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Private Military and Security Companies’ regulation in Colombia

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Antoine's PhD dissertation was on the role of the Inter-American System of Human Rights in facing the challenges posed by private military and security companies (PMSCs) in Latin America. Through his work on PMSCs he has collaborated with the Geneva Center for Democratic Control of Armed Forces (DCAF), the UN Working Group on Mercenaries, and the UN Regional Centre for Peace, Disarmament and Development (UNLIREC).

Introduction

The ongoing armed conflict in Colombia has been a source of work for private military and security companies (PMSCs)². The private security market in Colombia is divided between the domestic market regulated by a public institution and international PMSCs working for the United States (US) under the bilateral cooperation with Colombia (Plan Colombia). PMSCs in Colombia provide a large range of services, such as security for politicians, intelligence for the government, and fumigation of illicit coca fields.³

This presentation analyzes the characteristics of PMSCs' activities and their regulation in Colombia. After an abbreviated overview of the Colombian context this presentation looks first at domestic private security companies working in the context of ordinary crime and violence. Second, it focuses on private military and security companies' activities in the context of the armed conflict.

1. PMSCs in the national context

The history of violence in Colombia is long and complex. In order to understand the context in which private security works, it is essential to understand the different dynamics of violence in the country and their evolution in recent years. For this purpose it is possible to divide homicidal violence into two types: one is related to the dynamics of street and organized crime (ordinary crime) while the other stems from the armed conflict. The activities of private security companies depend on which type of violence they are hired to address. 'Ordinary' private security works in collaboration with police forces to fight against ordinary crime; meanwhile, international PMSCs—mainly from the US under the framework of Plan Colombia—are involved in the Colombian armed conflict.

It is important to note that the situation of crime in Colombia has been improving constantly in recent years. For instance, in 2012, the level of homicide was the lowest reported in the last fifteen years (14,670).⁴ This number has continued to decrease : in 2014, 12,776 homicides were reported.⁵

² I use the terminology for private military and security companies (PMSCs) in general when both or either option are possible and private security companies (PSC) when it is clearly not a military task that the company provides.

³ See US Department of State, Report to Congress On Certain Counternarcotics Activities in Colombia (2010) [hereinafter 2010 Report to Congress] (copy on file with author) and US Department of State, Report to Congress On Certain Counternarcotics Activities in Colombia (2007), available at <http://justf.org/files/primarydocs/0706cont.pdf> [hereinafter 2007 Report to Congress]. See also P. Medina, 'Los escoltas privados, la nueva papa caliente del Ministerio del Interior', *La silla vacía* Feb 2011, available at <http://www.lasillavacia.com/historia/los-escoltas-privados-la-nueva-papa-caliente-del-ministerio-del-interior-21288>.

⁴ Instituto Nacional de Salud, <http://www.ins.gov.co/lineas-de-accion/ons/boletin4/interactivo/index.html>; see also *Global Study on Homicide*, United Nations Office on Drugs and Crime, 2013.

⁵ El tiempo, <http://www.eltiempo.com/politica/justicia/medellin-y-cali-las-que-mas-aportan-a-reduccion-de-homicidios-en-2014/14952936>; See also InsightCrime, <http://www.insightcrime.org/news-analysis/colombia-on-track-for-least-violent-year-in-3-decades>

The *Fuerzas Armadas Revolucionarias de Colombia—Ejército del Pueblo* (FARC, Revolutionary Armed Forces of Colombia), *Ejército de Liberación Nacional* (ELN, National Liberation Army) and *Autodefensas Unidas de Colombia* (AUC, United Self-Defense Forces of Colombia) remained the main actors in the Colombian conflict until very recently. In the past decade, after failed peace talks with the FARC,⁶ the Uribe administration (2002-2010) increased its cooperation with the US and strongly attacked the guerrillas.⁷ Meanwhile, it negotiated with the AUC, managing to demobilize the majority of the paramilitary forces.⁸ Their demobilization resulted in a decrease in the intensity of the violence. However, soon after, new groups emerged called BACRIMs (*bandas criminales*, criminal bands) emerged; these are sometimes described as a new generation of paramilitaries.⁹

In 2012, newly-elected President Santos, who had served as defense minister in Uribe's administration, initiated new peace talks with the FARC.¹⁰ At the time of this writing (November 2015), the negotiations have advanced on several topics, such as land reform and political participation. In fact, the Colombian government and the FARC have announced an agreement will be reached in spring 2016. Nevertheless, the peace negotiations are far from over and the situation—presence of various organized armed groups, as well as the intensity and duration of the violence—meet the standards of international humanitarian law (IHL) to be defined as an armed conflict and, thus, IHL applies to Colombia.

2. PSC domestic market and legislation

2.1 Growing domestic market

According to the *Superintendencia de Vigilancia y Seguridad Privada* (SVSP, Superintendence of Surveillance and Private Security), which is the only institution in charge of the supervision and control of private security in the country, there are currently 879 companies operating in Colombia. These fall into eight categories, depending on the type of service they provide. The categories are: armed security companies, unarmed security companies, security cooperatives, conveyors of values, training companies, consultancy

⁶ J. M. Ospina Restrepo, 'La paz que no llegó: enseñanzas de una negociación fallida', 2 (2) *Revista Opera*, (2002) 59-85.

⁷ See for instance: D. M. Rojas, 'Much more than a war on drugs: elementos para un balance del Plan Colombia', 77 *Análisis Político* (2013) 113-132; F. Leal Buitrago, 'La Política de Seguridad Democrática 2002-2005', 57 *Análisis Político* (2006) 3-30.

⁸ J. Grajales, 'El proceso de desmovilización de los paramilitares en Colombia: entre lo político y lo judicial', 23:II *Desafíos* (2011) 149-194. See also F. Massé, (coord.), *La Evolución de las Estructuras Armadas Post-desmovilización: Pasado, Presente y Futuro*, Tercer Informe del Observatorio de DDR y Ley de Justicia y Paz, Centro Internacional de Toledo para la Paz, (Madrid, 2010).

⁹ S. Granada, J. A. Restrepo, and A. Tobón García, 'Neoparamilitarismo en Colombia: una herramienta conceptual para la interpretación de dinámicas recientes del conflicto armado colombiano' in J. A. Restrepo and D. Aponte, (eds) *Guerra y Violencia en Colombia: gerramientas e interpretaciones* (Bogotá: Editorial Pontificia Universidad Javeriana, 2009). See also F. Massé, '¿Bandas criminales o neoparamilitares?', 11 *Foreign Affairs Latinoamérica* (2011) 42-49, available at <http://www.revistafal.com/historicopdf/2011/2/bandas.pdf>

¹⁰ J. C. González and W. Neuman, 'Colombia explores talks with FARC', *New York Times* (August 28, 2012), available at <http://www.nytimes.com/2012/08/28/world/americas/colombia-in-exploratory-talks-with-farc.html>. See also W. Neuman and J. C. González, 'Colombia will start peace process with FARC', *New York Times* (September 4, 2012), available at http://www.nytimes.com/2012/09/05/world/americas/colombia-will-restart-peace-process-with-farc.html?_r=0.

companies, armoring companies, and leasing companies of armored vehicles- Armed security firms represent the largest part of the market with 584 companies registered as of August 2015; this contrasts sharply with the mere 59 unarmed security firms registered.

Evolution of the number of companies registered

Type of services	Number of companies registered (as legal person)								
	2006	2007	2008	2009	2010	2011	2012	2013	2014
Vigilance companies	439	425	525	525	527	430	509	567	538
Security cooperatives	34	44	49	46	47	39	46	48	49
Conveyors of values	6	7	6	7	7	6	8	8	8
Training companies	52	51	62	64	68	55	64	79	78
Consultancy companies	0	0	13	14	13	8	12	19	20
Armoring companies	17	22	14	13	17	16	21	30	28
Leasing companies of armored vehicles	0	0	16	17	18	11	17	19	19
Total	548	549	685	686	697	565	677	770	740

Table based on SVSP data available at <http://www.supervigilancia.gov.co/> (accessed June-August 2015).

Several sources reported in the past (2007, 2009, and 2012) that the real number of domestic and foreign companies hired in the country is under-recorded, meaning that some companies are providing security services illegally.¹¹ A potential explanation for this phenomenon is that the process of registering with the SVSP is complex and time-consuming. Nevertheless, under-recording is difficult to verify or measure because there is a lack of data concerning companies or agents working outside the supervision of the SVSP. Although some sources indicate that this issue is ongoing, several sources suggest that the SVSP, which is authorized to take action against natural or legal persons providing security guard services without authorization, has recently taken steps to mitigate the problem.¹²

2.2. Domestic legislation

The Colombian Constitution of 1991 established that the state has the monopoly over the use of force; nevertheless, Decree 356 of 1994 authorized the outsourcing of security functions under the supervision of the state.¹³ Decree 356 specified that the objective of private security is the reduction and prevention of threats affecting life, personal integrity, and the legitimate

¹¹ Personal interviews of PMSCs employees and managers in 2007, 2009, 2011 and 2015.

¹² Interview *ibid* and <http://www.supervigilancia.gov.co/>

¹³ Decreto 356 /1994

exercise of property rights.¹⁴ It further stipulated that the activities of PSCs must not alter or disrupt the exercise of civil rights and civil liberties.¹⁵

According to Decree 356, PSCs are classified as being in the business of surveillance and private security either with arms or without arms.¹⁶ The first category—with arms—includes surveillance and private security companies,¹⁷ security departments,¹⁸ surveillance and private security cooperatives,¹⁹ transportation of valuables,²⁰ special surveillance services and private security, and community services for surveillance and private security.²¹ The second category—without arms— includes surveillance and private security companies,²² companies related to security and surveillance equipment (production, installation, marketing and use),²³ and consultant and investigation companies.²⁴ Decree 356 binds all PSCs, regardless of if they use arms, are domestic or multinational, or if they are hired by a public or private entity—the only exceptions are companies contracted under Plan Colombia, which are discussed below.

The Decree also provided for the creation of an entity in charge of the control of PSCs: the SVSP.²⁵ The SVSP presides over a monitoring system that includes includes duties and rights for PSCs, with the ability to grant operating licenses for PSCs²⁶ and impose sanctions for noncompliance.²⁷

To obtain an operating license, a company must report specific certifications and information depending on the type of service offered. For instance, basic requirements include the location of the company, type of service offered, equipment used, insurance policy, and participation of their personnel to the social security system.²⁸ The Decree also obliges companies to provide proof of employees' training or skills in order to obtain a license.²⁹

In 2006 the Colombian Congress approved a reform to Decree 356.³⁰ The aim of the reform was to facilitate the renewal of licenses, as well as extend the duties and rights related to human rights and international humanitarian law.³¹ In 2012, another reform simplified the paperwork for companies to obtain a license and modified rules concerning the use of

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ See *Ibid.*, Titulo II and Titulo III.

¹⁷ *Ibid.*, Titulo II Capitulo I.

¹⁸ *Ibid.*, Titulo II Capitulo II.

¹⁹ *Ibid.*, Titulo II Capitulo III.

²⁰ *Ibid.*, Titulo II Capitulo IV.

²¹ *Ibid.*, Titulo II Capitulo V.

²² *Ibid.*, Titulo III Capitulo I.

²³ *Ibid.*, Titulo III Capitulo II.

²⁴ *Ibid.*, Titulo III Capitulo III.

²⁵ Superintendencia de vigilancia y de seguridad privada, <http://www.supervigilancia.gov.co/index.php>.

²⁶ See Decree 356 / 1994, Art. 11 and 14.

²⁷ Decree 356 / 1994, Art. 7.

²⁸ Decree 356 / 1994.

²⁹ Decree 356 / 1994, Art. 74; reaffirmed in the updated law in 2012 in Art. 103 (2) of Decree 19 / 2012.

³⁰ Congreso de la Republica de Colombia, Resolucion 2852 of 2006. This action transformed the Decree into a law.

³¹ The new duties of the PMSC in terms of human rights and international humanitarian law are related to ensuring adequate training in these matters and the corresponding certification. The rights would be oriented to guarantee the labor rights of the employees. See Resolution No. 2852, August 8, 2006, Unifying Private Security and Monitoring Regime. See also: Resolution 5349 December 6, 2007; Resolution 4745 December 27, 2006.

firearms.³² Companies are now required to be in charge of the weapons, which cannot be the property of company employees.³³

Despite some positive features, both in the Decree 356 and the subsequent reforms, there remain serious deficiencies. These instruments do not contemplate the export and import of military and security services.³⁴ There is no requirement that PSC personnel attend a human rights training, no oversight of the type of personnel hired, and no controls over the type of actors that are permitted to use PSCs.³⁵ Finally, the law lacks provisions articulating PSCs' accountability to society.³⁶

3 Domestic legislation and its limits

3.1 Private security and the extractive industry

In general, the commercial and industrial sectors are the biggest clients in the private sector and hire PSCs mostly for surveillance, but extractive companies are another important part of PSCs' private sector client base.³⁷ In recent years, extractive activities in Latin America have boomed, and Colombia is no exception.³⁸ As part of this expansion, companies increased their activities in remote areas where—especially in Colombia—extra security is needed because of crime and guerilla groups' activities.³⁹

Extractive companies have three different options for their security: 1) having an agreement with public forces (Colombian armed forces); 2) contracting private security companies; and 3) having in-house security departments.⁴⁰ These options are not exclusive, depending on the size of the companies and the places where they work. Indeed, it is often the case that extractive companies use all the options for different purposes.

Extractive companies have sought agreements with public forces on several occasions. For example, in the late 1990s, a consortium of oil companies concluded a contract with the

³² Decree 19 / 2012.

³³ Ibid.

³⁴ There is no mention of potential exportation of service abroad.

³⁵ I. Cabrera and A. Perret, 'Colombia: Regulating Private Military and Security Companies in a "host state"', in C. Bakker and M. Sossai, (eds) *Multilevel Regulation of Military and Security Contractors, The Interplay between International, European and Domestic Norms*, (Oxford: Hart Publishing, 2012), at 417.

³⁶ Comments made by the Academic Network on the Use of Mercenaries—Colombia chapter to the second commission of Congress of the Republic about the current law and the new proposal. The lack of requirement for PMSC personnel to attend a human rights training is particularly relevant when PMSCs are working in contra-insurgency or anti-drug operations.

³⁷ Official page of the *Vigilance and Private Security Superintendence*.

³⁸ See G. Bridge, 'Mapping the Bonanza: Geographies of Mining Investment in an Era of Neoliberal Reform.' 56 (3) *The Professional Geographer* (2004), 406–421; A. Bebbington, 'Extractive Industries in the Andean Region: Issues, actors, challenges', *PROCASUR Regional Corporation* (July 2011); V. Henríquez, 'Investment in Latin America to Total US\$200bn this Decade', *Business News Americas* (September 28, 2010).

³⁹ A. Perret, 'Las Compañías Militares y de Seguridad Privada en el Sector Minero-Energético: un Desafío para la aplicación de los Derechos Humanos', in A.-C. González Espinosa, (eds) *Los retos de la gobernaza minero-energética* (Bogotá: Universidad Externado de Colombia, 2013) 235-263.

⁴⁰ Personal Interview with experts on Extractive industries in Colombia

Colombian armed forces for US \$ 2 million per year, which could be paid in cash or in kind (e.g., equipment).⁴¹

In Colombia these agreements are now institutionalized. A specific entity, *Coordinación de Convenios* (CECON, Coordination of Agreements) is in charge of these processes.⁴² However, this raises concerns from the perspective of both the extractive industry and the public forces. From the viewpoint of the extractive industries, the public forces may not be the most reliable source of security considering that they have priorities other than providing private security services—this is especially true when the company is operating in a country where there is an armed conflict. As the Associate Director at Global Risks Advisory stated: “you can control your contractors to a certain extent, but it’s much harder to control or influence the activities of state security.”⁴³ From the point of view of the public forces, these agreements are often problematic for various reasons—for example, it may trouble the relationship between the soldiers and the local population and force the armed forces to adapt their strategies to private interests. In 2014, in order to limit the negative impact of these agreements, the Colombian government created a special force in charge of the protection of economic infrastructure: the Centro de Operaciones Especiales para la Protección de la Infraestructura Crítica y Económica del Estado (COPEI, Center of Special Operations for the Protection of Critical and Economic State Infrastructure).

The second option for extractive industry to obtain security services is hiring PSCs. In addition to having more flexible priorities and being more responsive to an extractive industry’s needs, PSCs “can be cost-effective [for] supplying short-term and contract-bound services.”⁴⁴ Furthermore, extractive industries may seek private security services thinking they can exert better and more complete control over them than over state forces. This avoidance of public forces in favor of PSCs may be a particularly attractive strategy in countries in which the police and armed forces are unreliable, weak, or have a record of human rights violations.⁴⁵ Within this strategy, extractive companies can opt to hire domestic or international private security companies.

Domestic PSCs’ connections to the local community can be a tremendous advantage for an extractive company. One of the biggest challenges for extractive companies is to become integrated into the local context. A good relationship with the local population allows PSCs to avoid tensions with employees and possible threats against them or the extractive companies’ facilities; this reduces the need for security services to resort to use of force, thus

⁴¹ Human Rights Watch, *Colombia: Human rights concerns raised by the security arrangements of transnational oil companies*; See also M. Jaskoski, Public Security Forces with Private Funding, Local Army Entrepreneurship in Peru and Ecuador, 47 (2) *Latin America Research Review* (2012), at 87.

⁴² See the proceeding of a subscription of agreement: Subscripción de Convenios- Ejército Nacional de Colombia www.ejercito.mil.co/

⁴³ James Smither, associate director at global risks advisory firm Maplecroft. Quoted in Oliver Balch, “Mining – Slow progress on extractive human rights”, Ethical Corporation (<http://www.ethicalcorp.com>), on Feb 7, 2013

⁴⁴ Umlas, E. & al (2011). Protected but Exposed: Multinationals and Private Security, Small Arms Survey 2011: states of security, Cambridge University Press, Graduate Institute of International and Development Studies, Geneva. p. 145.

⁴⁵ Ibid. Interestingly, in Latin America, public forces have relatively sophisticated and standardized training for their staff, whereas PMSCs in the region show little regularity in staff training. See Godnick, B. (2009). Private Security: a Preliminary Report for the Second Meeting of the Organized Crime Observatory for Latin America and the Caribbean, San Jose, Costa Rica, 8-9 September 2009. Lima: United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean, p.11. Cited in Umlas, E. & al (2011). p. 146.

diminishing the possibility of human rights violations. Furthermore, “[i]f there is a good relationship between the two [...] the community 'often becomes a key source of information', providing early warning to the company about potential security threats.”⁴⁶ By the same token, however, “[f]rictions between the community and the company can lead to conflict and increased security risks.”⁴⁷

Although domestic PSCs’ connections with and understanding of the local context is typically a positive factor, the ways in which these companies acquired this understanding may ultimately undermine an extractive industry’s attempts to circumvent public forces, obtain a professional yet independent source of security, and retain control over its contractors. PSC managers and employees are often former soldiers or police officers and remain very well connected with local public security forces.⁴⁸ This makes domestic PSCs more attractive, relative to international PSCs, considering that one of the first steps extractive companies need to take when starting operations in a country is to obtain information about the best places for their operations. Identifying possible problems with different locations is, thus, of key importance, and this requires detailed information and knowledge about the situation on the ground. Few international PSCs have staff that have collected the field information or developed the connections necessary to obtain such information⁴⁹; domestic PSCs’ physical presence in the country of operation is, thus, very valuable for the extractive companies.

The final available option for extractive companies is to have an in-house security department. Many extractive companies have their own security departments, which are usually in charge of stationary security of the companies’ facility. The apparent advantage of using this type of security in Colombia is that the law is more flexible than for private security companies.⁵⁰

3.2 International PMSCs

Numerous international PMSCs operate in Colombia, providing services to a range of clients, private and public. On the private side, as mentioned above, international PMSCs work for other businesses operating in Colombia; on the public side, several international PMSCs work for the United States within the framework of Plan Colombia.⁵¹

PMSCs working under Plan Colombia have been hired by the US Departments of State and Defense to carry out activities related to US military and police aid to Colombia.⁵² For example, Military Professional Resources Incorporated (MPRI) helped restructure the

⁴⁶ Umlas, E. & al (2011). *Op. cit.* p. 142.

⁴⁷ *Id.*

⁴⁸ Personal interviews with PMSCs’ manager in Colombia 2008-2009; Phone interview with PMSC employee, Guatemala City, June 2012; *See also* Cafferata, F. *Privatisation of Security in Latin America: Review*, Working Papers Series, no. 3, June, Global Consortium on Security Transformation, p. 4. Available at: http://www.securitytransformation.org/gc_publications.php.

⁴⁹ However, some PSCs have excellent connections with the local forces, which guarantees them access to domestic intelligence. For instance: Team Savant in Colombia or Control risk in several countries in Latin America.

⁵⁰ Personal interview expert on extractive industry in Colombia.

⁵¹ 2007 Report to Congress; 2010 Report to Congress. *See also* A. Perret, *Las Compañías Militares y/o de Seguridad Privadas en Colombia: ¿Una nueva forma de mercenarismo?*

⁵² *Ibid.*

Colombian armed forces to aid in their fight against drugs.⁵³ DynCorp has been in charge of the fumigation of coca plants since 2000 and was also tasked with training, air transport, aircraft maintenance, reconnaissance, and search and rescue operations.⁵⁴ Northrop Grumman held a reconnaissance program contract to fly over the Colombian jungle with aircraft equipped with infrared cameras in order to track illegal activities related to drugs or guerrilla movements.⁵⁵ The PMSCs Virginia Electronic Systems, Inc. and Air Park Sales and Service, Inc. delivered and installed communication equipment for the Colombian navy's air forces in 2002.⁵⁶ In 2006, Chenega Federal Systems was in charge of an intelligence database.⁵⁷ In 2009, Telford Aviation provided logistics support for reconnaissance airplanes,⁵⁸ while ARINC, Inc. was in charge of training activities, maintenance, and logistical support related to the Colombian Air Bridge Denial program—an anti-narcotic program operated by the US Central Intelligence Agency (CIA).⁵⁹

US PMSCs working under the framework of the Plan Colombia are legally under the control of the US. This raises some issues that are not relevant for the purpose of this report, such as US participation in the Colombian armed conflict; however, its result in placing these PMSCs beyond the application of the Colombian law on private security is highly relevant. US PMSCs employees benefit from special treatment: all US contractors are granted the same immunity protection that US military personnel working in Colombia have benefitted from for more than sixty years.

The immunity of US military staff in Colombia comes from agreements signed after the Second World War.⁶⁰ The most important of these agreements is the General Agreement for Economic, Technical and Related Assistance between the Government of Colombia and the Government of the United States of America, which was signed in Bogota on July 23, 1962.⁶¹ This agreement represented the first step towards the immunity of US personnel in Colombia. Article III states:

The Government of Colombia will receive a special mission and personnel to carry out the duties of the Government of the US according to the present Agreement and will consider the personnel of this special mission as part of the Diplomatic Mission of the Government of the US in Colombia, with the purpose to concede them the privileges and immunities that are granted to this mission and to personnel of equal rank.⁶²

This agreement has been extended several times since it was signed; for instance, through

⁵³ 'La guerra privatizada', *Semana* (10 November 2002).

⁵⁴ DynCorp-State Department Contract (2001), available at <http://www.corpwatch.org>.

⁵⁵ J. Forero, 'Private US Operatives on Risky Missions in Colombia', *New York Times* (February 4 2004).

⁵⁶ *El Tiempo* (June 20 2003).

⁵⁷ 2007 Report to Congress.

⁵⁸ 2010 Report to Congress.

⁵⁹ *Ibid.*

⁶⁰ See for instance Mutual Defense Assistance, United States of America and of the Republic of Colombia, signed at Bogota, April 17, 1952 available at <http://forusa.org/sites/default/files/uploads/us-colombia-agreements-1952-y-1974.doc>.

⁶¹ General Agreement for Economic, Technical and Related Assistance Between the Government of United States of America and the Government of Colombia (1962).

⁶² *Ibid.*, Art. 3.

Articles 5 and 11 of the Agreement of Military Mission of 1974.⁶³ In 2003, a bilateral agreement on the non-extradition of US personnel to the International Criminal Court expanded this immunity.⁶⁴

This immunity limits the possibility for Colombian authorities to control US PMSCs. This is concerning because there are numerous allegations of human rights violations at the hands of PMSCs operating under Plan Colombia, but none of these violations has been brought to justice either in Colombia or the US. Several sources reported in 2004 that US contractors from the Colombian military base Tolemaida recorded a pornographic movie with minors.⁶⁵ No investigation took place and the contractors responsible were never punished.⁶⁶ In August 2007, an American soldier and a PMSC contractor, also working at Tolemaida military base, were accused of raping a twelve-year-old girl.⁶⁷ The Colombian judicial system opened an investigation, but there is a very high probability that the perpetrators will not be brought to justice because of the immunity.⁶⁸

So long as this grant of immunity is observed, the only possibility for prosecuting employees of US PMSCs for offenses committed in Colombia rests in the US.⁶⁹

Conclusion

While the law has lacunae and could be improved, the main problem with the control of domestic PSCs in Colombia is the law's implementation. As reported by several PSCs' managers, the SVSP lacks real capacity to control any PSC activities.⁷⁰ Enforcement has only been achieved in some cases.⁷¹

The lack of resources of the SVSP in comparison with its task to fulfill has consequences: Small companies that are in the process of growing do not expect government inspections, due to their size. Consequently, even though they are legally established companies, they

⁶³ Agreement between the Government of the United States of America and the Government of the Republic of Colombia concerning an Army Mission, a Naval Mission and an Air Forces Mission of the United States or America Armed Forces in the Republic of Colombia (1974).

⁶⁴ See Article 1 of the "acuerdo entre el gobierno de la Republica de Colombia y el Gobierno de los Estados Unidos de America respeto a la entrega de personas de las Estados Unidos de America a la Corte Penal International" available at http://www.presidencia.gov.co/prensa_new/sne/2003/septiembre/18/08182003.htm.

⁶⁵ Contractors have been accused of drug trafficking, rape, and collaboration with paramilitaries. See for instance 'Mercenarios', *supra* note **Erreur ! Signet non défini.**; K. Penhaul, Americans blamed in Colombia raid, *San Francisco Chronicle* (June 15, 2001), available at <http://www.sfgate.com/news/article/Americans-blamed-in-Colombia-raid-2910509.php>; interview with former employee of Colectivo de Abogados José Alvear Restrepo, Bogota, April 19, 2007.

⁶⁶ "Investigan a dos militares de E.U. por violación de niña de 12 años en Comando Aéreo de Melgar"

⁶⁷ *Ibid.*

⁶⁸ Interview with former employee of Colectivo de Abogados José Alvear Restrepo.

⁶⁹ See an analysis of US mechanism for PMSCs activities can be find in the report Montreux Five Years On: An analysis of State efforts to implement Montreux Document legal obligations and good practices. DeWinter-Schmitt, R., (ed), Montreux Five Years On: An analysis of State efforts to implement Montreux Document legal obligations and good practices, (2013) available at <http://ihrib.org/wp-content/uploads/2013/12/MontreuxFv3.pdf>; See also K. A. Huskey and S. M. Sullivan, 'United States: Law and Policy Governing Private Military Contractors after 9/11', in C. Bakker and M. Sossai, *op cit.*

⁷⁰ Interviews of PMSCs' employees, conduct in Bogota in June and August 2008, and in August 2011.

⁷¹ *Semana*, February 26, 2006

supply themselves with arms acquired on the black market.

Finally, the figure of "security department" in the private security law is a problem in term of arms proliferation and can be a source of risk for the use of these weapons in illicit activities and illegal leaks arms market. At present there is no knowledge about the number of weapons in these departments and use they are being given. There have been reports regarding the involvement of Security Departments in illegal activities.⁷² (There have been also reports regarding legally-established PSCs involved in illegal activities.)

⁷² See annexe incident ??