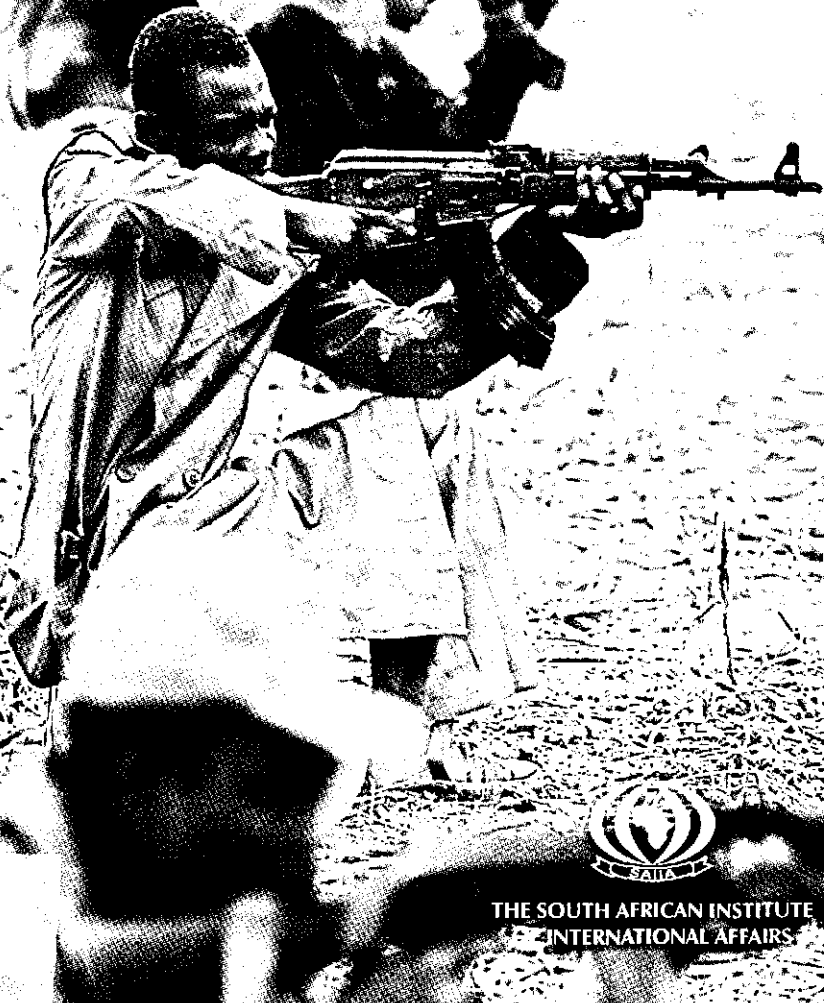


THE PRIVATISATION OF SECURITY IN AFRICA



THE SOUTH AFRICAN INSTITUTE
OF INTERNATIONAL AFFAIRS

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EDITED BY GREG MILLS AND JOHN S. EMLAU

SAIIA ARCHIVES

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The Privatisation of Security in Africa

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Foreword

*Kader Asmal*¹

The activities of people who perform military duty for gain are sufficiently controversial and potentially destructive to warrant close attention — even regulation — by democratic government.

Our finally free South Africa has resolutely embarked on a course of regulation, in the face of considerable scepticism, including even some expressed in this volume. Regulation is not an easy path to tread, but we are determined not, in enlightenment, to repeat the delinquencies committed in darkness. We have therefore decided, with the *Regulation of Foreign Military Assistance Act*, to grapple with the problem, to deal directly with the difficulties and challenges, and at all costs not to ignore this potential threat to our and our brothers' and sisters' statehood. There is no outright ban on privately-provided foreign military assistance; there is regulation.

This we do acutely mindful of the problems and pitfalls that lie in our way — for instance, the difficulties of definition. This we do, too, in the ordinary discharge of our democratic responsibilities. It is at times a cumbersome burden, but we cannot but accept it. We shall not be turned from this course — which is fully in line with the requirements of our Constitution. We have been encouraged by the fact that far older democracies than ours have shown considerable interest in the statutory arrangements we have made.

There is no doubt that the role of private protectors and armies has grown as conventional war has given way in much of the world to irregular, internal conflict. Africa is a case in point, as this study points out, where more than thirty wars have been fought since 1970, most of them 'intra-state' in origin. The glut of trained military personnel and equipment unleashed by the collapse of the Soviet Union and also of *apartheid* South Africa has provided vast new resources for those embroiled in such activity.

The value of this volume is that it sheds new light on the whole subject, and draws necessary distinctions, for instance between those private domestic security firms doing a job in the fight against ordinary crime, and those murky irregular mercenary forces which can only be called the 'dogs of war'. To the extent that this work equips governments, the international community,

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continental and regional groupings, Non-Governmental Organisations (NGOs), and interest groups — including human rights organisations and churches — to grapple with greater clarity and effectiveness in the matter, is a distinct advance.

There is one danger that stalks Africa and certain parts of the world as never before. It is warlordism. It feeds on failed statehood. It is a rapacious protection racket, run in the interest of the few. Ordinary people are the victims and dysfunctional governments are incapable of doing anything about it. The scourge must be combated, otherwise the very fabric of society will be destroyed. And the best way to combat it is to forge the widest of coalitions, spanning world bodies, national governments, aid organisations, other NGOs and the private sector, to be resolute in dealing with it. The capacity of the state to defend itself and to protect its citizens is the essence of an ethical and moral order. *We should be restrained in our support for private bodies taking over state or multinational functions.*

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The Privatisation of Security in Africa: An Introduction

Creg Mills and John Stremmlau¹

*Cry 'Havoc!', and let slip the dogs of war.*²

Mercenaries are not a new phenomenon in international relations; nor are they unique to Africa.³ Across the centuries they have played a variety of roles, notorious and noble, on offence and defence, in support of governments, armed insurrections, private corporations and cartels, and international and Non-Governmental Organisations (NGOs). Colourful examples abound in fact and fiction: defenders of the Dutch East India company, Swiss guards of the Vatican, British Gurkha regiments and the French Foreign Legion defending colonial and post-colonial interests, Pakistani soldiers protecting emirs in the Gulf, the many foreigners under contract to the former South African Defence Force (SADF), or the bands of armed European malcontents bent on overthrowing some small African country in a Frederick Forsyth novel.

Definitions are difficult and evaluations controversial. Just as one protagonist's guerrilla is another's freedom fighter, the same individual may be branded a mercenary by some, while being welcomed by others as a security service provider or even as a defender of humanitarian assistance. However the work *is defined*, there can be no doubt that what may be called the 'global private security industry' is both booming and adapting to the changing nature of war. Alex Vines, in his paper for this volume, notes that sales are projected to increase world-wide from US\$56 billion in 1998 to over US\$200 billion by 2010.

The current boom may reflect structural changes in the nature of modern warfare, notably the long-term decline in military discipline and professionalism in battle. During the First World War, 10% of the casualties

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² Shakespeare W, *Julius Caesar*, III, 1.273.

³ See, for example, Puren J (as told to Brian Pottinger), *Mercenary Commander*. Alberton: Galago, 1986; and Germani H, *White Soldiers in Black Africa*. Cape Town: Nasionale Boekhandel, 1967. For an exposé of the role of the modern mercenary outside Africa (in this case the role of British mercenaries in Bosnia), see Cory-Jones K, *Wardogs*. United Kingdom: Century, 1996.

were civilian. Today, 90% of the casualties in deadly conflicts are civilians.⁴ Equally dramatic has been the decline of interstate wars and the sharp rise of mass violence within countries. In 1995 there were 58 armed conflicts under way around the world, according to a University of Maryland study. Twenty had recorded deaths in excess of 1,000 during the preceding 12 months. Forty-nine were being fought over ethno-political issues: wars of secession or regional autonomy, conflicts among ethnic rivals for control of the state, communal or clan warfare. Only one was an interstate conflict, a border dispute between Ecuador and Peru.⁵

During the 1990s there have been major increases in both the supply and demand for the services of private international security companies. It does not matter whether the contract calls for fomenting or suppressing armed conflict, and the client's objectives can be political, economic, humanitarian, or sometimes criminal. Moreover, sovereign states, the rightful arbitrators of the threat or use of organised force, lack the international norms, institutions and political will to regulate or even adequately monitor the many new and diverse providers of armed security services.

About Africa

Africa's special attractiveness as a market for mercenaries is no mystery. Mass violence has become endemic, typically arising from reactions to authoritarian rule, exclusion of minority or majority groups from governance, socio-economic deprivation and inequity, and the inability of weak states to manage political and social conflict.⁶ United Nations (UN) Secretary-General Kofi Annan, in an unprecedented March 1998 report to the UN Security Council on the causes and nature of conflicts in Africa, notes:⁷

Since 1970, more than 30 wars have been fought in Africa, the vast majority of them intra-state in origin. In 1996 alone, 14 of the 53 countries of Africa

⁴ Ahlstrom C, *Casualties of Conflict: Report for the World Campaign for the Protection of Victims of War*. Uppsala: Department of Peace and Research, 1991, pp.8, 19; and *UN Development Report 1997*, New York: Oxford University Press, 1997, p.65.

⁵ Gurr TR & WH Moore, 'Ethnopolitical Rebellion: A Cross-Sectional Analysis of the 1980s with Risk Assessments for the 1990s', *American Journal of Political Science*, 41, 4, October 1997, pp.1079-1103.

⁶ Nathan L, 'Crisis Resolution and Conflict Management in Africa'. Paper presented at the Consultation on the Nexus between Economic Management and the Restoration of Social Capital in Southern Africa, World Bank and Centre for Conflict Resolution, Cape Town, 11-13 October 1998.

⁷ Annan K, *The Causes of Conflict and Promotion of Durable Peace and Sustainable Development in Africa*, May 1998, p.1.

were afflicted by armed conflicts, accounting for more than half of all war-related deaths world-wide and resulting in more than 8 million refugees, returnees, and displaced persons. The consequences of those conflicts have seriously undermined Africa's efforts to ensure long-term stability, prosperity and peace for its peoples ... Preventing such wars is no longer a matter of defending states or protecting allies. It is a matter of defending humanity itself.

Mercenaries and associated arms suppliers rarely precipitate these conflicts; nor are they often a decisive factor in their resolution. But their availability and capability of playing a role are expanding in a regional and global environment that has become more permissive. There is an urgent need to assess the negative and positive role that the private providers of violence might play in addressing Secretary-General Annan's concerns. For unless concerned national governments and international organisations can create a regulatory framework to manage mercenary interventions, their sovereign and collective authority will be undermined. From a global perspective, Africa is the continent at greatest risk. But it is also the region that the rest of the international community recognises as needing greater encouragement and support in conflict prevention, management, and resolution, as the Annan Report to the UN Security Council suggests. Finding better ways to deal with the incidence of deadly conflict, caused in this case by the private suppliers, would not only benefit Africa but could contribute to the development of a new world order.

Against this backdrop, the South African Institute of International Affairs (SAIIA), with the financial support of the United States Institute of Peace (USIP) undertook a path-breaking project on the Privatisation of Security in Africa. An international panel of four experts was commissioned to undertake complementary studies especially for this project: *African Security Systems: Privatisation and the Scope for Mercenary Activity*, by Christopher Clapham of Lancaster University; *Mercenaries and the Privatisation of Security in Africa in the 1990s* by Alex Vines of Human Rights Watch; *The Contemporary Legal Environment* by Garth Abraham of the University of the Witwatersrand; and *Contemporary Efforts at Regulation* by Jeffrey Herbst of Princeton University.

The findings of these studies were examined at a conference, which the SAIIA hosted on 10 December 1998. On that date, 50 years earlier, members of the United Nations gathered to sign the Universal Declaration of Human Rights, a fitting reminder that it is the inalienable rights of individuals and families, rather than the contested claims of states, that must be the ultimate and abiding concern of any campaign to regulate the private marketing of armed

forces and weapons. The results of the conference deliberations are reflected in this brief overview of the changing context and the need for a new regulatory framework for the provision of private security services in Africa, and the revised versions of the four commissioned studies, which comprise this volume.

Spiralling Supply of Security Services ...

During the 1990s, supplies of trained military personnel and equipment available to Africa glutted world markets as a result of two historic, unexpected, but ironically peaceful shifts in the geo-strategic balances globally. One was the collapse of the Soviet Union and an end to the Cold War. The other was the end of apartheid rule in South Africa.

Economic chaos and the weak state structures of Russia and other, newly independent, states across Eurasia, have left vast numbers of well-trained military personnel underpaid and unwanted. Huge stockpiles of weapons, logistical, communications and other materiel are also available, virtually without restrictions, to the highest bidder. The vast majority of the military exports from these countries still moves through official bilateral channels. But just about anyone with cash who is looking for arms, from the most commonplace ex-Soviet equipment (an AK-47 can cost less than US\$5,00) to highly sophisticated weapons of mass destruction, can find a 'private' supplier.

Meanwhile, American and Western European military exports continue to rise as prices fall, reflecting over capacity and falling national defence budgets following the end of the Cold War. The regulatory environment in Western countries is more robust and effective than in the ex-Soviet bloc, but this does not appear to have been seriously inhibiting. Officially, the US is by far the biggest source of conventional weapons — US\$10.2 billion in foreign sales in 1996 — with Russia second at US\$4.5 billion, followed by France (US\$2.1), UK (US\$1.8), and Germany (US\$1.4).⁸ Monitoring the end users of all this conventional equipment has never been easy. In the 1990s it is further complicated by the dispersal of thousands of highly trained senior military personnel who have been retrenched or taken early retirement as part of the post-Cold War reductions, some of whom have gone abroad as 'soldiers of fortune' or started their own private security contracting companies. In addition, the recent revolutions in global information technologies and communications, including electronic banking, highly mobile means of command, control and intelligence, plus modern means of transportation,

⁸ Stockholm International Peace Research Institute, *SIPRI Yearbook 1997*. New York: Oxford University Press, 1997, p.268

facilitate the rapid recruitment and deployment of private security forces.

But while non-African mercenary supplies have grown, the greatest new source of privately available battle-tested talent in Africa, with whatever hardware is required, can be found among the ranks of former members of the SADF. For African buyers, South Africans offer obvious comparative advantages, having actually fought in the region with equipment that has been developed and deployed for local conditions. During the Cold War, South Africa's military also maintained extensive networks of co-operation with major Western military establishments abroad (despite UN-mandated sanctions), which can still be tapped to facilitate the acquisition of additional expertise and equipment. And although most officers are white, they have had long experience commanding black troops and now are widely seen, as Jeff Herbst recounts, as the contractors of choice in most parts of the region. And in the papers that follow, the private military suppliers of first concern are South Africans.

... Meets Dynamic Demand

Traditionally, the most widespread and internationally acceptable role for mercenaries has been to help meet the domestic security requirements of a recognised sovereign. During the Cold War, throughout vast areas of post-colonial Africa, Asia and Latin America, there was a great preponderance of foreign military assistance, both technical and materiel, from official suppliers in *Western and Soviet bloc countries, including China*. Such assistance could be garnered at little or no economic cost to the client state, in return for supporting — or at least not opposing — the policies of one of the major powers. The period between 1945-90 was, in a sense, an anomaly in international relations when it came to, as Jeff Herbst has termed it, 'sub-contracting sovereignty'. In the 1990s, however, much of this assistance has become more difficult to attract, and opened the way to greater market forces.

Private security firms, of course, are not as concerned about the sovereign *bona fides* of their clients as governments; nor do they risk the diplomatic and political complications that attend government decisions to back insurgent groups, such as the *União Nacional para a Independência Total d'Angola* (UNITA) in Angola, the *Rassemblement Congolais pour la Démocratie* (Front for Democracy in the Congo — RCD) or, in the 1980s, the Nicaraguan Contras. Demand for private military assistance currently comes from a variety of governments and insurgent factions involved in the dozen or more conflicts that ravage Africa in most years. And, noted in the papers that follow, the main constraint on demand is not legal or moral, but financial. African clients

tend to be poor, although leaders in such thoroughly backward countries as Sierra Leone have managed to find the means to hire substantial private force capabilities, in return for special access to the country's mineral resources.

The willingness of governments and insurgent groups to mortgage the mineral, petroleum, timber or other valuable resources present in the territories under their control, is now a familiar story across much of central, southern and western Africa. In other cases, these resources not only pay for the private force, but also are the objects of its protection service. As security conditions in Africa deteriorate, private oil, diamond, and other mining companies have turned to private security firms to supply the armed forces necessary to protect against sabotage, hostage taking and other threats. There is very little interest in regulating these private military interventions, either by the local authorities, which benefit financially from continued mining operations, or from the home country of the client corporation.

The number of armed personnel required to defend a diamond mine or oil installation varies, but is much smaller than what might be required to protect the operations of non-governmental, national and international organisations involved in humanitarian relief operations. It is likely that the supply of protection will become a growth industry for multinational security firms in the decade ahead. During the latter half of the 1980s there occurred, on annual average, five ethnic and other forms of political conflict, which required massive amounts of humanitarian assistance and could be classed as 'complex emergencies'. That number quadrupled to 20 in 1990, and rose to 26 in 1995 before declining slightly.

Mercenaries were deeply involved in the first modern 'complex humanitarian emergency', the 1969-70 Nigerian civil war over Biafran secession.⁹ While their role in training, and occasionally leading, Biafran troops was not unusual, several became briefly famous for flying ageing transports in defiance of the federal blockade to deliver food, medical supplies and military equipment. Within the secessionist enclave, however, they were not needed to protect humanitarian operations, which continued to operate on both sides of the battle lines in accordance with the traditional rules of war and civilian protections, including those of the International Committee of the Red Cross (ICRC).

By the mid-1990s, however, conditions for non-governmental humanitarian organisations, national aid agencies, and international organisations (notably

⁹ See Stremmlau J, *International Politics of the Nigerian Civil War, 1969-70*. Princeton, NJ: Princeton University Press, 1977.

representatives of the UN High Commissioner for Refugees — UNHCR) had become much more perilous. In the horrific case of the predominantly Rwandan Hutu refugee camps in Eastern Zaire, mercenaries were desperately needed to provide minimal security for civilians and foreign aid workers, as armed remnants of the *interahamwe* militia sought local domination and to appropriate relief supplies to help finance military operations in Rwanda. Western governments, who were providing the bulk of assistance, administered by agencies largely staffed by their nationals, refused to provide security and the UN lacked the capability and necessary backing from member governments to fill this need. As a result, several NGOs left, abandoning their humanitarian mission, while those that remained tried to recruit a mercenary force that was eventually drawn from Zaire's military and police.

The need for private security forces to protect people at risk looms as an important and legitimate but largely unmet demand. Despite the rapid growth in funding for complex emergencies, money for security forces remains very tight. (Overall, UNHCR expenditures alone have jumped since the late 1970s, from US\$70 million to US\$1.3 billion in 1996, more than the core budget of the UN or the development funding of the UN Development Programme.¹⁰) The situation in Africa, where six of the world's ten biggest refugee-producing countries (Sierra Leone, Somalia, Sudan, Eritrea, Burundi and Angola) are plagued with local and regional conflicts, is especially dangerous.¹¹ UNHCR and other private and public humanitarian agencies require the funds and political support to develop their own capacity to recruit and deploy well trained and disciplined security forces to protect vulnerable field staff.

Keith Richburg's controversial biography of his stint as a journalist in Africa, *Out of America*,¹² highlights a dimension to this dilemma of engagement in terms of the link between humanitarian assistance and the provision of the necessary security guarantees. In doing so, his comments also make reference to the issue of the 'commercialisation' of security. He noted:

What was happening in Somalia wasn't about food, even though this was a famine. This was about power and control in a country where security had

¹⁰ Roberts A, *Humanitarian Action in War*. London: International Institute for Strategic Studies, 1996, p.12.

¹¹ UN High Commissioner for Refugees, *Africa Fact Sheet*, December 1998. The top four refugee-hosting countries in Africa are: Guinea (470,000), Sudan (390,000), Tanzania (339,000), Ethiopia (317,000). For comparison, the top two refugee-hosting countries globally are: Iran (1,980,000) and Pakistan (1,200,000).

¹² Richburg KB, *Out of America: A Black Man Confronts Africa*. New York: Basic Books, 1997, p.56-57.

broken down. The food was coming in, tons of it, by ship and airlift. But it was falling into the hands of these thugs with the AK-47s slung over their shoulders who used tree branches to beat the weak and the elderly while hoarding most of the booty for themselves. More than once I stood on the congested road outside Mogadishu's main port, watching trucks loaded with bags of relief food turn left instead of right, and head straight towards the storage bins of the warlords instead of the agency feeding centres. Solving this growing crisis would require more than the world simply throwing money and food at Somalia. It would require restoring some semblance of order and control, breaking the grip of the gunslingers and the so-called warlords who were willing to let their people starve.

Walter Clarke and Jeffrey Herbst have echoed such sentiments, noting that the Somalia experience teaches us, *inter alia*, of the need, first, to conceptually understand the demands of a failed state and, second, to develop 'proper forces' in order to intervene.¹³ These lessons can be translated to a number of African peace-support situations.

Developing African Markets

For the foreseeable future, Africa will probably remain the region where political turmoil and armed strife are most widespread, and where greater capacity for conflict prevention and resolution are increasingly recognised as necessary by governments in the region and abroad. What role private security companies play in either exacerbating or mitigating these problems must be one element in this complex equation. Given the weaknesses of many states in Africa, this region will probably remain their most important market for years to come. Whatever guidelines for best practice and rules of engagement that are developed in Africa, will shape the industry's global operations.

In Africa especially, lack of basic state capacity lies at the heart of wider problems of development. Decolonisation, and all that has followed, remains one of the great paradoxes of the 20th Century. Self-determination logically and morally led to decolonisation and, initially at least, democracy. Yet the accession to statehood was not accompanied by the capacity to ensure self-defence and economic survival without outside assistance.¹⁴

¹³ Clarke W & J Herbst, 'Somalia and the Future of Humanitarian Intervention' in Clarke W & J Herbst (eds.), *Learning from Somalia: The Lessons of Armed Humanitarian Intervention*. Colorado: Westview Press, 1997, p.252-3.

¹⁴ See Marshall P, *Positive Diplomacy*. London: Macmillan, 1997, p.14. These arguments are examined further in Mills G (ed.), *Southern Africa into the Next Millennium*. Johannesburg: SALLA, 1998, especially pp.13-17.

The increasing usage of private security forces should perhaps be expected in a continent where the notion of 'a state' is not shared by many within their nominal borders, and where there is a general absence of the attributes associated with statehood. The underlying weaknesses of African states stem from a number of factors, including the artificiality of identities as well as borders, resulting from the 'generally haphazard character of their colonial creation', the weak governing structures and difficulty in developing 'acceptable mechanisms for regulating the tenure and exercise of power', and 'the inadequacy of their economic base compounded by a dependence and vulnerability towards the global economy'.¹⁵

If the powers available to dysfunctional states in Africa continue to fall, then significant aspects of their responsibilities will be outsourced, either to inter-state or NGOs. It follows that security, along with other areas previously the preserve of national governments, such as tax collection, health services, agricultural production and commodity extraction, will then demand outside regulation. This will not be easy.

Distinctions between private security firms and mercenaries are hard to discern in an environment of weak state capacity and unwillingness on the part of the international community to accept full responsibility for peace-support missions. In some instances, the military resources at the disposal of these private firms are considerably greater than those available to states, yet not subject to the usual constraints applying to inter-governmental relations. Mercenary groupings have metamorphosed from detachments seconded to, and under the command of, local military forces into those paid for by the host governments but under distinctly separate command and control, and with external means of financial and military support.

With this backdrop in mind, the authors of the following four papers were asked to examine the rise and regulation of the private security industry in Africa. A number of questions were deemed pertinent to this study:

- First, is it possible to arrive at a consensually acceptable international definition of mercenary activity?
- Second, what are the trends regarding the likely extension of private security operations throughout Africa? Is the so-called 'privatisation of security' an increasing or decreasing phenomenon?

¹⁵ Clapham C, *Africa and the International System: The Politics of State Survival*. Cambridge: Cambridge University Press, 1996, p.73.

- Third, could private security companies be utilised in place of, or alongside, multinational peace-support operations? What are the likely pitfalls and problems with this?
- Fourth, what are the dangers inherent in private security operations, and how best might these be avoided?
- Fifth, is it possible to control or regulate such operations and, if so, how best can this be achieved — internationally, regionally or through domestic legislation? In this regard, it may be useful also to examine the South African experience with the development and application of legislation to regulate such activities.
- Sixth, what are the long-term foreign policy implications of such operations: for the host state as well as the state(s) of origin of these forces?
- Seventh, will a reliance on private security firms compromise other international initiatives in Africa? For instance, how will the control of small and conventional arms be possible if countries increasingly rely on private security firms?

Practical Problems of Definition

There remain problems of definition of mercenary activity. When does a private security company become a mercenary outfit? When is a consultancy a private security firm? Or when does a NGO become a private security consultancy? Should a national of one state engaged in military activity in another be regarded as mercenary? As one veteran of the UK Special Air Service (SAS) and SADF has put it: 'It's true that I've been a mercenary for a few months in my life, in northern Angola in 1976 and in Colombia. But Gurkhas are mercenaries too, and so are all the British officers and men who served in the Sultan of Oman's Armed Forces'.¹⁶

The use of the definition 'foreign military assistance' in the South African legislative context, as Abraham has argued, 'is problematic', and 'sufficiently wide to include a range of activities unrelated to military matters in the conventional sense'. Similarly the definition of mercenary activity under South Africa's *Regulation of Foreign Military Assistance Act, 15 of 1998* to mean 'direct participation as a combatant in armed conflict for private gain'¹⁷ is, he

¹⁶ McAleese P, *No Mean Soldier: The Story of the Ultimate Professional Soldier in the SAS and Other Forces*. London: Orion, 1997, p.i.

¹⁷ Section 1 (iv), *Regulation of Foreign Military Assistance Act 15 of 1998*.

contends, to render the definition meaningless. 'A more effective definition', he noted, 'could have looked to the purpose for which the mercenary is employed'.

Current international definitions and legislation do not exclude the type of mercenary increasingly present today: that recruited by a legitimate, sovereign government (normally to train and equip), however shaky that legitimacy and fictional that sovereignty. This much, as Herbst reminded us, should be expected, particularly in Africa, where states have long relied on foreign military assistance for their continued existence. As he has also pointed out, there is a 'bright line' which exists between the legitimacy of recognised governments employing firms as opposed to rebel movements doing so. On the other hand, as Christopher Clapham observed, 'Guerrilla warfare in Africa has characteristically been the result of bad government, rather than, or at least quite as much as, its cause'.

Problems of definition of private security industries are compounded by secretive internal structures as well as the operating parameters and funding arrangements of private security firms. Investigation of their activities is difficult where such firms have low levels of capitalisation and few formal, constantly maintained structures. Given such an asset structure, there is thus no real requirement for them to have headquarters in one place. Where they are, not surprisingly, such firms are unlikely to work against the interests of their host states. They are, as Herbst noted, 20th Century 'virtual firms'.

Even national armies in parts of Africa have become 'privatised' by their use to secure personal gains for their members or the governing regime. Privatisation is also often closely associated with the 'commercialisation' of security — the use of armies to secure access to economic resources, from which in turn those armies can be paid.

The conversion of supposedly national armies into groups of armed individuals bent on plunder is often exacerbated by the poor conditions of service offered in militaries, and the absence of formal controls and leadership examples. As Clapham has argued, 'the commercialisation of security in Africa is intimately related to the failure of many African states to develop "public" security systems in the first place ... that the choice that effectively arises is not one between "public" and "private" security, but rather one between alternative forms of private system'. *This distinction is complicated by the nature of contemporary civil-military relations in Africa, where the common involvement of the army in politics has led to a residue of politics in the army.*

This complicates the definition between public and private security, already blurred in the absence of good governance, and the open conduct of

warlordism and crime in many areas. Indeed, the degeneration of African state structures is so complete in some areas that the current environment can be described in terms of systems of *insecurity*.

'Commercialised' public security operations are not uncommon in the peacekeeping domain. The roles of the Economic Community of West African States' Monitoring Group (ECOMOG) in Liberia and Sierra Leone, where the role of the Nigerian military led to the acronym being twisted to 'Every Commodity and Movable Object Gone', and that of the Zimbabwe and Angolan forces in the Democratic Republic of Congo (DRC) in 1998 which were used *inter alia* to secure private, leadership access to mining concessions, are cases in point.

Challenges of Regulation

International security services are a peculiar industry. The product is deadly force, the labour required is specialised but highly mobile and unorganised. Entrepreneurship is not constrained by the need to raise large amounts of start-up or fixed capital. Contracts are typically extra-legal, and difficult to secure or enforce. And because these companies deal with matters of national and international security, non-client governments can take a sudden interest that can be a boon or can seriously damage a firm. Some, notably the US with its technologically advanced Office of Foreign Assets Control, are presumably able to monitor the finances of security services, and the Central Intelligence Agency (CIA) and many other intelligence agencies are busy tracking mercenary activity.

Most governments presumably would like to regulate this business. But the practical and political problems in even reaching an accord on how to proceed are enormous. As noted earlier, there is no consensus yet on how to define key terms, such as who is a mercenary, and, more importantly, what constitutes acceptable and unacceptable behaviour. Some actions, like assassination or helping to overthrow a legitimate government, are clearly contrary to established international legal norms, but supporting an insurgency against a regime widely held to be culpable of major human rights abuse may not be.

If regulation is to be a subject for international negotiation and action, the framework will have to include the supply and demand functions. In attempting to regulate the international drug trade and curtail the flow of narcotics, more effort by the US and other concerned countries has been devoted to stopping supply than lowering demand. And most observers agree this approach is not working. The demand for mercenaries and other security

services tends to be a function of failures of governance. The demand for these services is a function of other deeper problems, including the failure to prevent and resolve ethnic and other forms of conflict. Unlike international drug trafficking, this problem might be better addressed by trying to regulate the nature, direction, and levels of supply of private security services.

Finally, a viable regulatory framework will need to apply not only to a diversity of local situations but also at the regional and global levels. This volume's objectives are more modest. The four essays can only begin to map the historical and current roles of mercenaries in Africa (Clapham and Vines), survey the state of development of legal norms that apply to mercenary activities (Abraham), and conclude with a preliminary appraisal of recent regulatory efforts and their prospects (Herbst). The following comments are merely intended to alert the reader to the range of regulatory issues and obstacles that must be overcome, with particular emphasis on the search for standards to apply first of all to a major supplier country, South Africa.

A number of immediate issues and problems are apparent in assessing the trends and possible regulatory mechanisms of private security firms in Africa. Five areas should be highlighted:

- First, the scale and number of operations, particularly in Africa, should be addressed.
- Second, many security firms are private by definition — not under the control (as opposed to command) of states. These firms exist because states are weak and incapable of exercising control.
- Third, increasingly the use of mercenary forces in Africa is associated with those states with few security options (and less sympathy and friendship from the international community) and dubious legitimacy.
- Fourth, the emergence of private security companies in an age of global communication together with the degeneration of state units, especially in Africa, has served in itself to obfuscate, as Garth Abraham reminded us, the 'boundaries in the debate about the morality of mercenarism'.
- Fifth, and finally, there is today an explicit link between the operations of private security companies and their access to natural resources, where, in contrast to the norm in the colonial era, the focus is not on governance but rather on the narrow appropriation of commodities. This raises questions about the exact nature of the 'security' which private companies are trying to secure — where there is a need to distinguish between the political and military success of such assistance.

So long as many African states remain fictional legal sovereign entities with unresolved political/security problems, and with many retired military available in an environment where there is a 'profound ambivalence' on the part of the international community towards both the plight of African states and the regulation of private armies, there will be a fertile, lucrative market with few barriers to the provision and regulation of such services. Even in the South African case, where there is the political will and the most complete legislation in the world, three fundamental problems remain to undermine regulation:

- First, the ability of mercenary organisations to mutate to circumvent legislation, most obviously by changing their host base.
- Second, the extra-territorial nature of enforcement of domestic legislation (given that these firms will not operate where they are based). Related to this,
- Third, the ability (and resources) of governments to regulate the many types of activity that could fall within the broad definition of private security. In his challenging assessment of the aforementioned South African *Regulation of Foreign Military Assistance Act*, Garth Abraham has reminded us that 'Legislation incapable of proper enforcement is hollow legislation'.

First Regulate Domestic Security Services

Arguably, effective legislation has to begin at home with domestic security companies. As one senior member of the South African Secretariat for Safety and Security has argued: 'If you regulate at home and have responsible domestic security, you are more likely to promote a responsible and professional industry abroad'.¹⁸ In terms of the South African constitution, 'security services must be structured and regulated by national regulation'. As of 21 October 1998, there are 136,310 private security guards operating from 5,939 companies in South Africa, which are regulated by the Security Officers Board (which largely excludes in-house company security divisions).¹⁹

There are a number of parallels between external and internal private security industries:

- First, there is potential for abuse if they are not effectively regulated.

¹⁸ Interview, Johannesburg, 7 December 1998.

¹⁹ Information supplied by the Security Officers Board, 7 December 1998.

- Second, both external and internal agencies operate outside of the state monopoly on coercion, in an environment where the state is weak.
- Third, these agencies do not necessarily interact in the interest of the public, but rather in the interest of clients.
- Fourth, both industries are competitive and fragmented, so it is difficult to get them to speak with one voice. If the South African domestic security industry is an illustration of future trends among the external agencies, regulation might be easier to achieve as the industry stabilises rather than during periods of fast expansion — as is the case now in the domestic South African industry.

Prospects for Peacekeeping Inc.

Given the difficulties in enforcing legislation outlined above and the unlikelihood that the (public) international community will step in to provide the services currently offered privately, it may well be that the very nature of the *failed state in Africa, which encourages such intervention in the first instance, also provides the brake on such activity.* On-shore involvement with weak states and poor rebels may, at best, offer a quick return, but at very high risk. More secure and probably less profitable is work for multinational or Non-Governmental Organisations in providing protection, especially for humanitarian assistance/relief work — and this would (most likely) only be available to high-end legitimate organisations, dependent on the support of their host government for such legitimacy. This is an increasing imperative in the international community, given prevailing attitudes towards peace-support operations. As the former UK Permanent Representative to the UN, Sir Anthony Parsons, has observed:²⁰

Imperial responsibility and latterly the ideological coloration of the Cold War engendered a kind of internationalism. Now that both these influences have dissolved and multi-party democracy has taken a stronger hold, governments, even in the most powerful states, are more inclined to formulate their foreign and defence policies on the basis of short-term national interest than they were previously. It is no longer possible to invoke, for example, responsibility for subject peoples or the struggle against international communism in support of domestically unpopular decisions. The quest for domestic popularity is a dominant factor and, with the communications revolution, public opinion wields hitherto unimagined power. Hence, in foreign policy decision making, disinterested internationalism is coming a very poor second to national interest in a world

²⁰ Parsons A, *From Cold War to Hot Peace: UN Interventions 1947-1995*. London: Penguin, 1995, p.270.

of proliferating civil conflicts far from major power centres; except when public outrage demands action, and the prospect of unpopularity through inactivity looms.

The move from the 'privatisation of security' to the 'privatisation of peacekeeping' is not confined to the developing world, however. Washington's decision to ask a US firm, DynCorp, to supply the American contingent for the observer mission in Kosovo in late 1998 has been interpreted as reflecting a growing reluctance by politicians to commit ground troops to foreign military operations.²¹ In a similar vein, another US firm, Military Professional Resources Incorporated (MPRI), trained the Croatian Army for its Operation Storm in 1995, which resulted in the recapture of large chunks of territory, and has more recently been responsible for building up the Bosnian Army through its programme known as 'Train and Equip'.

UN Secretary-General Annan's March 1998 report to the Security Council on the causes of conflict and the promotion of durable peace, while not mentioning such private-public security collaboration, offers a framework for peacemaking, peacekeeping and post-conflict peace-building in which private contractors could conceivably make significant contributions.

The US and the other members of the Security Council have welcomed Kofi Annan's frank and thorough diagnosis of Africa's problems, and they have rhetorically endorsed his call for earlier and more substantial UN involvement in trying to prevent and resolve conflicts. Yet these same governments remain reluctant to cede independent authority and resources to give the UN either the mandate or the capability to act effectively. The financial plight of the UN is particularly perilous because of the US Congress' refusal to pay American arrears totalling some US\$1.3 billion, a sum roughly equivalent to the world body's annual operating budget. At the same time, the US and other powerful nations are reluctant to deploy their own security forces in support of peace operations in Africa, and yet when disasters occur they are the ones who end up paying most of the huge costs of humanitarian assistance.

The 1994 Rwandan genocide and the complex humanitarian emergency which followed, must never be forgotten for lessons they teach regarding the imperative that international capacity for early response and preventive action should be strengthened. There was no lack of early warnings. As the commander of the UN Assistance Mission for Rwanda (UNAMIR), Major-General Romeo Dallaire of Canada, convincingly maintains, just 5,000 troops operating under a peace enforcement mandate (Chapter VII of the UN

²¹ Steele J & R Norton-Taylor, 'Peacekeeping Inc. Flies into Action', *Mail and Guardian*, 6-12 November 1998.

Charter) in April 1994 could have prevented the killing of perhaps a half-million civilians, removed the pretext for continuation of the civil war, helped to avoid subsequent humanitarian operations that have cost more than US\$2 billion, and removed some of the sources of conflict and instability that continue to ravage the Great Lakes region.²²

Calls for a more robust rapid reaction force have thus far been either ignored or rejected by UN members with the capacity to put them into effect.²³ Given current conditions in Africa and elsewhere, the Secretary-General should have at his/her disposal a rapid reaction force of some five to ten thousand troops, backed by a robust planning staff, a standing operational headquarters, training facilities, and compatible equipment. Similar capabilities are also needed at the regional level, but the Organisation of African Unity (OAU) also lacks the political consensus, decision-making machinery and the logistical and financial structure necessary for effective preventive action.

If governments continue to be reluctant to face such challenges directly, despite their growing recognition that more effective regional and international conflict prevention and management measures for Africa need to be devised, perhaps the time has come to consider options for using private security firms to provide some of the stand-by rapid reaction capacity. There is, of course, a long and often unhappy history of UN contracts with private suppliers of transport, communications, and supply functions for peacekeeping operations, which have been handled through time-consuming, laborious and costly competitive bidding processes.

Similar inefficiencies also plague established practices in recruiting peacekeeping troops, most of whom come from a diverse mix of poor countries eager to receive hard currency reimbursement for the salaries and maintenance of soldiers sent on UN missions. While UN peacekeepers are paid as if they were mercenaries, their haphazard recruitment and the incompatibility of equipment, training and operational integrity renders existing procedures inappropriate for an effective rapid reaction force. New standing orders and a different division of labour involving the UN Secretariat, member governments, and private contractors would be needed if the Security Council were to mandate a rapid reaction to a deteriorating situation

²² See Feil SR, *Preventing Genocide: How the Early Use of Force Might Have Succeeded in Rwanda*. New York: Carnegie Commission on Preventing Deadly Conflict, April 1998. For General Dallaire's own reflections, see: 'Rwanda: UN Commander Says More Troops May Have Saved Lives', *Inter Press Service*, 7 September 1994. Also, *The International Response to Conflict and Genocide: Lessons from the Rwanda Experience*. Copenhagen: Steering Committee of the Joint Evaluation of Emergency Assistance to Rwanda, 1996 (Four Volumes).

²³ See Urquhart B, 'For a UN Volunteer Military Force', *New York Review of Books*, 10 June 1993.

such as the one faced by General Dallaire in Rwanda in April-May 1994.

*Ironically, those governments most capable of helping the UN meet this challenge identified the need as long ago as January 1992, when an unprecedented summit meeting of the UN Security Council called upon the Secretary-General for 'his analysis and recommendations on ways of strengthening and making more efficient ... the capacity of the UN for preventive diplomacy, peacemaking and for peace-keeping.'*²⁴ Boutros-Ghali replied with *An Agenda for Peace*, which pointedly reminded member governments that 'preventive diplomacy requires ... early warning ... fact-finding [and] may also involve preventive deployment and, in some situations, demilitarised zones.'²⁵ But the Security Council typically chose to ignore the report it had requested.

Eight years later, the political space and resources available to the UN Secretary General to develop the capacity to implement the measures to promote peace in Africa remain strictly limited. His only real authority to take preventive action, granted under Article 99 of the UN Charter, is to appoint personal envoys and deploy fact-finding missions and consult with member governments about ways to resolve conflict. During the 1990s the number of personal envoys and special representatives of the Secretary-General quadrupled to over twenty missions currently under way.²⁶ Special representatives require a Security Council mandate, although, as in Bosnia, Somalia, and Rwanda, they have often been dispatched with too little authority and too few resources to handle their missions, and so become the sorry scapegoats for the policy failures of governments seeking political cover.

Frustration over the failure of the US and other major powers to back UN peace operations adequately has prompted smaller powers to seek new ways to assist the Secretary-General. For example, in September 1996, then Prime Minister Gro Harlem Brundtland announced a Norwegian pledge of 'several million dollars' to establish a *Fund for Preventive Action*, which would be available to the Secretary General to 'facilitate immediate deployment of first class expertise for pro-active diplomacy'.²⁷ The following year, the founder of

²⁴ Statement by the President of the Security Council, S/23500, 31 January 1992.

²⁵ Boutros-Ghali B, *An Agenda for Peace*. Report of the Secretary General A/47/2775/2411, 17 June 1992.

²⁶ See Vance CR & DA Hamburg, *Pathfinders for Peace: A Report to the UN Secretary-General on the Role of Special Representatives and Personal Envoys*. New York: Carnegie Corporation of New York, September 1997.

²⁷ Gro Harlem Brundtland, *Prime Minister of Norway. Address to the 52nd Session of the UN General Assembly*, New York, 23 September 1996.

CNN, American businessman Ted Turner, pledged US\$1 billion to help strengthen the UN in ways that may eventually improve its capacity for preventive action. Although the UN Secretary-General will never be able to act in defiance of the Security Council, the Norwegian and Turner, and other voluntary contributions may give him the means to explore ways to build capacity for preventive action, including the eventual establishment of a rapid reaction force.

What role private security companies could and should play in support of UN and regional peace making and peacekeeping operations in Africa deserves a more thorough reappraisal, involving independent experts, representatives of the UN and OAU, and the South African along with other interested governments. Such deliberations should also include industry representatives. Initially, at least, the meetings of the group should be informal and under independent auspices, with participants acting in their personal capacities. In this way participants might find it easier to raise sensitive issues of sovereign rights and obligations, human rights and security, and reduce the risk of conflicts of interest and other moral hazards that might crop up in formal talks between the companies and potential clients. Kofi Annan's report to the Security Council on the causes of conflict and promotion of durable peace in Africa, and its implications for private security companies, might be a useful point of departure.

A special task force on the role of private security companies in support of more effective multilateral peace operations in Africa could serve several practical purposes:

- It should begin by sponsoring a more comprehensive and authoritative inventory of the industry's current scale and range of activities in African conflicts. If the task force were to be formed in a way that had at least the tacit blessing of the UN and OAU Secretaries-General, there is a good chance that several of the major Western intelligence agencies would provide informal assistance to the inventory.
- Elements of a 'code of conduct' and 'best practice' guidelines should be *tabled and carefully considered so that all stakeholders in African peace operations have a better idea of when private security companies are part of the problem or could become part of the solution.*
- A process should be developed for periodically evaluating and rating security companies, so that international organisations, NGOs, and other potential clients know who to consider, and efforts can be undertaken to restrict the operations of those engaged in nefarious activities.

- Assessments should be undertaken of the changing policies of the major Western donor countries toward private contractors in the security business, as to the availability of resources — financial and material — for African peace operations.
- Developing technical assistance capabilities for improving the legal and monitoring infrastructure of African countries that have private security companies based and/or recruiting staff on their territory is another important task. A process might be devised similar to the programs developed to assist countries to become full and effective partners in sanctions regimes. This could be especially useful for those developing countries that have traditionally supplied peacekeeping troops to the UN and whose veterans might become excellent recruits for approved privately run security operations.
- Finally, just as the UN Secretariat and the specialised agencies have developed regular consultative mechanisms with leading humanitarian NGOs, the business community and various other interests, the establishment of regular links with the leaders of the most important and responsible private security companies should be considered. One of the important side effects of such an arrangement would be to encourage self-regulation, as the market leaders presumably would have an interest in curtailing the activities of their more unscrupulous competitors. This may be the only way to promote some degree of 'good conduct' in an industry with a history that is more notorious than noble.

Conclusion: The Need for Effective Security in Africa²⁸

As long as many African states hide behind a façade of sovereignty and the international community prefers to abide by that pretext, there will be a market for private security operations and, consequently, a rejection by those very weak states of the effective regulation of such operations. Indeed, prospects for the regulation of foreign military assistance would appear to be best where either the private security company works closely with its host government (seeking a so-called 'seal of approval'), or where those companies are dependent on contracts with inter-state organisations or NGOs. Self-regulation through, first, the need for host governments to champion their cause and, second, the need to acquire a better image, will probably be more effective than any extra-territorial attempts to impose domestic legislation.

²⁸ These conclusions draw on those made in Mills G & C Clapham, 'Mercenaries Offer no Solutions to Effective Security in Africa', *The Star*, 21 December 1998.

Indeed, the search for respectability is seen to have prompted the announcement of the closure in December 1998 of Executive Outcomes (EO), arguably the best known of private security firms.

Ultimately, the most effective controls on mercenary operations lie in the relatively small number of African states with the resources needed to pay them; in the high level of military effectiveness required to make a real impact on an increasingly militarised continent; and, most of all, in the inability of external military intervention of whatever kind to create any lasting peace within divided African states. Whatever their temporary attractions, mercenaries are no answer to the basic need to create effective security in Africa.

African Security Systems: Privatisation and the Scope for Mercenary Activity

*Christopher Clapham*¹

The objects of this paper are firstly, to identify those features of African security systems that have created opportunities for the introduction into some African states of what may be termed 'privatised' security operations, and especially the foreign commercial security forces which are generally known as mercenaries; and secondly, to suggest criteria which may help to account for the relative success or failure of such forces, by comparison with other forms of security system. The first of these objects must necessarily take us into a very broad discussion, not only of the nature of African security systems, but also of what we should understand by 'privatised' security. I will argue that the commercialisation of security in Africa is intimately related to the failure of many African states to develop 'public' security systems in the first place, and that the choice that effectively arises is not one between 'public' and 'private' security, but rather one between alternative forms of private system. The second takes us into more specific issues of force organisation and effectiveness, and the relationships between privatised security forces and the states and populations concerned.

The Origins of Privatised Security in Africa

Public and Private Security

Central to the ideology of modern statehood is the idea of the state as an organisation which, in Weber's well-known definition, exercises 'a monopoly over the legitimate use of force within a territory'. This conception of the state's right to monopolise the legitimate use of force provides the basis for the *publicisation* of security, with which the privatisation of security can then be contrasted. Nor is this distinction merely an 'academic' one, used by social scientists to provide a neutral or objective definition of the type of security system prevailing under any given circumstances. It is, rather, a classically ideological definition, in which what is ostensibly a simple description is used to structure our perceptions of security in ways which confer power on some political actors, and remove it from others. The Weberian definition of public security *confers power not only on states, but on those social groups and*

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individuals who control states, and who therefore adopt an ideology of statehood which enhances their power. These have every interest in presenting the state as the legitimate expression of the identities and aspirations of those who live within its territory, and as being entitled therefore to undertake actions, in the security field as in any other, which enjoy a specially privileged status. And since those who control different states share common interests which to an appreciable extent override their frequent disagreements with one another, the 'community of states', or international system, generally has an interest in upholding this conception of legitimate security, and in building it into the charters of international organisations such as the United Nations (UN) or the Organisation of African Unity (OAU). From this point of view, 'public' security is that provided by states, which are deemed to represent the populations of the territories ascribed to them, and is contrasted with 'privatised' security systems controlled by groups and individuals other than states, such as commercial security companies, warlords, criminals, guerrilla bands, or — to take the form which has recently attracted most attention — 'mercenary' operations.

Like any plausible ideology, this one has a great deal to be said for it. A state which is both effectively organised on the one hand, and enjoys the support of its own people on the other, is indeed capable of exercising the minimal levels of force without which it is scarcely plausible to suppose that any stable social order can survive, in a way which is vastly superior to any practicable alternative. The ideal of the efficient and accountable state is one well worth striving for, in any setting in which there is a reasonable prospect of achieving it. The central argument of this paper, however, is that in much (or indeed most) of Africa, as to an appreciable degree also in some other parts of the world, this ideal of public security cannot plausibly be achieved. The management of security by at least a substantial number of African states is in practice essentially 'private', in that such security as exists is primarily concerned to protect the lives, power and access to wealth of specific groups and individuals who control the state, and is not substantially different from the security provided, say, by a warlord who is not formally recognised as representing a state. Many of the claims that are made for the provision of public security through states are actually little more than special pleading, designed to appropriate a veneer of legitimacy for attempts by people who control states to use them for their own interests.

This paper therefore adopts an alternative definition of public and private security: that the provision of security is 'public' to the extent that it protects without discrimination the whole population of the territory concerned, and to the extent also that those who are responsible for furnishing this security are

ultimately accountable to the people on whose behalf it is maintained. To the extent that these requirements are not achieved — and it has to be recognised that in virtually no state in the world are they achieved in their entirety — the provision of security, insofar as there is any, is therefore 'privatised', in the sense that it is exercised in the interests of particular groups and individuals as against those of others. Rather than confronting a sharp distinction between public (or state-managed) security systems on the one hand, and private (commercial or even criminal) ones on the other, we are faced by a proliferation of different kinds of security system, each displaying some varying combination of the two basic criteria by which any security system needs to be judged: its efficiency in maintaining some kind of order on the one hand, and its accountability to those people whose security is at stake on the other. The emergence of 'mercenary' forces, which have prompted much of the concern about the privatisation of security in modern Africa, is far more the result than the cause of the underlying problems of African security; and rather than being inherently or necessarily evil, such forces need to be assessed alongside other would-be solutions to the African security dilemma, each of which — supposedly 'national' armies most definitely included — has its own elements of privatisation.

The Origins of the African Security Dilemma

The origins of the African security dilemma lie squarely in those of the modern African territorial state. This is not to deny that precolonial Africa had security (or rather insecurity) problems of its own, of which the upheavals in early 19th Century Southern Africa known as the *mfecane* provide one of the most terrifying examples. It is merely to state that the specific form of the insecurity problem as we currently know it derives from the specific form of African statehood.

This amounted, obviously enough, to the imposition on Africa of a Weberian model of territorial statehood on the European pattern, marked by the creation of fixed territorial boundaries, and by the establishment of subordinate territorial units which were organised according to a strict hierarchy under the control of a single territorial government. Equally obviously, this pattern directly derived in the great majority of cases from European colonialism, though it did not do so in every case, and as we shall see, the indigenous African variants on the theme are in some ways particularly revealing. It was likewise always one of the key projects of colonial rule to ensure that security derived, and was seen to derive, explicitly from the central state, and that any mechanism through which African communities might seek to maintain 'their

own' security was systematically destroyed, or strictly subordinated to the colonial authorities. Wilfred Thesiger, describing his time as a British colonial administrator in Sudan, has an illustrative vignette:² having deprived their Sudanese subjects of arms with which to defend themselves, the government had left them prey to lions, and one of the obligations of a district official was then to exterminate any of these vermin who posed a threat to livestock; an activity previously carried out by local people on their own was thus taken over by the agents of government. Indigenous legal codes, where they were permitted to survive, were likewise brought under central supervision.

It is worth remembering, however, that the imposition of colonial territorial rule in Africa was itself in large measure a response to the failure of previous forms of exploitation which bore disturbing resemblances to some of those found in conflict zones of modern Africa, and which not only caused massive levels of human suffering and social disruption, but which had proved to be counterproductive even to the interests of the exploiters themselves. Apart from the slave trade, the clearest example of this process was the Congo Free State of King Leopold of the Belgians, in which such government as existed was solely concerned with the extraction of profits from a subject population, leading to abuses which eventually led to the conversion of the inaptly named Free State into a Belgian colony. The Portuguese Mozambique and Nyassa companies, and the Royal Niger Company and British South Africa Company (BSAC), likewise demonstrated the weaknesses which derived from treating government as an adjunct to commercial operations, and emphasised the desirability of associating the provision of security with the public institutions of the state.

Colonial rule possessed at least some public character. Colonial armies scored very highly on the effectiveness scale, and after the initial conquest, they were generally able to secure order with a minimal application of actual force, not least because they usually possessed the organisational and technological capacity to generate the confidence trick on which the maintenance of security classically depends: they were powerful, because they were believed to be powerful. In the process, they created a mythology of white military prowess, which at least in the early post-independence years helped to bestow a largely undeserved credibility on the ragbag collections of white mercenary forces which were recruited by some African rulers to deal with local security problems. They conversely scored very low on the scale of accountability to indigenous populations. Even during the pre-independence era, moreover, African armies were often in some degree discriminatory, not just between

² Thesiger W, *The Life of My Choice*. London: Collins, 1987, pp.203-9.

Africans and colonialists, but between different elements within the African population. All colonial governments to some extent used Africans to control other Africans: they were much cheaper than troops drawn from the colonial metropolis, they were generally better adapted to local conditions, and in the last resort they were more expendable. The British in particular were notable for the extent to which they recruited their armies from specific sections of the population, which were encouraged to maintain their own separate identities, as a means both of maintaining their internal *esprit de corps*, and of differentiating them from other indigenous people whom they were needed to control. It is worth noting that this practice, an extraordinarily effective one, goes back to the very earliest days of English (rather than British) imperialism, originating to the best of my knowledge in the recruitment of regiments drawn from specific clans in order to control other clans, during and after the 1745 rebellion in Scotland. A similar technique was used, far less effectively, by the Siyad Barre regime in Somalia. In British colonial practice, it subsequently reached its apogee in India, before being introduced to Africa. In practice, too, the ideology of 'martial races' provided a cover for the discriminatory recruitment of the military from those sections of the population which were generally least educated, most distant from the centres of political and economic power, and hence least threatening to the colonial government.

As I have already hinted, however, these sectional armies were not restricted to colonial powers, and appeared in their most extreme and exploitative form in non-colonial African states, which (not least in order to preserve their independence against encroaching colonialism) were obliged to establish their own projects of territorial statehood. This invariably involved the recruitment of forces associated with the central state power to conquer and expropriate the lands of neighbouring peoples, creating in the process inequalities which were built into the structure of the state, in a way that proved far more subversive of any 'public' conception of security than the relatively uniform imposition of control by colonial forces. The *neftenya* of the emperor Menilek in Ethiopia, military colonists drawn from the soldiers of the imperial army who were settled on conquered lands in the south and west of the country, laid the basis for the revolution of 1974, and the formation of a militant ethnicity which has now led to the division of Ethiopia into regions controlled by different 'nationalities'. The peculiar viciousness of conflict in Liberia since 1980 owes much to the legacies of an internal colonialism at the hands of the Liberian Frontier Force. In South Africa, indigenous military control was very closely associated with the imposition of white rule. The imposition of territorial statehood on diverse populations, rather than European colonialism *per se*, has been at the root of the problems of African security.

Independence and the Failure of 'National Security'

The achievement of independence from colonial rule offered African states, at least in principle, the opportunity to establish national security systems in which the security of the state could be combined with that of its citizens. An analysis of how this combination may be achieved is central to the most influential work in the field of security studies published in recent times, Buzan's *People, States & Fear*,³ and the optimal solution suggested by Buzan is that this dilemma can only be resolved to the extent that the population of the state broadly share an 'idea of the state' (or set of beliefs about why the state exists and how it should be run) with those who run it. Save in the relatively small number of cases, such as Sudan, where the idea of the state formed by its governing *élites* was contested from the very start, a broad consensus was established on the maintenance of the colonial state framework within its existing frontiers, and the creation of a sense of national identity on the basis of equality between all of its constituent peoples. This in turn offered a manageable and consistent conception of their own function to the generally small military forces inherited from colonialism, which were then fairly rapidly indigenised. These forces were usually apolitical, having been remarkably well insulated from the ferment of anti-colonial nationalism: they were neither much affected by anti-colonialism themselves, nor were they used, to any but a very small extent, to control or suppress nationalist agitation on behalf of the colonial rulers. Seldom did they stand (outside states such as Liberia and Ethiopia) in any evidently repressive relationship to the rest of the population, nor was the territorial integrity of the new states often threatened, either from within or from across the frontier. They could apparently look forward to a stable future as small professional armies with largely symbolic functions.

In a few African states, some approximation to this conception of the military role has been maintained. In a great many, however, it has not; and with its failure has come a collapse in the public provision of security, and its replacement (if security could be provided at all) by some necessarily privatised substitute.⁴ For a start, some militaries had problems even in making the initial transition from colonialism to independent statehood. By far the most important case was the former Belgian Congo, where the collapse of discipline in the *Force Publique* within days of independence led to almost immediate UN intervention, and even when some form of order was restored,

³ See Buzan B, *People States & Fear*. Brighton: Wheatsheaf, 1983, chapter 2.

⁴ See Lee JM, *African Armies and Civil Order*. London: Chatto & Windus, 1969, for a perceptive early analysis of the problems involved in transforming colonial forces into national armies.

paved the way for the most ruthlessly privatised of all African armies under the patronage (rather than command) of Mobutu. In the three East African states of Kenya, Tanganyika/Tanzania and Uganda, the mutinies of early 1964 were suppressed by instant British intervention, but led to rather different political responses on the part of the three governments concerned: in Kenya to a small professional army under a measure of continued colonial tutelage; in Tanzania to something closer to a citizen army, in association with the ruling party; and in Uganda, most dangerously, to the buying off of the mutinous elements, who were permitted to remain within the military.⁵

There were sometimes problems, too, in containing the divisions inherited from colonial militaries. Again, Uganda provides an example: Idi Amin belonged to a peculiar and virtually 'foreign' section of the population that was descended from the mercenaries recruited by Emin Pasha in the earliest days of colonial conquest, while the Ugandan army as a whole was differentially recruited from the north of the country, and was thus implicitly at odds with the more educated and prosperous populations of the south, and especially from Buganda — a fact which acquired a greatly enhanced political significance when the army was called on to oust the Kabaka of Buganda in 1966, and still more so after Amin seized power in 1971. In Nigeria, the introduction of a regional quota system for military recruitment under the first independent government helped to foment the ethnic military bloodletting of 1966. The former French colonies were generally spared the ethnic recruitment that characterised British colonial militaries, but one exception was Togo (in which, because it was a UN trust territory, conscription was not permitted), where it helped lead to the overthrow of the southern political élite by a northern militariat under Eyadema.

Early experiences of foreign mercenary activity in post-colonial Africa resulted in part from the continued mystique attached to white military forces in the continent, in part from the inability of the armed forces in a number of African states to cope with the challenges of the early post-independence years. In the former Belgian Congo, the failure of the national army left any ruler or would-be ruler dependent either on UN assistance, with the problems with that involved, or else on the recruitment of private forces under the command of such notorious operators as 'mad Mike' Hoare.⁶ The Nigerian civil war of 1967-70 created employment opportunities especially for specialists such as aircraft pilots, but also on the Biafran side for infantry; the death in action of one such mercenary, his pockets stuffed with dollar bills, is graphically

⁵ See Omara-Otunnu A, *Politics and the Military in Uganda 1890-1985*. London: Macmillan, 1987.

⁶ For Hoare's own account, see Hoare M, *Congo Mercenary*. London: Robert Hale, 1968.

depicted by John de St Jorre.⁷ The last dying gasp of this form of mercenary activity occurred in the Angolan civil war of 1975-76, during which a number of captured European mercenaries were tried and executed by the victorious *Movimento Popular de Libertação de Angola* (MPLA). In part perhaps as a result of this experience, but more because of greatly increased direct intervention by external states including France, the Soviet Union and Cuba from 1975 onwards, overt mercenary involvement in mainland Africa was then greatly reduced until the 1990s, although individuals such as Hoare and the Frenchman Bob Denard took part in operations in the Comores and the Seychelles — groups of small islands with negligible domestic militaries and violent local politics, which were exceptionally vulnerable to invasion.

Although the mercenary problem seemed by the mid-1970s to have been solved, as time went by much more basic problems emerged in the maintenance of public security structures in Africa. These ultimately went back to the inherent problems of African statehood itself: if there is no agreed 'idea of the state', as must almost necessarily be the case where states themselves are artificial amalgamations of peoples lacking shared identities, then there is no public basis on which a security structure can be built; and whatever system for maintaining security is constructed, it cannot help but be privatised, in that it must be drawn from, and reflect the interests of, some domestic (or even external) groups rather than others. This process can be traced in particular cases to a succession of incidents and events, which individually seemed to reflect little more than bad luck or poor judgement, but which cumulatively destroyed the idea of public order. The underlying problems revealed by these failures were, however, more deep-seated.

The two developments which more than any other contributed to this result were firstly military regimes, and secondly guerrilla warfare, even though both military *coups d'état* and guerrilla insurgencies took markedly different forms in different instances, and had correspondingly varying effects. In the case of military regimes, as the familiar maxim has it, when the army enters politics, so politics enters the army. Even an initially united military faces problems over the politicisation of promotions and recruitment, and is forced to take sides on issues which define some sections of the population as its allies, and others as its adversaries. Over time, officers in politics acquire both political and financial interests which they are impelled to defend, and which likewise turn them into a sectional force. Where the military is already divided, the dangers are much greater. They have historically proved to be greatest of all in cases such as Uganda and the Central African Republic, where power was

⁷ De St Jorre J, *The Nigerian Civil War*. London: Hodder & Stoughton, 1972, p.137.

seized by ill-educated former colonial non-commissioned officers, who simply lacked the capacity to formulate any national project which would accord a public legitimacy to their regimes.

Guerrilla warfare in Africa has characteristically been the result of bad government, rather than, or at least quite as much as, its cause. The creation of liberation movements, directed against colonial or minority regimes which explicitly used state power as an instrument designed to protect the ruling group against demands for participation by the mass of the population, offered at least a possibility of establishing security systems accountable to the majority which, once victory had been achieved, could be combined with the resources of a reconstituted state to provide an appropriate form of public security. The same was likewise true, at least in principle, of those insurgencies which were formed, in countries such as Ethiopia, Liberia, Somalia, Uganda or Zaire, to fight against indigenous African regimes which had forfeited any claim to govern on behalf of the great majority of their populations. In some instances, a reasonable claim could indeed be made; and these cases will be discussed later in this paper. There have nonetheless been very considerable problems associated with the guerrilla approach to security, deriving especially from the high level of militarisation and violence that almost necessarily accompany it; the tendency for guerrilla forces themselves to become divided into opposed factions (often drawing on ethnicity), even when fighting against a common target such as a colonial regime; and the distinctive political attitudes or ideologies of those who fight their way to power by these means. In some cases, as in Somalia and Liberia, guerrilla insurgency has been associated with the most ruthlessly privatised of all African security systems.

One of the clearest indicators of the failure of public security is the incidence of refugees, a criterion by which Africa emerges as by far the worst governed continent in the world. This may not be an altogether fair indicator, in that Africa's numerous small states and uncontrollable frontiers make it much easier for people to flee to neighbouring countries than in a continent with much larger states, such as Asia. The refugee figures do however point very clearly to the failure of African security systems, as a result either of state incapacity, or of the imposition of state power in ways which are appallingly discriminatory as between different sections of the population.

At the same time, the failure of state security systems in Africa can also be related to much broader considerations affecting security worldwide. In a

famous book,⁸ Martin van Creveld has pointed to the decline of what he terms 'trinitarian war', in which conflicts are assumed to take place between states, and to be conducted by the state's regular armed forces, and its displacement by various forms of 'irregular' warfare, characteristically involving guerrilla insurgencies, popular upheavals, and terrorist activities. 'Classic' wars, such as those between Britain and Argentina over the Falklands in 1982, or between Iraq and the United States-led alliance over Kuwait in 1990/1, are very much the exception in the modern world. More broadly, indeed, the rise of the state with its professional armed forces in early modern Europe, essentially from the mid-17th Century onwards, can be seen as a historical phenomenon which is now giving way to the assertion or reassertion of alternative forms of political organisation, in which the supposedly sovereign state has to make do with a far more limited role.⁹ Numerous factors associated with that buzzword of the 1990s, globalisation, have made it far harder for any state to maintain the level of control over its population which state security systems require, including not only the universalisation of trade and capital flows, but the spread of culture, values and communications.

African states have been peculiarly ill-equipped to resist subversion by external forces, because the circumstances of their creation and their exceptionally low levels of economic development have generally prevented them from constructing effective states in the first place: they have passed, as it were, from a pre-statist to a post-statist world, with only the briefest and feeblest intervening experience of effective statehood. The post-independence emphasis on 'nation-building', which was supposed to provide the foundation for the creation of such statehood, is no more than a nostalgic memory in the era of the structural adjustment programme and the good governance agenda. Though African states have in some respects been the architects of their own decay, not least as a result of the efforts of their rulers to impose top-down hierarchies of state control which they lacked the social, economic, and indeed military resources to implement effectively, they have also had to cope with an international environment which, especially since the end of the Cold War, has severely challenged the whole project of state creation. Even though there has been a strong recent emphasis, both political and economic, on the need for effective institution-building, the environment within which this quest has taken place is one that has undermined the prospects for its achievement.

⁸ Van Creveld M, *The Transformation of War*. New York: Free Press, 1991.

⁹ The classic study of the long-term impact of war on European statehood is Tilly C, *Coercion, Capital and European States, AD990-1990*. Oxford: Blackwell, 1990.

In summary, then, the capacity of African states to maintain 'public' security systems, in the sense defined at the start of this paper, has been very substantially undermined, both as the result of the internal mismanagement of those states themselves (including on occasion, it should be bluntly stated, *regimes which operated through the crudest forms of mass murder*), and as the result of factors deriving from the circumstances of their own creation and from changes in the global environment, over which they had no control. The central problem of African security management has then been to create some kind of security structure, almost necessarily in many cases a partial or 'private' one, to sustain the basic necessities of human life and provide some foundation for development. This in turn has raised extremely difficult questions about the alternative mechanisms through which this goal might be achieved; and the 'problem' of private or commercial security operations must be placed *within this setting*.

The Commercialisation of Domestic Security and Insecurity

African security (and its corollary, insecurity) have in consequence not only been privatised, in the sense of being undertaken on behalf of some groups within the population rather than (and at the expense of) others; it has also been commercialised, in the sense that it has been heavily concerned with securing access to economic resources on behalf of the people with the weapons. As we have seen, this process goes back to the earliest era of European engagement with Africa, in the form of the slave trade and the chartered companies. Like privatisation, commercialisation operates at different levels of intensity. At the low end of the scale, the military may be able to gain better pay and conditions of service than other state employees, simply because of a perception that they might 'cause trouble' if they did not. The accession to power of military regimes is almost always followed by the allocation of increased resources to the military; and the longer such a regime remains in power, the more opportunities open up for military officers to secure lucrative connections which in turn provide them with a powerful incentive against returning power to civilian rule, other than through some transparent *façade* that enables them to retain their vested interests. Mobutu's Zaire represents perhaps the extreme example of a state which, over a period of more than thirty years, came to operate almost exclusively as a source of private funding for the military dictator, and those on whom he directly relied to keep himself in power. In Nigeria, recent revelations indicate that the late General Abacha accumulated assets of over US\$3 billion (at a rate, simple calculations indicate, of about US\$2 million a day), while some of his subordinates ran up assets of over US\$1 billion.

The very limited funding base of many African states also provides those who run them with a strong incentive to control the specific sources of funds, rather than the territory and the population as a whole. In colonial times, the French divided Chad into what they described as *le Tchad utile* and *le Tchad inutile*, useful and useless Chad. Useless Chad, containing little more than rock and sand traversed by a few scattered nomads, did not matter. Many African states are in much the same position. Their revenues derive from a limited part of their territory — an oil well, a few mines, a restricted zone of profitable commercial agriculture — while much of the rest of it constitutes a drain on governmental resources. Given that cities are by far the greatest absorbers of government revenues, and that control over the capital city in particular is essential for international recognition, the funding structure of government essentially consists in extracting money from the surplus-producing area, in order to direct it towards consumption by the agents of the state in towns, and to some extent by other urban groups (such as potential rioters) who may be in a position to challenge the regime's tenure of power.¹⁰ What is absolutely vital is then to control the state's sources of foreign exchange; and when, as frequently happens, these sources of foreign exchange are managed by multinational companies, whose capital, expertise, and access to international markets are needed to realise their value, it becomes a 'rentier state' which exists in symbiotic relationship with its commercial partner.¹¹ This in turn readily leads to the commercialisation of security in a more restricted sense, through the provision by the corporation of its own private force to control its area of operations. Mercenary forces have equally, of course, been heavily concerned to protect specific installations and areas which are of financial interest to the governments that employ them on the one hand, and which provide the resources with which to pay the mercenaries on the other. The remaining 'useless' areas of the national territory, and the people who live in them, can then be left to their own devices.

The logic of these operations has recently been analysed by William Reno, with a wealth of supporting detail drawn especially from Liberia, Sierra Leone, the Democratic Republic of Congo, and Nigeria.¹² This logic follows a path which leads from cases such as Nigeria, which retains a state with a broad

¹⁰ Africa is not unique in this respect. Braudel F, *The Structures of Everyday Life*. London: Collins, 1981, chapter 8, argues that all early modern cities survived by draining resources from the countryside.

¹¹ For an analysis of rentier statehood in Africa, based on the example of Gabon, see Yates DA, *The Rentier State in Africa*. Trenton: Africa World Press, 1996.

¹² Reno W, *Warlord Politics and African States*. Boulder: Lynne Rienner, 1998.

institutional coherence, within which individual army officers can nonetheless build up substantial commercial empires derived from their access to oil revenues (and other profitable businesses such as the trade in narcotics), through to cases such as Liberia, in which anything describable as a 'state' has disappeared, and rival warlords recruit their own military forces to control areas from which some kind of profit can be made — through diamonds, timber, narcotics, or the straightforward looting of any movable object, such as corrugated iron roofing, which can be stripped and sold on international markets. In between, one may place cases such as Mobutu's Zaire, where the central government's control over most of its territory was not seriously contested (apart from the 1977 and 1978 Shaba invasions) until 1996, but where the 'state' was itself (unlike Nigeria) little more than a private commercial operation; and Angola, where both the 'national government' of the MPLA and the 'rebel forces' of Savimbi's *União Nacional para a Independência Total d'Angola* (UNITA) were essentially concerned with creaming resources from the oil sector on the one hand, and from diamonds on the other. The extreme case of a territory so thoroughly privatised that the slightest semblance of a state has disappeared must however be Somalia, where 'warlords' are most plausibly regarded as commercial operators, each with a private military force recruited largely on a clan basis, and dealing in straightforward looting, the arms trade, narcotics (notably a locally grown narcotic shrub known as *chat*), and the considerable profits to be made out of humanitarian relief and, most ironically of all, international peace-keeping operations.¹³

It does not follow that all African security systems are necessarily subordinate to the private greed of those who run them. Some have been able to retain, or still more remarkably to create, a sense of public obligation which at least to some extent overrides the sectional interests of those who run them. One of the most significant differences between African guerrilla or insurgent forces is indeed precisely that between warlord armies dedicated essentially to plunder, and armies which pursue some national or ideological goal, and are able to maintain a level of discipline that enhances their political appeal as well as their military effectiveness.¹⁴ Four examples of the latter kind of army appear to me to be the Eritrean People's Liberation Front (EPLF) in Eritrea, the Tigray People's Liberation Front (TPLF) in Ethiopia, the National Reformation Army (NRA) in Uganda, and the Rwanda Patriotic Front (RPF) in Rwanda. All of these, obviously enough, were drawn to some extent (though

¹³ See Compagnon D, 'Somali Armed Units: The Interplay of Political Entrepreneurship and Clan-based Factions', in Clapham C (ed.), *African Guerrillas*. Oxford: James Currey, 1998.

¹⁴ Examples of movements which fall into both groups are examined in Clapham C, *ibid.*

a varying one) from particular ethnic and regional groups within each country; the EPLF disproportionately from Christian highland Eritrea; the TPLF from the Tigray region of northern Ethiopia; the NRA from the Bantu kingdoms of southern Uganda and especially Ankole and Buganda; and the RPF from Rwandan Tutsis rather than Hutus. All of them likewise have faced internal armed opposition, and their claims to represent national unity have been bitterly contested. They have nonetheless operated very differently indeed from such movements as *Resistência Nacional Moçambicana* (RENAMO) in Mozambique, the National Patriotic Front of Liberia (NPFL) in Liberia, the Revolutionary United Front (RUF) in Sierra Leone, or any of the multitude of armed factions in Somalia. One group of movements offers (despite brutalities of which all four of those identified above have unquestionably been guilty) at least the possibility of establishing a broadly public or national security structure, whereas the other does not. There are significant differences between African militaries and societies, which need to be taken into account in assessing the actual or prospective security of different African states. We nonetheless need to bear in mind that commercialised security is not merely ascribable to foreign mercenary operations.

Externalised Security

The peculiar problems of African security go a long way towards explaining why African security systems have, since their inception, depended so heavily on the outside world. At one level, of course, this dependence amounted to no more than the continuation into the post-independence era of security structures which had been devised by external powers in order to control administrative units created by colonialism. Those security structures were built on metropolitan models, officered (often until well after independence) by individuals seconded from metropolitan armies, and dependent on arms and other equipment derived from metropolitan stocks. Several African military leaders (with Bokassa in the Central African Republic, decorated for gallantry in Vietnam, as one striking instance) had fought in the colonial army, and it was scarcely surprising that they developed in some cases what could only be described as colonial mentalities. The eulogy to Sandhurst in the memoirs of the Ghanaian military leader Afrifa provides a particularly embarrassing example.¹⁵ British as well as French and Belgian forces intervened in former colonies after independence, while France in particular maintained both permanent garrisons on the continent, as well as a

¹⁵ Afrifa AA, *The Ghana Coup*. London: Cass, 1967, pp.49-52.

comprehensive structure of security relationships which has been widely analysed.¹⁶

On almost every occasion when state security in Africa has been threatened, usually by domestic and much more seldom by external opposition, the external factor has been critical. The stage was set with the United Nations intervention in the former Belgian Congo within days of its independence, sustained through the extensive military aid provided to the Nigerian federal government by both the United Kingdom (UK) and the Union of Soviet Socialist Republic (USSR) during the civil war of 1967-70, and reached its apogee with the continental crises of the later 1970s — the Angolan war of 1975/6, the Shaba invasions of 1977 and 1978, and the Ogaden war of 1977/8. *Unlike previous crises, these were marked by a greatly increased level of superpower involvement, especially on the part of the USSR, and by the commitment of non-African troops to ongoing combat operations, especially of course Cubans.* Even though the end of the Cold War, followed by the dramatic failure of the 'new world order' in Somalia and the deeply controversial French involvement in Rwanda, sharply reduced the willingness of external states to commit their own forces to African security, the underlying dependence of African states on external support remained.

While much of the externalisation of African military security clearly derives from the legacies of colonial statehood on the one hand, and dependence on external armaments on the other, it is difficult to avoid the conclusion that much of it is also due to more general problems in maintaining effective large-scale organisations in African societies, and hence to deeper social causes of a kind that are reflected in difficulties not only of effective state creation, but in creating other institutions such as large commercial corporations. The patron-client structures which form the common currency of African social organisation are particularly ill-adapted to the needs of large and disciplined military forces. Again, there is an appreciable level of variance between African societies, with a marked tendency for more effective militaries to develop in societies with an experience of precolonial state formation. It is unlikely in my view to be a coincidence that the more effective insurgent movements noted above all drew on the social base provided by densely settled agricultural populations — highland northern Ethiopia and Eritrea in the case of the TPLF and EPLF, the kingdoms of the Great Lakes for the NRA and RPF — which had long maintained hierarchical and monarchical structures of government, whereas 'warlord' movements have derived from societies with far more fragmented systems of political authority.

¹⁶ See Chipman J, *French Power in Africa*. Oxford: Blackwell, 1989.

In short, just as the commercialisation of security cannot simply be associated with the deployment of foreign mercenary forces, so too is the externalisation of security a continuing feature of the African military scene. The greater the level of domestic military effectiveness, the smaller the scope for external military engagement. The niche available for occupation by mercenary forces derives from the combination of the factors making for the privatisation and commercialisation of security systems on the one hand, with those making for their externalisation on the other. This in turn creates a setting for mercenary operations, and helps to determine their impact and effectiveness. These are examined in the second section of this paper.

The Possibilities and Limitations of External Privatised Security

Conditions for the Deployment of Mercenary Forces

With the advent of the 1990s, then, the conditions were ripe for the reintroduction into the African security equation of the private forces which had apparently disappeared from the scene in the mid-1970s. The combination of state decay, the desperate struggle of state leaders and others for control over commercial resources, longstanding external dependence, and the end of the Cold War, all contributed to their re-emergence. This paper nonetheless argued that the particular niche market that is available to be filled by private external security forces is always likely to be a small one, and depends on the combination of fairly specific supply and demand criteria. Situations which fail to elicit the appropriate combination of demand and supply factors may well result in intense insecurity, but are unlikely to lead to the deployment of mercenaries.

On the demand side, the decision to seek mercenary assistance requires a prospective African employer, usually but not necessarily a formally recognised government, who needs security services, lacks access to indigenous resources of the quality required (external agencies must always depend on their ability to supply a small but high quality product), and believes himself capable of withstanding the domestic and external opposition which is almost bound to be prompted by the introduction of forces that are widely regarded as illegitimate both within the country and abroad, and which will necessarily require the expenditure of resources at a substantial premium over those available to would-be domestic substitutes. The employment of mercenaries calls for a particular combination of political factors, both domestic and international. In each case, the employer must have enough support to make the use of mercenaries feasible, but not so

much that it becomes unnecessary. Domestically, the critical consideration is usually the relationship between the employer and his own armed forces. Though mercenaries have been employed by a variety of types of regime, from elected governments through to personal dictatorships, these have all suffered from a combination of armed opposition (without which the mercenaries would not be needed) and exceptionally ineffectual indigenous armies, whose own inadequacies can only be thrown into still sharper relief by the mercenaries' arrival, and whose prestige, political leverage and access to economic resources are likely to be sharply reduced by their evident inability to perform the functions that justify their existence. This in turn calls for an army that is itself dependent on the existing regime, and thus on the mercenaries that have come to rescue it, and that is unable to present any effective challenge to them. The autonomy of the indigenous armed forces, and hence their ability to challenge their government's decision to call in mercenaries, was critical to the failure of the Sandline International intervention in Papua New Guinea in 1997.¹⁷ Externally, the regime must have at least enough support to permit the recruitment of mercenary forces, which — even though formally operating outside the authority of their state of origin — normally need at least its tacit acquiescence to be able to operate effectively, while at the same time lacking sufficient leverage to be able to call on rescue by the armed forces of allied states. Though intervention by allied states carries substantial costs, notably in subordinating the rescued regime to dependence on its rescuer, it is generally to be preferred to calling on mercenaries.¹⁸

A second set of demand criteria relates to the conflict in which mercenary intervention is sought. This must not be so heavily militarised that a small group of mercenaries will be swamped by the overall scale of the operation; the militarily successful intervention of Executive Outcomes in the Angola war stands out in this respect as by far the largest-scale conflict in which *mercenary forces have been involved*. It equally requires a situation in which the quality differential is high; in which a small but high quality external force is more effective than indigenous forces, to an extent that will make a critical difference to the outcome of the conflict. Military operations are a field in which quality differentials can often be considerable, as the result of varying capacities to use sophisticated weaponry, battlefield experience, and effective

¹⁷ See the account by Alex Vines in this volume.

¹⁸ However, Zairean troops called in by the Habyarimana regime in Rwanda to combat the RPF invasion of 1990 engaged in such a level of looting and other misbehaviour that the Rwandan government asked them to withdraw, while the Nigerian contingent of the ECOMOG force in Liberia also gained an unsavoury reputation, but any request to withdraw them was diplomatically impossible.

leadership, organisation and training. Some African militaries have however been much more effectively organised than others, and mercenary forces are likely to be able to make much difference only when levels of local organisation are exceptionally weak. A force as well organised as the EPLF, for example, could almost certainly defeat any mercenary force of its own size, let alone a much smaller one. Mercenary forces also usually lack the detailed knowledge of the terrain available to local ones, and may well find it difficult to come to terms with elements in the social and physical environment that local forces cope with relatively easily; their quality differential must be great enough to make up the difference.

The supply side variables are also significant. One critical factor is the availability of resources with which the mercenaries can be paid. It is by no means inconceivable that the considerable expense of hiring them may be met by external aid from a state which wishes to support the employing regime for essentially strategic reasons, but is not prepared to use its own troops for the purpose. Formally commercial military training missions in states such as Bosnia may come into this category, as may the provision of private security to francophone heads of state by individuals associated with the French intelligence services.¹⁹ Normally, however, they will have to be paid from the resources of the territory in which they operate, either directly by its government or indirectly through the involvement of some corporation with interests in the state concerned. This in turn is likely to restrict the employability of mercenaries to the limited number of African states which possess particularly valuable reserves of raw materials, which, given the nature of Africa's economies, will almost certainly be minerals: oil, diamonds, gold, cobalt, uranium. The majority of African states in which mercenaries have been employed — Angola, Congo, Nigeria, Sierra Leone, to take four obvious examples — fall into this category. On occasion, indeed, as in Sierra Leone, they have been brought in specifically in order to take control of the mining areas from which the costs of employing them are to be met. At this point, given the heavy dependence of some African states, as already noted, on installations occupying a very small part of their territory to generate a very high proportion of their revenues, the line between 'mercenary forces' and the maintenance of some kind of 'security' for corporate property becomes blurred. From the uniformed official at the gate, to the fully fledged private army, there is a gradation only of degree. In Angola, for example, Gulf Oil employs an American company, Airscan, to protect its Cabinda oilfields, while another security firm, International Defense and Security, guards the

¹⁹ For an account of one of the best-known operators of this kind, Paul Barril, see Smith S & A Glaser, *Ces Messieurs Afrique*. Paris: Calmann-Levy, 1992, pp.83-104.

Cuango diamond concession.²⁰ Both operations supply substantial revenues to the MPLA government, and in the case of Cuango, deny them to UNITA. The inability of the Angolan army *Forças Armadas de Angola* (FAA) and its associates to provide such security is graphically demonstrated by accounts of a recent UNITA attack on the Yetwene mine, which was run by Diamond Works, a close associate of EO, but protected by FAPLA and a private company, Teleservices, established by leading figures in the Angolan military.²¹

The second critical supply side factor is then the ability to create a mercenary force which possesses the quality differential needed to do the job. In this respect, the demands of military effectiveness have grown substantially, as the militarisation of much of Africa (and especially those parts of it in which mercenary forces are likely to have to operate) has led to a continent awash with arms, and as the impact of white forces has declined over the generation since decolonisation. There is no particular problem in securing either the weapons or the rank-and-file soldiers required for mercenary operations. Both are readily available from the former Soviet bloc, and from the proliferation of potential soldiers of fortune generated by post-Cold War conflicts in places such as the former Yugoslavia. Much more scarce and significant is the ability to create effective organisations, characterised by the command and control, discipline, *esprit de corps* and tactical skill needed to make an impact. The ineffectiveness in present-day Africa of the kind of ragtag outfit commanded by Mike Hoare in the Congo of the 1960s, with a few reasonably experienced commanders and a rank-and-file individually recruited from a *melange* of different backgrounds and nationalities, was demonstrated by the futile intervention of such a force (put together by French intelligence, and manned largely by Serbs) in the same country on behalf of Mobutu in 1997. This effectively means that any viable mercenary force must be able to duplicate the advantages associated with the national armies of relatively well-developed states, and thus that such a force must in effect be such an army, converted for one reason or another to private commercial use. The success of EO, on these criteria, must to a very high degree be due to the fact that it essentially consists of a particular section of the former SADF, unwanted in the new SANDF and available for deployment in a private capacity. Other such forces may be spin-offs from other national armies, such as the Gurkha Security Guards operation deployed (with embarrassing failure) in Sierra

²⁰ Reno W, 'International Commercial Law, Investment, and the Political Strategies of Weak States', workshop on 'Crisis and Renewal in Africa: States, Markets, Law and Democracy', Atlanta: Emory University, November 1998.

²¹ 'Diamond Fever: British Victims of Africa's Billion-Dollar War', *The Sunday Times* (London), 15 November 1998.

Leone prior to its replacement by EO, or the American corporation, Military Professional Resources Incorporated (MPRI), created with official approval to carry out functions in the former Yugoslavia and elsewhere for which official US Army involvement would raise unacceptable political risks. A necessary consequence of this close connection between effective mercenary forces and official state militaries is that the tacit approval of the supplying state becomes essential. While both individual soldiers of fortune and illicitly exported weapons can escape supervision, a viable private army must at some point require resources which expose it to the possibility of state control.

This combination of demand and supply factors, and especially the last of them, in practice creates considerable limitations on the number of cases in which privatised external security forces can actually be employed to any effect in Africa. Though the emergence of EO, in particular, has aroused understandable concern, there appears to me to be little reason to expect such operations to become widespread. The principal threats to African security, which are unquestionably serious, appear to me to arise from the increased militarisation of the continent, including notably the proliferation of guerrilla or insurgent movements, together with an increased willingness in African states to intervene militarily in wars within other such states, a tendency dramatically illustrated by the current war in the Democratic Republic of Congo. This level of intervention, especially on the part of states such as Nigeria, Uganda and Angola, which combine regional hegemonic ambitions with deep-seated domestic insecurities, are likely to carry African conflicts to a level at which mercenary involvement would be militarily ineffectual and diplomatically hazardous.

Conclusion: The Effectiveness of Mercenary Forces

The literature on corporate management training makes a useful distinction between the 'efficiency' and the 'effectiveness' of business organisations. 'Efficiency' refers essentially to the internal structure of the organisation itself, and is concerned with issues such as recruitment, training, discipline, salary structure, information flows, and the transmission of orders down the chain of command. 'Effectiveness' refers to the organisation's interactions with the surrounding environment, and notably its ability to achieve the goals for which it exists. An efficient army is smartly turned out, responds sharply to orders, and is capable of putting on a great display of drill; an effective army wins battles. It may well be, and drill sergeants readily assume, that efficiency contributes greatly to effectiveness; but it cannot be taken for granted.

The same distinction can helpfully be applied to the operations of mercenary forces. For a start, this is a field in which efficiency clearly does matter. Private armies differ very sharply in their levels of internal organisation, and especially in their training, discipline, coherence and *esprit de corps*, all of which are essential to generate the quality differentials that are needed to make any appreciable difference to the conflicts in which they are engaged. Although barriers to entry to the business of privatised security are in one sense very low, in that almost anyone can put together the collection of weapons and human beings that is necessary to set up shop, the critical importance of quality differentials means that the barriers to the creation of effective privatised militaries are actually rather high. Given the wide availability of weapons to all parties in any conflict, and the disappearance of the advantages that white mercenaries were at one time able to derive from misleading comparison with colonial armies, only an efficient force is likely to be able to make much impact, at least beyond operations of very limited scope. Even the defence of a fixed installation such as a mine against guerrilla attack requires military skills that squaddies recruited from the derelict armies of parts of Eastern Europe cannot be assumed to possess.

Efficient armies, on the other hand, can have an impact well beyond their numbers. Quality differentials among the various assemblages of human beings engaged in conflict in Africa, be they national armies, guerrilla insurgencies, warlords or straightforward looters, are very high indeed. The capacity of EO in Angola, and of EO in collaboration with local Komajor militias in Sierra Leone, to stabilise a previously crumbling government military situation provides the clearest evidence. No matter how expensive they may be, such armies are worth employing; no matter how cheap it may be, an army that cannot do the job is not worth having — and is, indeed, likely to prove a major obstacle to the objectives of the state that employs it.

Does it follow, then, that an efficient mercenary force will also be effective in achieving the wider goals of promoting security for the shattered states and societies in which they have to operate? They do, for a start, have a number of significant advantages. One of these, especially important for their employers, is that it is very difficult (though not absolutely impossible) for such a force to overthrow the government which it is supposed to be serving. Though domestic armies can launch a *coup d'état* with a reasonable (though, as the case of the 1997 coup in Sierra Leone indicates, decreasing) chance of obtaining international acceptance, a mercenary force can do so only with the connivance of an alternative indigenous political leader. The operations of Bob Denard in the Comores (a peculiarly vulnerable target) provide the clearest example. Normally, mercenaries are recruited by a particular leader

or regime, whose maintenance in power has to be their first priority, since they are likely to be ejected (or even placed in serious personal danger) if he is overthrown. A second and perhaps surprising advantage is that an efficient foreign mercenary force may actually be more accountable to the local population, in at least some respects, than indigenous combatants. There are ample indications from Sierra Leone in particular, which cannot be dismissed as mere propaganda on behalf of EO and its associates, that the presence of EO was widely welcomed by the people of rural areas, to whom it offered a level of security that was unavailable either from the government army or from the Revolutionary United Front against which it was (at least nominally) fighting.²² While it is a truism of insurgent warfare that 'winning hearts and minds' is essential both to the insurgents and to the government forces, for the terrorised populations of African conflict zones this goal can be far better achieved by the standard elements of military discipline and efficiency (not looting, not raping, not kidnapping, providing services such as medical assistance, and assuring day-to-day security), than by any appeal to ideology or ethnic solidarity. Being foreign is by no means necessarily a disadvantage.

In other respects, however, the effectiveness even of efficient mercenary forces is seriously open to question. Most important of all, they are likely to exacerbate rather than help to resolve the basic political problems which are the cause of their presence in the first place. Like all foreign peacekeepers, and in this respect they differ not at all from more acceptable forms of external military intervention such as UN-sanctioned peacekeeping forces, their presence is only temporary.²³ In principle, they are expected to help maintain order, while long-term solutions to these problems are being worked out by indigenous political actors; but in practice, their presence is far more likely to impede such solutions than to promote them. The mercenaries, like other peacekeepers, cannot avoid being dragged into the political equation, since they will have been introduced to the local political scene by one of these actors, with whom they will be indelibly associated. Both their own employers and other political forces will need to manoeuvre for position after their departure, and this will in turn place their status in question. In the complex four-way (or more) bargaining between the current state leaders, the official state army, the insurgents, and the mercenaries, the last-named are always likely to be at a disadvantage. Both in Angola and in Sierra Leone, the military successes which EO undoubtedly achieved were rapidly negated by

²² See Howe H, 'Private Security Forces and African Stability', *Journal of Modern African Studies*, 36, June 1998, p.326.

²³ For an assessment of some of the problems of peacekeepers from the viewpoint of indigenous societies, see Clapham C, 'Being Peacekept', in Furlley O & R May (eds.), *Peacekeeping in Africa*. Aldershot: Ashgate, 1998.

domestic political developments (in part, paradoxically, brought about by EO's success) which brought about EO's withdrawal, and led to a rapid resumption of conflict.

This in turn was the result, not merely of miscalculation by the domestic actors involved, but of contradictions inherent in the presence of the mercenary force itself.

Ultimately, the security of fractured African societies can only come from within, through the creation by domestic actors of some framework of order that enables them to survive, and with any luck develop, in some reasonably peaceful way. It cannot be assumed that this process will necessarily involve the maintenance of existing African states, or indeed in places of any organisation that is recognisable as a state at all. Nor can it be assumed that it will entail the creation of any plausibly democratic or accountable form of political organisation. These, however, are issues that lie well beyond the scope of this paper. The critical factor for our purposes is that this is a process that the presence of external mercenary forces, no matter how well disciplined and militarily efficient, cannot promote and may well impede. Whatever their temporary attractions for hard-pressed African regimes or external corporations, they offer no solution to the basic problem of creating effective security systems in Africa.

Mercenaries and the Privatisation of Security in Africa in the 1990s

Alex Vines¹

Background

Africa in the 1990s has seen a significant growth in the private security sector, driven by increased perceptions of insecurity, such as terrorism, kidnapping, random acts of violence, urban unrest, increasing general crime, corporate crime and weakened and poorly resourced and trained state law enforcement agencies. The rapid expansion of this industry has given rise to many thousands of providers of security-related services and products worldwide. As Mills and Stremlau have noted elsewhere in this volume, in South Africa alone there are 5,939 companies regulated by the Security Officers Board.² Many of these companies remain relatively small in global terms (average size is under US\$5 million in annual revenue), highly specialised yet undercapitalised and serving finite geographic regions. The combined US and international security market has estimated revenues of US\$55.6 billion in 1990. Revenues in this industry are expected to increase to US\$202 billion by the year 2010, a compounded annual growth of seven percent from 1990.³

Private security firms operational in Africa in the 1990s can be divided into three general categories: classic mercenary firms, private military companies that engage in mercenary-like activities, and private security firms. The divisions between these categories is grey and what these firms engage in is fluid, often depending on profit margins and commercial opportunity. A number of these firms exhibit a corporate nature, including ongoing intelligence-gathering and concern for public relations. These firms handpick their employees and enjoy large pools of qualified applicants, a spin-off from the end of the Cold War (1989 onwards) and the political realignments and defence cutbacks that followed. Many of these firms have close relations with multinational oil and mineral companies, which provide additional funding

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² As of 21 October 1998 there were 136,310 private security guards in South Africa operating with these firms.

³ Equitable Securities Corporation, *Equitable Securities Research*, 27 August 1997.

and political contacts to these firms.⁴

Is this privatisation of security a good thing in Africa, and will regulation work? This paper examines some ethical and practical problems generated by the growth of this industry, and assesses where it will be going in the next decade.

Mercenaries

A number of firms operating in Africa have been called mercenary. The traditional notion of a mercenary is 'a soldier willing to sell his military skills to the highest bidder, no matter what the cause'.⁵ The established definition of a mercenary in international law is set out in Additional Protocol 1 to Article 47 of the Geneva Convention (1949). This classifies a mercenary according to the following criteria:

- (a) Is specially recruited locally or abroad to fight in an armed conflict;
- (b) Does, in fact, take part in hostilities;
- (c) Is motivated to take part in the hostilities essentially by the desire for private gain;
- (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.

Both the OAU and international conventions on mercenaries contain definitions that focus on acts aimed at overthrowing or undermining the constitutional order and territorial integrity of the state. By January 1999 only 16 states had ratified the international convention; 22 are required before it comes into force.⁶ Many of the private military companies mentioned below also claim they work only for recognised governments and are therefore exempt from the terms of these conventions. The UN Special Rapporteur on the role of mercenaries understands this, noting that security companies

⁴ Howe H, 'Global Order and Security Privatisation', *Strategic Forum*, May 1998.

⁵ O'Brien K, 'Military-Advisory Groups and African Security: Privatised Peacekeeping?', *International Peacekeeping*, Autumn 1998, p.81.

⁶ These include Angola, Belarus, Democratic Republic of Congo, Germany, Morocco, Nigeria, Poland, Romania, Uruguay, and Yugoslavia.

'cannot be strictly considered as coming within the legal scope of mercenary status'.⁷

Domestic Legislation

The weakness of international law has placed greater responsibility on domestic laws. In the US there is the Neutrality Act of 1937 which prohibits the recruitment of mercenaries in the US. Australia has a similar law. Under the Australian Crimes (Foreign Incursions and Recruitment) Act of 1978, it is an offence to recruit mercenaries in Australia. However, in both countries it is not illegal to be a mercenary. The UK's Foreign Enlistment Act of 1870 makes enlistment of mercenaries both within and outside the UK an offence, but this has not stopped British citizens playing important roles in mercenary-like activities. The British government is now considering updating the legislation to take into account firms like Sandline International,⁸ but also believes that the International Convention is too weak to be of any use.

South Africa's parliament passed a tough new amendment to its Foreign Military Assistance Act in February 1998 in which anyone convicted of an offence involving mercenary activity would forfeit property to the state.⁹ The new prohibition simply says: 'No person may within the Republic or elsewhere recruit, use, train, finance or engage in mercenary activity', and adds a new definition of mercenary activity as 'direct participation in armed conflict for private gain'. It is also necessary that South African companies providing military assistance abroad seek prior government approval.¹⁰ However, this Act does not provide adequate mechanisms for public and parliamentary scrutiny and accountability of the activities of private security companies.

⁷ Office of the UN High Commissioner for Human Rights, *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.unhcr.ch.

⁸ Shearer D, 'Private Armies and Military Intervention', *Adelphi Paper* 316, February 1998, p.20.

⁹ Regulation of Foreign Military Assistance Bill (as Amended by the Portfolio Committee on Defence (National Assembly) B 54B-97. See also Malan M & J Cilliers, 'Mercenaries and Mischief: The Regulation of Foreign Military Assistance Bill', *ISS Papers*, 25, September 1997.

¹⁰ This allows for advice or training, personnel, financial, logistical, intelligence or operational support, personnel recruitment, medical or para-medical services or procurement of equipment. Authorisation may be refused if they are 'in conflict with the Republic's obligations in terms of international law'. They can also be refused in the 'infringement of human rights and fundamental freedoms', where the assistance to be rendered may endanger peace by introducing destabilising factors into a region. The kind of operations Executive Outcomes conducted in Angola and Sierra Leone come under the bill's ban on 'direct participation as a combatant in armed conflict for private gains'.

The UN Special Rapporteur recommended in January 1998 that:¹¹

Given the legal gaps and inadequacies which permit the existence of mercenaries whose activities can pass as normal, it is recommended that the Commission on Human Rights should propose that the States Members of the United Nations should consider adopting legislation to prohibit mercenary activity and the use of national territory for such unlawful acts.

He also concluded that:¹²

In what appears to be a new international trend, legally registered companies are providing security and military advisory and training services to the armed forces of legitimate Governments. There have been complaints that some of these companies go beyond advisory and instruction work, becoming involved in military combat taking over political, economic and financial matters in the country served. It is therefore recommended that the evolution of these companies, the relevant legislation of States and the conditions under which States agreed to conclude contracts with such companies should be monitored closely. It needs to be assessed whether the security and internal order of a State which has lost part or all its capacity to keep order should henceforth be left to the action of specialised companies which will take charge of its security.

A number of the private military companies that Ballesteros mentioned have operated in Africa. The case studies below assess their success on the ground, and question how beneficial they have been to the countries they have operated in.¹³

Private Military Companies

*Executive Outcomes*¹⁴

The most widely known firm is Executive Outcomes (Pty) Ltd. Beginning in 1989, this firm began by providing the South African Defence Force (SADF)

¹¹ 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, submitted by Enrique Bernales Ballesteros, Special Rapporteur, pursuant to Commission resolution 1995/5 and Commission decision 1997/120', 27 January 1998, www.unhcr.ch/html/menu4/chirep/98chr31.tm.

¹² *Ibid.*,

¹³ The US based Military Professional Incorporated (MPRI) is not covered in this paper, although it attempted to operate in Angola with little success to date.

¹⁴ See EO's web site, www.eo.com.

with special force training.¹⁵ In 1991 EO was contracted by De Beers to assist in counter-crime activities and may have done some counter-narcotics work in Colombia. In 1993 it was contracted by the Angolan state oil company, Sonangol, to provide security for the Soyo oil installations against UNITA attack.¹⁶ Although EO lost these installations to UNITA, the Angolan government gave EO a one-year contract in September 1993 (US\$20 million for military supplies and US\$20 million directly to EO).¹⁷ The Angolan government then renewed the contract every year till mid-1996.¹⁸ EO acted in Angola as a 'force multiplier', offering a small group of individuals who trained up the effectiveness of a larger fighting force. EO fielded some 550 men and trained over 5,000 troops and 30 pilots in this period.¹⁹

A watershed event for EO was the successful capture from UNITA rebels of Ndlatando city by the 16th Brigade in May 1994. EO had trained the Brigade and fought alongside it. The success increased the Angolan government's confidence in EO. EO personnel also helped recapture the diamond areas around Cafunfo in mid-July and the oil installations at Soyo in November. They were also active in Uige and Huambo.²⁰ Pilots belonging to Ibis Air — in which EO was a significant shareholder — flew combat missions in Mi-8, Mi-17 and Mig-23 fighters and Pilatus planes. EO activities in Angola cost

¹⁵ Many of EO's soldiers come from the South African Defence Force's former 32 Battalion, the Reconnaissance Commandos, or 'Reccies', the Parachute Brigade, or 'Parabats', and the para-military 'Koevoet', or 'Crowbar'. These four groups spearheaded apartheid's destabilisation throughout southern Africa. The 32 Battalion, composed largely of Portuguese speaking Angolans, became South Africa's most highly decorated unit since the Second World War. Three of EO's officials reflect this elite apartheid background. Eeben Barlow, the ex-EO director, was second-in-command of the 32 Battalion (and later a top official of the Civil Co-operation Bureau); Lafras Luitingh, head of recruitment, was a major in 5 Reconnaissance Commando; and Nick Van den Berg was a lieutenant-colonel in the Parabats.

¹⁶ EO's introduction to Sonangol was through Anthony Buckingham, a former British soldier who had served in the Special Air Service (SAS), was the Chairman of Heritage Oil and Gas, a company registered in the Bahamas, which had millions of dollars of drilling and related equipment in the coastal town of Soyo.

¹⁷ Michael Grunberg drafted the agreement with Buckingham and Barlow.

¹⁸ By this time EO was actually two companies, one Pretoria-based in South Africa which originally had Eeben Barlow, Lafras Luitingh and Nico Palm as directors. In July 1997 Barlow resigned, leaving Luitingh and Nico Palm with 50% of the shares each. The other EO was incorporated in England and Wales and its directors were Luther Eeben Barlow and his wife Susan.

¹⁹ Rubin E, 'An Army of their Own', *Harper's*, February 1997.

²⁰ Howe H, 'Private Security Forces and African Stability: The Case of Executive Outcomes', *Journal of Modern African Studies*, 36, 2, June 1998.

US\$60 million, with 20 fatalities.²¹

EO wanted to stay on and train the new Angolan army, but the Angolan army of the time came under increasing pressure to withdraw its support of EO and replace it with the US firm, MPRI. In January 1996 EO finally officially left Angola. A number of EO's personnel stayed on, redeployed to companies linked to EO, such as Branch Mining, Shibita Security, Stuart Mills Associates, Saracen and Alpha 5. EO and its partners were rewarded with a number of economic concessions across the country, including diamond mines. Many of its former personnel remained on EO's books and could be mobilised for new contract work with the firm. In 1998 press reports mention 150 former South African Defence Force members led by EO's Lafras Luitingh co-operating with the Angolan government in providing air intelligence, through a civilian aircraft fitted for surveillance and several Czech-built L39 ground-attack aircraft.²²

EO's involvement in Angola's war did not create peace or stability. Three years later, the Lusaka peace process is dead and the country is back at war with UNITA rebels. According to the government, UNITA is employing Israeli, Serb, Ukrainian and South African mercenaries, while the government has been beefing up its foreign military specialists, including Portuguese, South Africans and possibly Cubans.²³

In May 1995, Sierra Leone contracted with EO to help its faltering four-year campaign against the RUF. Branch Energy apparently entered into an agreement at the same time. Tony Buckingham, the CEO of Heritage Oil and Gas, helped introduce EO to Freetown, and Michael Grunberg negotiated EO's contract. The Sierra Leonean government signed three separate security contracts with EO over the 21 months they were in country for a total of US\$35 million — an average of more than US\$1.5 million a month, to be paid in cash.²⁴ Because the government was cash-starved, EO negotiated mining concessions in return for its services.²⁵ As it did in Angola, Branch Energy

²¹ Vines A, 'Executive Outcomes and Angola' in, Fayemi K & A-F Musah (eds.), *Mercenaries and African Conflicts*. London: Pluto Press (forthcoming).

²² O'Loughlin E, 'Angola: Now Mercenary Fights Mercenary', *The Sydney Herald*, 29 December 1998.

²³ *Ibid.*; Silva R, 'Angola Expulsa Jornalista do "DN"', *Publico*, 21 January 1999.

²⁴ Shearer D, 'Private Armies and Military Intervention', *Adelphi Paper* 316.

²⁵ Harding J, 'The Mercenary Business: Executive Outcomes', *Review of African Political Economy*, March 1997. Under the decree that granted the concessions to Branch Energy (now Diamond Works), the company pays US\$250,000 a year to the government as ground rent, of which US\$50,000 goes to the local chief. The government takes five percent of the value of all diamonds

(now Diamond Works) gained access to mineral assets — the Koidu (kimberlite pipes) and Sewa River (alluvial diamonds)— whose value is worth around US\$1 billion, according to independent estimates.²⁶

EO's military progress was rapid. Again the company acted as a force multiplier providing technical services, combat forces and limited training. By late January 1996, EO-backed forces had retaken the southern coastal Rutile and Bauxite mines, belonging to Sierra Rutile and Sieromco. EO claims that only two of its personnel were killed during its operations, which lasted a year and a half. As in Angola, a ceasefire followed in November 1996. With the signing of the November 1996 peace agreement, the rebels' demand that all EO personnel should leave, was carried out. EO technically withdrew at the end of its contract in January 1997, though again, as in Angola, around 100 of the 285 EO personnel stayed on in different companies, some of them, such as the security firm, Lifeguard, linked to EO.

EO's claim to have returned stability to Sierra Leone was short-lived. In May 1997 the newly elected government was overthrown in a coup led by Commander Johnny Paul Kosoma and a Junta remained in control of Freetown until a counter-coup in March 1998 restored the government of President Kabbah. The country has been engulfed by violence from the time of the 1997 coup.

There is no doubt that EO quickened the pace of the war in Angola and added pressure on UNITA to sign the Lusaka Protocol in November 1994.²⁷ However, the tide has already turned against UNITA and EO's claims to have won the war are inflated. US academic Herb Howe calls EO an 'apparently stabilising force' in Angola, and discounts the number of human rights abuses that EO personnel were involved in as 'generally correct treatment of the civilian populations'.

Howe is supported by David Shearer, who also writes that 'private military forces cannot be defined in absolute terms: they occupy a grey area that challenges the liberal conscience'. Moral judgements on the use of mercenaries are usually passed at a distance from the situations in which these forces are involved, he argues: those facing conflict and defeat have less moral

extracted, and 37.5% of net profits. There is no doubt that Branch Energy's relationship worked to its competitive advantage in getting this deal.

²⁶ 'Britain/Sierra Leone: the Freetown fall-out', *Africa Confidential*, 39, 10, 15 May 1998.

²⁷ Vines A, 'La troisieme guerre angolaise', in Messiant C (ed.), *L'Angola dans la guerre, Politique Africaine*, 57, March 1995.

compunction. What Shearer and Howe fail to acknowledge in their writing are the serious human rights abuses that occurred in Angola, and were documented by groups like Human Rights Watch.²⁸ The looting of a town by EO is even captured on a video diary.²⁹ Howe himself has said in public that EO introduced an indiscriminate weapon into Angola — fuel-air explosive.³⁰

Indeed EO pilots have boasted about such weapons. Jim Hooper recorded an EO pilot describing the use of weapons in an indiscriminate fashion as documented by a Human Rights Watch during the 1992-94 war, ³¹ saying:³²

As far as armament [is concerned], the MiG's twin-barrelled 23-mm cannon is an excellent piece of kit. Very accurate, very effective against ground troops. Our most common weapons loads were 250-kg or 500-kg bombs, but we occasionally carried napalm and rockets. Interestingly enough, we also had some MK 82 bombs kindly provided by the Israelis, who had modified the American kit to fit the hardpoints on Soviet aircraft. The most effective bomb we used was the Russian RBK SWAB, a 500-kg cluster bomb. Once we'd pulled off and looked back at that target you could see hundreds of explosions going off [within] at least a 300-m radius.

The UN Special Rapporteur on Mercenarism also challenges Shearer and Howe's hypothesis that EO brought stability to Sierra Leone. Ballasteros states that:³³

the hypothesis of the Special Rapporteur is that the presence of the private company which was partly responsible for the security of Sierra Leone created an illusion of governability, but left untouched some substantive problems which could never be solved by a service company.

This danger was flagged in paragraphs 64 and 65 of the Special Rapporteur's previous report to the Commission on Human Rights (E/CN.4/1996/27), in which he noted that EO was involved in such delicate activities as 'training of officers and other ranks; reconnaissance and aerial photography; strategic

²⁸ 'Angola: Between War and Peace. Arms Trade and Human Rights Abuses since the Lusaka Protocol', *Human Rights Watch*, 8, 1 (A), 1994, pp.17-21.

²⁹ 'Executive Outcomes: The War Business', 1997 Journeyman Productions documentary film.

³⁰ Howe H, 'Executive Outcomes: A 999 Service for Africa'. Talk given at King's College, University of London, January 1997.

³¹ See, Human Rights Watch, *Angola: Arms Trade and Violations of the Laws of War since the 1992 elections*. New York: Human Rights Watch, 1994.

³² Hooper J, 'Air War in Angola', *World Air Power Journal*, 1997.

³³ www.unhchr.ch/html/menu4/chrrep/98chr31.htm

planning; training in the use of new military equipment; advising on arms purchases; devising psychological campaigns aimed at creating panic among the civilian population and discrediting the leaders of the RUF etc, etc' (paragraph 65). Moreover, EO was responsible for overall security and was directly active in the Kovo and Koidu districts, Kangari Hills, and Camp Charlie at Mile 91.

The issue was also dealt with in the Special Rapporteur's 1996 report to the General Assembly (AC/51/392, para 33), in which he described the precarious situation in Sierra Leone, pointing out that the presence there of a company that worked in security matters but employed mercenaries was a debilitating factor which at some point would impair the stability of the legal government. Prompted by an enlightened sense of unity, discipline and subordination to civilian rule, Sierra Leone should accord priority to organising its police and armed forces, which should assume sole responsibility for security. Retaining the company for that function until late 1996 was a mistake and a waste of valuable time, and according to the thesis developed, it weakened the legal government of President Tejan Kabbah.

EO defended its record in Sierra Leone. It argued that 'forces employed to restore a legitimate democratically elected government, displaced by a coup, should be supported and praised and not shot down in flames by "ethical" journalists taking the moral high ground'. EO then warned that 'coup plotters should take cognisance of the fact that if the international community refrain (*sic*) from taking action against them, there are private forces who may just do so'.³⁴

EO was sensitive about being classified as a mercenary group, although Ballesteros calls it 'a private security company that works with mercenaries'. It also claimed that as it possessed no military equipment and had no military infrastructure such as bases or barracks it could not be described as a private army. Yet EO possessed shares in Ibis Air and during the Sandline International adventure in Papua New Guinea, purchased, rather than hired the heavy military equipment. Pilots of Mi-17 'Hip' and Mi-24 'Hind' helicopters earned US\$6,000 a month, while senior commanders could double that. According to EO its total revenue between 1994 and 1998 was US\$55 million, although other sources put it at between US\$25 million and US\$40 million.³⁵

³⁴ www.eo.com. EO Press Release signed JN Van den Berg, EO's Managing Director.

³⁵ Venter A, 'Market Forces: How Hired Guns Succeeded where the United Nations Failed', *Jane's International Defense Review*, 1 March 1998.

EO claimed to have refused to work for regimes such as Sudan, the military dictatorship in Nigeria, and Zaire's President Mobutu, but other sources suggest that Mobutu found EO too expensive.³⁶ In October 1997 EO also claimed that it had been approached by DRC President Laurent Kabila and there is evidence that in 1998 EO worked for Kinshasa. EO also denied that it had ever been involved with non-state actors, although there is some evidence that EO worked with UNITA in early 1993 and was employed briefly for intelligence-gathering purposes by the RUF in Sierra Leone.³⁷ EO has strongly denied allegations made by Human Rights Watch that it provided military services to CNDD forces in Zaire in 1996.

Exact details of EO's company connections are concealed in offshore registration offices and long paper chases. It appears that the original model was two broad umbrella companies. *Executive Outcomes* was one of a number of firms in the Strategic Resources Corporation group — the security wing — based in South Africa. The other group was housed in Plaza 107, a London-based service company that provides support for a swathe of offshore registered, mainly mineral operators, including Branch Energy, Diamond Works, Heritage Oil and Gas and Sandline International. Sandline, Diamond Works, Branch Energy, Heritage and EO all deny they have links, although an intelligence document seen by this writer calls the divisions a 'chinese wall'. As will be discussed below, all of these firms come from the same stable and are interlinked.

On 9 December 1998, EO announced that it would close down with effect from 1 January 1999. EO director Nico Palm justified this by saying, 'Over the past two years the majority of governments in Africa have endeavored to secure and maintain law and order. The nature of these efforts does not justify our involvement'.³⁸ As we will see below, the reasons for this announcement are very different.

Sandline International

Sandline International is the sister company to EO and offers the same sort of services.³⁹ It has been operational since 2 July 1993, when Sandline International (originally Castle Engineering) was incorporated in the British

³⁶ Some sources claim EO tendered two contracts in March 1997, one worth US\$36 million and another US\$18 million.

³⁷ Human Rights Watch Arms Project and Human Rights Watch/Africa, *op cit.*.

³⁸ Steinberg J, 'Executive Outcomes to Close', *Business Day*, 10 December 1998.

³⁹ See, www.sandline.com.

Virgin Islands and acted as a parent administrative company. Its name was changed to Sandline on 2 December 1996, having bearer shares which are held to the order of Hansard Management, a Guernsey Company.⁴⁰ According to Tim Spicer, during the Papua New Guinea (PNG) inquiry, Sandline is 100% owned by another company, the Guernsey-based Adson Holdings. In a memorandum submitted to the British parliament's Foreign Affairs Committee, in November 1998, Spicer said Sandline Holdings was now a dormant service vehicle incorporated for a different transaction and having bearer shares which are held to the order of Adson Holdings. Spicer in the Memorandum also stated that:⁴¹

- (1) Sandline International is registered in the Bahamas, having bearer shares which are held to the order of Hansard Management, a Guernsey company.
- (2) Hansard Management holds the legal and beneficial interest in those bearer shares on trust for investors resident outside the jurisdiction ('investors').
- (3) None of the investors is resident in the United States.
- (4) The corporate administration of Sandline International, including the appointment of nominee directors, is undertaken by Hansard Management.

Tim Spicer maintains that Sandline is a 'stand-alone company' entirely separate from EO, from which it may sub-contract, and that Tony Buckingham does not have a financial stake in the company or any position in it. However, it emerged that a US\$18 million forward payment by the Papua New Guinean government to Sandline was paid on 5 February 1997 into a Sandline Holdings Hong Kong bank account. The signatories to the account were Eeben Barlow, Anthony Buckingham, Simon Mann and Lafras Luitingh, revealing that Branch Energy, Sandline International and Executive Outcomes are at the least a Joint Venture.

Sandline in reality is the successor of EO: its management and personnel are largely the same, as is the personnel base from which it recruits. It hopes that despite a spate of unfavourable publicity it can distance itself from the South African mercenary image which contributed to the decision to close the

⁴⁰ Tim Spicer, its Chief Executive Officer, also used a 'Plaza 107' calling card in 1996. 'Plaza 107' is the office block at 535 Kings Road, London where Sandline International, Diamond Works and Branch Energy shared offices until March 1998. Sandline's financial affairs are handled by the Guernsey Hansard Management Services. Its affiliate, the Hansard Trust Company, has a 28% stake in the Vancouver-based Diamond Works.

⁴¹ House of Commons Foreign Affairs Committee, Second Report, *Sierra Leone*, 11. London: The Stationery Office, 1999, pp.151-2.

Pretoria-based operation. However, Sandline too is likely to find it difficult to find clients, given its reputation, and may also need to re-form.

Sandline, which offers a range of products from systems procurement to combat operations, admits to having undertaken six international operations since 1993. One of these was located in Papua New Guinea, where Sandline was hired by the government in March 1997 to import Russian small and large arms, including four helicopter gunships (two Mi-17s and two Mi-24s), and 44 mercenaries supplied by Executive Outcomes (41 South Africans and three Ethiopians). The objective was to defeat the Bougainville Resistance Army (BRA) and recapture the Panguna copper mine, one of the largest copper mines in the world, and a joint venture between the PNG government and the mining giant, Rio Tinto Zinc. It has been inactive for the last eight years because of the internal conflict.⁴²

The mission was explicitly defined in their contract with the PNG government. Sandline was to:⁴³

- train the State's Special Forces Unit (SFU) in tactical skills specific to the objective;
- gather intelligence to support effective deployment and operations;
- conduct offensive operations with PNG defence forces to render the BRA military ineffective and repossess the Panguna mine; and
- provide follow-up operational support, to be further specified and agreed between the parties and subject to separate service provision levels and free negotiations.

In order to fulfil the objectives outlined above, Sandline agreed to:

- send a 16-man command, administration and training team in the first week of implementation of the contract to establish the necessary liaison with the PNG Defence Forces; develop a logistical and communications infrastructure; prepare for the safe arrival of the military and aeronautical equipment contracted for; initiate the information-gathering and intelligence operations and begin training the Special Forces Unit;

⁴² The best account of the Sandline debacle is by Dorney S, *The Sandline Affair: Politics and Mercenaries and the Bougainville Crisis*. Sydney: ABC Books, 1998.

⁴³ The contract is published at www.theage.com.au/special/asiaonline/sandline.htm.

- set up bases at Jackson Airport and the La Selva training centre in Wewac;
- send and deploy throughout the territory of PNG within 10 days of the arrival of the command, administration and training team, the following: Special Forces officers and troops, aircraft and helicopter crews, engineers, intelligence agents, special teams of operatives, mission troops, medical and paramedical personnel etc;
- send arms, ammunition and equipment, including aircraft, helicopters, electronic warfare equipment and communications systems, as well as any personnel necessary for their maintenance and for training in their use;
- ensure that personnel sent to the country have appropriate identity papers, and assume responsibility for any expense caused by loss of its personnel, unless that loss was the result of negligence by the State.

The contract was worth US\$36 million, and part of the payment was a stake in the Panguna mine. Sandline's staff were also granted tax exemptions, facilities and privileges in connection with their import of goods and their entry into and departure from the country. The Government also undertook to instruct its civil servants and members of the Defence Forces to recognise the military ranks of Sandline personnel and to obey their orders. The government was forced to cut budgets in health and education drastically to raise money for the Sandline venture.

Item	Quantity	US\$
Mi-24 helicopter	2@4,100,000	8,200,000
Mi-17 helicopter	2@1,500,000	3,000,000
Mi-24 ordnance	Table 2 below	2,500,000
Mi-17 ordnance	-	400,000
Night Vision equipment	18@33,880	610,000
Mi-24 aircrew	6	680,000
Mi-17 aircrew	6	860,000
Surveillance platform	1 (spotter aircraft)	2,400,000
On-board systems	1	4,850,000
SP crew	4 (spotter pilots)	280,000
Ground System	1	600,000

Mission Operators	5	480,000
Ground Staff	5	270,000
Electronic warfare (EW)	inc	120,000
SP trainers	inc	120,000
Project co-ordinator	1	inc
Personnel equipment	30	250,000
Personnel movement	pack	250,000
Insurances	inc	inc
Logistics support	client	client
Asset positioning	4	1,200,000
Spares — helicopters	pack	1,500,000
Spares- SP	pack	600,000
Subtotal		29,170,000
Special Forces Team		
Manpower (40 plus doctors)	42	4,500,000
Equipment	Table 3 below	2,500,000
Positioning	pack	100,000
Subtotal		7,100,000
Communications Equipment		
HF radio system	1 + 15	400,000
Hardened tactical radio sys	1 + 16	500,000
Satellite comms units	15	200,000
Subtotal		1,100,000
Contract Totals		37,370,000
Package price reduction		-1,370,000
Contract Fee to Client		36,000,000

Item	Quantity
57mm rocket launcher pods	6
57mm high explosive rockets (for use against fixed installations, vehicles or boats)	1000
23mm ball	20,000
23mm tracer	5,000

23mm links	12,5000
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Table 3: Special Forces Equipment	
Item	Quantity
AK47 assault rifle	100
PKM light machine guns	10
RPC-7 shoulder-held rocket propelled grenade launcher	10
Makarov Pistol	20
60mm mortar	10
82mm mortar	6
AGS-17 automatic 30mm grenade launcher	4
7.62x39 (for AK-47)	500,000
7.62x54 (for PKM machine gun)	250,000
12.7mm ball	100,000
12.7mm tracer	25,000
PG-7 (rounds for RPC-7)	1,000
40mm grenade	2,000
Illumination flare	200
smoke/frag grenade	800
AK47 magazines	1,000
60mm HE (mortar rounds)	2,500
82mm HE (mortar rounds)	2,500
Ammo links	250,000
Personnel kit and uniforms	100

Source: Sandline site: www.coombs.anu.edu.au/specialproj/png

The project fell apart when the commander of the armed forces publicised the plan, which caused a military revolt.⁴⁴ At the end of March 1997, the 44 Sandline mercenaries were forced to leave as the result of widespread protests within the defence forces. Two commissions of inquiry investigated the matter, and while Sandline was cleared of illegality, their armaments were

⁴⁴ The Commander-in-Chief of the Defence Forces, Brigadier-General Jerry Singirok, was dismissed by the Prime Minister for criticising the contract. On 18 March 1997, the army protested against his dismissal, mutinied at the Murray barracks and marched on Parliament. General Singirok later accepted his dismissal but called for a commission of enquiry. On 26 March an enquiry was set up and on 11 August 1997 it was expanded.

impounded in Australia⁴⁵, and US\$18 million in payments was withheld although finally paid in October 1998 after a long legal battle with the Port Moresby government.⁴⁶ The commission of inquiry revealed that the head of the armed forces 'blew the whistle' in part, because he had been accepting payments from a rival organisation, the UK-based JS Franklin Corporation, referred to as 'The Franklins',⁴⁷ but also probably out of concern for the long-term dangers to the State of using foreign mercenaries.

The UN Special Rapporteur concluded that:⁴⁸

the crisis in Papua New Guinea suggests that it was triggered by the implementation of the contract between the Government of Papua New Guinea and the private security company Sandline International. For the armed forces and the population, the presence of foreign soldiers recruited by a foreign company, which was responsible not only for training but also commanding military operations in an internal armed conflict, thereby subjecting the country's military leaders to its orders, and which received for the initial period of the contract (three months) US\$36 million as well as the promise of participation in the company Bougainville Copper Limited was considered to be an act that violated sovereignty and the right to self-determination.

Sandline's behaviour in PNG was aggressive, pushing for business and advocating the use of force. The prices it quoted were above market rates for the equipment. The consultancy fees were high, such as US\$1,165 an hour and a cost price of US\$35,714 per mercenary per month. Spicer was poorly informed about Papua New Guinean politics and culture, and Sandline did not appear to understand that this was a country where institutions still

⁴⁵ Australia agreed on 27 March 1997 to store at Tindal RAAF base in Australia's Northern Territory an Antonov 124 full of Sandline's military equipment until ownership was sorted out. A PNG delegation that inspected the store in April 1997 reported that the transport helicopters were earlier models than those PNG had been charged for and that the rockets were in poor condition.

⁴⁶ 'Sierra Leone/Britain: Militias and Market Forces', *Africa Confidential*, 39, 21, 23 October 1998.

⁴⁷ J & S Franklin placed UK£31,000 in a London account for the PNG Army Chief. The firm, an agent abroad for Shorts of Belfast, GKN and other big defence contractors, has been accused by Amnesty International of offering to sell electric batons, which have been used by some regimes to torture dissidents. Franklin has a long history of supplying military equipment to Africa and introduced GSG to Sierra Leone. Sandline sources claim Franklin has been trying to erode their presence in that country by offering alternative bids. Franklin was also an agent of the Singapore government's arms company, Unicorn International Pty Ltd, and organised the sale to the PNG government of small arms and heavy mortar launchers.

⁴⁸ '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', submitted by Enrique Bernales Ballesteros, Special Rapporteur, pursuant to Commission resolution 1995/5 and Commission decision 1997/120', 27 January 1998, www.unhcr.ch/html/menu4/chrrep/98chr31.tm.

worked, suggesting that Sandline's predatory style of business stands a chance only in collapsed, or very weakened states.⁴⁹

Subsequent events on Bougainville illustrate just how wrong Sandline's hard military recipe for pacification was. Singirok's actions to terminate the Sandline deal provided the impetus for new mediation attempts, through the good offices of New Zealand's John Hayes. A round of contacts and talks starting in July 1997 resulted in the Lincoln Agreement of January 1998, which set out a process that would lead to the formation of a Reconciliation Government for Bougainville. In April 1998 a permanent cease-fire was signed and a multination Peace Monitoring Group made up of unarmed soldiers and civilians from Australia, New Zealand, Fiji and Vanuatu were on the island as observers.⁵⁰ The paradox was that Sandline's abject failure has been its greatest ever contribution to the enhancement of peace and stability.

Sandline was also involved in another scandal regarding an arms shipment to Sierra Leone in February 1996. Sandline was contacted by the deposed government of President Kabbah (which was overthrown in a military coup) in order to help the democratically elected government return to power through a counter-coup. The mission was scaled down because of the limited resources of the government-in-exile, and primarily consisted of importing weapons for ECOMOG forces and the local Kamajor militia members. The scandal broke when approximately 28 tons of Bulgarian arms were reported to have been imported into the country in violation of the UN arms embargo on Sierra Leone and British law enplaced by the Ordering Council.⁵¹ Sandline claims that the British government was fully aware of, and acquiesced, in the operation, and that the US State Department knew of the operation. In the UK, an investigation has been launched to determine whether the Foreign Office agreed to the operation.

An independent enquiry for the British government, the Legg enquiry, concluded that:⁵²

No Minister gave encouragement or approval to Sandline's plan to send a shipment of arms into Sierra Leone, and no Minister had effective knowledge of it. Some officials became aware, or had notice, of the plan. The High Commissioner gave it a degree of approval, which he had no

⁴⁹ Dorney S, *op cit.*.

⁵⁰ *Ibid.*.

⁵¹ This came into force on 1 November 1997.

⁵² Legg T & R Ibbs, *Report of the Sierra Leone Arms Investigation*. London: Stationary Office, July 1998, p.3.

authority to do, but he did not know that such a shipment would be illegal. No other official gave any encouragement or approval. All concerned were working to fulfil Government policy, and there was no attempt to hide information from Ministers. However, officials in London should have acted sooner and more decisively than they did on mounting evidence of an impending breach of the arms embargo, and they should have told Ministers earlier and more effectively.

A second enquiry in 1998 by the House of Commons Foreign Affairs Committee published its findings in February 1999.⁵³ The report was critical about how staff at the British Foreign and Commonwealth Office handled the Sandline affairs and failed to brief ministers.⁵⁴ The report also made a number of recommendations, including:

- that the Foreign Office should amend its new guidelines on dealing with Private Military Companies;
- that the government seek to amend the existing UN Convention against the Recruitment, Use, Financing and Training of Mercenaries; and
- that within 18 months a Green Paper outlining the legislative options for the control of private military companies, which operate out of the UK, and its dependencies and islands, be drawn up.

Although the Committee found no evidence of a conspiracy, there remains a suspicion that Britain's Secret Intelligence Service (SIS or MI6) encouraged British diplomats to work with Sandline and the question is still unresolved.⁵⁵ Strangely, the Legg report largely ignored the role of MI6, devoting only one page out of 160 to its involvement. The Foreign Affairs Committee attempted to gain access to MI6's information but was blocked by government. The Committee recommended that:⁵⁶

the Government reflect, in any future inquiry like into Sandline, as to the merit of a more mature attitude towards controlled access for the Foreign Affairs Committee to appropriate material and to witnesses from the Secret Intelligence Service.

⁵³ The Foreign and Commonwealth Office has produced guidelines on how to deal with Private Military Companies because of this scandal. Ministerial permission is required, and meetings must be held with witnesses.

⁵⁴ House of Commons Foreign Affairs Committee Second Report, *Sierra Leone*, 1, 1999, pp.xliv-xlvi.

⁵⁵ Abrams F & P Lashmar, 'MI6 backed Africa coup', *The Independent*, 5 October 1998.

⁵⁶ House of Commons Foreign Affairs Committee, *op cit.*, p.xlvii.

The Sierra Leone operation was unique in that Sandline was contracted by a government-in-exile. Previously the company had only worked for sitting governments. Sandline became involved in Sierra Leone in June 1997, following the coup in May. Kabbah had contacted Sandline through Rakesh Saxena,⁵⁷ an Indian-born Thai businessman who is currently in jail in Vancouver, and wanted in Thailand for defrauding clients of millions of dollars. Initially Sandline was asked to train and equip forces, and participate in a counter-coup to restore the government. Following an initial two-week feasibility study costing around US\$70,000, the operation was valued at US\$20 million.⁵⁸ Because the price was too high, the mission was scaled down to providing air support to ECOMOG and Kamajor forces, some training, and importing arms for these forces. The weapons, procured in Bulgaria through the Bulgarian National Arms Company, were approximately 38 tons of small arms and ammunition meant for ECOMOG forces and their militias. However, President Kabbah decided that he did not want more arms in the country, so the shipment was impounded at Lungi and the arms turned over to ECOMOG forces.

One Sandline and one EO pilot were the main personnel involved in the operation. The rest were personnel already working in the country for Lifeguard Security.⁵⁹ Their primary duty was to provide air support, mainly logistical transport and other air transport with a Russian-made Mi-17 helicopter. In addition to transporting and evacuating soldiers, there was some evacuation of civilians.

*The Kamajors were mostly trained by the Nigerians, but were also assisted by Sandline, which claims to have attempted to get the Nigerians to train the Kamajors in the laws of war and the Geneva Conventions and that over time the Kamajors changed their behaviour and started taking prisoners. Sandline appears to have continued its work in Sierra Leone after President Kabbah was restored to power in March 1998. For instance, Lifeguard and Sandline pilots have been used in security operations.*⁶⁰

Tim Spicer also continues to defend Sandline's record in Sierra Leone. In January 1999, when the rebels reached Freetown again, he told the British

⁵⁷ Rakesh Saxena was travelling on the passport of a dead Serb when he was arrested in Canada.

⁵⁸ *Canadian press reports in August 1997 indicated that Rakesh Saxena had been charged by Thai officials with embezzling US\$88 million from a Bangkok bank in 1996. Globe and Mail, 1 August 1997.*

⁵⁹ The commercial security wing of Sandline/EO is known as Lifeguard. It consists of the same personnel as the war-making division of the company.

⁶⁰ Sierra Leone/Britain: militias and market forces', *Africa Confidential*, 39, 21, 23 October 1998.

media that if Sandline had been able to complete its contract this would never have happened. The British Foreign Minister, Robin Cook, dismissed these claims, stating that the Legg report had shown how irrelevant Sandline had been and that West African states wanted no mercenary involvement in Sierra Leone, a wish 'we need to respect'.⁶¹ At the launch of the House of Commons Foreign Affairs Committee's report on Sierra Leone, the committee's chair, Donald Anderson, also said 'Sandline is an irrelevance in the Sierra Leone context'.⁶²

According to the Head of the Foreign and Commonwealth Office, in response to a tip-off from intelligence, Sandline was warned in 1998 that it should not attempt to break an arms embargo on former Yugoslavia. The Foreign Office also participated in discussions with Sandline over a Briton kidnapped by UNITA rebels from a Diamond Works mine in Angola in November 1998, when Tony Buckingham, Michael Grunberg and Tim Spicer were also visiting Angola.⁶³

Diamond Works

Diamond Works, founded in 1996, is a Vancouver-based mining firm that aspires to be a major player in the international diamond market. It acquired Branch Energy, a mining and oil interest firm with strong links to Sandline and Executive Outcomes, in that year. Part of the payment negotiated for the activities of Branch Energy's private army has been lucrative mining concessions in countries like Angola and Sierra Leone. Consequently, Diamond Works is developing mining concessions in Angola and Sierra Leone obtained as payments for the activities of EO. In 1997 it became Canada's largest producer of diamonds. Its diamond concessions (primarily in Angola and Sierra Leone) are estimated at a worth of US\$3.7 billion. In Sierra Leone, it holds three major properties: the Koidu diamond mine, the Sewa diamond concession, and the Sierra Rutile mine, the world's largest titanium mine.

In its 1997 Annual Report, Diamond Works reported that:

The only disappointment that we experienced in 1997 occurred in Sierra Leone. As our shareholders are aware, our development activities in Sierra

⁶¹ 'Today Programme', BBC Radio 4, 08h15, 12 January 1999.

⁶² Donald Anderson at press conference, House of Commons, London, 9 February 1999.

⁶³ Branch Energy sold its diamond concessions in Angola and Sierra Leone in October 1996 to Diamond Works, and received a 30% share in the company in exchange.

Leone were suspended after a military coup in May 1997. While the coup did not directly impact our operations, we decided to stop work in the country pending the restoration of peace. On March 10, Sierra Leone's democratically elected government was returned to power, paving the way for us to resume our development work at the Koidu Mine in eastern Sierra Leone.

The company's board includes individuals with well-known links to Sandline/EO. Bruce Walsham, the CEO of Diamond Works, has denied many times that his firm has any links to EO or Sandline. This denial is made despite the presence of Michael Grunberg on its board of directors; Simon Mann as its Southern Africa director; Tim Spicer being asked to liaise with the British Foreign Office in November over the kidnapping by UNITA of a British employee; and despite the offices of Diamond Works and Sandline having been in the same building in London (King's Rd., London). This contradiction is also to be found on the Diamond Works website, where in one section the company denies any link to Sandline and in another publishes a press release about Tim Spicer's acting on its behalf in seeking the release of the British hostage.⁶⁴

The White Legion

It is easy to recall images of the late 1960s in relation to mercenary activities in Congo. In the last months of President Mobutu's reign in early 1997, mercenary forces once again featured in Mobutu's final attempt to stop rebel forces from ousting him. The mercenary force that was hired did not make much impact, at the most delaying the fall of Kisangani by a number of weeks.

There were two distinct elements in the mercenary force that began assembling in late November and December 1996. One was a small, Western European element headed by Christian Tavernier, who had overall operational command of the force.⁶⁵ The other, larger element (280 strong) was the East European group, consisting of former members of Bosnian Serb forces. Their pay ranged from US\$3,000 to US\$10,000. The Yugoslav authorities who authorised the sale of military equipment also assisted with recruitment and the transfer of war material via Luxor Airport in Lower Egypt. The mercenary force hired four Mi-24 'Hind' helicopters manned by Ukrainians, and also used six French-made Puma and Gazelle helicopters and some Yugoslav-built

⁶⁴ www.diamondworks.com.

⁶⁵ Tavernier's group consisted of 16 French, two Belgian, one Italian.

SOKO tactical strike jets.⁶⁶

According to the UN Special Rapporteur on Mercenarism, the Mobutu government spent some US\$50 million in public funds to pay and arm the mercenaries. He also reported that:⁶⁷

the mercenaries hired to defend Mobutu came principally from Angola; the Federal Republic of Yugoslavia (Serbia and Montenegro); Bosnia and Herzegovina; South Africa; and France, where two former members of the presidential security teams, Alain le Carro and Robert Montoya, were alleged to be in charge of recruiting between 200 and 300 mercenaries. There were also, but in smaller numbers, Belgians, Britons and Mozambicans.

The mercenaries gave training to the *Força Armada da Zaire* (FAZ), and especially *élite* units at Kisangani airport. Although they enjoyed a success on 17 February 1997, the fall of Kindu on 1 March reversed their fortunes and caused increasingly low morale amongst regular forces and poor discipline amongst the Serbs. The Alliance of Democratic Forces for the Liberation of Congo-Zaire (AFDL) rebels in support of Laurent Kabila continued to make progress toward Kisangani, despite the mining of roads and the airport at Kisangani. The mercenary unit and the FAZ 48th Regiment were able to hold off the rebel advance on the city for some five days before the rebels broke through to capture the city. As the rebels closed in on Kisangani airport, the mercenaries tried to stop Zairean soldiers fleeing, which led to an exchange of fire. Finally the remaining few dozen Serb fighters fled aboard their helicopters after blowing up their HQ. A number of these Serbs moved to Gbadolite, but were overrun and killed by looting troops a few months later.

According to *Africa Confidential*, some of Tavernier's men were working for Sandline in Sierra Leone in 1998.⁶⁸ As in Angola, it has emerged that mercenaries may be fighting with the rebels, with some 300 Ukranian mercenaries reported in the north of the country.⁶⁹

⁶⁶ Boyne S, 'The White Legion: Mercenaries in Zaire', *Jane's Intelligence Review*, June 1997.

⁶⁷ www.unhcr.ch/html/menu4/chrrep/98chr31.htm

⁶⁸ 'Sierra Leone/Britain: militias and market forces', *Africa Confidential* 39, 21, 23 October 1998.

⁶⁹ Kiley S, 'Freetown burns as rebels slaughter hundreds', *The Times*, 13 January 1999.

Stabilco

Although the Belgian-led Serb and Croat mercenary forces withdrew from Congo, a South African firm, Stability Control Agencies (Stabilco), owned by Mauritz le Roux, attempted to win a government contract from Mobutu to turn the tide of the war. In January 1997 Stabilco deployed a small group of pilots in Kinshasa, and conducted air surveillance missions over Kisangani and the north-eastern provinces. This operation was funded to the amount of US\$300,000 by Kpama Baramoto Kata, at the time Chief of Staff of the Zairean army. In March Stabilco placed an advance force of 35 men on standby for deployment to Kisangani, and recruited 450 other troops to travel to Kinshasa by air. A significant number of those employed by Stabilco were former EO employees. Stabilco was also commissioned to extract assets and people from Gbadolite, but the plan failed when an advance party was attacked by looting Zairean soldiers and the operation was aborted. Stabilco has closed down and its personnel now work for Sandline in Sierra Leone and ECOMOG.⁷⁰

Mercenary Intervention in Congo-Brazzaville

In mid-1997, another African country, the Republic of Congo-Brazzaville, was afflicted by an armed conflict. This civil war, fought mainly by militias, again saw the intervention of mercenaries. Paradoxically it was the legal government of President Pascal Lissouba which had hired the mercenaries, from Israel and South Africa, to provide military training. On 10 October 1997 several mercenaries returned to South Africa and Namibia. President Lissouba, as his fortunes declined further, also hired Ukrainian helicopters and crews for MiG 21 planes in addition to getting assistance from UNITA rebels. He also appears to have used the services of Sandline International, but fell out with them over non-payment. His government fell to Denis Sassou-Nguesso's forces, backed up by Angolan government troops. Nguesso reportedly captured and imprisoned several mercenaries, of Russian nationality.

Unrest continued in Congo-Brazzaville in 1999, and there may have been a fresh influx of mercenaries in this conflict. The Vatican's news agency reports that 100 Cubans arrived in January 1999 to fight for Sassou-Nguesso.⁷¹

⁷⁰ Personal communication from Sam Kiley, 11 December 1998.

⁷¹ SAPA, 18 January 1999.

Gurkha Security Guards (GSG)

GSG is a privately owned British company offering security services. It was formed in late 1989 and was for much of its existence run as a private security company specialising in the recruitment and deployment of Gurkhas from Nepal. GSG has concentrated its work in Africa, protecting Lonrho's estates in Mozambique from 1990-92, and in 1991 providing a fully integrated security team of Gurkhas for Oderbrecht Mining Services in Angola. In 1994 GSG had an internal management split and faced financial ruin. In an attempt to reverse the decline, in late 1994 this small firm accepted an approach by J & S Franklin Ltd to train the Sierra Leone Military Force. GSG sent 58 Gurkhas and three European managers to Sierra Leone to train the military, and found themselves in active military operations to secure their training base.⁷² Additionally, one of GSG's directors worked for Sandline in Sierra Leone in 1998.

Disaster struck on 24 February when two of the European trainers, five Gurkhas and a platoon of RSMF infantry walked into a rebel training camp by mistake, while on a reconnaissance mission. A fire-fight followed, in which at least 21 were killed, including the two GSG European trainers. By late March, GSG had pulled out and EO had begun preparing its operations. The negative publicity generated by GSG's mercenary adventure in Sierra Leone has ensured that this company has been unable to attract further lucrative contracts, and has since 1994 remained little more than a letter-head company.

Private Security Companies

A category distinct from the private military companies and mercenary groups described above is formed by the growing number of private security firms operational in Africa. The 1990s have been a boom period for such firms, although no audit has yet been conducted. What is less well known is the mushrooming of local private security firms.⁷³ Many of these firms provide only guards, but some are increasingly used by cash-strapped governments for selected tasks. For example, in Zambia the Movement for Multiparty Democracy (MMD) government appears to use private security firms for

⁷² Vines A, 'Gurkhas and the Private Security Business in Africa', in Cilliers J & P Mason (eds.), *Peace, Profit or Plunder: The Privatisation of Security in War-Torn African Societies*. Pretoria: Institute of Security Studies & Canadian Council for International Peace and Security, forthcoming.

⁷³ See for example, Network of Independent Monitors (NIM) (compiled in conjunction with Bletcher S), *Safety in Security? A Report on the Private Security Industry and its Involvement in Violence*. Durban: NIM, 1997.

surveillance of opposition politicians and some types of crowd control when civil unrest is feared. One important development in recent years is joint venture agreements with international firms, which could assist the transfer of international norms and encourage higher standards and best practice conduct in this industry. International private security companies will come under increasing pressure to adopt codes of conduct that are internationally recognised and monitored. The recent fortunes of Defence Systems Limited demonstrate the opportunities and challenges for a private security firm as it enters the new millennium.

Defence Systems Limited (DSL)

Defence Systems Ltd was founded in 1981 by Alastair Morrison, a former SAS officer who had experience operating in hostile environments, and realised the demand for such services.⁷⁴ Today the company has over 130 contracts for 115 clients in 22 countries. The company is composed mostly of former British special forces officers and was originally associated with the Hambros Bank. DSL claims that it 'never gets involved in other people's wars. It's simply not an aspect of our business, and business is good. We want to establish clear blue water between us and mercenary firms'. However the UN Special Rapporteur on Mercenarism during his report to the 54th UN General Assembly, referred to DSL's activities as 'mercenary'.⁷⁵

DSL began providing security and logistical personnel to the UN mission in former Yugoslavia in 1992, becoming the largest such contractor there to the UN with at least 430 personnel by February 1995. The firm was approached by the PNG government in the mid-1990s to help establish a paramilitary police force for the country. Although the contract was never concluded due to lack of funds on the part of the PNG government, DSL Chairman Alistair Morrison did recommend Sandline to PNG.⁷⁶

In April 1997, DSL was bought out by a US firm, Armor Holdings.⁷⁷ The take-

⁷⁴ Morrison made his name leading the famous SAS rescue of a hijacked Lufthansa plane at Mogadishu Airport in 1977.

⁷⁵ Enrique Ballesteros' presentation to Fifty-Fourth session of UN General Assembly, GA/SHL/3484, 23 October 1998.

⁷⁶ *Daily Telegraph*, 3 April 1997.

⁷⁷ Armor Holdings, Inc., a leading provider of security products and services for law enforcement, governmental agencies and multinational corporations around the world, was founded in 1969 as American Body Armor & Equipment Inc. A controlling interest was acquired by Kanders Florida Holdings in January 1996. Armor Holdings has made five strategic acquisitions, broadening their product offering and distribution networks, and facilitated entry into security services.

over transaction was accounted for as a pooling of interest for US\$7.6 million in cash for all preferred shares and US\$10.9 million in stock (Armor also assumed US\$7.5 million in debt). DSL's net revenues for 1996 were reported at US\$31.1 million in annual *pro forma* revenue; it had more than 5,000 employees in 22 countries throughout South America, Africa and Southeast Asia, of which 100 only have access to 'firearms'.⁷⁸

DSL's core business is 'devising and then implementing solutions to complex security problems'. DSL is contracted to the US State Department for the provision of security to high-risk embassies, as well as to other diplomatic clients such as the British High Commission in Uganda. DSL currently offers comprehensive services in eight main areas:⁷⁹

- Mining and oilfield security: security consultancy, security audits and the provision of security management, training, personnel and equipment to the petrochemical and mineral extraction industries worldwide.
- Specialist manpower: provision of qualified and experienced personnel for all levels of security, and for specialist training and project management.
- Guard force management: selection, training, deployment and management of local guard forces for key installations, including Embassies in high-risk areas.
- Humanitarian mine clearance operation: training of indigenous personnel in de-mining, mine awareness training to NGO staff, Unexploded Ordnance clearance, and supply of de-mining equipment.
- Security of communication routes: extensive experience of airline, airport and port security. Security of rail, sea and overland routes including cash and high value Goods in Transit.
- Threat assessment: analysis of risk and exposure and recommendations of appropriate countermeasures.
- Crisis management: work with the client to consider various potentially damaging scenarios and cogently plan the responses.
- Technical security equipment: recommendations of cost-effective security equipment and systems complementing the security manpower.

⁷⁸ However, this has not always been the case in Mozambique and in DSL's proposal for paramilitary training in Papua New Guinea firearms featured prominently.

⁷⁹ Note sent to Human Rights Watch, no date.

DSL mishandled its operation in Angola badly, but was also a victim of the domination of the Angolan private security business by a number of senior MPLA military and security officials. There is fierce competition in the security market in Angola, with a number of security firms concluding joint ventures with Angolan partners — usually senior Angolan officials who are paid hefty dollar salaries to sit on the local companies' boards of directors.⁸⁰ Although there are some 90 registered private security firms in Angola, two dominate the market and control most of the business — Teleservice along the coast and oil areas, and Alpha 5 in the diamond areas.⁸¹ Teleservice's main shareholders are the chief of staff of the armed forces, the commander of ground forces, the head of intelligence and the current Angolan ambassador to Washington. In January, apparently as a reward for his help in evicting DSL, the Interior Minister was given a 25% stake in the company. Gray Security enjoys a management contract with both Teleservices and Alpha 5. This entails placing Gray personnel in key management positions and training positions in these companies.⁸²

The division of responsibilities between Teleservices and Alpha 5 was developed by government officials in 1992 and has ensured a tight operation. However, DSL's success threatened the domination of the market by these two Angolan firms, which made its eviction necessary.

The domination of security firms tied into the State is a source of concern. A senior Angolan police commissioner complained in September 1998 that, 'these private security firms erode the State further. They are dangerous, we cannot regulate them as they are politically controlled by senior government officials'. The over-running of Yetwane diamond mine in November by armed assailants was also made easy by lax security. Teleservices' personnel responsible for the mine's security responded to the attack by looting the mine themselves.⁸³

⁸⁰ *Monthly Review Bulletin*, February 1998.

⁸¹ Alpha 5's main share-holder is the state-owned diamond mining company Endiama.

⁸² Gray's main market is South Africa. However, it also has through joint ventures expanded into Botswana, Mozambique, Namibia, Nigeria and Zimbabwe. It claims to operate under the code of practice under the International Standards Organisation, the body that sets standards for industrial enterprises. There remains a suggestion that Gray has benefited from a close relationship with EO, something Gray denies.

⁸³ *The Sunday Times*, 15 November 1998.

DSL in Colombia

Angola is not the only country in which DSL has caused controversy. Its operations in Colombia have come under media scrutiny, and its conduct has been questioned by human rights organisations. BP contracted DSL in 1992 to run their security operation in Colombia. The BP contract is handled by a DSL subsidiary, Defence Systems Colombia (DSC). BP employs DSC to co-ordinate the defence of oil rigs and staff with the Colombia army and police. The oil field is situated in Casanare, a conflict zone where one of Colombia's strongest guerrilla forces, the Castroite National Liberation Army (ELN) is active.⁸⁴

The area is the focus of a dirty counter-insurgency war by the Colombian army in which many human rights abuses have been reported. Although DSC was not directly involved, investigative journalists suggest that two ex-SAS DSC security advisers trained Colombian police with BP approval. On 30 April 1996, BP signed a contract with the Colombian police to create and dispatch a unit of policemen to Casanare to protect their oil installations. The contract was worth some US\$5 million a year. Following an attack on a BP rig in May, BP tasked a team of DSC to train the police. The trainers wore police uniforms too. In two open letters released in April 1998, Human Rights Watch criticised the contractual relationship between Colombian security forces and two international consortia of oil companies operating the principal oil fields and pipelines in the nation.⁸⁵ The letters detailed terms of the multimillion-dollar security contracts and reports of killings, beatings, and arrests committed by those forces responsible for protecting the companies' installations. Human Rights Watch called on the companies to implement contractual and procedural structures to ensure respect for human rights in their security arrangements.

In Casanare department, the location of the Cusiana-Cupiagua oil fields developed by British Petroleum, ECOPETROL, Total, and Triton, contracts came up for renewal in June 1998 as military, paramilitary, guerrilla and criminal activity increased in the area. The renegotiated contracts between the

⁸⁴ 'Corporations and Human Rights', *Human Rights Watch World Report 1999*. New York: Human Rights Watch, 1998, pp.456-457.

⁸⁵ A consortium composed of Occidental Petroleum, Royal Dutch/Shell, and the national oil company, ECOPETROL, which operates the Cano-Limon oil field in Arauca department, took no action to address reports of extrajudicial executions and a massacre committed by the state forces assigned to protect the consortium's facilities. Although the companies' response was that human rights violations were the responsibility of governments, and they did not announce any programs to ensure that their security providers did not commit human rights violations, Royal Dutch/Shell, the only member of the consortium with human rights policies, announced its intention of selling its share of the project as part of an overall divestiture of its Colombian holdings.

companies and the Ministry of Defence restructured the flows of funds to avoid direct company payments to state security forces. Payments for security were to be made to the state-owned ECOPETROL as a conduit to the Defence Ministry instead of directly from the companies to the army. At the time of writing, *the oil companies still made direct payments to the national police.*

There were also some substantive changes in the contracts. BP, the only consortium member with a human rights policy, reported that human rights clauses were included in the new contract; an auditing mechanism was implemented to monitor the flow of funds; and a committee was established to monitor the performance of the military units providing security for the *companies.* *Human Rights Watch could not assess the effectiveness of these programmes because the contract was not available to third parties.* No mechanism to ensure that the personnel guarding these installations would be screened for human rights violations was apparent.

The conduct of private security providers for the BP-led consortium continued to be a problem in 1998. Following allegations in 1997 that DSC had *imported arms into the country and trained Colombian National Police (PONAL) in counterinsurgency techniques,* a government inquiry was launched to determine the role of this company and the police. DSC refused to co-operate with the investigation. In September 1998, BP reported that it had formed an oversight committee to monitor its private security providers, was developing a code of conduct for DSC, and had urged the company to co-operate fully with the government. Despite the allegations BP renewed its contract with DSC for one more year.

In October, new allegations were made that DSC and an Israeli private security firm, Silver Shadow, intended providing arms and intelligence services for the Colombian military while they were security contractors for the Ocesa pipeline. Reports also alleged that DSC had set up intelligence networks to monitor individuals opposed to the company. BP steadfastly denied these claims, but suspended a senior security official while investigating these allegations.

AirScan

The US Florida-based company AirScan has been under contract to protect the oil installations in Angola's oil-rich enclave Cabinda since 1995. Chevron is the main operator there.⁸⁶ AirScan also carries out day/night airborne

⁸⁶ Interview with Chevron, November 1998; Venter A, 'Market Forces: How Hired Guns Succeeded where the United Nations Failed', *Jane's International Defense Review*, 31, 3, 1998, p.24.

operations and security missions, such as protecting US military space launch sites and classified US government assets. At present AirScan has deployed in Cabinda a modified Cessna E337 aircraft equipped with five tactical radios and a Global Positioning System (GPS) receiver. These conduct 24 hour searches for insurgents in the vicinity of the oil fields. Aerial equipment includes the Northrop Grumman WF-360TL and WF-160DS infrared/television systems, which provide x10 magnification and allow for a stand-off surveillance range of between 8,000ft and 12,000ft.

Air Scan has made a number of proposals to the Angolan government to protect the oilfields and fisheries. It has offered a 'maritime surveillance and security system', which would include training crews, and providing surveillance aircraft, patrol boats and operational command centres.

AirScan has also been engaged in a Joint Venture project to train the security forces for the oil town of Malongo in conjunction with Alerta, a private security firm founded by the previous governor of Cabinda. Alerta is to take over complete responsibility for Malongo's security in 1999.

AirScan is itself not without controversy. It has been alleged to have been involved in the Angolan-Congolese intervention in Brazzaville in October 1997 to remove the democratically elected Pascal Lissouba in favour of former dictator Denis Sassou Nguesso. AirScan has also reportedly been involved in arms-trafficking from Uganda to southern Sudan to support the Sudanese People's Liberation Army (SPLA).

Israeli Companies

Israeli companies are also aggressive competitors. In 1994 Levdan, led by retired general Ze'ev Zachrin, signed a US\$50 million contract with the government in Brazzaville to train the local army and presidential bodyguard. Levdan is a subsidiary of Kardan Investment, an import-export company active in the diamond trade. Silver Shadow, a security company led by retired Lieutenant-Colonel Amos Golan, recently made an offer to President Kabila to build up a special protection unit, but the Israeli government ordered the company to stop negotiations since it is now prohibiting any security assistance in countries with 'unstable regimes'.⁸⁷ In late 1998 Silver Shadow assisted the Ugandan government to procure weapons.

⁸⁷ O'Brien K, 'World: Freelance Forces — Exploiters of Old or New-Age Peacekeepers?', *Jane's Intelligence Review*, August 1998, p.42.

French Companies

French companies, mostly run by ex-gendarmes, also have a presence. A former *Gendarmerie* captain, Paul Barril, formed a company called Secrets in 1992 to train Cameroonian President Paul Biya's guard. Another firm called Service and Security provided training to the Togolese anti-riot forces. Jean-Louis Chanas, formerly of the *Direction Generale de la Securite Exteriure* (DGSE) runs Eric SA, which has contracts in Algeria.⁸⁸

Future Trends

Private Military Companies

As we have seen in the case studies above, private military companies and classic mercenary firms have not been the silver bullet they market themselves as providing. In the case studies of EO, Sandline, the White Legion, Stablico and GSG none of these firms have shown the ability to provide anything but short and localised respites from conflict. They certainly have not enhanced stability or encouraged business confidence. Indeed their poor human rights record, their lack of transparency, their engagement in arms transfers, their training in psychological warfare against civilians, their erosion of national self-determination and sovereignty in situations of crisis and their use of people with track records of human rights abuse does not bode well for the upholding of international law.⁸⁹ One has to question the legitimacy of these firms. What gives them the right to choose a client or to infringe the established rights of sovereign states to non-intervention, as enshrined in the UN charter? Also, they do not offer an integrated approach to conflict resolution, although they later invest in protecting assets they have gained through the initial contract.

There is also increasing evidence of private military companies engaging in hostile actions to undermine each other in their efforts to obtain new clients. In this way, the foreseeable rivalry between oil and mineral companies and their accompanying private security companies could signify a dangerous step

⁸⁸ *Ibid.*

⁸⁹ Both EO and Sandline claim they have human rights codes of conduct. EO claim: 'As a rule, our training programmes emphasise the need for good manners which forms the foundation discipline and a high regard for universally accepted values and norms, based on the Universal Declaration of Human Rights (UN)', taken from EO Public Hearing Presentation to the Portfolio Committee — 13 October 1997.

towards the 'privatisation of warfare',⁹⁰ which also raises the question whether peace is in the interest of such companies, who would otherwise find themselves out of business. Sandline's aggressive push for a strong military response in PNG is an example of this.

All of the case studies above focus on firms working with governments or governments in exile. However, at the end of the 1990s there is an increasing incidence of classic mercenary operations conducted with non-state parties, in Angola, in both Congos and in Sierra Leone. Some of these mercenaries seem to have worked for 'responsible' private military companies but to have moved on to fighting for rebel forces to increase their wages. This trend has serious implications and urgently needs monitoring and tracking. But it is equally clear that it is only countries with lucrative mineral resources that can sustain this sort of enterprise. There is no sign of mercenary activity in countries that derive their wealth from tourism or agriculture.

Another problem is that private security firms may not be completely disassociated from the foreign policies of the countries they operate from. Security companies have often claimed that they operate with the tacit approval of their home governments and are a conduit for privatised intelligence gathering. The controversy over Sandline International suggests that in this case British intelligence may have played a role in the operation. This in turn raises the issue of accountability, as private military companies are at present accountable only to their shareholders and clients.

It is for a number of these reasons that the days of private military companies like Sandline are numbered. The closure of EO on 1 January 1999 occurred not because it could not find a steady client base, but because it was too controversial and too high profile. Also, both Sandline and EO have been dogged by non-paying clients. EO pulled out of Sierra Leone with US\$19.5 million still owed to it by the government. The debt was to be repaid at a rate of US\$600,000 a month between March 1997 and the end of 1999, and budgeted for in the country's yearly expenditures.⁹¹ Following its efforts in PNG, Sandline clawed back only some of what it was owed in 1998. Their failure to be paid cash up front and their need to tie their operations to mineral assets that will take time to generate cash has also been burdensome. In 1999 Heritage Oil and Gas and Diamond Works are both suffering from the collapse in world prices for oil and diamonds, and there was a rush to sell

⁹⁰ O'Brien K, 'Military-Advisory Groups and African Security: Privatised Peacekeeping?', *International Peacekeeping*, Autumn 1998.

⁹¹ Shearer D, 'Private Armies and Military Intervention', *Adelphi Paper* 316, 1998, p.52.

Diamond Works shares in Canada in late January 1999 following a collapse in confidence in the company. As their assets are located in insecure zones, the production costs are also high, making these assets even less lucrative. In such a climate it is the large firms that have the institutional muscle to see them through the depression.

EO and Sandline have made an attempt to move into upmarket security, becoming more like Defence Systems Limited. Both EO and Sandline have argued for regulation.⁹² In March 1998 Sandline published a paper called 'Private Military Companies — Independent or Regulated?', in which it supported a system of 'Registration, Approval, Project Authorisation and Operational Oversight', which it argued should be drawn up by 'governments and international institutions (such as the UN, EU and OAU)'.⁹³

EO failed and Sandline will continue to find it difficult to get business that is paid for. The established private security companies are also vigilant and protective of their niche markets, and will increasingly ensure that there is 'clear blue water' between them and a Sandline type firm, especially as they will not want to face losing clients that include a growing number of NGOs. The flip side of the coin is that as the clusters of former Soviet and Eastern Europeans that are turning up to fight in Africa's wars are likely to persist and although their numbers are still small, the task of exposing their firms and the methods by which they are recruited is an urgent challenge.

Legislation that will regulate private nonstate military companies needs to be carefully considered. Alternatives to private security companies should also be considered. Countries can formally invite other governments to provide advice. The creation of a UN rapid reaction force would also mean that such firms would not be needed in situations of crisis. Another way would be to put firms under direct home state or UN control.⁹⁴

The above are all responsive measures. However, the best way to avoid the use of such military firms is to invest in preventive action, dealing with core issues such as poverty and equitable, accountable use of resources and equal

⁹² EO stated at its public hearing to the Portfolio Committee on 13 October 1997 that, 'We are here today, not to object to the Regulation of Foreign Military Assistance (because we are not against regulation in principle), but in partnership with government to make an effort to ensure good legislation is drafted. We think the legislation should be objective, fair and practical — without denying people their basic and generally accepted rights.'

⁹³ Sandline International, 'Private Military Companies — Independent or Regulated?'. Sandline International, 28 March 1998. Available at www.sandline.com.

⁹⁴ Nathan L, 'Lethal Weapons: Why Africa needs Alternatives to Hired Guns', *Track Two*, August 1997.

rights long before conflicts begin. The UN Special Rapporteur in his 1998 report recommended that:⁹⁵

The Commission on Human Rights should call for a study on ways of reinforcing international prevention, action and intervention machinery in order to strengthen the exercise of human rights and promote the rule of law in countries threatened or weakened by armed conflicts, thereby ensuring that the purpose of hiring private companies of this nature, if indispensable, is solely to obtain technical and professional advice on military matters or police protection, within the legal framework expressly laid down.

Private Security Companies

Unlike private military companies, private security companies are booming and their market is likely to grow. They will prosper as long as they avoid becoming involved in mercenary type activities. DSL's problems in Colombia and Angola are good examples of some of the challenges this industry will face — how to keep clean in a hostile environment, and using mainly local staff.

The private security industry requires regulation, and training in human rights, transparency and best practice. Multinational firms can encourage such practice by scrutinising who they hire and also building into their security arrangements independent auditing of operations by human rights and environmental rights specialists. As standards in the oil industry on Health, Safety and the Environment (HSE) became increasingly benchmark practice for a number of mineral and oil companies in the late 1980s, so will respect for human rights in the next millennium. This will make firms with links to EO type operations very exposed in the market place.

⁹⁵ www.unhcr.ch/html/menu4/chrrep/98chr31.htm.

The Contemporary Legal Environment

Garth Abraham¹

This paper aims to examine the domestic and foreign legal environment with regard to mercenaries, and to consider the efficacy of current domestic (South African) and international legislation as it pertains to mercenary/private security activity.

Mercenaries and mercenarism are as old as is the history of organised warfare in the West.² Their presence has long been accepted as an alternative supplement available to governments wishing to augment limited military resources, whether in terms of numbers or in terms of expertise. However, because of their potential for duplicity³ and the moral opprobrium attached to contracting, effectively, to kill in return for blood money, mercenaries and mercenarism have been viewed with suspicion. That suspicion, though, has not translated itself into outright legal condemnation, either by way of international treaty or in terms of domestic legislation.

That there is no outright condemnation has much to do with historical context. Holds Beshir,⁴ '[i]t is difficult to define what a mercenary is. This is because the word has had different meanings at different times. The different meanings it has acquired throughout history depended on the spirit of the age.'

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² Comments Taulbee JL, in 'Myths, Mercenaries and Contemporary International Law', *California Western International Law Journal*, 15, 1985, p.339: 'From the Teutonic tribesmen who served in Roman legions to the Hessian and Hanoverian soldiers who fought under the British flag in the American Revolutionary War, mercenaries have played an integral role in many armies'. For a history of the subject see *ibid.*.

³ For example, after helping their Byzantine paymaster fight the Turks in the early 14th Century, the Almogaváres, Spanish frontiersmen hired by the Byzantine Empire, turned on their erstwhile employer and attacked the Byzantine town of Magnesia; and, following the assassination of their leader, they proceeded to ravage Thrace for two years before moving on to Macedonia.

⁴ Quoted in Zarate JC, 'The Emergence of a New Dog of War: Private International Security Companies, International Law, and the New World Order', *Stanford Journal of International Law*, 34, 1998, p.125.

Thus, the early international publicists⁵ — as the jurists specialising in international law are known — by and large,⁶ had little moral difficulty with the use and recruitment of mercenaries. For example, the Roman-Dutch jurist, and a significant source of South African common law, Van Bynkershoek, writing in 1737, saw no difference between a contract of hire or sale, and one for the hiring of soldiers.⁷

It has only really been in the late 20th Century, and then primarily as a consequence of events in post-colonial Africa in the 1960s, that the international community has been forced to focus significant attention on mercenary activity. Whereas the rise of nationalism and the development of a standing army drawn from amongst the citizenry of a state had meant the gradual decline of mercenaries in the West,⁸ the inherent fragility of the nation-state system within an African context made the continent ideal terrain for those wishing to revive recourse to mercenarism during armed conflict.⁹ From the deployment of a United Nations 'peace-keeping' force in Congo in 1963, in an effort to suppress the mercenary-aided secessionists in Katanga province, mercenary activity has become a regular feature of the African political landscape. It is therefore not surprising that it was largely as a consequence of the efforts and proclamations of the Organisation of African Unity (OAU) that the international community was spurred into action.

⁵ Amongst others, the early international publicists who addressed the issue included Vitoria F, *De bello*, Art I, §8, quoted in Scott ZJB, *Law, the State and the International Community*, 1939, p.328; Saurez F, *De Triplici Virtute Theologica*, 1944, pp.832-35 (Trans., *Classics of International Law*); Van Bynkershoek C, *Quaestionum Juris Publici Libri Duo*, 1930, pp.125 (Trans., *Classics of International Law*); De Vattel E, *The Law of Nations or the Principles of Natural Law*, 1964, pp.240 (Trans., *Classics of International Law*); Calvo C, *Le droit International*, (4th revision, 1888), p.131; Twiss T, *The Law of Nations*, 1863, pp.453-54; Lorimer ZJ, *The Institutes of the Law of Nations*, 1884, p.179.

⁶ For Francisco Vitoria, contrarily, participation in mercenary activity constituted a mortal sin: 'Those who are prepared to go forth to every war, who have no care as to whether or not a war is just, but who follow him who provides the more pay, and who are, moreover, not subjects commit a mortal sin, not only when they actually go to battle, but whenever they are thus willing'. Vitoria F, *ibid.*, quoted in Scott ZJB, *ibid.*

⁷ See Burmester HC, 'The Recruitment and Use of Mercenaries in Armed Conflict', *The American Journal of International Law*, p.41.

⁸ Taulbee JL, *op cit*, p.339.

⁹ Describing mercenarism from the perspective of many black African states, Burchett W & D Roebuck, *The Whores of War: Mercenaries Today*, 1977, have remarked that, '[t]hey [mercenaries] were neo-colonialism's last card — a faceless and bottomless reserve of cannon fodder, not identifiable with governments and their policies, immune to public criticism and debate. The perfect substitute for the expeditionary force'. Quoted in Taulbee JL, *ibid.*. See, too, Mourning PW, 'Leashing the Dogs of War: Outlawing the Recruitment and Use of Mercenaries', *Virginia Journal of International Law*, 2, 1982, p.589.

However, the various resolutions of the UN banning the recruitment, use and training of mercenaries for the purposes of, *inter alia*, destabilising nascent regimes or supporting national liberation movements have not effectively imposed a total ban on mercenaries or mercenarism in international law; nor have the resolutions adequately served to address the employment of mercenaries for the protection of legitimate governments or for the assistance of internationally 'recognised' national liberation movements. There is thus much debate as to whether certain types of mercenaries may in fact be legally acceptable, depending on the legitimacy of the employer and the nature of the services provided.

What is clear is that the failure of international law adequately to address the problem has much to do with the difficulty of having to define the nature of the mercenarism. However, despite the difficulty, an acceptable definition is crucial, for, holds Taulbee,¹⁰ '[a] precise definition is absolutely essential since individuals will be deprived of important rights as a consequence of falling into the proscribed category'.

Indeed, it was, amongst other reasons, because of the problems associated with defining mercenaries that the Diplock Report of the Committee of Privy Counsellors appointed to inquire into the recruitment of mercenaries in the United Kingdom (UK) chose not to regulate mercenaries.¹¹ What is it that makes one combatant a mercenary and another not? Why is it that the international community, until fairly recently, has appeared willing to accept the employment of Gurkhas¹² or members of the French Foreign Legion within foreign parts, and yet reluctant to accord similar acceptance to the employees of what are referred to as 'private security companies', which companies include amongst their number Executive Outcomes, Defence Systems Limited, Gray Security, Sandline International, or Military Professional Resources Incorporated?

The reason for the difference in treatment and regard is that those norms which have been developed by the international community have been in respect of mercenaries who are seen as destructive, amoral, rogue elements within conventional forces. However, this is no longer necessarily an

¹⁰ Taulbee JL, *ibid.*, p.349.

¹¹ *Ibid.*, pp.137-8.

¹² The British registered company, Lonrho, for example, employed Gurkhas to guard its investments in Mozambique in the 1980s. Shearer D, 'Executive Outcomes in Sierra Leone: Dial and Army', *The World Today*, August/September 1997. Further, Gurkhas are currently serving in both the British and Indian national armies. With regard to the former, they were successfully deployed in the Falklands War with Argentina.

appropriate characterisation of mercenaries and mercenarism, or of those in the employ of private security companies. Indeed, it is precisely because of the emergence of private security companies within the last decade that the boundaries in the debate about the morality of mercenarism have become blurred. These companies often have more in common with traditional corporate enterprises than with the *ad hoc* mercenary organisations of old; they appear to have competent intelligence capacities and a concern for good public relations. Herbert Howe continues:¹³

Their established character allows them to handpick each employee on the basis of proven accomplishments. The companies' goal of obtaining contracts encourages them to control their employees' actions. Private firms have a large pool of qualified applicants, due to worldwide political realignments and defense cutbacks since 1989. And, many of these companies often enjoy ties with major multinational, especially mineral, companies which provide increased funding, intelligence, and political contacts.

It is not surprising, therefore, suggests Jeremy Harding,¹⁴ that, rather than being seen as mercenaries, these companies prefer the appellation 'corporate troubleshooters'.

Thus, the question is legitimately asked whether what international law there is regulating mercenaries should necessarily be applied to the employees of private security companies¹⁵ hired by legitimate governments, or by internationally recognised movements of national liberation, either for purposes of training, or for the provision of combat support?

That the debate has become a little more complicated as a consequence of the emergence of private security companies was conceded by Enrique Ballesteros, the UN Special Rapporteur commissioned to examine mercenary activity internationally, as recently as 20 February 1997. In his annual report issued to the UN Economic and Social Council, he looked specifically at the emergence of private security companies and the extent to which they were regulated in terms of existing international norms dealing with mercenaries.

¹³ Howe H, 'Global Order and Security Privatisation', *Strategic Forum*, 1, 1998, p.140.

¹⁴ Harding J, 'The Mercenary Business: "Executive Outcomes"', *Review of African Political Economy*, 87, 1997, p.71.

¹⁵ Private security companies have proliferated in Africa. It has, for example, been alleged that there are at present over 100 such companies active on the continent at present, with 80 in Angola alone. Cleary S, 'Angola: A Case Study of Private Military Involvement'. Paper given at a conference on 'Profit and Plunder — The Privatisation of War and Security in Africa', Institute for Security Studies and the Canadian Council for International Peace and Security, p.3.

What is interesting about the report is the obvious difficulty, highlighted by the Special Rapporteur, of applying the law of mercenarism to private security companies. The report notes, with concern, the current apparent popularity of private security companies - particularly Executive Outcomes - and acknowledges that attitudes towards mercenaries are changing.¹⁶ Further, it concedes that what international law there is on the subject is insufficiently capable of addressing the issue as it exists contemporaneously.

Yet, despite the current uncertainty regarding the acceptability or otherwise of mercenaries and private security companies, the South African legislature, uniquely, has not been deterred from promulgating domestic legislation in an effort to regulate and control the involvement of its citizenry in mercenary activity.

The democratic elections of 1994 marked not only a political transition for South Africa, but represented, too, a dramatic change in the country's legal obligations — both with regard to local arrangement and with regard to South Africa's international commitments. The export of South African nationals *the world over as mercenaries in support of often dubious regimes* clearly posed a source of major embarrassment for a government committed to upholding an international image reflective of the country's newfound status as human rights champion; a commitment which, too, is reflected in section 199 of chapter 11 of the new Constitution. Dealing with the 'establishment, structuring and conduct of security services' within the Republic, the relevant sub-sections declare that:

- The defence force is the only lawful military force in the Republic.
- Other than the security services established in terms of the Constitution, armed organisations or services may be established only in terms of national legislation.
- The security services must be structured and regulated by national legislation.
- The security services must act, and must teach and require their members to act, in accordance with the Constitution and the law, including customary international law and international agreements binding on the Republic.

One consequence of the changes wrought by the new constitutional order,

¹⁶ Indeed, as respected a think tank as the International Institute of Strategic Studies has said of Executive Outcomes that, '[d]espite their dark beginnings in the ashes of apartheid, there is a general move toward respectability'. Ashworth M, 'Africa's Army for Hire', *The Independent*, 16 September 1996.

according to the chairman of the parliamentary National Conventional Arms Control Committee (NCACC), Kader Asmal, was that South Africa could no longer turn a blind eye to mercenary activities by its nationals. The government thus resolved strictly to control and regulate such operations. 'This is our constitutional duty, it is also in accordance with our stance in international affairs that we shall not interfere in the internal affairs of other countries or knowingly allow it to happen'.¹⁷

These constitutional provisions explicitly declare that security services established in terms other than those of the Constitution, might be established only in terms of national legislation, wherefore the *Regulation of Foreign Military Assistance Act*, 15 of 1998 was drafted and promulgated. The South African legislation commenced effective operation in September 1998.

The intention of this paper is to examine, in broad outline, the law regulating mercenary activity and private security companies from a South African perspective. That law includes both international law and municipal or domestic legislation. In its attitude to international law, it is generally agreed that South Africa adheres to the 'harmonisation theory'¹⁸ — which theory represents a qualification of the traditional monist¹⁹ position. The extent of the qualification is to the effect that, while international law is not foreign law, the corpus of international law cannot be applied directly by municipal courts. Rather, in order for an international treaty to enjoy domestic validity, it has first to be incorporated into local law by way of domestic legislation. Domestic legislation, therefore, always prevails over international law — as, indeed, it does over our common law. The implication of the theory is spelt out by South Africa's foremost international jurist, John Dugard, in the following terms:²⁰

... customary international law is to be applied directly as part of the common law, but conflicting statutory rules and acts of state are to prevail over international law and treaties are not to be applied without legislative incorporation. In this way 'harmony' is achieved between international law and municipal law.

Thus, any attempt at arriving at a clear understanding, from a South African perspective, of the legal position in respect of a particular issue with

¹⁷ *The Citizen*, 20 August 1997.

¹⁸ Dugard J, *International Law: A South African Perspective*, 1994, p.37.

¹⁹ The monist school maintains 'that international and municipal law, far from being essentially different, must be regarded as manifestations of a single conception of law'.

²⁰ Dugard, *ibid.*, p.37.

international implications must, of necessity, commence with a consideration of the common law regulating the issue. The common law — which, as Dugard contends, includes the customary international law — forms the background, or default position, against which municipal legislation is then assessed. Thus, the international law relating to mercenaries will receive initial consideration; whereafter mention will be made of the relevant municipal legislation.

The ascertaining of municipal law is a relatively simple exercise. The determination of what constitutes international law on the subject poses greater difficulty. The best vantage point from which to resolve the difficulty is generally accepted²¹ to be article 38(1) of the *Statute of the International Court of Justice*.²² The article sets out, as follows, the sources of international law:

- (a) international conventions (treaties), whether general or particular;
- (b) international custom, as evidence of a general practice accepted as law;
- (c) the general principles of law recognised by civilised nations;
- (d) ... judicial decisions and the teachings of the most highly qualified publicists, as subsidiary means for the determination of rules of law.

Sub-paragraph (d), which makes reference to 'judicial decisions and the teachings of the most highly qualified publicists',²³ is not so much a source of law as a means for the determination of an alleged rule of international law.²⁴ Rather, it is sub-paragraphs (a) to (c) which are concerned with the pedigree of a rule of international law.²⁵ Although the article makes no provision for a hierarchy of sources,²⁶ treaties or conventions are, ordinarily, regarded as the primary source of law,²⁷ whereas custom is seen as a secondary source.²⁸

²¹ See, for example, Harris DJ, *Cases and Materials on International Law*, 3rd edition, 1983, p.19.

²² Quoted in *ibid.*, p.777.

²³ International tribunals nowadays make less use of textual writings than was the case in the past, due largely to the fact that new sources of law are continually being created. Dugard J, *op cit.*, pp.25-8.

²⁴ Schwazzenberger, *International Law*, 1, 3rd edition, 1957, p.26, quoted in Harris DJ, *op cit.*, 1983, p.19.

²⁵ *Ibid.*, p.19.

²⁶ Dugard J, *op cit.*, p.23.

²⁷ *Ibid.*

²⁸ *Ibid.*

Treaties, or conventions, are ordinarily written agreements between two or more states. Such agreements might generally be divided into three broad categories: contractual (two or more states 'contract' with each other and so establish a new 'contractual' relationship); legislative (such treaties represent a codification of existing rules of customary international law, or the creation of a new rule of law²⁹); or constitutional (such treaties form the constitution of international organisations, and, as such, bind all states that are members of the organisation - for example, the Charter of the UN and the Charter of the OAU).³⁰ International custom, on the other hand, is determined on the basis of two requirements: the custom must be a settled practice (*usus*), and there must be a general acceptance amongst states of an obligation to be bound by the settled practice (*opinio juris sive necessitatis*).³¹ Thus, until such time as a rule of international law is created by treaty, or until such time as a custom is accorded treaty status through codification, it is 'state practice', accepted as law, which forms the primary source of international law. Given that South Africa follows the 'harmonisation theory', both treaties and international custom thus form the basis for South African customary international law, or common law, on a subject — until such time as a treaty is specifically incorporated into domestic legislation.

When considering the customary international law that has emerged regarding mercenaries, what is clear is that the law does not impose an international norm banning absolutely the use of mercenaries. The development of the law that has emerged must be examined in the light of the historical context out of which the various resolutions and conventions of the OAU and the UN emanated.

Prior to 1945, what customary international law there was on the issue, attempted to deal with the problem of mercenaries in terms of the law of neutrality.³² It had long been a practice of states within the international community that a state honour an obligation to the effect that when neutral *vis-à-vis* another state, that state should remain impartial in respect of the internal affairs of the other state. Violation of the obligation of neutrality, through permitting the recruitment or enlistment of mercenaries within one's

²⁹ Treaties so created are not ordinarily binding upon non-signatory states; however, where the treaty represents a codification of customary international law, the codification might well constitute evidence of a widespread customary practice — in which event, non-signatory states would be bound in terms of the customary practice and not in terms of the treaty.

³⁰ For further discussion, see Dugard J, *op cit.*, pp.23-4.

³¹ For a South African perspective see Dugard J, *ibid.*, pp.25-8.

³² Taulbee JL, *op cit.*, p.343.

national territory with the purpose of armed activity in another state, was considered to constitute an act of belligerence; which belligerence, in turn, invited claims for belligerent retaliation.³³

This obligation of impartiality on the part of neutral states soon came to constitute an integral aspect of customary international law, receiving *codification status in articles 4 and 6*³⁴ of the 1907 Hague Convention regarding the Rights and Duties of Neutral Powers and Persons in Case of War on Land.³⁵ The convention, though, limited the obligation on signatory states to the policing of national territory, and did not impose upon states an obligation to prevent their nationals from crossing territorial boundaries with the objective of *offering their services to a belligerent paymaster*. With regard to the national himself who enlisted in the foreign force, he committed no offence in terms of international law and was treated the same as was a national of the state whose forces he had chosen to join, regardless of his motivation in enlisting. However, Article 17 of Hague Convention No.V of 1907 provided that where the enlistee was a national of a neutral state, having voluntarily enlisted into the ranks of one of the parties to the conflict, he was *unable to avail himself of the neutrality of his own state*. The relevant article went further and provided that,³⁶ '[i]n such a case, the neutral shall not be more severely treated by the belligerent as against whom he has abandoned his neutrality than a national of the other belligerent State could be for the same act'.

Several states attempted to give greater substance to the Hague Convention by promulgating domestic legislation which effectively served to reinforce the international obligations enunciated,³⁷ while other states went even further

³³ *Ibid.*, p.343.

³⁴ The articles respectively provide: 'Corps of combatants must not be formed nor recruiting agencies opened on the territory of a neutral Power, to assist the belligerents'; and, 'The responsibility of a neutral Power is not engaged by the fact of persons crossing the frontier separating (sic) to offer their services to one of the belligerents'.

³⁵ *Convention Respecting War on Land*, 18 October 1907, 205 Parry's TS 395.

³⁶ *Burmester HC*, *op cit.*, p.53.

³⁷ Such legislation was not new. Under the Jay Treaty of 1794, between Great Britain and the United States, subjects and citizens of one state were not to accept commissions to serve in the armed forces of any foreign prince or state, enemies to the other state. See *Burmester HC*, *ibid.*, p.42. *Taulbee JL*, *op cit.*, pp.343-44, suggests that American legislation controlling the enlistment of its nationals into foreign militia had much to do with a 'pragmatic calculation regarding the strength of the new republic and a desire to remain aloof from the struggles in Europe', as well as a pervading antipathy for mercenarism born of contact with Hessian and Hanoverian soldiers fighting alongside the British during the Revolutionary Wars. Further, the American *Neutrality Act of 1917* declared that American citizens were not to take part as belligerents in foreign conflicts. See *Taulbee JL*, *ibid.*, p.344.

and enacted legislation which expressly aimed at preventing their citizenry from seeking to enlist in foreign armies.³⁸

These initial efforts at controlling mercenarism on an international scale did so not so much by way of direct regulation as by implication. Adherence to a principle of neutrality in respect of armed conflict in another state is a long way off from an obligation on a state to prevent its nationals from exiting national territory with the purpose of enlisting in mercenary groups outside of that territory. Indeed, the articles reflect a reluctance on the part of traditional international law to impute responsibility to a state for the actions of its nationals. This reluctance, suggests Zarate, is based on an outmoded distinction between what were seen as two mutually exclusive spheres of operation — that of government and that of the individual, despite the fact, as Zarate correctly holds, that 'private actions of individuals can, in certain circumstances, have a major impact on interstate relations'.³⁹ Yet it was from these traditional notions of neutrality that the international community developed principles applicable to the proscription of mercenary activity.

After 1945, principles were to be based essentially on the duty of a state to prevent the commission of injurious acts against foreign states rather than on any duty of neutrality. Following the promulgation of the Charter of the UN after the Second World War, it was, initially, only article 2(4) of that Charter which reaffirmed the traditional position of member states of the UN. The article prohibited member states from utilising 'the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations'.⁴⁰ No single major instrument was adopted by the international community expressly addressing the use and recruitment of mercenaries. Indeed, holds Taulbee, 'given the conflicts, ideological and otherwise, that flared immediately following the war, the regulation of mercenary activity was a minor concern'.⁴¹ The only international instrument making any mention of mercenaries was the Geneva Convention of 1949, which dealt with the Treatment of Prisoners of War. The Convention held that mercenaries were entitled to prisoner-of-war treatment, without distinction, if they belonged to

³⁸ The General Treaty of Peace and Amity of the Central American States, 7 February 1923, for example, prescribed that persons falling within the jurisdiction of the contracting parties were not permitted to organise or take part in armed conflict arising in a neighbouring state. Similar provisions were contained in article 23 of the Havana Convention on Maritime Neutrality, 10 February 1928. See Burmester HC, *ibid.*, p.42.

³⁹ Zarate JC, *op cit.*.

⁴⁰ Charter of the United Nations, quoted in Harris DJ, *op cit.*, p.749.

⁴¹ Taulbee JL, *op cit.*, p.345.

or formed part of the armed forces, militia, or other volunteer forces of a state the members of whose forces were otherwise entitled to such treatment.

The appearance of mercenaries in significant numbers, as combatants and advisors, on the African continent in the various local conflicts following independence, finally brought the issue to the fore on the agenda of the international community; although, again, the response of most states — initially — was simply to reaffirm a commitment to article 2(4) of the UN Charter.⁴² The first serious attempt to address the issue was General Assembly Resolution 2465 of 1968.⁴³ The relevant paragraph of the resolution declared:⁴⁴

that the practice of using mercenaries against movements for national liberation and independence is punishable as a criminal act and that the mercenaries themselves are outlaws, and calls upon the Governments of all countries to enact legislation declaring the recruitment, financing and training of mercenaries in their territory to be a punishable offence and prohibiting their nationals from serving as mercenaries.

As is clear, the paragraph was directed exclusively at the use of mercenaries against 'movements for national liberation and independence' in colonial territories; such mercenaries were declared to be 'outlaws'. Apparently⁴⁵ introduced toward the end of the debate by the then Soviet Union, the paragraph was not debated.⁴⁶ Subsequently, the resolution having been adopted as a whole, a number of west European countries voiced reservations about the paragraph — to no avail.

The resolution was followed shortly thereafter by the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, of 1968;⁴⁷ which latter resolution included a clause to the effect that: 'Every State has the duty to refrain from organising or encouraging the organisation of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State'.

⁴² *Ibid.*, p.345.

⁴³ Implication of the Declaration on the Granting of Independence to Colonial Countries and Peoples, GA Res 2465 UN GAOR Supp, 18 at 4, UN Doc A/7218, 1968.

⁴⁴ Quoted in Burmester HC, *op cit.*, p.54.

⁴⁵ *Ibid.*, p.54.

⁴⁶ *Ibid.*.

⁴⁷ General Assembly Resolution 2625, 1970; GA Res. 2625. 25GAOR. Supp, 28, 121, UN Doc A/8028, 1970.

This resolution, too, obliged states merely to preclude the actual organisation of a mercenary force within their territory; it placed no obligation on a state to prevent its citizenry from enlisting in a mercenary force. Despite the reservations voiced by certain powers in respect of both resolutions, the sentiments were reiterated in Resolutions 2548 (XXIV) of 11 December 1969, and 2708 (XXV) of 14 December 1970.

Shortly thereafter the declaration on the Basic Principles of the Legal Status of Combatants Struggling Against Colonial and Alien Domination and Racist Regimes,⁴⁸ held that:⁴⁹

Reaffirming the declarations made in General Assembly Resolutions 2548 (XXIV) of 11 December 1969 and 2708 (XXV) of 14 December 1970 that the practice of using mercenaries against national liberation movements in the Colonial Territories constitutes a criminal act ... The use of mercenaries by colonial and racist regimes against the national liberation movements struggling for their freedom and independence from the yoke of colonialism and alien domination is considered to be a criminal act and the mercenaries should accordingly be punished as criminals.

General Assembly Resolution 3314⁵⁰ of 1974 provided a definition of aggression which failed to impose an obligation on states to prevent their nationals from joining mercenary forces.⁵¹

However, the characterisation of mercenaries as 'outlaws' — a feature of the 1968 resolution as well as of subsequent resolutions — marked an important transition in the international law on the subject: the transition from the belief that the only way in which the matter could be addressed was by way of imposing certain obligations on states, to one of individual criminal liability.⁵² The resolutions have, too, called upon third party States to legislate domestically to preclude their nationals from engaging in mercenary activity.

It was against the background of this climate of thinking that the OAU, in 1972, signed the Convention for the Elimination of Mercenaries in Africa.⁵³

⁴⁸ GA Res 3103, 28 UN GAOR Supp, 30 at 142, UN Doc A/9030, 1973.

⁴⁹ Quoted in Taulbee JL, *op cit.*, p.346.

⁵⁰ GA Res. 3314, Art 3(g), 29(1) GAOR, Supp, 31, 143, UN Doc A/9631, 1974.

⁵¹ The definition of aggression is 'the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State'.

⁵² Taulbee JL, *op cit.*, p.346.

⁵³ OAU Doc CM/433/Rev L, Annex 1, 1972.

The international pressure against the use of mercenaries had, in a sense, originated in Africa, for it was in Africa that mercenaries were most active after the episode of the Katangan secession in the early 1960s. In 1964 Prime Minister Moïse Tshombé of Congo, the appointee of Christophe Gbenye (and sometime leader of the secessionist government in Katanga province), hired mercenaries to crush the Simba revolt; again in 1966 mercenaries were employed by the Mobutu regime to quell another revolt in Katanga; while in November 1967 two groups of mercenaries, again in Congo, (one led by Bob Denard, an ex-officer in the French marines, and the other by Jack Schramme, a Belgian), conducted a series of unsuccessful operations against Mobutu's government in an effort to bring Tshombé back to power. In the same year the Nigerian Civil War saw both sets of combatants (the Federal Government of Nigeria and the secessionists in Biafra) employing mercenary support.⁵⁴ Mercenaries were involved in the conflict in the southern Sudan in 1969; in November 1970 the socialist government of Guinea was attacked by a Portuguese-led band of mercenaries.

The seventies saw mercenaries active for much of the decade in Angola, whether as members of the right-wing National Front for the Liberation of Angola (FNLA) or of Jonas Savimbi's Union for the Total Independence of Angola (UNITA). Cuban troops had, too, been enlisted to support President Agostinho Neto's government. Bob Denard was again active in this decade, being involved in the overthrow of the government of the Comoro Islands in 1975 and 1978; while Mike Hoare attempted an overthrow of the Seychelles government in 1981. Like the proverbial bad penny, Denard was involved in an aborted effort to overthrow President Mathieu Kérékou in Benin (Dahomey). The action of mercenaries on the continent has continued unabated into the 1990s, with their being involved in conflicts in Sierra Leone, and continuing their involvement in the various conflicts in Angola and what is now the Democratic Republic of Congo.

The OAU responded to the numerous incidents of mercenary involvement in the conflicts raging across the continent with declarations of condemnation and calls that all nations should outlaw the recruitment and use of mercenaries. Resolutions were passed to this effect in the 1960s and 1970s. At its headquarters in Addis Ababa, in 1971, the Assembly of Heads of State and Government of the OAU declared that mercenaries represented a threat to the 'independence, sovereignty, territorial integrity and the harmonious

⁵⁴ A Pretoria-based company, Mercenaire International, supplied mercenaries to the Biafran secessionist movement — which group ultimately lost in 1970 after three years of intense fighting.

development of Member States of the OAU',⁵⁵ and, that those who made use of mercenaries directly threatened the sovereignty of member states.

The 1971 declaration was followed in 1972 by a Convention for the Elimination of Mercenaries in Africa, which declaration was drafted by the OAU's Council of Ministers' Committee of Legal Experts. The Convention was finally signed in Libreville in 1977. The convention, despite pertaining particularly to Africa, 'has influenced all subsequent thinking on the international control of mercenaries'.⁵⁶ The definition of what constituted a mercenary was determined by reference to the purpose of the mercenary's employment. The actions of the mercenary were also held to constitute crimes against the peace and security of the African continent. The relevant article (article 1) reads as follows:⁵⁷

[A] 'mercenary' is classified as anyone who, not a national of the state against which his actions are directed, is employed, enrolls or links himself willingly to a person, group or organisation whose aim is:

- (a) to overthrow by force of arms or by any other means the government of that Member State of the Organisation of African Unity;
- (b) to undermine the independence, territorial integrity or normal working of the institutions of the said State;
- (c) to block by any means the activities of any liberation movement recognised by the Organisation of African Unity.

While the OAU convention 'constituted the first attempt to establish practical sanctions against mercenary activity'⁵⁸ — seeking as it did to transcend the traditional limitations of national jurisdiction — the 1972 document does not explicitly preclude mercenaries from being employed. Indeed, Article I merely prohibits the hiring of mercenaries whose aim is the overthrow or undermining of established regimes or the suppression of movements of national liberation; but the convention, through careful construction, allows for legitimate governments to hire mercenaries with the purpose of repelling dissident groups within their own borders. Numerous commentators suggest that⁵⁹ the primary concern for African countries, at 'that point[,] was that mercenaries not be used against OAU-recognised liberation movements'.

⁵⁵ OAU Declaration on the Activities of Mercenaries in Africa, cited in Zarate JC, *op cit.*, p.127.

⁵⁶ Mourning PW, *op cit.*, p.600.

⁵⁷ Zarate JC, *op cit.*, p.128.

⁵⁸ Mourning PW, *op cit.*, p.601.

⁵⁹ Zarate JC, *op cit.*, p.128; Taulbee JL, *op cit.*, p.350.

Following the African lead, the issue of mercenaries came up for consideration at the Diplomatic Conference on International Humanitarian Law in Armed Conflicts in 1975, which conference was convened to consider possible amendments to the Geneva Conventions of 1949. During discussions concerning the status of prisoners of war, addressed in draft Article 42, the principle behind the various UN resolutions received the support of some countries. The aim of the countries concerned was to deny to mercenaries employed in conflicts on behalf of colonial or racist regimes the protection of prisoner-of-war status and to class such persons as criminals. The move would have constituted a significant departure from traditional international law — in terms of which mercenaries have traditionally been accorded the same status as that enjoyed by members of the belligerent force for which they are fighting.

The following year, at the 1976 session of the conference, the relevant Working Group of Committee III issued a report which reflected general agreement to the effect that, as a *minimum*, mercenaries were not to enjoy prisoner-of-war or combatant status. However, the report revealed no consensus over whether the deprivation of such status should necessarily be made mandatory. Indeed, the Working Group accepted that, 'as a minimum persons found to be mercenaries should be entitled to be treated humanely and in accordance with the national law of the capturing power'.⁶⁰

In June 1976 of the year preceding the final session of the conference, the potential impact of the discussions received dramatic illustration. Thirteen mercenaries were prosecuted in Angola in terms of various UN and OAU resolutions.⁶¹ In the wake of the prosecutions the Luanda Convention on the Prevention and Suppression of Mercenaries was drafted. The convention declared mercenaries not to be lawful combatants and thus not entitled to prisoner of war status.

The relevant provisions of the Luanda Convention were then mirrored in the compromise position adopted by consensus at the final session of the Diplomatic Conference on 8 June 1977. The content of Additional Protocols

⁶⁰ Burmester HC, *op cit.*, p.55

⁶¹ The defendants were tried and convicted of the crime of 'being mercenaries'. The prosecuting Angolan government derived the crime from four international legal precedents: (i) the four UN resolutions which had condemned mercenary activity prior to the trial; (ii) the 1967 statements of the Heads of state and Government of the OAU that had made specific appeals to all nations to enact laws declaring the recruitment and training of mercenaries a crime; (iii) the statement on mercenary activity adopted by the OAU in 1971; and (iv) the definition of crimes against peace in the Nuremberg Charter. Mourning PW, *op cit.*, p.602. Of the 13, four were sentenced to death and the remainder to lengthy prison terms.

I and II to the Geneva Conventions was to the effect that mercenaries were not to enjoy the rights accorded those with combatant status; mercenaries could consequently be tried as common criminals in the offended state. However, Protocol I allowed for states, if they so chose, to offer to mercenaries prisoner of war status. Further, the mere fact of being a mercenary did not, in itself, constitute a criminal offence. Thus, the forthright and bold nature of the various UN resolutions, which were not adopted at the Conference, 'did not appear to reflect the consensus of the international community'.⁶² Indeed, the variety of opinion, suggests HC Burmester, is reflected in the fact that,⁶³ '[w]hile the article does not expressly say so, it is clearly understood that a mercenary is entitled to the basic humanitarian treatment and protections provided for under the Protocol for persons in the power of a party to the conflict who are not otherwise entitled to more favourable treatment.'

The Additional Protocols to the Geneva Convention of 12 August 1949 (Protocol I, Art 49), defined a mercenary as any person who:

- (a) is specifically recruited locally or abroad in order to fight in an armed conflict;
- (b) does, in fact, take a direct part in the hostilities;
- (c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;
- (d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;
- (e) is not a member of the armed forces of a Party to the conflict; and
- (f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

⁶² Burmester HC, *op cit.*, p.55. 'Nevertheless', held Burmester, 'the removal of even certain protections from combatants who would otherwise qualify for such protection must be viewed with some concern. At the same time that one is extending protection under the laws of war to guerillas, it seems inconsistent to be taking it away from other combatants. If states accept the exclusion of mercenaries from the protection of the laws of war, then the argument that war criminals as a whole should not receive treatment as prisoners of war is also likely to gain acceptance. Once protection is denied to one class of persons the way is left open for other classes to be similarly denied protection. If states consider foreign participation in national liberation struggles against colonial and racist regimes to be of such gravity as to require that certain protections not be accorded to mercenaries, it seems only logical ... that such protections should not be accorded to any private foreign participants'.

⁶³ *Ibid.*, p.55.

The definition is so worded that, where the international community is willing to tolerate foreign nationals serving in the armed forces of another country, those foreign nationals will not fall within the definition of a mercenary. In addition, the relevant article of Protocol I (Article 47)⁶⁴ ignores those foreigners integrated into the armed forces of another state, those who are motivated by ideology or politics, and those who may not actually fight in the hostilities. Foreigners employed as trainers and advisers, although having a potential impact on the military situation significantly in excess of actual combatants, are also excluded from the definition.

Later resolutions of the General Assembly⁶⁵ affirmed the accepted principle that states are obliged not to allow, either by way of action or omission, armed groups from within their territories to invade another territory. However, it was soon realised by the United Nations that, despite its numerous pronouncements condemning the use of mercenaries, and despite Additional Protocol I, member states continued in their failure to restrain their citizens from enlisting in mercenary groups. Thus, the international community, albeit reluctantly, recognised 'the need for a multilateral convention'.⁶⁶ It was therefore resolved to draft an International Convention against the Recruitment, Use, Financing and Training of Mercenaries during the course of the thirty-fifth session of the General Assembly.⁶⁷ The committee formed to draft the international convention spent several years in doing so, following the assessment of proposals made by individual states. The end product was presented to the General Assembly for signature and ratification on 4 December 1989. The definition adopted in the Convention is more inclusive than that contained in the Additional Protocol; thus, the recruitment, use, financing and training of mercenaries are also declared to be offences, and states are required to prevent the commission of such offences.

However, the Convention still relies on motivation in order to distinguish mercenaries from other types of combatants. The motivation which invites the appellation 'mercenary' is money — 'a mercenary is motivated ... essentially by the desire for private gain'. However, as was recognised by the Diplock

⁶⁴ For discussion on the debate relating to the formulation of the definition contained in Article 47 in Additional Protocol I, see Taulbee JL, *op cit.*, pp.350-56.

⁶⁵ See, for example, *Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations*, GA Res. UN GAOR, 42nd Sess. UN Doc A/42/22 (1987), which resolution is discussed in *Stanford Journal of International Law*, p.126 n 310.

⁶⁶ Zarate JC, *op cit.*, p.131.

⁶⁷ At that time the Nigerian delegation to the UN offered a proposed convention to the Ad Hoc Committee on the Drafting of an International Convention Against the Recruitment, Use and Financing of Mercenaries. For a discussion on the Nigerian draft see Mourning PW, *op cit.*, p.605.

report in 1976, it is ordinarily virtually impossible to determine the motivation of combatants. The report concluded that:⁶⁸

... any definition of mercenaries which required positive proof of motivation would ... either be unworkable, or so haphazard in its application as between comparable individuals as to be unacceptable. Mercenaries, we think, can only be defined by reference to what they do, and not by reference to why they do it.

Although, holds Zarate,⁶⁹ the 1989 Convention 'appears to crystallise the customary international law regarding mercenaries', it is not beyond criticism. First, only when the crime of mercenarism is committed within the boundaries of a state or by a national of a state is that state accorded jurisdiction to deal with the crime. Secondly, in the event of conflict, the Convention denies to an aggrieved state the right to proceed against an offending state. Finally, the Convention provides for no monitoring mechanism of its provisions, thus placing that responsibility on the individual member states.

Since the signing of the 1989 convention, the UN has continued to pass resolutions dealing with mercenary activity. However, the various resolutions 'reflect the limited nature of the ban on the use of mercenaries and the traditional concerns of the international community regarding individual mercenaries'.⁷⁰ The resolutions passed have dealt with the use of mercenaries in a variety of different circumstances; including the destabilisation of neighbouring states,⁷¹ acting as the vanguard for a coup in a small state,⁷² the *hindering of the efforts of movements of national liberation in their drive toward independence*,⁷³ and, the violation of human rights.⁷⁴ The thrust of the resolutions is to the effect that at the actions of mercenaries are in contravention of the fundamental principles of international law, such as

⁶⁸ Burmester HC, *op cit.*, p.37.

⁶⁹ Zarate JC, *op cit.*, p.131.

⁷⁰ *Ibid.*, p.131.

⁷¹ *Ibid.*, p.132 n 349.

⁷² *Ibid.*, p.132 n 350.

⁷³ *Ibid.*, p.132 n 351.

⁷⁴ *Ibid.*, p.132 n 352.

'non-interference in the internal affairs of states' and 'territorial integrity and independence'.⁷⁵

What is clear, though, is that a total ban on the use of mercenaries does not exist in international customary law, and that those prohibitions that do exist do not deal adequately with all varieties of mercenary activity. Those laws which have been developed by the international community are aimed specifically at the curtailment of mercenary activity directed at sovereign, legitimate states, or at the suppression of movements of national liberation, or at efforts aimed at the realisation of national self-determination. The activities of a number of the private security companies currently active on the African continent would fall outside of this characterisation — they have not necessarily challenged the sovereignty of states, or been directed against *movements of national liberation, or hindered efforts at national self-determination*. Holds Zarate, in Africa there has developed 'a clear distinction between foreign support of legitimate African regimes and individualised mercenary attempts to wreak havoc in the region'.⁷⁶

While the repeated condemnations and resolutions of the various political organs of the United Nations have been interpreted by some as constituting evidence of a rule to the effect that a 'state has an obligation [that goes beyond the traditional constraints of international law] to control the recruitment of its nationals in situations where a threat to peace and security exists',⁷⁷ what the argument fails to recognise is that the condemnations and resolutions have been directed at particular conflicts — in which mercenaries have been seen to constitute a source of aggravation and a potential threat to international peace and security. *The condemnations and resolutions do not necessarily represent blanket opposition.*

Further, where the condemnations and resolutions have been more broad in their scope — such as those of the General Assembly as opposed to the Security Council — the pronouncements do not necessarily reflect established customary international norms. Indeed, as Zarate correctly observes,⁷⁸ in terms of the Charter of the UN, 'the General Assembly has no authority to enact, alter, or terminate rules of international law'. Thus, while 'an accumulation of

⁷⁵ This type of mercenarism is described by Marie-France Major as an 'internationally wrongful act'. Major MF, 'Mercenaries and International Law', *Journal of Comparative and International Law*, 22, 1992, p.117.

⁷⁶ Zarate JC, *op cit.*, p.90.

⁷⁷ *Ibid.*, p.133.

⁷⁸ *Ibid.*.

resolutions, [and] a repetition of recommendations ... may amount to evidence of practice on the part of states',⁷⁹ and *opinio juris*, they do not necessarily constitute international law. Instead, such resolutions and recommendations, whether emanating from the General Assembly or regional organisations like the OAU, may only represent contributions to the crystallisation of a future customary rule of international law.

The position of those who argue that the International Convention now constitutes settled international law on the subject is further undermined by the fact that, because it has yet to be ratified by a sufficient number of states, the convention has not been given force and effect. Indeed, the legal impact of the convention is rendered even more tenuous by the fact that of the 16 signatories, three — Angola, Congo, and Nigeria — have either hired or dealt directly with private security companies, while a fourth, the Ukraine, is a significant source for the supply of pilots to the most effective of the security companies, Executive Outcomes.⁸⁰ Further, a fifth signatory, the Zaire of Mobutu, hired individual mercenaries in its doomed effort to resist the advancing force of current strongman Laurent-Desiré Kabila. Thus, suggests Zarate, '[i]t is difficult ... to claim that a standard exists beyond that inherent in the peremptory norms of international law'.⁸¹

Private security companies also would fall outside the conjunctive definition of Article 47. Thus, in the event of such companies having been recruited not to 'fight' in an 'armed conflict', but to defend a particular position, they might well escape the censure of the definition. In this regard, were the enlistment of mercenaries for purposes of defence to be banned in terms of the Convention, it might well conflict directly with a country's right to self-defence — a right codified in Article 51 of the UN Charter.⁸² Similarly, what if the involvement of mercenaries in the employ of a security company has, in fact, received the authorisation of its home government? Would such persons, too, receive the censure of the Convention?

The reliance on motivation in the definition of mercenary in both the Additional Protocol and the 1989 Convention ignores the accountability of states in respect of the actions of their nationals. Indeed, the peremptory

⁷⁹ Dugard, *op cit.*, p.29.

⁸⁰ Zarate JC, *op cit.*, p.133.

⁸¹ *Ibid.*.

⁸² The article states: 'Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security'.

norms which do in fact exist continue to shy away from imputing responsibility to a state for the actions of its citizens — despite the very obvious potential of such individual citizens to endanger world peace and international security. Indeed, holds Zarate, '[t]he international community's fear of mercenaries lies in that they are wholly independent from any constraints built into the nation-state system'.⁸³ Clearly if the problem of rogue mercenarism is to be adequately addressed, international law will have to develop capacities to attribute responsibility to states for the actions of its citizenry. Such responsibility would not arise from any imputation of complicity on the part of the state concerned, but rather from recognition of the fact that membership of the community of nations confers such a responsibility on the modern state. In order for the state to honour its own obligations of respect for territorial integrity and political independence of other states within the international community, a member state of that community has the responsibility to ensure that its own nationals act in a manner that serves not to undermine those obligations. Further, the conferral of such responsibility is not foreign to many other spheres of international law.

Today, ... states ... have no hesitation in imposing numerous export restrictions, foreign exchange controls, and other government supervision over contracts and enterprises involving the export of war materials. This illustrates the growing recognition by states that they cannot ignore activities by their nationals which may affect world peace and security.⁸⁴

The debate, though, is with regard to the reach of this responsibility. The law, traditionally, has refused to attribute responsibility to a state where that state has taken what might be regarded as reasonable action to prevent injury caused by its own nationals. It might well thus be construed as unreasonable to impute responsibilities to states in respect of their nationals for actions taken by those nationals, without the knowledge of the state concerned and beyond its territorial borders. For the vast majority of states, the availability of measures to control the movements and actions of its nationals is quite simply beyond the powers which states are capable of exercising. It is thus not surprising that the international community has taken the easier route and encouraged individual states, by way of domestic legislation and administrative measures, to exercise control over the actions of their nationals. That such legislative and administrative measures are indeed within the capability of individual states would suggest that any attempt by states to disclaim responsibility for the actions of their nationals beyond their borders would ring hollow.

⁸³ Zarate JC, *op cit.*, p.122.

⁸⁴ *Ibid.*, p.154 n 474.

However, despite the call for domestic regulation, thus far, it is only South Africa and the United States of America that have actually legislated accordingly. Of present concern is the South African legislation, the preamble to which states that its purpose is to give effect to section 198(b) of the Constitution. The relevant section reads: 'The following principles govern national security in the Republic: ... [t]he resolve to live in peace and harmony precludes any South African citizen from participating in armed conflict, nationally or internationally, except as provided for in terms of the Constitution or national legislation.'⁸⁵

The South African legislation seeks to give effect to the section by the regulation of the rendering of foreign military assistance by 'South African juristic persons, citizens, persons permanently resident in the Republic and foreign citizens who render such assistance from within the borders of the Republic'.⁸⁶

The legislation does so by drawing a distinction between 'mercenary' activity and the rendition of 'foreign military assistance'. Mercenary activity is defined to mean 'direct participation as a combatant in armed conflict for private gain';⁸⁷ whereas 'foreign military assistance' is defined to mean:⁸⁸

... military services or military-related services, or any attempt, encouragement, incitement or solicitation to render such services, in the form of:

- (a) military assistance to a party to the armed conflict by means of -
 - (i) advice or training;
 - (ii) personnel, financial, logistical, intelligence or operational support;
 - (iii) personnel recruitment;
 - (iv) medical or para-medical services; or
 - (v) procurement of equipment;
- (b) security services for the protection of individuals involved in armed conflict or their property;
- (c) any action aimed at overthrowing a government or undermining the constitutional order, sovereignty or territorial integrity of a state;

⁸⁵ Sec 198 (b), *The Constitution of the Republic of South Africa, Act 108 of 1996*.

⁸⁶ Preamble, *Regulation of Foreign Military Assistance Act, 15 of 1998*.

⁸⁷ Sec 1 (iv), *Regulation of Foreign Military Assistance Act, 15 of 1998*.

⁸⁸ Sec 1 (iii), *Regulation of Foreign Military Assistance Act, 15 of 1998*.

- (d) any other action that has the result of furthering the military interests of a party to the armed conflict, but not humanitarian or civilian activities aimed at relieving the plight of civilians in an area of armed conflict.

Mercenary activity is prohibited in the following terms: 'no person may within the Republic or elsewhere recruit, use or train persons for or finance or engage in mercenary activity'.⁸⁹ With regard to the rendering of foreign military assistance, such assistance is not proscribed, provided the assistance has been approved of by way of authorisation or agreement received from the National Conventional Arms Control Committee. The legislation thus effectively introduces a system of licensing. However, the necessary licence will not be granted if the proposed foreign military assistance does not accord with the national interest of the Republic. Those circumstances where *licensing approval will not be granted are itemised to include assistance which would:*⁹⁰

- (a) be in conflict with the Republic's obligations in terms of international law;
- (b) result in the infringement of human rights and fundamental freedoms in the territory in which the foreign military assistance is to be rendered;
- (c) endanger the peace by introducing destabilising military capabilities into the region where the assistance is to be, or is likely to be, rendered or would otherwise contribute to regional instability and would negatively influence the balance of power in such region;
- (d) support or encourage terrorism in any manner;
- (e) contribute to the escalation of regional conflicts;
- (f) prejudice the Republic's national or international interests;
- (g) be unacceptable for any other reason.

In the event of contravention of the provisions of the Act, the statute imposes stringent penalties and is held to enjoy extraterritorial application. Thus, 'notwithstanding the fact that the act or omission ... was committed outside the Republic', the offender may be tried for the offence by any court of law in the Republic.⁹¹

That the South African legislature has so readily honoured its international responsibilities by promulgating the legislation is laudable; however, the legislation is not without its difficulties. Indeed, the difficulties are such that

⁸⁹ Sec 2, *Regulation of Foreign Military Assistance Act, 15 of 1998.*

⁹⁰ Sec 7 (1), *Regulation of Foreign Military Assistance Act, 15 of 1998.*

⁹¹ Sec 9, *Regulation of Foreign Military Assistance Act, 15 of 1998.*

the suggestion has been made that the legislation is 'mostly a symbolic effort by South Africa to appease the international community, in particular the Organisation of African Unity, rather than a realistic deterrent to mercenarism'.⁹²

What is of initial interest is the distinction which the legislation draws between mercenary activity and the rendition of foreign military assistance. It is submitted that the distinction was made in an effort to differentiate between the rogue variety of mercenarism that the international community has for so long been attempting to suppress, and that of the private security companies, whose actions are to be addressed in terms of the definition of 'foreign military assistance'. However, the result does not achieve that objective.

With regard to the definition of 'mercenary activity', despite the problems of definition referred to, international instruments have traditionally attempted to define mercenarism in terms of the motivation for private gain. The relevant instruments have, in fact, gone further and qualified private gain by specifying that such gain must be in excess of that ordinarily earned by national combatants. The South African legislation, however, makes allowance for no such qualification. Thus, even in those circumstances where the action taken is based on political, ideological or religious motivation and the person so motivated is remunerated — regardless of the amount or form of the remuneration — the action would constitute mercenarism.

As Taulbee contends, when dealing with definition from an international law perspective:⁹³

A definition must balance competing interests and must also balance precision with significance. As such, it must strike a medium between requirements which provide general parameters for evaluating contextual elements, and requirements which attempt rigorous and exhaustive descriptions of persons, situations and activities. An overly detailed definition may prove too rigid and resistant to accommodate change as circumstances demand. Conversely, a simple and brief definition which permits discretion in application leaves open the possibility of abuse. If the definition is too general the interpretation of terms may be colored by ideological or political calculation.

Clearly, the definitions employed in the South African legislation fail precisely for the reasons suggested by Taulbee. The legislation was rushed through

⁹² Hadland A, 'SA will find it hard to leash its dogs of war', *The Sunday Independent*, 5 April 1998.

⁹³ Taulbee JL, *op cit.*, p.349.

parliament without sufficient thought being given to the problem of definition. If the objective was to avoid the pitfalls of defining mercenarism in terms of motivation, a more effective definition of what constitutes mercenarism could, instead, have looked to the purpose for which the mercenary is employed. Ordinarily, the legitimacy of that purpose is reflective of the legitimacy of the employer. And, after all, it is the purpose which is of ultimate concern. However, simply to define mercenary activity as 'participation ... in armed conflict ... for private gain' is to render the definition meaningless.

The definition of 'foreign military assistance', similarly, is problematic. The definition, contend some commentators,⁹⁴ is sufficiently wide to include a range of activities unrelated to military matters in the conventional sense. Thus, the definition might well include within its ambit 'individuals, universities, non-governmental organisations involved in conflict prevention and dispute resolution and aid workers ...'.⁹⁵

Further, both definitions face potential constitutional challenge. The legislation might be interpreted as contrary to a number of the clauses contained in the Bill of Rights of the Constitution; for example, freedom of religion, belief and opinion;⁹⁶ freedom of expression;⁹⁷ freedom of association;⁹⁸ freedom of movement and residence;⁹⁹ and, freedom of trade, occupation and profession.¹⁰⁰ Similarly, the provisions might well contravene the relevant sections of the various international instruments to which South Africa is bound.¹⁰¹ However, both in the case of the domestic Bill of Rights and in the case of the international instruments, the rights are not unlimited.

⁹⁴ Malan M & J Cilliers, 'Genuine outreach projects can be given mercenary tag', *Business Day*, 3 September 1997.

⁹⁵ *Ibid*

⁹⁶ Sec 15: 'Everyone has the right to freedom of conscience, religion, thought, belief and opinion'.

⁹⁷ Sec 16: 'Everyone has the right to freedom of expression'.

⁹⁸ Sec 18: 'Everyone has the right to freedom of association'.

⁹⁹ Sec 21: '(1) Everyone has the right to freedom of movement.
(2) Everyone has the right to leave the Republic.
(3) Every citizen has the right to enter ... the Republic'.

¹⁰⁰ Sec 22: 'Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law'.

¹⁰¹ Para 2 of Article 13 of the Universal Declaration of Human rights provides that 'Everyone has the right to leave any country, including his own, and to return to his country'; while, para 2 of Article of the Covenant on Civil and Political Rights provides in part that 'Everyone shall be free to leave any country, including his own'.

In the event of a constitutional challenge, though, the legislator would have to justify the limitation on the grounds that it is 'reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom ...'.¹⁰²

Apart from the potential constitutional challenge, a further difficulty is one of enforcement of the legislation. Indeed, it has been suggested by some commentators that 'the methods of modern mercenarism and the unstable environment in which these kinds of activities take place make an effective deterrent virtually impossible'.¹⁰³ Legislation incapable of proper enforcement is hollow legislation.

Regardless of the efficacy, or otherwise, of the legislation, what is required is a thorough reassessment of mercenaries and mercenarism. As has been repeatedly stressed, it is important to differentiate between varieties of mercenaries and mercenarism, not all of which are deserving of condemnation and moral opprobrium. Rather, in the light of the political and social flux characterising those states where mercenary activity is most prevalent, a reassessment might lead to the abandonment of domestic legislation of the South African variety. In its stead regulation might be introduced which attempts more successfully to channel the capacities of mercenaries and of the private security companies. Such regulation might well assist in the realisation of regional security and stability.

¹⁰² Sec 36 (1), *Constitution of the Republic of South Africa*, Act 108 of 1996.

¹⁰³ Hadland A, 'SA will find it hard to leash its dogs of war'. *The Sunday Independent*, 5 April 1998.

The Regulation of Private Security Forces

Jeffrey Herbst¹

One of the most dramatic recent developments in Africa has been the emergence of Executive Outcomes and other private security forces that either have a combat capability or can advise and equip militaries to fight. The decisive role that EO played in the Angola and Sierra Leone conflicts and the prospect of it, and its competitors, having 'unlimited potential for expansion within Africa' — to quote a British intelligence assessment² — has made the regulation of private security forces a new and complex issue. The problem of exercising control over the private provision of violence will become more pressing in the future as the international community increasingly allows African solutions to African wars, as the glut of conventional weaponry makes it ever easier for private firms to arm, and as advances in technology (for example, the private provision of aerial and satellite reconnaissance) enables firms to supply the type of combat support that was until recently thought to be the province of states.

However, the international community currently lacks the analytic foundations necessary to understand the dynamics of regulating private security forces. Enrique Bernales Ballesteros, the United Nations (UN) Special Rapporteur for Mercenaries, has repeatedly expressed bewilderment at the prospects for regulating these new forces.³ The new but burgeoning literature on EO and other similar firms also contains largely unpersuasive suggestions for how governments and the international community should respond. This paper will try to provide the necessary tools to understand the likely relationship between states and private security forces by devoting particular attention to two critical issues: the nature of these firms as economic units, and their historical context.

Private security forces can be understood as firms that have a particular asset

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² Cited by Howe H, 'Private Security Forces and African Stability', *Journal of Modern African Studies* 36, June 1998, p.330.

³ See, most recently, Ballesteros EB, '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', Economic and Social Council, E/CN.4/1998/31, 27 January 1998, p.28.

structure and that cater to a specific market. As such, it is possible to apply the same kind of strategic analysis to EO, its successors (the firm announced that it was closing in December 1998) and its competitors as is routinely applied to other types of corporations, in order to understand their likely evolution. Such an analysis makes it clear that current and proposed attempts at either domestic or international regulation are likely to be futile. However, it is probable that the market will force these firms to evolve in a particular way that will address some of the concerns regarding the private provision of violence; but that will also generate new issues.

The paper will also stress an historical perspective because the supply of military forces for hire was a routine aspect of international relations before the 20th Century. Understanding EO, Sandline International, and the other private security forces as simply the latest entrants in a long corporate history that includes the Dutch East India Company and the British South Africa Company helps illustrate what is and what is not new about these firms. It is the post-Second World War period, especially since 1960 in Africa, that has been unique in its aversion to subcontracting sovereignty. Now, as the empirical facts regarding the weakness of African states catch up with the international legal notion that all of the states on the continent can only be considered sovereign entities, there is a return to many of the practices of the past.

The Mercenary: 'Useless and Dangerous'?

Although there has been a long debate over the utility of mercenaries, Machiavelli's view of the mercenary as 'useless and dangerous'⁴ eventually prevailed. The recent literature on private security forces is, in fact, replete with expressions of dislike for EO and the rest of the industry. However, it is important to unpack these concerns and then relate them to prospects for regulation. First, there is a general dislike of private security forces, in large part because of the belief that 'actors capable of deploying significant *military* force must be brought under the control of recognised subjects of international public law.'⁵ This concern has been aggravated by the fact that EO was founded by white South Africans who had served in particularly

⁴ Machiavelli, *The Prince*, first published in 1513. Reprinted in Bondanella P & M Musa (eds.), *The Portable Machiavelli*. New York: Penguin Books, 1979, p.116

⁵ Emphasis in the original. Cleary S, 'Angola: A Case Study of Private Military Involvement'. Paper presented at the conference 'Profit and Plunder — The Privatisation of War and Security in Africa', Johannesburg, n.d., p.39. See also, Hampson FJ, 'Mercenaries: Diagnosis before Prescription', in *Netherlands Yearbook of International Law*, 1991. The Hague: Martinus Nijhoff, 1992, p.16.

notorious units of the old white army (although a great number of EO's soldiers were black South Africans). It thus appears, bizarrely, that some of the most despised elements of the old South African regime have rehabilitated themselves by coming to the aid of black African regimes just as South Africa is eliminating the last vestiges of minority rule. Indeed, in Angola, where EO helped the *Movimento Popular de Libertação de Angola* (MPLA) government remain in power, many of the firm's employees had previously fought side by side with the rebel *União Nacional para a Independência Total d'Angola* (UNITA) movement. Thus, South African Laurie Nathan recently complained,⁶

[EO] claims inspire no confidence whatsoever ... They amount to this: trust me, I'm a mercenary. ... Who determines whether Executive Outcomes personnel have committed a crime? Who investigates allegations of criminal conduct? ... The answers to these questions are no one, no one, and nothing of any reliability.

Or as the UN Special Rapporteur on Mercenaries noted, '[private security companies] are today the biggest and most sophisticated threat to the peace, sovereignty and self-determination of the peoples of many countries.'⁷

Second, there is the more specific worry borrowed directly from Machiavelli, that 'good laws and good armies'⁸ are the foundation of all states and mercenaries therefore do not provide a solid footing for even domestic security. Thus, the Special Rapporteur argued that private security forces are 'incapable of replacing those agencies responsible for the State's inherent and preemptory role to protect life and security', and blamed the collapse of the government of President Ahmad Tejan Kabbah in Sierra Leone on that regime's dependence on EO. As a result, the Special Rapporteur still feels that it is necessary to demand, in rhetoric seldom found in dry UN documents, that countries ignore 'the siren songs that might be sung by these seductive private companies.'⁹

Finally, the use of private security forces has exposed the international

⁶ Nathan L, 'Doing No Harm: Ethical Guidelines for South Africa's Arms Trade Policy', *Track Two*, August 1997, p.11.

⁷ Ballesteros EB, 'Annex to the Report of 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', General Assembly, A/53/338, 4 September 1998, p.6.

⁸ Machiavelli, *op cit.*, p.115.

⁹ Ballesteros EB, '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', 27 January 1998, p.29.

community's profound ambivalence regarding the sovereignty of very weak states. While modern international society has never objected to other states helping to prop up a weak state, it has had little experience with another type of unit — the private firm — helping to secure sovereignty. In the modern world where only one type of unit — the nation-state — is sovereign, it has long been assumed that states would regulate firms, not be beholden to them for their very existence. The Sierra Leone case, where the democratically elected Kabbah government depended on EO to defend itself against a revolt and where Sandline International played a role in the restoration of that government, forced this ambivalence into the open. Thus, the United Kingdom (UK) parliament's Human Rights Group recently stated: 'Even if EO's role in Sierra Leone proves to be beneficial, it may lead to a situation where any government in a difficult position can hire mercenaries to stay in power'.¹⁰

Sovereignty and the Evolution of Private Firms

Despite the claims in dozens of repetitive articles and reports that EO, in particular, represents a new type of mercenary, there is, in fact, nothing novel about the subcontracting out of violence to private firms. For hundreds of years, international society tolerated or even encouraged private firms to exercise a broad range of powers, including sovereignty. As Janice Thomson reminds us,¹¹

Mercantile companies were based on a state-granted monopoly on trade between the home country and regions outside of Europe ... They possessed military, judicial and diplomatic power. For example, the charter of United East India Company of the Netherlands granted it the power 'to make war, conclude treaties, acquire territories and build fortresses.' These companies made treaties with each other and with foreign governments, governed subjects of their home states, raised armies, and even coined their own money.

The private supply of soldiers was also routine. Mercenaries were so accepted that Machiavelli noted that employing mercenaries was one of just two ways of defending territory.¹² Thomson confirms that, 'the practices of hiring foreigners and allowing individuals to join other states' armed forces were common in

¹⁰ Ashworth M, 'Africa's New Enforcers', *The Independent*, 16 September 1996, p.3.

¹¹ Thomson JE, *Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe*. Princeton: Princeton University Press, 1994, pp.10-11.

¹² Machiavelli, *op cit.*, p.116.

the period of 1600 to 1800. Among European states, only Switzerland apparently never employed foreigners. The market for military manpower was as international as it could be'.¹³

For most of the world, by 1900, violence 'was taken off the market'.¹⁴ Thomson argues persuasively that as states began to assert claims regarding the impermeability of borders, they were forced to take greater control of extraterritorial violence. Since states were claiming that sovereignty was more substantial than in the past, 'states could no longer buy an army or navy from the international system.'¹⁵ Rather, they had to show that they could defend themselves if they were to claim that sovereignty made intervention in their domestic affairs illegitimate.

However, Africa was not like other parts of the world because it came under European control much later, and claims regarding sovereignty were much weaker. When, in the late 19th Century, the scramble for Africa eventually forced European powers to conquer large parts of the continent, the new colonisers had little interest in ruling over most of the territory they suddenly found themselves controlling. HF Morris notes that for Great Britain (and undoubtedly the other European countries), 'annexation would have entailed the establishment of elaborate administrative control over these great areas, and this Britain was in no position to undertake, even had she at that time the wish to do so'.¹⁶ Chartered companies, in a kind of privatised imperialism, were therefore often used by the metropolitan powers to rule over large parts of Africa. Lord Lugard admitted that these companies were, at best, an imperfect form of government. However, 'they came forward at a moment when the Government, compelled by the action of other Powers to take some decision, not unnaturally shirked the responsibility of directly administering great regions, at a cost of which no estimate could be made.'¹⁷ Lugard pithily noted that by using these firms, the Europeans could 'persuade themselves that the omelette had been made without breaking any eggs'.¹⁸ After 1923, when the British South Africa Company was wound down, the colonisers slowly

¹³ Thomson JE, *op cit.*, p.31.

¹⁴ *Ibid.*, p.19.

¹⁵ *Ibid.*

¹⁶ Morris HF, 'Protection or Annexation? Some Constitutional Anomalies of Colonial Rule', in Morris HF & JS Read, *Indirect Rule and the Search for Justice: Essays in East African Legal History*. Oxford: Clarendon Press, 1972, pp.42-3.

¹⁷ Lord Lugard, *The Dual Mandate in British Tropical Africa*. London: Frank Cass, 1965, p.23.

¹⁸ *Ibid.*, p.17.

began to exert more formal control over Africa, and stopped relying on private firms to provide enforcement.

After most African countries received independence in the early 1960s, they embarked on a concentrated effort to ensure that the territorial boundaries inherited from the European colonisers would never be challenged. In particular, the Organisation of African Unity's (OAU) 1964 resolution on border problems committed member states, 'to respect the frontiers existing on their achievement of national independence.'¹⁹ Of course, across the continent, there was widespread agreement that the demarcations inherited from the colonialists made little sense given that they ignored local economic and social conditions, created a large number of small states, and split populations that had strong ties. However, no one could come up with a better system of frontiers because the demography, ethnography, and topography of Africa made it extremely difficult for new, more 'rational' borders to be established. The partition of the Indian subcontinent in 1947 had provided an astonishingly vivid warning of the human cost of boundary change, especially since Africa's leaders were conscious of how peaceful the transfer of power had been.²⁰ Finally, the new leaders had a profound interest in maintaining the existing boundaries because, if the design of nations was thrown into doubt, the leaders might not have a nation to rule once the dust settled.

African countries could not, by and large, defend their boundaries. As a result, the OAU had as its highest goal the establishment of an international understanding that the sovereignty of existing African states could not be challenged. This notion appealed to all of the very weak states on the continent, and also to the international community, which wanted the issue of self-determination solved by the decolonisation process. The superpowers, during the Cold War, also appreciated the stable African boundary system, because one of the principles of the global superpower competition was that neither side should challenge existing frontiers. The enshrinement of the sovereignty of very weak states has been the central African diplomatic success over the last 35 years: only one boundary was changed involuntarily (through the creation of Eritrea), and even that could be viewed, especially from Asmara, as simply the last stage of African decolonisation rather than as a fundamental challenge to the African boundary system.

¹⁹ Organisation of African Unity, 'OAU Resolution on Border Disputes, 1964'. Reprinted in Brownlie I (ed.), *Basic Documents on African Affairs*. Oxford: Clarendon Press, 1971, p.361.

²⁰ This view is identified and praised by the International Court of Justice in *Frontier Dispute (Burkina Faso/Republic of Mali)*, Judgment, I.C.J. Reports 1986, pp.566-7.

African Sovereignty and Mercenaries

Given the obsession that African rulers had with protecting their states through the device of sovereignty, it was hardly surprising that they took a particularly tough line against mercenaries. The 1960s vintage mercenaries — Mike Hoare, Bob Denard, and Jean Schramme (the trio given the name *les affreux* — the terrible ones) in Katanga; Rolf Steiner in Biafra; Denard in Benin and Comoros; Hoare in the Seychelles — were associated with attempts to overthrow recognised, sovereign governments. Gerry Thomas describes the old pattern of mercenary activity during conflicts,²¹

The faction which could claim the greatest degree of legitimacy on the world political scene engaged auxiliary troops supplied under open agreement with other sovereign nations. Opponents also sought this type of assistance but could seldom retain potentially sympathetic states ... It was then, for lack of any other military alternative, that the renegade states turned to the private sector and the enlistment of mercenary troops.

Mercenaries were thus a direct threat to the legal assumption that the new African leaders had full control over their territories. Indeed, given the absence of armed internal opposition at independence and the lack of territorial competition between states, mercenaries were among the few actual armed threats that most African states could imagine in the 1960s other than their own armies. Mercenaries were a potent threat because relatively few soldiers were needed to take over an African country. For instance, the coup overthrowing General Christophe Soglo in Benin in 1967 required only 60 paratroopers.²² Further, the colonial powers and those fighting against national liberation forces had occasionally employed mercenaries against fledgling African states or resistance movements, casting on the issue of mercenaries in the harsh glare of the struggle between blacks and whites for power in Africa.

As a result, several different international legal instruments were devised to counter the mercenary threat. However, these international statutes should be read carefully, because they demonstrate a far more nuanced understanding of sovereignty and the role of force in international and domestic affairs than is usually assumed. The Additional Protocols to the Geneva Convention adopted in June 1977 prevent mercenaries from having the status of prisoners of war during conflicts. However, mercenaries are defined in a particular way.

²¹ Thomas GS, *Mercenary Troops in Africa*. Boulder: Westview, 1984, p.27.

²² *Ibid.*, p.xi.

A mercenary is a person who:²³

- (a) Is specially recruited locally or abroad in order to fight in an armed conflict;
- (b) Does in fact take a direct part in the hostilities;
- (c) Is motivated to take part in the hostilities essentially by the desire for private gain ...;
- (d) Is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;
- (e) Is not a member of the armed forces of a Party to the conflict;
- (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.

The Additional Protocol does not interfere with the right of states to hire private security forces. Most private firms do not take direct part in the hostilities, as their primary mission is to train and equip. Further, the private security forces are usually, as was the case with EO in Sierra Leone or Sandline International in PNG, integrated into the armed forces of the states they are fighting for.²⁴ As such, private security forces do not qualify as mercenaries under accepted international law.

It is perhaps not surprising that Africa is the only region that has created its own law regarding mercenaries, the Convention for the Elimination of Mercenarism in Africa. The Convention, which was adopted in Libreville in July 1977 and entered force in 1985, is specifically designed to protect the interests of the states that wrote it and the national liberation movements opposing minority settler regimes they wanted to protect. The preamble notes that the ban on mercenaries is being adopted, in part, because of the 'grave threat which the activities of mercenaries present to the independence, sovereignty, security, territorial integrity, and harmonious development of Member States', and because of the 'threat which the activities of mercenaries pose to the legitimate exercise of the right of African People under colonial and racial domination to their independence and freedom.'²⁵ The Convention

²³ Additional Protocol I to the Geneva Convention of 12 August 1949, 8 June 1977. A/32/144, Annex I (1977).

²⁴ Zarate JC, 'The Emergence of a New Dog of War: Private International Security Companies, International Law, and the New World Disorder', *Stanford Journal of International Law* 75, 1998, p.124.

²⁵ Convention for the Elimination of Mercenarism in Africa. Reprinted in Naldi GJ (ed.), *Documents of the Organisation of African Unity*. New York: Mansell, 1992, p.58.

uses the same definition of mercenary as the Additional Protocol to the Geneva Convention. As a result, once again, it does not apply to private security forces. More generally, the Convention makes clear that mercenaries are only those private forces used in opposition to an existing state. For instance, Article 6 requires each contracting state to 'prohibit on its territory any activities by persons or organisations who use mercenaries against any African State member of the Organisation of African Unity or the people of Africa in their struggle for liberation'.²⁶

Finally, the International Convention against the Recruitment, Use, Financing and Training of Mercenaries which was adopted by the General Assembly in December 1989 also defines a mercenary as someone who 'is not a member of the armed forces of the State on whose territory the act is undertaken'.²⁷ As with the African Convention, the International Convention also specifically bans mercenary activities, 'opposing the legitimate exercise of the inalienable right of peoples to self-determination'.²⁸ Of course, self-determination in UN jargon means self-determination from colonialism, not, say, the exercise of self-determination by an ethnic group that feels itself repressed by an independent African state. Indeed, it is telling that the Special Rapporteur regarding Mercenaries presents his report to the Economic and Social Council each year under the general heading of 'The Right of Peoples to Self-Determination and its Application to Peoples under Colonial or Alien Domination.' Not enough states have adopted the International Convention for it to come into effect.

It therefore appears dramatically clear that international law regarding mercenaries is clearly in line with African understanding of sovereignty as propounded since independence in the 1960s. Mercenaries were seen as a threat to African states themselves or to the national liberation movements that African countries wanted to support, and were therefore banned largely because of the threat they posed. However, even before it was possible to imagine the emergence of EO, African countries and the drafters of the international codes had made ample provision for states to hire whomever they wanted. In part, care was taken because particular African regimes depended heavily on foreign military assistance from outside powers (for example, Great Britain in Kenya and Tanzania, Soviet Union in Ethiopia and Angola, France in a variety of African countries, US in Zaire and elsewhere)

²⁶ *Ibid.*, Article 6(c) of the Convention.

²⁷ International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 11 December 1989, A/44/49 (1989), Article 1(e).

²⁸ *Ibid.*, Article 5(2) of the Convention.

for their continued existence. Further, African countries, conscious of how much of their existence depended on their particular understanding of sovereignty, were obviously reluctant to propose any sort of international regulation which would limit their own ability to manoeuvre.

What international law has done is create a bright line between the legitimacy of employing firms by recognised governments and the legitimacy of rebel movements doing so. The legitimacy of either the government itself or the rebels in any particular conflict is not considered to be relevant now that all of the national liberation movements against colonialism have succeeded. Rather, one of the attributes of sovereignty is the ability to employ anyone any state chooses in order to augment security. Thus, the Angolan government was not being hypocritical about employing EO in the 1990s after trying US citizens who worked for UNITA in the 1970s as mercenaries. It was simply following established law.

Therefore, those who complain that governments are free to employ anyone they want in order to stay in power do not, in the first instance, understand current international practices and how carefully they have been crafted. The Special Rapporteur would appear to be simply wrong when he argues that,²⁹

In what appears to be a new international trend, legally registered companies are providing security, advisory and military training services to the armed forces and police of legitimate Governments ... If this trend is confirmed, the concept of security and the nature of international relations based on the principle of State sovereignty which have characterised the 20th Century and the international system for the protection and promotion of human rights would be greatly altered.

Existing law is clearly on the side of those who employed EO.

Further, at a normative level, it is hard to see how a complaint could be made that hiring private security forces is an illegitimate action for a government when international society still allows states to call on other states to do close to whatever is needed to stay in power. For instance, the government of Lesotho, winner of a highly disputed election, called in South African troops to suppress a mutiny in September 1998. The subsequent rioting destroyed most of the major towns in that small country. Yet, there were no suggestions from any part of the international community that what the government in Maseru had done was illegitimate. No one has yet claimed that any act by EO

²⁹ Ballesteros EB, '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', Economic and Social Council, E/CN.4/1997/24, 20 February 1997, pp.37-8.

was as damaging to any country as was the amount of destruction the South African intervention in Lesotho caused.

The Mercenary as a Firm

Numerous articles on the new private security forces begin by noting how their corporate veneer and military professionalism differentiate them from the old dogs of war. However, little has been done to follow up these observations by understanding the nature of private security forces as firms and analysing the particular market they confront. The new companies are, of course, highly secretive about their internal structures. What limited information exists suggests that the most salient aspect of private security forces is their extremely low level of capitalisation. EO and its competitors have few fixed assets: there are relatively few permanent employees and little more than a computer with a significant database containing the names of potential employees and their skills. These employees are then contracted on a case-by-case basis. As James Wood, former US Deputy Assistant Secretary of Defense for African Affairs noted, these firms 'basically consist of a retired military guy sitting in a spare bedroom with a fax machine and a Rolodex.'³⁰ Similarly, the firms need few assets, since everything they require for a particular mission can be purchased on the international arms market. Ironically, given the force that they are able to muster on the ground when employed, these firms, between wars, are almost virtual corporations with their only unique assets being the people they know and whatever procedures and policies they have adopted.

Locating Firms

The first implication of this asset structure is that there is no compelling reason for a firm to be based in any particular place. There is, presumably, some advantage to EO being based in South Africa because it is useful to be near many of its potential employees. However, if the company were based elsewhere, it could still contact potential South African employees and maintain its databases with relatively little trouble. Indeed, EO mutated with ease into a different corporate form in December 1998. Given that there will always be any number of countries that are happy to provide a nominal headquarters for almost any kind of company in exchange for relatively small

³⁰ Quoted in Silverstein K, 'Privatising War: How Affairs of State are Outsourced to Corporations beyond Public Control', *The Nation*, 28 July 1997, p.11.

payments, domestic regulation of private security forces is highly problematic. If domestic regulation were ever to become too onerous for a firm, it could simply move.

If a private security force decides to base its headquarters in a particular place, it probably has already calculated that it is not going to have difficult regulatory problems with the home government. It would be too easy to site its fax machine and Rolodex somewhere else. As a result, it is hardly surprising that no private military company thus far has worked against the interest of its home state.³¹ Instead, there is some evidence of home governments championing the interests of their private security forces as an instrument of foreign policy and for simple commercial advantage. For instance, the US placed heavy pressure on the Angolan government to cancel its contract with EO and hire Military Professional Resources Inc. (an American firm headed by former US generals) instead.³²

Partially as a result, states have never tried very hard to regulate mercenaries. The US Neutrality Act prohibits the recruitment of mercenaries within the US but being a mercenary, *per se*, is not an offence. When mercenaries were recruited within the US to fight the MPLA government in Angola, no legal action was taken.³³ Australia's approach under the Foreign Incursions and Recruitment Act of 1978 is similar. The UK's Foreign Enlistment Act of 1870 makes enlisting or engaging mercenaries within and without the UK an offence but no one has been tried under the provisions in more than 100 years.³⁴ France and Belgium have also banned the recruitment of mercenaries but have not enforced these laws in recent years.³⁵

The problem of domestic regulation of private security forces is amply demonstrated by the debate over the South African attempt, the Regulation of Foreign Military Assistance Act of 1998. The legislation had been drafted in good part due to the government's unease over EO and the prospect of a large number of soldiers of the old regime fighting in the rest of Africa (even though many of these soldiers are black). The early rhetoric surrounding the Act,

³¹ Isenberg D, 'The New Mercenaries', *Christian Science Monitor*, 13 October 1998, p.19.

³² Goulet Y, 'MPRI: Washington's Freelance Advisors', *Jane's Intelligence Review*, 1 July 1998, p.38.

³³ Layeb A, 'Mercenary Activity: United States Neutrality Laws and Enforcement', *New York Law School Journal of International and Comparative Law* 10, 1989, p.300.

³⁴ Shearer D, 'Private Armies and Military Intervention', *Adelphi Paper No.316*. London: Oxford University Press, 1998, p.20.

³⁵ Zarate JC, *op cit.*, p.140 and 'Belgium's Tolerant Policy towards Mercenaries Fatal for Angolan Diamond Prospectors', *Brussels De Morgen*, 25 February 1998, p.15.

which had a somewhat tortuous legislative history given the African National Congress' (ANC) absolute majority in Parliament, spoke of regulations that would essentially put EO, and its competitors, out of business. The actual legislation does go further than most international regulations in that it applies to those who render combat capability or provide training to any party in an armed conflict, including the recognised state (section 2(a)).³⁶ It demands that all those who seek to provide foreign military assistance be authorised to offer their services (section 3), and the Act also requires the actual rendering of assistance to be approved (section 4).

The clear thrust of the Act, consistent with the analysis above, is not to outlaw foreign security forces but to regulate them. As a result, EO has repeatedly said that it does not fear the new regulations. Eeben Barlow, founder of the company, said in response to the legislation,³⁷

I doubt very much whether Professor Kader Asmal's legislation is aimed at us and we have no fears for that. We are not going to help anyone that is not a legitimate government, or which poses a threat to South Africa, or that is involved in activities which are really frowned upon by the outside world...We have had a major impact on Africa. We have brought peace to two countries which were almost totally destroyed by civil wars.

EO said that it submitted 36 amendments to the Act and that 28 were accepted in one form or another.³⁸ Indeed, the company has said that it actually welcomes the proposed regulations because it does not believe that it is a 'mercenary outfit', and does believe that it would qualify for authorisation of the provision of military training and other services.³⁹ There is no evidence to date that the new South African regulations changed the operating procedure of EO. The company, of course, could easily move if the regulations had any bite. However, instead of EO resisting the regulations, it is most likely that its successors will seek to use the authorisation and approval procedures to legitimate its actions. There could be few better selling points, and no better counter to the charge of mercenarism, than the implicit endorsement of the South African government.

³⁶ South Africa, *Regulation of Foreign Military Assistance Act (B54-97)*.

³⁷ Pech K & D Beresford, 'Mercenary Group's "Peacekeeping" Role Viewed', *Johannesburg Mail Guardian* (Internet Version), 24 January 1997.

³⁸ Executive Outcomes, 'Comment by Executive Outcomes on a Conference: Profit and Plunder — The Privatisation of War and Security in Africa', posted on the Executive Outcomes' home page: <http://www.eo.com>, 11 March 1998, p.1.

³⁹ See, 'Comment by Executive Outcomes on the Regulation of Foreign Military Assistance (B54-97)', posted on the Executive Outcomes' home page: <http://www.eo.com>, 2 March 1998.

Finally, since private security forces never operate where they are based, enforcement of domestic regulation on private security forces will always be extraterritorial. Regulation of home companies overseas is always problematic, as the United States repeatedly found when trying to enforce sanctions against subsidiaries of American companies based in Europe who were trading with the Soviet Union. Many countries, especially when it is convenient for them, will find legal and nationalistic reasons not to allow the enforcement of another country's law in their territory. Separately, it is just too difficult to enforce a law when the illegal act is being carried out far from home, especially if the activity takes place in the confusions of war that accompany state failure, in obscure parts of Africa to which no foreign state devotes much attention. Thus the Legg inquiry into the 1998 scandal over Sandline International's involvement in Sierra Leone noted that failures in the British government occurred because of 'management and cultural factors, but partly by human error, largely due to overload.'⁴⁰ Similarly, Kader Asmal, in his role as chairperson of the National Conventional Arms Control Committee, noted that South Africa would be dependent on journalists, among others, to help it enforce its law regulating private security forces.⁴¹ That's a weak reed indeed.

There is certainly a demand that private security forces be regulated. Zarate has argued that it is necessary for home governments to do so: 'All states should regulate their security companies through licensing procedures that align security company contracts with the policies of their home states.'⁴² In fact, regulation is not only unlikely to work but is probably unnecessary. The law is too weak to force private security forces to work in the interests of their home states, and it is too easy for the firms to move if they were going to court trouble with their home governments. It is far more likely that each private security force will more or less automatically align itself with the interests of its home state and try to use that home state to bring in additional business.

Barriers to Entry

The flip side to a low capitalisation is that there are few barriers to entry into the industry. Across the world, there are many retired military officers with fat Rolodexes. That they may lack the polish of EO does not necessarily mean

⁴⁰ Quoted in Black I & R Norton-Taylor, 'The Sandline Report', *The Guardian*, 28 July 1998, p.8.

⁴¹ 'South Africa will Look to Journalists to Enforce New Mercenary Law', *Agence France Presse*, 19 August 1997.

⁴² Zarate JC, *op cit.*, p.160.

that they are not dangerous. Sandline International's Tim Spicer described the recruits the Zairian regime tried to garner during the last days of its rule: 'Mobutu swept the streets of Bosnia — and picked up the garbage. Belgians, and Frenchmen slung out of the Foreign Legion, Serbs, Russians — all were recruited for his "white Legion". Every psychotic they could lay their hands on.'⁴³ More generally, ex-soldiers looking for work are a common resource worldwide. The proliferation of private security forces therefore appears inevitable.

In industries where the barriers to entry are low and where, as a result, companies probably cannot compete on price alone, firms will necessarily attempt to differentiate themselves in other ways. Certainly EO and Sandline International have embarked upon one particular avenue: making themselves into 'uptown' security firms by stressing their respectability and the fact that they work only for governments. Indeed, in its search for prestige customers EO mutated into a different corporate form, in part because the old name carried too much baggage. As a result, there will inevitably develop a set of private security forces hoping to compete by living in the 'low rent' district, that do not stress their respectability with governments, do not advertise their professionalism, and which probably will not maintain a home page. These entrants into the private security force industry will instead stress that their comparative advantage resides in their willingness to work for anyone, including rebel movements challenging existing states. Shearer has argued that, 'Although EO argues that it works only for recognised governments, there is no guarantee that it, or other similar companies, would not work for rebel movements.'⁴⁴ In fact, given the market structure that these firms face, there is probably a guarantee that at some point in the near future firms that have decided to occupy the lower end of the market will start to work for those challenging existing states. Such firms will find many hospitable places in which to be based, because there are plenty of home governments who have little wish to regulate private security forces, and there may be some who see rogue private security forces as potentially useful instruments of foreign policy.

As good capitalists, EO responded to the threat of low-cost competition by attempting to co-opt the South African government to regulate its competitors out of business. Barlow welcomed the South African regulations because he hoped they would address his competition problem: 'There are too many cowboys and fly-by-nights, sometimes using our name, who are giving the

⁴³ Quoted in James B, 'The New Dogs of War', *Mail on Sunday*, 7 December 1997, p.18.

⁴⁴ *Shearer D, op cit., p.69.*

industry a bad name.⁴⁵ However, for the reasons discussed above, the successors to EO are likely to be disappointed. States will not be able to use domestic legislation to regulate low rent private security forces out of business. While these firms would clearly violate existing international law if they went to work for rebels, it is not clear who is going to enforce that law. Indeed, a low-rent private security force working in an African state and based in a country that does not care what it is doing is very far from the reach of current domestic or international law.

The private security force industry is therefore likely to bifurcate between those companies that are willing to work within the current confines of international law and those that will not. The former will not have any problems with the regulations of their home governments, and will probably not work against the interests of the home government, whether or not regulations are in place or enforced. Low-rent private security forces that work outside of existing international law will establish themselves where the home government does not care what they are doing. This is not a market-based 'solution' to the problem of private security forces. However, it is likely that the market will be much more powerful than domestic or international law in determining where private security forces site themselves, who they work for, and how they respond to regulation.

The Fundamental Business Problems for Private Security Forces

The fundamental reality for private security forces is that doing business in the failed states of Africa is exceptionally problematic. These states failed, in good part, because they could not pay the salaries of their security forces. Their economies, uniformly, have come to a halt. Much of the available money in their countries has fled to safe havens. Usually, the threat to the failed states is not particularly impressive, but the state's security forces have so atrophied in the context of a collapse in government revenue that even relatively small units with limited capabilities can present a real threat. Charles Taylor started off his rebellion in Liberia with a few dozen poorly trained guerrillas. Laurent Kabila's eventually successful rebellion in Zaire was initially meant only to provide Uganda and Rwanda with a degree of control in eastern Zaire. However, once the rebellion started it was obvious that the government of Zaire had feet of clay, and Kabila began his surprisingly strong move westward.

At the same time, from the viewpoint of a failed state, private security forces,

⁴⁵ Quote in Zarate JC, *op cit.*, p.153.

which can easily cost tens of millions of US dollars, are expensive operations. As a result, there will always be a concern on the part of private security forces as to whether they will get paid. Sandline International apparently came to grief in PNG, in part because its contract was viewed as excessive by the PNG military. EO, for understandable reasons, has expressed a strong preference for cash.⁴⁶

One of the reasons that EO could operate in Sierra Leone and Angola was that its contracts were apparently collateralised by diamond concessions, although there is some evidence that it did not receive full payment for the contract it signed with Freetown. It is unclear whether EO, or the corporate family it is associated with, was actually given diamond concessions or not, but diamonds are a good way to back up a contract because they are easy to mine, light-weight and high in value. Even a country whose infrastructure has otherwise collapsed can continue to supply diamonds and therefore make a persuasive case that it can actually pay the bills for a private security force. UNITA has managed to operate in part because it has been able to mine Angola's diamonds, even though it is not the government of Angola and the country's infrastructure is in shambles.

The only other resource that offers a continual supply of revenue during hard times is oil. As oil in Africa is either on the coast or offshore, it can continue to be pumped, irrespective of infrastructure collapse or fighting on the mainland. Both Angola and Nigeria have seen considerable investment by oil firms in recent years, despite outright civil war in the former and considerable instability in the latter. Therefore, countries with oil (including many of the littoral states of West Central Africa) may have the kind of resource base that could guarantee a contract with a private security force. Yet, only a small minority of African countries have oil.

On the other hand, it is unlikely that private security forces will find revenue streams based on resources such as tea, cocoa, or coffee — which is what other African countries can offer as collateral — nearly as reassuring. These are high volume, low price commodities that tend to degrade as a country's infrastructure collapses. They certainly do not hold out much hope of a quick dollar. Even the kind of mineral resources that other African countries have — such as copper, ferrochrome, gold, or asbestos — require the maintenance of a significant infrastructure to mine. For instance, both gold and cocoa revenue declined significantly when Ghana went into its steep decline in the 1970s. Non-food agricultural exports or most minerals cannot yield money on the

⁴⁶ Johnson A, 'Executive Outcomes: Eben Barlow Profiled', *Johannesburg Mail* (Internet Version), 28 February 1997.

kind of quick and dirty basis that might appeal either directly to a private security firm or at least convince it that a government had enough money to pay its bills.

Indeed, going back to history, it is important to remember that one of the reasons that chartered company imperialism was not seen as a long-term solution was that it did not have a persuasive business model. Rhodes' BSAC never returned a dividend and was eventually shut down. Similarly, the Imperial British East Africa Company, once it became a Chartered Company and took on sovereign responsibilities, did not report dividends and the shareholders eventually lost much of their capital.⁴⁷

The owners of low rent private security forces may not be deterred by the financial risks of dealing either with poor African states or poor rebels. These firms may be short-lived creations that are not expected to do anything but turn a quick dollar for their owners. The endgame in Zaire certainly proved that it is almost always possible to find someone who will at least agree to fight for you. However, private security forces which want to operate more or less like a regular businesses and which want to have a sustained corporate identity will probably find the financial problems of dealing with failed states daunting. Of course, it is unlikely that these companies will even deal with rebel movements, whose finances will be exceptionally problematic.

It is possible that some failing states will find a sugar daddy. Shearer believes that outside funds will be critical to future business opportunities of companies like EO: 'Private-sector intervention in civil conflicts will chiefly be determined by a state's willingness or ability to pay for it. In Bosnia, MPRI's bill was shouldered by the country's richer Muslim allies; for many weak states in the developing world, however, there are fewer options.'⁴⁸ Such funding would clearly appeal to private security forces. However, another characteristic of failed states in Africa is that they have few friends. Part of the reason that failed states are not able to pay even their own security forces is that they have been cut off from international aid flows because donors do not want to throw good money after bad. Bosnia was a special situation because it still has a significant number of friends who see it as the victim of an international war.

Given that the market for uptown private security forces is, in fact,

⁴⁷ Griffiths P, *A Licence to Trade: The History of English Chartered Companies*. London: Ernest Benn, 1974, p. 263. The Royal Niger Company, operating in West Africa, was a much more successful enterprise.

⁴⁸ Shearer D, *op cit.*, p.73.

exceptionally limited, they are likely to try to break into new markets. One pot of gold that is tremendously appealing is to work for the UN itself, or other agencies that deliver aid out in the field, such as NGOs. UN officials, especially in UNHCR and the United Nations Children's Fund (UNICEF), are now exposed to unprecedented danger because they are working in failed states and are thus personally at risk. Indeed, aid officials from the UN are now sometimes targeted by combatants if they are perceived as partial to one side (an almost inevitable charge given their mandate to deliver aid to those worst off). This security problem is a relatively recent development. When most wars were between states, rather than within states, as is now the case in Africa, refugees fled to safety behind international frontiers and aid could be distributed safely, far from the fighting. Similarly, NGOs found in Somalia, and elsewhere, that security is an extremely difficult issue if they are going to work in the midst of a failed state when fighting is still going on. The experience in Mogadishu, where many NGOs hired Somalis as guards at exorbitant prices only to have these same 'guards' steal from them at night, probably has increased the appeal to many aid agencies of being protected by a private armed force that is not a party to the conflict.

Providing security for the UN and those NGOs that deliver aid for western countries would solve the fundamental business problem of not getting paid for doing work in the failed states of Africa. Of course, this set of business opportunities would only be available to the high end private security forces. Indeed, they might move out of the inherently problematic business of working for failed states in Africa altogether if that would help legitimate them among international organisations and NGOs. The *imprimatur* of the South African government would be an excellent selling point in any business presentation to an international organisation.

Conclusions

Three concerns were noted at the beginning of the paper. First, many believe that EO and other private security forces should be regulated. The prospects for regulation are extremely limited. However, the market itself will probably shape the industry profoundly as more companies enter the market. Ironically, those who want to regulate private security forces do not have to worry because they will, due to their own strategic considerations, probably seek to legitimate themselves by working less for African governments and more for international organisations who can actually pay. At the same time, low-rent firms without EO's concern for legitimacy, will become increasingly common.

Indeed, a major selling point for these firms is that they are not concerned with legitimating themselves.

Those who are concerned, as Machiavelli was, that states have good armies also have reason to worry. States will always be able to employ someone to join their armies, although with private security forces, as with everything else, you get what you pay for. There is a small window for regulation if important powers in conflicts (like the US in Bosnia or South Africa in Angola) attempt to work closely with the private security forces based in their countries to promote a useful end to the conflict. This is precisely what the US has done with MPRI in Bosnia. Thus, instead of regulating the firms and holding them at a distance, host countries may find it best to engage actively with private security forces based on their territory so that there can be at least some co-ordination between private force and public diplomacy. This kind of engagement would simply be an acknowledgment that the private provision of violence is a force of nature: it cannot be ignored and it will not go away, so it should probably be harnessed.

Finally, those concerned that any state can employ private security forces by virtue of its internationally recognised sovereignty do not understand just what care African states, in particular, have taken in constructing the current sovereignty regime. Rather, they are expressing a far more general concern with the nature of sovereignty as it is currently understood. As long as all African states are considered sovereign, international law is clear that they can employ whomever they want to help them retain control. Opponents of private security forces are therefore likely to find that their objections to the employment of private security forces as a right of sovereignty are vehemently rejected in Africa. Just as African states were the most adamant in opposing mercenaries who worked for rebels because of the explicit threat they posed to existing regimes, the same states are likely to reject any attempt to circumscribe their right to employ 'the new mercenaries' as a means of staying in power. Sovereignty is not simply a legal nicety in Africa. Rather, the definition of sovereignty is central to the very nature of existing African states, and governments will act accordingly to protect the legal basis of their existence.

As long as industrialised countries remain militarily disengaged from Africa and allow states to fail, there will be a market for private security forces. Indeed, 30 years from now, the period from the early 1960s to the early 1990s may appear as little more than an aberration because the superpowers and the great powers were briefly willing to exert a military presence in many states that obviated the market for private security forces. When, after the Cold

War ended, the superpowers no longer felt the need to intervene and the great powers no longer saw Africa as an important arena, the private provision of security resumed, albeit in a slow and halting manner. Whether such firms will reach the prominence of the Dutch East India Company is unlikely, but that they have come out of the shadows is hardly surprising. They will probably be part of the African landscape for many years to come. As such, they cannot be wished away. Instead, ways should be found to exist with them and use them to the greatest possible advantage.

Select Glossary

AFDL	Alliance of Democratic Forces for the Liberation of Congo-Zaire
ANC	African National Congress
BRA	Bougainville Resistance Army
BSAC	British South African Company
CIA	Central Intelligence Agency
DGSE	<i>Direction Generale de la Securite Exteriure</i>
DRC	Democratic Republic of Congo
DSC	Defence Systems Colombia
DSL	Defence Systems Limited
ECOMOG	Economic Community of West African States' Monitoring Group
ELN	Castroite National Liberation Army
EO	Executive Outcomes
EPLA	Eritrean People's Liberation Army
EPLF	Eritrean People's Liberation Front
EU	European Union
EW	Electronic Warfare
FAA	<i>Forças Armada de Angola</i>
FAPLA	<i>Força Armada Popular de Libertação de Angola</i>
FAZ	<i>Força Armada da Zaire</i>
FNLA	National Front for the Liberation of Angola
GPS	Global Positioning System
GSG	Gurkha Security Guards
HSE	Health, Safety and the Environment
ICRC	International Committe of the Red Cross
MMD	Movement for Multiparty Democracy (Zambia)
MPLA	<i>Movimento Popular de Libertação de Angola</i>
MPRI	Military Professional Resources Incorporated
NCACC	National Conventional Arms Control Committee
NGO	Non-Governmental Organisation

NIM	Network of Independent Monitors
NPFL	National Patriotic Front of Liberia
NRA	National Reformation Army (Uganda)
OAU	Organisation of African Unity
PNG	Papua New Guinea
PONAL	Colombian National Police
RCD	<i>Rassemblement Congolais pour la Democratie</i>
RENAMO	<i>Resistência Nacional Moçambicana</i>
RPF	Rwanda Patriotic Front
RUF	Revolutionary United Front (Sierra Leone)
SA	South Africa
SADF	South African Defence Force
SAIIA	South African Institute of International Affairs
SANDEF	South African National Defence Force
SAS	Special Air Service
SFU	Special Forces Unit
SIS	Secret Intelligence Service (or M16)
SPLA	Sudanese People's Liberation Army
Stabilco	Stability Control Agencies
TPLF	Tigray People' Liberation Front
UK	United Kingdom
UN	United Nations
UNAMIR	United Nations Assistance Mission in Rwanda
UNHCR	UN High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNITA	<i>União Nacional para a Independência Total d'Angola</i>
US	United States
USIP	United Sates Institute of Peace
USSR	Union of Soviet Socialist Republics

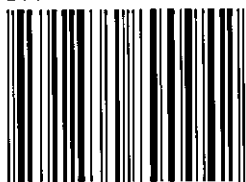
There is no doubt that the role of private protectors and armies has grown as conventional war has given way in much of the world to irregular, internal conflict. Africa is a case in point, as this study points out, where more than thirty wars have been fought since 1970, most of them 'intra-state' in origin. The glut of trained military personnel and equipment unleashed by the collapse of the Soviet Union and also of apartheid South Africa has provided vast new resources for embroilment in such activity.

The value of this volume is that it sheds new light on the whole subject, and draws necessary distinctions, for instance between those private domestic security firms doing a job in the fight against ordinary crime, and those irregular murky mercenary forces which can only be called the dogs of war. To the extent that this work equips government, the international community, continental and regional groupings, NGOs, and interest groups including human rights organisations and churches to grapple with greater clarity and effectiveness in the matter, it is a distinct advance.

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