CHAPTER IV

STATE, MARKET AND SECURITY

The contemporary discourse on state and market in the security arena is problematic and contested.\(^1\) Lately, with the advent of neoliberalism, a market-based logic of security has become prominent. This ultimately paves the way for an intensifying expansion of private actors performing security roles at the national and international level during peace as well as in conflict. As a result of which, the division between the two has become blurred. This increasing trend has led many to perceive that the state’s monopoly of legitimate violence has been shared and the ongoing development could eventually threaten the global order.\(^2\) Therefore, neoliberalism enables the market in shaping security and thereby changes the way one thinks about security.

Privatisation of security constitutes one of the most challenging issues of the present time.\(^3\) This has resulted in the increased growth of Private Securities Companies playing a role of security functions. Many PSCs are firmly established organisations selling enormous services worldwide, some of which are core military capabilities. These PSCs are also comparable to the strength of state military forces of many countries. This emerging development can also be perceived as a new business in warfare. Furthermore, involvement of PSCs in many of the conflicts could change the nature of warfare.

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Therefore, this chapter is an attempt to understand the contemporary discourse on
privatisation of security and its intensifying growth thereby connecting how state and
market in the security functions have converged and state monopoly of legitimate
violence has been shared. It will discuss the emerging role of PSCs and highlight some of
the complex issues such as accountability, regulations and control, and its implications.
Therefore, the underlying discussion in this chapter is to show how this can be
understood within the context of neoliberalism.

1. State and Market Relationship

The relationship of state and market is not new and particularly the distinction between
these two organising principles of social life is a recurrent theme in academic discourse.
State conventionally is based on territoriality, loyalty, and exclusivity, and possesses a
monopoly of legitimate use of force. Despite the assertion that state cannot survive long
unless it assures the interests and gains the consent of the most influential groups in
society, states enjoy varying degrees of autonomy with respect to the societies of which
they are a part. While market in contrast, is based on functional integration, contractual
relationships and expanding interdependence of buyers and sellers. It is composed mainly
of prices and quantities and the autonomous economic agents responding to price
mechanism provides the basis of decisions. States consider territorial boundaries as an
imperative basis of their sovereignty and political unity. It maintains a standing army to
protect its sovereignty where any aggression whether internal or external can be
challenged militarily which is mostly in the form of war. While for market, the
elimination of all political and other obstacles to the operation of the price mechanism is imperative.\textsuperscript{4}

Neoliberal ideology has become a dominant force behind reshaping state and market relationship in the contemporary era. Some scholars observed this as the demise of the state in the face of intensifying markets globally, while others focus on the state’s role in constructing markets themselves and making sustainable market interactions possible.\textsuperscript{5} Arguably, both might be true in their own stance but one cannot ascertain which is a winner or loser but one thing is certain which is the relationship between the two has been greatly transformed. Despite numerous differences between the two, in advanced capitalist countries, there has developed mutually acceptable notion that state and market are necessary towards growth and welfare and therefore are compatible.\textsuperscript{6}

There has also been different models and ideologies about the appropriate combination of state and market that have dominated in different period. During the Second World War period, the world witnessed a much higher level of state direction and involvement in the economy with that of the earlier period. Particularly in Europe, the high level of state interference continued for three decades after the war which was mostly Keynesian economic policies (with the appropriate policy instruments, state could sustain growth and welfare at high levels). This state-market set-up underwent crises since the late 1960s to the 1970s where the primary crisis was stagnation and growing


\textsuperscript{6} George Sorensen, \textit{The Transformation of the State: Beyond the Myth of Retreat} (New York: Palgrave Macmillan, 2004), p. 32.
inflation. This crisis paved the way for a new state-market relationship; the new set-up has been termed as the ‘Washington Consensus’.  

Thus it is the rise of this neoliberal state-market arrangement in the context of economic globalisation which has persuaded scholars that the state is being squeezed by the market. For instance, Susan Strange states, “Where state was once the master of market, now it is the market which, on many crucial issues, is the master over the governments of states.”8 But it can be argued that the current emphases on ‘market-oriented’ economic activity does not mean state diminish position rather, it means a different role compared to the earlier state-market set-up. The introduction of ‘more market’ in the context of the neoliberal Washington Consensus means not less, but ‘more state’ as well. Therefore, for some, the major feature of the state-market relationship under the new condition requires an elaborate and complex regulatory framework.9

State activity has been shifted from stressing functions of economic management towards stressing procedural-regulatory functions.10 Second, political authority is no longer primarily represented by an all-powerful central state but has been disaggregated into distinct parts, each of which interacts with a diverse compilation of private companies, groups and organisations. Thus, all these concern suggest the case where the state is getting involved with or participating in the market in new ways. But the reverse

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7 Ibid.
10 The role allocated to the government is to look after the mechanism which regulates the production of goods and services in working. The government should not interfere in the competitive economy even when their motives are noble as its intervention will create tyranny and bureaucratic inefficiency. In the era of the welfare state, government activity is determined by business failures without disciplining the mechanisms, while markets eliminate the efficiency. Anthony Giddens, Beyond Left and Right: The Future of Radical Politics (Cambridge: Polity Press, 1994), pp. 34-5.
process is taking place as well where market-based solutions are increasingly finding their way into areas previously dominated by the state. The privatisation of range of state services corresponds to placing under ‘market conditions’ a number of activities which earlier were exempt from the market.11

Neoliberalism entry in the field of security has become a reality lately. Neoliberals are particularly assiduous in seeking the privatisation of assets. Sectors previously run and regulated by the state have shifted to the private sphere and deregulated.12 This has been extended over a period even in the important public sector like that of security. Security now has been characterised in accordance to the market ideology. Therefore, today, both market and state seem to play a multi-dimensional role in security.

2. Privatisation of Security: Meaning and Approach

Privatisation of ‘Security’ is a growing concern today. With the demise of the Cold War, there has been an intensifying growth of PSCs engaged in a range of military and security tasks including, protecting public and private officials working in post-conflict environments, training state security forces, fighting alongside with state forces against rebels, safeguarding embassies and humanitarian demining roles. Historically, this task was normally the responsibility of state forces however, over-extension of welfare state, soaring defence budget and growing support for neoliberal market reform particularly in

11 Ibid., pp. 34-5.
the West make more and more of these tasks outsourced. This phenomenon of contracting-out responsibilities and services traditionally identified with or provided by the state is commonly defined as privatisation of security.

Despite its increasing global trend, the understanding of PSCs remains greatly limited (and contested). Some point out that PSCs remain largely unexplored for a variety of reasons such as the relative newness of the phenomenon, its failure to fall neatly into existing theoretical framework and chiefly, the nature of the business itself. The operations of these firms are mostly contentious and secrecy, therefore difficult to research. Though many are seemingly open about their operations many others try their utmost to cover up the range of their activities or try to intimidate those seeking to write about them. Some firms are often said to be at the centre of dangerous covert or semi-covert operations that many clients, including top governments, would rather reluctance to discuss. Many of these firms functions in between legality, with potentially unlawful clients, business practices, and employees with dark past. Although government’s conducts are open to scrutiny under laws such as freedom of information act, the

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company contracts are often protected under proprietary law, making their activities totally deniable.  

Many scholars have attempted to develop a clear definition of PSCs. According to P.W Singer, PSCs are the newest wave of commercial enterprises, “hierarchically organised into registered businesses that trade and compete openly and are vertically integrated into the wider global marketplace. They target market niches by offering package services covering a wide variety of military skill-sets.” Singer distinguishes these firms according to the kinds of services they offer. He adopted ‘tip of the spear’ typology by describing PSCs as military consultant firms that offer advisory and training services and military support firms that provide non-lethal aid and assistance. For Christopher Kinsey, PSCs can be distinguished along two axes: the means they use to secure their goal, ranging from lethal to non-lethal, and the object of their protection, ranging from private to public. While for others, PSCs are any company offering on business basis, service associated with reform of their institution or training, coordination, or direction of security personnel.  

In many existing literature on PSCs, there is some confusion over reference to those contractors or private companies who play a security role. Quite often, they are referred differently as Private Military Companies (PMC) or Private Security Companies (PSC) distinguished by their range of services. For David Shearer, military companies are distinct from organisations operating in other areas of security, designed to have a

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16 Quoted from Singer, Ibid., p. 45.
strategic impact on the security and political environment of weak states facing a major military threat. They do this by performing an active role together with the client’s force, acting as an additional force. Therefore, PMCs are understood by those in the industry to be service providers, delivering a business package that contain elements their clients require to retain the military advantage over rival forces. PSCs are generally concerned with crime prevention and public order. The task they undertake range from countering fraud, risk assessment of insecure areas on behalf of companies evaluating investment prospect, armed guards to protect government and business installations and persons, and security advisers for multinational companies operating in the volatile areas of the world. The security activities of some PSCs have sometimes tended to move into the political-military area of activities occupied by PMCs.

PSCs provide three broad categories of external security support: military advice, operational support, training and logistic support. PSCs also provide internal security ranging from site security (armed and unarmed), crime prevention and intelligence. Singer has disaggregated these firms by the relationship of their primary services to ‘the tip of the spear’ in battle space. Services closest to the ‘tip of the spear’ and those on the front lines of battle, are typically the most deadly and dangerous. According to Singer, this leads to distinction between type one firm that provide implementation and command, type two that provide advice and training, and type three that provide military support (non-lethal aid and assistance). Deborah D. Avant on the other hand argues that

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in practice, these categories more often than not merge into another. The same firms often
provide a variety of functions and adapt their services in response to changing client
demands.\textsuperscript{22} Even though, there might be some difference in their service, many a time
their roles overlap, and since both companies play an active role in security directly or
indirectly, rather than distinguishing, it might be appropriate to accommodate them under
a larger framework of PSCs.

There exists a highly overlapping role between the Mercenaries and PSCs, which
becomes a source of contention among scholars. Therefore, any attempt to understand the
contemporary proliferation of PSCs has to begin with a clarification of these
differences.\textsuperscript{23} To have a better understanding, the definition of Geneva Convention
defining mercenaries is imperative. The First Additional Protocol to the Geneva
Convention defines mercenaries on the basis of six cumulative characteristics: (1) they
are specially recruited locally or abroad in order to fight in an armed conflict; (2) they
take a direct part in the hostilities; (3) they are motivated to take part in the hostilities
essentially by the desire for private gain and are promised, by or on behalf of a party to
the conflict, material compensation substantially in excess of that promised or paid to
combatants of similar ranks and functions in the armed forces of that party; (4) they are
neither a national of a party to the conflict nor a resident of territory controlled by a party
to the conflict; (5) they are not a member of the armed forces of a party to the conflict,
and (6) they have not been sent by a state which is not a party to the conflict on official
duty as a member of its armed forces. In addition, mercenary forces are, typically,
composed on an adhoc basis and for illicit purposes. They are volatile, dangerous and

\textsuperscript{22} Elke Krahmann, \textit{State, Citizen and the Privatisation of Security} (Cambridge: Cambridge University
\textsuperscript{23} Ibid., p. 5.
little concerned with their long-term reputation and compliance with national and international laws.\textsuperscript{24}

There are few major initiatives undertaken against mercenaries. Norms against mercenaries and various efforts to outlaw them includes, the Organization of African Union Convention for the Elimination of Mercenaries and the United Nations International Convention against the Recruitment, Use, Financing and Training of Mercenaries and their exclusion from the safeguards of the Geneva Convention, are responses to the lack of control over mercenaries and the resulting threat to international peace and stability. However, the difficulty of persecuting mercenaries based on a definition which requires simultaneous evidence for all seven criteria, including the personal motivation of the accused, has not only undermined the widespread endorsement of the UN convention, but also its practical implementation since its coming into force in 2001.\textsuperscript{25}

One distinguishing feature between PSCs and mercenaries is the corporate nature of PSCs and their resulting legal status, while mercenaries operate outside the law. In addition, PSCs are legal business with permanent structures, headquarters and management. While there are still some gaps in the regulation of the industry, PSCs are subject to corporate and contractual law, sector regulations, and national and international legislation in Europe and North America. It is exclusively the incorporation of these businesses that has facilitated compliance with public laws and regulations through the assignment of corporate responsibility to private owners or executive boards.\textsuperscript{26} Therefore,

\textsuperscript{24} Ibid., p. 6.
\textsuperscript{25} Ibid.
\textsuperscript{26} Ibid., p. 8.
PSCs are commercial organisations that do business in professional services intricately linked to warfare. They are corporate bodies that specialise in the provision of military skills, including combat operations, intelligence, risk assessment, strategic planning, operational support, training and technical skill. In other words, it is also called as informalisation of warfare where an informal military sector develops, comprising regular, self-financed and PSCs, which operate outside the normal rules of the formal, state-controlled military sector.

3. Evolution of Private Security Companies

Over the last two decades, there has been an intensifying growth of PSCs but understanding of market for force is not something new. Since ancient times, there was prevalence of market allocation for force and it continued throughout medieval times. Moreover, the emergence of the modern state did not instantaneously preclude the market allocation of violence. Rather, early modern states had both delegated control over force to business entities and participated in the market as both suppliers and purchasers. This section explores the history of the idea and existence of market for force at different periods as an attempt to understand the emergence of PSCs in present times.

To analysts, hired soldiers or mercenaries is not a new phenomenon but as old as the institution of war itself. The constant conflict in different periods felt the need for specialists in war who could also earn their livelihood by selling their expertise and skills.

Consequently, throughout the history of war, participants were hired either from aboard or locally. These hired soldiers were generally profit-driven rendering their service to the highest bidder and more often loyal to no one master or ruler. Ancient history tells us numerous accounts of fighters being employed to fight for rulers whether, Egyptian, Greeks, Carthaginians, Roman or Byzantine Empire. Thus, in the ancient military history, prevalence of such hired soldiers is seen and used by almost all the empires and this trend continued even in the Middle Ages.  

During the medieval period, hired soldiers formed an integral part of the medieval army. These soldiers filled out the more technical services where short-term feudal forces could not supply or in other words, the inefficient feudal military system. Quite often, these soldiers were specialised in particular weapons (such as crossbows, firearms and cannons) which required much skill and practice for an ordinary person to perform. Because of their effectiveness, rulers turn back to relying on hired soldiers. Consequently, the revival of commercial economy in the 13th century in Europe, the growth of banking system and the emergence of the trading companies in Italy had led to the birth of Condotta (contract) system where military services were contracted out to private units. Furthermore, the fear of the power of an armed populace led nobles to support hired units and therefore mercenaries were preferred. 

Significant development in the medieval period in the nature of warfare suggests that quality and skills of soldier mattered more than sheer numbers. Thus, across Europe, the rulers were charged scutagium (shield money, the cost to equip a fighting man) where

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this money was used to hire mercenaries. By the end of the 14th century, organised private units had largely taken over the field of battle from their feudal predecessors. In this way, the term ‘commissioning’ came into being (the term still used today to denote the rise to an officer rank). Subsequently, the way to form an army consisted of a private individual to raise troops, cloth them, equip them, train them, and lead them. In exchange, the organizer received payment and a potential share of any goods seized in the conflict.33

Organised private militaries remained active players even when the system of state came into being. For instance, the overwhelming majority of forces in the Thirty Years’ War (1618-48) and the ensuing half-century of fighting were mostly privately contracted. During the following era, colonial expansion became popular leading to the emergence of chartered companies, where, trading entities such as the Dutch, French, Portuguese and English East Indies Companies operated as near-sovereign powers, commanding armies and navies negotiating their own treaties, governing their own territory, and even minting their own money.

From 17th century, these prominent chartered companies were state-designated entities for engaging long distance trade and establishing colonies. The French companies were state enterprises forged by the king and designed to increase state power while the Dutch companies were private wealth-seeking enterprises that were organised in a charter to increase the Dutch profit relative to the English or (particular) the Portuguese. The crown chartered the English companies for several reasons. These forces were both an army and a police force for establishing order and then protecting both trade routes and new territory. Moreover, throughout the early period of the state system, states rented out

33 Ibid., p. 23.
their forces to other friendly states. These troops would arrive equipped and ready to fight under the command of the contracting government.\textsuperscript{34} These firms conquered in non-European areas considered beyond the accepted boundaries of the sovereign system, such as on the Indian subcontinent, where local capabilities were weak and transnational companies the most efficiently organised units to be found.\textsuperscript{35}

Gradually, hired armies were replaced by standing state armies of citizen soldiers. However, market allocation for force was not completely eliminated even in the contemporary world. The emergence of PSCs though appears to be new and unique, rather reflects a resemblance of an old form or transformed unit. But, unlike earlier mercenaries, the PSCs have now become more established with corporate structures,\textsuperscript{36} offices and operate openly across the globe. They have moreover gained some degree of international acceptance\textsuperscript{37} used by states, organisations and individuals as well. As this trend continues, the intensifying growth of contemporary PSCs can be attributed to many factors such as the end of the Cold War, globalisation and neoliberalism.

The demise of the Cold War led to a drastic decline of big powers assistance in many developing countries. These changes in the established patterns exacerbated conflict in many weak states. Moreover, lack of effective multilateral intervention from the United Nations lead the regimes of some weak states to opt for contracting PSCs

rather than waiting indefinitely for broader support from the international community.\textsuperscript{38}

The use of PSCs by many weak states partly originated from the need for governments to find substitutes for lacking military and security backing. Through this privatisation route, PSCs have filled a security gap caused by withdrawal of the superpowers.

The end of the super powers military confrontation also profoundly affected armed forces and security establishments across the world. For instance, “the main threat of the NATO has largely disappeared where the Western defence industry found itself without a strategic competitor and hence without a need for continuous innovation and rearmament. This has led to the restructuring of the defence industry such as decrease in defence budgets, downsizing of military forces, and shifting to Research and Development (R&D) projects.”\textsuperscript{39} For instance, the ‘bottom-up review’ inaugurated in 1993 by US Secretary of Defence became the model for a series of reassessment of military postures in both the developed and developing world. Some of these reassessments expressed concerns about the implications of globalisation for security. Generals and defence planners are aware that the challenge is not just another attempt to reform or redefine military doctrines and to restructure military forces according to the latest threats.\textsuperscript{40}

Many top military officials also concede that there should be large cuts in military establishments, accepting that a leaner force is most likely to be the answer to future security threats. The new security agenda transcends boundaries and threatens every


\textsuperscript{39} Armin Krishnan, \textit{War as Business: Technological Change and Military Service Contracting} (Hampshire: Ashgate, 2008), p. 27.

\textsuperscript{40} Ulrich Albrecht, “The Changing Global Composition of Armed Forces and Military Technology: The Trend towards Informalisation,” in Mary Kaldor (eds.) \textit{Global Insecurity: Restructuring the Global Military Sector}, (London: Printer, 1997), p. 120.
nation such as weapon proliferation, energy security, refugee and environmental risks, the growing capabilities of transnational criminals and international terrorism. The security agenda of the 21st century will also include new security challenges posed by advances in information technology (cyber crimes, digital networking) and genetic engineering (nuclear, biological, chemical and conventional weapons).\textsuperscript{41} There is also the conviction that the new post-Cold War forces will need to be equipped differently to face those threats. There is also widespread awareness, much less specific, that transition from authoritarian rule implies steps towards privatisation and that actors other than the state will take over certain former state functions. This is accompanied by an uneasy feeling that these processes fundamentally affect the military, as a part of the state apparatus.\textsuperscript{42}

With the demise of the Cold War, a quantitative arms race has ended, and there have been substantial reductions in military potential during the 1990s, the qualitative arms race continues unabated. In the US, there is talk of a ‘Revolution in Military Affairs’ (RMA), referring to the comprehensive application of electronics to every possible military task. In addition, the end of the East-West confrontation has created huge surpluses of weapons.\textsuperscript{43} Some analysts have calculated that by the early 1960s the global destructive arsenal contained ‘some 45,000 combat aircraft; 1,72,000 main battle tanks; 1,55,000 artillery pieces; close to 2000 major surface warship’, accompanied by tens of millions of infantry weapons and millions of tons of ammunition and explosives.\textsuperscript{44}

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\textsuperscript{42} Ibid., p. 121.
\textsuperscript{43} Ibid.
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Most of these items are durable and have long service lives. In arsenals around the world substantial amounts of weapons and ammunition, of almost every description, have now become surplus over requirements. SIPRI records that the volume of military imports of major conventional weapons such as planes, tanks and explosive systems was at constant 1990 prices, $15,333 million and the top two suppliers were US and Russia from 1996-2000.45 A significant share of these weapons has been negotiated away in Europe by the Conventional Forces in Europe (CFE) Treaty, which put ceilings on national holdings of major weapons system. In addition, a vast number of conventional weapons systems have become redundant as the result of cut-backs in defence spending in a number of countries, due to a pressure to reduce government expenditure. Given the high costs of maintaining modern combat equipment, there is a strong incentive not to keep such weapons but to sell them. Almost all industrialised nations have sought new ways to dispose of their Cold War leftover.46

Another important development with the end of the Cold War was the existence of a large number of demobilised soldiers dissatisfied with poorly executed demobilisation programmes and looking for job opportunities and readily available weapons. The end of the Cold War ushered a huge availability of arms and ammunition. The defence personnel as well as policy-makers found it lucrative to dispose the huge consignments of arms. These led to reduction of army recruitments where many remained jobless. Therefore, the end of Cold War resulted in many soldiers looking for job opportunities and furthermore

the readily available weapons with which to equip them. There is a growing awareness
that if the formal state sector fails to cope with this redundant supply of war resources,
informal groupings—PSCs, which in Russia have strengths approaching private armies;
modern condottieri (name of the contract), who sell their services to anyone able to pay;
and warring factions in debilitated states—arise.47 Thus, as Mary Kaldor states, “Regular
armed forces are in decay, particularly in areas of conflicts. Cut of military spending,
diminishing prestige, shortage of equipment, spare parts, fuel and ammunition, and
inadequate training all contribute to a profound loss of morale. In many African and post-
Soviet states, soldiers no longer receive training or regular pay. They may have to seek
out their own sources of funding which contributes to indiscipline and breakdown of the
military hierarchy."48

An increasing support for neoliberal market reform, particularly in the West, has
lead to more and more of the military and security tasks outsourced.49 Neoliberal
ideology paved the way for free market and privatisation of security in two ways: One,
with increased wealth, power and capacity in private hands, many could now own and
run business as security-related companies. Two, in the ideological context, the debates
for cutting down of budgets for defence50 and the idea of downsizing is one of the
outcome of such debates. Primarily, the general notions about advantages of privatisation

47 Ibid., p. 122; Also see Robert Mandel, “The Privatisation of Security” Armed Forces & Society, vol. 28,
no. 1, Fall 2001, pp. 129-51; Kyle M. Ballard, “The Privatisation of Military Affairs: A Look into the
http://www.anselmz.edu/NR/rdonlyres/5CDDE900-9FCI-4143
9BICD4AF85090155/6305/paper1ballard1pdf (Accessed 15 January 2014.)
48 Mary Kaldor, New and Old Wars: Organised Violence in a Global Era (New York: Polity Press, 1999),
p. 92.
50 Ulrich Petersohn, “Sovereignty and Privatising the Military: An Institutional Explanation,”
were associated with the influential conservative coalitions in the United States and the United Kingdom in the 1980s. However, the downfall of the Soviet Union, the subsequent privatisation of state-run industries across Europe and the endorsement of these doctrines by powerful multilateral institutions such as the IMF and the World Bank led privatisation to be legitimate more extensively. The appeal of privatisation ideas led people to glimpse private alternatives as apparent and increased the growth of private supply.\(^{51}\)

4. Major Private Security Companies


These PSCs performed different types of services, having established offices (see Table 4.1).

5. Private Security Companies: Emerging Role of Security

PSCs today play a diverse role in security functions.\(^53\) For many analysts, they now sell more service, some of which are to the extent of core military capabilities.\(^54\) Some classic examples are Executive Outcomes (EO), which provided armed personnel that worked on the battlefield with the troops in Sierra Leone and Angola. Sandline International performed a similar role in Sierra Leone and Papua New Guinea. United States based Blackwater or Xe on numerous occasions provided armed personnel and has its own aircraft and lift capacity that can relatively replace US troops in some circumstances.\(^55\) In 2006, a US Congressional Report listed a number of PSCs and other enterprises that have signed contracts to carry out anti-narcotics operations and related activities as part of

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‘Plan Colombia’. DynCorp is among those contracted by the State Department, while others signed contracts with the Defence Department. Other companies from different countries, including Israel, have also signed contracts with the Colombian Defence Ministry to carry out security or military activities. In US, security companies like Military Professional Resources International (MPRI) offer support services that tutored high-level staffs on how to organise armies and prepared military units for battle. Services ranged from organising training and teaching how to draft battle plan to writing manuals and doctrine.

Many Western countries particularly the US, has relied heavily and given contracts to PSCs offering security services. The US Army’s Task Force XXI, Army Warfare Experiment (AWE) in March 1997 relied upon 1,200 civilian contractors from 48 different vendors. All of these people were in the field at the national training centre providing advice, maintenance and technical support. All these systems have been integrated into their operations, along with them has come the deployment of PSCs personnel in battlefield. In ‘Operation Iraqi Freedom’, PSCs supplied operational support for the B-12 Stealth Bomber, the F-117 Stealth Fighter, Global Hawk UAV (Unmanned Aerial Vehicle), and U-2 Reconnaissance Aircraft among others.

On several occasions, companies such as Halliburton, the parent company of Kellogg, Brown and Root (KBR) built bases, provided food, water, laundry service, and much more for American troops all part of a Multilayer Logistics Civil Augmentation

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59 Ibid., p. 10.
Program (LOGCAP) contract to support US forces. It is not only the US as the main consumer of these kind of services but also other countries like Australia and United Kingdom, even the UN peace operation in 1990s was conducted with support from the private sector in logistics. PSCs draw personnel from all over the world and offer their services both to strong and weak states. It is evident that the state is not only the actor that purchases security services but many non-state actors buy their own security. For instance, multi-national corporations that work in the extractive sector often pay for security either by financing a portion of the state’s forces or hiring – to accomplish their goals e.g. like, Shell and Chevron, British Petroleum, International Non-governmental Organisations (INGOs). Some examples of how PSCs have played a decisive role in conflicts in different states will be discussed in the following section.

5.1. Executive Outcomes in Angolan Conflict

Executive Outcome’s major operation in the Angolan conflict was to defeat the rebel movement of National Union for the Total Independence of Angola (UNITA) led by Jonas Savimbi. On numerous occasions, the South African Defence Force (SADF) intervened to prevent UNITA’s defeat and also to punish Angolan support of rebels fighting apartheid rule in Namibia and South Africa. However, by the time EO became involved in the Angolan conflict, the tide of war had turned. By 1993, UNITA had

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advanced from its bases in the interior to the government’s coastal bastions making the regime to retreat.\textsuperscript{63}

The critical turning point occurred in March 1993, when UNITA captured the oil facilities in the coastal town of Soyo. These specific fields were critical as the oil resources were an essential government source of finance and the facilities in question were owned by Sonogal, the state oil company, and Branch-Heritage Oil, the same company in the overall umbrella owned by Tony Buckingham. UNITA would not allow the companies to remove their oil and drilling equipment that they were leasing for $20,000 per day and the Forcas Armadas Angolans (FAA) did not have the capability to recapture the site without blowing up the valuable equipment in the process. The firm was hired to recapture the town of Soyo (and Sonogal and Heritage Oil’s valuable assets along with it) on behalf of the Angolan army. An EO unit of about 80 men quickly launched a commando assault that, after fierce fighting, seized the installation from the UNITA rebels.\textsuperscript{64}

\textit{5.2. Executive Outcome and Sandline International in Sierra Leone}

In Sierra Leone, the post-colonial regime led by Siaka Stevens had devolved his country into a one party and intentionally weakened his military to avoid threats to his rule. While the rest of the country languished, his party enjoyed huge wealth of the country. In 1991, a firefight begun by a small group of fighters led by Foday Sankoh under the flag of the Revolutionary United Front (RUF). A group of exiled students

\textsuperscript{64} Ibid. Also see Atul Bharadwaj, “Privatisation of Security: The Mercenary-Market Mix,” \textit{Defence Studies}, vol. 1. no. 2, Summer 2003, pp. 64-82.
opposed to Steven’s rule had originally founded the RUF. The PSCs involvement in Sierra Leone was to fight against the rebel RUF but their involvement caused widespread abuse of natural resources such as gold, diamonds, timber, and oil.

The government’s ability to resist the RUF was undermined by its very corrupt nature. The army had been largely ceremonial, completely unprofessional and recruited from among the same alienated youths as the RUF. Consequently, there was little resistance and towns and villages quickly fell to the rebels. The government then hired the Channel Island-based Gurkha Security Group (GSC) to train its army and bring some sense of order. However before the firm could make much headway, GSG suffered heavy causalities in a rebel ambush in February 1995. After it lost its local commander in the battle, GSG broke its contract with the government and left Sierra Leone. By April 1995, the rebel RUF forces had advanced towards the capital. The sense of doom at the impending slaughter was such that embassies began to evacuate the city. Groping for options (the U.N, U.K, and United States had all declined the government’s request to intervene) the beleaguered regime hired EO. The contract was for approximately $15 million dollars and called for the defeat of the RUF and their clearance from the capital region and several key industrial sites.

The original one-year contract called for 160 EO personnel to be deployed on the ground. It was later supplemented by contracts for additional manpower that brought the total costs to $35 million, about $1.5 million per month for the 21 months that the firm was in the country. Given that the contract aim was to establish the government’s control

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65 Ibid, p. 111.
over the economically productive parts of the country and that it was a fraction of the overall military budget, it seemed a good deal to the government. EO deployed the same month, with most of its troops flown directly from Angola. The force brought its own aircraft and was matched up with uniforms, weapons, and armoured vehicles, provided by the government. Within nine days, the EO force had not only stopped the rebel advance, but also sent them back 126 km into the jungle interior, mainly through the skilful employment of helicopter gunship that had not been used in the conflict previously. After clearing the capital area, EO forces then moved on the Kono diamond fields in the eastern part of the country, which they retook in just two days, and were a critical prize as a source of ultimate payment (as in the Angolan operation). After that, the RUF’s stronghold in the Kangari Hills was taken. It was seized in a ground assault bolstered by an additional 200 EO personnel, flown in from South Africa specifically for the operation and paid for in an additional, second contract. The firm ultimately pushed the RUF back to the border regions. Effectively defeated, the RUF agreed to negotiate with the government for the first time.68

In February of 1996, such a measure of stability had been achieved that a multi-party civilian presidential election was conducted in Sierra Leone. In the interim, a new leader, General Julius Bio, whom EO preferred to Strasser, had taken over the Sierra Leone government. The firm did not carry out, but did approve of the coup, as Bio was considered easier to work with him. Despite RUF opposition to the voting process, the elections brought into power Ahmed Tejan Kabbah, a former UN administrator. When the RUF pulled out of the peace agreement in October, EO went back into the field and

destroyed its headquarters in the southeast of the country. In November, the RUF leader signed peace accords, which, as in Angola, mandated EO’s withdrawal as a condition for signing of the agreement.\footnote{Ibid.}

The stability in Sierra Leone proved to be short lived. The EO once again offered the president a new deal, to equip a 500 men paramilitary force to provide a private intelligence unit to protect the civilian cabinet. Due to misguided trust in the capabilities of the regional organization’s peacekeepers, the feeling that EO’s contract price was too high or simple indecision, Kabbah never replied to the company’s offer. EO’s warning came to be true as the coup came on the 95\textsuperscript{th} days after it had left. Mid-level army officers who had been secretly cooperating with the rebels led the attack. Kabbah’s civilian government was toppled in May 1997. The coalition of renegade soldiers and RUF fighters then terrorised the capital city, Freetown, pillaging homes and business in a practice, they called ‘Operation Pay Yourself’. Mass killings and general chaos returned. The ECOMOG force pulled back to its camp. Government and UN officials sought protection in the offices of the EO-associated security companies, such as Lifeguard, that had stayed behind to guard mining properties. The general populace, however, was left unprotected. This lead Kabbah to hire Sandline International several months later to bring his regime back to power.\footnote{Ibid. Also see Christopher Kinsey, “Problematising the Role of Private Security Companies in Small Wars,” \textit{Small Wars and Insurgencies}, vol. 18, no. 4, December 2007, pp. 584-94.}

Sandline’s operations in support of the counter-coup were successful, with the coup/rebel force being driven from the capital. The aftermath, however, proved embarrassing to the Western powers. The firm’s shipment of arms to the region was held
to be in violation of the U.N. arms embargo. The British customs’ agency launched legal proceedings and raided the firm’s office. Sandline responded that its operations had been with full knowledge of the British foreign Ministry. This was originally denied, but then later proven true. The ensuing “Sandline Affair” nearly cost the job of British Foreign Minister Robin Cook, who at the time had been advocating an “ethical foreign policy”. Before Sierra Leone has recovered, the government terminated its contract with EO. The fighting continued until the RUF collapsed under the combined pressure of a rebuilt Sierra Leone Army, a revitalised U.N. force and the Guinean army. Finally, in 2002, an election was held.\textsuperscript{71}

5.3. \textit{Military Professional Resources Incorporated (MPRI) in Bosnia}

The role of MPRI in the former Yugoslavia helped to alter the entire course of the war\textsuperscript{72} while it also gained its international brand recognition. Under a contract with the State Department, MPRI personnel served as border monitors for the UN sanctions against Serbia from 1994-1995. Moreover, it was during this period that the company was first contracted by the Republic of Croatia to help its military’s transition into a professional force.\textsuperscript{73}

Croatia the first republic to break away from Yugoslavia in 1991, but with an under-equipped militia force, had suffered greatly with its Serbian minority in the Krajina region having rebelled with the support of the Yugoslav army. At the time of the MPRI contract, a U.N.-monitored cease-fire line requiring suspension of hostilities had been


\textsuperscript{72} Ibid., p. 125.

\textsuperscript{73} Ibid.
established between the Croat forces and the Krajina Serbs (who had gained control of a large swath of territory that lay astride the main lines of communications for all of Croatia). With the war going badly for the Serbs opponents and the U.N. peacekeeping operation languishing, the basic goal of US policy in the region was to bring the situation to an endgame. The strategy was to turn the Croats support for the US to strengthen them into a regional enforcer and ally them with the Bosnians in order to balance Serbian power. These endeavours were solidified in the Washington Agreement in 1994 that linked together the conflicting Muslim and Croat elements inside of Bosnia. However, for the strategy to have any effect, the amateur armies with whom the US had sided required bolstering. This would prove to be a difficult challenge because of a 1991 UN arms embargo that prohibited the sale of weapons to any of the warring parties. Military training and advisory were also prohibited by this international embargo, which the US had approved in the Security Council.74

It was at this time that the Pentagon referred the Croatian Defence Minister to MPRI. Once the Washington Agreement allowed a State Department licence to be given (in September 1994), the Croat government signed MPRI to two separate contracts. The first was the long-range management programme, intended to provide the Croatian Minister of Defence with “Strategic long-term capabilities” and was to be led by then retired Major General John Sewall, who had just served as the Pentagon’s point man in the region. After a survey team assessed the situation, the programme officially began in

January 1995. A second signed contract provided for the design of a Democracy Transition Assistance Programme (DTAP) that officially began in April 1995. DTAP was run out of the “Petar Zrinski” military school in Zagreb, and officially provided for the classroom instruction in democratic principles and civil-military relations to officers previously accustomed to Soviet model of organisation. Neither contract were claimed by MPRI to involve any other type of military training.\(^\text{75}\)

The officially expressed policy behind the contract was that they would help transform the Croatian army into a more professional, NATO–style force that would be a suitable candidate for the Partnership for Peace programme. However, in August of 1995, the Croat forces launched a massive offensive, called “Operation Storm,” whose scale and sophistication caught everyone of guard. In a shocking fashion, the Croat army revealed that it had transformed from a ragtag militia to a highly professional fighting force. The Krajina Serb defences crumbled and, within a week, the entire territory were seized. Quietly pleased with the results, the U.S. government downplayed that the offensive had both violated the UN ceasefire and created 1,70,000 new refugees. In addition, numerous reports of human rights violation surfaced in the wake of the offensive, including the murder of elderly Serbs who had stayed behind. The International War Crimes Tribunal has since indicted the Croats commander of the offensive, who may or may not have received instruction and guidance from MPRI or Pentagon planners.\(^\text{76}\)

\(^{75}\) Ibid. Also See Christopher Kinsey, “Problematising the Role of Private Security Companies in Small Wars,” *Small Wars and Insurgencies*, vol. 18, no. 4, December 2007, p. 596.

\(^{76}\) Ibid., p. 126.
Operation Storm, besides being the first major victory of the war against the Serbs, was to be the crucial turning point of the war in former Yugoslavia. The Bosnian Serbs lost their last active ally, and the Croat army then linked up with the Bosnian government army and drove into their enemy’s western flank. In the course of the offensive, the Croatians regained all but four per cent of their land and came to occupy 20 per cent of Bosnia. The beleaguered Serbs agreed to a ceasefire and the Dayton Agreement were signed on November 1995. Observers present at the negotiations in Dayton, Ohio, relate that the Bosnian government made an important precondition to their signature: the provision of a similar to train and equipped their own military. Although MPRI categorically denied any involvement in Operation Storm, the dramatic overall improvement in Croat strategic and technical skills over the same span is difficult to ignore. Despite MPRI officials’ denial that “they could have got a battle plan just as well from Georgetown University, as from MPRI,” the absolute success of Operation Storm definitely carried a Western-style imprint that appears to bear evidence of MPRI’s assistance. In particular, it made sophisticated use of war manoeuvre techniques to destroy Serbian command and control network. These were quite different from the outmoded Warsaw Pact military tactics that Croats had used earlier in the war and more reminiscence of the US Army’s Air-Land 2000 doctrine that the firm were expertise.77

In the wake of this success, MPRI won its next high-profile contract, administering, “Train and Equip,” the Dayton-inspired programme to build up an integrated Bosnian Federation military. After a supposed seventeen-week bidding competition with two larger, rival American firms in the advisory sector (SAIC and

77 Ibid.
BDM), MPRI was hired in May 1996, to advise the Bosnian force during its reorganisation and professionalism process. The difficulty inherent in this official version is that as early as December 1995, it was widely known that MPRI would be the firm that would administer the training and preparatory work begun before May. The overall contract was valued at approximately $50 million and carried provision for yearly renewals. The programme was titled the Military Stabilization Programme and differed from the contract with the Croats in that it had official provision for combat training. Along with a $100 million surplus arms transfer programme, the programme was intended to help create a balance of power within Bosnia, which was hoped would prevent future Serb aggression.\(^78\)

The payment method for MPRI’s role in Bosnia’s Train and Equip Program is indicative of the complexity of the firm’s role. Although the contract itself was directly between MPRI and the Bosnian government, the firm were actually paid with money donated to Bosnia by moderate Islamic countries such as Saudi Arabia, Kuwait, Brunei, and United Arab Emirates (UAE), and Malaysia. However, a US official at the State Department (initially Ambassador James Pardew) officially administered both the programme and the financial account into which the money were deposited. In no other example of governmental privatising, at either the federal, state or the local level, does such an example occur of having the purchaser, provider, contractor, and regulator in so many different personas.\(^79\)

\(^{78}\) Ibid., p. 126.

The original Programme Manager for MPRI’s operation in Bosnia was retired Major General William Boice. Boice’s particularly relevant experience to the situation in Bosnia was that he was the former commander of the US Army’s 1st Armoured Division (making for some nice potential contact with his former unit, which had provided the initial core of the NATO peace-keeping force that was in charge of administering the local security situation at the time in 1996). Headquartered on the third floor of a non-descript former University building in Downtown Sarajevo, the MPRI operation in Bosnia consisted of approximately 175 personnel, who would develop and conduct an expansive training and advisory regime that Boice described as “a unique programme in the history of the United States.” The tasks that MPRI was contracted to accomplish were wide ranging, numerous was to be the core of Bosnian military capabilities. The programme began with the restructuring of the Bosnian Ministry of Defence and a combined logistics system. This was much more difficult a task than in Croatia, as MPRI was essentially trying to bring together two separate armies (the Bosnian Muslim Army of Bosnia and Herzegovina (ABiH) and the Bosnian Croat Hrvatsko Vijece Obrane (HVO) under one organization. This tense dynamic presented recurring difficulties for the programme that still remained unsettled five years later. Concurrent with this army reorganization, MPRI built a training school and computer simulation centre near Hadzici, as well as established a field combat simulation centre near Livno that had been designed to mirror the force training grounds in the United States (complete with an “OPFOR” enemy training unit). The 60 kilometre (roughly 10 mile by 40 mile) training grounds were realistic as they still contained gutted villages abandoned by the Serbs during the previous round of fighting. MPRI followed essentially a ‘pebble in the
pond’ approach; that is, the students who have passed through the school were expected to impart their knowledge throughout the Bosnian force.\footnote{Ibid., p. 129}

MPRI’s role vastly improved the combined Bosnian army’s performance as a fighting force with their training and simulation centres, which added the Bosnian soldiers’ their individual skills. While MPRI’s involvement in Bosnia were also criticised from the fact that it undermined the integration efforts and polarised the state military.\footnote{Elke Krahmann, “Transnational States in Search of Support: Private Military Companies and Security Sector Reform,” in Chesterman (eds.), \textit{From Mercenaries to Market} Op.cit., p. 10.}

5.4. Private Security Companies in Iraq

Involvement of Private Security Companies has been massive in Iraq.\footnote{Isenberg, “A Government in Search of Cover: Private Military Companies in Iraq,” Ibid., pp. 82-93. Also see Frederick Rosen, “Commercial Security: Conditions of Growth,” \textit{Security Dialogue}, vol. 39, no. 1, February 2008, p. 83.} The use of PSCs in Iraq dates back since the first Gulf war. It is said that one out of fifty personnel in Iraq were American contractors. Nevertheless, the number of contractors in the second Gulf war was double that of the first, with less than half the number of US forces involved. During the last US war on Iraq and its aftermath, there has been an increased use of private security companies performing a range of services where majority of these are either US and UK based private security companies.

Over a period, Iraq emerged as the most fertile ground for private contractors. Some estimate that in 2007, there were over 1,80,000 private security personnel served in Iraq. Out of them, nearly 30,000 were armed security personnel, nicknamed as ‘shooters’. Estimates generally differ, but they do indicate the unusual presence of numbers of private contractors in the conflict zone. The PSCs comprised the second largest armed
security force in the ‘coalition of the willing’ serving in Iraq, second only to the US armed forces. Private contractors from nearly 30 countries were operating in Iraq. Far from restricting themselves to performing of ordinary logistical operations, some PSCs were directly involved in combat—related activities.\(^{83}\)

In 2003, during the US invasion, some of the contractors maintained and loaded many-sophisticated US weapon system such as B-2 Stealth bombers and Apache helicopters. They even assisted to operate combat systems such as the Army’s Patriot missile batteries and the Navy’s Aegis missile-defence system. In the post-invasion phase, the roles of private contractors were enhanced. Some of the companies such as Halliburton’s Kellogg, Brown & Root Division were major incharge of ensuring logistical supplies for the coalition army. Other firms helped to tutor local forces, including the new Iraq army and the national police force. Some of these companies played a prominent role in guarding military and diplomatic establishments in Iraq.\(^{84}\)

The contractors did everything from cooking and cleaning to servicing weapon systems and protecting US diplomats that increased operational expenses far more than if they would have relied solely on state forces. According to a 2006 survey of the Department of Defence’s Central Command showed that the US alone had employed more than 1,00,000 private contractors. This number represents a tenfold increase over

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\(^{84}\) Ibid., p. 20.
the use of contractors during the Gulf War in 1991. Given the failure to increase the size of the military, the US could not operate without them. For most part, those people worked side by side with US troops and shared the risk and hardship. An estimated 1,000 contractors have been killed since between 2003 and 2008.85

It was estimated that the U.S State Department alone spent more than $4 billion on security guards in 2007 up from $1 billion three years ago. For instance, PSCs such as Blackwater got an initial contract in 2003 of $27 million to guard L. Paul Bremer III, the administrator of the Coalition Provisional Authority (the US occupational authority in Baghdad). The contracts were increased to $100 million a year later. In 2007, it held a $1.2 billion contract for Iraq and employed 845 private security contractors.86

Although there is a greater risk in conflict zones, operation in such condition proved to be a huge package for personnel operating in these areas. In 2007, private guard working for companies such as Blackwater and DynCorp were earning up to $1,222 a day; this amounts to $4,45,000 a year. In contrast, US army sergeants were earning $140 to $190 a day in pay and benefits, a total of $51,100 to $69,350 a year. Worse, the military was competing against itself. The high pay for the contractors was one of the factors forcing the army to offer ever-higher bonuses for reenlisting. For soldiers, when their tour of duty ended, could go to work for contractors at much higher

86 Ibid.

Moreover, a number of PSCs had been held responsible for atrocities and human rights violations. For instance, Abu Ghraib prison scandal in 2003 and 2004, employees of PSCs such as CACI and Titan Corp were found involved. The US army established that contractors were involved in thirty-six per cent of the (Abu Ghraib) proven incidents and identified 6 employees as individually guilty although none have faced prosecution unlike US military personnel.\footnote{Chesterman (ed.), From Mercenaries to Market Opc.it., p. 87. Also see Jordi Palou-Loverdos and Leticia Armendáriz, The Privatisation of Warfare, Violence and Private Military & Security Companies: A Factual and Legal Approach to Human Rights Abuse by PMSC in Iraq (Barcelona: Creative Commons, 2011).}

5.5 Private Security Companies in Afghanistan

In Afghanistan, the PSCs involvement was evident since the US led invasion in 2001. According to one estimate, during the 2008, there were nearly 90 global PSCs operating in Afghanistan along with 20 domestic. The DynCorp as well as Blackwater (Xe) were in charge of security for VIPs and officials, and even guarded the former Afghan President Hamid Karzi.\footnote{Sarah Percy, “Private Security Companies and Civil Wars,” Civil Wars, vol. 11, no. 1, March 2009, p. 58. Also see Matthieu Aikins, Contracting the Commanders: Transition and the Political Economy of Afghanistan’s Private Security Industry, New York University Centre on International Cooperation (CIC), New York, 23 October 2012.}

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The fall of the Taliban did not guarantee American forces a respite from violence, ambushes, and daily attacks by bombs and rockets. In the new Afghan reality, the number-one target was Karzai. Karzai was a Westernised moderate Pashtun with a noble lineage and diplomatic skills who speaks fluent English along with four other languages. He was an easy choice for the US to support as a leader, but any Afghan who to aligned with America became a target of not only the Taliban, but also other disgruntled warlords.\(^9^0\) This necessitated the US to employ DynCorp in guarding the Afghan President.

Giving training to the Afghan Police Force and the task of poppy cultivation eradication programme, DynCorp was given in charge. The US State Department gave the assignment of police training to DynCorp in most of the nine regional centres leaving only the task of training higher-ranking officers, to the German authorities. There has, however, been considerable criticism from different quarters about the quality of training being imparted to Afghan police recruits by DynCorp. Barnett Rubin, a leading expert on Afghanistan, for instance, argued that security contractors, “have hired, armed, and trained militias that were supposed to be demobilised and disarmed, enabling them to persist and profit as part of the private sector, awaiting the spark that will set off another civil war.”\(^9^1\) Countries such as Canada also use contracted military service in Afghanistan. In 2008, the Canadian forces employed Private security companies in


support of the Afghan mission in four major services such as logistic, strategic lift, theatre aviation support, and site security.\textsuperscript{92}

Several cases of human rights violations by the private security personnel also have been reported by numerous sources. In response, the U.S government, so far, has prosecuted only one civilian contractor, for violence towards local nationals. Numerous other cases, however, have gone unnoticed. Such incidents have led to growing resentment among the local population against the private contractors, particularly against the American and the European contractors, who are perceived to be aliens.\textsuperscript{93}

5.6 Private Security Companies in the Indian Context

Though use of PSCs has not been extensive in the Indian context in the past decades, over a period, there has been an increasing growth and the growing tendency for the need of PSCs. The PSCs in India, performing diverse security related activities such as guarding homes, institutions, shopping malls, Banks, ATMs, conduct security audits of client’s site, threat/risk analysis, impart sector-specific specialised training, provide electronic security system and executive protection and some of the PSCs personnel are also operating globally. According to some observer, the changing face of PSCs in India from being traditionally unorganised workforce to a well-managed manpower is a visible effect of liberalisation. Gurgaon, which is also called as a ‘Millennium City’, has been


spearheading this transformation with its numerous domestic and global security service firms. To some analysts, the PSCs are growing at nearly 20 per cent annually.\textsuperscript{94}

India being one of the largest standing army and police, over the past, there is no such popularity of using PSCs for different kinds of security services or use of PSCs in public wars, but there are some cases where, the Indian establishment has used some of the local non-state actors to counter insurgent forces against the state. For instance, the Indian establishment used surrendered United Liberation Front of Assam (SULFA) for counter insurgency against ULFA\textsuperscript{95}; Ikhwan-i- Muslami to counter militant groups since 1990 until Ikhawanis were made part of the Home and Health Territorial Army\textsuperscript{96}; Salwa Judum encouraged and initiated by Chhattisgarh government as a popular movement against Naxalite in June 2005.\textsuperscript{97} In some remote areas, there is also a so-called Village


\textsuperscript{95} Surrendered Liberation Front of Assam (SULFA) is a member of the ULFA that have been surrendered to the Indian government. In 1992, a large group of high-ranking leaders and member surrendered to government authorities, thus earning the name SULFA. However, these former members were allowed to retain their weapon in order to defend themselves against their former colleagues. They were also offered bank loans without liabilities. Ajai Sahni and Bibhu Prasad Routray, “SULFA Terror By Another Name-South Asia Terrorism Portal” https://www.satp.org/satporgtp/publication/faultlines/volume9/Article1.htm (Accessed on 3 January 2014); “ULFA Groups Get SULFA Support-Former Rebels Urge Both Sides to Shed Rigid Stand” http://www.telegraphindia.com/10807/jsp/northeast/story_9512969.jsp (Accessed 5 January 2014.); Nitin A. Gokhale, “Fratricidal Flames: The ULFA and its former Colleagues Declare War on Each Other.” \textit{Magazine}, 21 December 1998. http://www.outlookindia.com/printarticle.aspx?206703 (Accessed on 5 January 2014.)


\textsuperscript{97} It is amply clear that the government has opened up this ‘new front’-the tribal genocide operation under the name of ‘Salwa Judam’ – to crush the economic and political aspiration of the people of Bastar Chattisgrah, and to perpetuate their kingdom of loot. See “Maoist Resistance”- \textit{CPI Maoist Booklet on ‘Salwa Judam’}. http://www.maoistresistance.blogspot.com.es/2007/09/cpi-maoist-booklet-on-salwa-judam.html?m=1 (Accessed on 15 January 2014.)
Defence Committee (VDC)\textsuperscript{98} to encourage and equip village communities for self-defence against the menaces of militants. This reflects that despite the increasing number of regular service soldiers and police, there is also an increasing law and order problem, or some issues where the army response would be disastrous, therefore relying on these means as economical and save their face from various national and international criticism.\textsuperscript{99} The other factor of growth of PSCs in India can be located due to the ongoing liberalisation and the need for more security. Today, with the growth of market and lifestyle, there is growing need of PSCs for different-security related services such as protection and other activities. Some of the well-known PSCs in India, which offer security service, are discussed below.

Tenon Group is one of the pioneers in private security manpower. Peregrine Guarding is the security arm and the first company of the group, started in 1995 in Gurgoan. The company launched its integrated-facility management firm namely Tenon Property Services in 2008. Among clients, Peregrine Guarding has IT/ITes and BFSI (Banking, Financial service and insurance) companies accounting for over a third of the share, the rest comprises manufacturing, retail malls and hospitality, like Oberois, Radisson, Taj, Cooperative Societies and Residential Complexes. The company’s recent client is Gurgoan’s Rapid Metro by DLF. “Post-liberalisation we had identified the huge

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\textsuperscript{98} Village Defence Committee (VDC) is the brain child of the former D.G.P Kuldeep Kumar Khoda, who was DIG Doda Kishtwar range in early 90s, had floated the idea of formation of VDCs in Jammu region to tackle militancy. His proposal was finally routed by Jammu and Kashmir Home Department to Union Home Ministry and they gave a nod for formation of VDCs in Jammu And Kashmir State. Thus, the concept of village Defence committee (VDCs) was born. https://www.tehelka.com/tag/village-defence- (Accessed on 15 January 2014.) The state government should disband VDCs and plug the communal fault lines in Jammu region power misused. Arshad Bhat, “The Case against Village Defence Committees” Greater Kashmir, Srinagar, Wednesday, 13 Shawal 1434 AH; 21 August 2013. http://www.greatherkashmir.com/news/2013/Aug/21/the-case-against-village-defence-committees-2.asp (Accessed on 17 January 2014.)

scarcity in private security and its potential in times ahead. To fulfil the civilian security needs and organise this industry, we started a professional security manpower firm,” says Atul Mehrotra chief strategy officer, Tenon.  

Group 4 Securicor (G4S) is another known name in Delhi-NCR whose core services include security solution and systems and cash solutions catering to ATM security and cash vans. Along with this, they have in-house facility management service.  

Distributed Security Service (DSS) has been one of the pioneers in the Indian Private Security Industry, set up in 1984. The company is providing manned guarding (MG), investigations (C&I), electronic security System (ESS) and Cash Service (CS) to over 500 corporate customers across 11 states in India. The company has also recently ventured into cleaning services (DSS Facility Management Services). DSS is an ISO 9001:2008 certified, public limited company backed by trained workforce of over 7000 men and supervisors and 150 managers.  

The SLV Security Services Pvt. Ltd is a multi-dimensional portfolio of companies that operate in various business domains across India founded by Late Sh. Sham Swara in the year 1986 with an office in Gurgaon. The core business of the group are security solutions, Mall/integrated Facilities Management, Real estate development and Service Apartment, Food Court Management.  

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101 “Facility Services Solutions for All Facilities Management.” http://www.g4s.in/ed-IN/ (Accessed on 20 January 2014.)  
Securitas India established in 2007 is one of the recent examples of foreign collaboration in the private security sector. The parent company is Walsons Security, “After establishing Securitas in US and Europe markets, our multinational clients propelled us to come to India and Gurgoan was identified, the most appropriate for the same,” says Amit Dar, senior vice-president, Securitas India.\footnote{Cited in Talwar, “Private Security Management Firms Mushroom in Gurgoan,” Op.cit.}

According to some estimates, market size of private security companies in India is 9,000 to 20,000 crores. There are over 10,000 private security firms of which, nearly 25 per cent are organised. The biggest challenge faced by this industry is that the government has not recognised and granted ‘skilled status’ to private security guards profession yet. “We have raised the issue of unskilled labour tag with the government (Home Ministry) for our educated, well-skilled and trained workforce on the lines of our armed forces who are paid well and given special social status,” says one of the players.\footnote{Ibid.}

With the growing relevance of PSCs in the security domain, the Indian Government has also undertaken some steps in order to regulate and impose certain norms on the PSCs both indigenous and foreign, the Private Security Agencies (Regulation) Act, 2005 (see Annexure). Under this Act, a controlling authority is to be appointed by the state governments for granting licences to agencies for carrying on the business of security agencies and other related matters. The government also framed the Private Security Agencies Central Model Rules, 2006 that have been sent to all the state governments for their guidance. Another bill related to Private Security Agencies known as ‘Private Detectives Agencies (Regulation)’ was introduced in the parliament in
This rule is in operational. According to this rule, private detectives would be regulated by Central legislation, and their functions will be mostly in the non-government sector and keep strictly off any investigation in affairs of the state, particularly the work of state agencies such as Intelligence Bureau (IB), Research and Analysis Wing (RAW) or Central Bureau of Investigation (CBI). In addition, a clause is proposed to be inserted in the PDA (regulation) bill 2007, debarring private detective agents (PDA) from interfering with the right to privacy of an individual, including tracking of his/her personal letters or electronic communications.


Increasing growth of PSCs not only denotes a huge demand of service globally but also suggests that it is turning into a huge profitable business. Without a doubt, corporations and individuals are motivated by money to get into the war zone contracting business therefore, the underlying assumption is that war itself has become a huge business. In 1992, two multinational companies, Gulf Chevron and Sonangol for approximately $ 30 million, hired EO. Angolan government hired EO, which defeated UNITA with an annual contract of $ 20 million and was extended to two years at $ 60 million. In 1997, the Papua New Guinea (PNG) government signed a $ 46 million contract with Sandline to suppress a revolt by the Bougainville Revolutionary Army (BRA).


It was projected that global PSCs trade has risen from $55.6 billion in 1990 to $202 billion in 2010. Some critics go on to say that in the US, it is one of the fastest growing industries. In 1990 alone, $52 billion were spent on PSCs compared to $30 billion on police.\(^{109}\) Most U.S. private soldiers working in a war zone are skilled at their job and are making between somewhere around $50,000 and $1,20,000 a year. Similar jobs in the US would pay about 20 to 30 per cent less.\(^ {110}\) Some security companies’ bill goes up to $1,500 to $2,000 per day, per contractor. These billing charges are unrelated to the individual contractor’s compensation.\(^ {111}\) In 2002, DynCorp took a contract of $2 billion guarding Karzai. It normally worked 95 per cent of US government business. DynCorp soldiers typically get a payment of $450 to $550 from the US State Department but for guarding Karzai, the contract is $600 a day. Over $2,00,000 a year sounds attractive as compared to less than $50,000 that a soldier receives in a year when they are in the US military.\(^ {112}\) The US Government Accountability Office (GAO) reported in 2006 that Iraq contracts for PSCs by US government agencies and reconstruction contractors alone amounted to more than $760 million between March 2003 and December 2004.\(^ {113}\)

It is apparent that the US war on Iraq inevitably opened up a new opportunity for PSCs. According to some, the US State Department alone spent more than $4 billion on

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\(^ {109}\) Ibid., p. 69.


\(^ {111}\) Ibid., p. 43.


security guards in 2007 up from $1 billion three years ago. PSCs such as Blackwater USA got an initial contract in 2003 with a $27 million to guard Lewis Paul Bremer, the administrator of the Coalition Provisional Authority (the US occupational authority in Baghdad). The contracts were increased to $100 million a year later. By 2007, it held a $1.2 billion contract for Iraq and employed 845 private security contractors.114

Another opportunity for PSCs is humanitarian demining and its related activities. In the mid-1990s, mine action became a major part of the larger human security agenda involving the worldwide promotion of human rights, sustainable development and governance. In other worlds, the goal of mine action was not just getting rid of landmines, but doing so in a way that fostered social, political and economic development and reconciliation. While, humanitarian community does not have an organisation or the capacity to carry out demining on a large-scale. Many NGOs and INGOs were not keen on themselves involving in military issue. Similarly, while there were some exceptions, many developed countries generally were not ready in performing humanitarian activities of such nature.115 This left them with no choice but to look to PSCs for demining activities.

PSCs such as RONCO consulting and DynCorp International have became the humanitarian de-miners of choice for the Department for International Development (DFID) and the US State Department of Humanitarian Mine Action Programme. Part of these firms success is rooted in their tailored all-encompassing approach (rather than

simply military demining, referred to as breaching) that involve assessment, removal, education, training, awareness and rehabilitation activities. With the exception of Australia and Antarctica, PSCs have mine action contracts on all the continents. For instance, the Armour Group alone had conducted operations of this kind in eighteen countries as of July 2006.\textsuperscript{116}

Observing such performances, a commentator remarked that PSCs appeal of servicing good deeds such as those noted above is twofold. First, such engagements help to further distance PSCs from the pejorative image of the mercenary and grant the industry a higher level of acceptance. Second, there exists the potential for lucrative opportunities. In particular, the long-term financial benefits of mine action are likely considerable. One estimate found that cost of removing landmines worldwide could well exceed US $ 33 billion. It is not surprising, therefore, that doing good deeds like this has been described as a ‘pot of gold’ for PSCs.\textsuperscript{117} Over the last few decades, there has intensified an involvement of PSCs in different conflicts across the globe. These involvements have evoked a serious concern among different scholars and analyst over the issue of accountability, norm and regulation of these firms will be discussed in the following section.

http://www.academia.edu/2285766/Goldmine_A_Critical_Look_at_the_Commercialization_of_Afghan_Demining (Accessed on 19 June 2014.)

7. Issues of Accountability

The issue of the accountability of PSCs is highly controversial and contested. Much of the earlier analysis of the PSCs has centred on corporate composition and the services provided by the PSCs, the international conditions allowing for the development of the PSCs industry, the role of PSCs in African conflicts, the normative implications of PSCs activities and the potential utility of PSCs in conducting International Peace Operations.\textsuperscript{118} Often, the issue of its accountability according to many has not been given considerable salience. Therefore, with expansion of PSCs globally performing various security functions almost in all the countries, the issue of accountability has become all more significant.

In almost all the countries, state security forces are made accountable through numerous methods. The various mechanism which control their activities and make them accountable are internal checks and balances, domestic laws regulating the activities of the military force and its personnel, parliamentary scrutiny, public opinion, and numerous aspects of international law. Through this various rules, their code of conduct is monitored, controlled and punished if proven guilty in accordance with the procedure established by laws. In contrast, PSCs due to their being ‘private’ in nature are viewed as the opposite of state forces. Since they are subject to the laws of the market and the companies that they belong, many analysts are sceptical that they are likely to be less accountable and pose a greater risk to effective policy implementation, human rights and human life.\textsuperscript{119}

Many scholars and analysts recently attempted to suggest diverse mechanisms through which PSCs can be made accountable for their action. For instance, accountability of PSCs based on activities in the South America context, particularly Colombia, Christopher Spearin, suggested four overlapping methods through which accountability can be enforced. They are political, administrative, market and judicial;

- Political accountability refers to the ability and effectiveness of elected officials to ensure that, in democratic tradition, the electorate’s tax money going towards activities relying upon PSCs are consistent with and effective in achieving foreign and defence policy objective. In this regard, political accountability also refers to supervising the supervisors: politicians make certain that bureaucrats are engaging in the duties properly.
- Administrative accountability refers to oversight and direction of projects and PSCs provided by bureaucrats.
- Market accountability refers that there are certain rules which govern the market and since PSCs are generally trying to enhance their legitimacy and acceptance in international affairs, it need to be sensitive to the image, particularly as it relates to the direct promotion of human rights.
- Judicial accountability, points to how PSCs can be directly accountable for their action these types refer to lawsuits, civilian judicial proceedings and endeavours undertaken by military courts that would bring PSCs to account and force them to modify their behaviour. The limitation of judicial accountability arises when the judicial structures of a weak state are questionable.\(^{120}\)

However, for Spearin even if accountability is recognised, the pertinent issue is the effectiveness and the appropriateness of these methods of accountability.\(^ {121}\)

Often, states rely upon private actors to achieve their objectives through coordination or subordination according to their expertise in certain areas. This has increased the number of groups in the private sector in the promotion of security. However, it creates the danger of incoherent policy and problematic outcomes towards accountability mechanism. By implementing their own rules in accordance to their own

\(^{120}\) Ibid., pp. 8-14.  
\(^{121}\) Ibid, p. 2.
unique objectives and operating principles, there is the risk that the state may not be able
to control these actors. The level of organisational complexity and lack of ideas on its
operational inter-relationship, private actors may not be readily made accountable.
Therefore, some suggested that identifying the various mechanisms through which PSCs
can be made accountable, the effectiveness of these mechanisms and how they might be
improved is an important task. In this way, the larger issue of governance should be
approached not simply through considering the sum of socio-political interactions. For
instance, Leon Grodenker and Thomas Weiss, contend that there should be a sense of
direction such that governance should concern efforts to bring more orderly and reliable
response to social and political issue.\textsuperscript{122}

According to Deborah Avant, lack of clarity surrounding the legal status of
contractors poses concerns about their legal accountability. Especially in US, unlike its
military personnel, private security personnel are not subject to the Uniform Code of
Military Justice (UCMJ) unless there is a formal declaration of war. Depending primarily
on the Status of Forces Agreement (SOFA) between the United States and the country in
which they are serving, contractors may be subject to the laws of the territory in which
they operate. In situations where local government is not functioning effectively, this may
lead to less than satisfactory outcomes. For instance, when DynCorp employees working
for the US or UN were implicated in prostitution rings in Bosnia, they were simply fired
and never prosecuted.\textsuperscript{123}

\textsuperscript{122} Ibid., pp. 3-5; Also see European Interagency Security Forum, \textit{Engaging Private Security Providers: A

\textsuperscript{123} Since the exposure of the conduct of DynCorp in Bosnia and Herzegovina, there have been continued
reports of employees of some of these companies perpetrating serious crimes including human
trafficking, sexual exploitation and abuse, and rape. The accountability mechanisms are weak and not
enforced, leading to a culture of impunity, which when coupled with military concepts of masculinities
There are often reports that PSCs providing armed and unarmed services have committed countless acts of a potentially criminal and tortuous nature. In 2004, PSCs translators and interrogators at the Abu Ghraib prison in Iraq allegedly participated in, or were present during, the rape and torture of detainees. In addition, the involvement of Blackwater in one of the most highly publicised incidents involving PMCs in Iraq where its employees shot and killed seventeen unarmed Iraqi civilians and injured twenty others on 16 September 2007, despite being authorised only to discharge their firearms in self-defence and as a last resort. Some of the PSCs claimed that they were under fire from suspected insurgents, but one of them later admitted that the shootings were unprovoked.

Until recently, PSCs enjoyed immunity from criminal prosecution in Iraq. The Coalition Provisional Authority, which operated as a transitional government following the 2003 invasion of Iraq, established this immunity on 27 June 2004 in Order Number 17. Though PSCs immunity ended one year after, when the United States and Iraq signed a three-year SOFA that recognised Iraq's right to exercise jurisdiction over US contractors and employees which was approved by Iraq's parliament on 27 November, 2008, and went into effect on 1 January, 2009, the SOFA remains subject to an Iraqi referendum that has been postponed until 2010.124

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Despite intensifying use of PSCs services globally, accountability mechanism of PSCs is weak. The problem is many PSCs have their own method of accountability, which is different from other. Even countries and the international community who are using those services do not have clear-cut accountability mechanism where, they rely mostly on the specific norms of the company. Though few countries have evolved their own norms for accountability, it is not universally applicable for all the countries. Therefore to analysts, the normative uncertainty is the question that who will answer for the error or action of PSCs? Who can and should be punished for these crimes? The private soldiers who does the actual deed or the individual employees of the PSCs or their overall security companies or their clients or the client’s owner (stockholders) or even their customers, who bought their service that helped, pay for the firm that directed the killings. Often these are difficult questions, which are still contested and debatable. Many consider this, the lines where the question of responsibility stops. Thus, it clearly suggests that privatising security functions only complicates the issues.\(^{125}\)

Along with its contested accountability mechanism, the question over its regulations and control of PSCs is a crucial aspect, which is widely debated at national and international level, will be discussed in the following section.

8. Regulations and Control of Private Security Companies

Extensive use of PSCs and its involvement has increased considerably over the years. Despite spreading globally, there is lack of effective regulation of these companies at

national and international level, which is of serious concern. In general, there has not evolved any clear regulation and norms to control this industry. Many scholars hold an opinion that if this industry is to be around for the coming decades, they should be controlled through clear national and international regulation. Yet, current attempts and future possibilities to control PSCs are generally viewed with scepticism. There are three problems associated with; one relates to the definition of mercenaries and PSCs for purpose of regulation; two, the perceived lack of interest among governments in the control of PSCs despite using them globally; three, the transnational character of most PSCs, which allows them to evade anything but global control.

The United Nation International Conventions against the Recruitment, Use, Financing and Training of Mercenaries, 1989 is identified as the key example of the problems, which characterised attempts to control PSCs. This Convention has been marred by difficulties associated with a common definition of mercenaries and the reluctance among members of the international community to sign up to the Convention. The definition of mercenaries embraced by the convention was based on the Additional Protocol I (Art. 47 of 1977) of the Geneva Convention. Unfortunately, the international legal definitions and regimes relating to PSCs focus on individual mercenaries have been...

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128 Ibid.
found inapplicable as it includes a series of vague, yet restrictive requirements. The result is that it is near impossible to find anyone, anywhere who fits all the criteria.\textsuperscript{129}

Another attempt at regulating mercenaries, which is widely criticised, is the Organisation of African Unity’s (OAU) Convention for the Elimination of Mercenaries in Africa, which was opened for signature in 1977 and entered into force in 1985. The OAU Convention, like the UN International Convention on Mercenaries, uses its definition of mercenaries of the Additional Protocol I and thus suffers from similar problems.\textsuperscript{130} However, since the definition presumes that it is possible to analyse and prove the motivation of mercenaries and since it requires that all criteria have to be met simultaneously, it is nearly impossible to convict any combatant as mercenary.\textsuperscript{131}

Another move to regulate this industry was the European Conference on Security Services (COESS) has produced an overview of national legislation on PSCs among the 25 EU member states. In the EU context, national regulation of PSCs among the member states can be classified into three categories namely; the control of private security and policing service; the licensing of armaments export; and the regulation of mercenaries and private military companies. Under the first category, the prime mechanism regulating private security and military service in the EU member states are the national registration and licensing of security companies and their personnel. The conditions for a licence,


which on average needs to be reviewed every five years, vary among the member state. However, all member states require a clear criminal record among management and personnel. Additional conditions include sufficient liability insurance, identification cards with name and photo and approved uniforms, which are not easily confused with those of the police or armed forces. In the second category, national defence export legislation can include the prohibition or licensing of services such as trafficking and brokering in arms, technical assistance related to controlled military goods. EU guideline for national export control is the Council Common Position 2003/468/CFSP, which sets out a range of provisions for the regulation of armaments brokering. The transfer of technical assistance related to WMDs and an embargoed country is controlled in Germany through the revised Export Regulation of 2002. In the third category, although many European countries have national legislation prohibiting the recruitment of mercenaries, no member state of the EU has so far implemented specific regulation for the provision and export of private military service. A British Green Paper on the options for such regulation, which was drawn up in 2002, is re-examined in the light of recent experiences in Iraq.\textsuperscript{132}

At the national level, lately, number of governments has developed policies in dealing with PSCs based in their countries. In the US, national level regulation of PSCs is made through its various government departments and agencies. The US has numerous laws that can be applied to contractors. This include the War Crimes Act of 1996; the Alien Tort Claims Act; the Victims of Trafficking and Violence Protection Act of 2000; the Anti-Torture Statute; the McCain Amendment to the 2006 department of Defence

Appropriations Bill; the Defence Trade Controls Act (DTCA); the Arms Export Control Act (AECA); the Gun Control Act; the Export Administration Regulations; ITAR (International Traffic in Arms Regulation); the Defence Base Act (DBA); the Foreign Corrupt Practices Act (FCP); the General Orders of the Central Command, Multinational Corps –Iraq and Combined Joint Task Force. Regulations also take place through orders, policy and instructions as is found in the Defence Federal Acquisition Regulation Supplement (DFARS), and various Department of Defence instructions and guidelines that would apply to DOD personnel and contractors, including instruction 3020.41 ‘Contractors Personnel Authorised to Accompany the US Armed Forces’ in October 2005; Directive 2311.01E, which requires that international law regulating armed conflict, such as the Geneva Conventions, be observed and enforced by the DOD and its civilian contractors.133

The regulation of United States, PSCs sector often focus on the existing regime for controlling the export of commercial military and security services, which is derived from the International Traffic in Arms Regulation, the Arms Export Control Act and the Defence Trade Controls Act. This regime establishes a dual system for controlling exports of the types of services that PSCs provide. Another regulatory dimension, that the US legislation that could be used to prosecute PSCs personnel for serious crime such as human rights violation are USA Patriot Act amendment on Special Maritime and

Territorial Jurisdiction (SMTJ), Alien Tort Claims Act (ATCA), War Crimes Act and UCMJ.\textsuperscript{134}

In UK, the publication of the ‘Green Paper’ on PSCs is an important initiative and as a significant development towards regulation of PSCs. The Green Paper was published on 12 February 2002. This consultation document originated in a request made by the Foreign Affairs Committee of the House of Commons in February 1999 report on the ‘arm to Africa’ affair. As explained in the foreword to the Green Paper, ‘the control of violence is one of the fundamental issues... in politics. The export of private military service is therefore a subject we need to take seriously’ footnotes The publication of the Green Paper strongly suggests that the government increasingly recognise that PMCs are new actors on the international stage. The Green Paper is also the first stage towards regulating the activities of these new actors.\textsuperscript{135} The Green Paper has outlined six options for regulations:

\textsuperscript{134} Ibid. The International Traffic in Arms Regulations (ITAR) is an important US export control laws that affect the manufacturing, sales and distribution of technology. The legislation seeks to control access to specific types of technology and the associated data. Its goal is to prevent the disclosure or transfer of sensitive information to a foreign national. The Arms Export Control Act 1976 (AECA) gives the US President the authority to control the import and export of defence articles and defence services. The Act of Congress requires international governments receiving weapons from the United States to use the armaments for legitimate self-defence. The Act also places certain restrictions on American arms traders and manufacturers, prohibiting them from the sale of certain sensitive technologies to certain parties and requiring thorough documentation of such trades to trusted parties. The Defence Trade Controls Act 2012 (DTCA) is legislation established to control the export, transfer and brokering of defence and strategic goods and technologies as listed on the Defence and Strategic Goods List (DSGL). See “US International Traffic in Arms Regulations (ITAR)” http://www.cistec.or.jp/english/service/report/0802ITARarticleforCISTEC.pdf (Accessed on 18 October 2014.); “The Arms Export Control Act (AECA).” http://fas.org/asmp/resources/govern/aeca00.pdf (Accessed on 18 October 2014.); “Defence Trade Controls Act 2012.” http://www.defence.gov.au/ustradetreaty/pdf-docs/defence-trade-controls-act-2012.pdf (Accessed on 18 October 2014.)

• A ban on military activity abroad
• A ban on recruitment for military activity abroad
• A licensing regime for military services
• Registration and notification
• A general licence for PMCs and PSCs
• Self-regulation: the introduction of voluntary code of conduct.\(^\text{136}\)

While the above list appears comprehensive, the government could also choose a seventh option suggested by Kevin O’ Brien and involves a three-fold system; as step one would involve licensing the company, step two would involve licensing service capabilities, and step three would require companies to notify Security Industry Authority (SIA) (It is an organisation responsible for regulating the PSCs in the UK) of each contract requested prior to tendering in order to obtain a licence for each individual contract.\(^\text{137}\)

Despite continuous effort to regulate PSCs, less has been successful. For instance, the American contractors are often subject to US law, while, the law that applies to contractors is riddled with uncertainty. The Military Extraterritorial Jurisdiction Act (MEJA) was passed in 2000. It has been heralded as a tool for prosecuting PSCs, which gives the US federal courts legal authority over persons who commit criminal acts abroad while under contract with the US government. Critics hold that it only addresses criminal action but not the many command-and-control issues tackled by the UCMJ. Even on


\(^{137}\) Ibid., p. 98.
criminal issues, the legal liabilities contractors’ faces under MEJA are quite different from those faced by the military. For instance, the contractors were implicated as ringleaders in the abuses committed at Abu Ghraib, but military police implicated in the same report were already court-martialled before contractors were even charged.\(^{138}\)

Another dilemma is unlike the military personnel, private security members are not subject to the UCMJ unless there is a formal declaration of war. Depending primarily on the SOFA between the United States and the country in which they are serving, contractors may be subject to the laws of the territory in which they operate. Critics’ points out that in situations where the local government is not functioning effectively, this may lead to less than satisfactory outcomes. For instance, in 1999, an incident involving DynCorp in Bosnia was followed by a Racketeer Influenced and Corrupt Organisations Act (RICO) lawsuit being filed against DynCorp employees stationed in Bosnia. It alleged that: "employees and supervisors from DynCorp were engaging in perverse, illegal and inhumane behaviour and were illegally purchasing women, weapons, forged passports and participating in other immoral acts."\(^{139}\) When DynCorp employees working for United States or UN were implicated in prostitution rings in Bosnia, they were simply fired and never prosecuted.\(^{140}\) The Patriot Act passed after 9/11 gives US federal courts Jurisdiction over crimes involving US citizens on property designated for use by the US government. In 2004, a contractor working for the CIA was charged under the Patriot Act for abuse of a prisoner in Afghanistan that resulted in the prisoner’s death. Like MEJA,


\(^{139}\) Ibid.

\(^{140}\) Ibid., p. 338.
however, the patriot act is new and untested. It can only be used for criminal acts and thus holds PSCs personnel to different standards than those to which military personnel are held.

PSCs’ unclear legal status extends to their status under international law. The Geneva conventions stipulate three categories of person: combatants, non-combatants and civilians. Contractors do not fit neatly into these categories. For analyst, this in-between status may lead contractors to be denied prisoner of war status if captured by the enemy. Furthermore, if seen to be taking a direct part in hostilities, contractors may be targeted by enemy forces or even tried as war criminals, given that it is unlawful for private individuals to wage war. For instance, Washington has been inconsistent on this point. Despite repeated US expression of concern that captured contractors should be given Prisoner of War (POW) status, in February 2003, when the Revolutionary Armed Forces of Colombia (FARC) captured three contractors working for the US military in Colombia, Washington maintained that they were hostages, not POWs.141

Within the national level, majority of domestic laws and ordinances seems to either ignore the phenomenon of private military actors’ altogether, deferring the issue back to the flawed international level, or fall well short of being able to define or regulate the industry. Only a small number of nations have regulations that could apply to the PSCs industry while none are considered effective.142 There is a dilemma that even if more states had better laws, the reality is that many PSCs operate as global business having their contract activities occurring elsewhere. Also many PSCs operate in institutionally weak areas, such as failed states, where the local government is either

141 Ibid., p. 340.
unwilling or unable to enforce its own laws. This means that any observation of and enforcement against them defers back to their home state. Extra-territorial observation and enforcement however, is almost impossible to carry out effectively. In addition, the organisational form of most PSCs also allows them to circumvent legislation. Thus, being service-oriented business, operating at the global level, PSCs have the ability to move across borders or transform themselves, whenever and wherever they choose.\textsuperscript{143}

The overall scenario of these various factors clearly reflects the vacuum in law. PSCs in general are relatively free of any form of legal control to prevent or punish abuses by the firms or their employees. As a result, a number of regulatory schemes have been offered by various interested actors. Many, in fact have been proposed by the firms themselves who recognise regulation as the means to increase their respectability and even market dominance (by squeezing out firms that do not meet their proposed standards). However, on closer analysis, commentators hold that other than providing voluntary guiding principles, these proposals remain far too self-biased or underdeveloped for implementation.\textsuperscript{144}

9. Implications

The privatisation of security globally in recent years has changed the nature of conflict. Conflicts often paved a new opportunity for markets in performing security services. For instance, conflict has always been projected an excellent source of business and by getting contract from different actors can garner huge profits. Some of the above discussion clearly shows how PSCs have earned billions of dollars in contracts as a result

\textsuperscript{143} Ibid., p. 239.
of various conflicts by performing different security-related functions. Since profit is the sole motive of the market, some argue that the intensifying involvement of PSCs might prolong the conflict as well as leading to lawlessness and uses of violence to achieve individual rather than collective purposes.\(^{145}\) The extensive involvement of PSCs in conflicts blurs the boundaries between civilian and military activities, which create new dangers for humanitarian assistance.\(^ {146}\)

With the creation of PSCs, states and non-state actors can easily hire military capabilities of the highest level from the global market.\(^ {147}\) It may also create divisions within the society’s particular privatising space through the creation of commercial enclaves. In weak states, many multinational corporations seek security for themselves and in the search for the best protection, the firms particularly those operating in the midst of civil wars, often hire PSCs to protect their investments. But when security is turned into a commodity that can be bought or sold, society is in effect, polarised.\(^ {148}\) One great concern is when security is a profit-driven exercise, the wealthy is inherently favoured. The portions of society who can afford will employ the best protection such as that offered by PSCs while, those who cannot afford the protection are often left out. The

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greatest threat is that this will create a dangerous situation where some section of society who cannot afford protection will look for their own security.\textsuperscript{149} The result is that privatising security potentially hurts the poor disproportionately, heightens social cleavages and results in continuing conflicts.

The regulation and control of PSCs at national and international levels are less effective, ambiguous and difficult to implement. Moreover, there is no concrete international law and it is left to the states which are using these companies that regulate the companies like any other industry. Specifically, in many Third World states, there is no effective policy to regulate this kind of industry and regimes are either unwilling or unable to enforce its own laws.\textsuperscript{150} So the larger question arises especially in conflict zones where there is lawlessness, who is going to monitor and conduct trial for the crimes of these companies. The rampant use and application of PSCs without proper international law and regulations has therefore left many states in a deep dilemma. Furthermore, a stricter international regime will have little effect because most Western governments have lack of interest in enforcement policy.\textsuperscript{151} In addition, the increasing global demand has made it difficult for states to outlaw PSCs which could eventually

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\textsuperscript{149} Ibid. \\
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challenge its control and may threaten global order with private forces that are less accountable and controllable than state forces.152

10. Conclusion

Increasing privatisation of security and its spread globally suggests this ongoing development can be seen within the context of neoliberalism. This has shifted the traditional notion of state as the sole player in the security domain. Though state military profession has not completely disappeared but this development suggests the state monopoly of the legitimate violence is gradually breaking down153 and shared with diverse non-state actors. While these changes are underway, the other issues such as issue of internal problems, development deficit, legitimacy crises, poverty, inequality, transnational crimes, proliferation of weapons, drug trafficking, human trafficking and money laundering has became a grave concern directly effecting the state and complicating security which will be discussed in the next chapter.
