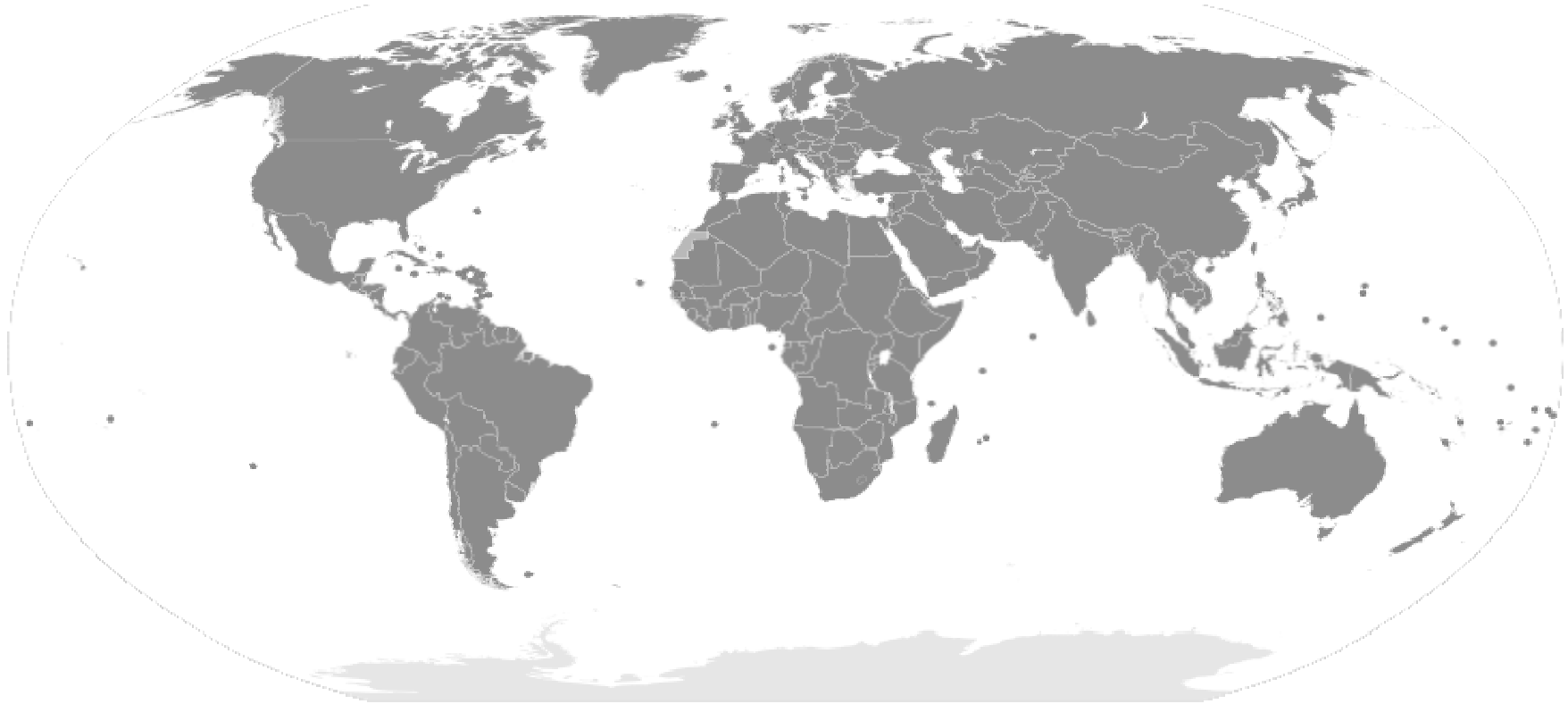


UN Working Group on the Use of Mercenaries



Regulating and Monitoring Private Military and Security Companies

José L. Gómez del Prado

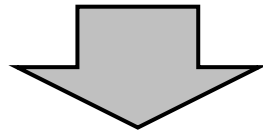
Geneva, 17th Session Special Procedures



PMSCs DO HAVE AN IMPACT ON THE ENJOYMENT OF HUMAN RIGHTS



“Private soldiers,” “private security guards” or “independent contractors. Employees of transnational military-security companies



Individuals who can violate human rights as much as be victims of human rights violations .

Summary executions, disappearances, torture, arbitrary detention, forced displacement, trafficking in persons, confiscation or destruction of private property, health, right to privacy...

Contractual irregularities, bad working conditions, overcrowding, excessive working hours, unpaid salaries, degrading treatment and isolation, lack of attention to their basic needs such as health and hygiene

EMPLOYEES OF
PRIVATE MILITARY AND
SECURITY COMPANIES
COMMITTING

TORTURE



Abou Ghraib



Nissour
Square

SUMMARY
EXECUTIONS



105
Chileans

**Serious
human rights
violations
cutting across
different mandates**

TRAFFICKING
IN PERSONS
MIGRANT
WORKERS

HEALTH



Aerial
Fumigation



CIA
RENDITION
FLIGHTS

ARBITRARY
DETENTION

NISOOR SQUARE BAGHDAD



BEFORE



AFTER

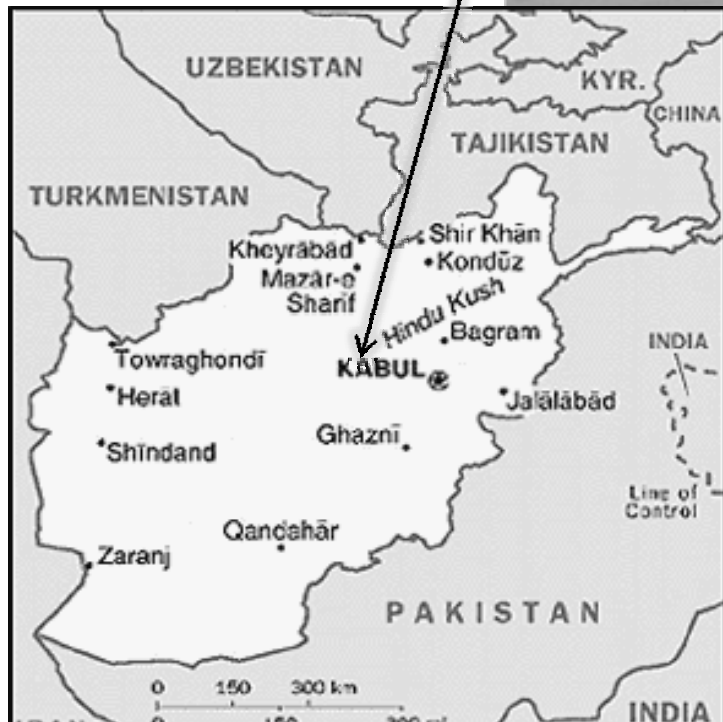
MASSACRE OF 16 SEPTEMBER 2007



- 17 CIVILIANS KILLED AMONG WHICH CHILDREN AND WOMEN
- OVER 20 CIVILIANS INJURED
- WITHOUT PROVOCATION ACCORDING TO US MILITARY REPORTS
- NONE OF THE EMPLOYEES ALLEGEDLY RESPONSIBLE FOR THE INCIDENT HAS BEEN YET SANCTIONED

EXTRAJUDICIAL SUMMARY EXECUTIONS

BLACKWATER ASSISTED THE CIA PREDATOR PROGRAMME IN AFGHANISTAN AND PAKISTAN RESULTING IN ARBITRARY EXECUTIONS



L-3 COMMUNICATIONS-TITAN CACI



ABOU GHRAIB SCANDAL



TORTURE and OTHER CRUEL
INHUMAN or DEGRADING
TREATMENT OR PUNISHMENT

CLAIM BY TWO HUNDRED AND FIFTY PLAINTIFFS UNDER THE ALIEN TORT

- rape and threats of rape ,
- sexual assaults;
- electric shocks; beatings,
- prolonged hanging from limbs;
- forced nudity; hooding;
- isolated detention;
- being urinated on;
- religious intolerance.

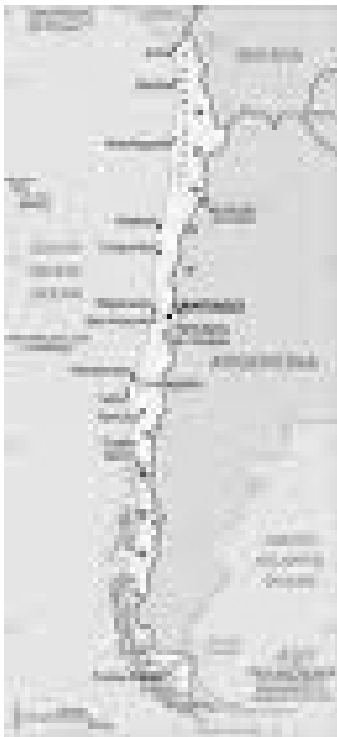


BLACKWATER INVOLVED IN RENDITION FLIGHTS OF C.I.A.

- It helped provide security on C.I.A. flights transporting detainees after the 2001
- A former top C.I.A. officer. "There was a feeling that Blackwater eventually became an extension of the agency."

"the use of contractors in intelligence and paramilitary operations is a scandal waiting to be examined." US Representative Rush D. Holt





In 2005, 105 Chileans were providing/or undergoing military training in the former army base of Lepaterique in Honduras. The instruction consisted in anti-guerrilla tactics such as possible ambushes and deactivation of explosives and mortars how to avoid them. The Chileans had entered Honduras as tourists and were illegally in Honduras. They used high-calibre weapons such as M-16 rifles or light machine guns.

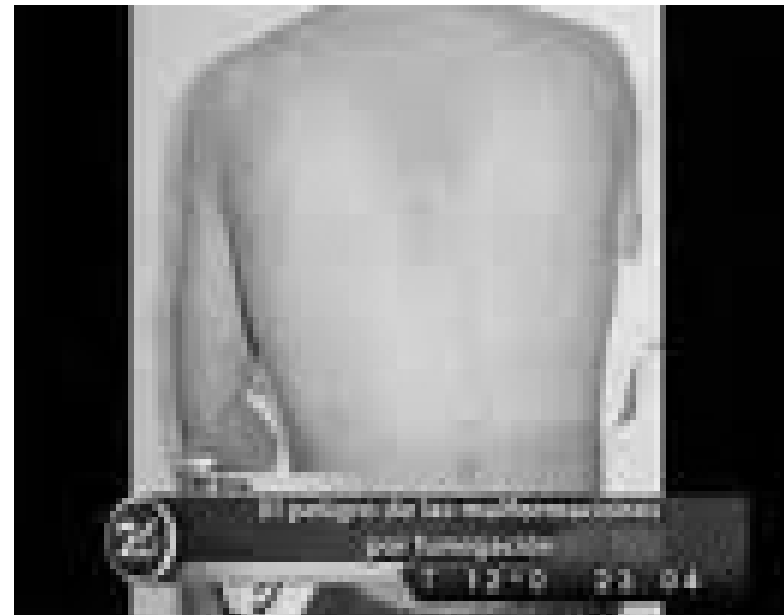




22 women in the frontier line, in Ecuador and Colombia where they were exposed by the air fumigations from the Plan Colombia to the 'glifosato' mixture with POEA + Cosmuflux 411 F. , besides the intoxication symptoms, presented genetic damages in a third of the sanguine cells.

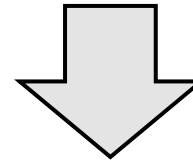


IMPACT ON HEALTH





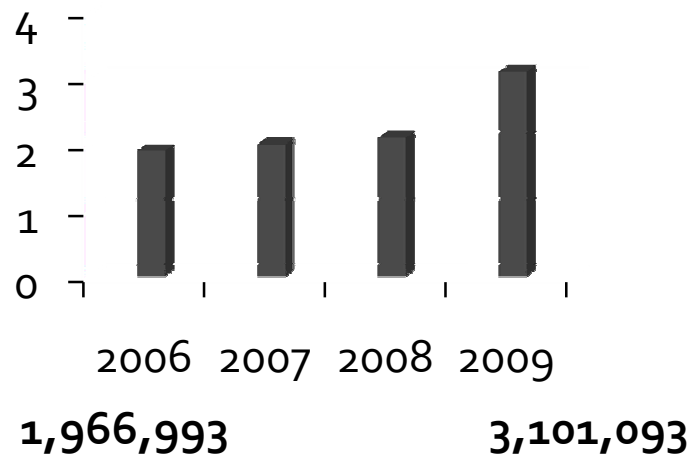
The report refers to four lawsuits concerning the spraying of narcotic plant crops along the Colombian border adjacent to Ecuador on behalf of 3 Ecuadorian Providences and 3266 plaintiffs



AND STATES

"The aerial spraying operations were and continue to be managed by us under a DoS contract in cooperation with the Colombian government. The DoS contract provides indemnification to us against third-party liabilities arising out of the contract, subject to available funding. The DoS has reimbursed us for all legal expenses to date."

Four Year Revenues
(\$ in thousand millions)

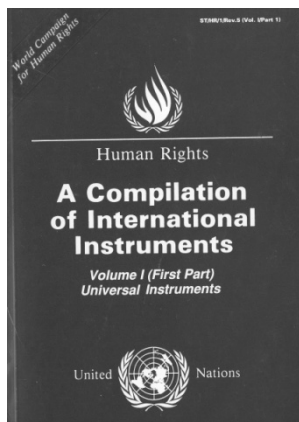


"The terms of the DoS contract provide that the DoS will indemnify our operating company against third-party liabilities arising out of the contract, subject to available funding. The DoS has reimbursed us for all legal expenses to date."

GAPS IN HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW

DEFINITION OF MERCENARY

- ALMOST IMPOSSIBLE TO APPLY IT TO THESE "PRIVATE CONTRACTORS" OR "SECURITY GUARDS"



INMUNITY

PLAN COLOMBIA



IRAK



THE USE OF PMSC IN HUMANITARIAN OPERATIONS



- Is blurring the distinction between humanitarian non-profitable organizations and corporations working for pecuniary gain
- Humanitarian and aid assistance organizations are not perceived as neutral, but often associated with the intervening force and targeted as such.

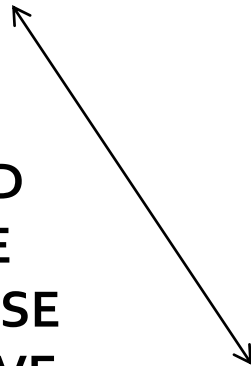


BEFORE



AFTER

THROUGH
SELFNESS
COMMITMENT
AND
COMPASSION
FOR
ALL PEOPLES,
BLACKWATER
WORKS
TO MAKE A
DIFFERENCE
IN THE WORLD
AND PROVIDE
HOPE TO THOSE
WHO STILL LIVE
IN DESPERATE
TIMES



Afghanistan Somalia Congo Bosnia Sudan Iraq

We live in a world that gets smaller each day. Inescapably, there are clashes between cultures and values systems. Tragedies that went unnoticed and undetected decades ago are now daily brought to the world via network news and the Internet.

Now that we are aware of the many atrocities on this earth, those of us who enjoy secure, peaceful, and free lives are called to help share that promise with the world.

Through selfless commitment and compassion for all people, Blackwater works to make a difference in the world and provide hope to those who still live in desperate times.

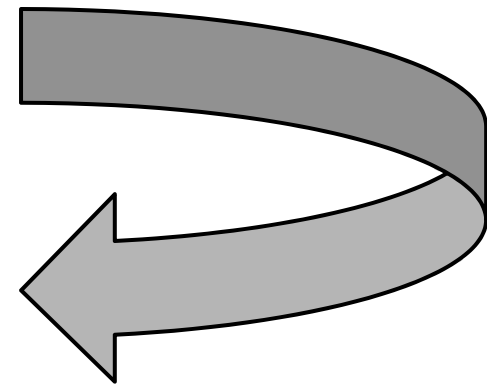
www.blackwater.com
P.O. Box 100000, NC 27718



Alarmed by the conference regarding Haiti on 9-10 March 2010, organized by IPOA, the trade association representing many PMSC

HAITI

American Jewish World Service
American Friends Service Committee
Bagay Dwo! Haiti Relief Fund
Beyond Borders
Center for Constitutional Rights
Environmental Justice Initiative for Haiti
Foreign Policy In Focus
Gender Action
Global Hood
Grassroots International
Institute for Justice and Democracy in Haiti
Lanbi Fund
Nouvelle Vie Haiti
Other Worlds
Quixote Center
TransAfrica Forum
Bill Fletcher, Black Commentator
Mark Weisbrot, Center for Economic and Policy Research



Letter to USA Secretary of State Ms. Clinton by 18 NGOs urging that funds pledged by the United States and other members of the international community, be directed towards rebuilding Haiti, not to international private security contractors.

COLLUSION BETWEEN PMSC AND REBEL GROUPS

- WARLORD GROUPS IN SOMALIA



- TALIBAN IN AFGHANISTAN



UN EMBRACES PRIVATE MILITARY CONTRACTORS

Foreign Policy Turtle Bay Informing from inside the UN
17 January 2010



« In Afghanistan, the U.N. has contracted an Afghan subsidiary of the London-based company, IDG Security Ltd., to provide 169 Gurkhas, according to figures compiled by the U.N. Mission in Afghanistan (some U.N. officials say there may be as many as 400 Gurkhas protecting U.N. officials). They are charged with supplementing security provided by the Afghan National Police. »

Comment by Sandline International

9 February 2000, Sandline listed as registered supplier in UN database

Sandline International is pleased to report that the company is now a registered supplier in the United Nations Common Supply Database (UNCSD).

Other PMSC in UNCSD: Aegis, Armor Group, DynCorp, MPRI...

It would seem that the PMSC Greystone of the Blackwater Group had also been registered in UNCSD

A COMMON PATTERN IN ALL REGIONS OF THE WORLD

LACK OF COMMON STANDARDS FOR

REGISTRATION

LICENCING

VETTING

TRAINING

SAFEKEEPING
OF WEAPONS

DIFFUSED RESPONSIBILITY AND LACK OF ACCOUNTABILITY



A labyrinth of contractual and insurance layers and shells

Many contracts outsourced by U.S.A. government to PMSCs are in their turn subcontracted to other companies registered in U.S.A. or abroad

Examples: Triple Canopy subcontracted Your Solutions Inc. Illinois whose subsidiary Your Solutions Honduras recruited Latinos for Iraq

Blackwater subcontracted Grupo Tactico Chile

These companies (some of which are “ghost” that have never been legally registered) are entrusted with selecting and recruiting military and police personnel from third countries.

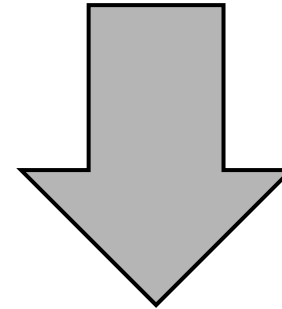
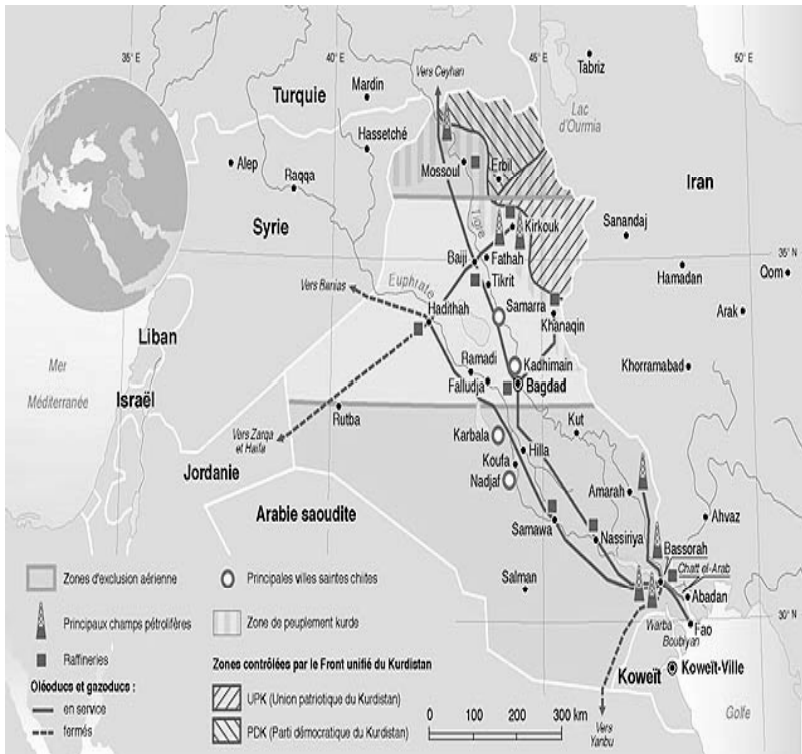
DIFFUSED RESPONSIBILITY AND ACCOUNTABILITY



**According to a
Congressional report
October 2007**

- ❑ Blackwater guards have been involved in nearly 200 shootings in Iraq since 2005**
- ❑ Despite the terms of the contracts which provide that Blackwater can engage only in defensive use of force,**
- ❑ The report indicates that Blackwater reported that in over 80% of the shooting incidents its forces fired the first shots**

LACK OF VETTING PROCEDURES



□ The case of South African PMSC employed in Iraq

Among PMSC employees in Iraq were found South Africans having committed crimes against humanity when they served in the South African police and army during the former *apartheid* regime.

LACK OF VETTING PROCEDURES

The Case of Danny Fitzsimons

Was diagnosed as suffering from Post-Traumatic Stress Disorder (PTSD) in January 2004, while still in the army. Assessments by consultant psychiatrists in May 2008 and June 2009 reported that the symptoms had worsened.

➤ **Despite this, in August 2009, he was hired by ArmorGroup and sent out to Iraq without undergoing a full medical assessment.**

➤ **Within 36 hours of his arrival, the incident took place in which two colleagues died and an Iraqi was injured.**

The Queensland Times



Danny Fitzsimons

PRIVATIZATION OF WAR

A NEW NON-STATE ACTOR: THE PMSC

IRAQ:

- ❑ 180 Private Companies providing services to militaries
- ❑ 190 000 Private Contractors
- ❑ 48 000 Private "security guards"

Rate Militaries/Private Contractors

First War Golf: 50 to 1

War Golf 2003: 1 to 1



AFGHANISTAN :

- ❑ 60 Private Companies
- ❑ Between 18 000 and 28 000 Private "security guards"

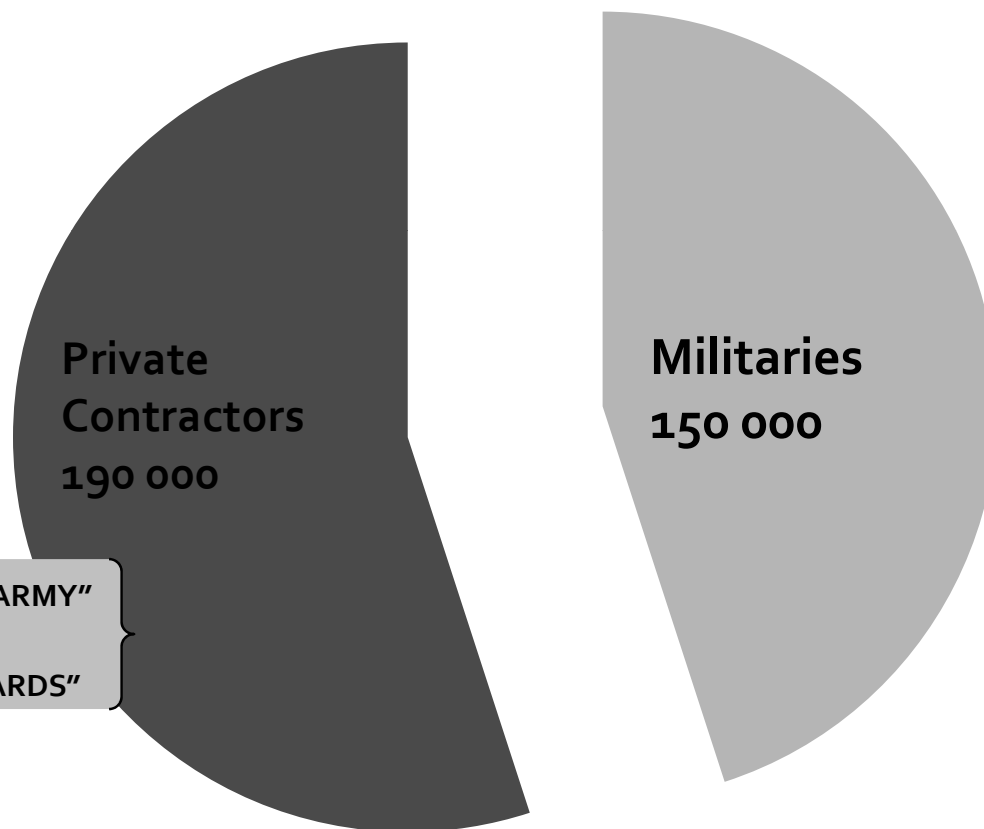
Estimates from various sources 2007-2008



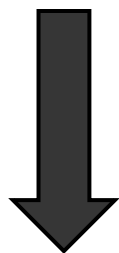
PRIVATIZATION OF WAR

A NEW NON-STATE ACTOR: THE PMSC

IRAQ



OF WHICH A "DISPOSAL ARMY"
OF 48 000
PRIVATE "SECURITY GUARDS"

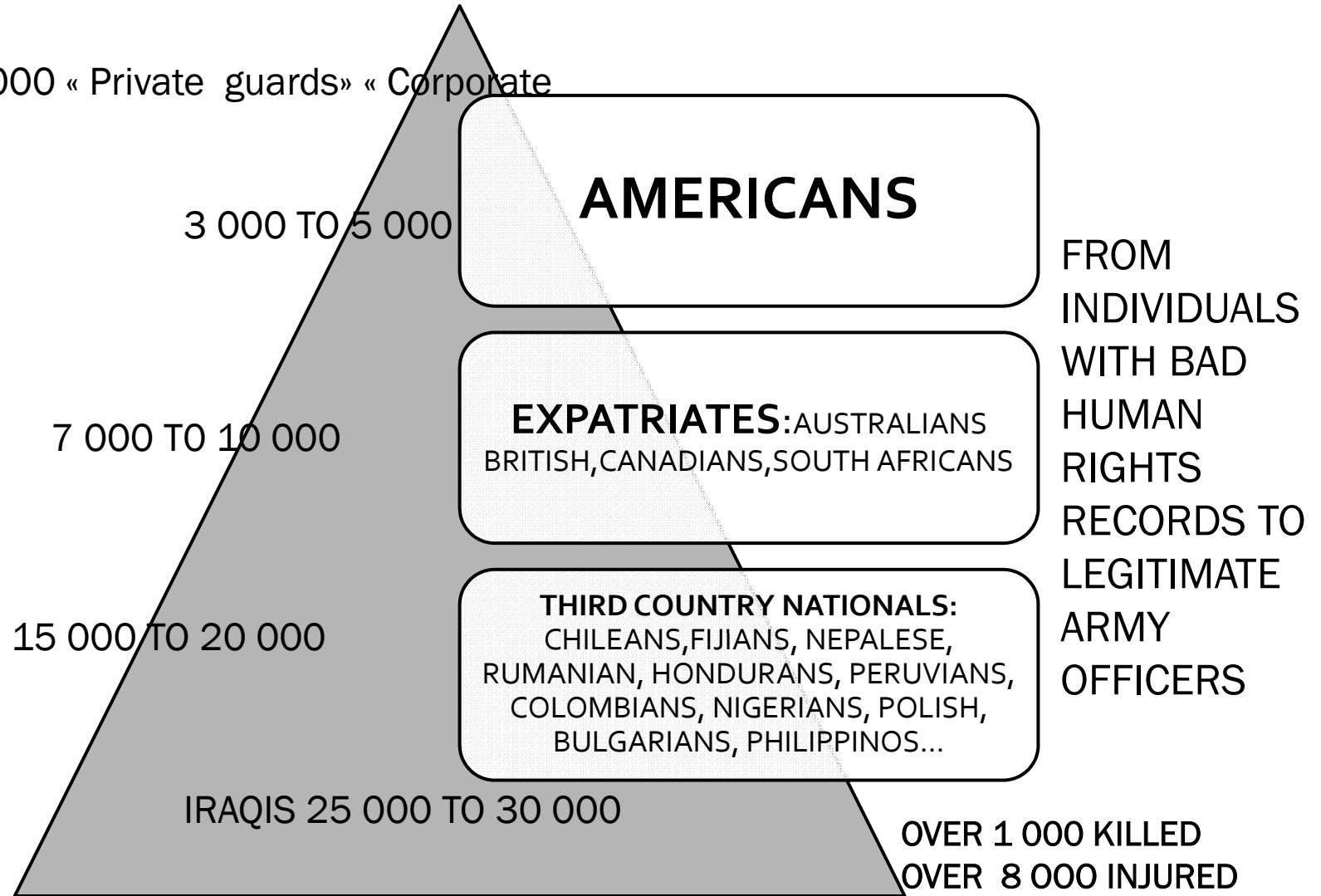


- ❑ MORE THAN ANY OTHER ARMY OF THE COALITION EXCEPT USA
- ❑ MORE CASUALTIES (1000 KILLED, 8000 INJURED) THAN OTHER ARMIES OF COALITION EXCEPT USA

“Private guards” RECRUITMENT IN IRAQ

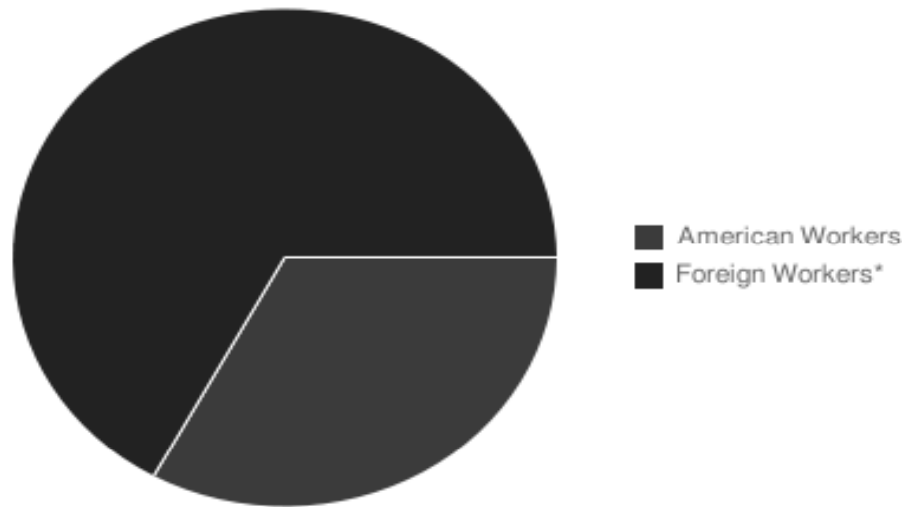
❑ SOME 180 000 PRIVATE CONTRACTORS

❑ SOME 50 000 « Private guards » « Corporate warriors »



Source: U.S. Central Command, July 2007

Nationality of Civilian Contractors Reported Working in Iraq and Afghanistan



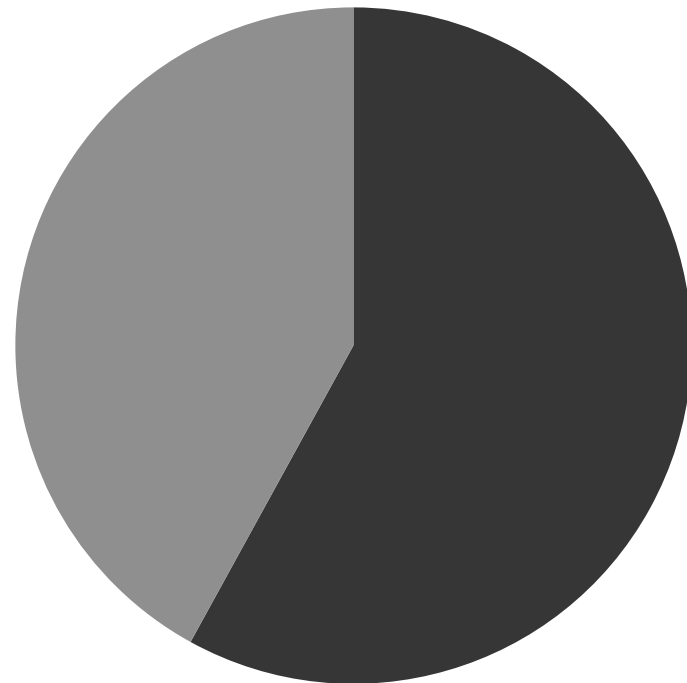
	Number of Workers	Percent of Total Workers
Foreign Workers*	45,194	67%
American Workers	22,465	33%



The latest figures of U.S. Department of Defense (April 2010) show there are more civilian contractors in Afghanistan than there are soldiers (Pro Publica)

□ 107,292 U.S.-hired civilian workers

□ 78,000 soldiers



A SOCIAL PHENOMENON WHICH REACHED 2010 CANNES
FESTIVAL

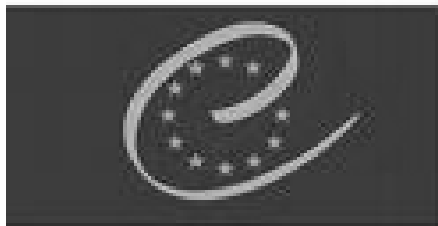
Route Irish, by Ken Loach



An incredible
and scary
plot.
(El País)

Investigates the death in Baghdad of a “security guard” working for one of the multiple private military and security companies making sinister businesses and committing crimes with absolute impunity in a devastated country.

**A POSSIBLE
DRAFT
CONVENTION
ON PMSCs**



COUNCIL
OF EUROPE

CONSEIL
DE L'EUROPE



Parliamentary Assembly

HAS ADOPTED TWO REPORTS recommending “that the Committee of Ministers draw up a Council of Europe instrument aimed at regulating the relations of its member states with PMSCs and laying down minimum standards for the activity of these private companies”:

- Report of the Political Affairs Committee. **Doc. 11787** (22 December 2008)
- Report of the Committee on Legal Affairs and Human Rights **Doc. 11801** (27 January 2009) on:

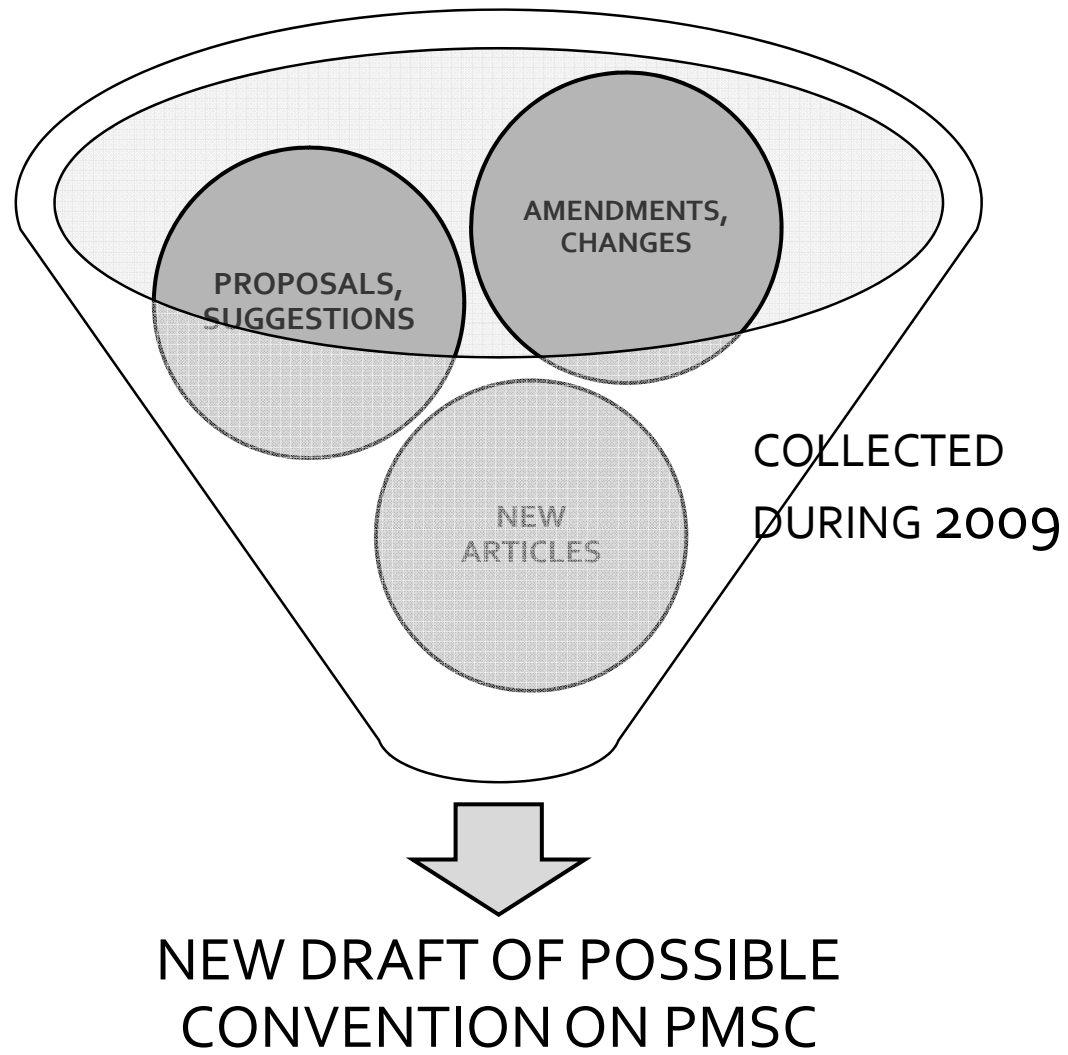
“Private military and security firms and the erosion of the state monopoly on the use of force”
Stating “its preference for a legally binding document (convention)”.



IMPLEMENTATION OF MANDATE GIVEN TO THE WORKING GROUP BY UN HUMAN RIGHTS COUNCIL IN OPERATIVE PARA. 13 OF ITS RESOLUTION 10/11 OF 26 MARCH 2009

- 2009 →
- 2010 →
- consult with IGO, NGO, academic institutions and experts on the **content and scope** of a possible draft Convention on PMSCs;
 - share with Member States **elements** for a possible draft convention on PMSCs requesting their input;
 - report to the fifteenth session of the HRC on the **progress** achieved in the elaboration of the draft convention;

SOME 200 REPLIES COMPRISING OVER 800
SUGGESTIONS FROM ACADEMICS, NGOS IGOS



NEW DRAFT TEXT SENT TO 192 UNITED
NATIONS MEMBER STATES FOR
COMMENTS IN 2010

ELEMENTS

TEXT OF ARTICLES OF A POSSIBLE



DRAFT CONVENTION ON THE REGULATION,
OVERSIGHT AND MONITORING OF PMSC

**P
R
E
A
M
B
L
E**

Reaffirms the relevant principles and rules of international human rights and international humanitarian law

Expresses concerns about the increasing delegation or outsourcing of inherently State functions which undermine any State's capacity to retain its monopoly on the legitimate use of force

Reiterates that responsibility for violations of international human rights and humanitarian law may be imputable not only to States but also to inter-governmental organizations and non-State actors

Considers that victims of human rights violations have the right to effective remedies, and declares that mechanisms must be devised to ensure the accountability of States, inter-governmental organizations and PMSCs.

STRUCTURE OF THE DRAFT CONVENTION

- General Provisions
- General Principles
- Legislative regulation, oversight and monitoring
- State responsibilities to impose sanctions on offenders and provide remedies to victims
- International oversight and monitoring
- Final Provisions

PURPOSES OF DRAFT CONVENTION (Art. 1)

Reaffirm the
State
responsibility
for the
legitimate
use of force

Identify
inherently
State
functions that
cannot be
outsourced

Provide
guidance for
regulation by
States of the
activities of
PMSCs and
their potential
sub-
contractors

Promote
cooperation
between
States
regarding the
licensing and
regulation of
PMSCs
activities

Establish an
international
monitoring
mechanism
and promote
the creation
of monitoring
bodies at
national level

SCOPE OF APPLICATION



GENERAL PRINCIPLES

State responsibility for the legitimate use of force

State sovereignty. Principles of sovereignty, equality and territorial integrity

Prohibition of outsourcing inherent State functions to PMSCs

Prohibition of outsourcing the use of certain firearms

Respect for IHRL and IHL and accountability for violations. Liability of superior of PMSCs personnel for crimes under international law committed by PMSC personnel under their effective authority and control

Prevent PMSCs from trafficking and illicitly manufacturing firearms

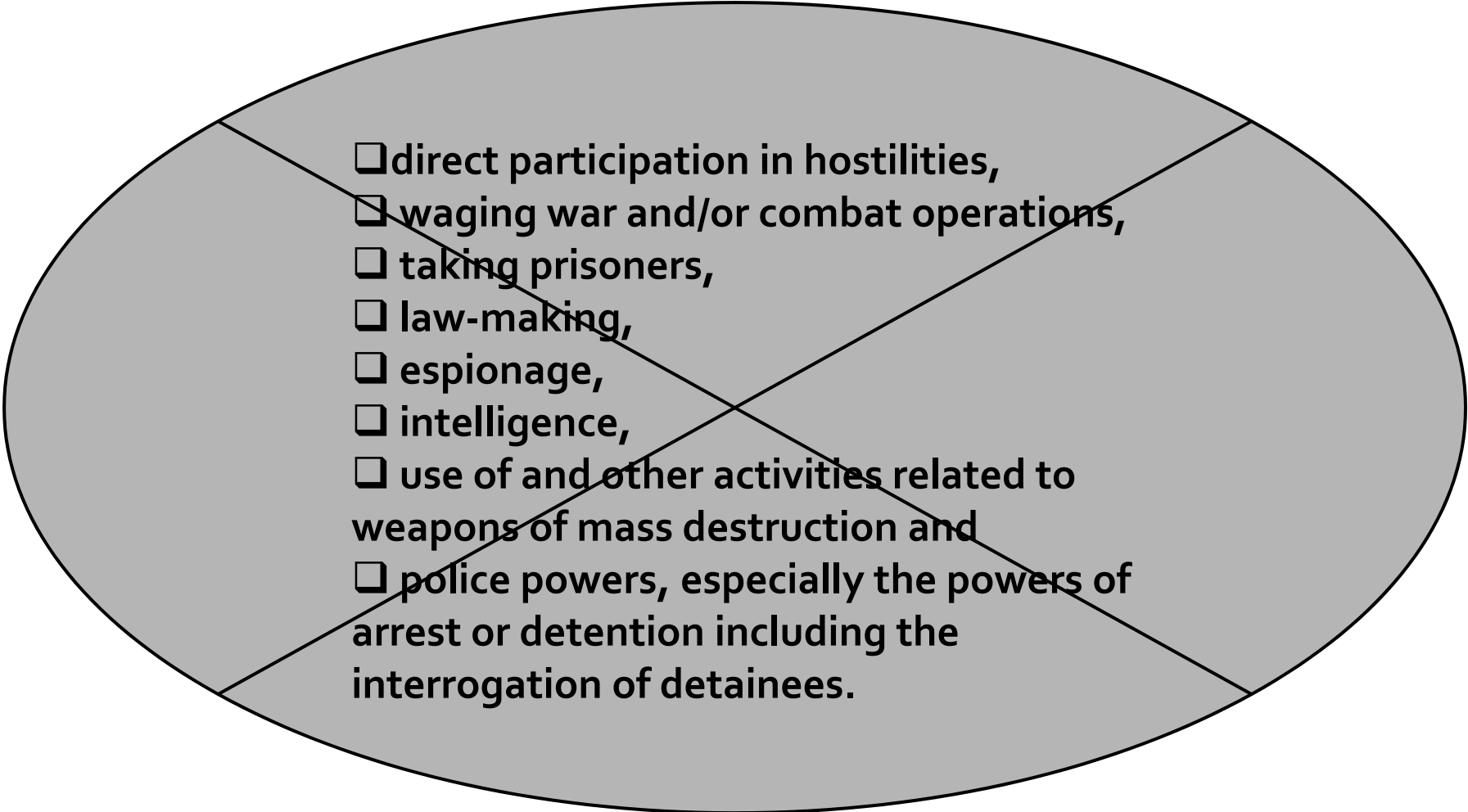
Rule of Law

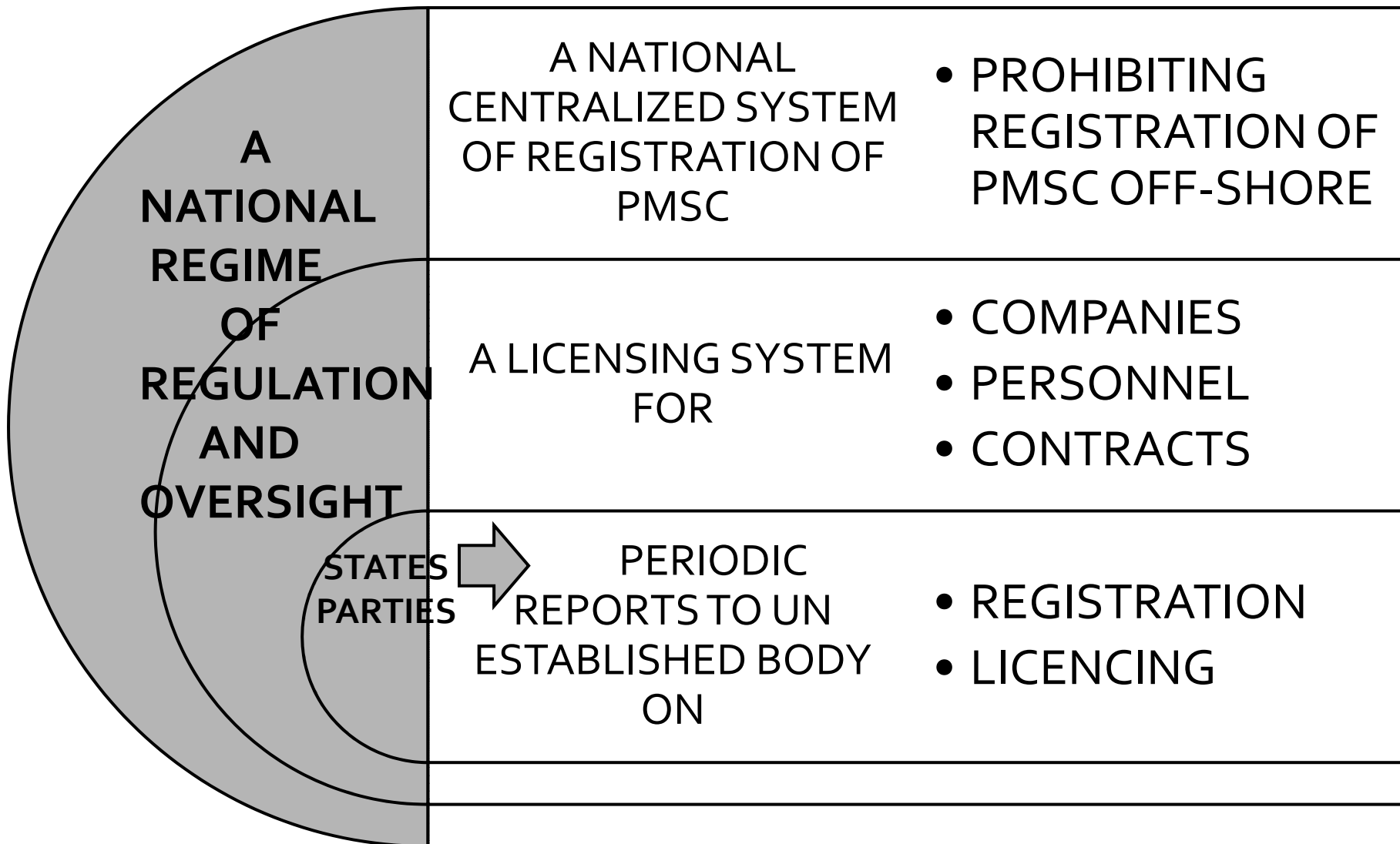
PMSC's activities consistent with IHRL and IHL

Compliance with legislation territorial State

Agreements with the legislation of home, territorial and national State

INHERENTLY STATE FUNCTIONS WHICH CANNOT BE OUTSOURCED

- 
- direct participation in hostilities,
 - waging war and/or combat operations,
 - taking prisoners,
 - law-making,
 - espionage,
 - intelligence,
 - use of and other activities related to weapons of mass destruction and
 - police powers, especially the powers of arrest or detention including the interrogation of detainees.



GUARANTEES
FOR THE USE OF
FORCE

- RULES ON THE USE OF FORCE AND FIREARMS BY PMSC
- ONLY LEGITIMATE WAYS OF ACQUIRING AND TRANSPORTING WEAPONS

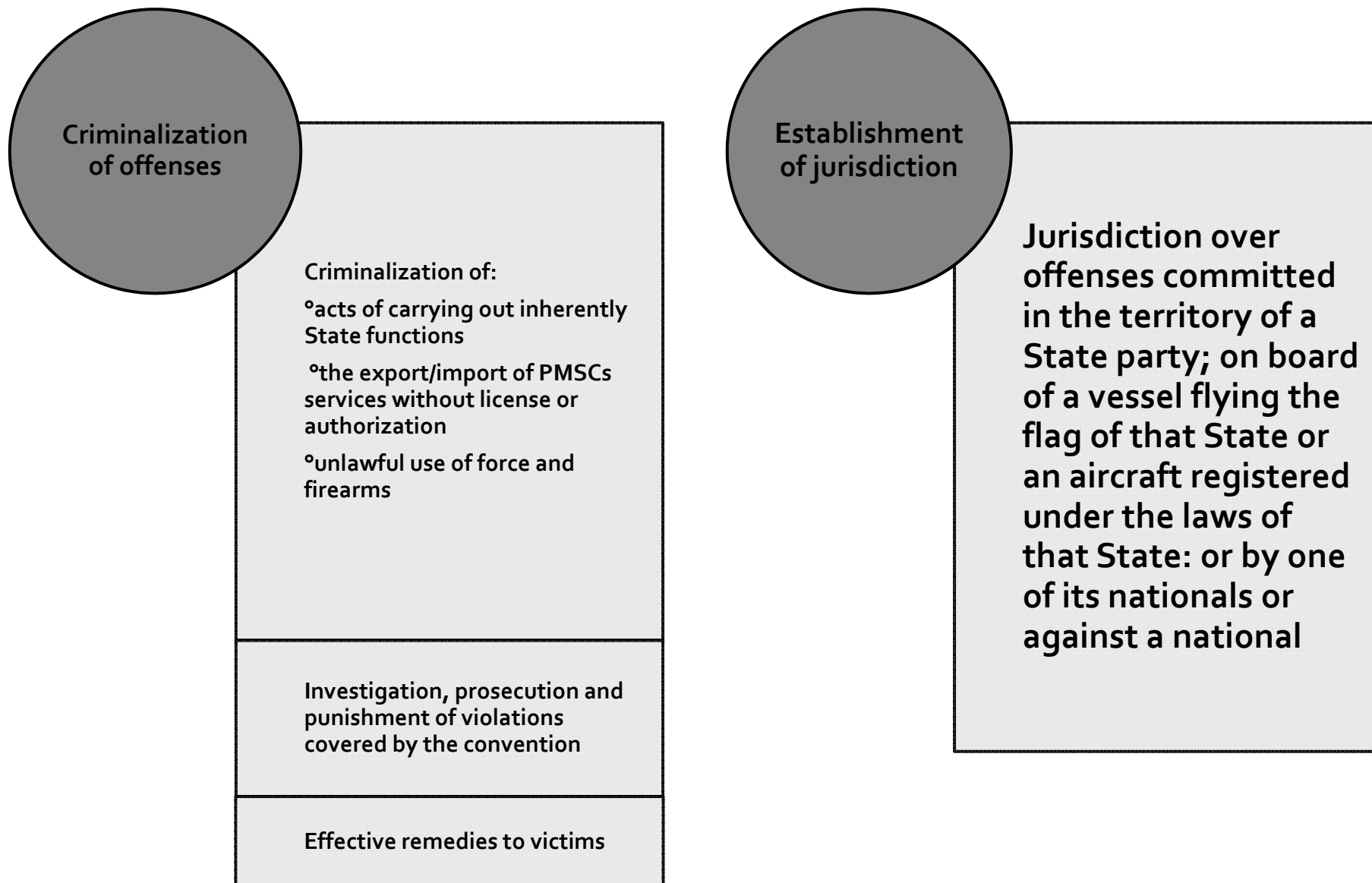
GUARANTEES
FOR THE USE OF
FORCE

- USE OF FORCE WHEN STRICTLY NECESSARY AND TO THE EXTENT AUTHORIZED BY THE STATE

GUARANTEES
FOR THE USE OF
FORCE

- USE OF FORCE REGULATED BY MILITARY NORMS AND HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW WHEN PMSC PROVIDE SERVICES UNDER AGREEMENT WITH ARMED FORCES OF A STATE

STATE RESPONSIBILITY TO IMPOSE CRIMINAL, CIVIL AND/OR ADMINISTRATIVE SANCTIONS ON OFFENDERS AND PROVIDE REMEDIES TO VICTIMS



STATE RESPONSIBILITY

Extradition. Criminal offenses under the convention to be included in any existing and subsequently concluded extradition treaties between States parties.

Mutual legal assistance in investigations, prosecutions and judicial proceedings

Transfer of criminal proceedings to another State, to the ICC

Liability of legal persons. Establishment of the criminal and civil liability of PMSCs for participation in offenses penalized under the convention

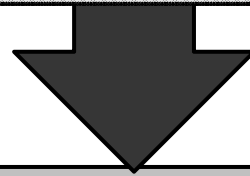
Obligation to lift immunity applicable to PMSCs and their personnel under other conventions and agreements

Fund to rehabilitate victims of offenses

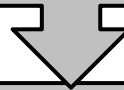
Obligation of PMSCs to compensate victims of violations

INTERNATIONAL COMMITTEE ON THE REGULATION, OVERSIGHT AND MONITORING OF PMSCs

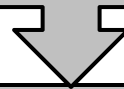
International monitoring mechanism for the implementation of the convention
RESPONSIBLE FOR RECEIVING AND DEALING WITH



Reports from States parties



Petitions from individuals and groups of individuals



Confidential Inquiries: *in situ* visit



Complaints from States parties – Conciliation Commission

**THE TEXT OF A
POSSIBLE
DRAFT
CONVENTION**

**WILL BE
SUBMITTED TO
UN HUMAN
RIGHTS
COUNCIL IN
September 2010
(A/HRC/15/25/Add 7)**

**THE UN HUMAN
RIGHTS COUNCIL
MAY ESTABLISH
AN OPEN ENDED
WORKING GROUP
FOR THE
ELABORATION OF
A NEW
INSTRUMENT**

