PMSCs Industry

120 bln. USD annual turnover

80 % of exporting companies registered in the USA and UK

Every fifth soldier in Iraq - through PMSCs
Multilayer Regulatory Framework

National
(laws and regulations)

Regional
(Model laws and agreements)

International partial
(self-regulation of Groups of companies)

International universal
(UN, ICRC, ICJ, etc.)
National Regulation

South Africa (1998, 2007)
United Kingdom (2001)
France (2003)
Russia (2000)
Afghanistan (2008-2010), etc.
Regional Initiatives

OAU Convention on Elimination of Mercenarism in Africa
(adopted 1977, came into force in 1985)
Regional Initiatives
Commonwealth of Independent States (CIS) (12 states)
Model Law
“On counter-acting Mercenarism” 2005
Includes clauses on PMSCs
Regional Initiatives

Council of Europe in 2005 adopted Recommendation 1713 on Democratic Control over Security Sector, which includes requirement to regulate PMSCs and create Control organ, preferably through EU.
United Kingdom

Out of 40 largest PMSCs registered in Britain only 5 are contracted by UK governmental agencies.

Information on other 35 PMSCs is not collected, not known to authorities.
United Kingdom
Registration of PMSCs under “business as usual” rules in general Companies Register by executive Department for Business.

Law (2001) on Private Security Services does not regulate export
United Kingdom
“Green Paper” and Parliamentary motions motivated by scandals around PMSCs in Iraq finally didn’t end in adoption of any new specific regulations for PMSCs
South Africa

Foreign Military Assistance Act (1998)


Mechanism is based upon permissions through NCACC.

Often circumvented by PMSCs.
Afghanistan - Systematic “purge” of PMSCs in 2008-2010
There are 20 millions of Kalashnikovs in Afghanistan
In 2009 only 39 PMSCs registered by Ministry of Inte
(23000 employees), others are announced illegal
In 2010 quantity of “permitted” PM raised to 51.
We do dismissed PMSCs employees go?

Upgrade of Army and Police to 130,000

All villages “Self-defense” armed formations

Pushtun border-guard contingent (up to 85,000)
DIAG program: Disbandment of Illegal Armed Groupings
DIAG: 105 districts

17,000 weapons confiscated

18,000 weapons registered (legalized)
DIAG: 105 districts

2500 illegal armed groupings reported

513 illegal armed groupings disbanded during 2010

Groups of less than 5 armed fighters are not counted
District leadership which succeeded to disband negotiated quantity of Armed groupings gets 150,000 – 300,000 USD for the local development projects (bridges, schools, etc.)
USA

Military Extraterritorial Jurisdiction Act (MEJA) of 2000
(DoD missions only)

MEJA Expansion and Enforcement Act of 2007
(all state contracted PMSCs missions)
USA

International Traffic in Arms Regulations (ITAR),
Part of the Arms Export Control Act
USA

No centralized Register for PMSCs in a national scale.

Aggregated data for Iraq:
180,000 PMSCs employees, from over 100 countries, employed by 630 companies
Problem of outsourcing inherently state functions to non-state actors.
INHERENTLY STATE FUNCTIONS:

Functions that a State cannot outsource to PMSCs:

• direct participation in hostilities, 
  ▪ waging war and/or 
  * combat operations,
INHERENTLY STATE FUNCTIONS:

Functions that a State cannot outsource to PMSCs.

* taking prisoners,
  
  ▪ intelligence,
  
  ▪ use of and other activities related to weapons of mass destruction
  
  ▪ police powers,
    especially the powers of arrest or detention including interrogation
SERVICES PROVIDED BY PRIVATE MILITARY AND SECURITY COMPANIES

• Maintenance
• Logistics
• Military counselling and security
• Military intelligence
• Training
• Protection of premises, persons and convoys
• Enforcing public order
• Operational support in combat
• Direct participation in combat
IRAQ

MASSACRE OF 16 SEPTEMBER 2007

17 CIVILIANS KILLED AMONG WHICH CHILDREN AND WOMEN

OVER 20 CIVILIANS INJURED

☑ WITHOUT PROVOCATION ACCORDING TO US MILITARY REPORTS
L-3 COMMUNICATIONS-TITAN CACI

ABOU

GHRAIB

SCANDAL

IN VolvEMENT OF 2 PMSC: CACI AND TITAN
Conclusions

Existing system of regulation for PMSCs remains limited and inadequate
Conclusions

Specific regulations for PMSCs exist only in a handful of countries, and mostly not in a form of a comprehensive law.
Conclusions

Regional level regulations (OAU, CIS, CE, etc.) applies to PMSCs only marginally
Conclusions

Standards of national regulation differ dramatically.

Easy to register PMSC in a country with no regulations.

No limitation yet for registration in off-shore zones.
Conclusions

Mostly registration of PMSCs is not differentiated from "business as usual". Licensing system absent or limited to legal bodies (not employees)
Conclusions

Standard criteria for minimum requirements towards contracts with PMSCs are not defined by law.

Nor requirements to personnel (absence of criminal record, level of training, training in IHL)
Conclusions

National or international comprehensive registers of PMSCs are absent.

No regular reporting required by states from PMSCs.

Most governments do not possess information on actual contracts and activities of their PMSCs.
Conclusions

System of sanctions or even investigations in case of violations of human rights or laws by PMSCs or their employees is absent.

No system of remedies.
Conclusions

Proposed Convention tries to overcome most of these gaps in legal regulation of PMSCs through upgrading both International and national regulation.
PRINCIPLES FOR CONVENTION

States should form separate system of registration for PMSCs

Prohibit register PMSCs in Off-shore zones
PRINCIPLES FOR CONVENTION

Create UN-based International Register for PMSCs

Of the UN Register for Conventional Arms
(172 states annually report)
PRINCIPLES FOR CONVENTION

Transparency, responsibility, accountancy

Annual report of the states to the UN on main state contracts with PMSCs, on registration and licensing
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<th>PRINCIPLES FOR CONVENTION</th>
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<tr>
<td><strong>System of advanced licensing</strong></td>
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<td>Licensing companies</td>
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<td>Licensing personnel</td>
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<td>Licensing contracts</td>
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PRINCIPLES FOR CONVENTION

Enable “countries of operation” to possess entry control over companies and personnel

Right to expel companies
PRINCIPLES FOR CONVENTION

Oblige companies
Provide appropriate training
In IHL and Human Rights Law
PRINCIPLES FOR CONVENTION

Parliamentary oversight over PMSCs:

- Hearings
- Investigations
- Subcommittee
- National law
PRINCIPLES FOR CONVENTION

Principle of state monopoly
On use of force
PRINCIPLES FOR CONVENTION

Define military and security functions which are in principle not outsourcable from the state
Examples:
Not to allow PMSCs use, protect or transport WMD

Afghanistan defined “protection of religious sites” as un-outsoursable
PRINCIPLES FOR CONVENTION

Draw “red line”
Beyond which activities of PMSC become pure mercenarism
PRINCIPLES FOR CONVENTION

Only legitimate ways of acquiring and transporting weapons
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<td>Create mechanism of interstate complaints</td>
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<td>«What your company is doing on my territory?»</td>
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<td>«How my company Behaves at your territory?»</td>
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PRINCIPLES FOR CONVENTION

Monitoring of PMSCs’ activities
And
Sanctions against PMSCs
PRINCIPLES FOR CONVENTION

PMSCs is NOT «business as usual»
It is highly specific export, requiring rigid “export control”