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**“MARS MEETS MAMMON IN THE
MODERN WARFARE: A JUSTIFICATION OF
THE USE OF PMCs”**

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Academic Year 2013/2014

*To my brother Nicola.
We may be distant,
but we will always look at the same stars,
and live under the same sky.*

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INTRODUCTION

The objective of this thesis will be to examine and discuss the extremely tricky issue of the regulation of the PMCs market, and the various problems that arose in such scenario. The main goal will be to try to explain the flaws of the opponents to such regulations while providing counter-arguments and evidences that might defend the work of this new companies, that have proven themselves useful and a precious asset for all the actors that hired them, from states, NGOs, international organizations as well as private actors.

In the international relation's framework, private military firms aspire to be considered as mere industries, and so to be protected, along with their "assets", like all the other multinational companies throughout the globe, and they also claim that they answers to a specific market need: the one for security and military skills; nevertheless, the product they sells generates an huge amount of problems that goes against their possibilities for regulation.

As a matter of fact, a lot of scholars argued and pointed out that even if this private military firms have a structure that resembles the one of a "normal" industry, they sell a completely new and "tricky" product: they sells private military strength and a possibility, both for states and privates who hires them, to operate in a regime of "semi-impunity" from the restrains and the shackles of the international law.

Another problem to the “industry” aspect previously cited is that such private military firms tend to operate in some “grey areas’ of business”, because even if they are hired from legitimate actors, whether states, NGOs, UN or NATO organizations or private actors, sometimes they were used for operations that were aimed to destabilize other states or governments, and even if these cases are reducing more and more, this stained past is hunting them since then.

Other criticism against the use of this new “guns for hire” derives also for an ethical point of view. If it is taken into account that these companies can be hired for every kind of purpose, even that was most likely to happen in the past, and we consider also that the people who hire such private firms cannot respond directly for the crimes that such private actors may carry out, it springs an issue concerning the ethical reasons that pushed someone to hire these new mercenaries.

After a deeper analysis of these problems and some of the theories that supported the prohibition of the use of PMCs in the international framework, this thesis will try to provide some counter-arguments and thesis in favour of a regulation and a wider use of these private firms.

This work will also outline the positive outcomes that the choice of using such companies provided for their employers and also for the world of the international relations, since they have been used to strengthen the situation of a damaged country as well as such private firms have been used to extend the control and support of an external state to another ally, or possible one,

without struggling with the obstacles placed by the bureaucracy of the international organizations.

It will be explained why such firms are cheaper than a national army or a UN mission, and why the PMCs have achieved greater results than others actors with a lower cost for the states and in less time.

In conclusion, it will be also presented the case of the United Kingdom's effort to regulate the usage of an asset considered extremely useful as the PMCs.

CHAPTER 1: DEFINITION OF PMCs, MERCENARIES AND NORMS.

PAR. 1.1: Definition of Norms and their influence.

“Simply because they (mercenaries) have been common

does not mean that mercenaries have had

or have today an accepted place

among the armies of the world”

(S. Percy)

Mercenaries have always been a constant element of our society, and even if they contributed, in a various scale, to the definition of the nations as we know them today, they were always accompanied by a sort of moral disapprobation.

Basically, as long as there have been mercenaries, there has been a norm against their use.

It is important now to define the meaning of “norm”, and even if it might seem pretty easy, it is indeed a quite laborious task.

There is a general agreement on the general and broader definition of “norm”, which is a “standard or a pattern that is usual, typical or expected¹”, but there is a lot of different variations on the details of such definition;

Philipott argues that “norms can be defined as rules viewed as obligatory by the broad majority of people living under them, which are usually or customarily practised²”.

Mearsheimer, on the other hand, states that “institutions are essentially norms, a set of rules that stipulate the ways states should cooperate and compete with each other. They prescribe acceptable terms of state behaviour, and proscribe unacceptable kinds of behaviour³”.

The basic agreement about the definition of a norm is the fact that, while most scholars agree about what a norm is, they disagree fundamentally about what norms do, creating a sort of “weak spot” in the structure of the critics of the mercenary use.

Basically, not all theorists agree that norms can influence state behaviour, and so that a normative explanation of state action is possible⁴.

Structural realists, for example, argue that norms are not intrinsically influential, and they are basically a reflection of the distribution of power in the world based on self-interested calculation and they have no independent effect

¹ Oxford dictionary: <http://www.oxforddictionaries.com/>

² D. PHILIPOTT, *Revolution in Sovereignty: How Ideas Shaped Modern International Relations*, Princeton University Press, Princeton, 2001, p. 21.

³ J. J. MEARSHEIMER, *The False Promise of International Institutions*, International Security, Vol. 19, No. 3, 1994/1995, Jhon M. Olin Institute for Strategic Studies, Harvard University, Harvard, p. 8.

⁴ S. PERCY, *Mercenaries, The History of a Norm in International Relations*, Oxford University Press, Oxford, 2007, p. 15.

on state behaviour⁵. So since norms are created to serve the state interests, they will not be influential when they lie outside the interest of the state.

The structural realist approach struggles to explain why mercenaries are rarely used in modern warfare, since it cannot be explained by an utilitarian calculus, given the fact that “there are countries with both material and financial resources whose citizens are reluctant to fight, for instance in the United States, for such states mercenaries would seem to be an optimal solution”⁶.

So why do we analyze norms, if it is so difficult for them to explain all the aspect of state behaviour? Because norms are necessary to understand the decisions states have made about the use of private force.

Another aspect to consider, when we try to discuss the role of norms and their influence, is the role played by the “interest”, which was already quoted before.

According to structural realist theory, states behave not according to norms but according to self-interest⁷. Interests are ecogenously given, exist prior to beliefs or norms, and might include status and power in addition to strictly material factors⁸. A state determines its interests by assessing its material capacity in relation to the material capacity of other states; the

⁵ J. J. MEARSHEIMER, *The False Promise of International Institutions*, International Security, Vol. 19, No. 3, 1994/1995, Jhon M. Olin Institute for Strategic Studies, Harvard University, Harvard, p. 7.

⁶ S. D. KRASNER, *Sovereignty: An Institutional Perspective*, Sage, Newbury park, 1989, p. 92.

⁷ S. PERCY, *Mercenaries, The History of a Norm in International Relations*, Oxford University Press, Oxford, 2007, p. 20.

⁸ *Ibidem*.

difficulty with this argument is that norms and interests are often interwoven in the sense that norms can shape states interests and that they might coincide⁹.

Norms sometimes might be institutionalized in specific institutions like political institutions or international law, and also in general institutions like the institutions of war. Norms embedded in specific political institutions provide an extremely visible form of influence upon the state¹⁰.

Once part of an institution, norms can have an impact on states even when they are no longer considered to be a useful moral guide to action¹¹. As a matter of fact, the institution can promote, protect and even prolong the existence of a norm.

The influence norms have on politics can be strengthened or weakened by the presence of other norms in two different ways:

- The effect of a norm might be multiplied by support from another norm, enhancing the proscription or by making it more influential than it would be.
- The “life” of a norm, and so the influence it has, can be prolonged if it is associated with a long-lived norm.

So by examining which norms and ideas are associated with particular norms at different junctures can reveal what particular states find dangerous about mercenaries at particular times.

⁹*Ivi*, p. 21.

¹⁰ J. GOLDSTEIN, R. O. KEOHANE, *Ideas and Foreign Policy: Beliefs, Institutions and Political Change*, Cornell University Press, Ithaca, NY, 1993, p. 3.

¹¹*Ivi*, p. 5.

Nevertheless, norms can have both a “negative” and a “positive” effect on state behaviour, because they not always lead to proper “functional” and “optimal” policy decisions for states.

PAR. 1.2: Definition of Mercenaries and PMCs, a problematic issue.

*“Soldiering is about fighting,
and if need be, killing.*

*That fact can be cloaked in a
wide range of fancy garments [...]*

but when it comes right down to it,

soldiering is about hitting the enemy hard,

before they can kill you”.

(T. Spicer¹²)

The first successful international effort to legally define the figure of mercenaries, or soldiers of fortune, was made in 1977 with the Additional Protocol I of the Geneva Conventions, followed in the same year by the Convention for the Elimination of Mercenarism in Africa, drafted by the Organization for African Unity (OAU). The third document that attempted to give a definition of mercenaries was the International Convention Against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the United Nations General Assembly in 1989.

According to those three documents, a mercenary is any person who:

(a) Is specially recruited locally or abroad in order to fight in an armed conflict;

(b) 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,

¹² Tim Spicer, former head of the PMC Sandline.

material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party;

(c) Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;

(d) Is not a member of the armed forces of a party to the conflict;

(e) 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.

A mercenary is also any person who, in any other situation:

(a) Is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at:

(i) Overthrowing a Government or otherwise undermining the constitutional order of a State;

(ii) Undermining the territorial integrity of a State;

(b) Is motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise or payment of material compensation;

(c) Is neither a national nor a resident of the State against which such an act is directed;

(d) Has not been sent by a State on official duty;

(e) Is not a member of the armed forces of the State on whose territory the act is undertaken¹³.

The first issue that is evident is that the attempt of these documents to deprive mercenaries of combatant status and outlawing soldiers of fortunes itself, instead of simply trying to outlaw certain actions of mercenaries, represent an important legal

¹³ Definition taken from the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries*, from <http://www.un.org/documents/ga/res/44/a44r034.htm> visited on 10/6/2014.

departure from humanitarian international law¹⁴. As it is possible to understand from the Hague law, mercenaries have been treated as combatants, with all the privileges and duties associated with combatant status. In the post-World War II effort to outlaw mercenarism, the international community, by denying mercenaries combatant status and the right of prisoners of war, has effectively reduced its regulatory capacity of mercenaries¹⁵.

Another flaw of this definition is that in order to consider a fighter a mercenary, all the previous characteristics must coexist, and this is quite rare also because of the fact that PMCs are different than simple mercenaries, because of the fact that they provides a wide-range of activities to potential clients, from Military Operation Support (MOS) or the standard combat operations, to military advice, analysis, training and logistic support¹⁶.

The definition of “mercenary” itself has become a powerful political tool, used in order to put a label on a different group of soldier in the attempt to make it appear somehow illegitimate.

In addition to this issue, it is also true that nowadays defining mercenaries even loosely is a really difficult task, because it is hard to figure out what exactly differentiate a mercenary, also known as contractor, from a regular soldier or other fighters.

Hampson, for example, states that mercenaries are best defined in three aspects: they are foreign, motivated by financial gain and that they use force not as members of the armed forces of the state which hires them¹⁷; all three of these criteria

¹⁴J. S. MORTON, P. JONES, *The Legal Status of Mercenaries*, Politics & Policy, Volume 30, No. 4, December 2002, p. 625.

¹⁵*Ibidem*.

¹⁶*Ivi*, p. 628.

¹⁷ F. HAMPSON, *Mercenaries: Diagnosis before Prescription*, Netherlands Yearbook of International Law, Nijmegen, Holland, 1991, pp. 5-6.

are largely debatable, since they present a lot of difficulties, and a proper counter-argument will be presented later.

To provide a loose definition of a mercenary is a twofold process: first, we must understand what are the conventional definitions provided and what are some of the problems with the attributes that identify a mercenary¹⁸. Second, we must deal with the difficulties relying on financial motivation and foreign status as the defining characteristics of a mercenary¹⁹.

As previously stated, one of the main features of a mercenary is the so called “foreign component” of a hired fighter; the problem with this definition is historically inaccurate, since it was always pretty common for a nation to enlist foreign soldiers in its ranks.

In order to give a better definition of this concept, it could be possible to state that a mercenary is a fighter who is external to a conflict, rather than merely foreign; in fact, there are many foreign or external fighters who are *not* considered mercenaries at all, first of all the UN peacekeepers²⁰.

So the externality, on its own, it is not enough to define properly a mercenary, it must be taken alongside the idea of the financial motivation, even if also this motivation is, indeed, deeply problematic.

The problem lies in the fact that even modern national soldiers can be highly motivated by financial gains, sometimes even without a patriotic feeling. It is not a surprise that armies nowadays promotes themselves as a career option with a lot of

¹⁸ S. PERCY, *Mercenaries, The History of a Norm in International Relations*, Oxford University Press, Oxford, 2007, p. 51.

¹⁹ *Ibidem*.

²⁰ *Ivi*, p. 52.

incentives and benefits for their “employee”, presenting themselves as a concrete alternative to a situation where finding a good job is getting more and more difficult²¹.

Another example can be found in the Sierra Leonean civil war that finished in 2002, where both rebels and national soldiers fought, sometimes together, for the sole purpose of financial gain that could derive from both the traffic of “bloody diamonds” and looting²².

As a consequence one might state that mercenaries, like soldiers, can also fight for different and mixed motivation, and a contractor that started a task for a mere financial motivation, might adopt the cause of the client that hired him.

As regards the definition of PMCs, instead, Carlos Ortiz defines them in the following way: “Private Military Companies can be defined as legally established international firms offering services that involve the potential to exercise force in a systematic way and by military or paramilitary means, as well as the enhancement, the transfer, the facilitation, the deterrence, or the defusing of this potential, or the knowledge required to implement it, to clients²³”.

The “potential” to exercise force can materialize when rendering, for example, armed protection services in climates of instability, both on land and sea. Transfer or enhancement occurs when delivering expert military training and other services such as logistics support, risk assessment, and intelligence

²¹ An example can be found here, regarding the salary of Italian soldiers: <http://www.paginedidifesa.it/img/stipendi.militari.pdf>.

²²J. D. KANDEH, *Ransoming the State: Elite Origins of Subaltern Terror in Sierra Leone*, *Journal of African Political Economy*, 81, 1998, p. 355.

²³ C. ORTIZ, *Private Armed Forces and Global Security: A Guide to the Issues*, Oxford Praeger, Santa Barbara, Denver, 2010, p. 48.

gathering. Defusing is patent when private military personnel engage in the disposal of unexploded ordnance (UXO) and mine clearance²⁴.

Another definition of PMCs is provided by Tim Spicer, which describes them as “corporate bodies specialized in the provision of military skills to governments: training, planning, intelligence, risk assessment, operation support and technical skills²⁵”.

After this definition, it is clear that a PMC is just a company that sells a product, like Nike or Nestlè. Even if this product is quite “uncommon” for a lot of people, it is important to state that a PMC offers not only mere fighters, and even in that case under strict control due to contracts stipulated with the “customer”, but offers also protections for VIP targets, and also trainers for local armed forces, like the Afghan police that was mostly trained by contractors from the Academi, former Blackwater Worldwide, a PMC company hired by the United States; as it is written in the *Academicode of conduit*, their mission is “delivering exceptional performance and elite training and security solutions, focused on counter-terrorism, force protection, law enforcement, and security operations, which enable our clients to succeed in challenging environments around the world²⁶”.

It is important now to explain why the post-cold war era is particularly conducive to mercenarism; it is possible to underline six major reasons:

²⁴ <http://www.privatemilitary.org/definition.html>

²⁵ T. SPICER, *Unorthodox Soldier: Peace and War and the Sandline Affair*, Edinburgh, UK, UK and London: Mainstream Publishing, 1999, p. 15.

²⁶ <http://academi.com/pages/about-us/code-of-conduct>

1. The decline of the support granted to the Third World leaders by superpowers was followed by a reduction in the ability of the African leaders to maintain their power. This underscored the extent of the deterioration of many national militaries and so professional assistance has become increasingly necessary for regime stability.

2. A global reduction in the size of the militaries in the leading states has resulted in substantial reductions in the number of military advisors, trainers and forces that leading states can deploy internationally. As a result, while challenges to existing governments increased the demand for mercenaries, cuts in national militaries among leading states increased the supply side of the equation.

3. Soldiers of fortune and PMCs relates to the reluctance of the western powers to get involved in Third World conflicts, the so-called “Somali Syndrome” (1992). Not only this reduced the likelihood of actions by states individually, but also the eventuality that international organizations and group of states will respond, like the massacre of civilians perpetrated in Rwanda in 1994 and met with silence in many western capitals. As a consequence, without international assistance, states under pressures from within are more likely to turn to mercenaries and, at the same time, states wishing to military intervene without committing their own forces have turned to the use of mercenaries.

4. Globalization and the spread of capitalism are going to bring numerous new markets, many located in the Third World, into the global economic system. In order to protect and secure their personnel, investments,

resources and assets, local governments and also the Multinational Companies involved in such processes turn to mercenary companies to provide protection.

5. Africa's borders and illogical, ethnically-diverse states on the continent are being questioned and challenged, creating the need for outside assistance, often provided by mercenaries.

6. The rise of sophisticated PMCs that can perform an increasing number of combatant and non-combatant-related roles, contributes to mercenarism as well²⁷.

²⁷J. S. MORTON, P. JONES, *The Legal Status of Mercenaries*, Politics & Policy, Volume 30, No. 4, December 2002, pp. 627-628.

PAR. 1.3: The issue of the “attachment to a cause”.

*“Mercenaries must engage in combat
and run the risk of killing in order to
be criticized for doing so without
an appropriate cause”*

(S. Percy)

All the previous statements helps with the drafting of a proper counter-argument of the common definition of mercenary that was used to create all the moderns “Anti-Mercenary Norms”: even if they are meant to be taken together, the “foreign component” and the “financial motivation” are not sufficient to define a contractor, and since two flawed halves do not make a coherent whole, in the definition of a mercenary was also introduced a third component, the issue of the attachment to a cause, with the consequent result of a proper motivation to fight.

The idea of a “cause” encapsulates both the ideas, previously explained, of externality to a conflict and a simple financial driven motivation to fight, but adds also the fact that foreigners can fight without being considered mercenaries as long as they have a cause for their actions²⁸, and sometimes the

²⁸S. PERCY, *Mercenaries, The History of a Norm in International Relations*, Oxford University Press, Oxford, 2007, p. 54.

idea of “cause” might also be used in relation of the idea of “just cause” in warfare²⁹.

This concept cuts to the heart of the morally problematic issue about PMCs and their contractors because, thanks to the introduction of this new variable, it is really difficult to provide a plausible justification for killing that fall outside the area of financial gain, and this goes against the rules of the *jus ad bellum*, the right to go to war, that defines who got the possibility to kill in warfare and separate a “justified kill” from a “mere homicide”. The definition of “just cause” that has been provided throughout the years were very different, from what was considered “just” given in different situation by the Church in the medieval period, to the “web of laws” that reinforced the idea that only the sovereign state could justly engage in war in the nineteenth-century Europe, to the idea that those fighting for self-determination as part of a recognized national liberation movement had the right to use force in the twentieth century³⁰. The combination of all these aspects provided the basis to create a situation that viewed contractors as actors morally unjustifiable since they were external to all these causes, and after that the creation of a strong “Anti-Mercenary Norm”.

Despite these issues, the idea that mercenaries are not motivated by a cause while regular national soldiers are is a mere generalization; it is used, in

²⁹ I. CLARK, *Waging War: A Philosophical Introduction*, Oxford: Clarendon Press, Oxford, 1988, p. 39.

³⁰ S. PERCY, *Mercenaries, The History of a Norm in International Relations*, Oxford University Press, Oxford, 2007, p. 54.

practice, by the states that compares the two types of fighters, but it remains flawed, in a certain way.

One of the most used motivation to consider a national fighter superior to a contractor is the reason that the first one can guarantee a better behaviour than the latter, since a mercenary is motivated only by a financial gain, rather than a patriotic feeling; even if sometimes this statement might be true, it is not to be considered as an absolute truth because, as Lynch and Walsh pointed out: “it remains simply unargued that organized violence centred on strong group identification is in itself morally better”³¹. In addition, there is the problem that contractors have an “inferior explanation for *why* they kill than just about any other type of fighter³²” mostly because mercenaries decides to fight on their own, in complete independence, while regular soldiers are often compelled to fight.

As a result it was stated that regular soldiers will fight for a cause larger than themselves, and that someone else is making the decisions about whether or not the cause is worth fighting, and killing, for; nonetheless the manner in which a fight and a kill is done falls under individual responsibility and under the international humanitarian law of the *jus in bello*. Quoting Lynch and Walsh, “group identification might excuse a fighter his participation in violence, but an excuse is not a justification, as the former merely excuses something that we still consider wrong³³”. In conclusion, contractors lack the

³¹ T. LYNCH, A. J. WALSH, *The Good Mercenary?*, The Journal of Political Philosophy, 8, 2000, p. 137.

³² S. PERCY, *Ivi*, p. 55.

³³ T. LYNCH, A. J. WALSH, *Ivi*, p. 139.

possibility of giving an excuse for their decision to fight since they made it in independence, without the “moral backup” of the cause of their employer. So the attachment to a cause provides, usually, the possibility of a selfless motive, even if in practice this is not true.³⁴

³⁴ S. PERCY, *Mercenaries, The History of a Norm in International Relations*, Oxford University Press, Oxford, 2007, p. 57.

PAR 1.4: The need to “control” mercenary forces.

*“Is the essentially private,
non-governmental nature of
mercenary intervention which
seems to be the basic problem”*

(S. Burmester)

Another aspect that differentiates mercenaries from other fighters is the degree to which they are under legitimate control, in other words under the control of the entity which is understood to have the legitimate right to wage war³⁵. The idea of control encapsulates the idea that the true mercenary is an independent, private contractor selling his services or the ones of a company he commands³⁶.

The aspect of control in the previous statement is quite useful for two reasons: firstly it fills in blanks left by the conventional definition and enhances the same notion of cause expressed in the previous pages; secondly, it is historically accurate, overcoming the difficulties encountered with the previous definitions. Mercenaries, when placed under any kind of legitimate control, are regarded as less threatening in the international system, because they no longer represent private interests, even if they can be “accused” of not having an association with a cause.

³⁵*Ibidem.*

³⁶S. BURMESTER, *The Recruitment and Use of Mercenaries in Armed Conflict*, in *American Journal of International Law*, n.72, 1978, p. 38.

Generally, foreign soldiers that serve on a permanent condition in other nations' army are not seen as mere mercenaries, and neither are soldiers sent with the approval of the respective home states. As Sarah Percy states in her book, "the degree of legitimate control can explain why mercenaries are not soldiers, and conventional definitions relying on foreign status cannot³⁷".

Group of fighters or singular soldiers that serve in permanent position in foreign armies are under two types of control:

1. They remain almost totally under the control of their home state, so if they made a mistake, or act improperly, they can and will be sanctioned by their home states.

2. Units or soldiers that are permanently connected to foreign armies are under the immediate and direct control of the hiring state, as far as the line of command and behaviour is concerned; so in this way the French Foreign Legion and the Gurkhas, military units formed by indigenous people from various clans of Nepal, are not properly mercenaries.

Troops sent as a part of an alliance agreement or as a peacekeeper force with the United Nations are not considered mercenary, despite the fact that they are foreign, because those troops remain under a kind of control considered legitimate, whether it is control coming from the respective home state, as in the case of UN missions, or from an allied commander of a different state, like in the case of the Second World War; their "foreign" status does not

³⁷ S. PERCY, *Mercenaries, The History of a Norm in International Relations*, Oxford University Press, Oxford, 2007, p. 57.

exclude the possibility for those foreign soldiers to be strongly motivated by a cause, whether is their home state goal, or an alliance objective, or a UN cause.

The issue of the degree of authority control over fighters is one of the key characteristic regarding the common perception and definition of mercenary: the bigger is the degree of control over the soldiers, the lesser is probable for them to be considered mercenaries and, therefore, a threat to the stability of the nation-state system. As Zarate said, “the international community’s fear of mercenaries lies in that they are wholly independent from any constraints built into the nation-state system. The element of accountability is the tacit standard that underlies the international antipathy for mercenary activity and truly determines mercenary status³⁸”.

Mercenaries in their purest form are seen as independent contractors outside state control, but it is not the real situation, since contractors are based under a triple degree of control, provided from the State that hires them, the government where they are going to operate, which usually is not stable or concrete indeed, and the one coming from the company for which they work, that compensate the lack of stability of a temporary government³⁹.

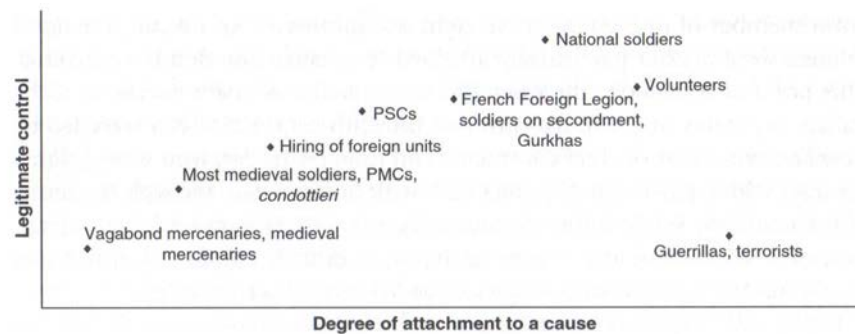
A useful tool to assess whether or not a fighter is perceived as a mercenary is to combine the previous definition of “cause” and “legitimate control”. If those variables are used as elements of a graph, it is possible to

³⁸ J. C. ZARATE, *The Emergence of a New Dog of War: Private International Security Companies, International Law and the New World Disorder*, Stanford Journal of International Law, Issue 34, Stanford, 1998, p. 18.

³⁹ *Shadow Company*

define a spectrum of fighters that helps with the definition of mercenary in a common sense.

Fig. A⁴⁰:



As it is possible to see from this chart, PMCs are perceived as less controlled by the “hiring state” than the PSCs, mostly because the former does predict the possibility to use armed force, while the latter does not, since PSCs deal mostly with military advice and training or guarding of facilities and individuals, so they do not engage in combat frequently; nonetheless, also PSCs are usually criticized for being poorly monitored and under-regulated.

In any case those critics are not quite correct, since several commentators, like Spicer⁴¹, Thomson⁴² and Mockler⁴³, make the common mistake of treating some organizations that are not mercenaries like they are, for examples the French Foreign Legion and the Nepalese Gurkas, while some

⁴⁰ S. PERCY, *Mercenaries, The History of a Norm in International Relations*, Oxford University Press, Oxford, 2007, p. 59.

⁴¹ T. SPICER, *Unorthodox Soldier: Peace and War and the Sandline Affair*, Edinburgh, UK, UK and London: Mainstream Publishing, 1999, pp. 33-34.

⁴² J. E. THOMSON, *Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Modern Europe*, Princeton University Press, Princeton, New Jersey, 1994, p. 89.

⁴³ A. MOCKLER, *The Mercenaries*, London: Macdonald, London, UK, 1969, pp. 15-16.

others, like Zarate⁴⁴ and Singer⁴⁵, does not differentiate between PMCs and PSCs, with the result of mudding the water of the issue of the definition and the control of mercenaries.

After the replacement of the just war theorist's suspicion towards mercenaries with the more receptive legal perspective of the positivists, two legal approaches have been used to address the issue of mercenary activities, one indirect and one direct.

The indirect approach derives from the eighteenth century's principle of neutrality. The state that has proclaimed itself neutral during a conflict should avoid any kind of participation, including, in theory, the provision of mercenaries. According to Hall, the principle of neutrality can be divided in three different statements⁴⁶:

1. A neutral state could not commit any act favored one belligerent's prosecution of the war.
2. Belligerents were to respect the sovereignty of neutral states.
3. A neutral state should restrain other states and private individuals from using its territory and resources for hostile purposes⁴⁷.

This three different statements were addressed in the Hauge Convention of 1907, the General Treaty of Peace and Amity of the Central American States

⁴⁴J. C. ZARATE, *The Emergence of a New Dog of War: Private International Security Companies, International Law and the New World Disorder*, Stanford Journal of International Law, Issue 34, Stanford, 1998, p. 2.

⁴⁵P. W. SINGER, *Corporate Warriors: The Rise and Fall of the Privatized Military Industry*, NY and London: Cornell University Press, Ithaca, New York, 2003, p. 8.

⁴⁶W. E. HALL, *The Rights and Duties of Neutrals*, Longmans Green, London, UK, 1874, pp. 102-103.

⁴⁷J. S. MORTON, P. JONES, *The Legal Status of Mercenaries*, Politics & Policy, Volume 30, No. 4, December 2002, pp. 633-634.

in 1923, the 1928 Habana Convention on Maritime Neutrality and the United Nations Charter of 1945. As a result, if the neutrality principle is fully articulated, it would oblige neutral states to do everything they can to prevent their citizens to take part in foreign conflicts. However, in all the previous stated conventions and treaties, the neutrality language limits in fact the obligations of the state to control their actual organization of mercenary and other irregular forces⁴⁸, and there is no obligation imposed on states to prevent their nationals from joining a mercenary force⁴⁹. In addition to this, the aforementioned resolutions regarding mercenary activities are not so solid and applicable if is taken into consideration the fact that mercenaries acts, technically, independently regarding the states from which they come from. What is evident in this reasoning is that traditional international law does not consider a state responsible for injuries caused by persons under its jurisdiction and control, so the indirect approach that tends to hold states responsible for acts of mercenaries who are their nationals is quite flawed.

The second approach to legally regulating mercenaries is the direct approach that deals directly with the mercenaries, rather than with the states form which such fighters hail from.

After the World War II, the neutrality rights started to declined, but the international legal regime failed in the attempt to strengthen the regulatory

⁴⁸ H. C. BURMESTER, *The Recruitment and Use of Mercenaries in Armed Conflict*, American Journal of International Law 72 (1), 1978, pp. 37-56.

⁴⁹ J. S. MORTON, P. JONES, *The Legal Status of Mercenaries*, Politics & Policy, Volume 30, No. 4, December 2002, p. 634.

capacity of the international community towards mercenarism⁵⁰, ending up stripping mercenaries of their combatant status, with all the rights connected to such status. As stated in the article 47, par. 1 of the 1977 Geneva Protocol I: “a mercenary shall not have the right to be a combatant or a prisoner of war”⁵¹. Also the article 3, par. 1 of the 1977 Convention for the Elimination of Mercenarism in Africa considers the mercenarism a crime and the International Convention Against the Recruitment, Use, Financing and Training of Mercenaries of 1989 states, in the article 3, par.1 states:”a mercenary, [...], who participates directly in hostilities or in a concerted act of violence, as the case may be, commits an offense for the purposes of the Convention”⁵².

What is clear from those Conventions is that the leading perspective on the legal regime on mercenaries is that mercenarism itself is seen as a violation of international law, regardless of the activities of the mercenaries⁵³. A major break from previous legal efforts came from the United Nation’s approach, which combine political considerations into its treatment of mercenaries, recognizing them as lawful-belligerent if they fight in support of the self-determination, while they are considered criminals if they fight for a government that does not support the previously said principle⁵⁴.

⁵⁰J. S. MORTON, P. JONES, *The Legal Status of Mercenaries*, Politics & Policy, Volume 30, No. 4, December 2002, p. 635.

⁵¹Data taken from <http://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=9EDC5096D2C036E9C12563CD0051DC30> visited on June 23, 2014.

⁵²From <http://www.un.org/documents/ga/res/44/a44r034.htm> visited on June 25 2014.

⁵³J. S. MORTON, P. JONES, *The Legal Status of Mercenaries*, Politics & Policy, Volume 30, No. 4, December 2002, p. 635.

⁵⁴*Ibidem*.

Despite this ground breaking decision taken by the U.N., two problems arise for the international law. First, the real meaning of a term like “self-determination”, which is extremely subjective and makes the determination of the legal status of mercenaries itself quite inconsistent. The second issue regards the fact that the General Assembly’s resolution blur the distinction between the jus ad bellum and the jus in bello; in Hampson’s words: ”determining the status of a fighter by reference to the classification of the conflict is fundamentally misconceived”⁵⁵.

Another legal perspective on mercenary is advocated by Cesner and Brant, and is focused on the fact that the only moral and practical way to confront the mercenary phenomenon is to withdraw certain protections ordinarily afforded combatants⁵⁶; this statement is coherent with the outcome of the 1977 Additional Protocol I to the Geneva Conventions that deprives mercenaries of their combatant status.

On the opposite side of the spectrum is placed the perspective that the private security and military companies are, in fact, a legitimate and effective measure to promote stability in regions branded as “hot-spots”, in other words regions that experience a deep and violent crisis. The previous statement is supported by the fact that a lot of times a small contingent of highly trained and coordinate professional foreign combatants that were not bounded to a specific government or international organization managed to achieve limited military objective in a relatively small amount of time; it is the case of Angola, as

⁵⁵J. F. HAMPSON, *Mercenaries: Diagnosis Before Prescription*, Netherlands Yearbook of International Law 22 (3), Maastricht, Netherlands, 1991, p. 13.

⁵⁶J. S. MORTON, P. JONES, *Ivi*, p. 636.

reported by Venter, where two pacekeeping operations directed by the United Nations achieved a paltry result with an overall cost of \$700 million dollars, while Executive Outcome managed to force the UNITA rebels to the negotiating table with less than \$60 million dollars and less than three years⁵⁷. Such outcome was possible, follows Venter, due to the rapid deployment capabilities of mercenary companies, the absence of overly restraining mandates and political considerations of governments and organizations on the forces in the field, the high level of professionalism and, last but not less important, the relatively low expense of employing mercenary groups⁵⁸.

In conclusion, the fact that the international law still considers mercenaries and their activity as “criminal” despite the successes achieved by this companies all around the world, and the fact that the definition itself of these fighters is not coherent nor univocal, represent the main issue to be addressed, in order to create a proper set of law that avoids blaming the private fighters on the base of a vitiated conception of their works. As Shearer said: “the interventions of military companies have served to strengthen the ability of governments to control their territory”⁵⁹, and so this companies need a proper legal control, to avoid further issues regarding the appliance of the norms in the international law’s framework.

⁵⁷A. J. VENTER, *Market Forces: How Hired Guns Succeeded Where The United Nations Failed*, Janes International Defense Review 3 (March), Englewood, Colorado, 1998, pp. 24-25.

⁵⁸*Ibidem*.

⁵⁹D. SHEARER, *Outsourcing War*, Foreign Policy (112), 1998, p. 80.

CHAPTER 2: THEORIES AGAINST PMCs.

PAR. 2.1: Materialist/Realist approach and its counter-argument.

*“They sent forth men to battle,
But no such men return;
And home, to claim their welcome,
Come ashes in an urn.”
(Aeschylus, Agamemnon)*

One of the main point that lies in both the Materialist and the Realist approach towards the “contractors issue”, is the certainty that material changes in the society, like population growth, and new features of the military ideology, such as the introduction of new strategies and tactics, generated pressures and needs that could only be faced with the creation of the so-called “citizen army”.

They also add the notion that developing relationship between states and citizens and the increasing role of neutrality in international law combined to render the use of mercenaries obsolete. Increases in the population meant that states had enough citizens to create large armies and, subsequently, enough

wealth to keep them supplied⁶⁰. Meanwhile social dislocation and urbanization meant that “the devil was finding predatory work for idle hands” and so incorporating troublemakers into the army was one solution to the problem⁶¹.

As this changes was taking place, another important issue became more and more relevant, and it was the problem about keeping the troops motivated, since after the exclusion of “mercenaries” from the army it also collapsed the previous way to maintain discipline in its ranks, which was the “iron rule”; in Palmer words: “Only iron rule could make into a unified force men who had no cohesion in themselves⁶²”, and it became harder and harder to find moral qualities like courage, loyalty, and group spirit in the lower classes that composed the new bulk of the army⁶³.

Realists, in addition, argue that patriotic motivation became more and more useful during the period of the French Revolution, because from that period on the same nature of war began to change⁶⁴. War increasingly required troops that could be trusted, so strict discipline on its own was no longer as useful as before to keep troops in order⁶⁵; citizens armies, since they were motivated by more than the desire for financial gain, would be less likely to

⁶⁰ B. R. POSEN, *Nationalism, the Mass Army, and Military Power*, *International Security*, n. 18, 2 year, 1993, p. 83.

⁶¹ W. H. McNEILL, *The Pursuit of Power: Technology, Armed Force and Society since A.D. 1000*, Oxford: Blackwell, Oxford, UK, 1982, pp. 145-146.

⁶² R. R. PALMER, “*Frederick, Guilbert, Bülow*”, in P. PARET, G.A. CRAIG and F. GILBERT, *Makers of Modern Strategy: from Machiavelli to the Nuclear Age*, Princeton University Press, Princeton, NJ, 1986, p. 93.

⁶³ R. R. PALMER, *Ivi*, p. 95.

⁶⁴ S. PERCY, *Mercenaries, The History of a Norm in International Relations*, Oxford University Press, Oxford, 2007, p. 96.

⁶⁵ *Ibidem*.

become demoralized⁶⁶; in the Realist view, patriotism could suffice the cohesion required by a citizen army, while allowing them to be more independent and reliable, and it is fundamental to maintain the structure of a citizen army.

Both the Materialist and the Realist approach points out that “the combined pressures of desire for a larger army with more independent soldiers capable of functioning farther from home and at the end of a long supply line forced states to adopt a citizen-based army. Changes in material factors would bring states into conflict with each other, and force the less technologically developed or organized states to adopt the tactics of the more developed, or face defeat⁶⁷”.

Despite the fact that this approaches has been preferred in the international law arena, giving a great aid to the development of the current anti-mercenary norm, they share a common problem, which is the inability to explain why the shift towards a citizen army was preferred by the European leaders, why, basically, it was so attractive to them.

Regarding the Materialist/Realist approach, we can find four main issues about the progressive shift towards a citizen based army rather than the previous model that considers the use of mercenaries.

The first issue regards the fact that population growth, despite the importance given to it by the Realist approach, might be less significant in

⁶⁶ R. R. PALMER, *Ivi*, p. 94.

⁶⁷ W. H. McNEILL, *The Pursuit of Power: Technology, Armed Force and Society since A.D. 1000*, Oxford: Blackwell, Oxford, UK, 1982, pp. 149-150.

reality, and the best response to either this issue or the changing in tactics might not be a shift towards citizens based army.

The second issue regards the timing chosen by the various states to adopt a “Citizen Army”, which cannot be explained by “Systemic Pressures”. The “Systemic Pressure” cannot also justify the approval expressed by the states to the “Citizen Army” and cannot also guarantee that this model was in fact a successful one, and this is the third problem about the Materialist/Realist approach.

The fourth problem that will be taken in consideration in this chapter is the fact that the kind of nationalism that was the core element of the transition to a “Citizen Army” did not exist prior to the creation of such armies⁶⁸; therefore the states took a leap of faith that citizens would suddenly behave patriotically while at war⁶⁹.

It is important to focus on the four contradictions briefly explained above, and analyze them.

Regarding the first issue, the fact that population growth, despite the importance given to it by the Realist approach, might be less significant in reality, is supported by Palmer, that states that the idea of a large army would be even dangerous for good generals that might be held back by huge numbers; the great size of an army might also be seen as an indicator of weak

⁶⁸ S. PERCY, *Mercenaries, The History of a Norm in International Relations*, Oxford University Press, Oxford, 2007, p. 97.

⁶⁹ *Ibidem*.

authority⁷⁰; this is backed up by Montesquieu view that saw the perfect army in a small militia instead of a mass army⁷¹.

In addition to this, the less effectiveness of mass armies in front of small strike forces was reported in different occasions, from Napoleonic Wars to Vietnam war, along with numerous other examples like the Italian's "Arditi" of the II World War; as a matter of fact, after the Napoleonic Wars the states of Europe returned to small armies which did not require mass mobilization: the desire to use citizens, then, cannot have been because of the pressures of surplus population or the desire to have a mass army⁷².

The second issue is as important as the first one as well. In order to explain better why the timing of the adoption of Citizen armies is not explained by systemic pressure, is it important to consider the arguments proposed by Posen, which argues that the changing from a small army in a Citizen Army is desirable only when a state is defeated by, or excepted to meet, one on the battlefield⁷³. But states adopted conscription without military necessity as an impetus, and at remarkably different times, so if the systemic pressures pushed states towards the adoption of citizen armies, it is not possible to justify the delay occurred in some states to shift to a citizen based army in comparison with some others.

⁷⁰R. R. PALMER, "Frederick, Guilbert, Bülow", in P. PARET, G.A. CRAIG and F. GILBERT, *Makers of Modern Strategy: from Machiavelli to the Nuclear Age*, Princeton University Press, Princeton, NJ, 1986, p. 109.

⁷¹MONTESQUIEU, *The Spirits of the Laws*, Cambridge University Press, Cambridge, (1748) 1989, p. 224.

⁷²S. PERCY, *Mercenaries, The History of a Norm in International Relations*, Oxford University Press, Oxford, 2007, p. 99.

⁷³B. R. POSEN, *Nationalism, the Mass Army, and Military Power*, *International Security*, n. 18, 2 year, 1993, p. 87.

One possible realist justification is proposed by Paret, with the so-called “British example”; he states that Britain’s size, alliances, naval power, operational requirement and her place in the international arena, combined with her isolation, allowed her to avoid pressures and continue to use past force organization for longer than others⁷⁴.

Nevertheless, the previous statement fails in convincing that when Britain shifted towards a citizen army it was not for a failure derived from the use of mercenaries, because they did not managed to arrive in Crimea, where this setback occurred; instead it derived from the method of “recruitment” of Britain, and it cannot justify the shift towards a citizen army⁷⁵.

The third issue that must be explained is the one regarding the fact that citizen armies were not the best response to systemic pressures, and it presents two specific problems: on one hand, assuming the contrary fails to explain that in order to adopt a citizen army, common beliefs about citizens and their behavior had to be changed, and how this change might occur; on the other hand, it was not obvious that mercenary forces were somehow inferior to a citizen based army, nor it was mandatory to change a structure of forces that worked well for a long time.

The realists states that the reason of this shift is due to the fact that citizens are more reliable than mercenaries, and their behavior is more predictable; they can be motivated by patriotism and they could be more

⁷⁴ P. PARET, *Napoleon and the Revolution in War*, in P. PARET, G.A. CRAIG and F. GILBERT, *Makers of Modern Strategy: from Machiavelli to the Nuclear Age*, Princeton University Press, Princeton, NJ, 1986, p. 136.

⁷⁵ S. PERCY, *Mercenaries, The History of a Norm in International Relations*, Oxford University Press, Oxford, 2007, p. 99.

disciplined than their “private counterpart”, but it is already explained that this statement does not correspond to the truth, also because it is proven that effective troops were created by training and experience, and so professionalism would trump patriotism⁷⁶. As a matter of fact, it is discipline that can save an army from desertion not bravery or patriotism, that can only be seen as an additional value in a fighter; but a fighter is only a brawler without a proper discipline and training, and in that contractors are often better than national soldiers. As history proved several times, for example after the French Revolution, desertion can be linked easily to inexperience and poor training rather than the type of soldier used or, even, the motivation that drives such fighters.

In conclusion, a belief that citizens were not necessarily worthy, the problems that existed in citizen armies, an understanding that good troops were created by training and professionalism rather than motivation, and the mixed records of civilian army success combine to demonstrate that a citizen army was not the obvious solution to systemic pressure⁷⁷.

The last issue is it important to analyze is the one regarding the influence played by nationalism in the transition from foreign armies towards citizen based armies. The realist/materialist doctrine supports the idea that citizen armies arose from nationalism, while instead it is the opposite: the nationalistic feeling was created by citizen armies; it was a result, not a

⁷⁶ D. E. SHOWALTER, *Europe's Way of War 1815-64*, in J. BLACK, *European Warfare 1815-2000*, UK and New York: Palgrave, Houndmills, Basingstoke, 2002, p. 39.

⁷⁷ S. PERCY, *Mercenaries, The History of a Norm in International Relations*, Oxford University Press, Oxford, 2007, p. 104.

triggering factor. Historically, European populations managed to combine both national awareness and pride with a profound distaste for military service, and even after the surge of citizens armies, the training and the discipline proved by contractors were taken into great consideration by national leaders.

The realist Posen recognizes that the army was the source of nationalistic feeling, and argues that preparations for war incubated nationalist tendencies and reinforced them among the people⁷⁸. Nevertheless, an important question remains: how did Europe's leaders know that creating a mass army would create nationalism⁷⁹? To abandon an effective system in favour of an untested one requires confidence⁸⁰, a level of confidence that is impossible to find in the international arena.

⁷⁸B. R. POSEN, *Nationalism, the Mass Army, and Military Power*, International Security, n. 18, 2 year, 1993, p. 81.

⁷⁹S. PERCY, *Ivi*, p. 105.

⁸⁰*Ibidem*.

PAR. 2.2: Avant's approach and the critics against her theory: domestic politics, path dependency and transition from mercenaries to civilian armies.

"War is fought by human beings."

(Carl von Clausewitz)

Deborah Avant states that the decision to use citizen armies can only be understood if a series of factors are taken into account: Enlightenment ideas, domestic politics and the logic of path dependency⁸¹. In her theory, these three ideas are interconnected, because they can be seen as three different "steps" towards the adoption of a citizen army and its consolidation.

The first aspect that is taken into account in Avant's theory is the "Enlightenment ideas"; this idea managed to create a new way of thinking about the relationship between states and soldiers, thanks also to the development of the social contract and the prestige of both natural sciences and philosophy⁸². In the development of natural law, the abstract reasoning capabilities of the people provided the foundation for a series of human and civil rights that concerned both the treatments of soldiers and the possibility for a vast range of people to become officers. As an effect of this new set of ideas, natural law could be separated from the sphere of the state and protected,

⁸¹ D. AVANT, *From Mercenary to Citizen Armies*, International Organization, n. 54, 2000, pp. 42-43.

⁸² *Ivi*, p. 44.

although just in theory, from the Leviathan ideas and the imposition of state absolutism⁸³.

The social contract suggested the relevance of the political community to notions of sovereignty, rather than just the political leaders; so if sovereignty rested in the population, the defense of it was an obligation held by all, rather than by small elite. All these ideas were fundamental in the construction of the understanding of the link between citizens and military service.

As Peter Paret pointed out, the decision of arming the population for military service was taken not only because of technical and political problems, “but also for the unwillingness of their subjects to take up arms”⁸⁴.

Avant describes also the point of views of realist and sociologists about Enlightenment ideas and material demands in order to strengthen her theory and she states that, for the realists, population growth and territorial expansion, which are considered material demands, raised the bar of competition that required mass armies with soldiers committed to a common goal to be faced. In response, states were inducted by this systemic demand to turn to citizen based armies in order to increase both size and reliability of their respective forces.

As regards the sociologist point of view, Avant states, it was the introduction of the concept of “citizens” that came along the Enlightenment idea that made states responsible, whether they like it or not, for the actions of their citizens; this in addition to the will of the states to control the population

⁸³ E. CASSIRER, *The Philosophy of the Enlightenment*, Princeton, N. J., Princeton University Press, 1951, p. 238.

⁸⁴ P. PARET, *Understanding War: Essays on Clausewitz and the History of Military Power*, Princeton, N. J., Princeton University Press, 1992, p. 43.

inside their boundaries caused states to find an effective way to control “non-state violence”, and the immediate solution was the adoption of a citizen based army⁸⁵.

What she points out is that both these approaches fails in explaining in an effective way why the states have followed a path that might be seen as less appealing than other alternatives; “if we assume that a selection mechanism will punish those who make bad choices, functional analysis should still be able to explain broad, historical outcomes. The larger problem arises if we do not feel confident assuming a selection mechanism. If there is more than one natural or efficient solution to a problem, functional analyses cannot tell us which will be chosen. Furthermore, these analyses tend to be either drawn from economics and emphasize material variables or from sociology and center on ideational and social variables.”⁸⁶

Starting from this statement, Avant describes in deep the analysis that is at the core of her theory, which was already discussed briefly at the beginning of the paragraph.

First of all, she focuses the attention on the “domestic policies”, explaining that established institutions tend to be questioned more easily when external shocks occurs, because this shocks can “shift power, open minds to new alternatives, affect the legitimacy of institutions and shatter worldviews”⁸⁷.

⁸⁵D. AVANT, *From Mercenary to Citizen Armies*, International Organization, n. 54, 2000, p. 45.

⁸⁶*Ivi*, p. 48.

⁸⁷*Ibidem*.

As it is possible to understand from such statement is that this external shocks are important for political entrepreneurs to delegitimize established perspectives, by proving that the system is broken and so starting a research for a new way of thinking to fix it; as a matter of fact, even if such external shocks are not enough to generate effective changes, Avant states that they are responsible for unsettling the status quo⁸⁸.

When such a situation is created, domestic policy comes into play, helping actors to formulate options shared by a large amount of people, establishing focal points, or building one up in case it did not established naturally. An example is provided in Fig. B.

As it is clear in the figure, when an actor is powerful and it is possible to identify what potential gain or losses of power would originate by the choose of a particular solution, that actor will be more inclined to put his effort to build a solution that will lead to his interest; another important aspect that can be seen in the Fig. B is the fact that such focal points tend to be conservative in the absence of an external shock⁸⁹, and even when such shock occurs, it has been observed that “conservative reactions are more likely when the dominant coalition uniformly sees new ideas as a threat to their interests”⁹⁰; so a focal point based on new ideas will more likely take place in a situation in which the external shock is combined with a disjuncture in the coalition in power.

⁸⁸D. AVANT, *From Mercenary to Citizen Armies*, International Organization, n. 54, 2000, p. 49.

⁸⁹*Ivi*, p. 50.

⁹⁰*Ibidem*.

Fig. B⁹¹:

<i>Case</i>	<i>Antecedent conditions</i>	<i>Exogenous shock?</i>	<i>Domestic conditions</i>	<i>Outcome</i>
France				
Pre-Napoleonic/ Napoleonic France	Material and ide- ational changes	Yes: Defeat in the Seven Years War	Divergent interests on military issues among dominant coalition	Reform
Prussia				
Pre-Napoleonic Prussia	Material and ide- ational changes	No	Divergent ideas on military issues among dominant coalition	Plans, but no reform
Napoleonic/Post- Napoleonic Prussia	Material and ide- ational changes	Yes: Defeat to France at Auerstadt and Jena	Divergent interests and ideas on mili- tary issues among dominant coalition	Reform
Britain				
Pre-Napoleonic Britain	Material and ide- ational changes	Yes: Defeat in American Revolu- tion	Conservative focal point, shared inter- ests and ideas on military issues among dominant coalition	Little reform
Post-Napoleonic Britain	Material and ide- ational changes	No	Conservative focal point, shared inter- ests and ideas on military issues among dominant coalition	No reform
Britain in the 1870s	International model: Citizen army in Prussia	Yes: Embarrassment in Crimean War, Indian Mutiny	Divergent ideas on military issues among dominant coalition	Reform

All the issues described above lead us to path dependency, that states that an initial outcome originated from a decision make that decision more appealing even if it is only one of the many potentially successful possibilities, and maybe not even the most efficient one. This attitude is justified by Avant by referring to “sunk costs”, both material and cognitive, that can be considered as

⁹¹D. AVANT, *From Mercenary to Citizen Armies*, International Organization, n. 54, 2000, p. 50.

additive and can make a decision even more appealing if both of them are present at the same time.

Since the Neorealist claims that all the previous arguments are not important in the real scenario because it is the international relations that “selects” the winners while punishing states who adopt wrong choices⁹², Avant replies that this system of selection relies on an objective selection mechanism that does not exist in reality, since the concept of “selection” in the international system relays completely on the action of other states; as a matter of fact, it is impossible to predict the efficient outcome among all the options, since “what proves to be efficient depends on what other states do, and this, in turn, depends on their interpretations of the system’s demands”⁹³. This argument might rise a question: if selection is nor automatic nor predictable, and if the action of a state does not influence whatsoever the perception that other states have of themselves and the way they compete with each other, what is the spark that ignites the mechanism described by Avant? She answers that question with the concept of the “past practices”, which states that institutions that have proved themselves successful become “past practice”, and so are more appealing for other states that have to choose between a wide range of options that include one that proved itself positive for another state, even if such success might have been a product of pure luck or a fortuitous accident. This might lead to a situation in which a wide number of better solutions are discarded due to the sticking of a “past practice”; in the words of Douglass

⁹²D. AVANT, *From Mercenary to Citizen Armies*, International Organization, n. 54, 2000, p. 51.

⁹³*Ibidem*.

North: “The historically derived perceptions of the actors shape the choices that they make. In a dynamic world characterized by institutional increasing returns, the imperfect and fumbling efforts of the actors reflect the difficulties of deciphering a complex environment with the available mental constructs: ideas, theories and ideologies⁹⁴”.

Regarding the private militaries issue, the born of the hard feeling towards them can be traced back when Prussia created an army made entirely by citizens and achieved a series of victories, making it a model for all the modern armies. Despite the fact that a citizen based army might have been a successful response to the system demands at that particular time, it is also true that a frame like the one of international relations and international clash of powers change at a speed so high that a response that might have been correct in one year might be outdated and flawed the year after. Nevertheless, the frame just described is somehow “corrupted” by the presence of the human population, so the most logic solution might not be chosen due to the existence of the concept of “emulation”, that Waltz described as an adjustment to the demands of the system⁹⁵, while in sociology it is described as a blind copying of other entities regardless of inefficiencies, sometimes with even serious deleterious effects on state security⁹⁶.

⁹⁴ D. C. NORTH, *Institutions, Institutional Change, and Economic Performance*, Cambridge, United Kingdom, Cambridge University Press, 1990, pp. 95-96.

⁹⁵ K. N. WALTZ, *Theory of International Politics*, New York, United States, New York : Random House, 1979, pp. 126-128.

⁹⁶ D. P. EYRE and M. C. SUCHMAN, *Status, Norms and the Proliferation of Conventional Weapons : An Institutional Theory Approach*, in *The Culture of National Security*, edited by Peter J. Katzenstein, Ithaca, N.Y., Cornell University Press, 1996, pp. 82-85.

As Avant further states, it is not difficult to identify a general change in the practice of warfare, different states are likely to have different permutations of the institutions based on the preferences and strength of political coalitions⁹⁷.

Avant's theory fails in describing how norms play a complex role in the decision to stop using external fighters inside national armies, by banishing their role to simple norms associated with the Enlightenment, precisely with rationality and the new relationship between state and citizen, where each was responsible to the other and states were responsible for the actions of their citizens abroad⁹⁸, seeing norms just as an antecedent condition.

The assumption made by Avant in her theory, so, triggers two problems: first of all, considering the Enlightenment norms as universal and the most important norms that should be taken into consideration fails in recognizing that "they manifested themselves differently in different states"⁹⁹. Another flaw of Avant's theory lies in the fact that in this way is impossible to realize that existed way before the Enlightenment were indeed reinforced by this set of norms, and the anti-mercenary norm is among those.

Basically Avant assumes that the political choices made by states based on the Enlightenment principles were similar all across Europe, while instead there was a significant variation in the perception of the relation between citizen and state; as Percy retorts: "While the development of Enlightenment thinking on the social contract and the relationship between the state and the

⁹⁷D. AVANT, *From Mercenary to Citizen Armies*, International Organization, n. 54, 2000, p. 67.

⁹⁸*Ivi*, p. 45.

⁹⁹S. PERCY, *Mercenaries, The History of a Norm in International Relations*, Oxford University Press, Oxford, 2007, p. 106.

citizen are undoubtedly important for understanding how reformers came to advocate abandoning the use of foreign troops, these beliefs existed alongside far more explicitly moral beliefs about the appropriate motive for fighting. Enlightenment thinking reinforced an existing dislike of foreign troops on moral grounds[...]. Europeans were becoming increasingly, and explicitly, uncomfortable with the morality of using foreign troops to fight wars”¹⁰⁰.

In this way Avant dismisses the importance of the role played by the motivation, and makes difficult to understand why the model of the citizen army became so appealing to the states for reasons that maybe were not responsible for the successes achieved by such armies.

The second problem triggered by Avant is that she “does not take into account that path dependency is an inherently normative process”¹⁰¹, thus neglecting the role played by the norms in the path dependency framework and making even more difficult to explain how a particular choice became a standard and appealing to other states.

As a matter of fact stating that a solution for a specific issue can be chosen by one state and it might be considered as the best solution from other states even if other equally good, or even better, solutions are possible does not explain why these better possibilities are discarded. Avant explain such decision with the idea of “sunk costs” that is already discussed in this chapter, nevertheless she fails in explaining why the idea of a citizen army was so

¹⁰⁰ S. PERCY, *Mercenaries, The History of a Norm in International Relations*, Oxford University Press, Oxford, 2007, p. 107.

¹⁰¹ *Ivi*, p. 106.

attractive and powerful that it would outweigh the lack of evidence that it was successful, even if the “sunk costs” are taken into account¹⁰².

In conclusion, if the idea of “sunk costs” cannot fully explain the shift from a mercenary based army to a citizen based one and, moreover, the use of mercenary forces had been proved successful various times after this shift, the justification of the abandon of mercenaries is not entirely satisfactory.

¹⁰² S. PERCY, *Mercenaries, The History of a Norm in International Relations*, Oxford University Press, Oxford, 2007, p. 109.

PAR. 2.3: Thomson's approach and its criticism: ideas can explain the shift from mercenaries to civilian armies.

“The inevitableness, the idealism, and the blessing of war, as an indispensable and stimulating law of development, must be repeatedly emphasized.”

(Friedrich von Bernhardi)

Thomson provides another point of view on this transition from mercenarism to citizen based army. She states that norms can successfully explain why the states shifted away from a mercenary based army and towards a citizen based army, and one of the main norms that made this possible was the norm of neutrality, previously described in the first chapter of this dissertation; nevertheless Thomson provides a deeper analysis of the definition of this norm: “Neutrality is a particularly interesting practice because it is not an objective fact but a claim whose viability depends fundamentally on an intersubjective understanding, a set of expectations among statesmen about the proper behavior of a neutral state. A state cannot simply proclaim its neutrality in a particular war and then proceed to define its rights and duties according to its self-interest in that situation. To make good its claim to neutrality, a state must adopt policies that other states will interpret as consistent with neutrality. States assess another state’s neutrality by comparing the latter’s policies with the customary practices of neutrals.

In other words, to make good their claim to neutrality, states imitate the customary practices of neutral states.

Practices that have been eliminated as inconsistent with neutrality cannot be resurrected at will. Belligerents will simply deny the neutrality of a state that strays from customary practice, and reject its claim to special status in the war. Ultimately, the “neutral” can be drawn into the war. So, in a very real sense, neutral states are coerced into adopting the customary practices of neutrality; belligerents threaten to bring them into the war if they do not”.¹⁰³

Before the norm of neutrality took place in the international framework, “the market for military manpower was as international as it could ever be.

Nationality or country of origin was not the primary basis for determining service obligations. The capabilities of officers, the economic or legal desperation of the soldiers, and the economic interests of rulers determined who served and where.

State leaders needed military manpower; they were not particularly choosy about where they obtained it”¹⁰⁴.

With the affirmation of the norm of neutrality, mercenarism was delegitimated in the context of war, but since its introduction in the international framework it has been reported that such norm became internationally used because it created new expectations about the behaviour of neutral states. But if the essence of the delegitimation of mercenarism could be found in the redefinition of neutrality, it was likely to see other states adopt

¹⁰³J. E. THOMSON, *Mercenaries, Pirates and Sovereigns, State Building and Extraterritorial Violence in Early Modern Europe*, Princeton University Press, Princeton, NJ, 1994, p. 84.

¹⁰⁴*Ivi*, p. 26.

such norm when facing a particular war scenario, but it has been proved that most of the times the relationship between war and implementation of the neutrality norm is most of the time random.

Thomson, in any case, provides an explanation for her theory, in which she notes that the shift from mercenarism to a citizen based army is a reflection of the new relationship created between states and citizens, mainly because it prevented their citizens from involving themselves in other states' affairs and also to prevent them from creating their own armies¹⁰⁵.

In Thomson's word: "Interstate relations or systemic forces were responsible for the decline of mercenarism. An international institution, namely, the institution of neutrality, empowered state-builders to implement new controls on their citizens or subjects, thereby monopolizing authority to make war.

State leaders did not set out to eliminate mercenarism since most of them benefited from it. Instead, their common interest in building state power vis-à-vis society produced an international norm against mercenarism".¹⁰⁶

Despite the creation of such norm against mercenarism, is it possible to identify some anomalies between reality and theory: for examples, it is not illegal to employ foreign fighters in the PMCs, thus creating a sort of "alternate state army" *inside* a company that might be *outside* the national borders of such fighters; there is also the two anomalies of the French Foreign Legion and the Gurkhas: in the first military institution a foreign might join its ranks

¹⁰⁵J. E. THOMSON, *Mercenaries, Pirates and Sovereigns, State Building and Extraterritorial Violence in Early Modern Europe*, Princeton University Press, Princeton, NJ, 1994, p. 88.

¹⁰⁶*Ibidem*.

individually and without its home state's approval; in the second case, their members can be recruited under an interstate treaty or contract¹⁰⁷.

It is possible to define at least three problems with Thomson's theory: in the first place is it possible to identify some difficulties associated with linking the disappearance of mercenaries based on the supply of selling and buying states, also because it is difficult to explain some inconsistencies in the timing of when states stopped using foreign troops¹⁰⁸. The second problem springed from Thomson's analysis regards the neutrality principles; the third problem derives from the fact that states sought to control their citizens and the disappearance of mercenarism was an unintended effect of this decision¹⁰⁹.

Regarding the supply-based argument is it possible to understand that Thomson managed to recognize only one of the two possible ways states followed to shift away from mercenary use; Thomson recognizes the option that involved some sort of "restrictions" for the movements of their own citizens and prevent either recruitment for foreign wars on domestic soil or, in some cases, going abroad to enlist in another state's forces. Thomson fails in analyzing the other possible way that implies states to stop hiring foreign fighters as a result of an autonomous decision supported by the decision to using their citizens as a military force¹¹⁰. As a matter of fact, in the words of Sarah Percy: "a large part of the story about why states abandoned the use of

¹⁰⁷J. E. THOMSON, *Mercenaries, Pirates and Sovereigns, State Building and Extraterritorial Violence in Early Modern Europe*, Princeton University Press, Princeton, NJ, 1994, p. 89.

¹⁰⁸S. PERCY, *Mercenaries, The History of a Norm in International Relations*, Oxford University Press, Oxford, 2007, p. 112.

¹⁰⁹*Ibidem*.

¹¹⁰*Ibidem*.

mercenaries and adopted citizen soldiers stems from the states who bought mercenaries in the international system, not the states that sold them”¹¹¹.

Thomson argues that the supply of mercenaries suffered a gradual loss of requests due to a progressive restriction on foreign recruitment and enlistment; if such affirmation can be considered right, it could be possible to witness a big group of countries trying to buy mercenaries and failing, but in fact there is a little evidence supporting such statement¹¹². As a matter of fact, even if the cost of hiring mercenaries rose, and the supplies were restricted, Thomson failed to explain why states stopped being interested in hiring this kind of foreign troops all of a sudden.

The problem of this supply-based argument is also that neither the mechanics of neutrality law nor an increased desire to enhance state control over citizens can explain the change in supply, and so fails also in describing why states decided to abandon the successful practice of using foreign troops¹¹³.

A second issue with Thomson’s argument is her assertion that the neutrality mechanism allowed states to enhance their control over citizens; she rejects, rightfully, the idea that the neutrality principle became universal even in time of peace, but fails in giving a proper explanation on why this principle was the principal mechanism that controlled, and therefore diminished, the

¹¹¹ S. PERCY, *Mercenaries, The History of a Norm in International Relations*, Oxford University Press, Oxford, 2007, p. 112.

¹¹² *Ibidem*.

¹¹³ *Ivi*, p. 113.

supply of mercenaries that lead to their disappearance¹¹⁴; as a matter of fact, states could decide if a neutral status was significant or not, and therefore their willingness to supply and interested state with mercenaries.

It is important to underline also that calling the neutrality legislation an “anti-mercenary norm” is misleading, mostly because mercenaries were responsible only for few of the problems this norm had to deal with, and such norm was going to deal with other issues springing from other non-state actors; in addition, Thomson suggest, in her book, that the states did not purposely attempted to eradicate mercenarism, so if it was not a purposeful attempt it is difficult to define the neutrality legislation an “anti-mercenary” one¹¹⁵.

For Thomson’s argument to be right, we would expect that states required neutrality law because their citizens foreign enlistment was creating numerous problems with the states; reality, instead, proved that the neutrality principle “prohibited mercenary activity by implication¹¹⁶” rather than directly, as a side effect of states’ attempt to control other aspects of force like privateering and filibustering¹¹⁷.

In order to attempt to save Thomson’s argument, it is possible to theorise some ideas, like an oversupply of mercenaries on the international market that made the demand of such forces to drop until states stopped to ask for them, or the fact that industrialization made the number of mercenaries to

¹¹⁴ S. PERCY, *Mercenaries, The History of a Norm in International Relations*, Oxford University Press, Oxford, 2007, p. 114.

¹¹⁵ J. E. THOMSON, *Mercenaries, Pirates and Sovereigns, State Building and Extraterritorial Violence in Early Modern Europe*, Princeton University Press, Princeton, NJ, 1994, p. 81.

¹¹⁶ J. L. TAULBEE, *Myths, Mercenaries and Contemporary International Law*, California Western International Law Journal, n.15, 1985, p. 344.

¹¹⁷ S. PERCY, *Mercenaries, The History of a Norm in International Relations*, Oxford University Press, Oxford, 2007, p. 117.

be hired reduced, even if it should be necessary to ignore the fact that numerous states that used such foreign forces had stopped this hiring of mercenaries long before industrialization (like France and Prussia). A more solid justification suggests that states wanted to enhance their control over their citizens and so stopped selling their soldiers to other states¹¹⁸.

However, these problems were not severe enough to prompt a legislation, and the simple will of control citizens it is not sufficient to justify an abandonment of the use of mercenaries throughout the states.

Thomson herself seems going against her arguments in her book, when she states that: “Mercenarism persists for three main reasons. First, no state can be expected to exert total control over all individuals residing in its jurisdiction.

It is difficult to see how the soldier of fortune could be eliminated, short of a country’s sealing its borders.

Second, most states did not ban foreign military service per se but instead retained the right of the executive to authorize it. [...]As a result, some states continue to authorize their citizens’ or subjects’ service in foreign armies during peacetime. State-contracted military services persist, particularly in formerly formal imperial relationships.

Finally, the Cold War sparked a decline in the enforcement of neutrality laws. In a world in a permanent state of war with no neutrals, the U.S. Neutrality Act and British Foreign Enlistment Act “are virtually dead letters.”

France’s prosecution of mercenaries has also been half-hearted.

¹¹⁸S. PERCY, *Mercenaries, The History of a Norm in International Relations*, Oxford University Press, Oxford, 2007, p. 118.

I want to emphasize that eliminating mercenarism is not a matter of enforcing international law; the laws in question are municipal laws.

The Great Powers' failure to enforce their municipal law has led some Third World leaders to seek an international ban on mercenaries, so far to no avail.[...]

Western states argue that an effective ban on mercenarism would entail substantial violations of their citizens' basic rights, especially freedom of speech and movement. Third World states argue that mercenaries pose a threat to world peace, and Western states cannot simply disclaim responsibility for the mercenary activities of their citizens.

My argument is that twentieth-century practices described in this chapter reflect the delegitimation of mercenarism that occurred in the nineteenth century. They appear to us as anomalies precisely because they are only marginally legitimate. [...] The charge of mercenarism is always lingering in the background, and may serve as a propaganda tool. Statesmen must create legitimating devices, such as foreign aid in place of direct subsidies, because the latter practice is not legitimate. Moreover, since the norm was implemented, no state has attempted to reinstitute eighteenth-century practice by reversing or even challenging the norm. In the twentieth century, foreign aid, mutual defense pacts, and per diems have replaced eighteenth-century subsidies, leases, and direct recruiting¹¹⁹”.

¹¹⁹J. E. THOMSON, *Mercenaries, Pirates and Sovereigns, State Building and Extraterritorial Violence in Early Modern Europe*, Princeton University Press, Princeton, NJ, 1994, pp. 96-97.

What is possible to understand is that none of the theories explained in this chapter can explain why states were willing to reject a stable, established, and effective practice in favour of an untested and potentially unstable alternative. If the results on the battlefield cannot provide a not debatable explanation for this shift, the choice of changing from a mercenary based force to a citizenship oriented one must have been a little moral; basically the states made this leap of faith not because it was the best thing to do, but because it was considered the right thing to do¹²⁰.

¹²⁰S. PERCY, *Mercenaries, The History of a Norm in International Relations*, Oxford University Press, Oxford, 2007, p. 120.

CHAPTER 3: THEORIES IN FAVOUR OF PMCs AND THE UNITED KINGDOM'S CASE.

PAR. 3.1: Neo-Liberal Theory.

“There's a beast in every man.

And it awakens when

you put a sword in his hand.”

(Ser Jorah Mormont, Game of Thrones)

In order to try to explain the use of PMCs in the international framework and the modern age in a Neo-Liberal perspective, it is important to make a little premise.

First of all we have to consider the neoliberalist's conception regarding the State and the actors involved in its “life”. Industries and companies are not part of the State, in opposition to the mercantilist theory, and there is a convergence of private and public, national, economic interests, so a cooperation between individuals and states increase the public warfare. According to this theory, it is possible to identify two kind of actors, the public ones and the private ones, and even if an higher degree of preference is assured

to the latter, public actors and institutions are approved by neoliberalist because they are considered as “market-enabling factors” and so responsible for creating the premises to allow new economies and thus new actors to blossom; nonetheless institutions are criticized as well, since they are responsible for the “Red Tape” that ties up the entire process of economic development, slowing its expansion.

Keeping this information in mind, it is already possible to provide a partial justification for the use of PMCs, at least in an economic perspective, which might state that such companies are nothing more than another kind of private actor in the economic development process, and in this view the state should not prevent their develop; in addition, it is highly demonstrated that using mercenary force is way more cheap than relying only in a citizen based army.

In any case such explanation alone is not sufficient to convince the international community of the benefits deriving from a better regulation about PMCs, so it is important to go deeper into the analysis of the issue of privatization of security in the neoliberalistic view.

The post-Cold War era is characterized by two major revolution in the field of international security: the first one is the so-called “revolution in military affairs” (RMA), the second one is in more ways more definitive and has been silently creeping into the security arena, and it is the privatization of security, that is changing both the concept of war and peace and also mutating

the very concept of national security¹²¹. As a matter of fact, it is possible to see that “the swelling number of internal wars and the dwindling authority of states have raised questions about legitimacy of at least some states enjoying total monopoly over the means of controlling and conducting organized violence¹²²”. As Crocker, Hampson and Aall states: “the Cold War security paradigm had looked at the spectrum of war and peace through the prism of state-centrity and therefore the entire security discourse always opened and closed with the role of the state in organizing and regulating the means of coercion both within and beyond its boundaries¹²³”.

Nevertheless, some of the basic beliefs of the pre-Cold War concept based on the state monopoly on legitimate violence, SMLV, that Martin van Creveld considered one of the means used by a state to achieve one of the principal functions of the sovereign since the time of Bodin and Hobbes, which is the protection of private property, were contested by the events triggered by the international political economy based on the neo-liberal globalization; in Anna Leander’s words: “globalization is undermining two cornerstones of thinking about war and peace; that war and peace are essentially matter of relations between states and that these states are like units¹²⁴”.

¹²¹ LCDR INDIAN NAVY A. BHARADWAJ, *Privatization of Security: The Mercenary Market-Mix*, Defence Studies 3:2, Routledge, London, UK, 2003, p. 64.

¹²² *Ibidem*.

¹²³ C. A. CROCKER, F. O. HAMPSON and P. AALL, *Turbulent Peace : The Challanges of Managing International Conflict*, U.S. Institute of Peace Press, Washington DC, 2001, p. 35.

¹²⁴ A. LEANDER, *Conditional Legitimacy, Reinterpreted Monopolies: Globalization and the Evolving State Monopoly on Legitimate Violence*, paper presented at the annual convention of the International Studies Association, New Orleans, Copenhagen Peace Research Institute, 2002, p. 2.

The first challenge to the states' unbridled use of force against their own citizens in the twentieth century came from the evolution of the welfare state and the growth of the civil society, but this event also increased the capacity and the legitimacy of states to project their military influence and power beyond their national borders. In the occasion of the two world wars such capacity was limited until the end of the Cold War, when the episodes of human rights violations and the broad number of government related problems in many countries led the international community to challenge the states' legitimacy to manage the use of force within their territories¹²⁵. Such action was viewed by the private entrepreneurs that worked in the military and private defense sector as the opportunity they so long waited since the end of the World War II.

The promotion of the security sector reforms, SSR, was redacted for such reasons, because it aims the uniformity of the security norms involving the operations of transnational actors across the globe, not only directed towards the militarized formations like army, police and paramilitary groups, authorized for both domestic and foreign use, but also for regulating the activities of private security and military companies, who already gained international acceptability; this underlines the deep impact that the neoliberal doctrine had on International Relations.

Deborah Avant has identified the phenomenon of private security as a particular type of contracting of force, since she recognized not only an

¹²⁵ LCDR INDIAN NAVY A. BHARADWAJ, *Privatization of Security: The Mercenary Market-Mix*, Defence Studies 3:2, Routledge, London, UK, 2003, p. 65.

increase in the private provision of security, but also more payment of security and more provision of security for foreign governments¹²⁶. In fact, only during the 1990s private firms of fighters had trained approximately 42 countries, and since such companies claims to possess means to wage war as well as building peace, they had found a great amount of request for a wide spectrum of clients, from weak and failed state, NGOs and private actors to big and powerful states.

In 2002, an important Indian journal published an editorial in defense of such companies stated that: “if indeed war is bad for business, and peace means profit, then isn’t peace too important to be left to politicians and diplomats? Businessmen don’t trust governments to run business. How can they be sure governments are any better equipped to deal with complex matters concerning war and peace?¹²⁷”.

Such feeling is the one that drove the neoliberalist doctrine through this issue, and is supported also by a multitude of empirical proofs; one of the most significant is the UN-led operation in South Africa: the UN operating costs in Sierra Leone alone amounted to \$500 million, while an aimed use of private firms would have a cost for the UN of only \$750 million, with a guarantee of resolution of the critical situations of the entire South Africa, if the UN agreed to outsource such operations¹²⁸.

¹²⁶ D. AVANT, *Selling Security: Post Cold War Private Security Services in Historical Perspective*, paper presented at the meeting of the American Political Science Association, San Francisco, United States, 2001, p.75.

¹²⁷ *Profit for Peace*, Editorial, The Times of India, 7 Oct. 2002.

¹²⁸ P. FABRICUS, *Private Security Firms Can End Africa’s Wars Cheaply*, International Peace Associations, 23 Sept. 2000, www.ipaonline.org/news/092300.htm .

Opposition to this view were made, pointing out that this military firms acted regardless of the international law to undermine the stability of other nations and that they exploited the lands where they were used; such evidence could be easily countered because strong governments tend to use this “new mercenaries” to maintain a strong presence in various “hot-zones” without incurring in the huge obstacle created by the bureaucracy of the UN and NATO, avoiding also the so called “Mogadishu Syndrome” generated after the UN-led operation in Somalia in the early 1990s.

The “exploiting territories” argument can be countered as well because, in a neoliberal perspective, the price of a certain service in the market cannot be dropped too much in order to give a proper gain to all the actors involved and, more importantly, this military private firms produces a lot of profitable outcomes for their clients, from surgical intervention to resolve critical situations at a relatively low cost to training *in loco* of national troops that can take advantage of such acknowledged skills as long as they will exist, long after the end of the contract with PMCs. In addition, this new branch of market helped in the creation of new working opportunities for an huge amount of former national soldiers that retired, or were discharged, from their respective national armies after the end of the Cold War¹²⁹.

In the end it is possible to recognize one thing, that will most likely stay un-counteracted for a long time; as Dave Whyte says: “States are playing a formative role in the expansion of private military markets.

¹²⁹ LCDR INDIAN NAVY A. BHARADWAJ, *Privatization of Security: The Mercenary Market-Mix*, Defence Studies 3:2, Routledge, London, UK, 2003, pp. 74-75.

In contrast to the dominant themes of the literature on globalization, the emergence of those markets should be understood as an expansion rather than a diminution of the coercive and violent capacities of states.

Western states are facilitating new modes of delivering terror and violence that are also likely to increase, rather than reduce, the incidence of state-corporate crimes¹³⁰”.

¹³⁰ D. WHYTE, *Lethal Regulation: State-Corporate Crime and the United Kingdom Government's New Mercenaries*, *Journal of Law and Society*, Vol. 30, N. 4. December 2003, London, United Kingdom, p. 575.

PAR. 3.2: The United Kingdom's Case.

“War has changed/ War... War never changes”

*(Old Snake, Metal Gear Solid 4: Guns of the Patriots, Hideo Kojima /
Narrator, Fallout 3, Bethesda Softworks)*

United Kingdom's government has tried to create some sort of “collaboration pact” with the private military firms, in order to gain some advantages, both in economic terms and political terms, by trying to regulate such companies. Though before venturing into the analysis of the U. K. case, it is important to do a quick overview of the situation and the theories that created the basis for such actions to take place.

According to United Kingdom Foreign Secretary under Blair's government in the period 2001-2006: “Today's world is a far cry from the 1960s, when private military activity usually meant mercenaries of the rather unsavoury kind involved in post-colonial or neo-colonial conflicts¹³¹”. This statement is useful to better identify the core of United Kingdom's government attitude towards PMCs and PSCs.

Such private firms are nowadays involved in an extremely wide range of legitimate operations such as providing security to NGOs and United

¹³¹ J. STRAW, *Foreword by the Secretary of State for Foreign and Commonwealth Affairs*, in Foreign and Commonwealth Office, *Private Military Companies: Options for Regulations*, London, United Kingdom, 2001-2002, HC 577, n. 5.

Nations organizations in a series of high profile humanitarian missions¹³², de-mining operations¹³³ and providing security most commonly in the extraction, mining and oil, industries¹³⁴ and, in addition, private contractors provide as much as 80% of British Army training¹³⁵; the positive effects of the implementation of private military firms in the national government and in the international arena can be seen also in the United States, where private contractors are employed by the United States Department of Defence in a number way more higher than the one retain on the government pay roll¹³⁶, with an appraisal of the 8% of the Pentagon's total budget of the 2003/2004 spent on PMCs¹³⁷.

This evidences are notable because they underline a dominant thought in most of the authors writing about globalization and the future of national states in this new framework: the world is suffering a structural change in the relationship between states, markets and corporations, and what this change will generate for the global social order depends on the outcome of a polarized struggle between states and markets; and apparently, markets have gained the

¹³² P. SINGER, *Corporate Warriors: the Rise and Ramifications of the Privatized Military Industry*, *International Security* n. 26, 2001-2002, pp. 186-220.

¹³³ C. SPEARIN, *Private Security Companies and Humanitarians: a Corporate Solution to Securing Humanitarian Spaces?*, *International Peacekeeping* n. 8, 2001, pp.20-43.

¹³⁴ J. CILLIERS, P. MASON, *Peace, Profit or Plunder? The Privatization of Security in War-Torn African Societies*, J. Cilliers and P. Mason eds, 1999, p. 37.

¹³⁵ D. WHYTE, *Lethal Regulation: State-Corporate Crime and the United Kingdom Government's New Mercenaries*, *Journal of Law and Society*, Vol. 30, N. 4. December 2003, London, United Kingdom, p. 576.

¹³⁶ SELECT COMMITTEE ON FOREIGN AFFAIRS, *Private Military Companies*, Ninth Report, H. C. 922, 2001-2002, par. 8.

¹³⁷ N. SCHWARTZ, *The War Business: The Pentagon's Private Army*, *Fortune Magazine* n. 3, 2003, p. 6.

upper hand and they are winning¹³⁸. State control over key public policy areas has been fatally eroded¹³⁹. State sovereignty is gradually withering¹⁴⁰ and some accounts propose that we are witnessing the end of the nation state as a meaningful unit of participation in the global economy¹⁴¹.

A process of sovereignty erosion is in act, where the degree of control held by central political and administrative institutions over important aspects of nation's administration like the management of economy is getting lower and lower, and the colonization of new market spaces is driven by a private interest to the detriment of state-ordered power¹⁴²; this undermining of state sovereignty is partly due to the markets that tended to become localized and globalized, triggering indeed a transformation of the state's capacity to govern, even if it is better to describe this process as a reconfiguration of state-ordered power, where in some "strong" states corporations and public authorities have simultaneously tightened their hold on economic and political decision making process¹⁴³. The Neo-Liberal mantra "privatize or die" have allowed Western corporations to accelerate their accumulation of wealth and power, even if sometime this process was at the expense of the most vulnerable states;

¹³⁸ D. YERGIN, J. STANISLAW, *The Commanding Heights: The Battle Between Government and the Marketplace that is Remaking the Modern World*, Touchstone, New York, NY, 2002, p. 84.

¹³⁹ S. STRANGE, *The Retreat of the State: The Diffusion of Power in the World Economy*, Cambridge University Press, Cambridge, UK, 2000, p.7.

¹⁴⁰ D. HELD, *Democracy, the Nation State and the Global System*, *Economy and Society* n. 20, 1991, p. 17.

¹⁴¹ K. OHMAE, *The End of the Nation State: The Rise of Regional Economies*, Free Press Paperback, New York, NY, 1996, p. 69.

¹⁴² M. KEMPA, R. CARRIER, J. WOOD and C. SHEARING, *Reflections on the Evolving Concept of "Private Policing"*, *European Journal on Criminal Policy and Research*, 1999, p. 215.

¹⁴³ I. DOUGLAS, *Globalisation and the Retreat of the State*, in *Globalisation and the Politics of Resistance*, B. Gills, 2001, p.123.

nevertheless the process of privatization requires a new set of market rules to be constructed and applied. In this sense, such process always involves one of re-regulation¹⁴⁴.

Due to this processes, a growing body of researchers stated that this new *modus operandi* of the modern state presents some “criminogenic aspects”, that were called state-corporate crimes; according to Michalowsky and Kramer, such crimes can also be described as: “illegal or socially injurious actions that occur when one or more institutions of political governance pursue a goal in direct co-operation with one or more institutions of economic production and distribution¹⁴⁵”.

This statement proves two important points of the critics towards mercenaries regulation: first, that the intersection of corporate and state interests produce a bigger amount of large-scale social harms, and second, that such blending of interests will decrease the possibility that such harms will be criminalized and punished by the state¹⁴⁶.

Such critics are helpful in order to reassess the value of new forms of privatization and “re-regulation”, basing this reassessment not only on the analysis of how it restrict access to markets for corporate actors and prevent the happening of harms, but also on how the ability to produce or encourage such harms and crimes depends on a particular form of regulation.

¹⁴⁴ D. WHYTE, *Lethal Regulation: State-Corporate Crime and the United Kingdom Government's New Mercenaries*, Journal of Law and Society, Vol. 30, N. 4. December 2003, London, United Kingdom, p. 580.

¹⁴⁵ R. KRAMER, R. MICHALOWSKY and D. KAUZLARICH, *The Origins and Development of the Concept and Theory of State-Corporate Crime*, Crime and Delinquency 48, 2002, pp.274-275.

¹⁴⁶ *Ivi*, p. 277.

As previously stated, the end of Cold War generated a lot of highly trained soldiers in desperate need to find a new job, and the private military firm's market answered this need. Cold War powers have, after the collapse of the Soviet Union colossus in 1991, disengaged from the system of military patronage that prevailed in the Third world, and some argued that weak states were left isolated and politically destabilized from this decision; moreover, in this framework the stronger states keep to avoid submitting their military forces to protect the weaker states, and this creates a "security vacuum" that was filled by the PMCs¹⁴⁷. In addition, the changing face of war, that now is more based on low-level conflict and skirmish operations, is encouraging the use of small and self-contained forces, which mainly are soldiers of fortune, that are capable to respond on a relatively shorter span of time than national armies or NATO and UN-based forces, and most importantly that are free from the shackles associated with liberal democracies¹⁴⁸. This triggered a sort of circle of instability that sees relatively weak states incapable of maintaining competent armed forces to rely on, and so forces them to seek a guarantee of security from this private military firms¹⁴⁹.

In order to face this situation, states have to acclimatize to this new environment and accept this new actors, the PMCs, as a permanent fixture and, moreover, as useful allies. To do otherwise, and so to attempt to stop the rise of

¹⁴⁷ D. BROOKS, *Messiahs or Mercenaries? The Future of International Private Military Services*, *International Peacekeeping* 2, 2000, p. 135.

¹⁴⁸ C. SPEARIN, *Private Security Companies and Humanitarians: a Corporate Solution to Securing Humanitarian Spaces?*, *International Peacekeeping* n. 5, 2001, p. 16.

¹⁴⁹ D. WHYTE, *Lethal Regulation: State-Corporate Crime and the United Kingdom Government's New Mercenaries*, *Journal of Law and Society*, Vol. 30, N. 4. December 2003, London, United Kingdom, p. 583.

this new companies, is both futile and undesirable, if it is considered the fact that PMCs can be used as a tool to maintain order in weaker states.

The rise of this new strand of market, however, does not imply a decline of the political decision-making process, because even if PMCs are often hired by legitimate governments , sometimes under a strong insistence of other foreign governments, and sometimes such companies are used to destabilize other states, when such private firms are hired by NGOs, private corporations, or by other states, they tends to operate outside the “security vacuum” previously cited, and they need to operate under consent of hosting governments for their livelihood.

When facing this growth in the private military sector’s volume of trades it is important not to consider this as an automatic loss of sovereignty, nor think that state sovereignty turn on the relative economic power of private and public military apparatus, even if such volume of trades still maintain an high level of positive outcomes for the wellness of the state¹⁵⁰.

As a matter of fact, and in relation with the neoliberalist approach, Dave Whyte states that: “state sovereignty does not rest upon a contractual relation between corporations and states. No matter how much political and physical distance it may keep from the territories it places under the control of PMCs the state formally retains its law-making capacity and the capacity to enforce the law coercively in those territories.

¹⁵⁰ D. WHYTE, *Lethal Regulation: State-Corporate Crime and the United Kingdom Government’s New Mercenaries*, Journal of Law and Society, Vol. 30, N. 4. December 2003, London, United Kingdom, p. 585.

State sovereignty cannot simply be transferred by a process of corporate takeover. Nor can it be bought and sold as a commodity, no matter the extent to which state institutions and the apparatuses of government have been commodified. Sovereignty is inscribed in the international state system which, despite its shifting boundaries, continues to support an institutional framework within which the market economy is embedded. Analysing the impact of the rise of the new mercenary therefore requires a rejection of simplified, negative-sum versions of the sovereignty erosion thesis. Instead, the excavation of the mutual benefits that might accrue to state institutions and corporations, the symbiosis of interests, is likely to prove to be a more productive line of inquiry¹⁵¹”.

The current United Kingdom policy debate brings to light an emerging state-corporate military coalition. It is to a discussion of the United Kingdom government's proposals for reform that this thesis will now turn.

A try to regulate the world of private military companies can be found in the British government's Green Paper HCP 577 “Private Military Companies: Options for Regulation”¹⁵², that can be considered as a recognition of the existence and the importance of PMCs and PSCs, since it recognize that the possibility of a complete abolition of mercenaries is highly unlikely and unrealistic, and so it is considered “safer to bring such private military firms into the fold than leave them drifting around unbridled, bereft of a governing

¹⁵¹ D. WHYTE, *Lethal Regulation: State-Corporate Crime and the United Kingdom Government's New Mercenaries*, Journal of Law and Society, Vol. 30, N. 4. December 2003, London, United Kingdom, p. 586.

¹⁵² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228598/0577.pdf visited the 15/09/2014.

framework¹⁵³”. According to Denis McShane, Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs in 2001, “to keep these companies inside the tent doing their things in a way that that we can see what they are up to rather than outside the tent when we have not got the faintest idea of what they are undertaking or what activities they are performing¹⁵⁴”.

What is clear from the previous statements is that the British government is proposing that PMCs can be used as powerful allies to stabilize rather than undermine the ability to rule of others weak governments, in addition to a substantial cost savings to be made if this path would be chose.

It was also noted that thanks to the use of PMCs in United Kingdom’s humanitarian and peace support operations had helped the national army to reduce substantially its military over-stretch¹⁵⁵, minimizing the prohibitive costs associated with a permanent military presence since, in some cases, the costs of security are absorbed by host states or socialized by corporations.

Although the Green Paper outlines seven possible options for the regulation of PMCs and PSCs, it is possible to identify four main kind of approaches:

1. The one that will maintain the status quo.
2. The one that will cause an outright ban of these private military firms.

¹⁵³J. STRAW, *Foreword by the Secretary of State for Foreign and Commonwealth Affairs*, in Foreign and Commonwealth Office, *Private Military Companies: Options for Regulations*, London, United Kingdom, 2001-2002, HC 577, n. 3, p. 20.

¹⁵⁴D. WHYTE, *Lethal Regulation: State-Corporate Crime and the United Kingdom Government’s New Mercenaries*, *Journal of Law and Society*, Vol. 30, N. 4. December 2003, London, United Kingdom, p. 587.

¹⁵⁵SELECT COMMITTEE ON FOREIGN AFFAIRS, *Private Military Companies*, ninth report, HC 922, 2001-02, par.101.

3. The one that will provide a sort of self-regulation, with the onus upon PMCs to demonstrate compliance and notify the government of contracts voluntarily.
4. The one that will create some form of licensing regime, where such licenses will be issued to govern either the general terms of a company operation or issued for each specified contract.

Events have proved that the United Kingdom government is opposing to the first two options listed above, while being more favourable to the latter two¹⁵⁶, since they might avoid the “risk of damage to legitimate security-related business interests by over-regulation¹⁵⁷”. This strategy would maximize the advantages both to the companies concerned and to the British government, considering also that a total ban might provoke capital flights.

The licensing regime seems the best viable option for the British government because it would combine the establishment of a voluntary code of conduct that companies would be forced to adhere to¹⁵⁸. Such “soft-touch” regulatory mix would likely produce great outcomes and advantages for an eventual state-corporate alliance in the military framework; such advantages considers three major aspects:

- The increasing of British industrial competitiveness.
- British ability of conducting foreign policy “by proxy”.

¹⁵⁶ FOREIGN AND COMMONWEALTH OFFICE, *Foreign Affairs Committee, Private Military Companies*, Cm. 5642, 2001-2002.

¹⁵⁷ *Ivi*, p. 1.

¹⁵⁸ *Ivi*, p. 101.

- The diffusion of legal accountability for PMCs.

It is important to do a deeper analysis of the three aspect cited above.

As regards the first point, the British government thought that this kind of regulation might be useful because it would maintain the British private military firms competitive in the international market currently dominated by the American and the British ones¹⁵⁹, and the British government seeks to maintain such dominant status, and in order to do so both the Green Paper previously cited and all the supporting documentation is full of a neo-liberal ideological backdrop centered over an anti-control “burdens on business” rhetoric. As it is possible to read in an appended regulatory impact assessment, the government’s determination to maintain United Kingdom share of military market is an imperative: “An outright ban on the provision of all military services would deprive British defence exporters of contracts for services of considerable value. Since exports of defence equipment are frequently dependant on the supplier being able to provide a service package, a large volume of defence sales would be lost in addition to the value of the sales themselves [...] Significant losses could also impact on the defence industrial base to the detriments of our defence capability¹⁶⁰”.

What is clear after this quote is that the British government believes in a strong umbilical connection between the private military firms market and the weaponry one. As a matter of fact, the government theorized that the

¹⁵⁹ D. SHEARER, *Private Armies and Military Intervention*, Adelphi series, Routledge, Oxon, UK, 1998, p. 37.

¹⁶⁰ FOREIGN AND COMMONWEALTH OFFICE, *Foreign Affairs Committee, Private Military Companies*, Cm. 5642, 2001-2002, p. 45.

rehabilitation of the incorporated mercenary firm would be extremely positive because it would stimulate the defence industry as a whole.

A healthy PMC market is also useful for others British industrial sectors, since the demand for security protection for British companies operating in foreign areas seems to have increased in time, spawning a series of contracts and joint ventures with British private military firms.

In conclusion of the analysis of the first point it is important to underline that British corporate interests and government foreign policy options will be enhanced by this regulatory process.

As far as the second point is concerned, the capability to use PMCs as agents to do foreign policy by proxy, it is important to say that such agencies have been used as a tool to such goal a lot of times by domicile states. For example, in the United States the providers of military goods and services must register with the State Department and any contract that worth more than \$50 million must be notified to the Congress, while contracts with foreign governments are indirectly arranged indirectly by the Pentagon's Foreign Military Sales Department without the need for a licence¹⁶¹. This method helped the United States' government to claim neutrality while keeping a political influence in territories that would be, otherwise, difficult to reach; it also helps to provide logistics and training services to counter-government insurgents or pariah regimes whilst avoiding the risk of public condemnation that might follow a direct and "official" involvement of the United States

¹⁶¹ D. WHYTE, *Lethal Regulation: State-Corporate Crime and the United Kingdom Government's New Mercenaries*, Journal of Law and Society, Vol. 30, N. 4. December 2003, London, United Kingdom, p. 590.

military¹⁶²; as Shearer noted: “In many cases the countries are either carrying out foreign policy directly, or at the least working within acceptable boundaries¹⁶³”.

As a matter of fact, it is known that the British government has already, at least informally, approved and vetoed contracts between PMCs and host states in the past, and so the licensing regime proposed by the United Kingdom will merely formalize an already existing practice¹⁶⁴.

As it is stated before, this way of using PMCs will allow states to achieve foreign policy goals without the need of approval from legislatures, with the certainty that an involvement in or awareness of controversial military operations can be plausibly denied; it is such project for regulation that encourages a sort of lax scrutiny, even more if it is likely going to implicate governments. As Brayton states: “Although some processes might be in place, it is unlikely that politicians will insist on close scrutiny of the military activities of private companies, when those activities can easily be disavowed as non-governmental action¹⁶⁵”.

This use of the PMCs will also allow states and International Organizations to avoid the fearsome “Mogadishu factor”: the reluctance of nations to commit their own troops to overseas conflict and risk public pillory

¹⁶² K. SILVERSTEIN, *Privatizing War: How Affairs of State are Out-Sourced to Corporations Beyond Public Control*, *The Nation*, 28 July/ 4 August 1997, p. 12.

¹⁶³ D. SHEARER, *Private Armies and Military Intervention*, Adelphi series, Routledge, Oxon, UK, 1998, p. 37.

¹⁶⁴ C. WRIGLEY, *The Privatization of Violence : New Mercenaries and the State*, Campaign Against the Arms Trade briefing document, 1999, available at www.caat.org/research/Mercenaries_Body.html, visited the September 18th, 2014.

¹⁶⁵ S. BRAYTON, *Outsourcing War: Mercenaries and the Privatization of PACEKEEPING*, *Journal of International Affairs* n. 325, 2002, p. 55.

when the bodies starts to come back home. The same reaction, in fact, will not happen if mercenaries are used in a conflict. Michael Mann has observed that this propensity is starting to turn the backbone of the nation state into jelly¹⁶⁶, as the UN finds increasing difficulties to recruit troops for peace-keeping operations and to make those troops engage in combat as well¹⁶⁷.

In response to this issue, the Green Paper cited above highlights the advantages, both in cost terms and in terms of overcoming the difficulties associated with securing commitment from member states, of the use of a private security force in UN humanitarian and peace keeping missions¹⁶⁸.

Now the focus will turn on the third point of the list written above, concerning the diffusion of the legal accountability for the private military firms, it is important to say that the government's regulatory impetus has been motivated by an extreme difficulty of securing prosecutions of individuals under international law¹⁶⁹. In addition, the British Green Paper underlines the United Kingdom government's concern about banning the private military firms, taking an opposite side against those in the UN who wish to follow the UN treaty on the banning of mercenaries; moreover, the British government sees the definition of mercenaries found in the Geneva Convention ban

¹⁶⁶ M. MANN, *Has Globalisation Ended the Rise and Rise of the Nation State ?*, Rev. Of International Political Economy, 1997, pp. 472-496.

¹⁶⁷ D. WHYTE, *Lethal Regulation: State-Corporate Crime and the United Kingdom Government's New Mercenaries*, Journal of Law and Society, Vol. 30, N. 4. December 2003, London, United Kingdom, p. 591.

¹⁶⁸ FOREIGN AND COMMONWEALTH OFFICE, *Foreign Affairs Committee, Private Military Companies*, Cm. 5642, 2001-2002, par. 57-59.

¹⁶⁹ *Ivi*, par. 68.

unworkable due to a series of loopholes and misconceptions¹⁷⁰; an interesting fact about that “International Convention Against the Recruitment, Use, Financing and Training of Mercenaries” is that, among all the European countries, only Italy and Belgium had signed that treaty¹⁷¹.

By acting as private agents, PMCs gain advantages of the shield in relation to international humanitarian law provided by the corporate personality. Nowadays it is arguable that states are entitled or obliged to contain within their boundaries any individuals they suspect may be committing war crimes in a foreign country, considering also the UN Declaration of Human Rights. Such legal anomalies create a “law-accountability gap” for the legal scrutiny of PMCs and, despite this situation, government publications fail to consider the possibility of reform at the level of international law. The form of regulation proposed by the British government suggests a rejection and a drifting from the view of international law as a site of legal regulation.

In the most likely scenario, it seems that for private military firms legal control will be enacted mainly through a commercial agreement between the government and private contractor. This re-regulation of the PMCs market can be seen as a form of transferral of law by a catalytic state¹⁷², in which both

¹⁷⁰ D. SHEARER, *Private Armies and Military Intervention*, Adelphi series, Routledge, Oxon, UK, 1998, p. 18.

¹⁷¹ https://www.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=530, visited the September 18th, 2014.

¹⁷² B. SANTOS, *On Modes of Production of Law and Social Power*, International Journal of the Sociology of Law n. 13, 1985, pp. 299-336.

international prohibition treaties and national law are cast aside for a commercial or civil contract as the primary form of legal regulation.

Via this process, the state is capable of establish the basis for consolidating its common interest with private military capital; the state will also gain access to the “ultimate sanction” towards non-compliant PMCs, which would be the power to de-licence or debar them from participating in the market¹⁷³. This possibility is analyzed in the Green Paper, which underlines that PMCs are not willing to change sides during a dispute, unlike the ancient free companies, because such action would be ruinous for a PMC’s reputation in the long run and in a mere business prospect¹⁷⁴. It is possible to rephrase the following concept as follows: “the invisible hand penalties generated by the market, the invisible slap on the wrist, will prevent PMCs from engaging in illegal or unethical acts¹⁷⁵”. According to Tim Spicer, formerly head of PMC Sandline: “PMCs are very unlikely to be involved in human rights violations; it is the quickest way to be out of business and en route to the International Criminal Court. On the contrary, PMC training and supervision of military operations can raise the standard of human rights awareness and behaviour. Government forces in some less developed countries can be part of the problem¹⁷⁶”.

¹⁷³ D. WHYTE, *Lethal Regulation: State-Corporate Crime and the United Kingdom Government’s New Mercenaries*, Journal of Law and Society, Vol. 30, N. 4. December 2003, London, United Kingdom, p. 593.

¹⁷⁴ FOREIGN AND COMMONWEALTH OFFICE, *Foreign Affairs Committee, Private Military Companies*, Cm. 5642, 2001-2002, p.17.

¹⁷⁵ D. WHYTE, *Lethal Regulation: State-Corporate Crime and the United Kingdom Government’s New Mercenaries*, Journal of Law and Society, Vol. 30, N. 4. December 2003, London, United Kingdom, p. 593.

¹⁷⁶ T. SPICER, *Memorandum form Lt. Colonel Tim Spicer*, p. 3.

In conclusion of this analysis, it is possible to point out some interesting starting point for further discussions: first of all that the punitive arm of the market is going to be invested, if such regulatory act would be passed, with more controlling weight than the criminal law; also, it seems inevitable that the current law-accountability gap will get wider and wider, according to this regulatory trend, and that the responsibility for the crimes committed by Licensed PMCs would not fall on the British government, without regarding the latter's complicity¹⁷⁷.

For all the previous stated reasons, it is possible to see that PMCs tend to uphold, rather than undermine, the rule of law; they are likely to act as law-abiding citizens, respecting the limits placed by local laws and international, or human rights, standards, and any residual nervousness about the figure of the "new mercenaries" it is said to be based upon a "false and antiquated premise of human rights violations"¹⁷⁸.

In conclusion, if there is a negative-sum power game in this framework, it is not one between states and markets, but between Western state-corporate powers and the rest of the world. The predicted scenario for the market of the PMCs is not representing an erosion of the state's sovereignty, but it is more a relation of re-regulation as described previously. Some studies tend to describe such relation in a pejorative way: the regulation is a sort of handcuff that the states place on the wrists of the private actors. But it is not a correct statement,

¹⁷⁷ D. WHYTE, *Lethal Regulation: State-Corporate Crime and the United Kingdom Government's New Mercenaries*, *Journal of Law and Society*, Vol. 30, N. 4. December 2003, London, United Kingdom, p. 594.

¹⁷⁸ *Ibidem*.

because regulatory regimes build the foundations that allows private companies to flourish and enable the function of the market.

As Brooks have noted: “legislation allows clients and purchasers to use the services of PMCs without having to justify the position of whether the companies are mercenaries or not¹⁷⁹”. The opening of this new market may provide to the British government a certain degree of control over the private military sector, while encouraging the “mercenary activities” that were supposed to be consigned to the past.

Nevertheless, it is undeniable that abuses and human right violations abound in the “war market”, and so in the absence of a proper and new criminal legal control, the rate of such crimes are most likely to increase; in this scenario, the expansion and a new regulation for this market can be read as a move that will encourage, rather than control, the incidence of state-corporate crime¹⁸⁰. Despite this statement, it is plausible to consider such crimes as having origin in the infrastructural, as well as coercive, capacity of a state, since it is the government that makes political choices about the legal and institutional frameworks that regulate the market¹⁸¹.

¹⁷⁹ D. BROOKS, *Messiahs or Mercenaries? The Future of International Private Military Services*, *International Peacekeeping* 2, 2000, p. 137.

¹⁸⁰ D. WHYTE, *Lethal Regulation: State-Corporate Crime and the United Kingdom Government's New Mercenaries*, *Journal of Law and Society*, Vol. 30, N. 4. December 2003, London, United Kingdom, pp. 599-600.

¹⁸¹ *Ivi*, p. 600.

CONCLUSIONS

This work was an attempt to justify the use of the private military firms in the market, and in the seeking of this result the author tried to underline the various loopholes and errors of all the theories and explanations that were proposed to justify and ban the PMCs, while recognizing that, indeed, there were some true and valid statements in them.

As a matter of fact it has emerged that the conception behind the scepticism towards this “new-mercenaries” lies on some false assumption based on the fact that in the past national armies might have been more “reliable” instead of a free company.

It has been showed that, in the modern society, the use of PMCs might generate various outcomes that encompass a wide range of fields; it can prevent the overspread of national troops on foreign soils, it can reduce the costs of providing security to the citizens, thus reducing the public expenditure for a state, it can help a nation to support some operations bypassing the “red tape” of the international bureaucracy; it can also create a better environment for the regulation of such companies, reducing greatly the risk of a rise of illegal operations realized by such private military firms and providing a solid regulation that might discipline the actions of this private actors.

In conclusion, it is important to underline the fact that PMCs have proven their worth and their importance as military assets in various situations,

from training foreign troops, to providing security for agencies and private actors, to risk assessment and support to local troops, to active combat, and since they acted less and less as their “ancestors” in ethic terms, a kind of regulation that might legitimize their use and recognize to them as well the status of combatant should be the logic way to answer to a market logic that is growing stronger day after day while avoiding the creation of a market colossus that might endanger the stability, both economical and political, of a nation.

ACKNOWLEDGEMENTS

It is common knowledge that this part of a dissertation is one of the most difficult one, and such statement is correct.

Nevertheless, there are a lot of people that needs to be thanked, and so I have to face this white page, overcome the “writer’s block” and let all my emotions flow like a river; easier said than done.

First of all I would like to thanks my supervisor, Prof. David Held, and my co-supervisor, Prof. Marcello Di Paola, for giving me the possibility to finish my academic life with a thesis focused on a subject and a topic that I really like.

Then I would like to thank the university LUISS Guido Carli and its director, because it is thanks to them that today you can read these words.

I would also like to thanks all my family, because they supported me during this wild ride towards this degree, without losing faith in me, even when everyone else did; I guess that this is how a family should act, but it feels always good when it happens to you and your family.

Thanks to my dad Cesare, that granted me all the things I needed to accomplish this goal, and not only on an economic point of view. He gave me a lot of motivation to finish this run, so if I am here today, it is also for this.

I would also like to thank my mom Milena, she simply knows why.

Last but not least, I want to thank my older, and wiser, brother Nicola. It is hard to see each other but I know that I can always count on his support, weather it is a simple joke or a wise advice. He always stayed at my side, and

was always honest and kind with me. He knows every reason why I thank him, and I am sure that I made him a little proud about this achievement, in the same way he makes me proud of him every day. Hopefully we will be together when you will read this, and this will be the best gift I could receive from you.

In any case, it is impossible for me to consider this page done without thanking all my friends that shared with me two amazing years and all the ones of the “old guard” that stayed at my side during this incredible adventure.

Like Alonso of Aragon once said: “old wood to burn, old wine to drink, old authors to read and old friends to trust!”; this is the message I would like to send to all my friends, because during these years I really understood who was a real friend, and it is to them that I give my deepest thanks.

Thanks to Geovani “Chico”, shieldbrother and fellow tactician, we will meet again in the “battlefield”: he knows what I mean. Thanks to “Farnet”, fine sommelier and great friend: you are a kind spirit, keep it up. Thanks to Magnus, finest of the Rhoan’s riders: at the dawn of the fifth day, look at east.

Thanks to Camilla, Marta and Consuelo, that never failed to give me good advices and that accepted me as a friend when I didn’t knew anyone. Thanks to Ale Pisanu, you and Federica were the first people I met, and you were always at my side.

Thanks to “Siggi” and Giovanni, we shared a great Erasmus experience and we came back with a very strong bond: we should go out to dinner with Dhur someday.

Thanks to “Magico Bomber” Quaglia, fellow A.S. Roma supporter and great confident: we shared a lot of adventures, and I hope we will share more in the future.

Thanks to Giulia, that never failed to make me laugh and that made me meet a lot of great people: see you later alligator!

Sure I would like to thank all my friends one by one, but it would take hundreds of pages, and so I will thank you all in a form of a list; please do not be upset, I cherish each and every one of you equally. Thanks to Federica “Fefè” that crashed into my bachelor party uninvited (you know I am joking), to Lollo DS, to Carolina, Diggi, Chiara “Let’s Rock” Silvestrini, Eugenio “Finch”, Pietro Von Matterhorn, Francesco “Franz”, MaryHappy, Anna The Face, Dennis “4th of July” Pinna, Leonardo, Mattia “The General” Ravano and all the people of the course of International Relations that I forgot for sure to mention. Thanks also to Vipra, may your thesis will be excellent, Giachi, Alberto Sergi and Daniela, Galasso, Pingitore, and all the people of that group that shared with me a summer of study and years of laughs.

Thanks to all the people of the “Group 88” that is now scattered all around the world; I would like to thank especially PP Coli because even if he was abroad, he never let me feel his absence.

Thanks to Peppe “Son of Love” and Matteo “LoZio”, two great friends that I met in Lent and that I hope to never lose: ad maiora semper!

Thanks to all my friend in Rimini, that always made me feel welcome even when I went away for long periods: Berna, Teonj, Costy, Pate, Carenz, Alex, Borgo, Giorgia, Jungle, Baba; simply thank you all.

Thanks to all the wonderful people that I met during the Erasmus: the “Catalan Ghetto”: Mireia “LaZia”, Lidia, Bea, Berta and Laia, Jero “TheDragon”, my flatmates Ian, Vanessa and Sarah, Olivia and Sherezade, Fra Luvisotti: we have to eat again “la carbonara quella bona”; Donatella, Alexia, Stefan “I paid for this”, Roman, Venio “The President”, Diego Maiolatesi, Carlo “Caccia” Macale, Spollonz, Ashley, my dear mentors Michelle, Hester and Arjan, Patricia, Karolina, Farbod, Zoe, Belal, Kinga and Izabela. All of you made that six months unforgettable, and I will remember it forever.

Thanks also to all the people that proved to be anything except my friends; it might seems strange, but the pain I felt for their betrayal was a great motivation to be a better person. It is indeed true that “what does not kill you, only makes you stronger”; and the pain that all of you inflicted to me made me capable of bearing the worst in life.

The last thanks is to myself, because I was able to resist the numerous assaults that life did against the walls of my castle, and I was able to come out victorious in this battle, despite the odds, the people who crave for my failure in the shadows of their vileness and those who tried to bring me down. I am glad to be a living monument for their sins and their ultimate failure.

But most of all thanks to you, fellow reader of this words because, even if your name was not present in this pages, the fact that you are reading this

means that you care about me, and your friendship is a precious thing that I cherish more than everything.

And now the time has come for me to wander away towards the sunset, like the old gunslingers, treasuring the memories and ready to face the new challenges that I will encounter. As Stephen King wrote: “The man in black fled across the desert, and the gunslinger followed”. Destiny awaits.

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