Mercenaries and Private Military Companies
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The large-scale employment of private contractors in support of the US-led wars in Iraq and Afghanistan has been hailed by some analysts as one of the most significant changes in the conduct of armed conflict in the contemporary era. It has also led to numerous accusations of mercenarism being directed against these contractors. Despite the strongly negative connotation associated with the mercenary label, surprisingly little focused analysis of the ethics of contracted force has been published.

Background

Mercenaries have long featured in armed conflicts. The use of mercenary armies in Europe was considered a legitimate means of force generation until the Thirty Years’ War of 1618–48. That war was fought largely by mercenary armies on all sides, and is considered to have been one of the most destructive conflicts in European history. The war ended with the signing of the Treaty of Münster on October 24, 1648. This treaty, when grouped together with the earlier Treaty of Osnabrück (May 15, 1648), is generally referred to as the Peace of Westphalia, and is widely considered to have established in international law and practice the principle of state sovereignty. This, together with much of the blame for the destructiveness of the Thirty Years’ War having been laid at the door of mercenary forces, led to the emergence of a norm against the use of mercenary forces.

While large-scale use of mercenary forces has not been a feature of conflicts in the modern era, mercenaries have remained active throughout the world, particularly in Africa. Stories (some of them true) of the exploits of men like “Mad” Mike Hoare and Bob Denard contributed to an almost glamorous reputation for mercenaries in the mid to late twentieth century. A more recent phenomenon, particularly since the end of the Cold War, has been the emergence of the private military and security industry. Private military and security companies, or PMSCs (sometimes referred to as private military firms, private military companies, or private security companies), now provide a myriad of services that have, until recently, been largely performed by the regular military.

A notable early example was Executive Outcomes, a South African company started by Eeben Barlow in 1989, which employed mostly former apartheid-era South African military personnel. Active throughout most of the 1990s, Executive Outcomes is best known for its actions in Angola and Sierra Leone. In both cases, it was employed by the national government to train and support national armed forces engaged with opposing rebel movements. By most accounts, Executive Outcomes was militarily effective and was robust in its use of force (which included artillery, armored fighting
vehicles, helicopter gunships, and fixed-wing strike aircraft). Indeed, in Sierra Leone, it was credited with playing a key role in pushing back the murderous Revolutionary United Front from Freetown. Executive Outcomes was disbanded in the late 1990s, and no PMSC since has approached this level of force employment, but it remains a leading example for those addressing the political, social, and ethical implications of the outsourcing of armed force to private contractors.

When after the 2003 invasion of Iraq it became clear that the United States and its “coalition of the willing” had become embroiled in a long-duration counterinsurgency campaign, the US government turned to the private sector as a way to boost its force capabilities. Peter W. Singer (2004) coined the phrase “the coalition of the billing” to refer to these contractors, with estimates of the number of private contractors in Iraq ranging from 10,000 to more than 100,000. To be sure, most of the many thousands of contractors employed in Iraq (and, increasingly, Afghanistan) are unarmed and perform services such as logistics, interpreting, advising, and training of Iraqi military and police, construction, and aviation support. According to Mark Cancian (2008), only about 1 percent of the contractors are armed, primarily offering guarding services for static facilities and convoys and close protection (bodyguard) services. Of these, the now renamed and refocused Blackwater USA is without doubt the best known. Blackwater leaped to international prominence on March 30, 2004 when four of the company’s contractors were ambushed and killed in the insurgent hotbed city of Fallujah. Their bodies were dragged through the city, mutilated, burned, and hung from a bridge— all before the watching eyes of the international media. The incident was also a significant factor leading to the US military’s unsuccessful and controversial attempt to “recapture” Fallujah from insurgents in April 2004. Blackwater again came to prominence when one of the company’s protective security details opened fire on allegedly unarmed Iraqis (killing 17) in Baghdad’s Nisoor Square on September 16, 2007. This incident led to the 2009 Iraqi government’s decision to deny Blackwater a license to continue to operate in Iraq, which in turn seems to have led to the company changing its name to “Xe” in 2009 and “Academi” in 2011.

**Ethical Issues**

Despite being a minority grouping among private military and security contractors, it is the so-called “trigger pullers” employed by companies like Executive Outcomes and Blackwater that have caught the attention of journalists and academics. Certain critics view private military and security contractors as morally indistinguishable from traditional mercenaries. By contrast, supporters point to the corporate structure of PMSCs, the range of services offered by these companies, and their relative openness about their legally binding contracts as ethically significant differences to mercenaries.

Important early examples of rigorous analysis of the issues at hand were a book chapter by C. A. J. Coady (1992) and a paper jointly authored by Tony Lynch and Adrian Walsh (2000) in the *Journal of Political Philosophy*. Both take as their starting point Niccolò Machiavelli’s comments on contracted combatants in *The Prince*.
Coady, Lynch, and Walsh read Machiavelli’s objections to contracted combatants as being effectively threefold:

1. Contracted combatants are not sufficiently bloodthirsty.
2. Contracted combatants cannot be trusted because of the temptations of political power.
3. There exists some motive or motives appropriate to engaging in war that contracted combatants necessarily lack, or else contracted combatants are motivated by some factor that is inappropriate to engaging in war.

The first two objections, Lynch and Walsh argue, carry little weight. They are empirically questionable and do not adequately distinguish the moral standing of the contracted combatant from that of the national soldier, sailor, marine, or airman. The question of motives, on the other hand, is significantly more challenging ethically. In fact, this is the most frequently encountered objection to the employment of contracted combatants.

Those concerned that contracted combatants lack some critical motivation generally focus on the *jus ad bellum* criterion of right intention, which stipulates that war may be waged only with the goal of achieving the just cause (*see war*). The general presumption is that the economic dimension of the contracted combatant’s employment, which in Iraq saw many private contractors earn several times the salary of those in the regular armed forces, excludes the possibility of him or her having the appropriate motive. For the most part, the concern is that a private contractor’s motive is objectionable in itself. But it may also be that a contractor’s alleged financial motive is instrumentally problematic. For instance, it is sometimes suggested that being motivated by profit means that private contractors are more willing to abandon their posts if the situation becomes too dangerous (*see profit motive*).

This “mercenary motives” objection has been challenged on several fronts. First, defenders of private force highlight that there may be nothing wrong with being motivated by monetary gain. For, we do not tend to rebuke those in other professions, such as lawyers and bankers, who may similarly be motivated primarily by the high wages on offer. On the contrary, it is sometimes suggested that it is desirable that those using or assisting military force are motivated by financial gain rather than, for instance, patriotism, since extreme forms of the latter motivation may lead to hypernationalism, xenophobia, and potentially the dehumanization of the enemy (and opposing civilians). Second, supporters of PMSCs argue that many regular soldiers are also largely motivated by financial gain, which plays a central role in their decision to join the armed forces. A third argument that defenders of private force make is that it is not necessarily empirically true that private contractors will be motivated by financial gain. On the contrary, defenders argue that many private contractors are predominantly motivated by apparently good motives, such as humanitarian concern. The fourth point made in response to the mercenary motives objection is that the application of the criterion of right intention to individual combatants is problematic. This is because the assessment of matters of *jus ad bellum* in just war theory is to be
undertaken by states or the representatives thereof who make the decision to go to war, rather than those who carry out the decision (see just war theory, history of). As such, the consideration of private contractors’ motives (or intentions) seems to be an irrelevancy; what matters are a state’s or its leaders’ motives (or intentions).

These replies seem to diffuse much of the force of the mercenary motives objection. However, critics of those engaged in private force can still present this objection in a qualified form. This reformulated objection runs as follows. Those engaged in private force are objectionable because, although there may be exceptions, they are more likely than regular soldiers to possess mercenary motives (given the high wages on offer in the private military and security industry), and the possession of a financial motivation in the context of military force is more morally problematic than in other professions because military force clearly involves harming others. And, even if leaders should be tasked with making decisions about jus ad bellum, it is still important on an individual basis that private contractors act with the right motive.

In addition to the issue of the alleged mercenary motives of private contractors, there is debate about the intentions of those engaged in private force. That is, there is an important distinction between motive – the underlying reason for acting – and intention – the purpose or objective of the action – at play here (Pattison 2008). For while the contracted combatant may lack what may be considered the appropriate motive, such as patriotism, she may nonetheless have the appropriate intention, such as to protect civilians in a refugee camp. A useful example here is the case of the American Volunteer Airgroup, or Flying Tigers, of World War II. Prior to the United States’ entry into the war the Flying Tigers were formed from volunteers who resigned from the US armed forces in order to fly on behalf of China, fighting against Japanese aggression. There is no question that some of the pilots and aircrew who joined the Flying Tigers did so out of a desire for adventure and lucrative remuneration, though others seem genuinely to have joined up out of a desire to fight for a just cause. Those in the former category did, nonetheless, fight with the appropriate intention: namely, to oppose the Japanese Air Force. On the other hand, it is sometimes claimed that private contractors will lack the appropriate intention since there is insufficient control of their behavior on the battlefield and, as such, they may undertake subsidiary objectives (perhaps instrumentally related to their alleged mercenary motives) that differ from their employer’s main aims.

A related criticism is that because contracted combatants cannot be relied upon to act according to patriotic duty in the way that (it is assumed) state combatants usually can, they will be less responsive to the directives they receive from elected civilians. Control, then, is the problem here. That is, there seems to be a blurring of the lines of command and control, from democratically elected representatives to soldiers, as PMSC employees are ultimately answerable to their company rather than to the state employing their services.

Certainly, following traditional models of civil–military relations such as that articulated by Samuel Huntington (1957), in which the military desire for honor is a critical feature in ensuring obedience, this appears to be a problem. However, more recent theories of civil–military relations, such as Peter Feaver’s (2003) agency
theory (which views the relationship as one of delegation, and akin to the employer-employee relationship in which it is taken as a given that the employee has a strategic incentive to “shirk”), cast doubt on how important this is (Baker 2011). In agency theory, the primary means by which elected civilians ensure the obedience of their military servants is through a range of monitoring and punishment mechanisms, and there is no conceptual reason why such mechanisms cannot be applied (with appropriate modification) to contracted combatants. For example, after the Nisoor Square incident involving Blackwater contractors, the US State Department (the branch of the US government for which the contractors were working at the time) installed cameras in the escort vehicles used by Blackwater and began recording radio communications made between the contractors. Later, as mentioned, the Iraqi government refused to grant Blackwater a license to continue to operate in Iraq—a classic case of what Feaver (2003: 91) calls “forced detachment” from service.

Critics of the industry also worry that contracted combatants represent a threat to the appropriate civil–military relationship, which is a key component of democratic governance and which envisions the military as being the armed “servants” of democratically elected officials. In weak states, in particular, there has been concern that contracted combatants may cross the line to become masters rather than servants (Musah and Fayemi 2000). Yet there is little empirical evidence to support this concern and the danger of coups is not one that clearly distinguishes the contracted combatant from his counterpart in uniform, given the regular involvement of state military personnel in coups and attempted coups.

These concerns about civilian control of the armed forces are part of a larger set of worries about the accountability of private force. One significant issue here concerns not whether PMSCs will be properly under governmental control, but rather that governments can use PMSCs to their advantage to circumvent existing democratic restrictions on the use of force. This is because it can often be much easier for governments to use private force secretly to initiate military action or to increase the size of a force without a parliamentary or public debate beforehand (which is often required when using regular armed forces). Casualties among private contractors are rarely reported and often not included in official death tolls, so using private force can also be a way for governments to evade public concern over casualties. The worry here, then, is twofold: first, the use of private force can weaken the degree of democratic control over the use of force and, second, governments may use PMSCs to engage in covert, secretive, or proxy operations that would not have been possible with regular armed forces.

In addition to these concerns about democratic accountability, critics often highlight a lack of clear legal accountability of PMSCs. That is, they argue that the private military and security industry is ineffectively regulated because the international law that prohibits the use of mercenaries (particularly United Nations Resolution 44/34, the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which presents a serious of very narrow requirements that an individual needs to meet to be classified as a “mercenary”) does not seem to apply to PMSCs. Critics also claim that the proper status of private
contractors under international humanitarian law (whether they can be regarded legally as “combatants”) is contentious. In addition, states in which PMSCs operate and in which they are based frequently lack the ability or the willingness to prosecute private contractors who commit wrong-doing.

The underlying concern here is that this lack of effective legal accountability means that private contractors frequently operate with de facto impunity in the field. This, it is claimed, means that they will be more likely to be involved in the abuses of civilians and violate the central *jus in bello* principle of noncombatant immunity (see CIVILIAN IMMUNITY). For instance, after the Coalition Provisional Authority specified that the Iraqi laws and regulations do not apply to private contractors, several contractors were alleged to have been involved in serious human rights violations of civilians, but almost no one was prosecuted. On the other hand, defenders of the industry deny that private contractors will be any more likely than regular soldiers to commit abuses. They point to similar incidents involving regular soldiers, the professionalism and high-level training of many private contractors, and reputational pressures on PMSCs to maintain a positive reputation by avoiding abuses in order to win future contracts.

Moreover, these worries about the lack of effective legal accountability of PMSCs and the violation of *jus in bello* do not seem to be fundamental objections to private force. They could conceivably be tackled by a rigorously enforced and extensive system of regulation of the industry. Indeed, many of the central objections to private force are contingent on empirical circumstances in one of two senses. First, as just noted, the objection may be contingent in that it arises largely because of the lack of effective accountability of private force, but the problems that it focuses on could be tackled by increased regulation. For instance, the worries about the circumvention of the democratic control of armed force may be alleviated by stricter rules on governments that want to hire private force in order to ensure proper parliamentary and public debate. Second, the objection may be contingent in that it applies to only some, but not all, PMSCs or private contractors. For instance, as discussed above, not all private contractors may possess mercenary motives; some contractors may be motivated predominantly by other reasons. It is a moot point whether the use of private force poses more fundamental normative concerns that, first, would apply even if PMSCs were effectively regulated, second, would not also apply to regular armed forces and, third, apply to all PMSCs (see Lynch and Walsh 2000; Fabre 2010; Pattison 2010). The most frequently highlighted and potentially most serious challenges to private force seem to concern the contingent issues discussed above.

*See also:* CIVILIAN IMMUNITY; JUST CAUSE (IN WAR); JUST WAR THEORY, HISTORY OF; MACHIAVELLI, NICCOLO; PROFIT MOTIVE; WAR

**REFERENCES**


FURTHER READINGS