Law.....	16
2.2.1 Detention Places	17
2.2.2 Piracy	17
2.2.3 Direct Participation in Hostilities	18
2.2.4 The Obligation to use due care	20
2.2.4.1 International Humanitarian Law	21
2.2.4.2 Human Rights Law	22
2.3 Compensation for the illegal conducts of PMSCs under IHL and HRL.....	23
2.3.1 Where the provisions of IHL are violated.....	24
2.3.2 Where violations of IHRL are committed	26
2.4 State Accountability.....	29
2.4.1 Liability of State that contract with private military companies or hire contractors.	29

2.4.2	The responsibility of other states	31
2.5	The Criminal Accountability of Private Military and Security Company Personnel: Difficulties in Application and Jurisdiction	33
2.6	Attempts to make rules	34
2.6.1	The United Nations: An established Guideline	35
2.6.2	Unofficial Procedures: The ICRC, Non-Obligatory Mechanisms and Codes	36
	Conclusion	39
Chapter 3:	Direct and Indirect participation in Hostilities	39
3.1	Significance of direct participation of private military contractors in hostilities	40
3.2	Does Safeguarding and providing security amount to direct participation?	42
3.3	Legal consequences of civilian participation in an armed conflicts	44
3.4	Constitutive elements of direct participation in hostilities	46
3.5	What conduct amounts to direct and indirect participation in hostilities?	48
3.6	Legal protection of combatant and civilians directly participating in hostilities: Limitations put on the use of force in direct attack	49
	Conclusion	51
Chapter 4:	International world coping with Private Military and Security Companies	52
4.1	Afghanistan	53
4.1.1	David Passaro's case	54
4.1.2	US v. Drotleff and Cannon	55
4.2	Pakistan	56
4.2.1	Raymond Davis Case	57
4.3	African States	59
4.3.1	Angola	60
4.3.2	Executive Outcomes in Sierra Leone	62
4.3.3	Democratic Republic of the Congo	64
4.3.4	Somalia	65
4.3.4.1	Case of Puntland	66
4.3.4.2	Case of Somaliland	69
	Conclusion	70
	Conclusion and Recommendations	71
	Bibliography	76

Abbreviations

API	Additional Protocol I 1977 to the 1949 Geneva Conventions
APII	Additional Protocol II of 1977 to the 1949 Geneva Conventions
DRC	Democratic Republic of Congo
EEZ	Exclusive Economic Zone
EO	Executive Outcomes
FNLA	National Liberation Front of Angola
GC	Geneva Convention of 1949
ICC	International Criminal Court
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ICRC	International Committee for the Red Cross
NIAC	Non International Armed Conflict
NCM	Nordic Crisis Management
PMSCs	Private Military and Security Companies
PMC	Private Military Company
PMPF	Puntland Maritime Police Force
PSC	Private Security Company
PRS	Physical Risk Solutions

POW	Prisoner of War
RSLMF	Republic of Sierra Leone Military Forces
RUF	Revolutionary United Front
SSDF	Somali Salvation Democratic Front
TGS	Transitional Government of Somalia
UAE	United Arab Emirates
UNITA	Union for the Total Independence of Angola
UNCLOS	UN Convention on the Law of the Sea
UAE	United Arab Emirates
UK	United Kingdom
UN	United Nations

Abstract

The expansion of private military and security companies (PMSC) has created a new class of security guards and private soldiers engaged particularly in conflict areas. Their activities blur the borderlines between the public services of the state and the private commercial sector, creating a dangerous 'grey zone' with no transparency, no accountability and no regulation. Some of the most argumentative issues that arise from privatizing the military and security sector is their contractual difficulties and problems, their vague legal status, human rights problems, and their use as proxies for governments.

State security functions normally carried out by national armies or police forces are being outsourced to private military and security companies in countries where conflict is displacing many people. They are hired by the states and it is necessary to legalize such companies and contractors. There is a dire need of a legally binding instrument regulating and monitoring their activities at the national and international level. It is discussed in this research how PMSCs are not given any legal status as it is still grey area. They cannot come under the category of mercenary as it is contrary to these companies. States cannot also absolve themselves of their responsibility under international humanitarian law. Harmonization of national laws to create common standards and a universal approach to the regulation and use of PMSCs is necessary.

Thesis Statement

The ever expanding activities of PMSCs and the outsourcing of security to these companies by States are creating violations of international Human Rights law and International Humanitarian law; raising questions regarding regulation of those non-state actors also posing a threat to international peace; therefore there is a need for a legally binding international agreement to regulate the use and activities of private military and security companies (PMSCs).

Statement of the Problem

There is a lack of regulations at the international, regional and national levels regarding private military and security companies which often operate without effective oversight and accountability. The existing national legislation is not sufficient to address the challenges pose by PMSCs, due to inadequacies related registering and licensing, and the lack of effective and transparent mechanisms and remedies for human rights violations.

The employment of private military companies in the context of armed conflicts raises various concerns with respect to the legality and legitimacy of the transfer of state functions to private actors. The conflicts in Afghanistan and Iraq brought privatization within the scope of peace, war, and security to the fore. Indeed, private contractors had already been used before in African or South American states in internal conflicts or in the fight against drug trafficking. Today, however, the focus has sbifted from a mercenary-like deployment of military companies by warlords or rebel groups towards a long-term policy of outsourcing sovereign functions by highly industrialized, often western states. This systematic extension of privatization into spheres where the monopoly on the use of force and the laws of war are concerned provoke calls for a strong international regulation of activities of private military and security companies.¹

¹ Alexander Kees, "Regulation of Private Military Companies", *Goettingen Journal of International Law* 3:1 (2011), 199-216.

The activities and conduct of armed private contractors or “security guards” operating in such situations may have serious and even fatal penalties.²In this regard, the Working Group has drawn the attention of the General Assembly about the impunity with which operate the private military and security companies³.

Weak or insufficient domestic legislation, regulation and control of private military and security companies encourage these transnational companies to seek to hire former military personnel and ex policemen from other developing countries, where labor is cheaper. A significant part of the responsibility to regulate and control these companies falls on States from where they export military and security services. These States should not grant immunity to these companies and their personnel; they should investigate and prosecute “private security guards” who have committed crimes and human rights violations.

Private military and security companies are blurring the areas of the public and the private sector⁴. Furthermore, by the fact of presenting themselves as humanitarian organizations working for the construction of peace, they are also blurring the areas between truly nonprofit humanitarian organizations and military and security companies working for profit⁵.

² Michael Cottier, “Elements for contracting and regulating private and military companies”, *International Review of the Red Cross*, 88:863, (September 2006), 640.

³ Check the Working Group’s report to the UN General Assembly, available at <http://www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/AnnualReports.aspx> (accessed June 4, 2014).

⁴ José L Gómez del Prado, “Privatising security and war”, *Forced Migration Review*, March (2011), 18.

⁵ José L. Gomez del Prado, “Impact on Human Rights of Private Military and Security Companies’ Activities”, *Global Research*, (October, 2008), available at <http://www.globalresearch.ca/impact-on-human-rights-of-private-military-and-security-companies-activities/10523> , (accessed June 3, 2014).

Research Questions

Main point to ponder in this research is:

How the rapid proliferation of PMSCs in armed conflicts around the world, with PMSCs participating in offensive combat and peace keeping missions is happening? What are the challenges faced by extensive outsourcing of military and security activities?

Other issues are;

- To what extent the PMSCs are entitled to come under the category of mercenary?
- What are the Liabilities of PMSCs under IHRL and IHL when they violate laws?
- How much a state is responsible for the acts of PMSCs?
- What are the obligation of State that contract with private military companies or hire contractors?
- What are the standards of international law under which states cannot freely hire PMSCs?
- What is the impact of direct participation of PMSCs in hostilities?
- How international world is dealing with the rapid growth of PMSCs?

Outline of the Thesis

There is no term existing with the name of PMSCs in any international instrument. This term comes with the idea of military group or a special force hired by the state to perform special functions. As far as the status of these companies IS concerned it is seen that they do not come under the category of mercenaries. It is essential to determine their status as combatant or civilian because it is still a grey area to be defined.

The prominent feature on modern armed conflict is the participation of Private military and security companies in a diversity of different role. There are no comprehensive rules for the

solution of unambiguosness, regulatory prosecution, accountability and hiring or use of PMSCs. There is no solid improvement seen regarding a specific law as of international point of view. There is a need of making an internationally enforced instrument to regulate PMSCs.

The term direct participation is nor clearly mentioned in any instrument of international law. PMSCs are neither permitted nor banned to directly participate in hostilities. All people whether employees of an armed group or PMSCs are under compulsion to respect the rules of IHL, IHRL and may be held liable for the combat criminalities and breach of international criminal law.

The activities of PMSCs stretch far across the globe, to unstable states including Afghanistan, Pakistan and African states. In Afghanistan and Pakistan they have been linked with secretive operations of numerous intelligence agencies fighting so called international war on terror. In African states their activity started when the government hired them to battle against the people fighting for independence or the right of self-determination.

Chapter 1: Development of the idea Private Military and Security Companies

The dependency on private military and security companies in international and non-international armed conflicts has unquestionably intensified in recent years which is one of the most prominent feature of the modern armed conflict.⁶ The growth of private military and Security Company under international humanitarian law is increasing⁷ and damages by their personnel are also exposed in some cases.⁸

Despite a wealth of legal and political science literature on private security and military companies (PMSCs), no truly systematic analysis has been undertaken to illuminate the theoretical risks of violations of international humanitarian law by such companies and the incentives they have to comply with it. The result is an incomplete picture that fails to adequately appreciate the complex interrelationship between each component of private military and security company activity and their impact on compliance with international humanitarian law.⁹

It is notably seen that the PMSCs were formerly linked to openly mercenary¹⁰ movement, now are developed as skilled and trained corporations willing to provide facilities.¹¹

⁶ Károly Végh, "Warriors for Hire?" – Private military contractors and the international law of armed conflicts", *Miskolc Journal of International Law*, 5:1(2008), 26, available at <http://www.uni-miskolc.hu/~wwwdrint/20081vegh1.htm> (accessed June 22, 2015).

⁷ See "The ICRC to expand contacts with private military and security companies", *International Committee of the Red Cross*, 4 August 2004, available at <https://www.icrc.org/eng/resources/documents/misc/63he58.htm> (accessed June 22, 2015).

⁸ In September 2004, there were three contractors from United States who were held guilty in the court of Afghanistan on an account of committing torture as they had a secret imprisonment and unlawful confinement. Shaista Shameem, "Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination", Report of the Special Rapporteur, Commission on Human Rights, 61st Session, December 8, 2004, UN Doc. E/CN.4/2005/14, para. 14, available at <http://daccess-ods.un.org/TMP/7021580.33847809.html> (accessed June 22, 2015).

⁹ Benjamin Perrin, "Promoting compliance of private security and military companies with international humanitarian law", *International Review of the Red Cross*, 88:863 September (2006), 614.

¹⁰ Conway H. Hinderson, *Understanding International Law* (Singapore: Wiley-Blackwell, 2010), 50; A mercenary is a person who takes part in an armed conflict, who is not national or party to the conflict. He is the person who fights for personal gains for money or other reward whether in favour or against government. The definition of a mercenary is given under Article 47 of Additional Protocol 1 to Geneva Convention 1949.

Dissimilarities among private military and private security companies occur usually.¹² The perimeters concerning these notions are not visibly described in matters of International Humanitarian law.¹³

Creation of the word PMSC is done deliberately irrespective of their usage, armed or security services provided via these companies.¹⁴ Actions performed by such companies are either offensive or defensive.¹⁵

Dependence on PMSCs is increasing countlessly now.¹⁶ PMSCs activities started in Africa when people wanted to fight for the right of self-determination and independence. In Iraq, Afghanistan, and Pakistan secretive actions of several US organizations are being carried out by PMSCs on the basis of the worldwide “War on Terror.”¹⁷

Practically it is seen that the United States and well established countries drive towards combat operations through the private armies they hire from different states and not only with the armies in their state.¹⁸

1.1 Introduction and Historical Developments

The evolution of private military and security companies is one of the phenomenon that has attained notable growth in national and international security arrangement during the

¹¹ Bushra Khan, “Involvement of the US civilian contractors in the war on terror: the privatization of war and the IHL and IHRL regime”, (thesis unpublished, International Islamic University, Islamabad 2012), 2.

¹² Ibid.

¹³ Emauela Chiara Gillard, “Business Goes to War: Private Military/Security Companies and International Humanitarian Law”, *International Review of the Red Cross* 763 (2006). 527-528.

¹⁴ Ibid. The writer additionally says, actions carry out by these companies to some extent are relative not the particular tag set to them.

¹⁵ See, e.g., Protocol I of 1977 additional to the 1949 Geneva Conventions (Additional Protocol I) Art. 49, which defines “attacks” intended for IHL by means of “acts of violence against the adversary, whether in offence or defence”.

¹⁶ “Countries in Which PMSCs Operate”, *Global policy forum*, available at <http://www.globalpolicy.org/pmscs/50192-countries-in-which-pmscs-operate.html> (accessed July 31, 2015).

¹⁷ Ibid.

¹⁸ Adam Ebrahim, “Going to war with the army you can afford: The United States, international law, and the private military industry”, *Boston University International Law Journal*, 28:181 (2010), 182.

previous three decades.¹⁹ The function, status and liability of the private military companies have become a burning issue since the 2003 invasion and occupation of Iraq because more than 20,000 persons were hired by the companies.²⁰

Two unpleasant events particularly have served as catalysts in the discussion.²¹ First is about the injury and murdering of the four members of the private military company Blackwater and pursuant to an attack on Fallujah in April 2004. This issue focused the connection of armed forces to these contractors and truth behind giving them the name of noncombatants.²² Second, an allegation which is made to the civilian contractors of the private military company CACI (Consolidated Analysis Center, Incorporated) regarding torture of prisoners at Abu Ghraib imprisonment by them. This questioned the credentials and responsibilities of contractors and also their liability if they violate any of the terms of human rights.²³

Even though a few US military recruits were tried in the courts as they tortured internees at Abu Ghraib detention facility but no one has been taken to the court on account of criminal charges.²⁴

With the end of the Cold war, previous military and political dealing changed.²⁵ For this reason third world countries were left with no trustworthy and valuable military backing which

¹⁹ Andrew Alexandra, Deane-Peter Baker and Marina Caparini, "*Private military and security companies, ethics, policies and civil-military relations*", (New York: Routledge, 2008), 1, available at <http://www.amazon.com/Private-Military-Security-Companies-Civil-Military/dp/0415570301> (accessed June 21, 2015).

²⁰ Lindsey Cameron, "Private military companies: their status under international humanitarian law and its impact on their regulation", *International review of the Red Cross*, 88:86(September 2006), 574.

²¹ Shaista Shameem, "Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination", Report of the Special Rapporteur, Commission on Human Rights, 61st Session, December 8, 2004, UN Doc. E/CN.4/2005/14, para. 50, available at <http://daccess-ods.un.org/TMP/7021580.33847809.html> (accessed June 22, 2015).

²² Cameron, *Private military companies*, 574.

²³ Mark Bina, "Private military contractor liability and accountability after Abu Ghraib", *John Marshall Law Review*, 38:4(2005), 1237, available at <http://repository.jmls.edu/lawreview/vol38/iss4/6/> (accessed June 22, 2015).

²⁴ Cameron, *Private military companies*, 574.

formed cavities in their security and defense structures. Defense budget reduced by strong western countries resulted in emergence of plenty of weapons in the world market. As these markets were not lawful, weapons were made available for everyone who paid money to the vendor.²⁶ Deploy troops

During the Vietnam War the initial steps on how to use these weapon were occupied by civilians to form group and military suppliers to deliver different equipment²⁷. Three leading familiar causes of the enlarged action of Private Military Companies are:

- altered position of international security afterward the Cold War²⁸
- additional open-minded international dealing procedures and strategies²⁹
- the remaining of weaponries in the market place.³⁰

These activities stretched across the world, especially to unstable states including Afghanistan, Angola, the Democratic Republic of the Congo and the Republic of Congo, Ethiopia and Eritrea, Iraq, Kashmir, Liberia, Sierra Leone and the former Yugoslav states.³¹ At present, thousands of PMCs are listed, some of them are ; DynCorp; Kellog, Brown & Root; Military Professional Resources, Control Risks; Inc (MPRI); Executive Outcomes (separated in 1999); and Vinnel corp, essentially from the United States, United Kingdom and South Africa.³²

²⁵ Peter Benicsak, "Overview of private military companies", *National University of Public Service, Budapest, Hungary*, 11:2 (2012), 316, available at <http://www.zrnne.hu/aarms/docs/Volume11/Issue2/pdf/14.pdf> (accessed August 4, 2015).

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid., 317.

²⁹ Ibid.

³⁰ Helen Tung, "Under international law what is the legal status of private military contractors during military occupation and under United Nation peace keeping operation", (thesis presented for the requirement of certificate of training in United Nations peace support, peace operation training institute, February 2006).

³¹ C Walker, and D Whyte, "Contracting Out War? Private Military Companies, Law and Regulation in the United Kingdom". *International and Comparative Law Quarterly*, 54:3 (2005), 653

³² Tori Aarseth, "Private Military Companies: Assisting the Transnational Capitalist Class in Accumulation

Services provided by the companies are questioning at jails, warfare, intelligence meeting, driving, analysis and linguists, teaching the military and forces, safeguarding of military stock and securing military groups³³, industrial and high-tech maintenance, foodstuff, transportation, sending weapons³⁴.

The persons employed by these firms come from a considerable number of countries including the US, the UK, Australia, South Africa, Fiji, New Zealand, Chile, Nepal, Afghanistan and Iraq.³⁵

1.2 Private Military Companies³⁶

Peter Singer describes PMCs as:

Business organizations that trade in professional services intricately linked to warfare. They are corporate bodies that specialize in the provision of military skills, including combat operations, strategic planning, intelligence, risk assessment, operational support, training and technical skills.³⁷

by Dispossession", (thesis of Master, American university of Cairo, January 2012), 30-32, available at <http://dar.aucegypt.edu/bitstream/handle/10526/3186/MA%20thesis%20-%20Tori%20Aarseth.pdf?sequence=1> (accessed February 27, 2016).

³³ Daniel G. Straub, "Outsourcing human security: The pros and cons of private security companies in peacekeeping", (Master dissertation, Naval Postgraduate School Monterey, March 2013), 2, available at http://calhoun.nps.edu/bitstream/handle/10945/32906/13Mar_Straub_Daniel_PhD.pdf?sequence=3&isAllowed=y (accessed August 4, 2015).

³⁴ Liber Amicorum Said Mahmoudi, *International Law and Changing Perceptions of Security*, edited by Jonas Ebbesson et al, (The Netherland: Hotei Publishing, 2014), p.15 ; Fabien Mathieu and Nick Dearden, "Corporate Mercenaries: The Threat of Private Military & Security Companies", *Review of African Political Economy*, 34:114 (December , 2007), 748, available at <http://www.jstor.org/stable/20406461> (accessed June 15, 2015).

³⁵ Dr U C Jha, *International Humanitarian Law: The Laws of War*, (New Delhi: Vij Books India Pvt Ltd, 2011), 338.

³⁶ Private military companies comprise on active PMCs ready to bring weaponries into warfare and passive PMCs that give emphasis on training and administrative matters.

³⁷ P.W Singer, *Corporate Warriors: The Rise of the Privatized Military Industry*, (New York: Cornell University Press.2003), 8.

Simply Private Military Companies (PMC) can be defined as the providers of skillful facilities that are related to conflict.³⁸ Actually, diversity in amenities are given by PMCs³⁹ including arranged data, training, language maintenance, gathering intellect and sending of personnel.⁴⁰

1.3 Private Security Companies

However the usage of the word private security company is seen numerously but its existence is not found in any present international convention. PSCs can be well-defined such as:

A Private Security Company is a registered civilian company that specializes in providing contract commercial services to domestic and foreign entities with the intent to protect personnel and humanitarian and industrial assets within the rule of applicable domestic law.⁴¹

1.4 The roots: PMSCs and the mercenary issue

The term private military company (PMC) does not exist within any existing international convention or legislation.⁴² Although the private military company arises from the idea of armed forces (within the meaning of Additional Protocol I)⁴³ or militias or volunteer corps (within the

³⁸ P.W Singer, "The Private Military Industry and Iraq: What have we learned and where to next?", *DCAF: Geneva*, 2004, 1, available at <http://www.dcaf.ch/Publications/The-Private-Military-Industry-and-Iraq> (accessed March 19, 2016).

³⁹ C Walker, and D Whyte, "Contracting Out War? Private Military Companies, Law and Regulation in the United Kingdom". *International and Comparative Law Quarterly*, 54:3 (2005), 651. Available at http://www.researchgate.net/publication/228376566_Contracting_Out_War_Private_Military_Companies_Law_and_Regulation_in_the_United_Kingdom (accessed August 4, 2015).

⁴⁰ *Ibid.*, 652.

⁴¹ Major S. Goddard, "The Private Military Company: A Legitimate International Entity within Modern Conflict" (Master dissertation, Fort Leavenworth Kansas, 2001), 8.

⁴² PMC has been defined as —a registered company of nationals that specializes in operational capabilities (communications, Special Forces advisors, intelligence functions, control and command), military support operations (logistic support), military training (instruction and simulation programs). See Fred Schreier and Marina Caparini, *Privatising Security: Law, Practice and Governance of Private Military and Security Companies*, Geneva Centre for the Democratic Control of Armed Forces Occasional Paper No. 6, March 2005, 18, available at <http://www.dcaf.ch/Publications/Privatising-Security> (accessed October 1, 2015).

⁴³ Article 43(1) of Additional Protocol I. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, available at <https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=AF64638EB5530E58C12563CD0051DB93> (accessed September 22, 2015).

meaning of the Third Geneva Convention)⁴⁴, they are not categorized under the category of a mercenary. As manner of speaking, a mercenary is an individual who works intended for salary or a combatant appointed to work outside the country.⁴⁵ To see whether the personnel of PMSCs are mercenaries is very simple. If they fulfill the conditions given in Additional Protocol I or other conventions then they are considered mercenaries.

There are three documents in which a mercenary has been defined: Article 47 of the “First Protocol Additional to the Geneva Convention of 1949” (hereinafter “Additional Protocol I”), “1977 Organization of African Unity (OAU) Convention for the Elimination of Mercenarism in Africa”⁴⁶ and the — “1989 United Nations International Convention against the Recruitment, Use, Financing and Training of Mercenaries.”⁴⁷ Ban on the practice of mercenaries and their involvement in conflicts are the purposes of these conventions.⁴⁸

“The Additional Protocol I to the Geneva Conventions in Article 47”⁴⁹ suggests that an individual has to meet the six requirements to be nominated as a mercenary.⁵⁰ Several

⁴⁴ Article 4(A) of the 1949 Geneva Convention III, available at <https://www.icrc.org/ihl/WebART/375-590007?OpenDocument> (accessed September 22, 2015).

⁴⁵ Lindsey Cameron, *New standards for and by private military companies, in Non state actors as standard setters*, ed. Anne Peters et al (New York: Cambridge University Press, 2009), 123-124.

⁴⁶ This Convention was adopted on 3 July 1977 by the Organisation of African Unity in Libreville, available at <https://www.icrc.org/ihl/INTRO/485?OpenDocument> (accessed March 19, 2016).

⁴⁷ This Convention was adopted on 4 December 1989 by Resolution 44/34 of the United Nations General Assembly, available at <http://www.un.org/documents/ga/res/44/a44r034.htm> (accessed March 19, 2016).

⁴⁸ Gillard, *Business Goes to War*, 560-561.

⁴⁹ Article 47 of the Additional Protocol I to the Geneva Conventions of 1949 states, — Mercenaries: 1. a mercenary shall not have the right to be a combatant or a prisoner of war. 2. A mercenary is any person who: (a) is specially recruited locally or abroad in order to fight in an armed conflict; (b) does, in fact, take a direct part in the hostilities; (c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party; (d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict; (e) is not a member of the armed forces of a Party to the conflict; and (f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

⁵⁰ Cameron, *Private military companies*, 578.

authors, critics and analysts have debated⁵¹ that requirements given in the article are so inflexible due to which the idea of mercenary turns out to be imaginary.⁵²

Moreover if we look into the description given in API (Additional Protocol I) of mercenaries it eliminates citizens of the opposing state that is related to the clash, due to which personnel of Blackwater considered as U.S. nationals are not mercenaries.⁵³

Likewise, employees of private companies have to accomplish additional responsibilities and duties as they are not "specially recruited to fight in an armed conflict". The applicability of Article 47(a) is questionable⁵⁴.

Additionally the members of PMCs authoritatively involve equipped armies to provide services due to which provision of Article 47(e) is not linked⁵⁵. As F. Kalshoven described,

The effect of the definition is that the exception of Article 47 applies only to the members of a totally independent mercenary army which is not (in terms of Article 43(1) 'under a command responsible [to a party to the conflict] for the conduct of its subordinates.'⁵⁶

The issue of directly taking part in a conflict given in Article 47(b) devises a vital impact.

The study of Article 47 of Protocol I describes that:

⁵¹ Alexandre Faite, "Involvement of Private Contractors in Armed Conflict: Implications under International Humanitarian Law", *International Committee of the Red Cross*, 4:2 (Summer 2004), available at <https://www.icrc.org/eng/assets/files/other/pmc-article-a-faite.pdf> (accessed August 14, 2015).

⁵² Cameron, *New Standards for and By Private Military Companies*, 125.

⁵³ E.L. Gatson, "Mercenarism 2.0: The Rise of the Modern Private Security Industry and Its Implications for International Humanitarian Law Enforcement", *Harvard International Law Journal* 49:1 (Winter 2008), 233, available at http://www.harvardilj.org/wp-content/uploads/2010/09/HILJ_49-1_Gatson.pdf (accessed August 14, 2015).

⁵⁴ Article 47 of the Additional Protocol I, "2.A mercenary is any person who: (a) is specially recruited locally or abroad in order to fight in an armed conflict."

⁵⁵ Article 47 of the Additional Protocol I, "2.A mercenary is any person who: (e) is not a member of the armed forces of a Party to the conflict."

⁵⁶ Frits Kalshoven and Liesbeth Zegfeld, "Constraints on the Waging of War, An Introduction to International Humanitarian law", *International Committee of the Red Cross*, 3rd Edition, Geneva, (March 2001), 90, available at http://www.loc.gov/rr/frd/Military_Law/pdf/Constraints-waging-war.pdf (accessed August 23, 2015).

The increasingly perfected character of modern weapons, which have spread throughout the world at an ever-increasing rate, requires the presence of such specialists, either for the selection of military personnel, their training or the correct maintenance of the weapons. As long as these experts do not take any direct part in the hostilities, they are neither combatants nor mercenaries, but civilians who do not participate in combat.⁵⁷

A Mercenary under the UN mercenary conventions are persons who openly join warfare and transgress.⁵⁸ Different methods of participating in wrong doing lacking the actual presence and fighting the warfare are identified in UN convention.⁵⁹ Valuable point to notice is that states who are hiring or the states where PMSCs are present have not ratified to the convention as United Kingdom and United States are prominent in the list.⁶⁰

One of the argument is that PMSCs are hired by companies and governments to deliver military and security services.⁶¹ On the other hand, mercenaries are hired by non-state armed groups, aiming to destabilize the constitutional order of states.⁶² Members of PMSCs barely meeting the requirements as mercenaries would certainly provide way to inquire about their status under IHL whether they are qualified as civilians or combatants.

⁵⁷Y. Sandoz, Ch. Swinarski and B. Zimmermann, "Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949", *International Committee of the Red Cross*, (Geneva :Martinus Nijhoff Publishers, 1987), 579, available at www.loc.gov/rr/frd/Military_Law/pdf/Commentary_GC_Protocols.pdf (accessed August 23, 2015).

⁵⁸International Convention against the Recruitment, Use, Financing and Training of Mercenaries A/RES/44/34 72nd plenary meeting 4 December 1989 (UN Mercenary Convention) Entry into force: 20 October 2001, Article 3 of the UN Convention, available at <http://www.un.org/documents/ga/res/44/a44r034.htm> (accessed August 24, 2015).

⁵⁹Article 2 of the UN Convention stipulates that "Any person who recruits, uses, finances or trains mercenaries ... commits an offence for the purpose of the Convention, available at <http://www.un.org/documents/ga/res/44/a44r034.htm> (accessed August 24, 2015).

⁶⁰The lists of states that have ratified the UN Convention are available at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-6&chapter=18&lang=en (accessed August 24, 2015).

⁶¹ Schreier and Caparini, *Privatizing Security*, 20.

⁶² Ibid.

1.5 Growth of private military and security companies and the world wide lawful reaction

Although the mercenaries must have a distinction as of PMSCs, answers of the development of mercenaries to private military actors are subsequently given.

1.5.1 Prior to 1945: The Rule of Objectivity

Prior to 1945, a state that allowed the mercenaries on its land was believed to be in favour of aggression. Due to this situation an impartial state was considered to be in a conflict.⁶³

A state's common suffering is observed such as ultimately assisting a conflict from side to side activities of non-state actors. Now in modern day conflicts, people who take part in warfare having their contracts with PMSCs can convert their risks to fears.⁶⁴

This fear directed the implementation of domestic impartial laws restricting the illegal appointment of individuals in overseas militaries, as in a distinct "foreign enlistment laws", for instance the U.K. Foreign Enlistment Act of 1870, or in criminal code⁶⁵. In enlargement of laws, Article 4 of Hague Convention V of 1907 "Respecting the Rights and Duties of Neutral Powers and Persons in War on Land" banned mercenary employment nationwide.⁶⁶

⁶³ Christopher Kinsey, "International Law and the Control of Mercenaries and Private Military Companies", *Culture & Conflict*, 26 June 2008, available at <http://conflicts.revues.org/11502?lang=en#ftn5> (accessed August 26, 2015).

⁶⁴ For instance, South African has expressed such worries in regard to the war in Iraq. Cf. Benjamin Perrin, "Promoting compliance of private security and military companies with international humanitarian law", *International Review of the Red Cross*, 88:863, September (2006), 619.

⁶⁵ Swedish Penal Code, 1 January 1965, Chapter 19.

⁶⁶ Article 4 was reaffirmed in the U.N. GA Friendly Relations Declaration (1970), A/RES/25/2625, available at <http://www.un-documents.net/a25r2625.htm> (accessed August 25, 2015) and United Nations General Assembly Resolution 3314 (XXIX) (Definition of Aggression) was adopted by the United Nations General Assembly on December 14, 1974 by way of a suggestion to the United Nations Security Council, available at <https://www1.umn.edu/humanrts/instrree/GAres3314.html> (accessed August 25, 2015).

1.5.2 Post 1945: Reactions of U. N.

Afterward the Second World War, the prohibition of use of force in Article 2 (4)⁶⁷ under The U.N. Charter of 1945 did not discuss the issue of mercenaries' participation in warfare. Actions and numbers of mercenaries enlarged during the era of decolonization in the 1960s particularly in central African countries. In 1960s in Congo, mercenaries as Mad Mike Hore, Jacques Schramme and Bob Denard had fought a war.⁶⁸ Mercenaries' notion has universal significance, however they are affecting those African states who are fighting for freedom.⁶⁹

Lawful reactions regarding the use of force were restricted and at that time finally a demand from Security Council was made to the states to ban the enrolment of mercenaries on their land for toppling overseas government⁷⁰. Prohibition on the usage of mercenaries by U.N. General Assembly (GA) was made to the countries beside the lawful governments⁷¹.

The primary code of the GA Friendly Relations Declaration 2625 (1970)⁷², yet has no lawful obligation, forbids the mercenary practice. The use of mercenaries for "national liberation

⁶⁷ "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purpose of the United Nations." UN Charter Article 2, para. 4.

⁶⁸ Kinsey, "International Law and the Control of Mercenaries and Private Military Companies".

⁶⁹Ibid.

⁷⁰UN Security Council, Resolution 239 (1967) of 10 July 1967, S/RES/239 (1967), available at: <http://www.refworld.org/docid/3b00f28340.html> (accessed August 27, 2015) and UN Security Council, Resolution 241 (1967) of 15 November 1967, S/RES/241 (1967), available at: <http://www.worldlii.org/int/other/UNSC/1967/> (accessed August 27, 2015).

⁷¹ UN GA 96th plenary meeting, A/RES/40/25, 29 November 1985; UN GA resolutions 3103 (XXVIII) of 12 December 1973, 3314 (XXIX) of 14 December 1974 and 38/137 of 19 December 1983, as well as Security Council resolutions 405 (1977) of 14 April 1977, 419 (1977) of 24 November 1977, 496 (1981) of 15 December 1981 and 507 (1982) of 28 May 1982, in which the United Nations condemned "the recruiting and the use of mercenaries, in particular against developing countries and national liberation movements", available at <http://www.un.org/documents/ga/res/40/a40r025.htm> (accessed August 27, 2015).

⁷²U.N. GA Friendly Relations Declaration (1970), A/RES/25/2625, available at <http://www.un-documents.net/a25r2625.htm> (accessed August 27, 2015).

movements” and struggling for freedom was acknowledged as a criminal act by UN General Assembly Resolution 2465⁷³, hence labeling mercenaries as criminals.

1.5.3 1970s: Luanda Draft Convention and Additional Protocol I

In 1970s, there was a need of an International law to control mercenaries.⁷⁴ It is in this backdrop that the draft of Luanda Draft Convention on Mercenaries⁷⁵ was presented.

The citizens of states were stopped to join mercenary actions under state accountability, plus requirements on state obligation were incorporated intended for the hiring of mercenaries through government representatives.⁷⁶

Article 4 of the draft convention states “Mercenaries are not lawful combatants. If captured they are not entitled to prisoner of war status”.⁷⁷ Criticism has been done by professionals on Article 4 on disrespecting the “principle of equality of belligerents” and puzzling “jus in bello and jus ad bellum”⁷⁸.

Two conventions were implemented in 1977: First AP I merged Article 4 of “the Luanda Draft Convention”. Second was a local law the “OAU Convention for the Elimination of

⁷³U.N. GA 2465 (XXIII) Implementation of the declaration on the granting of independence to colonial countries and peoples 20 December 1968, available at <http://daccess-ods.un.org/TMP/2532858.55054855.html> (accessed August 27, 2015).

⁷⁴ Alexander Betts and Phil Orchard, *Implementation and World Politics: How International Norms Change Practice*, (U.S.A New York: Oxford University Press, 2014), 71.

⁷⁵ The Luanda Draft Convention on the Prevention and Suppression of Mercenaries was drafted because 13 people were accused of mercenary activity in Angola in 1976. 4 out of 13 accused were sentenced to death and the ones left were sentenced to long prison.

⁷⁶ Christopher Kinsey, “Challenging international law: a dilemma of private security companies”, *Conflict, Security & Development* 5:3 (December 2005), 274.

⁷⁷Draft convention on the prevention and suppression of mercenarism, Drafted by the International Commission of Inquiry on Mercenaries, in Luanda, Angola, June 1976, available at <https://www1.umn.edu/humanrts/instreet/mercenaryconvention.html> (accessed August 30, 2015).

⁷⁸Divisions under IHL are not prepared among members in battles created on their intention. Therefore, distinct provision for mercenaries in the ICRC draft for AP I are not made, ICRC Commentary to AP I Article 47 para. 1791, available at <https://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=FFC84B7639B26F93C12563CD00434156> (accessed August 30, 2015).

Mercenarism in Africa in which the Article 3 states “Mercenaries shall not enjoy the status of combatants and shall not be entitled to the prisoners of war status”. The description of mercenary is also given in detail under Article 1 of the same convention.

No prohibition on the practice or alteration was made on the laws of mercenaries however acknowledgment was made that legality of mercenary is argumentative under AP I.

1.5.4 1980s/1990s: U.N. Convention on Mercenaries and Termination of the Cold War

The growth of an international private military and security business and decreasing of several western armed forces was seen in 1990s.⁷⁹ The word ‘private military and security companies’ was used to distinguish them from customary mercenaries.

Actions in Angola and Sierra Leone are the dishonorable occurrences of PMSC engagements by two now non-operational companies, South African “Executive Outcomes” and U.K. “Sandline” as they conducted hostilities on the command of the government’s administration⁸⁰.

The International Convention against the Recruitment, Use, Financing and Training of Mercenaries (U.N. Mercenary Convention) is the newest mercenary phenomenon. The approval of this convention was made in 1989 but did not come into force till 2001 as several powerful countries still have not given their consent on it.⁸¹

⁷⁹ Shantanu Chakrabarti, “Growth and Implications of Private Military Corporations”, *Journal of Defence Studies*, available at http://www.idsa.in/jds/2_1_2008_GrowthandImplicationsofPrivateMilitaryCorporations_SChakrabarti (accessed March 19, 2016).

⁸⁰ David Isenberg, “The PMSC Perils of Peacekeeping”, *Global Policy Forum*, Huffington Post, February 15(2012), available at <https://www.globalpolicy.org/pmscs/51298-the-pmsc-perils-of-peacekeeping.html> (accessed August 30, 2015).

⁸¹ U.K., U.S., Germany, France and even Switzerland are in the list. The lists of states that have ratified the UN Convention are available at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-6&chapter=18&lang=en (accessed August 24, 2015).

Conclusion:

Legal status of Mercenaries and PMSCs are not the same as in organization, variety of facilities, and position of personnel. The description of 'mercenary' under Geneva Convention denotes single person. In the 1990s, though, private military activity started to become independent entity. Companies as Blackwater and MPRI are registered in the U.S., and Aegis and Armor Group are registered in the UK, are considered to be legal entities.⁸²

It shows that imposition of anything similar to mercenaries agreement through these companies can be done legally. The facility that is offered by customary mercenaries is to provide crowd on the combat zone. PMSCs deliver an extensive range of facilities, mainly the Armed Expert Corporations and the "Military Support Firms."⁸³

There is no progress in the study of the standing of PMC employees to determine whether they are entitled the status of mercenaries or not.⁸⁴ From a strictly formally approved study, it has been appeared that the answer to the question about the status of the individuals of PMSCs as mercenaries is not positive.⁸⁵ Internationally approved law on mercenaries do not apply on the personnel of PMSCs. As the organization of PMSCs are concerned it is essential to identify their status as combatant or non-combatant.⁸⁶

⁸² Nimka, "From Bosnia to Baghdad", 4.

⁸³ Ibid. Supreme, for example, provides catering, supply, and distribution of products from fuel to fruit, duty free shops, and quality control. MPRI provides training and consultancy services. Blackwater provides services including cargo, aviation mobility, and other transport including road construction, troop transport, ship logistics, and even recruitment.

⁸⁴ Juan Carlos Zarate, "The emergence of a new dog of war: Private international security companies, international law, and the new world disorder", *Stanford Journal of International Law*, 34 (Winter 1998), 20.

⁸⁵ Todd Milliard, "Overcoming post-colonial myopia: A call to recognize and regulate private military companies", *Military Law Review*, Vol 176 (June 2003), 2, available at <http://www.loc.gov/frd/MilitaryLaw/MilitaryLawReview/pdf-files/176-06-2003.pdf> (accessed March 19, 2016).

⁸⁶ L. Cameron, "Private military companies", 582.

In 2005, A United Nations Commission on Human Rights (UNCHR) working group on the use of mercenaries, determined that private security companies working in regions of armed conflict are involving in different mercenaries.⁸⁷

The draft of the International Convention on the Regulation, Oversight and Monitoring of Private Military and Security Companies⁸⁸ which confirms the opinion PMSC's notwithstanding having features related to mercenaries are certainly separate from them.

⁸⁷Jennifer K. Elsea, "Private Security Contractors in Iraq and Afghanistan: Legal Issues", Congressional Research Service, (January 7, 2010), available at <https://www.fas.org/sgp/crs/natsec/R40991.pdf> (accessed March 19, 2016).

⁸⁸ The Draft presented on 13 July 2009, available at <http://mgimo.ru/files/121626/draft.pdf> (accessed December 24, 2010).

Chapter 2: Outsourcing, Liabilities and Regulation of PMSCs in Armed conflicts

2.1 Introduction

Inquiries on the subject of ruling on 'non-state actors' are increased as the practice of private military companies by countries in armed conflict are growing. Under IHL, there should be an assurance by the states to guarantee jus in bello and implement related international law similarly towards private contractor employees if they are charged by tasks administered through international law.⁸⁹

Various apprehensions are increased due to hiring of PMCs regarding their authenticity and legality concerning handing over the tasks performed by states to private actors. Private contractor are used in Afghanistan and Iraq for global war on terror.⁹⁰ Certainly, private contractors had been working in South American and African states in inner clashes or else in the 'fight against drug trafficking'.⁹¹ The states are contracting out supreme tasks to PMCs that incites demand for a durable and solid international regulation for the actions taken by PMCs.⁹²

2.2 Regulative Principles in International Law

Some standards of international law are set regarding the services of PMCs. Keeping in mind those principles, states are not permitted to freely hire PMCs.

⁸⁹Alexander Kees, "Regulation of Private Military Companies", *Gottingen Journal of International Law*, 3:1 (2011), abstract.

⁹⁰ U.S military has used civilian contractor in combat zone since 1960, July 21, 2015, available at <http://www.your-poc.com/u-s-military-used-civilian-contractors-combat-zones-since-1960s/> (accessed September 5, 2015).

⁹¹Kees, "Regulation of Private Military Companies", 200.

⁹² The statements of the UN Working Group on the use of mercenaries, 'Guns for hire' (29 April 2010), available at <http://www.ohchr.org/EN/NewsEvents/Pages/Gunsforhire.aspx> (accessed September 1, 2015).

2.2.1 Detention Places

State organizations perform some specific roles using their mechanism. Under article 99 of the Fourth Geneva Convention, power of detention camps will be given to an officer in charge from armed services or public organization.⁹³ In Article 39 of the Third Geneva Convention, the ability to control prisoner of war cells and industry impartialities should be in control of an accountable officer of military services.⁹⁴

The organization must be under the supervision of trained and administered staff.⁹⁵ This shows that the presence of officers is compulsory on-site. They are not allowed to give these services to private entities lacking sufficient witnessing.

2.2.2 Piracy

The United Nations Convention on the Law of the Sea (UNCLOS) has applicability on the subject of disputed actions taken on the sea. Western governments have allowed to hire a "private navy" to maintain international armed forces as of the conflict against the robbery beside the shores of Somalia.⁹⁶ 'Right of self-defense' must consist to prevent instantaneous bandit attacks, and there are some limitations to the mission of PMCs by countries to achieve defensive tasks as they are usually done by army.

⁹³ Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, Article 99, available at <https://www.icrc.org/ihl/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5> (accessed September 5, 2015).

⁹⁴ Convention (III) relative to the treatment of prisoners of war, Geneva, 12 August 1949, Article 39: Every prisoner of war camp shall be put under the immediate authority of a responsible commissioned officer belonging to the regular armed forces of the Detaining Power. Such officer shall have in his possession a copy of the present Convention; he shall ensure that its provisions are known to the camp staff and the guard and shall be responsible, under the direction of his government, for its application.

⁹⁵ Ibid., Article 56 and 57,

⁹⁶ See Chahal Milmo, 'Insurance firms plan private navy to take on Somali pirates', *Independent news*, (28 September 2010), available at <http://www.independent.co.uk/news/world/africa/insurance-firms-plan-private-navy-to-take-on-somali-pirates-2091298.html> (accessed September 2, 2015).

These duties include specific to the right to call and enter into a vessel on the basis that the vessel exists to be involved in unlawful actions similar to piracy, equally the right to take hold of a vessel.⁹⁷ Fighting vessel will possibly approve those tasks⁹⁸, those actions define the ships have its place in the military under and authoritative command.⁹⁹

It is under an empowerment of government to allow extra ships to conduct those actions on the condition that those ships are obviously categorized under government's facility.¹⁰⁰ If any destruction or loss produced due to a random inspection, or a ship is confiscated unlawfully, the states are accountable for that.¹⁰¹ The states should carefully hire or work with PMCs due to this severe accountability rule.

2.2.3 Direct Participation in Hostilities

There are some limits exist to hire and control PMCs under IHL ambiguously. If the personals of PMSCs are not included in the military then they are thought to be as civilians.¹⁰² The personals are under the supervision of an army officer and answerable under a penal structure because of the need of this amalgamation.

As comparison to this , generally the guarantee of 'military companies' is related to the state merely from side to side agreements amongst individuals¹⁰³ resulting "commanders do not have direct control over contractors or their employees; only contractors manage, supervise, and

⁹⁷United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS), available at http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf(accessed September 5, 2015).

⁹⁸ Ibid., Article 107, 110 (5).

⁹⁹ Ibid., Article 29.

¹⁰⁰ Ibid., Article 107, 110 (5).

¹⁰¹ Ibid., Article 106, 110 (3).

¹⁰² Background Document Working Sessions VIII and IX: Individual Contractors and Civilian Employees, Expert Meeting on the Notion of "Direct Participation in Hostilities under IHL", ICRC, (Geneva, 23 to 25 October 2005), 3, available at <https://www.icrc.org/eng/assets/files/other/2005-06-background-doc-ws-viii-ix-icrc.pdf>(accessed September 10, 2015).

¹⁰³ For rare cases of a real incorporation of private persons into the armed forces see Congress of the United States, Congressional Budget Office, Logistics Support for Deployed Military Forces (2005), 60, available at <https://www.cbo.gov/publication/17395> (accessed September 2, 2015).

give directions to their employees”¹⁰⁴. Therefore, the mandatory commands to the personals of service provider cannot be given by army chief officers.

States are permitted to manage conflicts merely by armed forces, on the other hand states should not burden the companies for the conflicts they work freely and there is no penalizing for those workers that empowers states to impose obedience using IHL.¹⁰⁵Members of PMCs are not entitled to security in contradiction of risks rising out of armed actions if they directly participate in warfare as civilians.¹⁰⁶States should also consider that all the employees working under their command are answerable to an authoritative organization.

Article 43 of the Additional Protocol I states:

The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, 'inter alia', shall enforce compliance with the rules of international law applicable in armed conflict.

It shows that a lawful responsibility is attached to states to establish a disciplinary organization for armed groups .Breach of Arts 43, 86 and 87 Additional Protocol I to the Geneva Conventions can be produced if the cooperation with the guiding principle of international

¹⁰⁴Oxford Dictionaries Staff,*American International Law Cases 2009*, Volume 5, Fourth series(New York: Oxford University Press, 2009), 1793.

¹⁰⁵Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

¹⁰⁶ Article 51, Additional Protocol I.

humanitarian law are unable to be implemented therefore involve the international accountability of the state.¹⁰⁷

The meaning of the word “direct participation in hostilities” therefore establishes a restriction aimed at the practice of private military companies in armed conflicts. Although the point look as if it is broadly recognized,¹⁰⁸ the descriptions extremely not as clearer.

Generally the connection concerning safekeeping or maintenance purposes and fighting actions is not clearly defined. Agreement with public armed suppliers are done on the point that they will practice deadly control to safeguard properties and people.¹⁰⁹ Private military contractors remained permitted to do preventive actions throughout the invasion of Iraq, although holding armed weapons similarly to examine, rescue, and hinder nationals if it's essential for their welfare or stipulated in the agreement.¹¹⁰ As per US Army rules, these safety facilities do not establish the application of fundamentally parliamentary functions that possibly will cause a ‘direct participation in hostilities’.¹¹¹

2.2.4 The Obligation to use due care

States are under some limitations and boundaries to implement liabilities and privileges for the time of war and invading a country. States are under obligations to obey rules of IHL and IHRL

¹⁰⁷ Article 91, Additional Protocol I.

¹⁰⁸ See the opinion of the US Department of Defense, “Policy and Procedures for Determining Workforce Mix, Instruction 1100.22”, (12 April 2010), available at <http://www.dtic.mil/whs/directives/corres/pdf/110022p.pdf> (accessed September 2, 2015).

¹⁰⁹ For the United States see e. g. Defense Federal Acquisition Regulation Supplement, ‘Contractor Personnel Authorized to Accompany U.S. Armed Forces’ (DFARS Case 2005-D013), (16 June 2006), available at <http://www.gpo.gov/fdsys/granule/FR-2006-06-16/E6-9499> (accessed September 2, 2015).

¹¹⁰ Coalition Provisional Authority, ‘Memorandum 17: Registration Requirements for Private Security Companies (PSC)’ (26 June 2004), Annex A, para. 5 b. available at <http://www.iraqcoalition.org/regulations/> (accessed September 3, 2015).

¹¹¹ DFARS Case 2005-D013. See Ninth Report of the Foreign Affairs Committee, ‘Private Military Companies, Session 2001-02, Response of the Secretary of State for Foreign and Commonwealth Affairs’ (October 2002) 4, para. K, available at <http://www.publications.parliament.uk/pa/cm200102/cmselect/cmffaff/cmffaff.htm> (accessed September 3, 2015).

regarding their militaries. According to those rules it may be allowed to states to subcontract their tasks, however the strong organization of PMSCs is the extreme complex task to perform that is not permissible.

2.2.4.1 International Humanitarian Law

Common Article 1 to the four Geneva Conventions puts a duty on the states and their army leaders to compel any individual for the respect of the convention. It is a responsibility of states to regulate all individuals if they directly participate in hostilities during and afterwards the armed conflict. Beginnings of remedial and strict operations and to suppress gaps of the laws of war are mentioned in Article 86¹¹². Article 87 usually involves that the leaders are capable of taking uninterrupted actions and can give required instructions when needed and the states have opportunity to see the data when they accuse private individuals with the tasks administrated by IHL.¹¹³

In Hague Regulations it is mentioned that it is the duty of the states to proceed all actions to reestablish and guarantee public demand and security in invaded zone.¹¹⁴ The assurance of the wellbeing, safety and happiness of the residents is also necessary.¹¹⁵

As entities are used to protect and facilitates some residences by a conquering authority so it is essential as well to guarantee the respect for international law for the duties which are

¹¹² Additional Protocol I, Article 86: "1. The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol which result from a failure to act when under a duty to do so."

¹¹³ Additional Protocol I, Article 87: "1. The High Contracting Parties and the Parties to the conflict shall require military commanders, with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions and of this Protocol."

¹¹⁴ Art. 43, Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907, available at <https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=3741EAB8E36E9274C12563CD00516894> (accessed September 15, 2015).

¹¹⁵ M. Sassòli, 'Legislation and Maintenance of Public Order and Civil Life by Occupying Powers', 16 *European Journal of International Law* (2005) 6:4, 661-663, available at <http://ejil.org/pdfs/16/4/313.pdf> (accessed September 3, 2015).

obligatory on the conquering authority. It may be said that the protection of the citizens is threatened due to the use of PMCs because of their regulation.

Private military companies should not use extreme power and they should be liable to their actions. As seen in an incident that took place on March 31, 2004, an Iraqi boy had a pamphlet that stated in wrecked English "Fallujah, the cemetery of the Americans". Citizens were annoyed and harmed the burned bodies of American contractors later trapping their group.¹¹⁶ By way of an outcome of responsibilities, there should be an institution that allows states to successfully and strongly manage all their employees together with the workers of private military companies.

Duty to insure the respect for IHL must be satisfied by the states. Deficiency of disciplinary measures, absence of observation methods, also inadequate law application can be hindrance in the way of safeguarding the rules of international humanitarian law.¹¹⁷

2.2.4.2 Human Rights Law

Human rights law is doing its part to observe the implementation of some actions done by private bodies to insure the integrity, and to stop abuses to human rights. Personals that are involved in the supervision, questioning or conduct of any person exposed to some procedure of detention, their training and teaching is essential under the UN Convention against Torture.¹¹⁸ Furthermore an organized analysis of every measure used for the supervision and conduct of individuals

¹¹⁶Brian Bennett, "Victims of an Outsourced War", Thursday, Mar. 15, 2007, available at <http://content.time.com/time/magazine/article/0,9171,1599682,00.html> (accessed September 3, 2015).

¹¹⁷ See Swiss Federal Council, *Report by the Swiss Federal Council on Private Security and Military Companies*(2 December 2005), available at http://psm.du.edu/media/documents/national_regulations/countries/europe/switzerland/report_swiss_2005_private-security-and-military.pdf(accessed September 3, 2015), paras 2.5, 5.2-5.4.

¹¹⁸ Article 10, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx> (accessed September 15, 2015).

exposed to any method of apprehension is necessary to stop situations where the breaches of the convention is committed.¹¹⁹

States need to introduce actual “ongoing monitoring systems” if private security providers are assigned to deal with the persons in custody or imprisonment for the accomplishment of these purposes.¹²⁰The application of “full supervisory authority”¹²¹is necessary over private security companies. As regards to Art. 10 of the ICCPR (treatment of persons deprived of their liberty), emphasize has be given by the Human Rights Committee that states need to form and “effective mechanism of day-to-day monitoring”¹²² as to fulfil their requirements in the Convention, if tasks declining in the extent of Art. 10 are limitedly available to private organizations.

2.3 Compensation for the illegal conducts of PMSCs under IHL and HRL

Government representatives from 15 African countries assembled in Pretoria, South Africa from 23 to 26 August 2016 for the 16th Annual Regional Meeting on International Humanitarian Law (IHL) co-hosted by the Department of International Relations and Cooperation of the Government of South Africa and the International Committee of the Red Cross (ICRC). The representatives reflected the challenges IHL is facing globally, as well as attacks against health

¹¹⁹ Ibid., Article 11.

¹²⁰ For problems with private contractors that have been charged with interrogation and translation services in US prisons in Iraq see ‘AR 15-6 Investigation of the Abu Ghraib Prison and 205th Military Intelligence Brigade (Fay Report)’ (2004), available at <http://fl1.findlaw.com/news.findlaw.com/hdocs/docs/dod/fay82504rpt.pdf> (accessed September 4, 2015).

¹²¹ Committee against Torture, Summary record of the first part of the 424th meeting: United States of America, UN Doc. CAT/C/SR.424, 9 February 2001, para. 34, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0a2c63bdcfec877c12569f800392171?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0a2c63bdcfec877c12569f800392171?Opendocument)(accessed September 4, 2015).

¹²² International Covenant on Civil and Political rights, Human Rights Committee, Concluding observations of the Human Rights Committee: New Zealand, UN Doc. CCPR/CO/75/NZL, 7 August 2002, para. 13, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.75.NZL.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.75.NZL.En?Opendocument) (accessed September 3, 2015).

care services, targeting of civilians, and the predicted damage to the national property as well as continuous attacks against the personnel who are aiding injured people during war.¹²³

2.3.1 Where the provisions of IHL are violated

It is necessary for States to create compensation under Articles 3¹²⁴ of Hague Convention IV 1907, Articles 131¹²⁵ of Geneva Convention III, Article 148¹²⁶ of Geneva Convention IV and Article 91¹²⁷ of Additional Protocol I that if in an International Armed Conflict provisions of IHL are violated, damages are sanctioned to the State.

According to these provisions, the ICRC has established that it is the responsibility of customary law that the States are duty bound to make reimbursement.¹²⁸ Article 91 of AP I, which pays the similar phrasing such as Article 3 of the Hague Convention, mentions merely towards “acts committed by persons forming part of its armed forces.” On the other hand, Article 91 is not suggesting to bind the accountability for action that can be allowed to the State.

Similarly the issue rises as whether to ask for restitution is restricted to give monetary compensation under IHL. Under Article 91, “Party to the conflict...shall, if the case demands, be

¹²³Joint Statement by the Republic of South Africa and the International Committee of the Red Cross on the occasion of the 16th Annual Regional Seminar on International Humanitarian Law, 26 August 2016, available at <https://www.icrc.org/en/document/joint-statement-republic-south-africa-and-international-committee-red-cross-occasion-16th> (accessed August 28, 2016).

¹²⁴ Article 3. “A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces”.

¹²⁵ Article 131. “No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article”.

¹²⁶ Article 148. “No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article”.

¹²⁷ Article 91. “A Party to the conflict which violates the provisions of the Conventions or of this Protocol shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces”.

¹²⁸ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol. I: Rules, (New York: Cambridge University Press 2005), Rule 150, 537-550, available at <https://www.icrc.org/eng/resources/documents/publication/pcustom.htm> (accessed October 7, 2015).

liable to pay compensation.” As seen through the implementations by states to sort out damages are not restricted to reimbursement.

Under Principle IX of the Basic Principles and Guidelines on the Right to a Remedy and Serious Violations of International Humanitarian Law and compensation for Victims of Gross Violations of International Human Rights Law this responsibility incorporates a liability to offer contentment, compensation, recovery as well as reward.¹²⁹

Another question that arises in mind is that whether an individual has a right to bring claim for the breach of IHL? The old opinion is that only the states could claim compensations but the situation has developed.

An individual’s right of entitlement have been acknowledged by Law court in Greece and Italy,¹³⁰ by way of international treaties. Commission of the Eritrea-Ethiopia authorizes that whichever of these two Countries to take allegations contrary to the other for its peoples.¹³¹ Similarly, permission to states is given by the United Nations Reimbursement Commission to perform in place of representatives for the entitlements of their peoples.¹³² It is said in the contemporary Palestinian Wall by ICJ that land must be given back to the person from

¹²⁹Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx> (accessed October 7, 2015).

¹³⁰Prefecture of Voiotia v. Federal Republic of Germany, AreiosPagos (Supreme Court), Greece, Case No. 11/2000 (288933), Judgement of 4 May 2000, available at <http://www.internationalcrimesdatabase.org/case/3247> (accessed October 10, 2015); Ferrini v. Federal Republic of Germany, Italian Court of Cassation, Judgment of 11 March 2004, by Andrea Bianchi, in *The American Journal of International Law*, 99:1 (January 2005), pp. 242-248, available at http://www.jstor.org/stable/3246103?seq=1#page_scan_tab_contents (accessed October 11, 2015).

¹³¹ The Agreement between the Government of the Federal Democratic Republic of Ethiopia and the Government of the State of Eritrea (Peace Agreement) 12 December 2000, Article 5 establishes the Claims Commission; Article 5(8) specifies that “claims may be submitted by either party on its own behalf or on behalf of its own nationals”.

¹³² The United Nations Claims Commission (UNCC) was established to address claims arising out of Iraq’s invasion and occupation of Kuwait. David D. Caron, “The United Nations Compensation Commission for Claims Arising out of the 1991 Gulf War: The Arising Prior to Decision”, *J. Transnational law & policy*, 14:2 (Spring 2004), 321, available at <http://scholarship.law.berkeley.edu/facpubs/175> (accessed October 12, 2015).

whom the land was occupied that was seized by Israel to make the parting fence, identifying that compensation need to be given to the targets of IHL.¹³³

Under some states people do have a right to compensation if they are the victims of IHL breaches however cannot apply for the entitlement as applicable provisions of domestic law including IHL were not self- implementing. Where the states have breached the provisions of IHL they are under obligation to create compensation.

2.3.2 Where violations of IHRL are committed

It is true that the armed conflicts are dealt under IHL but there are some circumstances in which applicability of IHRL is also observed. The common recognition on the other hand was that the relevancy of both IHL and IHRL were seen merely in the rules of non-international armed conflict (NIAC). The idea that both possibly will be relevant for the duration of an international armed conflict (IAC) was only evolving concerning doctrinal connection.¹³⁴

The European Court of Human Rights in 1995 explored the opportunity of extraterritorial applicability of IHRL in the circumstances of an IAC. Therefore, in the case *Loizidou v. Turkey*¹³⁵; it was held that:

Bearing in mind the object and purpose of the Convention, the responsibilities of a Contracting Party may also arise when as a consequence of military action—whether lawful or unlawful—it exercises effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set forth in the

¹³³ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, *I.C.J. Reports 2004*, Summary of the Advisory Opinion of 9 July 2004, paras. 153, 163, available at <http://www.icj-cij.org/docket/files/131/1677.pdf> (accessed October 12, 2015).

¹³⁴ Iain Scobbie, "Principle or Pragmatics? The Relationship between Human Rights Law and the Law of Armed Conflict", *Journal of Conflict & Security Law* 14 (2010), 451.

¹³⁵ Available at http://www.mfa.gov.cy/mfa/properties/occupiedarea_properties.nsf/loiz_main.txt (last accessed October 14, 2015).

Convention derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration.¹³⁶

Under the ECHR, this manner was recognized by the court recognized for human rights liabilities of states even in cases of armed invasion.¹³⁷

Relationship of IHL and IHRL in IAC was discussed by the International Court of Justice in 1996, a first strong judgement in the Nuclear Weapons advisory opinion¹³⁸ where it was stated:

The protection of the International Covenant on Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency. Respect for the right to life is not, however, such a provision. In principle, the right not arbitrarily to be deprived of one's life applies also in hostilities. The test of what is an arbitrary deprivation of life, however, then falls to be determined by the applicable *lex specialis*, namely, the law applicable in armed conflict which is designed to regulate the conduct of hostilities.¹³⁹

Where IHL and IHRL are associated with each other, the International Criminal Law is also linked with them. The report of the International Law Commission stated on the Impact of Human Rights Law on General International Law that:

International human rights law, in the sense of the present report, includes not merely human rights law *stricto sensu*, but any international norm capable of conferring rights and

¹³⁶Scobbie, "Principle or Pragmatics?", 451.

¹³⁷ Khan, "Involvement of the US civilian contractors", 33.

¹³⁸ Ibid., 451-452.

¹³⁹ Bertrand G. Ramcharan, *Human Rights Protection in the Field* (Leiden: Martinus Nijhoff Publishers, 2006), 3.

duties directly on individuals regardless of nationality, including under international humanitarian law and international criminal law.¹⁴⁰

The basis of this preface was to determine that the personnel of PMSCs are not only dealt under IHL but they are also in IHRL.

Bearing in mind the applicability of IHL to actions taken by PMSCs, application of IHL is seen only circumstances of expanded armed conflict; although when there is an expanded armed conflict and refusal from governments comes for the presence of a conflict.¹⁴¹ Moreover the human rights structure permits a broader variety of liability method.¹⁴²

There might occur several problems for the implementation of IHRL to private corporations and individuals. A vast portion of HR liabilities is reduced unworkable in times of armed conflict by advantage of the derogation provisions existing in practically all human rights mechanisms.¹⁴³ It is noteworthy for the accountabilities of PMSCs as the facilities asked by them are usually for conflict centered regions.

The idea of extraterritoriality is another flaw. It strictly restricts the applicability of local HRL mechanisms on the other hand is relevant due to the international working character of the PMC.¹⁴⁴ If the representatives of states are the private contractors then the

¹⁴⁰ Robert Cryer, "The Interplay of Human Rights and Humanitarian Law: The Approach of the ICTY", *Journal of Conflict and Security Law*, 14:3 (2009), 513.

¹⁴¹ Andrew Clapham, "Human Rights Obligations of Non-State Actors in Conflict Situations", *International Review of the Red Cross* 863 (2006), 491.

¹⁴² *Ibid.*, 503.

¹⁴³ For example in time of public emergency which threatens the life of the nation, Article 4(1) of the ICCPR.

¹⁴⁴ Hin-Yan Liu, "Leashing the Corporate Dogs of War: The Legal Implications of the Modern Private Military Company", *Journal of Conflict & Security Law* 15 (2010), 162.

state is accountable that influence severely into the options of extraterritorial IHL obligation for PMC transferring states.¹⁴⁵

The Montreux Document provides appearance to the settlement that IHL and IHRL has an application on PMSC's.¹⁴⁶The Montreux Document forces PMSCs to act in accordance with IHL and IHRL and rules set by the document.¹⁴⁷

2.4 State Accountability

The International Law Commission's (ILC) Draft Articles on state responsibility¹⁴⁸, conclude under which conditions and situations a state is to be considered to break the rules of international law. Article I of the ILC's Draft Articles relating to responsibility of State for its internationally wrongful acts states that the international responsibility of that State is involved where there is an internationally unlawful act is committed by the State.

2.4.1 Liability of State that contract with private military companies or hire contractors

There is a regulatory gap which states take advantage of to avoid accountabilities concerning the activities of the private contractors hired by them.¹⁴⁹ As stated before, employees of PMSCs are dealt under IHL and IHRL which gives right to the states to make them accountable for their illegal acts.

Article 8 of the ILC draft articles on State Responsibility states that "The conduct of a person or group of persons shall be considered an act of a State under international law if the

¹⁴⁵ Ibid.

¹⁴⁶ Addressing the use of private security companies at the international level, *Institute for Security Studies*, available at <http://idl-bnc.idrc.ca/dspace/bitstream/10625/41432/1/129208.pdf> (accessed October 14, 2015).

¹⁴⁷ Ibid.

¹⁴⁸ Draft Articles on Responsibility of States for Internationally Wrongful Acts, With Commentaries 2001, available at http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf (accessed November 11, 2011).

¹⁴⁹ Carsten Hoppe, "Passing the Buck: State Responsibility for Private Military Companies", *The European Journal of International Law*, Vol. 19(2008), 989.

person or group of persons is in fact acting on the instructions of, or under the direction or control of that State in carrying out the conduct.”¹⁵⁰

Activities executed through the private companies in Iraq and in prison of Abu Ghraib, some accusations found has important impact as to the what extent the states are accountable on behalf of the actions performed by private actors that amounts to infringement to international humanitarian law.¹⁵¹

The International Law Commission of the United Nations completed its manuscript “Draft Articles on Responsibility of States for Internationally Wrongful Acts” after fifty years of struggles On 26 July 2001.¹⁵² These articles were offered in the direction to induct whether the violation of international law is attributed towards a state by the 53th meeting of General Assembly of the United Nations.

It is clearly specified in Article 3 of the Fourth Hague Convention and Article 91 of API¹⁵³ that the breach of international humanitarian law done through organizations of the state or by way of well their armed forces, it amounts to the liability of the state. Article 3 of the 1907 Fourth Hague Convention states, “a belligerent party is responsible for all acts committed by persons forming part of its armed forces”¹⁵⁴. It is mentioned in the Article 5 of the Draft Articles

¹⁵⁰ Available at <http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf> (accessed January 22, 2012).

¹⁵¹Alexandre Faite, “Involvement of Private Contractors in Armed Conflict: Implications under International Humanitarian Law”, *Defence studies*, 4:2, (Summer 2004), 8, available at <https://www.icrc.org/eng/assets/files/other/pmc-article-a-faite.pdf> (accessed October 19, 2015).

¹⁵² Draft Articles on State Responsibility States for Internationally Wrongful Acts, International Law Commission, (hereinafter, “the Draft Articles”), U.N. Document A/56/10, 30 October 2001, available at <http://www.refworld.org/docid/3ddb8f804.html> (accessed September 22, 2015).

¹⁵³ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

¹⁵⁴Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907, available at <https://www.icrc.org/ihl/INTRO/195> (accessed September 22, 2015).

that the accountability of the states exists not merely restricted to their organizations,¹⁵⁵ however liability goes to the actions performed by the organizations maintained completely or partially via government, and entities acting in competency specified to them by the government.¹⁵⁶

Under international humanitarian law, the personnel of PMCs employed by states must be accordingly skilled.¹⁵⁷ The burden is on the states of all the activities done by the militaries. If there is any breach of international law done as a result of private contractors performing in a public capacity, it will be the accountability of the state as keeping in mind whatever is the individual's level of liability. It is the duty of the government to proceed necessary actions once it knows that there is a breach of international law in an overseas state by its private military company¹⁵⁸.

2.4.2 The responsibility of other states

There are some duties and liabilities given to the states by international humanitarian law where the PMSCs or the employees of PMSCs are working apart from the accountability of the state who appoints them.¹⁵⁹ Article 1 common to the Geneva Conventions states that the states have come to an agreement to assure the honour directed at international humanitarian law.¹⁶⁰ Yet this

¹⁵⁵Draft Articles, *ibid.*, Article 4.

¹⁵⁶Draft Articles, *ibid.*, Article 5 states: "The conduct of a person or entity which is not an organ of the State under Article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in that particular instance".

¹⁵⁷Article 87(2) of Additional Protocol I requires commanders to ensure that members of the armed forces under their command are aware of their obligations under the Geneva Conventions and the Protocol. Those PMC/PSC employees who can be considered members of the armed forces would obviously fall within the scope of this provision.

¹⁵⁸Report of the expert meeting on private military contractors: status and state responsibility for their actions, organized by the University Centre for International Humanitarian Law, Geneva, 29–30 August 2005, available at http://www.geneva-academy.ch/docs/expert-meetings/2005/2rapport_compagnies_privees.pdf (accessed September 22, 2015).

¹⁵⁹Gillard, "Business goes to war", 557

¹⁶⁰*Ibid.*

pledged is implicitly given by all state to apply and encourage high regard for law¹⁶¹. It is mandatory for states to act lawfully against people who are suspected of criminalities and provide opportunities to them for impartial trial also provide equality.¹⁶²

The hosting states are the states whose land private military companies perform their actions. Some laws are specifically made for the instructions of these companies by hosting states namely Sierra Leone in Iraq.¹⁶³

The functional permit by supervisory organizations is given to those companies or workers satisfying the criteria and expected to sustain the respect for international humanitarian law.¹⁶⁴

The state whose nationals are the PMSCs will be helped by the controlling organization to control and manage the activities of their companies in a foreign country. Currently, it is South Africa only which has acknowledged laws specifically relating to the actions of its companies and residents out of the country.¹⁶⁵ Some limited states deal with the situations of armed facilities abroad in their weaponries trade regulatory laws.¹⁶⁶ This monitoring structure is proceed by UK into thoughtfulness to give consent to it.¹⁶⁷

¹⁶¹ Frits Kalshoven, "The undertaking to respect and ensure respect in all circumstances: From tiny seed to ripening fruit", *Yearbook of International Humanitarian Law*, Vol. 2, December 1999, abstract, available at <http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=4044608&fileId=S1389135900000362> (accessed September 22, 2015).

¹⁶² Gillard, "Business goes to war", 557.

¹⁶³ Coalition provisional authority memorandum number 17: Registration Requirements for Private Security Companies, 26 June 2004, available at http://www.trade.gov/static/iraq_memo17.pdf and Section 19, National Security and the Central Intelligence Act 2002, available at <http://www.sierra-leone.org/Laws/2002-10.pdf> (accessed September 22, 2015).

¹⁶⁴ Gillard, "Business goes to war", 559.

¹⁶⁵ Raenette Talijsaard, "Implementing South Africa's Regulation of Foreign Military Assistance Act" in *Private Actors and Security Governance*, Alan Bryden and Marina Caparini (eds.), (Geneva, Switzerland: Geneva Centre for the Democratic Control of Armed Forces (DCAF), 2006), 176, available at www.dcaf.ch/content/download/35317/525851/file/bm_yb_2006.pdf (accessed October 1, 2015).

¹⁶⁶ Schreier and Caparini, *Privatising Security*, 126.

¹⁶⁷ Christopher Kinsey, "Regulation and control of private military companies: The legislative dimension", *Contemporary Security Policy*, 26:1 (2005), abstract, available at <http://www.tandfonline.com/doi/abs/10.1080/13523260500116083> (accessed October 1, 2015).

2.5 The Criminal Accountability of Private Military and Security Company Personnel: Difficulties in Application and Jurisdiction

An appropriate medium should be provided for the hearing of the cases where the private military personnel are held responsible. A proper and permanent institution where direct liability of an individual for war crimes, genocide and crimes against humanity can be dealt.

As the jurisdiction of serious crimes is given under the Rome statute of International criminal law¹⁶⁸ and the cases of 'sufficient gravity' are permissible,¹⁶⁹ the question arises that who will resolve the cases linked with private military personnel. Universal jurisdiction is not applied to the crimes that are not severe violations of Conventions or Additional Protocol I, the jurisdiction can be specified from any state over these crimes regardless of the nationality of the guilty party, place of the crime, or whether somewhat more connection with the accusing state can be proven.

A permission to take legal actions against international crimes is given to states by international law, however definite situations are marked for them. International crimes which extent to grave breaches of the Geneva Conventions or Additional Protocol I are subject to mandatory universal jurisdiction.¹⁷⁰ The *aut dedere aut iudicare*¹⁷¹ principle assists the state to

¹⁶⁸Article 1: "An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute". ICC Statute, available at http://legal.un.org/icc/statute/99_corr/cstatute.htm (accessed October 16, 2015).

¹⁶⁹ Art. 17(1): "The Court shall determine that a case is inadmissible where: (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution; (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute; (c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3; (d) The case is not of sufficient gravity to justify further action by the Court." Ibid.

¹⁷⁰Article 49, 50 of Geneva Convention I; Article 50, 51 of Geneva Convention II; Article 129, 130 of Geneva Convention III; Article 146, 147 of Geneva Convention IV; Article 85(1) of AP I. This obligation, according to the Customary International Humanitarian Law Study, also exists under customary law.

inspect and act against or expel individuals alleged of taking part in the serious violations of the Geneva Conventions and Additional Protocol I¹⁷². Serious violations comprise torture, intentional killing, and affecting excessive pain or severe injury, illegal extradition,¹⁷³ these crimes are possibly done by PMCs employees under the circumstances of IAC.

Practically it is hardly seen that the persons are deported or inquired who are alleged for the serious violations.¹⁷⁴ Weak states are hesitant to implement their jurisdiction over PMCs on political surroundings. The instruments used for the implementation by criminal law for states are incompatible, causing freedom of PMC workers.¹⁷⁵

The US War Crimes Act¹⁷⁶ may be applied against PMC employees overseas if they have US nationality. Even though the mistreatments at Abu Ghraib are debatably punishable crimes in the Act but has not been enforced on the PMC personnel. The absence of implementation of the existing laws shows that the real action is taken by national system if ready and have enough sources to handle overseas personnel of PMCs if they execute international crimes.

2.6 Attempts to make rules

International law provides unbalanced structure for the services of PMSCs. There are no comprehensive rules for the solution of unambiguousness, complications of error, employment, application, and regulatory prosecution of PMSCs. No stable progress is seen concerning a

¹⁷¹ This doctrine means “The obligation to extradite or prosecute”. There is a Final Report of the International Law Commission adopted by the International Law Commission at its sixty-sixth session in 2014.

¹⁷² Article 85, 11, 86, 88 of AP I.

¹⁷³ Article 147 of Geneva Convention IV.

¹⁷⁴ Henckaerts and Doswald-Beck, Customary International Humanitarian Law, 573, available at <https://www.icrc.org/eng/resources/documents/publication/pcustom.htm> last accessed October 7, 2015.

¹⁷⁵ Chia Lehnardt, “Individual Liability of Private Military Personnel under International Criminal Law”, *The European Journal of International Law*, 19:5, (2008), 1031, available at (accessed October 1, 2015).

¹⁷⁶ 18 U.S. Code § 2441 - War crimes, available at <https://www.law.cornell.edu/uscode/text/18/2441> (accessed October 17, 2015); The War Crimes Act does not forbid entirely worldwide criminalities. For instance, an assault that is not causing grave physical harm doesn't come under protection of this act and aggressive actions upon individuals in US supervision or regulation not increasing to the legislative definition of harsh or inhuman behavior.

particular law as of international point of view. Although the UN organization encourages a powerful guidelines but somewhat hesitant regarding the use of private military companies, an emphasize on non-obligatory mechanisms are given by national and private procedures, that basically mention advance means of rule to the national level.

2.6.1 The United Nations: An established Guideline

The private military companies are debated in United Nations under the similar circumstances as of mercenaries. It is unlawful to transfer the primary roles performed by the state to a private body. A Special Rapporteur was set up to interrogate the usage of mercenaries by the former Human Rights Commission in 1987. In 1990s, the growing use of private military companies raised. It was the view of the Special Rapporteur that it is a breach of state authority, international human rights law and humanitarian law if the private companies performs independent roles.¹⁷⁷

“A 2010 draft convention on private military and security companies”¹⁷⁸ founded on the principle that “inherent state functions” need not be achieved by private entities.¹⁷⁹ The convention gives a comprehensive sense of whatever must exist in the place of ‘inherent state function’. This contains among other things, “direct participation in hostilities, waging war and/or combat operations, taking prisoners, law-making, espionage, intelligence, knowledge transfer with military, security and policing application, use of and other activities related to

¹⁷⁷ Enrique Bernales Ballesteros, Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, commission on human rights 53rd session, UN Doc. E/CN.4/1997/24, 20 February 1997; UN Doc. E/CN.4/1998/31, 27 January 1998, UN Doc. E/CN.4/1999/11 13 January 1999, UN Doc. E/CN.4/2001/19, 21 December 1999 and UN Doc. E/CN.4/2003/15, 16 December 2002.

¹⁷⁸ Draft of a possible Convention on Private Military and Security Companies (PMSCs) for consideration and action by the Human Rights Council, Annex to the Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, Chairperson/Rapporteur: José Luis Gómez del Prado, UN Doc. A/HRC/15/25, 2 July 2010, available at <http://www2.ohchr.org/english/issues/mercenaries/> (accessed September 4, 2015).

¹⁷⁹ Ibid, Article 4 (3): “No State Party can delegate or outsource inherently State functions to PMSCs”.

weapons of mass destruction and police powers, especially the powers of arrest or detention including the interrogation of detainees and other functions that a State Party considers to be inherently State functions”.¹⁸⁰

Prohibition under Article 9 on delegation and outsourcing is as well placed by the convention on additional operations. The convention generates an idea agreeing that “each state party bears responsibility for the military and security activities of PMSCs registered or operating in their jurisdiction, whether or not these entities are contracted by the state”¹⁸¹.

In conclusion, the draft recommends compulsions on states to launch authorizing and observing methods also operational state law making methods¹⁸², for the assurance of legitimate responsibility of private individuals and lawful objects¹⁸³.

Therefore, for those states that go beyond the existing principles of international law the draft convention comprises very extensive duties and limitations. As it limits the contracting of private entities, there is a clash of opinion by some states that the hiring of private contractors is a supreme choice of a state. It is uncertain that the practices for the usage of private contractors might be considered secretly as they are used to secure diamond trading then again to protect services of conquering power.

2.6.2 Unofficial Procedures: The ICRC, Non-Obligatory Mechanisms and Codes

Swiss government and the International Committee of the Red Cross made a beneficial development in 2006. Under numerous parliamentary assemblies partaking states confirmed the “Montreux Document on Pertinent International Legal Obligations and Good Practices for States

¹⁸⁰ Ibid, Article 2 (i),

¹⁸¹ Ibid, Article 4(1), 26

¹⁸² Ibid, “PART III. Legislative regulation, oversight and monitoring”, 30-35

¹⁸³ Ibid, PART IV. State Responsibility to impose criminal, civil and/or administrative sanctions on offenders and provide remedies to victims, 35-39.

related to Operations of Private Military and Security Companies during Armed Conflict”¹⁸⁴. The document is not enforced tool and no struggle for the progress of lawful principles is seen in it on the other hand it establishes the present “pertinent international legal obligations”¹⁸⁵ and to supply to the states with intentional “good practices” relating to the selection, contracting and monitoring of private military and security companies¹⁸⁶. It is exposed to worldwide institutions and states. Endorsement is done by 36 states till February 2011¹⁸⁷.

In the document the duties and responsibilities under human rights, international humanitarian law, and international criminal law could be applied to private bodies.¹⁸⁸ It also explains law making and executive ways for the appliance of those according to international criteria. There are some actions that are to be performed by the states and they ought not to be transferred to other entities. Chapter A (2) mentions those functions:

Contracting States have an obligation not to contract PMSCs to carry out activities that international humanitarian law explicitly assigns to a State agent or authority, such as exercising the power of the responsible officer over prisoner of war camps or places of internment of civilians in accordance with the Geneva Conventions.¹⁸⁹

¹⁸⁴ Annex to the Letter dated 2 October 2008 from the Permanent Representative of Switzerland to the United Nations addressed to the Secretary General, UN Doc. A/63/467-S/2008/636, 6 October 2008, available at https://www.eda.admin.ch/content/dam/eda/en/documents/aussenpolitik/voelkerrecht/Montreux-document-4_en.pdf (accessed September 4, 2015).

¹⁸⁵ Ibid, part I.

¹⁸⁶ Ibid, part II.

¹⁸⁷ States which have “communicate[d] their support for this document” (last paragraph of the preface of the document) are: Afghanistan, Albania, Angola, Australia, Austria, Bosnia and Herzegovina, Canada, Chile, China, Cyprus, Denmark, Ecuador, France, Georgia, Germany, Greece, Hungary, Iraq, Italy, Jordan, Liechtenstein, Macedonia, Netherlands, Poland, Portugal, Qatar, Sierra Leone, South Africa, Spain, Sweden,

¹⁸⁸ Annex to the Letter, UN Doc. A/63/467-S/2008/636, part I chapter C. 9-10.

¹⁸⁹ Ibid, part I chapter A(2), 7.

The opinion varies visibly as of the comprehensive description of limited state actions suggested in the 2010 UN draft convention.¹⁹⁰ It is also similarly correct to the amount where the states are allegedly liable for the transgression of the personnel of PMCs.

Contracting States have an obligation to provide reparations for violations of international humanitarian law and human rights law caused by wrongful conduct of the personnel of PMSCs when such conduct is attributable to the Contracting States in accordance with the customary international law of State responsibility.¹⁹¹

The key features of the part II of the document are to choose corporations and their personnel to determine their experiences and education.¹⁹² Furthermore, the agreement's position must certify regard for relevant national and international law plus involve an actual meaning of the command.¹⁹³ In conclusion, an operational observing organizations must be active when implementing the agreement in addition "criminal and civil accountability" have to be offered by those organizations.¹⁹⁴

Later in 2010, Swiss government presented a 'code of conduct for private security companies' founded on the Montreux Document.¹⁹⁵ 70 companies approved to the charter till November 2010.¹⁹⁶ To conclude, several private steps have been taken in this regard. Particularly unions of the private safety service have a firm concern in expecting parliamentary methods of state through implementing intended codes of behavior. Those codes of behaviour are, e. g., in the

¹⁹⁰ Ibid, part I chapter D, 10.

¹⁹¹ Ibid, chapter A. (8), 8.

¹⁹² Ibid, Part 2, Chapter A. II: "Procedure for the selection and contracting of PMSCs", III: "Criteria for the selection of PMSCs", 13-15.

¹⁹³ Ibid, Part 2, Chapter A. IV. Terms of contract with PMSCs, 15.

¹⁹⁴ Ibid, Part 2, Chapter A. V. Monitoring compliance and ensuring accountability, 16

¹⁹⁵ Swiss Confederation, 'International Code of Conduct for Private Security Service Providers'(ICoC)- a process aimed at companies, (9 November 2010), available at <http://business-humanrights.org/en/conflict-peace/special-initiatives/initiatives-on-private-military-security-companies/international-code-of-conduct-for-private-security-service-providers-icoc-a-process-aimed-at> (accessed September 5, 2015).

¹⁹⁶ Among them companies like Xe (formerly Blackwater), Aegis Group, Control Risks Group, DynCorp International.

United Kingdom, the British Association of Private Security Companies (BAPSC) marked a “Charter” that comprises a few simple standards to which fellow companies intend to obey.¹⁹⁷The Australian Security Industry Association Limited (ASIAL)¹⁹⁸ and International Stability Operations Association (ISOA) presented some similar charters and code of behavior of ISOA offers associate corporations using moral values¹⁹⁹.

Conclusion

Some policies are made for the hiring of private military companies before and after the armed conflicts at national levels. But these policies comprises simple codes that cannot be dealt internationally. There is a need of creating an international obligatory mechanism to regulate PMSCs. It is not the absence of laws but the lack of implementation of the available international laws.

Chapter 3: Direct and Indirect participation in Hostilities

Under Common Article 3 of the 1949 Geneva Conventions, the concept of direct participation is established from the exclusion on attacking “persons taking no active part in the hostilities”. The phrase ‘direct part in hostilities’ is not defined in IHL.

¹⁹⁷ The Charter is available at <http://www.bapsc.org.uk/> (accessed May 4, 2011).

¹⁹⁸ ASIAL, ‘ASIAL Code of Professional Conduct’ (24 February 2011), available at <http://www.asial.com.au/Codeofconduct> (accessed September 5, 2015).

¹⁹⁹ Swiss Confederation,(ICoC) - a process aimed at companies.

Merely taking part in hostilities doesn't amount direct participation but the individual loses protection from attack as of its effect. It is necessary to make a distinction between "indirect" and "direct" participation.²⁰⁰

3.1 Significance of direct participation of private military contractors in hostilities

Under Article 50 of AP I, individuals are called civilians if they are not members of the armed forces.²⁰¹ If private contractors are categorized as civilian then they are secluded against direct attacked "unless and for such time as they take a direct part in the hostilities"²⁰². If a person only carries arms it does not amount to direct participation in hostilities. Using arms may come in the general illegal movement.

Inter-American commission of Human Rights in situation linked to case in La Tablada occurred in Argentina states that civilians come to be lawful target whether they take part independently or in a group but only for the time while they are taking direct part in combat.²⁰³

Amusingly, most of the security companies have eliminated themselves from the meaning of mercenary; the reason is that they do not take direct part in hostilities. However, under international humanitarian law, direct participation is not confined to the situations that the

²⁰⁰ ICRC Commentary to Article 51.3, "There should be a clear distinction between direct participation in hostilities and participation in the war effort. The latter is often required from the population as a whole to various degrees. Without such a distinction the efforts made to reaffirm and develop international humanitarian law could become meaningless. In fact, in modern conflicts, many activities of the nation contribute to the conduct of hostilities, directly or indirectly; even the morale of the population plays a role in this context." ICRC, Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949.

²⁰¹ AP I, Article 50: "Definition of civilians and civilian population: A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 A (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian."

²⁰² This rule is provided for in Article 51 (3) of AP I for international armed conflicts and Article 13 (3) of additional Protocol II for non-international armed conflicts.

²⁰³ Jean-Marie Henckaerts and Louis Doswald-Beck, *Customary International Humanitarian Law, Vol. I* (Cambridge: Cambridge University Press, 2005), 21.

individuals are concerned in military operation or persons are equipped to take lively part in warfare actions.²⁰⁴

Taking direct part in fighting does not constitute organizing a ware house, foodstuff facilities or permanent work²⁰⁵. Argument starts here that the protection availed by private contractors might lose it if they are involved in delivery of weaponries and other arm material, planning strategies and they are considered as civilians under international humanitarian law. According to A.P.V.Rogers: "Taking a direct part in hostilities must be more narrowly construed than making a contribution to the war effort and it would not include taking part in arms production or military engineering works of military transport".²⁰⁶

Generally, the basic method to make distinction in warfare is that the civilians are precluded from attack. Dissimilar to combatants, who has a duty to attack in every step with the exception of "hors de combat"²⁰⁷. International humanitarian law gives privilege to civilians "unless for such time as they take a direct part in the hostilities."²⁰⁸ Yet, the immunity is lost under Conventions and Protocols from strike if civilians take direct part in hostilities.²⁰⁹ So when the private contractors are categorized as civilians and directly participate in hostilities then they are unable to get safety.

It is a violation of IHL if a civilian is directly targeted when he is not taking part in hostilities.²¹⁰ The question of what constitute direct participation implemented on personals of PMSCs and civilian in a similar mode. An issue is usually raised that PMSCs performs their

²⁰⁴ Faite, *Involvement of Private Contractors in Armed Conflict*, 7.

²⁰⁵ Y. Dinstein, *The Conduct of Hostilities Under the Law of International Armed Conflict*, (Cambridge: Cambridge University Press, 2004), 27-28.

²⁰⁶ A.P.V. Roger, *Law on the Battlefield*, (Manchester: Manchester University Press ,1996), 8.

²⁰⁷ They cannot take part in combat if they have given up, are sick, injured or stranded, or have been arrested.

²⁰⁸ Article 51 of AP I and Article 13. 3 of AP II.

²⁰⁹ Article 51.3, AP I.

²¹⁰ F. Kalshoven and L. Zegveld, *Constraints on the Waging of War* (Geneva, ICRC March 2001),p.129.

actions in defense and that does not amount to direct participation. This should be kept in mind that there is no dissimilarity among 'offensive or defensive operation' under IHL.²¹¹ As PMSCs are in Iraq since 2003 to safeguard armed forces weaponries. Defending those army objects comes in the notion of direct participation.²¹²

The US Department of Defense gave a new mandate which proposed of regulation of the activities performed by PMSCs workers also impose responsibility for those who directly participate in hostilities.²¹³ PMSCs are not merely appointed for armed facilities however similarly used for other actions for instance manufacturing etc. that makes these rules insufficient.²¹⁴

3.2 Does Safeguarding and providing security amount to direct participation?

PMC and PMSCs both can carry out the actions performed by the security guards that needs exceptional care and might come into the category of direct participation or not under the circumstances of armed conflicts. Two inquiries need to be observed: first is the services provided for protection by the private company is related to army purpose or not, second what ways are occupied by employees of private companies when the violence occurred.

According to Article 52 (2) of AP I that is related to international and non-international armed conflicts, "attacks shall be limited strictly to military objectives". The Article adds that:

Insofar as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and

²¹¹ Article 49(1) of Additional Protocol I, which states that "'' [a]ttacks'' means acts of violence against the adversary, whether in offense or in defense."

²¹² Roger, *Law on the Battlefield*, 8.

²¹³ Department of Defense Instruction No. 3020.41 (3 October 2005) on "Contractor Personnel Authorized to Accompany the U.S. Armed Forces", available at https://fas.org/irp/doddir/dod/j3020_41.pdf (accessed October 20, 2015).

²¹⁴ Cameron, "Private military companies", 593.

it stand to be directly participating in the hostilities.²¹⁹ If private contractors abstain themselves to fire back in case of an attack then they should be awarded protection as given to civilians.²²⁰

The question is what would be the consequences if the private contractors fire back in case of an attack? An issue regarding private contractors acting in self-defense still continue to exist. Obviously this is a gray area that should be evaluated according to the circumstances. As using a force in self-defense would not be comprehended as direct participation, on the other hand the perimeter concerning defensive and offensive actions is weak.

3.3 Legal consequences of civilian participation in an armed conflicts

During the past time, civilians took part in combat through foodstuff, and accommodations and manufacturing and delivering arms.²²¹ As actions taken by civilians happened to be away from the combat zone that is why limited numbers actually participated in the war.²²²

Over the latest years, the situations related to conflicts have been changed. Instead of carrying armed activities in the battleground, they are continuously conducted in residential area for example Gaza City, Grozny or Mogadishu. This is the reason why civilians are connected to the conflict.²²³

As the blurred division of civilian and a member of armed forces produced a doubt due to growing participation of civilians in fighting and they exist to be the lawful military object. The fundamental standard of division in the conduct of hostilities is that the civilians are protected

²¹⁹ Faite, *Involvement of Private Contractors in Armed Conflict*, 9.

²²⁰ *Ibid.*

²²¹ Direct participation in hostilities: questions and answers, ICRC (2009), available at <https://www.icrc.org/eng/resources/documents/faq/direct-participation-ih-faq-020609.htm> (accessed October 24, 2015).

²²² *Ibid.*

²²³ *Ibid.*

from attack. Conversely, this safeguard is taken away from them for the time when they directly participate in hostilities under conventions and protocols.²²⁴

From 2003 to 2008 , after six years of professional debates, inquiries and research, " Interpretive Guidance on the Notion of Direct Participation in Hostilities under IHL "was published by the ICRC , the objectives of this document is to simplify the sense and significances of direct participation in hostilities under international humanitarian law (IHL).²²⁵ "Interpretive Guidance" is not published to alter the rules and laws available on IHL but to simplify and analyze them. Although the Interpretive Guidance exists not to be officially enforced instrument but the ICRC expects that it will have influence to States, non-State actors, experts and researchers similarly and eventually civilians will have benefit to get security as of the risks of war.²²⁶

Issue of the personals of PMCs regarding direct participation in hostilities as civilians is that their penalty will be same as of a mercenary and the criminal legal method will possibly be applied to them. This is not dealt under a distinct crime of mercenarism. Furthermore, employees will be astonished to see that they have given no immunity if they directly participate in hostilities as they are not labelled as mercenaries. There should be a supervisory contexts that must force companies to appoint people to disclose their theoretically defenseless lawful standing.²²⁷

Article 45.1 of AP I and Article 51.3 of AP II mentions particular category of cases are mentioned for those civilians who take direct part in hostilities under international and non-

²²⁴ Cameron, "Private military companies", 590.

²²⁵Clarifying the notion of direct participation in hostilities, *ICRC* (2009), available at <https://www.icrc.org/eng/resources/documents/feature/2009/direct-participation-ihl-feature-020609.htm> (accessed October 24, 2015).

²²⁶ Direct participation in hostilities, *ICRC* (2009).

²²⁷ Cameron, "Private military companies", 592.

international armed conflict. According to these articles an immunity provided to a civilian under IHL regarding protection will be availed by him except for the time when he participate directly in hostilities.²²⁸ It also derives that the civilians just like combatants may be attacked when they are participating in a conflict.²²⁹

Civilians participating directly in hostilities need to obey the laws of IHL as can be liable for the criminalities of warfare. Civilians acting oppose to individuals and entities secured against direct attack, to seize, hurt or murder an enemy using perfidious methods amounts to breach of IHL. As doing these actions civilian make an enemy think that he eligible for the safety against direct attack as a civilian which possibly will specified as a perfidy.²³⁰

3.4 Constitutive elements of direct participation in hostilities

Particular actions done by people amount to the manners of fighting among parties to the conflict gives the concept of direct participation in hostilities.²³¹ Two fundamental elements form direct participation in hostilities, 'hostilities' and 'direct participation'. The term 'hostilities' denotes that mutual help by parties to an armed conflict to means and methods of combat²³² and 'participation' denotes participation by a person in these hostilities.²³³ It depends on the nature and amount of the participation of people that what acts amount to direct or indirect participation.²³⁴ Direct participation indicates an aggressive action and causes deprivation of security. On the other hand indirect participation may help in assisting war however no direct

²²⁸ Françoise Bouchet-Saulnier, *The Practical Guide to Humanitarian Law*, edited and translated by Laura Brav and Camille Michel (UK: Rowman & Littlefield Publishers, 2013), 54.

²²⁹ *Ibid*, 60

²³⁰ Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law, Adopted by the Assembly of the International Committee of the Red Cross on 26 February 2009, 90:872 (December 2008), p.1046, available at <https://www.icrc.org/eng/resources/documents/article/review/review-872-p991.htm> (accessed October 23, 2015).

²³¹ Saulnier, *The Practical Guide to Humanitarian Law*, 61.

²³² Article 35(1) of API, Article 22 of Hague Regulation 1907.

²³³ Andrew Clapham and Paola Gaeta, *The Oxford Handbook of International Law in Armed Conflict*, (UK: Oxford University Press, 2014), 25; See Articles 43 (2), 45 (1) and (3), 51 (3), 67 (1) (e) of AP I and 13 (3) of AP II.

²³⁴ *Ibid*.

damage is given to the individuals of adverse party and also does not amount to loss of security.²³⁵

There is no particular definition of “direct participation in the hostilities”²³⁶ under IHL. However the interpretations on Additional Protocol I explain that “direct participation means acts of war which by their nature or purpose are likely to cause actual harm to the personnel and equipment of the enemy armed forces.”²³⁷

The word ‘direct participation in hostilities’ found in AP I and AP II to the Geneva conventions 1949 so this applies to international and non-international armed conflict. It is important to formulize what are the components that amount to direct participation in hostilities. There are some essential standards to meet the requirement for the direct participation in hostilities.

“1.The act must be likely to adversely affect the military operations or military capacity of a party to an armed conflict or, alternatively, to inflict death, injury, or destruction on persons or objects protected against direct attack (threshold of harm); 2. There must be a direct causal link between the act and the harm likely to result either from that act, or from a coordinated military operation of which that act constitutes an integral part (direct causation); 3. The act must be specifically designed to directly cause the required threshold of harm in support of a party to the conflict and to the detriment of another (belligerent nexus).”²³⁸

²³⁵ Ibid.

²³⁶ See Article 51(3) of the Protocol Additional to the Geneva Conventions and Relating to the Protection of Victims of International Armed Conflicts 1977 (Additional Protocol I) and Article 13(3) the Protocol Additional to the Geneva Conventions and Relating to the Protection of Victims of Non-International Armed Conflicts 1977 (Additional Protocol II). The phrase is also used in Articles 43(2), 45(1) and (3), 47(2)(b) and (c), 67(1)(e), 77(2) and (3) of Additional Protocol I and Article 4(1) and (3)(c) and (d) of Additional Protocol II. The phrase has been declared to be customary international law by the Israeli High Court of Justice in *Public Committee Against Torture in Israel v Israel* 46 ILM 375 (2007) (Targeted Killing Case) at paragraph 30.

²³⁷ Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, op.cit., § 1944, 618.

²³⁸ Interpretive Guidance, ICRC (2009), 1016.

Article 13.3 of AP II also have an element of direct participation. Civilian will lose protection when he takes part in hostilities.²³⁹

3.5 What conduct amounts to direct and indirect participation in hostilities?

Actions performed by Individuals that directly causes death, injury, or destroy the adversary's army infrastructure amounts to directly participating in hostilities and the main purpose behind all this is to support one party and instigate harm to the other.²⁴⁰

There are some examples of directing military harm to another party that comprises arresting, hurting or murdering army employees; injuring armed entities; constraining or troubling armed organization, interrupting language and announcement, creating obstacle to paths or intruding the control of locating system sites.²⁴¹ Intrusion by electronic means through computer systems used by army and communicating planned aiming understanding for a particular occurrence are as well cases of direct participation. Airplanes or jet that works without a man, automatic missile, remote controlled setups, time fixed weaponry also come into the category of direct participation in hostilities as they inflict direct injuries to the adversary.²⁴²

Examples of an indirect participation in hostilities include delivery and manufacturing of arms, building of passages, groundworks, and economic, governmental and administrative funding.²⁴³

It is difficult to establish a difference between "direct" and "indirect " participation. For instance, if a civilian truck driver supply bullets or missiles to a place of bombardment that is a basic part of a war so it means he is directly participating in hostilities. Nevertheless, carrying

²³⁹ Article 13 (3) of AP I: "Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities".

²⁴⁰ Direct participation in hostilities, *ICRC* (2009).

²⁴¹ Interpretive Guidance, *ICRC* (2009), 1020.

²⁴² *Ibid.*

²⁴³ *Ibid.*

arms in a truck particularly for the purpose to help army and delivering far from the battle area is also related to the direct participation. Even though a truck full of weapons stands to be a lawful target but driving it will not constitute direct participation.²⁴⁴

All the Intense actions taken in an armed conflict does not come into the category of direct participation in hostilities. Some examples that do not amount to direct participation in hostilities are civil protests, a bank burglary not linked to the conflict, or an occasion where a number of fugitive people block a street and securing oneself from attacks.

3.6 Legal protection of combatant and civilians directly participating in hostilities: Limitations put on the use of force in direct attack

General rule says that civilians are protected against an attack unless they directly participate in hostilities and members of armed forces or organized armed groups are usually considered as lawful military targets except they become hors de combat or surrender.²⁴⁵

The use of permitted amount of force need not to go beyond that is essentially required to achieve a lawful military purpose in the usual circumstances keeping in mind the limits enforced by international humanitarian law on particular ways of war.²⁴⁶

If a civilian directly participate in hostilities and a member of an armed group performs in warfare, does not mean that there is no law available on them but right to wage war against the enemy is limited.²⁴⁷ An action taken by army in the circumstances of armed conflict need to act in accordance with the appropriate valid laws of IHL.

²⁴⁴ Ibid., 1024.

²⁴⁵ Ibid., 1039.

²⁴⁶ Ibid., 1040

²⁴⁷ Article 35 (1) of AP I: "In any armed conflict, the right of the Parties to the conflict to choose methods and means of warfare is not unlimited".

Some laws consist of the restraint or prevention of certain weaponries and the ban of ways and procedures of warfare to provide unessential harm or excessive misery (maux superflus).²⁴⁸ There is no provision in IHL that explicitly states the amount of force allowed to use against lawful military targets. As an alternative, IHL only abstains persons to directly participate in hostilities as of “acts of violence against the adversary, whether in offence or in defence”.²⁴⁹ Even if the safeguard is not provided to a special class of people against offensive or defensive actions still it is not equal to legitimate authorization to murder those individuals.

As there are lack of rules, some provisions should be regulated on the how much amount is allowed to use force against military objects according to the basic values of military need and humankind.²⁵⁰

The advantage of limiting the actions will rise the capacity of a party to the conflict to regulate the situations and region where the army actions are taking place.²⁵¹ For instance, a citizen is sitting in an eating place without arms and communicating planned intelligence activity via wireless means of communication aiming to attack air force, this action possibly considered as directly participating in hostilities.²⁵²

According to IHL, if a rebellious army leader of a systematized armed group for the time being throws away his arms, and distinguishing emblems to spend time with families to the area

²⁴⁸ The prohibition of methods involving the denial of quarter (Art. 40 AP I; Art. 23 (d) of the Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907 and the resort to treachery or perfidy (Article. 23 (b) of the Hague Convention IV ; Article. 37 of AP I).

²⁴⁹ Article 49 (1) of AP I.

²⁵⁰ Yves SANDOZ' Christophe Swinarski Bruno Zimmermann, Commentary on the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), *International Committee of the Red Cross*, (Martinus Nijhoff Publishers: Geneva 1987), 1389.

²⁵¹ Interpretive Guidance, 1042.

²⁵² *Ibid.*, 1043

that is governed by the government he will not redeem civilian security against direct attack.²⁵³

However, government possibly will be capable to arrest that officer conditional on the situations.

Weaponless citizens are directly participating in hostilities if they are intentionally making interruption in the way of government to chase a rebel group. It would be reasonable to put a small amount of damage can be used by armed forces instead of direct attack to eliminate the hindrance made by individuals.²⁵⁴

Conclusion

A “right” to participate directly in hostilities is given to the employees of the armed forces that is associated to an IAC members in a *levée en masse*²⁵⁵ by IHL.²⁵⁶ This right does not infer privilege to perform acts that are forbidden under IHL, however only offers combatants with freedom from local trial for actions that are in harmony with IHL.²⁵⁷

There is no prohibition or permission given to civilians or PMSCs to take direct part in hostilities. So, when civilians stop taking direct part in hostilities or a person stop to act as a PMC then the civil protection against direct attack is redeemed. Yet, if there is a lack of war immunity then there is no freedom from trial under national criminal law on the behalf of the actions taken in direct participation or when they belonged to an armed group. All people whether civilians, members of an armed group or PMSCs are under an obligation to respect the

²⁵³ Ibid.

²⁵⁴ Ibid.

²⁵⁵ *levée en masse*, Crimes of War Project, available at <http://www.crimesofwar.org/thebook/levee-enmasse.html> (accessed December 17,2010). The term *levée en masse*, which first became an international legal term at the Brussels Conference in 1874, must be distinguished under the laws of war from an insurrection by a people against its own national government. The *levée en masse* is defined as taking place against foreign troops either invading or occupying a country, restricting the definition to one involving national self-defense. It refers especially to situations in which the public spontaneously takes up what weapons it has and, without having time to organize, resists the invasion.

²⁵⁶ Art. 43(2) AP I (except medical and religious personnel).

²⁵⁷ On the contrary, there is no protection from trial under international or national criminal law for the breaches of IHL given to combatant.

rules of IHL and may be accountable for the warfare criminalities and breach of international criminal law.²⁵⁸

Chapter 4: International world coping with Private Military and Security Companies

The privatization of warfare is an emerging concept in today's world. Many transnational organizations hire the services of armed forces to perform numerous tasks. However, this concept is not new in bygone era the non-state actors are used to hire the services of mercenaries.

²⁵⁸ Interpretive Guidance, 1042.

As stated in United Nations Report of the Working Group on the Use of Mercenaries to the Human Rights Council that a noteworthy growth of PMSCs has been seen mainly in Western European and North American countries and specially in the United States and the United Kingdom in the last twenty years.²⁵⁹ Now these companies work in zones of low-intensity armed conflict such as Iraq, Afghanistan, Colombia and some other countries such as Pakistan and Africa. The call for personal safety and safeguard of property has massively increased globally due to privatization of warfare internationally.²⁶⁰ The Present chapter aims to highlight the countries where PMSCs are working.

4.1 Afghanistan

The Congressional Research Service (CRS) and the Government Accountability Office (GAO) in their latest reports demonstrate that Pentagon is incapable of determining the purpose of increased private contractors in Afghanistan.²⁶¹ According to David Francis of the Fiscal Times, more than 108,000 private contractors are present in Afghanistan.

In 2013, Obama is quoted to have said, “America’s war in Afghanistan will be over” also announcing termination of “combat operations” by the end of 2014. However approximately 10,000 American groups continued to stay in Afghanistan as instructors in 2015.²⁶²

²⁵⁹ José Luis Gomez del Prado, UN General Assembly “Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination”, Human Rights Council, Seventh Session, Agenda item 3, A/HRC/7/7, 9 January 2008, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/100/75/PDF/G0810075.pdf?OpenElement> (accessed March 16, 2015).

²⁶⁰ Herbert Wulf, “Reconstructing the Public Monopoly of Legitimate Force”, in *Private Actors and Security Governance*, A. Bryden, M. Caparini (eds.), DCAF(2006), 93, available at www.dcaf.ch/content/download/35317/525851/file/bm_yb_2006.pdf (accessed March 16, 2016).

²⁶¹ Aubrey Bloomfield, 108,000 Private Contractors Are in Afghanistan and We Have No Idea What They're Doing, June 05, 2013, available at <http://mic.com/articles/46621/108-000-private-contractors-are-in-afghanistan-and-we-have-no-idea-what-they-re-doing#.BPOYHoeI1> (accessed March 27, 2016).

²⁶² Ali Gharib, Obama pledged to stop the Afghanistan war, but its end is nowhere in sight, Thursday 15 October 2015, available at <http://www.theguardian.com/commentisfree/2015/oct/15/obama-afghanistan-war-end-nowhere-in-sight-troops> (accessed March 27, 2016).

4.1.1 David Passaro's case

The case of David Passaro is one of the most important case because he was the only CIA contractor charged for torturing a prisoner and the only case of any private contractor being accused before a US Federal Court²⁶³ for instigating the death of a civilian. Passaro case started in 2003, where a local farmer Abdul Wali was being constantly tortured during interrogation on suspicion of being behind a rocket fire on a US military base at Asadabad, Afghanistan.²⁶⁴

After three days of questioning and frequently being hit with a metallic flashlight and kicked by David Passaro, Abdul Wali died.²⁶⁵ No autopsy was made.²⁶⁶

On 17th August, 2006 under the 2001 Patriot Act²⁶⁷ the North Carolina Federal District Court found Passaro guilty and convicted him of an assault only due to lack of proof concerning the death of Abdul Wali.

Section 804 of Title VIII of the Act offers a method which may be used for accusing civilians who committed serious violations. The text of Section 804 is as follows:

With respect to offenses committed by or against a national of the United States as that term is used in section 101 of the Immigration and Nationality Act- (A) the premises of United States diplomatic, consular, military or other United States Government missions or entities in foreign States, including the buildings, parts of buildings, and land appurtenant or ancillary thereto or used for purposes of those missions or entities, irrespective of ownership; and (B) residences in foreign States and the land appurtenant

²⁶³United States v. David F. Passaro, available online at <http://caselaw.findlaw.com/us-4th-circuit/1086927.html> (accessed March 26, 2016).

²⁶⁴CIA Lawsuits: U.S. vs. David Passaro, available at http://www.expose-the-war-profiteers.org/CIA/Personnel/david_passaro/profile.htm (accessed March 26, 2016).

²⁶⁵ Researcher CQ, *Issues in Terrorism and Homeland Security: Selections from CQ Researcher* (California: SAGE Publications, 2010).

²⁶⁶ Marnie O'Neill, Jailed CIA interrogator describes torturing a prisoner to death, *news.com.au*, April 23, 2015, available at <http://www.news.com.au/lifestyle/real-life/jailed-cia-interrogator-describes-torturing-a-prisoner-to-death/news-story/a23184bfc16061be4559e768b6cfc676> (accessed March 26, 2016)

²⁶⁷ Available at <http://www.law.cornell.edu/uscode/text/18/7> (accessed November 18, 2015).

or ancillary thereto, irrespective of ownership, used for purposes of those missions or entities or used by United States personnel assigned to those missions or entities.²⁶⁸

It is clear that there is no immunity given to a civilian for violating law during armed conflict. David Passaro is the sole precedent for putting a private contractor to trial.

This authority has been implemented against David Passaro which is the sole precedent for accusing private contractor. Due to this accountability, there is a possibility to take actions against private contractor if they commit breaches of law.²⁶⁹

In August 2006, Passaro's conviction was made initially of eight years but later it was reduced to seven years. Although Passaro is a free man now but this case is an evident that the federal court has jurisdiction of a trial against an individual who commits any violation of law abroad.²⁷⁰

4.1.2 US v. Drotleff and Cannon

May 5, 2009, a vehicle accident in Afghanistan developed this case. Two contractors Christopher Drotleff and Justin Cannon from Blackwater opened fire at an automobile hitting its driver, passenger and a pedestrian. The pedestrian and passenger later died. Later on these two contractors gave statements to Army investigator during incident investigation claiming that they acted in self-defense. They both returned to United States.

The Government accused them of criminal charges under the MEJA, which gives jurisdiction to national courts over persons who commit crimes even though employed by the

²⁶⁸ Ibid.

²⁶⁹ Michael N. Schmitt and Jelena Pejic, eds., *International Law and Armed Conflict: Exploring the Faultlines: Essays in Honour of Yoram Dinstein* (Leiden: Martinus Nijhoff Publishers, 2007), 389.

²⁷⁰ UNITED STATES v. PASSARO, United States Court of Appeals, Fourth Circuit, UNITED STATES of America, Plaintiff-Appellee, v. David A. PASSARO, Defendant-Appellant, Nos. 07-4249, 07-4339, Decided: August 10, 2009, available online at <http://caselaw.findlaw.com/us-4th-circuit/1086927.html> (accessed March 26, 2010).

Department of Defense in a foreign country. The conviction was made against both Drotleff and Cannon for an unintentional killing of the car passenger.²⁷¹

4.2 Pakistan

Whether we deny it or not but this is the reality that Pakistan is in the state of war within some specific parts of the country. Under one report it is stated that the personnel of Blackwater are engaged in an underground plan in Pakistan which aims killings of suspected members of Al Qaeda and Taliban organization.²⁷² It may be a possibility that the members of Blackwater are involved in abuses of human rights.

Some past happenings have revealed that Backwater is not the sole company directing actions in Pakistan. The Raymond Davis case evidences that private contractors exist and have quite successfully evaded prosecution for violation of HR law. Furthermore, it was reported in the New York Times that C.I.A used Shamsi base in Pakistan for functioning of drones.²⁷³

The question as to the responsibility of such acts however, remains a tricky one. There is no doubt as to the liability of the private contractors, the question is whether it would be the American authorities which would be held responsible for the commission of such acts under the principle of superior and command responsibility or will it be the Pakistani Government, for allowing such operations within its territory? This answer to a large

²⁷¹UNITED STATES OF AMERICA, Plaintiff-Appellee,v. CHRISTOPHER A. DROTTLEFF, Defendant-Appellant.Nos. 11-4677, 11-4744, United States Court of Appeals, Fourth Circuit, available at <http://iisonline.net/us-v-drotleff-court-of-appeals-4th-circuit-2012/> (accessed March 26, 2016).

²⁷²Jeremy Scahill, The Secret US War in Pakistan, *The Nation*, November 23, 2009, available at <http://www.thenation.com/article/secret-us-war-pakistan> (accessed February 24, 2012). The report also states, —The Blackwater operatives also assist in gathering intelligence and help direct a secret US military drone bombing campaign that runs parallel to the well-documented CIA predator strikes, according to a well-placed source within the US military intelligence apparatus.

²⁷³ James Risen And Mark Mazzetti, “C.I.A. Said to Use Outsiders to Put Bombs on Drones”, *The New York Times*, (August 20, 2009),available at <http://www.nytimes.com/2009/08/21/us/21intel.html> (accessed April 17, 2016).

extent depends upon Pakistan's secret —Joint Special Operations Command contracts with the CIA.²⁷⁴

There are some provisions of laws on national level regarding this issue. Under the Article 256 of the constitution of Pakistan 1973, "private armies forbidden"²⁷⁵, there is a punishment up to 5 years for private soldiers and those who join them under 'Private Armies Prohibition Act'. Section 121 of the Pakistan Penal Code expresses the offence that "Whoever wages war against Pakistan, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment for life shall also be liable to fine." Such non-state actors are announced as rivals by the Pakistan Army Act (PAA).²⁷⁶

4.2.1 Raymond Davis Case

The Raymond Davis case created vital "diplomatic storms" that placed Pak US political affairs to test. It is the leading example of private contractors engaged in conduction activities in Pakistan.

On 27th of January 2011, US Consulate employee Raymond Davis killed two Pakistanis in Lahore on busy Road and a car came to rescue him that killed third Pakistani citizen. Raymond claimed that he acted in self-defense.²⁷⁷ Recovery of weapon from his custody made his position questionable for government and citizens. This gave an impression to common people that US is weakening Pakistan by organizing a secret agent system.

Questions were raised regarding his identity and status after the incident. Issue of exception under international law also revolved on a heated discussion. The US government

²⁷⁴ Scahill, "The Secret US War in Pakistan".

²⁷⁵ The Constitution of Pakistan 1973, Article 256: "Private armies forbidden.-No private organisation capable of functioning as a military organisation shall be formed, and any such organisation shall be illegal."

²⁷⁶ Ahmer Bilal Soofi, "Military Employment: Constitutional Provisions and Relevant Laws", Hilal English, (November 2013), available at <http://hilal.gov.pk/index.php/layouts/item/627-military-employment-constitutional-provisions-and-relevant-laws> (accessed March 29, 2016).

²⁷⁷ Asif Chaudhry, US official guns down two motorcyclists in Lahore, *Dawn News*, (January 28, 2011), available at <http://www.dawn.com/2011/01/28/us-official-guns-down-two-motorcyclists-inlahore.html> (accessed April 17, 2016).

emphasized that Davis is a diplomat and therefore under Vienna Convention he is entitled to protection.²⁷⁸ However, Pakistani officials discarded these affirmations and said that he had been secretly carrying mission in Pakistan.²⁷⁹ In US reports relating to involvement of Davis with a security firm established in Florida having links with the CIA also started to float.²⁸⁰

First US affirmed that Davis as employ of US consulate in Lahore but later denial was made by stating him a technical advisor at US embassy in Islamabad. The change in the statements by US concerning Davis status was because the employee of embassy enjoy special immunities which cannot be availed by the consulate.²⁸¹

Under Article 41(1) of The Vienna Convention on Consular Relations of 1963 it is said that there is no immunity offered to any official having consular position or even to head if the crime done is of grave nature.²⁸² Raymond Davis was retained under custody and brought before the Lahore High Court, Pakistan. However, he was charged for murder but was acquitted by the court as he was pardoned and a deal was made by the victims' families that involved blood money.²⁸³ This speedy trial of Raymond Davis shows that it was an outcome of continues US

²⁷⁸President Obama, while calling upon the Pakistani authorities for his release, referred to him as 'our diplomat'. See Greg Miller, "U.S. officials: Raymond Davis, accused in Pakistan shootings, worked for CIA", *The Washington Post*, (February 22, 2011), available at <http://www.washingtonpost.com/wpdyn/content/article/2011/02/21/AR2011022102801.html> (accessed February 16, 2011).

²⁷⁹ Rob Crilly, "Detained US official 'in telephone contact with Islamic terror group'", *The Telegraph*, (February 10, 2011), available at <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/8316286/Detained-US-official-intelephone-contact-with-Islamic-terror-group.html> accessed February 17, 2012.

²⁸⁰ Chaudhry, US official guns down two motorcyclists in Lahore.

²⁸¹ The base of diplomatic immunity is formed in the Vienna Convention on Diplomatic Relations 1964, legally became part of national law of Pakistan in 1972. Under Article 29 of the Convention it is stated that "the person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention."

²⁸² The Vienna Convention on Consular Relations of 1963, which came into effect in 1967, Article 41(1) that "Consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority."

²⁸³ CIA Man Free After 'Blood Money' Payment, *Al Jazeera*, (March 14, 2011), available at <http://www.aljazeera.com/news/asia/2011/03/2011316121616279778.html> accessed February 17, 2012.

pressure that was a hindrance to fair trial. Also a result of dialogues between both states and subsequent pressure applied on the families of victims by authorities in Pakistan.²⁸⁴

The Raymon Davis case was dealt in an unpleasant way. As it was the first case that came in the front concerning private contractors activities, it should have been dealt in such a way that being a precedent and deterrent to others who are conducting such activities in the country. He was not tried for having unlicensed arms and espionage too. That is another issue that the families of victims were forcefully given the blood money in exchange of pardoning Raymond Davis.

4.3 African States

In 1960, the origin of mercenary activity started with the fight for independence and the right of self-determination.²⁸⁵ ‘Mad’ Mike Hoare, Jacques Schramme ‘Black Jack’, Callan and Bob Denard (real name Gilbert Bourgeaud) were appointed to destabilize the rights of the peoples of Algeria (1956), the Congo (1960s), the Comoros Islands (1970s-90s), Benin (1970s) to select their leaders and proclaim their political independence, or to threaten independent states (Guinea, Angola, Seychelles, Mozambique).²⁸⁶

The most significant discussion regarding the employment of Private security zone on the subject of PMSCs are the two cases. First was the participation of Executive Outcomes (EO) in the clashes of Angola and Sierra Leone in 1995–97 and second was of Sandline International²⁸⁷ in Sierra Leone in 1997–98.²⁸⁸

²⁸⁴ Ali Tariq, Raymond Davis case, available at <http://historypak.com/raymond-davis-case/> (accessed March 29, 2016).

²⁸⁵ Schreier and Marina Caparini, “Privatising Security”, (DCAF), 16.

²⁸⁶ Ibid.

²⁸⁷ An international company registered in the Bahamas but with offices in London and Washington, DC.

²⁸⁸ David J. Francis, “Mercenary Intervention in Sierra Leone: Providing National Security or International Exploitation?”, *Third World Quarterly*, 20:2 (April 1999), 327.

4.3.1 Angola

President Roberto of National Liberation Front of Angola (FNLA) was unexpectedly barred of Western funding and evacuated by Mobutu, hired mercenaries from the U.S., Britain and the Netherlands.²⁸⁹ In 1989, a restricted accountability company Executive Outcomes (EO) was listed in South Africa and Great Britain but was created in South Africa.²⁹⁰ EO was a competent power working in sub-Saharan Africa providing services regarding security, logistical support and military training so that they have expertise to fight opponents.²⁹¹ In Angola, however, Executive Outcomes workers did not merely taught the native armies, they also united in the combat too.

In 1993 when the oil assets were in danger due to the parading of groups of the National Union for the Total Independence of Angola (UNITA) towards the Angolan capital Luanda, the government agreed to take help from the external forces.²⁹² A new type of army joined the conflict and for the first time PMCs were known internationally.

EO performed its initial important military operation in 1993 and thus directed the control of the new business groups into Africa. EO head Barlow met SAS (British Special Air Service) officer Buckingham who represented oil heritage and asked Barlow to employ fighters to bring back the heritage resources in Soyo that had been occupied by UNITA in the Second

²⁸⁹ Sean Cleary, „Angola – A Case Study of Private Military Involvement, in Jackie Cilliers and Peggy Mason (eds.) *Peace, Profit or Plunder?: Privatization of Security in War-Torn African Societies*, (Pretoria: Institute for Security Studies, 1999), 148.

²⁹⁰ Juan Carlos Zarate, “The Emergence of a New Dog of War: Private International Security Companies, International Law, and the New World Disorder”, *Stanford Journal of International Law* (winter, 1998), 8. Some South African companies registered as security companies are Combat Force, Kas Enterprises, Shield Security, Honey Badger Arms & Ammunition, Longreach Security and Investment Surveys. See Report on the Question of the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination, submitted by Mr. Enrique Bernales Ballesteros, Special Rapporteur, pursuant to Commission resolution 1995/5 and Economic and Council resolution 1995/254, 53d Sess., Agenda Item 7, U.N. Doc. E/CN.4/1996/24 (17 January 1997) [hereinafter *Mercenaries Report*], para 65, available at <https://www1.umn.edu/humanrts/commission/thematic52/27-mer.htm> (accessed March 16, 2016).

²⁹¹ Michael Ashworth, Africa's new enforcers, *Independent News*, Monday 16 September 1996, available at <http://www.independent.co.uk/news/africas-new-enforcers-1363564.html>, (accessed March 17, 2016).

²⁹² Herbert M. Howe, “Private Security Forces and African Stability: The Case of Executive Outcomes”, *The Journal of Modern African Studies*, 36: 2 (June 1998), 311.

Civil War.²⁹³ EO's Special Forces victory in Soyo had encouraged the Angolan government to employ EO to take actions opposing to UNITA.

An action that was considered as a piece of cake twisted into a slanting conflict when the South Africans were organized as the UNITA troops came towards the zone. A number of mercenaries were injured and three expired during operation. Several decided to cancel their agreements and exiled after a few days.²⁹⁴

The era from October 1992 to January 1995 is considered to be the most aggressive in the country's history. This fact cannot be denied that EO's connection with government extended the war in Angola. Since that corporate bodies and workers are linked by EO stay in military clash in Angola.²⁹⁵ EO differentiated itself from other security companies is that it delivered warfare facilities to the Angolan government in its military operation against UNITA.²⁹⁶ This is the common thought that EO was protecting oil and diamonds resources as well as combating mercenary clashes.²⁹⁷

After two- and- a half years in Angola, EO accomplished approximately \$80 million (US). Angolan government asked for removal of EO from Angola on December 12, 1995.²⁹⁸ On

²⁹³Alex Vines, 'Gurkhas and the Private Security Business in Africa', in Jackie Cilliers and Peggy Mason (eds.) *Peace, profit or Plunder?: Privatization of Security in War-Torn African Societies*, p,129, (Pretoria: Institute for Security Studies.(1999)), available at <https://www.issafrika.org/pubs/Books/PeaceProfitPlunder/Chap7.pdf> (accessed April 2, 2016).

²⁹⁴ Khareen Pech, "Executive Outcomes – A Corporate Conquest", in Jackie Cilliers and Peggy Mason (eds.) *Peace, Profit or Plunder?: Privatization of Security in War-Torn African Societies*, Pretoria: Institute for Security Studies, 1999), 85, available at <https://www.issafrika.org/uploads/PEACECHAP5.PDF> (accessed April 2, 2016).

²⁹⁵ Cleary, *Angola – A Case Study of Private Military Involvement*, 141-148.

²⁹⁶ Francis, "Mercenary Intervention in Sierra Leone", 327.

²⁹⁷ Jesse Selber and Kebba Jobarteh, "From Enemy to Peacemaker: The Role of Private Military Companies in Sub-Saharan Africa", *Medicine & Global Survival*, 7:2 (February 2002), 93, available at <http://www.ippnw.org/pdf/mgs/7-2-selber.pdf> (accessed April 2, 2016).

²⁹⁸ Howe, "Private Security Forces and African Stability", 312.

January 11, one troop gone to South Africa but half of the personnel of EO stayed there by doing tasks in private security companies of governments.²⁹⁹

The contracted operation conducted by EO was successful. But the question arise whether human security was developed in Angola? Was the curse of war ended? The answer is no. it was an unsuccessful peace mission. Even though diamond and oil assets were secured by EO and UNITA was defeated however the peace offered was flawed.

4.3.2 Executive Outcomes in Sierra Leone

As the term PMCs was not inexistence at that time since the troops like Executive Outcomes came under the classification of mercenary as they conducted warfare operation. There was a civil war in Sierra Leone before a private security company was hired. Republic of Sierra Leone Military Forces (RSLMF) soldiers were already fighting against Revolutionary United Front (RUF) unsuccessfully as they were incompetent and dishonest. The government of Captain Valentine Strasser of Sierra Leone made an agreement with EO to aid and assist its undecided battle against RUF in May 1995.

The EO tasks were to provide services to military technically and logistically, training soldiers, and fight against RUF. EO called its 30 warriors in May 1995 and also trained 150 employees of armed force. Its primary responsibilities were to throw RUF from the capital of Sierra Leone Freetown also Kono diamond region.³⁰⁰ Non-operational Executive Outcomes hired a large quantity of army having weapons and fighting jets to retrieve control of rich diamond kono district of Sierra Leone and overthrow Revolutionary united Front (RUF) protestors who were coming towards the capital.³⁰¹

²⁹⁹ Ibid., 313.

³⁰⁰ Ibid., 314.

³⁰¹ Fabien Mathieu and Nick Dearden, "Corporate Mercenaries: The Threat of Private Military & Security Companies", *Review of African Political Economy*, 34:114, Class, Resistance & Social Transformation (December, 2007), 746. Available at <http://www.jstor.org/stable/20406461> (accessed June 15, 2015).

The conflict distressed the country which caused almost 4 million individuals to migrate and a minimum of 15,000 have been killed ever since 1992.³⁰² Though it turns out to be obvious that the services provided by EO were unaffordable to the government.

In January 1997, the Sierra Leonean government's failure to pay and the requirement for end of hostilities by RUF was removal of EO from Sierra Leone which resulted in its departure from the country.³⁰³ The government and RUF reached truce agreement on 29 November which remained in force till early 1997. EO delivered its services to the government of Sierra Leone from 1995 to January 1997.³⁰⁴ EO was investigated under domestic legislation in South Africa in the shape of the Regulation of Foreign Military Assistance Act³⁰⁵ which consequently ended all tasks in January 1999.

In 1998, another Private military company Sandline International was appointed to end what EO had initiated.³⁰⁶ An inquiry was made against Sandline International for violating UN arms embargo by the Department of Customs and Excises while accomplishing an agreement to support the democratically selected government as it was trying to ship 30 tons of trivial weapons to the West African country.³⁰⁷ Sandline claimed that this was done with the implied consent and support of the British Foreign Office which extended the debate.³⁰⁸

The Sandline was required to leave Sierra Leone afterwards the peace agreement was contracted with insurgents. The Sandline extradition was the consequence of destruction and

³⁰² Ibid.

³⁰³ Guy Arnold, *Mercenaries: The Scourge of the Third World*, (New York: St. Martin's Press, 1998), p.117.

³⁰⁴ Ibid.

³⁰⁵ Regulation of Foreign Military Assistance Act (1998), available at <http://www.gov.za/documents/regulation-foreign-military-assistance-act> (accessed April 3, 2016).

³⁰⁶ Sean Creehan, "Soldier of Fortune 500", *Harvard International Review* (Winter 2002), available at <https://www.globalpolicy.org/component/content/article/199/40973.html> (accessed April 3, 2016).

³⁰⁷ David Isenberg, "Combat for Sale: The new, post- Cold War mercenaries" *USA TODAY*, (New York: March 2000), 13, available at <https://www.questia.com/read/1G1-60868309/combat-for-sale-the-new-post-cold-war-mercenaries> (accessed April 3, 2016).

³⁰⁸ "A far off country", *The Economist*, (London: 14 May 1998), available at <http://www.economist.com/node/129238> (accessed April 3, 2016).

massacre. Similarly UN peacekeeping force took British groups functioning in the country along.³⁰⁹ An assumption can be made that PMSCs can be an active instrument to terminate the battle, though a durable strategy is necessary to avoid extra confusion.³¹⁰ The issue is, are these companies a more appropriate option than governments or UN peacekeeping forces? In 2000, ex chief of Sandline Tim Spicer said, "It was a darn sight cheaper for the British Government to pay us than the 350 million pounds it is costing us to maintain our troops and the UN operation".³¹¹

Ethical values are not eradicated with small budget. PMSCs cannot obey the similar moral values as armed forces of the state who are parties to international agreements. PMSCs must be dealt under regulatory principles. Even if the companies do not commit any moral breach but their regulation would make them attractive to governments.

4.3.3 Democratic Republic of the Congo

Three Americans, along with twenty-six security workers, were arrested in the Democratic Republic of Congo (DRC) in an attempted plot to overthrow the government during the national elections in 2006. Twelve of the security workers worked for the South African private security company, Omega Security Solutions.³¹² The Americans also worked for a security firm, but the firm remains unnamed.³¹³

Although the men participating in the coup were private military contractors, they behaved in a mercenary-like manner because their mission was an attempt to violently overthrow the government. PMC operatives primarily protect citizens and help build infrastructure, but

³⁰⁹ Creehan, "Soldier of Fortune 500".

³¹⁰ Ibid.

³¹¹ Ibid.

³¹² Craig Timberg, "Congo holding 3 Americans in Alleged Coup," *Washington Post Foreign Service*, May 25, 2006, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/05/24/AR2006052401591.html> (accessed April 10, 2016).

³¹³ Ibid.

when PMC employees begin to resort back to the ways of mercenaries, their actual job enters a grey zone.³¹⁴

Later on in 2011, companies as DynCorp was appointed to teach the soldiers of Democratic Republic of Congo (DRC) under US African Peacekeeping Program. Companies as MPRI and ArmorGroup have resettled their business in DRC to maintain peace internationally.³¹⁵

4.3.4 Somalia

Two independent states in Somalia, Somaliland and Puntland had established their private law enforcement agency for the protection of maritime traffic in coastal waters with the help of overseas PMSCs that is why they were not supportive with the Transitional Government of Somalia (TGS).³¹⁶

Numerous schemes by TGS to safeguard coastline were unsuccessfully applied. The first deal of \$50-million was contracted with an American security firm named Top Cat by TGS in 2005. Chasing on behalf of pirate vessels and teaching a state coastguard were included in the agreement. However, the agreement was blocked by the State Department of the US, as it was revealed to infringe the 1992 arms restriction on Somalia³¹⁷, and similarly the US weaponries operating rules.³¹⁸

In 2008, the TGS signed up a new contract with the French PSC Secopex. But the contract has not ever been completed due to shortage of fund. Likewise in 2012 policies of

³¹⁴ John M. Broder and James Risen, "Blackwater Tops Firms in Iraq in Shooting Rate," *The New York Times*, September 27, 2007, available at <http://www.nytimes.com/learning/students/pop/articles/27contractor.html> (accessed April 10, 2016).

³¹⁵ David Pfothenauer, "Unloved but Needed: PMCs in Africa", *African Defense Review*, (May 5, 2015), available at <http://www.africandefence.net/pmcs-in-africa/> (accessed April 10, 2016).

³¹⁶ James M. Bridger, "Searching for a Somali Coastguard", *Maritime Security Review, Volume 7*, (February 14, 2014), 3, available at <http://cimsec.org/searching-somali-coastguard/7776> (accessed April 16, 2016).

³¹⁷ United Nations Security Council Resolution 733 (Implementing an Arms Embargo on Somalia), Adopted by the Security Council at its 3039th meeting, on 23 January 1992, U.N. Doc. S/RES/733 (1992).

³¹⁸ Bridger, "Searching for a Somali Coastguard", 3.

Kenyan security firm called Halliday Finch to secure coastline was also affected by shortage of fund.³¹⁹

Furthermore, the Somali Federal Government (SFG) contracted with Dutch PMSCs named Atlantic Marine and Offshore Group to establish a Somali coastguard that would fight with piracy and to protect Somalia's exclusive economic zone in July 2013.³²⁰

4.3.4.1 Case of Puntland

Private security firms came into action after Puntland became independent in 1998 when the Somali Salvation Democratic Front (SSDF) threw a fight opposing to the Somali central government. However, Puntland still remained part of the Federal State of Somalia.³²¹

Government of Puntland approached security firms for assistance as they were unsuccessful to stop mercenaries and pirates from working.³²²

In 2000 first participation of private contractors was made, to construct the capability of protecting coastline, to restrict unlawful fishing and to work against anti-piracy actions a company named Hart Group was appointed by Puntland government.³²³ President Abdullah Ahmed introduced a private business to suppress piracy.³²⁴ It turned out that the hiring of PMSCs was a failure. Government frequently made variations in PMSCs contracts as local

³¹⁹ Ibid.

³²⁰ Ibid.

³²¹ Szabolcs Tamás Sasvári, "Why some private security and military companies succeed and others fail in taking over public tasks", Master's Thesis, Copenhagen Business School, (16 June, 2014), 49 ,available at http://studenttheses.cbs.dk/bitstream/handle/10417/4952/szabolcs_tam%C3%A1s_sasv%C3%A1ri.pdf?sequence=1 (accessed April 16, 2016).

³²² Christopher Kinsey, *Private Security Fighting Pirates and Illegal Fishing in Puntland* , in *Maritime Private Security : Market Responses to Piracy, Terrorism and Waterborne Security Risks in the 21st Century* / ed. by Claude Berube and Patrick Cullen, (London: Routledge 2012), 126-137.

³²³ David Isenberg, "Somalia and the PMSC Market", *Isenberg Institute of Strategic Satire*, (October 21, 2013), available at <http://iissonline.net/somalia-and-the-pmsc-market/> (accessed April 16, 2016).

³²⁴ Sasvári, "Why some private security and military companies succeed and others fail", 51.

political leaders identify these deals as awards and they inclined to give incentive to their own political supporter.³²⁵

The leading causes of piracy include unsuccessful government, poor establishment, and failure to protect coastal regions, poverty and inability to induct piracy policies.³²⁶ It is hard for a state like Somalia to conduct a simple state duties.³²⁷ The UN Convention on the Law of the Sea (UNCLOS) allowed a special right to consume sea assets in a 200-mile Exclusive Economic Zone (EEZ), that the Somalia is incapable of using.³²⁸

Kinsey say that illegal piracy and politics in Puntland are linked.³²⁹ It becomes apparently problematic because the UNCLOS on piracy describes this delinquency as a private movement where merely private shareholders are concerned.³³⁰

Money gathered from piracy in Puntland is spent to build a stronger political power and to collect wealth. In the incident of hijacking of MV Rozen cargo ship in 2007, accusations were made that public servants were involved with pirates. This challenge is very tricky to handle because of the solid bond among private and public investors.³³¹

The South African Saracen International a new PMSC was hired in November 2010 by the government of Puntland to monitor and guide the Puntland Maritime Police Force (PMPF)

³²⁵ Ibid., 48

³²⁶ Stig Jarle Hansen, *Private security, maritime protection and surveillance in Somaliland*, in *Maritime Private Security : Market Responses to Piracy, Terrorism and Waterborne Security Risks in the 21st Century* / ed. by Claude Berube and Patrick Cullen, (London: Routledge 2012), 113-125.

³²⁷ Christopher Paul Kinsey, Stig Jarle Hansen & George Franklin, "The impact of private security companies on Somalia's governance networks", *Cambridge Review of International Affairs*, 22: 1 (2009), 150.

³²⁸ Sasvári, "Why some private security and military companies succeed and others fail", 49.

³²⁹ Kinsey, *Private Security Fighting Pirates*, 127.

³³⁰ Piracy consists of any of the following acts: (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State; (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b). (United Nations Convention on the Law of the Sea, . 1982, Article 101)

³³¹ Kinsey, *Private Security Fighting Pirates*, 127.

that was fighting against piracy in the territory. Saracen International and Sterling Corporate Services both debatable PMSCs, taught PMPF group of marines. After sometime of signing the contract it turned out that founder of Blackwater Erick Prince is at the back of these firms and funding is provided by the United Arab Emirates.³³² An allegation was made regarding infringing the laws of arm embargo that Saracen secretly smuggled armed weapons into northern Somalia from Uganda and the UAE on shipment airplanes.³³³ The contract with Saracen International was ended in the start of 2011 by government of Puntland.³³⁴

In 2012, Sterling Corporate Services was hired to train the groups of PMPF.³³⁵ UN asserted that there is a violation of arms prohibition by this PMSC on Somalia. Numerous cases of abuse and murder of Somali trainees were acknowledged. UAE stopped financing PMPF which led to immediate end of services and actions provided by Sterling Corporate Services in June 2012. In April 2012, one of the Somali trainee murdered his South African instructor named Lodewyk Pieterse. In June, Soon after this occurrence, Sterling Corporate Services was removed from Puntland.³³⁶

To conclude the PMSCs' actions in Puntland, it can be said that the security firms were failed to control the danger of piracy in the state.

³³² Szabolcs Tamás Sasvári, "Why some private security and military companies succeed and others fail in taking over public tasks", Master's Thesis, Copenhagen Business School, (16 June, 2014), available at http://studenttheses.cbs.dk/bitstream/handle/10417/4952/szabolcs_tam%C3%A1s_sasv%C3%A1ri.pdf?sequence=1 (accessed April 16, 2016).

³³³ Jeffrey Gettleman, Mark Mazzetti And Eric Schmitt, *The New York Times*, (August 10, 2011), available at http://www.nytimes.com/2011/08/11/world/africa/11somalia.html?_r=0 (accessed April 16, 2016).

³³⁴ The Associated Press, "Puntland Drops Deal With Mercenary Firm", *The New York Times*, (March 17, 2011), available at <http://www.nytimes.com/2011/03/18/world/africa/18briefs-ART-Somalia.html> (accessed April 16, 2016).

³³⁵ Sasvári, "Why some private security and military companies succeed and others fail", 55.

³³⁶ Mark Mazzetti And Eric Schmitt, "Private Army Formed to Fight Somali Pirates Leaves Troubled Legacy", *The New York Times*, (October 4, 2012), available at <http://www.nytimes.com/2012/10/05/world/africa/private-army-leaves-troubled-legacy-in-somalia.html> (accessed April 16, 2016)

4.3.4.2 Case of Somaliland

Somaliland is a semi-independent state in northwestern Somalia that is positive for international acknowledgement of its freedom. It is a peaceful region because it is based on consensus of clans and other types of PMSCs that are working in Somaliland.³³⁷ The case of Somaliland primarily relates to the Norwegian PMSC, Nordic Crisis Management's (NCM) seaport controlling actions.

In 2006, Government of Somaliland hired NCM to improve Berbera port's safekeeping structure and also to certify the principles established by the UN and the International Maritime Organization are being fulfilled in the actions taken through the port.³³⁸ NCM faced challenges as the state of Somaliland was not internationally recognized.

Between 2009 to 2011, a second PMSC established in UK Triton International by Somaliland was also appointed to assist and teach the coastguard. However, several of alleged pirates, unlawful fishing vessels and smugglers were captured by this coastguard.³³⁹ The reason why Triton couldn't continue its functions was shortage of funds.

Somaliland separated itself from the federal state of Somalia in 1992 but is still not accepted as an independent state as de jure it still belongs to the federal state of Somalia.³⁴⁰ Somaliland has still not signed UNCLOS agreement. Notwithstanding, Somaliland spreads its forcible control for a 200 nautical mile to its area.

A lot of difficulties would be face by a foreigner company that finance or use the watercourses in Somaliland. Excessive insurance rate is one of the cause. As stated by Søren

³³⁷ Stig Jarle Hansen, "Private Security & Local Politics in Somalia", *Review of African Political Economy*, 35:188 (November 2008), 585.

³³⁸ Kinsey and et al, "The impact of private security companies", 155.

³³⁹ Bridger, "Searching for a Somali Coastguard", 4

³⁴⁰ Hansen, "Private Security & Local Politics in Somalia, 595.

Thomsen (Danish Shipowners' Association) the insurance charges raised gradually; at the present time they are controlled, it is almost \$50,000 per delivery.³⁴¹

One more reason is absence of an ability to implement law. For instance, poorly instructed navy officers were incapable to deal with the matter when alien boats unlawfully fished nearby the sea of Somaliland.

An ex South African army official accomplished a different type of PMSC in Somaliland named Physical Risk Solutions (PRS) in 2009.³⁴² Presently PRS is the merely private military or security company listed in Somaliland. There were no rules or guidelines in existence which PRS had to follow. The government of Somaliland presently working on embracing law specially regarding monitoring the actions of the PMSC commerce in the regions of Somaliland.

Actions performed by Trion International and NCM were successful apart from that the Trion failed to conduct further activities in Somaliland.

Conclusion

Cases of PMSCs in Afghanistan and Pakistan clearly states that these contractors and companies posture a serious threat which need to be well directed. If alleged offender of the incidents mentioned in this chapter, knew that any serious action will be taken against them, they would not have done any breach of the law in the first place. The development of security privatization of African states may severely damage them as these firms are not working under prescribed rules.³⁴³

³⁴¹ Szabolcs Tamás Sasvári while writing his Master's thesis on the topic "Why Some Private Security and Military Companies Succeed and Others Fail in Taking over Public Tasks" interviewed Søren C. Thomsen Senior Vice President of Ultrabulk on February 26, 2014.

³⁴² Available at <http://physicalrisksolutions.com/> (accessed April 16, 2016).

³⁴³ Private Military and Security Companies in Somalia Need Regulation, Says UN Expert Group, Office of the High Commissioner for Human Rights, December 18, 2012, available at <https://www.globalpolicy.org/pmscs/52154-private-military-and-security-companies-in-somalia-need-regulation-says-un-expert-group.html> (accessed April 13, 2016).

Currently PMSCs are hardly liable by active legislative tribunals whether in the host state or in the sending state. The problem doesn't specifically lie that there is no law available under which these companies can be dealt but it lies when these states do not implement these laws. However the states are still bound by the rules of International law and national laws of the states.

Conclusion and Recommendations

Conclusion

The increasing activities of PMSCs in armed conflicts are held responsible as they are extending and strengthening conflicts in states where they are operating. In previous two decades, their

growth has been increased. PMSCs mostly work in Afghanistan, Iraq, Pakistan and Africa. Western governments also hire private contractors for local purposes.

There are number of offences done by the members of PMSCs that emphasize misbehaviours and dangers raised due to activities of these companies. Though, PMSCs are not held liable in national or international as there is no instrument available to control them.

Worldwide struggles to control the activities of PMSCs are not successful concerning several of their matters. The description of mercenary given in the International Convention on the use of Mercenaries, approved under the Geneva Convention, is impracticable as it does not properly discuss the matter. The similar issue is faced by the UN Convention against the Recruitment, Use, Financing and Training of Mercenaries from 1989 because its mercenary description is barely relevant to present circumstances. In 2008, an international struggle to control the private security business was done that produced the Montreux Document recognized by 17 states. This document has no binding condition which gives full authority to states not to oblige by any rules set by it.³⁴⁴

One of the main problem is that the states cannot exercise civil and criminal in the place where breaches are done. Another issue is also seen that the states cannot exercise jurisdiction over the grave breaches done by the PMSCs. Some cases of trafficking was done in Balkans and the cases were brought in the US and UK. The topic regarding regulation of these companies is very important and it should be dealt thoughtfully to avoid horrifying situations.³⁴⁵

³⁴⁴“Regulation and Oversight of PMSCs”, *Global Policy Forum*, available at <https://www.globalpolicy.org/pmscs/50211-regulation-and-oversight-of-pmscs.html> (accessed April 13, 2016).

³⁴⁵ “Expert meeting on private military contractors: Status and state responsibility for their actions”, *The University Centre for International Humanitarian Law, Geneva*, (International Conference Centre, Geneva 29-30 August 2005), 58.

One of the real effort to give legal status to PMSCs is vagueness in international laws linked to combat. Clarity is not found in affiliation of PMSCs and governments. Government cannot clearly express the connection of PMSCs and government.³⁴⁶

Under Geneva Convention, PMSCs are classified as combatant as they carry arms and are working for one party to the conflict; on the other side they are also treated as civilians, as they do not wear identifiable uniform. Those people who are working for their own government are obviously not mercenaries.³⁴⁷

The right to take direct participation in hostilities is given to PMSCs if their members are categorized as combatants with the status of prisoner of war.³⁴⁸ Their rights and liabilities will be equal as members of armed forces. On the other hand, if they are classified as civilians then it is against the provisions of international humanitarian law to attack them. However, they will not be protected from attack if they take direct participation in hostilities even if they do not violate provisions of IHL because civilians are not given the right to take part in direct hostilities.³⁴⁹

There are some standards of IHL and human rights which states have to respect and not fulfilling those norms will lead to punishments. All severe breaches of international humanitarian law are includes in war crime³⁵⁰ and its jurisdiction is on worldwide.³⁵¹ War crimes not only

³⁴⁶ David Isenberg, "A Fistful of Contractors: The Case for a Pragmatic Assessment of Private Military Companies in Iraq", *British American Security Information Council, Research Report*, (London: 2004), 45, available at https://www.academia.edu/8851835/The_Case_for_a_Pragmatic_Assessment_of_Private_Military_Companies_in_Iraq (accessed August 17, 2015).

³⁴⁷ Ibid.

³⁴⁸ Article 43(2) of Additional Protocol I recognizes the right of combatants to participate directly in hostilities.

³⁴⁹ Knut Doormann, "The legal situation of "unlawful/unprivileged combatants"", *International Review of the Red Cross*, 85:849 (March 2003), 45.

³⁵⁰ Jean-Marie Henckaerts, Louise Doswald-Beck and Carolin Alvermann, *Customary International Humanitarian Law*, Vol. I (Cambridge: Cambridge University Press, 2005), Rule 156, 604; Customary IHL, ICRC, Rule 156. Definition of War Crimes, available at https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule156 (accessed May 8, 2016).

committed by members of armed forces but also by civilians.³⁵² Therefore, employees of PMCs are guilty of war crimes if they breach war laws.

At present, several unresolved queries concerning PMSCs and their basic work are established. Generally the issues are internal matters of the states. In international humanitarian law under Article 47 of Protocol I the definition of mercenary is unworkable as those six conditions are unable to be fulfilled by a person to have the status of mercenary.³⁵³ This definition, which contains six conditions to fulfil the status of mercenary has been reviewed by several critics³⁵⁴ and they will hardly applied to personnel of private companies.

Another issue is particular liability of private contractors abroad. For example, there is no obligation on them to obey commands or to observe military codes of conduct, because they are bound by agreement not oath.³⁵⁵ Furthermore, it is ambiguous that how, when, who, where and which authorities are to review, investigate and to take legal action against employees of PMSCs and contractors if they breach law.³⁵⁶

One challenging job is to determine the legal status of these companies. For this purpose difficulties of IHL have to be addressed including the question regarding combatant and civilian status and what amounts to direct participation in hostilities. These queries are to be responded through circumstance.³⁵⁷

Recommendations

³⁵¹ Henckaerts, *Customary International Humanitarian Law*, Rule 157, 604.

³⁵² Knut Doermann, *Elements of War Crimes under the Rome Statute of the International Criminal Court* (Cambridge: Cambridge University Press, 2003), 34-37.

³⁵³ Edward Kwakwa, "The current status of mercenaries in the law of armed conflict", *Hastings International & Comparative Law Review*, 67, (1990), 69

³⁵⁴ R.C Hingorani, *Prisoners of War*, (New York: Oceana Publications, inc., Dobbs ferry, 1982), 63.

³⁵⁵ Schreier and Marina Caparini, "Privatizing Security", (DCAF), 58

³⁵⁶ *Ibid.*, 59

³⁵⁷ Gillard, "Business goes to war", 570.

Present laws on the usage of private armies do not deal with the contemporary private contractors. To control the extensive activities of PMSCs all over the globe it is obligatory to set rules for their actions.

There is a need to make national laws for creating a criminal accountability on the companies that does not come under the laws made by ICC. Under these laws punishments can be awarded to the personals in the form of real compensation.

One more grey part related to the use of PMCs is hiring of these contractors through other companies. This issue is very typical and it usually happens in the situation of non-armed conflict where IHL is irrelevant. Those active PMSCs which do not join them with any state and try to get away from the laws; must be dealt under some new rules and regulations made for them.

There should be a strict prohibition on PMSCs to engage in the combat operations and governments should also not hire them to function in the states. It is certain that where PMSCs are hired for the safety keeping missions that they involve in combat to protect themselves. If the states like African hire PMSCs, the laws should be made by emphasizing how much they should be allowed to participate and what measure can be taken when they are under attack.

States should have a discussion with PMSC business to understand how they control and work. Laws should be harmonized between States because various PMSCs are working in several different states.

There is sure a need for international policies and rules as the demand of PMSCs is increased now a days. It is very essential to build a lawful structure nationally and internationally. States are under an obligation to make sure that those companies are registered

whether in the state which is hiring them or the state where they are functioning.³⁵⁸ A strict licensing guideline should be viewed for these companies.³⁵⁹

These companies and their employees should be legally accountable if they commit violation of law. Even if they do not come under any particular categorization still then they cannot be set at liberty without criminal actions. The vagueness need to be eliminated with development of new regulations. There is an essential need to penalize criminals and every state should make, amend and enforce these rules.³⁶⁰

Bibliography

Articles

- "A far off country", *The Economist*, (London: 14 May 1998).
- Benicsak, Peter. "Overview of private military companies". *National University of Public Service, Budapest, Hungary* 11:2 (2012): 315-324.
- Bina, Mark. "Private military contractor liability and accountability after Abu Ghraib", *John Marshall Law Review* 38:4(2005):1237-1263.
- Bloomfield, Aubrey. "108,000 Private Contractors Are in Afghanistan and We Have No Idea What They're Doing". (June 05, 2013).
- Bridger, James M. "Searching for a Somali Coastguard". *Maritime Security Review* Volume 7 (February 14,2014).

³⁵⁸United Kingdom, Green Paper, "Private Military Companies: Options for Regulation", (London: stationary Office, February 2002), 14.

³⁵⁹ The majority of political scientists gave consent to the idea of a licensing system. See Caroline Holmqvist, "Private Security Companies: The Case for Regulation", *SIPRI Policy Paper No. 9*,(SIPRI: Stockholm January 2005), 29, available at <http://books.sipri.org/files/PP/SIPRI09.pdf> (accessed May 14, 2016); Schreier and Caparini , *Privatising Security*, 58.

³⁶⁰ Peter Singer, "The Private Military Industry and Iraq: What have we learned and where to next?", (DCAF: Geneva 2004), 21.

- Cameron, Lindsey. "Private military companies: their status under international humanitarian law and its impact on their regulation". *International review of the Red Cross* 88:86 (September 2006): 573- 600.
- Caron, David D. "The United Nations Compensation Commission for Claims Arising out of the 1991 Gulf War: The Arising Prior to Decision". *J. Transnational law& policy* 14:2 (Spring 2004) :309- 334.
- Clapham, Andrew. "Human Rights Obligations of Non-State Actors in Conflict Situations". *International Review of the Red Cross* 863 (2006): 491-523.
- Cottier, Michael. "Elements for contracting and regulating private and military companies", *International Review of the Red Cross* 88:863, (September 2006): 637-663.
- Creehan, Sean. "Soldier of Fortune 500". *Harvard International Review* (Winter 2002).
- Cryer, Robert "The Interplay of Human Rights and Humanitarian Law: The Approach of the ICTY", *Journal of Conflict and Security Law* 14:3 (2009): 511-527.
- Dorman, Knut. "The Legal Situation of "Unlawful/unprivileged Combatants"", *International Review of the Red Cross* 85:849 (March 2003): 45-74
- Ebrahim, Adam."Going to war with the army you can afford: The United States, international law, and the private military industry". *Boston University International Law Journal* 28:181 (2010): 181-218.
- Faite, Alexandre. "Involvement of Private Contractors in Armed Conflict: Implications under International Humanitarian Law".*Defence studies* 4:2 (Summer 2004): 1-14.
- Francis, David J. "Mercenary Intervention in Sierra Leone: Providing National Security or International Exploitation?".*Third World Quarterly* 20:2 (April 1999): 319-338.
- Gatson, E.L. "Mercenarism 2.0: The Rise of the Modern Private Security Industry and Its Implications for International Humanitarian Law Enforcement". *Harvard International Law Journal* 49:1 (2008): 221-248.
- Gharib, Ali. "Obama pledged to stop the Afghanistan war, but its end is nowhere in sight". Thursday 15 October 2015.
- Gillard, Emanuela-Chiara. 'Business Goes to War: Private Military/Security Companies and International Humanitarian Law'. *International Review of the Red Cross* 88:863 (2006): 525-572.
- Gómez del Prado, José L. "Privatising security and war", *Forced Migration Review*, March (2011):18-20.
- Gomez del Prado, José L. "Impact on Human Rights of Private Military and Security Companies' Activities". *Global Research* (October 2008).
- Hansen, Stig Jarle. "Private Security & Local Politics in Somalia". *Review of African Political Economy* 35:188 (November 2008):585-598.
- Hoppe, Carsten. "Passing the Buck: State Responsibility for Private Military Companies". *The European Journal of International Law* Vol. 19(2008): 989-1014.
- Howe, Herbert M. "Private Security Forces and African Stability: The Case of Executive Outcomes". *The Journal of Modern African Studies* 36: 2 (June 1998): 307-331.
- Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law , *Adopted by the Assembly of the International Committee of the Red Cross on 26 February 2009* 90:872 (December 2008): 991-1047.

- Isenberg, David. "A Fistful of Contractors: The Case for a Pragmatic Assessment of Private Military Companies in Iraq". *British American Security Information Council Research Report* (London: 2004).
- Isenberg, David. "Combat for Sale: The new, post- Cold War mercenaries". *USA TODAY* (New York: March 2000): 12-16.
- Isenberg, David. "The PMSC Perils of Peacekeeping". *Global Policy Forum*, Huffington Post (February 15, 2012).
- Isenberg, David. "Somalia and the PMSC Market", *Isenberg Institute of Strategic Satire*, (October 21, 2013).
- Kalshoven, Frits. "The undertaking to respect and ensure respect in all circumstances: From tiny seed to ripening fruit". *Yearbook of International Humanitarian Law*, Vol. 2, (December 1999) abstract.
- Kees, Alexander. "Regulation of Private Military Companies". *Gottingen Journal of International Law* 3:1 (2011): 199-216.
- Kinsey, Christopher Paul. Stig Jarle Hansen & George Franklin. "The impact of private security companies on Somalia's governance networks". *Cambridge Review of International Affairs* 22: 1 (2009):147-161
- Kinsey, Christopher. "Regulation and control of private military companies: The legislative dimension". *Contemporary Security Policy* 26:1 (2005).
- Kinsey, Christopher. "Challenging international law: a dilemma of private security companies". *Conflict, Security & Development* 5:3 (December 2005): 269-293.
- Kwakwa, Edward. "The current status of mercenaries in the law of armed conflict". *Hastings International & Comparative Law Review* 14:1 (1990): 67-92.
- Lehnardt, Chia. "Individual Liability of Private Military Personnel under International Criminal Law." *The European Journal of International Law* 19:5 (2008): 1015- 1034.
- Liu, Hin-Yan. "Leashing the Corporate Dogs of War: The Legal Implications of the Modern Private Military Company", *Journal of Conflict & Security Law* 15 (2010): 141-168.
- Mathieu Fabien and Nick Dearden. "Corporate Mercenaries: The Threat of Private Military & Security Companies". *Review of African Political Economy* 34:114, Class, Resistance & Social Transformation (December 2007).
- Perrin, Benjamin. "Promoting compliance of private security and military companies with international humanitarian law". *International Review of the Red Cross* 88:863 (September 2006): 613-636.
- Pfothenauer, David. "Unloved but Needed: PMCs in Africa". *African Defense Review* (May 5, 2015).
- Rosemann, Nils. "The Privatization of Human Rights Violations – Business' Impunity or Corporate Responsibility? The Case of Human Rights Abuses and Torture in Iraq". *Non-State Actors and International Law* 5(2005): 77-100.
- Sassòli, Marco. "Legislation and Maintenance of Public Order and Civil Life by Occupying Powers". *European Journal of International Law* 6:4 (2005):661-694.
- Selber, Jesse and Kebba Jobarteh. "From Enemy to Peacemaker: The Role of Private Military Companies in Sub-Saharan Africa". *Medicine & Global Survival* 7:2 (February 2002): 90-95.
- Scobbie, Iain. "Principle or Pragmatics? The Relationship between Human Rights Law and the Law of Armed Conflict". *Journal of Conflict & Security Law* 14 (2010): 449-457.

- Singer, Peter. "The Private Military Industry and Iraq: What have we learned and where to next?", (DCAF: Geneva 2004).
- Tariq, Ali. "Raymond Davis case".
- Végh, Károly. "Warriors for Hire?" – Private military contractors and the international law of armed conflicts", *Miskolc Journal of International Law* 5:1(2008): 26-38.
- Zarate, Juan Carlos. "The Emergence of a New Dog of War: Private International Security Companies, International Law, and the New World Disorder". *Stanford Journal of International Law* (winter 1998).

Books

- Alexandra, Andrew. Deane-Peter Baker and Marina Caparini. *Private military and security companies, ethics, policies and civil-military relations*. New York: Routledge, 2008.
- Arnold, Guy. *Mercenaries: The Scourge of the Third World*. New York: St. Martin's Press, 1998.
- Clapham Andrew and Paola Gaeta, *The Oxford Handbook of International Law in Armed Conflict*. UK: Oxford University Press, 2014.
- Cleary, Sean. "Angola – A Case Study of Private Military Involvement" in Jackie Cilliers and Peggy Mason (eds.) *Peace, Profit or Plunder?: Privatization of Security in War-Torn African Societies*, Pretoria: Institute for Security Studies, 1999: 141-173.
- Dinstein, Yoram. *The Conduct of Hostilities under the Law of International Armed Conflict*. Cambridge: Cambridge University Press, 2004.
- Dorman, Knut. *Elements of War Crimes under the Rome Statute of the International Criminal Court*. Cambridge: Cambridge University Press, 2003.
- Francioni, Francesco and Natalino Ronzitti. *War by Contract: Human Rights, Humanitarian Law, and Private Contractors*. New York: Oxford University Press, 2011.
- Hansen, Stig Jarle. "Private security, maritime protection and surveillance in Somaliland" in *Maritime Private Security: Market Responses to Piracy, Terrorism and Waterborne Security Risks in the 21st Century* / ed. by Claude Berube and Patrick Cullen. London: Routledge 2012: 113-125.
- Henckaerts, Jean-Marie and Louise Doswald-Beck. *Customary International Humanitarian Law*. Vol. I: Rules. New York: Cambridge University Press 2005: 537-550.
- Henckaerts, Jean-Marie and Louise, Doswald-Beck. *Customary International Humanitarian Law*. Vol. I Cambridge: Cambridge University Press, 2005.
- Hinderson, Conway H. *Understanding International Law*. Singapore: Wiley-Blackwell, 2010.
- Hingorani, R.C. *Prisoners of War*. New York: Oceana Publications, Inc., Dobbs ferry, 1982.
- Kalshoven Frits and L. Zegveld. *Constraints on the Waging of War*. Geneva: ICRC March 2001.
- Kinsey, Christopher. "Private Security Fighting Pirates and Illegal Fishing in Puntland", in *Maritime Private Security: Market Responses to Piracy, Terrorism and Waterborne Security Risks in the 21st Century* / ed. by Claude Berube and Patrick Cullen. London: Routledge 2012: 126-137.

- Louise, Doswald-Beck. "Private Military Companies under International Humanitarian Law", in *Mercenaries to Market : the Rise and Regulation of Private Military Companies / ed.* by Simon Chesterman and Chia Lehnhardt, Oxford:Oxford University Press, 2007: 115-138.
- Pech, Khareen. "Executive Outcomes – A Corporate Conquest" in Jackie Cilliers and Peggy Mason (eds.) *Peace, Profit or Plunder? Privatization of Security in War-Torn African Societies*, Pretoria: Institute for Security Studies, 1999: 81-109.
- Ramcharan, Bertrand G. *Human Rights Protection in the Field*. Leiden: Martinus Nijhoff Publishers, 2006.
- Roger, A.P.V. *Law on the Battlefield*. Manchester: Manchester University Press, 1996.
- Sandoz, Yves. Christophe Swinarski and Bruno Zimmermann. "Commentary on the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)" *International Committee of the Red Cross*. Martinus Nijhoff Publishers: Geneva 1987.
- Saulnier, Françoise Boucher. *The Practical Guide to Humanitarian Law*, edited and translated by Laura Brav and Camille Michel. UK: Rowman & Littlefield Publishers, 2013.
- Schmitt, Michael N. and Jelena Pejic, eds., *International Law and Armed Conflict: Exploring the Faultlines: Essays in Honour of Yoram Dinstein*, Leiden: Martinus Nijhoff Publishers, 2007.
- Talijaard, Raenette. "Implementing South Africa's Regulation of Foreign Military Assistance Act" in *Private Actors and Security Governance* by Alan Bryden and Marina Caparini (eds.), (Geneva, Switzerland :Geneva Centre for the Democratic Control of Armed Forces (DCAF), 2006).
- Vines, Alex. "Gurkhas and the Private Security Business in Africa" in Jackie Cilliers and Peggy Mason (eds.) *Peace, profit or Plunder?: Privatization of Security in War-Torn African Societies*, Pretoria: Institute for Security Studies, 1999: 123-139.
- Wulf, Herbert."Reconstructing the Public Monopoly of Legitimate Force", in *Private Actors and Security Governance* by A. Bryden, M. Caparini (eds.), DCAF(2006).

Cases

- Ferrini v. Federal Republic of Germany, Italian Court of Cassation, Judgment of 11 March 2004, by Andrea Bianchi, in *The American Journal of International Law* 99:1 (January 2005).
- Raymond Davis Case
- United States v. David F. Passaro.
- United States v. David F. Passaro, United States Court of Appeals,Fourth Circuit, UNITED STATES of America, Plaintiff-Appellee, v. David A. PASSARO, Defendant-Appellant, Nos. 07-4249, 07-4339, Decided: August 10, 2009.
- Voiotia v. Federal Republic of Germany, Areios Pagos (Supreme Court), Greece, Case No. 11/2000 (288933), Judgement of 4 May 2000.

Dissertations and thesis

- Khan, Bushra. "Involvement of the US civilian contractors in the war on terror: the privatization of war and the IHL and IHRL regime" .Thesis unpublished, International Islamic University, Islamabad 2012.

- Sasvári, Szabolcs Tamás. "Why some private security and military companies succeed and others fail in taking over public tasks". Master's Thesis unpublished, Copenhagen Business School, 16 June, 2014.
- Tung, Helen. "Under international law what is the legal status of private military contractors during military occupation and under United Nation peace keeping operation". Thesis presented for the requirement of certificate of training in United Nations peace support, peace operation training institute, February 2006.

National and International Legislations

- Coalition provisional authority memorandum number 17:Registration Requirements for Private Security Companies, 26 June 2004 and Section 19, National Security and the Central Intelligence Act 2002.
- Convention (III) relative to the treatment of prisoners of war, Geneva, 12 August 1949.
- Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.
- Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987.
- OAU Convention for the Elimination of Mercenarism in Africa was signed in Libreville on 3 July 1977 and entered into effect on 22 April 1985.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.
- Regulation of Foreign Military Assistance Act (1998).
- The Agreement between the Government of the Federal Democratic Republic of Ethiopia and the Government of the State of Eritrea (Peace Agreement) 12 December 2000.
- The Constitution of Pakistan 1973
- The Vienna Convention on Consular Relations of 1963, which came into effect in 1967
- United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS).

Newspapers

- Ashworth, Michael. "Africa's new enforcers." *Independent News*, Monday, September 16, 1996.
- Bennett, Brian. "Victims of an Outsourced War." Thursday, March 15, 2007.
- Broder, John M. and James Risen. "Blackwater Tops Firms in Iraq in Shooting Rate." *The New York Times*, September 27, 2007.
- Chaudhry, Asif. "US official guns down two motorcyclists in Lahore." *Dawn News*, January 28, 2011.
- "CIA Man Free After 'Blood Money' Payment." *Al Jazeera*, March 14, 2011.
- Crilly, Rob. "Detained US official 'in telephone contact with Islamic terror group.'" *The Telegraph*, February 10, 2011.
- Gettleman, Jeffrey. Mark Mazzetti And Eric Schmitt, *The New York Times*, August 10, 2011.
- Mazzetti, Mark And Eric Schmitt. "Private Army Formed to Fight Somali Pirates Leaves Troubled Legacy." *The New York Times*, October 4, 2012.

- Miller, Greg. "U.S. officials: Raymond Davis, accused in Pakistan shootings, worked for CIA." *The Washington Post*, February 22, 2011.
- Milmo, Chahal. "Insurance firms plan private navy to take on Somali pirates." *Independent news*, September 28, 2010.
- Neill, Marnie O'. "Jailed CIA interrogator describes torturing a prisoner to death." *news.com.au*, April 23, 2015.
- Risen , James And Mark Mazzetti. "C.I.A. Said to Use Outsiders to Put Bombs on Drones." *The New York Times*, August 20, 2009.
- Scahill, Jeremy. "The Secret US War in Pakistan," *The Nation*, November 23, 2009.
- Soofi, Ahmer Bilal. "Military Employment: Constitutional Provisions and Relevant Laws." *Hilal English*, November 2013.
- The Associated Press, "Puntland Drops Deal With Mercenary Firm." *The New York Times*, March 17, 2011.
- Timberg, Craig. "Congo holding 3 Americans in Alleged Coup." *Washington Post Foreign Service*, May 25, 2006.

Meetings and Opinion

- "Expert meeting on private military contractors: Status and state responsibility for their actions", *The University Centre for International Humanitarian Law, Geneva*, (International Conference Centre, Geneva 29-30 August 2005).
- The opinion of the US Department of Defense, "Policy and Procedures for Determining Workforce Mix, Instruction 1100.22", 12 April 2010.

Papers

- Holmqvist, Caroline. "Private Security Companies: The Case for Regulation", SIPRI Policy Paper No. 9, SIPRI: Stockholm, January 2005.
- Schreier Fred and Marina Caparini, "Privatising Security: Law, Practice and Governance of Private Military and Security Companies", Geneva Centre for the Democratic Control of Armed Forces (DCAF), Occasional Paper No. (March 6, 2005): 1-184.
- United Kingdom, Green Paper, "Private Military Companies: Options for Regulation." London: stationary Office, February 2002.

Reports and Documents

- Annex to the Letter dated 2 October 2008 from the Permanent Representative of Switzerland to the United Nations addressed to the Secretary General, UN Doc. A/63/467-S/2008/636, 6 October 2008.
- "AR 15-6 Investigation of the Abu Ghraib Prison and 205th Military Intelligence Brigade (Fay Report)" 2004.
- Background Document Working Sessions VIII and IX: Individual Contractors and Civilian Employees, Expert Meeting on the Notion of "Direct Participation in Hostilities under IHL", ICRC, (Geneva, 23 to 25 October 2005).
- Ballesteros, Enrique Bernales. "Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination." commission on human rights 53rd session, UN Doc. E/CN.4/1997/24, 20 February 1997. UN Doc. E/CN.4/1998/31, 27 January 1998, UN Doc. E/CN.4/1999/11 13

January 1999, UN Doc. E/CN.4/2001/19, 21 December 1999 and UN Doc. E/CN.4/2003/15, 16 December 2002.

- Ballesteros, Enrique Bernales. Special Rapporteur, pursuant to Commission resolution 1995/5 and Economic and Council resolution 1995/254, 53d Sess., Agenda Item 7, U.N. Doc. E/CN.4/1996/24 (17 January 1997) [hereinafter Mercenaries Report], para 65.
- Committee against Torture, Summary record of the first part of the 424th meeting: United States of America, UN Doc. CAT/C/SR.424, 9 February 2001, para. 34.
- “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.” Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.
- Draft of a possible Convention on Private Military and Security Companies (PMSCs) for consideration and action by the Human Rights Council, Annex to the Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, Chairperson/Rapporteur: José Luis Gómez del Prado, UN Doc. A/HRC/15/25, 2 July 2010.
- Draft Articles on State Responsibility States for Internationally Wrongful Acts, International Law Commission, (hereinafter, “the Draft Articles”), U.N. Document A/56/10, 30 October 2001.
- International Covenant on Civil and Political rights, Human Rights Committee, Concluding observations of the Human Rights Committee: New Zealand, UN Doc. CCPR/CO/75/NZL, 7 August 2002, para. 13.
- Ninth Report of the Foreign Affairs Committee, “Private Military Companies, Session 2001-02, Response of the Secretary of State for Foreign and Commonwealth Affairs.” October 2002.
- Prado, José Luis Gomez del. UN General Assembly “Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination”, Human Rights Council, Seventh Session, Agenda item 3, A/HRC/7/7 , 9 January 2008.
- “Report of the expert meeting on private military contractors: status and state responsibility for their actions, organized by the University Centre for International Humanitarian Law.” Geneva, 29–30 August 2005.
- “Report of the Third Meeting of Experts on traditional and new forms of mercenary activity”,
UN Doc. E/CN.4/2005/23, January 18, para. 12.
- Shameen, Shaista. “Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.” UN General Assembly sixtieth session, UN Doc. A/60/263, 17 August 2005.
- Shameem, Shaista. “Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.” Report of the Special Rapporteur, Commission on Human Rights, 61st Session, December 8,2004, UN Doc. E/CN.4/2005/14, para. 14.
- Swiss Federal Council, *Report by the Swiss Federal Council on Private Security and Military Companies*. December 2, 2005.

- United Nations Security Council Resolution 733 (Implementing an Arms Embargo on Somalia), Adopted by the Security Council at its 3039th meeting, on 23 January 1992, U.N. Doc. S/RES/733 (1992).

Web links

- Addressing the use of private security companies at the international level, *Institute for Security Studies*. Available at <http://idl-bnc.idrc.ca/dspace/bitstream/10625/41432/1/129208.pdf> (accessed October 14, 2015).
- ASIAL, 'ASIAL Code of Professional Conduct.' February 24, 2011). Available at <http://www.asial.com.au/Codeofconduct> (accessed September 5, 2015).
- Congress of the United States, Congressional Budget Office, Logistics Support for Deployed Military Forces (2005). Available at <https://www.cbo.gov/publication/17395> (accessed September 2, 2015).
- <http://www.bapsc.org.uk/> (accessed May 4, 2011).
- CIA Lawsuits: U.S. vs. David Passaro, available at http://www.expose-the-war-profiteers.org/CIA/Personnel/david_passaro/profile.htm (accessed March 26, 2016).
- Clarifying the notion of direct participation in hostilities, *ICRC* 2009. Available at <https://www.icrc.org/eng/resources/documents/feature/2009/direct-participation-ihl-feature-020609.htm> (accessed October 24, 2015).
- Coalition Provisional Authority, 'Memorandum 17: Registration Requirements for Private Security Companies (PSC)' (26 June 2004), Annex A, para. 5 b. Available at <http://www.iraqcoalition.org/regulations/> (accessed September 3, 2015).
- "Countries in Which PMSCs Operate", *Global policy forum*, Available at <http://www.globalpolicy.org/pmscs/50192-countries-in-which-pmscs-operate.html> (accessed July 31, 2015).
- Defense Federal Acquisition Regulation Supplement, 'Contractor Personnel Authorized to Accompany U.S. Armed Forces' (DFARS Case 2005-D013), June 16, 2006. Available at <http://www.gpo.gov/fdsys/granule/FR-2006-06-16/E6-9499> (accessed September 2, 2015).
- Department of Defense Instruction No. 3020.41 (3 October 2005) on "Contractor Personnel Authorized to Accompany the U.S. Armed Forces". Available at https://fas.org/irp/doddir/dod/i3020_41.pdf (accessed October 20, 2015).
- Direct participation in hostilities: questions and answers, *ICRC* 2009. Available at <https://www.icrc.org/eng/resources/documents/faq/direct-participation-ihl-faq-020609.htm> (accessed October 24, 2015).
- Private Military and Security Companies in Somalia Need Regulation, Says UN Expert Group, Office of the High Commissioner for Human Rights, December 18, 2012. Available at <https://www.globalpolicy.org/pmscs/52154-private-military-and-security-companies-in-somalia-need-regulation-says-un-expert-group.html> (accessed April 13, 2016).
- "Regulation and Oversight of PMSCs", *Global Policy Forum*, available at <https://www.globalpolicy.org/pmscs/50211-regulation-and-oversight-of-pmscs.html> (accessed at April 13, 2016).
- The International Stability Operations Association in the US, available at <http://www.stability-operations.org/> (accessed May 14, 2016) and the British Security Industry Association, available at <http://www.bsia.co.uk/about-us.aspx> (accessed May 14, 2016).

- “The ICRC to expand contacts with private military and security companies”, *International Committee of the Red Cross*, 4 August 2004, available at <https://www.icrc.org/eng/resources/documents/misc/63he58.htm> (accessed June 22, 2015).
- The statements of the UN Working Group on the use of mercenaries, ‘Guns for hire’ (29 April 2010), available at <http://www.ohchr.org/EN/NewsEvents/Pages/Gunsforhire.aspx> (accessed September 1, 2015).
- http://www.mfa.gov.cy/mfa/properties/occupiedarea_properties.nsf/loiz_main.txt last accessed October 14, 2015.
- U.S military has used civilian contractor in combat zone since 1960, July 21, 2015. Available at <http://www.your-poc.com/u-s-military-used-civilian-contractors-combat-zones-since-1960s/> (accessed September 5, 2015).
- 18 U.S. Code § 2441 - War crimes, available at <https://www.law.cornell.edu/uscode/text/18/2441> (accessed October 17, 2015);
- <http://www.law.cornell.edu/uscode/text/18/7> (accessed November 18, 2015).
- <http://physicalriskolutions.com/> (accessed April 16, 2016).
- <http://www.economist.com/node/129238> (accessed April 3, 2016).
- www.zmne.hu/aarms/docs/Volume11/Issue2/pdf/14.pdf (accessed August 4, 2015).
- <http://repository.jmls.edu/lawreview/vol38/iss4/6/> (accessed June 22, 2015).
- <http://mic.com/articles/46621/108-000-private-contractors-are-in-afghanistan-and-we-have-no-idea-what-they-re-doing#.BPOYHoeI1> (accessed March 27, 2016).
- <http://cimsec.org/searching-somali-coastguard/7776> (accessed April 16, 2016).
- <http://scholarship.law.berkeley.edu/facpubs/175> (accessed October 12, 2015).
- <https://www.globalpolicy.org>
- <http://www.theguardian.com/commentisfree/2015/oct/15/obama-afghanistan-war-end-nowhere-in-sight-troops> (accessed March 27, 2016).
- https://www.academia.edu/8851835/The_Case_for_a_Pragmatic_Assessment_of_Private_Military_Companies_in_Iraq (accessed August 17, 2015).
- <https://www.questia.com/read/1G1-60868309/combat-for-sale-the-new-post-cold-war-mercenaries> (accessed April 3, 2016).
- <http://iissonline.net/somalia-and-the-pmsc-market/> (accessed April 16, 2016).
- <http://www.ejil.org/pdfs/19/5/1695.pdf> (accessed October 1, 2015).
- <http://caselaw.findlaw.com>
- www.jstore.org.com
- <http://www.nytimes.com>
- <http://www.africandefence.net/pmcs-in-africa/> (accessed April 10, 2016).
- <http://www.ipnw.org/pdf/mgs/7-2-selber.pdf> (accessed April 2, 2016).
- <http://historypak.com/raymond-davis-case/> (accessed March 29, 2016).
- <http://www.uni-miskolc.hu/~wwwdrint/20081vegh1.htm> (accessed June 22, 2015).
- <https://www.issafrika.org/pubs/Books/BlurbPPP.HTML> (accessed November 18, 2015).
- <http://www.independent.co.uk/news/africas-new-enforcers-1363564.html>, (accessed March 17, 2016).
- <http://content.time.com/time/magazine/article/0,9171,1599682,00.html> (accessed September 3, 2015).
- <http://www.dawn.com/2011/01/28/us-official-guns-down-two-motorcyclists-inlahore.html>(accessed April 17, 2016).

- <http://www.aljazeera.com/news/asia/2011/03/2011316121616279778.html> (accessed February 17, 2012).
- <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/8316286/Detained-US-official-intelephone-contact-with-Islamic-terror-group.html> (accessed February 17, 2012).
- <http://www.washingtonpost.com/wpdyn/content/article/2011/02/21/AR2011022102801.html> (accessed February 16, 2011).
- <http://www.independent.co.uk/news/world/africa/insurance-firms-plan-private-navy-to-take-on-somali-pirates-2091298.html> (accessed September 2, 2015).
- <http://www.news.com.au/lifestyle/real-life/jailed-cia-interrogator-describes-torturing-a-prisoner-to-death/news-story/a23184bfc16061be4559e768b6cfc676> (accessed March 26, 2016).
- <http://www.thenation.com/article/secret-us-war-pakistan> (accessed February 24, 2012).
- <http://hilal.gov.pk/index.php/layouts/item/627-military-employment-constitutional-provisions-and-relevant-laws> (accessed March 29, 2016).
- <http://www.washingtonpost.com/wp-dyn/content/article/2006/05/24/AR2006052401591.html> (accessed April 10, 2016).
- <http://www.dtic.mil/whs/directives/corres/pdf/110022p.pdf> (accessed September 2, 2015).
- <http://www.dcaf.ch/Publications/Privatising-Security> (accessed October 1, 2015).
- https://www.eda.admin.ch/content/dam/eda/en/documents/aussenpolitik/voelkerrecht/Montreux-document-4_en.pdf (accessed September 4, 2015).
- <http://fl1.findlaw.com/news.findlaw.com/hdocs/docs/dod/fay82504rpt.pdf> (accessed September 4, 2015).
- <http://www.globalsecurity.org/military/library/report/1997/e-cn-4-1997-24.htm> (accessed September 4, 2015).
- <https://www1.umn.edu/humanrts/commission/thematic52/27-mer.htm> (accessed March 16, 2016).
- <http://www.unhchr.org>
- <http://www.refworld.org/docid/3ddb8f804.html> (accessed September 22, 2015).
- <http://www.publications.parliament.uk/pa/cm200102/cmselect/cmfaff/cmfaff.htm> (accessed September 3, 2015).
- <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/100/75/PDF/G0810075.pdf?OpenElement> (accessed March 16, 2015).
- http://www.geneva-academy.ch/docs/expert-meetings/2005/2rapport_compagnies_privees.pdf (accessed September 22, 2015).
- <http://daccess-ods.un.org/TMP/5969487.42866516.html> (accessed August 4, 2015).
- <http://www.refworld.org/docid/43f30fa70.html> (accessed September 3, 2015).
- http://psm.du.edu/media/documents/national_regulations/countries/europe/switzerland/report_swiss_2005_private-security-and-military.pdf (accessed September 3, 2015).

