

# the privatization of security and peacebuilding :

a framework for action

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INTERNATIONAL ALERT



International Alert is an independent non-governmental organization which analyses the causes of conflict within countries, enables mediation and dialogue to take place, sets standards of conduct that avoid violence, helps to develop the skills necessary to resolve conflict non-violently, and advocates policy changes to promote sustainable peace. The International Alert Policy and Advocacy department has three programmes on security and peacebuilding: light weapons, the privatization of security, and security sector reform. Each promotes the development and implementation of policies and works to enhance the capacity of governments, non-governmental organizations, and civil society to address the causes of insecurity in regions of conflict.

- The Light Weapons programme, established in 1994, focuses on identifying ways to control the proliferation and misuse of conventional arms, especially light weapons.
- The Privatization of Security programme, established in 1998, focuses on the development and promotion of policies and practices which will ensure that the activities of private security and military companies have a positive impact on preventing conflicts and building sustainable peace.
- The Security Sector Reform programme focuses on the development and promotion of policies and practices which contribute to the effective implementation of security sector reform programmes.

# Contents

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<b>Executive Summary</b> .....	3
<b>I Introduction</b> .....	5
<b>II Globalization, a new security paradigm, and the privatization of security</b> .....	6
<b>III A typology of private security groups</b> .....	8
3.1 Mercenaries .....	8
3.2 Private military companies .....	10
3.3 Private security companies .....	10
<b>IV Distinguishing private security groups</b> .....	12
4.1 Mercenary/volunteer forces .....	12
4.2 Mercenaries/private military companies .....	12
4.3 Private military companies/private security companies .....	14
4.4 The limitations of categorization .....	14
<b>V Users of private security groups</b> .....	15
5.1 Non-state armed actors .....	15
5.2 Governments in conflict regions .....	16
5.3 Governments in supplier countries .....	16
5.4 Multilateral peacekeeping organizations .....	17
5.5 Humanitarian agencies .....	18
5.6 Corporations in the extractive industry .....	19
<b>VI Critical issues emerging from the use of private security groups</b> .....	21
6.1 Conflict management .....	21
6.2 The legitimate use of force .....	22
6.3 Governance of the security sector .....	22
6.4 Human rights .....	23
6.5 Accountability .....	24
6.6 Arms and training .....	25
<b>VII The implications of limited responses</b> .....	26
7.1 International measures .....	26
7.1.1 International Convention Against the Recruitment, Use, Financing, and Training of Mercenaries .....	26
7.2 Regional measures .....	27
7.2.1 The OAU Convention for the Elimination of Mercenaries in Africa .....	27
7.2.2 Other regional measures .....	27
7.3 National legislation .....	28
7.3.1 South Africa .....	28
7.3.2 United States .....	29
7.4 Local measures .....	30
7.4.1 Codes of conduct by users of private security companies .....	30
7.4.2 Self-regulation by private security and military companies .....	30
<b>VIII Conclusions and recommendations: towards a comprehensive framework of action</b> .....	31
I The restrained and responsible use of private security groups .....	31
II A comprehensive regulatory framework .....	32

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## Abbreviations

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ANC	African National Congress
COFRAS	Compagnie Française d'Assistance Spécialisée
DSL	Defence Systems Ltd
EU	European Union
GSG	Gurkha Security Guards Ltd
IDAS	International Defence and Security, Ltd
ITAR	International Traffic in Arms Regulations
KLA	Kosovo Liberation Army
MPLA	Movimento Popular de Libertação de Angola ( <i>Popular Movement for the Liberation of Angola</i> )
MPRI	Military Professional Resources Inc
NATO	North Atlantic Treaty Organization
OAU	Organization of African Unity
OSCE	Organization for Security Co-operation in Europe
PAE	Pacific Architects and Engineers
RUF	Revolutionary United Front
SAIIA	South African Institute of International Affairs
SAS	Special Air Service
UK	United Kingdom
UN	United Nations
UNITA	União Nacional para a Independência Total de Angola ( <i>National Union for the Total Independence of Angola</i> )
US	United States

## Executive summary

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The 1990s witnessed the emergence of private security and military companies as key actors in a number of conflicts. Companies such as Executive Outcomes, Sandline International, Military Professional Resources Inc., and Defence Systems Ltd have all hit the headlines for the role they have played in a variety of wars. As this paper shows – section II – these companies are very much the product of globalization and a series of post-cold war factors that have led to a 'new security paradigm' and fertile ground for private interventions in conflicts. The consequences for peace and security of this trend towards the privatization of security are, however, unclear. The activities of these companies have led to a contentious debate amongst experts and commentators about whether they are a menace and a hindrance to peace or whether they could be a force for good, as they appear to have achieved what others, notably the UN, have failed to.

As an international non-governmental organization committed to the just and peaceful transformation of violent conflict, International Alert has been concerned over recent years about the proliferation of these war entrepreneurs and the privatization of the functions of war itself. It has witnessed their activities in the parts of the world where it works and has been developing a programme to address the policy implications of the phenomenon. Whilst recognizing that the privatization of security may be a reality in certain situations, International Alert believes that the international community needs to mount a concerted policy response to this growing problem if it is to enhance prospects for preventing conflicts and building sustainable peace. The debate that has ensued about the potential benefits and dangers of the privatization of security has not been matched by a commensurate response by international policymakers to this multifaceted and complex problem. The aim of this report is to fill this gap by providing an overview of the issue from a policy perspective and proposing a framework within which it can begin to be addressed by policymakers.

The paper addresses – section III – a discrete set of actors associated with the privatization of security, namely mercenaries, volunteers, and private security and military companies. There are difficulties in ascribing these different groups appropriate definitions and distinguishing between them, as a great deal of overlap exists. A central argument of this paper – section IV – is that while a better categorization system for the different groups would provide clarity in addressing the issue, it is more useful to look at the purpose for which particular groups are being used in a variety of situations in order to understand the phenomenon better. The paper therefore surveys the reasons behind the hiring of private security groups by a range of actors, identifying in each case the critical issues that need to be addressed by further research in order to inform policy in that area. The six principal users of private security groups under examination – section V – include: non-state armed actors, governments in regions of conflict, governments in supplier countries, multilateral peacekeeping organizations, humanitarian agencies, and corporations in the extractive industry.

Each of these situations raises different sets of issues. In spite of the need for further research in order to inform policy in each area, there are, however, some common critical issues – section VI – that emerge from these uses of private security groups that should begin to shape policymakers’ response to the problem. These issues concern the implications of the phenomenon for peace and security and are discussed under the headings of: conflict management, the legitimate use of force, governance of the security sector, human rights, accountability, and arms and training. Despite these concerns, though, there has been only a limited response – section VII – by the international community to the problem in terms of international, regional, and national laws and local measures taken by the industry and its users, which has ostensibly been in terms of legislating against traditional mercenary activity.

The paper concludes – section VIII – by outlining a proposed comprehensive framework of action within which international policymakers can begin to address this complex issue. Critically, it calls for the restrained and responsible use of private security groups and the development of a comprehensive regulatory framework to prohibit and suppress activities deemed illegitimate and undesirable, while at the same time providing regulation of other activities seen as acceptable to the international community. The paper does not make specific policy prescriptions, but rather maps out the areas in which policy debate and formulation needs to take place, and suggests ways forward. It is hoped that this paper will serve as a reference point for a wide range of policymakers and policy shapers, including NGOs, academics, and experts, to begin to answer some of the critical policy questions raised here.

Recommendations are presented within two broad, but interrelated, strands:

#### I **The restrained and responsible use of private security groups**

The paper makes proposals for the six users of private security groups that have been discussed by identifying the critical policy issues that need to be addressed in order to ensure the restrained and responsible use of private security groups.

#### II **A comprehensive regulatory framework**

The paper proposes a range of measures at the international, regional, national, and local levels to address the many gaps in existing responses so that a comprehensive regulatory framework is developed to govern the use of private security groups and mitigate the potentially harmful aspects of the privatization of security.

## I Introduction

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According to Western tradition, the state, through its monopoly over the legitimate use of force, is responsible for the provision of internal security and defence from external threats. More and more this axiom is being challenged, however, by globalization and a series of other influences which are causing the privatization of security functions in many weak states, especially those experiencing or emerging from internal conflict. The consequences of this trend for peace and security are, however, unclear. The privatization of security is a phenomenon affecting war-torn societies in many diverse ways. It involves a variety of actors including mercenaries, volunteers, and private security and military companies. Each of these groups operates in different ways and has different users within conflict situations. There may well be some legitimate and acceptable uses of these private security groups. However, actors such as mercenaries which profit from war have traditionally caused the international community a great deal of concern, and the result has been efforts to outlaw them.

How then is it possible to understand better the impact which the privatization of security is having on peace and security, and what sort of measures should be developed to address the phenomenon? This paper attempts to answer this question by looking at a range of actors using private security groups in conflict situations including: non-state armed actors, governments in regions of conflict, governments in supplier countries, multilateral peacekeeping organizations, humanitarian agencies, and corporations in the extractive industry. Each of these uses obviously throws up different sets of issues. Are there, however, some common issues that can be identified and help to shape the international community’s response to this issue? Closer inspection of the different situations in which private security groups are being used shows that there are many dangers and threats associated with the privatization of security which have serious implications for the maintenance of peace and security, and should be a cause for concern for policymakers. As will be seen, though, the international community has mounted only a limited response to the problem thus far, which has allowed these actors to operate largely unregulated. It is vital that international policymakers take steps to address the privatization of security if they are to enhance prospects for preventing conflicts and building sustainable peace. The aim of this paper is to develop a policy framework within which policymakers can begin to respond to this emerging and complex issue.

## Globalization, a new security paradigm, and the privatization of security

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The notion of public security is being usurped in many contexts, with security functions increasingly being privatized. The principal reason for this emerging trend towards the privatization of security is the inability of many fragile war-torn states to provide security within their borders and for their societies. It is not coincidental that private security groups are most active in weak states. In the Western model of the provision of public security the state is a legitimate expression of the identities and interests of the society which it governs and protects. In many situations around the world, however, conflict and other malign factors are causing the erosion and collapse of state security structures such that this ideal is unattainable. The current era of globalization is also undermining many states' ability to provide security. While there is a genuine imperative for developing countries to integrate into the global economy and reform their economies, the policies that they have been encouraged to adopt by the international financial institutions have often undermined political stability and public security. The fragile security structures of many post-colonial states can also be traced to poor state-building and a failure to develop properly accountable public security systems that represent and protect the entire population. As Christopher Clapham has argued in relation to many parts of Africa, the "ideal of public security cannot be plausibly achieved".<sup>1</sup>

As a result of these realities there has been a reconfiguration of our understanding of security and the emergence of a 'new security paradigm' in recent years. A new security community now exists in which security is not just the preserve of the state but a whole multiplicity of actors.<sup>2</sup> The state itself has, in certain places, become what Eboe Hutchful has called a "security racket"<sup>3</sup> in which political leaders abuse official state power and patronage to provide security to influential societal groups that underpin their position of power. At the same time there has been a proliferation of non-state armed actors, including rebel movements, insurgents, warlords, guerrilla groups, and mercenary forces. For these entities, security is undertaken for and on behalf of some groups of the population as opposed to and to the exclusion of others.<sup>4</sup> Private businesses and individuals too have become more reliant on the services of private security firms for their protection in the absence of state provision of security.

Associated with this new security paradigm and privatization of security functions has been a radical change in the nature of war and contemporary conflict. The majority of wars nowadays are internal conflicts within states, as opposed to between them, which was the norm not so long ago. Instead of wars being fought between competing national forces, conflict is far more likely to be characterized by fighting between government and irregular forces. However, rather than being less violent, contemporary conflict has become more brutal and lethal than in the past, characterized by new forms of warfare and barbarism. Furthermore, civilians are now the principal victims of war. Since World War I the proportion of civilian casualties rose from 5 per cent of total casualties to 80 per cent in the 1990s. A confluence of interlinking influences and actors, including the availability of small arms and prevalence of war entrepreneurs, is now causing a chronic militarization of society and undermining peace efforts in many countries such as Colombia, Liberia, and Somalia.<sup>5</sup>

Private forms of security were less pronounced during the cold war, when the influential powers in the world were willing to prop up weak states as long as they signed up to their ideological persuasion, thus providing a semblance of stability. Although the end of this bipolar system brought peace to some parts of the world, the unravelling of these patron-client security arrangements undermined existing security paradigms and led to greater instability in many conflict-prone regions.<sup>6</sup> Weak states facing endemic insecurity and violence have, furthermore, been unable to rely on the international community which has become either unwilling or unable to tackle a growing number of crises. Critical to this has been the increasing reluctance of Western governments to intervene militarily in situations where they do not now have any strategic interest, mindful of the political difficulties committing troops to faraway wars causes at home. The sheer scale and frequency of the crises occurring today has also meant there is simply not the capacity to address all problems.

Over the last decade new types of international security entrepreneurs have emerged to fill the resulting 'security gap' left by the international community in the form of private security and military companies. These companies have been created from surplus military personnel resulting from military cutbacks in many Western countries over the last decade. The emergence of these companies can also be explained by the dominant privatization ethos prevailing in many developed countries. The rationale for privatization has been to boost efficiency and reduce costs in public services which the state is failing to deliver effectively. Hitherto confined to services such as electricity, telecommunications, and gas, this trend is starting to encroach on the most carefully-guarded of public services, the defence sector. The private sector already provides a large proportion of the logistical and support services to a number of Western armed forces, but it may be that it will be used to carry out less benign duties of the armed forces in the future as governments seek to reduce budgets. In the same way as the manufacturing of arms and defence equipment was denationalized, services traditionally supplied by the armed forces could follow a similar path.

The downsizing of armed forces in many developing countries, as a result of either a cessation of conflict or the adoption of economic policies that necessitate reduced military expenditures, has also led to the proliferation of domestic security companies in many regions including the former Soviet Union, Central America, and southern Africa, to name a few. Inappropriate demobilization and reintegration of ex-combatants after the ending of a number of conflicts has also led to the creation of a number of mercenary forces seeking employment in foreign conflicts. The ending of wars in Bosnia, Afghanistan, and Liberia, for example, led to the formation of a number of irregular and *ad hoc* groups of combatants who have been found fighting in other ongoing conflicts.

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In this paper 'private security groups' is used as a generic term to encompass both mercenary forces and private security and military companies when talking about them in general as a manifestation of the privatization of security. Whilst this is a useful shorthand, it would be wrong not to appreciate that there are many differences between these entities. Indeed, the lack of established definitions has served to cloud the policy debate on the privatization of security. This section outlines the typology of private security groups being addressed in this paper and highlights the differences between them in terms of the services they provide and the activities in which they are engaged. Within each category it should be appreciated that there is variation in the professionalism of different groups and organizations.<sup>7</sup>

### 3.1 Mercenaries

The popular notion of a 'mercenary' – someone who fights for financial gain in armed conflicts alien to their own nationality – comes from Africa's post-colonial history. Instead of fighting as part of national armies, as their historical counterparts, mercenary forces were often employed by colonialist and rebel groups opposed to national liberation movements. Hired for their perceived military supremacy, a relatively small mercenary force could pose a severe threat to an emerging newly-independent African state. Bob Denard, for example, gained notoriety for fighting with Katanga secessionists in the Belgian Congo against a UN peace-enforcement force. Similar individuals also fought for the Congolese government at one point and on the side of the Nigerians in the Biafran war, but it was the attempt to destabilize newly-independent states that caused most concern. Lacking any ideological concern, these mercenaries quickly acquired the label 'the dogs of war' prepared to fight for anybody.

#### Historical background

Mercenaries, or more precisely 'foreign hired soldiers', have been a common feature of military history. Often nations chose to employ foreign forces to fight their wars rather than maintaining standing armies which are common today. The ancient Greeks, for example, used the Macedonians to fight many of their wars. In the 14th century, the *condottieri* were contracted by Italian city states because they were perceived to be more cost-effective and mitigated problems of loyalty. During the American War of Independence, the United Kingdom sent 30,000 Hessian soldiers to fight in order to avoid conscripting their own citizens. The rise of nationalism and the Weberian notion of the state in the 19th century, however, led to national conscripted armies becoming the norm. The employment of 'mercenaries' was seen as inimical to this ideal and underwent a relative decline. Some states chose to retain foreign elements in their forces, but because they were integrated into national armies they were generally considered to be legitimate.<sup>8</sup> The United Kingdom, for example, has maintained a Gurkha regiment of Nepalese nationals since signing an initial agreement with the Nepalese government in 1815.

The mercenary activity of the 1960s led to a backlash by African leaders who saw it as threatening their countries' right to self-determination and new-found sovereignty. The UN General Assembly passed its first resolution<sup>9</sup> condemning the use of mercenaries in 1968.<sup>10</sup> Since then, UN bodies have repeatedly condemned mercenary activity as an internationally unlawful act which serves to undermine the exercise of the right to self-determination of peoples and the enjoyment of human rights. This period led to efforts to limit mercenary activity. In 1977 mercenaries were given legal status within international humanitarian law with the adoption of Article 47 to Additional Protocol I of the Geneva Convention.<sup>11</sup> For somebody to be classified as a mercenary six criteria must cumulatively be met. A mercenary is a person who:

- a) is specially recruited locally or abroad in order to fight in an armed conflict;
- b) does, in fact, take 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 a territory controlled by a party to the conflict;
- e) is not a member of the armed forces of a party to the conflict;
- 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.

Mercenaries are also denied combatant or 'prisoner of war' status. Although not establishing criminal responsibility for being a mercenary, the article served as an attempt to deter people from engaging in such activities. In July 1977 in Libreville the members of the OAU adopted the Convention for the Elimination of Mercenarism in Africa, which came into force in 1985. The Convention, which uses a similar definition to Article 47, was designed to protect newly-independent states from the threat posed by mercenaries to their sovereignty and territorial integrity. The UN introduced a similar ban on mercenaries in 1989 with the adoption of the International Convention against the Recruitment, Use, Financing, and Training of Mercenaries.<sup>12</sup>

The definition of a 'mercenary' that has been used in each of these instruments has been criticized as being so narrowly defined – since all six criteria must be met cumulatively – as to render it meaningless in most situations. Indeed, Article 47 was designed in such a way as to ensure that it could not be misused to deny combatant and prisoner of war status to legitimate combatants.<sup>13</sup> The combination of these problems has led one commentator to suggest that if an individual were convicted of being a mercenary, they should "shoot their lawyer".<sup>14</sup> The use of this definition is, therefore, only relevant to a few circumscribed situations and not particularly helpful for understanding the phenomenon, especially as it exists today. Importantly, the definition has been carefully worded so as to allow states to retain the right – as they have enjoyed throughout history – to hire foreign soldiers as part of their national forces.



### 3.2 Private military companies

The discourse on mercenarism reached another stage in the 1990s with the advent of private military companies providing a range of services in conflict situations including combat and operational support, military advice and training, arms procurement, intelligence gathering, hostage rescue, and post-conflict reconstruction. The first-ever private military company dates back to 1967, when Colonel Sir David Stirling founded WatchGuard International, a company employing former British Special Air Service (SAS) personnel to train militaries overseas. There have been a number of other companies that have become active over the last decade. Examples include: Military Professional Resources Inc. (MPRI), DynCorp, BDM Corporation, and Vinnel from the United States; Defence Systems Ltd (DSL), and Sandline International from the UK; Executive Outcomes (which ceased business in 1999) from South Africa; Silver Shadow and Levdan from Israel; Compagnie Française d'Assistance Spécialisée (COFRAS) from France; International Defence and Security, Ltd (IDAS) from Belgium; and Teleservices and Alpha 5 from Angola. Each company specializes in certain kinds of services and operations. There are consequently sub-categories to private military companies. Some commentators have suggested for instance that they should be split into those that perform combat roles and those that perform non-combat roles.

### 3.3 Private security companies

The international private security market has been in existence for a lot longer and is far larger than that for military services. The majority of private security companies are used in a crime prevention capacity to protect businesses and property in non-conflict situations. However, the demand for security services in conflict regions has escalated in recent years as the state's ability to provide security in insecure areas has diminished. This includes the hiring of local companies, but also international companies which have expanded their global operations. In the 1980s, the British company Lonhro hired Gurkha Security Guards (GSG) Ltd to protect its numerous business interests in Mozambique, then in the midst of civil war. Since then, there have been a greater number of such companies willing to operate in conflict regions. This entails using personnel with military as well as security expertise because of the hostile environment in which they operate. Examples of this type of company include Defence Systems Ltd (DSL), Lifeguard, Group 4, and Securicor from the UK; DynCorp and Kroll Associates from the US; and Gray Security and Coin Security from South Africa.

**Table I**  
**Activities, examples and users of private military and security companies**

Activities and services provided	Examples of companies	Main users of services
Combat and operational support	Executive Outcomes, Sandline International, IDAS, Gurkha Security Guards	Governments
Military advice and training	DSL, MPRI, Silver Shadow, Levdan, Vinnel, BDM	Governments
Arms procurement	Executive Outcomes, Sandline International, Levdan	Governments
Intelligence-gathering	Control Risk Group, Kroll, Saladin, DynCorp	Governments, multinational companies
Security and crime-prevention services	DSL, Lifeguard, Group 4, Control Risk Group, Gurkha Security Guards, Gray Security, Coin Security	Multinational companies, humanitarian agencies
Logistical support	Brown and Root, DynCorp, Pacific Architects and Engineers (PAE)	Peacekeeping organizations, humanitarian agencies

*Taken from presentation given by Kevin O'Brien on 'Non-Governmental Security Forces, Mercenaries, Private Military Companies, Private Intelligence Services and Western Governments', International Centre for Security Analysis Seminar Series, January 1999, and David Shearer, 'Private Armies and Military Intervention', International Institute for Strategic Studies Adelphi Paper 316, Oxford: Oxford University Press, February 1998*

There are many difficulties in drawing boundaries and distinctions between the different categories above. As has been seen, some companies have been mentioned under two categories because of the dual nature of the services that they provide. What follows is a description of three divisions which present the most problems.

#### 4.1 Mercenary/volunteer forces

The mercenary definition used in the international instruments mentioned above draws a distinction between ‘volunteers’, who fight for ideological motivation, and mercenaries, who fight purely for financial gain. Examples of volunteer forces include the international brigade which fought in the Spanish Civil War in the 1930s and the mujahedin, who joined Bosnian Muslim forces in the war in the former Yugoslavia in the early 1990s. Volunteers are often labelled as mercenaries, although they are generally considered to be more legitimate than their profit-seeking cousins. However, they are both types of foreign-recruited soldiers. It is extremely difficult to say with assurance that an individual’s motivation for fighting is either exclusively financial or ideological; usually it is a combination of the two. There is evidence to suggest, for instance, that Islamic groups fighting with separatists in Kashmir receive remuneration far in excess of local forces and use it to support their communities back home, suggesting financial as well as ideological motivation.<sup>15</sup> Many have argued that it is more appropriate to define mercenaries by the purpose for which they have been employed and the services they provide, rather than the motivation for their fighting, which is extremely difficult to prove legally.<sup>16</sup> In general, volunteers have gained less attention from the international community than mercenaries. However, they are arguably far more prevalent and signify a growing trend towards the internationalization of many conflicts, which presents particular challenges in attempting to seek their resolution.

#### 4.2 Mercenaries/private military companies

There has been a contentious debate about whether private military companies are merely modern-day mercenary forces in a corporate shell. There are similarities, in that they both profit from conflict, but also differences. The principal difference is that private military companies have in the majority of cases so far worked for governments. Mercenaries of the post-colonial Africa era on the other hand predominantly worked for non-state armed groups attempting to destabilize governments. Assimilation into a foreign country’s armed forces exempts private military company personnel from clause e) in Article 47. For example, Sandline International personnel were termed ‘Special Constables’ in the contract the company signed with the Papua New Guinea government in 1997.<sup>17</sup> If private military companies were to work for non-state armed groups, though, they would take on mercenary characteristics and liability. Commentators have suggested that it is ironic that the signatories of the UN and OAU Conventions are those countries that have hired the services of private military companies. Because the conventions were

carefully worded so as to allow states to retain the right to recruit foreign soldiers into their armed forces, this is perhaps not so surprising.<sup>18</sup> The other major difference is that private military companies have mostly been unprepared to commit their personnel to take part in actual combat duties, excluding them from criteria b) in Article 47. The US company MPRI, for example, will only provide military training and advice and is not prepared to commit its employees to combat operations. A fine line exists, however, between training armies and fighting alongside them, and there have been cases of private military companies becoming engaged in actual combat. If private military companies were to engage in active combat then they would again begin to resemble mercenaries.

As well as legal comparisons, there are other observations that can be made to explain the differences and similarities between mercenaries and private military companies. Unlike mercenary forces, which are generally covert in nature, relying on *ad hoc* organizational and financial arrangements, private military companies have attempted to be more above-board about their operations and intentions. They are usually registered companies, pay taxes, and display many characteristics of corporations in other industries. However, the use of offshore tax havens and other financial arrangements has meant that they have not always been required, nor have made efforts, to be transparent about their operations. This lack of transparency has raised questions about the financial arrangements of some companies and concerns about their links with other business activities. The personnel structure of the companies is another grey area since companies usually do not have a fixed set of employees and therefore have to draw upon networks of ex-servicemen or ‘soldiers for hire’ on the international market. This freelance culture leads to problems of vetting suitable employees and ensuring that they are not working for less reputable outfits or engaging in more traditional mercenary activities. For example, there were a number of allegations of ex-Executive Outcomes employees fighting in Zaire before the downfall of President Mobutu Sese Seko when the company itself always denied that it would work with his government.<sup>19</sup>

The UN Special Rapporteur on the use of mercenaries, Enrique Bernales Ballesteros (Peru), concluded in his 1997 report to the UN Commission on Human Rights that private military companies “cannot be strictly considered as coming within the legal scope of mercenary activities”.<sup>20</sup> The legal definition of a mercenary, however, is unique to a particular political epoch – post-colonial Africa – and is extremely narrowly drawn, so as to make comparisons difficult, if not meaningless. Contemporary private military companies display a closer resemblance to the private armies used throughout much of military history before the rise of the modern nation state. The use of traditional mercenaries was criminalized because of the purpose for which they were used. It is perhaps more constructive to address the purpose for which private military companies are being used and the sorts of issues this raises rather than making a comparison between the two entities.

### 4.3 Private military companies/private security companies

Private security companies are in theory distinct from private military companies in that they are usually unarmed and are concerned with the protection of property and personnel, rather than having a military impact on a conflict in a given situation. There is a blurred line, however, between the services provided by the two types of companies. Some companies display characteristics of both kinds of companies by being involved in both security and military-related activities. DSL, for example, whilst ostensibly involved in providing security services to corporations and humanitarian agencies, has also been involved in military training. In Colombia, DSL played a dual role of protecting British Petroleum oil installations in the country and training government counter-insurgency forces, notorious for their poor human rights record.<sup>21</sup> The same personnel might also work for both kinds of companies. Lifeguard, for example, is a company closely associated with Sandline International and was involved with training local militia groups to guard the mines of Branch Energy in Sierra Leone.<sup>22</sup> In situations such as these, and where personnel of private security companies are armed, what is seemingly a defensive role can turn into one that might have an impact on the local conflict.

### 4.4 The limitations of categorization

There are problems not only in ascribing different private security groups appropriate definitions, but also in drawing boundaries and distinguishing between the different categories. It has been considered important to establish appropriate categories for the range of private security groups mentioned here to provide not only clarity when discussing the issue, but also to assess the legitimacy of the various groups. It has generally been considered, for instance, that mercenaries should be prohibited while private security companies are generally acceptable. An appropriate categorization system, based on services provided and activities engaged in, would certainly help provide clarity in addressing the issue. It is argued here however that labels are not always helpful as they will always be inaccurate and possibly misleading. It is perhaps more useful to look at the purpose for which a particular group is being used – in addition to the services being provided and activities involved – and from this assess the implications for developing appropriate policy responses. The next section therefore looks at a range of actors hiring the services of private security groups.

## V

## Users of private security groups

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This section surveys the reasons why particular actors are hiring private security groups in regions of conflicts. It identifies the predominant group being used and the critical issues that need to be addressed by further research in order to inform policy. In so doing the purposes for the use of private security is given, as well a tentative prediction of likely trends in each case.

### 5.1 Non-state armed actors

It is predominantly non-state armed actors such as rebel groups, separatist movements, insurgents, warlords, private militias, and religious factions that use traditional mercenaries and volunteers. The reason for their use has been to augment the military capability of the warring faction. Because of the covert nature of their activities, it is impossible to gauge the scale of the involvement of mercenaries and volunteers in conflicts other than by relying on periodic media coverage. For example, there were a number of reports of mercenaries from (amongst other places) Ukraine, Mauritius, Burkina Faso, Italy, Liberia, Britain, and South Africa fighting with the Revolutionary United Front (RUF) during hostilities in Sierra Leone in early 1999.<sup>23</sup> There have been similar allegations of mercenaries fighting alongside União Nacional para a Independência Total de Angola (UNITA) in Angola and rebel groups in many other wars including Afghanistan, Bosnia-Herzegovina, Chechnya, Colombia, the Democratic Republic of Congo, Eritrea, Ethiopia, Georgia, Kashmir, Kosovo, and Liberia. It would appear from the reports that volunteer forces are as prevalent as traditional mercenaries if not more so, although once again it is difficult to quantify how many are active world-wide. A mapping of the scale of mercenary and volunteer activities world-wide would be a useful means of assessing their impact on the conflicts in which they operate.

Most private military companies have made a point of not signing contracts with non-state armed actors, stating that they will only work for internationally-recognized governments or liberation movements. To do so would go against international norms and could be deemed as being mercenary activity. It is a cause for concern, though, that there are few legal safeguards for preventing private military companies working for non-state armed groups. It was rumoured that Executive Outcomes sent a mercenary force to Burundi in 1996 to train Hutu guerrillas.<sup>24</sup> It also became apparent in 1998 that Sandline International wished to supply arms and assistance to the Kosovo Liberation Army (KLA), but was warned off after sharing its intention with the UK Foreign and Commonwealth Office.<sup>25</sup>

## 5.2 Governments in conflict regions

Governments facing insurgency from rebel groups and seemingly intractable conflicts have been the principal contractors of private military companies in an attempt to resolve the conflict in which they are embroiled. (Private security companies are not usually hired by governments, although governments often have close links with companies providing security services within their territory.) Examples include the Papua New Guinea government signing a contract with Sandline International in late 1997 to try to end the eight-year conflict it had been fighting with separatist rebels on the island of Bougainville, the Movimento Popular de Libertação de Angola (MPLA) government in Angola hiring the services of Executive Outcomes from 1994 to 1996 in order to help end its war with UNITA, and the contracting of the same company by the Sierra Leone government in 1996 to assist it in its war against the RUF rebels. Individual mercenaries are also employed by governments, but this is usually for specific technical expertise such as piloting sophisticated aircraft, as is alleged to have occurred in the war between Ethiopia and Eritrea. In 1997 President Mobutu Sese Seko of the former Zaire hired the so-called White Legion, a 300 member mercenary force comprising Serbs, Moroccans, Belgians, South Africans, British, French, and Angolans, to help fight against the rebel forces of Laurent Kabila.<sup>26</sup> However, mercenary forces of this size, whilst common in post-colonial Africa up until the 1970s, are rare today.

The reasons for besieged governments' hiring external help in the form of mercenaries or private military companies are common to each of the examples above. The primary reason has been to gain military expertise lacking in unprofessional, inefficient, and potentially disloyal local security forces which may at any time challenge the authority of the state. Hiring governments have turned to external private military assistance usually after having failed to gain support from the international community or neighbouring allies and have done so to help strengthen and bolster their means of maintaining power and hopefully changing the tide in the conflict. While governments in regions of conflict might have legitimate reasons for hiring private military companies, this should be carefully balanced against the impact this may have on the governance of the security sector and the building of democratically accountable security forces – see section VI.

## 5.3 Governments in supplier governments

The governments of the countries (usually Western) where private military companies are headquartered are either contractors of their services or are having to address the implications their activities are presenting for how they conduct their foreign policies. As outlined earlier, with the break-up of the cold war bipolar system, the strategic interest of Western countries in many remote war-torn countries has diminished, making them less prepared to intervene. After the deaths of US troops in Somalia in 1993, for example, there is now a Presidential Directive that stipulates that US forces will not be sent to hostile environments unless specific national interests are at stake. The NATO intervention in Kosovo in 1999 showed once again the West's uneasiness in committing ground troops if there is any chance of incurring casualties. The use of private military companies has been offered as a solution to the problems faced by Western governments, because they do not appear to suffer the same political constraints and are considered cost-effective in comparison to national forces. The US administration, for example, has

close contact with a number of private firms, such as MPRI and DynCorp, to which it contracts out many of the military-related services it needs to conduct its overseas operations.

The cost benefits of using private military companies and privatizing defence functions is by no means clear, however, and is certainly something that requires further research and analysis.<sup>27</sup> Most companies are also – like governments – unwilling to put their personnel at risk. The loss of employees of Gurkha Security Guards in Sierra Leone in 1997, for example, had a severe impact on the company, which had to withdraw from the country.<sup>28</sup> Neither do private military companies act apolitically just because they are a private entity. For example, President Mobutu Sese Seko had reservations about hiring Executive Outcomes because the company had had a previous contract with Angola, who had supported the rebel forces of Laurent Kabila in their attempts to overthrow him.<sup>29</sup> Unlike the US, most governments in supplier countries do not have a mature relationship with companies established in their territory. Despite the fact that private military companies claim to act in accordance with the national interest of the country where they are from, the absence of proper regulation has meant that there have been instances of them acting contrary to the foreign policy objectives of their home government. Private military companies, as Zarate explains, cause states most concern when they operate outside the control of government authorities.<sup>30</sup> Although one could argue that there are reasons for supplier governments to engage with and use private military companies, the reasons are by no means clear-cut. There are a host of issues that supplier governments need to consider carefully when developing appropriate policies for addressing private military companies operating out of their territory.

## 5.4 Multilateral peacekeeping organizations

Private security and military companies are beginning to be used in multilateral peacekeeping operations, but this has thus far mainly been to perform benign functions such as logistical and other support services rather than those of a security or military nature.<sup>31</sup> Private companies have become an option in peacekeeping contexts because of the political, financial, and institutional constraints faced by the UN and other multilateral peacekeeping organizations. As has outlined above, supplier governments are considering the use of private military companies to conduct overseas operations, such as peacekeeping, because of the political constraints associated with using their own troops. In terms of financial considerations, the UN's capacity to mount peacekeeping missions diminished for much of the 1990s. The figure for troops deployed in UN operations grew from 10,000 in 1989 to 70,000 in 1995, but had fallen to 19,000 by 1998.<sup>32</sup> Private security and military companies are another potential pool from which personnel may be found for peacekeeping missions, and perhaps more cheaply than conventional forces. In response to criticisms that the UN has been institutionally slow in acting quickly when crises have arisen, it has also been suggested that private military companies could be hired and deployed far more quickly than traditional peacekeepers.

In June 1998, UN Secretary General Kofi Annan indicated that he had considered the possibility of engaging a private firm in separating fighters from refugees in the Rwandan refugee camps, but did not feel the world was ready to privatize peace.<sup>33</sup> It is unlikely that the UN and other multilateral peacekeeping organizations will move far from this position in the foreseeable future. Private military companies might appear not to possess many of the political constraints of traditional peacekeeping forces, but it is only the UN Security Council, through exercising Chapter VII of the UN Charter, that can authorize peacekeeping missions. Using private military companies does not obviate this requirement. Arguably, the creation of a UN standing force is a necessary antecedent to the UN's being able to use a private military company as part of its peacekeeping missions. The high profile cases of private military companies performing peace-enforcing roles in Angola and Sierra Leone in the mid-1990s have served as a wake-up call to the international community to boost its efforts and abilities to respond to emerging crises. In large part this has been a question of political will. As Funmi Olonisakin has argued in reference to the use of Executive Outcomes in Sierra Leone, "the decisive use of force offered by private security companies is not beyond the capability of multinational armies if given the political backing".<sup>34</sup>

For these reasons, while some experts have called for the UN to engage with these companies, this option has received only a lukewarm response by policymakers. The US government's decision to use a private firm, DynCorp, to supply its contribution to the Organization for Security Co-operation in Europe (OSCE) verification force in Kosovo in late 1998, for example, led to a number of concerned comments by many European governments.<sup>35</sup> The use of private security and military companies in international and regional peacekeeping operations will remain an option for policymakers, but further research and analysis needs to be done before they can be considered a realistic option.<sup>36</sup>

## 5.5 Humanitarian agencies

The use of private security companies in humanitarian operations is becoming far more common as agencies are being forced to work in increasingly insecure environments. (Reports of private military companies being used are more anecdotal and denied by most humanitarian agencies.) A 1999 report by the Canadian NGO CARE concluded that "the core dilemma for humanitarians, from which all others arise, stems from the security vacuum engendered by the emergency itself and the unwillingness of internationally sanctioned, legitimate forces to address the need for security".<sup>37</sup> Not only is there an absence of humanitarian space in which to deliver emergency relief, but violent attacks against humanitarian aid workers have grown at an alarming rate. In 1998, the number of civilian UN workers killed exceeded UN military casualties for the first time.<sup>38</sup> The safety of staff is now a major concern for donors and agencies alike. Faced with these increased security risks, humanitarian agencies are having to look far more seriously at how they manage their security arrangements, including the use of private security companies.

Traditionally, the host government is responsible for the security of humanitarian operations within its territory. If law and order has broken down and parts of its territory are under the control of insurgents and rebel groups, however, the government is often unable or unwilling to fulfil this obligation. Local and international private security companies are used in these situations to ameliorate the security problems faced and to provide protection to personnel and property. Other options include working more closely with local security forces and multilateral peacekeeping forces to provide a secure passage for the delivery of aid. The use of armed escorts in these ways, however, threatens the impartiality of humanitarian assistance and can magnify security risks rather than reduce them. Most humanitarian agencies are consequently adverse to using armed escorts.<sup>39</sup>

The supply of protection and security services to humanitarian organizations is, however, predicted to be a growth business.<sup>40</sup> As the failure of the international community to intervene militarily in crisis situations has led to the growth of private military companies' involvement in conflicts, so too has it led humanitarian agencies to provide for their own security needs by using the private sector. The humanitarian 'industry' has already undergone massive privatization, with private companies now providing much of the logistical support in relief operations.<sup>41</sup> Some have suggested that the privatization of security functions in these instances should perhaps not be considered as anything radically different.<sup>42</sup> However, the consequences of using private security companies for the impartiality of humanitarian operations and its potential impact on the local conflict is unclear and needs to be researched before this trend progresses further.

## 5.6 Corporations in the extractive industry

Corporations involved in the extraction of natural resources such as oil, diamonds, and other minerals are principal users of private security, and sometimes military, companies. Competition in the global economy is forcing corporations to establish operations in some of the most dangerous and insecure environments in the world, such as Angola and Chechnya, in search of potentially high financial rewards. This has magnified the security risks of their staff and property, which are often seen as targets by warring factions because the corporation has control over precious natural resources. When the host government is unable to guarantee security for these foreign investors, corporations are taking responsibility for their own security by hiring local or international security companies. The host government is keen to see this take place as it secures foreign investment and strengthens the security position within the country. The Angolan government, for example, has now made it part of its constitution that foreign investors provide their own security arrangements.<sup>43</sup>

There is a legitimate international market for security services, and in many instances globalizing forces can in this way help bring investment to poorly-developed countries and provide accompanying improvements in security. There are, however, a number of dangers associated with this trend. The downside of globalizing forces is that they localize economic and security benefits in particular resource-rich locations to the exclusion of other communities in society. The trilateral relationship between the host government, the private security or military company, and its associated mining company can be characterized by corrupt financial arrangements which underpin the government's illegitimate position and fail to benefit the general population.<sup>44</sup> Each is a beneficiary of the war economy which fuels black markets, entrenches existing economic and power relationships, and fails to address the social and political problems that lie at the heart of many conflicts.<sup>45</sup>

There is also the question of whether a country's resources are merely being exploited to the detriment of local communities and to the benefit of international investors. There have been a number of cases in which a private military company has signed a contract with a government to provide security in resource-rich areas of a country in exchange for the mortgaging of future income from natural resources by granting mining concessions to associated mining companies.<sup>46</sup> The exploitation of natural resources in this way has been the main inducement for the use of private military companies by governments in the instances named above: Angola, Papua New Guinea, and Sierra Leone. As Christopher Clapham has argued, security is not only being privatized but also commercialized, in that it is predominantly about securing economic resources.<sup>47</sup> It is not inconceivable that rival mineral and oil companies and their associated private security or military company could actually compete over the same resources, signalling a dangerous step towards the "privatization of warfare".<sup>48</sup> It has been suggested, for example, that mining companies in Sierra Leone, jealous of the privileges extended to the Canadian company Diamondworks because of its connections with the government-hired Sandline International, covertly backed the rebel RUF.<sup>49</sup> The use of private security and military companies by corporations in the extractive industry has serious implications for many conflicts and is something that needs to be researched further to help inform policy in this area.

## VI

### Critical issues emerging from the use of private security groups

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The situations described above where private security groups are being used raise different sets of issues and challenges. Each of these deserves further research individually in order to inform policy in that particular area. There are, however, some common critical issues that emerge from the use of private security groups in general that, if addressed, can help to shape policymakers' response to the overall phenomenon.

#### 6.1 Conflict management

The most extreme manifestation of private security activity has been companies acting as private armies to perform peace-enforcement functions such as occurred in Angola and Sierra Leone with the use of Executive Outcomes. In these instances private military companies acted as 'force multipliers' to augment the military capability of one side in a conflict to change the military tide. Proponents of private military companies point to empirical evidence that suggests that the majority of intra-state conflicts have been resolved by force, rather than by negotiations.<sup>50</sup> Indeed a realist perspective of conflict management theory and tools has dominated the literature on private military companies.<sup>51</sup> In this regard it is acknowledged that the use of Executive Outcomes provided a degree of stability in the conflicts in Angola and Sierra Leone which brought the warring factions to the negotiation table for peace accords to be signed. The peace achieved in these instances, though, proved only temporary and relative stability unravelled once Executive Outcomes left.

While recognizing the inevitability of the use of force in some instances as a means of providing short-term stability, it is a cause of concern that the advent of private military companies might represent a shift towards a reliance on military force for resolving conflicts. It is only by addressing the social, political, and economic factors which fuel and underlie most conflicts that genuine long-term sustainable peace can be built. The new security paradigm discussed in section II depicts a complex set of actors and issues that characterize most contemporary conflicts. A coherent and concerted response to this multiplicity of vested interests must be adopted to resolve these conflicts. Rather than signalling a lack of commitment to the use of force, the cases of the use of private military companies mentioned above highlight the need to channel greater resources towards efforts aimed at ending conflicts through non-violent means. For example, the Papua New Guinea government signed a contract with Sandline International in 1997 only after repeated pleas for assistance from the international community. The contract was cancelled after much controversy. However, the exit of Sandline International led to a renewed effort by the international community to end the conflict peacefully, with the New Zealand Foreign Minister, Don McKinnon, brokering a peace deal in June 1998.<sup>52</sup> There are not enough cases to judge the usefulness of private military companies in terms of conflict management. The examples there have been, however, highlight the need for an integrated approach to conflict management and peacebuilding efforts.

## 6.2 The legitimate use of force

The legitimate use of force is considered the cornerstone of the modern nation state. The legitimacy and consequences of governments' contracting out this responsibility therefore needs to be carefully considered in assessing the implications of the privatization of security. Article 51 of the UN Charter stipulates that states have the right to self-defence by seeking external assistance. This has been interpreted as allowing governments the right to hire the services of private military companies to provide internal security. Furthermore, private military companies have only worked for 'internationally-recognized' states which can be interpreted as meaning that their use has assisted in restoring legitimate and democratically-elected governments. States are obliged, however, not to abdicate their responsibility for the legitimate use of force and protection of their citizens; doing so can upset the fragile social and political structures which underpin the state, aggravating existing tensions.<sup>53</sup> The contestation of the legitimacy of a government has been precisely the reason for the company's presence in most cases. It should not be for private military companies to adjudicate on the legitimacy of a potential client. As Yves Sandos has argued, the reluctance of the UN to rule on the legitimacy of governments should not entitle a private entity to substitute itself for the international community and decide whether its support activities are lawful or not.<sup>54</sup> Ten years ago UNITA was considered a genuine internationally-recognized and supported liberation movement, while the African National Congress (ANC) of Nelson Mandela was branded a terrorist group by many.<sup>55</sup> The impact of the use of private military companies on the legitimate use of force is an extremely complex issue which challenges existing international norms and standards, and calls into question the desirability of the use of these companies in a number of instances.

## 6.3 Governance of the security sector

The demand for private security and military companies in nearly all the situations outlined in section V has been due to the ineffective and unprofessional nature of the security forces in the country in which they are being used. Either a government has hired a private military company to help bolster its capacity to provide security for its citizens or this inability has led actors operating within its territories, such as humanitarian agencies and corporations, to provide for their own security by hiring private security companies. It is widely recognized that security sectors that cannot provide the legitimate security needs for their citizens often fail to prevent and sometimes perpetuate an escalation of violent conflict. A key challenge in helping to prevent conflicts and building sustainable peace is to promote the development of accountable security forces with proper civilian oversight and control. The implications of private security and military companies being used by governments and other actors in such situations need to be assessed within this context i.e. whether their use subverts or reinforces this process.

Although further research is needed in this area, it appears the impact on the governance of the security sector of using these companies is complex and depends on the specific situation. The use of Executive Outcomes in Angola apparently boosted confidence in the country's military, for example. On the other hand, the Papua New Guinea government's hiring of Sandline International led to a revolt by the country's military. The hiring of a private military company may augment the state's capacity for providing security, but it may also impede the delicate process by which accountable security structures with

proper civilian oversight are developed. As David Shearer has explained, the presence of a private military company can "upset the delicate balance between a country's political leaders and its military, which may view employment of an outside force as an indication of its own failure".<sup>56</sup> There is then a twin process by which the use of private military companies impacts on the governance of the security sector. As William Reno explains, "by privatizing security and the use of violence, removing it from the domain of the state and giving it to private interests, the state in these instances is being both strengthened and dissembled. While groups such as these are attempting to reconstruct the state in order to ensure stability and security sufficient for economic activity, they are also removing the state's control over violence and war."<sup>57</sup> In developed countries the state is arguably strong enough to manage this process, whereas in many developing countries the state's weakness and inability to maintain internal security within its territorial borders is precisely the reason for the presence of private security and military companies. A more cautious approach needs to be taken in these instances, which points to the need for more analysis of the complex processes taking place.

### Security Sector Reform

The security sector reform framework<sup>58</sup> currently being prioritized by the donor community offers a suitable framework in which to assess the impact of the use of private security and military companies on the governance of the security sector, and to develop appropriate policy. Whilst in the past bilateral security and military assistance was used mainly to promote strategic interests aimed at fostering stability, the donor community has in recent years begun to see what has been termed 'security sector reform' as an explicit development objective. Rather than presenting a risk of aid being diverted to unproductive means, development programmes aimed at reforming security sectors are now seen as a way of promoting good governance as a necessary precondition for sustainable development. The security sector is defined broadly as those institutions which can extend the use of force for protecting the state and its population. This includes not only institutions which provide military and security functions, but also those civil structures responsible for oversight and control of security forces. Security sector reform encompasses a range of activities aimed at improving the governance of the security sector so that it can play a legitimate role in protecting its citizens.

## 6.4 Human rights

The impact of private security groups on human rights is complex. As stated earlier, the UN has repeatedly condemned mercenary activity as an internationally unlawful act which serves to undermine the exercise of the right to self-determination of peoples and the enjoyment of human rights. This conception arose out of the role played by mercenaries in post-colonial Africa. The reports of the UN Special Rapporteur on the use of mercenaries, Sr. Enrique Bernales Ballesteros, have consequently concentrated on the threat posed by mercenary activities to the sovereignty and territorial integrity of the states in which they operate. As this paper has shown, though, the mercenary phenomenon has changed since this time. Private security groups are used in many different ways, which raises different



sets of issues in terms of how they impact on human rights. In particular, there is a difference between the threat posed to the right to self-determination caused by governments' use of mercenaries (and now private military companies) and the threat caused by non-state actors' use of the same actors.

It is important then to consider the possible ways in which the current uses of private security groups outlined in this paper might threaten other human rights. Their role in the exploitation of natural resources certainly has an impact on the enjoyment of economic rights and in particular the right to development. Civil and political rights may also be threatened because of the contracts signed between governments and private military companies. Another question is whether there is a link between those that fight for financial gain and physical abuses of human rights.<sup>59</sup> The popular notion of a mercenary is of someone with a disregard for the 'rules of war' and a record of committing barbarous acts, rape and pillage. It is by no means certain, though, that an individual that fights for financial gain should necessarily be more likely to commit human rights abuses than someone whose motivation is ethnic or national. The critical issue is that there is little reliable and verifiable information on the conduct of private security groups in their various guises because they operate predominantly in areas where there is inadequate monitoring of human rights. The evidence so far has mainly been anecdotal. Alex Vines, for example, has noted how Executive Outcomes was responsible for introducing indiscriminate weapons, including fuel air explosives, into Angola.<sup>60</sup> Coverage on the use of such weapons and other barbaric acts of warfare committed by Executive Outcomes has been captured in a television documentary about the company.<sup>61</sup> There have also been reports of private military companies being complicit in violations of human rights committed by the armed forces they have trained. As well as further research into the link between private security groups and human rights, a key priority is the need for better monitoring and observation of their activities in order to make a proper assessment. This will only occur once private security and military companies are required to be more transparent about their operations.

### 6.5 Accountability

Private security and military companies' performance of functions traditionally associated with the state raises serious concerns about who is accountable for their actions and for any wrongdoing, such as human rights violations. The complex nature of their activities means that accountability occurs on a number of levels. As private companies they are accountable to their shareholders and must abide by company law. The government in the country where they are headquartered should be accountable for their activities because of obligations under international law, but this depends on the regulatory system that prevails, which is poorly developed in most cases (see next section). There is an incentive for supplier governments to regulate private military companies operating out of their territory because of the implications they present for conducting foreign policy. However the activities of private military companies enable governments to claim 'plausible deniability' of undesired consequences associated with their operations that are viewed as beneficial to foreign policy objectives. Because of the possible benefits of this proxyization of foreign policy, governments may be less keen to take measures to regulate private

military companies and in so doing making themselves more accountable for their activities. Supplier governments should, however, recognize their responsibilities in this area and take steps to regulate companies operating out of their territory. Governments in regions of conflict that hire the services of private military companies and assimilate their personnel into their armed forces are also accountable for their actions. In theory they are bound by international humanitarian and human rights law applicable to all national armies. As non-nationals hired on a contractual basis, however, provisions for accountability are weak. The armed forces which enrol private military company personnel also often have poor human rights records and are therefore unlikely to implicate their fellow combatants.<sup>62</sup> While governments are principally accountable for the actions of private security groups, other users including corporations and humanitarian agencies are arguably accountable. In view of these concerns about the accountability of private security groups it is important that all actors be included in a comprehensive regulatory framework.

### 6.6 Arms and training

Private security groups are by their nature closely associated with the means and methods of waging war. A critical issue is whether their activities have led to the militarization of society and increased the likelihood of violent conflict in the places where they have operated. There are certainly cases where private security groups have contributed through the transfer of arms and military training to the militarization of society. The proliferation of arms is not a problem *per se* but there is a burgeoning literature to suggest that the availability and misuse of, particularly, small arms makes conflict more lethal and violent.<sup>63</sup> Private security groups have been a considerable demand factor for weapons in the countries where they have operated. Half of the \$40 million contract signed by the Angolan MPLA government with Executive Outcomes in September 1993, for example, went on military supplies.<sup>64</sup> Private security groups have also at times acted as arms brokering agents for the transfer of weapons into regions of conflict. Research has been conducted into monitoring and tracking arms flows and developing ways to control their spread and misuse. Actors such as private security groups involved in the intricate networks and routes by which weapons enter conflict regions is less well understood and an area that needs further research. Even less is known about the consequences of private contractors supplying military services and training. While the services provided by private military companies might lead to more professional and efficient armed forces in the recipient countries, the reverse might also occur in the absence of proper regulations. In the same way as the unregulated transfer of weapons into conflict regions can fuel violence and lead to human rights violations, so too can the introduction of new military capabilities have a similar effect. For example, MPRI's training of the Croatian army in 1995 led to allegations that it contributed to the human rights violations committed during the subsequent bloody offensive in Krajina against Serb forces, although this case has led to much debate as to the responsibility of the company in this instance. It is of course feasible that training by national forces can have, and has had, the same outcomes, but in the absence of proper regulations for private military companies the consequences of their providing military training is less well understood.

The critical issues emerging from the use of private security groups outlined above suggest that policies need to be developed which proscribe certain illegitimate and undesirable activities whilst at the same time ensuring proper regulation of those others that are deemed acceptable. A key priority for policymakers is not only to carry out further research into the different situations in which private security groups are being used so as to inform policy in each area, but also to develop a comprehensive regulatory framework to control their activities. As the following section demonstrates, however, there has been only a limited response to this issue so far. There are corpuses of international and national laws applicable to private security groups and a degree of self-regulation by the industry and its users, but also many gaps which allow these actors to operate largely unregulated. There is broad recognition of the need for greater regulation by all concerned, if harmful aspects of this phenomenon are to be addressed.<sup>65</sup> If policymakers do not address the critical issues that have been raised here and only mount a piecemeal response to the problem, the consequences may be serious.

### 7.1 International measures

#### 7.1.1 *International Convention against the Recruitment, Use, Financing, and Training of Mercenaries*

The International Convention against the Recruitment, Use, Financing, and Training of Mercenaries adopted by the UN in 1989 is the only international instrument applicable to the activities of private security groups.<sup>66</sup> The Convention does not impose a total ban on mercenarism, only on those activities aimed at overthrowing or undermining the constitutional order and territorial integrity of a state. To come into force the Convention must be ratified by 22 UN member states. To date 19 states have done so with a further ten having signed it but not yet ratified it.<sup>67</sup> The UN Special Rapporteur has repeatedly drawn attention to the many gaps and ambiguities in the international legislation and the apparent connection between these and the persistence of and increase in mercenary activities.<sup>68</sup> In particular, the Convention uses the definition of a mercenary found in Article 47 of Protocol I to the Geneva Convention, the problems of which have already been highlighted in section III. It is important to realize, however, that these inadequacies do not preclude member states from introducing more feasible national legislation which does not contain the same pitfalls, but which at the same time accedes to the aims of the Convention and therefore counts as ratification. The coming into force of the International Convention would represent an important step in the development of a comprehensive regulatory framework applicable to private security groups *per se*. Nevertheless, there is clearly a need for the international community to review international legislation on mercenary activities. The Convention would act as a deterrent to private military companies engaging in mercenary activities, but since they fall outside the definition contained in the Convention, there is also a need for supplementary measures.

### International Regulatory Body

It has been suggested that a regulatory body could be set up under the auspices of the UN to register and monitor the activities of private security and military companies.<sup>69</sup> Administered by an appropriate branch of the UN, companies would be certified only if they met an internationally-agreed set of principles and standards reflecting international humanitarian and human rights law. As with the UN Register on Conventional Arms, it would be the responsibility of each member state to gather and submit information on companies operating out of their territory. Such a mechanism would certainly help set important precedents for much-needed transparency and standards in the international market for private security and military companies. Even though the register would be voluntary and not comprehensive to begin with, there would nonetheless be a willingness on the part of companies to submit information, as it would give credibility to what they are already doing in exchange for greater acceptance by the international community. There would also be an added incentive for those companies not already meeting the required standards to raise them. However, before such a system could be established the UN would first need to see major advances in terms of supplier countries providing regulations for companies operating out of their territory before it could play a significant role itself. If the UN were to accredit companies, this might appear as if it has the power to authorize their use – which is clearly not the case. This responsibility should remain within the competence of each member state. Nevertheless, the UN has an extremely important role to play in reporting and monitoring the conduct of private security and military companies to ensure that any wrongdoing is acted upon.

### 7.2 Regional measures

#### 7.2.1 *The OAU Convention for the Elimination of Mercenaries in Africa*

The seemingly uncontrollable spread of mercenaries in Africa in the 1960s and 1970s led governments in the region – as with the international community – to try to limit their activities. In Libreville in 1977 the member states of the Organization for Africa Unity (OAU) signed the Convention for the Elimination of Mercenaries in Africa. The Convention came into force in 1985, making it the only international legal instrument that criminalizes mercenary activities. The OAU Convention does not suffer from all the pitfalls of the International Convention as it uses a definition of mercenarism which refers to the purpose of a mercenary's employment as well as features of who a mercenary actually is. Like the International Convention, its scope is restricted to acts aimed at overthrowing recognized governments or undermining a state's territorial integrity. Because African governments are not strictly prevented from hiring foreign soldiers as part of their armed forces under the Convention, this has reduced their credibility when accusing opposition rebel and insurgency groups of using mercenaries. A lack of resources and legal capacity in many African states has also meant that the Convention has seldom been implemented and enforced.

#### 7.2.2 *Other regional measures*

Italy and Germany are the only European countries which have ratified and signed, respectively, the International Convention. Some European Union (EU) member states, such as Finland, have said that they are considering whether their domestic legislation means that they can accede to the aims of the Convention, but others have doubts about its legal enforceability. Many mercenaries and private security and military companies

originate from Europe. Few EU countries however have appropriate domestic laws and regulations to control the activities of the private security groups operating out of their territory. The EU has a responsibility to take measures to address the problem. An EU Declaration or Common Position to combat mercenary activity and regulate the use of private security and military companies would represent an important step in this regard and would send a clear signal for international action to tackle the problem. The G8 Foreign Ministers' meeting in December 1999 also made mercenary and private military activity one of its conflict prevention priority issues.

### 7.3 National legislation

National legislation is the most feasible and effective means of regulating private security groups. In spite of the obligations of states under international law (for example the International Conventions) few supplier countries have adequate laws and regulations for controlling private security groups operating out of their territory. South Africa and the United States have perhaps the most advanced national legislation, but closer inspection shows that even these measures are not totally adequate.

#### 7.3.1 South Africa

The South African Regulation of Foreign Military Assistance Act introduced in July 1998 is perhaps the boldest attempt to develop comprehensive measures to address both mercenary activities and those services provided by private security and military companies. The legislation makes a clear distinction between 'mercenary activity' and the export of 'foreign military assistance'. Mercenary activity is defined to mean "direct participation as a combatant in armed conflict for private gain"<sup>70</sup> and is proscribed under the Act. The definition of 'foreign military assistance' is far broader, including "advice or training; personnel, financial, logistical, intelligence or operational support; personnel recruitment; medical or paramedical services; or procurement of equipment" as well as "security services for the protection of individuals involved in armed conflict or their property".<sup>71</sup> The rendering of foreign military assistance is not proscribed under the Act but instead controlled by a licensing and authorization procedure under the competence of the National Conventional Arms Control Committee. Approval for a contract is not granted if it contravenes criteria based on international law. The Act includes extra-territorial application and punitive powers for those that do not abide by it. However, the Act has received criticism, particularly for the definitions it employs, and is thought to be more symbolic than a realistic deterrent, since few companies have applied for a license to operate under its measures. The fact that the Act provides a legislative framework is important, however, and sets precedents for other supplier countries.

#### United Kingdom

The Foreign Enlistment Act of 1870 is the only UK law applicable to private security groups; it has never been enforced in all the time since it was enacted. The UK has no recognizable regulations relevant to the activities of private security and military companies. The British government has said that it has no plans to sign the International Convention against mercenaries due to doubts about its legal enforceability in the UK.<sup>72</sup> As a result of the 1998 'arms to Africa' affair, though, in which a British-based private military company, Sandline International, signed a contract with the (at the time) exiled President of Sierra Leone, Ahmed Tejah Kabbah, to supply a 35-tonne shipment of arms in contravention of a UN embargo on the country, it has made a commitment to address the issue. The Government has said that it is considering options for regulation, and in April 1999 British Foreign Secretary Robin Cook announced that it would produce a Green Paper (consultation document) on mercenary activity by the end of November 2000.<sup>73</sup>

#### 7.3.2 United States

The United States (US) has some laws applicable to mercenary activities and is also the only other country that has recognizable regulatory measures for the export of military services.<sup>74</sup> These are dealt with in the same way as military exports under the International Traffic in Arms Regulations (ITAR). Monitored by the Department of State's Office of Defence Trade Controls, registered companies must apply for a licence before they enter into a contract with a government or irregular armed group abroad. This application is subjected to an internal process involving a variety of bureaux within the Department including those for democracy and human rights. Controversial cases are referred to the Assistant Secretary of State, who makes the final decision, as was the case when MPRI's contract to train the Angolan army was revoked in 1994. Whilst this process does place some restrictions on those companies selling military services abroad, they are more concerned with US foreign policy than with provisions within international law.<sup>75</sup> In addition, there is no formal oversight once a licence has been granted, nor are there provisions to ensure transparency other than contracts in excess of \$50m requiring congressional notification before being granted. Only in these instances does Congress have the right to demand additional information about the proposed contract.

#### Arms export controls

Existing arms export controls applicable to defence manufacturers in supplier states are an important context in which to consider the regulation of private security groups. As pointed out earlier, private security groups have been involved in the transfer of weapons into the conflict regions, where they have operated by acting as arms-brokering agents. There are, however, few national or international controls over the activities of arms-brokering agents. Closing the loopholes on arms brokering in arms export controls regimes is a priority not only to help prevent the proliferation of arms in conflict regions, but also to place some regulations on the activities of private security groups. Extending the scope of arms export controls to incorporate military services – as in the US model – might also present the most feasible means of regulating the activities of private security groups.

## 7.4 Local measures

### 7.4.1 Codes of conduct by users of private security companies

Non-governmental entities, including corporations and humanitarian agencies, are responsible for their use of private security companies and have drawn up policies and guidelines to help mitigate problems associated with this. For instance, Amnesty International and other human rights NGOs have for a while been promoting human rights guidelines for companies, and a number of multinational corporations in the extractive industries now have recognizable measures in place. Humanitarian agencies make reference to the use of private security companies in their security policies, but have not really developed explicit measures as corporations have. The development of best practice and dialogue on the development of codes of conduct are needed in both the extractive industry and the humanitarian field. However, it is important to realize that, while important, voluntary codes of conduct are not enforceable and only form a small part of a comprehensive regulatory framework.

### 7.4.2 Self-regulation by companies

Private security and military companies often outline in their company profiles the sorts of contracts that they are prepared to accept and those that they are not. Some companies, for instance, state that they will not engage in combat roles, whereas others make it clear that they will only work for internationally-recognized governments. A number of companies also state the principles and values which they aspire to abide by when accepting a contract from a client, including codes of conduct to ensure they adhere to international human rights standards and international humanitarian law during their operations. The adoption of self-imposed standards in this way is a means by which companies can gain greater acceptance of their existence and improve marketability. Efforts by more progressive companies are laudable, as they provide leadership in setting industry standards which other companies must meet because it is in their commercial interest to do so. However, self-regulation by the industry is by no means rigorous or enforceable and should not divert attention away from the urgent need for regulations administered by governments.

## VIII

## Conclusions and recommendations: towards a comprehensive framework of action

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The privatization of security is a complex and multifaceted phenomenon that is radically challenging prospects for achieving peace and security in regions of conflict. As can be seen from the discussions of the different users of private security groups and the critical issues that emerge from these, there are many challenges facing policymakers in a range of governments, international institutions, corporations, and other organizations affected by the privatization of security. This paper proposes a comprehensive framework of action in which the issue can begin to be tackled, encompassing two broad, but inter-related, strands:

### I The restrained and responsible use of private security groups

As has been argued, in developing policy responses to the privatization of security it is necessary to look at the users of private security groups and situations in which they are being used. What follows are the critical policy issues that need to be addressed in relation to the actors that have been discussed in order to ensure the restrained and responsible use of private security groups. Key priorities include:

#### ■ *Non-state armed actors*

The international community should seek to enforce existing international standards relating to the use of mercenaries to prevent non-state armed actors from using mercenaries, volunteers, and other private security groups with impunity. Efforts should also be made to measure the scope, magnitude, and impact of mercenary and volunteer involvement in conflicts through appropriate mechanisms such as the Office of the Special Rapporteur on the use of mercenaries.

#### ■ *Governments in regions of conflict*

Those governments in regions of conflict that use private security groups within their security apparatus should consider the implications this will have for their ability to govern the security sector. They should instead concentrate on the adoption of public policies that are geared towards the development of professional and democratically-accountable security forces, with the support of the donor community through the implementation of security sector reform programmes.

#### ■ *Governments in supplier countries*

Governments in supplier countries of private security groups should engender public debate through appropriate reviews and consultations about the impact of private security groups on conducting foreign policy and the desirability of such individuals and companies operating from their territory.

#### ■ *Multilateral peacekeeping organizations*

The UN and other multilateral organizations involved in peacekeeping should adopt policies to ensure that their member states refrain from using private companies to perform peacekeeping functions of a military nature. They should also take steps to

channel greater resources into the development of effective peace-support and conflict-management mechanisms that promote an integrated approach to peacebuilding and emphasize the importance of peaceful negotiations.

- *Humanitarian agencies*

International and non-governmental humanitarian agencies should examine their internal policies using private security companies because of the implications for the impartiality of humanitarian operations and the impact of such companies on the local conflict. They should also adopt conflict-prevention and peacebuilding frameworks into the planning and management of their security arrangements.

- *Corporations in the extractive industries*

Corporations in the extractive industries operating in regions of conflict should examine their internal policies on using private security companies in recognition of the impact this can have on the local conflict in terms of facilitating war economies, undermining sustainable development, and exacerbating local tensions. Like humanitarian agencies, they should in addition adopt conflict prevention and peacebuilding frameworks into the planning and management of their security arrangements.

## II **A comprehensive regulatory framework**

Only by developing a comprehensive regulatory framework to govern the use of private security groups will the international community be able to mitigate the potentially harmful aspects of the privatization of security. Such a regulatory framework should reflect the prohibition and suppression of activities deemed illegitimate and undesirable whilst at the same time providing proper regulation of those other activities seen as acceptable. A comprehensive regulatory framework requires a range of measures at the international, regional, national, and local levels to address the many gaps in existing responses.<sup>76</sup> Key priorities include:

- *International legislation*

The member states of the UN should ratify the International Convention against the Recruitment, Use, Financing, and Training of Mercenaries so that it comes into force, and develop supplementary international measures (such as a UN-administered International Regulatory Body) that can be introduced to regulate those private security groups that fall outside the scope of the Convention.

- *Regional measures*

The member states of the OAU and other regional bodies in areas where private security groups are active should seek the introduction and enforcement of measures that control their use, like the OAU Convention for the Elimination of Mercenaries in Africa. The European Union and other regional bodies from which private security groups operate should take collective steps, for example by issuing an EU Declaration or Common Position, to control activities originating from their territory.

- *National legalization*

Those governments in supplier countries should regulate and control the activities of private security groups operating out of their territory by introducing or strengthening national legislation and ensuring such measures reflect internationally-agreed obligations and standards.

- *Codes of conduct by users*

Those organizations that use private security companies in regions of conflict, notably humanitarian agencies and corporations in the extractive industry, should introduce or strengthen guidelines and codes of conduct to ensure their responsible use and minimize undesirable consequences. They should also work with others in their field to develop industry-wide standards in order to ensure best practice of these guidelines and codes of conduct.

- *Self-regulation by companies*

Private security and military companies should enhance self-regulation of their industry by introducing or strengthening codes of conduct to reflect relevant internationally-agreed standards. They should also aim to improve transparency in the industry and allow for proper scrutiny and monitoring of their activities.

## Endnotes

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- <sup>1</sup> Christopher Clapham, 'Africa Security Systems: Privatisation and the Scope for Mercenary Activity', in Mills, Greg and Jon Stremmlau, eds. *The Privatisation of Security in Africa*, South Africa, The South African Institute of International Affairs (SAIIA), March 1999, p24
- <sup>2</sup> See for instance Mark Duffield, 'Globalisation and War Economies: Promoting Order or the Return of History?', Fletcher Forum of World Affairs, Vol. 23, No 2: 19-36, Fall 1999
- <sup>3</sup> Eboe Hutchful, 'Understanding the Africa Security Crisis' in *Mercenaries: An African Security Dilemma* by Abdel Fatau Musah and J Kayode Fayemi, London, Pluto Press, 1999, p 213
- <sup>4</sup> Christopher Clapham, *op. cit.*, p24
- <sup>5</sup> J. Kayode Feyami, 'Africa in Search of Security: Mercenaries and Conflict – An Overview', in *Mercenaries: An African Security Dilemma* by Abdel Fatau Musah and J Kayode Fayemi, Pluto Press, London, 1999, p29
- <sup>6</sup> It is interesting to note that the stepping-up of support for many African countries after their independence at the height of the Cold War led to a relative decline of mercenary activities, whereas today the waning strategic interest of Western powers in these parts has caused a demand for mercenary groups and other private security groups once again.
- <sup>7</sup> Jeff Herbst for example talks of different private security forces operating at the 'low' and the 'high' end of the market. See Jeff Herbst, 'The Regulation of Private Security Forces' in *The Privatisation of Security in Africa*, South Africa Institute of International Affairs, p125
- <sup>8</sup> David Shearer, 'Private Armies and Military Intervention', International Institute for Strategic Studies Adelphi Paper 316, Oxford: Oxford University Press, February 1998, p16
- <sup>9</sup> The UN Security Council and General Assembly had passed resolutions condemning the use of mercenaries previously, but they were restricted to specific conflicts.
- <sup>10</sup> GA Res 2465 (1968)
- <sup>11</sup> Additional Protocol 1 to the Geneva Convention of 12 August 1949, 8 June 1977. A/32/144, Annex 1(1977)
- <sup>12</sup> UN General Assembly resolution 44/34 of December 4 1989.
- <sup>13</sup> Katrien Coppens, 'Mercenaries Do They Still Exist? An Overview of International Law and Examples of National Legislation', Research at the request of Pax Christi, the Netherlands, July 1996, p11
- <sup>14</sup> Geoffrey Best, *Humanity in Warfare: The Modern History of the International Law of Armed Conflicts*, London: Weidenfeld & Nicholson Ltd, 1980, p 238, quoted in David Shearer, *op. cit.*, p18
- <sup>15</sup> *Mercenaries and the Criminalization of A People's Movement*, New Delhi, India, Peace Initiatives, Vol. III, No. V September-October 1997, p3
- <sup>16</sup> Report of the Committee of Privy Counsellors Appointed to Inquire into the Recruitment of Mercenaries, London: Her Majesty's Stationary Office, 1976, p2
- <sup>17</sup> David Shearer, *op. cit.*, p18. Acting within the command structure of a host countries armed forces is now a feature of the company's profile – see Sandline International website, [www.sandline.com](http://www.sandline.com).
- <sup>18</sup> Unlike the Gurkha regiment in the British armed forces, which is based on an agreement between the Nepalese and British governments, contracts signed by some private military companies have often excluded prior authorization from the government in the country in which they are headquartered.
- <sup>19</sup> See for example Jeremy Harding, 'The Mercenary Business: Executive Outcomes', *Review of African Political Economy*, Vol. 24, No. 71, March 1997 and Khareen Pech, 'The Hand of War: Mercenaries in the Former Zaire 1996-97' in Abdel-Fatau Musah and J. Kayode Feyami, *op. cit.*
- <sup>20</sup> Enrique Bernales Ballesteros, 'Report on the Question of the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Rights of Peoples to Self-determination', (E/CN.4/1997/24), 20 February 1997, available at [www.unhchr.ch](http://www.unhchr.ch)
- <sup>21</sup> Alex Vines, 'Mercenaries and the Privatisation of Security in Africa in the 1990s' in Mills, Greg and Jon Stremmlau eds, *op. cit.*, p74
- <sup>22</sup> David Shearer, *op. cit.*, p24

- <sup>23</sup> See for example 'Ukraine and Mauritian mercenaries killed in Sierra Leone', STAR Radio, Monrovia, January 19 1999; 'Italian mercenaries helping RUF captured', Africa Free Press, January 19 1999, 'Neo Nazis linked to Freetown Rebels', Times (UK), February 11 1999
- <sup>24</sup> Yves Goulet, 'Executive Outcomes – Mixing Business with Bullets', *Janes Intelligence Review*, September 1997
- <sup>25</sup> *The Financial Times*, November 18, 1998
- <sup>26</sup> *The Sunday Times*, 9 March 1999
- <sup>27</sup> See for instance Ann Markusen, 'The Case Against Privatising National Security', Council on Foreign Relations, New York, September 1999 and Deborah D Avant, 'Privatising Military Training', *Foreign Policy in Focus*, Vol. 5, No. 17, June 2000
- <sup>28</sup> Alex Vines, 'Gurkhas and the private security business in Africa', in Jakkie Cilliers and Peggy Mason, *Peace, Profit and Plunder ? The Privatisation of Security in War-Torn Africa Societies*, South Africa, Institute for Security Studies, 1999, p125
- <sup>29</sup> *Newsweek*, February 24 1997
- <sup>30</sup> Juan Carlos Zarate, 'The Emergence of a New Dog of War: Private International Security Companies, International Law and New World Disorder', *Stanford Journal of International Law*. Vol. 34, No. 1, Winter 1998.
- <sup>31</sup> For an elaboration of this argument see Damian Lilly, 'The Privatisation of Peacekeeping: Prospects and Realities', Disarmament Forum, United Nations Institute for Disarmament Research, Geneva, No. 3 2000
- <sup>32</sup> Mark Malan, 'The Crisis in External Response' in Jakkie Cilliers and Peggy Mason, *op. cit.*, p48
- <sup>33</sup> Speech given by the Secretary-General at Ditchley Park, United Kingdom, 26 June 1998 (Press Release SG/SM/6613)
- <sup>34</sup> Dr Funmi Olonisakin, 'Mercenaries Fill the Vacuum', *The World Today*, June 1998, p. 167
- <sup>35</sup> *The Guardian*, October 31, 1998
- <sup>36</sup> Greg Mills and John Stremmlau, 'The Privatisation of Security in Africa: An Introduction' in Greg Mills and John Stremmlau, *op. cit.*, p19
- <sup>37</sup> Michael Bryans, Bruce Jones and Janice Gross Stein, 'Mean Times: Humanitarian Action in Complex Political Emergencies – Stark Choices, Cruel Dilemma', Report of the NGOs in Complex Emergencies Project – Coming To Terms, Vol. 1, No. 3., Program on Conflict Management and Negotiation, Center for International Studies, University of Toronto, January 1999, Executive Summary
- <sup>38</sup> Conflict Reduction and Humanitarian Assistance, Policy Statement, UK Department for International Development, London, February 1999, p5
- <sup>39</sup> The International Red Cross and Red Crescent Movement will only consider using armed protection for relief convoys in exceptional circumstances. See Resolution 9 adopted by the Council of Delegates at its session of 1-2 December 1995, Geneva, Switzerland: Armed Protection of Humanitarian Assistance, *International Review of the Red Cross* 310, January-February 1996, p150-51
- <sup>40</sup> Greg Mills and John Stremmlau, 'The Privatisation of Security in Africa: An Introduction' in Greg Mills and John Stremmlau, *op. cit.*, p6
- <sup>41</sup> In a similar vein non-governmental humanitarian organizations have now begun to outstrip the role of UN agencies and other inter-governmental agencies as the main providers of aid.
- <sup>42</sup> Kevin O'Brien, 'Military-Advisory Groups and African Security: Privatised Peacekeeping ?', *International Peacekeeping*, Vol. 5, No. 3, Autumn 1998, Frank Cass Journals, p84
- <sup>43</sup> Kevin O'Brien, 'Private Military Companies and African Security 1990-98', in Abdel-Fatau Musah and J. Kayode Feyami, *op. cit.*, p54
- <sup>44</sup> Jakkie Cilliers, 'Private security in war-torn African states' in Jakkie Cilliers and Peggy Mason, *op. cit.*, p7
- <sup>45</sup> William Reno, 'Privatising War in Sierra Leone', *Current History*, May 1997, p229
- <sup>46</sup> Edward Mortimer, *The Financial Times*, 29 September 1997
- <sup>47</sup> Christopher Clapham, *op. cit.*, p33
- <sup>48</sup> Kevin O'Brien, 'Military-Advisory Groups and African Security: Privatised Peacekeeping ?', *International Peacekeeping*, Vol. 5, No. 3, Autumn 1998, Frank Cass Journals, p97. As Martin Van Creweld explains, "as used to be the case before 1648, military and economic function will be reunited". Martin Van Creweld, *The Transformation of War*, New York: Free Press, 1991

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- <sup>49</sup> *Africa Confidential*, 23 October, 1998
- <sup>50</sup> David Shearer, *op. cit.*, p34
- <sup>51</sup> Kayode Feyemi, 'Africa in Search of Security' in Abdel Fatau Musah and J Kayode Fayemi, *op. cit.*, p14
- <sup>52</sup> A 2,500-strong military peace-monitoring group was committed by Australia to maintain the peace.
- <sup>53</sup> Enrique Bernales Ballesteros, 'Report on the Question of the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Rights of Peoples to Self-determination', (E/CN.4/1997/24), 20 February 1997
- <sup>54</sup> Yves Sandos, 'Private Security and International Law' in Jakkie Cilliers and Peggy Mason, *op. cit.*, p206
- <sup>55</sup> Jakkie Cilliers and Richard Cornwall, 'Africa – From the privatisation of security to the privatisation of war ?' in Jakkie Cilliers and Peggy Mason, *op. cit.*, p234
- <sup>56</sup> David Shearer, *op. cit.*, p68
- <sup>57</sup> William Reno, 'Privatising War in Sierra Leone', *Current History*, May 1997
- <sup>58</sup> For further reading on security sector reform see Nicole Ball, 'Spreading good practices in security sector reform: policy options for the British government', Saferworld, December or Informal DAC Task Force on Conflict, Peace and Development Co-operation, 'Security Sector Reform and Development Co-operation: A Conceptual Framework for Enhancing Policy Coherence', Paris, February 2000
- <sup>59</sup> Yves Sandos, *op. cit.*, p210
- <sup>60</sup> Alex Vines, 'Mercenaries and the Privatisation of Security in Africa' in Greg Mills and John Stremlau, *op. cit.*, p54
- <sup>61</sup> 'Executive Outcomes: The War Business', Journeyman Productions, London, UK, 1997
- <sup>62</sup> David Shearer, *op. cit.*, p71
- <sup>63</sup> See for instance, 'Arms Availability and the Situation of Civilians in Armed Conflict', International Committee of the Red Cross, Geneva, June 1999
- <sup>64</sup> Herbert M Howe, 'Private Security Forces and Africa Stability: the case of Executive Outcomes', *Journal of Modern African Studies*, Vol. 34, No. 2., 1998, p312
- <sup>65</sup> Some private military companies have argued that greater regulation and transparency would bring credibility and legitimacy to their industry. In the absence of proper regulation there is the distinct danger that competition will lead less scrupulous outfits to work for illegitimate employers such as warlords and other non-state actors and engage in more nefarious activities. See interview with Tim Spicer, Sandline International, *The Times* 24 May 1998
- <sup>66</sup> UN General Assembly Resolution 44/34, December 4 1989
- <sup>67</sup> The following 19 states have ratified the Convention: Azerbaijan, Barbados, Belarus, Cameroon, Cyprus, Georgia, Italy, Maldives, Mauritania, Qatar, Saudi Arabia, Senegal, Seychelles, Suriname, Togo, Turkmenistan, Ukraine, Uruguay, and Uzbekistan. The following nine states have signed but have yet to ratify the Convention: Angola, Congo, Democratic Republic of the Congo, Germany, Morocco, Nigeria, Poland, Romania, and Yugoslavia.
- <sup>68</sup> Enrique Bernales Ballesteros, 'Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination', (E/CN.4/1999/11), 13 January 1999, p16-18
- <sup>69</sup> Kevin O'Brien (1998), *op. cit.*, p.100
- <sup>70</sup> Sec 1 (iv) Regulation of Foreign Military Assistance Act, 15 of 1998
- <sup>71</sup> Sec 1 (iii) Regulation of Foreign Military Assistance Act, 15 of 1998
- <sup>72</sup> UK House of Commons Hansard, written answers, 8 June 1998
- <sup>73</sup> Response of the Foreign Secretary to the Select Committee for Foreign Affairs' Second Report on Sierra Leone, April 1999.
- <sup>74</sup> Different laws and oversight procedures apply to private contractors signing a contract with the US government.
- <sup>75</sup> Yves Sandos, *op. cit.*, p217
- <sup>76</sup> It is important that international and national measures be developed in parallel as it is easy for groups to relocate to other areas if they are unwilling to accept the measures that have been introduced in the country in which they are headquartered.
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