PRIVATE MILITARY SECURITY CONTRACTORS AND ITS LEGAL IMPLICATION

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ABSTRACT

The past three decades have seen a significant rise in the deployment of Private Military Contractors by States for the strengthening of their warfare capabilities. The functioning of Private Military and Security Companies (hereinafter PMSCs), which can also be termed a Non-State Actor, impacts the international peace and security of the world. The article examines the status quo of private military personnel under international law by looking into various definitions under the Geneva Conventions. The article has tried to examine the PMSCs under the capacity of armed forces and mercenaries. The PMSCs still being an emerging area under international law leads to various confusions with regard to the laws being applicable to them. Therefore, different laws related to PMSCs have been analyzed in this article. The article separately examines the articles of agreement between Iraq and US, as Iraq witnesses the deployment of highest number of PMSC personnel. There are legal gaps prevailing in the shift of providing defence services from being a public function to private action concerning a particular corporation. Further, the necessity of imposing criminal liability on the corporation's security personnel committing breach of International Humanitarian Law has been discussed with the help of Blackwater 'Nisor Square' Incident, which took place in Iraq in 2007. The main objective of this article is to scrutinise the position of PMSCs in International Humanitarian Law and to look into the liabilities being imposed on them for the breaches caused by them. Lastly, the article draws its conclusion based on the concepts being discussed in the research paper.

Keywords: **War, Private Military Contractors, Criminal Liabilities, Humanitarian, Mercenaries.**

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INTRODUCTION

Privatisation of any department is a general phenomenon which is prevalent all over the globe and it further opens the gate to flexibility, competitiveness, outsourcing of the service, private contracts as well as private regulations being made in that particular department. However, the situation becomes completely different when it is about privatization of military combatants as it is an important sovereign function of the government, which, if outsourced to private organizations will raise questions about their legal status.

The important factor to consider here is that; whether outsourcing the military functions to the private organizations gives the private organization a legitimate right to use force or not? If yes, then this undermines the authority of state as the sole actor allowed to legitimately and lawfully use force. This leads to consideration of many questions, i.e., whether such outsourcing of work is legal? If legal, then what laws will apply to them? Can the State deploying them be held liable for their actions?

The research paper tries to determine the status quo of the personnel deployed by private military contractors. It tries to determine the transition of the acts committed by private military security contractors from being illegal to legal. The PMSCs are the companies providing actual combat services to the State. Such PMSCs are involved in providing advice, training, and in procuring services ranging from logistics and base support to intelligence operations and physical security.[1] Apart from State being the main contractor of their services, many other actors such as major International Organizations (e.g. UN, Private Businesses, Humanitarian Agencies, the media, and non-governmental organizations) often turn to these services to provide security in zones of conflict or instability.[2] However, conflict arises when State uses such cooperation for outsourcing their important sovereign function of defending itself. This will, in the long run, affect the public peace and security as it is evident that the PMSCs will compete with other such agencies to establish their position in the market hence, ending up having profit motive in their mind.

[1] Rain Liivoja and Tim McCormack (eds), *Routledge Handbook of the Law of Armed Conflict* (1st edn, Routledge 2016) 623.
[2] Lain Cameron, 'Report on Private Military and Security Firms' (European Commission on Democracy Through Law 2009) <www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)038-e> accessed 10 September 2019.

STATUS QUO OF PMSC PERSONNEL

PMSCs being deployed by the States to protect them from the conflicts, both internal as well as external, may lead to PMSCs using force and thereby, getting involved in warfare practices. Generally, International Humanitarian Law deals with the resort and conduct of warfare through their principles of *jus ad bellum* and *jus in bello*.[3] The conventions in humanitarian law can be seen as the set of principles revolving around the principle of necessity[4], the principle of proportionality[5], the principle of distinction and the principle to avoid unnecessary sufferings during the war, which should be considered by the armed forces during warfare. But are the personnel of PMSCs under the radar of Humanitarian law? Legal experts do argue that the very purpose of the States to contract with PMSCs is to escape from the principles of International Humanitarian Law.

ARMED FORCES UNDER INTERNATIONAL HUMANITARIAN LAW

The very first Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field entered into force on 12th August 1949, has its application on all cases of declared war. It also applies to any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognised by one of them.[6] The bare reading of this article will not answer the question on the subjects on whom such laws will apply. Instead, it only states about when such laws will apply. Going by the definition, this convention will apply during an armed conflict. 'Armed Conflict' under Article 2 of the above convention is, 'any difference arising between two States and leading to the intervention of armed forces'.[7] Hence, armed forces are the ones who should abide by this convention.

The 1949 Geneva Convention deals with the protection of armed forces who are no longer taking an active part in the hostilities being committed. They are the protected person under this

[3] Carsten Stahn, 'Jus ad bellum', 'jus in bello' . . . 'jus post bellum'? – Rethinking the Conception of the Law of Armed Force' (2006) 17 EJIL 921.
[4] Lieber Code 1863, art 14.
[5] Protocol Additional to The Geneva Convention 1949, art 51(5)(b).
[6] Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field 1949, art 2.
[7] International Committee of the Red Cross, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (Cambridge University Press 2016).

convention and to have a proper understanding of the same, they have defined the term 'protected person'. The PMSC personnel stand a chance to be included under this definition as it also includes, "*Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorisation from the armed forces which they accompany*".[8] Since, the PMSCs are the ones who work for the welfare of the armed forces and receive the authorisation from armed forces, they do form the part of 'protected person' under this convention unless they take direct part in hostilities. If they take a direct part, they lose protection and if they are captured, they will be tried for taking part in hostilities irrespective of the fact that they have not committed any violation of International Humanitarian Law.[9]

The PMSC personnel can be categorised as combatants only if they form part of the Militias belonging to the State army and qualify the criteria mentioned under Article 43 of the Protocol I of the Geneva Convention.[10] Article 43 of the Convention requires the combatant to be the part of organised armed forces, to be commanded by a person responsible for his subordinates and to be subject to an internal disciplinary system, which leads to, *inter alia*, compliance with international rules of warfare. If all the above-stated criteria are satisfied by the PMSCs then they can fall under the definition of armed forces. The problem arises with respect to internal disciplinary action taken against them; as it generally taken by the contractors themselves, unlike the State military soldiers who are subject to State disciplinary actions.

Most of the primary military contractors do make it a point to mention in their terms of the contract or on their websites about them complying with the international rules. For example, Erinys Iraq is a private security company having its base in Iraq and provides services such as security consulting, security systems design, providing security solutions to a wide range of commercial clients for diplomatic missions and to government agencies. They have mentioned on their website about compliance with International laws by stating, "*Erinys is fully licensed*

[8] Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field 1949, art 13.
[9] 'International Humanitarian Law and Private Military/Security Companies- FAQ' (*ICRC*, 10 December 2013) <https://icrc.org/en/document/ihl-and-private-military-security-companies-faq> accessed 14 September 2019.
[10] Protocol Additional to the Geneva Conventions and Relating to the Protection of Victims of International Armed Conflicts (Protocol 1) 1977, art 43.

and compliant with all Government of Iraq policies and laws governing the operations of Private Security Companies. This coupled with our Iraqi ownership, compliance to international standards…to succeed where many others have failed."[11]

Therefore, some private security companies do qualify to be a labelled as armed forces since they qualify the criteria mentioned under Article 43. Their rights and obligations are no different than that of the State armed personnel as both of them are immune to military attack and will be treated as prisoners of war if captured.[12] It may not be wrong to conclude that the Geneva Convention or any other International Convention has failed to come up with the precise definition or regulations with regard to PMSCs and this may lead to failure in imposing liability as well to extend them with the rights of protected person.

MERCENARIES

The concept of PMSCs has evolved from the functioning of mercenaries. The Oxford dictionary defines 'Mercenaries' as 'professional soldiers hired to serve in a foreign army'. This indicates the functioning of the Personnel's working with PMSCs. Mercenary has also been defined under Article 47 of Geneva Convention 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 substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party; (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) 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.[13]

Therefore, for the personnel of private military contractors to fall under Article 47, they have to fulfil the above-mentioned criteria which further narrows down the scope. The American employees of PMSCs carrying out duties in Iraq during the war in 2003 would not have qualified

[11] Erinys Iraq, 'Company' (*Erinys*) <www.erinysiraq.com/company/> accessed 20 September 2019.
[12] Mirko Sossai, 'Status of PMSC Personnel in Laws of War: The Question of Direct Participation in Hostilities' (2009) European University Institute Working Paper Academy of European Law 7.
[13] Protocol Additional to the Geneva Conventions and Relating to the Protection of Victims of International Armed Conflicts (Protocol 1) 1977, art 47.

as mercenaries since they were nationals of a party to the conflict,[14] and do not satisfy the conditions of Article 47(d) of the Convention. Similarly, Article 47(a) makes the inclusion of the PMSCs personnel in the definition of mercenaries hardly possible as they are not specifically recruited to fight in a particular armed conflict but they also have other duties to be performed. Further, the clause of direct participation in the hostilities limits the scope of definition and makes it more unclear as the personnel of PMSCs do advise and provide strategy for armed conflicts apart from participating in the battlefield. Hence, considering all the requirements of Article 47, the answer to the question whether the PMSC personnel fall under the definition of mercenaries is a negative one.

LEGAL FRAMEWORK DEALING WITH PMSCs

In international law, the extent to which primary human rights obligations apply to the conduct of private military companies remains unclear: first, because there is no agreement as to whether human rights obligations are binding upon private actors; second, because the conduct of these actors normally occurs abroad and therefore outside the ordinary territorial and jurisdictional sphere of application of human rights obligations.[15] There has been a significant reliance by States on the services of contractors in sustaining the war fighting capabilities of national armed forces in the past two decades. The phenomenon of outsourcing in the military context is by no means new, the expansion of this market in the post-Cold War period has been extraordinary.[16] Consequently, at the level of secondary rules, a State may not be held responsible for having failed to prevent abuses by private military contractors, or for not having provided adequate remedies or prosecution, unless a certain degree of control existed over the conduct that cause the abuse. With soldiers such level of control is *in re ipsa*, since they are an integral part of the organic structure and apparatus of the State – with a chain of command, disciplinary oversight, and mechanisms of enforcement that make them directly accountable to the State. However, private military 'contractors' are by definition only in a contractual relation with the hiring State. Thus, their acts are not in principle acts of State but acts of private persons, even though their services often entail carrying weapons and exposing other persons to the risk of injury. The

[14] Alexandre Faite, 'Involvement of Private Contractors in Armed Conflict: Implication under International Humanitarian Law' (2004) 4(2) Defence Studies <www.icrc.org/en/doc/resources/documents/article/other/pmc-article-310804.htm> accessed 20 September 2019.
[15] Francesco Francioni, 'Private military contractor and International Law: An Introduction' (2008) 19 EJIL 961.
[16] P W Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Cornell University Press 2007).

problem of accountability becomes even more complex when private military contractors are used by international organizations, such as the UN, the EU, or NATO. In this case, their conduct may call into play, the still elusive concept of institutional responsibility of intergovernmental organizations, a topic that is now the object of a study and possible codification by the International Law Commission.[17] Further, the industry is extremely diverse and the companies providing actual combat services are not rare. Additionally, different States have different motives and needs for outsourcing. While some have used contractors as a source of expertise and manpower; many firms in the marketplace shun the label 'military contractors' and rather describe themselves as providers of 'National Security Solutions' or 'Security Services', or explain that they deliver services to support the mission of defence and governmental agencies.[18]

MONTREUX DOCUMENT

The first major multilateral attempt to address the perceived lack of regulation of PMSCs was the Montreux Document.[19] This document was an effort to clarify the international legal responsibilities of the PMSCs. Basically, this document puts forth the legal obligation of the contracting territorial State whenever these companies operate during situations of armed conflict, and develops a set of 'best practices' to guide their use. This document has been well accepted by fifty three (53) States and three (3) International Organizations in December 2015 and commands global support.

Consequently, in December 2013, the 'Montreux + 5 Conference' took place, which aimed to promote the Montreux Document among interested stakeholders and to help ensure its effective implementation by participating States. This document is not legally binding and rather contains a compilation of legal implications and good practices. This document further provides for the procedure for the selection and contracting of the PMSCs and lays down the risks associated with the services to be performed. It states that if the conduct of PMSC personnel is attributable to the contracting State according to the Montreux Document, that State is responsible for

[17] Francesco Francioni, 'Private Military Contractor and International Law: An Introduction' (2008) 19 EJIL 961, 962.
[18] Iraq (n 11).
[19] The Montreux Document (17 September 2008) <www.icrc.org/en/doc/assets/files/other/icrc_002_0996.pdf> accessed 20 September 2019.

providing reparations in accordance with customary international law. Private actions are attributable to the contracting State, according to the Document, if the company's personnel are: (a) incorporated by the State into its regular armed forces in accordance with its domestic legislation; (b) members of organised armed forces, groups or units under a command responsible to the State; (c) empowered to exercise elements of governmental authority if they are acting in that capacity; or (d) in fact acting on the instructions of the State or under its direction or control.

The document also put forth responsibilities of the State on whose territory the activity takes place and the State of nationality of the PMSC. It also lists responsibilities of the PMSC itself, which includes compliance with relevant international humanitarian law and human rights law as well as all applicable laws of the territorial and home States. However, the document does not take a position on whether such companies and their personnel are 'armed forces' or 'combatants', but states that such status determinations are made under humanitarian law on the basis of 'the nature and circumstances of the functions in which they are involved'. A study issued at the occasion, identified a number of challenges relating to the effective implementation of the legal obligations and good practices of the document.[20]

INTERNATIONAL CODE OF CONDUCT AND ITS ASSOCIATION

When it comes to regulations by the State, there may be a regulatory and accountability gap for which the effective government authority and control is not available in all environments in which PMSCs operate, particularly in compound security situations, which may lead to insufficient protection for potential victims. So, for ensuring commitment to effective rules in such situations, it becomes important to include companies in standard-setting processes.

The International Code of Conduct for Private Security Service Providers (*hereinafter* ICoC)[21] is a set of standards for security companies to respect human rights and humanitarian law. It is a multi-stakeholder initiative developed as a complement to the Montreux Document. The ICoC was initiated by the Swiss Government in a multi-stakeholder initiative, to complement State regulation in a complex environment. The ICoC includes management policies and human

[20] Benjamin S Buckland and Anna Marie Burdzy, *Progress and Opportunities, Five Year on: Challenges and Recommendations for Montreux Document Endorsing States* (Geneva Centre for the Democratic Control of Armed Forces 2013).

[21] The International Code of Conduct for Private Security Providers 2010.

rights-based normative rules and prohibitions which was signed in 2010 by fifty eight (58) companies and subsequently, the number of signatory companies rose to seven hundred and eight (708) by September 2013, when the possibility to become a signatory company was closed and replaced by membership of the ICoC Association (*hereinafter* ICoCA). This association under Swiss law will form an oversight mechanism for compliance with the ICoC, as has been foreseen by the Code and thus committed to by all its signatories.[22] An intergovernmental forum was established, known as Montreux Document Forum, aiming to strengthen the dialogue among the participant States and International Organizations. The forum is a platform for the States to exchange good practices on implementing the Montreux Document in national regulation and to support outreach and increase awareness for the document in different regions. The three core functions of the ICoCA will be:

1. the certification of companies,
2. performance assessment, including reporting and in-field monitoring to ensure that companies continue to apply the code and
3. administering a complaints process which can assess whether companies deal appropriately, by fair and accessible grievance mechanisms, without any claims of breach of the Code.

The ICoC and Montreux Document together form the 'Swiss initiatives', expressing the consensus that PMSCs do not operate in a legal vacuum and outlining their obligations to comply with applicable national law and standards of international law.[23]

The two instruments are set out for different fields of application and aim to complement effective national regulation. Subsequently, the concerns over a perceived legal aid have been replaced by a layered approach to regulations at international and national levels that clearly sets out the responsibilities of both States and companies.

IRAQI LAW AND STATUS OF U.S. FORCES

Contractors to the US agencies or any of the multinational forces or diplomatic entities in Iraq operate under the law of the Government of Iraq. During the time covered by the UN Security Council mandate, such law included orders issued by the Coalition Provisional Authority (CPA),

[22] The International Code of Conduct for Private Security Providers 2010, General Commitments.
[23] 'Private Military and Security Companies' (*Swiss Federal Department of Foreign Affairs*, 17 July 2019) <www.fdfa.admin.ch/eda/en/home/foreign-policy/international-law/international-humanitarian-law/private-military-security-companies.html> accessed 20 September 2019.

prior to the hand-over of sovereignty to the Iraqi Interim Government that had not been rescinded or superseded.[24] CPA Order Number Seventeen exempted contractors from Iraqi laws for acts related to their contracts.[25] As of 1st January 2009, however, jurisdiction over US defence contractors is governed by the Withdrawal Agreement[26] negotiated between the US and Iraq as part of the legal framework meant to take the place of the UN mandate upon its expiry on 31st December 2008. The Withdrawal Agreement provides that Iraq has 'primary jurisdiction' over US Defence contractors and their employees who are not citizens of Iraq or who habitually reside there. Presumably, Iraq has exclusive jurisdiction over the State Department and other non-Defence Department contractors, who do not appear to be covered by the Withdrawal Agreement, as well as the contractors who are citizens of Iraq or habitually reside in Iraq. The US could continue to exercise jurisdiction over US contractors in cases over which US courts have jurisdiction. However, Iraq is under no obligation under the Withdrawal Agreement to negotiate with the US according to its provisions for determining how cases involving US service members and department of defence civilians will be handled, nor even to inform US officials that a contract employee has been arrested.[27] The Agreement does not authorise the US to arrest or detain contractor personnel without a warrant issued by an Iraqi court,[28] unless perhaps such persons are caught in the act of committing a serious crime[29] or if the arrest takes place on base.[30] However, such arrests must be reported and the detainee must be turned over to Iraqi authorities within 24 hours.[31]

UN INITIATIVE

A draft convention on the use of private security companies has been considered in different UN forums since it was first proposed to the Human Rights Council (*hereinafter* HRC) by the

[24] 'CPA Official Documents' (*Coalition Provisional Authority*) <https://govinfo.library.unt.edu/cpa-iraq/regulations/#Orders> accessed 24 September 2019.
[25] Coalition Provisional Authority, Order 17.
[26] Agreement Between the United States of America and the Republic of Iraq on the Withdrawal of United States Forces from Iraq and the Organization of Their Activities during Their Temporary Presence in Iraq 2008, art 12.
[27] The International Code of Conduct Articles of Association 2013, art 12.
[28] The International Code of Conduct Articles of Association 2013, art 22.
[29] Trevor A Rush, '*Don't Call It a SOFA! An Overview of the US-Iraq Security Agreement*' (2009) The Army Lawyer 34.
[30] The International Code of Conduct Articles of Association 2013, art 6.
[31] The International Code of Conduct Articles of Association 2013, art 22.

Working Group on mercenaries in 2010.[32] An Open-ended Intergovernmental Working Group (*hereinafter* OEWG) was created in 2010 in order to discuss the draft further among States. Recently, the mandate of the OEWG was extended for further two and a half years, but with a clear divergence of views on the topic within the HRC,[33] even after one session a year for several years and still the achievements of this forum were limited.

A UN initiative with considerable influence on the regulation of the PMSCs has been the development of the UN Guiding Principles on Business and Human Rights as it outlines a 'protect, respect, remedy' framework describing how business and States are to address human rights challenges.[34]

CORPORATE CRIMINAL LIABILITY OF PMSCs

The possibility of PMSCs being involved in committing war crimes cannot be foreseen. For the States to provide their citizens with appropriate remedy, they should have domestic legislation to impose criminal liability on the PMSCs committing war crimes. The criminal liability on PMSCs should be seen with the intent to punish the head controlling such actions and all other persons responsible for the breach of humanitarian law. The status quo of the Private military contractors being open to debate has led to such cooperations roaming free from the clutches of criminal liability in the international regime. This further led to unaccountability of PMSCs and the example of it can be seen in the aftermath of the incidents at Abu Ghraib, Iraq, in 2004, where the military officers were found by a military investigation to have participated in the abuse of detainees and were subjected to court-martial and sentenced to prison, whereas, on the other side none of the employees of two PMSCs involved in the abuses were punished with any crime.[35] This raised questions on the humanitarian laws as it failed to consider the private military contractors under their regime in lieu of war crimes being committed by them. Hence, in the

[32] UNGA 'Report of the 15th Session 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' (5 July 2010) UN Doc A/HRC/15/25.

[33] UNGA 'Summary of the Third Session of the Open-Ended Intergovernmental Working Group to Consider the Possibility of Elaborating an International Regulatory Framework on the Regulation, Monitoring and Oversight of the Activities of Private Military and Security Companies' (2 September 2014) UN Doc A/HRC/WG 10/3/2.

[34] UNHRC 'Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises (Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework)' (21 March 2011) UN Doc A/HRC/17/31.

[35] Peter Spiegel, 'IRAQ: No Contractors Facing Abu Ghraib Abuse Charges' (*CORPWATCH Holding Corporations Accountable*, 9 August 2005) <https://corpwatch.org/article/iraq-no-contractors-facing-abu-ghraib-abuse-charges> accessed 23 September 2019.

Musema case, the ICTR Trial Chamber appears to interpret its ruling in *Akayesu*[36] more broadly, arguing that excluding certain persons from the scope of war crimes law on the basis that they did not belong to a certain category would be at odds with the fact that international humanitarian law is addressed to anyone who is in a position to violate it.[37]

The International Criminal Court and *ad hoc* International Criminal Tribunals established by the Security Council provide no mechanism for corporate criminal liability.[38] Hence, it requires enforceable national laws in line with the internationally imposed obligations. The 2007 incident of killing Iraqi civilians by the employees of PMSC, Blackwater Corporation, raises serious questions on the credibility of the State having a dominating position over the PMSCs being deployed by them. Blackwater was a US corporation having its registered base in North Carolina. It was contracted by the US State Department to provide security services to the US Diplomats in Baghdad, Iraq. The personnel of Blackwater security travelled in four heavily armoured trucks and blocked the traffic at the junction where they indiscriminately fired on unarmed civilians, killing at least fourteen, and wounding another twenty.[39] The employees of Blackwater had to abide by the use of force policies set by the State Department Mission Firearms Policy for Iraq, which stated that the use of force should be reasonable and only permissible when there is no safe alternative and without the use of deadly force, the individual or others would face imminent and grave danger.

The investigation of the incident took place for years for gathering evidences. Criminal charges were filed in the US against the employees of Blackwater but not against the corporation per se. It led to the conviction of four employees in 2014. US failed to impose the criminal liability on the corporation and instead tried the corporation for arms violation. Blackwater accepted the violation of arms export control and trafficking laws and came into the settlement with the State by paying $42 million. The settlement of charges was also based on agreed conditions contained in an agreement with the state to reform its conduct. The corporation was also kept under supervision for a certain period. This case raised various concerns on the most developed nation not having any laws to enforce criminal liability on the corporate for killing the civilians.

[36] *The Prosecutor v Jean-Paul Akayesu* ICTR-96-4-T (2 September 1998).
[37] *The Prosecutor v Musema* (Judgement and Sentence) ICTR-96-13-T (27 January 2000) para 270.
[38] James Crawford, 'Responsibility of States and Non-State Actors' (2005) 104 Journal of International Law and Diplomacy 45.
[39] *US v Ridgeway* 489 F3d 732 (5th Cir 2007).

The basic principle of International Humanitarian Law, i.e., principle of distinction between civilians and combatants was violated and no criminal implications were made on Blackwater. Blackwater now functions under the name of 'Academi' as a US company, providing Private Military Services.[40] The only available remedy to the victims of this incident was to apply for civil compensation under the US Alien Tort Statute (ATS). Blackwater was tried under ATS and Racketeer Influenced and Corrupt Organizations Act.[41] But after five years of the trial, it closed the matter for an undisclosed amount being given to the State. In the trial various arguments were raised by the attorney of Blackwater stating the lack of provisions in law for the trial of corporation and exhaustion of the remedy in Iraq means that the PMSC cannot be tried. US, on the other hand, was concerned about its relation with other States while discussing the matter. Hence, they involve a political dimension to it. For addressing these concerns, international laws are needed to impose criminal liability on the corporations. A relevant solution will be to provide corporate liability under ICC and thus require States to take action at the national level.[42] This will help the States to exercise their jurisdiction over the corporates committing crimes internationally. The inability of the developed States like the US not having effective laws for imposing liability on the PMSC personnel shows the threat the world is exposed to on the active working of PMSCs.

Therefore, there exists no specific law for holding the PMSCs criminally liable for the violations of international war crimes. The authoritative international law on Corporate Criminal Liability is required which also provides for dispute settlement mechanism.

CONCLUSION

The outsourcing of defence services, which is an essential public function, by the states to the private agencies authorises them to use force. This raises concerns for International Humanitarian Law as the life of civilians is threatened by the very concept of PMSCs. More hazardous is the functioning of PMSCs, without the appropriate laws being established to govern their actions. The shift of right to use force from the state to the private sectors will affect the

[40] Jason Ukman, 'Ex-Blackwater Firm Gets a Name Change, Again' (*The Washington Post*, 12 December 2011) <http://washingtonpost.com/blogs/checkpoint-washington/post/ex-blackwater-firm-gets-a-name-change-again/2011/12/12/gIQAXf4YpO_blog.html> accessed 23 September 2019.
[41] US Code 1964, s 18.
[42] Crawford (n 38).

interest of civilians as the private sectors are always driven by profit. International laws need to be upgraded for having specific conventions for governing as well as imposing direct obligations on PMSCs. If the PMSC personnel fulfils the six-pronged criteria mentioned in article 43 of the Additional Protocol I of the Geneva Convention then they can be regarded as armed forces. The slow growth of international laws making corporate identities liable for war crimes and atrocities will further widen the scope of International Humanitarian Law. The Blackwater incident indicates the inefficiency of laws to deal with the crimes committed by the PMSC at the international level. The international laws, though have developed to come up with the Montreux Document and UN Draft Convention, but there still needs to be a proper implementation of the same.