

# PRIVATE MILITARY COMPANIES “THE MARKET FOR FORCE”: TOWARD INTERNATIONAL REGULATORY AND CONTROL FRAMEWORK

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## ABSTRACT

*The diminution of the State and the State system as a whole both in its traditional role and functions have again loomed so large in the face of the increasing commodification, privatization, outsourcing and military re-structuring of security and military functions to the Privatized Security Industry (PSI), Private Security Companies (PSCs), Private Military Companies (PMCs) and Private Military Firms (PMFs). These as a consequence have combined to alter and erode the very foundation of the State and the State-system and undermining the quintessential roles and functions of the State as the most basic unit in the analysis of International Relations. Indeed, the encroachment of the market and corporation principles into ones traditional ground of the State clearly represents the erosion of the logical, legal, juridical, moral and philosophical concerns of the State in International relations with wider implications for both military and security ramifications for State and the State system. To this end, whilst there seems to be an ever increasing redefinition of the 'new global military and strategic landscape as well as architecture, there have, however, existed, if any, effective and sufficient international regulatory and control framework for making corporation operating in the global market place answerable to International law as well as other national regulatory and control frameworks. Employing both empirical and analytical methodologies, this study suggests that what is required is a sufficient and efficient International regulatory and control framework to curtail the agencies of PMCs in International Relations.*

**Keywords:** *PSI, PSCs, PMCs, PMFs, regulatory framework*

## INTRODUCTION

The world today is characterized by the increasing commodification and privatization of public goods, a decline in law and order, demise in state centrality, and more worryingly, the fracturing of state military and security apparatuses. The state has lost its monopoly of and over organized violence. Beset by a plethora of threats, processes and actors, the state has found itself increasingly incapable of monopolizing violence emanating from above, below and across the state. At the same time, the state has surrendered its role as the sole legitimate provider and guarantor of security to private security and military providing agents. The emergence of a legitimize private security industry, and of private non-state security providing actors, apart from the state is a significant development for the modern state system and for

International Relations (I.R.). It challenges over three hundred years of accepted ontology regarding the state, as having the sole legitimate right to force and violence (Uadiale, 2009). The new business face of warfare is not just a challenge for the military, it is also a challenge to international peace, security, international law and lawyers (Suter, 2008).

Military restructuring, out sourcing and privatization affect the very core of the state, its foundations, its authority, and most worryingly, its control. Whilst states have long made use of forms of private security, those were largely ad-hoc, covert, transient groupings that, have served a purpose, dissipated as promptly as they formed. However, since the end of the cold war, the Private Security Industry (PSI), Private Security Companies (PSCs) and Private Military Companies (PMCs), on the other hand, embody an industry operating openly on the global market, organized along permanent corporate lines, and showing signs of growth rather than contraction.

They are the result of the privatization of state function that is to say, an actual process, rather than just being a form of private force. Given the prospective permanency of the PSI, PSC, and PMC, it is important to deliberate upon how this will affect the state and state system. The commodification of violence and the privatization of security are accepted more widely today than at any other time in the history of the modern nation - state, typifies the steady erosion of State authority monopoly over all forms of organized violence. The growing trend internationally towards the privatization of security and the outsourcing of state functions, states businesses, international organizations, non-governmental organizations, individual and communities have all turned to the private sector for their security needs. There are few, if any in the strictest sense wholly state-owned-centred-or managed military security structures that subsist in the inter-state system today.

The state, having the sole right to force formed the basis of our understanding, has constricted as PSCs and PMCs have come to acquire a *de facto* legitimacy and feature prominently in today's global and domestic security landscape and setting. Together, private security industry, or the PSI, has constituted themselves as "credible alternatives" to the insufficient or inexistent public means of regulating violence. The emergence and expansion of PSI, PSCs and PMCs is problematic for a number of reasons, indeed, it represents an anomaly in International Relations (IR).

However, whilst there have existed mostly inadequate International Regimes within the framework of International Law to govern PMCs and their activities, they have been largely inadequate, to say the very least. Nonetheless, there is the need to evolve, new, efficient and sufficient options with a view to governing the global market place and space in which PMCs have operated, albeit, un-regulated. Be that as it is, the overreaching aim of this paper is to interrogates, how the increasing commodification and privatization of violence, as embodied by the PSI in general and PMCs in particular challenges the notion of the authority state. That is, whether the privatization of security greatly undermines the very foundation upon which state authority rest, sovereignty, and if so, how? By extension, it will be deliberated

upon as to whether PMCs represent security actors of and for the state, or whether they represent autonomous agents who work above and beyond; below and even across the state; and again how this re-inforces or challenges the notion of the state monopoly over the forms of organized violence. It is important to deliberate upon how the PSI in general and PMCs specifically affect the state authority because the state remains the most basic unit of analysis in IR. Furthermore, security provision is at the heart of the state, it is its core defining characteristic, its *raison d'etre*, an abdication of which holds great consequences for the state and state system.

However this paper has to push beyond the rough picture, its goal is to provide an understanding of the sector more broadly. Doing this requires point out ways in which commodification in the military field creates markets, rules and the needs for regulations which defy any simplistic rendering. Therefore this paper would build a richer picture of the firms in the sector. It does this first by delineating:

- Outer contours of the private military markets
- Discuss the types of firms that are active in the market
- The factors which are responsible for their rise, growth and developments
- A panoramic excursion into the existing international regulatory framework for the industry and the market and
- A short discussion of options for formal international regulatory framework by which governments direct and control the PSI.

This paper seeks to establish the link between the state and its quintessential functions of security provision and use of force. It sets the study within the context of examining the implications of privatization of security and military functions for the state. And as alternative for the state in security and military functions, provisions by these entities have impacted differentially upon states depending on their level of developments, durability and their institutional apparatuses within both Tilian and the Weberian states structures. Establishing this observation is important for supporting the argument that empowering private agents in security and military realm for ever alter state power and authority. Changes in the markets or the commodification of security and military services, type of security threats, and the state incapacities within and without, have pushed forth a private led supply and demand security mechanism. It is hoped that through this study, a greater understanding of PMCs in particular and PSI in general are regarded as changing states authority relations.

## **PRIVATE MILITARY COMPANIES: CONTEXTUAL CLARIFICATION**

The use of private armies is not an entirely new phenomenon on the international security landscape, nor is it a tool which states have previously neglected to draw upon. Private security occurred in three main forms, the freelance mercenary, or individual soldiers for hire type, the mercenary free company also known as condottiere, and finally mercantile companies. The freelance soldiers or soldiers for hire type refer to individual soldiers who independently market themselves on the

black market to the highest bidder. This type of combatant was ephemeral, not easily controlled, largely unobservable and very hard to hold accountable. The free companies or condottiere form of non-state violence were essentially bands of fighting men who offer their skills jointly as opposed to individually. Although they represented a more organized structure of violence, these structures were ad-hoc and therefore also hard to monitor and control. Finally, the mercantile company represented the most pervasive structure of not only private security but also private enterprise. Private security was a permanent feature of the mercantile company deeply embedded in greater form of private economic power and agency.

Mercantile companies held the power to raise armies and navies, declare war, and garner trading rights and established ports and towns all on the behalf of their home states. In this way, they operated a 'semi-sovereign entity' empowered with the privilege of war making and violence. Collectively, the hiring of private armies and or foreign soldiers was termed, and became known as mercenarism. Mercenarism is defined as a practice of foreign soldiers freelancing their labour and skills to a party in conflict for fee higher and above those of soldiers of the state in conflict. More loosely, mercenarism may also be defined as a professional soldier serving a foreign power. The key defining characteristic here is that, mercenaries, or private armies represent forms of private, often foreign (but not always), non-state organized violence, for which they received recompense (Uadiale, 2009).

Every empire from ancient Egypt to Victorian England utilized contract forces. The Roman empire employed Teutonic tribesmen to extend border lines and rule terrain, the Byzantine Emperor hired the Grand Catalan Company to wage war with the Turks, the British utilized the Hessians during the American War of Independence; the British also made use of the Hudson Bay Company, the Dutch East Indian Company and the British South African Company all mercantile Companies, to wage war extract trade monopolies and expand the mother land colonial empire. The renting of non-state armies to do battle has also featured prominently in recent wars, such as the wars of de-colonial independence in Vietnam, Afghanistan, Kashmir, Nicaragua, and more perniciously in a series of coup attempt in the Comoros, Haiti, and Suriname to name a few of them. While utilizing private armies or mercenaries to do battle featured recurrently, doing so was and still is viewed pejoratively.

The reasons for these are for both moral and political. Ethically, the hiring of an individual to kill for pecuniary benefits or blood money, detached from responsibility and accountability is view as both immoral and inhumane. It also undermined the very foundation of state sovereignty and denigrates the organizing principle of state hood. The use of private armies or contract forces has historically occurred during turbulent times, whenever there has been a breakdown of internal order, systemic upheaval or change, grand territorial expansion project and or continental wars. Today's private securities in the form of PSCs and PMCs share both similarities and departures with the old style form of contract security providing forces.

The private security today especially referred to as industry that is exclusive and self sufficient of the state, trading in professional military and security services, equipment, training, logistics, and know-how. They are business, profit driven entities that market themselves on their ability to provide specialized state like security services. PMCs are profit driven organizations that provide professional military services for a global market. PMCs perform services closely related to the conduct of war that are the traditional responsibility of regular uniformed military personnel. The most common service categories include: logistic support, transportation, engineering, constructions, skilled and unskilled labourers, maintenance, technical expertise and other paramilitary operations. They operate in a highly competitive global market place and adapt their products to meet market demand. PMCs closely choose their employers and the duties they will perform in accordance with company policies. They also utilized current business management philosophies such as, aggressive advertising and sales, outsourcing sub contracting of non core military function where efficient and controlled production and delivery systems to optimized profits cost. PMCs shares many similar attributes. They also differ significantly in organizational structure, source of working capital, the number of employees and that of employers, and other characteristics.

They perform a range of services from highly specialized task requiring extensive training and experience such as computer networking abilities and communication systems, for example, to unskilled general labour in dinning halls, laundry facilities and construction projects. PMCs vary in sizes and in structures from large Multi-National Corporations (MNCs) with a complex hierarchical corporate structure to simple partnership and individual properties. PMIs are categorized into three, based on their functional capabilities. Military Providing firms, Consulting firms and Supporting firms... concentrated on tactical situation, often participating directly in actual conflict; focus on building capacities within the clients military or civil defence forces. Typically, consultants provide analysis, advisory and training services and many forms of non lethal assistance to military forces in the field, including transportation services, maintenance and supply, logistical and technical support, engineering, intelligence and financial management. These services categories roughly correspond to the traditional military functions of war fighting provider, tactical combat support consultant and combat service support, personnel in-theater, and external to theater and technological system support and operate on the open market. In this way, they differ from the previous forms of private security as embodied in the freelance mercenary and the condottiere. The freelance mercenary and the condottiere were and are ad-hoc, transient structures that appeared and dissipated as conflict arose and then wounds down.

Furthermore, neither were tied to any one government, state or accountable entity; they were (and are) a force unto themselves and largely operated underground. These endeavours are distinct from the agency of a PMC for two main reasons. One, it is an ad-hoc transient structure as opposed to the permanency of the PMC business

entity. There is no overarching organization or establishment that ties these men together, other than the task at hand. Two, their orientation is of a covert and destabilizing nature working against the state system rather than as PMCs position themselves, as actors working for the state system. Their services have been specifically procured on the underground black market in contrast to the open tendering process PMCs undergo when pursuing clients. Thus, PMCs, it is argued, therefore, do not represent a revolutionary development on the international security landscape. Rather, they are re-constitutions of past forms of an evolutionary process mercantile, and for this reason their agency is problematic.

Our contention here is that; granted that since classical antiquity, through to the rise of the modern nation-state since 1648, rulers and states have long employed and used the agency of private forms of non-state organized violence on the international security landscape. Why then is the fuss or otherwise, and the controversy surrounding the employment of PMCs? Is it couched on the rise of the modern nation state since 1648? The answer lies in the supposed acquisition of the principles and trapping of statehood, nationhood, absolute sovereignty; bounded territory, territorial integrity, principle of non-intervention; the right to a monopoly of and over force within that delineated space that have evolved over the last three hundred years. Nevertheless, the hiring of foreign soldiers, private armies, or mercenaries was, and still is, considered an antithesis to the founding of the modern nation state. Indeed, bringing non-state violence under control was one of the achievements of the last two centuries. Mercenarism has been outlawed in a whole range of conventions, treaties and neutrality laws. And as PMCs represent an anomaly in this accepted ontology, they represent the usurpation of the sovereignty of the state, and erodes state authority in the international system.

## **THE RISE AND RAMIFICATIONS OF PRIVATE MILITARY COMPANIES**

The increasing use of Private Military Contractors is a manifestation of the privatization and commercialization of war. Private contractors are now so firmly embedded in intervention, peace keeping, and occupation that this trend has arguably reached the point of no return. They are companies that specialized in providing security and protection of personnel and property, including humanitarian and industrial assets; with military skills, including combat operations, strategic planning, intelligence collection, operational support, logistics, training, procurement and maintenance of arms and equipment. While most PMCs serve governments and the armed forces, and have worked for the United Nations, Non-Governmental Organisations, and even environmental groups. Others have prospered at the other end of the marketplace, working for dictators, regimes of failing states, organized crime, drug cartels and terrorist-linked groups.

The rise of the PMCs reflects the new business face of war. Representing the newest addition to modern battle space, the role of PMCs in contemporary warfare

is becoming increasingly significant, changing armed forces around the world and the ways war are fought. As new forms of armed conflict multiply and spread, they cause the lines between public and private, government and society, military and civilian to become as blurred as they were before 1648. Thus, with the continued growth and increasing activity of the PMI, the start of the twenty first Century is witnessing the accelerating breakdown of the nation-state's monopoly of violence, and the emergence of a market place for the purveyors of armed force.

The privatization of security has been allowed to develop as a result of interconnected dynamics and of state failure, and a broader normative shift in International Relations. The result of which have supplanted the once state based power on military strength, to one of economic performance and economic competitiveness, which began to, swiftly, outpace such preoccupations. Over burdened by the inherent difficulties of state maintenance as well as enormous pressures emanating from the market, states have been forced to trim their administrative, legal, extractive, and coercive apparatuses. Caught between the necessity of remaining competitive in the International economy, and the necessity of providing basic amenities and services to their citizens, states embarked upon projects of external governance.

The externalization of state functions and services was a means of both dealing with their inefficiencies and handling market pressures. Reflective of a wider neo-liberal or neo-conservative normative shift in International Relations towards transnationalism, de-regulation, privatization, and outsourcing, the state began to 'roll back' its organization. This belief pushed forth by businesses and international financial Institutions (IFI's) such as the World Bank (WB) and the International Monetary Fund (IMF) held that private enterprise is a more cost effective means of carrying out certain tasks. IFIs stressed the importance of adopting austerity packages aimed at privatizing public works and commodifying public goods. These include the privatization of telecommunications, transportation, infrastructure, education, healthcare, water and sanitation and lately security; all areas that were once the exclusive domain of the state. As such, by the privatization of military and security functions, state authorities are simply the latest additions in the gradual procession of the externalization of state functions.

The privatized military industry has thus drawn on precedents, models and justifications from the wider privatization revolution allowing private firms to become potential and perhaps even the preferred, provider of military services. This indeed, heralds a new epoch for the state and a change from its traditional form. The dual processes of trans-nationalism and privatization are unprecedented in the history of the modern nation state. These processes have effectively resulted in the structural alteration of power between the state, corporations, and the market. The state is found to occupy a structurally de-privileged position in the security realm. Privatization in conjunction with transnationalism, reflects real structural changes in the scale of modern social organization, operating across all the primary domains

of social power including the economy, military, politics, technology, and the cultural. In this way, the state diminished capacity to meet its citizens' demands both due to and compounded by market fundamentalism, provided a market opportunity for the birth of Private Security Sector (PSS).

PSS essentially developed a *modus operandi* compatible with the needs and structures of the twenty first century. They have interpreted insecurity as a market issue for which they are corrective, effectively repackaging violence in pseudo-market frills. The expansion and accumulation of private ownership in terms of property, assets and goods has also favoured the use of Private Security Enterprises (PSEs). This bring us back to the above mentioned creation of a private Industry structure that is self promoting and self-sufficient beyond the state. A confluence of market forces and state deficiencies therefore created conducive setting for the rise of PSI. It was the confluence of several changes or shifts at the start of the 1990s that led to the rapid re-emergence of this industry. The first was political; the peace dividend that led to a massive downsizing of the armed forces. Since the end of the cold war, more than seven (7) million servicemen have been thrown into the employment market with little to peddle but their fighting and military skills.

Downsizing fed both supply and demand as new threats emerged ethnic, regional and political conflicts and instability. The booming private military and security has soaked up part of this manpower and expertise, which entails replacing soldiers wherever possible with much better paid civilians, who had often been trained at high expense by the state. Another change was the power vacuum created at the end of the cold war that removed control over levels of conflict, while also releasing unresolved tensions and new pressures. In some regions, the number of conflict zones and the incidence of civil wars have doubled. The period since has seen a massive increase in instability which often resulted in failed or failing states, unable to field sufficient armed forces to maintain internal order. Thus for some fragile states, lacking support from the great powers and unable to provide security for their citizens, PMCs have provided a means of re-affirming political control and some semblance of order.

Concomitantly, the international arms trade opened up to an increasing number of buyers and sellers, which not only allowed a larger number and broader variety of actors to access weaponry, but also opened more and easier ways for PMCs to profit from conflicts by engaging in the arm trade, thus facilitating arms proliferation. Hence, PMC activity in the arms trade has helped to fuel the privatization of political violence which undermines or make more difficult the re-establishment of the state monopoly on legitimate violence. An additional change, initiated by the Gulf war and the wars in the Balkans is strategic and technological in nature. As the level of technical sophistication of command and control and military hardware increases, there is a greater push to utilize civilian specialists because of the difficulty of developing and retaining the relevant skills in the military. These shifts have lead to a much increased demand for private sector specialists.



Perhaps the most important factor in the recent rise of the PMC and the PSC industry is the normative shift toward the marketisation of the public sphere: the privatization revolution - the ultimate representation of neo-liberalism - which provides the logic, legitimacy, and models for the entrance of markets into formerly public sector domains. Privatization has gone hand in hand with globalization. Both dynamics are supported by the belief that comparative advantage and competition maximize efficiency and effectiveness. Privatization has been touted as a testament to the superiority of the market place over government in the provision of certain services. Thus out sourcing, public-private-partnership, dubbed private finance initiative is all about paying privately for what can not be afforded publicly.

Finally, there has been escalation in the demand for PMCs and PSCs in the wake of 9/11 particularly in Afghanistan and Iraq, and in connection with homeland defence. The confluence of all these dynamics led to the emergence and rapid growth of the privatized security and military industry, there are no signs these trends will slow down or reverse in the foreseeable future. PMCs often form part of the large corporate consortiums and business networks. And as far as the ramifications of PSI are concerned, they represent a subsidiary of advanced extractives and mining firm, aviation and transportation companies, weapon and armaments producers as well as communications, engineering and manufacturing specialist. The link is not that PMCs enlarge their activities to include other sectors, but the other way round. It represents a linking up of interests that are likely to create powerful structures which favoured the reliance on private security.

In this way, through its inclusion in a web of diversified and powerful corporate enterprise, the PMCs has been compared to the outdated mercantile company whose acquisition of trading and mining rights, in conjunction with its ability to wage war, bestowed upon it powers comparable to the sovereignty state. Driven by neo-liberal agenda, the commercialization and outsourcing of powers of weak militaries and unconsolidated government have created new opportunities for PSCs and other actors. This apparent loss of coherence of the state over power of coercion or improvement have encourage the emergence of new forms of power relations, notable between the central government and local actors, and of new institutions such as vigilante groups and private militias which reduces the relevance or significance of internal security as well as external security. Outsourcing and commercialization of the state functions in unconsolidated state have not proven to be a panacea for the lack of capacity, corruption and poor delivery that has characterized the post colonial state, because of the activities of PMCs in presenting unique governing problems in transitional and post conflict states. Therefore, PSCs activities are acting as obstacle to peace building, good governance and sustainable development, because private actors are increasingly assuming roles that have traditionally been the responsibility of the state.

## **EXISTING REGULATORY FRAMEWORK FOR PRIVATE MILITARY COMPANIES**

The World may not be ready for privatize peace with the use of un-regulated PMCs (Verloy, 2004). Regulation of the Private Military market is fragmentary, contradictory and incomplete. The consequences is not only that regulation is difficult for state, but also firms in the market find the legal uncertainty surrounding their activities, very trying. This certainly adds to the overall informality and lack of transparence in the sector since the easiest way to avoid having to deal with unclear legislation is to avoid formality. Behind the fragmentary, contradictory and incomplete state of official regulation lies first the obvious difficulty related to regulating any global market. However, compounding this general difficulty are two things: the relatively recent spur of commercialization and globalization in the military sector and - more fundamentally - the fact that states have shown little interest in developing regulation (Leander, 2004).

Mercenary activity has been an illegitimate practice internationally since the late 19th century. This said, formal international regulation is relatively recent and has its roots in the de-colonialisation process and the related conflicts. Condemnation of the use of mercenaries began appearing in UN general assembly, resolutions related to the de-colonialization, for example, 1969 resolution 2548 on the Implementation of the declaration on the granting of independence to colonial countries and peoples. Moreover, the first international convention is an OAU convention adopted in 1977 on the Elimination of mercenaries in Africa which entered into force in 1985. The UN followed suit in 1989 by formulating a convention equally focused on the post-colonial situation against the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self determination.

The conventions have been of limited significance in actually regulating the market for force. The OAU convention is formulated in harsh terms referring to the obligation of states to punish mercenaries in the harshest way possible, including capital punishment (Act 7). However, since it does not explicitly the use of mercenaries by states in literal wars nor precludes the presence of advisers, trainers and technicians, it has been highly in effective for dealing with contemporary mercenarism and is in dire need of reform. Similarly, the UN convention, which only extends into force in 2001, has been significant above all because it encouraged debate, awareness, and improved international understanding of the problems involved in regulating the Private Military Market. Indeed, attached to the convention, has been a special rapporteur whose report has done much to promote awareness of the issue. However, in actual regulator, terms the convention has failed to make a mark. Part of the reason for this is that only 24 states have joined the convention so far and most states where the PMCs are significant because the operate there, have their home base there or recruit there have not signed. The reason mostly given is that the convention is too imprecise or insufficient in its definition of mercenaries. The insufficient and ineffectiveness of international regulation is mirrored at the

national level. Many countries have no direct legislation on mercenaries. The regulation that exists is often un-implementable or not implemented. Therefore, regulation is more often than not indirect working through regulations covering the carrying of arms and the arms trade. These regulations usually restrict the kinds of equipment, logistics, training intelligence and advisory services that can be exported to countries at war as well as the types of arms that can be legally used by private individuals, but not on the art of mercenarism itself.

These regulations are clearly not a panacea. This is so for obvious reasons including that national regulation often does not cover the activities of national citizens abroad or that states have many good reasons for not following them vigorously. But more fundamentally they fail to deal adequately with the kinds of issues at stake. National regulations usually assume the activities in the market, take peace with the knowledge of the state and most recently with its tacit, if not explicit, approval. When this is not the case, regulation often proves, inadequate.

The overall picture is also evolving. There is a trend to revise and expand national legislation and introduce measures to deal explicitly with the issue of mercenarism and PMCs. The South African Government was the first and has gone further with its 1998 Regulation of Foreign Military Assistance Act which prohibits the recruitment, use or training of persons for as well as financing or engaging in mercenary activity and which was recently sharpened further. Russia made the use, recruitment, financing and training of mercenaries a crime in 1996. Western Countries are beginning to consider legislation. France has recently passed a law on Repression of mercenary activities (April, 2003). In the United Kingdom preparatory move has been under way for sometime now to regulate PMCs. New Zealand is introducing a bill to outlaw mercenary activities.

Regulation is nonetheless, likely to remain patchy both in coverage and in implementation. This is because while governments have political and economic stakes in the expansion of the business, it is often far from clear what their stakes in regulation are. Politically, governments have no interest in being overly zealous in regulations. Economically, the logic of national champions applies no less in the security sector than it does elsewhere. Contracts that do not go to national firms and market shares not occupied by them might be taken by firm from elsewhere. Both stakes militate against stringent and effective legislation which would undermine the possibility of being soft handed if necessary.

### **TOWARD AN INTERNATIONAL REGULATORY AND CONTROL FRAMEWORK FOR PMCS**

The existing International regulatory and control regimes and framework for governing the activities of PMCs in the global market place seems largely and grossly inadequate, inefficient and insufficient. There have, however, existed some new and efficient options for governing as well as regulating and controlling the PSI in general and the activities of PMCs in particular. These new options include:

- i Ban on military activity abroad
- ii A ban on recruitment for military activity abroad
- iii A licensing regime for military services
- iv Registration and notification
- v A general licence for PMCs/PSCs
- vi Self regulation: a voluntary code of conduct (House of Commons Commission, 2002: 45-48).
- vii Ratification of relevant International and regional legal instruments.
- viii The Introduction of controls over arms brokering and shipping agents into the scope of arms export controls that recognizes the roles played by PMCs
- ix Rigorous implementation of UN arms embargoes and sanctions which include in their scope, PMCs and technical assistance that may accompany arms transfers.
- x Development of International measures to improve the monitoring of their (PMCs) activities abroad.
- xi Promotion of measure to ensure that employers of PMCs introduce sufficient safeguards to prevent breaches of Human Rights Standards, as well as Humanitarian laws by PMCs personel.
- xii Promotion of security sector reform programmes that leads to accountable PMCs with proper civilian oversight and democratic control to reduce the need for PMCs engaging in combat and support efforts to combat illicit trade in arms.
- xiii Development of national legislation to licence and control the activities and to improve transparency of PMCs
- xiv The return to the use of national armies to fight wars and maintain the discipline.
- xv Extension of the International Court of Justice (ICJ) jurisdiction to PMCs activities.
- xvi Negotiation of a new convention on the use of armed non-military contractors by an occupying force, and
- xvii Harmonization of national laws to create common standards and to help the development of an eventual universal approach (Schreier and Caparini, 2005: 116-117).
- xviii A multi-layered regulatory and control framework at national, international and local levels (Leander, 2004).

## **CONCLUSION AND RECOMMENDATIONS**

War is far too important to be left to Chief Executive Officers (CEOs) of an un-regulated private military and security industry (Singer, 2004). The rule of the game governing contemporary PMCs are to sum-up, less anchored in formal legislation than they are in the discipline of the market. Formal legislation and

regulation has not developed apace with the development of the industry. Even if there are signs that there are some interest in altering this state of affairs both nationally and internationally, it is most probable that the markets rather than legislation will have the upper hand in setting the rules of corporations behaviour.

Military functions should not be delegated to private agents. By empowering private sources of authority in the form of PMCs to perform critical national security and military functions or task forever compromises state power, authority and sovereignty. It also undermines the very foundation of the state as the units of analysis in IR. By extension, the commodification of security as a public good, structurally removing it from the public domain of accountability, legitimacy and control, into the market that is profit driven, unregulated, arbitrary, and immoral of the private domain, accentuates the retreat of the state in IR.

To this end, PMCs as organized as businesses, driven by corporate rather than individual profits motives, and competing in the global and open market, in the most unregulated mould, must be sufficiently regulated as well as controlled within the framework of international law with a view to retaining the post - Westphalian foundation of the state as the basic unity of the International Relations. Adequate and sufficient International regulatory and control frameworks remains the only available options, especially within the framework of International law, in dealing with the twin danger of the Retreat of the State in particular, and anarchy in the structure of the State - system in general.

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