

ABOUT THE INVESTIGATOR



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EXECUTIVE SUMMARY

THE MORALITY OF PRIVATE WAR: THE CHALLENGE OF PRIVATE MILITARY AND SECURITY COMPANIES

ESRC SMALL GRANT: RES-000-22-4042

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The private military industry has been growing rapidly since the end of the Cold War. Private military and security companies (PMSCs) provide a myriad of services, including the training of troops and security forces, the provision of transportation and logistics, and a number of roles more likely to involve the direct use of force, such as the protection of state officials. This privatisation of military force has led to a range of reactions. Some perceive PMSCs to be vital actors in promoting not only states' interests, but also humanitarianism worldwide. Others view them as part of a distasteful industry that enables new opportunities for Western colonialism. Although the potential benefits and disadvantages of private military force are often discussed in the literature and wider public debate on PMSCs, the ethical considerations are rarely elaborated fully. This research project therefore used normative political theory to assess the leading moral objections to the use of private military and security companies.

The Current Acquiescence in Private Military Force

Background: The use of PMSCs, especially in Iraq, has been subject to extensive negative media coverage and, at times, heavy criticism. Four problems have been highlighted in particular:

1. PMSCs are **ineffectively regulated**: There is not an effective system of national and international law to govern their use.
2. A number of private contractors have been involved in the **violation of the human rights of civilians**. This is exacerbated by the apparent lack of effective legal apparatus to prosecute those who commit wrongdoing. One widely reported incident occurred in September 2007, when Blackwater employees allegedly opened fire on civilians in Nisour Square in central Baghdad.
3. The **bidding processes** for contracts have not been competitive. Contracts have also been awarded to companies that have little or no experience in providing the services.
4. There is a lack of **governmental oversight** of PMSCs. There have been too few governmental officials to oversee the conduct of PMSCs.

As a result of these well-documented problems, there have been several initiatives to clarify and to improve the accountability of PMSCs and private contractors, contracting procedures, and the oversight of contractors.

In September 2008, seventeen states (including Australia, Canada, France,

Germany, Iraq, the U.K., and the U.S.) agreed to the **Montreux Document**, following a process initiated by the Swiss government and the International Committee of the Red Cross. More recently, industry members and other stakeholders developed the **International Code of Conduct** for Private Security Service Providers (the 'ICoC'), which is a form of industry self-regulation.

Although these efforts and initiatives have had *some* positive impact, they have done little to address the more basic issue of whether private military force is a morally acceptable way to organize its armed forces. At times, there is a general acquiescence that PMSCs are here to stay and that they will continue to play a central role in the provision of military force. The debates about improving the regulation, cost-effectiveness, and oversight of PMSCs largely overlook whether private military force is a permissible and preferable way of organizing the military in the first place. Consequently, the use of PMSCs in certain roles has increasingly gone unchallenged. Moreover, there is often an implicit assumption that, if PMSCs *were* effectively regulated and limited in the roles that they perform, their use would be morally justifiable.

The findings of this research challenge this view. In addition to the more obvious contingent problems, **the use of PMSCs also raises a number of deeper, more fundamental ethical concerns**. These give us further reason to prefer public military force (or, sometimes, none at all).

The different levels: The problems involved with the use of private military force and a market for force can be split into those at (1) the individual level (i.e., those that concern private contractors), (2) the employer level (i.e., those that concern employing PMSCs), and (3) the international level (i.e., negative, diffuse externalities).

1. The Problems at the Individual level

Mercenary Motives: Private contractors are more likely to be predominantly motivated by financial gain than regular soldiers. The motive of financial gain is morally problematic since it is typically self-regarding, rather than altruistic.

The Right to Use or Assist Force: The requirements for it to be morally

permissible to use or assist force are stricter for private contractors than those for regular soldiers. This is because private contractors, unlike most regular soldiers, are free to select the wars in which they fight. Although some private contractors may meet these requirements, this is generally unlikely.

2. The Problems at the Employer Level

The Problem of Private Choice: Contractors and PMSCs can more easily choose *not* to undertake certain operations and wars. By contrast, regular soldiers are under the authority of the regular military and so can be more easily compelled to perform services.

Effectiveness: It is questionable whether PMSCs are likely to be effective in the theatre, although there is likely to be significant variance between different PMSCs in different circumstances. For instance, PMSCs (particularly firms providing security services) are often viewed by the public as mercenaries. This can make it harder to win the hearts and minds of the local population, which is crucial in certain operations. In addition, PMSCs tend to focus narrowly on achieving their specific contract aims. In doing so, they lack concern about the broader mission objectives and in fact can sometimes undermine these.

Lack of Democratic Control: Governments can employ PMSCs to circumvent many of the constitutional and parliamentary—and

ultimately democratic—constraints on the decision to send troops into action. Using PMSCs also gives government further scope to initiate war covertly or to extend the size of state involvement without public debate beforehand. This problem is exacerbated by the general lack of transparency about the use of PMSCs.

Treatment of Personnel: The use of PMSCs raises concerns over about the abrogation of a state's responsibility of care for those fighting on its behalf. Private contractors generally do not receive the same level of support after conflict as regular soldiers and political leaders are often less concerned about the deaths of private contractors.

PMSCs and Communal Bonds: When PMSCs are employed, the potential benefits in terms of communal identity that come from having citizens defend the community are generally lost. Communal defence sometimes becomes not a matter of shared pride in the community, but simply necessary for the protection and enrichment of the atomistic individual.

3. The Problems at the International Level

Formal Constraints: The privatization of military force makes it harder to maintain the current formal constraints (e.g., current international laws) on the frequency and awfulness of warfare. Many of the current rules governing the conduct of war do not clearly apply to PMSCs and their personnel, or may not be easily enforced. In addition, the market for force enables state and nonstate actors to more easily circumvent the existing rules.

Informal Constraints: The privatization of

military force means that it is harder to maintain the informal constraints on the frequency and awfulness of warfare.

Access to Security: The market for force leads to, and exacerbates, insecurity for certain individuals.

General Instability: A market for force can be expected to increase international instability by enabling more wars and unilateralism, as well as by increasing the ability of state and nonstate actors to use military force.

The Problem with Regulation

Some of the problems could be addressed by better regulation of the industry. Yet, there are several general difficulties with achieving effective regulation:

1. **Monitoring and investigation** can be tricky and expensive since PMSCs often operate in conflict zones.
2. **The complex, globalized nature of the industry** makes effective regulation difficult since monitoring, investigation, and enforcement can involve several states and nonstate actors.
3. Several of the proposed regulatory schemes would require significant **political**

will to be achieved. This is sorely lacking in some quarters. This is due in part to the short-term benefits that PMSCs offer governments, the financial cost of regulation, the fear of reducing the flexibility that the private military and security industry offers governments, and a general laissez-faire opposition to strong systems of regulation of the market.

4. By improving the *appearance* of the effectiveness of the regulation of the industry, **the industry is likely to be seen as more reputable** and therefore the hiring of PMSCs be seen as more acceptable.

The Limits of Regulation

Even if there were the effective regulation of the PMSC industry, there would still be some deeper problems raised by the privatization of military force.

Mercenary Motives: The propensity for contractors to be more likely to be motivated by financial motives could not be tackled by effective regulation given that

motives are subjective (i.e., a feasible system of regulation could not ensure that contractors have the right mindset).

Effectiveness: Effective regulation could not guarantee that contractors and PMSCs will take on contracts (the *Problem of Private Choice*). When PMSCs are relied upon to provide vital services, this can undermine

military effectiveness. By contrast, the authority structures of the regular military mean that it is more likely (if not always certain) to perform the services. system of regulation, PMSCs would still not be able to reinforce communal bonds. The use of the market to provide military and security services would still encourage individualism.

Democratic Control: Even if there were an effective system of regulation, PMSCs are more likely to be unwilling to follow the dictates of the democratic polity. This is again because of the *Problem of Private Choice:* as private actors, contractors and PMSCs can more easily choose *not* to undertake certain operations and wars, requested by the democratic polity.

Insecurity: Even with effective regulation, PMSCs and contractors can choose not to accept a contract because it is unprofitable or too risky, thereby leaving certain individuals unprotected. To that extent, PMSCs can be expected to engage in ‘cream-skimming’, that is, be willing to provide their services only in the seemingly easier cases where there are likely to be low levels of conflict and minimum risk.

Commodification: Even if there were an effective

Implications

The ethical problems of associated with use of PMSCs and market for force are not simply contingent on the lack of regulation. They are deeper in that they cannot be addressed by regulation alone. Ultimately, the use of PMSCs should be eschewed, given the significant ethical concerns at the individual, employer, and international levels.

Associated Publications

James Pattison (due 2014) *The Morality of Private War: The Challenge of Private Military and Security Companies* (Oxford: Oxford University Press).

James Pattison (2013) “When Is It Right to Fight? Just War Theory and the Individual-Centric Approach”, *Ethical Theory and Moral Practice*, 16 (1), pp. 35–54.

James Pattison (2012) “The Legitimacy of the Military, Private Military and Security Companies, and Just War Theory”, *European Journal of Political Theory*, 11 (2), pp. 131–54.

Deane-Peter Baker and James Pattison (2012) “The Principled Case for Employing Private Military and Security Companies in

Interventions for Human Rights Purposes”, *Journal of Applied Philosophy*, 29 (1), pp. 1–18

James Pattison (2010) “Outsourcing the Responsibility to Protect: Humanitarian Intervention and Private Military and Security Companies”, *International Theory*, 2 (1), pp. 1–31.

James Pattison (2010) “Deeper Objections to the Privatisation of Military Force”, *Journal of Political Philosophy*, 18 (4), pp. 425–47.

James Pattison (2008) “Just War Theory and the Privatization of Military Force”, *Ethics & International Affairs*, 22 (2), pp. 143–62.

Copies of these publications are available on www.jamespattison.co.uk and on request (james.pattison@manchester.ac.uk)