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## The Mercenary Tradition and Conflict Privatization: A Revolutionary Shift in the Cyclical Nature of Mercenary Use

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**THE MERCENARY TRADITION AND CONFLICT PRIVATIZATION: A  
REVOLUTIONARY SHIFT IN THE CYCLICAL NATURE OF  
MERCENARY USE**

A Masters Thesis

Presented to

The Graduate College of

Missouri State University

In Partial Fulfillment

Of the Requirements for the Degree

Master of Science, Defense and Strategic Studies

By

Joseph M. Tribble

August 2018

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**ABSTRACT**

This paper seeks to show that there has existed through time, a cyclical nature in the use of mercenaries, which has left imprints on societies that continue to exist in the presence of international law against their use. Looking at modern elements of this tradition, the paper will attempt to show how there has been a revolution in military affairs since the formation of the United Nations Conventions against Mercenaries, in which a number of elements of this culture have converged at once, existing in the international community and what this means for international security moving forward. The paper will look at a series of historical cases that establish the cycle, utilizing a range of historical sources and scholarly research, before addressing the theoretical and legal frameworks that affected the use of mercenaries. Building on this, it will then address the current structure of the privatization of conflicts through news media, autobiographies, and a host of other sources. Through this research, the paper will seek to determine the extent to which the cycle of mercenary use remains present in international conflict and what this means for the future of international security.

**KEYWORDS:** mercenaries, conflict privatization, private military companies, private sector, revolution in military affairs, use of force, realism

This abstract is approved as to form and content

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In the interest of academic freedom and the principle of free speech, approval of this thesis indicates the format is acceptable and meets the academic criteria for the discipline as determined by the faculty that constitute the thesis committee. The content and views expressed in this thesis are those of the student-scholar and are not endorsed by Missouri State University, its Graduate College, or its employees.

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## INTRODUCTION

The mercenary has been tied to military history as far back as the early Greek and Roman civilizations, and this history has been interwoven with conflict since the concept of monetary economies was a glimmer of an idea. While mercenaries go back further than the Middle Ages, it was not until this period that the mercenary identity or tradition came to resemble a form as it is now recognized. Over time, this identity became blurred with the concept of private contractors that became a staple of later evolutions of the cycle.

As their use progressed through time, the generally accepted definition of a mercenary changed in relation to the political atmosphere of the international community. Using the words of former Czechoslovakian President Vaclav Havel, “The same word can, at one moment, radiate great hope; at another, it can emit lethal rays. The same word can be true at one moment and false the next, at one moment illuminating, at another deceptive.”<sup>1</sup> It is in this nature that a single definition would be deceptive in nature, as the use of terminology has been dictated by behavior and semantics over time. For this reason, the U.N. legal definition contained within the Protocol Additional I to the Geneva Convention, 1977 will be the primary nomenclature of classification for the general discussion of mercenaries, but to apply this definition *ex post facto*, or retroactively, to historical groups would be an insult to history.

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<sup>1</sup> J. Michael Waller. *Fighting the War of Ideas Like a Real War*. Washington, D.C.: Institute of World Politics Press, 2007. 41.

The consensus definition of mercenarism arrived at by the international community in Article 47 of Protocol I Additional to the Geneva Convention, 1977 has an expanded nature, and states:

1. A mercenary shall not have the right to be a combatant or a prisoner of war.
2. A mercenary is any person who:
  - a. is specially recruited locally or abroad in order to fight in an armed conflict;
  - b. does, in fact, take a direct part in the hostilities;
  - c. is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is 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;
  - d. is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;
  - e. is not a member of the armed forces of a Party to the conflict; and
  - f. has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.<sup>2</sup>

This definition of mercenary as we know it is a modern construct, coming out of the idea of foreignness as it relates to describing soldiers and groups that were different from the native forces raised for war. The basic elements that define mercenaries are not independent of each other, but instead the convergence of variables, including motivation, payment, and this concept of foreignness. The idea of motivation is a complex one in looking at the evolution of the mercenary identity, because at times the drivers for participation in a conflict outside of the normal bounds of engagement have included religion and political ideology, with payment being part of the underlying motives.

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<sup>2</sup> United Nations General Assembly. *Protocol Additional to the Geneva Conventions of 12 August 1949, And Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977*. Geneva, Switzerland: International Committee of the Red Cross, 2010. [https://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0321.pdf](https://www.icrc.org/eng/assets/files/other/icrc_002_0321.pdf). 35.

The use of mercenaries by political factions, groups, and later states can be loosely tied to economics over time. The connection between economics and mercenary use is a result of the transactional basis of military service in war, and the costs associated with raising forces, in both logistical and material terms. Economic history is tied to this understanding as war and conflict represented a motivation for profit and the markets for force over time. The use of mercenaries has at times been more prevalent in history when economies have either been at the height of their growth or in downswings after larger conflicts ended and soldiers sought continued income outside the perceived regular channels of military service in the public sphere.

Over time the use of mercenaries developed as part of the wider advances in military strategy and philosophy. As much of the historical record of their use is within the traditional European development of military conduct and warfare, focus has been devoted to this viewpoint for much of the earlier historiography. The fracturing of regional centers of power at the end of the Classical Period is partly to blame in attributing the cycle to primarily the European societies.

Much as international norms developed over time dictating the conduct of warfare, mercenary use has shaped culture throughout history. Auxiliary forces for much of history represented the prime areas of mercenary use, as armies co-opted or contracted out specialized tasks to persons with expertise and later integrated these groups into the larger society. In similar fashion, innovation was at times driven by and directly related to the conduct of war, such as with the early uses of iron for military means and the development of chariots and specialized shipbuilding.<sup>3</sup> Use of mercenary, and by

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<sup>3</sup> Rondo Cameron and Larry Neal. *A Concise Economic History of the World: From Paleolithic Times to the Present*, 4th ed. New York: Oxford University Press, 2003. 31.



extension private, force also helped shape societal norms, from economics to political and legal views of the world. The story of the Ten Thousand, a Greek mercenary army formed the basis of Xenophon's *Anabasis* in ancient times, representing one of the first novels in history, and helped shape the formation of literature.<sup>4</sup> As their use has extended from the beginning of recorded history, mercenaries have been interwoven into the frameworks of culture as it is seen now. This portrayal has shifted with time from the romanticized Medieval knights and paid men to modern soldiers of fortune and the increasingly privatized military industry.

This cyclical nature of widespread use has shaped the identity of those classified as mercenaries, as the rich history provides countless examples to choose from when analyzing the shift to the current depiction and use. The current security climate in international relations has signaled a possible upswing in this cycle, while also witnessing a revolution in military affairs as many of the historical qualities and elements have converged in a singular point. The limited defining qualities of the mercenary in international law make this revolution in military affairs more pronounced, as states begin to cede the monopoly on use of force to private actors, as seen in the Middle East and Africa in recent years.

Within the current conditions in international security, a range of armed non-state actors are present in conflicts around the world, with the private sector making up a significant percentage of these groups. The normalization of acceptance of these privatized actors in conflict helps to illustrate the competitive self-interests of states to

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<sup>4</sup> P.W. Singer. *Corporate Warriors: The Rise of the Privatized Military Industry*. Ithaca, New York: Cornell University Press, 2008. 21. See also Xenophon. Translated by H. G. Dakyns. "Xenophon's *Anabasis*." LibriVox | Free Public Domain Audiobooks. Accessed January 29, 2018. <https://librivox.org/xenophons-anabasis/>.

disregard or play coy the legal norms against use. These competitive self-interests portray the realist ideals of the anarchical international system within international relations, as states have begun to cede the monopoly on force back to private actors as the world becomes more globalized.

## THE CYCLICAL NATURE OF USE

The mercenary experience in history has been of a cyclical nature, as widespread use was affected by a number of economic and political factors, which created a state of being that fluctuated in regards to the needs of the markets of force within conflict and foreign relations. This cyclical nature of use illustrates these shifting markets of force over time, with the peaks and valleys of widespread conflict and intervening periods of mercenary engagement. Mercenaries and other forms of privatized actors were part of the routine aspect of international relations prior to the twentieth century.<sup>5</sup> While not all privatized actors are mercenaries, the tradition of private military industry came out of the use of mercenaries over time. This section looks at this evolution of these privatized actors and how the concept of the markets for force were shaped by the use of both foreign and internal groups for the conduct of conflict.

### Classical Period

During the classical period of history, focused in interlocking civilizations and empires of the Greeks and later Rome, mercenary use was tied to the auxiliary units of the armies of these civilizations. Many of these early factions were built on economic power and regional trade, which coupled with the expanding colonization presented a political disposition that pitted them against each other as they expanded around the Mediterranean. While economic considerations were not the only motivating influence in conflicts between city-states, the economic bases of these ancient empires laid in the

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<sup>5</sup> Singer. *Corporate Warriors*. 19.

tribute and taxation that could be acquired from conquest.<sup>6</sup> Thus, conflict was tied early on to markets as there was a correlation between trade, production and the value of force.

As trading factions and empires expanded in the Mediterranean basin, these factions looked to outside militant groups and non-citizen subjects to support their growing armies. The early examples of this outside sourcing came from the city-states of the early Aegean Sea basin, as the Greek city-states fought continued wars against each other and the Persian Empire. The hoplite armies of the Greek city-states were made up of primarily ordinary citizen soldiers who had been drafted, wherein the citizenship-oriented nature of armies drove the defense of the polis, or the political community of free men.<sup>7</sup> In periods of extended warfare between the city-states, the composition of armies shifted from the small semi-standing hoplite forces to include auxiliaries of cavalry and archers that supplemented these forces.

The auxiliary units of much of the ancient world were drawn from a mix of peoples from outlying territories and neighboring factions. Distinguishing specific mercenary auxiliaries during this period is difficult, as one of the modern defining characteristics of mercenaries is citizenship, which covered only a small minority of populations during this period. For instance, the Romans used two nontechnical terms to denote a mercenary, *conducticius* and *miles mercenarius*, and the meaning depended on the context.<sup>8</sup> Other groups, and even Rome, lumped these forces in with other auxiliaries

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<sup>6</sup> Cameron and Neal. *A Concise Economic History of the World*. 31.

<sup>7</sup> Arthur M. Eckstein. "Bellicosity and Anarchy: Soldiers, Warriors, and Combat in Antiquity." *The International History Review* 27, no. 3 (September 2005), 481-497. doi:10.1080/07075332.2005.9641068. 483-484.

<sup>8</sup> Bernard S. Bachrach. "Merovingian Mercenaries and Paid Men in Imperial Perspective." In *Mercenaries and Paid Men: The Mercenary Identity in the Middle Ages : Proceedings of a Conference Held at University of Wales, Swansea, 7th-9th July 2005*, edited by John France, 167-192. Leiden: Brill, 2008. 174.

at times, with the Romans later referring to paid foreigners serving in their armies as *foederati*.

The use of mercenaries and contracted soldiers in this region represents some of the earliest recorded use of private force as supplement for military action and established the general principle that contracted military service was an accepted norm of the period. One of the earliest novels, Xenophon's *Anabasis*, is the recounting of the Greek mercenary army of the Ten Thousand's travels through Persia during a civil war between brothers.<sup>9</sup> It is from this episode that later groups could base their reasoning for use and illustrates that there is a cultural aspect to the historical use of privatized military force.

Many of these auxiliary units became specialized detachments over time, as they developed certain skill sets in conflict that made them attractive acquisitions for the factions and empires which employed these groups. This held especially true in the case of Carthage, wherein the Carthaginians had constructed a base army composed of citizen-soldiers making up the ranks of infantry for the main army, while outsourcing specialized services that they lacked expertise in. Carthage saw the benefits and costs of hired armies and contract warfare, as the failure of the city-state to pay its forces at the end of the First Punic War (264-241 B.C.E.) led to revolts in what was known as the Mercenary War.<sup>10</sup> Even after the Mercenary War, the city-state continued use of private groups, as generals such as Hannibal needed forces that the state could not provide independently for expansion. Hannibal had learned firsthand from his father the importance of paying mercenaries, and while in Spain he "carefully acquired the best possible army of trained

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<sup>9</sup> Xenophon. Translated by H. G. Dakyns. "Xenophon's Anabasis." LibriVox | Free Public Domain Audiobooks. Accessed January 29, 2018. <https://librivox.org/xenophons-anabasis/>.

<sup>10</sup> Singer. *Corporate Warriors*. 21

soldiers – on the one hand, buying the loyalty of some veteran mercenaries; and on the other, offering other mercenaries the opportunity to share loot from the Spanish conquests.”<sup>11</sup> Hannibal utilized the specialization of these hired forces to buffer his troops in his later expedition into Italy, allowing him to have a well-trained army that was loyal to him and not the politics of factions that may have disagreed with his actions.

The important factor of the mercenary tradition that came out of this period was the idea that citizenship was tied to military service. Over time, auxiliary soldiers that rose through the ranks within armies of the major factions were rewarded with citizenship in addition to their standard pay. Evidence of these agreements can be found within the Roman histories, such as with the case of Flavius Aetius, a Roman general whose father, a Scythian by the name of Flavius Gaudentius, had acquired rank and stature through service to the Eastern Roman Empire.<sup>12</sup> Aetius later went on to make use of Hunnic forces in campaigns both internal and external, as he rose in power, and it was likely that these forces fought in non-Hunnic armies for their economic benefit.<sup>13</sup>

The Roman experience with auxiliaries differs from other classical factions and empires, in that the auxiliaries of Rome represented a far greater diversity of subjects and hired forces, due in part to the expanse of the empire at its greatest extent. “In support of the legions, the auxilia provided substantial numbers of well-mounted, disciplined cavalymen – something often lacking under the Republic – as well as archers equipped with sophisticated composite bows. There were also slingers and other skirmishers, but

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<sup>11</sup> Patrick N. Hunt. *Hannibal*. New York: Simon & Schuster, 2017. 25.

<sup>12</sup> Thomas J. Craughwell. *How the Barbarian Invasions Shaped the Modern World: The Vikings, Vandals, Huns, Mogols, Goths and Tartars Who Razed the Old World and Formed the New*. Beverly, Massachusetts: Fair Winds Press, 2008. 60.

<sup>13</sup> Kelly DeVries. "Medieval Mercenaries: Methodology, Definitions, and Problems." In *Mercenaries and Paid Men: The Mercenary Identity in the Middle Ages: Proceedings of a Conference Held at University of Wales, Swansea, 7th-9th July 2005*, edited by John France, 43-60. Leiden: Brill, 2008. 47-49.

the majority of auxiliary infantrymen fought in a style very similar to the legionaries.”<sup>14</sup> This diversifying of forces set a measure by which later political factions and governments could look to in raising outside forces.

The auxiliaries of this period set forth an example for the mercenary tradition that would develop during the medieval period in Europe, as well-disciplined and trained fighting forces that could supplement the armies that they supported. By the end of the third century C.E., the imperial army of Rome was more Germanic than Roman, as the empire came to depend on the military expertise of foreigners and it became relatively harder to recruit native Romans into the force.<sup>15</sup> The Roman Empire later turned to depend on outsiders and subjects in the frontier regions to support their armies, as during the Pax Romana period’s use of *foederati* as paid outside forces. These federate forces served under a *foedus* or pact by which the imperial government hired them, and “the *foedus* ... may well be considered a contract for service whether the agreement was made by an individual *foederatus* or by a group of *foederati* serving under a leader of some sort.”<sup>16</sup>

The period came to a close as Europe experienced the gradual societal collapse of the Roman Empire as the population began to shift from the urban towns and cities of the empire to the countryside. The degrading nature of the economic system of Rome saw the power of great lords greatly increase as these populations became entrenched around the rural estates, which in turn became fortified strongholds over time. Cases still existed

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<sup>14</sup> Adrian Goldsworthy. *PAX ROMANA: War, Peace and Conquest in the Roman World*. New Haven, CT: Yale University Press, 2016. 314.

<sup>15</sup> Singer. *Corporate Warriors*. 21

<sup>16</sup> Bachrach. "Merovingian Mercenaries and Paid Soldiers in Imperial Perspective." In *Mercenaries and Paid Men*. 2008. 175.

of use during the period of lull in the cycle, such as with the British decision to hire the German mercenaries, *foederati*, to defend Britain after the withdrawal of Roman legions under Constantine III.<sup>17</sup>

This first lull in the cycle was brought about by a shift in economic practices and governance, thus shifting the makeup of militaries in the greater European region to localized centers of power as political control devolved into feudalism. The decentralized nature of feudalism saw levy systems and layered obligations to military service become the mechanism for military recruitment, which turned out to be ineffective for conflicts of long duration, in which companies of hired warriors were later conceived as a solution to the problem.<sup>18</sup> The feudalist structure of societies and legal-military customs would continue into the early Medieval period, but would become untenable as the process by which the greater military system functioned became inefficient for raising the forces that city-states and early nation-states needed for the increasing scope of conflict that came in the new millennium.

## **Medieval Period**

The mercenary tradition came into fruition during the Medieval Era, as the considerable number of city-states and early nation-states began the great competitions that would shape Europe into the state-based system that prevailed in this period. As kings, great lords, city-states, and the early nation-states began to increase their outward

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<sup>17</sup> Richard Abels. "Household Men, Mercenaries, and Vikings in Anglo-Saxon England." In *Mercenaries and Paid Men: The Mercenary Identity in the Middle Ages: Proceedings of a Conference Held at University of Wales, Swansea, 7th-9th July 2005*, edited by John France, 143-166. Leiden: Brill, 2008. 145.

<sup>18</sup> Carlos Andrés González Paz. "The Role of Mercenary Troops in Spain in the Fourteenth Century: the Civil War." In *Mercenaries and Paid Men: The Mercenary Identity in the Middle Ages: Proceedings of a Conference Held at University of Wales, Swansea, 7th-9th July 2005*, edited by John France, 331-344. Leiden: Brill, 2008. 336.



views of political power in early formations of foreign policy and relations, paid men became the way to judge the quality of force, as levy forces were slowly replaced with a mix of paid retainers and professional soldiers, both mercenary and resident.

Mercenaries reappeared in the Medieval period around the end of the ninth century, as increased economic output and investment created an atmosphere in which factions could expand their quarrels and conflicts further abroad, while offering pay for military service to both citizens or levies as well as foreign opportunists. The appearance of mercenaries in late tenth century, at least in England, has been attributed to the emergence of the money economy, which resulted in the hiring of troops and direct payments to both individuals and companies.<sup>19</sup> The differences in language, political terminology and typology, have meant that there was no one distinguishing reference to mercenaries throughout much of Europe until late in the Middle Ages. Terminology ranged from the generic references to regions or troubled lands from which paid men originated to those terms that derived from old Latin references to coin or pejorative terms.

The blunt term mercenary or mercenarii was to be avoided in this time period, in part because of the ecclesiastical overtones, and while the use of paid men was regarded as a sign of power, a 'paid' lord was considered to be degraded. The issue of identity is also raised with regards to whether there is a pure mercenary, as men who fought for money could also at times have been moved by ideological considerations. Thus, there were very strong social and cultural reasons for a framework of language which hides reality, and it was not until the late Middle Ages and the advent of professional armies that the mercenary became a distinct and identifiable figure.<sup>20</sup>

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<sup>19</sup> John France. *Mercenaries and Paid Men: The Mercenary Identity in the Middle Ages: Proceedings of a Conference Held at University of Wales, Swansea, 7th-9th July 2005*. Leiden: Brill, 2008. 5.

<sup>20</sup> *Ibid.*, 7-9 and 11-12.

While there existed no standard defining reference in this time period to distinguish who was and was not a mercenary, there has since evolved a series of central qualities to those who served in this capacity.

The principle characteristic of the mercenary became the idea of foreigners fighting for pay, but this is a modern construct, as it was not until the later end of this period that distinct national identities came to play a role in the fostering of a distinct mercenary identity. Kelly DeVries recounts the historian Michael Mallett's definition that "It is the concept of fighting for profit, together with the gradual emergence of a concept of 'foreignness,' which distinguishes the true mercenary ... from the ordinary paid soldier."<sup>21</sup> This idea of foreignness and the distinct mercenary identity was shaped by the transformations in conflict during the Medieval period, as armies swelled in size and political and religious factions competed for both territory and influence.

With the disintegration of the former Carolingian Empire into internecine conflict in the late ninth and early tenth century, the Hungarians became a mercenary society, as the ethnic group made their martial services available to the leaders and kings of Eastern and Central Europe. After settling into a semi-permanent settled state in the Carpathian Basin near the Danube river, the Hungarians continued their profession as classic nomadic mercenaries in their new homeland as they found willing customers for their 'service industry.'<sup>22</sup> The nomadic nature of the group meant that it made more sense for them to fight for pay rather than raiding for plunder and slaves that many of their peers in

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<sup>21</sup> DeVries. "Medieval Mercenaries: Methodology, Definitions, and Problems." In *Mercenaries and Paid Men*. 45.

<sup>22</sup> Charles R. Bowlus. "The Early Hungarians as Mercenaries 860-955." In *Mercenaries and Paid Men: The Mercenary Identity in the Middle Ages: Proceedings of a Conference Held at University of Wales, Swansea, 7th-9th July 2005*, edited by John France, 192-206. Leiden: Brill, 2008. 194.

this part of Europe partook in. For the Hungarians, these careers and the militant lifestyle allowed for them to maintain the herds and horses needed to support their large numbers, serving as both economic rationale and motivation to curtail other forms of development.<sup>23</sup> The Hungarians continued to be in demand until the consolidation of power under Otto I in East Francia brought about an end to the infighting of the Germanic Tribes in Central Europe, culminating in the Hungarian defeat in 955 at the battle of Lechfield.

It was during the early twelfth century that the mercenary identity became widespread, in part supported by the needs of rulers such as Henry II of England (1154-1189). Under Henry II, it was not the numbers or ratio of mercenary to regular troops that was important, but as to how and why he engaged in contracts with nonnative forces. Henry made use of a number of different mercenaries, most notably the Welsh and *Brabanters*, a group with a “vicious reputation, singled out during the Third Lateran Council of 1179, which ordered the excommunication of any Christian hiring their services.”<sup>24</sup> The Brabanters set the example for the later Flemish and low countries mercenaries of the later Medieval Period, as the continued state of conflict and vulnerable position of the region of Brabant, around modern Antwerp, meant that militarism became a way of life with a specialism that made them a useful auxiliary for armies of the period.<sup>25</sup> This specialization allowed for the group to carve out a niche that could be

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<sup>23</sup> Ibid., 195-198.

<sup>24</sup> John D. Hosler. "Revisiting Mercenaries under Henry Fitz Emperess, 1167-1188." In *Mercenaries and Paid Men: The Mercenary Identity in the Middle Ages: Proceedings of a Conference Held at University of Wales, Swansea, 7th-9th July 2005*, edited by John France, 33-42. Leiden: Brill, 2008. 35.

<sup>25</sup> Morvern French. "Brabant and the Brabanters | Scotland and the Flemish People." St Andrews Institute of Scottish Historical Research. Last modified April 24, 2015. <http://flemish.wp.st-andrews.ac.uk/2015/04/24/brabant-and-the-brabanters/>. Also see DeVries. "Medieval Mercenaries: Methodology, Definitions, and Problems." In *Mercenaries and Paid Men*. 50.

utilized while also advertising to potential employers a reasoning as to how the group could be of service.

Looking back at Henry II, it was with regard to the reliability of vassals and a ruler's own forces that led many to view the utility of such hired forces. The ready availability of mercenaries both in England and on the continent over time presented rulers with valuable alternatives to untrustworthy or ineffective native forces. Such was the case with Henry's later campaigns, in which he transported Welshmen to the Continent and Brabanters to England, as he desired on certain occasions the unique attributes particular brands of mercenaries brought to a campaign.<sup>26</sup> This idea was emphasized in the more widespread use of Catholic military orders founded during the Crusades, as these institutions became contract orders hired out by the Catholic Church in pursuit of protecting the Holy Lands of the Levant as well as the remains of the Byzantine Empire from the encroaching Islamic empires.

The Crusades represented the call to arms of all Christendom by the Catholic Church for a series of wars, and military orders such as the Teutonic Order set a standard for later semi-state militant actors in the international sphere. After turning to the Baltic Crusades of the fourteenth century, the Prussian branch of the Teutonic Order sought to carve out a territory for rule. The resulting conflicts led to a break from the religious motivations for conflict, and instead for a mix of monetary and territorial gain without the Papal blessing they had come to depend on for recruitment and warfare. The situation became complicated for the Order when war broke out with Christian Poland, and the institution could not count on the crusader armies, making it necessary for the Order to

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<sup>26</sup> Hosler. "Revisiting Mercenaries under Henry Fitz Emperess, 1167-1188." In *Mercenaries and Paid Men*. 38-39.

recruit mercenaries.<sup>27</sup> The Teutonic Order's recruitment needs emphasized the nature of changing motivations for paid men during this period, as chivalry and religion would represent a reason for service in one conflict, but in the next conflict monetary gain may be the main motive for participation. At the end of the Order's time in Prussia, it was an ideological problem that forced the group to turn to the expensive mercenary recruitment against Poland, leading to a constant dilemma until its dissolution in 1525.<sup>28</sup> The lack of outside support drove the Order to hire mercenaries, and in doing so only served to distance itself further from the supposed causes they supported.

Around this same time, the Byzantine Empire was experimenting with a concept of mercenary royal guards, loyal only to the emperor, and by extension the state. Known as the Varangian Guards, these men were in relative isolation to the court intrigues and it was said of them that "they pass on loyalty to the Emperors and the protection of their bodies from one to another like ancestral inheritance, a trust or a sort of guardianship; these stay unshakably loyal, and will not brook the slightest hint of disloyalty."<sup>29</sup> Drawn from tribes in Northern Europe, the men of the Varangian Guards had diverse backgrounds, with some even being from royal families, such as Harald Hardrada the later king of Norway. As outsiders rather than stakeholders in the schemes of the court, the Varangians were not beholden to the interests of factions and were free to perform their task with single-minded efficiency and effectiveness.<sup>30</sup> This outsourcing of

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<sup>27</sup> Sven Ekdahl. "The Teutonic Order's Mercenaries during the 'Great War' with Poland-Lithuania (1409-11)." In *Mercenaries and Paid Men: The Mercenary Identity in the Middle Ages: Proceedings of a Conference Held at University of Wales, Swansea, 7th-9th July 2005*, edited by John France, 345-362. Leiden: Brill, 2008. 345.

<sup>28</sup> *Ibid.*, 358.

<sup>29</sup> Jonathan Shepard. "The English and Byzantium: A Study of Their Role in the Byzantine Army in the Later Eleventh Century." *Traditio* 29 (1973), 53-92. doi:10.1017/s0362152900008977. 65.

<sup>30</sup> Sean McFate. *The Modern Mercenary: Private Armies and What They Mean for World Order*. New York: Oxford University Press, 2017. 116.

protection set standards for later groups, such as with Papacy's use of Swiss mercenaries in the later stages of this period, and the continued recognition of these Swiss Guards today by the Vatican.

As part of the Hundred Years' War, mercenaries and free companies became heavily used in both the primary conflict between France and England, but also as part of neighboring conflicts such as the Spanish (Castilian) Civil War during the fourteenth century. As a way of neutralizing the Castilian-English alliance, King Charles V of France aligned with the Trastamara party who needed the support of the French Companies of Bertrand du Guesclin, and arranged for the support of these companies by the Pope.<sup>31</sup> This action represents the existence of an understanding of the need for private military forces in conflict during the period even as the Catholic Church had previously set a precedent against use with the Third Lateran Council. The White Companies, formed in France, were based on the model of the companies of condottiere that were beginning to control the battlefields of Italy, and their formation and use marked a new way of waging war that differed from the chivalry of former periods.<sup>32</sup> This period saw the beginnings of the military revolution, as new technologies and increasingly large armies meant that the brutality of conflict was no longer held to small battlefields, but instead entire regions.

The fourteenth century brought about a renewed period of violence in Italy, especially in the territories bordering the Alps, with the beginnings of a series of wars, both local and regional, that lured many outside groups into the conflicts. The free

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<sup>31</sup> González Paz. "The Role of Mercenary Troops in Spain in the Fourteenth Century: the Civil War." In *Mercenaries and Paid Men*. 332-333.

<sup>32</sup> *Ibid.*, 337 & 341.

companies and other mercenary groups were known collectively as the condottiere and represented the mercenaries of the later medieval period. The condottiere got their start in the Italian armies of the thirteenth century, especially in the Papal armies. In the wars waged by the Popes Gregory IX and Innocent IV, the mercenaries employed by the papacy were normally Italian, but later expanded to include troops from France, Austria, Germany, Spain, and Portugal, representing a truly mixed force.<sup>33</sup> The condottiere challenge the concept of foreignness that has been applied in defining mercenaries over time, as the Italian states considered themselves both separate and part of the greater Italy during this period, meaning that Italian mercenaries consistently fought for groups outside the provinces they came from.

The Italian states increasingly turned to outside forces as conflict on the peninsula continued, with cities such as Florence, Venice, Milan, and Genoa in constant periods of war.

The free companies evolved from temporary organizations to more permanent military and economic organizations that over time became tied to agreements signed with their employers that developed into highly detailed *condottas* that specified the length and terms of service, number of men, and pay. These *condotta* were documents of great care, drawn up by the equivalent of modern lawyers.<sup>34</sup>

The condottiere developed into a form of privatized international actors who acted at times in the interest of those they represented, but also with their profit remaining central to their decision-making. Some of these actors were individuals such as John Hawkwood, one of the most well-known condottiere of the period, who as an English mercenary attained great wealth and renown in fourteenth century Italy, and served as the basis for

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<sup>33</sup> D. P. Waley. "Papal Armies in Thirteenth Century." *The English Historical Review* LXXII, no. CLXXXII (1957), 1-30. doi:10.1093/ehr/lxxii.clxxxii.1. 15-16.

<sup>34</sup> Singer. *Corporate Warriors: The Rise of the Privatized Military Industry*. 24.

numerous other groups in Medieval Europe.<sup>35</sup> Widespread use along these lines continued through the Thirty Years War, when the devastation in Europe led the major states to negotiate for a new peace that resulted in the Treaties of Westphalia, which created the new state-based system of international relations, while weakening the markets for force.

The end of the Thirty Years War signaled the beginnings of the lull in the cycle from the Medieval period, in part due to the legalistic nature of the Treaties of Westphalia, setting a benchmark for later legal norms as well as international law. The gathering of nations to sign the Treaty of Westphalia in 1648 marked the end of the Medieval mercenary tradition, as nation-states began to monopolize the conduct of war. This monopolization was a gradual process, beginning in the sixteenth century, and spanned centuries, as states developed public armies maintained in peace and war, and loyal only to the state.<sup>36</sup> Some early states continued to engage in the mercenary trade, but in a manner that differed from this previous tradition, as some smaller states began to loan out companies of soldiers to competing states during the intervening period.

This lull was bookmarked in part by the increases in conflict less than a century after the Thirty Years War, as colonial competition between many European powers, primarily the English, French, and Spanish, outside of Europe led to the need for recruitment of forces beyond that of the capability of the state to support. It was in this expansion of global conflicts that the concept of the private contractor merged with the mercenary identity.

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<sup>35</sup> González Paz. "The Role of Mercenary Troops in Spain in the Fourteenth Century: the Civil War." In *Mercenaries and Paid Men*. 337.

<sup>36</sup> McFate. *The Modern Mercenary*. 32.



## **Late Modern Period**

The late modern period saw a shift in the use of mercenary forces and the mercenary tradition towards contractors that served states, many times as citizens working for private interests that were guaranteed by the state. The beginnings of this period blur with the dying gasps of the Medieval period, as some early joint-stock and trading companies were established for the purpose of exploration and settlement in regions such as North American and South Asia. Contractors became prevalent in the New World, as the formation of joint stock ventures and trading companies led to increased settlement and expansion without direct state investment in the enterprises. For many of these ventures, profit, rather than national pride, became the primary motivation for engaging in conflict outside the Continent. The key to understanding this period's version of mercenary use is in the form of contract conflict, which had been institutionalized under the Italian condottieri, and had been translated into versions of contracts passed down to charter and trading companies, granting military and use of force rights to private actors.

During the early modern period, many nation-states began to utilize private contractors for a range of activities from exploration and colonization to national defense. Early British attempts to colonize the Americas came in the form of charters issued to contractors and companies willing to take risks in establishing settlements in the name of the British Crown. Settlements such as Jamestown and Plymouth were built and funded by investors separate from the British Crown, who sought the opportunity to benefit from possible profits from the New World. In 1607 Captain John Smith landed in the

Chesapeake Bay, having been sent by the joint-stock business Virginia Company of London. He was tasked with overseeing security operations in the New World, as the company hoped to mine for gold and explore the surrounding countryside for more lucrative natural resources in hopes of establishing a more permanent English settlement.<sup>37</sup> It was not only states that were contracting out security, but the companies were beginning to turn to the idea of subcontractors to fill their needs.

It is during this period that the American experience with mercenaries began, starting with the American Revolution. When the American colonies revolted against the British Crown, the British did not have the necessary manpower to fight a war in the Americas while also being engaged in conflicts in other theatres. “It’s allies, such as Russia, refused to loan troops to put down what they saw as an internal peasant revolt. So, Britain turned to the international market, primarily German principalities, such as Hesse-Kassel and in all 29,875 German troops crossed the Atlantic.”<sup>38</sup> As the British attempted to hold onto their status as a Great Power during the period, the international markets for force were seen as a necessity to uphold the status quo without risking great losses across multiple theaters of engagement.

The devastation of the Thirty Years’ War on the German principalities, and especially Hesse-Kassel, meant that the state had a high population density with little in the form of economic support, leading them to consider the markets of force that remained in continued existence on the European continent. What rendered Hesse-Kassel unique among the German states is that it looked to its military establishment as the

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<sup>37</sup> Erik Prince. *Civilian Warriors: The Inside Story of Blackwater and the Unsung Heroes of the War on Terror*. New York: Portfolio, 2014. 61.

<sup>38</sup> Singer. *Corporate Warriors*. 33.

principle source of income for economic recovery, as the military had represented an international recruiting ground as well as contemporary German view of warfare as an integral part of the natural order.<sup>39</sup> In the military establishment being the principle source of income for the state, this presents the idea of state-sponsored mercenarism, in that the state oversaw the contract between the soldiers and the outside requesting party. State-sponsored mercenarism differs slightly from the individual mercenary in that the state received a portion of the profits from military engagement in conflicts, compared to the direct contract. This process of state engagement in the markets for force, while legitimate at the time, began to earn a morally repugnant status, attaching labels such as *Menschenhandel* (trade in human beings) and *Menschenverkauf* (sale of human beings).<sup>40</sup> Even though state-sponsored mercenarism earned these labels, the process presented a concept that set precedents for later practices.

This period also witnessed the birth of the contractor companies, with the creation of trading companies that were self-sustaining, such as the British East India Company. Created to protect early British interests in the Indian subcontinent, this company later became the dominant force in ruling the territories for the British Empire. This was part of the delegation of military affairs to quasi-state-run trading companies such as the British East India Company, which commanded its own armed forces and governed India for Great Britain for more than two centuries.<sup>41</sup> While the state still had a say in the overall behavior of the companies, these companies represented their own ideas of foreign policy to be directed in the interests of the stakeholders.

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<sup>39</sup> Charles Ingrao. "'Barbarous Strangers': Hessian State and Society during the American Revolution." *The American Historical Review* 87, no. 4 (1982): 954-76. doi:10.2307/1857901. 961.

<sup>40</sup> McFate. *The Modern Mercenary*. 34-35.

<sup>41</sup> *Ibid.*, 35.

For the British East India Company, the involvement in military affairs started early on, as the company attempted to carve out a political position within the Indian subcontinent, and prior to the consolidation of lands after the Battle of Plassey in 1757.

After attacks on Mughal shipping from India at the beginning of the eighteenth century, the Emperor Aurangzeb insisted that the only remedy to the situation would be for the British East India Company, with the Dutch and the French, to provide convoys to protect Mughal Indian Ocean shipping against all pirates. Samuel Annesley, the Company's president, had earlier proposed an alternative that the Company should also seek from Aurangzeb a position as a Mughal military and police force over the high seas, a *faujdari* or sheriff for the "Saltwater." Annesley predicted that this would bring the Company special immunities, privileges, and a *jagir*, or assignment of revenue, worth over 400,000 rupees per annum.<sup>42</sup>

Samuel Annesley's views of this quasi-militant status for the Company represented the growing concept of companies providing security and military services for both their government as well as outside states within regions of contention or conflict. Annesley's proactive gambling allowed for the Company to stake a political claim for company rule in India.

The British East India Company became one of the largest multinational companies during this time and saw this prosperity turn into both economic and political power as the company controlled the Indian subcontinent for much of the eighteenth and nineteenth centuries. The Company was increasingly in a dilemma as their rule continued, and as economist J.R. McCulloch remarked that "A Company which carries a sword in one hand, and a ledger in the other – which maintains armies and retails tea, is a

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<sup>42</sup> Philip J. Stern. "'A Politie of Civill & Military Power': Political Thought and the Late Seventeenth-Century Foundations of the East India Company-State." *The Journal of British Studies* 47, no. 02 (April 2008), 253-283. doi:10.1086/526759. 253-254.

contradiction".<sup>43</sup> In this idea, the state and the Company were partners in India, and resources gained from the continent only indirectly benefited the empire, as Company revenue came first, legitimizing the use of private force for protection of state interests. For much of India, the Company represented British rule until it was dissolved after the Sepoy Rebellion in 1857. It was composed of both the civil and military governing authorities under a board of directors, granted a charter that was renewed by the British Crown, whose choices were in the Company's interests before those of the government.

In this context Company rule could be made acceptable on a long-term basis if the Company was perceived as a lawful ruler rather than a commercial enterprise. This problem was solved by making use of the traditional structure of feudal governance and loyalty, in which local rulers occupied central places in this structure and regarded as legitimate sovereign.<sup>44</sup>

This portrayal of lawful ruler in India allowed for the British and the Company to justify the use of private force as the Company was an indirect representative of the British Crown during this time.

As the British developed this system of corporate governance, others were also experimenting with similar formats of indirect rule that utilized private force as a means of expanding regional influence. European states ceded political power in regions outside the Continent to these companies as a means of future investment, while at the same time acknowledging a sense of sovereignty to early corporate interests. In the case of the British East India Company, these officials engaged in diplomatic relations in Asia, keeping residents at various courts while also seeking and accumulating agreements,

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<sup>43</sup> Douglas M. Peers. "Between Mars and Mammon; the East India Company and Efforts to Reform its Army, 1796–1832." *The Historical Journal* 33, no. 02 (June 1990), 385-401. doi:10.1017/s0018246x00013388. 389.

<sup>44</sup> Amar Farooqui. "Governance, Corporate Interest and Colonialism: The Case of the East India Company." *Social Scientist* 35, no. 9/10 (2007): 44-51. <http://www.jstor.org.proxy.missouristate.edu/stable/27644239>. 46-47.

treaties, and *farmans* (imperial commands providing immunities and privileges) from both local and imperial powers throughout Asia.<sup>45</sup> It was in these relations that the Company officials proposed protection for the native rulers from other outside companies and states seeking to gain footholds in the region.<sup>46</sup>

This period marks a shift in the evolution of mercenary use within the cycle, as companies became extensions of state policy, and increasingly beholden to the directives of the national government, unlike their predecessors of earlier periods. The later private military companies that became prominent starting in the Cold War were the result of this evolution, wherein states utilized private force under a general command structure to support public forces in conflict zones. This release came after the international community saw the state take control over military power and closed the markets for force for close to a century, as warfighting became part of the public sector.

While the idea of a state monopoly on force had been set by the Treaty of Westphalia, it was not until the advent of the ideals of nationalism at the end of this period that military power was administered solely by the state. This came as a result of the Napoleonic Wars in Europe, which marked the next downswing in the cycle of mercenary use.

“Napoleonic reforms also helped consolidate the states’ monopoly of force. As the Napoleonic Wars continued, the model of national conscription eventually became the norm for all powers, and it survives today. Administrative changes also helped put private armies out of business. Sustaining a large standing army is complicated and expensive, requiring a considerable bureaucracy to collect taxes and administer revenue. Over time, large centralized state bureaucracies replaced feudal lordships in the machinations of governance and especially military administration.”<sup>47</sup>

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<sup>45</sup> Stern. "A Politie of Civill & Military Power." 264.

<sup>46</sup> *Ibid.*, 265.

<sup>47</sup> McFate. *The Modern Mercenary*. 33.

The centralized state bureaucracies that came from these reforms allowed for a supporting structure for national military service and trained standing armies that did not need a complementary private force during times of conflict. This shifting market for force that had been dominated by mercenaries and companies to the monopolization by states was gradual, as states consolidated their power and centered the control of conflict under national militaries.<sup>48</sup> The public-private partnerships of the late modern period, like the British East India Company, marked the close of this monopolization, as control over private conflict was centered in large chartered companies that slowly ceded their power to the state.

### **Contemporary Period**

After the devastation of two world wars, states began to reconsider ceding power to private actors as a means of limiting the effects of war on populations that were separate from conflicts that they may be engaged in. As conflict spread across the African continent, newly independent states and rebel groups look to outside sources of personnel to provide military force in their attempts to control both internal conflicts and external threats. To respond to this demand, private military companies (PMCs) and individual mercenaries began to flock to the continent to provide defense services. Outside of announced corporate mergers, tracking the activities of these companies has become increasingly difficult with time, as they are shrouded in secrecy and government contracts are regularly classified and away from the public eye.

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<sup>48</sup> Ibid., 28-29.

Executive Outcomes (EO) was one of the most prominent of these companies, participating in a number of conflict zones in Africa in the 1990s. The company was registered in Great Britain as far back as 1993, in part because “London is an international centre of informal defense and security activity, arms dealing and war profiteering.”<sup>49</sup> While being registered in Great Britain, the company primarily operated in Africa in support of struggling governments fighting internal conflicts. “[During this time, EO utilized the South African Defense Forces] – along with the police, and the remains of Koevoet (or crowbar), a former counter-insurgency force in Namibia - as a skilled labor pool. The SADF regards the loss of trained personnel, pilots especially, as crude poaching.”<sup>50</sup> The company’s first testing ground was the civil war in Angola, as many of the men had participated in one form or another prior to the end of the Cold War. After UNITA forces captured the Soyo oilfields in the country, EO was contracted to take the oilfields back, and after successful completion of this mission was contracted to provide training missions to the Angolan army.<sup>51</sup> After the company’s time in Angola, it was contracted to provide security forces for the struggling government in Sierra Leone to hold off the advancing rebel forces. The actions of EO in Sierra Leone and Angola also opened the world to a new option for private force in the form of stability operations and humanitarian peacekeeping.

The conflict in Sierra Leone saw an international intervention in 1998, responding to the collapse of government functions after the forced exit of Executive Outcomes and

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<sup>49</sup> Jeremy Harding. "The Mercenary Business: 'Executive Outcomes'." *Review of African Political Economy* 24, no. 71 (March 1997), 87-97. doi:10.1080/03056249708704240. 88.

<sup>50</sup> *Ibid.*, 89.

<sup>51</sup> Sarah Percy. *Mercenaries: The History of a Norm in International Relations*. Oxford: Oxford University Press, 2007. 209.



other groups supporting the government of President Ahmad Tejan Kabbah. As part of the international intervention in the conflict raging in the country, Nigerian troops under the West African peacekeeping force, ECOMOG, and a handful of other groups supported the under-equipped national army.

The small U.S. contribution was not part of a seconded military unit, but a private, Oregon-based company, International Charter Incorporated of Oregon (ICI), one of several companies contracted by the U.S. State Department to go into danger zones deemed too risky or unsavory to commit conventional U.S. forces. While the services the company provided were of a support role, the personnel were forced to engage in defensive combat, a right extended to the company in a letter from the U.S. ambassador to Sierra Leone, Joseph Melrose. Employees that discussed the conflict with the International Consortium of Investigative Journalists explained that the hot combat was left to the South African mercenaries.<sup>52</sup>

This deployment of contractors represented part of the global trend of military outsourcing and foreign policy by proxy that began to play an increasing role in international politics after the Cold War. The “peace dividend” that came as a result of the end of the Cold War saw the absence of a clear direct threat to the United States and the Western powers, which led to substantially reduced defense budgets and smaller armed forces that created a collision of supply and demand in military and security services in the world market.<sup>53</sup> The reduction in defense budgets meant that countries now needed options for security services outside of the state controlled military, and this allowed for an influx of companies to take advantage with an increasing supply of personnel that they could provide.

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<sup>52</sup> Laura Peterson. "Privatizing Combat, the New World Order." ICIJ. Last modified March 12, 2012. <https://www.icij.org/investigations/makingkilling/privatizing-combat-new-world-order/>. Peterson also noted that according to Douglas Johnson, State Department's Office of Defense Trade Controls spokesman, under the International Traffic in Arms Regulation (ITAR) Congress must be notified of all defensive contracts worth more than \$50 million. Anything less than that number was in practice submitted for oversight, but not always.

<sup>53</sup> Frederick W. Kagan. *Finding the Target: The Transformation of American Military Policy*. New York: Encounter Books, 2007. 144.

A number of companies began to expand operations in late 1990s as countries began to look outward for advanced military and police training. London-based TASK International, which cites its niche market as the training of military and police forces, has trained the Jamaican police and in the past has trained the presidential guard in Nigeria, the royal police in Malaysia and the special forces of the United Arab Emirates.<sup>54</sup> This same ICIJ investigation revealed that miniature versions of the well-known PMCs, such as EO and Blackwater, began to offer these downscaled versions of military training and tactical response packages.

The Nevada-based Sayeret Group says it has tactical teams that can deploy to anywhere in the world in support of security, protection and direct-action operations. Pistris Inc., a Massachusetts-based maritime security company which maintains its own fleet of vessels, also claims it can provide fully equipped, mobile protection teams to provide waterborne security of oil fields, ports and vessels throughout the world.<sup>55</sup>

As regional hotspots became increasingly active at the beginning of the twenty-first century, these companies were well-situated to provide defensive combat and non-combat services to their clients as they had this global reach.

The advancement of the cycle in this period was stunted by the creation of an international legal regime against mercenary use but has not entirely broken the cycle. Instead the use of private force in the grey areas of the law has continued and pushed the boundaries of the legal ability of the international community to impose effective control over conflict. The general attitude towards the private use of force in the early 1990s might have suggested that it was becoming increasingly accepted and efforts to control it had failed and suggested that the prospects for future use of private force were good.<sup>56</sup>

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<sup>54</sup> Peterson. "Privatizing Combat, the New World Order."

<sup>55</sup> Peterson. "Privatizing Combat, the New World Order."

<sup>56</sup> Percy. *Mercenaries: The History of a Norm in International Relations*. 207.

However, even as there was an increase in the use of private force, the private groups involved in conflict were in increasingly grey areas around the periphery of the legal regime. Duke Piper, the Sayeret Group's president, remarked in relation to the licensing system for groups that work with the U.S. government, "There are no regulations or laws saying you have to do X, Y, Z. It's more of an integrity or ethical issue that comes into play" adding that "some people do choose to operate behind the scenes or under the table."<sup>57</sup> Piper thus illustrates that for much of the private military community, there is a need to balance ethics rather than law in the private use of force, as profits are determined by the public outlook rather than the ability of the international community to impose controls.

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<sup>57</sup> Peterson. "Privatizing Combat, the New World Order."

## INTERNATIONAL NORMS AND LAW RELATING TO USE

As states centralized power over time, views on the use of mercenaries began to change, seen both in the formation of international norms as well as the later international laws of war. Much as the international legal system has changed over time in regards to the conduct of war, the norms relating to conflict have been influenced by countless cultural factors that shaped the concept of the mercenary into what is seen now. For the purpose of this argument the focus is on the norms that relate to the use of private force in a legalistic manner, addressing how the conduct of war was shaped in part by this use. While the use of private force encompasses many aspects outside of mercenary use, it was through the mercenary tradition and the development of these norms relating to their use that the private military industry developed.

### **Norms Relating to Use**

As mercenary use has progressed through time, the idea of the contractual nature of international relations has played a part in shaping how actors engaged with these forces. During the Medieval period, state began drafting legal contracts with mercenary groups as well as individual contracts for service. By the sixteenth century, the relationship between the state and mercenary had taken on this contractual nature, given the name *condotta* in Italy, and became the subject of countless treaties in other areas.

Under the Perpetual Peace Treaty of 1516, specific rules were set about the number of troops the French king could recruit; where and under which circumstances Swiss troops could be use; and when the Swiss could recall their troops, which was only in times of war. By the 1540s, the system was tightly

organized, down to a tribunal with two judges from each country to arbitrate pay disputes.<sup>58</sup>

While this relationship could be regarded as an alliance, the outlining of specific rules for French foreign recruitment displayed a nature of relationship which followed this larger pattern of the contractual nature of relations. It was not the treaty itself that established the alliance, but rather provided the basis for numerous subsequent alliances, as the treaty created an early form of arbitration for relations between the Swiss cantons and France.<sup>59</sup> This idea of arbitrary clauses within state-to-state relations as part of larger treaties for state-to-state relations supports the idea of state-sponsored mercenarism that was seen in Hesse-Kassel and other German principalities in the eighteenth century. Relationships such as these illustrate the importance of the existence of grey areas that continue to exist in the classification of mercenary forces over time, as well as the status of modern private and semi-public forces utilized by many countries in conflict zones.

This concept of the contractual nature of relations has implications for international law, as agreements between states have formed the basis for later law. What became customary international law has a general origination in the contractual nature of agreements between states, whether these are bilateral or multilateral agreements. Building on the customary agreements among states on the use and conduct of private force, and with the devastation brought about by the global nature of World War I, the international community agreed to a comprehensive framework on the laws of war under the Geneva Conventions, in order to protect civilian populations in areas of conflict. Under this framework, states saw no place for mercenaries or forces outside state control,

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<sup>58</sup> Percy. *Mercenaries: The History of a Norm in International Relations*. 84-85.

<sup>59</sup> William L. Penfield. "International Arbitration." *The American Journal of International Law* 1, no. 2 (April 1907), 330-341. doi:10.2307/2186167. 338-339.

and therefore tried to dictate the conditions in which actors could partake in conflict when not under the control of a state. This norm helps to show how the conventions against use are a split from the historical cycle of use, but at the same time an extension of the recognized nature of contracts between states and non-state actors.

From the strategic perspective, the idea of cultural norms also plays a role in the use of mercenaries over time. A society's view of the use of force is an important factor in determining whether they are amenable to the idea of private groups holding military power. This can be tied to the degree of interdependence within a society, and if it is more of a collectivist or individualist society, helping to determine where perceptions of loyalty are derived.<sup>60</sup> As European societies accepted the idea of working as or with mercenaries, and the idea of utilizing private force that men began to travel and fight for causes beyond their villages and homes. It was through the recruitment of men to serve as mercenaries or paid men that military service as a career became widespread, fitting into the broader society as a result of the economic and political changes that began to take place during the early Medieval Period.<sup>61</sup> Prior to the payment structures that arose out of that period, it had become culturally acceptable for different political factions and early states to allow foreigners to serve in their militaries as auxiliaries, making use of training or combat experience not available to certain groups.

The expansion of private armies leading up to the Thirty Years War normalized the idea of the professional soldier, while allowing for the growth of this idea as a

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<sup>60</sup> "National Culture." Hofstede Insights. Last modified 2018. <https://www.hofstede-insights.com/models/national-culture/>.

<sup>61</sup> Patrick Wyman. "Tides of History: Life as a Mercenary in the Military Revolution." Podcast audio. Wondery. September 14, 2017. Accessed November 28, 2017. <https://wondery.com/shows/tides-of-history/>.

cultural norm within many societies. This expansion allowed for societies to accept the concept of professional soldiers as being culturally appropriate, as younger generations followed in the footsteps of their fathers.<sup>62</sup> This norm continued into the late modern period, as a large percentage of officers serving the British East India Company in India were from military families, and “the growing tendency of sons to follow their fathers into Company service perpetuated this dynasty of middling sorts.”<sup>63</sup>

The norm that is most closely tied to the debate over the public versus private use of force and by extension, mercenary use, is the Just War tradition. The theory of the Just War originated with the works of St. Augustine, wherein the ecclesiastical bodies agreed that while Christians could not kill in a private capacity, it was accepted in a public manner when war was a response to avenge injury or to restore peace. The goal of the Just War theory was to set the Church’s position in regards to warfare among actors and set the general principles for which international law regarding the use of force would be later based upon.

St. Thomas Aquinas later expanded on this concept with the idea that war needed a sense of a controlling factor beyond the accepted nature of aggressive conflict between man or the state. Aquinas focused in part on the idea of “whether war was licit (*utrum aliquod bellum sit licitum*), [with] *licitum* then being the standard term used by theologians and canon lawyers in evaluating actions whose normative status was in some measure open to doubt.”<sup>64</sup> With this understanding of licit, Aquinas and later theorists

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<sup>62</sup> Wyman. "Tides of History: Life as a Mercenary in the Military Revolution."

<sup>63</sup> Douglas M. Peers. "Between Mars and Mammon; the East India Company and Efforts to Reform its Army, 1796–1832." *The Historical Journal* 33, no. 02 (June 1990), 385-401. doi:10.1017/s0018246x00013388. 390.

<sup>64</sup> Gregory M. Reichberg. "Thomas Aquinas Between Just War and Pacifism." *Journal of Religious Ethics* 38, no. 2 (June 2010), 219-241. doi:10.1111/j.1467-9795.2010.00427.x. 221.

saw the use of force to be within the normal realm of behavior when conducted by a legitimate authority, such as the state or the Church, but not individuals.

As this tradition developed, the ideas of the just cause and legitimate authority became central to the arguments for acceptance of private force within the larger markets for force in conflict. Wars of public motive became accepted as a just cause over the unjust private motives of individuals. Mercenaries fighting for themselves did not have 'just cause' because they were not fighting for, and under the direction of, the noble classes or the Church; their actions seen as criminal, and in some cases treasonable or even heretical.<sup>65</sup> This historical concept was codified into law over time, representing a norm in both relations and actions among actors in international relations. While idea of the just war continues to be regarded as one of the general principles upon which international use of force law is based, the difficulty with distinctions to control conflict based on justness is that such justifications are infinitely elastic and malleable.<sup>66</sup> The elastic nature of justification is present within the mercenary debate, dating back to the medieval period, and evidence suggests that it was not necessarily financial motivation or foreign status which distinguishes mercenaries from other fighters, but the presence or absence of some kind of appropriately sanctioned cause.<sup>67</sup>

The post-medieval shift away from privatized conflict to the public use of force under the control of the state is representative of how this norm was ingrained in the minds of the decisionmakers within society. It was increasingly seen as necessary to use

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<sup>65</sup> Percy. *Mercenaries: The History of a Norm in International Relations*. 72.

<sup>66</sup> David J. Bederman. *International Law Frameworks*, 2nd ed. New York, NY: Foundation Press, 2006. 223.

<sup>67</sup> Percy. *Mercenaries: The History of a Norm in International Relations*. 73.



one's own people as soldiers to justify the control of legitimate authority and the following of an acceptable cause for war.

The distinction between a war fought under just authority and a war fought outside it had significant practical ramifications. A routier captain on trial in 1391 pointed out that he had 'done all those things which a man can and ought to do in a just war, [such] as taking Frenchmen and putting them to ransom, living on the country and despoiling it, and leaving the company under his command about the realm of France, and burning and firing places in it'. The captain was executed not for committing the acts, but because he did not have just authority to commit them.<sup>68</sup>

This case presents an early legal situation wherein a mercenary was tried under the Just Cause legal tradition, and also shows that at that time the concern over mercenaries focused on control and the cause they fought for, and not necessarily the monetary aspect of the private markets for force.

Towards the end of the Medieval Period the brutality of the wars in Italy led to the humanist school of thought drawing the connection between morality and the fight for the just cause in conflict. Italian humanists were concerned that using mercenaries would undermine the civic spirit, and that the use of mercenaries by the Italian city-states was not just immoral because mercenaries were not fighting for the cause of their employers, but because their existence prevented citizens from having to support the cause of the state.<sup>69</sup> The humanist argument against use reached its apotheosis in the works of Machiavelli, who, living in Italy during the height of the *condottieri*, saw a system of warfare that allowed for individuals to control and dictate the terms of conflict, rather than the Italian city-states. Machiavelli argued that mercenaries did not fight for the common good as the republic is the common good; and that 'a republic with its own

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<sup>68</sup> Ibid., 72.

<sup>69</sup> Ibid., 75.

armies holds out longer against the tyranny of one of its citizens than does a republic with foreign armies.’<sup>70</sup> His theory was that mercenaries were not part of a just cause and therefore not part of the common good that the republic must seek when considering military action.

## **International Law**

As the international legal regimes surrounding the use of force expanded, the classification of privileged versus unprivileged combatants became more defined, delineating an internationally agreed upon definition of what made an unprivileged combatant. Within these regimes, the legal discussion regarding mercenaries covers a very small but increasingly important framework outlining the relationship between state and non-state actors.

Use of force law represents the focus of the international legal discussions on conflict, and by extension this covers the concerns and matters relating to mercenary use. The legal framework is derived from the general sources that the International Court of Justice and the United Nations look to when making decisions regarding action in the international system. Article 38 of the Statute of the International Court of Justice outlines the sources of international law, which the Court utilizes to decide disputes amongst states.

The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- b. international custom, as evidence of a general practice accepted as law;
- c. the general principles of law recognized by civilized nations;

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<sup>70</sup> Ibid., 76.

- d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.<sup>71</sup>

Of interesting note in regards to the international legal framework that exists under this structure is that legal precedent, or judicial decisions, is a subsidiary means of legal argument. This means that even in the face of recognized cases of mercenarism, the legal requirements must be generally recognized in a consensus of states, by which the rules recognized apply to all parties involved. It is for this reason that the historical legal basis proves to be of further importance in grasping the significance of custom and practice in both defining mercenarism and arguing its existence in an international conflict.

The historical legal basis on which the current framework is constructed dates back to the Third Lateran Council of 1179. The council singled out the *Brabanters*, a group with a vicious reputation, and ordered the excommunication of any Christian hiring their services.<sup>72</sup> This action set a precedent against use, and while international law is not based on precedent but custom, this decision by the religious leaders signaled the legal customary practice that Christian men were expected to abide by. It is also of note that the Lateran Council condemned only those mercenaries fighting for themselves, and out of control, leaving mercenaries fighting under just title unaffected; again, going back to the idea of the just cause.<sup>73</sup> The Church represented the principal standard of control, albeit flawed attempts for control during this period.

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<sup>71</sup> Permanent Court of International Justice. *Statute of the International Court of Justice*. Permanent Court of International Justice, 1945. <http://www.icj-cij.org/en/statute>. Article 38.

<sup>72</sup> Hosler. "Revisiting Mercenaries under Henry Fitz Emperess, 1167-1188." In *Mercenaries and Paid Men*. 35.

<sup>73</sup> Percy. *Mercenaries: The History of a Norm in International Relations*. 80.

In the fourteenth century, the Church again attempted to regain control over their mercenary ‘problem’. In the papal bull *Cogit nosi* of February 27 1364, Pope Urban V exemplified the moral disdain that the Church had for mercenaries, even as the political factions in Europe depended upon them for war. Urban’s bulls excommunicated mercenaries, granted indulgences to those who fought against them, forbade assisting mercenaries, and tried to restrict the payment of protection money to get the mercenaries to leave various areas.<sup>74</sup> The Church and rulers sought to control private force through different strategies, but it was not till much later that a consensus among actors could be achieved. From this point until the drafting of the Geneva Conventions, the legal basis dictating use revolved around contract law and treaties among individual states on the accepted use and parameters of arrangements.

The Treaty of Westphalia set the stage for much of later international law as it established the nation-state as the primary actor within international relations. The treaty represented a convention among the European states that drew up the standards for relations amongst states and sought to bring about a new world system that recognized the state as the primary representative of ideas on the international stage. “In [this] system of sovereign states, each recognizes the others as the final authorities within their given territories, and only they can be considered actors within the system. It is precisely on this ground that scholars have identified Westphalia with the origins of sovereignty: as a formal statement of the principle of sovereignty.”<sup>75</sup> This state-based system left little

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<sup>74</sup> Ibid., 81-82.

<sup>75</sup> Derek Croxton. "The Peace of Westphalia of 1648 and the Origins of Sovereignty." *The International History Review* 21, no. 3 (1999), 569-591. doi:10.1080/07075332.1999.9640869. 570.

room for non-state actors such as mercenaries to actively participate in conflict, as states sought to control the markets for force, and thus conflict itself.

At the end of World War I, the international community came together to develop the next stage of the international legal framework on use of force law. The development of the Geneva Conventions and overhaul of the Hague Conventions created a combatant's standard to recognize legal combatants on the battlefield. The combatant's standard has four requirements for a person to be classified as a prisoner of war if captured; (a) they must have a visibly displayed unit insignia, (b) they must have a recognized chain of command, (c) they must display their arms openly, and (d) must conduct operations in accordance with the laws and customs of war.<sup>76</sup>

With the proliferation of non-state actors in the period of decolonization, and a visibly changing nature of international conflict, the international legal community in conjunction with the United Nations developed the Protocol Additional to the Geneva Convention to address these changes. It was in the concept of *opinion juris*, or the belief that a norm is accepted as law, that Article 47 of the Geneva Conventions Protocol I Additional is regarded as having reached the status of customary international law.<sup>77</sup> The normative behavior of states' disregard for a private market for force meant that the unspoken norm against mercenary use and the shift away from use at the end of the Hundred Years War allowed for parties to claim the existence of a status of customary international law to base these conventions on.

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<sup>76</sup> "Geneva Convention (III) on Prisoners of War, 1949 - Article 4 - Prisoners of War." ICRC Databases on International Humanitarian Law | International Committee of the Red Cross. Accessed June 25, 2018. <https://ihl-databases.icrc.org/ihl/WebART/375-590007?OpenDocument>.

<sup>77</sup> Percy. *Mercenaries: The History of a Norm in International Relations*. 18.

The international law on mercenaries takes the form of two primary sources, Article 47 of Protocol I Additional to the Geneva Conventions, and the United Nations International Convention against the Recruitment, Use, Financing, and Training of Mercenaries.<sup>78</sup> It was in Article 47 of Protocol I Additional to the Geneva Conventions that the international community came to a consensus on a single definition of mercenarism, but as a result of the need for an overwhelming majority of states to recognize the protocol the definition has an expanded nature that allows for grey areas in combatant classification. Article 47 states:

1. A mercenary shall not have the right to be a combatant or a prisoner of war.
2. A mercenary is any person who:
  - a. is specially recruited locally or abroad in order to fight in an armed conflict;
  - b. does, in fact, take a direct part in the hostilities;
  - c. is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is 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;
  - d. is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;
  - e. is not a member of the armed forces of a Party to the conflict; and
  - f. has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.<sup>79</sup>

The UN Convention against the Recruitment, Use, Financing, and Training of Mercenaries sought to provide a framework for prosecuting states that engaged in the

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<sup>78</sup> United Nations General Assembly. *Protocol Additional to the Geneva Conventions of 12 August 1949, And Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, of 8 June 1977. 35. See also, United Nations General Assembly. *International Convention against the Recruitment, Use, Financing and Training of Mercenaries*, 4 December 1989. New York City: International Committee of the Red Cross, 1989. <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=D5EDD61038ECF47FC12563CD002D6E50&action=openDocument>.

<sup>79</sup> *Ibid.*, 35.

markets for private force and utilized mercenaries in international conflict, as well as acknowledging the growing capability of non-state actors to become involved in these markets.<sup>80</sup> The convention specifically expands upon the recruitment of private forces for the purpose of overthrowing a government or undermining territorial integrity. This augmenting of the legal definition is a result of the presence of mercenary and other private forces in the battlefields of Africa at the end of the twentieth century, where proxy forces and liberation movements mixed with private force within internal conflicts.

The presence of extraneous requirements for one to be considered a mercenary under the UN definition was the result of loopholes created in the negotiating process in order to gain a consensus amongst the international community. These definitional loopholes were not meant to allow for mercenaries to act in international conflict, but instead a means of protecting public forces that crossed into grey areas and private contracting forces that served under distinct chains of command. Inconsistencies and loopholes within the law were side effects of state attempts to deal with particularly thorny issues rather than purposeful attempts to create that might be easily circumvented.<sup>81</sup> One of the most heavily criticized aspects of Article 47 of the Protocol was Paragraph (2)(e), which specifically excludes those persons who are members of armed forces of parties to a conflict, as a number of states still retain non-resident and non-citizen soldiers within the formal structure of the military, such as the French Foreign Legion and British Commonwealth forces.<sup>82</sup> These actors were not perceived by

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<sup>80</sup> United Nations General Assembly. *International Convention against the Recruitment, Use, Financing and Training of Mercenaries*, 4 December 1989. New York City: International Committee of the Red Cross, 1989.

<sup>81</sup> Percy. *Mercenaries: The History of a Norm in International Relations*. 170.

<sup>82</sup> United Nations General Assembly. *Protocol Additional to the Geneva Conventions of 12 August 1949, And Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, of 8 June 1977. 35.

the states to be mercenaries, instead being soldiers permanently enrolled in the armed forces of a state, and therefore the states sought to protect traditional practices and units that were not generally considered mercenary.

This legal definition of the mercenary drafted under the Geneva Conventions also represents a form of regulatory attempt on the increasing proliferation of private and non-state actors in international conflict, by outlining the limits of what was accepted in the use of private force in conflict zones. Much of the regulatory efforts and oversight that now exist are domestic and mostly limited to those governments that have utilized groups such as PMCs. Many other governments have acknowledged the need for the services that PMCs offer, but have yet to develop a structure to oversee them.<sup>83</sup> Specifically looking at the U.S. model for oversight reveals that it is far from comprehensive.

Defensive services, including training, are considered military products under U.S. law, particularly the International Traffic in Arms Regulations Law (ITAR), requiring PMCs to obtain approval from the State Department before selling their services to a foreign government. However, these companies can also sell their services abroad through the Defense Department's Foreign Military Sales (FMS) program, which does not require any licensing by State.<sup>84</sup>

While these regulatory efforts help to keep governments informed of where their citizens are operating abroad, the general public has little information to the extended reach of these companies. According to Douglas Johnson, the State Department's Office of Defense Trade Controls spokesman, State lawyers determined that the only information which should be available to the public about contracts between a private U.S. military

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<sup>83</sup> Peterson. "Privatizing Combat, the New World Order."

<sup>84</sup> Ibid.



company and a foreign government is which country the contract was performed in and what services were exported – and then only through the Freedom of Information Act.<sup>85</sup>

This proves to be a problem when the companies themselves attempt to provide the public with information as to how they operate on certain contracts. For instance, when Erik Prince testified before the U.S. House of Representatives Committee on Oversight and Government Reform, he was prohibited under the State Department Worldwide Personal Protective Services (WPPS II) contract's gag clause to speak about the contract itself to the congressional committee.<sup>86</sup> For these companies, and the states they work with to create an effective legal regime on the private use of force requires input from the outside, which has not been achieved to this point.

The Treaty of Westphalia created a basis for the state monopoly on the use of force, which was later enshrined in use of force law, but this basis has been challenged recently with the rise in asymmetric conflicts where multiple states are involved either directly or with the use of proxy forces for a range of reasons. In their attempts to outlaw mercenaries, what the international community did instead was provide a form of regulatory law regarding the private use of force, and this has allowed for the cycle's continued presence as private actors are present in conflict zones.

If, as the humanists of the eighteenth century saw it, the defining factor that separated mercenaries was the concept of the Just Cause, then the legal frameworks have presented a conundrum. As much of the legal regime in regards to combatants' privileges

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<sup>85</sup> Ibid.

<sup>86</sup> Prince. *Civilian Warriors*. 234-235. Also see Committee on Oversight and Government Reform, U.S. House of Representatives. *"Blackwater USA" Hearing Before the Committee on Oversight and Government Reform, U.S. House of Representatives*. Washington, D.C.: U.S. Government Printing Office, 2008. <https://www.gpo.gov/fdsys/pkg/CHRG-1110hrg45219/pdf/CHRG-1110hrg45219.pdf>.

focus on the standards by which soldiers must abide and what protections they can be afforded, at the same time this regime is based in humanitarian law as a means of protecting life. The law regarding mercenaries and the use of private force as it currently stands is a misinterpretation of the identity, based in a reductionist theory that has come out of the international disdain for those who provide private force in conflict.

Machiavelli's arguments against mercenary use had a direct impact on subsequent anti-mercenary thought, and this also impacted the later design of international law regarding their use.<sup>87</sup> An acceptance of the distortion of facts surrounding this use during the intervening period meant that later generations led with this idea of diminished strength of the state when arguing for the outlawing of a structure of military service in direct competition with the state-based system of relations. Modern legal and security experts have thus been presented with a difficult situation in which there is an increasingly complex grey area where forces operate near this former framework in regards to the use of force.

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<sup>87</sup> Percy. *Mercenaries: The History of a Norm in International Relations*. 76-77.

## THE REVOLUTION IN MILITARY AFFAIRS

The increasingly defined legal standing on the private investment in the markets for force have meant that mercenarism has experienced a shift from the clear-defined nature of the past. As illustrated by the expanded nature of private actors in international conflict, the varying shades of grey have allowed for continued investment in conflict by private actors. The legal frameworks that have come out of the presence of an international consensus on the need to control mercenary use have affected the cycle in a negative sense, as this framework stunted the resurgence of the cycle as conflict shifted to a less state-centric nature in the wake of World War II.

### **Realist Argument for Use**

The Westphalian system brought the markets for force under state control, as the states began to monopolize their ability to conduct war, and this continued through much of the twentieth century. It was the rapid decolonization of former territories and proliferation of nonstate actors after the Cold War that created an atmosphere in which private force became a viable option for control of conflicts again. Within this state of international security, realist theory helps to explain why states look to private actors to address security concerns.

The development of the laws of war and later recognition of a need to define who was a mercenary comes from an idealist perspective, in which the international community sought to outline what was acceptable behavior in war. The inherent problem is that war is the breakdown of relations, when all other options are exhausted in the

discourse among actors, much as Clausewitz argued in the treatise *On War*, that war is nothing but the continuation of policy by other means.<sup>88</sup> But as the world has seen, the rules and settled patterns of behavior can only be shaped to a certain point, before human nature takes over. The outlawing of mercenary use in the Geneva Conventions only holds so long as state abide by the agreed conditions and defining qualities. This has begun to change recently as the private military industry was thrust into the fold in the Balkans, and later as part of the War on Terror conducted by the United States, as states have looked to the grey areas of the legal regime in which some of these actors operate.

These attempts to force a change in the anarchical system seen under realism came as a result of a shift in the portrayal of mercenary groups prior to the institutionalization of a legal definition of what constituted mercenary action. Part of the reason mercenaries were considered especially heinous during the decolonization period was that their use negatively affected the changing nature of statehood, as new states sought to strengthen norms and institutions promoting self-determination.<sup>89</sup> The character of society also plays a role in this change, and in the view of the military historian Paul Schmitthenner “democratic forms and traditions have as a rule given rise to militias, while absolutism has invariably supported itself by mercenary troops.”<sup>90</sup> While this still mostly holds true, at the same time democratic societies such as the United States have looked to private actors for assistance in balancing security risks after defense cuts following the Cold War. By allowing contractors to handle security details and

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<sup>88</sup> Carl von Clausewitz. *On War*. Edited by Michael Howard and Peter Paret. Princeton, New Jersey: Princeton University Press, 1976. 69 and 75.

<sup>89</sup> Percy. *Mercenaries: The History of a Norm in International Relations*. 26.

<sup>90</sup> Pertti Joenniemi. "Two Models of Mercenarism: Historical and Contemporary." *Instant Research on Peace and Violence* 7, no. 3/4 (1977), 184-196. Accessed December 25, 2017. <http://www.jstor.org/stable/40724838>. 186.

training, as well as other support functions from maintenance to cooking, militaries could focus on combat operations.

The gathering of nations to sign the Treaty of Westphalia in 1648 marked the end of the Medieval mercenary tradition, as nation-states began to monopolize the conduct of war. This monopolization was a gradual process, beginning in the sixteenth century, and spanned centuries, as states developed public armies maintained in peace and war, and loyal only to the state.<sup>91</sup> This means that the state's monopoly over violence was the exception rather than the norm for most of history, until legal principles were established beginning with the Treaty of Westphalia.

The legal frameworks discussed in the previous section established a baseline definition of mercenarism, one which is maximalist in its application to the fluidity of conflict in the rapidly changing world of contemporary international politics. In international legal theory, under the understanding of maximalism, that which is not explicitly prohibited in law is permitted; thus, there still exists room for private groups to operate in areas of conflict. However, the very definitions that international law uses to identify mercenaries includes a series of vague, restrictive requirements, such that it is nearly impossible to find anyone in any place who fulfills all the criteria.<sup>92</sup> These laws were not meant to prohibit the trade in military services, but instead served as a form of legal regulation on the privatized side of the industry. Many of the countries that pushed the formation of this legal regime were from Africa and had experienced the importation of military forces in conflict.

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<sup>91</sup> McFate. *The Modern Mercenary*. 32.

<sup>92</sup> P.W. Singer. "War, Profits, and the Vacuum of Law: Privatized Military Firms and International Law." *Columbia Journal of Transnational Law* 42, no. 2 (2004), 521-549. <https://www.brookings.edu/wp-content/uploads/2016/06/singer20040122.pdf>. 524.

The argument for the success of the legal regime falls apart though when one encounters Angola's history of conflict. Angola was one of the first signatories of the UN Convention against the Recruitment, Use, Financing, and Training of Mercenaries, and by 1994 had already used a PMC, Executive Outcomes (EO) against the UNITA insurgency in the country.<sup>93</sup> The use of private contractors to take back the Soyo oilfields and train and support the military helped the government force the insurgents back to the negotiating table. The Angola case is an interesting one in that while it illustrates the presence of realist actions, it also presents an idealist view that private force can be used to lower the political and economic costs of a conflict for a state. This also plays into the next, and one of the most important, tenets of realist theory.

The use of private force and mercenaries in conflict comes down to the idea of competitive self-interest, where individuals will act in their best interests and not that of the larger group. In a world that has increasingly accepted the failings of the United Nations in the modern period, and where states are seeing a breakdown of the previous order with a rise in internal conflicts as well as interest in humanitarian intervention, they are turning to outside groups to provide supporting military services in times of need. For instance, the failings of the United Nations to halt the coming collapse in Sierra Leone, with the rebels supported by the Liberian government under Charles Taylor, meant that the government in Sierra Leone had to turn to another actor for support.

The role of Executive Outcomes as an autonomous operator is less important than its symptomatic character. Any appraisal of its business has to be weighed against the doings, and non-doings, of the governments, international organizations and capital formations that have contributed to the opening into which it has moved

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<sup>93</sup> Percy. *Mercenaries: The History of a Norm in International Relations*. 208-209.

with such alacrity. If there were strong, consensual political and social institutions in Angola or Sierra Leone, EO would have no place in either.<sup>94</sup>

In recent years it has become increasingly difficult for states to build coalitions to address both conflicts and possible regional security concerns, and much as the governments of Angola and Sierra Leone turned to Executive Outcomes, other states have turned to private actors to provide options that will fill their self-interests. This means that in some cases the states offer concessions to the private actors in the form of natural resource opportunities. The presence of clear financial incentives and opportunities, and alleged links to companies in position to take advantage of natural resource opportunities has not helped PMCs avoid the mercenary label, even when they operate in the interests of the states they serve.<sup>95</sup>

The state of use of private force today differs significantly from previous periods, as the private military industry has taken on a distinctly corporate character. “[Today’s military companies] have a distinct corporate character, have openly defended their usefulness and professionalism, have used internationally accepted legal and financial instruments to secure their deals, and so far have supported only recognized governments and avoided regimes unpalatable to the international community.”<sup>96</sup> At the same time states have been willing to accept the private use of force in order to preserve their public personality. When faced with a mounting death toll in Iraq in the mid-2000s, the United States sought to utilize private contractors for expanded security roles in the country in

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<sup>94</sup> Harding. "The Mercenary Business: 'Executive Outcomes'." 96.

<sup>95</sup> Percy. *Mercenaries: The History of a Norm in International Relations*. 217.

<sup>96</sup> David Shearer. "Outsourcing War." *Foreign Policy*. Last modified September 15, 1998. <http://foreignpolicy.com/1998/09/15/outsourcing-war/>.

part to alleviate the strain that the media placed on the recorded deaths of American soldiers in the country.

While the general realist theory is based in the concept of states as the primary actors, the changing nature of world politics requires this understanding in order to grasp the full effect that these private actors play in supporting roles. The theory is based in the idea that these primary actors act in a unitary way in pursuit of their national interest and must rely primarily on themselves to manage their own insecurity.<sup>97</sup> With their self-interest at the forefront of their security concerns, the utility of contractors and other means of private force has given expanded options for national security policy.

### **Revolution in Military Affairs**

The world is currently experiencing a revolution in military affairs in regards to the use of private force in conflict. The convergence of a number of historical factors within the cycle of use, as well as the mass proliferation of non-state actors and regional hotspots since the end of the Cold War has presented a monumental point in the cycle. As Dima Adamsky notes, the “Revolution in Military Affairs (RMA) [is one of] the terms used for a radical military innovation, in which new organizational structures together with novel force deployment methods change the conduct of warfare.”<sup>98</sup> While most military revolutions have been driven by technological advances, RMAs are driven by more than these breakthroughs in technology, with the term implying that the change in the system will be profound. While the technological component for these changes are

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<sup>97</sup> Margaret P. Karns, Karen A. Mingst, and Kendall W. Stiles. *International Organizations: The Politics and Processes of Global Governance*, 2nd ed. Lynne Rienner Publishers, 2013. 45.

<sup>98</sup> Dima Adamsky. *The Culture of Military Innovation The Impact of Cultural Factors on the Revolution in Military Affairs in Russia, the US, and Israel*. Stanford, California: Stanford University Press, 2010. 1.



often important initial conditions, a true revolution depends on a confluence of weaponry, concept of operations, organization, and the vision of future war.<sup>99</sup> In this case, the revolution is being driven by the later factors, as this convergence of historical factors is evolving the organization and vision of future development in the mercenary tradition as the state-based world system is currently changing.

Much as earlier states and groups sought to expand the composition of their armies from smaller semi-standing forces to include auxiliaries or other supplemental forces, modern armies depend on private contractors to fill the gaps when they go to war. The historical factors outlined below are all present in one form or another in the current state of international security and help to illustrate how this revolution in military affairs is being driven by an evolution and convergence of historical elements at one single point in history.

One of the more visible aspects of mercenary and private forces in conflict is the concept of specialization, as many of the groups through history as well as those in current conflicts are specialized forces offering focused services. This aspect of the tradition is one of the oldest, as Carthage and later Rome came to depend on the military expertise and specialized services offered by foreigners by the third century C.E. This extended into the use of foederati by the Romans, who served under the foedus, which was “considered a contract for the service whether the agreement was made by an individual foederatus or by a group of foederati serving under a leader of some sort.”<sup>100</sup> Henry II’s use of different mercenaries, such as the Welsh and Brabanters, in his

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<sup>99</sup> Ibid., 1.

<sup>100</sup> Bachrach. "Merovingian Mercenaries and Paid Soldiers in Imperial Perspective." In *Mercenaries and Paid Men*. 175.

campaigns allowed for him to choose and build the specialized force he needed for any particular campaign to be successful.<sup>101</sup> It also allows private military forces to advertise to potential employers the services and unique attributes they could provide, especially if they present a valuable alternative to untrustworthy or ineffective native forces.

In the past few decades, one of the primary services that private groups have been contracted out for is personal protection. This use of private force can be traced back to the Varangian Guards used for the protection of the emperors of the Byzantine Empire. These men were a mercenary force that was trusted for its loyalty to the throne and passed this loyalty like an ancestral inheritance to those who came after them.<sup>102</sup> Some countries or political factions still see this as viable options for protection because the protective details are seen as outsiders with involvement outside of performing their objectives with driven effectiveness. The legal definition of mercenarism under Article 47 of the Geneva Convention provides protective legal coverage for these groups, as some are recognized as part of historical traditions, such as the continued recruitment of primarily Swiss citizens for the Swiss Guards tasked with protecting the Vatican and the Pope. This historical concept also extends to the private security side of military contractors, who offer protective services for governments in high-risk areas when the military or police are either not capable or deployed elsewhere.

Another aspect of the private use of force that has carried on, but become increasingly contentious in the current security climate, is the payment of outside countries in support of conflicts. Much as the British went to the German principalities

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<sup>101</sup> Hosler. "Revisiting Mercenaries under Henry Fitz Emperess, 1167-1188." In *Mercenaries and Paid Men*. 35.

<sup>102</sup> Shepard. "The English and Byzantium." 65.

and the international market when they hired troops from Hesse-Kassel after failing to gain support from allies, a number of modern contemporaries have looked to the international market to help fight internal conflicts. For the states that consider providing forces on the international market, they may stand in a similar position to the Hessian state by seeing the military as a principle source of income for economic recovery.<sup>103</sup> This aspect also crosses over into the field of peacekeeping, as United Nations peacekeeping forces are generally contracted out from participating states to serve in warzones, which draws from the precedent of state-sponsored mercenarism utilized by Hesse-Kassel during the late modern period. While regular peacekeeping forces under the UN are protected under Article 47-Paragraph 2(f) of Protocol I Additional to the Geneva Conventions, and accepted by the international community, there has been an increasing privatized nature to operations as for-profit companies seek involvement.<sup>104</sup>

Decentralized states or those with ineffective military recruitment and bureaucratic systems could look outwards during drawn out conflicts, particularly to private groups as a solution to their governance problems. This goes in a similar way to how mercenaries were conceived as the solution to the problems of feudal levies at the beginning of the Medieval Period.<sup>105</sup> If states with limited economic means or uncooperative internal populations were stuck in a must-win conflict, outside forces provide extended options in bringing a conflict to a close. The current conflict in Syria has begun to shift towards this factor, as the government has struggled at times to fight on

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<sup>103</sup> Ingraio. "Barbarous Strangers". 961.

<sup>104</sup> United Nations General Assembly. Protocol Additional to the Geneva Conventions of 12 August 1949, And Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977. 35.

<sup>105</sup> González Paz. "The Role of Mercenary Troops in Spain in the Fourteenth Century: the Civil War." In *Mercenaries and Paid Men*. 336.

its own, it sought outside help in the form of both allies and private groups working under the Syrian banner. This conflict is possibly the clearest representation of current mercenary use, but due to the constantly evolving nature of the conflict, has been difficult to track outside group involvement.

Much of the bad name that mercenaries have received comes from an age-old tradition of how to pay these soldiers. Military leaders quickly learned that buying the loyalty of both their soldiers as well as the private forces they contracted required them to sometimes offer opportunities to share loot from conquests. Hannibal gave his mercenaries this opportunity during the Spanish conquests, and later the specialized forces he had hired for these campaigns followed him on his expedition to Italy and allowed him to have a well-trained army that was loyal to him and not other political factions.<sup>106</sup> This later became a contentious issue as armies accepted the norm of plundering the countryside of their enemies. In the modern sense of the spoils, private military companies will sometimes be contracted to perform missions in natural-resource rich areas, such as Executive Outcomes' operation in the Soyo oilfields of Angola, as well as DynCorp's work in Colombia. This has more recently been displayed in the use of contractors who were tasked with protecting the Iraqi oil fields until 2012.<sup>107</sup>

The last of these factors that have attributed to the revolution in military affairs is the idea that private force is an option in stability operations and humanitarian peacekeeping. The stability operations side of this goes back to Samuel Annesley's proposal to the Mughals of the British East India Company acting as a military and police

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<sup>106</sup> Hunt. *Hannibal*. 25.

<sup>107</sup> "Iraq Bans Security Firms on Oil Fields." United Press International (UPI). Last modified March 19, 2012. <https://www.upi.com/Iraq-bans-security-firms-on-oil-fields/21471332177942/>.

force on the high seas to protect the trade routes to Europe from pirates in exchange for special immunities.<sup>108</sup> When piracy began to pick back up along the Somali coast during the 1990s, private companies were hired to provide security to ships traversing the trade route from the Red Sea to Asia, and this practice has continued. The use of Executive Outcomes by both the Angolan and Sierra Leone governments for stability operations gave the world a glimpse of a new aspect of this use of private force, and this aspect will be addressed further in the next section.

This convergence of historical factors at one single point in history has presented the world with a remarkable continuum in which the private side of the military industry has vastly expanded. The radical change in military innovation, specifically new experimentation with novel force deployment has changed the conduct of war and placed the world at a monumental point in the cycle of use of private force. It is in this profound change that a revolution in military affairs is present in the use of private force, and that the organization of private force has changed dramatically from what has been seen previously.

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<sup>108</sup> Philip J. Stern. "'A Politie of Civill & Military Power': Political Thought and the Late Seventeenth-Century Foundations of the East India Company-State." *The Journal of British Studies* 47, no. 02 (April 2008), 253-283. doi:10.1086/526759. 253-254.

## THE CURRENT INTERNATIONAL SECURITY ENVIRONMENT

While the cycle was stunted by the creation of the international legal regime against mercenary use, private military actors have proliferated the global security market in the past two decades. These actors can be grouped largely according to the degree to which they are attached to, and motivated by, a cause and the degree of legitimate control they act under.<sup>109</sup> What has developed is a spectrum of violence, that in the current iteration of the cycle is spread between PMCs, and others in similar fashion to the *condottieri*, and national soldiers under the direct control of the state.

In this new proliferation of private actors involved in the international sphere, attaching a single descriptor to actors assumes they carry the same motivations and is reductionist in nature as it reduces the multitude of roles that private military actors play in international security to a debate of the legality of their actions. In looking at these grey areas of private violence, one can see how this tradition has carried on, and that the legal definition accepted by the international community does not encompass all aspects of the larger field of private military involvement in conflict. This section addresses the main areas in which private military actors have become involved in the international system and influenced world politics, showing that a changing nature is present in this involvement.

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<sup>109</sup> Percy. *Mercenaries: The History of a Norm in International Relations*. 58-59.

## The Legal Greys

Today, it can be difficult at times to pinpoint exactly where individual groups, persons, or companies fall in regards to their place on the spectrum. A number of groups have been classified in the press as mercenaries in recent years, but due to the complex nature of the legal definition many of these “mercenaries” are such in name only. These groups represent the new form of mercenarism and show how the grey areas of the legality of private violence plays out on the international stage.

During the bloody crackdown in Libya at the start of the Arab Spring that led to the Libyan Civil War, Muammar Qaddafi turned to outside help before his death in October 2011. With his concerns of the unreliability of the loyalty of his armed forces, Qaddafi turned to mercenaries from other parts of Africa, many perhaps veterans of wars and insurgencies elsewhere in Africa, often from countries he had strong links with.<sup>110</sup> One of the groups Qaddafi turned to were the Tuareg, a semi-nomadic Saharan people who inhabit the large desert swathes of Libya, Mali, Niger, and Algeria. Qaddafi had previously used the Tuareg during his military expeditions in the 1980s, and when the formerly trained rebels sought shelter after failed campaigns back home, he provided shelter and aid.

One reporter had the chance to interview one of these mercenaries after he returned to Mali from the fighting in Libya.

The man had been on both sides of rebellion, and had fled Timbuktu in the early 1990s, yet chose to fight for Qaddafi against the Libyan rebels, albeit mostly for money. He was assigned to a Tuareg brigade in the southern town of Awbari when he went to Libya in 2007, and in exchange for his military service, he was

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<sup>110</sup> Peter Apps. "Analysis: Is Libya's Gaddafi Turning to Foreign Mercenaries?" Reuters. Last modified February 24, 2011. <https://www.reuters.com/article/us-libya-mercenaries-idUSTRE71N2CA20110224>. See also, David Smith. "Has Gaddafi Unleashed a Mercenary Force on Libya?" The Guardian. Last modified February 22, 2011. <https://www.theguardian.com/world/2011/feb/22/gaddafi-mercenary-force-libya>.

granted residency status, paid 1,500 dinars (about \$1,300) a month, and his wife and children received free medical care. His unit covered much of the war and fought in several battles east of the capital, and later on the outskirts of Benghazi. He deserted a few weeks after the NATO bombings began and joined other Tuareg refugees leaving the country.<sup>111</sup>

It is important to note that this story is just a vignette providing a single first-hand perspective of these conflicts, with a lack of complete verification, but at the same time helps to show how the private markets have come back to life as governments struggle to address internal concerns relating to the use of force.

After Qaddafi's death in 2011, the civil war did not end, instead turning into a fractured conflict with multiple sides vying for control of the country. Many of the groups that had been hired by the regime previously stayed after its fall, seeking payment for their services. A report by the United Nations noted the increasing involvement of Chadian and Sudanese mercenaries in Libya in recent years, with involvement in criminal activities, which has increased the sense of vulnerability and distrust towards the Libyan National Army in communities in southern Libya.<sup>112</sup> "Groups from Chad, Niger, and Sudan are involved in the Libyan Civil War for a variety of reasons including money, tribal affiliation, or geopolitical gain. In some instances, groups are fighting in this war in return, they hope, for future support in their own wars one day."<sup>113</sup> The nature of the

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<sup>111</sup> Peter Gwin. "Former Qaddafi Mercenaries Describe Fighting in Libyan War." The Atlantic. Last modified August 31, 2011. <https://www.theatlantic.com/international/archive/2011/08/former-qaddafi-mercenaries-describe-fighting-in-libyan-war/244356/>. The author notes in his article that others were able to corroborate parts of the story based on what they had heard from others, but due to the nature of the conflict, many details were unverifiable, and officials did not want to talk about the conflict.

<sup>112</sup> Panel of Experts on Libya. *Final Report of the Panel of Experts on Libya Established Pursuant to Resolution 1973 (2011) (S/2017/466)*. United Nations Security Council, 2017. <https://reliefweb.int/report/libya/final-report-panel-experts-libya-established-pursuant-resolution-1973-2011-s2017466>. 18/299.

<sup>113</sup> Joseph Hammond. "Foreign Fighters and Mercenaries Fueling Libyan Conflict." RealClearDefense. Last modified January 2, 2018. [https://www.realcleardefense.com/articles/2018/01/02/foreign\\_fighters\\_and\\_mercenaries\\_fueling\\_libyan\\_conflict\\_112843.html](https://www.realcleardefense.com/articles/2018/01/02/foreign_fighters_and_mercenaries_fueling_libyan_conflict_112843.html).



conflict in the country has forced factions in both the government as well as outside to seek foreigners as the Libyan people lack the motivation to fight for the root political causes at the heart of this conflict.

The rise in conflict in the wake of the Arab Spring presented a problem for many of the Arab countries, who have embraced more aggressive military strategies as they try to rein in the chaos unleashed by these revolutions. This is also a glimpse into the future of war, where wealthy nations, particularly in the Middle East, look for military options that address a wish to wage war, but lack militaries prepared for sustained warfare and populations with generally little interest in military service.<sup>114</sup>

With the conflict in Yemen dragging on as part of a larger proxy conflict between Iran and the Gulf Community, the United Arab Emirates looked to outside military support in their attempt to take the country from the Houthis. The New York Times reported in 2015 that the UAE had secretly dispatched hundreds of Latin American mercenaries to Yemen, representing the first combat deployment for a foreign army that had been built over the previous five years.<sup>115</sup> What has separated these men from being prosecuted or charged as mercenaries is a single clause within the international definition, Article 47 Section 2(e), which states a mercenary is any person who “is not a member of the armed forces of a Party to the conflict.”<sup>116</sup> These men have been incorporated into a unit within the Emirati military, and operate under government control.

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<sup>114</sup> Emily B. Hager and Mark Mazzetti. "Emirates Secretly Sends Colombian Mercenaries to Yemen Fight." The New York Times. Last modified January 19, 2018. [https://www.nytimes.com/2015/11/26/world/middleeast/emirates-secretly-sends-colombian-mercenaries-to-fight-in-yemen.html?\\_r=0](https://www.nytimes.com/2015/11/26/world/middleeast/emirates-secretly-sends-colombian-mercenaries-to-fight-in-yemen.html?_r=0).

<sup>115</sup> Ibid.

<sup>116</sup> United Nations General Assembly. Protocol Additional to the Geneva Conventions of 12 August 1949, And Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977. 35.

While many of these men spent much of this time stationed domestically in the UAE, they have stayed largely because of the money, receiving salaries ranging from \$2,000 to \$3,000 a month, compared with approximately \$400 a month they would make in Colombia. Those troops who deploy to Yemen will receive an additional \$1,000 per week, according to a person involved in the project and a former senior Colombian military officer.<sup>117</sup>

While the salaries of foreigners may be in a comparable range to that of Emirate citizens employed by the military, it represents a substantial material compensation and motivating draw for outsiders.

The side of this case that poses problems for the legitimate side of the private use of force is the way in which the Emirates recruited many of these former soldiers. Most of the recruiting in Colombia is done by Global Enterprises, a Colombian company run by a former special operations commander named Oscar Garcia Batte, who is also a co-commander of the brigade of Colombian troops and part of the force deployed in Yemen.<sup>118</sup> The Emirati officials looked specifically for troops who had operated in former conflict zones. With their preference for Colombian troops over other Latin American soldiers, the officials consider the Colombians more battle tested in guerrilla warfare, having fought against rebels in the jungles of Colombia.<sup>119</sup> The changing nature towards conflicts of an internal or interventionist nature has drawn states to seek those with experience in these conflicts rather than attempting to reinvent the wheel and repeat the same mistakes others had already seen.

Another country that has seen an influx of private actors in recent years is Somalia, which has experienced ongoing conflict since the Siad Barre government

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<sup>117</sup> Hager and Mazzetti. "Emirates Secretly Sends Colombian Mercenaries to Yemen Fight."

<sup>118</sup> Ibid.

<sup>119</sup> Ibid.

collapse in 1991 and the Somali Civil War. A contingent of mercenaries has managed to carve out a niche for itself in the failed state, initially brought on to combat pirates in the coastal waters, the mostly South African corps has turned to fighting al-Shabab.<sup>120</sup> With the ever-shifting web of alliances in the country between Islamist militants, pirates, clan militias, and government forces, the security situation is far from adequate for many Western nations. In January 2010, the autonomous government of Puntland in the north of the country contracted roughly 150 fighters and support staff from Saracen International to train the Puntland Marine Police Force (PMPF), a local counter-piracy militia in their fight against pirates.<sup>121</sup> For the next five years, this contingent assisted the PMPF in these operations and later helped shift towards counter-terrorism after the African Union peacekeeping force in the south pushed al-Shabab north into Puntland.

The PMPF and its foreign personnel have raised questions regarding the role that contractors and mercenaries have to play in failed states. The United Nations' Somalia Eritrea Monitoring Group raised continued concerns regarding the PMPF and the foreign military personnel's participation in combat operations, as it went beyond what the Security Council envisioned for any foreign force other than the African Union.<sup>122</sup> These concerns come from the fact that the companies working with Puntland are not under a recognized legitimate command, and this has hindered the autonomous province's attempts to bring in more personnel to build up its capabilities. After the departure of Saracen from the area, the government in Puntland has searched for other contracting firms to take over Saracen's role and continue the PMPF training programs.

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<sup>120</sup> James Bridger and Jay Bahadur. "The Wild West in East Africa." *Foreign Policy*. Last modified May 30, 2013. <https://foreignpolicy.com/2013/05/30/the-wild-west-in-east-africa/>.

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*

This blurring of the lines between mercenaries and other forms of private force has taken place in other regions as well. For instance, Nigeria hired a number of private groups in their ongoing fight against Boko Haram to oversee protection of the last election cycle in the country in 2015. A large part of these men came from STTEP, under the direction of Executive Outcome's co-founder Eeben Barlow, who discussed the role his company played in shaping the aggressive strike force that pushed back Boko Haram during a seminar at the Royal Danish Defense College.<sup>123</sup> The Nigerian government went shopping for foreign assistance after the United States refused to provide military equipment, and blocked other foreign military sales, to Nigerian forces due to human rights violations.<sup>124</sup> This shopping included a search for both advisors and trainers as well as equipment, which led to the hiring of foreign soldiers.

Nigeria's use of foreign contractors shows the concerns that states have in dealing with unconventional conflicts that have become part of the norm over the last few decades. Barlow said in his interview that the initial plan with Nigeria was for his men to train a team to free the schoolgirls captured by Boko Haram, but this changed to schooling the largely traditional army in "unconventional mobile warfare".<sup>125</sup> One diplomat based in Nigeria's capitol of Abuja told Reuters that the mix of security personnel was "an incoherent mix of people, helicopters and random kit from all sorts of

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<sup>123</sup> Colin Freeman. "South African Mercenaries' Secret War on Boko Haram." The Telegraph. Last modified May 10, 2015. <https://www.telegraph.co.uk/news/worldnews/africaandindianocean/nigeria/11596210/South-African-mercenaries-secret-war-on-Boko-Haram.html>.

<sup>124</sup> Siobhan O'Grady and Elias Groll. "Nigeria Taps South African Mercenaries in Fight Against Boko Haram." Foreign Policy. Last modified March 12, 2015. <https://foreignpolicy.com/2015/03/12/nigeria-taps-south-african-mercenaries-in-fight-against-boko-haram/>.

<sup>125</sup> Freeman. "South African Mercenaries' Secret War on Boko Haram."

different sources, but there is an element of cohesion from the Nigerian army.”<sup>126</sup> While the Nigerian government insisted that the role of these forces was as technical advisors for the military, reports that came out of the country gave a somewhat different idea of how the conflict was playing out. Eeben Barlow even suggested that his men had been involved in direct combat, as his air units had been given missions in areas to the front and flanks of the strike force, utilizing a number of aircraft including refurbished Soviet-made Mi-24 Hind helicopter gunships.<sup>127</sup> In a similar fashion to the Emirati use of Colombian soldiers in Yemen, the Nigerian contractors have been imbedded with the larger Nigerian forces, and therefore protected by the same Article 47 Section 2(e) clause considering them to be attached to the regular armed forces.<sup>128</sup>

The spread of unconventional conflicts has increasingly drawn countries, such as those described above, to the private sector to fill voids in military training and doctrine at a time when security threats are in a period of constant change. And with the expanding role that private force is playing in all aspects of current international security, the lines between groups have been blurred as the number of actors increase, much as there has been a proliferation of other non-state actors in recent years. The confusion of the private military company with mercenaries comes from the grey areas in which they operate, as many of the conflicts that the world is experiencing today have no defined battle lines that allow one to delineate whether a group is operating directly on the front lines of a conflict.

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<sup>126</sup> Ed Cropley and David Lewis. "Nigeria Drafts in Foreign Mercenaries to Take on Boko Haram." Reuters. Last modified March 12, 2015. <https://in.reuters.com/article/nigeria-violence-mercenaries/nigeria-drafts-in-foreign-mercenaries-to-take-on-boko-haram-idINKBN0M80X920150312>.

<sup>127</sup> Freeman. "South African Mercenaries' Secret War on Boko Haram." See also, O'Grady and Groll. "Nigeria Taps South African Mercenaries in Fight Against Boko Haram."

<sup>128</sup> United Nations General Assembly. Protocol Additional to the Geneva Conventions of 12 August 1949, And Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977. 35.

It is important to note that private military contractors like Blackwater, DynCorp, and Triple Canopy are not the same thing as Qaddafi's mercenaries used in the Libyan Civil War. "They are bound to follow the laws of the countries where they are based and operate and, in theory, are only hired for noncombat operations like guard duty (though that line is often a thin one in war zones). Mercenary forces in West Africa, by contrast, tend to be informal networks of ex-civil war combatants rather than formal corporations like Western private military contractors."<sup>129</sup>

These informal networks of ex-conflict combatants make up only a small part of the expanded nature of the private use of force in the current environment and used by states with little regard for international law.

The same construction of informal networks of ex-conflict combatants that has been seen in West Africa is also growing in Syria. Russian involvement in the Syrian Civil War has only blurred the lines further between what has been the accepted use of private force and mercenarism. The Russian military companies operating in Syria have been deployed in tough ground fighting alongside Syrian government troops, and as the Russian government does not officially recognize their existence, it can downplay or deny any Russian casualties.<sup>130</sup> These companies have challenged the Russian government's narrative of low-cost conflict, being far more extensive than the Russian government wants to admit.<sup>131</sup> The most prominent of these companies is OSM, known informally as Wagner, which was one of Russia's first attempts at trying to create a private military company. The Russian Defense ministry hasn't publicly acknowledged their existence as lawmakers are still trying to create the legal basis for such companies,

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<sup>129</sup> Joshua E. Keating. "How Do You Hire Mercenaries?" Foreign Policy. Last modified February 23, 2011. <http://foreignpolicy.com/2011/02/23/how-do-you-hire-mercenaries/>.

<sup>130</sup> "Who Are Russia's Shadowy Mercenaries Fighting in Syria?" BBC News. Last modified February 23, 2018. <https://www.bbc.com/news/world-europe-43167697>.

<sup>131</sup> John Sparks. "Revealed: Russia's 'Secret Syria Mercenaries'." Sky News. Last modified August 19, 2016. <https://news.sky.com/story/revealed-russias-secret-syria-mercenaries-10529248>.

according to Ivan Konovalov, director of a Moscow-based security think tank involved in the process.<sup>132</sup>

The company operates outside the regular military channels, but with support of the Russian government. According to a number of former Wagner recruits, recruitment and training take place in the small village of Molkino in southern Russia, home to a Ministry of Defense special forces base, where part of the base had been handed over to the company.<sup>133</sup> One of these men, known as Alexander, had been deployed to Syria, where the company operated out of the main Russian base on the Syrian coast. He said that "There were 564 soldiers with me and we were put up at the base ... We had two reconnaissance companies, one air defence company, two assault groups and foot troops, plus heavy artillery, tanks and so on."<sup>134</sup> These units have been used in a number of battles in Syria, from the army offensive to retake Palmyra to their attack on the Syrian Democratic Forces base in the Deir al-Zour region, where they came in contact with U.S. supported coalition forces.<sup>135</sup>

The use of private military companies and paramilitary groups by Russia in Syria is part of the larger idea of hybrid-warfare that has been championed since the annexation of Crimea. These companies have gotten around the domestic ban on private military companies by "registering themselves as private defense enterprises in Russia, which guard shopping centers and other businesses, while they take on paramilitary contracts

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<sup>132</sup> Thomas Grove. "Up to Nine Russian Contractors Die in Syria, Experts Say." Wall Street Journal. Last modified December 18, 2015. <https://www.wsj.com/articles/up-to-nine-russian-contractors-die-in-syria-experts-say-1450467757>.

<sup>133</sup> Sparks. "Revealed: Russia's 'Secret Syria Mercenaries'."

<sup>134</sup> Ibid.

<sup>135</sup> "Who Are Russia's Shadowy Mercenaries Fighting in Syria?" See also, "Russia Admits Heavy Casualties in Syria." BBC News. Last modified February 20, 2018. <https://www.bbc.com/news/world-europe-43125506>.

abroad.”<sup>136</sup> These companies also have operated in conjunction with shell companies operated by Russian oligarchs close to the Kremlin, and one of these companies, Evro Polis was added to the U.S. Treasury’s sanctions list in early 2018.

The company was described by the U.S. Treasury Department as a Russian company that has contracted with the government of Syria to protect Syrian oil fields in exchange for a 25% share in oil and gas production from the fields. It said the company was "owned or controlled" by Yevgeny Prigozhin, who is also believed to be funding Wagner. A rich businessman close to President Vladimir Putin, Mr. Prigozhin is on the US sanctions list because of his links to the eastern Ukraine separatists.<sup>137</sup>

Without direct recognition or oversight by their home government, these companies represent one of the closest cases of private military force to mercenarism in the current security environment. Taking part in direct hostilities, these groups may fall under the Article 47 definition of mercenarism, unless they could prove that their forces are “nationals of a Party to the conflict”, as recognized under Article 47 Paragraph 2 (d).<sup>138</sup>

### **The Private Military Contractor**

Following in a long tradition of private force, the new form of the private military industry is seen most prominently in the private military companies and those who work for them, the private military contractors. While some of the groups looked at in the last section are recognized private military companies, those groups were involved in direct combat operations. Much of the private military industry is based in services outside of tactical operations and protective security services, but the current security environment has shifted the role of contractors to an increasingly combat oriented nature.

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<sup>136</sup> Grove. "Up to Nine Russian Contractors Die in Syria, Experts Say."

<sup>137</sup> "Who Are Russia's Shadowy Mercenaries Fighting in Syria?"

<sup>138</sup> United Nations General Assembly. Protocol Additional to the Geneva Conventions of 12 August 1949, And Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977. 35.



Few modern PMCs fit the Article 47 definition of ‘mercenaries’ and, indeed, spokesmen for such companies insist they rarely engage in combat and provide military skills only to legitimate, internationally recognized governments. The ICIJ investigation found that a wide range of companies – from large corporations that offer military training, security, landmine clearance and military base construction to start-up entrepreneurs offering combat services and tactical training – are in what has become the complex and multibillion-dollar business of war.<sup>139</sup>

These companies have been supported by the poor conditions of many state militaries in the developing world. The overall decay of state forces in these regions and rising challenges have provided this opening for the private sphere, at a time when states are less willing and less able to guarantee their sovereign autonomy and have increasingly delegated these tasks to others.<sup>140</sup>

Erik Prince’s domestic battles with Congress overshadowed the work that his company, Blackwater did in Iraq and Afghanistan, instead being remembered for a number of high-profile questionable shootings that took place in the countries. His story also illustrates the problems that private military companies can face when they attempt to provide the public with information as to how they operate. For instance, when Prince testified before the U.S. House of Representatives Committee on Oversight and Government Reform, he was prohibited under the State Department Worldwide Personal Protective Services (WPPS II) contract’s gag clause to speak about the contract itself to anyone other than his legal team or State.<sup>141</sup> Prince’s concerns about the gag clause

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<sup>139</sup> Peterson. "Privatizing Combat, the New World Order."

<sup>140</sup> Singer. *Corporate Warriors*. 56-57.

<sup>141</sup> Prince. *Civilian Warriors*. 234-235. See also: Committee on Oversight and Government Reform, U.S. House of Representatives. "*Blackwater USA*" *Hearing Before the Committee on Oversight and Government Reform, U.S. House of Representatives*. Washington, D.C.: U.S. Government Printing Office, 2008. <https://www.gpo.gov/fdsys/pkg/CHRG-1110hrg45219/pdf/CHRG-1110hrg45219.pdf>.

contained within WPPS II was also supported by David Isenberg, a policy analyst and writer on international security issues, who noted the following,

The State Department ordered Blackwater not to disclose information about its Iraq operations without approval from the Bush administration. The State Department official, Kiazan Moneypenny, wrote Blackwater vice president Fred Roitz to “advise” him of Blackwater’s obligations under the State Department’s contract. Among them was this statement: “All documents and records (including photographs) generated during the performance of work under this contract shall be for the sole use of and become the exclusive property of the U.S. government.” These obligations, according to the contract, exist in perpetuity, not just until the contract expires. As a result, Moneypenny told Roitz to make “no disclosure of documents or information generated under [the contract] unless such disclosure has been authorized in writing by the Contract Officer.”<sup>142</sup>

The nature of limited U.S. government oversight of contracts awarded to private military companies allowed for the WPPS II contract to lack transparency, while also blocking the companies themselves from disclosing pertinent information outside the State Department approved channels.

The prepared statement of Ambassador Richard J. Griffin, Assistant Secretary of State for Diplomatic Security, from a hearing on this same issue revealed a number of details relating to the WPPS II contract and the role of private military contractors in protecting State Department personnel in foreign countries.

After the bombing of the US Embassy in Beirut in the mid-1980s, private companies were afforded the opportunity to compete for security contracts, and the employment of security contractors had become a critical tool for providing services necessary to protect U.S. embassies, consulates, Foreign Service personnel and ambassadorial residences in more than 111 countries worldwide. As a result of the deployment of diplomats to high risk areas, Diplomatic Security

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<sup>142</sup> David Isenberg. "The State Department Tells Us How They Really Felt: Part 1." HuffPost. Last modified April 18, 2012. [https://www.huffingtonpost.com/david-isenberg/state-department-blackwater\\_b\\_1280847.html](https://www.huffingtonpost.com/david-isenberg/state-department-blackwater_b_1280847.html). It was on Isenberg’s second FOIA request to the State Department, filed three and a half years earlier in September 2008, that he received partial return of contract documents relating to the WPPS contracts.

began using civilian contract personal security specialists (PSS) to fulfill their priorities.<sup>143</sup>

The use of these contractors allowed the State Department to meet the increased protective duties that came as a result of the conflicts in Iraq and Afghanistan, while giving them the flexibility to rapidly adjust the level of security personnel deployed based on changing threat environments. After the Iraq invasion, the WPPS initiative received additional task orders, and as DynCorp was no longer able to meet the full mission requirements, Blackwater USA and other contractors were added to the new WPPS II contract in 2005.<sup>144</sup> The WPPS and other contracts have created a place for private companies to provide tactical protective services to foreign heads of state, diplomats, and other high-level officials, in highly volatile environments.

With the growing economic costs of conflict, private contractors were seen as a solution to lessening the burden on states, much as the United States realized in Iraq. As of the time of Ambassador Griffin's testimony, private contractors involved in the WPPS II contract accounted for annual costs of \$570,882,962, with the costs for Iraq by itself reaching \$520 million.<sup>145</sup> And of a final note in looking at this sole contract were the statistics he provided in regards to incidents involving PSS personnel. "From January 1 to September 18, 2007, PSS contractors conducted 3,073 missions in Iraq, out of which there were 77 incidents that resulted in the use of weapons. These missions occurred during a period in which there were 54,236 recorded attacks (an average of 6026 per

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<sup>143</sup> *Private Security Contracting In Iraq And Afghanistan: Statement of Ambassador Richard J. Griffin, Assistant Secretary of State for Diplomatic Security, Testimony before the House Committee on Oversight and Government Reform.* Washington, D.C.: U.S. Department of State, 2007. Accessed June 20, 2018. <https://2001-2009.state.gov/m/ds/rls/rm/93191.htm>.

<sup>144</sup> *Private Security Contracting In Iraq And Afghanistan: Statement of Ambassador Richard J. Griffin.* See also, Prince. *Civilian Warriors.* 2014.

<sup>145</sup> *Private Security Contracting In Iraq And Afghanistan: Statement of Ambassador Richard J. Griffin.*

month) in Iraq.”<sup>146</sup> The ability to utilize private actors in these mission areas meant that the regular military could be focused on the counterinsurgency mission without having to spend extraneous resources on outside responsibilities.

In his autobiography, Erik Prince noted that the rules of engagement that had been drawn up for the company by the State Department under their contract prevented the Blackwater contractors from firing warning shots when confronted with possible threats or unidentified armed persons. As part of the Mission Firearms Policy, “Warning shots are not authorized. At no time will a weapon be fired into the ground or air as a warning to stop a threat. If at all feasible, other warnings, visible, verbal, and combination will be used before [the next level of deadly force is authorized]”<sup>147</sup> The State Department regarded this policy as paramount to protecting human life, while acknowledging that there is necessity in some cases, where there is no safe alternative to using force in the face of imminent and grave danger.<sup>148</sup> This use of force policy helps to illustrate how even when operating in insurgent environments where there are no clearly delineated front lines, states seek to separate their contractors from direct combat.

The industry has developed at a rapid pace since the end of the Cold War, and especially so after the attacks of September 11, 2001. The International Consortium of Investigative Journalist report used in this research revealed at least 90 private military companies that had operated in 110 countries worldwide at its time of publication.<sup>149</sup>

Most of these companies, which provide services that have normally been associated with a national military force, including military training, intelligence, logistics, combat and security in conflict zones, are headquartered in the United

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<sup>146</sup> Ibid.

<sup>147</sup> Prince. *Civilian Warriors*. 213-214.

<sup>148</sup> *Private Security Contracting In Iraq And Afghanistan: Statement of Ambassador Richard J. Griffin*.

<sup>149</sup> Peterson. "Privatizing Combat, the New World Order."

States, Britain and South Africa, while the bulk of their services are performed in conflict-ridden countries in Africa, South America and Asia.<sup>150</sup>

The reasoning behind headquartering these companies in a select few nations is partly due to the mix of defense activities and centers of economic operations. Executive Outcomes was one of the most prominent early companies that followed this trend. The company was registered in Great Britain as far back as 1993, in part because “London is an international centre of informal defense and security activity, arms dealing and war profiteering.”<sup>151</sup> This reiterates the idea that the markets for force have been tied to economics, and that the historical economic centers have become the new centers for the direction of this growing industry.

While the United States government historically provided military training and other services to foreign governments directly, the explosion of the private military industry in the wake of the Balkans conflict created an upward trend of out-sourcing. Even as far back as 1995, the Pentagon was looking to lower the direct costs and a report from the Defense Science Task Board, a standing committee that advises on technological, scientific, and other issues, supported this. The report “suggested that the Pentagon could save up to \$6 billion annually by 2002 if it contracted out all of its support functions to private vendors, except those that deal directly with war fighting.”<sup>152</sup>

One of the most important questions that continues to arise when looking at PMCs, mercenaries, and the use of private force is the aspect of their motivation. For many the lure of private gains or profits drive these men and women, as well as the companies they work for, to work in global hotspots and warzones. While profit is seen

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<sup>150</sup> Ibid.

<sup>151</sup> Harding. "The Mercenary Business: 'Executive Outcomes'." 88.

<sup>152</sup> Peterson. "Privatizing Combat, the New World Order."

as a primary motivating factor, at the same time motivations can shift over time. This was illustrated in the case of the Prussian wing of the Teutonic Order during the Medieval Period, as their political situation became complicated when they went to war against Christian Poland, and the institution found it necessary to recruit mercenaries.<sup>153</sup> The recruitment need of the Teutonic Order thus emphasized the nature of motivation for paid men, as chivalry and religion had previously represented a reason for service in one conflict, but monetary gain later became the main motive for participation.

While many private military companies operate within the industry respective to their home nations, at the same time they have become multinational in nature. The spread of conflict over the last two decades has created a security vacuum that states are no longer able to fill themselves, and these states have turned to this developing private military sector to fill their unmet security concerns.

### **Foreign Nationals**

While the general idea of mercenaries acknowledges the foreignness of soldiers involved in a conflict, some foreign soldiers serve states other than their own in times of conflict as part of tradition backed arrangements and alliances. Section 2(e-f) of Article 47 of the Geneva Conventions Protocol Additional was written in part to proscribe the accepted use of foreign nationals within the military.<sup>154</sup> This protection was developed in the law to outline accepted forms of noncitizen military service.

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<sup>153</sup> Ekdahl. "The Teutonic Order's Mercenaries during the 'Great War' with Poland-Lithuania (1409-11)." In *Mercenaries and Paid Men*. 345.

<sup>154</sup> United Nations General Assembly. Protocol Additional to the Geneva Conventions of 12 August 1949, And Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977. 35.

One of the most visible cases of this acceptance in action has been the French Foreign Legion, which was designed to fight for France in regions where French citizens were either unwilling or unable to fight. “In its first version, the Legion was seen as a rough mercenary force that guaranteed immunity from criminal prosecution, as well as a new life and French citizenship. Now in its third, the official image of the Legion is of an elite fighting force, compared to the British SAS.”<sup>155</sup> This current version of the Legion has gained renown for its ability to deploy to conflicts in support of the policies of the French government and handle even the most difficult of missions assigned.

The modern Legion is composed not just of infantry, but also has paratroopers, engineers, and armored cavalry. The paratroopers are based on the island of Corsica, in part because they are still not trusted to be on the mainland after being involved in a coup attempt in 1961.<sup>156</sup> While their most recent action was in Mali against al-Qaeda, units have been stationed in French Guiana and the United Arab Emirates. Of note is that when a recruit joins the ranks of the Legion, they swear their allegiance not to France, but to the Legion itself.<sup>157</sup> Those that make it through training sign a five-year contract, which can be renewed, and at the end of three years legionnaires have the option to take French citizenship. “A long-standing tradition of the Legion is that any legionnaire wounded in action automatically gets his citizenship, whether or not he completes his service, becoming *‘Français par le sang versé’* (French through spilt blood).”<sup>158</sup> This tradition of citizenship through blood is questionable when looking at the current legal

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<sup>155</sup> Robert Twigger. "The Legend of the Legion." Edited by Sam Dresser. Aeon. Last modified April 10, 2017. <https://aeon.co/essays/why-young-men-queue-up-to-die-in-the-french-foreign-legion>.

<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

<sup>158</sup> Ibid.

regime, as the tradition offers substantial rewards for combat service, that go beyond what can be offered to citizens, as regular citizens already have what many in the Legion seek for themselves as a bonus for their employment.

The Legion's history is a brushstroke of French conflict, having served the French government since its conception in 1831. The Legion earned its reputation first in the conflicts in North and West Africa as France sought to colonize these regions. The romance of the Legionnaire's life attracted many well-born men into its ranks, including King Peter I of Serbia, Prince Aage of Denmark, Crown Prince Bao of Vietnam, Louis Prince Napoléon VI and Louis II Prince of Monaco.<sup>159</sup> Since then the Legion has provided a serious attraction to young men over the years because in being an elite fighting force, they have gotten to fight a lot. In the last fifty years, the Legion has played a role in countless conflicts, in roles from a peacekeeping force in Lebanon to the front lines of the battle against Islamic extremism in Mali.<sup>160</sup>

The British also developed a series of units similar in nature to the Legion, known as the British Gurkha regiments. These units are drawn from the Gurkhas of Nepal and serve in the British Army as part of a tradition dating back to the British East India Company. "Gurkhas are currently recruited into the British Army under the 'Tripartite Agreement' reached between the governments of Nepal, India and the United Kingdom in 1947. They are regular soldiers in the Armed Forces of all three countries. There are some 3,400 Gurkhas in the British Army today."<sup>161</sup> These units are protected from prosecution under international law as they are fully integrated into the British Armed

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<sup>159</sup> Ibid.

<sup>160</sup> Ibid.

<sup>161</sup> "Gurkhas and the Term 'Mercenary'." Welcome to the Gurkha Brigade Association. Last modified January 8, 2018. <http://www.gurkhabde.com/gurkhas-and-the-term-mercenary/>.



Forces, as the Geneva definition excludes anyone who “is a member of the Armed Forces of a party to the conflict.”<sup>162</sup> The arrangement between Great Britain and Nepal allows for the British government to utilize a number of units drawn specifically from a foreign base of soldiers with a history of loyalty.

While there are other examples of foreign nationals serving in state militaries, the French Foreign Legion and the British Gurkha Regiments represent how traditional units have been exempted from the legal definition as a means of protecting legitimate military units. As part of this concept, it is also common practice for states to provide Loan Service personnel and training units to work within the armed forces of allied nations, while also granting resident ‘aliens’ a fast track to citizenship in exchange for service.<sup>163</sup>

### **Peacekeeping and Humanitarian Business**

Another aspect of note in the current security environment is the development of United Nations peacekeeping forces since the 1950s. In its current form, peacekeeping operations require outside states to commit troops to operations under the supervision of the United Nations. This design has been questioned in recent years, as continued interventions and a rise in conflict have created a strain on the ability of the international organization to effectively oversee the protection of civilians in warzones. Governments have begun to join the calls from the private industry in recommending the possibility of utilizing private contractors in low-intensity conflicts.

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<sup>162</sup> United Nations General Assembly. Protocol Additional to the Geneva Conventions of 12 August 1949, And Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977. 35.

<sup>163</sup> Douglass Porch. "What Ever Happened to the French Foreign Legion?" Military Times. Last modified December 21, 2017. <https://www.militarytimes.com/off-duty/military-culture/2017/12/21/what-ever-happened-to-the-french-foreign-legion/>.

In early 2002, the British government's Foreign and Commonwealth Office released a report titled "Private Military Companies: Options for Regulation." The report argued that PMCs could actually aid in low-intensity conflicts and proposed regulating them as soon as possible rather than leaving them to operate unchecked. The British press, however, had a field day with the notion that "mercenaries" would take the place of blue-helmeted U.N. soldiers, and a public outcry ensued.<sup>164</sup>

This has led to an interesting cross among peacekeeping and humanitarian operations and the private military industry. The prevalence of areas of conflict in the past thirty years has created a need for humanitarian operations to consider private sector security and defense packages in areas of conflict where they operate.

With the expanding debate on the norm of "Responsibility to Protect", private actors have become the guardians of governance when states have suffered a degree of fatigue from the pace of conflict that the world is now experiencing. This conversation goes back to the 1990s and the well-publicized case of Sierra Leone's use of Executive Outcomes to repel insurgents who had violated human rights on a massive scale brought the possibilities for privately enhanced security to the agenda, and since there has been mounting interest in the topic.<sup>165</sup>

Actors in the private military industry have utilized this opening in the humanitarian markets for both the benefit of people in conflict zones as well as a way of showcasing the services they have to offer.

"In seeking to penetrate the market for humanitarian services, profit-oriented actors are engaged in recycling themselves. For example, doing "humanitarian" work allows Kellogg, Brown & Root, and DynCorp to emphasize their experience in rebuilding war-torn societies and economies rather than become bogged down with accounting for their ties to companies or parties sustaining or propelling conflicts."<sup>166</sup>

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<sup>164</sup> Peterson. "Privatizing Combat, the New World Order."

<sup>165</sup> Thomas G. Weiss. *Humanitarian Business*. Polity Press, 2014. 43.

<sup>166</sup> *Ibid.*, 44.

With a number of conflicts in the Middle East on the cusp of coming to a close, this ability of private actors to emphasize experience in post-conflict reconstruction and other security domains provides a boost to local economies that can invest in areas other than military buildups.

One study sponsored by Canadian NGOs in the aftermath of the international paralysis for the Rwandan genocide went so far as to recommend the creation of a private NGO army. If governments were spineless, so the argument goes, why not privatize security so that outside humanitarians can come to the rescue.<sup>167</sup> This report, published by the University of Toronto's Center for International Studies, revealed that one of the core dilemmas facing humanitarians stems from the security vacuum engendered by the emergency itself and the unwillingness of internationally sanctioned, legitimate forces to address the need for security.<sup>168</sup> This dilemma has allowed private firms, especially those with significant military capabilities to provide physical security to be viewed as possible options. As humanitarianism has come to include both the physical protection for victims and aid workers, and as the UN and state-based security resources are often unavailable or insufficient, the "idea of using private military contractors to provide protection or facilitate access for humanitarian agencies has gradually taken hold."<sup>169</sup>

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<sup>167</sup> Weiss. *Humanitarian Business*. 45. See also Michael Bryans, Bruce D. Jones, and Janice G. Stein. "Mean Times: Humanitarian Action in Complex Political Emergencies - Stark Choices, Cruel Dilemmas." *Coming To Terms* 1, no. 3 (January 1999). [https://reliefweb.int/sites/reliefweb.int/files/resources/4DDAAC6BEA969F63C1256F62004A6908-MeanTimes\\_CARE\\_Jan\\_1999.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/4DDAAC6BEA969F63C1256F62004A6908-MeanTimes_CARE_Jan_1999.pdf).

<sup>168</sup> Michael Bryans, Bruce D. Jones, and Janice G. Stein. "Mean Times: Humanitarian Action in Complex Political Emergencies - Stark Choices, Cruel Dilemmas." *Coming To Terms* 1, no. 3 (January 1999). [https://reliefweb.int/sites/reliefweb.int/files/resources/4DDAAC6BEA969F63C1256F62004A6908-MeanTimes\\_CARE\\_Jan\\_1999.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/4DDAAC6BEA969F63C1256F62004A6908-MeanTimes_CARE_Jan_1999.pdf). Executive Summary.

<sup>169</sup> Weiss. *Humanitarian Business*. 44-45.

## DISCUSSION

In the rapidly changing nature of conflict that the world has experienced in the last two decades, with a proliferation of private actors involved in the international sphere, there are some important features looking forward. The result of failures of governance since the end of the Cold War has been conflict and the reordering of the state system, which has opened up new spaces for private military actors to operate.<sup>170</sup> This final section looks at some of the newly developing aspects of private force and what implications come from this changing nature.

### Looking Forward

This breakdown of state sovereignty, from interventions to the proliferation of non-state actors, as well as questions of citizenship in the new millennium has provided the opening for the private military industry to grow while also contributing to the breakdown of previous norms against the use of private force. The changing nature of citizenship has supported this breakdown, as states have begun offering citizenship in exchange for services rendered on behalf of the state, both in domestic aspects as well as militarily. When South Korea went athlete shopping after winning the hosting rights to the 2018 Winter Games in 2011, the country opened up what could potentially be a can of worms in other fields. “South Korea followed a familiar strategy for host nations that do not excel at winter sports ... It went shopping, hiring a number of foreign coaches and

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<sup>170</sup> Singer. *Corporate Warriors*. 50.

granting citizenship to athletes from other countries.”<sup>171</sup> While some of the naturalized athletes had ties to the country and gained dual citizenship, others were essentially Olympic mercenaries, seeking the chance to win an Olympic medal.<sup>172</sup> The drive for competitive self-interest in both the individuals as well as the state pushed the boundaries of the nature of citizenship for Olympic glory.

For much of the world, the privatization of war and peacekeeping has already become an established feature of geopolitical life. For instance, even non-state actors have looked to the private industry in supporting their goals. With the rise of the Islamic State in 2012-13, a number of private actors became involved in the brewing conflict in Iraq and Syria, with many supporting the Islamists in the region. Malhama Tactical, the world’s first jihadi private military contractor and consulting firm, isn’t an enormous military conglomerate like many of the companies that work in the security sectors.<sup>173</sup> The group has specialized their services to provide training programs that have become renowned within the region.

While many of their Russian compatriots have become front-line shock troops in Syria, the men of Malhama Tactical have carved out their own distinct niche between the worlds of professional PMCs and jihadi groups in Syria. The company trained fighters from Ahrar al-Sham and Jabhat Fateh al-Sham in 2016 as they prepared to fight government forces in the urban battlefields of Aleppo. Malhama Tactical has also taken social media very seriously, and in advertising its services through Facebook, YouTube, Twitter and other sites has created a reach that far outsizes the company’s true size.<sup>174</sup>

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<sup>171</sup> Jere Longman and Chang W. Lee. "South Korea Got the Winter Games. Then It Needed More Olympians." The New York Times. Last modified February 24, 2018.

<https://www.nytimes.com/2018/02/09/sports/olympics/south-korea-naturalized-citizens.html>.

<sup>172</sup> Longman and Lee. "South Korea Got the Winter Games. Then It Needed More Olympians."

<https://www.nytimes.com/2018/02/09/sports/olympics/south-korea-naturalized-citizens.html>.

<sup>173</sup> Rao Komar, Christian Borys, and Eric Woods. "The Blackwater of Jihad." Foreign Policy. Last modified February 10, 2017. <https://foreignpolicy.com/2017/02/10/the-world-first-jihadi-private-military-contractor-syria-russia-malhama-tactical/>.

<sup>174</sup> Ibid.

The growth of the company came as an offshoot of the prolonged nature of the Syrian Civil War, in which a number of private groups have been involved in different capacities. The outfit's mixture of extremist ideology with the privatization of war is a unique and troubling trend, and as Sean McFate points out "A jihadi group doing this is a new level because if you're talking about hardcore idealists paying for [military training], then that's a milestone of modern warfare."<sup>175</sup> This shake up of the war in Syria has repercussions for the future of the larger global military-industrial complex, as this new breed of entrepreneurial jihadi has mixed with the expanding private military industry.

What this expansion of use in the current international security environment has illustrated is that the world is potentially on the cusp of breaking the cycle of mercenary use, and a return to the historical norm of the utilization of private force in conflict. While there is international law to contend with, law at the international level is based in customary use and acceptance and not legal precedent. This means that if the custom leans towards greater acceptance of use, there is the possibility that the law and legal definitions could be left behind as part of an idealist worldview.

The acceptance of Russian mercenary and paramilitary use in Ukraine and Syria has created another dilemma moving forward for the international community in addressing the role of private actors in conflict. While economic sanctions were imposed on Russia for the country's actions in Ukraine, the general acceptance of their disregard for sovereignty and paramilitary force represents a failure of the legal regime to hold state actors accountable. It also represents the possible establishment of a custom or practice

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<sup>175</sup> Ibid.

that could lead to the dissolution of the conventions if other states fail to recognize and respond to possible uses of mercenaries. Continued acceptance of these actions degrades the legal regime, as it is not based in legal precedent but recognized custom, and Russia has recognized this in a similar way to China's testing of sovereignty in the South China Sea and their use of Air Defense Identification Zones along the East China Sea.

## **Conclusions**

The blurring of the grey areas between private and public force and the use of privatized military in increasingly corporate structures has created a new conceptual idea of how private force fits into the politics of global governance. As the world has seen, there is a rich historical tradition of the utilization of private military industries and markets for force. From the auxiliaries of the Classical Period to the PMCs of today, this tradition has been tied to military advancements, and this will continue into the future.

The consensus definition of mercenarism arrived at by the international community in Article 47 of Protocol I Additional to the Geneva Conventions is a modern construct, based in the ideas of the state-centric world that had been a standard since the Treaty of Westphalia. The words that have historically been used to describe the behavior of private use of force are at a point in which they have encountered a new terminology and actor behavior. As the world looks to the future, the idea of foreignness is changing, both forward looking as well as moving backwards. The reemergence of nationalist ideals in the past few years has seen attempts to move back to this state-centric international system even as greater forces are pushing back.

The United States pushed the ideals of the capitalist world system during the Cold War, and what developed out of this was a dependence upon the private sector for services which has helped drive the resulting expansion of the private military industry. The debate over the use of mercenaries will continue to center around economics, as the world has seen the development of a globalized economy where a multitude of actors are involved, from states to multinational corporations to individuals. The transactional basis of military service in war, and the costs associated with raising forces has become a contentious topic of debate among policymakers as technological transformations have led to new military policies in the West. In the developing world, private force has been seen as an accepted part of the business of war, and a force multiplier in competition with regional actors.

As states begin to cede the monopoly on use of force to bodies outside their control, the development of competitive markets for different military services have helped drive the revolution in military affairs and the expansion of the use of private force. As non-state actors have begun to utilize these markets in their competitive self-interests, there has been a shift in the historical cycle of mercenary use. The world currently stands at the cusp of a new era in which the expansion of use in the current international security environment could have a chance of breaking the cycle of use.



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