

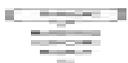
Privatized War:

A Historic, Political, Economic and Legal Analysis

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Privatized war has been a phenomenon that has existed for millennia, but recently, the emergence of Private Military Corporations has provided a new complication in regards to governance. In order to determine a solution to the lack of governance, it is therefore necessary to understand the history of privatized war and the documents related to it.

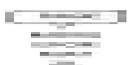


Introduction:

Privatization is a concept that has been gradually taking over our world as we know it. Privatization works its way into every possible industry, and war is certainly no exception. The phenomenon of privatized warfare has re-emerged following the period when the state was the dominant controller of force, yet regulation over privatized war has been scarce. The meager amount of regulation over privatized warfare is generally due to ignorance of the issue, or inability to influence governance. The lack of governance is especially noteworthy because it gave way to lawlessness and chaotic environments which can be seen through the chaotic nature of the Middle Ages. Ever since the fall of the Soviet Union, the world has seen the rapid growth of the Private Military Corporation but has been unable to do anything about it.¹ The ability to have governance over the Private Military Industry would prevent events similar to the tragedy that occurred on September 2007 in Nisour Square, Baghdad, Iraq.

The rise of the Private Military Corporation is fascinating because of how quickly the industry has grown in a relatively short period of time. According to Kinsey (2006), Private Military Corporations are generating approximately \$100 billion USD in revenues per year and run active operations in over 50 different countries around the world (p. 2). It is also noted by Cusumano (2011) that “As of July 2007, DoD (Department of Defense) contractors in Iraq were about 190,000 versus 160,000 troops” (p. 2). This is just a preview of the scope and incidence of Private Military Corporations, and these number increases every year. Despite the intense growth in the industry, there have been common misconceptions that the Private Military corporations are no different from Mercenaries. If we look at the argument that Salzman (2008) sets forth, she attempts to convince the

¹ For the purposes of simplicity, please be advised that Private Military Corporations and its various forms shall be referred to exclusively as “Private Military Corporations”

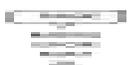


reader that the current international laws and regulations regarding Mercenaries are sufficient enough to warrant regulation over Private Military Contractors because they can meet some of the stipulations of contemporary international law regarding Mercenaries (p. 856). The fact that Private Military Corporations could fall in line with the stipulations set forth in the United Nations Convention regarding Mercenaries is not, however sufficient enough to warrant governance over them with current international laws or regulations.

In order to prove that current international laws and regulations are not appropriate for governance over Private Military Corporations, we need to analyze the chronological evolution of privatized war from the Middle Ages till the 21st century. In looking at the history of the Middle Ages, the rise of the State and the Post-Cold war society, we will see how the Private Military Corporation became a **nuanced, legal derivative of the Mercenary**. While analyzing these periods of time, there will also be a focus on how the political, economic, and legal environments ultimately affected the evolution of privatized war, leading the industry to where it currently is today.

Mercenaries vs. Private Military Corporations

When understanding the evolution of privatized war, it is important to take a moment to appreciate the evolution of this phenomenon. While it is true that Mercenaries and Private Military Corporations may have similar functions, it would be impetuous to assert that these entities are the same in all aspects, save for the name. It would also be false to assert that Private Military Corporations are a completely separate entity from Mercenaries, because they can share similar functions. Therefore, it logically follows that there needs to be an understanding regarding the role of Mercenaries, and the role of Private Military Corporations in order to discuss future, appropriate governance over these entities.

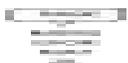


The Middle Ages:

Mercenaries, during the Middle Ages were widely used because of their versatility, compared to the alternative, otherwise known as knights. As noted by Zarate (1998), knights only needed to serve for a year and forty days. They also were not required to serve abroad in any militaristic campaigns. Finally, the lords, nobles and kings² would refrain from the armament of the peasant class for the purposes of self-preservation (p. 82). It follows that since these obstacles hindering the campaigns of lords, they would turn to Mercenaries, who were more flexible, which would allow lords to launch offensive campaigns in the pursuit of appropriating more territory. Using Mercenaries also held a secondary benefit, which allowed these lords to maintain control over their respective territories while launching offensive campaigns. Singer notes that “the Hundred Years War observed periods of on and off again war” (p. 23). This created inconsistency in income for those who hired themselves out as Mercenaries. In order to collectively mitigate this issue, Mercenaries would actually join something known as “Free Companies” headed by a *Condottieri* (the leader of Mercenaries or Free Companies). According to John of Legnano (Contamine, 1984), the *Condottieri* were collectively hired by an employer for an agreed upon salary, for a set period of time (or indefinitely) with particular objectives (p. 160). This consolidation of private military strength would essentially characterize the history of the Middle Ages.

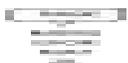
Economically, Mercenaries were better than the regular knights because of their versatility, in comparison to the knights for a lord. The system of a contract was a major driving force because, as Singer notes business guilds, who were gaining prominence (by virtue of a banking system) believed that contracting out jobs to Mercenaries would prevent mobilization of society and allowed these

² From this point forward these three groups shall be collectively referred to as “Lords” for the purposes of brevity.



guilds to stay away from war (p. 22). As noted earlier, Lords were in favor of hiring Mercenaries, but it is also important to note that business guilds in the Middle Ages were also in favor of employing Mercenaries. This is due to the fact that employing Mercenaries meant those who were members of these business guilds could focus exclusively on their task, and not worry about being required to participate, in any capacity, in hostilities. The support of Mercenaries by the Lords and the members of the business guilds eventually led to a tax known as a scutage, otherwise known as shield tax. According to Zarate (1998), a scutage would give the lords the ability to afford the professional military services of Mercenaries (p. 82). During the period of the Hundred Years War, Free Companies as actors in privatized war held economic value in comparison to knights, which explains why they were so widely used. During the Hundred Years War, Lords were able to procure the services of Free Companies, which consisted of a number of Mercenaries for an agreed upon price, as opposed to hiring Mercenaries individually, which was the norm prior to the creation of Free Companies. The economic benefit of Mercenaries caused a consolidation of power in privatized warfare, and this consolidation coupled with the political environment of the Middle Ages resulted in an overall lack of governance over Mercenaries during the Middle Ages.

The political environment contributed to the lack of governance over Mercenaries because the political system of feudalism, as noted by Singer (2003), actually encouraged Mercenaries due to the lack of centralized governmental structure (p. 23). Zarate (1998) also notes that when there is weak governance or chaos, Mercenaries become the primary source of military force (p. 82). If we analyze the political system of feudalism during the Middle Ages, we can see that it is essentially characterized by multiple warring Lords looking to accumulate territory, which necessitated the use of armies in order to pursue the Lords' goals. This requirement to have an army, considering the on again off again wars that occurred during the Middle Ages would, in part, encourage the formation of

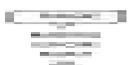


the Free Companies, which is relevant when understanding why governance during this time was so weak. There was an attempt at governance during the Middle Ages, when the French kings attempted to crush the Mercenaries in their kingdom, however this attempt was unsuccessful based on the events that occurred at the Battle of Brignais. In Jean Froissart's (1901) book, Froissart illustrates the battle between Jacques of Bourbon and the Free Company headed by Seguin de Badefol, where Jacque's army was caught off guard by the Free Company, and was subsequently decimated (p. 140). Singer (2003) notes that, following the Battle of Brignais, the French Kings initiated new campaigns against other kingdoms (Spain and Hungary) in order to remove Mercenaries from the French kingdoms territory (p. 25). As we can see from this, it is evident that governance over Mercenaries was almost non-existent since the Mercenaries and Free Companies retained a lot of power, due to the quality of their units.

As we can see from the period of the Middle Ages, there was a lack of governance over privatized war, by virtue of the political and economic environments, which greatly encouraged Mercenaries. This lack of governance existed for the entirety of the Middle Ages, and would continue well into the rise of the State following the Peace of Westphalia in 1648. Even though the Peace of Westphalia establishes the notion of state-sovereignty (Singer, p. 29), it wasn't until the Napoleonic Wars, when we see the rise of the State as a controller of force. With the rise of the State, we see a shift in the political, economic and legal environment regarding governance over privatized warfare.

The Rise of the State:

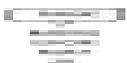
Shifting away from the political system of the Middle Ages, a new political system characterized by centralization of power began to take hold, and with the establishment of centralization, there was a severe decline in the demand for Mercenaries. According to Zarate "with



the consolidation of central authority in most European states and the establishment of the notion of nation-state sovereignty, the recruitment of foreigners for duty in national armies declined. States began to pass neutrality laws which generally prohibited their citizens' enlistment in foreign armies, and citizen armies became the norm" (p. 85). The establishment of this 'nation-state' identity is crucial in our understanding of governance over privatized war because this notion created a unifying force amongst members of the nation-state. The power of identity is important to take note of, because as Foucault (1973) notes, via a quote from Tournefort:

"To know plants is to know with precision the names that have been given to them in relation to the structure of some of their parts...the idea of the character that essentially distinguishes plants from one another ought invariably to be one with the name of each plant" (p. 139).

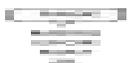
Even though Tournefort references plants, the same principle of characterization applies to people with regards to identity with a particular nation-state. This systematic characterization of people creates a 'self vs. other' mentality which is helpful in understanding another reason why the demand for Mercenaries decreased during this time period. Considering the fact that mercenaries, by this point, were groups who had no particular identity relation to any state, and that their unifying characteristic was profit, citizens of the nation-state felt at odds with the Mercenaries. It is due to the differences between these two unifying characteristics, that we can view Mercenaries, and the citizens of the nation-state under the dichotomy of the 'self vs. the other'. Singer (2003) also notes that "those who fought for profit rather than patriotism were completely delegitimized under these new conceptions [identity as citizens rather than subjects] (p. 31). The creation of the United Nations further perpetuated the dominance of the State as a controller of force through various pieces of



legislation which would add an additional level of governance over Mercenaries, until the end of the Cold War.

After the Middle Ages, even though Mercenaries existed, the demand for their services was severely diminished. This occurred because of the economies of scale³ regarding war, the additional costs associated with Mercenaries, as well as the 'criminalization' of war for profit. When neutrality laws were passed, Mercenaries were impacted in regards to their replacement rate and their size. Singer (2003) notes that 'the level of warfare began to increase, in order to take advantage of new economies of scale' (p. 29). This speaks to the fact that warfare became a numbers game rather than a determination of skill on the battlefield. Because there was a new economy of scale regarding warfare, States, who could arm their citizens began to outnumber Mercenaries and Free Companies, which means that the size of Mercenary/Free Company groups was relatively smaller in comparison to State armies. The neutrality laws as noted earlier, also helped contribute to the unifying characteristic of 'nation-state' identity for citizens of States. This coupled with the 'self vs. other' mentality, causes a decline in the replacement rate of Mercenary groups. It is also important to take into account that Mercenaries, when they weren't employed by States, looked for uncouth methods to generate revenue. According to Mary Kaldor (1996), the system of using Mercenaries was too expensive and inefficient because they lacked reliability and were causing overbearing costs upon the nation (p. 16). The costs of militarizing and demilitarizing Mercenaries who did not have a reliable track record became an unreasonable and irrational cost upon the States. The Mercenaries would also pillage and plunder areas where they resided when not employed, which affected the amount of revenue the states could obtain from the citizens of the state. Finally, the 'criminalization' of engaging in war for profit was a normative shift that was consistent with the notion of 'nation-state' identity.

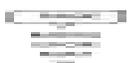
³ Economies of Scale refer to the cost advantage that occurs when a businesses can produce an additional unit of a good/service at a decreased cost.



According to Singer “Those who fought for profit rather than patriotism were completely delegitimated under these new conceptions [nation-state identity]” (p. 31). All of these economic factors contributed to the decline of Mercenaries with the rise of the state, but the political environment, coupled with governance capabilities also played a significant role in why the demand for Mercenaries decline, with the rise of the state.

The political system of centralized governments required states to create definable territories in order to have these nation-states assert their rights to sovereignty as an independent entity. Since the notion of sovereignty made intervention into the domestic affairs of the state, by another separate state illegitimate, each state needed to prove that they were capable of maintaining their sovereignty, as noted by Singer (2003, p. 31). Initially, there was no global system to ensure that States respected the sovereignty of other States however, following the end of World War II, the United Nations was formed in order to promote international peace and security as well as prevent another World War from occurring. Because of the United Nations, issues that were considered threats international peace and security came under the scrutiny of Nations-states, and Mercenaries were no exception. During the rise of the state, Mercenaries were viewed as threats to the sovereignty of a nation, because in areas of chaos or conflict, Mercenaries would interfere in the domestic affairs of a nation, which was a common for States in the African Continent. In order to combat the threat of Mercenaries to a State’s sovereignty in African Nation-states, the Organization of African Unity (OAU) passed regulations that attempted to ban the use or employment of Mercenaries.

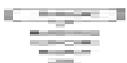
According to Zarate, this caused the international community to assess the threat of Mercenaries and later a ban that prevented or restricted the employment, use, recruitment or financing of Mercenaries (p. 78). This would further delegitimize the position of Mercenaries in the



international sphere; however Zarate also presents a significant point that grants legitimacy to Mercenaries, at least in part. Zarate states that a total ban on Mercenaries potentially violates the rights of states, which are codified in the United Nations Charter; Chapters One and Seven specifically (p. 78). According to the United Nations Charter, Chapter One, states that nothing shall infringe upon the state's sovereignty in the domestic sphere (UN Charter, 1945), and Chapter Seven stipulates that a nation has the right to self-defense or collective self-defense (UN Charter, 1945). The reason that Mercenaries could be legitimized, is because for the purposes of preserving order within one's nations (which is under the purview of domestic affairs), a government may need to employ the use of Mercenaries due to a lack of capacity to maintain a standing national force. Also, in some situations, countries, by virtue of their non-existent military, must turn to Mercenaries for the immediate defense of their nation. To deny these countries the access to Mercenaries would be tantamount to taking away the inherent rights of the State which was built upon the principles of Westphalian Sovereignty. If a country must wait for the approval of the Security Council before defending itself, which is not necessarily a given, it is likely that the country could be overrun or the government will be deposed by the aggressor country.

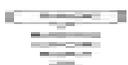
Following the OAU's appeal to the United Nations Security Council for collective action against Mercenaries, the United Nations drafted the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries* in 1989⁴. The United Nations Convention regarding Mercenaries has six stipulations on the basis of three broad characteristics. The convention also has an additional statement that references the status of Mercenaries in regards to war. The characteristics pertain to the fact that Mercenaries are: not a party to the conflict, look for direct

⁴ Prior to the passing of the International Convention regarding Mercenaries, the Geneva Convention's Additional Protocol I had regulations imposed on Mercenaries, but will not be referenced because the United Nations convention regarding Mercenaries has the same holding as the Additional Protocol with additional information to address Mercenaries in a nuanced way (at this point in time). Document shall also be referred to as "the United Nations Convention regarding Mercenaries" for the purposes of brevity.



participation in hostilities and actively seek private gain. The convention also stipulates that Mercenaries shall not be able to qualify for either Combatant or Prisoner of War status. The convention also speaks to the State's responsibility regarding Mercenaries, stating that they are not allowed to recruit, use, or finance Mercenaries (A/RES/44/34). Even though the convention attempts to provide governance over Mercenaries, many scholars note the fact that there are multiple factors that inhibit the power of the United Nations Convention regarding Mercenaries. These factors include the fact that none of the five permanent members of the United Nations Security Council are parties to the convention, and individuals can circumvent the specific stipulations of the convention, thereby making it difficult to determine whether or not an individual has engaged in Mercenary activity. The fact that the United Nations Convention regarding Mercenaries does not have the backing of the five permanent members of the United Nations Security Council is important because this shows a lack of political will to reform the practice of using Mercenaries amongst the most powerful nations in the world. The fact that individuals can circumvent the specific stipulations of the convention also is problematic when attempting global governance over these entities because this makes the motivations of fighters extremely difficult to discern. Jose L. Gomez del Prado (2008) comments on the fact that the criteria of motivation for private gain essentially ignores any other possible reason for combatants getting involved in a conflict (p. 7). The motivations of people happen to be one of the most significant factors in regards to why labeling someone as a Mercenary is difficult.

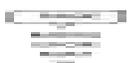
After looking at the rise of the state with regards to privatization of war, we see that there has been a shift towards states being controllers of force, and a decline in the demand for Mercenaries. It should be noted that even though there were multiple attempts to have global governance over Mercenaries, it was ultimately ineffective at preventing Mercenary-esque activity from occurring. According to Singer, the private military trade was durable, in the sense that following the



criminalization of Mercenaries, they continued to operate, albeit on a significantly smaller scale (p. 43). In essence, the ability for the international community to regulate the privatization of war is limited in so far as they can set certain outlines or requirements that comprise the 'Mercenary identity'. Following the International Conventions and organizations that look to safeguard human rights, the state is responsible for regulating and monitoring Mercenaries within their states. To this end, most domestic governments have their own particular legislation that discusses the privatization of war, with regards to Mercenaries. Despite the fact that Mercenaries have specific legislation against them, the privatization of war has seen a reemergence recently with the rise of the Private Military Corporation. This new entity fundamentally changes the way war, especially privatized war is viewed. The introduction of the Private Military Corporation creates a new type of actor in war, that can't be regulated by the current international laws and documentation that exist. It is for this reason, that it is imperative to understand Private Military Corporations as a nuanced, legal derivative of Mercenaries, as opposed to "Mercenaries in a new designer bottle" as Abdel-Fatau Musah would argue (Singer, p. 44).

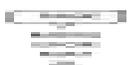
Rise of the Private Military Corporation:

Following the end of the Cold War, there was a shift towards privatization, and war was no exception. This shift towards privatization actually encouraged the reemergence of privatized war because the end of the Cold War led to a mass disarmament of States which led to a flood of resources entering the markets. Noticing the vast availability of resources, individuals attempted to take advantage of this, which gave birth to a private corporate entity entering the markets, offering services to various clients in a number of ways. Even though Private Military Corporations have been getting more attention in recent years, the fact remains that Private Military Corporations are a relatively new concept with no official definition. Pursuant to the principles of legality, *nullum crimen*

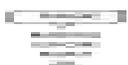


sine lege (no crime without law) and *nulla poena sine leges* (no punishment without law), Private Military Corporations have been able to evade International global governance for many years. The economic implications of the industry as well as the legal and political environments have significant contributions towards the emergence and rapid growth of the Private Military Corporation.

If we want to look at the effect that economics had on the emergence of the Private Military Corporation, we need to look at why there is a shift towards privatization, following the end of the Cold War. Stephen Kobrin (2008) notes how globalization essentially blurs the line between what is a part of the private and public sector in terms of business (p. 8). This blurring of the distinction between the private and public sector is important due to the fact that businesses are now becoming familiar with functions that used to be in the control of the state. This coupled with the fact that the armies of Western countries have shrunk since the end of the Cold War starts to create a connection between privatization and the emergence of the Private Military Corporation. Kinsey notes that state armies, following a mass demilitarization, had difficulties responding to humanitarian efforts, responding to various forms of conflict and other such situations which required the mobilization of professionally trained armed forces (p. 96), which contributes to the demand for the Private Military Corporations. Private Military Corporations are also able to boast high yields for shareholders at minimal personal costs. According to Singer, the industry doesn't require a lot of capital investment, because their resources are typically openly available and vast in supply (p. 74). For a Private Military Corporation, it is relatively easy to enter the markets due to the fact that there are low barriers to entry, resources are generally available and costs are generally minimal. There are low barriers to entry for this particular industry because of the fact that there were many people, following the end of the Cold War, who were no longer required to serve in the militaries of their nations.



If we look at the number of troops that the United States employed following the end of the Cold War, we see the number drop significantly, from 780,000 troops to 380,000 troops (p. 95). As we can see, there was a decrease of 400,000 troops, and this figure was exclusive to the United States only. Keeping in mind the fact that there was global mass demilitarization that occurred following the Cold War, it reasonably follows that there were, and still are, millions of former members of a State's armed forces who are looking for a way back into the war industry. This ambition to return to the war industry stems from the fact that most of these former soldiers were soldiers for a majority of their life, and are unable to effectively reintegrate into civilian life. Singer (2003) notes that "one lure is that the military industry offers recently retired personnel a relatively easy, even natural, transition stage into private life" (p. 76). While there is a qualifier that shows that the former example doesn't characterize the applicant pool, it is still a strong attraction for former soldiers, following the period of mass demilitarization that occurred following the end of the Cold War. Also, Singer notes that the employees of Private Military Corporations are able to lure the 'best and brightest' away from the nation's army due to the prospects of getting anywhere from two to ten times more than their military salary (p. 74). The Private Military Corporations also offer a smooth transition from active duty military service towards private military services by virtue of the fact that the Private Military Corporations operate in a manner similar to that of the military. By this logic, it is relatively simple for a person to finish as an active duty member of the armed services and transition straight into the private sector without any delay periods. The ability to seamlessly incorporate recently retired military personnel into the Private Military Corporations is essential to their ability to mitigate costs, because there is no need to provide training or anything of the sort. Essentially, the employees of Private Military Corporations 'pick up where they left off' in regards to their assignments in the Private Military Corporation.



Digitalization also makes it easier to enter the industry because it is possible to effectively run a corporation with the only cost pertaining to maintenance of a server. Singer notes how the virtual company makes entry into the markets easier because these companies use databases in order to find the personnel needed in order to complete the contract (p. 75). Digitalization also allows for global access for the Private Military Corporation. Kobrin notes how digitalization is ultimately the result of “the viability of discrete borders, the increased indeterminacy of location, the increased irrelevance of geographic proximity, and the reorganization of international production as a result of the disaggregation of production” (p. 13). The mitigation of costs, by virtue of digitalization actually incentivizes the use of the Private Military Corporation, because they can offer a wide range of services at competitive rates, which is typically cheaper in comparison to the alternatives.

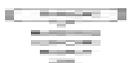
In the pursuit of understanding Private Military Corporations, there needs to be an understanding that they do not serve a strictly military function. There has typically been misconceptions that Private Military Corporations, in general, are similar to corporations like Academi⁵, however ignores the presence of various other corporations, such as MPRI⁶, G4S⁷, and other corporations that typically operate in a non-lethal capacity⁸. According to Kinsey (2006), Private Military Corporations can be observed as entities that occupy a specific point on a grid with respect to the objective that is to be secured and the means by which the corporations look to secure those objectives (p. 10). Kinsey asserts that each Private Military Corporation can be plotted on a grid because he, like Singer, recognizes that even though Private Military Corporations can share functions

⁵ Academi: Formally known as Xe and formerly known as Blackwater. Academi is currently a subsidiary of Triple Canopy (a division of Constellis Holdings).

⁶ MPRI: Military Professional Resources Incorporated.

⁷ G4S: Group 4 Securicor

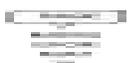
⁸ Non-lethal capacity is characterized by a lack of deadly force when looking to achieve a particular objective. According to Kinsey (2006), in the examples of MPRI, they focus almost exclusively on government contracts that pertain to spearheading various types of military program training with the specific goal of improve the quality of a nation’s military forces and law enforcement institutions (p. 24).



similar to Mercenaries (particularly an engagement in zones of conflict), they, by virtue of corporatization, offer a variety of functions that don't necessarily require them to be active in hostilities (Singer, p. 46). Prior to a recent reevaluation of Private Military Corporations, the international community held the assumption that since Private Military Corporations can operate in a manner similar to that of Mercenaries, they should be held to the same legal constraints. Proponents of this line of thought would often attempt to have governance over these entities by referencing the United Nations Charter, the Additional Protocols of the Geneva Convention or the United Nations International Convention regarding Mercenaries, however these documents ignore the fact that Private Military Corporations are driven by business profit, are legal, public entities, offer a wide range of services to a variety of clients, and are linked specifically to the financial markets (Singer, p.47). Now that the international community recognizes Private Military Corporations as entities that are different from Mercenaries, there have been a few attempts at governance over these entities by international organizations. The International Committee of the Red Cross and the United Nations Working Group on the use of Mercenaries have each attempted to provide governance over Private Military Corporations through the *Montreux Document of Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict*⁹, and conventions respectively.

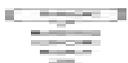
Governance of the Private Military Corporation was really started with the International Committee of the Red Cross's *Montreux Document*. This document lists the responsibilities of States with regards to employing Private Military Corporations during Armed Conflicts, the responsibilities of Private Military Corporations with regards to their participation in active war zones, and the good

⁹ The *Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict* shall be referred to as the *Montreux Document* for the purposes of simplicity.



practices regarding the regulation of Private Military Corporations. This document also explains what a Private Military Corporation is and provides the appropriate guidelines which outline what is deemed good practices regarding these corporations (ICRC, p.9). The Document was initially signed by seventeen different countries, but the important thing to note is the fact that it had the backing of four of the five permanent members of the United Nations Security Council. This shows that the Montreux Document had the political backing as well as the backing of some of the most prominent nations in the international community; however this document was susceptible to a major weakness. This document lacks legal enforcement mechanisms in order to ensure compliance from member states. The Initiative for Human Rights in Business (IHRB) actually notes in their analysis of the United States, the United Kingdom, Iraq and Afghanistan, that the lack of compliance amongst these three member nations is linked to a lack of legally binding stipulations (IHRB, 2013). It is also noted that the domestic policies of these nations lacks clarity, which makes compliance with the document difficult for these states. Even though the Montreux Document does actually start the initial process of governance over Private Military Corporations, it is not completely effective due to the fact that it has no ability to force compliance amongst states.

The other element of governance over Private Military Corporations comes from the United Nations Working Group regarding Mercenaries. Even though there have not been any legally binding documents that have come from this group, there has recently been more discussions about Private Military Corporations as entities that are separate from Mercenaries. In a previously released statement by the Chair of the Working Group regarding Mercenaries, there are 8 critical factors that the committee wished to address with regards to providing governance over Private military Corporations (Working Group Chair on the Use of Mercenaries, 2015). This group has been convening to discuss ways to try and shift control of force out of the private sector and back into the hands of

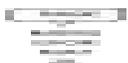


the State, claiming that there are certain tasks that should not be outsourced, and that in the hands of the state, there will be sufficient oversight by the domestic government. They also attempt to argue that there needs to be some sort of enforcement mechanism for Private Military Corporations, provided that they fail to adhere to the stipulations that they are attempting to set forth. If we refer back to Kobrin's argument that the lines between private and public sector are becoming increasingly blurred, it becomes difficult for the United Nations working group to assert their position that certain tasks should not be outsourced. The outsourcing of functions that used to be in the direct control of the state stems from the public's lack of confidence in the government's ability to sufficiently perform these functions. As Singer notes, "Many states are less willing, and less able to guarantee their own sovereign autonomy. Instead, they have increasingly delegated the task of securing the life and property of their citizens to other organizations, including PMF's¹⁰" (p. 56). This lack of ability for the nation-state to sufficiently perform their duties in safeguarding the rights of their people is what causes the lack of confidence in nation-states, thereby encouraging the outsourcing of functions that used to be handled by the States. While the United Nations Working Group is only now recognizing Private Military Corporations as separate entities from Mercenaries, they still have a long way to go before they can gather the political will, the power and the legal documentations that will create some level of governance of Private Military Corporations.

Conclusion:

As we can see, privatization of war has been a concept that has been prevalent in societies for many years, and continues to this date. There have been numerous economic advantages to the privatization of force, and there has been a lot of political will to reform the privatization of force since the creation of the notions of Westphalian sovereignty. Governance however has been severely

¹⁰ Private Military Firms (PMF's) are a variation of Private Military Corporations.

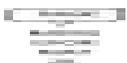


stifled due to the fact that international resolutions are either too specific, not specific enough, or lack the political will of the more powerful nations in international relations. It therefore logically follows, that aside from domestic legislation regulating corporations, there is hardly any governance over these corporations.

An important aspect that should be noted when assessing Private Military Corporations, is the trends that occur from each time period, and how this trend is skewed towards privatization.

Reviewing the history, economics, political and legal aspects of each time period, we can see that control over this industry has been inefficient. The Middle Ages showed how privatization of war thrived due to a lack of central authority, and how it was more efficient to employ Mercenaries as opposed to using the knights. The rise of the State showed how privatization of war survived, despite numerous attempts at global governance by virtue of a lack of political will and a lack of legally binding legislation. The rise of the Private Military Corporation proved the tenacity of the industry by evolving from Mercenaries into a **nuanced, legal, derivative** of the Mercenary. When the Private Military Corporation came about, they not only showed that they were more effective economically, but they also showed that they followed legal legislation, globally and nationally, and that they are able to operate under a centralized political system. During each of these time periods, there have always been instances of privatization, and despite the brief period of time when privatization was diminished, it is clear that privatization of war has come back with a vigor which is most notably seen with the Private Military Corporations.

Even though privatization of war has certain tangible benefits, there are dangerous costs associated with the privatization of war. One of the most notable dangers pertains to the lack of oversight when outsourcing military functions. Allison Stanger (2014) argues that instead of outsourcing, we should implement a system of “smart-sourcing” coupled with good government



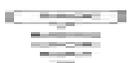
practices (Stagner & Myers, 2015). Unfortunately, this does not account for the privatization of functions that are no longer in control of the State. Economically, it is more effective to employ private entities, and with the rise of the Private Military Corporation, we can see that the State is not in control of functions that they once had a handle on. If global governance over these entities is to be achieved, it would require binding international legislation, the political will of many nations, and the backing of the most powerful nations to come to an agreement on an appropriate way to regulate the Private Military Corporations. Without all three of these elements, the economic, social, political and legal structures that attempt to provide governance over this industry will inevitably fail.

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