

**T.C.
HASAN KALYONCU ÜNİVERSİTESİ
LİSANSÜSTÜ EĞİTİM ENSTİTÜSÜ
SİYASET BİLİMİ VE ULUSLARARASI İLİŞKİLER ANABİLİM DALI
İNGİLİZCE TEZLİ YÜKSEK LİSANS PROGRAMI**

**PRIVATE POWER REGULATION: THE LEGAL STATUS OF PRIVATE MILITARY
AND SECURITY COMPANIES IN ARMED CONFLICTS**

YÜKSEK LİSANS TEZİ

**HAZIRLAYAN
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**TEZ DANIŞMANI
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LİSANSÜSTÜ EĞİTİM ENSTİTÜSÜ MÜDÜRLÜĞÜNE
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Bu tez Enstitü Yönetim Kurulunca belirlenen yukarıdaki jüri üyeleri tarafından uygun görülmüş ve Enstitü Yönetim Kurulu kararı ile onaylanmıştır.

Prof. Dr. İbrahim Halil GÜZELBEY
Enstitü Müdürü

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Yüksek Lisans Tezi “PRIVATE POWER REGULATION: THE LEGAL STATUS OF PRIVATE MILITARY AND SECURITY COMPANIES IN ARMED CONFLICTS” başlıklı çalışmanın tarafımca, bilimsel ahlak ve geleneklere aykırı düşecek bir yardıma başvurmaksızın yazıldığını ve yararlandığım eserlerin kaynakçada gösterilenlerden oluştuğunu ve bunlara atıf yapılarak yararlanmış olduğumu belirtir ve onurumla doğrularım. 07/07/2021.

TAHSEEN AYYASH

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ABBREVIATIONS

BC	Before Christ.
CPA	Coalition Provisional Authority.
DCAF	Geneva Centre for Security Sector Governance
DRC	Democratic Republic of the Congo.
EO	Executive Outcomes.
FDFA	Federal Department of Foreign Affairs.
HRC	Human Rights Council.
ICRC	International Committee of the Red Cross.
IED	Improvised Explosive Device.
MNF	Multi-National Force.
MOI	Ministry of Interior.
MPLA	People's Movement for the Liberation of Angola.
NGO	A non-governmental organization.
OAU	Organization of African Unity.
ODTC	The State Department's Office of Defense Trade Controls
OECD	The Organization for Economic Co-operation and Development.
PMC	Private Military Company.
PMSCs	Private Military and Security Companies.
PSC	Private Security Company.
RUF	The Revolutionary United Front.
SRC	Strategic Resources Corporation.
UK	United Kingdom.
UNAMI	United Nations Assistance Mission for Iraq.
UNDC	United Nations Global Compact.
UNDP	United Nations Development Programme.
UNITA	The National Union for the Total Independence of Angola.
USA	United States of America.
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SRC	Strategic Resources Corporation.
UK	United Kingdom.
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UNDC	United Nations Global Compact.
UNDP	United Nations Development Programme.
UNITA	The National Union for the Total Independence of Angola.
USA	United States of America.

ABSTRACT

This research focused on defining the Private Military and Security Companies (PMSCs), their history, activities, the aspects of the services it provides to the contracting states or parties.

Considering the increase in restoring to the PMSCs, the study highlighted several legal aspects, including the legal framework of those companies, the international efforts in regulating its work, and the international documents and agreements that tried to provide a clear definition of its staff, activities, and to limit the violation of human rights.

The study took Iraq and as a case study to shed light on the PMSCs' activities, regulation, and human rights violations in addition to the United Nations Working group in these regards. The study presented examples of the practices of the employees of the private military and security companies, and it was found that the perpetrators were not held accountable for various reasons, including the immunities granted to them by the parties that employ them and the weakness of the sanctions and deterrence system of the state and the companies themselves.

The study reached multiple conclusions, including the fact that the International legal agreements and documents do not imply any direct civil or criminal liability for private military and security companies.

There is an absence of international mechanisms that acknowledge companies and persons' corporate and moral liability for their violations of human rights rules.

The responsibility of the employees of PMSCs depends on defining their legal status precisely in international documents and agreements and ending the ambiguity surrounding them.

INTRODUCTION

Today's world is witnessing the spread of the phenomenon of so-called privatization, which is represented in the state relinquishing its traditional sovereignty over all areas of life for the benefit of individuals and private enterprises. However, it is noteworthy that the phenomenon of privatization has affected the most critical and dangerous sector related to state sovereignty, the security and defense sector. Over the past few years, the wars that erupted have known the participation of private companies on the battlefields, as they began to fight side by side with the forces of the belligerent countries. These companies emerged after the end of the Cold War in the late eighties and early nineties of the twentieth century when states began at that time to shift from militarism and the arms race to reducing their regular armies and demobilizing thousands of soldiers in the direction of reducing military budgets.

In modern warfare, private militaries and security firms are becoming increasingly essential. Any examination of the law that applies to firms involved in armed conflict generally starts with investigating how the law is applied to the contractors. The rise of the private military business necessitates a rethinking of the old methodology to evaluating mercenaries' legal status under international law. This research examines classical international law pertaining to workers of private security and military firms and the extent to which corporate actors might fit mercenary legal standards.

The globe has seen a transformation in the way government entities deliver security since the early 1990s. Private military and security businesses are engaged at both the local and international levels to carry out many of the conventional public security functions since the rising presence of private corporations in armed conflicts leads to their engagement in military operations.

Private military and security agencies are increasingly being used by nations, businesses, and other organizations, according to recent trends. PMSCs are being used in several situations. It can offer security in foreign nations, war zones, and non-conflict yet complicated and/or high-risk situations. Also, the increasing demand on the local level for security and logistic services, including but not limited to guarding persons, protecting property, money transfer, observing oil fields, and natural gas.

Moreover, charges of wrongdoing, crimes against humanity, and breaches of international human rights law by the corporation or individuals working for it have drawn increasing international attention to several PMSCs. The contractors have the potential to be prone to misbehavior in all these situations, resulting in serious human rights violations. Furthermore, many States lack suitable national legislative frameworks to address such challenges at the national level. Improved national regulatory frameworks are urgently needed to guarantee that PMSCs promote an internal human rights culture and, as a result, uphold human rights values.

While governments are focused on limiting military expenditures, new entities, in particular, have appeared, working to provide security and military services. These entities were known as Private Military and Security Companies (PMSCs). The activities of these companies were initially limited to providing technical support services, consultations, and military expertise. They began to recruit hundreds of members of the armed forces who were discharged or retired. The past few years have witnessed an unprecedented increase in demand for security and military services. Instead, they compete to contract with states, international organizations, commercial companies, and even private, non-governmental organizations during periods of tension and armed conflicts.

The decrease of the numbers of the national armies and the increase in the demand for the services of private military and security companies had developed to the point of using the employees of these companies in hostilities and military confrontations during wars and armed conflicts. The most prominent example of this was what happened in the US invasions of Afghanistan 2001 and Iraq in 2003 when it became clear that the employees of these companies participated in hostilities and committed abuses against civilians and prisoners, such as what happened in Abu Ghraib prison 2004, the incident in Nissour Square in Baghdad 2007, and other incidents that revealed the involvement of these employees in violations of international humanitarian law.

The Research Problem

The study's problem focuses on the various forms of usage of private military and security companies in conflicts and civil wars, especially in countries where armed conflicts are widespread. This study will shed light on the nature of private military and security companies and

the mercenaries and the legal status of mercenaries in international law that has evident ambiguity regarding the responsibility and the accountability of the Private Military and Security Companies' activities. The judicial system in conflict zones is insufficient if not absent, which raises the concern of citizens, organizations, and humanitarian and international bodies, human rights and legal institutions, and associations regarding the possibility of the perpetrators of impunity. Besides the difficulty in knowing mercenaries' behavior because the companies in which they work do not submit reports to the governments or humanitarian organizations in their home countries or in which they work. Also, the Private Military Companies are neither patriotic nor holding the nationality of the countries they are fighting in, raising the concerns of committing war crimes without consequences.

The participation of PMSCs actors in the Iraqi conflict has sparked widespread worldwide interest, particularly in light of claims that PMSCs contractors have been involved in war crimes in some situations. This is unquestionably the type of behavior that international humanitarian law attempts to stop, and it has sparked worry in humanitarian communities. Governments have also shown interest in the role of PMSCs involved in the Iraq conflict. The presence of military contractors in Iraq also raises concerns about holding firms participating in armed conflicts accountable. The PMSCs tended to maintain that their business was self-regulating in the lack of a distinct regulatory framework for dealing with the PMSCs' activities. The International human rights law and PMSCs treaties offer a framework for regulating the activities of private military contractors on a global scale. However, in specific ways, this legal structure is disconnected and inconsistent.

The Research Objective

The study aims to shed light on private military and security companies' phenomenon and the legal concepts of these companies by studying and analyzing. Monitoring aspects related to their activities and the position of international law and international humanitarian law from their actions, the decisions and orders about their impunity, and the legal status for mercenaries in armed conflicts.

The study also aims to identify the role that private military companies play in armed conflicts, thus reaching results through which recommendations can be made to achieve this research's purpose and objective.

The Research Questions

The study will try to clarify the following points:

What are the Private Military Companies and the mercenaries' phenomenon, and who are mercenaries in international agreements?

What is the legal status of Private Military Companies in armed conflicts?

What are the main challenges facing the organization of the Private Military Companies sector?

The study will investigate the primary global documents, agreements, and compacts related to the activities of the private military and security companies.

Also, considering the high presence of the PMSCs in Iraq, the study will provide an overview of the activities of the PMSCs in Iraq, their legal status, and the violations committed by its contractors. The research will focus on the extent to which these companies are subject to the law and the level of their immunity in Iraq.

The study will follow the descriptive approach. The study will depend on the international agreements directly related to mercenaries during armed conflicts over and on the protocols concerned with this topic, in addition to references and studies on private military companies and mercenaries.

The Research Significance

The research's importance lies in the fact that it deals with a controversial topic that raises a broad debate among the world's countries about the governments that use Private Military Companies in modern warfare. And studying the law should be applied to companies that have an active role in armed conflicts by checking how the regulations are applied to Private Military Companies.

The scientific importance of this study also lies in its being a contemporary topic. This study coincides with the increase in private military companies' use in current conflicts, which opens the way for researchers in international humanitarian law and makes appropriate suggestions in this field. It is crucial to focus on regulating the Private Military Companies' activities in international agreements and conduct the proper improvements in this area.

The dispute regarding the definition of mercenaries and their legal status has elicited reactions from a variety of countries. Some argued that a full prohibition on mercenaries' activities is necessary, while others argued that mercenaries should not be given special consideration under international law. The opposition to mercenary activities in the second half of the twentieth century was motivated by a desire to protect post-colonial governments' right to self-determination. The United Nations continued view of the employment of mercenaries as a way of violating human rights and obstructing the exercise of peoples' right to self-determination reflects this perspective. The participation of private military contractors in Iraq and other nations has sparked renewed interest in the active PMSCs.

Under international law, private military contractors are not inherently mercenaries, but they are considered as acting in armed conflict with economic or personal objectives. As a result, the PMSC's position in today's wars necessitates a re-assessment of active businesses' roles and the norms that govern their contractors in armed conflicts.

The research will focus on the complicated situation in Iraq, as the country did not interact previously with a contractual relationship with PMSCs, but the nation found itself in front of a reality filled with contractors on its territory, and this happened due to the orders of the occupying countries and the direction of the Coalition Provisional Authority in Iraq. Later Iraq found itself facing a situation of political and legal interference due to the presence of PMSCs. The contractors, due to their presence in an unstable security environment, used lethal force in the simplest cases that accompany the provision of their services. Later, the Iraqi government attempted to limit the use of force by the contractors and impose a kind of oversight, inspection, and field visits approved by the Iraqi Ministry of Interior.

CHAPTER 1: THE CONCEPT OF THE PRIVATE MILITARY AND SECURITY COMPANIES

1.1 History and Development of Private Military Companies

Looking at the history of the world, we find that the state did not monopolize the use of violence, but the use of violence by private parties was the norm before the 20th century. Violence by non-state actors has dominated the world order for a long time until the military emerged as a modern professional institution.

To understand the development of private military action, we must address the emergence of mercenaries, which can be the core of modern private security companies. There is a remarkable similarity in the motivation for recruitment, its means, and in the areas of work between several modern private military companies and mercenary veterans.

As recorded in historical documents, the first use of mercenaries dates back to the army of King Shulgi of Ur in 2094-2047 BC (Singer P. W., 2008). After that the frequency in BC historical accounts of the use of mercenaries in different regions of the world. Among the most prominent of those who have relied on foreigners in providing security and protection is the Vatican; the Swiss Guard mediates the pope's protection. They developed this guard from a Swiss platoon hired in 1502 to serve as a guard force for Pope Julius II (Singer P. W., 2008).

In the twentieth century, the use of mercenaries emerged despite the increase in the professionalism of the military establishment, and the clearest example of this was the use of American mercenaries in the Boer War of 1899-1902 and in the Biafra war in Nigeria, 1967-1970, and in Angola, Sierra Leone and the Congo at the end of the century. One of the precise historical examples of private armies was European commercial companies' employment of private troops.

1.1.1 Private Business and Corporate Armies

The European trading companies established in the seventeenth century emerged as the spearhead of colonialism, which paved its way forward. The armies created by these companies are a perfect example of the phenomenon of the privatization of security. The most famous companies in this field are the "English East India Company," which was founded in 1600, and the "Dutch East India Company," which was founded in 1602, and were given concessions under which a show that no

Dutchman outside this company could not work in the trade in the Indian Ocean region. The Netherlands seized several areas under the control of Portugal, occupying Malaga in 1641 and Cochin in 1663. After the company's presidency was established in Java in 1607, England was forced to limit its business to India. The Netherlands diverted Chinese trade through Java and established a terminal in Cape Town in 1652. The Dutch company's army has grown to have 104 ships and 25,000 militants (Singer P. W., 2008). In the first half of the eighteenth century, the influence of the Netherlands declined in the western Indian Ocean.

The French East India Company was founded in 1664 and took Madagascar as its headquarters and established its presence in India in 1719. These companies monopolized trade in various spices, porcelain, gold, and opium.

The English East India Company employed British, German, and Swiss mercenaries and local units. In 1749, the Company used its military power, in return for money, to help a local prince of Tanjore regain his throne. By 1782, the Company's army was over 100,000 men and was thus more significant than the British Army. After fierce battles with the Dutch, the English company could evacuate them from India in 1759, and the French, who worked under the guise of the French East India Company was expelled in 1761. Still, the Dutch continued in Java and Borneo for half a century after that (Singer P. W., 2008).

1.1.2 Foreign Units Attached to European Armies

Gurkha

The Gurkha is one of the most famous foreign units attached to the European army, and its origins date back to the British colonial period in India. When Britain declared war on Nepal in 1814 and sent two military campaigns until 1815, these campaigns found fierce resistance from the Nepalese, after which the British forces preferred to sign a peace agreement. The British were impressed with the courage of the Nepalese, as the agreement stipulated that large numbers of them would be absorbed as volunteers working in the service of the British East India Company, and these Nepalese were known as the Gurkha by the British or the Gurkhas by the Indians. The name refers to the indigenous people from western and eastern Nepal. The Gurkha was, at that time, a small and independent fiefdom that lasted for a period of nearly two hundred years (Ballard, 2007).

When India gained independence in 1947, four factions of the Gurkha were transferred to the British Army, and the rest became part of the Indian Army. The Nepali, British and Indian governments signed an agreement guaranteeing fair treatment of the Gurkha soldiers. 100,000 Gurkha soldiers took part in the First World War and the same in the Second World War. They have fought in many parts of the world, including Malaya and Cyprus. More recently, they took part in the Gulf, Falklands, East Timor, Bosnia, Kosovo, Afghanistan, and Sierra Leone wars.

The Gurkha's long track record in the British Army and their reputation for discipline and courage prompted private security companies to employ them and even benefit from the name commercially. Among the most famous of these companies is Gurkhas Security Guards, a private British company founded in 1989 that employs ex-Gurkhas soldiers in the British army and promotes them in its publications to work in high-demand areas, such as Africa, as they are accustomed to the harsh life of hardship, and are not tired, besides being brave, cost-effective, and apolitical, they serve their customers without asking why.

Just as the Gurkhas fought with the British in Iraq in World War I, after ninety years, they returned to join the British forces that fought the Iraqi army in 2003. The demand of the Nepalis to join the Gurkha Brigade in the British Army is still high. In 2003, there were 230 vacancies in the Gurkha brigade. In 2003, the veterans of the Gurkha lost a lawsuit in British courts accusing the British government of discrimination in treatment compared to their British counterparts since their salaries were linked to those of the Indian army according to the 1947 agreement. When Britain handed over Hong Kong to China, the leadership of the Gurkha Brigade was transferred to the United Kingdom. The number of the Gurkhas in the British army decreased until it reached 3443 soldiers in July 2004 (Tonkin, 2011).

This decline occurred after a review of defense policies; The British government decided to reduce the Gurkha by 70%. To alleviate the impact of the decision on the Nepalese, the British government attempted to convince the United Nations to use the Gurkha as a rapid reaction force. But those attempts of the former British prime minister in 1991 were unsuccessful. As for the Gurkha company has worked in Mozambique, Angola, Sierra Leone, and Somalia. In Sierra Leone, the company trained military personnel in anti-guerrilla operations; Hot pursuit, ambushes, and evacuation. They also guarded the Camp Charlie military base in the country's heart. In

Mozambique, the United Nations contracted with them to provide field supervisors for mine clearance programs (Oliver, 2004).

The French Foreign Legion

King Louis Philippe created the foreign legion in 1831 to assist in the French war to occupy Algeria, and the legion won wide fame in the Mexico War in 1863. Corps participated in the two world wars. First and second, he also participated in defense of the Dien Bien Phu in Vietnam. The French were 90% of the legionaries' officers, while the rest came from the soldiers promoted to non-commissioned officers. As for soldiers, the French made up about 25-30% of them, and foreigners made the rest. There is great competition for admission to the Corps, with only one selected for every eight applicants. The recruit must spend five years in service before he can apply for French citizenship (The French Foreign Legion information pages, 2020).

The presidency of the Corps was until 1962 in Sidi Bel Abbes in Algeria, but after that, the leadership moved to France. There are platoons in Corsica, Djibouti and other regions. The question of loyalty arose when a fraction of it supported the Algerian revolution, and it was revoked immediately. The Corps currently stands at about 8,500 soldiers, and the Foreign Legion has fought in Algeria, Cameroon, Chad, Djibouti, Morocco, Congo-Brazzaville, Congo-Kinshasa, Somalia, Angola, and Benin (Tonkin, 2011).

1.2 Private Military Business in the Modern Era

After the colonial era ended because of the spread of national liberation movements and the growth of national spirit, most peoples gained their freedom in the middle of the twentieth century. Perhaps the world believed at that time that there was no need for arms and soldiers because there would be no war if the peoples had pledged under the banner of the United Nations to renounce violence and resolve conflicts among themselves by peaceful means¹. However, the reality showed that colonialism left behind vast numbers of mercenaries. If the wars are over, their fate is not clear,

¹ According to the United Nations Charter Preamble "*WE THE PEOPLES OF THE UNITED NATIONS DETERMINED*

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom"

their direction is not clear, and their future activities are not transparent, primarily that their forces used to earn their living from participating in other wars and conflicts.

The role of this warrior class has receded, especially in Europe after the emergence of the nation-state during the seventeenth and eighteenth centuries, with the growing feelings of patriotism and loyalty to one nation. But in the Third World, the phenomenon of a mercenary was still present, as colonialism left behind several mercenary soldiers, who are a group of military men who sell their military services to, primarily, governments and presidents who jumped to power against the will of their people, so it became commonplace to see rulers guarded by European mercenary soldiers. Dictatorial governments impose their hegemony on their people and protect themselves by hiring foreign agents and mercenaries (Swed, 2006).

With the departure of the major colonial powers from the African and Asian continents, the former colonial countries began seeking, through their intelligence services, to form private protection companies, supervised by former military personnel, to sublet them to do dirty work and fabricate small wars in countries that want to continue controlling them by means other than Colonialism in its well-known traditional form. The world also woke up after the Second World War to the emergence of two great powers fighting over its leadership. The former Soviet Union, pioneer of communism, in the East; and the United States of America, representative of capitalisms, in the West, and each country, from the small states newly liberated from the grip Colonialism, chose one of these two powers as a political, economic, ideological, and even military point of reference, and the entire world entered an arms race, as nations competed with each other to supply their regular armies with the most powerful and modern weapons and war equipment in the context of what is termed the Cold War (McMahon, 2003). That extended to the beginning of the ninth decade from the twentieth century, when the political breakthrough appeared with the collapse of the Berlin Wall in 1989, announcing the end of the conflict between the eastern and western camps.

By the end of the Cold War and the disintegration of the Soviet Union - in the past - followed the departure of states from the interest in developing the capabilities of their armies, and even took the initiative to reduce the number of their armed forces significantly, the matter that created a security vacuum and a remarkable increase in violence in the world, accompanied by the outbreak of ethnic, sectarian and ideological conflicts in various parts of the countries (Cook, 2002).

During this period of tension and armed conflicts, a new player appeared on the international military arena, which gradually began to impose itself on the international scene, the private military and security companies, as a for-profit company that provides security, military, and expert services to clients, from both the public and private sectors. It is important to note that the activities and the industry of these companies began to escalate with the beginning of the nineties of the twentieth century, when the demand for security services provided by private, non-governmental agencies increased after the disintegration of the regular armies and their size decline, as thousands of soldiers with combat experience were discharged or referred to retirement. Accordingly, they constituted an essential human resource for private military and security companies that are often owned by former generals and military officers who have employed other former officers and soldiers for high wages, and there is an abundant supply matched by a growing demand for security and military services for these soldiers. Consequently, the market for ex-military-turned-military contractors has boomed, until it turned into a stand-alone business sector, where many protection and security companies were established and spread in many parts of the world, especially in the United States of America, UK, and South Africa, offering their services to those who request them in return for money (Pernille, 2011).

These companies have contributed to the overthrow of government systems in many countries of the world, especially in Africa, and they also contract to protect presidents and kings, especially the dictatorial ones, hiding behind a wall of security contractors to impose their influence and protect their lives and the lives of their families and their entourage. Private military and security companies also participate in small wars and protect oil wells and diamond mines and are accused of stirring up sectarian conflicts and strife in the past few years (Gwatiwa, 2016).

All this accelerating and growing activity of these companies would have been unnoticed globally, but due to the global war on terror launched by the United States of America at the beginning of the first decade of the third millennium, which began with the invasion of Afghanistan in 2001, and then Iraq in 2003, which removed the veil of more than 52 security companies in Afghanistan, and 100 companies operating in Iraq (Schwartz, 2011). The international media began to talk about a new player in the wars of the modern era, the private military and security companies. The size of the regular armies shrunk, allowing companies to employ hundreds of impoverished soldiers with exceptional combat skills to enter the fields of wars based on contracts. They conclude with

the parties to the conflict and lead the battle fronts in exchange for millions of dollars. For example, the size of the US Army was reduced from 2.1 million soldiers in 1989 to 1.4 million soldiers in 2004, and this led to reliance on private military services companies that took over the military and security gap resulting from the entry of the United States into armed conflicts in hot areas of the world.

Perhaps the most famous incident that raised the alarm coming from the private military business was the Fallujah incident in Iraq on March 31, 2004, which drew the world's attention to private irregular forces fighting with the US and British forces. It was an incident in which members belonging to the Iraqi resistance killed four Americans who were driving their car in the street in the city of Fallujah, and hung their charred bodies on a bridge across the Euphrates River, where television cameras captured their pictures in a frightening scene that shook world public opinion, and the headlines came the next day talking about the terrible accident; accordingly, the American leadership was forced to admit that these were not American soldiers, it becomes clear later that they belong to the Blackwater Company, the largest private American military company operating in Iraqi lands. Then the investigations continued the Blackwater company and other companies that hire mercenaries to work for the occupation forces in Iraq (Gettleman, 2004).

Interest in these companies' activities increased, especially after the Abu Ghraib prison scandal in the same year (2004), in which the protagonists were employees of private military and security companies that the occupation forces contracted with to interrogate prisoners and interrogate them to gain access to information about the Iraqi resistance. The has documented blatant crimes and abuses against prisoners, which varied between rape, torture, intimidation, and the use of the most heinous means to humiliate Iraqi prisoners, which constitutes a clear violation of the rules of international humanitarian law, in particular Article Three of the four Geneva Conventions 1949.

After these two incidents, the series of crime scandals committed by private military forces operating in armed conflict areas in the world continued, and some investigations revealed more heinous crimes committed by private military and security companies, not only in Iraq, in different regions of the world. These companies were accused of committing acts of murder and torture against civilians, rape, and trafficking in Bosnia, Sierra Leone, Afghanistan, Darfur, and other countries, under cover of the so-called war on terror. All these crimes and violations sparked many

discussions about them due to the evasion of their perpetrators from the grip of justice and the international disregard for their grave transgressions (Scahill, 2007).

Given the ambiguity in the concept of private military and security companies and their role in modern-day wars, it is necessary to define what these companies are, explain their legal nature, and give a clear description of their activities.

1.3 The Contractors, Are They Mercenaries?

According to article number #47 of the additional protocol to the Geneva Conventions approved on August 12, 1949 (Protocol A) June 8, 1977:

A mercenary cannot have the status of combatant or prisoner of war.

A mercenary is anyone who is being specially recruited, locally or abroad, to fight in an armed conflict;

Does take a direct part in hostilities;

A mercenary is motivated mainly to participate in hostilities; the desire to achieve a personal gain and an act is made for him by a party to the conflict or on his behalf and a promise of material compensation that goes beyond what is promised or paid to combatants of comparable ranks and positions in the armed forces of that party;

A mercenary is not a national of a party to the conflict, nor is a citizen of a territory controlled by one of the parties to the conflict;

A mercenary is not a member of the armed forces of one of the parties to the conflict and is not delegated on an official mission by a state that is not a party to the conflict as a member of its armed forces (Protocol Additional to the Geneva Conventions, 1977).

The definition of mercenaries under international humanitarian law excludes most PMSC employees. Most of these were not contracted to fight in military operations, and many of them were nationals of one of the parties to the conflict. Moreover, it is challenging to prove motivation for private gain. Finally, while some contractors are being paid highly high, it is challenging to ascertain whether they are being paid much more elevated than soldiers' wages (Isenberg, 2009).

While the First Additional Protocol to the Geneva Conventions and other instruments provide definitions of mercenaries, their complexity and personal nature make them difficult to implement in practice. When defining prohibited and permitted activities, and instead of banning the activities of mercenaries, a more realistic approach could be taken that of prohibiting the provision of specific services, such as direct participation in hostilities in the context of an armed conflict of all commercial actors, including private military and security companies.

It should be noted that national laws dealing with mercenaries are not relevant enough to address the issue of PMSCs.

The most controversial condition in Article 47 is the second condition stipulated in Paragraph (C), which relates to incentives, as some jurists see the need to distinguish between the definition of mercenaries and other actors based on their motives because it is impossible to define a mercenary acceptably without reference to the mercenary motives. This opinion was filled by some delegations of the Diplomatic Conference for the Promotion and Development of International Humanitarian Law in 1997 (Bouchet-Saulnier, 2013).

As for the second condition of Paragraph (C), which states that a mercenary must be given, by a party of the conflict or a representation on its behalf, a promise of material compensation that exceeds what is promised to combatants of similar ranks and positions in the armed forces of that party or what is paid to them, which is considered as an attempt to mitigate the subjectivity of the condition of the motive, by balancing it with an objective choice, however, it appears from item (c) that the formulation of the condition of excessive material compensation comes beside the condition of the motivation (Henckaerts, 2009).

Article 43 of Additional Protocol I defined a combatant as a member of the armed forces of a party to the conflict, except for medical personnel and preachers, but Article 47 (e) stipulated that a mercenary is not a member of the armed forces of one of the parties to the conflict. According to the definition, a mercenary is basically not entitled to be considered under the legal status of a combatant. Accordingly, Article 47 cannot be considered an exception to the rules relating to the status of combatant and prisoner of war, as it actually becomes of no value when it is read with Article (43) (Protocol Additional to the Geneva Conventions, 1977).

In addition, Article 75 guarantees the right to a fair trial and due judicial procedures regarding criminal offenses.

The 1977 Organization of African Unity (OAU) Convention on the Prohibition of Mercenaries stipulated, in Article 1, that a mercenary is defined as 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;*
- 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) *Is not sent by a State other than a party to the conflict on an official mission as a member of the armed forces of the said state.”* (Organisation of African Unity, 1977).

Article 1 of the draft Luanda Convention on Political Rights defines the crime of mercenarism that it would be committed by individuals, groups or associations, or representatives of states, or states themselves. It does not specify precisely the elements of the crime. The legal person is involved in a civilian for committing the crime of mercenarism, if it is committed with the aim of resisting the right to self-determination through armed violence acts any of the following:

- Organizing, financing, supplying, training, promoting, supporting, or employing, in any way, military forces that consist of individuals, or include individuals who are not nationals of the country in which they will practice these works, with the aim of personal gain, and by obtaining a salary or any Another type of material reward.
 - It also includes the registration, enlistment, or attempted enlistment in the said forces.
 - Allowing the implementation of activities in any lands under its jurisdiction or anywhere under its control or granting facilities for the passage of military forces or their transfer for any other operations of those forces (Hoover, 1977).

The first article of the OAU convention reflected all aspects of the definition of a mercenary contained in the first additional protocol to its criteria the requirement that a person is essentially

motivated to participate in hostilities by the desire to achieve a personal gain and to make financial compensation that exceeds what is promised or paid to combatants of comparable ranks and positions in that party's armed forces.

The OAU Convention on the Prohibition of Mercenaries, Article 1 (a) and (c), stipulates that only a party of the conflict or a representative promises a person to grant him material compensation. The most significant differences between the OAU Convention and the Additional Protocol I lie in the aspect of criminalization, as the provisions relating to the criminal act in the OAU convention are broad and generic, as according to that convention, a person commits a criminal offense as a mercenary. Mercenaries also bear criminal responsibility for any specific criminal acts committed during the performance of their duties (Henckaerts, 2009).

According to Article (2) of the OAU Convention, the crime of mercenarism also applies to broad and unusual forms of application. Article (3) states that mercenaries do not have the legal status of a combatant and do not have the right to prisoner of war status. At the same time, Article (7) requires each state party to ensure that the crime of mercenaries is punished with the maximum penalties according to its laws, including the death penalty.

The United Nations Convention definition of a mercenary is divided into two parts. The first section in terms resembles the definition contained in the first additional protocol, except that it excludes the condition that a person actually participates in hostilities. This exception alone makes the definition of the United Nations Convention on the status of a mercenary broader than the definition contained in the Additional Protocol.

This agreement gained its importance because it came after two legal attempts to ban mercenaries, the first was international (Additional Protocol I), and the second was regional (the African Agreement on the Prohibition of Mercenaries) 1977, and then it was expected to be more comprehensive than both of them, and to address the deficiencies that exist.

Nevertheless, the second section of the definition is broader in scope, as the "United Nations International Convention against the Recruitment, Use, Financing and Training of Mercenaries" sets much fewer conditions that give an individual the status of a mercenary, as it states that:

“1. A mercenary is any person who:

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

(b) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party;

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

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

(e) Has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.

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

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

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

(ii) Undermining the territorial integrity of a State;

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

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

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

(e) Is not a member of the armed forces of the state on whose territory the act is undertaken.”

The definition contained in the United Nations Convention on Mercenaries in 1977 is identical to the definition contained in Article 47 of the Additional Protocol, with some modifications, perhaps the most prominent of which is the expansion of the definition of a mercenary, not making him restricted to participating in hostilities only, as was the case in the second paragraph from the protocol, as this paragraph was excluded from the convention.

This expansion also came in the first part of the second paragraph (2-a) to add to the armed conflict acts of violence aimed at overthrowing a government, undermining the constitutional order of a country in another way, or undermining its territorial integrity, so that the person would be a mercenary - provided the rest of the conditions are met. If the mercenary participates in any work of the military sector or provides one of the services offered in military actions or participates in acts of violence or security sector work. This is a clear indication that the article includes both military and security work.

However, some conditions may make this description not applicable to military companies, such as carrying the nationality of one of the parties to the conflict, such as the case of Blackwater in Iraq, as its members are holding American citizenship or residing on American soil permanently, also, by referring to the private military and security companies activities as a logistical task, and stating that those companies (contractors) do not participate in military operations, whether it is an attack or defense. Perhaps this is what drives the United States. The major countries in general, or these companies to describe themselves as military contractors, to try to deny the character of fighting from them, aiming to be excluded from the status of mercenary under this agreement, especially since it criminalizes all mercenary activities, and to escape from the legal consequences and status of mercenarism (Isenberg, 2009).

The Draft Code of Crimes Against the Peace and Security of Mankind in 1991 made a particular reference was made to mercenaries. Article 32-2 defined the same conditions for a mercenary as in the OAU Convention, but it did not include the requirement that the mercenary actually participates in hostilities.

According to the conventions mentioned above, concepts, and definitions, the mercenaries are hired persons who have been recruited to fight for a country other than their own, to meet their own interests away from political, humanitarian, or moral interests. They are individuals who engage in fighting with one of the parties in exchange for financial benefits and not for just causes. Therefore, their activity lacks moral, humanitarian, and legal foundations. The most dangerous thing is that they do not pay the slightest attention to the laws and customs of war and do not abide by any controls or restrictions.

1.4 The Difference and the Overlaps Between Private Military and Security Companies (PMSCs)

First of all, it must be noted that the term private military and security companies contain two terms. The first is ‘private military companies’ and the second is ‘private security companies,’ which are two terms that express two different and distinct types of companies, at least in terms of the services provided by each. But this study will use one term that brings them together because what matters to international humanitarian law is the behavior of these companies during armed conflicts, this branch of international law is not concerned with naming the perpetrator as much as it is concerned with the actions of people in areas of conflict, and therefore the term ‘Private Military and Security Companies’ will be used in this study. It is described as an inclusive and cloudy term covering companies that provide any form of military or security services in situations of armed conflict (Gillard, 2006).

This next section will present the concept of each type of these companies separately for the sake of clarification and definition. The overlap between both types will be shown for the purposes of the study, and accordingly, the first section will indicate the concept of private military and security companies. The second section deals with the overlap between both types, which is what it will be explained below.

1.4.1 Private Military Companies

Despite the noticeable proliferation of private military companies and the increase in writing about them at the legal, military, strategic, and even media levels, in recent years, no official definition of them has been adopted in international treaties and treaties. Perhaps this represents one of the difficulties facing scholars in this field. The lack of a legal definition may be due to the lack of international interest in establishing mandatory texts governing the activities of these companies, except for some documents that do not rise to the level of binding international rules. Therefore, the definitions generated by some academics who went in-depth in the study of these companies are more accurate. Amongst those scholars, Peter Warren Singer, author of the first detailed study on private military companies, P.W Singer defined the Private Military Companies as “*Business providers of professional services that are intricately linked to warfare.*” (Singer P. W., 2004)

In a more general term, these companies were defined as “*A registered civilian company that specializes in the provision of contract military training (instruction and simulation programs),*”

military support operations (logistic support), operational capabilities (special forces advisors and command and control, communications, and intelligence functions) and or military equipment, to legitimate domestic and foreign entities.” (Goddard, 2001)

In its definition, it has also been said that they are legally registered companies, usually employing mercenaries, governments lease that to provide public security.

A reference to the definition adopted by the Center for Public Integrity² of PMCs defines it as: *“For-profit companies that provide services that were carried out by the national armed forces. These services include military training, intelligence, logistical support, in addition to peacekeeping in conflict areas.”* (CPI, 2006)

According to most of the previous definitions that the definition of the military companies was based on the services they provide, which is not completely precise, as the scope of these services is extensive, and it differs from one company to another according to the degree and level of its specialization, noting that it does not It is required that a company provide all these services to be described as military.

In the absence of an approved legal definition of these companies, previous attempts remain the reference to which the researcher returns to define the concept of military companies.

Accordingly, these companies include all the private, profitable companies that provide services of a military nature to national and foreign bodies.

1.4.2 Private Security Companies

Unlike the Private Military companies, the Private security companies did not have an official legal definition at the international level that could be used as a reference in determining what they are, but the academics, as usual, addressed this issue by defining it as *“Companies that provides defensive security services to protect individuals and property.”* (Gulam, 2005)

² *“The Center for Public Integrity was founded in 1989 by Charles Lewis as nonpartisan, nonprofit investigative news organizations. It’s mission is to reveal abuses of power, corruption and dereliction of duty by powerful public and private institutions in order to cause them to operate with honesty, integrity, accountability and to put the public interest first.”*

Also, it is defined as *“A registered civilian company that specializes in providing commercial contract services to domestic and foreign entities with the intent to protect personnel and humanitarian and industrial assets within the rule of applicable domestic law.”* (Goddard, 2001)

Private security companies are usually described as *“companies that provide passive security services in the most dangerous conflict areas”* (Brooks, 2000) as a distinction to them from military companies, which engage in active activity in armed conflicts. Whereas military companies usually carry out combat, reconnaissance, and training tasks, the role of security companies is limited to defense and protection in the event of an attack, which is why its activity is described as passive.

Also, it was defined as companies that engage in an activity that is directly related to the protection of persons, places, or things. Some of them used an expanded definition that includes other activities such as intelligence analysis, coordination operations, and training of security forces.

On the domestic level, The U.S. Bureau of Labor Statistics defined private security companies as *“Companies primarily engaged in providing guard and patrol services, such as bodyguard, guard dog, parking security and security guard services. Many of them will even provide advanced special operations services if the client demands it.”* (The U.S Bureau of Labor of Statistics, 2011)

A simplified description can be drawn for private security companies, based on the previous definitions, by saying that they are profitable projects with preventive or passive activity. Their work focuses on preventing crime, maintaining public order, and guarding people and property.

1.4.3 The Overlap between the Private Military and the Private Security Companies

After reviewing various definitions of private military and security companies, it became clear that the field of work of military companies is often in areas of combat and armed conflicts, and it usually takes the form of participation in combat operations, which makes their role described as active. At the same time, security companies provide preventive services such as guarding and security training, which explains their role as passive (Singer P. W., 2008).

Although the activity of security companies plays a preventive security role, which may suggest that the circle of their work is confined to places that characterized by security stability, the war on Iraq revealed the presence of private companies describing themselves as security and the occupation forces contracted with them to protect diplomatic and military facilities and provide

guard for convoys of diplomatic and military agencies alike, a kind of overlap was observed between the tasks of each of the security companies and their military counterparts, due to the security companies contracting to perform tasks and services for the armed forces in conflict areas, and in return for military companies contracting to perform tasks and services related to security and protection.

This overlap between the roles of military and security companies, especially in periods of armed conflict, makes it difficult to describe one company as military and another as security. Perhaps this led to the use of one term that unites them in this study, so what should be a final judgment on the type of company It is the essential services it provides, not the description that it attributes to itself, and this is precisely the essence of international humanitarian law. It is far from the issue of classifying these companies or examining the legality of their resort to armed force, but rather regulates the way combat operations are managed (Gillard, 2006).

This has prompted the Swiss government and the International Committee of the Red Cross, in the Montreux Document, to adopt a unified definition that unites military and security companies as *“PMSCs are private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings, and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel.”* (ICRS & DIL, 2009)

The draft international agreement adopted the same approach regarding the organization of the work of private military and security companies proposed by the “The Working Group on the use of mercenaries to violate human rights and impeding the exercise of the rights of the peoples to self-determination” in 2010. The report emphasized the severe overlap between the concept of military companies and the private security company by stating that *“a corporate entity which provides on a compensatory basis military and/or security services by physical persons and/or legal entities.”*³

In the report, the team used the designation, Private Military and Security Services Companies, indicating that the description of security or military is a description that appends services and not

³ The Working Group on the use of mercenaries as a means of violating human rights Report No. A/HRC/15/25.

the companies themselves. The company's description of itself as a security company does not absolve itself of responsibility for its participation in hostilities. This fact supports the proposed designation of these companies in this study as private military and security companies. It is a term that carries with it all types of companies that provide services within the security and military field framework.

In the absence of an official international legal term for these companies, using the term private military and security companies, or military and security services companies, or similar names, remains the appropriate name that reflects the significant overlap between the activities of these companies.

Many of the basic concepts relating to the military and security companies, including the term (Private Military and Companies), per se, do not have a universally accepted definition. Bearing in mind that many international documents, such as the Montreux Document and the International Code of Conduct for Private Security Service Companies, suggest definitions, but they are inconsistent between them. States must pay special attention to defining basic terms when drafting domestic procedures and terms of references around the private military and security companies (PMSCs).

The definition of a private military and security company should not be too vague or too precise because the overly vague definition opens the way for interpretations and may be difficult to enforce. In contrast, the overly precise definition may not consider the rapidly changing developments in the sector, thus becoming outdated and ineffective in companies' private military and security sectors. Several countries do not include military activities within their regulatory framework and refer to private security companies only. However, many countries and international organizations contract for services that can be closer to military services, such as logistical support and training.

States suffering from a lack of resources rely on employing an increasing number of contractors to supplement the national armed forces, for example, in the technical field of weapons maintenance. The important thing is not the company's name, whether it is security or military, but rather the activities and the objective it carries out, such as logistical support and training.

The Montreux Document definition of PMSCs includes, among others, the detention of prisoners. However, the draft agreement of the working group on the use of mercenaries excludes the functions that fall at the core of the state's powers from the range of activities that can be carried out by private military and security companies, including the authority to arrest or detain, as it is one function that falls within the core of the state's powers (Bakker & Sossai, 2012).

At the conclusion of this chapter, the picture must have become clearer about the reality of private military and security companies, as the historical roots of this type of companies were presented, starting from the ancient times in which the use of mercenaries was common, down to the contemporary history in which the number of security contractors has become comparable to, or even greater than, the number of regular soldiers, in a global phenomenon, and the principle of privatizing wars to reduce costs off the shoulders of state budgets.

It must be re-emphasized that the study uses a broad term that includes these two sectors of private companies. The reason is the inability to separate the activities of each type during wars and conflicts, and this is due to the intermingling and great overlap between them, not to mention that international humanitarian law does not care about the type of company or the name it gives. Still, it judges the behavior of different people during periods of wars, and it establishes legal sanctions for every breach of its rules.

CHAPTER 2: PRIVATIZATION OF SECURITY WHYS AND WHEREFORES

This chapter will summarize the reasons that led to the emergence of the phenomenon of privatization of security in four interrelated developments in the world. The first is the change in the nature of war. The second is the weakness of governments and their military and security institutions and the emergence of new actors, such as militias, self-protection groups, and organized criminal gangs. And the third is the global trend towards privatization, which is supported by international financial institutions and Western countries and supported by the mechanisms of globalization.

And the fourth is the proliferation of arms, especially small arms, and the increase in military tendencies it causes in a more significant sector of society.

These general developments can be briefly explained as follows:

2.1 War Changed

In the last few decades, the war has witnessed a change in nature and organization.

This section will summarize these transformations in the following areas:

1- The Increase in The None-State Actors' Power

Previously, the ability to mobilize material and human resources required great potential and was the determining factor in the superiority of the state. Now, because of the opening of the military market, the availability of money has become an essential factor (Radziszewski, 2020). Some have been able to overcome this dilemma; for example, in Angola, “The National Union for the Total Independence of Angola” (UNITA) has relied on diamonds it extracts from the areas it controls to finance its war against the Angolan government. This is estimated at \$2 billion a year (Bieri, 2010).

2- The Evolution of The Information War

The evolution in information warfare including psychological warfare, military deception, cyber operations, cyber-attacks, and physical attacks to mislead and eliminate the enemy, has raised the governments to demand the private companies and non-governmental organization which operate such high technological services.

3- Structural Change in War Administration

The way society is organized economically, socially, and politically has had a clear impact on the management of the war. The emergence of the nation-State, the expansion of colonialism, and the emergence of commercial, industrial production have had a major impact on the way wars are waged and managed. The new millennium world has been characterized by the emergence of networks, whether in the economic, social, or political spheres. This has affected the management of the war, which in turn has begun to take the form of networks.

In conflict zones in Africa, Latin America, and Asia, forms of asymmetric violence have emerged through covert networks engaged in border trade and facilitating migration flows. On the other side, a global security system is steadily expanding and operating through various forms of formal and private networks. This is evident in some networks, and agencies are connected through new contract systems, strategic arrangements, and close coordination between the public and private sectors. In many third-world countries, these networks provide support in conflict resolution and capacity-building (Duffield, 2002).

Modern-day war has been described as a trinity war. A regular war waged and led by the State army and its leadership against the enemy's army to achieve political objectives (Moller, 2005). In this regard, the state represents its people, which is a unified entity, whether in the dimension of citizenship or the spirit of the community. Based on this proposition, the state is a rational entity that monopolizes the legitimate use of violence within its borders. The state here has the administrative capabilities to control all of its territory and the legitimacy and recognition of its sovereignty by others. The army is also a hierarchically united and organized entity, operating following scientific principles that include aspects of strategy and tactics. The relationship between the three parties is formed as follows:

The relationship between the people and the state is based on a social contract that binds the state by protecting individuals, the state and the army are based on the loyalty of the armed forces of the state as a professional army, while the relationship between the people and the army is based on homogeneity, where the people provide the manpower of the army. This relationship has implications, as the people have a say in the state's actions and its conduct in exchange for service in the army.

This description of modern-day war has been criticized; Because it doesn't accurately reflect what happens in all cases. For example, the people, who were at a time of homogeneity, may experience bloody conflicts that are ravaging their homogeneity, as has happened to the Somali people example. The state is a modern entity with great violence. The army's excesses in many wars are far from what is contained in the model of trilateral warfare. Various descriptions were given for current wars, such as "new wars" and others. These wars are carried out not only by the state but also by other actors, including ethnic groups, warlords, religious groups, militias, terrorists, and even child soldiers. The war here is targeting everyone, Fighters or civilians. It is evident the disappearance of the difference between external and internal security. The function of war in vulnerable states has also become divided between state institutions and private destinations, such as the warlords of Afghanistan under the Taliban. Because of the nature of the new wars, some of the tasks previously performed by the military, such as supply and training, were performed by private companies (Moller, 2005).

4- Modern Conditions

The efficiency of technology, especially new technologies, such as the Internet and communications, has reached a high degree of effectiveness after becoming decentralized and crossing borders. The old technologies were effective when the state monopolized them. The non-governmental groups in this regard may be more effective than formal military units because they are decentralized. Most of the information systems used in contemporary PMSC are designed, developed, and managed by civilians and depend on civilian infrastructure (Liu, 2005).

5- Changes In the War Ethics

War is often no longer a means but an end. For example, in the great lakes region of Africa, states, companies, and warlords were involved, parties' conflict of interests was the main fuel of this war. Profit has become a major motive for some wars (the diamond war, the opium war). In the past, wars were dominated by political character or the exploitation of economic resources. Some strategists describe it as a continuation of politics but by other means. In Sierra Leone, the most important thing in the war was controlling the diamond fields, not the capital (Singer P. W., 2008).

6- The Outsourcing

Several companies have sought to benefit from outsourcing in some aspects of production to increase efficiency and competitiveness. In developing countries, cheap labor is available, the trade unions are weak, and governments are less interested in issuing restrictive labor legislation. Because of this situation, today, outsourcing has become a strong trend among businesses and companies. Many American, European, and Japanese companies started working on manufacturing part of their products in countries such as China, India, Vietnam, and others. In 2001, the total external contracting in the world reached a trillion dollars, and this has doubled during the three years 1998-2001, and the trend of outsourcing moved from private companies to the public sector, in the shift's context towards privatization, as governments resorted to private companies to do work that was preparing Previously it was at the core of government business (Singer P. W., 2008).

The reasons that push governments, especially in the military field, to outsourcing, using the "transaction cost economics" model to explain the public sector's resort to outsourcing. According to the model, production, whether in the public or private sector, depends on a balance between the cost of contracting on one hand and the cost of internal bureaucracy and the lack of incentives on the other (Soeters, Fenema, & Beeres, 2016). For the analysis of public sector outsourcing, Williamson sees the need to differentiate between normal transactions and sovereign transactions, and the latter refers to

transactions in which public authority must be present, in which loyalty to the state is essential, and has implications for state security, in addition to the existence of special risks related to it. The risks of sovereign transactions are represented in the risks of contracts, ambiguity, and defining structures, and the risk of implementing these transactions with loyalty and credibility. Williamson believes that the public sector bureaucracy is the most efficient body in regulating sovereign transactions (Soeters, Fenema, & Beeres, 2016).

Private military companies are divided into companies of a combat nature and training & supply companies. The transaction cost economics model indicates that companies that do non-combat actions will expand their businesses in poor countries with weak governments. In contrast, the growth of the companies' fighting nature will be limited as a result of their involvement in sovereign transactions, where the risks of loyalty and credibility appear to be great, especially in countries in which the headquarters of these companies are located.

2.2 The Governments' Weakness and The Fragile Armies

Several developing country governments suffer from the inability to carry out the bulk of their duties, and this weakness is reflected in their armies. For instance, the Nigerian Army, one of the largest and most effective African armies, suffers from multiple deficiencies. In the Navy, there are 19 admirals, 34 brigadiers, and only nine warships are in working order, indicating inflated manpower without being matched by reasonable equipment.

The Ministry of Defense does not know the number of army personnel because the number has been inflated as a result of financial corruption. A study conducted by a US company on the army itself found that 75% of the equipment is malfunctioning or not working at all and that many soldiers lack the basics such as helmets, and in some cases, eyeglasses.

The reason behind the weakness of some African armies is that those armies, as modern institutions, emerged with the European colonial state. The majority of Africa in the past relied on its security and defense systems on custom and tribal authority, and the strength of the armies, the

men of the tribe and its knights, and although many African armies emerged as national institutions in which tribes and regional affiliations were merged (Omioogun, 2006).

The practices of political regimes in some countries of the continent have stormed with national orientations, armies became suffering as a result of regional fragmentation and tribal intolerance, and they were no longer dependent on a national institution to protect the country's entity. What added to the weakness of governments was the emergence of new non-state actors in the field of using violence, such as extremist religious groups and drug gangs in Colombia, revolutionaries who did not find support from outside forces but were able to grow with their own capabilities, and the proliferation of covert networks working to spread and distribute small arms.

There is an increase in the number of private militias, gangs imposing royalties and carrying out acts of revenge, organized crime networks, self-defense forces, and protection groups. Besides, spending on security is no longer limited to governments. Non-governmental organizations, international companies, and others are now spending on security. In doing so, it spends on governments, private security companies, and militias to provide them with security services. Both Shell and Chevron spent on the Nigerian army and police to provide them with protection (Abrahamsen, 2005). Also, the demobilized soldiers who supplied the private companies with trained forces, their market grew dramatically after the end of the Cold War and the shrinking military budgets in Western countries and Russia. This led the ex-military to offer their services to whoever pays them, and there is an ample supply, matched by increasing demand. The world's armies decreased from 28,320 million to 23,500 million during the period 1987-1994, and then the number decreased by another million by the year 2000 (Singer P. W., 2008). This brings the number of soldiers who have been demobilized to about 7 million. This was evident in Russia, where about 3000 Russian mercenaries participated in battles in the various regions of the old Soviet Union and about 2000 in the former Yugoslavia.

2.3 The Global Trend Towards Privatization

The acceleration of the global trend towards privatization is justified by increasing efficiency, providing good quality outputs, and providing excellent services. This means that the state will withdraw completely or partially from providing public services, including security services (Avant, 2005).

The logic of privatization is based on the fact that resorting to private military companies came from bureaucratic and political failure to confront some of the threats and that the private sector can deal with these threats with greater flexibility than government forces (Avant, 2005).

Added to this are the effects of globalization; The spread of globalization mechanisms increased global inequality between the poor and the rich, as there are 1.3 billion poor and 820 million food insecure in the world, which reflects the extent and severity of human insecurity. (Ritchie, 2020)

2.4 Weapons Prevalence

This factor indicates the prevalence of carrying weapons in society. A report issued by Amnesty International reflects a steady global increase in the production of small arms. The report indicated that the number of countries that manufacture small arms has doubled in the period 1964-1999, and the number of companies working in their production has increased six times (Amnesty International, 2001). And there has become a growing market for arms as a result of the changes that took place due to the end of the Cold War; All East German weapons were offered for sale at low prices. Besides, the proliferation of small arms causes 90% of the casualties in contemporary wars, including two million in West Africa alone.

There is a significant correlation between the proliferation of small arms and the spread of crime. In South Africa, the proportion of homicides in which small arms were used rose in 1988 from 41.5% to 49.3%, although general homicides decreased (Fleshman, 2011).

Also overlapping with this factor is the increase in civil wars. Wars and internal conflicts have multiplied since the end of the Cold War. Of the 82-armed conflicts between 1989 and 1992, there are only three between countries (UNDP, 1994). Despite the increase in civil wars, there are several wars between states, such as the Congo war and the Ethiopian-Eritrean war, which broke out as a result of the loss of the balance of power that existed due to the conflict between the two superpowers, the United States of America and the Soviet Union.

CHAPTER 3: PRIVATE MILITARY AND SECURITY COMPANIES AREAS OF ACTIVITIES

The fields of activities of private military and security companies that have emerged in the past few decades have diversified as follows:

3.1 Internal Privatization

Within the global trend towards privatization, and in line with the state's withdrawal from providing many services in different regions of the world under the pressures of the neoliberal economic system, supported by global companies and international financial institutions, private security companies that protect individuals, institutions, and housing have proliferated around the world, or what became known as the Special Police. The state is no longer the only body that monopolizes the provision of security and spending on it; rather, society has become individuals and groups that compete with the state and surpass it in terms of some cases.

In the United States of America, in 1995, individuals spent 90 billion dollars on their security in return for the government spending on the police, which amounted to only 40 billion dollars (Muthien, 2009). In the United States of America also, the ratio of individuals working in the private security sector to those working in the public police reached a ratio of 2:1. And in Germany, the number of people working in private security companies increased from 30,000 in 1980 to 105,000 in 1994. In Turkey, Since the enactment of the 1981 legislation that allowed private security companies to form the number of security institutions in 1993 reached 2227, employing 34,928 people (Kempa, 1999). In South Africa, by the year 2000, the number of security companies registered in the country reached 5,343, and the number of registered security guards reached 350 thousand (Irish, 1999). Based on the Security Industry Authority analysis the income of private security companies in the United Kingdom in 2003 amounted to 3-4 billion pounds a year, and about half a million people work in them compared to 136 thousand police personnel (SIA, 2005).

In the Arab region, security companies and security companies have witnessed significant growth in the past few years. In Egypt, the first private security companies were established in the mid-seventies in the era of openness, and their role increased over time. One of the most important

companies that appeared at the time was “Care Service,” and today, it acquires more than 50% of the security services in Egypt. It was established in 1979 in a partnership between two foreigners and the same Egyptians.

Today, the number of security companies in Egypt has reached more than 200, according to data from the Security and Guarding Division of the Chambers of Commerce. There are branches of many international security companies operating in Egypt, such as G4S, Swedish “Securities,” and “Speed Service.”

In 2006, the Egyptian Falcon Company was established with Egyptian participation from the Commercial International Bank and Egyptian investors. Since its establishment, it has achieved record growth rates until it has become one of the largest companies that provide integrated security services, and its activity covers 28 governorates. The company started its tasks by providing three main services including security, money transfer, and technical and security systems.

It also has the mission of securing nine universities throughout Egypt, protecting banks, financial and banking institutions, and dozens of public figures, including diplomats, senior state officials, and some United Nations offices and international embassies in Cairo. The number of its employees currently stands at 22,000, most of whom are former police and army officers and members (Hourani, 2020).

In the Kingdom of Saudi Arabia, Ministerial Approval No. (1217) was issued on December 26, 1990, on the regulations for private security institutions and companies. The first license was published on 3 July 1991, to establish the Caspel Company. After that, the private companies were rolled, reaching more than 60 private security companies. The private security companies also seek to select, employ and qualify female Saudi workers who wish to work in security jobs in the markets, commercial centers, banks, and other institutions designated for families, the number of which is estimated at ten thousand jobs (AL-Kahtani, 2003). And in Syria, companies are working in guarding persons and facilities, and the number is estimated at 6-8 companies.

The security companies operating in the local field can be sorted into five types:

- First, the security companies that work in the field of providing protection for individuals and property, securing residential and commercial complexes, and maintaining public security and

order. It mainly uses manpower to achieve this goal, and these companies are sometimes called “contract security companies.”

- Secondly, security companies “inside the institution,” whose mission is to protect the security of individuals and the institution's property, and also use individuals.

- Third, private central monitoring and alarm stations and their professional services are provided to various parties, and these companies use monitoring and imaging devices to implement their tasks. It sends members of the special police to the place where an infringement or danger was spotted. This category can include the companies that supply and install alarm devices.

- Fourth, security transport companies secure the transfer of cash and holdings.

- Five, Private investigators and risk management consultants (Waard, 1999).

The private police is defined as those private institutions or persons who provide support for crime prevention, detection, or arrest, for commercial purposes. Thus, the definition of private police includes those persons who work for a security company or are employed by an individual or company to carry out security work or control gatherings or private investigations (Reynolds, 1996).

The spread of the special phase is due to four main reasons:

- The first reason is the spread of large private facilities, such as commercial complexes and fenced residential places, and these facilities have remained far from the presence of the public police.

- The second reason is due to increasing the fear of those the facilities owners of crime to the degree that outweighs the state’s ability to spend on public security.

- The third reason is the special police resorting to visible guards to deter and limit the crimes (Irish, 1999).

Finally, the citizens’ lack of confidence in the authoritarian state institutions that ruled for a long time in some countries led to their resorting to private institutions to provide security.

In some countries of the third world, the poor performance of the security services and the spread of corruption in parts of them contributed to the spread of the special police. In Nigeria, for example, only 0.4% of the stolen items are recovered by the police, which indicates ineffectiveness

and refers directly to the Nigerian Police for being involved with stolen Items. The poor police performance in Nigeria appears to be due to poverty and the oil boom of the late 1970s, which led to the emergence of many means of obtaining easy money (Montclos, 1997).

In a survey conducted in Lagos, the largest city in sub-Saharan Africa, two-thirds of the respondents believe that the police are entirely ineffective. At the same time, 99% see that the predicate purpose and the police checkpoints are to force vehicle owners to pay sums to the police. 90% believe that the monitoring carried out by the population is more effective in fighting crime. In the poor districts, almost half of people are applying participatory fee collection programs to protect their places of residence by hiring people to conduct night watches, where half of the population participates together in patrols and guarding. The rich people resort to hiring private security companies, which has become the case in wealthy neighborhoods in most African cities (Montclos, 1997).

3.2 Civil Wars, Internal Strife, And Coups

There is extensive debate about the role of private companies in conflicts and civil wars; The first view is that these companies are only sophisticated mercenary organizations that work for those who pay more and are not interested in stabilizing the areas in which they operate, but on the contrary, contribute to the deterioration of the security situation and hinder the process of nation-building in the third world. The second trend is that these companies, regardless of their financial motives, have created security stability at lower costs.

The most famous mercenary intervention in internal conflicts in the Congo Kinshasa (the Democratic Republic of the Congo) occurred in the early 1960s when Patrice Lumumba faced attempts by the separatist province of Katanga, politically supported by Moise Chumi. The attempt to secede was carried out by the Belgian mining company Union Minière du Haut Katanga, now known as Gecamines. When Lumumba was assassinated and the security situation deteriorated, three groups of mercenaries emerged. Belgians who had participated with the Katanga rebels at the behest of the Belgian government, south African mercenaries, and other mercenaries from many other countries.

The most substantial influence of mercenaries was in both the Comoros and Seychelles, where politicians used them to gain power. Bob Denard of Comoros and Mike Hoyer in Seychelles have had effective control over the political situation in the two countries for 25 years. In Comoros, for example, Bob Denard, whose original name is Gilbert Bourgeaud – had a strong influence. He is a professional mercenary who has been involved in the fighting in Zimbabwe, Yemen, Iran, Nigeria, Benin, Gabon, Angola, and Zaire (DRC). He was reportedly involved in 18 coups in Africa (BBC, 2006).

In the first coup in Comoros, he helped Ali Sweileh overthrow Ahmed Abdullah, the country's first president. But he later helped Ahmed Abdullah return to power in the second coup in 1978, when he sailed a boat with 44 mercenaries and sneaked into the palace at night where he killed Sweilah in mysterious circumstances and became head of the 500-member Presidential Guard and continued in this position for ten years. Denard was charged for his role in the assassination of President Ahmed Abdullah in the third coup in 1989 when he learned of the president's desire to be relieved of his post but was acquitted for lack of evidence. He was arrested in 1995 after a fourth coup attempt, and France sent a force that arrested Denard and 33 mercenaries who had taken part in the operation. He was brought to trial in France, where he spent ten months in prison (Musah, 2002).

Mike Hoyer, a South African mercenary of Irish origin who has been involved in many African conflicts, particularly the Congo, led 50 men in 1982 to invade Seychelles and overthrow its government. The attempt failed, and Hoyer fled to South Africa; He was sentenced to 10 years' imprisonment. The Prime Minister of South Africa accused his country's intelligence services of being involved in the invasion attempt (Nundy, 1999).

3.2.1 Executive Outcomes

Executive Outcomes was formed in 1989 in South Africa to provide espionage and training services to the South African Defense Forces and the Crowbar militia, which was made up of two units of Angolans and Namibians. It employed 1,000 demobilized South African soldiers, of whom 70 percent were from the Special Forces, especially the 32nd Division, the Observation Unit, and the Parachute Regiment. From 1989-1992, it destabilized the

regime's enemies. It fought with Ian Smith in Rhodesia and against both SWAPO in Namibia and the People's Movement for the Liberation of Angola (MPLA) in Angola.

EO was officially part of a holding company, Strategic Resources Corporation (SRC), and its leaders were part of the board of directors of this holding company, indicating its influence. SRC owns twenty other companies associated with the business of military companies, including Lifeguard and Teleservices, which provide guarding for the exploration work for Branch Energy, and Saracen, a private security company operating in Uganda and Angola, and these companies work in guarding the property against buildings and equipment mostly after the departure of the Executive Outcomes (Singer P. W., Eo'S Corporate Network, 2003).

There is a correlation between SRC and Branch-Heritage Group. The latter group has mining and oil businesses in different world regions and has investments in all areas where Executive Outcomes are located (Singer P. W., Eo'S Corporate Network, 2003).

Branch-Heritage Group includes Branch Energy in the mining industry, Diamond Works in the jewelry business, and Support Line in the security and military business.

The company was re-registered in Britain in 1993, where laws were more flexible in dealing with companies that deal in mercenaries and military actions. Among the personalities that emerged in the company after its re-registration in Britain were two veterans who became businessmen, Simon Man, director of IBIS Air in South Africa, and Tony Buckingham, director of Branch Heritage Group. To give a blanket of political respect, David Steele, a leader of the British Liberal Party and head of the United Nations Peace Initiative in Yugoslavia, was added to the Heritage Oil Board.

3.2.1.1 Executive Outcomes Activities in Angola

Although many security and military companies are operating in Angola, perhaps reaching eighty (Cleary, 1999), the activity of Executive Outcomes has had the greatest impact on the conduct of battles and war operations between the Angolan government and the UNITA movement. Its activity began when Luther Barlow was asked to recruit a group of mercenaries for two months to work in northwestern Angola, intending to seize the oil fields and reclaim the city of Soyo in the region of jewelry and oil production in Angola in

January 1993. It succeeded in controlling the city of Soyo in May 1993, but UNITA was able to recover it later after the withdrawal of the Executive Outcomes. Before this attempt, Mann and Buckingham succeeded in obtaining holdings of the Ranger Oil Company (Cleary, 1999, p. 157).

After the conclusion of a peace agreement between UNITA and the MPLA government in 1991, elections were held in September 1992. Jonas Savimbi, the leader of UNITA, rejected their results after preliminary results showed that the MPLA would win the elections. After returning to the fighting, UNITA took control of large territories in the countryside of Angola, and its forces began to march to the capital, Luanda, and thus the oil resources threatened to fall into their hands. Because of the gravity of the situation, the MPLA government was forced to accept foreign aid. A deal has been struck - arranged by Buckingham and his colleagues, under which the state oil company, Sonangol, would finance the use of the EO. In exchange for oil holdings given to both Heritage and Ranger, EO trained Angolan forces for a year through a sublease of \$ 30 million (Aning, 2001).

Executive Outcomes has provided 550 soldiers with advanced combat experience to lead the fight with the Angolan army, from which the company has trained 5,000 soldiers. In June 1994, the 16th Battalion trained by Executive Outcomes turned the tide of fighting in Angola when UNITA forces defeated the strategic town of N'dalatando near Luanda. On 20 November 1994, the Angolan government and UNITA signed a peace agreement in Zambia, known as the Lusaka Agreement (Howe, 1998).

3.2.1.2 Executive Outcomes in Sierra Leone

The civil war in Sierra Leone began in March 1991 when Foday Sankoh, leader of the Revolutionary United Front (RUF), with the support of Charles Taylor, leader of the National Front in Liberia, crossed the border with Liberia to attack General Joseph's Momoh government forces. More than 20,000 people were killed in the civil war, and half of the population was displaced from their homes (Douglas, 1999). By the end of 1994, the Revolutionary Front made progress in the theaters of operations against the government and later against the ruling National Transitional Council led by Captain Valentine Strasser.

In 1995 the Sierra Rutile Ltd., which was incorporated in Ohio, USA, rented lots of Gurkha to protect its titanium mines in Sierra Leone. The Gurkha came to Sierra Leone led by Colonel Robert C. MacKenzie, a former Rhodesian officer who fought in Vietnam and Bosnia. But Robert C. MacKenzie was killed in an ambush, and the company's work was restricted to training without tangible results on the battlefield. The company withdrew after 60 of its members were killed in battles with the rebels. After that, the Sierra Rutile Company contacted the British company, Special Projects Services, to provide 400 ex-British soldiers to protect the mining areas, but the British company requested a large sum (\$ 80 million). At that time, the Sierra Rutile Company requested offers from other small British companies.

Companies such as Defense Systems, Report Research, and Analysis applied, but it did not influence the balance of battles until 1995, the capital, Freetown, became under the insurgent fire range (Francis, 1999).

It was agreed with (EO) company on an amount of \$ 1.2 million with Branch Energy being given holdings in the jewelry areas in Kono, and the agreement with (EO) stipulated the evacuation of the Revolutionary United Front (RUF) forces from Freetown suburbs, securing some jewelry areas, and defining and disturbing the Revolutionary United Front (RUF) strongholds in addition to conducting psychological and propaganda warfare.

EO sent 150 soldiers to Sierra Leone in May 1995, trained government forces, and succeeded by the end of January 1996 in breaking the siege on the capital, Freetown, and restore the southern coast where the bauxite mines (Howe, 1998, p. 314). Thus, the EO tilted the military balance in favor of the government for the first time since 1991, forcing the Revolutionary Front to attend peace sessions and hold elections in March 1996. Ahmad Tejan Kabbah was elected president. Among the conditions set by the Revolutionary United Front in the negotiations that took place in Côte d'Ivoire to implement the peace agreement and begin demobilizing the evacuation of EO from Sierra Leone.

After Kabbah took power, he clarified that his government was suffering from a financial crisis that disrupted the relationship with the EO. And in June 1996 Revolutionary United Front agreed with two Belgian mercenaries to train its forces and work to shoot down EO's helicopters. Still, they left after a few days due to the lack of organization that the RUF

suffers from. Under pressure from the International Monetary Fund, the Kabbah government was forced to end its relationship with Executive Outcomes (Douglas, 1999, p. 186). After EO left in January 1997, and the government became exposed to the military despite the survival of Life Guard Security, a subsidiary of EO to guard the facilities of Diamond Works Corporation. When it left, EO had received \$ 15.7 million of the total contract amounting to \$ 35.3 million and promised the rest as the debt to the government. On May 25, the civilian Kabbah government, which had been elected 15 months earlier, was toppled in a military coup led by Major Joy Koroma. After Kabbah escaped, he called the Sandline company intending to return him to power, and Sandline then, in conjunction with the Kabbah government in exile and the Thai businessman Rajesh Saksina, conducted a feasibility study the use of mercenaries in Sierra Leone called the Payton Project. Peter Penfold, the British High Commissioner for Sierra Leone, encouraged Sandline to intervene in the country. The Kabbah government paid Sandline \$ 10 million for arms, training, overthrowing the coup government, and returning to power (Aning, 2001, p. 166).

The intervention of a third party in internal conflicts, such as private military companies, the United Nations, or regional organizations, raised the issue of the impact of this intervention on the settlement or continuation of the conflict. Private companies claim that their involvement in civil wars leads to a quick settlement of the conflict. At the same time, the United Nations believes that their intervention backed by international legitimacy leads in the long run to a stable peace.

In this regard, Patrick M. Regan conducted a study on the impact of third-party intervention in ending the conflict or prolonging it. The study included 150 conflicts in the period 1999-1945. Regan found that the intervention favored by the government or the opposition contributed to shortening the duration of the conflict and that the neutral intervention prolonged the duration of the conflict (Regan, 2000). Regan's findings indicate that the biased intervention is not necessarily positive because the biased party has tilted the balance of one side over the other, as happened in the cases of Sierra Leone and Angola before.

In another study, Jared Lauer made a comparison between the intervention of EO and Sandline in Sierra Leone and Angola and the intervention of United Nations peacekeepers

in these two countries in addition to Somalia and Liberia. Lauer concluded that PMC intervention is less costly and of a shorter duration than UN peacekeepers. The reason for this is that the intervention of military companies is at all times biased to a party and with high efficiency. For example, EO had 150 people in Sierra Leone who commanded 10,000 members of Kamajors forces. On the other hand, the UN peacekeepers took a longer time, with great costs for achieving peace (Lawyer, 2003).

3.3 Humanitarian Support

The use of organizations and agencies working in humanitarian aid for security companies raises a special sensitivity due to the accompanying questions about the politicization and militarization of humanitarian work. However, the economic and political changes in Western donor countries and the expansion of the new liberal economic order have prompted many organizations to reconsider their rejection of merging humanitarian work and the military dimension. After the British government merged aid issues with military and political issues and made its resources concerning deal with joint conflicts between the ministries of defense, foreign affairs, and international development, many humanitarian aid organizations have embarked on a path that favors consolidation and merging, including the use of private security companies (Vaux, 2002).

In a paper titled “Private Security Companies and Humanitarian Assistance” written by Martin Barber of the United Nations Office for the Coordination of Humanitarian Affairs, the United Nations has issued similar circulation in the workplace about the use of private security companies. The basic condition for use is that the company is registered with the country's government in which the business is practiced and that the government approves their work in a specific contract (Vaux, 2002).

The United Nations uses these companies in a number of countries, where armed guards sometimes carry out the task of protecting facilities and property so that humanitarian aid institutions use private security companies to secure the transfer of aid materials, just as the World Food Program does. And because of this usage, the humanitarian aid organizations have become, in many cases, in the view of the warring parties, a part of the conflict because they deal with important resources

required in the war. It thus constitutes a real threat to the military strategy aimed at stopping civilian support for the fighting group or groups.

3.4 Peacekeeping Missions

Opinions about the use of private military companies in peacekeeping operations varied between supporters and opponents. Those who support the use of private companies argue that several countries, especially Western ones, have become reluctant to send their soldiers in peacekeeping missions. The Western countries believe that sending troops to conflict areas is politically costly after the experience of the intervention in Somalia. The top ten countries contributing soldiers to peacekeeping operations are all from developing countries. The total number of Western peacekeepers in peace-keeping forces is less than 600 in July 2004 (Deen, 2004), and private military companies believe that they can play an important role in peacekeeping operations.

It became evident that there is a division of work in the field of peacekeeping, whereby the countries of the south provide soldiers, while around the north they provide the necessary funding for them. According to this arrangement, the peacekeepers will work at less than the required competence, and therefore the option of private companies emerges as they are more efficient (Beal, 2002). Regarding the political consequences, it was made clear that the killing of individuals working in private military companies did not raise an uproar as much as the killing of a soldier in a regular army would. In this regard, the USA used DynCorp in Colombia without arousing public opinion (Lilly, 2000).

Another reason for the supporters is the United Nations' lack of capacity and money. The number of peacekeepers jumped from 10,000 in 1989 to 70,000 in 1995 and decreased to 19,000 in 1998. Due to the increased demand for peacekeepers, the number is expected to increase once again, to 82,000. It was evident that the will to send important peacekeepers was weak in the case of Kosovo, where the United Nations approved a plan to send 4,780 policemen from 42 countries. Still, only 1970 personnel arrived (Lilly, 2000). On top of that, the response is often slow. Supporters argue that the private sector could play a role in the technical aspects of peacekeeping. Satellite imagery has become an important part of the intelligence-gathering process. The importance of monitoring is evident in the period between the signing of the ceasefire and the signing of the peace agreement,

and the United Nations can provide surveillance forces in demilitarized areas with clear borders, such as Cyprus and southern Lebanon. On the other hand, supporters of the use of the PMSC suggest that the complex technical operations associated with training, communication, information gathering, and provision of supplies can be carried out by the private sector more efficiently and at a lower cost (Gerson, 2001).

As for those who oppose the use of private military companies in peacekeeping missions see the size of companies operating in them as a major obstacle to their ability to perform peacekeeping missions that usually require a large human force that is not available to private companies. Also, the private companies accountability is weak, unlike the case with the United Nations (Lilly, 2000), besides the suspicion of mercenarism surrounding the work of these companies is also raised, making them in conflict with peacekeeping missions, especially since some of these companies are involved in conflicts that the United Nations wishes to contribute to resolving. Some statistical studies concluded that the intervention of the United Nations to maintain peace was more effective than the intervention of other parties, and the reason for this is due to the legitimacy, neutrality, and independence of the United Nations (Sambanis & Schulhofer-Wohl, 2006).

On the other hand, and after it became clear that international companies, such as those operating in the field of oil or precious metals, used private military and security companies, especially in conflict areas such as the Congo and Sierra Leone, a trend emerged that called for involving companies in preventing conflicts. As a result, the principle of "Corporate Social Responsibility" CSR has emerged, which places on companies working in the field of natural resource extraction, in particular, a responsibility related to fighting corruption and illegal exploitation of these resources, transparency in money paid to governments, and directing part of the resources In local development.

The former Secretary-General of the United Nations, Kofi Annan, drafted the United Nations "global compact" with business companies to establish the principle of social responsibility. And it stipulated that companies refrain from investing in areas of civil wars or areas whose governments commit major violations of human rights or that these companies withdraw from working in these countries if they start working already (Haufler, 2004).

CHAPTER 4: Responsibility of the Private Military and Security Companies as Legal Entities

This chapter deals with the accountability of the PMSCs at the international level as legal entities; for this purpose, this chapter will clarify the legal framework governing the PMSCs sector. First, this chapter will highlight the legal framework for these companies in general at the international level. Then it will highlight the legal rules related explicitly to private military and security companies. Also, this section will provide an overview of the international and national efforts to regulate the work of these companies.

4.1 The Legal Framework for Private Military and Security Companies

The role of companies at the international level has evolved in recent years; It has become an important player in various fields, which has drawn the attention of the international community to the need to regulate its activities, as the private military and security companies sector promises to be one of the business sectors that have received international attention, especially in the field of its relationship to human rights. This topic will present the efforts made to regulate the work of private military and security companies by clarifying the legal status of companies in general in light of the rules of international law, specifically concerning the issue of human rights, then shedding light on the most important legal rules that govern the work of private military and security companies at the international and domestic levels.

4.1.1 The Legal Status of Companies, In General, Considering the Rules Of International Law

The grave human rights violations committed by corporations during the two world wars while seeking to make profits by any means have prompted the international community to consider setting international standards for the activity of these entities after the focus was on the violations committed by states only. International initiatives emerged that sought to glorify the idea of corporate accountability over the past years. They are embodied in codes of conduct and guidelines promoted by international bodies such as the United Nations and the “Organization for Economic Cooperation and Development” (OECD) (Bohoslavsky, 2010).

The following is an overview of the most important international initiatives seeking to regulate the relationship between the business sector and human rights:

4.1.1.1 The Organization for Economic Co-operation and Development Guidelines for Multinational Enterprises (OECD Guidelines)

The countries of the Organization for Economic Cooperation and Development in 1986 agreed on a set of guidelines for multinational enterprises that were revised and ratified by 37 countries⁴ in 2000. They are voluntary standards directed at multinational enterprises operating in the member countries of the organization to motivate them to carry out their activities responsibly in a variety of fields such as employment, industrial relations, human rights, and the environment, following laws and regulations (The United Nations, 2004). The adherence to these principles is voluntary and cannot be imposed by the force of law (OECD, 2011). However, governments that abide by them encourage commercial enterprises operating in their territories to respect them wherever their headquarters are, meaning that their respect is outside the signatory countries (UN, 2000).

Although the OECD Guidelines are a previous step for regulating companies' work at the international level; however, it has weaknesses always associated with being non-legally binding principles. There are no judicial mechanisms at the international or national level to hold companies accountable for human rights violations and impose sanctions on them. However, this does not negate the fact that the principles are a prominent point in the field of corporate responsibility for human rights violations. It is the only international document on corporate responsibility that state governments have adopted. Also, the geographical scope of these principles exceeds the territories of state parties because they apply to all companies of the nationalities of the state parties, even if they operate in the territories of other countries (Černič, 2008).

The principles stipulated the establishment of contact points in the State Parties; Its function is to provide the possibility to file a complaint from anyone about any breach of its tenets (OECD, 2011). This works to achieve the goal of these principles, which is to push multinational companies

⁴ “The OECD’s 37 members are: Austria, Australia, Belgium, Canada, Chile, Colombia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States.”

to respect human rights. The complaint before the contact points is the only international mechanism in place to date to regulate the work of companies, despite Noting that it does not bear a judicial character, or even it should be noted that there are suggestions that have been put forward to enhance the effectiveness of the guidelines, such as the necessity of establishing a quasi-legal labor court to deal with complaints at the level of national focal points in member states that is independent and impartial (WATCH, 2005).

4.1.1.2 The UN Global Compact

The Global Compact is an initiative proposed by the United Nations⁵, incorporating a set of values based on universally accepted and agreed-upon principles, aimed at encouraging companies and businesses to commit to aligning their operations and strategies with ten principles outlined by the agreement in the areas of human rights, labor, the environment and combating corruption (UNGC, 2021). The initiative for this agreement was launched in July 2000 with the participation of more than one hundred countries.

As for human rights, it was mentioned in the introduction to the ten principles. It is included in both the first and second principles:

“Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: make sure that they are not complicit in human rights abuses.”

Placing the human rights issue at the top of the Ten Principles is being one of the challenges related to developing the spirit of participation among companies at the international level, which is an issue that is always a matter of states. Also, human rights laws usually direct their discourse to states alone (UNGC U. N., 2009). Therefore, companies need a direct awareness line from international bodies to light how they contribute to enhancing respect for human rights.

⁵ The idea of a global compact was first proposed by former UN Secretary-General Kofi Annan in 1999. Currently, there is an office for the global compact that is supported by the following United Nations agencies: the Office of the United Nations High Commissioner for Human Rights, and the United Nations Environment Program, International Labor Organization; United Nations Development Programme, United Nations Industrial Development Organization, United Nations Office on Drugs and Crime; And the United Nations Development Fund for Women.

The global agreement offers the companies joining it several approaches to work and innovation to advance the ten principles that it is promoting, and joining it is a clear commitment of these companies with what is stated in it. Where it must take some steps such as:

- Initiate changes to its activities so that the global agreement becomes part of its management style, strategy, culture, and day-to-day operations;
- Submit annual reports that describe how these companies support the global agreement;
- Work to attract public support for the global agreement through media (United Nation, 2000).

The United Nations Global Compact is the largest global initiative to create a sense of citizenship and responsibility in companies. Thousands of company owners from more than 100 countries participate in it; It is a global forum for learning and sharing experiences. Another advantage of the global agreement is that joining it binds the company as a whole but its directors, particularly, so that participation in the agreement is in-person by the chief executives; this sends an important message to employees to respect principles (UNGC, 2021).

On the other hand, the United Nations Global Compact is considered to have a weak impact in the field of combating corporate violations of human rights and compensation for the resulting damages, as it is nothing more than a voluntary initiative based on public accountability and transparency (United Nation, 2000). It does not bear any regulatory character. It is also taken for the agreement to briefly enumerate the companies' obligations regarding human rights without referring to them all. The method of enumeration constitutes a deficiency in the agreement that deserves a second review.

4.1.1.3 ECONOMIC, SOCIAL AND CULTURAL RIGHTS, Norms on The Responsibilities Of Transnational Corporations And Other Business Enterprises Concerning Human Rights

The Sub-Commission for the Promotion and Protection of Human Rights of the United Nations⁶ was established in 1998 as a working group on the methods and activities of transnational corporations. Five years after its creation, the Subcommittee's Working Group submitted its draft UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises in the Field of Human Rights (Economic and Social Council, 2003) in August 2003 and its comments on these norms (Commission on Human Rights, 2003).

The Subcommittee project emphasized that states bear the primary responsibility for promoting human rights recognized in international law and national law and securing the implementation of these rights, ensuring their respect and protection, including that transnational corporation and other business enterprises respect human rights. Transnational corporations and other business enterprises must promote, fulfill, respect, and protect human rights (Economic and Social Council, 2003, p. 4). The project then enumerated a set of rights that companies are obligated to respect, such as the right to equal opportunities and non-discriminatory treatment, the right to the safety of persons, and all the rights stipulated in national laws and international conventions (Economic and Social Council, 2003).

But the norms were met with strong opposition from the International Chamber of Commerce and employers' organizations, with support from the United States, Britain, and many European countries. Among the most important issues that were contested was what was stated in Paragraph 16 on corporate oversight, where it says:

“Transnational corporations and other business enterprises shall be subject to periodic monitoring and verification by United Nations, other international and

⁶ The Sub-Commission for the Promotion and Protection of Human Rights is a body affiliated with the Commission on Human Rights - previously - (the Human Rights Council now), previously called the Sub-Commission on Prevention of Discrimination and Protection of Minorities, consisting of experts in human rights, whose mission is to conduct studies on human rights issues and make recommendations on them.

national mechanisms already in existence or yet to be created, regarding the application of the Norms. This monitoring shall be transparent and independent and take into account input from stakeholders (including non-governmental organizations) and as a result of complaints of violations of these Norms. Further, transnational corporations and other business enterprises shall conduct periodic evaluations concerning the impact of their own activities on human rights under these Norms.”

There were many discussions about the legal strength of these norms and whether they were binding until the Commission on Human Rights issued its Resolution No. 116/2004, which put an end to the existing controversy, stating: “*The norms contain useful elements and ideas for consideration but the proposal, i.e., The draft norms, as a draft of no legal value*” (Commission on Human Rights, 2004).

As such, the proposed norms relating to the responsibilities of transnational corporations and other business enterprises in the field of human rights were not adopted by the Sub-Commission for the Promotion and Protection of Human Rights, which were the fruit of the Working Group’s effort over four years, which led a complete failure in the task entrusted to it; consequently, The Human Rights Commission previously requested the Secretary-General of the United Nations to appoint a special representative on the issue of human rights and companies. Indeed, on July 5, Mr. John Ruggie was appointed as Special Representative of the United Nations Secretary-General on the issue of human rights and transnational corporations and other business enterprises and mandated to submit annual reports to the Commission on Human Rights. The following will explain the most prominent points raised in these reports.

4.1.1.4 The Special Representative of The Secretary-General on The Issue Of Human Rights And Transnational Corporations And Other Business Enterprises (John Ruggie).

Based on the Human Rights Commission Resolution No. 69/2005, Mr. John Ruggie⁷ was appointed as the Special Representative of the Secretary-General of the United Nations, he is responsible for the issue of human rights and transnational corporations and other business enterprises, and he is also requested to submit an annual report to define and clarify standards related to corporate responsibility in the field of human rights. John Ruggie's submitted his first report to the United Nations Human Rights Commission in 2006; then, he continued submitting his reports – on annual bases till 2011 - to the Human Rights Council after he replaced the Human Rights Commission⁸.

Mr. Ruggie has based his work on studies he has conducted on the role of states in effectively regulating the work of transnational corporations and other business enterprises in the field of human rights, and has assessed the impact of companies on human rights, as well as collected best practices from states, transnational corporations and other business enterprises In the field of human rights (Commission on Human Rights, 2006). The following is an overview of John Ruggie's Reports:

4.1.1.4.1 The Report, E/CN.4/2006/97 “Interim Report of The Special Representative of The Secretary-General On The Issue Of Human Rights And Transnational Corporations And Other Business Enterprises”

The first report of Mr. John Ruggie laid out a framework for the basic issues raised by the relationship between the business sector and human rights. It emphasized three

⁷ “Professor John Ruggie of Harvard University served as the UN Special Representative for Business and Human Rights from 2005-2011. His mandate was to propose measures to strengthen the human rights performance of the business sector around the world. The end result was the *Guiding Principles on Business and Human Rights*, drafted by John and unanimously endorsed by the U.N. Human Rights Council in June 2011.” <https://www.hks.harvard.edu/faculty/john-ruggie>

⁸ The Human Rights Commission was transformed into the “Human Rights Council” according to United Nations General Assembly Resolution No. A_RES_60_251 in 2006, and the Council is considered a higher authority in the United Nations system due to its direct affiliation to the General Assembly and not to the Social and Economic Council as the Commission's predecessor.

main factors that define the boundaries of this relationship. First globalization, the violations reported by companies, and the actual practices to confront these violations. These factors were explained in the first part of the report. The second part dealt with the rules drafted by the Subcommittee in 2003 regarding the reasons that made them the subject of criticism, and in particular, the issue of accountability of companies and the imposition of direct international obligations on them (Commission on Human Rights, 2006, p. 17), as John Ruggie emphasized that there are no principles and acceptable legal framework that binds commercial enterprises directly. He strongly criticized the allegation of the sub-committee in the norms it wrote, saying that “*What the Norms have done is to take existing State-based human rights instruments and simply assert that many of their provisions now are binding on corporations as well. But that assertion itself has a little authoritative basis in international law - hard, soft, or otherwise.*”

The report also addressed the most important deficiencies in the norms drafted by the subcommittee. It highlighted that this deficiency should not prevent thinking about developing the rules that govern companies’ relationship with human rights. It presented a basic model that can be followed in enhancing companies’ respect for human rights.

4.1.1.4.2 The report, “A/HRC/4/74” “Promotion and Protection of Human Rights.”

In the same context, the second report came by the representative of the Secretary-General of the United Nations. Still, it expanded in defining the responsibility of both states and companies in the field of human rights, highlighting the methods of holding the latter accountable for international crimes, and then their responsibility for all human rights violations under international law, as well as among others' mechanisms. These mechanisms are complementary to the standards set by intergovernmental organizations, such as the guidelines of the Organization for Cooperation and Development. At the report’s conclusion, Mr. John Ruggie referred to the self-regulation by the companies themselves and their efforts to promote and

enhance respect for human rights through policies adopted to develop codes of conduct that refer to international instruments in this regard (HRC H. R., 2007).

4.1.1.4.3 The Report, “A/HRC/8/16”, “Clarifying the Concepts Of “Sphere of Influence” And “Complicity.”

In his third report, John Ruggie proposed three pillars for corporate accountability for their human rights violations. These pillars, as John Ruggie described them as distinct but complementary responsibilities, layout a framework based on three basic principles:

“The State duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective access to remedies.”

Each of these principles constitutes an essential component of this framework. The state's duty to protect is necessary because protection is the core of the international human rights system. The corporate responsibility to respect is important because this is what the international community expects from the business sector. Remedies are also essential, as even the most concerted efforts cannot prevent all wrongdoing.

A remedy can include - according to the report - compensation, restitution, guarantees of non-recurrence of the transgression, changes in the law applicable to violations, and the issuance of public apologies (HRC H. R., 2008).

4.1.1.4.4 The Report, “A/HRC/11/13”, “Business and Human Rights: Towards Operationalizing the “Protect, Respect And Remedy” Framework.”

The report of Mr. John Ruggie for the year 2009 came under the slogan: "Towards activating the framework of protection, respect, and remedy," meaning that it reinforces the framework drawn up by the previous report (2008 report). After the Human Rights Council welcomed - unanimously - the framework of the "protection, respect and remedy" policy in July 2008, the Special Representative was charged with

the task of activating this framework, that is, providing practical recommendations and concrete directions to states and companies for their implementation. For this reason, the 2009 report included an explanation of the most important means that must be followed to achieve the three objectives (protection, respect, and remedy). When talking about the corporate responsibility to respect, John Ruggie emphasized that this responsibility is independent of the state's duties. Companies should, as a minimum, observe the international bill of human rights (i.e., the Universal Declaration and the International Covenants). For example, conflict-affected areas should consider international humanitarian law and policies (HRC H. R., 2009).

4.1.1.4.5 The Report, “A/HRC/14/27”, “Business, And Human Rights: Further Steps Toward the Operationalization of The “Protect, Respect And Remedy” Framework.”

In the 2010 report, the Special Representative of the Secretary-General presented further steps towards activating the framework of "protection, respect, redress," as he addressed how countries and companies can become more responsive and effective in addressing the challenges raised by the relationship between the business sector and human rights. The UN Framework indicated that states and businesses each have obligations independent of others' obligations, but they are complementary. States, by better performing their duty of protection, facilitate fulfillment by all companies of their responsibility to respect, and companies by integrating the responsibility for respect into their strategies increasingly support States' efforts in protection. As the access to remedies improves, companies and states alike will know how to better prevent companies' human rights violations (HRC H. R., 2010).

The John Ruggie Report of 2010 received various reactions and comments from academics, NGOs, and bodies interested in the field of human rights. By analyzing the report, we find that he has recognized that companies can affect all fields of human rights and that they are committed to respecting those rights. Still, he did not confirm that companies are obligated to protect and implement human rights but rather focused his attention on the duties and obligations of states in this field. Although

Ruggie's reports, including the 2010 report, have drawn a conceptual framework in which to clarify the challenges facing the corporate sector in the field of human rights, it failed to provide a convincing proposal or answer to the problem of corporate human rights violations. Perhaps this is because Mr. Ruggie did not possess the necessary powers during his tenure to give definitive answers about the responsibility of companies for their human rights violations.

4.1.1.4.6 The Report, "A/HRC/17/31", "Guiding Principles on Business and Human Rights: Implementing The United Nations "Protect, Respect And Remedy" Framework"

This report contained a summary of Mr. Ruggie's work in the period from 2005-2011 in which it was stated that the framework proposed by the Special Representative was widely welcomed by many governments, commercial institutions, and civil society organizations, and multilateral institutions such as the Organization for Cooperation and Development benefited from its implementation in The Economic Field and the International Organization for Standardization. Mr. Ruggie's last report was appended to the text of the Guiding Principles on Business and Human Rights, which, before its final formulation, underwent extensive consultations and discussions with delegations of the Human Rights Council, business institutions and associations and international community bodies. The draft was sent in its final form to all member states of the Human Rights Council. On November 22, 2010, the guidelines presented by Mr. John Ruggie were an initial step towards activating the United Nations framework and are based on the same three pillars adopted by the framework. They apply to all countries and commercial institutions regardless of their size, sector, location and ownership. Still, they do not create legal obligations New international or limit any existing legal obligations.

John Ruggie presented 31 principles with a detailed explanation of these that were divided into three main sections, the first of which is: the state's duty to protect human rights, the second: the corporate responsibility to respect human rights, and the third: access to remedies.

The Human Rights Council adopted these guidelines without a vote at its seventeenth session following Resolution No. 17/4 of 6/6/2011 (HRC H. R., 2011). With the end of Mr. Ruggie's mandate, the Council decided to establish a new working group on the issue of human rights and transnational corporations and other business enterprises, consisting of five independent experts, for three years, to be appointed by the Human Rights Council at its eighteenth session.

One of the tasks of this team is to encourage the effective and comprehensive dissemination and implementation of the guidelines and to support efforts to enhance their use. Under this resolution, the team is also obligated to submit an annual report to the Human Rights Council and the General Assembly. A forum on business and human rights has been established under the guidance of the Working Group to discuss current trends and challenges in implementing the guiding principles and encourage dialogue and cooperation in this regard.

The purpose of reviewing these terms and initiatives was to highlight international efforts to draw up a legal framework that regulates the relationship between companies and human rights norms. Indeed, the United Nations succeeded in developing a framework that governs this relationship, in a bold step towards controlling companies' activities and urging them to respect human rights. Pending the activation of the guidelines presented by Mr. Ruggie, the aspirations for an international system for the accountability of non-state legal persons remain in place and need in-depth reflection and study. It is noticeable that calls for establishing direct corporate responsibility at the international level are increasing. And the idea of directing an international legal discourse to these entities is becoming empowered. There are indeed no mandatory provisions and effective mechanisms to monitor the activities of companies and hold them accountable for violating human rights rules at the international level. Still, it is not unlikely that such terms and mechanisms will exist in the future, especially since international efforts are going at an increasing pace. It is certain that these efforts and endeavors due to the belief of the international community that transnational corporations and other commercial entities have become an important and major player in the globalization system, with the promotion of international prosperity and peace in their hands.

4.2 Regulation Of the Private Military and Security Companies' Activities

Private military and security companies are profitable companies that practice the military and security industry and provide their services to those who request them. Still, the criticality of the field these companies operate in causes special attention to this type of companies, and this interest has been clear at the international and domestic levels. This section will focus on the legal framework that steers the activities of private military and security companies at three levels. First, the international efforts to regulate the activities of private military and security companies; second, the attempt of these companies to self-regulate their work; and third, regulate the work of private military and security companies by internal legislation.

4.2.1 The International Efforts to Regulate the Activities Of Private Military And Security Companies

The continuous increase in the use of private companies during armed conflicts was a sufficient motivation to raise international awareness of the need to control the activities of these companies by setting rules governing the conduct of their operations, especially in periods of armed conflict that represent the natural environment for these companies work. The following is a review of the most prominent international efforts in this regard:

4.2.1.1 Montreux Document

The Montreux Document resulted from a joint initiative launched by Switzerland and the International Committee of the Red Cross, with the help of government experts from 17 countries⁹ after meetings held between 2006-2008. The document bearing the name of the city of Montreux, located on the shores of Lake Geneva, Switzerland, was adopted on September 7, 2008. The Montreux Document explains the legal obligations of the states and private military and security companies in the framework of international humanitarian law and human rights law. The Montreux document contained two parts.

The first part contains “Pertinent international legal obligations relating to private military and security companies” (ICRC, 2009). It outlines the obligations of each of

⁹ Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, Ukraine, United States of America.

the contracting states, the countries of origin, and the rest of the other states, in addition to the obligations of the private military and security companies and their employees, including the directors. For the purposes of the document, a definition of each of these vocabularies has been given.

In this way, the Montreux Document is considered a pioneering step in controlling terminology related to private military and security companies. Also, it established a legal framework for the international legal obligations of all parties involved in the activities of these companies.

The second part of the document dealt with “*Good practices relating to private military and security companies*” (ICRC, 2009, p. 16) to enhance compliance with international humanitarian law and human rights law during armed conflict.

The document called on both the contracting states, the countries of the region, and the countries of origin to consider these good practices when determining their relations with private military and security companies, without these practices and the whole document having a legally binding effect (ICRC, 2009, p. 18).

Similar to the first part, the second part also distinguishes good practices between the contracting states, the region's countries, and the countries of origin. These practices range from introducing transparent licensing systems to ensuring better oversight and accountability. Private military and security companies are likely to abide by international humanitarian law and human rights law. By providing adequate training, internal procedures, and appropriate oversight procedures are the only ones that can provide services during an armed conflict (ICRC, 2009, p. 16).

4.2.1.1.1 The Montreux Document Legality

The Montreux Document affirmed from the outset that it was not a binding legal instrument and that it did not affect or reinforce the current obligations of states under international humanitarian law in any way, and that it did not impose or place new

obligations in international law (ICRC, 2009). So, what is the legal value of the Montreux Document?

The document states that it is merely a "reminder" of some of the states' current international legal obligations concerning private military and security companies and that it is derived from various international agreements relating to humanitarian affairs, human rights, and customary international law (ICRC, 2009, p. 42).

4.2.1.1.2 The Montreux Document Evaluation

The Montreux Document was the first official document dealing with the issue of private military and security companies. Although the subject of the Montreux Document is private military and security companies, it did not directly address these companies, but rather it was directed at states. The authors of the document recognized the obligations of private military and security companies established following international humanitarian law and human rights law, but not directly as international obligations, but according to internal laws originally inspired by international principles and rules in this regard, as it was stated in the document that private military and security companies must comply with international humanitarian law and human rights law imposed on them by applicable national law as well as other national laws such as criminal law and tax law Immigration law, labor law and regulations related to private military and security services (ICRC, 2009, p. 38), and according to the United Nations rules relating to the responsibilities of transnational corporations. In addressing companies, where it indicates:

Transnational corporations shall not commit or exploit war crimes, crimes against humanity, genocide, torture, and other violations of international humanitarian law and other international crimes committed against human beings as defined by international law, in particular human rights law and international humanitarian law (UN Economic and Social Council, 2003). Commenting on this text; The Sub-commission of the Human Rights Committee said - previously -:

The transnational corporations and other business enterprises that produce and/or supply the military, security, or police products/services must take strict measures to prevent these products and services from being used to commit violations of human rights or humanitarian law and to comply with the best-developed practices in this field. In this comment, there is a clear reference to PMSCs and strong-worded speech. In an almost assured position, companies are directly bound by international instruments related to human rights (Commission on Human Rights, 2003).

The Montreux Document is the first document to describe the legal status of PMSCs in light of the rules of international humanitarian law; After years of talking about a legal obligation covering it. However, although the document clarified the countries' obligations related to these companies, it lacked a clear and concrete classification of the applicable laws. And the necessary mechanisms to address violations committed by private military and security companies; weaken its part related to the good practices that must be adhered to by these companies because it creates confusion and confusion regarding finding a legal basis for their accountability (Mehra, 2009).

Among the aspects that illustrate the deficiencies of the Montreux Document is that the scope of its application is limited to armed conflicts only, as it states: *“That this document recalls existing legal obligations of States and PMSCs and their personnel (Part One), and provides States with good practices to promote compliance with international humanitarian law and human rights law during armed conflict (Part Two)”* (ICRC, 2009). It is excluded PMSC from being held accountable for its other activities such as logistical support, supply services, and training. At the same time, in field practices it confirmed that even employees and companies working in the field of logistical support and consulting services use force to defend themselves if they are attacked while performing their duties.

The Montreux Document was, when it was drafted, aimed to act as a decisive step towards accountability for PMSCs. The limited adoption of the document by states, coupled with its lack of legal capacity, greatly weakens its power. The Montreux

Document is the fruit of an initiative launched by the Swiss government and the International Committee of the Red Cross, and only 17 countries have adopted it. And for the Montreux Document to gain an influential role, more countries should declare their support for it. This is what the permanent representative of Switzerland called for in his letter addressed to the Secretary-General of the organization, where He asked states to adopt the measures contained in the Montreux Document and quickly declare their support for it (General Assembly Security Council, 2008).

On the other hand, the document lacks binding force, although it was approved by 17 countries that are among the largest beneficiaries of the services of private military and security companies. If more countries adopt the document, it may turn into a soft law¹⁰. Likewise, the states' practices and commitment may lead to transform the document into customary international law and then acquire binding force. In other words, the adoption of the document by more countries may give it strong roots in Law (Mehra, 2009, p. 328).

Finally, the Montreux Document has ignored international attempts to create a framework for corporate activity in light of human rights rules, especially the reports of the Special Representative of the Secretary-General of the United Nations, Mr. John Ruggie, which drew up rules for corporate responsibility in general concerning human rights, based on general principles of human rights and international humanitarian law. Besides, the document did not adhere to the framework of "protection, respect, and remedy. Rather, it preferred to establish its framework, whereby it took a different path to study private military and security companies, even though they are commercial companies. It did not refer in any of its seventy-three paragraphs to the international efforts in this regard. This approach adopted by the Montreux Document ignored the efforts made to unify the formulation of the international obligations imposed on these companies, especially since coordination between international efforts is important to ensure the uniform application of the

¹⁰ Soft Law definition: "Co-operation based on instruments that are not legally binding, or whose binding force is somewhat "weaker" than that of traditional law, such as codes of conduct, guidelines, roadmaps, peer reviews" <https://www.oecd.org/gov/regulatory-policy/irc10.htm>

general principles governing companies intending to remove any confusion regarding its obligations.

4.2.1.2 Working Group on The Use of Mercenaries As A Means Of Violating Human Rights And Impeding The Exercise Of The Right Of Peoples To Self-Determination

The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of peoples' right to self-determination was established in July 2005 following the resolution of the Commission on Human Rights 2005/2. The Commission requested the team in paragraph 12 of its decision to prepare and present concrete proposals on what could be established new standards to encourage respect for human rights and to confront current and emerging threats posed by mercenaries or their activities, in addition to monitoring their activities. The working group was also tasked with monitoring and studying the human rights implications of the activities of private military and security companies in the international market and preparing draft international basic principles that encourage respect for human rights by these companies (ECOSOC, 2005).

The team consists of five independent experts and has presented its reports from 2005 to 2011, based on consultations and meetings with governments, and field visits to countries in which PMSCs operate, such as Afghanistan, and countries in which those companies are registered, such as the United States of America and the United Kingdom, and countries where it has the recruitment of employees of such companies as Fiji and several Latin American countries.

In its reports, the Working Group provided detailed information on the grave human rights violations committed by PMSC employees while working in conflict areas and information proving the companies' lack of transparency and accountability (General Assembly, 2010).

The most important contents of these reports can be summarized in the following points:

- The use of mercenaries in traditional or non-traditional forms is widespread worldwide (General Assembly, 2008).
- The United Nations Convention against the Recruitment, Use, Financing and Training of Mercenaries of 1989 (General Assembly, 1989) is an important international legal

instrument to prevent the use of mercenaries as a means of violating human rights (General Assembly, 2008).

- The working group examined actual cases that included definite violations of human rights rules and principles by private military and security companies and their employees. It concluded that urgent action is needed at the international community level to implement a comprehensive regulatory mechanism for these companies (General Assembly, 2008, p. 17).
- The Working Group considered that the criminalization of the prohibited traditional mercenary activities could be separated from the general context of the activities of private military and security companies and concluded that the public activities of these companies could not be regulated based on the United Nations Convention against the Recruitment of Mercenaries only, even after it was amended and updated. A new international legal code takes the form of a new agreement for private military and security companies (General Assembly, 2008). This agreement is supported by another legal instrument, such as a model law to regulate the activities of these companies, which helps governments develop and adopt legislation to regulate the activities of these companies at the national level (United Nations General Assembly, 2009).
- The working group indicated that most national governments do not have systematically arranged information about private military and security companies registered on their territories or about their national companies registered abroad and in return called on them to establish a special registry for these companies, in addition to minimum standards of transparency required of them (General Assembly, 2008).
- The Working Group has repeatedly expressed its concern in its reports about the lack of a national and local system that governs the activities of private military and security companies, which employ and train thousands of citizens from all over the world to carry out missions in Afghanistan, Iraq or any other areas of armed conflict (United Nations General Assembly, 2009).

In 2009, the General Assembly and the Human Rights Council gave the Working Group a mandate to develop guidelines governing the work of private military and security companies based on the following principles (United Nations General Assembly, 2009):

- PMSCs, as legal entities and their employees, respect global standards of human rights and international humanitarian law. In this regard, there is a trend towards directing an international legal discourse for private military and security companies as legal persons.
- These companies and their employees respect the national laws of countries of origin, transit countries, or countries in which operations are conducted.
- These companies are accountable to the governments of the country of origin and registration and to the countries in which they conduct their operations.

To reinforce these principles, the working group proposed setting up a mechanism to receive complaints from individuals and state agencies, foreign governments, and other companies and entities to ensure individual criminal liability and civil liability for private military and security companies, which indicates a clear recognition by the working group of the possibility of holding private military and security companies accountable at the international level, as legal entities.

In 2010, the Working Group presented a possible new draft agreement related to private military and security services companies. In its report for the year 2011, the team emphasized the need for states to cooperate and intensify efforts to adopt an international instrument that establishes a framework for organizing the work of these companies. It also summarized the work carried out during its mandate and presented its findings regarding the issue of mercenaries and the issue of private military and security companies (United Nations General Assembly, 2011).

4.2.1.2.1 Draft International Convention on the Regulation, Oversight, and Monitoring of Private Military and Security Companies

In its report submitted to the Human Rights Council during its fifteenth session on 5/7/2010, the Working Group on the issue of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination presented a draft of a possible international agreement related to private military and security services companies. As contained in the draft annexed to the report of the Working Group, the agreement has six parts.

The preamble emphasized, inter alia:

- Responsibility for violations of international human rights law and international humanitarian law may be blamed not only on states but also on intergovernmental organizations and non-state actors.

- The Convention acknowledged that all states have to prevent human rights violations or other attacks committed or implicated by transnational corporations and other commercial enterprises.

- The draft emphasized the need to put in place accountability mechanisms for states, governmental organizations, and private military and security companies (United Nations General Assembly, 2010).

As for the convention body, the first part of the draft contained general provisions in which the objectives of the agreement were stated, the definitions of important terms, and the scope of application¹¹, which was expanded to include both states and governmental organizations, and the agreement took this position since intergovernmental organizations such as the United Nations and the Alliance North Atlantic and the European Union use the services of private military and security companies, and It confirmed this in Article 2/42¹².

As for the second part, the convention explains the general principles of the agreement, the most important of which are:

- The State party to the treaty holds responsibility for the military and security activities of PMSCs.
- PMSCs respect the rule of law and respect the sovereignty of the state.
- The State Parties' obligation is to prevent these companies from directly participating in hostilities, terrorist acts, and military actions that violate international humanitarian law (HRC, 2010).

¹¹ Article 3 states that the proposed agreement applies to states and intergovernmental organizations, each within the limits of their jurisdiction, with regard to private military and security services companies, their activities, and their employees in all cases, whether or not the situation is defined as an armed conflict.

¹² The PART VI. Final provisions of the document mentioned "References to "States Parties" in the present Convention shall apply to such organizations within the limits of their competence."

- It prohibits the use of private military and security companies to carry out jobs that are inherently the preserve of the state and prevent these companies from possessing or trading in weapons and ammunition illegally.

In the third part, the national system of regulation and oversight was dealt with in terms of commitment to licensing services provided by private military and security companies, creating a national registry for them, commitment to training and screening their employees, and respecting basic work standards and regulations governing the use of force and firearms by these companies (HRC, 2010).

The fourth part deals with the responsibility of state parties to the convention to impose criminal, civil, and/or administrative penalties on violators, in addition to their responsibility to provide remedies to victims.

In the fifth and final part, reference was made to the establishment of a committee to regulate, control, and monitor private military and security companies, which receives reports from state parties on the legislative, judicial or administrative measures that they have adopted in the implementation of the provisions of this agreement, as well as the establishment of an investigation and another mechanism for individual complaints.

On July 15, 2009, the working group presented an initial draft of the potential agreement to about 250 experts, academics, and non-governmental organizations for comments. The working group received about 45 written statements containing more than 400 comments in response to its letter from this group.

In the conclusion of its report, the Working Group expressed its encouragement to member states of the Human Rights Council to carefully consider the proposed project to develop a possible new international legal instrument to regulate private military and security companies and recommended that the Human Rights Council establish an open-ended intergovernmental working group, whose task would be to develop a new convention, taking into account the initial work undertaken by the Working Group regarding the use of mercenaries.

The draft convention was welcomed by the Human Rights Council, which commended the efforts of the working group and recommended the extension of its mandate (Human Rights Council, "The use of mercenaries as a means of violating human rights and impeding the

exercise of the right of peoples to self-determination", 2011). Since the Council does not have the competence to adopt the texts of the agreements, it decided to establish a governmental working group, to develop a text of an agreement regulating the work of private military and security companies in light of the findings of the Working Group on the issue of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination in its previous reports.

The open-ended governmental team is continuing its work in this regard, and the Human Rights Council has called on states to cooperate with the team and seriously consider adopting a legal instrument dealing with private military and security companies.

4.2.2 Private Military and Security Companies Self-regulation

The lingering image of private military and security companies remained that they are institutions that employ mercenaries, do not observe moral values, and do not respect the laws in force. To polish their image, these companies took the initiative to develop an international code of conduct to legalize their activities. Accordingly, in Geneva 10th November 2010, around 60 Private Military and Security Companies signed on The International Code of Conduct for Private Security Service Providers (ICOC) (FDFA, 2010), and at the forefront of the signers was Blackwater, which became famous for its violations in Iraq, and later changed its name to XE Services (Krahmann, 2016).

The Code consists of 70 articles that regulate the work of private military and security companies to ensure respect for human rights and international law and not endangering the lives of individuals except in self-defense cases (FDFA, 2010). The code was based on an initiative launched in June 2009 by industrial associations, private military and security companies, and businessmen, with the assistance of the Swiss government and in consultation with the governments of the United Kingdom and the United States of America (DCAF, 2010).

The International Code of Conduct for Private Security Service Providers was formulated based on the principles of the Montreux Document and the framework of "Respect, Protection and Remedy" established by the Special Representative of the United Nations Secretary-General on Business and Human Rights, Mr. John Ruggie (FDFA, 2010), and aims to develop a collective

agreement on security principles and to establish an institution to translate those principles to standards and mechanisms for management and control (FDFA, 2010).

4.2.3 Obligations of PMSCs under the International Code of Conduct

By signing the Code of Conduct, companies are obligated to require their employees, subcontractors, and all other parties that provide security services under the signed company's service contracts, to work following the principles contained in this code, and the signatory companies pledge not to enter into contracts that directly and substantially conflict with The principles of this Code, the law to be applied nationally or internationally, or to be applied locally and regionally, and local and international human rights law (FDFA, 2010), as well as committing not to contract with, support or service any government, person or entity in a way that would violate the sanctions of the United Nations Security Council.

The signatory companies and their employees refrain from committing, encouraging, or seeking to commit any national or international crimes, including war crimes, crimes against humanity, genocide, and torture (FDFA, 2010). The Code prohibits the use of firearms by private military and security companies against individuals except in cases of self-defense from the danger of death or to protect other people from death or severe injury, which means that these companies do not have the right to participate in the field military operations or any combat operations.

4.2.3.1 The Legal Value of The International Code of Conduct

Although the Code of Conduct stipulates a set of obligations on the signatory companies, it does not create new international legal rules, as stated in Paragraph 14 of it:

“This Code complements and does not replace the control exercised by Competent Authorities and does not limit or alter applicable international law or relevant national law. The Code itself creates no legal obligations and no legal liabilities on the Signatory Companies beyond those which already exist under national or international law. Nothing in this Code shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law” (FDFA, 2010).

4.2.4 Organizing The Work of The Private Military and Security Companies Through Internal Legislation

The widespread prevalence of private military and security companies has prompted some countries to address the issue of their regulation through national legislation. This section will deal with some examples of the internal organization of these companies.

4.2.4.1 United States of America

The United States of America is considered one of the countries that most use the services of private military and security companies. At the same time, it is one of the largest exporters of the military and security industry, as the number of companies that provide their own military services is about 35 legally registered companies (Al-Nayrab, 2008), which is demanding to have legislation regulating the work of these companies and their employees.

The United States of America has regulated the work of these companies with many regulations, including laws governing licensing procedures related to the export of military equipment and laws governing contracting contracts at the state level. For instance, The International Traffic in Arms Regulation (ITAR) (PETTERS, 2021), which was put in place to regulate arms trafficking and training operations accompanying arms sales deals and is suitable for regulating contracts of private military and security companies in this regard. Also, all contracts related to the military and security services sector are under the supervision of The State Department's Office of Defense Trade Controls (ODTC). If the value of the contracts exceeds 50 million dollars, a notification must be made. Congress and the US State Department, and in order for PMSCs to avoid this oversight, usually split their contracts (SINGER, 2004).

As for PMSC employees, other laws apply to them, including The Department of Defense Guidelines for Personnel Accompanying US Forces (US Department of Defense, 2005).

In 2007, Congress proposed several bills to improve oversight of contracts concluded in Iraq, for fear of misuse of government funds, and to determine the number of security contractors with the Iraqi government and those who carry weapons. Rules have been proposed to control private military and security companies and their activities, especially after the incident in Nissour Square in Baghdad 2007. Still, all these suggestions were rejected by former American President George Bush (Nevers, 2009).

4.2.4.2 The United Kingdom

The interest in establishing rules governing the work of private military and security companies in the United Kingdom began in 2002 with the report of the British Parliament in the wake of the scandal of the British company Sandline that smuggled weapons to Sierra Leone in violation of the international embargo that was imposed on it at that time, which prompted the United Kingdom to address the issue of these companies via The Green Paper on PMCs that highlighted the risks and challenges these companies pose (White, 2015).

This document raised several topics, such as the criminal liability of employees of PMSCs, the establishment of these companies, their employment of mercenaries, and how to consider potential conflicts between these companies and the British crown (Brooks, 2002). However, the Green Paper does not live up to the American model in organizing these companies. Therefore, several alternatives have been proposed to regulate the activities of this sector, such as a proposal to establish a special registry for these companies that are managed by the government and to regulate the licenses granted to private military and security companies to determine the types of services that they offer it and with any countries. But the option to ban these companies was completely unlikely, as the goal was to make them more law-abiding.

Although there is no British legislation for private military and security companies, there are some documents/procedures that can be considered in one way or another to regulate this issue, most notably the Export Control Act, which regulates the transfer of weapons, technical equipment, and military services abroad, and the Terrorism Act (Tullo, 2000) that can be applied to Private military and security companies in terms of military training and training inside and outside British territory, there is also the Private Security Industry Act (Tullo, 2001) that regulates the field of protection services for people and property (guard services). As for judicial follow-up, the Armed Forces Act (Tullo, 2006) allows accountability of private military and security companies contracting with British forces before British courts, regardless of the nationality of the employee and the place of registration of the company.

4.2.4.3 South Africa

South Africa is one of the first countries that sought to restrict the activities of private military and security companies, as it adopted the first legislation in this field in 1998, as it is one of the largest exporting countries to workers in these companies after the United States and Britain, as it is estimated that the number of mercenaries from South Africa in Iraq is what Between five and ten thousand mercenaries (Al-Nayrab, 2008).

The legislation as mentioned above required the government to approve any contract concluded by these companies in other countries. Still, it had no effective effect due to its vague wording and broad terms (Singer, 2008). New legislation was adopted in 2007 that criminalizes any South African citizen working in a conflict zone without permission from his government. Thus, it applies even to humanitarian workers in armed conflict areas and employees of private military and security companies. The law indicates the difficulty of drafting legislation for the private military and security services sector (Nevers, 2009).

It was evident from the previous chapter that the private military and security companies sector is receiving increasing international attention, as evidenced by the establishment of a special United Nation team to study the impact of these companies on human rights, which reached draft international conventions to regulate this sector and in the face of international awareness of the need to define the legal status of private military and security companies And drawing a framework for its accountability, the latter quickly polished its image before the international community by choosing to self-regulate its activities through the international code of conduct to avoid imposing an international ban on its actions. On the other hand, some countries sought to restrict the activities of private military and security companies according to national legislation, in the sense of the seriousness of the legal vacuum that may create a gray area in which these companies are laid off without being monitored for their crimes.

CHAPTER 5: PRIVATE MILITARY AND SECURITY COMPANIES ACTIVITIES IN IRAQ

One of the genuine foundations for the existence of private military and security companies in the territory of any country is the basis of the occupation. In the case of Iraq specifically, the first basis for the existence of these companies on its territory is the American occupation and the countries allied with it, this occupation was legitimized by the Security Council issuance of Resolution No. 1483 for the year 2003 in which it recognized The United States and Britain are occupying states and bear the resulting obligations by the provisions of international humanitarian law. This occupation has been accompanied by a constitutional gap, which affected Iraq's sovereignty and its national independence besides the marginalization of its military and security institutions with the emergence of armed resistance against the foreign presence in it.

And for the following reason, including foreign occupation, the real absence of Iraqi security institutions, and the acceleration of armed operations against the occupation forces, the US Department of Defense (the Pentagon) contracted with private military and security companies to provide services to their forces in Iraq, and the order to use these companies to protect personalities, organizations and giant companies developed Operating in the field of investment such as oil companies, and even after the withdrawal of those forces in the implementation of the American-Iraqi security agreement, the need had increased to provide security and protection for the various parties present in Iraq, which constituted an urgent need to search for an official regulatory framework that would be applied to the status of these companies Inside Iraq

It has become very evident that the violations and crimes caused by the private security companies in Iraq have provoked denunciations and condemnations and demands that these companies and their employees be held accountable after the United States and Britain introduced it to Iraq based on contracting with these two countries to provide security services to them, in addition to what was established for it by the orders of the civilian chief of the (CPA) Coalition Provisional Authority of Iraq, Paul Bremer, such as the order (17) for the year 2003 and the revised order (17) (the memorandum) for the year 2004 (Otterman, 2005). The first granted these companies immunity from any Iraqi legal procedures. At the same time, the second dealt with its inevitable presence on the Iraqi lands, expressing a kind of restriction and submission to Iraqi laws. Still,

from all of those as mentioned above, this presence did not have a positive impact, but rather it was negative.

5.1 History of the American Occupation of Iraq:

Several security problems encountered by the U.S.A. in the Middle East were the Iraqi challenges resulting from victory over the Arab Gulf following the Iran-Iraq war (1988-1980) and the changes in the new world order in the 1990s. The Iraqi challenge may be one of the most famous ones of this kind. On 4/9/1972, it is known that in Iraq, which caused the U.S. to take a stand on Iraq, the Treaty of Friendship with the Soviet Union was signed. Worse yet, the outcome of the Iran-Iraq war led to the Iraqi army being attacked by the United States; the U.S discovered an obvious hurdle to the control of the Arab Gulf region; hence, even before Iraq invaded Kuwait, the U.S. had thought of undermining Iraq's military capability (Gause, 2002).

In 1990 the Iraqi conquest of Kuwait, when the U.S.A played a crucial part in the mobilization and export of Iraq by a multinational coalition. The dismissal of Iraqi militaries from the territory of Kuwait marked the end of this expansion; it became the start of American hegemony in the Arab Gulf area. In 2003, a military attack against Iraq was begun by the U.S.A, the U.K. and several other nations, a blatant violation of the U.N. agreement. The term "violence," as defined by U.N. G.A, is undoubtedly applicable. This aggressiveness resulted in the U.S.A occupying Iraq, a power imbalance in the area, and Iran's rise as a new regional authority (Hinnebusch, 2007).

5.1.1 Legitimacy, goals and motives for the Third Gulf-War

Iraq's occupation of Kuwait in 1990 is the first threat to U.S. interests in the Gulf region. Therefore, the U.S.A saw that the State of Iraq was seeking to control the Persian Gulf region. Moreover, there are substantial oil reserves, which will lead to tightening its control over the determination of oil prices, which will negatively affect the industrially advanced countries. This will, therefore, lead directly to a risk to the interests of the U.S.A in the Arab Gulf region (Bensahel, 2004).

Also, Iraq's possession of mass destruction munitions will affect the security of the Arab-Gulf countries and, consequently, the entire world's security. Therefore, as America called it mass-destruction munitions, Iraq's possession (evil axis) will endanger the interests of the U.S.A, and this has increased the continuous pressure to destroy mass destruction munitions in Iraq, which prompted the U.S.A to conquer and occupy Iraq, even though these allegations were not true (Hinnebusch, 2007).

The United States-British occupation of Iraq in 2003 describes a tyranny of political purposes, mainly since the U.S.A. and Britain ended control of Iraq and the toppling on 9 April 2003 of their political dictatorship.

Many political analyzes have come to put Iraq and the U.S.A and its ally Britain in a state of complete political, economic, cultural, civilizational and strategic conflict. Therefore, perhaps the political explanation for this intervention is more meaningful than the one based on just war theory, which was previously shown to be in no way explaining what happened in Iraq; And that it was not a just war by any standard or according to any of its principles.

Economically, the U.S.A has sought to restore its absolute dominance over all Arab points and completely encircle Iran. As for the military aspect, America justified its war on Iraq by saying that the security of the American armies and the protection of friendly and allied countries at risk.

On the political side, the U.S.A administration aimed to change some of the features or foundations of the Arab system, considering it a regional system emerging since after the Second World War, meaning that the Arab system has a relationship with the U.N. regulated by Chapter-8 of the Charter of the U.N.

Researching the third Gulf War requires studying the U.S.A's interests, identifying the strategic goals that the U.S administration seeks to achieve and studying American allegations to wage war. It also requires learning the position of the U.N on the American invasion and occupation of Iraq, following international treaties and agreements, the U.N Charter and its decisions regarding Iraq; In addition, it is the body entrusted with the application of international law (Bensahel, 2004).

5.1.2 Motives and goals

The U.S.A has shown the great importance of the Gulf region in its political agenda. Where the U.S. President at that time, Jimmy Carter, declared clearly that any attempt by any external power to control the Gulf-region would be a threat to the vital interests of the U.S.A, and it would be confronted by all means, including military force. Thus a new strategy for the U.S.A was defined towards the Arab Gulf region. This strategy is known as the Carter Principle. In light of this statement, the importance of forming a special military force known as the Rapid Intervention Forces to be entrusted with American intervention operations abroad, especially the oil-rich region, i.e., the Arab Gulf region (Lieber, 1992).

The claims for which the U.S.A launched its military campaign against Iraq were based; There are several justifications:

- Disarmament of weapons of mass destruction in Iraq.
- Stop its support for international terrorist networks or Al-Qaeda.
- Iraq's release from a brutal tyranny.

The management of President Bush Jr. has taken a stronger position against Iraq and its leader. Accordingly, the U.S. President has made it a priority to change the Iraqi regime in the new war on terrorism. The war ended, as it is known, with the overthrow of the administration. In its occupation of Iraq, the U.S.A relied on its possession of Mass devastation weapons; or its pursuit of such weapons and the possibility of providing such weapons to terrorist organizations which might be used against the U.S.A (Hinnebusch, 2007).

5.1.3 American interests in Iraq

After the Second World War, the United States of America was formed to preserve its strategic interests. This resolve peaked in 1947 when President Truman presented his plan that bears his name: to develop the Third World nations that threaten to fall and guarantee their loyalties to the U.S.A. to extend their grip on the Soviet Union.

The U.S. intended in 1954 to establish a bilateral agreement with several countries, including Iraq, to achieve development in third-world countries with a view to the implementation of its programs.

Eisenhower's administration stressed the need that any country in the Middle East, the number one opponent of the United States of America, should be given financial and military help to guard against the Soviet Union.

The Iraq-America ties entered a new era, particularly with the start of the Iran-Iraq war of 1988-1980, when ties grew based on the balance of power in the fighting grounds.

Despite the U.S. losses caused by the downfall of the Shah's rule, Iran remained strategically important for the U.S. The anti-US attitude of Iran, however, opposes Iraq and Iran's objectives. This led to the U.S. leaning toward Iraq.

Iraq was likewise aimed at winning America's favor. However, this change in U.S. policy continued to contrast America's prior evolution towards Iraq, limited by U.S. foreign relations restrictions.

The Iran-Iraq conflict freed the U.S. from the perils of Iranian military involvement. However, the U.S. also took advantage of Iran's nuclear threat to reinforce and accomplish strategic goals in its presence in the Gulf area. To achieve its goal, the U.S, therefore, established a plan in the following:

- Attempt to stop Iraq and Iran from endangering the U.S.A interests in the region of the Arab Gulf.
- Use of the option of armed action in the Arab Gulf area to safeguard its interests.
- End Iraq's association, imposed by the perils of the Iranian menace, with the Gulf Countries Cooperation Council.

The character of American activity requires the capacity to fulfill its objectives in the Arab area, stated as follows:

- Securing the prolonged presence of the U.S. military in the Arabian Gulf area - Protecting energy supplies and their continuing flow.

The U.S. government intended to achieve these objectives:

5.1.3.1 The annihilation of the Iraqi army:

The fact that Iraq emerged victorious in its war with Iran made it significant power in the Arab Gulf region within the regional environment, which prompted the United States of America to try to destroy Iraqi relations with the Gulf Cooperation Council countries, and it had that.

Iraq was confronted by countries including the United States, the United Kingdom and the Gulf Cooperation Council, which led Iraq to invade Kuwait in 1990. This justified the use of force against Iraq by the U.S.A.

A dispute arose between Iraq and the United States of America when Iraq occupied Kuwait in 1990. The United States of America launched a war with its allies, the so-called war of liberation of Kuwait and Operation Desert Storm. Iraq called it at that time the mother of all battles. However, the U.S (Hinnebusch, 2007). ambassador assured Iraqi President Saddam Hussein that the U.S. would not interfere in the neighborhood's problems.

But America started a war against Iraq, confirming that Iraq has become a goal for the big countries, as Iraq possesses one-third of the world's oil.

Because of the 1991 U.S. war on Iraq, Iraq lost more than half its military capacity, and several arrangements were imposed by the U.S. after the war, illustrated as:

- A series of international resolutions to destroy Iraq's military ability to remove the situation of strategic imbalance, such as Resolution 687.
- In the United States, strategic analysts began to concentrate on taking oil into account as part of the U.S. strategy (Lieber, 1992).
- There have been several resolutions adopted by the U.S.A to prohibit states like Iraq and Syria.

After the liberation of Kuwait, the conflict led to the annihilation of the Iraqi army, and the Iraqi military was at its lowest level, encouraging Iraqi forces to conduct a revolution against the Iraqi regime, saying that it was just the freedom of Kuwait.

The strategy of the U.S reflects America's hegemonic role as the U.S.A launches its task of demolishing Iraq's military and economic capabilities by implementing resolutions on international legitimacy to destroy weapons of mass destruction."

5.1.3.2 Control of Iraqi oil

The U.S.A sought to obtain the Iraqi oil concession, which cost nine times less than American oil. The United States of America has taken several methods in the context of achieving its interests, including these methods, including stopping Iraqi oil exports and cutting global oil prices (Lieber, 1992).

In Iraq, the attention of big U.S. oil firms has also been stepped up owing to several factors, believed to be around 112.5 billion barrels of enormous oil reserves in Iraq. Which is (66%) world reserves; the figure might reach 332 billion barrels with additional drilling efforts, which is becoming Iraq's oil the world's largest oil supplier. Furthermore, Iraqi oil prices for a barrel are low. In addition, there have been numerous privileges in Iraq's oil, notably, the high share of oil reserves compared with many other nations in which oil has been deteriorating and the profit from oil extraction for many Western businesses, as Iraq's oil was a source of money for them. Moreover, Iraq's oil sources are characterized by an abundance of output; one oil reservoir production is more than (1350) barrels a day.

5.2 The Private Military and Security Companies in Iraq and Its Linkage to Foreign Presence

The private military and security companies have begun scheduling their work by offering their services to the governments of countries that face a complex situation that is difficult to control in the territories of the occupied countries. To control it, it is necessary to sacrifice losses that exceed the balance of the military victory, for example. What the United States and Britain faced in Afghanistan and Iraq have taken the so-called privatization of war. Still, as a measure it contradicts principles of international humanitarian law, including the provision of protection for people by setting controls on the rules for the conduct of military operations and most importantly ensuring good treatment for the inhabitants of the occupied territories (Swed, "The Global Expansion of PMSCs: Trends, Opportunities, and Risks", 2006).

It is evident that the United States has adopted, in addition to the regular military presence of the occupying countries, another massive foreign presence in the form of companies that perform security and protection tasks and services, as in Bosnia and Afghanistan and in Iraq, to provide these companies with protection services for personalities, military bases, and the movement of military convoys, buildings, infrastructure, training the national police and for the protection of military personnel (K. Elsea, Schwartz, & H. Nakamura, 2008).

This mechanism took place in the Iraqi situation after its occupation in 2003, when the United States, Britain, and some organizations operating in Iraq sought the help of these companies. While those companies prevailed in some of the events, the contracting countries could not find anything to legally address the situation and deter these companies and the activities that they practiced, that were, in fact, violations of the provisions of IHL and crimes under its national laws, as this was accompanied by the absence of Iraqi legislation to contain this action due to factual reality of its modernity to the legal system in it, also, the dissolved Coalition Provisional Authority was out of power that could issue orders that prevent these activities and hold those companies and their employees accountable for violating laws. Therefore, these companies and their employees remained among those who committed some violations without any consequences, even by the civil or military courts of the United States (K. Elsea, Schwartz, & H. Nakamura, 2008).

5.2.1 The Association of Private Security Companies with The Multinational Forces In Iraq

It has become clear considering the armed conflicts that states are waging that they do not enter the war with their armed forces only, and this is the case which has become a phenomenon that countries follow in some armed conflicts, so the use of private military and security companies has become one of the features and mechanisms of globalization and imposing the domination and control of some countries over others even the international community and the global system.

In the cases of Afghanistan and Iraq specifically, this tradition did not differ in its relation to the United States of America and Britain, as both the multinational forces in Iraq and the Iraqi government itself recognize that security in it is one of the issues that remain a concern that, without comprehensively addressing it, cannot control the political and economic situations, as both contribute by their development to the presence of a stable security situation.

One of the most important issues pertaining to the United States and Britain's outsourcing of external resources, even if that led to the achievement of the goals pursued by both countries, was accompanied by the occurrence of serious violations of human rights at the sites of the event by these companies, so states cannot bear the consequences of those acts, moreover, knowing that these companies evade any punishment that can be imposed on them and their employees at a time when they are the main players in the areas of armed conflict and beyond (Cordesman, 2011).

The fact that some of these companies establish branches were characterized by legal personality in one country while providing their services in another one, while recruiting individuals from a third country to work within their staff, aiming for achieving the highest percentage of profits, also to avoid any judicial or legal actions in the cases of serious violations of human rights (Prado, 2008).

5.2.2 The Private Military and Security Groups Rule in The Achievement of The Army Assignments

The end of the cold war was the reason why countries began to reduce the number of their armed forces, then their tendency to give the character of the use of force for defense rather than attack (Cottier, 2006), which is the basis on which the establishment of private military and security companies intensified to provide protection and achieve profit, but they are not allowed to participate in offensive combat operations or by using force except in the case of self-defense to respond to the attack (Franke, 2010). This issue becomes clear through the states' use of private military and security companies to protect people and things, exchange experience in weapons systems, training, and collect information (Gillard, Business goes to war: private military/ security companies and international humanitarian law, 2006).

Suppose the previous is an aspect of the relationship between the states of the regular armies and the private military and security companies. In that case, the other and important side is that the reality of some conflict sites and their aftermath reflects a particularly dangerous collapse in the security field for the countries whose territories witness a conflict of multiple parties from within. And this is what happened regarding Iraq, which prompted the American side to declare that its forces must rely on maintaining security in it to focus on military operations without relying on the capabilities of imposing security by the Iraqi security forces, considering that they have reflected themselves as peacekeepers, similar to the case of using the United Nations forces to maintain international peace and security and ensure their stability in any place where they may be exposed to danger and threat, which is what the occupying powers have intended to achieve in Iraq, by seeking the help of private security companies.

The United States Department of Defense started to contract and award a group of private military and security companies, including those operating in Iraq. The United States Department of Defense was prompted by the fact that there is no legal violation of those contracts/companies operates under the national law of private sector companies. Accordingly, The United States Department of Defense did not violate any international agreements in this field, including the Geneva Conventions of 1949 and the two Additional Protocols of 1977 annexed to the conventions that prohibit mercenarism.

The outsourcing of power for the implementation of several state functions and tasks, such as those related to the usual functions that the national army or police forces perform, led to blurring the boundaries between the public services of the state and what the private commercial sector can perform with its capabilities (Prado, 2008).

The parties involved in some armed conflicts have revealed their extensive use of private military and security sector companies to protect, train and advise members of the military forces and assets, maintain weapons systems, interrogate detainees, and, in some cases, fight (ICRC,2006).

The so-called top-down situation appeared accompanied by what is described as gray status, in which that the employees of private security companies, in areas of armed conflict, are civilians armed as military personnel, which makes their status lacks certainty whether they are combatants or civilians, which concluded that private security companies have led to the creation of a new type of security guards and private soldiers working in areas of armed conflict and high-risk areas. In contrast, this situation is not subject to clear legal restrictions (Prado, 2008). Therefore, the growth of these companies and the growth of government contracts with them to carry out the military and security functions of the state has become a foreshadowing of new types of wars that these companies are taking on instead of states.

The issue of using private military and security companies to wage wars abroad increased, which was followed by the United States government, allowing these companies to grow steadily in number and participate in both military and security operations, due to several reasons, the most important of which are that there is no need for the approval of the US Congress to use these companies in America's wars, and, that everything that accompanies this is kept away from the media.

Private security companies have emerged as a strong alternative to the US military in Iraq to complete the tasks of the military forces mainly because, The United States Department of Defense recognition that its soldiers in Iraq are calling for an increase in weapons and the mechanisms used to protect oneself after the increase in combat operations against them, in addition to the increase in suicide rates among the ranks of American soldiers in Iraq reached the point that pressured the American army to admit it, at the same time a committee from the Ministry of Defense had prepared a report described as pessimistic about the psychological state of the soldiers there.

While some reports indicated that the US military conducted hundreds of evacuations in the ranks of its forces in Iraq due to mental or psychological problems, the United States worked to compensate some of its military formations supporting the fighting forces in Iraq with private security companies.

In a US Congress report on the usage of security contractors in Iraq, the report mentioned the large number of cases in which the US Army resorted to the military operations of private security companies there. Despite the military gains achieved by these people, it is according to the opinion of analysts and some members in the Congress, has caused incitement, hatred, and lack of sympathy with all Americans in the world, and the role of companies active in the armed conflict in Iraq, as a result of what was revealed by human rights reports many violations of these companies committed by their employees (Schwartz, 2011).

When referring to the text of Paragraph (a) of Article (4) of the Third Geneva Convention, which includes the determination of prisoners of war after describing a combatant by classifying them within the categories mentioned in this paragraph, and Article (43) of Additional Protocol I of 1977 annexed to the fourth Geneva Conventions of 1949 states in its paragraph (3) that “*Whenever a Party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other Parties to the conflict.*” Combatants are mainly members of the armed forces of countries, which means that the employees of these companies cannot be described as fighters except for those who are used by the state only within its regular armed formations as part of the merging procedures that come from activating the jurisdiction of the internal legal system of the concerned state, making them accordingly individuals registered in the ranks of its armed forces, given that international humanitarian law establishes the description of members of the armed forces as fighters. Still, it does not add to this the specification of certain conditions to discriminate against others (Fallah, 2006).

In addition to the above, the absence of any national law will lead to the absence of any determinant that can be referred to regulate the circumstances in which employees of private security companies can be considered fighters for their affiliation with the armed forces, militias, or volunteer units that are part of those forces, or not, the contract between the company and the state party to the conflict does not mean the existence of an official affiliation between the company's employees as fighters and the armed forces of that party (Cameron, 2006).

According to the Sponsored Reserve Act, enacted in 1996, and the annex to which the special military and security companies were added in 2003, Britain summoned the employees of these companies to join the reserve forces, where they were mobilized and deployed as members of the forces. The armed forces wear their uniforms and work under the command and control of military commanders. As members of the armed forces, they have the right to participate directly in the fighting and have the status of prisoners of war upon their capture by the enemy (the UK, Reserve Forces Act, 1996).

In the United States, the former US President, George W. Bush, the Chairman of the Joint Chiefs of Staff, General Peter Pace, the founder of the Blackwater Company, Erik Prince, and the spokesperson for the US Department of Defense, Geoff Morrell, expressed their desire to integrate private military and security companies into the armed forces, which led the President in 2007 to suggest, establishing teams very similar to the reserve forces in the US Army that will work and reduce the burden on the armed forces through The government permission of the employment of skilled civilians to serve or work in missions abroad when the United States needs them, while General Pace stated that this idea is consistent with the reality of the presence of American forces in scorching conflict areas and that establishing civilian reserve teams serves the nation (Cadieux, 2008).

This reserve represents approximately 35 thousand non-American soldiers in the US Army and about 175 thousand employees of security companies in Iraq. This matter was not far from the assessment of the former US Secretary of Defense in 2006, Donald H. Rumsfeld, of the current and future strength of the United States, as he stated that the apparatus for waging war includes a forces group which consists of four elements: the armed forces, reserve forces, contractors, civilians. And apparently, this not only indicates the viewpoint of the Ministry of Defense in merging contractors and making them part of the military forces but also draws attention to the distinction between contractors and civilians. Some of them are also seen as a volunteer force intended to reduce the burden on the armed forces. It enables American civilians with accurate skills to serve in foreign missions, including what comes to a dangerous degree of importance, such as confronting terrorism.

In addition to the above, in line with the revised Order No.17 issued by the Provisional Coalition Administrator of Iraq, Paul Bremer, for the year 2004, the Coalition Provisional Authority in Iraq

issued a Memorandum Registration requirement for private security companies, the Article (9) indicates that one of the obligations imposed on private security companies operating In Iraq, includes the following:

“Limitations and Responsibilities of Private Security Companies

1) The primary role of PSC is deterrence. No PSC or PSC employee may conduct any law enforcement functions.

2) A licensed PSC shall be responsible for the actions of its employees. PSC officers and employees may be held liable under applicable criminal and civil legal codes, including the Iraqi Penal Code Law Number 111 of 1969 as amended, the Iraqi Weapons Code of 1992 as amended, and the CPA Order Number 3 Weapons Control, except as otherwise provided by law.

3) PSC are subject to and must comply with all applicable criminal, administrative, commercial, and civil laws and regulations, except as otherwise provided by law.

4) PSC must conduct operations following the provisions of the Rules for the Use of Force in Annex A and the MOI PSC Code of Conduct in Annex B.”

The US military, through a contract between the US Department of Defense, and private security companies, assigned tasks of a combat nature, the most important of which was the participation of these companies, including Blackwater, which was protecting the Coalition Provisional Authority in Iraq and which participated in the clashes of the Najaf battle and in the evacuation of American soldiers trapped in the battle using its helicopters, as the company contributed with military support, firing thousands of shells and bombs, which caused civilian panic, even many of them are victims of that company's activity that has shifted from being defensive and preventive to offensive combat.

5.2.3 The Private Military and Security Companies Were Not Subject to The Military Law In Iraq

All the reports that the US Army Commander of the Multinational Forces in Iraq prepared and submitted to the US Congress also acknowledge that private security companies are the second largest military or paramilitary presence in Iraq, as the number of contractors contracted to provide security is more than double the number of US forces and the UK troops stationed in Iraq, making it the second-largest fighting force for the coalition forces, with nearly 8,500 personnel (Towery, 2008).

It must be pointed out here that the direction of such privatization is logical when accompanied by the presence of foreign forces on the territory of any state and the consequent use of private security service providers, does not raise many interferences and complex issues when the United Nations is a party in this situation through the decision making of legalizing the intervention to use the force to support the peace operations, as its member states are willing to contribute voluntarily sending military personnel, civilian police, and civil servants. Therefore, this does not result in many or complex implications, as the United Nations often works to attribute the behavior of military and civilian personnel, specifically to civilian police elements, through a series of guidelines by which they contribute in organizing the leadership of peace support operations in a way that does not entail complex implications related to the violations against human rights that may be committed (Johnston, 2012).

In contrast, in the absence of the United Nations as a party to achieve such assistance in peace support operations, the internal state security will collapse, especially after its occupation or after the end of the occupation, which will pave the way for the private security companies to achieve ample growth in their profits by exploiting the need of the governments of the occupying countries and the occupied countries to establish security, then, it begins to offer its services to the governments in these countries, which was the case with the British government when it contracted with a private security company to protect its embassy in Iraq, later the privatizing of the British and American regular armies by replacing the soldiers with the employees of private security companies begin.

5.3 The Iraqi Legal Regulation of The Private Military and Security Companies

The internal or national legal regulation of the work of international Private Military and Security Companies in Iraq can be observed in Order 17 of the Coalition Provisional Authority, and its continuation in force according to the Iraqi State Administration Law of the year 2004 and the Iraqi Constitution of 2005, as well as the general rules in the Iraqi legal system, which are practically suspended due to the immunity granted to those private international security companies. In addition, the Security Agreement between Iraq and the United States contains clear information about this regulation. However, it has not made significant progress in imposing the mandate of the Iraqi judiciary on those companies.

The internal legal organization of the PMSC in Iraq is recent, specifically needed after 2003, after the change of political system, and the accompanying increased use of these companies in the protection of official persons and institutions, both on the Iraqi and Foreign Sides and at the civilian and military levels. Starting with the CPA memorandum, including the registration requirements for private security companies, and later the order number 17.

The Iraqi State Administration Law of 2004 and the Constitution of Iraq of 2005 that refers to the enforcement of CPA orders until new legislation is enacted to replace them following the law, as well as the general provisions scattered in some relevant Iraqi laws, foremost of which are the criminal law, in addition, the provisions in the security agreement concluded between Iraq and the United States of America (Lanigan, 2006).

Accordingly, the following will address the legal regulation of Private Military and Security Companies at the Iraqi internal level, as follows:

- The Coalition Provisional Authority Memorandum of the Registration Requirements for Private Security Companies.
- Coalition Provisional Authority Order Number 17 (Revised), Status of The Coalition Provisional Authority, Mnf - Iraq, Certain Missions and Personnel in Iraq.
- Coalition Provisional Authority Order Number 17: Status of The Coalition, Foreign Liaison Missions, Their Personnel, And Contractors.
- The Iraqi State Administration Law of 2004, also the Iraqi Constitution for the year 2005.

5.3.1 The CPA Memo of The Registration Due Diligence for Private Security Companies.

After the CPA noticed that many private security companies are operating in Iraq without registration and authorization from the Ministry of Interior and Trade, it issued a memorandum related to the requirements for registering private security companies under Order No. 17 dated 1/1/2004 signed by the Administrative Director of the Coalition Authority. The interim Paul Bremer, that memorandum represented a first and important step in the way of establishing a mechanism for registering private security companies, organizing them, and evaluating their work. The memorandum defines the private security company as a private business that is properly registered by the Ministry of Interior and the Ministry of Trade and seeks to obtain commercial benefits and material profits by providing security services to individuals, companies, businesses, organizations, government, etc. (Dobbins, 2009).

It is the responsibility of the Ministry of Commerce to grant a license to practice the profession under the Companies Law No. 21 of 1997, amended by CPA Order No. 64, to prove that the private security company, upon its request, has been properly registered to conduct its business in Iraq. While it is the responsibility of the Ministry of Interior - the Companies Registration and Evaluation Department, to grant a work permit to the private security company in Iraq upon its request.

The first section and its annexes A and B have organized the binding rules for the use of force by private security companies, their directors, and officials, as well as the rules of conduct that these contracting companies must follow in Iraq (Clapham, Gaeta, Haack, & Prid, 2014).

Regarding the binding rules on the use of force, the procedures granted the private security companies the right to act in self-defense. Those rules required the contracting security forces to fully cooperate with the coalition, the multinational forces, and the Iraqi security forces and not aim weapons against them. They were also prohibited from avoiding or bypassing the checkpoints of the authorities. These rules permit private security companies to use necessary force to the point of using lethal force against people in cases: for self-defense or on behalf of persons contracted to protect them or to prevent threats to civilian lives.

In addition to the preceding, the memorandum rules have required the international private security companies, in general, to use gradual force by adopting some techniques or methods such as a

verbal warning to stop, physical pushing, closing entrances, showing weapons, shooting to remove a threat only. If the weapon is used, aiming bullets must be fired, the innocent people's safety must be considered, and the incident should be reported immediately.

The memorandum emphasized that civilians should be treated with dignity, respect, and humanity and that every effort should be made to avoid injury to them. However, private security companies have been granted the ability to arrest, detain, search, or disarm civilians based on achieving the safety of the contractors on the one hand, or implementing the provisions of the contract on the other hand, provided that civilian detainees are handed over to the coalition, the multinational forces, or the Iraqi police.

The Ministry of Interior is the authority that grants authorization to own and use weapons, and this fact is determined in the contracts concluded with private security companies. The contractors must bear the authorization of weapons and the obligation not to take part in the battles of the coalition and the multinational forces, except in cases of self-defense or for the persons contracted to protect them.

In addition to the above, order 17 has organized a code of conduct that private security companies must follow in Iraq, perhaps the most important of which are:

The pledging to perform operations professionally, honestly, sincerely, accurately, ethically, and with integrity and with good conscience with all clients, complete all operations within the legal and ethical limits, and ensure that all of its employees abide by the code of conduct.

Regarding the registration, evaluation, and licensing, they were organized by the second section of the memorandum. It was prohibited for the private security company to work in Iraq unless it obtained a license to practice the profession, a work permit, and temporary leave. Also, it considered that any private security company that operates without obtaining these licenses would be deemed to be breaching the Iraqi law and liable to prosecution under it (Talmon, 2013).

The private security company must include in its application to obtain a work permit basic information such as a copy of the license to practice its profession, the names of its employees, officials, and directors, proof of the company's registration, and details of the work that it will perform in Iraq.

The third section of the memorandum states that any breaches of the Iraqi law or any other law applied by employees or companies may lead to the Ministry of Interior confiscating part or all the \$ 25,000 guarantee deposited with it or lead to the Ministry of Interior reviewing or canceling the work permit granted to the private security company.

The fifth section of the memorandum stipulates that private security companies shall be subject to account checks from time to time by the Ministry of Interior regarding their operations in Iraq.

The eighth section of the memorandum regulated the restrictions and responsibilities imposed on private security companies, whereby their role is determined by deterrence and not by enforcing the law.

The private security company is responsible for its employees under the applicable criminal law, civil law, the Iraqi Penal Code No. 111 amended, the Iraqi Weapons Law of 1992 Amendment, and CPA Order No. 3 on Weapons Control and others. Private security companies are also subject to applicable criminal laws and civil, commercial, and administrative laws and regulations.

5.3.2 CPA - Order Number - 17, Status of The Coalition Provisional Authority, MNF - Iraq, Certain Missions And Personnel In Iraq

Order No. 17 was submitted on June 27, 2004, and signed by Paul Bremer, Managing Director of the Coalition Provisional Authority. Several definitions were submitted, the most important of which are the following:

Security Services Contract: “a contract for security services provided by Private Security Companies to Foreign Liaison Missions and their Personnel, Diplomatic and Consular Missions and their personnel, the MNF and its Personnel, International Consultants, or Contractors.”

Private security companies: “means non-Iraqi legal entities or individuals not normally resident in Iraq, including their non-Iraqi employees and Subcontractors not normally resident in Iraq, that provide security services to Foreign Liaison Missions and their Personnel, Diplomatic and Consular Missions and their personnel, the MNF and its Personnel, International Consultants and other Contractors.” (Coalition Provisional Authority, 2004).

Order 17 regulates the issue of contractors in Section 4 thereof. In paragraph 2 it emphasized that contractors are not subject to Iraqi laws and regulations in matters related to the clauses and conditions of their contracts, including licenses and registration of employees, activities, and companies, provided that the contracting parties abide by these laws and regulations pertaining to licensing and registration if they participate in business or financial transactions in Iraq (Clapham, Gaeta, Haeck, & Prid, 2014).

It has also been emphasized that the contractors are immune from any Iraqi legal action regarding the works performed by them according to the terms and conditions of the contract.

However, despite the foregoing, Paragraph 4 stipulates that the relevant Iraqi laws must be respected, including regulations, orders, memoranda, and public statements issued by the Administrative Director of the Coalition Provisional Authority.

Section 5 of the order has regulated the issue of waiver of immunity and jurisdiction, as follows:

- The immunity of the multinational forces, the Coalition Provisional Authority, the foreign liaison mission staff, international advisers, and contractors are not in the interests of individuals and can be waived.
- Requests to waive immunity are referred to the sending state and be clear and written to be enforceable. For contractors, requests are referred to the sending state with which the contractor has contracted about the disposition or actions required to waive immunity against it to be enforceable.

As for the lawsuits, taking into account what is stated in Section 5, Section 18 has regulated this issue, stressing that the claims of others shall be submitted and discussed, including those related to loss or damage to property, personal harm, illness, or death, or any other matter resulting from or attributable to the actions or oversights of the Coalition Provisional Authority, the multinational forces, the staff of the foreign liaison mission, the international consultants, the contractors, or any persons employed by them for activities related to the completion of their contracts, whether they are residing in Iraq or not. This damage is not caused by what is related to the military operations. Lawsuits are submitted to the sending state.

It is worth noting that Order 17 will remain active/in force, except with the departure of the last member of the multinational forces from Iraq, or according to the legislation that is fundamentally acceptable and has the force of law, which is confirmed by Section 20 of the order.

5.3.3 Coalition Provisional Authority Order Number 17: Status of The Coalition, Foreign Liaison Missions, Their Personnel and Contractors

The preamble to this order included "*Recalling that under international law occupying powers, including their forces, personnel, property, and equipment, funds and assets, are not subject to the laws or jurisdiction of the occupied territory.*" (Coalition Provisional Authority, 2004)

Section 2 included the following:

The Coalition Provisional Authority, Coalition Forces, and Foreign Liaison Missions and their property, funds, and assets are immune from Iraqi legal procedures.

The staff of foreign liaison missions has immunity from the legal process.

All coalition employees are exclusively subject to the jurisdiction of their home countries, and they have immunity from all local criminal, civil, and administrative jurisdictions from arrest or detention in any form, except by persons acting on behalf of their home countries.

Section 3 stressed that coalition contractors are not subject to Iraqi law or Iraqi regulations in matters related to the terms and conditions of their contracts with Coalition Forces or the Coalition Provisional Authority and that they have immunity from Iraqi legal procedures.

Section 4 specifies the duration of immunity from the Iraqi legal process for acts performed during the CPA's period of exercising its powers.

As for Section 5 related to waiver of immunity and jurisdiction and Section 6 pertaining to claims of rights or obligations on others. It did not deviate from the framework defined in the order as mentioned above in the previous section (Engelhardt, 2007).

5.3.4 The Iraqi State Administration Law Of 2004, And the Iraqi Constitution for The Year 2005

Iraq lost part of its sovereignty when it was placed under Chapter VII of the United Nations Charter and became under international trusteeship¹³. It lost all sovereignty after the year 2003 when it was subject to the occupation of the American and British forces and the allied countries, and then it was subject to the multinational force led by the United States. Then the established authorities sought to restore Iraqi sovereignty, albeit gradually.

In light of the foregoing, the judiciary in Iraq had become incomplete concerning some serious crimes that occur on its territory, or the so-called Iraqi region, as the civilian governor of the dissolved coalition authority Paul Bremer issued Order 17 of 2003 when it stipulated that member of the multinational forces and those working with them would not be subject to the mandate of the Iraqi judiciary.

Immunity is granted to all individuals without exception, even if he is performing a commercial or civil action and not a combat or war action.

This Order 17 of 2003 is still in effect because it gained its legitimacy from the text of Article 26 of the Law on State Administration for the Transitional Period, which states the following:

- “Laws in force in Iraq on June 30, 2004, will remain in effect unless this law stipulates otherwise and until the Iraqi Transitional Government revokes them or amends them according to this law.”
- “Legislations issued by the federal legislative authority will prevail over any other legislation issued by any other legislative authority, in the event of a conflict between them, except for what was stipulated in Article 54 B of this law.”
- “The laws, regulations, orders, and instructions issued by the Coalition Provisional Authority based on its authority per international law remain in effect until they are repealed or amended by legislation issued per the rules, and this legislation shall have the force of law” (Coalition Provisional Authority, 2004).

Then, the enforceable constitution of Iraq for the year 2005 gave legitimacy to the dissolved Coalition Provisional Authority Order No. 17 of 2003 when it stipulated in Article 126 that the

¹³ It take place when United Nations granting a country or countries sovereignty over a specific area of land.

legislation in force shall remain active, unless repealed or amended, in accordance with the provisions of this constitution—noting that the Order 17 refers to all the citizens of the countries that participated in the multinational forces and were not limited to the American forces or individuals who are American citizens.

This means that the security agreement signed by Iraq with the United States of America. However, it amended some of what is related to the jurisdiction, this amendment does not include the rest of the individuals who are citizens of other countries because Order 17 is still in effect.

The Iraqi jurisdiction represents the application of the law to all individuals who are present on Iraqi lands, which is called the regional jurisdiction of Iraqi law under the provisions of Article 6 of the Iraqi Penal Code No. 111 of 1969, as amended, which states the following:

The provisions of this law shall apply to all crimes committed in Iraq, and a crime committed in Iraq shall be considered if:

If only one of the actions that formed, it occurred on its territory;

Or if its results were achieved on his territory.

Or it was wanted to be achieved on its territory (Iraq Ministry Of Justice, 1969).

Because the principle of territoriality is consistent with the boundaries of the territory subject to state sovereignty, the law applies to every crime committed in this region, whether the perpetrator is a national or a foreigner, and whether the victim is a national or a foreigner, and whether the interest of the state that has sovereignty over the region is threatened or the interest of a foreign state is threatened.

5.4 The Iraq Mission of The United Nations “Report of The Working Group On The Use Of Mercenaries As A Means Of Violating Human Rights And Impeding The Exercise Of The Right Of Peoples To Self-Determination.”

Recently Iraq has been a key area of operations for PMSCs. A succession of high-profile instances involving such firms, notably the 2007 shooting in Nissour Square¹⁴, have drawn attention to the harmful effects of their operations on Iraqi human rights. Such occurrences and reports of abuses in other regions of the world have motivated efforts to hold security organizations and their staff accountable for human rights crimes.

The Working Group discovered through its mission to Iraq that the frequency of events involving the private military and security firms has declined in recent years. This might be due to a number of factors:

- 1- Their military-related actions in Iraq are dwindling.
- 2- attempts by the United States of America to strengthen monitoring of its private security contractors working in Iraq.
- 3- More control by Iraqi authorities.

Despite the decline in events, Iraq continues to contend with the CPA's Order 17 granting legal protection to private security contractors. This protection shielded them from being prosecuted in Iraqi courts. Prosecutions in the home nations of such firms have also failed. The case against the accused culprits is still ongoing in US courts as of the date of this report. So yet, no other accused culprits have been brought to justice. The Working Group is profoundly concerned about the absence of accountability for breaches that occurred from 2003 - 2009 and noted that the victims and their families had suffered greatly as a result of such crimes.

The Status of Forces Agreement¹⁵ in 2009 between Iraq and the United States includes a clause reducing the immunity of some private foreign security contractors in Iraq, which is a positive step. However, it is unclear if this revocation of immunity applies to all contractors employed by

¹⁴ The Nissour Square incident, is a massacre that took place in Baghdad by security forces from the Blackwater Company, in which 14 Iraqis were killed and 20 wounded.

¹⁵ An agreement between a host country and a foreign government stationing military personnel in that country is known as a status of forces agreement (SOFA). SOFAs are frequently included in comprehensive security agreements, along with other forms of military agreements.

the US government and whether it is completely implemented in Iraqi courts. This legal issue should be resolved as soon as possible, according to the Working Group.

The licensing mechanism for private military and security organizations (PMSCs) operating in Iraq is addressed in Coalition Provisional Authority Memorandum 17. Even though the CPA was disbanded some years ago, the Iraqi government's control of PMSCs is still based on this memorandum. This, according to the Working Group, is not a solid foundation for regulation. Iraq has drafted legislation to regulate security firms, which has been in the works since 2008. The Working Group recommended the Iraqi government take the necessary efforts to ensure that PMSCs legislation is passed as soon as possible.

The report reaffirmed that the State's first role is to provide security to its citizens. Subcontracting PMSCs poses a risk to human rights, and the Iraqi government must stay alert and invest the necessary resources to guarantee that PMSCs, whether foreign or national Iraqis, are strictly controlled and protect the Iraqi people's human rights.

The Working Group on the use of mercenaries as a method of breaching human rights and obstructing the exercise of peoples' right to self-determination visited Iraq from June 12 to 16, 2011, at the invitation of the Iraqi government. The Working Group was represented by two of its members, José Luis Gómez del Prado and Faiza Patel, in accordance with standard procedure¹⁶.

The Working Group is mandated by the Commission on Human Rights resolution 2005/2 and the Human Rights Council resolution 7/10 to monitor mercenaries and mercenary-related activities in all of their forms and manifestations around the world, as well as to investigate the effects of private companies providing military assistance, consulting, and security services.

A private military and/or security company (PMSC) is defined in this report as a business entity that delivers military and/or security services to physical individuals and/or legal entities for a fee. Strategic planning, reconnaissance, investigation, ground, marine, or air surveillance, human or unmanned flight operations, satellite surveillance, any sort of information transfer with military applications, material and technological support to armed forces, and other related tasks are all

¹⁶ "The Working Group met with representatives from the Ministries of Human Rights, Interior, Defense, and Justice, members of the High Judicial Council, and members of the Council of Representatives' Committees on Defense and Security and Committee on Human Rights during its visit to Baghdad (the Parliament of Iraq)."

examples of military services. Armed guarding or protection of buildings, installations, property, and people, any type of knowledge transmission with security and police implications, creation and implementation of information security measures, and other related operations are all examples of security services.

5.4.1 Private Military AND Security Companies IN Iraq

5.4.1.1 The situation

The American Government, which has the greatest military and diplomatic force in Iraq, is the most important private security customer. The US has hired PMSCs to offer a wide range of military and security services in Iraq throughout the US-led military campaign that began in 2003 and continued beyond. The United States Department of Defense continues to be the primary contractor for PMSCs. Other stakeholders, such as the Department of State and USAID, are increasing their need for PMSC services as the US Armed Forces gradually leave Iraq. Several reasons contribute to this need, including a lack of institutional development in law enforcement, the ongoing condition of widespread violence, and increased US Embassy activity in Iraq. The difficult security environment in much of the nation also forces private firms, which are becoming more active in Iraq, to use PMSCs.

The Group was also advised the UN not to utilize PMSCs in Iraq at this time. However, in its report, the Working Group mentioned that humanitarian groups, non-governmental organizations (NGOs), and certain journalists employ PMSCs to secure their safety while working in Iraq.

Despite modest progress since 2007, when violence against civilians peaked, Iraq's general security situation remains difficult. The usage of improvised explosive devices (IEDs) by rebel and terrorist organizations is responsible for many civilian deaths. Although overall violence has declined since 2007, homicides, terrorist activities, and extrajudicial executions appear to be on the rise. In 2010, at least 71 people were assassinated, according to UNAMI.¹⁷

¹⁷ According to the UN Assistance Mission in Iraq (UNAMI), about 3,000 people were killed and almost 14,500 were injured in 2010. These estimates are fewer than those recorded in 2007, when about 18,000 people were supposedly murdered, but they are nonetheless substantial.

Iraqi security forces will assume complete and entire responsibility for maintaining the safety and security of all Iraqi residents and foreigners in the nation as US soldiers eventually depart. Various parties have highlighted concerns about the lack of training of Iraqi security personnel, institutional issues, and a lack of political leadership (since there have been neither a Minister of Defence nor a Minister of the Interior since the March 2010 elections). A continuous and even expanding involvement of PMSCs in Iraq fills this gap in law enforcement, which is a cause for worry.

When Iraq was examined by the Human Rights Council as part of its universal periodic review in February 2010, concerns were expressed about the impact of PMSCs on human rights. The Council advised Iraq to ensure that any collaboration arrangement signed with other States or contracts concluded with private security organizations ensure the responsibility to respect international standards for the protection of human rights and provide an effective framework to supervise the actors involved in the compliance with these standards. Accordingly, Iraq agreed with this proposal.

5.4.1.2 Private Military and Security Companies Distribution in Iraq

The Ministry of the Interior notified the Working Group that 117 PMSCs are now licensed to function in Iraq or are in the process of renewing their license, in line with the mechanism initially established in 2004 by Coalition Provisional Authority (CPA) memorandum 17. There are 89 Iraqi enterprises and 28 international enterprises among them.

According to the Ministry of the Interior, around 35,000 armed workers are working for approved PMSCs (Schwartz, 2011). The Iraqi Police had 303,000 agents, and the Iraqi Federal Police had 45,000 as of March 2011.

The US Departments of Defense and State and USAID have been the major clients of PMSCs in Iraq since 2003 (Cotton, 2010). Between 2003 and 2008, 77 PMSCs had direct or subcontracts with the Department of Defense, the Department of State, and USAID, according to the Special Inspector General for Iraq Reconstruction. They provided static security (guarding locations), escorting persons (personal security details), safeguarding convoys, as well as operational coordination, intelligence analysis, security advising, and planning. A total of 233 PMSCs were also hired to perform a variety of security services. Since 2003, these 310 firms have held contracts worth about \$6 billion. The top ten PMSCs accounted for around 75%.

Over the previous few years, the number of PMSC personnel employed by the US government has decreased. According to the Department of Defense, as of December 2010, there were 8,327 private security contractor troops working for the Department in Iraq, down from a peak of 15,279 in June 2009. 10 At that time in 2010, there were 47,300 American forces in Iraq (Schwartz, 2011).

The Report stated that there are an extra 3,500 workers working for PMSCs contracted by the Department of State in addition to those employed by PMSCs contracted by the Department of Defense. The Department employs PMSCs under the Worldwide Appropriate Protective Contractual agreement. They offer static security for US diplomatic buildings as well as protection for American diplomats and foreign heads of state. The number of private security contractors employed by the Department of State is projected to rise to as many as 5,500 in order to provide security to US diplomats once their soldiers leave (Schwartz, 2011, p. 8). The Working Group has seen inconsistencies between the data available for Department of State contractors in this respect.

Some PMSCs are also hired by the Iraqi government to offer security services. For example, the security firm G4S has a substantial contract with the Iraqi Ministry of Transport to handle security at Baghdad International Airport, according to the report. However, the Working Group stated in its report that they did not get precise information on the type and amount of security services that the government had outsourced.

Many other entities have also hired private military and security companies. Some PMSCs have apparently been hired by the UK Foreign Office and Department for International Development in Iraq. In the report, the Working Group mentioned that private military and security agencies are increasingly being hired by the private sector, including multinational oil and gas firms, as well as non-governmental groups.

The majority of the companies operating in Iraq previously came from the United States or the United Kingdom. This has changed in recent years, according to the Working Group. There has been an increase in the number of Iraqi-registered companies, which now account for the vast majority of PMSCs licensed in Iraq, according to figures provided by the Ministry of the Interior, 89 out of 117. It's unclear how many of the companies labeled as Iraqi are actually owned and managed by Iraqis. Some of these businesses, like Sabre International, advertise themselves as "Iraq-registered, foreign-owned and managed." Others appear to be controlled and run by Iraqis.

According to the report, The Ministry of the Interior stated that more than 35,000 PMSC workers in Iraq included “23,160 Iraqis and 12,672 foreigners.” In recent years, the percentage of Iraqi employees has risen considerably. Comparing to Afghanistan, which the Working Group visited in April 2009, the vast majority of the staff, %85, were Afghan citizens (Human Rights Council, "Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination", 2010).

Third-party nationals, on the other hand, dominate several contracts. For example, of the 8,327 security contractor staff employed by the Department of Defense, “%89 are third-country nationals, 9% are Americans, and only 1% are Iraqi National” (Schwartz, 2011, p. 10).

According to the report, Third-country nationals were recruited from a variety of nations, including Uganda, South Africa, Sri Lanka, Peru, Nepal, Fiji, and other South American countries. According to sources, PMSCs in Iraq employ individuals from more than 30 nations. Despite American attempts in 2009 to raise the number of security personnel hired locally, this proportion actually declined between 2009 and 2010, falling from 13% to 1%. Only 113 Iraqi nationals were employed by PMSCs contracted by the Department of Defense starting December 2010. Throughout this respect, the report stated that while US-contracted PMSCs primarily employed foreigners, other PMSCs mostly hired Iraqis (Schwartz, 2011).

The report stated that the Iraqi government has lately requested enterprises to terminate the employment of African and Asian workers in an effort to resolve the country's unemployment problem. Foreign firms' licenses, including security businesses', that hire these foreign personnel will be canceled. The reports and reminded the State of its international commitment to implement all rules in a nondiscriminatory way, which is enshrined in international treaties such as the Convention on the Elimination of All Forms of Racial Discrimination, to which Iraq is a signatory.

The Private Security Companies Association of Iraq was founded in 2004, aiming to debate and resolve issues of common interest and concern to the Iraqi security sector. The Association is made up of more than 40 Iraqi and foreign firms. Its members must be licensed or in the process of receiving a license from the Iraqi Ministry of the Interior (Human Rights Council, 2011).

5.4.2 The Human Rights Impact of The Private Military and Security Companies in Iraq

5.4.2.1 The PMSC Effect on The Local Population

PMSC employees were involved in a series of high-profile events involving the killing and wounding of Iraqi civilians between 2003 and 2007. Although some involved car accidents, others were marred by charges of unjustified shootings, torture, and harsh treatment of captives.

Titan Corporation and CACI International employees are accused of torturing and inhumanely treating inmates at Abu Ghraib jail. While some US military personnel have been convicted due to the Abu Ghraib events, no contractors were charged until the report date (Human Rights First, 2008).

Blackwater, a company also had a significant presence in Iraq, has been linked to many human rights violations. Employees of Blackwater were involved in 195 incidents involving gun discharges between January 2005 and September 2007. They were the first to fire in a vast majority of these occurrences (84%). Significant Iraqi deaths and property damage happened from these instances. The two instances involving Blackwater workers that drew the most attention garnered the most attention (U.S Committee on Oversight and Government Reform, 2007).

Raheem Khalif Hulaichi, the bodyguard of Iraqi Vice-President Adil Abdul-Mahdi, was reportedly shot and killed by a Blackwater employee called Andrew Moonen on December 24, 2006. The incident took occurred in the Green Zone, near the Prime Minister's residence. Moonen has flown out of the country right away, sacked from his job, and went to work for another firm (Human Rights First, 2008, p. 46). A US prosecutor determined on October 18, 2010, that there was insufficient evidence to indict him ("United Nations Assistance Mission for Iraq," 2010).

Nissour Square was likely the most high-profile incident employing PMSCs: on September 16, 2007, Blackwater personnel killed 17 Iraqi civilians and wounded many more at a busy traffic roundabout in Baghdad. According to sources, Blackwater workers thought they were being attacked by rebels with small arms fire, so they retaliated with machine guns, grenade launchers, and snipers (Cotton, 2010, p. 26). Other stories, on the other hand, claim that Blackwater employees started firing first, then fired indiscriminately (UNAMI,2007). They indicated clear their concerns with the situation at the time.

Blackwater was not the only private military contractor engaged in civilian killings. Employees of Triple Canopy, for example, were accused of shooting and killing Iraqi civilians for no obvious cause other than "sport" in 2006. They were never charged with anything (Cotton, 2010). Unity Resources Group, another firm, was also implicated in two events in Baghdad, one in March 2006 when an Australian national was shot and the other in October 2007 when two Iraqi women were killed.

According to the research, the frequency of events involving private military and security organizations has declined dramatically in recent years, with some interlocutors claiming that there have been no instances since 2009. This might be due to a number of causes, including a reduction in their military-related activity in Iraq, tighter supervision by Iraqi authorities, and US efforts to tighten control of private security contractors operating in Iraq (Human Rights Council, 2011).

According to estimates from the UN Assistance Mission for Iraq, the number of civilians killed by PMSCs has dropped since 2007. At least five instances purportedly using PMSCs and resulting in the death of Iraqi civilians occurred in the second half of 2007, including the Nissour Square incident. Three instances involving Iraqi citizens were recorded in 2008, with PMSC workers allegedly killing or injuring them. Only one killing involving PMSC personnel was reported in 2009, and it included the killing of three PMSC personnel by some other PMSC worker. Only one civilian death involving PMSCs was recorded by the UN Assistance Mission for Iraq in 2010: on July 8, 2010, some PMSC workers allegedly began firing on a car on the way to Baghdad airport, murdering a civilian (UNAMI, 2010).

As reported, the PMSCs staff have an influence on the state populace that goes beyond civilians' fatalities and injuries. PMSC staff accessed or even damaged private property, ran their cars irresponsibly and caused traffic accidents, and acted in a culturally insensitive manner toward the local populace. According to a study of American military troops, some believed that military contractors in Iraq were menacing, arrogant, and even hostile (Cotton, 2010, p. 26). As per a study of US diplomatic employees, the majority of respondents said that armed contractors lacked understanding and compassion for Iraqis and their culture (Cotton, 2010, p. 30). The local community was subjected to provocations by PMSC workers, who, for example, would point their firearms at individuals at checkpoints.

The report indicated that the Iraqi community did not distinguish between PMSC staff and US military forces. This ambiguity was exacerbated during the early years of the American presence when PMSCs typically lacked distinguishing markings. As a result, PMSCs appeared to have a detrimental influence on Iraqis' views of the US Army and coalition troops in general.

5.4.2.2 Human Rights Violation Control

Following the 2007 incident in Nissour Square, US officials examined and improved the reporting protocols and supervision systems for PMSCs working for them in Iraq. Following the incident in Nissour Square, the Department of State mandated the installation of video-recording devices in all vehicles used by PMSCs when executing tasks that directly assist the Chief of the US Operation, for example, transportation of State Department officials, ambassadors, other officials, legislative delegations, and other political figures. To maintain cooperation, PMSCs are expected to transmit information on their movements to US forces.

Besides the strict registration requirements, the Iraqi government had taken further steps to supervise PMSC personnel's movements. The report indicated that the Ministry of the Interior requires PMSCs to give a three-day notice for each convoy movement and to provide complete mission details, including the route, vehicles, and weaponry to be employed.

Also, the Iraqi government mandated that all PMSCs install cameras on all cars in convoys as of March 2010. Monitoring cameras must now be installed in all company cars, and film of any event must be stored so that it may be watched at any time. According to Ministry of the Interior guidelines, several contractors reported that the Ministry of the Interior has never verified their video recordings.

Iraqi officials stated that a satellite-based monitoring program for PMSC vehicles is being considered. The Iraqi authorities expect that by implementing this scheme, the positions of PMSC trucks will be established using GPS equipment installed within the cars. The location of the vehicles would be reported to control centers overseen by Iraqi authorities. From the control rooms, PMSC staff working in the cars could be reached.

According to Government guidelines, every incident or crime that occurs during the firm's operations must be reported to the Government promptly. The Working Group has asked for data

from many occurrences submitted to the Government and how these complaints have been addressed, but no response has been received. While there have been multiple incidents where contractors fired at Iraqi civilians from a moving vehicle and then escaped (U.S Committee on Oversight and Government Reform, 2007, p. 2), officials from PMSCs told the Working Group that their workers are expressly instructed to stay at the scene of any event until the authorities come and examine the incident area.

The UN Mission was unable to get clear information on how local residents reported human rights breaches involving the contractors to the authorities. According to the report, the citizens did not report the incidents to cause them to have limited trust in the justice system.

Generally, the report indicated that both the US government and Iraqi authorities had made substantial headway in establishing up procedures to supervise the operations of PMSCs. The Working Group did not obtain enough information concerning the reporting processes for events using those companies or genuinely offer the civilian population a viable remedy method.

5.4.3 Victims' Compensation and The Accountability Measures

PMSCs hired by the US government and operating in Iraq were exempt from Iraqi legal proceedings until 2009, according to Coalition Provisional Authority Order 17. Therefore, none of its personnel could be penalized in Iraq for abuses of Iraqi civilian rights. Such matters, on the other hand, should have been brought before American courts. Accordingly, in its report, the Working Group stressed the US government's responsibility to respect and protect the rights enshrined in the International Covenant on Civil and Political Rights for those living within its authority but beyond its borders. This includes the responsibility to investigate, penalize, and offer adequate remedies to victims of violations committed by State-hired contractors (Montreux Document, 2008).

The Department of Justice attempted to prosecute five Blackwater workers for their role in the Nissour¹⁸ Square killing in December 2008 under the Military Extraterritorial Jurisdiction Act of

¹⁸ The Nissour Square Massacre occurred in Baghdad, where 17 Iraqis were murdered and 20 were injured by security troops from the Blackwater Company.

2000. The lawsuit was dismissed by the Federal District Court of Columbia on December 31, 2009, on the grounds that the evidence was inadmissible under the US Constitution. The case was reinstated in April 2011 after the Court of Appeal Circuit found that part of the evidence was still acceptable on appeal. The case against the suspected culprits is still ongoing in American courts four years after Nissour Square. Despite this, the report points out that there were no prosecutions in American courts for numerous other crimes in Iraq before 2009, no one was made responsible.

The Report recognizes that before 2009, the government of Iraq could only take limited legal action against the contractors accused of human rights crimes against Iraqi citizens. Iraqi authorities, on the other hand, have taken action against Blackwater, which is widely recognized as one of the principal perpetrators. The government of Iraq ordered Xe, previously Blackwater, to leave Iraq within seven days, along with all of its staff, later. Iraqi officials reported that they kept a list of Xe workers in order to prevent them from being employed by other PMSCs in Iraq. According to further evidence, some 250 former Blackwater staff stayed in Iraq and were contracted with

Staff of the Blackwater Security Company began firing on Iraqi citizens at Nisour Square in Baghdad on September 16, 2007, killing 17 and injured 20. Iraqis were outraged, and ties between Iraq and the United States were strained as a result. Four Blackwater personnel were prosecuted in 2014. One of the workers was found guilty of premeditated murder in a US federal court, while the other three were found guilty of manslaughter with guns. Blackwater guards said that their military convoy was attacked, and that in order to defend the convoy, they fired at the assailants. The death, according to the Iraqi government and an Iraqi police investigation, was not warranted. The death, according to the Iraqi government and an Iraqi police investigation, was not warranted. Blackwater's permission to operate in Iraq was provisionally revoked the next day.

The accident resulted in "the fall of innocents," according to the State Department. According to the Washington Post, a military assessment "supported the Iraqi government's suspicions that Blackwater was at blame, and the Iraqi government promised to punish Blackwater." The disaster prompted five investigations, including one by the FBI, which revealed that at least 14 of the 17 victims slain by the guards were slain for no apparent reason.

The US prosecuted five Blackwater guards with 14 counts of manslaughter, 20 counts of attempted murder, and weapons abuse in December 2008, but on December 31, 2009, a US court dropped all charges on the grounds that the case against the Blackwater guards had been closed. It was built incorrectly and gave immunity to company guards.

Because of this decision, Prime Minister Nuri al-Maliki has expressed his displeasure. The manslaughter allegations against Paul A. Slough, Evan S. Liberty, Dustin L. Heard, and Donald W. Ball were re-examined in April 2011 by the US Federal Court of Appeals, which heard secret and confidential testimony. The court stated, "We conclude that the conclusions of the US judge are founded on an incorrect understanding of the law." Fifth Guard was found not guilty of premeditated murder and attempted manslaughter, but the sixth convict Jeremy Ridgeway was found guilty of premeditated murder and attempted manslaughter. Blackwater settled a lawsuit brought on behalf of six of the victims for an undisclosed sum on January 6, 2012.

Slatten was convicted guilty of first-degree murder by a jury in Federal Court on October 22, 2014, while three other guards, Slough, Liberty, and Heard, were convicted guilty of all counts (premeditated murder and use of a weapon to commit a violent crime). Slatten was condemned to life in prison on April 13, 2015, while the other three guards received 30-year sentences. The perpetrators of this massacre were granted a presidential amnesty for the killings on December 23, 2020. Trump's amnesty for the massacre's perpetrators, according to the UN, is a violation of international law.

different companies. It was not possible to determine if the remaining individuals were involved in human rights breaches.

Despite the fact that the contractors cannot be convicted in Iraqi jurisdiction for occurrences that occurred prior to 2009, the Iraqi Government was notified of each occurrence and might initiate an inquiry to explain the circumstances and determine the individuals involved. Iraq government informed the Working Group the PMSCs, and the United States Officials were hesitant to provide evidence on criminal investigations. Regardless of the other parties' alleged lack of transparency, the Iraqi government may have communicated the findings of domestic inquiries with the US government in a more structured manner to aid convictions in their jurisdiction. In this context, the Iraq government might inquire about the condition of proceedings in the U. S. and, on behalf of the individual, demand that charges be instituted if they are not. Although Iraq officials have interfered with U.S. officials in the Nissour square incident, the United Nations Mission has received no evidence that they have addressed additional incidents with the US officials in a structured manner.

Between 2003 and 2009, the cumulative impact of the Coalition Provisional Authority granted immunity, and the refusal to prosecute the contractors in their home countries resulted in impunity for human rights crimes against Iraqi civilians. The Working Group is gravely concerned about the continuous inability to hold those responsible for such crimes accountable and to provide victims and/or their families with adequate redress. Civil lawsuits have been brought by some of the victims in U.S. courts. Personnel of the PMSC, on the other hand, should be punished in US courts for any offenses perpetrated in Iraq.

The Iraqi courts have been able to charge the contractors starting January 1, 2009, pursuant to the stipulations of the Framework Agreement. While Iraq authorities have had jurisdiction over US contractors working in Iraq since 2009, there is no particular Iraqi legislation governing PMSCs. Hence such companies may only be tried under the Iraq Criminal Code of 1969.

In 2009, the Iraqi government stated that five U.S contractors were detained as part of an inquiry into the murder of another contractor¹⁹ (Mason, 2009). This arrest does not appear to have resulted in any charges being filed.

¹⁹The victim was of American nationality, James Kitterman.

Since 2009, just one conviction has been undertaken in Iraq, according to the report. Daniel Fitzsimons²⁰ (UK) was found guilty of murdering Paul McGuigan (UK) and Darren Hoare (Australia), as well as wounding an Iraqi security guard. He was condemned to 20 years in jail in February 2011 (Davies, 2011).

Despite the fact that the number of occurrences conducted by contractors has fallen significantly since 2009, certain occurrences have happened. In July 2010, the United Nations Assistance Mission for Iraq received information of civilian death committed by a contractor. During its mission, the Working Group inquired about the event and its aftermath, but no information was provided suggesting that any contractors had been charged in this matter.

In circumstances of criminal death, injuries, or substantial property damage, the U.S authorities asked the Private Military and Security Companies to provide reimbursements to victims and their families as quickly as feasible. However, it makes no suggestion as to what a reasonable payment sum might be. The report indicated that the US Embassy pays families whose lives have been disrupted by their contractors' actions, but it did not get specific information on how many such payments have really been given as of now²¹.

In 2009, Iraqi law was passed to compensate casualties of military operations, armed forces errors, and terrorist attacks. The law goes into effect in 2003 and is retrospective. However, there is no clear information on if or when the casualties/victims, or their families, of incidents conducted by contractors, benefited from this statute.

²⁰ Daniel Fitzsimons was a UK national working for Amor Group which known now G4S.

²¹ The report indicated that the compensation made by the U.S embassy included \$10,000 for a fatality, \$5,000 for an injury, and \$2,500 for destruction of property

CHAPTER 6: CONCLUSION

- The International legal agreements and documents do not imply any direct civil or criminal liability for private military and security companies at present. However, it is not unlikely that such responsibility will take place shortly. The international sense of the extent of corporate dominance in the world, and the seriousness of the violations committed, led many to call for the necessity of drawing legal boundaries for these companies and removing the veil behind which they hide to avoid their crimes. Perhaps the draft international agreement to regulate the work of private military and security companies will carry with it explicit provisions requiring companies to be held accountable at the international level.
- In the absence of international mechanisms that acknowledge the corporate and moral liability of companies and persons for their violations of human rights rules, only national judicial bodies remain before the victims, which, in the case of private military and security companies, are usually suspended due to armed conflicts, which are the natural environment for the work of these companies, with noting that the notion of legal responsibility of legal persons has not yet fully supported by the legal systems, whether in civil or criminal terms.
- The employees of private military and security companies cannot be considered mercenaries, yet their status as combatants or non-combatants remains uncertain and raises many legal problems. However, what is certain is that international humanitarian law obligates all groups, especially combatants, to respect the rules and customs of war.
- The responsibility of the employees of PMSCs depends on defining their legal status precisely in international documents and agreements and ending the ambiguity surrounding them. However, until this happens, all possible efforts must be made to prevent violations of international humanitarian law the contractors at the domestic and international levels and to put an end to the abuses committed by the employees of private military and security companies because of their stay in this gray zone will make them reassured that they will not be penalized for their violations and abuses, but rather will encourage them to more violations, and allow them to cross the lines without worrying about their violation of international laws and norms, as long as there are no judicial bodies that would take charge of trying them and inflicting the most severe penalties against them.

- Private Military and Security Companies is A term that includes two types of companies: companies that provide security services and others that provide military services; But the study used one term that includes these two sectors of companies due to the great overlap and intermingling between their activities and the inability to separate the activities of these companies during armed conflicts.
- It was necessary to explore the international instruments that dealt with the issue of human rights related to the corporate sector in general, to highlight the legal framework that governs the work of private military and security companies. And it became clear that calls for the determination of direct corporate responsibility at the international level are increasing and that the idea of direct international legal speech to these entities is increasing. It is starting to become somewhat acceptable.
- It is evident that the private military and security companies' sector is getting great international attention, and this is evidenced by the formation of a special UN team to study the impact of these companies on human rights, which reached a possible draft international agreement to regulate this sector.
- There are remarkable international efforts to put an end to the violations of these companies at the international level, most notably the "Montreux" document proposed by the International Committee of the Red Cross and the Swiss government, in addition to the attempt of private military and security companies to self-regulate their work through the International Code of Conduct adopted in 2010.
- At the national level, some countries sought to regulate the activities of private military and security companies following internal legislation. Still, it was clear that there was a difficulty in formulating legal texts to restrict the activities of these companies.
- International law has not yet recognized the international legal personality of companies, nor does it impose any direct international obligations on them, and therefore it is not possible to talk about their responsibility internationally. On the other hand, international law obliges states to ensure that companies respect international conventions and to ensure that they apply human rights provisions.
- To determine the responsibility of the employees of PMSCs, it is necessary first to know their legal status during armed conflicts and to classify them within a specific category of international humanitarian law.

- The description of mercenaries cannot be applied to all the PMSCs employees, as it depends on the circumstances of each employee. For an employee of a private military or security company to be described as a mercenary, all the conditions mentioned in the definition of a mercenary must be met by international legal instruments.
- The study presented examples of the practices of the employees of the private military and security companies. It was found that the perpetrators were not held accountable for various reasons, including the immunities granted to them by the parties that employ them and the weakness of the sanctions and deterrence system of the state and the companies themselves, which encourages these employees to commit more transgressions.
- As the preceding discussion indicates, PMSC legislation in Iraq has made great strides from the condition that existed from 2003 to 2009. Both the US administration and Iraqi officials have moved to tighten supervision over PMSCs, prompted by public anger after the massacre in Nissour Square in 2007 and a widespread perception among the Iraqi populace that contractors were operating with impunity.
- The drop in the frequency of events involving contractors in recent years is likely due to these actions, as well as a reduction in contractors' military-related activity.
- Responsibility for violations of human rights perpetrated between 2003 and 2009 is still unattainable. Indictments in Iraq were barred during this time due to the immunity granted to PMSCs staff in Iraq. This put an even higher burden on the home countries of the contractors to guarantee that perpetrators are prosecuted. Regrettably, such was not successful.
- The investigation of the Nissour Sq massacre, which sparked most of the PMSC legislation, is still stuck in administrative fights in U.S. courts.
- Between 2003 and 2009, there had been a lack of responsibility for breaches perpetrated, and the victims' relatives are still seeking justice.
- The position of the Iraqi Forces Framework agreement revocation of immunity may not encompass all foreign contractors. In addition, it is unclear if the elimination of immunity is effectively implemented in the Iraqi judiciary. It is strongly recommended that this legal position be resolved as soon as possible.
- There is no clarity about the legal status of PMSCs regulation in Iraq. This includes any company permitted immunity under CPA Order 17 or other settlements or legal permits.

- The PMSCs interventions have affected the sovereignty of national states, this is due to the usage of the PMSCs as political tool, and a cover, by some states to intervene widely in the internal affairs of other national states. This influence is found to greater in the situation of weak states comparing to the strong ones. This interference has affected the relations between starts, especially on the long term.

6.1 RECOMMENDATIONS

- According to a formal international legal text, private military and security companies should be controlled internationally to be distinguished from any other term.
- The international community must take the issue of the corporate sector and its relationship with human rights more thoughtfully and effectively by establishing international monitoring mechanisms over companies accused of committing human rights violations.
- There is a need to adopt the guidelines proposed by the Special Representative of the Secretary-General of the United Nations on human rights and transnational corporations and other business enterprises on the broadest international scale possible.
- There is a need for states to adopt the international convention draft regarding private military and security companies, proposed by the “Working Group on the issue of using mercenaries as a means to impede peoples' right to self-determination,” or any other legal instrument proposed to regulate the activities of these companies and to activate it with a model law to regulate the private military and security companies sector States emulate it in their domestic legislation.
- It is recommended that countries adopt internal legislation that deals with private military and security companies, especially the countries with internal conflict, which are the largest theater of operations for these companies.
- States should keep pace with the development that has taken place in the international community requires recognition of the international legal entity of transnational corporations to hold them legally responsible for their breach of international obligations in the field of human rights.
- The study recommends amending the provisions of international humanitarian law to harmonize the development that has occurred in recent years with the emergence of new

groups on the battlefields—private military and security companies. In the meantime, the definition of mercenary contained in international treaties should be reconsidered to include this new category.

- Private military and security companies must take all the necessary measures to ensure that their employees respect the rules of international humanitarian law, sign the International Code of Conduct for Private Military and Security Companies, and respect and activate the principles.
- The states, international governmental and non-governmental organizations, and other international bodies that contract with private military or security companies should set penal conditions to penalize contractors who violate international law rules instead of establishing immunities and legal privileges in their favor.
- All the states contracting with PMSCs must strengthen supervision systems, including screening requirements for the contractors.
- Ensure that contractors accused of human rights breaches are thoroughly investigated. Those responsible are brought to justice as soon as possible, especially for any crimes in Iraq. Wherever possible, concerned nations should solicit Iraqi authorities' assistance in gathering the evidence needed to act against and gain convictions.
- The Iraqi government must guarantee that occurrences involving fatalities committed by PMSC workers are investigated promptly, that those involved are prosecuted, and that suitable measures, such as compensation, are provided to the victims or their relatives.
- There are weaknesses in the Iraqi monitoring and reporting procedures in place for the contractors. The government should provide adequate funding and staff to all the mechanisms which are responsible for these processes.
- There should be strong Iraqi legislation concerned about the PMSCs, that can replace the Coalition Provisional Authority, Order 17.
- The states should start taking measures to guarantee that capacity-building operations are prioritized, especially in war and post-conflict circumstances (like Iraq). Local police departments are taught to uphold human rights norms.
- The Iraqi feedback and complaint mechanism about the PMSCs violations is not efficient, the Iraqi government must create an impartial, transparent, and easily accessible complaints process for residents to report human rights breaches involving PMSCs.

- The Iraqi government should ascertain the passage of laws governing PMSCs. After the legislation is passed, the government should take the appropriate steps to guarantee that it is fully implemented.
- The Iraqi government should indicate if all PMSCs functioning in Iraq, such as those serving embassies, are subjected to the governmental internal licensing system.
- The Iraqi administration must also assist with appropriate national authorities to urge them to investigate contractors involved in human rights breaches in Iraq, especially during the immunity time.



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