Chapter 13
States’ Procedural Obligations Regarding Private Military and Security Companies’ Activities

Zafeiris Tsiftzis
University of Bolton, UK

ABSTRACT

A lot of attention has been paid by the international community to the responsibility of Private Military and Security Companies (PMSCs) and to the prevention of human rights abuses committed by their employees. The non-binding nature of the existing international initiatives with respect to PMSCs requests the human rights law to play a crucial role to the regulation of PMSCs and their employees during operations. This article examines the States’ procedural obligation under international human rights law with regard to allegations of the right to life and the prohibition of torture. Moreover, it assesses the application of the jurisprudence of human rights bodies over the activities of PMSCs, whilst it focuses on the obligations of States to prevent and investigate human rights allegations committed by PMSCs’ employees. Above all, this article advocates that human rights law has a significant role in the regulation of PMSCs and the prevention of the commission of human rights violations by PMSCs and their employees.

I. INTRODUCTION

Over the past few decades the international community has several concerns about the responsibilities of private businesses for human rights violations (Gómez del Prado, 2009). Private Military and Security Companies (PMSCs) and their employees/private contractors have been accused of involving in episodes of human rights violations during their operations (Swisspeace, 2007; Giustozzi, 2007: p. 30; Perrin, 2012: p. 2; Human Rights First, 2013). The most notorious examples have allegedly taken place in Iraq. In particular, in 2004, Titan Corporation and CACI – two American PMSCs latterly, they contracted out to provide interpretation and interrogation services at Abu Ghraib prison – were accused of being involved in torturing of Iraqi detainees (Mokhtari, S. (2011); McCorquodale, R. & Simons, P. (2007: p. 598; Pratel, L. J. (2005: p. 383; Brown, 2005: p. 973; Paust, 2004; Iraq Prison Abuse Scandal – Fast Facts. (2014); Nieminen, 2004; p 289). A few years later, in 2007 Blackwater’s private contractors were involved in shooting innocent Iraqi civilians in Nisour Square. As result, 17 people were killed and 24 were wounded, among them women and children (Glanz & Rubin, 2007). Apart from the aforementioned incidents, PMSCs have also been accused of attacking civilians in Colombia (Institute for Human Rights and Business, 2012) and even of buying and keeping women and girls in sexual slavery in Bosnia (Capps, 2010).

Despite the fact that there seems to be a proven record of the involvement of private contractors in human rights abuses, in most cases none of them had been prosecuted (Singer, 2003/4: p. 521). Indeed, the absence of a coherent and binding international legal framework to regulate PMSCs and oversee private contractors’ activities (Kamminga & Zia-Zarifi, 2000: p. 3) helps PMSCs’ employees to escape from prosecution for human rights violations (Kelly, 2013: p. 17; Beerli, 2013). As a result, private military and security industry remains ‘less regulated than the cheese market’ (Singer, 2004: p. 14) and/or ‘the toy industry’ (Gómez del Prado, (2012): p. 262; Singer, 2004: p. 14; Percy, 2007: p. 41; Avant, 2010: p. 144).

In the aftermath of those accidents, the international community elaborated more towards the establishment of an international framework to regulate PMSCs’ activities and advocate human rights allegations. In particular, the Montreux Document (The Montreux Document, 2008) provides with good practices of compliance with the international humanitarian law and human rights law with respect to PMSCs. However, the Montreux Document has limited application –only during land-based military and security operations- and also it recognizes that its provisions do not affect States’ existing obligations under customary international law or under any other international agreement to which States are parties (the Montreux Document, 2008: Preface, Part I, para. 3; White, 2014: p. 53; Richemond-Barak, 2011: p. 1027).
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