

Revisiting the Legal Framework for Private Military and Security Contractors: Maritime Perspective

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Abstract

The paper aims to analyse legal lacunas and suggest possible solutions for the acts and wrongdoings of Private Military and Security Companies within the lens of maritime activities. The paper has been divided into three parts. Part I deals with the necessity and role of Private Military and Security Company in the present times. Part II discusses the legal status of Private Military and Security Company and the ways of ensuring responsibility for their acts. Part III examines the legal framework for the acts of Private Maritime Security Companies. An assessment of the rules of international humanitarian law (IHL), state responsibility, applicability of the Montreux document and efforts such as GUARDCON have been discussed to highlight the inadequacy of the laws on Private Maritime Security Companies. There has been an upsurge in employing Private Maritime Security Companies since 2008 to cope up with a myriad of problems at sea involving piracy, robbery and so forth. However, an umbrella of rules including the employment procedures, agreements, training techniques, responsibility in non-conflict times as well as in times of conflict, and the guidelines of IHL must be restructured or enhanced in order to be made applicable to govern the Private Maritime Security Companies.

1. The Need for Private Military and Security Company in the 21st Century: Hegemonic Control over the Sea and Increased Security Issues

A. Relevance of Sea Power

The status of supremacy over the sea has been contested and justified many times. The sea promotes life on land multifariously through colossal trade, transportation, rich mineral and metal deposits, oxygen provision and sea-dwelling marine life functioning as climate moderators, making it – to an extent – the conductor of life on Earth. The United Nation (U.N.) Secretary General aptly remarked that it would not be wrong if we substitute the name ‘planet Earth’ with ‘planet water’¹ as the surface

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¹ United Nation Secretary General, ‘Secretary-General’s opening remarks to the Ocean Conference’ (*United Nation Secretary General*, 5 June 2017) <<https://www.un.org/sg/en/content/sg/statement/2017-06-05/secretary-generals-opening-remarks-ocean-conference-delivered>> accessed 17 July 2019.

of our Earth predominantly consists of water (approximately 70%). The struggle for the title of hegemon is irrefutably routed via seaways. The undisputable master of the sea could easily elevate his dominance to rule the entire world by superseding others in the race of becoming the master of the world. The great strategist Alfred Mahan theorised the supremacy of sea power and substantiated the theory with examples from history.² The democratisation of the world has unshackled the sea from the despotic kingdom to the rule of none. The segmentation of the power blocks has led to major challenges to seaways. In 1982, the U.N. Convention on the Law of the Sea (UNCLOS) became the official word on sea governance.³ Nevertheless, the quest for power still thrives in individuals, agencies and nations as approximately 60% of the area of the sea remains untamed and beyond the direct control of any country⁴.

B. Need for Private Military and Security Companies

Prior to the establishment of the U.N., world domination and intolerance remained prevalent as the hidden agenda across the globe. The U.N. emerged in 1945 and made a paradigm shift by advocating peace and prosperity in the world. The globalised nations now face promising challenges in terms of achieving peace with better connectivity, emerging economic needs and technical advancement. The need for Private Military and Security Company lay in the non-participation of member States, as nations deviated from their duty to pool support for peacekeeping missions,⁵ which were created to address international security breaches. The threat from emerging non-State actors (repression of the public, extending unaccountable power and indirect control over failing States) remains one of the latent prerogatives for the establishment of Private Military and Security Companies. As Private Military and Security Company provides for instant solutions and available professionals to offer varied security, military and technical assistance. Its application has even seeped in the maritime industry by providing on-board guards & logistical services.

Modern problems can be fathomed and resolved only with modern solutions and it has become inevitable to privatise peace, despite the world

² Office of the Historian, 'Milestones 1866-1898, Mahan's The Influence of Sea Power upon History: Securing International Markets in the 1890s' (*Office of the Historian*) <<https://history.state.gov/milestones/1866-1898/mahan>> accessed 17 July 2019.

³ UN Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397.

⁴ Global Environment Facility, 'Areas beyond National Jurisdiction' (GEF) <<https://www.thegef.org/topics/areas-beyond-national-jurisdiction#:~:text=Marine%20Areas%20Beyond%20National%20Jurisdiction,95%20percent%20of%20its%20volume.>> accessed 4 August 2020.

⁵ Tristan Ferraro, 'The applicability and application of INHL to multinational forces' (2013) Vol. 95 No. 891/892 Autumn/Winter 603.