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REGULATING THE PRIVATIZATION OF WAR: HOW TO STOP PRIVATE MILITARY FIRMS FROM COMMITTING HUMAN RIGHTS ABUSES

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Abstract: Private Military Firms (PMFs) have recently stepped in to fill the growing global demand for temporary, highly-specialized military services. These private corporations can be a blessing to their client countries in that they offer many economic, military, and political benefits not ordinarily found in standing armies. However, PMFs fall within a gap in international law, which presumes and prefers a monopolization of force by state actors, thereby leaving no effective way to deal with those PMFs that commit human rights abuses. This Note traces the history of private militaries and the applicable legal standards and argues for a coordinated domestic approach among a handful of countries to legitimize and regulate PMFs.

Introduction

Since the end of the Cold War, there has been an abundance of unemployed, highly-trained soldiers in the Developed World.[1] Recently, the market has seen an increasing demand for such soldiers to support Developing World regimes that had hitherto relied upon their Cold War sponsors for military support.[2] A similar demand also exists among Developed World armies, who now look to outsource many of their training and support needs.[3] Private Military Firms (PMFs), which are "profit driven organizations that trade in professional services intricately linked to warfare," have stepped in to fill these demands in the global security market.[4] Offering services that range from operational

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[1] *See* Juan Carlos Zarate, *The Emergence of a New Dog of War: Private International Security Companies, International Law, and the New World Disorder,* 34 Stan. J. Int'l L. 75, 75–76 (1998).

[2] *Id.*

[3] P.W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry and Its Ramifications for International Security,* 26 Int'l Sec. 186, 188–89 (2001/02).

[4] *See id.* at 186.

support and military training to strategic planning and even full-scale combat, PMFs bring their military expertise to places where Developed World armies are often loath to intervene.[5]

Despite their widespread use, PMFs fall within a gap in international law, which presumes and prefers a monopolization of force by state actors.[6] Indeed, although PMFs often perform the same tasks as state-sponsored militaries, the PMF corporate structure is a foreign concept to international law.[7] Therefore, there is very little legal protection for the victims of PMF human rights abuses.[8]

This Note focuses on how best to remedy PMF human rights abuses. First, it traces the long history of private, profit-driven militaries. In doing so, it discusses the reasons for the 20th Century's historically aberrant, yet profound, distaste for private armies.[9] Second, it discusses the inadequacies of existing international law when applied to PMFs as well as why the proposed remedies for these inadequacies are unworkable. Finally, this Note outlines a practical and effective method of legitimizing and regulating PMFs so as to retain their utility while minimizing their potential for criminal behavior.

I. History and Background

A. *A History of Private Militaries*

"As long as humanity has waged war, there have been mercenaries."[10] Indeed, the history of private militaries can be traced back at least 3,000 years, when Numidian mercenaries played a large role in Ramses II's attack on Kadesh (1294 B.C.), and biblical King David's mercenaries drove the Philistines from Israel (1000 B.C.).[11] The ancient Greeks and Romans also relied heavily upon mercenaries, as did Emperor Justinian and William the Conqueror.[12]

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[5] *See* Herbert M. Howe, *The Privatization of International Affairs: Global Order and the Privatization of Security,* 22 Fletcher F. World Aff. 1, 5 (1998).

[6] *See id.* at 1; Tina Garmon, Comment, *Domesticating International Corporate Responsibility: Holding Private Military Firms Accountable Under the Alien Tort Claims Act,* 11 Tul. J. Int'l & Comp. L. 325, 338–39 (2003).

[7] *See* Garmon, *supra* note 6, at 338–39.

[8] *See id.*

[9] *See* Todd S. Milliard, *Overcoming Post-Colonial Myopia: A Call to Recognize and Regulate Private Military Companies,* 176 Mil. L. Rev. 1, 6–11 (2003).

[10] Zarate, *supra* note 1, at 82.

[11] Milliard, *supra* note 9, at 2.

[12] *Id.*

The use of mercenaries continued unabated up through the modern era. In the Middle Ages, companies of fighting men offered their collective skills to whomever would hire them.[13] During the Renaissance, Italy's city-states contracted with freelance military commanders, or *condottieri,* so as to deny military power to potential domestic rivals and to avoid disrupting "the productive economy by forcing normal citizens into military service."[14] Most of the forces used in the Thirty Years' War (1618–1648) were privately contracted,[15] and the British Crown famously hired Hessian soldiers to fight against George Washington's troops in the American Revolutionary War.[16] Indeed, "not until the Franco-German War of 1870 did the 'nation-in-arms' concept gain predominance in the world's militaries," after which armies built upon national loyalties quickly became the international norm.[17]

Throughout the twentieth century, the international community further curtailed organized private armies.[18] In particular, there was an extraordinary backlash against the individual, ad-hoc mercenaries, commonly known as *les affreux* ("the dreaded ones"), who threatened the stability of many mineral-rich, post-Colonial African regimes.[19] Indeed, during the 1960s and 70s, the governments of Zaire, Nigeria, Sudan, Guinea, Angola, Benin, the Comoro Islands, and the Seychelles were all seriously threatened by such mercenaries who usually hailed from these countries' previous colonial occupiers.[20] It is largely because of the abuses committed by these mercenaries and the significant threat they posed to post-Colonial independence that an international consensus developed condemning mercenarism.[21]

B. *The Emergence of Private Military Firms*

For many reasons, today's PMFs are quite different from *les affreux* of a few decades ago or even today's individual soldiers of fortune.[22] As P.W. Singer of the Brookings Institution has characterized them,

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[13] *See* Zarate, *supra* note 1, at 83.
[14] *Id.* at 84.
[15] Singer, *supra* note 3, at 190.
[16] Zarate, *supra* note 1, at 85.
[17] Milliard, *supra* note 9, at 6–7.
[18] *See* Singer, *supra* note 3, at 191.
[19] *See* Zarate, *supra* note 1, at 87.
[20] *See id.* at 88–89.
[21] *Id.* at 116.
[22] *See* Singer, *supra* note 3, at 191.

> Today's PMFs represent the evolution of private actors in warfare. The critical analytic factor is their modern corporate business form. PMFs are hierarchically organized into incorporated and registered businesses that trade and compete openly in the international market, link to outside financial holdings, recruit more proficiently than their predecessors, and provide a wider range of military services to a greater variety and number of clients. Corporatization not only distinguishes PMFs from mercenaries and other past private military ventures, but it also offers certain advantages in both efficiency and effectiveness.[23]

Perhaps the greatest reason for the post-Cold War emergence of PMFs is the growing demand for private military expertise within the Developed World.[24] Not only did the world's armies shrink by more than 6 million people during the 1990s,[25] but many Developed World governments also announced policies of non-intervention except in areas of vital national interest.[26] Subsequently, PMFs have replaced many uniformed soldiers because they "can perform services which governments approve of, but hesitate to attempt themselves because of political, military or financial costs."[27] Indeed, PMFs have performed specialized tasks in every major post-Cold War American military operation; they have served as American proxies in places like Colombia and Liberia, and they even operate the computer and communications systems for the U.S. nuclear response at NORAD's Cheyenne Mountain base.[28]

Developing countries also hire PMFs to fight the small-scale conflicts that do not attract the attention of militarily developed nations.[29] Due to recent advances in weapons technology, "[a]lmost any group operating inside a weak state can now acquire at least limited military capabilities, thus lowering the bar for creating viable threats

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[23] *Id.*

[24] *See* Howe, *supra* note 5, at 5–7.

[25] Singer, *supra* note 3, at 193.

[26] Howe, *supra* note 5, at 5 (referencing President Clinton's Presidential Decision Directive 25 as an example of a trend towards policies of non-intervention).

[27] *Id.*

[28] Singer, *supra* note 3, at 188–89; *see also US's 'Private Army' Grows,* Christian Science Monitor, Sept. 3, 2003, at 6.

[29] Zarate, *supra* note 1, at 92.

to the status quo."[30] Since Developing World armies rarely have the ability to combat such threats, they hire PMFs to come to the rescue.[31]

C. *When PMFs Run Amok*

Although it is clear that PMFs fill an important role in the global security market, it is also clear that PMFs do not always respect the international standards of armed conflict.[32] For instance, in 1995, the government of Sierra Leone hired the South African PMF, Executive Outcomes (EO), to help subdue the rebellious Revolutionary United Front.[33] EO quickly assumed control over all offensive operations and, when asked how to distinguish between civilians and rebels, EO commanders supposedly ordered their pilots to just "kill everybody."[34]

Another such example involves DynCorp, an American PMF currently active in Iraq.[35] While working in the Balkans, several DynCorp employees allegedly ran a prostitution ring, selling the services of girls as young as twelve years old.[36] Despite these wide-spread accusations, none of the accused DynCorp employees were brought to trial or disciplined in any way. [37] Rather, DynCorp has addressed the issue by firing the whistle-blower who exposed the prostitution ring.[38]

II. Discussion

A. *Mercenary Restrictions do not Apply to PMFs*

One way in which the international community has tried to restrict private militaries is by condemning mercenary activity.[39] However, different states define "mercenary" in different ways, usually according to that state's history as a client or victim of mercenaries.[40] Largely because of these differences, it is unclear whether international law has

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[30] Singer, *supra* note 3, at 196.

[31] *See* Zarate, *supra* note 1, at 92.

[32] *See id.* at 76; Jennifer L. Heil, Comment, *African Private Security Companies and the Alien Tort Claims Act: Could Multinational Oil and Mining Companies Be Liable?*, 22 Nw. J. Int'l L. & Bus. 291, 297–98 (2002).

[33] *See* Heil, *supra* note 32, at 297.

[34] Garmon, *supra* note 6, at 326.

[35] *The Enron Pentagon,* Boston Globe, Oct. 19, 2003, at L12.

[36] *Colombia: Private Companies on the Frontline,* Financial Times, Aug. 12, 2003, at 15.

[37] *Id.*

[38] *Id.*

[39] *See* Zarate, *supra* note 1, at 125–34.

[40] *See id.* at 120.

settled upon a particular definition of "mercenary," but scholars largely agree that none of the current definitions include PMFs.[41]

The two definitive documents restricting mercenary activity are the Additional Protocols to the Geneva Conventions of 12 August 1949 (Protocol I)[42] and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (UN Mercenary Convention).[43]

Protocol I's regulatory power is largely derived from its discouragement of mercenary activity by withdrawing eligibility for prisoner of war status.[44] However, Protocol I's definition of "mercenary" excludes military trainers, advisors, and support staff, thereby omitting the great majority of PMF activities.[45] Furthermore, even those PMFs engaging in direct combat would likely escape Protocol I's regulations in any one of three ways. First, if PMFs engage in combat while on a security detail, they would probably avoid the Protocol I requirement of involvement in "armed conflict."[46] Second, it is almost impossible to prove that a PMF employee's motivation is financial gain, which is a requisite component of Protocol I's definition of "mercenary."[47] Third, PMFs often fully integrate into a client's armed forces, thereby avoiding mercenary classification under Protocol I.[48]

Largely due to perceived inadequacies in Protocol I's restrictions on mercenarism, the UN Mercenary Convention extended the Protocol I definition to cover all conflicts (beyond just international armed conflicts) and also added a second, more sweeping definition of mercenary activities.[49] However, this second definition still does not apply to most

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[41] *See id.* at 120–33.

[42] *See* Zarate, *supra* note 1, 123-25; *see also* Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, art. 47, 1125 U.N.T.S. 3 [hereinafter Protocol I]. Article 47 defines a mercenary as any person who (1) fights abroad, (2) in combat, (3) is motivated by private gain paid substantially more than standing army combatants, (4) is neither a national nor resident of either Party, (5) is not a member of either Party's armed forces, and (6) is not on official duty as a member of a non-Party State's armed forces. *See* Protocol I, art. 47.

[43] U.N. GAOR, 44th Sess., Supp. No. 43, U.N. Doc. A/RES/44/34 (1989) (entered into force Oct. 20, 2001) [hereinafter UN Mercenary Convention]. Article 1(2) of the UN Mercenary Convention includes the Protocol I definition, but adds that a mercenary is any person who (1) fights in *all* conflicts, (2) aimed at overthrowing or undermining a government or its State's territorial integrity. *Id.* art. 1(2).

[44] *See* Milliard, *supra* note 9, at 41.

[45] *See* Zarate, *supra* note 1, at 123.

[46] *Id.* at 124; *see also* Protocol I, *supra* note 42, art. 2(a).

[47] *See* Milliard, *supra* note 9, at 59–61; Protocol I, *supra* note 42, art. 2(c).

[48] *See* Zarate, *supra* note 1, at 124; Protocol I, *supra* note 42, art. 2(e).

[49] *See* Milliard, *supra* note 9, at 57–58.

PMFs since it retains both the loophole for those combatants who integrate into a client's armed forces and the problems associated with ascertaining a combatant's motivation for fighting.[50] Indeed, it is widely recognized that neither the Protocol I nor the UN Mercenary Convention's definitions of "mercenary" cover a majority of PMF activity.[51]

B. *The Alien Tort Claims Act*

Introduced in 1789, but rarely invoked over the next two centuries, the Alien Tort Claims Act (ATCA) gives aliens access to U.S. federal courts for violations of international law.[52] The ATCA was passed to ensure that visiting diplomats could bring claims against the United States or U.S. citizens and have those claims heard in federal, rather than state, courts.[53] More recently, however, U.S. courts have expanded the ATCA to cover claims for international human rights abuses occurring outside the United States.[54]

The 1980 case of *Filartiga v. Pena-Irala* ushered in this more expansive interpretation of the ATCA.[55] In *Filartiga,* the 2nd Circuit retained jurisdiction over an action where a Paraguayan citizen sued a former Paraguayan police officer for acts of torture committed in Paraguay.[56] In doing so, the court read the ATCA both as an action-granting and a forum-granting statute, allowing U.S. district courts to hear any case in which an alien alleges a tort committed in violation of customary or treaty-based international law.[57]

More recently, this trend has continued as U.S. district courts have expanded ATCA liability to cover individual war criminals in the Former Republic of Yugoslavia and political parties in Zimbabwe.[58] Furthermore, in *Iwanowa v. Ford Motor Company*, a district court found the Ford Motor Company liable for its use of slave labor during World War

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[50] *Id.* at 59–62. *See generally* UN Mercenary Convention, *supra* note 43 (further constricting the integration of forces loophole by recognizing only those combatants who integrate with the armed forces of a state actor).

[51] *See* Zarate, *supra* note 1, at 123–25.

[52] Garmon, *supra* note 6, at 339; *see also* 28 U.S.C. § 1350 (2000) (stating "district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.").

[53] Heil, *supra* note 32, at 298.

[54] *Id.*

[55] *See* Garmon, *supra* note 6, at 339–40; *see also* Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir. 1980).

[56] *See Filartiga,* 630 F.2d at 878, 885.

[57] Garmon, *supra* note 6, at 339–40; *see also Filartiga,* 630 2d at 884–87.

[58] *See generally* Tachiona v. Mugabe, 169 F. Supp. 2d 259 (S.D.N.Y. 2001); *see also* Kadic v. Karadzic, 70 F.3d 232 (2d Cir. 1995).

II, thereby holding that even corporations that work closely with state actors will be held liable under the ATCA for violations of international law.[59] This trend, from *Filartiga* to *Iwanowa,* has led some scholars to believe that PMFs can successfully be held liable under the ATCA.[60]

C. *Domestic and International Regulatory Systems*

Although some countries restrict mercenary activity and many countries forbid their citizens to enlist in foreign armies, very few countries have laws regulating PMFs.[61] Legislation within PMF host countries usually takes one of three forms: (1) a complete ban upon any military activity other than in support of that country's armed forces; (2) regulation or complete prohibition of mercenary activity, but no mention of PMF activity; or (3) explicit regulation of PMF activity.[62] Of the eleven currently known PMF host countries, only the United States and South Africa explicitly regulate PMF activity.[63]

The U.S. Arms Export Control Act (AECA) regulates the export of both arms and military services.[64] Under the International Transfer of Arms Regulations (ITAR is the regulatory scheme which implements the AECA), all PMFs providing strategic, training, or maintenance advice to foreign forces must register with, and obtain a license from, the State Department.[65] Additionally, the State Department must individually approve (after Congressional notification) each specific PMF contract in excess of $50 million.[66]

Largely in response to the alleged atrocities of Executive Outcomes in Sierra Leone, South Africa passed the Regulation of Foreign

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[59] *See* Garmon, *supra* note 6, at 342–43; Iwanowa v. Ford Motor Co., 67 F. Supp. 2d 424, 439 (D.N.J. 1999).

[60] *See* Garmon, *supra* note 6, at 342–43. Garmon further asserts that the 9th Circuit, in *Doe I v. Unocal,* has held corporations liable for aiding and abetting violations of international law. Therefore, even PMFs that only train and support forces that commit human right abuses might still be liable under the ATCA. *See id.* at 346–49.

[61] *See* United Kingdom Foreign and Commonwealth Office, Private Military Companies: Options for Regulation 39–43, Annex B (2002).

[62] *Id.*

[63] *Id.; see also* Listing of Private Military Firms and Country of Origin on the Public Integrity Website, at http://www.publicintegrity.org/bow/docs/bow_companies.xls (last visited Dec. 7, 2004) [hereinafter ICIJ] The United States, United Kingdom, Canada, France, Israel, South Africa, Russia, Angola, Sierra Leone, Belgium, and Uganda currently host active PMFs. A handful of other countries may host PMFs, but it is undetermined whether the companies actually exist. *Id.*

[64] 22 U.S.C. § 2752 (as amended 1999) [hereinafter AECA].

[65] *See* United Kingdom Foreign and Commonwealth Office, *supra* note 61, at 39–40.

[66] *Id.* at 39.

Military Assistance Act (FMAA) in September of 1998.[67] Much like the American regulatory scheme, the FMAA establishes a licensing procedure for PMFs who wish to offer non-combat military services to foreigners.[68] South Africa also explicitly bases its licensing decisions on principles of international law (including human rights law) and prohibits PMFs from acting as combatants in armed conflict.[69]

Other suggested regulatory schemes consist of everything from a laissez-faire approach to an international regulatory system and even an outright ban on PMF activity.[70] Laissez-faire proponents argue that market forces will drive PMFs to honor contracts, maintain a good reputation, and eschew human rights abuses.[71] Those arguing for international regulation call for the United Nations to regulate PMFs through a scheme similar to the American and South African models.[72] Lastly, those who wish to completely ban PMFs fear that any legitimization of PMF activity erodes sovereignty by destroying the monopoly of force by state actors and encouraging neo-colonialist incursions into Developing World conflicts.[73]

III. Analysis

A. *Banning PMF Activity is both Unwise and Unlikely*

Since current international norms against mercenaries are considered either unenforceable or inapplicable to PMFs, some states and scholars have suggested either banning all PMF activity or broadening the Protocol I and UN Mercenary Convention definitions to cover PMF activity.[74] Adherents to the latter approach aim to discourage PMF activity (as is done to mercenary activity) bv explicitly withdrawing prisoner of war rights from their employees.[75] However, such

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[67] *Id.*

[68] *See* Regulation of Foreign Military Assistance Act 15 of 1998, § 5 (S. Afr.), *available at* http://polity.org.za/html/govdocs/legislation/1998/act15.pdf [hereinafter FMAA].

[69] *See* United Kingdom Foreign and Commonwealth Office, *supra* note 61, at 40.

[70] *See* Zarate, *supra* note 1, at 145–49 (discussing an outright ban of PMFs as well as the *laissez-faire* approach); *see also* Milliard, *supra* note 9, at 79–84 (promoting an international regulatory scheme).

[71] *See* Zarate, *supra* note 1, at 148–49.

[72] *See* Milliard, *supra* note 9, at 79–84.

[73] *See* Zarate, *supra* note 1, at 145–46.

[74] *Id.*

[75] *See id.* (referencing the U.N. Special Rapporteur's 1997 suggestions to expand the "mercenary" definition to include PMFs). The Protocol I definition of "combatant" probably includes PMFs, thereby granting them prisoner of war rights. *See* Protocol I, *supra* note 42, art. 43.

a sweeping condemnation of PMFs is unlikely to occur due to the wide-spread recognition of their utility.[76]

Indeed, the almost universal (though often tacit) approval of PMFs is well-founded due to their economic, military, and political advantages.[77] It is very expensive for governments to maintain standing armies because they demand housing, salary, and pensions.[78] Moreover, standing armies contain specialists who remain on the pay-roll even when their specialty is not required.[79] In contrast, PMFs are highly specialized and are paid only to perform specific tasks and then go home.[80] For instance, rather than depend upon an expensive, standing army of security-conscious mail delivery soldiers, the U.S. military has hired Kellogg Brown & Root to provide postal services in Iraq.[81]

PMFs also offer military advantages in that they consist of highly-trained military specialists (often from prestigious special-forces units of militarily advanced countries) who can assemble extraordinarily quickly.[82] For instance, EO has a permanent staff of 30, but can "deploy a fully supported battalion of about 650 men within 15 days."[83] Since EO's recent successes have earned it the distinction of the "most deadly and efficient force operating in sub-Saharan Africa today [aside from the South African army]," it certainly can offer significant military advantages over the standing armies of many client nations.[84]

Finally, the political benefits of hiring PMFs are manifold. First and foremost, although the loss of a PMF employee is certainly a personal tragedy, the loss of a uniformed soldier almost always becomes a national tragedy, bringing significant political pressure to bear upon any government.[85] Second, the governments of many conflict-ridden countries do not want to so empower their national armies as to risk a coup d'etat.[86] Thus, PMFs offer a way to exercise force without strengthening potential domestic enemies.[87] Lastly, economic concerns quickly become political concerns and money saved by not supporting a standing

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[76] *See* Howe, *supra* note 5, at 2–3.

[77] *Id.* at 5–7.

[78] *Id.* at 5.

[79] *Id.*

[80] *See id.*

[81] *See* Doug Brooks, *A New Twist on a Long Military Tradition,* Boston Globe, Oct. 19, 2003. at L12.

[82] *See* Howe, *supra* note 5, at 2, 5; Singer, *supra* note 3, at 193–94.

[83] *See* Howe, *supra* note 5, at 5.

[84] *See* Zarate, *supra* note 1, at 93.

[85] *See* Singer, *supra* note 3, at 218.

[86] *See* Howe, *supra* note 5, at 6.

[87] *See id.*

army can often be spent on the very ills that created a client country's instability in the first place.[88] Indeed, PMFs offer so many economic, military, and political advantages to client states that banning or discouraging PMF activity would be unpopular, impractical, and universally harmful.[89]

B. *The ATCA Is an Inadequate Remedy for PMF Abuses*

Even if a plaintiff shows both that a PMF has violated international law and that corporations are subject to the ATCA, she still must overcome a host of procedural hurdles.[90] ATCA defendants often successfully use *forum non conveniens*, exhaustion of remedies, comity, standing, and failure to join an indispensable party to stymie litigation.[91] The ATCA also has a ten year statute of limitations, which would further limit claims only to those PMF abuses that are reported relatively quickly.[92] Finally, personal jurisdiction in the United States over non-American PMFs (over two-thirds of the currently active total) could be established only if those defendants conducted "continuous and systematic business" within the United States.[93] In short, the ATCA may be a useful weapon against a handful of rogue PMFs, but the law's many procedural loopholes and wide inapplicability to most PMFs makes it a poor regulatory tool.[94]

C. *The Case for Coordinated Domestic Regulation of PMFs*

The American and South African approaches to regulating PMFs are worthy of emulation, and a coordinated effort to establish similar regulatory schemes in the other nine PMF host countries would offer the best remedy for potential PMF abuses.[95] Both the American AECA and the South African FMAA insist upon state licensing of all PMFs.[96] These licensing systems promote PMF responsibility because the free market favors licensed respectability, and very few PMFs will risk crimi-

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[88] *See id.* at 5–6.
[89] *See generally* Howe, *supra* note 5.
[90] Heil, *supra* note 32, at 303.
[91] *Id.*
[92] *See* Garmon, *supra* note 6, at 343.
[93] *See* Heil, *supra* note 32, at 306; *see also* ICIJ, *supra* note 63.
[94] *See* Heil, *supra* note 32, at 303–06.
[95] *See* AECA, *supra* note 63; FMAA, *supra* note 68.
[96] *See* AECA, *supra* note 63; *see also* FMAA, *supra* note 68.

nal liability by evading their host country's oversight.[97] Any domestic regulation should also include the AECA's notification requirements for most PMF contracts, since such notification precludes host governments from claiming ignorance of their PMFs' actions.[98] This, in turn, strengthens government oversight of PMFs and lessens the likelihood of their behaving in ways that would embarrass their host country.[99] Finally, much like the FMAA's licensing standards, domestic regulation should criminalize all PMF activity in violation of international law, thereby creating something akin to a criminal version of the ATCA in all PMF host countries.[100]

Such a coordinated regulatory scheme would also overcome the failures of a laissez-faire approach.[101] The mere fact that PMF abuses have occurred proves that market forces do not create sufficient incentives for good behavior.[102] Indeed, since war is inherently dirty and PMFs are hired to win wars, it can be argued that there is actually a strong market incentive for PMFs to strive to win at any cost.[103] On the other hand, regulation would redefine market incentives by conferring respect upon licensed PMFs, while leaving others in a shadow of illegitimacy and open to criminal prosecution for unlicensed operation.[104]

Finally, due to the relatively small number of PMF host countries, coordinated domestic regulation offers an easier (and equally effective) alternative to an international regulatory scheme.[105] Of the sixty-one currently active PMFs, twenty-four come from the United States and South Africa, while another twenty are based in the United Kingdom (which is currently considering enacting PMF regulations).[106] Most of the remaining sixteen hail from Canada, France, Israel, and Angola, thereby making a fully international regulatory regime entirely superfluous.[107] Furthermore, the likelihood of PMFs sprouting up in un-regulated countries is small since the supply of military ex-

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[97] *See* International Alert, Green Paper Submission 'Private military Companies: Options for Regulation', at 13–14 (2002) [hereinafter Int'l Alert].

[98] *See* AECA, *supra* note 64.

[99] *See* Int'l Alert, *supra* note 97, at 13–14.

[100] *See* FMAA, *supra* note 68.

[101] *See* Zarate, *supra* note 1, at 148–49.

[102] *See* Singer, *supra* note 3, at 214–15.

[103] *See id.*

[104] *See* Zarate, *supra* note 1, at 148–49.

[105] *See* ICIJ, *supra* note 63.

[106] *See Countries Where Private Military Companies Were Active, 1991–2002,* Boston Globe, Oct. 19, 2003, at L12 [hereinafter PMF Active List] (citing to P.W. Singer's data); ICIJ, *supra* note 63.

[107] *See* PMF Active List, *supra* note 106; ICIJ, *supra* note 63.

pertise (and the demand for it) is largely concentrated in the eleven current PMF host countries.[108]

Conclusion

In both the Developed and Developing Worlds, there is a growing need for inexpensive, specialized military expertise, and PMFs fill that need far better than standing armies. However, since current international and domestic laws do not adequately restrain PMFs from committing human rights abuses, the privatized military industry must be regulated in such a way that international norms are respected and protected. A coordinated domestic regulatory scheme (along the lines of those currently found within the United States and South Africa) would adequately solve this problem and would require the assent of only the eleven current PMF host countries, thereby offering the easiest and most effective remedy to PMF human rights abuses.

[108] *See* Howe, *supra* note 5, at 2–3.