

The World of Mercenary Companies and Private Military Contractors

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Wherever they're deployed, they're menacing and feared for good reason. Known historically by various names, they include mercenaries, soldiers of fortune, dogs of war, and Condottieri for wealthy city state leaders and the Papacy in the late Middle Ages and Renaissance Italy.

Ancient Greeks and Romans used them. So did Alexander the Great, feudal lords, Napoleon and George Washington against the British.

Article 47 of the 1977 Protocol I to the Geneva Conventions calls them anyone:

specially recruited locally or abroad to fight in armed conflicts;

directly participating in hostilities:

doing so for greater private gain than conscripted or otherwise recruited combatants;

acting unaffiliated to conflict parties and not a resident of territory where they're waged;

not an armed forces member of either side; and

not sent by a nation unrelated to hostilities as a member of its armed forces.

During the 1990s, America privatized military functions to let mercenaries serve in place of conventional forces. They're used tactically as combatants, for training, advice, personal security, technical expertise, intelligence gathering, weapons systems management, transportation, and other non-combatant functions.

In May 2011, the Congressional Research Service (CRS) said as of March 2011, the Defense Department (DOD) "had more contractor personnel in Afghanistan and Iraq (155,000) than uniformed personnel (145,000)."

In 2010, an estimated 260,000 of all types were used globally, including by the State Department and USAID.

Some analysts call DOD figures understated. The General Accounting Office (GOA) says they're approximations at best and shouldn't be used for precise analysis. DOD acknowledges data shortcomings, including costs. Estimates exceed \$300 billion annually.

Given black budgets and enormous amounts of waste, fraud, and abuse, precise figures are hard to verify. A recent joint congressional investigation estimated around \$60 billion. Misappropriations, corruption, and other forms of malfeasance may, in fact, be much greater.

Since the 1990s, as troop levels fell, PMCs increased. From 2000 – 2005, DOD spending doubled from around \$134 billion to \$270 billion. In war theaters, the ratio of PMCs to troops escalated dramatically. In the 1991 Gulf War, it was one to 50. For the 1999 Yugoslavia conflict, it was one for every 10, and by the 2003 Iraq War, PMCs comprised the second largest force after the US military.

They've also been used in numerous civil wars globally in nations like Angola, Sierra Leone, the Balkans throughout the 1990s, Papua New Guinea, and elsewhere. From 1990 – 2000, they participated in 80 conflicts, compared to 15 from 1950 – 1989.

Widespread PMC Abuses

In April 2011, the University of Illinois Law Review published a study titled, "The Absence of Justice: Private Military Contractors, Sexual Assault, and the US Government's Policy of Indifference."

In Iraq alone, mercenaries like Blackwater (renamed Xe, then Academi to disguise its scoundrel history), DynCorp, CACI, Titan, and others operate unaccountably off the congressional radar.

Many know about Abu Ghraib torture and abuse. Some recall Blackwater's Nisour Square rampage, murdering 17 Iraqis in cold blood. Prosecutions never follow. Nor when other appalling crimes are committed, including sexual abuse and human trafficking.

In 1999, DynCorp employees were accused of "buying and keeping women and girls as young as twelve years old in sexual slavery in Bosnia." Most shocking is that no one was held accountable. In fact, the company got a new \$250 million contract to train Iraqi police – notably after whistleblower employees were fired.

PMC accountability is lacking. Liability depends largely on laws where crimes are committed, but mainly on agreements between Washington and host nations. If committed today in war zones, sanctions alone might follow, not prosecutions.

Liability for these crimes "should extend beyond the individual perpetrator to the US government itself."

Notably, in all conflict and occupation zones, "women have been treated as spoils of war...." Reports regularly surface about peacekeeper abuses, including mass rapes, sex trafficking, murders and other crimes. Though common wherever Blue Helmets are deployed, immunity comes with them.

Instead of restoring order, maintaining peace and security, upholding rule of law principles, facilitating reconstruction and development, providing essential needs, they terrorize populations with impunity.

They have power. Occupied people don't. Who'll stop them no matter what they do. The

same holds for PMCs everywhere. Their personnel had military training. They're taught to view women as the enemy "other" to be conquered, subdued and abused.

Currently, they operate in over 50 countries globally, including Haiti, Bosnia, Kosovo, Kuwait, Somalia, Pakistan, Libya, Pakistan, Afghanistan and Iraq.

A misogyny culture accompanies their arrival. "Research suggests that military culture" indoctrinates abusive "views of women and sexuality." Intractable problems are created, including immunity for horrendous crimes.

Around one-third of female veterans from Vietnam through the 1991 Gulf War reported being raped. "A 1995 study of female veterans reported that ninety percent had been sexually harassed...."

Notably, over 90% of sexual assaults aren't reported because commanders aren't sympathetic and women worry about reprisals.

Occupied populations are especially vulnerable. Sex crimes committed by US military personnel and PMCs are commonplace. Evidence includes "acts causing bodily harm using unlawful force as well as sexual offenses including, but no limited to rape, sodomy and indecent assault."

The 2009 Franken Amendment followed evidence of rape and other sexual abuse committed by male PMCs against female co-workers. It prohibits DOD from doing business with firms requiring employees to sign arbitration agreements for certain claims, including rape, assault and other forms of harassment.

Enforcement it's another matter as authorities turn a blind eye to horrendous abuses. Justice rarely follows. Perpetrators operate with impunity.

For example, the US Army US Army Field Manual (FM) 27-10 incorporates the Nuremberg Charter, Judgment and Principles, as well as The Law of Land Warfare (1956). Rules of engagement (ROE) are explicit.

FM's paragraph 498 says any person, military or civilian, who commits a crime under international law is responsible for it and may be punished.

Paragraph 499 defines a war crime. Paragraph 500 refers to a conspiracy, attempts to commit it and complicity with respect to international crimes.

Paragraph 509 denies the defense of superior orders in the commission of a crime, and paragraph 510 denies the defense of an "act of state" absolving them.

Two points are key:

These provisions apply to all US military and civilian personnel, including top commanders, the Secretary of Defense, his subordinates, and the President and Vice President of the United States.

Moreover, under the Constitution's Supremacy Clause (Article VI, paragraph 2), all international laws and treaties are the "supreme Law of the Land."

Nonetheless, Iraq commanders gave orders to kill all military age males. Stjepan Mestovic documented Col. Michale Steele's involvement in his book titled, "The 'Good Soldier' On Trial: A Sociological Study of Misconduct by the US Military Pertaining to Operation Iron Triangle, Iraq."

He also exposed how low-ranking troops are sacrificed to absolve higher-ups. In addition, ROE provisions and rule of law principles are one thing, enforcement another.

Notably, "PMCs are in a unique position to exploit the vulnerabilities of women because (they operate) in post-conflict environments." Moreover, studies show that "histories of sexual violence are key indicators of future victimization."

For example, Bosnian and Kosovo women suffered during war. PMCs then treated them as exploitable sex objects. Yet they're immune from suits unless crimes occurred in war zones or on US military or government installations.

In 2006, Defense Federal Acquisition Regulations implemented the 2000 Trafficking Victims Protection Act (TVPA). It requires PMCs develop policies ensuring against sexual abuse and human trafficking.

In 2002, zero tolerance became DOD policy for military personnel. Amending TVPA followed to include PMCs. However, laws produced no accountability. PMCs became self-enforcing.

DynCorp abuses showed they don't comply with mandates. Only whistleblowers were fired. The company's \$2 billion in DOD contracts stayed in force.

Numerous UN reports on Blue Helmet abuses show "zero compliance with zero tolerance." It's also true for PMCs nearly always and military personnel nearly as often.

Moreover, at issue is applying US laws abroad. Although limited ways allow it, follow through rarely happens.

Notably, the Special Maritime and Territorial Jurisdiction Act (SMTJA) applies for crimes committed on certain type military and government facilities abroad, including sexual ones by or against US nationals. However, loopholes let PMCs escape accountability. In addition, many of their employees aren't US citizens or residents.

One time only SMTJA successfully prosecuted a CIA contractor for beating an Afghan detainee to death.

The 2000 Military Extraterritorial Jurisdiction Act (MEJA) authorizes domestic prosecutions of DOD contractors under US criminal law. It applies to overseas crimes considered a felony in America. Again, using it is rare. In fact, only one successful prosecution resulted. It involved a contractor guilty of child pornography possession in 2007, hardly a capital or violent crime offense.

America's Status of Forces Agreements (SOFAs) are key. The DOD's Defense Technical Information Center calls them "an agreement that defines the legal position of a visiting military force in the territory of a friendly state."

In his book titled, "Sorrows of Empire," Chalmers Johnson called America's "foreign military enclaves (micro-colonies) in that they are completely beyond the jurisdiction of the occupied

nation.”

As a result, military personnel and PMCs are protected. Moreover, if crimes are too egregious to ignore, companies or Pentagon officials can repatriate perpetrators to escape accountability.

Universally applicable human rights laws are also ignored, including the Convention on the Elimination of all Forms of Discrimination against women (CEDAW). Called an international women’s bill of rights, it took effect in September 1981. However, America never signed it.

It prohibits gender-based violence, including rape called a form of torture and crime against humanity. Even DOD admits that rape is considered “perhaps the most traumatic of violent of crimes on victims (excluding murder).”

However, America “sought to ensure PMC immunity from prosecution under international law, rather than imposing obligations on them.” Laws and rules are one thing, enforcement another. Washington wants its troops and contractors operating with impunity.

Truth and bad journalism are the first casualties of war. So is accountability when America wages them.

A Final Comment

The University of Illinois Law Review said PMCs are “a convenient way for the US government to evade its legal obligations, including the responsibility to protect the human rights of civilians in war and peace, by allowing private individuals, rather than official state actors, to perform services on behalf of the US military.”

As a result, murder, sexual abuse, human trafficking, and other crimes go unpunished. Women especially are affected. Political Washington, Pentagon commanders, and intelligence operatives ignore rule of law principles. Only wealth, power, and full spectrum dominance matter.

Given their might, viciousness and influence, who’ll challenge them? Only mass public outrage has a chance.

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