

The Privatisation of War: “Private Security Companies” on Contract with UN “Humanitarian” and “Peace Keeping” Operations

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In order to discuss the use of armed private military and security companies to protect UN personnel and UN premises in the field as well as the use of such companies in United Nations peace and humanitarian operations, the UN is convening an Expert Panel Event in its New York Headquarters, on 31 July 2013. The present Working Group on the use of mercenaries organizes the Panel.

In other words, the privatization of UN peace and humanitarian operations to the private sector: an objective of several billion dollars annually the cartel of private military and security companies have coveted for many years.

Since Gregory Starr became United Nations Under-Secretary General for Safety and Security in 2009 and started to outsource UN security to the private sector, the UN Department of Safety and Security has been elaborating guidelines and criteria to legitimize the use of private military and security companies since the use of such companies has had a negative image due to their implication in human rights violations.

In 2012, the Department published a United Nations Policy on Armed Private Security Companies and Guidelines on the Use of Armed Security Services from Private Security Companies. According to the organizers the objective of this Expert Panel is to foster discussion and elicit responses from civil society on the Guidelines. The results will be included in the next annual report of the Working Group to the General Assembly. However, one may raise the question as to whether one of the main objectives of the July Expert Panel is not to present and endorse such UN Guidelines by achieving a further step in legitimizing the use of private military and security companies by the UN system.

It is interesting to note that Gregory Starr before joining the United Nations was Former Director of the U.S. Diplomatic Security Service (DSS) in the State Department. He was one of the prime movers to outsource the security of US diplomats to private companies such as Blackwater.

Within this context one should remember that two former UN Secretary-Generals, have made proposals to provide the World Organization with a small group of permanent forces that could be at the disposal of the Organization in accordance with the UN Charter spirit.

Indeed, UN Member States have yet to implement a standing UN army or standing UN police force as originally envisioned in the UN Charter. As a result, UN peace operations have been based on ad hoc coalitions of willing states with a number of dysfunctions of UN peace and security operations such as the lack by UN Member States to make available standing peace

operations personnel and resources[1].

The UN Department of Safety and Security seems to have opted for privatizing UN security.

However, one should not forget that Private Military and Security Companies (PMSC) are the modern reincarnation of a long lineage of private providers of physical force, including corsairs, privateers, and mercenaries[2].

In the XIX and beginning of the XXth. century, nations adopted international instruments to regulate the activities of corsairs, privateers, and buccaneers[3].

Mercenaries, which had practically disappeared during the nineteenth and twentieth centuries, reappeared in the 1960s during the decolonization period operating mainly in Africa and Asia. Under UN auspices, a Convention was adopted which outlawed and criminalized their activities[4].

In order to avoid the stigma of the labeling name "mercenaries", these non-state entities of free-lance fighters have changed it from "dogs of war" to "private military companies" in the 90s, when Executive Outcomes and Sandline were created, to "private contractors" and "private security companies" with the intervention of United States in Afghanistan and Iraq and the development of the security industry at the beginning of the XXIst century and more recently to "private security service providers" with the development of a security industry cartel.

The widespread outsourcing of military and security functions to private military and security companies (PMSCs) by governments, intergovernmental and non-governmental organizations, and multinational companies in situations of low-intensity conflict, armed conflict, post conflict, international relief, and contingency operations has been a major phenomenon in recent years.

In many instances private companies are contracted in order to avoid direct responsibility. The use of these private contractors to support operations in Iraq and Afghanistan, and the human rights violations in which they have been involved have been the focus of international attention. It has generated debate about the roles of PMSCs, the norms under which they should operate, and how to monitor their activities.

The United Nations Commission of Human Rights, the predecessor the UN Human Rights Council, alerted by such trends established in 2005 the UN Working Group on the use of mercenaries with the mandate to analyze these modern trends of mercenarism.

In 2010, the UN Working Group, after having completed its six-year mandate, submitted to the United Nations a draft convention it had elaborated to regulate and monitor private military and security companies.

There have been a number of cases in Afghanistan and elsewhere of collusion of international security companies in government corruption and illegal businesses. Such activities included creating insecurity with the objective of securing their business and expanding contracts by providing anti-government groups with bribes to ensure the movement of military and humanitarian convoys, as well as providing havens for suspects or alleged perpetrators of human rights violations and crimes against humanity and recruitment facilities of security companies. There is also information indicating that a number of PMSCs, contracted by the US government, have a privileged relationship with the

Talibans.

The draft convention contains a series of procedures to regulate these companies at the national and international levels. It also envisages measures of control for intergovernmental organizations such as United Nations and NATO as well as the prohibition to outsource to the private sector a number of inherently state functions relating to the sovereignty of states.

In many countries the number of private security personnel per 100,000 inhabitants is much larger than the active police. Among these countries are; Angola, Argentina, Australia, Bulgaria, Chile, China, Colombia, Costa Rica, Coted'Ivoire, Czech Republic, Dominican Republic, El Salvador, Guatemala,

Honduras, Hungary, India, Ireland, Jamaica, Japan, Kenya, Luxembourg, Panama, Poland, Romania, Russian Federation, Slovenia, South Africa, Turkey and the U.S.A.[5]

Following the UN Working Group' proposal of an international instrument to regulate and monitor the activities of private military and security companies, the United Nations Human Rights Council established an Intergovernmental opened working group to discuss and negotiate a possible convention. Although a majority of UN Member States is in favor of regulatory and control measures, the position of Western States is a total rejection of regulation and oversight mechanisms. Their position is understandable since the new booming and flourishing security industry is located in Western countries and particularly in the UK and the USA where seventy percent of PMSCs are found.

It should be pointed out that parallel to the creation of the UN Working Group on the use of mercenaries and in order to avoid any international or state regulation as well as criticism for committing human rights violations, backed by the governments of United Kingdom, United States and Switzerland the security industry with groups such as the Stability Operation Association (ISOA) of United States and the British Association of Private Security Companies (BAPSC) launched in 2006 the Swiss Initiative.

It comprises a number of self-regulating agreements including the Montreux Document and the International Code of Conduct which has already been signed by almost 700 private military and security companies.

Among the almost 700 PMSC signatories of the Code one can find companies-such as Blackwater (which now figures as Academi after having changed twice its name), United Resources Group, G4S and its affiliate Armor Group or Triple Canopy, all involved in grave human rights all violations; companies such as DynCorp, Blackwater, and Aegis (another company that has changed from Sandline), all with a troubled past; the Ugandan company Saracen Uganda Ltd. allegedly involved in training paramilitaries in Puntland, Somalia.

All signatories of the International Code of Conduct have done it without yet any control whatsoever. Oversight mechanisms, such as: (i) certification; (ii) auditing and monitoring; and (iii) and reporting will only be applied once the International Code of Conduct Association is established.

Since the private military and security industry is not controlled by governments but regulates itself, and has generally been operating in a vacuum without respecting international humanitarian and human rights instruments, the latest development under the

Swiss Initiative has been the establishment of an international association -cartel- in Geneva to provide the legitimacy it needs in order to obtain contracts from United Nations and intergovernmental organizations for peace and humanitarian operations.

A conference is scheduled to take place in Geneva on 19-20 September 2013 at which the Association will be formally established under Swiss Law and the first Board of Directors will be selected.

The Swiss Government, as the host state for the ICoCA, has pledged \$467,500 p.a. for the first two years, and indicated the possibility of further funding after that period. The UK Government has committed GBP 300,000 as its initial contribution. The United States and Australia also have indicated their intention to contribute to the Association. This is in addition of the funding by the security industry, namely the subscription due for joining the Association and their annual fee in accordance with the company's level of revenue.

The timing for convening the United Nations Expert Panel Event in its New York Headquarters, on 31 July 2013 to discuss the use of armed private military and security companies by the United Nations and its Specialized Agencies appears to be excellent unless it has all been unintelligibly coordinated.

Notes

[1] Report of the Panel on United Nations Peace Operations, UN document A/55/305 - S/2000/809.

[2] Hin-Yan Liu, Leashing the Corporate Dogs of War: The Legal Implications of the Modern Private Military Company, 15 J. CONFLICT & SEC. L., 141-168 (2010).

[3] The 1856 Paris Declaration Respecting Maritime Law states in Article 1: "Privateering is, and remains, abolished." Declaration of Paris (Apr. 16, 1856), in CONVENTIONS AND DECLARATIONS BETWEEN THE POWERS CONCERNING WAR, ARBITRATION AND NEUTRALITY 10 (1915) available at <http://www.icrc.org/ihl.nsf/FULL/105?OpenDocument>.

The 1907 Hague Convention Relating to the Conversion of Merchant Ships into Warships further expands on this rule. Article 1 of the Convention stipulates, "A merchant ship converted into a warship cannot have the rights and duties accruing to such vessels unless it is placed under the direct authority, immediate control, and responsibility of the Power whose flag it flies." Convention Relative to the Conversion of Merchant Ships into War Ships (1907) in JAMES BROWN SCOTT, 2 THE HAGUE PEACE CONFERENCES OF 1899 AND 1907 423 (1909), available at <http://www.icrc.org/ihl.nsf/FULL/210?OpenDocument>.

[4] International Convention against the Recruitment, Use, Financing and Training of Mercenaries art. 1, December 4, 1989, 2163 U.N.T.S. 75

[5] See Nicolas Florquin, Small Arms Survey 2011: States of Security, Geneva.

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