

“Rent-a-Soldier”: War as Business

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Abstract

Wars are not only fought by armed forces. Often, different non-state actors are involved – mercenaries, private military companies, rebels and many more. They have now moved back into the public consciousness due to the operations of the Russian company Wagner in the Ukraine war. Such missions are not new or extraordinary. Private or non-state actors were at times more important than state-established armed forces. Armed conflicts became an attractive and profitable business for some of the participants in wars. Even in the Middle Ages, war entrepreneurs were present. From Wallenstein in the 30 Years' War to Wagner today, they offer themselves for political goals for their economic profit. Economic and personnel shortages in the military sector accelerated privatization after the end of the Cold War. The liberalization of the market, deregulation concepts and neo-conservative economic programs were decisive for the gold rush of private military companies in the 2000s. Scandalous and criminal activities of private military companies and their potentially dangerous activities for peace, stability and the protection of human rights have caused a bad reputation for this industry. They operate in a legal grey area and undermine the state's monopoly on the legitimate use of force. Thus, there is a need to regulate them.

Introduction: Wide-ranging Number of Actors and Activities

The mercenaries, mostly former elite soldiers, marched in large numbers towards the capital. "The deployment ... and the 'stability' created by the company served to access the country's resources, namely oil and diamond deposits, by companies connected by ... a network."¹ What sounds like a current description of the role of the dubious Russian military company Wagner of Yevgeny Prigozhin, who died in the crash of his plane, actually refers to the South African military company Executive Outcomes in Sierra Leone. Executive Outcomes made headlines in the 1990s for offering its services in various conflicts in Africa for "private profit, derived from the very act of fighting."² These activities are problematized in the film "Blood Diamond" with Leonardo DiCaprio.

The type of short-lived mutiny of the Russian Wagner Group and the failed march on Moscow, as well as its activities in Africa today, are by no means a Russian speciality. On the contrary, mercenaries, warlords, militias, war contractors and private military and security companies have always played a role in the history of wars and conflicts. These non-state actors were in some case the dominant military units. As a rule, they tried to achieve their own political and mostly economic goals by participating in armed conflicts.

Who are these private, non-state actors who intervene in conflicts? There is no universally accepted definition of the different actors involved in privatizing or commercializing of violence.³ The focus is primarily on the following groups:

1. Mercenaries: Mercenaries are people hired by governments or rebel groups to carry out combat operations. There is still the traditional type of mercenary for direct combat use, although mercenaries are classified as illegal by the Geneva Convention. As a classic form of privately organised participation in wars and armed conflict, mercenaryism has been known since antiquity.

2. Paramilitary troops and groups: These are the above-mentioned militias, rebels, warlords, but also well-organised criminals and similar groups who, for political, but mostly economic reasons, instigate civil wars, overthrow a government, cause uncertainty among the population and systematically commit violent crimes.

3. Private security companies: In many countries, private companies perform certain functions previously performed by the police, such as maintaining public order in subways or on streets (security services).

4. Service companies: Primarily business considerations have led defence ministries in a number of countries to transfer all or part of the management and operation of military

¹ Schneiker, Andrea (2010), Private Militärfirmen in Kriegsökonomien Companies. Der Einsatz von Executive Outcomes in Sierra Leone, p. 289, in: Stig Förster, Christian Jansen and Günther Kronenbitter (eds), Rückkehr der Condottieri? Schöningh.

² Singer, Peter W., (2003), Corporate Warriors. The Rise of the Privatized Military Industry, Ithaka Cornell University Press, p. 19.

³ Wulf, Herbert, (2005), Internationalizing and Privatizing War and Peace, Basingstoke, Palgrave MacMillan.

properties such as barracks or residential quarters, the management of canteens and the financing and operation of the armed forces' vehicle fleet to companies.

5. *Private military firms*: These companies are active in preparations for war or post-conflict programs instead of or alongside the armed forces. Instead of hiring the state-legitimized armed forces, governments conclude contracts with private specialist companies. Increasingly, these companies are also involved in hostilities, such as the recent Russian company Wagner, which fought in competition with the Russian armed forces for the Ukrainian city of Bakhmut.

6. *Arms producers*: In most countries, state-funded weapons and other military equipment are developed, produced, and exported by private companies with the approval of the respective government.

Comparing the relationship of these six different private actors to the state (and particularly their function regarding the state's monopoly on the use of force⁴), the mercenaries and paramilitary groups are usually illegal or even criminally active and are often fought by state authorities (but occasionally also used by the state). The private security companies have met with a less critical response than the private military companies, even though they carry out classical police functions, and thus undermine the legitimate state monopoly on the use of force. In contrast to the military companies, the service companies are far removed from the actual combat operations of the armed forces in their function. Since their activity is primarily of an organisational nature and can be described as project management, this type of *outsourcing* does not seem to be very controversial.

Privatizing and Commercializing of Violence from Below and Above

A distinction can be made between the use of force from below and above by non-state actors.⁵ The first form, privatization from below, is characterized by the activities of non-state actors who use violence without authorisation from state organs or against their declared will to achieve their own political or economic goals. The second form of privatization, which can also be described as privatization or commercialization from above, is the outsourcing of traditionally military tasks to private companies. This type is desired and encouraged by the state. The services of firms offerings such assistance are wide-ranging; they work for armed forces in war, not only for state institutions, but also for international institutions and aid organisations in post-conflict societies, for governments that feel threatened by rebels or insurgents, as well as for multinational corporations.

Numerous non-state actors participate in the privatization of violence from below because they want to defend themselves against attacks, overthrow a government or simply enrich

⁴ I have dealt with this aspect in a [previous Toda Policy Brief](#). Wulf, Herbert (2021), The Rule of Law: Undermined and Under Attack. Questioning the State Monopoly on the Legitimate Use of Physical Force, Toda Policy Brief 105, March.

⁵ The distinction between violence from above and below is used by Mandel, Robert (2001), The Privatization of Security, in: *Armed Forces & Society*, vol. 28, no. 1, pp. 129-151.

themselves. These groups, the prototype of which are the warlords, are causing insecurity and state collapse. The weak state, or in some countries barely existing, cannot enforce the state's monopoly on the use of force. Attacks on the state, inefficient and corrupt state institutions—especially the military, police, and judiciary—create insecurity, uncontrolled crime, and instability. The maintenance of law and public order is difficult or, in critical cases, no longer possible at all.

These developments are closely related to the general trend of globalization in many areas of society. Integration into the world market led not only to growth and international integration, but also to significant upheavals, which often lead to violent conflicts within society. As a result of this policy, not only the economic opportunities grew, but also the possibilities of systematic profit-oriented participation in wars. Moreover, waging wars and participating in armed conflicts became an attractive and profitable business. War is waged for economic gain. Scarcity of resources has fostered armed conflicts and it is no coincidence that private military companies play an important role in these war economies and resource wars.

Governments and international organisations initiate the privatization of the state's monopoly on the use of force from above. They try to protect themselves against the dangers of armed violence, they wage war and hire private military companies to carry out tasks which are classical police and armed forces functions in the concept of the state's monopoly on the legitimate use of force. The liberalization of the market, the deregulation concepts and neoconservative economic programs have led to the free movement of goods and services, but also to the globally organised feeding of wars.

Privatizing violence from above can also be described as a deregulated war. It is not only the Russian government that has used private military companies in its involvement in the wars in Syria, Ukraine, and some African countries. The Wagner activities, which are now widely discussed in public, are merely the latest development in a long history of violence by private groups.

Scandalous and Trigger-happy Companies

For the US armed forces, which shrank from 2.3 million troops to less than 1.5 million after the end of the Cold War, it became increasingly difficult during the 2000s to keep supplies ready for their war and post-conflict missions – whether in the Balkans, Afghanistan, or Iraq. Increasingly, they relied on private contractors for services: to train soldiers, repair weapons, collect war-related information, interrogate prisoners of war, or provide soldiers in combat zones with food and clean laundry. Hundreds of new private military companies were founded – but not only in the USA. Following the example of Executive Outcomes, companies operating in combat operations such as Blackwater, CACI Systems, DynCorp and Triple Canopy in the USA, Sandline, Aegis Defense Services and Armor in the UK, Omega Support in Hong Kong and Saracen in South Africa (to name just a few outstanding examples) have emerged. From the end of the 1990s to the end of the 2000s, a real gold rush atmosphere surfaced. But deaths and kidnappings of foreign contract personnel irritated the public.

Today, Russian military companies are rightly being targeted for their brutal actions and possible war crimes. But such behaviour is the rule rather than the exception when private contractors are hired for combat operations. Again and again, private military companies

are involved in scandals. For example, the US company CACI, which had become a general contractor of the Department of Defense, received a major contract from the Pentagon to interrogate Iraqi prisoners. CACI intelligence specialists used dubious methods and torture to conduct interrogations. DynCorp, also from the US, which also worked in Iraq and Afghanistan, fell into disrepute during the Bosnian war, when seven of its employees in Bosnia prostituted girls as young as 12. After public criticism, the company made these employees redundant. But the company also fired the whistle-blowers who had made the scandal public because they did not want to keep "nest polluters" in their ranks. However, the accused employees were never prosecuted.⁶ Like Blackwater, the entire private military industry has a bad reputation because some companies are regularly involved in scandals.

In September 2007, 17 Iraqis were killed in a wild shootout in Baghdad. Another dozen were injured. The victims were innocent citizens. The shooters were neither insurgents, nor Iraqi or American soldiers, but employees of the private American military company Blackwater. The Iraqi government responded by announcing that it would revoke Blackwater's work permit in Iraq and expel the company's employees. The Blackwater incidents at that time point to a general problem: They are an indication that private contractors in conflicts are difficult to control. At times, the number of contractors exceeded the number of soldiers, for example in Iraq and Afghanistan. As a result, the war is privatized and profitable for companies and employees who are willing to take a high security risk. However, given the political will of governments, there exist options for effective legislative supervision.⁷ But for governments, the attractions of using private military companies resulted in gaps and ambiguities as to what extent international norms would apply for such companies.

The Iraqi government had no legal choice but to cope with the dealings of employees of the US company. The American FBI, which investigated the case, returned home without the possibility of indicting the Blackwater employees since they enjoyed immunity in Iraq. The result during the Abu Ghraib torture scandal was similar. At that time, courts sentenced only a few low-ranking American soldiers, but not the employees of the CACI company. Private military companies operate in a legal grey zone and the Pentagon itself, given the large number of companies with hundreds of subcontractors, had long since lost track of which and how many people and companies worked for the US government and how they behaved. Even the commanders of the armed forces often do not know what the private armies of the companies do, since their mostly combat-proven specialists are not integrated into the command structures of the armed forces.

It is no coincidence that employees of the companies are constantly trigger-happy in the wars, because many of them are killed in the fighting. Yevgeny Prigozhin, former head of the Russian company Wagner, unabashedly used his contractors, most of whom were hired in prisons, as cannon fodder and even boasted about it. Blackwater first hit the headlines in March 2004 when four of the company's employees were ambushed near Fallujah, Iraq, and murdered by insurgents. Their bodies were mutilated and hung upside down from a bridge

⁶ Schreier, Fred und Caparini, Marina, (2005) *Law, Practice and Governance of Private Military and Security Companies*. Geneva Centre for the Democratic Control of the Armed Forces, Geneva: Occasional Paper, Nr. 6, March.

⁷ A report by International Alert, *Regulating private military companies*, spelled out these options for the UK Government already in 2001, <https://www.international-alert.org/publications/regulating-private-military-companies-options-for-the-uk-government/>.

over the Euphrates. The insurgents themselves filmed a video of their attack. When they posted it on social media, it went viral. The American Marines, who were then in charge of suppressing the insurgency in the Fallujah area, were unaware of the presence of the Blackwater team.

The companies like to idolize and exaggerate their activity, for example, as a patriotic duty in the "fight for Russia". Blackwater's website, before the company was renamed because of its scandals, said pathetically: Guided by integrity, innovation, and a desire for a safer world. Investigations by a US congressional committee revealed that Blackwater had to fire more than one in seven employees in Iraq for involvement in shootings, alcohol, or drug abuse, improper, aggressive, or violent behaviour, lack of performance, violations of regulations, false statements about incidents or causing a public nuisance.

From Wallenstein to Wagner: The Renaissance of Private Violence

US contractors in Iraq, Russian companies in the wars in Syria or Ukraine, the British company Sandline International, incriminated with affairs in Papua New Guinea and contravention of a UN embargo in Sierra Leone, or Executive Outcomes in Angola and Sierra Leone are not isolated cases and today's situation is not without precedents from past centuries. Even in the Middle Ages, war entrepreneurs were present. During the Renaissance, *Condottieri* offered themselves to the influential patricians in the Republic of Florence, as contract commanders of the princes. Niccolò Machiavelli, in his famous work "Il Principe" (The Prince), analysed their role and tried to convince the wise princes that these mercenary leaders lacked the necessary loyalty. They were interested in increasing their own profits and therefore quickly changed sides during the conflict. Machiavelli recommended that the princes build up their own professional army to free themselves from dependence on these mercenaries.⁸ But Machiavelli's reform proposals were implemented to only a limited extent. The *Condottieri* "were war entrepreneurs who earned their money through contracts of states and accordingly had an interest in ensuring that Italy did not come to rest."⁹

The use of mercenaries was the classic form of war in Europe during the 30 Years' War (1618-1648). Many military leaders, especially aristocrats, hired themselves out as "free lances" ("the origin of the modern business term"¹⁰). They were contracted by the financiers of the wars. The wars of this period in Europe were usually fought between private armies, just as the *Condottieri* in Italy. In almost all of Europe, the war entrepreneurs waged wars on their own account and with the weapons, equipment, and food they financed. They had an economic interest in keeping the 30 Years' War going. The most famous war entrepreneur during this period was the Bohemian nobleman Albrecht von Wallenstein.

⁸ Lang, Heinrich (2010), *Condottieri im Italien des 15. Und 16. Jahrhunderts*, pp. 91- 110, in: Stig Förster, Christian Jansen and Günther Kronenbitter (eds), *Rückkehr der Condottieri??* Schöningh.

⁹ Förster, Stig, Jansen Christian and Kronenbitter, Günther (2010), *ibid.*, p. 20.

¹⁰ Singer, Peter W., *ibid.* P. 24.

The famous German writer Friedrich Schiller immortalized him, his deeds, and misdeeds in a dramatic theatre trilogy. One of Schiller's protagonists proclaims: "The war feeds the war".

Based on his war business, von Wallenstein became the richest man in Europe. He knew how to supply his armies logistically and to use them profitably in the devastating wars. He proved to be a master of waging wars and obtaining the necessary resources. Although private mercenary armies were primarily used then, one cannot speak of a privatization of the monopoly on the use of force. Because, at the time, the state monopoly on the legitimate use of force did not exist. Only the Peace of Westphalia (1648) led to the formation of states in Europe and pushed back the importance of private military commanders.

The conquests of the Spaniards, Dutch and British, euphemistically referred to as discoveries, left much of the colonial expansion to the private "Chartered Companies" for a long time. The officers of the British East India Company were particularly successful, although, at first, they were a group of adventurers who did not take loyalty to their employer seriously. It was only over the course of time, with the integration of the East India Company into the British state, that professionalized armies emerged.¹¹ The reform of mercenary armies in Europe to a standing army had its starting point in the 30 Years' War. However, it took the French Revolution and Napoleon's military reforms for mercenaries to be placed under regular state institutions.

A different form of war business was practised during the 18th century, when several small German states supplied trained troops for hire. The most prominent example is the Hessians who served in the British army during the American Revolutionary war. The Landgrave Friedrich II of the small Landgraviate of Hesse-Kassel provided King George III, to whom he was related, with thousands of soldiers. In 1776 he signed so-called subsidiary contracts. According to these agreements, Hesse-Kassel undertook to provide about 12,000 soldiers. As a result of the fighting in Europe and the constant warfare, these soldiers were well trained, and Friedrich II earned a substantial portion of his state budget by renting out these soldiers. Hesse-Kassel became one of the most militarized state units in Europe. Up to 8% of the population volunteered or was drafted into this military service.

In the anti-colonial struggles after World War II, mercenaries intervened in these conflicts, for example in the civil war in the Congo. Primarily, former soldiers of the European powers hired themselves out as mercenaries in Africa.¹² Quantitatively more significant than these isolated adventurers and soldiers of fortune, however, was the "gold rush mood" described above in the 2000s, which was characteristic of the Bush administration in the US. During this time, many old and newly-founded companies benefited from the Pentagon's contract practice. Outsourcing was a hobbyhorse of Vice President Dick Cheney and Secretary of

¹¹ Kortmann, Mike (2010), *Söldner oder Gentleman? Die Offiziere der East India Company*, pp. 205-222, in: Stig Förster, Christian Jansen and Günther Kronenbitter (eds), *ibid.*

¹² Cilliers, Jakkie and May, Roy (eds), (1999), *Peace, Profit and Plunder? The Privatization of Security in War-torn African Societies*. Pretoria: Institute for Security Studies. Musah, Abdel-Fatau/ Fayemi, J. `Kayode (eds.), (2000), *Mercenaries, An African Security Dilemma*, London, Pluto Press.

Defense Donald Rumsfeld, who firmly believed that the market (and private military firms) could perform military tasks more efficiently.

Russian Military Companies

The US Treasury Department classified the Russian Wagner Group as a "Transnational Criminal Organization" in the enforcement of sanctions against Russia. But Wagner's boss Prigozhin merely copied the commercialization of violence, as it had been practiced on a large scale two decades earlier, especially by companies in the United States.

The Wagner Group, estimated at 30,000 to 50,000 men in mid-2023, received a lot of attention in the Ukraine war: first in the brutal and costly battle for the Ukrainian city of Bakhmut, then later in June 2023 when thousands of soldiers marched on Moscow. On their way to Moscow, they shot down several helicopters and planes of the Russian Air Force. The coup, which lasted only 24 hours, was directed against the Kremlin and, above all, challenged the Russian military leadership. Prigozhin was a long-time confidant of Vladimir Putin, who then fell out of favour after his attempted coup and eventually died under mysterious circumstances. This private force still plays an important role, especially in some African countries. Its future, after the death of its leader, is uncertain. Possibly their projects might gradually be absorbed into the armed forces or other private military companies might take over.

But Wagner, like other Russian military companies, has been used for many years as a foreign policy tool for the Kremlin, in which the company's employees, first former soldiers and later prison inmates, were deployed in some conflict zones to pursue Russia's interests.

Some 5,000 Wagner fighters and regular Russian soldiers fought in Syria to support the regime of Bashar al-Assad in crushing the Arab Spring, to fight the "Islamic State" and the Kurds who are pushing for the country's independence. As payment, Evro Polis, a company in which Prigozhin had a stake, received generous oil concessions.

The UN condemned crimes such as torture, looting and rape by Malian forces. They have been held in power by Wagner mercenaries and with Russian arms supplies since the 2021 coup. The Malian government has made it unmistakably clear to UN-mandated peacekeepers from various countries, including France and Germany, that it no longer needs their services. They feel more comfortable with Wagner troops.

Since 2017, Wagner has been training the Sudanese armed forces and controlling the extraction of mineral resources in the Darfur region. Gold exports to Russia are an important source of income.

In the Central African Republic, around 1,000 to almost 2,000 Wagner fighters are said to have been deployed since 2018 to defend the government against rebels. There, too, the Wagner companies are paid with logging rights and mining rights for gold and diamonds. The New York Times quoted Central African Republic mining economist Abdoul Aziz Sali in late 2022 with the comment: "The Russians control everything."

Wagner's involvement in Mozambique quickly ended after the force failed to suppress the insurgency in the Islamic State-occupied region of Cabo Delgado.

Wagner mercenaries have been deployed in Libya for almost a decade to support Khalifa Haftar, who rules the east of the country, in his fight against the government in Tripoli.

There are clear parallels to scandalous private military companies of the 2000s and Wagner's business model, both in the commercialization of violence and with brutal approaches in war situations that violate international law.

Not only the Wagner Group operates as a private military company in Russia. There are an estimated 30 major military companies that the Russian government has increasingly relied on since the 2010s, mostly outside Russia. The so-called "green men" who appeared in Crimea in 2014 and supported the separatists in the Donetsk region in eastern Ukraine can also be attributed to this category of irregular troops and military companies. The privately-led troops had developed as a kind of army within the army. When some of these groups became too powerful and too independent, the Ministry of Defence tried to regain control of the companies. Some of them were registered by the ministry, but Prigozhin resisted the Defence Ministry's attempt to control them.

A good number of other groups in Russia have intervened in wars or served as troops to protect large companies. Shchit for the Special Airborne Forces and Redut for the protection of Gennady Timchenko's companies operated in Syria. The company Patriot is said to have worked directly for Defence Minister Sergei Shoigu, also in Syria. The RSB group of the Russian security forces offers protection against terrorist groups, so does anti-terrorist Orel. Moran Security Group emerged from Orel and provides security services.¹³ In addition, the following are mentioned: the Akhmat force of the Chechnyan dictator Rasman Kadyrov, (who also offered his military services to Russia in Ukraine), the Sparta Battalion (deployed in eastern Ukraine), the Slavic Corps (registered by employees of the Moran Security Group in Hong Kong and deployed in Syria), the Cossack Unit (a para-military organisation), E.N.O.T. Corp. (a right-wing group that was also deployed in Ukraine) as well as Fakel and Plamy (two state-supported militias of the energy company Gazprom, which mainly protect Gazprom workers in Syria and Ukraine).¹⁴

The Russian government is playing a political game of hide-and-seek in which it tolerates, registers, and sponsors these groups and companies, but at the same time claims that it is not responsible for their actions.

Causes, Motives, Interests

Is the recent commercialization of the military a renaissance of the *Condottieri* or mercenary leaders of the 30 Years' War who dominated armed conflicts at the time? There is a crucial difference today: The state's monopoly on the use of force exists today (at least ideally),

¹³ Heinemann-Grüder, Andreas (2023), Russia's Corporate Warriors in Armed Conflicts, in: European Union Institute for Security Studies, Brief 10.

¹⁴ Leymarie, Phillipe (2023), Dienstleister des Krieges, in: Le Monde Diplomatique, August 2023, p. 8.

whereas in the period of state formation in Europe, public control over war entrepreneurs only gradually emerged. Eventually, individuals and companies were deprived of the use of force by the norm of the state's monopoly on the use of force. Today, the opposite trend can be observed. Although the state's monopoly on the use of force is not conceptually questioned, in practice it is de facto overridden or undermined. Governments apparently accept the risks posed by private military companies.

Like during the 30 Years' War, when veritable mercenary markets emerged, especially in Switzerland, southern Germany, and Bohemia, this is now the case globally. Military companies recruit battle-hardened former soldiers worldwide. They employ soldiers who have been trained in Latin American armed forces to conduct covert operations and overt repressive measures, as well as fighters who gained their experience in the Yugoslav wars, who served in Afghanistan and Iraq. Wagner's fighters are also recruited from the combat-proven troops in Chechnya, Georgia and Syria. It was only when the combat troops were thinned out by the fighting in Ukraine that Prigozhin, with the permission of the government, recruited convicts with the promise of release after the end of the operation.

Weapons and other equipment are offered by the companies – usually with a proper license from the government. More and more, private military companies are taking over the tasks of soldiers. There are several military, economic, socio-political and ideological–conceptual reasons for this business success.

The demand of weak or distressed governments in the Global South played an important role in the return of private military professionals. In several cases, such as in Papua New Guinea, Sierra Leone and Zaire, governments had resorted to private militias and companies under pressure from the onslaught of rebels and the threat of being overthrown. Instead of entrusting the state-legitimised armed forces with the defensive struggle or keeping the government in power, African governments have contracted private specialist companies because the military could not fulfil the tasks.

After the end of the Cold War, a shift occurred from the traditional mercenaries to private military companies. The military sector was reduced in many countries. At the same time, however, demand increased, especially for UN peacekeeping operations. Due to the reductions of military personnel, some armed forces were overstretched. Governments responded with the concept of outsourcing military functions. Economic and personnel bottlenecks in the military sector and disarmament accelerated privatization. The reduced number of deployed weapon systems in the armed forces opened new business areas for civilian military service providers. For example, many armed forces bought fewer training aircraft and had their pilots trained by private companies that provide their own equipment.

The flip side of the release of qualified soldiers is their search for new jobs, a development that resembles the violence markets in the 30 Years' War mentioned above. Disarmament in the 1990s not only led to a flood of second-hand weapons that were sold or given away from Europe to numerous countries around the world, but also produced a surplus of qualified military personnel who then sought and found new fields of activity in private military companies.

The change in the nature of warfare also plays a role. The armed forces are increasingly relying on modern equipment, but without being able to operate and maintain the

technically complex equipment themselves. They can no longer do without the logistical service of the companies. This development is not entirely new; however, it intensified significantly after the end of the Cold War. An "army" of engineers and technicians, IT specialists and logisticians, pilots and instructors from private companies ensures the functionality of complex weapon systems.

After September 11, 2001, the increased demand for the deployment of the armed forces in the "war on terror" also offered private military companies new business opportunities. Increasingly, the army felt overwhelmed by the many missions in the fight against terrorism. In the Gulf War in 1991, the US Army still had 711,000 active soldiers at its disposal. During the Iraq war in 2003, it was a third less, at 487,000. This gap was filled by private contractors.

The influence of public opinion should not be underestimated for the upswing of military firms. When governments want to impose military power in order to secure supremacy in a region, they sometimes prefer to resort to private companies rather than their own troops. The "green men" in Crimea in 2014 are proof of this. On the one hand, governments internationally seek to deny responsibility for these covert operations. On the other hand, past experience shows that growing criticism, for example from the American and British public, of the increasing number of killed and wounded soldiers in Iraq, still played an important role in decisions for foreign missions. A dead contractor seems to be less problematic than a killed soldier. The private military companies are not controlled by governments or parliaments. While a government is accountable to parliament, private firms are accountable only to their shareholders and clients. In Western democracies, it is therefore important that parliamentary control is not undermined by the privatization of military tasks.

My thesis is that the most important reason for the privatization of violence is the commercial interest of companies and the ideology of the lean state. The economic, neoliberal concept of streamlining the state and curtailing and privatizing its tasks did not stop at the gates of military barracks. In the US, then-Secretary of Defense Rumsfeld suggested during the great wave of privatization that any function that could be taken over by the private sector was not a core function of government.

But the much-heralded relief for the armed forces through the efficiency of the private sector has not happened. The successes often failed to materialise, from Executive Outcomes in Sierra Leone to private companies in Afghanistan, to the role of the private and irregular groups in the Ukraine war. Wherever possible, companies exploit their special position to make a profit, and governments often lack the competence to monitor the companies. As a result, the sensitive area of security becomes a self-service shop for private actors.

So "rent-a-soldier" is no longer a utopia. Many of the operations of these companies are legal. Some, however, operate in a grey area. The question is whether the reduced role of private companies after the gold rush was over is the reversal of an exaggerated trend or whether a rapidly growing "security market" will lead to further privatization? We can assume that governments will use the services of private military contractors when, as recently in the case of Russia, the situation seems to require it. This privatization of military operations is dangerous. An important function of the state—to be the only authorised institution to use force to ensure the rule of law—is being undermined, in some countries abolished altogether.

How Do You Get a Grip on the Military Companies?

It is difficult to determine precisely when the privatization of military tasks crosses a critical threshold that undermines or endangers the monopoly on the use of force. In weak or failing states, where armed non-state actors of various kinds have effectively eliminated the state's monopoly on the use of force, the setting is clear.

The private military companies have military power that largely escapes public scrutiny and laws. The law of the market rules. In principle, companies can offer their services to anyone who is willing to pay for them, be it governments, multinational corporations, UN agencies, aid agencies, rebel groups or drug cartels. The existing international norms on wars apply to private military companies only if these companies violate the right of self-determination of peoples as laid down in the Charter of the United Nations (i.e., if they intervene in the internal affairs of a state) or if they participate directly in hostilities. But the examples of Blackwater in Iraq or Wagner in Ukraine show that even these norms of international law are not or hardly enforceable.

There are different approaches to dealing with the unregulated activities of military companies: a ban, reliance on the self-regulation of the companies or international and national legal regulations.¹⁵

A comprehensive ban would be the most direct form of control, but national legislation needs to have powers that can effectively be enforced extraterritorially. Otherwise companies could, like Executive Outcomes in South Africa did, register elsewhere in the world. It is also difficult to clearly define who or what activity is covered by this prohibition. Some companies provide valuable services, for example in logistics during disaster relief operations. A general ban would also prevent these services. It would extend into the arms export regulations, and hardly any government has an interest in tying its own hands – neither in the case of arms producers nor military companies. In the report by International Alert, a list of suggested proscribed activities is presented, which includes, among others, direct participation in hostilities and acts that might lead to human rights violations or internal repression.¹⁶

Relying on corporate self-regulation, as proposed by the International Peace Operations Association, a member organisation of private military and security firms, is tantamount to doing nothing or ignoring the problem. The so-called Montreux Document on international legal obligations of military companies during armed conflicts is one such initiative, in which private military companies actively participated, as is the International Code of Conduct for Private Security Providers. Both initiatives are primarily intended to prevent human rights violations by private military companies. However, they are too vaguely worded to really make an impact.

Such an approach appears to be inadequate, since firms cannot be bound by a code of conduct adopted by an industry association. The scandalous and trigger-happy company

¹⁵ This section draws on an earlier analysis of mine. Wulf, Herbert (2005), *ibid.*, especially Chapter 9, pp. 197-214.

¹⁶ <https://www.international-alert.org/publications/regulating-private-military-companies-options-for-the-uk-government/>, p.7.

Blackwater also repeatedly emphasised that it respected international standards and upheld professionalism. In addition, the "black sheep" of the industry would not adhere to the voluntary commitment anyway. In some areas (e.g., "blood diamonds"), however, such codes about corporate responsibility have led to improvements and curtailed some unclean practices. The minimum standard for such a code is to respect human rights, international humanitarian law and the laws of war, adherence to the sovereignty of states and transparency in their business activities. Initiatives by associations and companies are certainly to be welcomed; however, they are by no means sufficient, since neither the problematic borderline cases between legality and illegality nor the worst excesses can be prevented and prosecuted. The advantage of this concept is that it is easy to apply; however, it would remain a "light" regulation.

There are a whole range of different, partly complementary, options for regulating companies:

Firstly, **the reform of the Geneva Convention:** According to the Geneva Convention, the use of mercenaries is illegal. The international law of war distinguishes between combatants (persons who are entitled to serve in wars, i.e., soldiers) and non-combatants. Rebel groups, mercenaries, the employees of private military companies and irregular formations are *de facto*, but not *de jure* combatants.

Since contract personnel are no longer concerned only with logistical tasks and companies are also involved in wars on the battlefield, the Geneva Convention needs to be revised. Employees of private military companies are not "non-combatants" because they usually carry weapons and act on behalf of governments. However, neither are they "combatants" under the international laws of war, since they do not wear regular uniforms and are not subject to military command. Since the definition of "mercenaries" does not apply to them either, they currently have a vague legal status as "unlawful combatants" that requires interpretation.

What is needed, therefore, is clarification and an extension which includes private military companies. The regulation of the mercenary question in the Additional Protocol to the Convention has shown in its application that the compromise reached internationally does not offer any real means of holding mercenaries legally accountable. Presumably, even in the case of a revision to cover the personnel of private military companies, there will be equally broadly interpretable definitions and compromises, which will open up great room for manoeuvre for governments and will hardly prevent them from using private violent actors if it is in their interest.

Secondly, **introduction of a licensing system:** Licences could be granted to companies by national governments as a general licence. This would mean that only the licensed companies would be entitled to offer military services. They would be given a kind of governmental legitimacy, with all the consequences for the government in the event of unlawful behaviour by licensees. Licences could also be granted for well-defined services instead of to companies, while other activities would be excluded. Finally, a licensing system is conceivable that is based on a case-by-case basis and requires a new license for each new contract. These possible differences in licensing have clear parallels to arms transfer and the experience gained there should be used for the licensing of private military companies. Experience with arms exports in particular shows how often international and intra-

societal conflicts are fuelled by arms deliveries. Therefore, certain areas must be declared taboo for companies, especially their use in combat operations.

Thirdly, **an obligation to register**: Companies must register their operations and inform the home government and the government of the countries of operation about their activities. The advantage of this system is its simple application. The disadvantage, however, is that governments would have to take action to prevent certain services. This, in turn, requires not only political will, but also a legal basis. In addition, it is a significantly reduced form of possible control. Negotiations in the United Nations on the registration or licensing of arms brokers have shown that few governments are inclined to agree on such regulations in an internationally binding manner. The same must be feared for the registration of private military companies.

Fourthly, **international registration, transparency, and verification**: Companies and the commissioning and financing countries could be obliged to register their contracts with the necessary details on scope and performance in a central international register. This universal format is a sub-form of the registration discussed above. These instruments have clear parallels to the UN Register of Conventional Arms. The advantage over the current state would be a significant improvement in transparency. For such a register, the United Nations or the International Committee of the Red Cross could be considered as depositaries. But the two main and important drawbacks of the UN arms register would also apply to a military company register. The reporting would be *post-factual*, and the verification possibilities would extend only to a comparison of the data reported by the different bodies (companies, commissioning, and financing countries). In this form of registration, the most problematic cases would probably not be reported.

Fifthly, **blacklists**: Establishing blacklists under the aegis of the United Nations or other international organisations can prove to be an effective means of at least branding the "black sheep" of the industry and keeping them away from future business deals. Such blacklists of individuals and companies already exist today in cases where the United Nations has imposed embargoes. They also exist in the fight against suspected terrorists. Such lists would have to be constantly updated in a public monitoring system. The disadvantage of blacklists is their reactive function, i.e., only after erroneous or criminal behaviour of the companies would they appear on such a list.

Without the introduction of regulations, companies can be held accountable only by their clients and their owners or shareholders. All control mechanisms mentioned have gaps and are not easy to implement. In some cases, they require extensive controls, which require an appropriate organisational structure. To curtail uncontrolled companies, a regulation similar to that for arms exports must be provided as a minimum requirement. But the arms transfer regulations also illustrate the loopholes and the many scandalous transactions that are concluded.

The companies' activities impinge on public authority. It is primarily governments' responsibility to control private military companies – in the current cases, mainly the Russian government. But as long as governments use these companies as foreign policy instruments or subsidiary forces in war, it cannot be expected that they will take action to

monitor and control them effectively. With the appropriate political will, the activities of the private armies can be controlled, restricted, or banned. Governments bear responsibility for the abandonment and undermining of state's monopoly of force through the privatization of war. Thus, it is governments that must be held accountable. But the tension between the possible control of the private military companies versus its frequent use by many governments, including the Permanent Five members of the UN Security Council, remains.

The Author

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