

Privatization of Armed Conflicts and International Humanitarian Law

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Abstract- From earlier times Private Military Companies (PMC) have become a popular phenomenon in armed conflicts around the world. However thus far, International law have averted from creating a comprehensive legal framework that is especially needed on recognizing the status of people who provides services under PMC to uphold accountability. Today the International community has laid down several International documents with regard to the subject matter, focusing on responsibility and good practice of the PMCs. However, a question arises on the legality of these documents. PMCs are today playing its role, which has attracted the attention of the International community for the reason of their recent activities around the world. Therefore there is a need of adopting a new legal phenomenon addressing the activities of the PMCs with respect to the laws of International Humanitarian Law (IHL). In light of that, this paper will focus on the overview of the existing International laws with regard to PMCs. It will also critically analyse the existing International theories and documents in relation to the effects it would have on PMCs, with a special reference to its accountability and criminal responsibility. In this study qualitative information was used for the purpose of critical analysis. Based on such analysis both pros and cons were recognised. As a result it was discovered that there is a necessity to take initiatives to create an inclusive International framework that binds all participants of armed conflicts with reference to principles of IHL.

Keywords— International Humanitarian law, Private Military companies, Armed conflicts, Criminal responsibility

I. INTRODUCTION

The concept of war can be traced down over decades and throughout the time periods its actions are defined by different concepts, customs, laws and actions of war. In warfare outsourcing military services have been occurred in the earlier times of war as well. The concept of mercenaries or hiring parties to conduct warfare for compensation has evolved through time to time. In the recent 20 years there is a particular growth in PMC which grew through the post-cold war era. Since it is an emerging phenomenon it has become a great concern of the International community and there are various

problems that should be practically addressed under IHL, when private contractors are hired to replace members in an armed conflict.

IHL is the law of war, and the parties to an armed conflict must adhere to its provisions. But the question is whether these provisions provide an adequate legal framework to ensure PMC compliance with IHL.

Montreux document has defined PMCs as “private business concerns that provide military and/or security services, irrespective of how they describe themselves”. PMCs provide its services related to logistics and administrative support such as, protecting persons and objects, maintenance and operation of weapon systems, prisoner detention and providing advice or training of local military personals.

IHL and customary International laws contain their provisions of almost all the aspects of war. But there are no specific provisions with regard to PMCs. Even though there are no direct provisions it is important to address the fundamental issues of PMC such as the status of PMC employees, accountability and responsibility on addressing the violations of Human rights and IHL.

II. METHODOLOGY AND EXPERIMENTAL DESIGN

The study adopted an observational research methodology in order to achieve the objectives of this research. Also a great prominence and reliance are made upon the qualitative method since the core subject matter of this research is grounded substantively in International legal instruments and related academia.

Mixture of both observation and qualitative methods allow the researcher to focus on understanding the phenomenon within its settings and to investigate number of variables. Hence it allows the researcher to have widespread perspective on addressing the issue.

Throughout the research numerous conventional provisions under IHL and customary International laws have been observed and also various documents which have been implemented on addressing the legality of PMCs have been analysed in order to recognise the status of the employees of PMCs at different situations and the state and individual responsibility on the contracting parties.

III. RESULT

In the research, when observing the legal framework of International law with regard to PMCs was observed with a special reference to Additional Protocol I of the Geneva Convention of 1949. The employees of PMCs do not fall into the definition of mercenaries. Furthermore they are not recognized under combatants to a state party. Therefore such employees are recognised as civilians under IHL.

Secondly with regard to the responsibility of the actions of the employees of the PMCs, states that are contracting with the PMC are responsible for the observation of the activities of PMCs and whether such activities are according to their contract.

Also several downfalls were recognized. Whereas,

- i. There are certain duties that a state has to provide, especially they are fighting for a state but PMCs are fighting for money.
- ii. There is an issue on their transparency and accountability.
- iii. The line behind offensive and defensive gets blurred.
- iv. The Rules of armed conflicts get bent because the employees of PMC do not wait till the other party shoots; they get there and kill the other party first.

The research was carried on to enter into the above said results and it was perceived that even though there is no special reference relating to PMC in IHL, today the International Committee on Red Cross (ICRC) has collaborated with the government of Switzerland and had been able to present an International Code of Conduct for employees of PMC and at present more than 700 PMCs have agreed upon this document. This is a sign of improvement in the International community. It shows that the basic foundation with regard to legal framework on PMC has been laid down.

DISCUSSION

In any situation of armed conflict every party including PMCs are obliged to respect the provisions of IHL. But at present it can be observed that IHL does not pertain every aspect or cover every situation at war. Therefore it can be said that it provides only a mere guidance for parties.

It is necessary to recognise the status of PMCs in the International context. Whether they should be recognised as mercenaries, combatants or civilians and whether they can be targeted at war, and whom should gain the responsibility of the actions of the PMC employees.

Under IHL privatizing of military activities are prohibited, even though some of the activities are carried done by PMCs in the warfare. IN the question of mercenaries Section 47 of the Additional Protocol I, has laid down a definition for mercenaries and PMCs do not fall under the definition itself. The status of PMC

employees differ from according to the situation, where as they are considered as civilians unless they are incorporated in the forces of a state or have combatant functions for an organized armed group belonging to a party to the conflict. When they are protected as civilians they may not be targeted during warfare. and protected against attacks unless they are directly participating in the hostilities. Such employees may directly participate in hostilities by way of gathering tactical military intelligence, operating weapon systems in a situation of armed conflicts and also when guarding military bases against attacks from the opposite parties. Such acts will make the employees to lose their protection from an attack. And when such employee is captured during warfare directly participating in hostilities they may be tried in a court even though there is no such violation.

Since there are no expressed provisions to regulate PMCs the ICRC and the Swiss government came up with two documents. Firstly the Montreux Document on pertinent International legal obligations and good practice for states related to operations of Private Military and Security Companies during armed conflict. The issue of this document is that it is not legally binding on the parties. The second document is the International Code of Conduct for Private Security Service Providers. Where its foundation is laid down by the Montreux document. It has been initiated for security service providers to support the rule of law, respect the human rights of all persons and to protect the interest of their clients. According to its preamble the purpose of the code is to set forth a commonly agreed set of principles for PMCs and to establish a foundation to translate those principles into related standards as well as governance and oversight mechanisms.

In both of these documents state responsibility has been recognised and it is the responsibility of states who hire or who makes a contract with the PMC is remain responsible. Such party can be either a state party or an International organisation. It is their responsibility to have precautionary measures to prevent violations into the further by ensuring there are relevant standards are met in law, whether the employees of PMC are following the instructions given by the hired party, a proper training have been given before undertaking a special task and they are responsible for having a mechanism for holding the Employees accountable at any suspicion.

Not only on the hired state but also it is the responsibility of the state whose territory PMCs are incorporated or carry out their missions. Therefore such state party may be responsible to overview whether the domestic laws are followed or not, also responsible to see whether the employees have undergone necessary training required and whether these companies are adopting rules and standards according to IHL and wether the employees are adhering to the contract which they are bound to.

CONCLUSION

Even though PMC has been operating since more 20 years still it is relatively a new phenomenon to the legal framework of the International arena, because there are no direct implications in both IHL as well as in customary International laws. At present there are several documents incorporated in order to address the obligations and good practice along with IHL. Since the PMC industry is growing day by day there is a necessary of incorporating more statutory bodies; rules and regulations in order to keep these emerging private corporations in line. When considering the practical scenario in 2004, the Abu Ghraib lawsuit was filed against two PMCs CICA and Titan for practising in torture, war crimes, and crimes against humanity, sexual assault and cruel, inhuman and degrading treatment at Abu Ghraib prison. But these Private corporations argued that the subject matter of claim constitute a political question therefore cannot be decided by the courts and also they claimed immunity from being sued before their status as governmental contractors because they were instructed to act upon by the government of United States. Therefore it can be seen that these PMCs used their contracts with the United States as a shield even though there were grave breaches oh IHL and human rights by these companies.

Consequently in the research it can be preserved that there is a need of stable and a wide legal framework to address such issues and also when the statutory bodies are created in order to address the standards, violations, responsibility and the status of PMCs there should be, a vetting procedure for hiring of staff, proper training especially on IHL, internal disciplinary procedures with in PMCs, rules standards in how PMC would contract and also in their operation procedure, also the state parties should have a proper licensing and regulatory system according to IHL and also a special procedure holding violators of IHL who are already retired because when such PMC employee are no longer engaged in direct participation in hostilities they are recognised as civilians and may not be able to be tried for their violations or to impose individual responsibility.

These are crucial aspects on the International law that have been addressed by this research study because every war should be carried out in a human manner and every person is entitled to basic human rights which they are inherited from their birth.

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