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Responsibility for security during the „wars on invoices”. The case of contractors: an outline¹

ABSTRACT

There are many theoretical and legal issues related to the operation of private military companies (PMCs) and their presence (location of their registered offices) in democratic states under the rule of law that remain unsolved in legal doctrine and practice. There are no clear rules at an international level that define the status of these agencies and the way in which they carry out their duties. There is also the problem of distinguishing between contractors and mercenaries. PMCs, like private security companies (PSCs), are used by states in exchange for large government contracts in so-called „unwanted wars”, where it is cheaper to conduct operations without parliamentary oversight, media publicity, or social objections to sending military contingents abroad. Sometimes it is a question of providing discrete military aid to „friend countries”. PMCs are politically safer in such a situation. Not only states but also non-governmental organizations, private companies, rebel groups and declining dictators hire these private armies. The problem requires urgent multifaceted reflection leading to changes in legal doctrine and legislative action, both at the international level and in individual countries.

Keywords: mercenary, private army

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Odpowiedzialność za bezpieczeństwo w czasie „wojen na faktury”. Na przykładzie kontraktorów. Zarys tematu

STRESZCZENIE

Jest wiele nierozwiązanych w doktrynie i praktyce problemów teoretyczno-prawnych związanych z działaniem prywatnych firm wojskowych (PMC) i ich obecnością (usytuowaniem siedzib) w demokratycznych państwach prawnych. Brakuje jasnych przepisów na poziomie międzynarodowym, zdefiniowania statusu tych agencji i sposobu, w jaki wykonują swoje obowiązki. Wciąż pojawia się problem odróżnienia kontraktorów od najemników. PMC, podobnie jak prywatne firmy ochroniarskie (PSC), są wykorzystywane przez państwa – w zamian za duże kontrakty rządowe na tak zwanych „niechcianych wojnach”, w których tańsze jest prowadzenie działań bez nadzoru parlamentarnego, medialnego rozgłosu, a przede wszystkim sprzeciwów społecznych wobec wysyłania za granicę własnych kontyngentów wojskowych. Czasem chodzi też o udzielenie dyskretnej pomocy wojskowej „zaprzyjaźnionym krajom”. PMC są w takiej sytuacji bezpieczniejsze politycznie. Jednak nie tylko państwa, ale także organizacje pozarządowe, firmy prywatne, grupy rebeliantów, upadający dyktatorzy wynajmują „prywatne wojska”. Problem nadal wymaga pilnie wieloaspektowej refleksji doktryny prawniczej i działań praktyki legislacyjnej, tak w skali międzynarodowej, jak i w poszczególnych państwach.

Słowa kluczowe: najemnik, kontraktor, prywatna armia



1

INTRODUCTION

In the spring of 2014, it was reported, „Since the turn of February and March of this year, several German, Israeli, French, and Russian news agencies and information portals informed about the presence of the American commandos and **mercenaries** [emphasis by the author] from other countries in Ukraine. According to the latest data of the German newspaper Bild am Sonntag, 400 mercenaries from the private US army Academi, formerly known as Blackwater, take part in the ongoing battles against the ‘separatists’. Leaks about the American presence in Ukraine (and mercenaries from other countries of Europe, Asia and Africa) appear from time to time, and every time more information comes to light. There were also rumours about Polish mercenaries”².

Regardless of whether and to what extent the information in the media is true – the armed Russian-Ukrainian conflict that started in 2014, involving numerous unmarked armed troops, has revived the question of the political and legal doctrines relating to the permissible scope of legal tolerance of modern democratic states for the participation of private military agencies, and contractors employed by them, in armed conflicts and stabilization actions.

The present paper discusses this issue because it is like a focusing lens that shows how modern Western states look for savings and ways to outsource their tasks. The growing role of private military companies can be considered a manifestation of how the functions of states are transformed. However, the transfer of military tasks from the public to the private sector gives rise to new legal issues related to the sovereignty of states and the militarization of societies.

Private military companies often operate in a grey zone of law, while international and national regulations on their activities are rudimentary and vague in many countries³.

² M. Soska, *Amerykańscy najemnicy na Ukrainie. Pogłoski czy rzeczywistość?*, www.konserwatyzm.pl (15.07.2014). The information concerns 2014. www.spiegel.de/politik/ausland/ukraine-krise-400-us-soeldner-von-academi-kaempfen-gegen-separatisten-a-968745.html (11.05.2014).

³ For security cf., e.g., J. Potrzebacz, *Bezpieczeństwo prawne z perspektywy filozofii prawa*, Lublin 2013.

THE HISTORY

Let us recall first that mercenaries and private armies have been known since ancient times. In fact, mercenary troops only started becoming less significant as late as the 19th century, when national armies of conscripts were established. The issue is now becoming relevant again.

In ancient times, mercenaries served in the armies of Greece and Persia⁴. Xenophon, a pupil of Socrates, described the return of defeated Greek mercenaries from an expedition against Artaxerxes⁵. Cyrus the Younger hired 10,000 Greek mercenaries to fight against his brother Artaxerxes.

Mercenaries in ancient times provided highly specialized services during wars: the inhabitants of the Balearic Islands specialized in stone slinging, and the Cretans were excellent archers⁶. Rome and Carthage used their services.

Mercenary troops in Byzantium consisted of Germans, Normans, Franks, Turks and Scythians.

Condottieri fought in Italy during the Renaissance⁷. „Every city, every province had its condottieri and those were not necessarily Italians. Just to mention the famous Englishman, John Hawkwood (1320–1394). To avoid robbery in times of peace, Italian princes were the first who understood the necessity to pay mercenaries, even when not at war. This was the beginning of a professional army”⁸.

In the 16th and 17th centuries, the high seas were full of pirates at the service of monarchies that were conquering the world⁹.

In Europe, Switzerland was famous for mercenary troops for several hundred years. On many battlefields, Swiss mercenary troops were fighting on both sides of the conflict at the same time. „Historians estimate that over the past 600 years, 1.5 million Swiss mercenaries served in foreign armies.

⁴ Mercenary – fights for wages, is not a national of a party to a conflict. The UN Convention of 1989 prohibits the provision of mercenary services.

⁵ R. Gan-Ganowicz, *Kondotierzy*, Warszawa 2013, p. 15 (my translation), <http://armieswiata.freehost.pl/pod/bizant.html> (20.12.2014).

⁶ So it is today: contractors have often unique and highly specialized skills – cf. below on this topic.

⁷ Condottiere – a mercenary, generally a commander of the army in medieval Italy.

⁸ W. Caferro, *John Hawkwood. An English Mercenary in Fourteenth-Century Italy*, Baltimore 2006.

⁹ Corsair – fought for the spoils of the seas and oceans on behalf of a ruler during war or peace.

(...) Swiss mercenary troops could be encountered in the armies of Poland, Austria, France, Venice or Sardinia. Mercenaries from the Alps also made their way to India. They even fought in America under the British banners. The most famous branch of the Swiss mercenaries is the Swiss Guard that has served the popes since the 16th century¹⁰. The Swiss Corps were part of the French army from the beginning of the Renaissance to the Revolution. In the 15th century, almost the whole of Europe was dominated by mercenary troops. „Their commander played an important role there – he was an entrepreneur who signed a military service contract with a state. The mercenary army system has not gained a foothold in Poland”¹¹. However, there were exceptions. In the 17th century, mercenary troops called *lisowczycy* went down in history because of their bravery – but the Noble Republic of Poland did not pay them, and so they lived off the spoils of war.

Mercenaries fought in wars and also undertook many morally ambiguous or even extra-legal actions. The activity of pirates and privateers illustrates how public authorities and individuals in the past benefited from actions taken by private individuals who used illegal violence yet with the implicit acceptance of an authority¹². Francis Drake (1540–1596) attacked and robbed vessels and ports of Spain and Portugal. He was secretly supported by Queen Elizabeth, with whom he shared the profits. Since Drake’s loot and other achievements for England in sea battles were huge, after some time the queen gave him an official licence to operate as a pirate. She also gave him a nobility title and the rank of admiral¹³. In Poland, King Casimir IV organized a privateer fleet in 1456 during the Thirteen Years’ War with the Teutonic Order. „Privateers were private ship owners, who voluntarily and at their own expense joined one of the states in sea battles and fought under its flag in exchange for the resulting gains. Privateers – according to the customs prevailing in Europe at the time – were given ‘letters of marque and reprisal’ entitling them to recruit the crew and provide proof that they were not ordinary pirates”¹⁴. The commissioned crew enjoyed legal protection

¹⁰ B.T. Wieliński, Szwajcaria nie chce już najemników, *Gazeta Wyborcza*, (02–03.02.2012, p. 12).

¹¹ J. Bardach, B. Leśnodorski, M. Pietrzak, *Historia państwa i prawa polskiego*, Warszawa 1976, p. 234; H. Wisner, *Lisowczycy. Łupezcy Europy*, Warszawa 2013.

¹² Privateer – a corsair operating in the Baltic Sea and the North Sea in the period from the 15th to the 18th century.

¹³ J. Cummins, *Francis Drake*, Warszawa 2000.

¹⁴ *Ibidem*, p. 236; www.biography.com/people/francis-drake-9278809 (20.12.2014).

and had the right to use the flag. Corsairs were hired not only by monarchs, but also by some of the port towns. Gdańsk organized a privateer fleet under the Hanseatic League. In 1856, the Treaty of Paris prohibited privateering.

Private armed forces operated for centuries not only at sea but also on land. In the 17th century and the mid-18th century, individual magnates had their own, well-organized and well-equipped private armies called „court troops” or „militias.” Private armies included all types of military forces: cavalry, infantry and artillery. The ranks of officers and non-commissioned officers were the same as in the royal army. Magnates also possessed fortresses which were sometimes more modern and better equipped with artillery than those owned by the state (e.g., Zamość, Wiśnicz). Magnates used private armies to maintain power among their subjects and to gain political influence. In the 18th century, German, Scottish and even one Turkish regiment served the King of France. „Not only troops were foreign: so were their commanders. In the 17th and 18th centuries, many famous commanders roamed Europe, offering their swords to princes who were able to pay them money and honours”¹⁵. „In the second half of the 17th century and the first half of the 18th century, the military troops owned by magnates still sometimes took part in private wars, which would often become a form of resolving disputes between various magnates or factions of magnates, as was the case in Lithuania in 1700–1701, when a civil war was fought against the Sapieha family by other powerful aristocratic families led by the Radziwills”¹⁶.

Changes in the perception of mercenaries in Europe, mainly due to the emergence of mercenaries with new motivations, are associated with the ideas of freedom brought about by the French Revolution. Since then, in times of war, mercenaries began to join one of the parties in a conflict also for ideological reasons, and not just for money.

The situation changed even more when firearms began to dominate on the battlefield. The massive loss of life led to a significant multiplication of troops in the 17th and 18th centuries. Great wars and mass armies in turn gave rise to a new order: the increased authority of nation-states. Only well-organized

¹⁵ R. Gan-Ganowicz, *op. cit.*, p. 16.

¹⁶ *Ibidem*, p. 237; M. Kallas, *Historia ustroju Polski*, Warszawa 2007, p. 128.

nation-states were able to use mass armies equipped with weapons, while the scale of private armies was no longer appropriate.

The strengthening of national states changed the situation of private troops. In the 19th century, national armies of conscripts were developed. There was no need for founding expensive private armies, because they could no longer pursue new strategic concepts of war. This was the twilight of mercenary troops.

There were exceptions. King Louis Philippe created the French Foreign Legion to suppress the revolt of Abd-el-Kader in Algeria, and afterwards „rented” it to friendly monarchs, such as the Queen of Spain¹⁷. Exceptions took place also in colonies. In India, the British East Company had its own private army, which well illustrates the link between the interests of the state and private commercial companies. The state no longer has a monopoly on the legitimate use of force¹⁸.

However, during World Wars I and II, mercenary troops performed only a small range of tasks. They operated mainly „in the background”, built bridges or organized supplies. After World War I, many military pilots (French, Germans or Americans) had no job, and found employment in China.

In the 1960s, private mercenary troops were reborn in many African countries and played important roles in the newly liberated colonial countries¹⁹. The struggle for influence was in fact a struggle for a place in the new, hidden Cold-War world order. Trained in Moscow and other Eastern bloc countries, „military instructors” „supported” the weak structures of the newly formed states, while „mercenaries” organized defence, sometimes actively participated in fighting, delivered elementary military knowledge to the natives, and were responsible for communication. As the territories of the new African states were not set out on the basis of cultural, linguistic and ethnographic tribal boundaries in the 60s, many tribes who had been antagonized for centuries were incorporated together into the newly-created states. In the colonial times, the rule of the Europeans had suppressed the symptoms of antagonisms. Decolonization and the creation of new states revived age-old tribal conflicts. „We observe a similar phenomenon almost in all African countries: the central government is opposed by a ‘national liberation

¹⁷ R. Gan-Ganowicz, *op. cit.*, p. 17.

¹⁸ A. Porter, *The Nineteenth Century. The Oxford History of The British Empire*, Vol. III, Oxford 1998, p. 90.

¹⁹ Among them were Poles: e.g., J. Zumbach, R. Gan-Ganowicz; P. Montagnon, *Historia Legii Cudzoziemskiej. Od 1831 roku do współczesności*, Warszawa 2006.

front' – wrote Polish mercenary, Rafał Gan-Ganowicz, who took an active part in the fighting in Africa and the Middle East. When we look closer, in most cases we find something that professional commentators do not want to see: namely, that 'the government' and 'the front' are simply different and hostile tribes!"²⁰. The terms „right-wing dictatorship” or „left-wing dictatorship” were usually not culturally associated with what these terms meant in Western doctrine. „Depending on where the state takes money, weapons and advisers from, the official language and external forms take on different shades, and the state flag becomes more or less red, or national, but in fact the goal is always the same: the dominant tribe wants to preserve or gain power”²¹. During the war of the 1960s, Lumumba in the Congo wanted the Soviet and Chinese communists to seize power. White mercenaries, among others, fought on the opposite side, supporting the Prime Minister, Thsombe. The Europeans decided to join the conflict for a mixture of reasons: to pursue their ideological (e.g., anti-communist) goals, to satisfy their thirst for adventure in the extreme conditions of war, to escape from the problems of life in Europe, to earn some money, and even to satisfy the motivations of deeply demoralized violent criminals²². This diverse, hard-to-clearly-assess group in the Congo also included some Poles: Captain Kowalski, Józef Swara, Stanisław Krasicki, Kazimierz Topór-Staszak and Rafał Gan-Ganowicz. The difficult period when new states were created in Africa and the Middle East after decolonization gave rise to demand for more advanced security protection and professional soldiers to support the safety of the indigenous population. It was satisfied by, among others, demobilized soldiers from Vietnam, Korea and Algeria. In the 20th century, mercenaries became notorious for unclear relationships with hardly legitimized groups fighting for power in the Third World, acting outside international law, participating in often mafia-related rebellions, or taking part in fighting for drugs or blood diamonds, and they were often seen as adventurers, criminals or paid murderers. However, the ethical evaluation of their actions in history should not be generalized, but addressed in a time-specific and in-

²⁰ R. Gan-Ganowicz, *op. cit.*, p. 123.

²¹ *Ibidem*.

²² www.mercenary-wars.net/congo/list-of-congo-soldiers.html (20.12.2014). „For several months I felt a growing longing. Longing for the sun, for war, for adventure. (...) I begged the god of war for one more adventure” – so writes R. Gan-Ganowicz in his memoirs (*op. cit.*, p. 133). However, there are those who call mercenaries bluntly: „paid murderers.”

dividual manner. Mercenaries now generally have a bad reputation, and the UN Convention in 1989 banned the use of their services, officially designating their activities as criminal. Therefore, the term „private soldiers“ has been replaced by „contractors.“ The new term has been promoted in legal doctrine in the last 30 years. The idea is to break from the notoriety, the „black legend“ of the mercenaries, and set a new ethical and legal scope for the rights and obligations of combatants who are not nationals of a party to a conflict and perform their tasks in paramilitary companies for payment.

In Poland, Art. 141 of the current Criminal Code regulates the issue of service in a foreign army or mercenary service as follows: „§ 1. Whoever, being a Polish national, undertakes, without the consent of a relevant authority, military duties in a foreign army or military organization, shall be subject to the penalty of the deprivation of liberty for a term of between three months and five years. § 2. Whoever assumes duties in a mercenary military service prohibited by international law, shall be subject to the penalty of the deprivation of liberty for a term of between six months and eight years. § 3. A Polish national who, at the same time, is a national of another state shall not commit the offence specified in § 1 if he resides within the territory of the latter state and completes his military service there“²³.

Contractors, who distance themselves from mercenaries, are employed by legally private military companies (PMCs) and currently perform tasks that in the 20th century belonged, for the most part, exclusively to states, state-owned military enterprises and military units, including naval units²⁴. In inflammatory areas, professional regular soldiers were accompanied by – rather few – mercenaries who were, however, not supported by large private and legitimate military agencies, but had unclear contracts with not very credible entities.

A PMC is now taken to be an armed body, a paramilitary organization able to act directly on the front in an area of armed conflict or in other regions at risk of crime (e.g., piracy at sea)²⁵.

Private security companies (PSCs), which have a slightly different profile to PMCs, also operate in hazardous areas. PSCs are security agencies that provide support and perform background tasks (e.g., training); in regions

²³ The Criminal Code, OJ 1997 No. 88, item. 553 as amended.

²⁴ PMCs in the broad sense include PMCs in the strict sense (private military companies) and PSCs (private security companies involved also in the military security), including also private military naval companies.

²⁵ www.communicatingsecurity.PrivateMilitary.org (15.08.2014).

of conflict, they generally carry out only ancillary tasks (e.g., logistics, personal protection). However, in practice, such tasks are typically complex and difficult to qualify, so the boundary between the different types of companies is blurred.

3

MERCENARIES AND CONTRACTORS TODAY – AN ATTEMPT TO MAKE A NORMATIVE AND ACTUAL DISTINCTION

In accordance with Art. 47 of the Protocol Additional of 1977 to the Geneva Conventions of 1949, a mercenary is „any person who: (a) is specially recruited locally or abroad in order to fight in an armed conflict; (b) does, in fact, take a direct part in the hostilities; (c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party; (d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict; (e) is not a member of the armed forces of a Party to the conflict; and (f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces”²⁶.

In the Protocol Additional in 1977, it was decided, however, that armed forces may include paramilitary organizations or armed law-enforcement services, but that any belligerent party is obliged to notify of this inclusion. Such agencies hire contractors, i.e., armed employees of paramilitary companies who operate in areas of armed conflict²⁷.

In 1989, the United Nations adopted the Convention against the Recruitment, Use, Financing and Training of Mercenaries²⁸. The Convention expands the definition of „mercenary” to include: „any person who, in any

²⁶ The act of 8 June 1977 entered into force on 7 December 1979. <http://www.icrc.org/ihl/WebART/470-750057> (26.08.2014). The same definition is in the Convention for the Elimination of Mercenarism in Africa of 1977. www.icrc.org/ihl/INTRO/485 (10.08.2014).

²⁷ <http://www.icrc.org/ihl/WebART/470-750057> (26.08.2014).

²⁸ www.icrc.org/ihl/INTRO/530/OpenDocument (15.08.2014).

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; or (ii) Undermining the territorial integrity of a State,” of course, in return for remuneration. Art. 2 of the Convention bans the recruitment, financing and training of mercenaries and the use of their services, while Art. 3 states that it is an offence to participate directly in hostilities or in a concerted act of violence. It is forbidden to attempt to commit, assist or participate in any of the offences set forth in the Convention. The states that are parties to the Convention have committed themselves to prohibit the activities of mercenaries. In the case of arrest, the states have an obligation to extradite or sentence a mercenary²⁹.

This regulation generally makes a distinction between mercenaries and contractors, but in practice the criteria remain unclear, as it is easy to point to various borderline cases. Therefore, one can often find in the literature a position that is generally hostile to private military companies, because PMCs promote the modern form of „(unreasonably) legalized mercenarism”³⁰.

Also, today’s media and public opinion still use the terms „contractor” and „mercenary” generally as synonyms. Here is an example: „The use of mercenaries is now big business and an important part of the economy. Private military companies (PMCs), private security companies (PSCs) and those providing services for the army have become a well-paid haven for former members of special units like SEALs, Delta Force or SAS. This market is worth more than USD 100 billion”³¹.

4

TASKS OF PMCS AND PSCS

A private military company (PMC or PSC) employing contractors (not mercenaries) is an economic entity operating openly and legally, in a continuous manner. In general, it offers services in the field of military security,

²⁹ <http://www.un.org/documents/ga/res/44/a44r034.htm> (26.08.2014).

³⁰ *Ibid.* c.f. footnote 4 in Sect. 17.

³¹ Editorial, *Prywatne wojska najemników. Nieuchronna przyszłość?*, www.gazetaprawna.pl (16.12.2012), accessed on 20.08.2014.

ranging from training, protection of military units in the country in which the agency has its registered office, to providing support for an army during armed conflicts, catastrophes, and natural disasters, including in other countries³².

It is characteristic that PMCs take orders from countries, international organizations or large corporations, but they can also legally accept orders from private individuals. The question is, what is the responsibility of the state in which a PMC has its registered office and its liability, if the PMC accepts orders from dictators, rebel leaders or deposed leaders?

PMCs are often responsible for the protection of facilities, grounds and equipment belonging to an army, the soldiers themselves, the army civilian employees, government offices located outside the country, humanitarian organizations, large corporations and their employees operating in dangerous areas of the world³³. However, the protection may also include dictators, rebels and warring separatist forces.

PMCs and PSCs also perform tasks during natural disasters, as well as during peacekeeping and stabilization operations. They protect missions of non-governmental organizations and industries, for example buildings, equipment and investment areas of large transnational corporations operating around the world, especially outside the countries in which they have their registered offices. In addition to personal and technical protection, the companies also conduct professional training for troops and other institutions (e.g., security agencies and police), and also for citizens of countries where military conflicts take place. This includes training related to threats at mass events, specialized military tactical training (for example, for a navy or air force), dog training and weapons training. PMCs and PSCs often provide (rent) highly specialized safety equipment, renovate and maintain it, and operate it in vulnerable areas to train nationals for whom they work in how to use it³⁴. PMCs have rigid, strongly formalized and hierarchical

³² Private Security Contractors (PSCs), Private Military Corporations, Private Military Firms, Military Service Providers, Private Military Industry. C.f. A. Stanger, M.E. Williams, *Private Military Corporations: Benefits and Costs of Outsourcing Security*, *Yale Journal of International Affairs*, 2006 winter, p. 2–17.

³³ Private security companies work also for the UN and the World Bank.

³⁴ For a list of comparative literature see: M. Kovac, Legak. *Legal Issues Arising from the Possible Inclusion of Private Military Companies in UN Peacekeeping*, Geneva 2008 (10.08.2012). This text also contains a careful legal analysis of the problem of the possible use of PMCs in UN peacekeeping military structures. Cf. also: S. Gordon, *Business Goes to War. Private Military/Security Companies and International Humanitarian Law*, *International Review of the Red Cross*, 2006, no. 525; A. Calphman, *Human Rights Obligations of Non-State Actors*, Oxford 2006.

structures, with strong subordination and discipline, very similar to an army. In addition to explicit tasks (i.e., tasks that are publicly available), they often perform secret tasks that are not disclosed to the public. The nature of such tasks must be assessed individually: they can be important measures ordered in favour of democratic states, for the common good or international peace, but are sometimes ethically questionable, disputable, reprehensible or even criminal, grossly violating norms of international and domestic law. For example, it is no secret that sometimes PMC contractors protect prisons in countries where prisoners are tortured; sometimes they work on behalf of dictators, for example in African countries. They also participate in provocative actions under false flags³⁵. The South African company Executive Outcomes, founded in 1989 by former soldiers of the South African armed forces, is considered the precursor of modern private military companies – unfortunately with a bad reputation. Its first task involved taking over diamond mines for a private individual. Then, it instigated conflicts in southern Africa and signed contracts with a local authority to suppress these conflicts. EO was disbanded in 1999.

Private military companies have different profiles all over the world. It is not accurate to name collectively all agencies associated with military services „transnational private armies” or „private armies” (or to call a private maritime security company a „private navy”). This does not reflect their function, which is often limited in practice to supporting a professional army. However, „the fact that these companies have employees who are armed as regular armed forces, perform tasks that often a few years ago were the responsibility of the state power structures, and are able to mobilize combat forces capable of actually changing a political situation in many countries, justifies the use of the term ‘private military companies’”³⁶.

³⁵ The night attacks on the Ukrainian army units made by provocateurs dressed in Russian uniforms were supposedly „false flag” attacks, carried out by, among others, Academi contractors(?).

³⁶ Ł. Szozda, Prywatne firmy wojskowe, *Bezpieczeństwo Narodowe*, no. 2/2006, p. 208.

5

TRANSFORMATION OF WARS, TRANSFORMATION OF STATES, TRANSFORMATION OF LAW?

Today, tasks relating to public safety in the military sector are divided into: a) those entirely reserved for an army (so-called „red” tasks) and b) those that can be performed by both the military and the private sector („green” tasks). There are also „white” tasks, which are new in the modern world. These tasks apparently relate entirely to personal safety and exist quite apart from the interests of a state; in reality, however, they are not socially neutral and irrelevant to the public sphere, the state, or the common good. For example, the protection of a large shopping mall in a capital apparently applies only to private business security, but in the case of a terrorist attack this can lead to a dangerous problem detrimental to the state and public safety.

During the Cold War, it was primarily state authorities and state military services that were engaged in public safety. Since the end of the Cold War, safety-related tasks have been increasingly marked as „green” and entrusted to PMCs or PSCs. The significance of „white” tasks has also increased.

Is this blurring of the border and the balance between civil/military and private/public during armed conflicts and stabilization operations merely a symptom of the transformation of warfare forms in the 21st century, or is it also a symptom of the transformation of goals, structures and functions of states? Do these changes in the rules of warfare result from the transformations of the function played by modern Western states? What is/should be the legal answer to these phenomena?

In Western democratic states under the rule of law, there are currently no agreed positions in political, legal and military doctrines in this regard, and there are also no relevant regulations in public international law. The positions of the UN, the IMO, NATO and the European Union are rather vague.

The place of PMCs and PSCs in contemporary international relations is said to depend on several main circumstances.

Firstly, according to the view that has been prevailing in the last 30–40 years, the current costs of stabilization missions, armed conflicts and wars are too high for professional state armies to bear – therefore states have to use military services provided by private companies, as they are cheaper.

The priority of states is to ensure the security of the military, government employees, employees of international organizations and employees of large corporations sent to conflict areas with relatively small budgets.

Secondly, as the charges against mercenaries, mostly from the time of decolonization, are still remembered, it is clearly stressed that it is acceptable to use in conflict situations only those companies which fulfil international standards on human rights and the laws of war and rules of professional ethics³⁷. Only contractors, not mercenaries, can operate in conflict areas. Detailed rules for proper conduct in accordance with the laws and rules of ethics are an important part of contracts with PMCs.

In general, „there is no political will and determination to find appropriate tools (national interests are scattered)”; so, despite discussions, law is not being adapted to the situation in a sufficiently effective manner³⁸.

According to the UN, in 2010 alone the United States Government hired 260,000 contractors. Faiza Patel, a UN expert, says that each year „private armies” generate revenue of 20 to 100 billion dollars³⁹. Contractors try to clearly distance themselves from mercenaries.

6

PMCS IN DIFFERENT STATES

In Europe, the policies of Great Britain and Germany have been illustrating two different approaches to PMCs for many years⁴⁰. The American model is quite different and to the greatest extent expresses the idea of the privatization of military services.

³⁷ J. Jabłońska-Bonca, *Policentryczność źródeł norm w zakresie bezpieczeństwa obywateli. Problem czy margines?* In: *Prawo, język, logika*, eds. S. Lewandowski, H. Machińska, J. Petzel, Warszawa 2013, p. 59–75. The book discusses the issue of the Montreux Document signed in Switzerland on professional ethics in PMCs.

³⁸ J. Kranz, *Dokąd... op. cit.*, p. 173. Cf. also: P. Benicsak, Overview of Private Military Companies, *AARMS* Vol. 11, No. 2, p. 315–325; N. Tzifakis, *Contracting out to Private Military and Security Companies*, Brussels 2011, U. Peterson, *Outsourcing the Big Stich: The Consequences of Using PMC*, Weatherhead Center Harvard University no. 08-0129 www.wcfia.harvard.edu. For example, the NATO military operation in Libya in 2011 also showed the weakness of the EU's concept in this area.

³⁹ www.dziennik.pl, *Zaciągnij się do prywatnej armii. Potrzeba najemników!*, 02.11.2011. Accessed on 20.07.2014.

⁴⁰ The comparisons between Great Britain and Germany come from: E. Krahmann, *States, Citizens and the Privatization of Security*, Cambridge 2010.

In 1980, Margaret Thatcher began to privatize the national defence industry; military training followed, then the maintenance and protection of military facilities, and finally large security companies were developed and „moved to the front”⁴¹. This situation led to the gradual transformation of the relationship between the public and private sectors, while the Ministry of Defence became dependent on services provided by private entities. Some specialized branches employ only professionals outside the state apparatus. A sudden replacement of security agencies such as PMCs or PSCs, if necessary, becomes increasingly difficult.

This model shows that states may become dependent on the presence of PMCs and thus entrust some of the essential security interests of the country to operators who are inherently guided by private interests based solely on economic calculation. There is also an inverse relationship: PMCs are in fact „vassals” of the states in which they have their registered offices – to obtain contracts they must perform tasks even at the risk of breaking the rules of law and professional ethics.

Problems are growing. British companies have been operating commercially in many countries, not only on behalf of the UK Government, but also on the orders of foreign countries, international organizations and large corporations.

For example, years ago the London agency Aegis Defence Services entered into an agreement with the United States Department of Defence. The contract was worth USD 293 million⁴². Aegis coordinated the flow of information and operational cooperation of most of the PMCs and other contractors operating in Iraq, including the exchange of intelligence, risk assessment and cooperation in the event of a specific threat to the safety of employees of one of the corporations. Aegis’s activities also included physical and technical protection of corporate offices and embassies – most of them American. In 2005, Aegis supported the security of the constitutional referendum and elections in Iraq.

In 2006, the agreement with the United States Government was extended with new elements; according to anecdotal evidence, the contract was worth USD 400 million. The company employs 20,000 contractors around

⁴¹ www.mod.uk/aboutus/factfiles/ (20.07.2014); www.mod.uk/business/pfi/intro.htm (20.07.2014).

⁴² Quoted after: Ł. Szozda, *op. cit.*, also: www.aegis.com (15.07.2014).

the world. In 2010, Aegis moved the holding's main office to Switzerland⁴³. This sparked public protests in Switzerland. Contractors from Aegis, like those from Blackwater, were blamed for attacks on civilians in various conflicts and called mercenaries⁴⁴.

In Germany, the privatization of military services has been cautious and slow, but the interest of private companies in „green” tasks has always been large. In 1999, 700 private companies applied for the pilot programme of privatization of military services⁴⁵. However, Germany has tended not to go to war and does not have such a developed industry of private services useful on the battlefield.

In the USA, in 1991, at the request of the then Secretary of Defence of the United States, Dick Cheney, a report was prepared on the possible use of private companies in the military sector. This report can be considered the precursor to the privatization of the American armed forces⁴⁶.

Donald Rumsfeld, Secretary of Defence during George Bush's presidency, was one of the proponents of this concept. The outsourcing of the US Army, supported by the Republican Party, progressed most quickly during the presidencies of Ronald Reagan and George W. Bush. Today, private companies employ more than 1.5 million employees around the world, and contracts granted to them by the government are worth hundreds of millions of dollars.

For example, DynCorp, one of the largest private military companies, in 2010 entered into contracts worth nearly USD 2.5 billion. Halliburton Company, whose operations include logistics and supply, from catering to the maintenance of oil rigs, earns much more⁴⁷. More than 150 private companies have been operating in Iraq and Afghanistan, and the president of the Private Security Company Association of Iraq estimates that there

⁴³ Lower taxes, the centre of Europe.

⁴⁴ Protests in Basel in 2010. Cf. B.T. Wielniński, Szwajcaria już nie chce najemników, *Gazeta Wyborcza*, 02–03.02.2013, p. 12.

⁴⁵ www.bundeswehr.de/reform/hitergrund (20.07.2014).

⁴⁶ M. Lewicki, Zjawisko prywatyzacji przemocy w życiu międzynarodowym a prywatne firmy wojskowe, *Rocznik strategiczny*, 2004/2005, p. 409.

⁴⁷ Vice President Cheney had been the president of Halliburton for five years before he was elected to government in 2001.

have been 181 such companies along the Euphrates and Tigris⁴⁸. Most of them originate from the United States.

It is estimated that the value of the PMC industry is 100 billion dollars⁴⁹.

PMCs have also originated from eastern Europe. In Russia, with the support of President Putin, a „system of private military companies” has developed, which offers services abroad in the protection of facilities and institutions, as well as the training of foreign forces or informal combat formations⁵⁰. „The Daily Beast” on 28 February 2014 titled one of its articles, „The Russian Blackwater took control of the Ukrainian airport”. Russian forces in the Crimea – according to the portal „Center for the National Interest – America’s Realist Voice”, which quoted former adviser to Richard Nixon, Dimitri K. Simes – belonged to the „private” Russian company Vnevedomstvenaya Okhrana, which acts on behalf of the Russian Foreign Ministry.

Switzerland has a special position in the PMC market. Switzerland, for centuries called the „mecca of mercenaries”, has now become a centre for raising labour standards among contractors and PMCs. Among other things, its parliament is working on prohibiting the registration of any PCM that: a) trains and recruits mercenaries, b) takes part in war hostilities, c) takes part in special actions such as the release of hostages, d) protects jails at the request of third countries⁵¹. Such actions of private companies may lead to severe human rights violations.

In Poland, there are no classic PMCs, but there are strong PSCs, global and local private security companies which protect, inter alia, military units and government facilities. There are no companies that take orders of foreign countries and organizations for services during armed conflicts⁵². Some military units protect military civil guards, and others security agencies. However, there are undoubtedly Polish citizens, generally former professional soldiers, working as contractors or mercenaries around the world. The cooperation of private security agencies with the army in Poland is regulated by law.

⁴⁸ J. Goławski, Akolici wojny, *Polska Zbrojna*, no. 33/2006; J. Goławski, Służba prywatna, *Polska Zbrojna*, no. 37/2006.

⁴⁹ B.T. Wieliński, *Szwajcaria...*, *op. cit.*, p. 12.

⁵⁰ As of 11 April 2012 (information taken from the portal RIA Novosti),

⁵¹ The rules are to come into force in 2016. Switzerland has also adopted the Montreux Document for PMCs.

⁵² Contracts with PMCs are individually signed in Poland by former soldiers and officers of the special services, who fight privately in most conflicts in the world.

7

UNCLEAR BOUNDARIES BETWEEN MERCENARIES, CONTRACTORS AND SOLDIERS – LEGAL PROBLEMS

There are many theoretical and legal issues related to the operation of PMCs and their presence (location of registered offices) in democratic states under the rule of law that are unsolved in legal doctrine and practice. „There are no clear rules at an international level defining the status of these agencies and the way in which they carry out their duties“ – so said the chairman of the Subcommittee on Security and Defence of the European Parliament, the French deputy Arnaud Danjean. PMCs are currently operating in a grey area of international law⁵³.

Legal doctrine still faces the problem of the blurring of the boundary between contractors (PMC employees) and mercenaries (?) as well as contractors and soldiers. For example, who are the „illegal armed groups“ in Ukraine in 2014 in the light of international law?

Private military companies try to build a positive image and strongly argue that they employ workers – „civilian soldiers“ – called contractors. They stress the differences between illegal mercenaries and contractors. They emphasize the legality and transparency of the activity of PMCs, which have publicly available goals, missions and strategies, have registered offices in specific countries, pay taxes and employ contractors based on contracts. They also emphasize that they have codes of ethics.

These features are meant to distinguish these companies from different organizations with unclear legal status that are often secretly and illegally recruiting mercenaries⁵⁴. In addition, contractors generally undertake contracts only to protect the safety of persons and property in a conflict zone, to protect equipment and provide training and logistical support, while in theory it is only mercenaries who actively decide to take part in an armed struggle.

However, practice shows the weakness of this division: even if contractors are obliged by contract merely to support and protect a professional army,

⁵³ Quoted in: J. Gołowski, *Akolici...*, *op. cit.* p. 12.

⁵⁴ In the 60s and 70s in the Congo and the Yemen, and in the 80s in Afghanistan, mercenaries were seen as adventurers and criminals. PMCs are officially registered companies that have offices, run legitimate businesses, are subject to law and pay taxes.

objects or people, and not to take an active part in fighting, they often protect, for example, military facilities, refineries or mines in an unsafe area, and these objects are often subject to attacks by guerrillas, rebels, separatists, rebel tribal groups or a regular army. As a result, contractors are also generally forced to take a direct part in fighting, even only by repelling attacks⁵⁵.

Thus, in reality, the criteria are still unclear. It is easy to point out cases that are not explicitly classifiable, and there is no new, relevant regulation of international law in this regard.

Contractors are armed employees of private paramilitary companies operating in the sphere of international security and the security of large organizations and corporations in endangered areas and in conflict regions – an unusual context for structures of private and public law that were established in democratic states in the 20th century. In general, if the companies do not commit crimes they are in principle subject only to the law of the country where they have registered offices, which may be another country to the area of their operations. They are not subject to military courts if they commit a crime during fighting, because they are not soldiers.

Soldiers are liable for crimes before military courts or the International Criminal Court. In contrast, contractors, though armed, as civilian employees of private companies are not subject to military liability, even if they take actions on the front and abide by the international law of armed conflicts like soldiers.

Nor do contractors have veterans' entitlements in their own country, even though they may have fought alongside soldiers. In the event of capture by the enemy, they are not entitled to the prisoner-of-war status in accordance with international law. They are treated like common criminals.

Most importantly, and interestingly from the point of view of the limits of public safety and responsibility that modern states take for it, public international law is silent on the number of legal entities that can legally order military services involving security protection in conflict areas.

⁵⁵ For different cases of contractors fighting in Iraq see e.g.: K. Kęciek, *Zagraniczni najemnicy przelewają dla Ameryki krew w Iraku*, www.przegląd-tygodnik.pl 19/2004 (20.08.2014).

8

SOURCES OF LEGITIMACY OF THE USE OF FORCE BY PMCS

If legal doctrine recognizes that private military companies in specific countries have the right to send armed contractors to conflict areas and they can legally (from the point of view of the employing entity) use weapons and take direct coercive measures in certain circumstances, the following question arises: Who can legally, in light of the general principles of the law applicable in the civilized world, outsource military services? Should the state where the PMC has its registered office oversee all contracts? On what basis? Should this issue be settled? Can any entity be the ordering party? For example, should any country, including an undemocratic, „rogue“ totalitarian state, any organization (even suspected of mafia activities), any company (even when committing flagrant breaches of ethics, for example in „blood diamonds“), or any individual (even a dictator, tyrant, usurper) be legally allowed to order such services?⁵⁶ To what extent?

In addition, should it be acceptable by law to order legal actions against a civilian population, or only against armed groups (and if so, which?), or only against an army? Can the same PMC send contractors and military aid to both sides of the conflict?

The essence of the legal issue is therefore the problem of the legitimacy of the use of force – whether a PMC may, in any capacity, including private, use its strengths and resources, and to what extent it may lawfully use firearms and other means of coercion. When will it become indistinguishable from the army of a dictator?

States (e.g., USA) that outsource giant tasks to PMCs transfer huge public funds to them under contracts. Probably in many cases they could simply allocate these funds to provide local authorities with technical and logistical assistance in the areas of conflict, which would be beneficial for weak states recovering after armed conflicts. Entrusting these tasks to PMCs means that the financial benefits (e.g., taxes from these companies paid in

⁵⁶ Despite the UN Conventions and the UN General Assembly's calls for the establishment of laws prohibiting mercenary services and the recruitment of mercenaries, the demand for mercenaries is still high, as shown by the recent operation in Libya. Many mercenaries from many parts of the world fought on the side of Colonel Gaddafi, including supposedly some from Ukraine and Belarus (?).

the country of their registered office) go ultimately to the budget of the state ordering foreign tasks related to safety protection, thus stimulating its economy. For example, contracts between the government of the United States and DynCorp International in Afghanistan, including training of Afghan police and, till the beginning of 2006, personal protection of President Hamid Karzai, were worth nearly USD 300 million⁵⁷.

The business future of PMCs established in rich countries is associated not only with services at the time of a conflict, but also after its completion or temporary suspension, and during military advisory and aid missions to poor and weak countries emerging from deep crises or in post-conflict situations. Western countries and international organizations interested in political and economic influence in these countries organize military assistance in the form of specialized equipment; however, permanent long-term services and training are also required – which are provided by PMCs. In unstable areas, equipment can be (and sometimes is) lost and even used against the donors in further struggles and upheavals; constant PMC supervision greatly reduces the danger of such situations and also brings taxes to the budget of the state where the company is registered⁵⁸.

The question of a state's possible international responsibility for actions taken by PMCs on a foreign territory is also important. Can the activities of contractors employed by a government in another country during an armed conflict be recognized by international law as a sign of that country's aggression? The UN General Assembly resolution of 14 December 1974 defines an act of „state aggression” as, inter alia, „sending by a state or on its behalf, armed bands, groups, irregular troops or mercenaries, which carry out armed actions against another state of such importance that they are equal to the above-mentioned acts (...)”. A lawful use of armed forces by the states of the United Nations in response to the acts of aggression committed by „mercenaries” is thus possible⁵⁹.

⁵⁷ Quoted in: Ł. Szozda, *op. cit.*, p. 209.

⁵⁸ For example in Iran in 1979. After the revolution the new government took over the equipment (including F-14 fighter jets) supplied by the United States for the Shah, cf. Ł. Szozda, *op. cit.*, p. 218.

⁵⁹ The above-quoted author mentions, for example, bombing the territory of another state, blocking ports using armed forces, etc.

CONCLUDING REMARKS

In light of all these facts, the following questions can be asked: Is the replacement of the „war on orders“ by the „invoice war“ a symptom of permanent changes in the function of modern democratic states? Are big business, multinational corporations and countries with political and economic interests in „foreign military expeditions“ forcing not only the outsourcing of many internal tasks of states, but also the privatization of wars? Is this privatization of wars leading us back to the European solutions of the Middle Ages?

PMCs, like PSCs, are used by states in exchange for large government contracts in so-called „unwanted wars“, where it is cheaper to conduct operations without parliamentary oversight, media publicity, and above all social objections to sending military contingents abroad. Sometimes it is a question of providing discrete military aid to „friend countries“. PMCs are politically safer in such a situation.

However, „private armies“ are not only hired by states, but also by non-governmental organizations, private companies, rebel groups or declining dictators⁶⁰.

This restless world requires an increasing number of private security services, not only in times of conflict, but because multinational corporations investing in troubled regions need to know the conditions of the business environment, how to neutralize the local forces protesting against these investments (especially against the devastation of the environment), and that their people, property and transport are safe⁶¹. The main contractors are companies extracting minerals.

The combat potential of many PMCs is also large. They undertake dangerous military missions, such as demining⁶².

⁶⁰ For example, mercenaries commissioned by Gaddafi suppressed demonstrations during the Libyan conflict. In November 2012, the Libyan military tribunal sentenced 24 mercenaries (Ukrainian, Belarusian, and Russian) for preparing an attack on NATO aircraft. The accused pleaded not guilty and claimed they had worked in the oil sector. [www.wiadomości.dziennik.pl/świat](http://wiadomości.dziennik.pl/świat) (04.04.2012).

⁶¹ I do not mention here criminal activities, for example, illegal arms trading with the rebels.

⁶² The British company ArmorGroup won a UN contract to carry out demining operations in southern areas of Sudan in 2007.

For example, the private company R2 (Reflex Responses), created by the founder of Blackwater, Erik Prince, was hired in 2012 to provide the UAE's armed forces with „operational support in planning and training”. The New York Times published documents showing that R2 was to create a task force for the ruler of the emirate of Abu Dhabi, which would eventually consist of 800 foreign contractors. The contract was worth USD 529 million. Contractors have been engaged to take care of security in the emirate and protect oil pipelines and the highest buildings against terrorist attacks. Considering the area of the emirate, the contractors equate to a kind of private army division⁶³.

It has been argued that PMCs can participate in humanitarian and peacekeeping missions (UN), and that they already provide security services during major catastrophes and natural disasters.

For example, in 2005, when New Orleans was destroyed by Hurricane Katrina, and armed criminal groups appeared on the streets, Blackwater sent about 150 fully-armed employees to protect the property of the inhabitants. Their tasks included the protection of objects and people, and patrol missions.

Some argue that private military companies should replace ailing international forces in humanitarian operations. „The UN is aware that most of its peacekeeping force is completely useless; developed countries that have mobile armies are not interested in helping, while poorer countries send troops who go on missions just for money, and do not want to go out into the field”⁶⁴.

It is cheaper, according to many analysts, to „use PMCs, several of which are able to put up forces equivalent to an infantry brigade, than to send troops of the line to a conflict region from the United States or any of the NATO countries.

This is despite the fact that the high salaries the employees of these companies receive are several times higher than those earned by regular army soldiers. The reason for this is primarily the lack of gigantic bureaucracy in PMCs, which in turn is characteristic for every army in the world”⁶⁵.

⁶³ PAP, *The Emirates hired the world's most famous mercenary*, 16.05.2011, www.wiadomości.dziennik.pl/świat.

⁶⁴ J. Piątek, *Prywatne firmy wojskowe – nowy charakter prowadzenia wojen w świecie globalnym*, *Kultura – Historia – Globalizacja*, no. 8/2010, p. 128.

⁶⁵ Ł. Szozda, *op. cit.*, no. 2/2006, p. 214.

Opponents argue that these „private armies” are accountable only to their paymaster, and this is risky. The same people may be hired by governments, mafia or dictators. Thomas Friedman argues, „When America works abroad, I prefer that these actions are carried out by representatives of the public service, guided by a sense of the common good and patriotism, not profit or private ambitions”⁶⁶. Academi, formerly known as Blackwater USA, Blackwater Worldwide and Xe Services LLC, is the most famous private security company in the world due to its profile and scope of activity, its relations with the government of the United States and the extreme tasks it undertakes⁶⁷. It is a global company that provides a wide range of security services, primarily in cooperation with the government and the army of the United States. It provides assistance mainly in wars (Iraq, Afghanistan), and catastrophes and natural disasters (e.g., it performed tasks commissioned by the Department of Homeland Security during Hurricane Katrina), operates in the Indian Ocean and protects big events (e.g., the 2004 Olympics in Greece). Academi has been operating since 1997; the protection of troops in the Iraq war was the most spectacular public task it has been entrusted with, much discussed in legal doctrine and the media⁶⁸. The organization owns the largest tactical training facility in the world. It trains about 40,000 people per year. Almost all the revenue of Blackwater comes from contracts with the government of the United States. The government entrusts important public tasks to the organization. These include contracts for security services in wars, including the protection of objects and people, support for the military, and training of local forces⁶⁹. Poles have also been working for Blackwater⁷⁰. „I think that less than 1% of all contractors come from Poland”, said Lt.-Col. Artur Gołowski⁷¹. The media speculate that mercenaries from Academi took part in the fighting in Ukraine on the side of the Ukrainian army in May 2014. They are said to have advised and trained

⁶⁶ Quoted in: J. Dziejna, *Faktura za wojnę*, www.gosc.pl/36/2011.08.09.2011 (15.08.2014).

⁶⁷ www.academi.com, 30.04.2012 (15.08.2014).

⁶⁸ GROM soldiers also worked for this company – in 2007, the company’s helicopter safely evacuated E. Pietrzyk, the Polish ambassador to Iraq.

⁶⁹ www.blackwaterusa.com, 30.04.2012 (15.08.2014).

⁷⁰ „I began working for Blackwater in 2003 in Iraq. At the beginning we went there together. Then, I would go there alone” (former GROM soldier), www.wp.pl, 19.01.2011 (15.08.2014).

⁷¹ J. Dziejna, *Faktura za wojnę*, 08.09.2011, www.gosc.pl/doc/937275/Faktura-za-wojne/3 (15.08.2014).

soldiers and directed their actions, e.g., against the „separatists” in Sloviansk. It is difficult to determine if this is true, as the conflict is continuing.

PMCs can be considered a manifestation of the transformation of states’ functions – they open new problems associated with sovereign states on the one hand, and the militarization of societies on the other hand. They show how military tasks move from the area of public authority to the private sector.

The issue of private military companies also provide evidence that the changes have not been properly defined in the theory of the state and law. Firstly, international and national legal regulations of PMCs’ activities and relationships with armies and mercenaries are rudimentary and vague. Secondly, there is a serious global-security problem regarding the responsibility of these companies towards countries, societies and law. Thirdly, the transparency of PMCs’ activities and the democratic control over them are major issues. Fourthly, the ethical aspects of the „unwanted” jobs that these companies are entrusted with by states also provide for controversy. Fifthly, there are specific legal issues of public-private partnerships in different countries, for example, the issue of forms and levels of government control. The problem is worth extensive research, also from the perspective of a number of legal sciences.