Private Security Contractors and New Wars

Risk, law, and ethics

Kateri Carmola

Contemporary Security Studies

Private Security Contractors and New Wars

This book addresses the ambiguities surrounding the growing use of private security contractors and provides guidance as to how our expectations about regulating this expanding "service industry" will have to be adjusted.

In the war zones of Iraq and Afghanistan many of those who carry weapons are not legally combatants, nor are they protected civilians. They are contracted by governments, businesses, and NGOs to provide armed security. Often mistaken as members of armed forces, they are instead part of a new protean proxy force that works alongside the military in a multitude of shifting roles, and are overseen by a matrix of contracts and regulations.

This book analyzes the growing industry of these private military and security companies (PMSCs) used in war zones and other high-risk areas. PMSCs are the result of a unique combination of circumstances, including a change in the idea of soldiering, insurance-industry analyses that require security contractors, and a need for governments to distance themselves from potentially criminal conduct. The book argues that PMSCs are a unique type of organization, combining attributes from worlds of the military, business, and humanitarian organizations. This makes them particularly resistant to oversight. The legal status of these companies and those they employ is hard to ascertain, which weakens the multiple regulatory tools available. PMSCs also fall between the cracks in ethical debates about their use, seeming to be both justifiable and objectionable. This transformation in military operations is a product of more general changes in the relationship between the individual citizen and the state.

This book will be of much interest to students of private military and security companies, war and conflict studies, security studies, and IR in general.

Kateri Carmola is the Christian A. Johnson Professor of Political Science at Middlebury College in Vermont. She received her PhD from the University of California, Berkeley.

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To Joseph and Sonia

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Abbreviations

BAPSC	British Association of Private Security Companies
CPA	Coalition Provisional Authority
CRG	Control Risks Group
DoD	Department of Defense (US)
EO	Executive Outcomes
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
IGO	international governmental organization
IPOA	International Peace Operations Association
LOAC	Law of Armed Combat
MEJA	Military Extraterritorial Jurisdiction Act
MPRI	Military Professional Resources Incorporated
NGO	non-governmental agency
PMSC	private military and security company
RUF	Revolutionary United Front (Sierra Leone)
SMOM	Sovereign Military Order of Malta
SAS	Special Air Services (UK Special Forces)
TNC	Transnational Corporation
UCMJ	Uniform Code of Military Justice
UNITA	Unia Nacional Pro Independencia Total de Angola
UK	United Kingdom

Introduction

In late 2002, a new private military and security company (PMSC) was formed by British Lt. Col. Tim Spicer, a notorious and controversial figure in the new global "defense assistance" industry. Aegis Defense Systems Ltd is based in London, with offices in Iraq, Afghanistan, Bahrain, and the United States. Its services include risk assessment; the provision of security guards for corporate, humanitarian, and governmental clients; and a wide array of security training courses. As its name implies – Aegis refers to the shield of the Greek god Zeus – the company offers protection and security, as well as control and coordination.

In 2004, the Pentagon awarded Aegis the largest contract ever given to a PMSC involved in Iraq: $293 million to provide bodyguards, Iraqi security service trainers, and an office that would coordinate all the other security companies operating in Iraq (Flaherty 2004). Initially, there was a storm of protest to the award of this "no-bid, cost-plus" contract. Peter Singer, author of the book *Corporate Warriors*, said:

> This contract is a case study in what not to do. The Army never even bothered to Google this guy to find out that he was involved in political scandal, that he was a source of parliamentary investigations and the owner of failed businesses.
>
> (Sennott 2004)

Other large and well-known firms from both the UK and the US, including Blackwater, Dyncorp, and ArmorGroup, claimed that Aegis was unqualified to offer the services it was promising: none of its principals had any Iraqi experience, and it did not seem able to provide the personnel and equipment necessary to do the job (Witte 2005). In response, the Pentagon's Inspector General commissioned an audit. When it was published a year later, in April 2005, it listed a number of glaring deficiencies in Aegis' performance, and concluded that "there is no assurance that Aegis is providing the best possible safety and security for government and reconstruction contractor personnel and facilities as required by the contract" (Murrell 2005: 3). Nevertheless, a few months later the DoD extended its contract with Aegis. Celebrating the victory, Tim Spicer noted that

his company was “completely integrated into the military chain of command” in Iraq (O’Connell 2005).

The name of Lt. Col. Spicer, the former head of two of the most controversial firms in the industry, did little to help legitimize the new face of the PMSC industry. In the 1990s Spicer had been the public face of two now-defunct companies – Executive Outcomes, a joint UK and South Africa company, and later Sandline International, a UK firm – both of which offered full-fledged military services to countries that could pay.

Angola hired Executive Outcomes (EO) in 1993 to train the Angolan army and then help rout the remnants of the UNITA rebel guerrilla group that controlled access to profitable oil fields (Singer 2003: 104ff.). Using members of a former South African battalion that had been used to fight African National Congress rebels in the apartheid era, and helicopter gunships and weaponry bought from downsized Eastern European militaries, EO made Angola safe for resource extraction by such companies as the UK-based Branch Heritage. In 1995, the Sierra Leonean government hired EO after its embattled military lost ground to brutal Revolutionary United Front (RUF) rebel forces, which terrorized civilians, and held crucial diamond mining areas. Skirting an embargo on supplying weaponry to the Sierra Leonean government, EO ultimately received $35 million for driving the rebels from the field. After EO left, United Nations peacekeeping forces were dispatched to the capital, Freetown, and were able to hold the peace long enough to bring an end to the conflict. Executive Outcome’s actions in Sierra Leone resulted in a scandal in the UK government – now known as the “Arms for Africa Affair” – in which it was alleged that certain members of the UK Foreign Office gave tacit approval to EO’s operation, and allowed it to circumvent Parliamentary policy. Unable to shake the bad reputation it had acquired as a result of the Arms for Africa Affair, and its hiring of questionable members of the ex-South African Defense Forces, EO formally disbanded in 1999.

In 1997, however, Sandline – one of the companies formed out of the ashes of EO – agreed to a similar mission in Papua New Guinea: to rout a rebel group that was occupying the largest copper mine in the world on the island of Bougainville. The rebel group was a mix of indigenous peoples protesting further development of the copper mine, and disaffected Papuans, protesting the corrupt government of Sir Julius Chan. But Papua New Guinea, unlike Sierra Leone or Angola, had a functional military, and they threatened a coup should Sandline be hired to perform its work. After details of the contract were leaked to the public, demonstrations and riots occurred in response, and eventually Prime Minister Chan was forced to resign. Sandline staff quickly left the country.

After these incidents, Spicer tried to remake Sandline into the leading organization promoting its type of forces for UN peacekeeping operations. But by April 2004 the company closed its doors, tarnished by the widespread sense that it had tried to push for too much change too quickly. On its website, which had served as a clearinghouse for articles debating the use of PMSCs, the company posted the following statement:

> The general lack of governmental support for Private Military Companies willing to help end armed conflicts in places like Africa, in the absence of effective international intervention, is the principal reason behind Sandline's decision. Without such support the ability of Sandline (and other PMSCs) to make a positive difference in countries where there is widespread brutality and even genocidal behavior is irretrievably diminished.
>
> (Sandline International 2004)

Given its unseemly demise, many were surprised to see the new Aegis firm emerge unapologetically from the ashes. As one member of another prominent firm put it, "we don't even want our name mentioned in the same paragraph as Aegis, or any other organization connected to Spicer."[1] Later that year, the two most prominent industry organizations debated whether or not to admit Aegis. But, after some grumbling, the British Association of Private Security Companies (BAPSC) eventually decided to admit Aegis to its membership, as did the US-based International Peace Operations Association (IPOA).

Since then, Aegis has weathered additional scandals associated with its operators shooting civilians in Iraq. Recently it was awarded the Armed Contractor Oversight Directorate Contract in Afghanistan. The most recent report from the Office of the Special Inspector General for Iraq Reconstruction gave it a passing grade (Bowen 2009: 30). It seems that Aegis, like the private military and security industry more generally, is here to stay.

* * *

Military operations at the beginning of the twenty-first century include a new cadre of private actors like Aegis and the multinational contractors who work for them. Increasingly, the traditional responsibilities of state military forces have been ceded to these private actors. Privatized security has become a global business, with individuals recruited from many countries and backgrounds.

This new industry lends itself to headline-grabbing images: The "world's first private Christian army" defends US-held territory in Baghdad; legions of consultants advise overstretched militaries and transnational corporations on how best to suppress insurgencies and end civil wars; former soldiers with questionable backgrounds from multiple countries shoot civilians on highways in Baghdad. Meanwhile, some companies deny death benefits to those who die in what can only be called combat, or short-change employees filing insurance claims. Headlines proclaim that "the dogs of war have gone corporate," or that "business is making a killing."[2] There is a lot of truth behind these headlines.

Meanwhile, policy-makers and scholars are trying to understand an industry that seems at once a return to familiar trends of the past (soldiers for hire), and a completely new species of international actor. At a 2006 conference at the NYU Law School on the problem of regulating private military and security companies, Christopher Beese, the most public face of the firm ArmorGroup, expressed his continued astonishment (and exasperation) at the fact that academics and policy-makers continued to find the legitimate activities of his publicly

traded company so interesting. “I am here because you care about me,” he began, “not because I care about you.” Why indeed do we care about Beese and his industry? And what exactly are they doing anyway?

The growing use of contractors is occurring in three separate sectors: alongside the military in places like Iraq and Afghanistan, where parallel services are provided; in peripheral areas where the military is not present but large corporations are, and in training missions that used to be conducted by the military. Contractors follow the contracts and the money, and this means that they are usually found in zones of instability and war, where either defense contracting or multinational business is taking place.

PMSCs challenge the essential and longstanding idea of what constitutes a political state, and how violence, anywhere, is named legitimate, or not. An abbreviated version of Max Weber’s definition of a state is often repeated by social scientists: a state “claims the monopoly of the legitimate use of physical force within a given territory” (Weber 1946: 78). Weber’s definition is much wider than this, however, and underscores the connection between justice, power, community, and security that is the essence of politics:

> Today the relation between the state and violence is an especially intimate one. Today, we have to say that the state is a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory.... Specifically, at the present time, the right to use physical force is ascribed to other institutions or to individuals only to the extent to which the state permits it. The state is considered the sole source of the “right” to use violence. Hence, “politics” for us means striving to share power or striving to influence the distribution of power, either among states or among groups within a state.
>
> (Weber 1946: 78)

A few sentences later, he specifies that “legitimate” means “considered to be legitimate,” that is, law and “right” rest upon a shared consideration among people, which is also the essence of politics. The connection between the state and the use of force, and by extension modern political life itself (which includes the debates about what should or should not be considered legitimate), is explicitly challenged by the flourishing industry of PMSCs, whose access to the use of force is so often only weakly linked to the state. The issue is even more important than Weber’s definition, however. As Deborah Avant puts it: “state control of force (though often imperfect) has provided *the best* (even if highly uneven) mechanism human kind has known for linking the use of violence to political processes and social norms within a territory” (Avant 2005: 3). In other words, Max Weber’s definition of the state represents *the best way* by which violence actually is judged, and by extension, controlled.

In the 1990s, US military officers became concerned about the rising levels of contractors working alongside the military performing various jobs, including weapons repair, logistics provision, and administration. The widespread use of

the American PMSC Dyncorp for civilian policing units in Bosnia and Kosovo in the 1990s drew attention to the ways in which the State Department was outsourcing post-conflict reconstruction. Before the attacks of September 11, 2001, the debate focused on the quiet transformation of the mercenary trade into an industry that, if not yet seen as legitimate, began to wield increasing influence. Questions of legitimacy aside, everyone could agree that the industry was a force that would need to be reckoned with. In Iraq, especially after the grisly deaths of four contractors working for Blackwater in Fallujah in April 2004, attention began to shift toward the ways in which a certain new breed of PMSC was changing the profile of force on the ground.

Speaking more broadly, the ideal image of a globe populated by territorially and legally bounded sovereign states is being challenged by the rise of strong non-state actors of all kinds: armed groups, ranging from recognized rebel and guerrilla movements to transnational criminal and terrorist networks, multinational corporations, and international non-governmental organizations (NGOs). Our world may consist not of territorially bounded areas so much as of alternating zones of law and lawlessness, places where state power is so weak as to demonstrate a failed state altogether, and where contracts are enforced and security provided in distinctly sub-state ways. This fluid situation has contributed to a changing culture of warfare, or armed conflict, or complex emergencies – or, in the newest nomenclature, "contingency operations." Not only are there new actors on the ground amidst violent conflict, but the ways in which we define and understand conflict are changing. The legal and ethical categories that have been traditionally used to judge warfare do not seem adequate to the task: they are "on the cusp" of comprehensibility (Coker 2007).

This book focuses on PMSCs to better understand them, but also because they can serve as a prism, to separate out some background trends and assumptions that have given these firms their staying power. If Avant is right, and "the PMSC train has left the station," I want to illuminate the ideas that made such a train line possible. PMSCs are more than ambiguous entities that pique our curiosity; their prominence draws attention to larger theoretical issues at the heart of contemporary political life. This analysis requires an understanding of the background assumptions that have allowed this new phenomenon to flourish. Some of the assumptions, such as those of liberal capitalism, are familiar to us, and PMSCs operate according to the assumptions of contract and profit which lie at the heart of capitalism. But many of these conditions are truly new, having arisen during the last two decades. They include a new conception of military service in the post-Cold War era, and a novel view of risk and its impact on business and conflict. The assumptions that have helped PMSCs thrive at this historical moment include, too, a crisis in ethical and just-war thinking. If PMSCs are our future, which it seems like they are, then it will be a future that is quite different from the one we have come to know. And if they are the logical outcomes of shifts and changes that have been happening for a long time, then they have caught us by surprise. They are either the foreshocks, or the aftershocks, of a tectonic shift in the relationship between violence, the state, and politics.

Roadmap

This book is divided into five chapters. The first addresses the complex identity of PMSCs, which I describe as protean: a mix of organizational cultures that represents a new type of international actor and resists governance. PMSCs sometimes operate as corporately organized proxy forces – auxiliaries – to the military; which may make them more dangerous than any single group of mercenaries. The second chapter provides five "origin stories" to explain the advent of this new species of actor. The first three – the market story, the political story, and the story of the rise of private authorities – are those most often told by analysts. Two more recent changes also deserve analysis: the advent of a certain type of new war, fought by a military undergoing changes in strategy and tactics; and the rise of a new type of professional soldier, marked by a much more individualized identity, and, in many ways, good material for a future private security contractor.

There is a more diffuse change, however, that is also responsible for the rise of the PMSCs. This is the rise of the risk industry more broadly, which is the subject of the third chapter. This chapter looks at those specific firms that have grown up in and around the longstanding political and war-risks insurance industry. PMSCs that provide security and analysis to businesses and NGOs often do so as part of a risk-reduction strategy mandated by insurance coverage. The insurance industry itself is part of a larger "economy of risk" that some theorists say defines the late-modern era. Although they may be hard to define and understand, PMSCs are emblems of this era. Seeing them through the lens of the "remarkable story of risk," as Peter Bernstein called it, enables us to understand why they are here to stay (Bernstein 1996).

The fourth chapter takes up the question most often associated with the industry: how can it be regulated? Here there is an interesting paradox: although they are often described as being "beyond the law," there are in fact multiple forms of legal tools that apply to PMSCs. In this chapter I argue that the protean nature of the PMSC described in the first chapter has resulted in a clash of legal cultures. PMSCs could be regulated using three cultures of law: military law, contract law, or International Humanitarian Law. The combination of all three, however, has yet to create a distinct legal personality that can be easily reined in. Military contractors, especially the armed security contractors profiled in this book, are the uncomfortable inheritors of this mixed genealogy: and as yet no one has determined which body of law really fits. This chapter is as much about legal theory as it is about the status of contractors, for it uses contractors to discuss more broadly the role of law in war.

There is even more confusion about PMSCs in the ethical realm. Looking at them through an ethical lens, the fifth chapter asks: how should we understand these contractors in a normative light? In this chapter I characterize them as inhabitants of an ethical "frontier," where actions are judged in an entirely different manner than either those of a military organization or civil society. The language of the "contractor code of conduct" embeds itself in a different set of

practices than does the language of military ethics – now a central part of a military education – or that of civil society. If we have become accustomed to a division between military and civil society, we must also consider this third category, which is distinct from the military–civil divide. Finally, in such a volatile and current field, policy recommendations are necessary, and in the epilogue I add my own. If in fact the train has left the station and PMSCs are here to stay, it will be necessary to carve out a new way of guarding the guardians.

Cultures of risk, law, and ethics: these three analytic lenses will sharpen the view of exactly what the phenomenon of PMSCs represents. At the same time, the process works in reverse: the PMSC can serve as an enfolding case study, or living example, of these larger, more abstract, issues. If extremism has the suicide bomber as its symbolic face, then liberal capitalism is best symbolized by the private military contractor. They are, in a sense, polar opposites. The one uses its body as a weapon, representing the religious expression of martyrdom to achieve political ends. The sacrifice of the body for specific, territorially bounded resistance to foreign occupation, metaphysically expressed, contrasts sharply with the highly armored security guard, protecting a person, a convoy or a building from harm, but at the same time doing homage to two of the liberal West's greatest icons: the right to contract and the right to make money. In order to comprehend modern warfare and the evolution of the state, we have to understand the PMSC.

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