



**TRABAJO FIN DE GRADO**

**TITLE:**

**The Intervention of the United States in Iraq and the presence of Private  
Military and Security Companies: The case of Blackwater**

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## **ABSTRACT**

In the last decades there has been an increasing tendency from state and non-state actors to use the services of Private Military and Security Companies. This dissertation analyzes the employment of Blackwater USA by the United States, during their intervention in Iraq. And their involvement in the Fallujah ambush, the An-Najaf battle or the Nisur Square massacre. These events determine that Blackwater in most of the cases acted wrongly, and had a higher rate for firing first during the performance of their operations in comparison with other companies. The analysis also presents the flaws in the international and domestic legislation to determine under which grounds these companies could be prosecuted. To prosecute PMSCs personnel under International Humanitarian Law and International Human Rights Law is very complex. The Domestic Law of the states is a more adequate resource to do so. Nonetheless, still there here have been proved many deficiencies exist. Thus, this paper suggests that Blackwater

Keywords: Private Military Companies, Private Security Companies, Iraq, Blackwater, Fallujah, Nisur Square, An-Najaf, United States.

## RESUMEN

En las últimas décadas, el uso de los servicios que ofrecen las Empresas Militares y de Seguridad Privadas por parte de los estados y de otros agentes no estatales, ha incrementado considerablemente. Esta disertación analiza el empleo de la empresa Blackwater USA, por parte de los Estados Unidos durante su intervención en Irak. Además de su implicación en la emboscada de Fallujah, la posterior batalla de An-Najaf o la masacre de Nisur. Estos eventos determinan que el personal de Blackwater, en la mayoría de los casos actuó de manera incorrecta además de tener un índice más elevado que otras empresas similares a la hora de disparar primero durante sus operaciones. El análisis también presenta los defectos existentes en las leyes internacionales, y las leyes domésticas para encausar y procesar a estas empresas y a su personal. Además, este ensayo sugiere que el personal de Blackwater actuó fuera de su jurisdicción y de manera ilegítima durante su despliegue en Irak.

Palabras Clave: Empresas Militares Privadas, Empresas de Seguridad Privadas, Irak, Blackwater, Estados Unidos, Fallujah, Nisur, An-Najaf.

## INDEX OF ACRONYMS AND ABBREVIATIONS

ACRONYM	ENGLISH
ATS	Alien Tort Statute
CIA	Central Intelligence Agency
CPA	Coalition Provisional Authority
CRG	Control Risk Group
DoD	US Department of Defense
DoS	US Department of State
ESS	ESS Support Services Worldwide
FBI	Federal Bureau of Investigation
GSA	General Services Administration of the US
IAEA	International Atomic Agency
ICoC	International Code of Conduct for Private Security Providers
ICJ	International Court of Justice
ICDC	Iraqi Civil Defense Corps
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
IHRL	International Human Rights Law
LOGCAP	Logistics Civil Augmentation Program
MEJA	Military Extraterritorial Jurisdiction Act
NGOs	Non-Governmental Organizations
OHCHR	Office of the High Commissioner of Human Rights
PMC	Private Military Company
PSC	Private Security Company
PMSC	Private Military and Security Companies
SEAL	The United States Navy Sea, Air, and Land
SIS/MI6	Secret Intelligence Service
TNC	Transnational Corporations
UK	United Kingdom
UN	United Nations
UNSC	United Nations Security Council

UNMOVIC	United Nations Monitoring, Verification and Inspection Commission
US	United States of America
WMD	Weapons of Mass Destruction
WWI	World War I
WWII	World War II

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## **1. INTRODUCTION**

This dissertation is structured in four major parts, the first part is formed by the introduction and the explanation of the research question and research objectives, as well as the methodology used. The second part is composed by the theoretical and conceptual framework, in which two main theories of International Relations will be linked to the phenomena of the privatization of security, as well as the concept of Private Military and Security Companies will be defined. Following this, in the theoretical and conceptual framework, the history of Private Military and Security Services and the history of Iraq will be explained, in order to understand the required background and concepts that will be applied in the analysis. Finally, this section will also introduce the necessary concepts to understand the legitimacy of the companies operating private security services, and how their actions can be prosecuted under the international and domestic law grounds.

The third part corresponds to the content of research or analysis, and consist on the analysis of Blackwater USA and its main operations, as well as the main events in which the company and its personnel were involved will be studied. In addition, this section also analyzes the role of the United States as the state contractor of the services of Blackwater in Iraq. Finally, the fourth part corresponds to the conclusion in which the research question and objectives will be answered.

### **1.1. Research question**

The subject that will be studied in this research paper is what was the role of Private Military Security Companies in the United States intervention in Iraq, and in particular the role of Blackwater, as it was one of the main companies present in the country hired by the US as outsourced security provider. The development of “new wars” and the change in the course of the conflicts that have taken place in the last decades, have led to the growth of the Private Military and Security industry.

The 9/11 attacks by the al-Qaeda organization, represented a threat that previously did not exist for the United States and many other countries predominantly Western. It was the first time that an attack to such a degree happened in United States soil, and the response by President George W. Bush was to declare his so-called "war on terror".



Iraq's leader, which had already been openly anti-American, did not condemn the attacks and among other reasons, became one of the main targets of the Bush administration and the "war on terror." Claiming that Iraq possessed a Weapons of Mass Destruction program, in 2003 the United States and a coalition of allied states intervened Iraq to overthrow the Saddam Hussein's regime.

The US did not have sufficient resources within its military structure, so it used the services of security and private military companies to provide different services in Iraq that its troops could not. Blackwater was one of them, and they began with a contract to provide security services to Ambassador Paul Bremmer III. During Bremmer's stay in the country and ended up becoming one of the most known private companies for his intervention in Iraq. Because of this, it is of interest to analyze what was the role of the company and its personnel during their deployment in Iraq, and answer the research question: What was the role of Blackwater in Iraq?

## **1.2. Research objectives**

As the role of Blackwater was decisive, other objectives of this study are to analyze how the company was involved in the war, through studying some of the largest and most popular events in which the company was implicated. Such as the Fallujah ambush (2004), the An-Najaf battle (2004), their involvement with the use of riot control agents or the Nisur massacre (2007), and what was the role of the company and its staff, as well as the consequences they had.

On the other hand, it will be analyzed what was the legitimacy from Blackwater's personnel to act in those cases, and which laws and regulations could apply to PMSCs and Blackwater. For instance, international treaties or the possible applications of the International Humanitarian Law or the International Human Rights Law. As well as the domestic laws that the United States as a country to which the company belonged and for which it worked had.

In the same way, the role of the United States when hiring Blackwater will be analyzed, since the role of private contractors in supporting the US in military operations in Iraq were significant. Likewise, since it is not only one of the main states in the world that

engage with PMSCs, but it is also one of the few that has some type of domestic legislation to regulate such activities it is important evaluate this field.

### **1.3. Methodologies**

The methodological approach used in this research paper is bibliographical. This data has been collected from academic sources, which can be divided between primary and secondary sources. Firstly, the primary sources are constituted by official documents such as United States Laws as for example the Military Extraterritorial Act (2000). International Treaties, as the Montreux Document or the Geneva Convention (1949), United Nations Security Council Resolutions, for instance the UN Security Council Resolution 1441, regarding the compliance of Iraq to disarm their weapons of mass destruction program, and speeches from the United States President George W. Bush.

On the other hand, the Secondary sources used in this research paper, as their authors analyzed and interpreted other sources to elaborate them are cannot be considered primary, and are: academic papers such as Scott Fitzsimmons, *Wheeled Warriors: Explaining Variations in the Use of Violence by Private Security Companies in Iraq* (2013), and books specialized in the topic. Within the books, is worth highlining John Scahill, *Blackwater: The Rise of the World's Most Powerful Mercenary* (2007) and Christopher Kinsey, *Corporate Soldiers and International Security: The rise of Private Military Ccompanies* (2006). As well as newspapers articles, articles published by law institutions, and reports published by US organisms, such as the Congress and the US Congressional Budget Office and the US Attorney's Office has been used.

## 2. THEORETICAL-CONCEPTUAL FRAMEWORK

The international system is characterized of being driven by national and international affairs. How states interact with each other as well as with other non-state actors, is what the International Relations (IR) theory studies (Lamy et al., 2017). Which at the same time, is composed of various theories proposed and reviewed by numerous authors. Modern IR theory is dominated by two waves, Neorealism and Neoliberalism, therefore the phenomena of the privatization of security through the scope of these two theories will be explained below.

Neorealism, is based on Kenneth Waltz's revision of the classic Realist theory on his publication *Theory of International Politics* (1979). Waltz suggested that systems are composed by political structures, which have three main elements: "an ordering principle (anarchic or hierarchical), the character of the units (functionally alike or differentiated), and the distribution of capabilities" (Waltz, 1979, in Elman, 2007, p. 13). Based on this concept, he emphasized that the international system is anarchic, as there are not an authority over sovereign states, and that as a consequence of this lack of a higher authority, they have to depend on "self-help" to maintain their security (Waltz, 1979, in Benjamin Idris, 2018).

As Waltz (1979) described it,

To achieve their objectives and maintain their security, units in a condition of anarchy -be they people, corporations, states, or whatever- must rely on the means they can generate and the arrangements they can make for themselves. Self-help is necessarily the principle of action in an anarchic order. (p. 111).

Neorealism prioritize the survival of states and their capabilities as the main tool, being also an instrument for the distribution of power in the international system (Waltz, 1886, in Benjamin Idris, 2018). Similarly, Mearsheimer (2014) suggests that states pay special attention to how this power is distributed, and look for "opportunities to alter the balance of power by acquiring additional increments of power at the expense of potential rivals" (p. 27). Likewise, power is based on the material capabilities or the military forces that a state have, and how they compare these capabilities with the one's other rival states have (Mearsheimer, 2014). Thus, it can be said that according

to the neorealist theory and the military power dynamics that it proposes, the privatization of security and military services happen to be another way for states to increase their material capabilities.

On the other hand, Neoliberalism is based on the ideas of Liberalism and the principle of the self-regulating markets (Roy & Steger, 2010). It can be said that Neoliberalism is established on three pillars: first, an ideology widely shared and accepted by many groups in societies, being thus legitimized the free-market world that it proposes; second, the governance approach based on decentralization, self-interest or competitiveness; and third, the privatization of state-owned companies, the deregularization of the economy and the liberalization of industry and trade of the states (Roy & Steger, 2010).

Thus, from the Neoliberal perspective the privatization of the military capabilities is just another response to the Neoliberal policies of governance, in which the reduction in size of the armies have led to private security companies to fill that gap (Berg, 2007). Similarly, Kinsey suggested that the liberalization of the markets and the proliferation of “new wars” have led to a relationship between: “the corporate world and the military could be described as of mutual benefit and spanning most of the twentieth century” (Kinsey, 2006, p.98). Therefore, the increase in the demand of the private security sector, along with the liberalization and privatization of the markets could have influenced in the rise of private companies that provide security services.

## **2.1. Private Military and Security Companies**

### **2.1.1. What is a PMC?**

The definition of Private Military Companies varies from the scope of the organization that defines it, as Galai explains there is a wide variety of terms to describe them; Private Security Company (PSC), Private Military Company (PMC), Private security Companies and other Private Security Service Providers (PSCs) or Private Military and Security Companies (PMSCs) (Galai, 2019). According to Chesterman and Lehnardt (2007), most firms maintain that they only provide security services, therefore they only participate in defensive operations (consultancy services, protection of places or people, provision of logistics and intelligence or training of police or military units) which are associated with PSCs. On the contrary to PMCs, which usually are associated with

fighting “wars alongside or in place of national forces”(Chesterman & Lehnardt, 2007, p. 2). They also claim that the term PMC,

denotes firms providing services outside their home states with the potential for use of lethal force, as well as training of and advice to militaries that substantially affects their war-fighting capacities, although they emphasized on the difficulty to distinguish between offensive and defensive operations. (Chesterman & Lehnardt, 2007, p. 3).

Whereas Pattison (2014) suggests that the definition given by Chesterman and Lehnardt is too narrow, as they claim that PMCs operate “outside their home states”, and they are excluding those that do not leave their own state. Similarly, by focusing their definition on the use of “lethal force” and “war-fighting capabilities”, they are excluding firms that not only provide war-fighting material such as weapons but also provide other military assets such as logistics (Pattison, 2014, p. 14). On the other hand, the International Committee of the Red Cross (ICRC) described in the Montreux Document<sup>1</sup>(2008) PMSCs as:

PMSCs are private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel. (p. 9).

This definition includes more broadly the activities carried out by this type of private companies, but in a certain way it is too broad. Since within it includes private security services not only outside the country itself, but also domestic, within which could be included services such as security guards (Pattison, 2014). Consequently, Pattinson proposes his own definition of PMSCs as “private firms that provide military and/or security services that involve or assist the use of force beyond the borders of their own or their client’s political community” (Pattison, 2014, p. 15). Following this argument,

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<sup>1</sup> The Montreux Document is a joint initiative by the Swiss government and the International Committee of the Red Cross, that discusses the legal concerns about PMSCs and provide guidance to this issue from the basis of International Law (The Montreux Document, 2008).

Pattison (2014) clarifies that since many firms provide both military and security services, the distinction between them is almost impossible. Thus, in order to avoid confusion in this research project we will call them Private Military and Security Companies (PMSCs).

Similarly, it is important to differentiate the nature of these organizations as by the means of being private, they are separate entities from the state although they can provide services for these states. Their character of being for-profit organizations is also clear, as well as that they might provide services and not goods like other defense firms that produce military hardware (Pattison, 2014). The clients using these companies' services not only comprise states, but also a wide variety of other private corporations and Non-Governmental Organizations (NGOs) (Ghazi Janaby, 2016).

Related with the classification of PMSCs, there is not a single and universally agreed method to do so (Ghazi Janaby, 2016). Kinsey divided them into two broad groups: "active" and "passive", being the first referred to those companies that take direct action in "combat operations", and the second to those companies that do not offer armed services (training and advice) (Kinsey, 2006, in Ghazi Janaby, 2016, p. 3). Moreover, for Kinsey inside these groups there are three subcategories: "private military companies", which focus on military operations, "private combat companies" whose main focus are combat operations and "private security companies" which provide security services but do not engage in military or combat operations (Kinsey, 2006, in Ghazi Janaby, 2016, p. 3).

Singer on the contrary, classifies PMSCs into three different groups: "military provider firms", "military consulting firms", and "military support firms". Being the first main focus the supply of military services in the battlefield, the second focusing on consulting and training military services and the third, being focus on the supply of logistics and technical military services (Singer, 2008, in Ghazi Janaby, 2016, p. 3).

Therefore, there are different classifications suggested by many scholars, and the differences between them can rely as well on the fact that, these private companies can expand the extent of their services to expand their business. Thus, a private military company which is specialized in combat operations could also provide training

and advisory services in order to expand their commercial operations (Ghazi Janaby, 2016).

### **2.1.2. History of PMCs**

#### 2.1.2.1. Medieval and Early Modern period of Europe and the rise of private forces

For Kinsey (2006), the marketization of violence dates to the 11<sup>th</sup> century when in Northern Italy the commercialization of war took place as city states in that part experienced an improvement in communication and transportation methods (*Conddottieri*). Furthermore, this led to the importation of skills from near areas such as the Ottoman Empire (McNeill, 1984, in Kinsey, 2006). This importation of skills at the same time, meant that the city states were able to expand their economic activities to other parts in Europe, and as they became more wealthy, their citizens were able to pay soldiers in order to fight wars for them (Kinsey, 2006). Moreover, this changed the relationship that existed between knights and the feudal community. As Kinsey assesses the wars of this period of time were mostly fought by mercenary armies, such as the Swiss pikemen or the Spanish *tercio*, and a new form of warfare arose (Kinsey, 2006). The knights were no longer able to defeat this type of mercenary armies purchased by the inhabitants, thus they were putting to an end the knights and its feudal tax system (Kinsey, 2006).

Nevertheless, in the case of Italy, they started to tax their citizens to pay for the defense of the city. They needed to reach an agreement beneficial for both parts, and they established that the best way was to create a relationship between small units of professional soldiers and the civil administration (Kinsey, 2006). Moreover, the civil administration had control over the armed forces as they had the power to appoint specific officers. Therefore, violence was bureaucratized and commercialized (Kinsey, 2006). On the contrary, for Ortiz the mercenary units cannot be related with PMCs, as they “lacked a multinational business character that I argue is necessary to establish a link with PMCs.” (Ortiz, 2007, p. 22). Thus, he disagreed with the idea of Kinsey that PMCs arose at the medieval period, and the following centuries will be characterized by these changes in warfare in the region.

Moreover, according to Kinsey a “military revolution” took place and changed war and the way it was conducted. “The introduction of linear formations in battle, the ability to concentrate firepower more accurately, and the use of the momentum of the charging cavalry to break the enemy’s formations, ushered in the modern art of war.” (Kinsey, 2006, p. 36). And most of the armies that carried out this revolution were mercenaries. Inevitably, the costs for the state started to grow as well as the state had to have more control over military operations (Kinsey, 2006). Then again, the costs of dissolving and paying off the mercenary armies after each campaign, became highly expensive after the implementation of the new techniques. And mercenary armies, which were the ones carrying out this military revolution, became steadily standing armies as it was financially more convenient (Kinsey, 2006).

#### 2.1.2.2. Mercantile companies and mercenaries

The mercantile companies emerged in the 16<sup>th</sup> century, and they were granted by the state to practice long distance trade and establish colonies, being able to motivate the European imperialism in the next 350 years (Kinsey, 2006). And almost all the European nations that had maritime capabilities established trading companies (Ortiz, 2010). Moreover, from the 1600 until the beginning of the 20<sup>th</sup> century, the relation among states was shaped by these companies. Without the intervention of private military companies, European states would not have the power and influence that they have nowadays (Krammer, 2007).

As mentioned above, these companies were granted a charter by the states in order to obtain privileges through having a monopoly over trade of primary commodities such as spices, gold and other materials (Krammer, 2007). Besides, they were also granted with full sovereign powers, and were thus able to raise an army, make war or sign treaties among other competences (Kinsey, 2006). These charters allowed the companies to develop instruments of warfare capable of operate and maintain the needs of armies and navies (Ortiz, 2007).

Hence, in order to maintain this monopoly and create their own military protection, the companies commonly hired mercenaries (Krammer, 2007). “Military power was used to impose and then defend their trade monopolies” (Kinsey, 2006, p. 39). An illustration of it is the Dutch East India Company, that hired Indonesian mercenaries in the 17<sup>th</sup>



century to take control over trade and established themselves in Macassar, Sumatra, East Java, and Bantam (Kinsey, 2006).

For Ortiz (2007), the military forces of these trading companies are the closest historical precedent of Private Military Companies, and can be “regarded as PMCs in an embryonic form” (p. 11). On the other hand, Krammer dates the Peace of Westphalia in 1648 and the French Revolution in 1789 with the formation of sovereign equal states, as the starting point of organized groups specialized in warfare that worked for the highest price. Furthermore, he acknowledges their importance in developing warfare and shaping the international relations system (Krammer, 2007).

Krammer (2007) compares the military units of the mercantile companies as well with modern PMCs, as they also work for states and Transnational Corporations (TNCs), which in some cases trade with raw materials such as oil, copper or iron ore.

#### 2.1.2.3. The decline of private violence

The French Revolution (1789) brought a transformation in how war was conducted, and how the national armies were organized as it was the starting point to national armies to rise (Kinsey, 2006). The executive government after the execution of Louis XVI, disseminated that all French people needed to be available to serve in the military until all the “enemies of the republic were expelled from the country” (Ortiz, 2010, p. 29). Thus, the concept of a national army started to grow (Ortiz, 2010, p. 29).

Furthermore and as Kinsey (2006) suggests, these national armies required bureaucracy to run them, resources to sustain them and a national population willing to fight in them (p. 43). Thus, the role of the mercenary armies started to be marginalized as only a state with a strong political elite was able to achieve this and mobilize the population. Mercenaries meant an expensive solution for states (Ortiz, 2010).

These factors contribute to change as well the objective of wars to be fought, “Wars became wars between nations, fought by the citizens of those nations, as opposed to between monarchs with private armies” (Kinsey, 2006, p. 43). Through nationalism the state was able to centralize the military power, and by the end of the 19<sup>th</sup> century mercenaries were removed from the domestic affairs. Nevertheless, during this period

mercenaries kept being used for promoting the self-interest of states outside their borders, although this groups were highly controlled by the state (Kinsey, 2006).

#### 2.1.2.4. Industrialization of war

The industrialization of war also contributed to the decline in the use of mercenary military units. The improvement in transportation by using fossil fuels or the steamships and railroads facilitated the large distance supply of weapons, men and provisions (Kinsey, 2006). This led to European states to increase in size their armies and as a consequence, the use of mercenary military armies became more and more irrelevant. In fact, the change that how war was conducted led states to be the only ones capable to organize it, being mercenary units barely able to participate (Kinsey, 2006). For that reason, mercenary armies were relegated to the background from the middle of the 19<sup>th</sup> century until the end of the Cold War (Kinsey, 2006).

Ortiz (2010) supports this idea and suggests that in the 19<sup>th</sup> century, the concept of a national army and security forces based on citizenship became accepted. Although, he explains that this foreign units did not completely disappear but rather transform into other organizations based on “quasi-citizenship paradigms” (Ortiz, 2010, p.32). For example, the Swiss units that worked for the French Army and which were banned in 1830, transformed into the French Foreign Legion in 1831 (Ortiz, 2010).

#### 2.1.2.5. Re-emerging after WWII

From the 1960s a series of independence movements, insurgencies and rebel movements took place, and this led to a re-emergence of mercenary activity (Ortiz, 2010). Thus, during the Cold War the operations of this mercenaries still happened, specially between them and the British government. The relationship between political elites and mercenary individuals became common, as both served in World War II (WWII) and they started to establish informal networks between themselves (Kinsey, 2006).

The British government used this way of informal connections, to promote their foreign policy interests in places such as Africa or the Middle East (Kinsey, 2006). Another important aspect, as mentioned above, is that these operations were informal, therefore they ensured that they did not enter into conflict with the British government

policy. Nevertheless, the Secret Intelligence Service (SIS) or MI6, controlled all these exercises (Kinsey, 2006).

An example of this is the British involvement in the Yemen civil war (1962-1970), mercenaries were used instead of the British Army Troops to influence the course of war. The interests of the British in the Middle East depended on Yemen's financial security, and they employed a private group formed by former personnel of the Special Forces to influence in the direction of the war (Kinsey, 2006). By using this group instead of the regular forces they also safeguarded their international reputation (Bloch & Fitzgerald, 1983, in Kinsey, 2006).

"The idea behind the modern day PMC developed out of the country's involvement in the civil war in Yemen."(Kinsey, 2006, p. 44). The unofficial intervention in Yemen, led to the creation of Watchguard as considered by Kinsey the first established PMC, as it was the first company established in the United Kingdom (UK) in selling military services. The company was settled in 1967 and as Kinsey (2006) identifies, seek to provide the following services in Third World countries for the British government: Military survey and advice, undertaking security for heads of state friendly to the British government and training of Special Forces. Moreover, Watchguard did not launch any of these actions without the complete approval of the British government.

#### 2.1.2.6. Re-emerging during the Cold War

Most of the PMCs that were established in the Cold War period, originated in the United States and the United Kingdom and nowadays both countries remain as the main providers of this type of companies (Ortiz, 2010). Although Watchguard firstly explored the commercialization of military services, by the mid-1970s the privatization of military services started to gain legitimacy internationally (Kinsey, 2006).

"Globalization and international terrorism created opportunities for companies to engage in private military security as a legitimate commercial" (Lord Westbury, 2004, in Kinsey, 2006, p. 50). Specially, TNCs engage with this type of PMCs do they could operate in dangerous areas all over the world and face security problems (Kinsey, 2006). And companies such as Kroll, Control Risks Group, Saladin or Defence Systems Ltd, arose.

Similarly, through the decades of 1980s these private security or military companies started to change the way of operations, and distance from the pattern of British mercenaries in the 1960s and 1970s. Instead, they focused on providing security services to corporations.

#### 2.1.2.7. New Wars and PMSCs

During the 1990s, as Mary Kaldor (2013) identifies a new type of violence developed specially in East Europe and Africa which she described as “new wars”. This “new wars” differ from the previous in their goals, methods of warfare and how they are financed. In earlier wars, the geopolitical or ideological goal drove the rationale, states fought against each other to claim sovereignty over a territory. On the contrary this “new wars” are driven by identity politics (Kaldor, 2013). Thus, the way they are conducted also changes, there is a shift from fighting wars on battlefields by opposing armies, but the battlefield extends to all places: cities, towns, etc. The rules that soldiers used to following when fighting in a war also changes, combatants have no rules on how to behave and atrocities against civilians are common in this type of “new wars” (Kinsey, 2006). The mode of warfare of “new wars” also combined the strategies of guerrilla warfare and counterinsurgency. As Kaldor (2013) identifies, “New wars are, in a sense, a mixture of war, crime and human rights violations, so the agents of cosmopolitan law-enforcement have to be a mixture of soldiers and police” (p. 12).

As a consequence, resolving the outcomes of the humanitarian crises that could emerge from this new type of conflicts, states must cooperate with different non-state actors. Thus, this cooperation have resulted in networks of strategic complexes constituted by Governments, PMSCs, International Organizations or Non-Governmental Organizations (NGOs) among others (Kinsey, 2006). Furthermore, this strategic complexes as Kinsley highlights, have led to PMSCs to become a key element inside them and other parties they have been tied to hiring their services to take advantage of his abilities (Kinsey, 2006). Nowadays, NGOs, TNCs or even government agencies, uses PMSCs services to protect their assets and stuff, becoming private security the main resource in developing states where “new wars” are likely to happen (Kinsey, 2006).

## **2.2. Iraq**

### **2.2.1. Context of Iraq**

#### 2.2.1.1. Iraq after the end of the Ottoman Empire

Iraq's territory belonged and was ruled by the Ottoman Empire until the end of World War I (WWI). On October 1918, when the Ottoman empire agreed to the armistice signed in Mudros, and the hostilities between the Allies and the Ottoman Empire ceased, Iraq was occupied by the British (Keegan, 2004). Thus, the British imposed a semi-colonial administration similar to the one they had in India. By 1920s, revolts among the Iraqi population against the British took place, and they decided to establish an indirect way to rule: a council of Iraqi ministers that replaced the British officers. But the problem of sovereignty was still not solved (Keegan, 2004). Then, according to the League of Nations they appointed Amir Faisal, a Hashemite prince who had taken part in the Arab Revolt (1916-1918) against the Ottoman Empire, and who was also been appointed as King of Syria. Nonetheless, Faisal was not Iraqi by birth, and had not all the support from certain factions of the Iraqi population (Keegan, 2004).

#### 2.2.1.2. Iraqi Kingdom

By 1932, the British promised Iraq their independence on the condition that the Iraqis accepted the provisions of the British. This process was successful, due to the involvement of the Iraqi Prime Minister at that time, Nuri al-Said, who held that position until the end of the monarchy in the country in 1958 (Keegan, 2004). Faisal died in 1933, and his son Ghazi inherited the position although it did not last long as he also died in 1939. After Ghazi's death, his son Faisal II became the king and heir of the throne. At that time he was only 3 years old, thus prince Abd al-Ilah, brother in law of Ghazi, ruled Iraq until 1953 when Faisal II reached the age to reign (Keegan, 2004).

#### 2.2.1.3. Iraqi Republic

On 14 July 1958 a coup led by Abdul Salam Arif and Abd al-Karim Qasim attacked the royal palace and overthrown King Faisal II and Prime Minister Nuri who were executed. Immediately after, a republic was established and Qasim was proclaimed Prime Minister (Keegan, 2004). Qasim ruling lasted from 1958 until 1963, many attempts against him in order to remove him from power occurred but in 1963, he was shot and died in a street battle generated by some Ba'athists.

Power was transferred to Abdul Salam Arif who was proclaimed president and Ahmed Hassan al-Bakr from the Ba'athist party as Vice-President (Keegan, 2004). Arif's who as Keegan suggests was a skillful political, did not last longer in the position as he died in a helicopter crash in 1966. This time his brother was the one that inherited his position, although he did not have the skills his brother had and in July 1968 after a coup organized by the Ba'ath party, he was removed from power (Keegan, 2004). After this, Ahmed Hasan al-Bakr was established as President of Iraq and Saddam Hussein as his deputy.

#### 2.2.1.4. Saddam Hussein's mandate

In 1979 Saddam Hussein assumed the presidency when his predecessor Ahmed Hasan al-Bakr, resigned. Just one year later, in 1980 Hussein got involved in the Iraqi-Iranian war (1980-1988). Saddam Hussein saw in the Iranian leader Ayatollah Khomeini a threat, as he thought he could call on the Iraqi Shi'is and overthrow his Ba'athist regime (Holden, 2012). Moreover, he believed that Khomeini would support the Kurds as well in order to destabilize his regime. Therefore, he ordered the invasion of Iran in September 1980, and the Iran-Iraq war lasted eight years (Holden, 2012).

The United Nations Security Council (UNSC) Resolution 598 of 1987 demanded the cease to this conflict, and called "upon Iran and Iraq to co-operate with the Secretary-General in implementing this resolution and in mediation efforts to achieve a comprehensive, just and honorable settlement, acceptable for both sides" (United Nations Security Council, 1987). And despite this efforts, it was not until 1990 that Iraq accepted the fully implementation of the UNSC resolution (Holden, 2012).

In August the same year, Saddam Hussein also invaded Kuwait intending to annex this territory to Iraq. The reasons behind this invasion were not just the annexation of the territory, but also Hussein was enraged with neighboring Kuwait and Saudi Arabia as they did not condone the debt Iraq had to pay for the involvement in the Iran-Iraq war. Similarly, although the Organization of Petroleum Exporting Countries had established some producing quotas, Kuwait was overproducing oil and it not only affected global prices but also made Iraq loose about 6 billion US Dollars in revenues (Holden, 2012).

### **2.2.2. *The Iraq War context***

The attacks carried on by al-Qaeda on September 11, 2001 convulse the American leaders. The organization had never attacked on American soil before, so from that moment it turn into a real threat and it was no longer a potential danger that operated from far away (Godfroy & Collins, 2019). Hence, as Godfroy and Collins (2019) suggest, the United States have not been threatened in such way since the Japanese attack on the Pearl Harbor naval base on WWII. Before the 9/11, the US have led a world order in which a set of shared western ideas or values by which peace was established. After 9/11, the US committed to the defense of the US foremost. As Keegan proposes “It provoked a revolution, changing national sentiment and redirecting national policy.” (Keegan, 2004, p. 86).

After the 9/11 strikes, President George W. Bush received different options to address Osama Bin Laden and the threat of al-Qaeda. As the biggest challenge was that al-Qaeda was supported and sponsored by multiple state and non-state actors (Godfroy & Collins, 2019). Although, most of these recommendations were focused on attacking al-Qaeda in Afghanistan, the US also needed to tackle other allegedly sponsors of the organization such as Saddam Hussein and his program of Weapons of Mass Destruction (WMD) (Godfroy & Collins, 2019).

Therefore, once the Americans removed the Taliban out of Afghanistan on December 2001, the US Department of Defense offered a plan to overthrow Hussein and his Ba’athist regime and invade Iraq (Holden, 2012). In January 2002, Bush delivered a message in which he described Iran, Iraq and North Korea as the “axis of evil”, since they were considered state actors who financed the terrorist group, and therefore they threatened the US security.

States like these, and their terrorist allies, constitute an axis of evil, arming to threaten the peace of the world. By seeking weapons of mass destruction, these regimes pose a grave and growing danger. They could provide these arms to terrorists, giving them the means to match their hatred. (Bush, 2002, in Glass, 2019).

President Bush and his administration worked to portray Saddam and his regime as a threat to the US, the Middle East and the World (Donnelly, 2004). In the same speech Bush called on the “war of terror” and added that: “We will work closely with our coalition to deny terrorists and their state sponsors the materials, technology and expertise to make and deliver weapons of mass destruction.”(Bush, 2002, in Glass, 2019).

For that reason, the Bush administration put special attention on Saddam’s Ba’athist regime in Iraq and his WMD program. As Tripp (2007) highlights, when the 9/11 attacks took place, Saddam was the only Arab leader that did not condemn them. What’s more, he declared that the attacks were a response of their policies in the Middle East and somehow their burden (Tripp, 2007). Thus, Saddam was openly anti-American and he along with his regime represented a threat. This was made public by Bush in the mentioned above speech of January 2002, and the one he made later in June of the same year at the US military academy, in which he openly denounced Saddam (Keegan, 2004).

By summer 2002, the plan for invasion were drafted but the administration focused on receiving support from the congress. Later in October, the US Congress passed a joint resolution in which the Bush administration was allowed to use of force in Iraq (Holden, 2012). In parallel to obtaining support from congress, the Bush administration exposed and sought support among the international community. In September 2002, he addressed the issue in the UN General Assembly and he remarked the fact that Iraq was not complying with previous UN resolutions that called on the disarmament of the regime (BBC, 2016). President Bush also saw this occasion as an opportunity to explain how the war “would fit into his larger set of strategic goals”, and into spread the values of the Western Liberal Democratic Order led by the US as its dominant power (Donnelly, 2004, p. 20). As he expressed on a speech on February 2003:

A liberated Iraq can show the power of freedom to transform that vital region, by bringing hope and progress into the lives of millions. [...] The world has an interest in spreading democratic values, because stable and free nations do not breed the ideologies of murder. (Bush, 2003).



A few days after the Bush intervention in the UN, the UK published a dossier in which Prime Minister Tony Blair assessed:

Intelligence has established beyond doubt is that Saddam has continued to produce chemical and biological weapons, that he continues in his efforts to develop nuclear weapons, and that he has been able to extend the range of his ballistic missile programme. [...] I am in no doubt that the threat is serious and current, that he has made progress on WMD, and that he has to be stopped. (British Government, 2002).

The UK prime minister words in the report, shows that Bush and Blair shared the same concerns about Saddam and its WMD program and the later support from the US led intervention in Iraq in 2003. Similarly, it demonstrates the willing of the UK to take the necessary measures to make end with it. Furthermore, the UK alongside with the US, and other states such as Spain, Italy, Austria and Poland later on will form the so called “coalition of the willing” against Iraq (Holden, 2012). Besides, and despite the fact that the US was willing to go to war with the support of the “coalition of willing” or the UN support, they also tried to convince Egypt and Saudi Arabia to support the offense, without any success (Bodansky, 2005).

After the allegations of the UK and the US, the position of Saddam still was ambiguous about the capabilities Iraq had, and did not deny the possession of WMD (Tripp, 2007). Following this, the UN Security Council passed resolution 1441 in which they recalled previous resolutions related with this matter, and recognized the threat that Iraq’s proliferation of WMD to international peace and security (United Nations Security Council, 2002). Moreover, the UN Security Council (2002) established that:

Iraq shall provide UNMOVIC and the IAEA immediate, unimpeded, unconditional, and unrestricted access to any and all, including underground, areas, facilities, buildings, equipment, records, and means of transport which they wish to inspect, as well as immediate, unimpeded, unrestricted, and private access to all officials and other persons whom UNMOVIC or the IAEA wish to interview in the mode or location of UNMOVIC’s or the IAEA’s choice pursuant to any aspect of their mandates. (p. 3).

Following the UN Security Council orders, Saddam Hussein allowed the UNMOVIC and the IAEA officers to enter in Iraq in November 2002. The officers did not find evidence of WMD or other prohibited weapons so they made a positive report (Holden, 2012). Nevertheless, it seemed already too late, as by the beginning of 2003 the US and the “coalition of the willing” were planning an invasion of Iraq. As the reports from UNMOVIC were positive, the efforts from getting a UN Security Council resolution were reduced as two of the permanent members, Russia and France opposed it (Tripp, 2007). The UN position “revealed that it inherently favored sovereignty over liberty”, since the very composition of the organization by states, in a certain way inevitably leads to it (Donnelly, 2004, p. 24).

As the consent from the international community was out of the options, Bush saw himself into an intervention led by US unilaterally. Therefore, on March 17, 2003, just one day after the Azores Summit where the US, UK, Spain and Portugal leaders met, the war begun (Keegan, 2004). Bush gave Saddam Hussein and his family an ultimatum to leave Iraq in the next 48 hours. They did not leave and as he already advanced, the failure in doing so “will result in military conflict, commenced at a time of our choosing.” Claiming to “build a new Iraq that is prosperous and free.”(Donnelly, 2004, p. 28).

Thus, two days later the Operation Iraqi Freedom began (Holden, 2012). When the US military forces arrived at the capital, Saddam flew from Baghdad. He was not captured until December 2003 and by December of 2006 he was hanged as a result of him being found guilty for crimes against humanity (Holden, 2012).

### **2.3. Legitimacy of the use of force on Iraqi Freedom Operation**

The number of operations in which PMSCs are required continued to grow, whereas the regulations and legislation of their activities still remained poor. These private companies sell military and security services that in the past were named under the practices of mercenaries and which were prohibited by the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (1989) and in the Additional Protocols I and II added to the 1949 Geneva Convention. Nevertheless, this International Convention have been proven unsuccessful to regulate PMSCs services (Kinsey, 2006).

For instance, the Geneva convention in Article 47 which is also introduced in the International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 1989, which describes mercenaries as:

A mercenary is 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. (Protocols Addittional to the Geneva Conventions of 12 August 1949, 1977, p. 35).

According to this definition given in the Additional Protocols on the Geneva Convention, PMSCs or their employees could be categorized as mercenaries (Gómez del Prado, 2017). On the contrary, the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the activities of mercenaries are criminalized. As article 2 of the convention express: “Any person who recruits, uses, finances or trains mercenaries, as defined in article 1 of the present Convention, commits an offence for the purposes of the Convention.” (International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 1989).

The International Convention against the Recruitment, Use, Financing and Training of Mercenaries as just mentioned, criminalize the activities of mercenaries, and focus mainly on two main aspects: the status of the mercenary as a foreigner and his motivation. Related with the first, the convention focuses on the individual and in the

case of PMSCs is almost impossible to determine the origins of their personnel. As Gomez de Prado (2017) suggests, in the Iraq and Afghanistan wars it was not possible to classify the personnel from the private contractors directly with mercenary activities as they were nationals from one of the parties involved. In regards with the motivation, the main problem it has is the difficulty to demonstrate it. It must be demonstrate that in order to classify it as a mercenary action, it must be committed on “desire for private gain”, and the contracts of PMSCs commonly are complex and the specifications about this are sometimes vague (Gómez del Prado, 2017, p. 71).

Thus, the definition and criminalization of mercenary-related activities led to PMSCs to separate from that term. This have been a process that saw some progress in 2006, with the so-called Montreux Document as an initiative from the Swiss Government and the International Committee of the Red Cross (ICRC), and which aimed to “reaffirm the international legal obligations of States regarding the activities of private military and security companies.” (The Montreux Document, 2008, p. 31). And culminated in 2010 with the International Code of Conduct for Private Security Service Providers (ICoC), an initiative of states and PMSCs, to establish the responsibilities of this companies under international humanitarian law and human rights law (Gómez del Prado, 2017).

### **2.3.1. *International Humanitarian Law and Human Rights Law***

International Humanitarian Law (IHL), “is a body of rules that apply during armed conflicts to protect those who are not actively involved in such conduct, as well as those who are no longer taking part in hostilities” (Ghazi Janaby, 2016, p. 152). It also limits the means and methods that the parties involved in those armed conflicts use, and as Ghazi Janaby explains, there are two types in which it can be applicable: international armed conflicts in which two or more states are fighting each other, and “internal armed conflicts which occur on the territory of a single state between its regular armed forces and identifiable armed groups or between armed groups fighting each other” (Ghazi Janaby, 2016, p. 152).

IHL do not only engage states, but also individuals although it does not directly meet any other type of legal entities such as companies. Thus, IHL can be applied to PMSCs depending on the classification of their personnel (combatants, civilians or mercenaries) as each legal status have specific rules, but it is not possible to prosecute

the company as a whole. Nevertheless, there is not a universal criteria to decide in which category PMSCs personnel are, it must be established on a case-by-case basis (Ghazi Janaby, 2016).

Similarly, International Human Rights Law (IHRL) is a legal form to respect human rights based in international human rights treaties and other instruments. IHRL assumes that by participating on its treaties, states must respect the obligations that lay on them (OHCHR, n.d.). So even though, some aspects of armed conflicts are regulated by IHL, the actions taken by the personnel must be regulated by domestic law, which at the same time must abide by IHRL. Therefore, basic human rights such as the right to liberty, the right to life or the right to not be treated in an inhumane or degrading manner must be respected by the PMSCs personnel during the operations (Chetail & Cameron, 2013).

Nevertheless, these initiatives have no legal regimes to be binding for their participants, as well as the two conventions seem to have gaps that do not comprise the activities of PMSCs. Thus, a new convention in this aspect is much needed to regulate the role of PMSCs as it is not possible to categorize the activities of PMSCs into the definition of mercenaries.

### **2.3.2. Domestic Regulation**

As mentioned above, when PMSCs commit human rights violations although the states should guarantee that human rights are respected by its agents, in some cases the conduct of private agents can be attributed to them because they have to comply with IHRL (Lopez, 2017). Furthermore, the International Court of Justice (ICJ) have established that the acts of a private entity can be attributed to a state if it operates “with complete dependence on the state, even in the absence of specific instructions or a law” (Lopez, 2017, p. 87). This way it can be prevented the cases in which states use PMSC services to avoid the legal responsibilities by not being committed by the state itself.

Similarly, most PMSCs as private corporations are set and regulated based on the domestic law of the state in which they are based (Lopez, 2017). However, states do not necessarily regulate in a specific way PMSCs as well as each state may do it

differently. In what is related with the domestic US regulation of PMSCs, the 1939 Neutrality Act focuses on the recruitment of the mercenaries, but it does not mention the action of selling any type of military services. As at that time of history the use and proliferation of private military services were not as relevant as it is nowadays. Thus, it existed a flaw regarding this concern, and as Kinsey suggests, in 2000 the Military Extraterritorial Jurisdiction Act (MEJA) attempted to fill that gap (Kinsey, 2006).

But the Act is only applicable to civilian contractors working for the “US Department of State on US military facilities”, and it does not apply to contractors working for other US agency, organization or state (Kinsey, 2006, p. 136). As it can be seen in section 3261 of the Military Extraterritorial Jurisdiction Act (2000):

Whoever engages in conduct outside the United States that would constitute an offense punishable [...] if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States:

- (1) while employed by or accompanying the Armed Forces outside the United States; or
- (2) while a member of the Armed Forces subject to chapter 47 of title 10. (section 3261).

Also, the US domestic regulation for PMSCs can be claimed under the Alien Tort Statute (ATS), which gives jurisdiction to US federal courts "of all causes where an alien sues for a tort only in violation of the law of nation or of a treaty of the United States." (Legal Information Institute, n.d.) In other words, it gives domestic jurisdiction for dealing with violations of International Law, by any foreigner for a tort or wrongdoing, no matter where the violation happened as long as the claim is done in the US territory courts.

### **3. CONTENT OF RESEARCH**

#### **3.1. Blackwater**

Blackwater USA was established in 1997 by Erik Prince and one of his mentors, Al Clark. According to Scahill (2007), even though the creation of the company is attributed to Prince, the location, plans and details of the new established company came from Clark. Al Clark trained Erik Prince when he was transferred to SEAL team 8 in 1996, although during this period they did not discuss any type of business association. Prince was deployed with the SEAL (The United States Navy Sea, Air, and Land) team 8, and it was not until he came back that they started to talk about the creation of a possible PMC. Prince wanted to remain in the SEAL, but his personal situation did not allow him to do so, his wife was sick and his father died a few years earlier. His father was a successful businessmen and the family sold his empire for \$1.35 billion, which later allowed Erik Prince to self-found Blackwater USA (Scahill, 2007).

As Prince himself claimed in 2006, "I wanted to stay connected to the military, so I built a facility to provide a world-class venue for US and friendly foreign military, law enforcement, commercial, and government organizations to prepare to go into harm's way" (Prince, 2006, in Scahill, 2007, p. 91). Prince also has claimed that the idea of the company born from his deployments under the SEAL team 8, although as mentioned above other former Blackwater officials manifest the opposite. They affirm that the idea came from the experience Al Clark had and which he later commented to Prince, "It grew out of Clark's experiences as a Navy firearms trainer, when he recognized firsthand what he saw as an inadequate training infrastructure for what was one of the most vaunted forces in the U.S. military machine." (Scahill, 2007, pp. 89–90).

Blackwater emerged as the response and need of privatization that took place under Defense Secretary Dick Cheney. From 1989 to 1993, he reduced the military budget and thus he reduced the number of troops and weapons systems.

The army depended very little on civilian contractors in the early 1990s and Cheney was inclined to change that. The idea was to free up the troops to do the fighting while private contractors handled the backend logistics. It was also

a tidy way of handling the public relations nightmare that ensued every time the United States committed troops overseas. More contractors meant fewer troops, and a much more politically palatable troop count. (Briody, 2004, in Scahill, 2007, p. 92).

This accelerated under the Clinton administration, and thus provided Blackwater USA or most commonly known Blackwater, with the ground to be able to grow fast. The number of training facilities for special forces was low and Blackwater at its beginning provided a solution (Scahill, 2007).

The Blackwater facilities were strategically built near the Great Dismal Swamp, just a few hours from Washington D.C as well as close to the Norfolk Naval Station, the largest in the world. Moreover, the name of the company was inspired in the black waters of the swamp. In 1997 Prince purchased the land that later on became Blackwater's facilities in Camden County in North Carolina, and in the same year, the complex facilities started to be built and they started their operations in May 1998 (Scahill, 2007).

Thus, by 1998 Blackwater was training government and private customers as well as they were leasing their facilities for training to the SEALs, police officers from other states as well as foreign governments among others (Scahill, 2007). The first contract that Blackwater obtained from the US government was in 2000 under the General Services Administration of the US (GSA) for \$68,000. But the estimated value of the business that Blackwater would have with US federal agencies was \$125,000, furthermore, when in 2005 the contract was extended five years, the estimation was made on \$6 million. Nevertheless, all this estimations were extremely low, as by 2006 Blackwater already had been paid about \$111 million (Scahill, 2007).

The first event that boosted Blackwater's business and the growth of its operations was the attack attributed to al-Qaeda and Osama bin Laden to the US Navy missile destroyer the USS *Cole*, at the Yemeni port of Aden in which seventeen US sailors were killed and nineteen were injured. After the attack, "the Navy had already committed itself to incorporating "a comprehensive plan to reduce infrastructure costs through competition, privatization, and outsourcing" (Scahill, 2007, p. 104). Nevertheless, it was not after the 9/11 attacks that Blackwater experienced substantial



growth, the Bush administration push further the privatization program that Dick Cheney created. The administration by declaring their “war on terror” rise the PMCs industry to \$100 billion worth, and Blackwater was one of the main recipients. Moreover, Secretary of Defense Donald Rumsfeld would have a key role in the performance of PMSCs in the wars that took place after 9/11. “Osama bin Laden turned Blackwater into what it is today.”, Al Clark stated” (Scahill, 2007, p. 105).

### **3.1.1. Main Operations: Contracts in Afghanistan and Iraq**

While after 9/11 Blackwater’s main operations consisted of training, in 2002 after hiring Jamie Smith a CIA agent they incorporated consulting services as well with Blackwater Security Consulting. Blackwater won their first security contract with the CIA for \$5.4 million in 2002, when they were required to provide twenty security guards to the CIA station in Kabul as well as to another station the US was building near the Pakistani border in Shkin. As Scahill highlights, Erik Prince did not have the status of a full CIA agent, but he had close ties with the agency. But the contracts and works Blackwater had for CIA and other US agencies, led them to become the US State Department in their largest client (Scahill, 2007).

After the work in Afghanistan, the major contract Blackwater obtained was in 2003 when they were assigned the security of Ambassador Paul Bremer III, appointed by George W. Bush administration as the Coalition Provisional Authority (CPA) of Iraq. This contract meant the recognition by the Bush administration as “an essential part of its war on terror”, moreover the Iraq war set Blackwater as “the industry trendsetter” of PMSCs (Scahill, 2007, p. 111).

According to Erik Prince, the Ambassador’s security was under a small component of the Army, the Criminal Investigation Command which at the same time has a smaller unit known as the Protective Services Battalion and which “provides security for executive-level Defense Department personnel during wartime” (Prince, 2013, p. 67). Furthermore, he relates that in order to provide support for this team the DoD added a few ex-Navy SEALs from Blackwater. Notwithstanding, it was not three months later in August 2003 when the Pentagon gave Blackwater a \$21.3 million contract to protect Bremer. “the DoD didn’t initially have time to choose among competing bids.[...]

Keeping the ambassador safe would prove we could keep anyone safe, anywhere.” (Prince, 2013, p. 70).

Moreover, according to Prince, Blackwater had other contracts in Iraq such as protecting British Prime Minister Tony Blair in 2004, US Secretary of State Colin Powell, the “CIA contingent combing the country for proof of weapons of mass destruction” or the Iraq Survey Group (Prince, 2013, p. 72). As Prince (2013) pointed out,

By mid-2004, Blackwater was filling security and training contracts for the DoD, the State Department, and the CIA, in multiple countries. And as well-known as we were becoming within the halls of power in Washington D.C., we were gaining similar cachet on the streets of Baghdad. (p. 72)

### **3.2. Violation of Human Rights**

According to Fitzsimmons (2013), despite the fact that Blackwater was hired to develop almost the same tasks as other PMSCs present in Iraq under the same “client-imposed rules of engagement, and facing the same kinds of threats in the same general operating environment”, they fired their weapons and injured far more people than other PMSCs (p. 708). Thus, it is important to analyze their role in major situations, that changed the course of some events during the US occupation of Iraq, such as the Fallujah ambush and its aftermath, the battle of An-Najaf or the event that involved Blackwater using rioting-control agents.

#### **3.2.1. Fallujah Ambush**

On March 31, 2004 four American personnel from Blackwater were ambushed and killed in the Iraqi city of Fallujah by a group of insurgents. Their corpses were set on fire and dismembered while the images were shown at the media reaching to public worldwide (De Lira, 2009). Fallujah is mostly populated by Sunni inhabitants and have a history of rebellion and insurgency, dating the uprising after the liberation of Iraq from the Ottoman Empire by the British. Moreover, Saddam recruited from the area’s local tribes many agents for his regime military units and intelligence services (De Lira, 2009). Additionally, since the March 2003 invasion of Iraq, the US Army units in Fallujah had witness many “violent incidents” that contributed to the instability of the town (De Lira, 2009, p. 3). The city was considered as an “uncontrolled hot spot”, and

the operations carried by the US officials contributed to the rise of insurgencies (Young Pelton, 2006, p. 114).

The mission consisted of escorting three trucks from ESS Support Services Worldwide (ESS) to the Al Taqaddam Airbase. It started on March 30<sup>th</sup>, when they lost their way and arrived at Camp Fallujah instead to the airbase when they believed by mistake that they had arrived at their destination, and where they spent the night in order to retake the mission the day after. Other PMSC and their predecessors CRG personnel warned them to not dive through downtown Fallujah, but anyway the Blackwater team decided to take that route in order to shortcut it. Furthermore, Blackwater's personnel did not inform the US military units that were operating in downtown Fallujah off their route; thus, the US was not aware of their presence in the area (De Lira, 2009).

On their way into downtown Fallujah, the Blackwater teams and the truck they were escorting passed first through an Iraqi Civil Defense Corps (ICDC) without any problem. Once inside the city, the Iraqi Police stopped the convoys but also allowed them to continue (De Lira, 2009). Several blocks away traffic forced them to stop, the traffic was divided in two lines and the line on the left had the leading Blackwater vehicle followed by two of the escorted trucks and on the right the third of the escorted trucks was ahead of the other Blackwater vehicle. While they were stopped in the traffic, the lead Blackwater Mitsubishi Pajero was approached by "by four to five boys for whom the security personnel rolled down their windows", and two of the boys went into the crowd and talked with two men (Committee on Oversight and Government Reform, 2007, p. 12). A few minutes later the two vehicles with the Blackwater personnel were fired with AK-47s by a group of insurgents resulting in the death of the four Blackwater personnel, while the ESS trucks were able to drive outside the area. Furthermore, a CPA report suggested that "the insurgents may have not realized that they were part of the same convoy as the Blackwater vehicles" (Committee on Oversight and Government Reform, 2007, p. 13).

According to the Committee on Oversight and Government (2007) report for the House of Representatives, the evidence found indicated that the attack was initiated "from the rear blind spot of the vehicles, with fire initially focusing on the passengers, then on drivers" as well as there was no evidence that the Blackwater personnel fired back at the insurgents (p. 13).

When the ambush took place, they were operating under a “complex series of contracts”. At that time Blackwater was providing security services to ESS Support Services Worldwide (ESS) which at the same time was acting as a subcontractor to a Kuwaiti company (Regency Hotel & Hospital Company). ESS was also a subcontractor of two other government prime contractors, Kellogg, Brown & Root (KBR), which was a subsidiary of Halliburton that had the Logistics Civil Augmentation Program (LOGCAP) contract to provide logistical support to the US Army. And, ESS was also a subcontractor to Fluor Corporation, to supply with logistical services to the US Airforce (Committee on Oversight and Government Reform, 2007).

ESS security services were being transferred from the British PMSC Control Risk Group (CRG) to Blackwater. The PMSC agreed that the transition would have been done by a four-week period, in which Blackwater was supposed to learn from Control Risk Group’s activities. The full responsibility for the missions was presumed to happen on April 2, 2004, thus when the incident happened the transitional period was not over and Blackwater was not “set to begin security operations until April 2004” (Committee on Oversight and Government Reform, 2007, p. 7).

Furthermore, according to an employee of Regency Hotel & Hospitality Blackwater was not fully equipped at the time of the ambush. Blackwater did not have protected and armored vehicles by March 31, the vehicles used were ESS owned Mitsubishi Pajeros, and they had used them as the company was purchasing the required ones for Blackwater and its personnel. Also, reportedly Blackwater was not supplied by the day of the incident with the weapons required in their contract (Committee on Oversight and Government Reform, 2007).

“Then the Fallujah attack on Blackwater contractors changed everything.” (Young Pelton, 2006, p. 111) According to Young Pelton (2006), after what happened in Fallujah the personnel of PMSCs in Iraq become more ready to “shoot if they felt threatened” (p. 111). Similarly, the days after Fallujah took place one of the most significant incidents in the Iraq war in which private contractors were involved. The personnel of Blackwater, which before only provided security but not engage in combat, became active combatants in An-Najaf (Young Pelton, 2006).

### 3.2.1.1. An-Najaf

Blackwater was hired to protect the headquarters of the US CPA<sup>2</sup> in the city of Najaf, which is considered holy by the Shiite Islam. In Washington, the Bush administration weeks earlier from the Fallujah ambush to the Blackwater convoy, was preparing a to restrain Muqtada al-Sadr, as he was seen as an obstacle to fulfilling the objectives of the CPA. Muqtada al-Sadr, a Shiite cleric who arise as the leader of the Mahdi Army, and one the most known opponent to the US occupation. Thus, in March 2004 Ambassador Bremmer, “launched his all-out war on Sadr, his institutions, and his followers” (Scahill, 2007, p. 185). Thus, the US officers closed *Al Hawza*, al-Sadr newspaper on March 28<sup>th</sup>, as allegedly it was inciting to violence (Scahill, 2007).

The closure of *Al Hawza* triggered massive protests among angry Shiites and Sunnis. This along with the killing of fifteen Iraqis in a Fallujah raid by the US Army, caused thousands of people to take the streets. Following the March 31<sup>st</sup> Fallujah ambush, on April 2<sup>nd</sup> Bremmer ordered the detention of Mustafa Yaquobi, al-Sadr top deputy who was arrested a day later. After he was taken into custody, thousands of al-Sadr followers after being called to do so by Sadr himself rose against the US occupation in the city of Kufa, next to Najaf, as they believed Yaquobi was retained there (Scahill, 2007).

By April 4<sup>th</sup>, the Mahdi Army started to take over to the administrative buildings of the CPA and ICDC in cities such as Al Kut, Nasiriyah, Baghdad or Al Amarah (Malkasian, 2006). Also, they moved towards Najaf and the CPA building protected by Blackwater in the city. The building was guarded by eight Blackwater personnel and some troops from El Salvador, from Spain and also unintentionally there were present a few US Marines as the US military presence in Najaf was quite poor as the Shiite religious leaders asked the US authorities to leave (Scahill, 2007). The US Marine Corporal Lonnie Young and his partner were in the CPA building that day were installing some communications equipment, after finishing the task Corporal Young decided to take a quick nap in the back of the truck as they were ahead time. But just a few minutes later, he was called by the other US Marine as the equipment they installed apparently was not working. As he was walking into the CPA building, he heard some AK-47 fire

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<sup>2</sup> The US headquarters in Najaf also accommodated the military bases of Spanish and El Salvador troops (Gutiérrez López, 2019).

sounds and met in the roof of the building with the Blackwater and El Salvador troops. He settled his automatic weapon and waited for orders although there was no US commanding officer in the area at the time. As Scahill highlights, “Cpl. Lonnie Young, active-duty United States Marine Corps, would be taking his orders that day from the private mercenaries of Blackwater USA.” (Scahill, 2007, p. 187).

As Young declared,

One of the Iraqis quickly dropped down into a prone position and fired several round[s] at us. I started yelling that I had one in my sights and asking if I could engage.” [...] Finally, the Blackwater Security guys gave the call [to] commence firing.” (Young, 2004, in Scahill, 2007, p. 187).

It is also important to mention that the Spanish troops present, were not allowed to fire according to their rules of engagement, and thus they did not participate in the attack (Gutiérrez López, 2019). As Young Pelton explains, “The Spanish contingent was supposed to be functioning in a strictly peacekeeping role and had been ordered not to return fire. They just sat and watched the action without taking part ” (Young Pelton, 2006, p. 152).

The contend lasted four hours in which the US Marine corps personnel, the Salvadorian Army personnel, and the Blackwater personnel were firing their weapons to the crowd. Furthermore, as they had barely no ammunition left and Corporal Young was wounded, Blackwater sent in helicopters to take Young out and supply more ammunition (Priest, 2004).

As mentioned above, four hours later, the US Special Forces troops arrived, and the battle ended. There are no official reports on how many Iraqis died, according to Corporal Young it was hundreds, Scahill on the contrary suggest that according to other sources between twenty and thirty people died, and about two hundred were injured. When Lieutenant Ricardo Sanchez, which held the top military position as commander in Iraq, arrived to the CPA building in Najaf, did not mentioned Blackwater, instead he said “a small group of American soldiers and coalition soldiers” (Sanchez, 2004, in Scahill, 2007, p. 194). Also, they did not mentioned that most of the fight was carried out by the Blackwater personnel (Young Pelton, 2006). Although, it is clear that

Najaf was the turning point in which the role of Blackwater became clear and that it not only provided security services, but was also a “major player in the war” (Scahill, 2007, p. 196).

#### 3.2.1.2. After Fallujah

In Fallujah, the Blackwater personnel engaged in an operation into an area known for insurgent attacks, and after being warned by their predecessors not to do so, when their contract did not begin officially, and when they did not have enough resources and preparation for it (Committee on Oversight and Government Reform, 2007). As a consequence, the night the battle of Najaf “more than a thousand U.S. Marines had Fallujah surrounded and were preparing to exact revenge for the killing of the four Blackwater contractors five days earlier.” (Scahill, 2007, p. 196).

The Bush administration wanted to respond to the killing of the four Blackwater staff, and show that they would not tolerate such attacks, thus they set Operation Vigilant Resolve or most commonly known as the first Fallujah battle. The operation aimed to take control over the city and resulted with approximately six hundred casualties. It was also expected to last about four weeks, but it was halted five days after it started (De Lira, 2009). Thus, the ambush and the aftermath of the events, raise many questions of the engagement of Blackwater in the Iraq war, and to what extent they triggered situations that affected the US authority in Iraq, and the consequences these actions had (Committee on Oversight and Government Reform, 2007).

#### **3.2.2. Nisur Square Massacre**

Blackwater personnel on 16 September 2007, opened fire and shot civilians on Baghdad’s Nisur Square while escorting a US State Department convoy. This episode is known as “Baghdad’s bloody Sunday” and it can be considered as “the single largest known massacre of Iraqi civilians at the hands of private U.S. security contractors.” (Scahill, 2014). The Blackwater team used the force against unarmed pedestrians and motorists ending with the death of seventeen and at least another twenty-four civilians wounded (Fitzsimmons, 2013). Snuka and Gilbert (2015) highlight that Blackwater men did it in just about fifteen minutes, and that witness described the episode as a “massacre”. McFate (2016) identifies that “Nisour Square connotes villainy, war crimes

and mercenarism.” (p. 65). And the Iraqi Prime Minister at the time, Nouri al-Maliki, “stated that the Nisour Square incident was “nothing short of a direct challenge” to the nation’s independence.”(Nouri al-Maliki, 2007, in Harden, 2017, p. 17).

According to an Iraqi report traffic was being stopped as a car was driving in the wrong side of the road, and ignored the warnings from the Iraqi police to clear the road for the Blackwater convoy (Fadhil Altamimi, 2012). As suggested by Fadhil Altamimi (2012), the Blackwater personnel first fired “warning shots” and the “lethal fire at the car”, followed by stun grenades to clear the path (p. 353). The Iraqi police and Army forces present in Nisur Square, misread the stun grenades as fragmentation grenades and fired back at the Blackwater convoy. Thus, the Blackwater personnel responded to the fire of the Iraqi forces (Fadhil Altamimi, 2012).

In order to investigate the events in Nisur Square, an “American-Iraqi joint commission” was created (Fadhil Altamimi, 2012, p. 354). The commission was conducted by the Chargé d’affaires of the U.S. Embassy in Iraq and the Iraqi Minister of Defense. The investigation concluded that the Blackwater personnel were responsible for the casualties resulted from the intervention, furthermore US Military reports also supported these statements and blame Blackwater as the responsible for the episode. The US military report determined that “Blackwater’s guards opened fire without provocation and used excessive force.” (Fadhil Altamimi, 2012, p. 354). Moreover, the FBI opened an investigation and also reported that at least fourteen of the seventeen deaths were without any cause (Fadhil Altamimi, 2012).

On the other hand, the Blackwater personnel stated that their convoy was attacked and that a car bomb detonated as well as they were attacked with “small arms fire”, and denied the statement of the Iraqi police and Army (Fadhil Altamimi, 2012, p. 353). They also refused to “acknowledge legal liability”, and Erik Prince stated in a congressional hearing about the activities of Blackwater that they “acted appropriately while operating in a very complex war zone” (Prince, 2007, in Snuka & Gilbert, 2015, p. 661).

Nisur Square called the attention worldwide and the prosecution to their personnel after Nisur Square is relevant, because criminal prosecution in the US was held against the employees of Blackwater, but no to the company (MacLeod, 2016). In 2008 the US



Department of Justice announced that five employees of Blackwater involved in Nisour Square, were being prosecuted on “multiple counts of voluntary manslaughter and other offenses [...] involving the death or wounding of thirty-four Iraqi civilians.” (“Blackwater Guards Indicted for 2007 Baghdad Civilian Killings,” 2009, p. 361). As Harden suggests (2015),

Blackwater USA would see the beginning of the its end when four Blackwater men were given guilty verdicts and charged with the killing of more than a dozen Iraqi civilians and wounding many others in Nisour Square in September 16, 2007. (p. 15).

### **3.2.3. Riot-control agents in Baghdad**

In May 2005 Blackwater was involved into another incident, it was reported that one of the helicopters that belonged to the company as well as a vehicle dropped CS gas to Baghdad’s so-called Green Zone, “typically crowded with cars, Iraqi civilians and United States military personnel” (Risen, 2008). That day in the Green Zone, there were at least ten US soldiers operating a checkpoint and some Iraqi civilians gathered. The gas, which is similar to tear gas and which is used to control riots, blinded temporarily the people who were in the area (Welch, 2009).

This incident raised concerns about the legality of using this type of substances in a war zone (Welch, 2009). The use of this agents is internationally prohibited under the Chemical Weapons Convention (CWC) which entered into force in 1997 and in its Article 1, Subsection 5 clearly states that “Each State Party undertakes not to use riot control agents as a method of warfare.” (Chemical Weapons Convention: Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, 1997). And of which the US is a state party to the convention.

However, the former US President Gerald Ford, during their ruling in 1975 passed the Executive order 11850, which renounced to the “first use of riot control agents in war except in defensive military modes to save lives.” (Boyd, n.d.). Although, it allowed the use of chemical weapons by the military in war zones under restricted and by any means defensive conditions with the approval of the US president (Welch, 2009). Also,

the order mentions four cases in which US military personnel could use riot control agents:

“In areas under direct and distinct U.S. military control,” such as to control rioting prisoners of war; in a situation where hostile forces use civilians “to mask or screen attacks”; for rescue missions; and “in rear echelon areas outside the zone of immediate combat to protect convoys from civil disturbances, terrorists and paramilitary organizations. (Boyd, n.d.).

In any case, the US military do not use these substances often as they participate in the CWC. In 2003 President George W. Bush and following Executive Order 11850, “authorized the use of riot control agents in Iraq under specific circumstances, such as controlling rioting civilians” (Boyd, n.d.). Thus, the Executive order and the CWC could enter into conflict and it may be not legitimate to use riot control agents. According to the US Defense Department the distribution of this riot control agent among US military does not violate the CWC, as it prohibits the use of this substances as a “method of warfare”, and thus it does not contradict the CWC (Wade & Schmitt, 2003).

Related with the episode, the US soldiers involved declared that “there were no signs of violence at the checkpoint. [...] the Blackwater convoy appeared to be stuck in traffic and may have been trying to use the riot-control agent as a way to clear a path.” (Risen, 2008). On the other hand, a spokeswoman for Blackwater said that “Blackwater teams in the air and on the ground were preparing a secure route near a checkpoint to provide passage for a motorcade,” and that “It seems a CS gas canister was mistaken for a smoke canister and released near an intersection and checkpoint.” (Tyrrell, n.d., in Risen, 2008).

According to Risen, the State Department claimed that according to its lawyers the incident did not violate any treaty. However, the posterior contract that Blackwater has with the State Department did not allow them to use CS gas (Risen, 2008). Others claim that the use of riot control agents could lead to the use of “any chemicals on a battlefield, so as to bar escalation from tear gas to lethal chemicals.” (Wade & Schmitt, 2003). Nonetheless, and as suggested by Welch, only the US military has the authority to release them and “solely under the strictest conditions approved by top military commanders” (Welch, 2009, p. 358). Regarding this, Blackwater claimed that under

the contract they had with the State Department they were allowed to carry the gas. The US government officials stated that the contract neither authorized specifically the company to use them as well as it did not prohibit it (Welch, 2009).

Thus, it is still not clear if the use of the CS gas by Blackwater personnel was legitimate or not as well as if they operate under the same rules of the US military forces (Risen, 2008). Following the argument of Executive Order 11850 and the later reinforcement by George W. Bush and the Defense Department, under domestic law it is completely legal as well as it can be somehow identified as legal under the International Law as long as it was released by US military personnel. But whether if the use by Blackwater personnel was legal or not have a legal void, since the contract does not specify anything in this regard.

As for the motives of the action, in the same way cannot be classified as defensive or fall within what the presidential order stipulates, as it was not authorized by the president or from any high-ranking officer in the United States Army. Therefore, although the status of the legality of this act is considered unclear. It can be understood that the action of Blackwater was not legal, and that most probably also violated the fundamental rights of the people who were present in the area.

### **3.3. Legitimacy**

#### **3.3.1. *Military Extraterritorial Jurisdiction Act (MEJA)***

The Blackwater personnel were accused under the MEJA, which was designed to complete legislation and give authorization to federal courts to “subject civilians accompanying armed forces to the civilian jurisdiction of the US.” (Snuka & Gilbert, 2015, p. 666). Thus, the actions of PMSCs could be criminalized under US domestic law, although it presented a big limitation, only the contractors working directly for the DoD would fall under the MEJA (Snuka & Gilbert, 2015).

To deal with this affair, the Congress expanded the reach of the MEJA in 2004 and this time “any other Federal agency, or any provisional authority, to the extent that such employment relates to supporting the Department of Defense Mission overseas” (Snuka & Gilbert, 2015, p. 666). Nevertheless, the MEJA language was still ambiguous and after the events in the Nisur Square, the House of Representatives passed a new

legislation, the MEJA Expansion and Enforcement Act of 2007 (2007). Which stated that:

(3) while employed under a contract (or subcontract at any tier) awarded by any department or agency of the United States, where the work under such contract is carried out in an area, or in close proximity to an area (as designated by the Department of Defense), where the Armed Forces is conducting a contingency operation. (Section 2, para. 3).

This would have provided a more specific and less ambiguous language and grounds to judge PMSCs personnel. However, the legislation of the MEJA Expansion and Enforcement Act of 2007 was not passed through the Senate, and the jurisdiction of the MEJA is still not clear (Snuka & Gilbert, 2015). Nevertheless, in 2014 four blackwater personnel were convicted for the events of Nisur Square in 2007 under the MEJA grounds, which will be discussed below.

### **3.3.2. *Lawsuits against Blackwater's intervention in Nisur Square***

On 2007 October 11<sup>th</sup>, Blackwater was sued for the Nisur Square events by the Center for Constitutional Rights on behalf of three families of death civilians and one injured. Alleging that Blackwater violated the Alien Tort Statute “in committing extrajudicial killing and war crimes, and that Blackwater should be liable for claims of assault and battery, wrongful death, intentional and negligent infliction of emotional distress, and negligent hiring, training and supervision.” (Center for Constitutional Rights, 2010). The case (Estate of Himoud Saed Atban, et al. v. Blackwater USA, et al.) was joint in 2009 with another case (Estate of Albazzaz, et al. v. Blackwater Lodge and Training Center, Inc. et al), and later in 2010 was closed after an extrajudicial agreement between the parties involved was reached (Fadhil Altamimi, 2012).

The Justice Department on the other hand, did not plan to prosecute the company, but in December 2008 charged the five employees of Blackwater under the MEJA, and ordered them to “surrender to the FBI” (Fadhil Altamimi, 2012, p. 355). Moreover, the State Department while performing the investigation, made the Blackwater employees signing a contract in which it was stated that their declarations “would never be used against them in criminal charges or used as evidence” (Snuka & Gilbert, 2015, p. 666).

A year later, the charges were dismissed by Judge Ricardo Urbina of District of Columbia in December 2009, as he considered that the evidence statements that the guards were incited to give to the State Department, would have been self-incriminating” and thus they were violating their right to be protected under the Fifth Amendment of the US Constitution (Fadhil Altamimi, 2012). In 2011, a federal judge panel of the Court of Appeals for the District of Columbia Circuit found “systemic errors” in the decision of Judge Urbina and restore the case.

Finally, on October 22, 2014 four of the five former workers of Blackwater were found guilty of their actions in Nisur Square, on September 2007 that resulted with the killing of fourteen unarmed civilians. It has been the only case in which Blackwater personnel had been judged for crimes committed in Iraq. The other guard, pled guilty in December 2008 and testified as a witness in the trial against his colleagues, but still remained without a sentence for his crimes (U.S. Attorney’s Office: District of Columbia, 2014).

### **3.3.3. *The role of the US***

The US is one of the main states that uses the services of PMSCs worldwide and therefore, it is essential to mention the role played by the US in Iraq and their link with PMSCs. (Fadhil Altamimi, 2012). PMSCs have developed many of the tasks that belonged to the military, and in fact they have become part of the structure of US military (Kinsey, 2009). According to a report from the US Congress, the role of private contractors in supporting the US in military, diplomatic and reconstruction operations in Iraq were significant (U.S. Congressional Budget Office, 2008). Between 2003 and 2007, U.S agencies spent \$85 billion in contracts to work in the Iraq theater and from those between \$6 and \$10 billion were spent on PMSCs services. Furthermore, between 30% and 40% of PMSCs with an estimated of 7,300 personnel worked directly for the US government (U.S. Congressional Budget Office, 2008).

Iraq became a key moment for the rise of PMSCs and Blackwater, from June 2004 the company had received more than \$320 million from contracts with US agencies (Siddhartha & Joshi, 2009). Thus, the interaction and interdependency between Blackwater and the US agencies that had contracts with them, was somehow inseparable. As Kinsey suggests, “the DoS, along with all the other US government

agencies working in Iraq, would not be able to perform their mission tasks without PSCs, increasing the likelihood of mission failure if they were withdrawn from theatre” (Kinsey, 2009, p. 57).

Furthermore, as suggested by Welch (2009), if we compare the shoot rates between Blackwater and other PMSCs in Iraq, the ones from Blackwater are twice as the ones from the other companies. And according to a memorandum released by the Committee on Oversight and Government Reform (2009), Blackwater between 2004 and 2007 engaged in 195 escalation of force incidents, in which 160 they fired first.

Also, the US occupation of Iraq meant the “largest deployment of private military companies in the history of warfare, including more than 60 firms contracting over 20,000 private personnel.” (Welch, 2009, p. 354). As Prince stated, “It seems nearly impossible to talk about military contractors today without reflexively mentioning Blackwater” (Prince, 2013, p. 63). During the mandate of Bremmer, the US launched a series of counterinsurgency attacks towards Shia and Sunni resistance movements to the US occupation, and Blackwater played a decisive role during this period. Moreover, Bremmer started to dismantle the political and military structures of the Saddam regime, and started the “de-Baathification” programs. Under this policies, many public officials were fired and became part of the resistance movements (Scahill, 2007). As a veteran British war correspondent stated, “The British took three years to turn both the Sunnis and the Shias into their enemies in 1920”, and the Americans were doing it in only one year (Fisk, 2004, in Scahill, 2007, p. 182).

In addition, and as Welch suggests, Blackwater’s capability to lobby the US government is concerning, as well as the immunities granted to them and other PMSCs in Iraq by the US government (Welch, 2009).

Therefore, it is necessary to explain the creation of Order 17 by the CPA under Bremmer’s administration. In June 2004, the CPA passed Order 17, which stipulated that the Iraqi courts and legislative bodies had no authority over PMSCs working in Iraq (Snuka & Gilbert, 2015). The order was passed one day before the CPA handled sovereignty over Iraq, and continued to be valid until December 2008, when the UN mandate of the US in Iraq was over (Snuka & Gilbert, 2015).

Section 2 of the Order, regarding the legal process involving PMSCs and other non-Iraqi personnel states that “shall be subject to the exclusive jurisdiction of their sending states. They shall be immune from any form of arrest or detention other than by persons acting on behalf of their Sending States” (Coalition Provisional Authority Order Number 17, 2004).

Furthermore, Section 4 explicitly says that contractors:

(2) Shall not be subject to Iraqi laws or regulations in matters relating to the terms and conditions of their Contracts, including licensing and registering employees, businesses and corporations; provided, however, that Contractors shall comply with such applicable licensing and registration laws and regulations if engaging in business or transactions in Iraq other than Contracts [...].

(3) Shall be immune from Iraqi legal process with respect to acts performed by them pursuant to the terms and conditions of a Contract or any sub-contract thereto. (Coalition Provisional Authority Order Number 17, 2004, section 4).

Without the Order 17 established, PMSCs could only be hold accountable in their sending states, and could not be prosecuted for criminal acts in the state they were working at. Thus, the Iraq war exemplifies how law and territoriality have been separated from each other, allowing to the US at the same time to somehow having jurisdiction outside their territory (Raustiala, 2005, in Snuka & Gilbert, 2015). As mentioned above, the Order 17 granted Blackwater and other PMSCs immunity in Iraq, even after the US mandate was over and remained like that until the end of the UN mandate. As Engelhardt suggest, the US granted Blackwater with the grounds of acting with impunity (Engelhardt, 2007).

#### 4. CONCLUSIONS

The use and existence of private military persons and entities may be dated to the 11<sup>th</sup> century, with the establishment of the *Condottieri* units in Northern Italy or the use of mercenaries and private armies by the Mercantile Companies later on. This practice has evolved throughout the centuries in different ways, but it can be said that from the decade of the 1990s to the present the use of PMSCs services has seen a considerable increase. This phenomenon is partly due to the reduction of some states in their military budget, and the increase in the so-called “new wars” as a form of war in the 21st century. And partly, because of the privatization of services that have taken place in the past decades in most services all over the world. And Blackwater specifically, is the result of budget military cuts by the Clinton administration among other reasons.

PMSCs have become key elements in how war is constructed nowadays, and the case of Iraq is one of the main examples. The US intervention in Iraq settled a trend towards the use of PMSCs from states, in order to provide the services their own armies cannot. The objective of this research has been to analyze the role of Blackwater as one of the most important PMSCs present in Iraq. Thus, to the question: what was the role of Blackwater in Iraq? The answer is that the company and its personnel not only provided to the US and Bush administration security services, as the contracts between US agencies and Blackwater stipulated, but they also somehow became a part of the US military structure in Iraq, and performed tasks that were outside that categorization of security services. After the 9/11 the US started their “war on terror”, and Blackwater became one of the main tools for the Bush administration to combat it in Iraq.

Also, it can be said that Blackwater entered in Iraq with a contract from the United States to protect Ambassador Paul Bremer III, and left the country being not the biggest PMSC in the country, but in fact the most known all over the world. As it has been mentioned, Blackwater exceeded their role in providing security and by being involved in some of the most controversial events that took place during the intervention of Iraq. Among these events, is important to highlight the Fallujah Ambush (2004), the An-Najaf Battle (2004) and the Nisur Square Massacre. The performance of the Blackwater employees, in most cases can be said that violated civil and human



rights from most of the Iraqi civilians involved. As well as it has been proved that Blackwater having the same rules of engagement as other PMSCs in Iraq, fired their weapons more often and injured far more people than other PMSCs colleagues.

The Fallujah ambush of 2004, established a before and after in the role of the company in Iraq. Firstly, it can be said that the ambush where the four Blackwater employees were killed and which raised awareness about PMSCs, in Iraq to the public worldwide, was in some way the result of the wrong decision made by the company personnel, who involved into an operation to which they were not ready to develop. They decided to drive through downtown Fallujah, disregarding the recommendation of other companies and US military personnel. Also, their contract with ESS was not started at the time of the incident, and the company did not have the required protected and armored vehicles. Secondly, the ambush also represents an inflexion point in which they became active combatants. Leading to some of the most significant events in which Blackwater was involved in Iraq. The An-Najaf battle is the demonstration of that change and the willingness to engage from the Blackwater personnel. That day the US and El Salvador soldiers at the CPA building, were receiving orders to shoot from the Blackwater personnel, when they did not have the authority to do so.

The Nisur Square massacre of 2007, also demonstrates the fact that the personnel from Blackwater exceeded their tasks and launched an attack on unarmed civilians without having any legitimacy to do so. The Blackwater personnel open fired towards the civilians without any reason, and started a battle engaging the Iraqi police and the military units that misread their actions. The incident led to an investigation from the FBI and the Iraqi police, that proved the fire was not justified and which led to the conviction of the personnel involved seven years later. Becoming this, the first time any Blackwater personnel was judged and convicted for crimes committed in Iraq.

Equally important, is the legitimacy that Blackwater as PMSC working in Iraq had. The activities of mercenaries are prohibited and regulated under the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (1989) and the Additional Protocols I and II added to the 1949 Geneva Convention. But the PMSCs personnel do not fall under the definition given in these documents, thus they cannot be applied to them. On the other hand, the IHL and IHRL do not enforce for companies, but it does for individuals. The main problem is that in order to

implement this legislation to PMSCs personnel their status must be established, and to do so is really complicated. Furthermore, states should guarantee that IHL and IHRL are respected and PMSCs comply with them.

Similarly, the ICJ established that the acts of private entities can be attributed to the state they operate. Therefore, it can be said that the legitimacy to PMSCs, and Blackwater is given by the contracting state. Related to this, it has been analyzed the tools that the US had to regulate the actions of Blackwater. It can be concluded that the US legislation presents too many breaches in what is related to PMSCs and their personnel. The case of Order 17 approved by the CPA, shows that during the US and UN mandate in Iraq, was intended to protect the PMSCs from local justice, and as a result, those involved in the Nisur events could not be prosecuted under Iraqi law.

After this incident, the US promoted changes within its domestic legislation, but which proved not to be enough. Nowadays, legislation both on domestic and international grounds on PMSCs is limited and ambiguous. Despite the fact that there have been some initiatives such as the ICoC or the Montreux document, it is still necessary to draft legislation that is binding on states and companies. Finally, it can be said once more that Blackwater's role in Iraq exceeded the legality, that the contracts it had with the United States granted, and that its personnel were involved in some of the most important events during the war, even changing the course of many of them and affecting the foreign policy of the United States.

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