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DISMANTLING IRAQI SOVEREIGNTY

José L. Gómez del Prado

The basic principle contained in the UN Charter in order “ to preserve generations from the scourge of war” is that no country has the right to send its troops into another country without the consent of its government, and that conflicts must be solved by negotiations and peaceful means.

The government whose consent is required does not need to be an elected government but simply a **sovereign government** which controls the armed forces and the police: that factor determines whether crossing the border leads to war¹.

The US/UK invasion of Iraq was an unlawful War of Aggression, as stated in the conclusion of all the 27 lawyers in the UK’s Foreign Affairs Department. The lawyers’ judgment of unlawful war follows the Dutch government’s unanimous report² and UN Secretary General Kofi Annan’s statements³ that Security Council resolution 1441 did not authorize use of force. The argument that an individual nation has the right to choose war violates the purpose, letter and spirit of the UN Charter.

UK Foreign Affairs leading legal advisor, Sir Michael Wood, disclosed this information at the UK Chilcot inquiry⁴. He stated that the reply

¹ J. Bricmont, “Humanitarian Imperialism”, page 94.

² Examiner, « Judgment begins : Dutch govt declares Iraq war unlawful in first « Emperor has no clothes report », January 13, 2010.

³ E. Macaskill and J. Borger, « Iraq war was illegal and breached UN Charter, says Annan », The Guardian, 16 september 2004.

⁴ The Chilcot inquiry was initiated from public outrage against UK participation in the Iraq war, with public opinion having to engage a second time to force hearings to be public. The hearings were not authorized to consider criminal charges, which is the

from Prime Minister Tony Blair's office to his legal department's professional work was chastisement for putting their unanimous legal opinion in writing. He also added Foreign Secretary Jack Straw preferred to take the legal position that the laws governing war were vague and open to broad interpretation⁵.

Since 1990 to the invasion of Iraq in 2003, the UN Security Council had imposed against Iraq the most comprehensive sanctions ever inflicted on a country. The transportation, power and communication infrastructures decimated during the Gulf war could not be rebuilt owing to the sanctions. The industrial and agricultural sectors were in shambles and a health crisis had erupted. Deaths caused by the sanctions regime constitute grave breaches of humanitarian law⁶. They led to the resignation of three United Nations officials.

In addition, the UN Security Council by its Resolution 1483 (2003) on Iraq recognized the occupation merely indicating "the specific authorities, responsibilities, and obligations (...) of the United States and the United Kingdom as occupying powers under the unified Authority" of Paul Bremer "and under Chapter VII of the UN Charter" This situation contributed in blurring even further the distinction between the neutral role UN and humanitarian organizations should play and the political interests of Member States as well as those of commercial entities such as private military and security companies (PMSCs) moved by greed and the forces of the market. Intervention forces, be military or humanitarian were put in the same basket and have become the target of insurgents and paramilitaries.

Such a policy led, on 19 August 2003, to the bombing of the Canal Hotel in Baghdad, the UN Headquarters in Iraq, which killed Sergio Vieira de Mello, the Special Representative of the Secretary-General for Iraq, 20 other persons and injured over 100. For Vieira de Mello it was clear that the role of the UN was to assist the Iraqi people in the transition towards democracy by rebuilding a country in peace. For him all political and ethnic groups had to be included in a transitional

next battle for UK public opinion: BBC News, "Anger over secret Iraqi inquiry", 16 June 2009.

⁵ Examiner, "All 27 UK Foreign Affairs lawyers: Iraq war unlawful. Obama, politicians, US media: no response", 28 January 2010..

⁶ "The adverse consequences of economic sanction on the enjoyment of human rights », UN document, E/CN.4/Sub.2/2000/33, Working paper prepared by Marc Bossuyt.

government. The occupation had to cease and in establishing the rule of law and rebuilding the country militaries as well as PMSCs were to be excluded. A view apparently not shared by the Authority.

The occupation of Iraq marks a turning point in the participation of private military and security companies in modern warfare. Iraq together with Afghanistan have seen a myriad of transnational private corporations and private military and security companies fulfilling inherently state functions which were till recently the realm of sovereign States. Iraq has been a major theatre of operations for private military and security companies. PMSC have been operating in gray areas without any control or lines of command threatening the lives and security of the Iraqi civilian population and contributing to the dismantling of the Iraqi sovereignty.

This has been the result of the policy of privatizing war and outsourcing inherently state functions by the US government. As a US Congress report indicates:

“Without contractors: (1) the military engagement would have had to be smaller – a strategically problematic alternative; (2) the United States would have had to deploy its finite number of active personnel for even longer tours of duty -a politically dicey and short-sighted option; (3) the United States would have had to consider a civilian draft or boost retention and recruitment by raising military pay significantly—two politically untenable options; or (4) the need for greater commitments from other nations would have arisen and with it, the United States would have had to make more concessions to build and sustain a truly multinational effort. Thus, the tangible differences in the type of war waged, the effect on military personnel, and the need for coalition partners are greatly magnified when the government has the option to supplement its troops with contractors”.

The use of security contractors is expected to grow as American forces shrink. A US Congress report estimated that the State Department alone would need more than double the number of contractors it had protecting the American Embassy and consulates in Iraq

In 1991 during the First Gulf War the ratio of participation in the war between private actors and militaries was 1 to 50; in 2003 it was of 1

to 1; after six years of occupation the involvement of private companies was greater than that of the militaries (218 000 private contractors (all types) while there were 195 000 uniformed personnel).

As indicated in more of 300 000 classified military documents made public by Wikileaks the use of private contractors substantially contributed to “the War’s Chaos in Iraq”. The chaos that private military and security contractors added to the war in Iraq has also been widely reported by the international media.

This is also confirmed by the research carried out by UN Working Group on the Use of Mercenaries which indicates the negative impact of the activities of “private contractors”, “private soldiers” or “guns for hire”, whatever denomination we may choose to name the individuals employed by private military and security companies as civilians but who are, in general, heavily armed.

In the cluster of human rights violations allegedly perpetrated by employees of these companies, which the Working Group has examined one can find: summary executions, acts of torture, cases of arbitrary detention; of trafficking of persons; serious health damages caused by their activities; as well as attempts against the right of self-determination.

It also appears that PMSCs, in their search for profit, neglect security and do not provide their employees with their basic rights, and often put their staff in situations of danger and vulnerability such as they did in Fallujah.

Though Iraqis have been the major victims of private contractors they are not the only ones. As reported in an article of The New Yorker magazine titled “The Invisible Army” many of the 70,000 “third country national” (TCN) service workers from South Asia and Africa employed in Iraq and Afghanistan have been robbed of wages, injured without compensation, subjected to sexual assault, and held in conditions resembling indentured servitude by their subcontractor bosses: a new form of contemporary slavery.

These non-state entities of the XXIst century operate in extremely blurred situations where the frontiers are difficult to separate. The new security industry of private companies moves large quantities of

weapons and military equipment. It provides services for military operations recruiting former militaries as civilians to carry out passive or defensive security.

However, these individuals cannot be considered as civilians, given that they often carry and use weapons, interrogate prisoners, load bombs, drive military trucks and fulfill other essential military functions. Those who are armed can easily switch from a passive/defensive to an active/offensive role and can commit human rights violations and even destabilize governments. They cannot be considered soldiers or supporting militias under international humanitarian law either, since they are not part of the army or in the chain of command, and often belong to a large number of different nationalities. They are proxies or the corsairs of the XXIst century.

It is important to bear in mind that private security guards not only have committed grave violations of human rights in Iraq like the massacre of Nissour Square where some 15 persons were murdered and several others including women and children, injured or the torture committed on detainees at Abu Ghraib prison but that the killing of four American private security guards by Iraqi insurgents in Fallujah and the US siege that followed changed the course of the war and the occupation by US in Iraq.

This led to an abortive US operation to recapture control of the city and a successful recapture operation in the city in November 2004, called Operation Phantom Fury, which resulted in the death of over 1,350 insurgent fighters. Approximately 95 American troops were killed, and 560 wounded. The U.S. military first denied that it has used white phosphorus as an anti-personnel weapon in Fallujah, but later retracted that denial, and admitted to using the incendiary in the city as an offensive weapon.

The experience in Iraq shows that foreign intervention tends to provoke internal conflict, civil war, as the occupying power seeks to gain support by favoring one group or faction against others. The behavior of the US armed forces was foreseeable, that is why its armed forces are such a bad instrument for advancing human rights. In addition, the Anglo-Americans exacerbated ethnic differences using the same strategy as in the former Yugoslavia. Moreover, Bremer's policy in Iraq of dismantling the national Iraqi army and the police forces, the sovereign attributes of statehood, was catastrophic.

American companies behaved like vultures; the occupiers pillaged the Iraqi culture heritage, PMSC's behavior of torture and disappearances was scandalous, and the Fallujah destruction unacceptable⁷.

The occupation of Iraq has been part of a long-term strategy of the present system of global governance by a minority of States based on a culture of war and the plundering of natural resources. It promotes the globalization of conflicts, insecurity, the arms race as well as the deregulation of the financial markets. The system has marginalized the United Nations, weakened democratic countries, privatizing essential public sectors such as education, health and security by outsourcing to the private sector large parts of their military and security forces and, therefore, undermining the state monopoly of force.

As the years that followed the decolonization period in the 1960's were marked by the activities of mercenaries, similarly the last 20 years which ensued the fall of the Berlin Wall, the collapse of the U.S.S.R. and the globalization of the world economy⁸, triggering "the ruthless competition for natural resources, political instability, armed conflicts and crisis situations", have been stamped by the activities of private military and security companies (PMSC).

Military and security functions, considered inherently state functions, are being increasingly outsourced to the private sector⁹. The growth of this new industry, a direct consequence of merging together the public and the private sectors (government and big business) with an unstoppable flow of money in a period of economic recession, has seen the increasing outsourcing of military functions to private contractors, with companies such as Blackwater (renamed Xe and Academi) or DynCorp doing the jobs of the professional soldiers. In

⁷ J. Bricmont, « Humanitarian Imperialism », page 132

* UN Working Group on the use of mercenaries (Former Chairperson).

⁸ M. Kurtz, "The social foundations of institutional order: Reconsidering war and resource in third world state building" (2009) 37 (4) *Politics & Society* 479.

⁹ Cook, Tanya (2002) "Dogs of war or tomorrow's peacekeepers?: the role of mercenaries in the future management of conflict," *Culture Mandala: The Bulletin of the Centre for East-West Cultural and Economic Studies*: Vol. 5: Iss. 1, Article 1. Available at: <http://epublications.bond.edu.au/cm/vol5/iss1/1>

the field of intelligence private contractors are hired to do the work of spies¹⁰.

This new industry is transnational in nature and has literally exploded with the privatization of war in the Afghan and Iraqi conflicts, where private contractors have outnumbered that of militaries¹¹.

The contracting out to private companies in Iraq and Afghanistan of a number of military and security activities has been the embarrassment of the United States government in numerous occasions. Employees of PMSCs have been accused in high-profile incidents, such as of violating human rights, shooting civilians, using excessive force, being insensitive to local customs or beliefs, treating the local population disrespectfully. Concerns over the lack of transparency, oversight and accountability have also attracted media and public attention¹².

With the 2003 invasion of Iraq and its occupation the privatization of the use of force acquired unprecedented proportions turning the provision of military and security related services into one of the most prosperous post-conflict business. It has consolidated the PMSC industry as a key player for future international interventions.

After eight years in Iraq and the installation of a new government, the US withdrew without achieving its goals, leaving Iraq in disarray. And after more than a decade in Afghanistan a similar outcome seems to be imminent. Like Vietnam, these wars too are not two-state wars.

They amount to invading armies battling indigenous peoples for self-determination who themselves are not united and not under the control of any government, group, or commander. No surrendering army in either country will ever be found.

¹⁰ Paul Harris, "How private firms have cashed in on the climate of fear since 9/11", The Guardian, 5 September 2011: "Generals, government officials and intelligence chiefs flock to private industry and embark on new careers selling services back to government".

¹¹ Scott Horton, "One Nation under Contract: six Questions for Allison Stanger", Harper's Magazine, 22 April 2011.

¹² Moshe Schartz, "The Department of Defense's Use of Private Security in Iraq and Afghanistan: Background, Analysis, and Options for Congress", U.S. Congressional Research Series, June 22, 2010.

But now there's a new twist. The forces facing the invaders do not merely consist of local peoples. Non-state actors who are similarly minded as multi-state actors assist them.

The seeds of the hatred towards America and the West developed by al-Qa'ida were deeply rooted when the first bombs dropped on Baghdad in 2003. Al-Qa'ida members were directed to collaborate with the hated Baathists against US forces. Since then al-Qa'ida units cooperate and fight with other groups and rebel organizations in Iraq, Yemen, Libya, Algeria, Syria and Mali¹³.

¹³ R. Frisk, « War on Terror is the West's New Religion », The Independent, February 25, 2013.