

Merchants of African conflict

More than just a pound of flesh

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List of acronyms

| | |
|---------|---|
| ASF | African Standby Force |
| AU | African Union |
| BAPSC | British Association of Private Security Companies |
| CEMIS | Centre for Military Studies |
| CIA | Central Intelligence Agency |
| COW | Correlates of War |
| DDR | Disarmament, Demobilisation and Reintegration |
| DRC | Democratic Republic of the Congo |
| HRA | Human Rights Advocates |
| ICRC | International Committee of the Red Cross |
| IDRC | International Development Research Centre |
| IPOA | International Peace Operations Association |
| ISS | Institute for Security Studies |
| MINURSO | United Nations Mission for the Referendum in Western Sahara |
| MNCs | Multinational Companies |
| MONUC | <i>Mission de l'Organisation des Nations Unies en République démocratique du Congo</i> / United Nations Mission in the Democratic Republic of Congo |

| | |
|--------------|---|
| NCACC | National Conventional Arms Control Committee |
| NPM | New Public Management |
| OAU | Organisation of African Unity |
| PASA | Pan African Security Association |
| PMC | Private Military Company |
| PMSCs | Private Military and Security Companies |
| PSCs | Private Security Companies |
| PSIRA | Private Security Industry Regulatory Authority |
| RMA | Revolution in Military Affairs |
| ROE | Rules of Engagement |
| SADF | South African Defence Force |
| SANDF | South African National Defence Force |
| SOC-SMG | Special Operations Consulting-Security Management Group |
| SSR | Security Sector Reform |
| UK | United Kingdom |
| UN | United Nations |
| <i>UNMEE</i> | United Nations Mission in Eritrea and Ethiopia |
| <i>UNMIL</i> | <i>United Nations Mission in Liberia</i> |
| <i>UNMIS</i> | United Nations Mission in the Sudan |
| <i>UNOCI</i> | <i>United Nations Operation in Côte d'Ivoire</i> |
| US | United States |

Foreword

Effective governance of the security sector is crucial for African states if sustainable peace is to be achieved. Traditionally, the state addressed external and internal security threats. This responsibility changed with the emergence of private military and security companies (PMSCs), which are sometimes described as ‘corporate entities that provide military expertise and other professional services essential to combat and warfare’. It has been argued that the mixture of state and private actors within the field of security is here to stay and states have to devise strategies for addressing the privatisation of security. States should, therefore, accept that private security actors are increasingly becoming part of international security structures. Acknowledging this is critical in developing and implementing regulations to govern this sector in a way that allows it to coexist effectively with the regular state militaries.

The unregulated operations of private security actors and their capacity to get involved in various levels of conflicts in Africa present a potential risk to the stability of the continent. Various regions are beset with socio-economic and political challenges that have manifested themselves in security complexes. Therefore there is a need to explore ways of regulating this sector to ensure that its resources, both human and material, are geared towards the promotion of peace and sustainable development in Africa, as opposed to the perpetuation of conflict. The importance in such regulation is not just of interest to governments, but also to the private sector players themselves. PMSCs must be forthcoming with regard to the process of regulation, which would be a determining factor in their involvement in enhancing Africa’s peace and security.

The realisation by African states that they cannot achieve their development goals without creating a conducive environment that is free of war and insecurity has encouraged regional organisations to integrate peace and security mechanisms into their protocols. These include the African Union (AU),

the Economic Community for West African States, the Common Market for Eastern and Southern Africa, the Southern Africa Development Community and the Inter-governmental Authority on Development.

The Peace and Security Council of the African Union Protocol (PSCAU Protocol) registers member states' concerns about the continued prevalence of armed conflicts in Africa. This has contributed to the shift in the AU's approach to security provision, with its acknowledgement of the responsibility to protect civilians. The PSCAU Protocol further states that no single factor has contributed more to socio-economic decline on the African continent and the suffering of the civilian population than the scourge of conflict within and between states. Article 3 of the protocol provides the objectives for which the council was established, namely to promote peace, security and stability in Africa; to anticipate conflicts; to promote and implement peace building and post-conflict reconstruction activities; to coordinate and harmonise continental efforts in the prevention and combating of international terrorism in all its aspects; and to promote and encourage democratic practices, good governance and the rule of law.

Most importantly, Article 13 of the PSCAU Protocol outlines the establishment of the African Standby Force (ASF). The purpose of the ASF is to 'enable the AU Peace to perform its responsibility with respect to the deployment of peace support missions and intervention pursuant to article 4(h) and (j) of the Constitutive Act, such a force is to be composed of standby multidisciplinary contingents, with civilian and military components of origin'. Due to the many peacekeeping missions particularly in Africa, United Nations (UN) and AU resources and capacity are over-stretched. It is for this reason that the debate on what role PMSCs should play in peacekeeping missions becomes critical.

The engagement of PMSCs in African conflict and post-conflict situations has increasingly come under scrutiny due to the importance of human security as a principal factor in the resolution of conflict. It is noted that as the changing nature of war continues to undergo transformation, the targets in recent conflicts have been civilians. For example, of all persons killed in African conflicts in the late 20th century, the overwhelming majority were civilians. It is in this regard that the PSCAU Protocol noted with concern that these conflicts have forced millions of African people, including women and children, into a drifting life as refugees and internally displaced persons deprived of their means of livelihood, human dignity and hope.

PMSCs are today largely embedded in the military and administrative structures of both donor and recipient states, and exercise their power and authority within these structures. This introduces an interesting dynamic in the way in which PMSCs are analysed. Thus, rather than focusing narrowly on the economic interest of the companies, there is need to take into account how these companies have become part of broader structures and agendas and how they facilitate the pursuit of foreign policy by key states. It is now common knowledge that most PMSCs originate in the United States (US) and the United Kingdom (UK) and offer services to conflict-ridden areas of Africa, South America and Asia.

In the pursuit of peace and security, the UN has also used PMSCs in various missions, and several of them are registered in the UN system to provide services such as transportation, logistics, personnel security and training. The International Charter Inc., which was engaged by the UN, the US and ECOWAS to ferry personnel, troops and supplies into and within Liberia, Sierra Leone and Nigeria to support regional peacekeeping operations, furnishes a good example in this regard. This example illustrates that PMSCs can in fact play a role in peacekeeping operations. The question that remains, however, is the extent to which they should play this role.

The real impact of PMSCs on Africa's peace and security is difficult to quantify. Although their activities are documented, there is little information showing a direct relationship with the African peace and security mechanism. A great deal of literature is available on how international actors are using PMSCs in various activities involving African military actors, such as the US-driven Africa Crisis Response Force initiative. There is, however, very little information from the recipients' perspective on how this has impacted on peace and security, at both the state and regional levels. Available literature indicates that most of the private military and security support to Africa is channelled through the AU, sub-regional organisations or regional organisations such as the Kofi Annan International Peacekeeping Training Centre in Ghana.

Not much has been documented from an African security actor's perspective on how such actors gauge the impact of PMSCs in the latter's efforts to contribute to peace and security in Africa. Before such studies are completed, the alternative would be to engage in a critical analysis of PMSCs' activities, and to draw lessons that can be used to create a more effective and efficient partnership. Although the emphasis is on analysing PMSCs' impact, they must also be assessed in relation to their funders and their objectives. One important issue

that arises regarding donor–recipient partnerships relates to the understanding of what Africa’s priorities are in terms of peace and security.

The other issue related to the above is the question of how PMSCs are to be evaluated. Part of the problem is that there are no universally accepted criteria for evaluating peacekeeping operations and this also applies to other sectors such as training, which is highly dependent on the contractor. The lack of such criteria makes it difficult for recipient states or organisations to evaluate the performance of PMSCs or provide a basis for accepting or rejecting specific organisations based on their performance. It is hoped that this shortcoming will be addressed as research on PMSCs progresses.

Another point to note is that different donors contract PMSCs, which is particularly problematic with regard to the universality of the training provided by these PMSCs to the troops of various African states. This inevitably leads to a lack of cohesion among these troops, which in turn calls into question the potential cohesiveness and efficiency of the ASF. The multiplicity of donors thus raises questions of how the AU should ensure that the training provided to the troops of its different member states is harmonised.

Furthermore, the lack of a binding international regulatory framework on the activities of PMSCs makes it difficult to assert whether their involvement could contribute positively to African peace and security. So long as this loophole exists, personnel from such companies will continue operating with impunity due to the lack of a legal framework at the international, regional and national level. Revision of the 1977 Convention of the OAU for the Elimination of Mercenarism in Africa is intrinsically important and would play a role in regulating the activities of PMSCs.

As Africa’s peace and security programme continues to develop, it is clear that PMSC involvement is inevitable. It is important that African leaders recognise this fact and move quickly in developing rules of engagement that will bring about accountability in terms of both output and ethics. The fact that such actors have become central in donor programmes should also be taken into account and reflected in donor assistance to ensure that the PMSCs are held accountable to both those that contract them and those to whom they provide services. Just like the UN, the AU should move rapidly to create a legal framework that will govern the activities of such actors.

Given that the activities undertaken by most PMSCs are security related and ultimately could determine the sustainability of post-conflict environments, a

concerted effort to ensure oversight and regulation of this industry is of paramount importance. To this end there is a need to carry out research to determine the exact role PMSCs play in the African peace and security context and develop a suitable and effective regulatory framework associated with gains rather than losses in terms of PMSCs involvement in African peace and security initiatives.

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Introduction

The privatisation of security in African conflicts

SABELO GUMEDZE

The outsourcing of security-related tasks to private security actors in Africa has become a norm that presents a plethora of ethical, operational and strategic challenges in the continent. Not only have private military and security companies (PMSCs) been carrying out security-related tasks for warring factions, but they have also been directly involved in combat operations, resulting, among other things, in the destabilisation of parts of the continent. The privatisation of security has not been adequately addressed in Africa. This is partly due to the very limited knowledge of the phenomenon, especially by policymakers, a majority of whom still confuse PMSCs with mercenaries.

Extant literature on the privatisation of security in Africa points to the daunting challenge of the minimal or lack of regulation of PMSCs, particularly the powerful international firms that supply military services in Africa's conflict zones. It is for this reason that the United Nations (UN) Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-determination developed a possible text for a draft International Convention on the Regulation, Oversight and Monitoring of Private Military and Security Companies, among other things. This draft convention is currently being considered and commented upon by UN member states, and it is hoped that they will adopt this important convention in the not too distant future.

This monograph is a modest contribution to the body of knowledge that seeks to intensify the call for the regulation of PMSCs in Africa, especially in the context of African conflicts. That African conflicts have included the use of PMSCs is not in dispute. The most disturbing issue, however, is that the use of PMSCs in such conflicts is not regulated, resulting in PMSCs violating human rights with impunity. The need for an international mechanism that will monitor and oversee the activities of PMSCs is now long overdue.

Previous Institute for Security Studies contributions to this interesting debate have urged the African Union (AU) to develop a regional instrument that will ensure that the use of PMSCs is effectively regulated in order to ensure that PMSCs operating in Africa respect human rights and international humanitarian law.

The monograph provides a foreword by Njeri Karuru, who asserts that effective governance of the security sector, including the private security industry in the form of PMSCs, is critical for African states if sustainable peace is to be achieved in the continent. She considers how the involvement of PMSCs could be best addressed within the African security architecture. She avers that as the Africa's peace and security programme, as championed at both the regional and sub-regional levels, continues to be nurtured and promoted, PMSC involvement will no doubt be inevitable. To this end, Karuru advocates for further research in the field of private security, which would better inform the policy options for addressing the involvement of PMSCs in the continent.

This monograph is divided into four chapters, which present enlightening perspectives on the use of PMSCs in Africa. In Chapter 1, Deane-Peter Baker addresses the question of whether the global demand for PMSCs in major conflicts will continue. This question is very important in that in one way or another, it will affect the African continent. For example, the wars in Iraq and Afghanistan have resulted in the recruitment of Africans to provide security, military and related services. This takes place without any effective regulatory frameworks in Africa. The end of the wars in Iraq and Afghanistan will also present an opportunity for PMSCs to seek contracts in other conflict zones, which unfortunately happen to be readily available in Africa.

Baker also considers the manner in which warfare has radically changed over the years, as seen by different scholars, and discusses the central trends that are discernible in three key spheres of future armed conflict, namely mid- to high-level conventional armed conflict, urban warfare and counterinsurgency. Baker then discusses the implications of this dynamism in warfare in relation to the private military industry. He asserts that as a result of both the material and non-material conditions of future battle space, PMSCs will be sought after. Flagging some of the issues that the continued demand for PMSCs poses, such as whether they are immoral, whether states can ensure their accountability, whether mechanisms exist for their employment and whether they undermine the notion of state monopoly on force, Baker drives the point home that we

should in fact be concerned about PMSCs because demand for their services will remain, especially in major conflicts.

Approaching the issue of PMSCs from a human security angle, in Chapter 2, Irene Ndung'u discusses the human security challenges related to PMSCs in Africa. While accepting that private security providers are important, Ndung'u looks at the negative side of PMSCs, especially insofar as they affect human security in Africa. She revisits the notion of human security and critically juxtaposes it with PMSCs. She considers some of the innumerable allegations that have been levelled against PMSCs in Africa and locates the nexus between PMSCs and human security.

Ndung'u also considers how the use of PMSCs has impacted on the notion of state sovereignty. She discusses how PMSC involvement, though important, is not the solution in addressing the underlying causes of conflict in Africa. She identifies other causes of conflict such as poor governance and abuse of the security sector in most African states. Ndung'u then gives an overview of the international legal instruments dealing with mercenarism and how they could be used in addressing the bad side of PMSCs, which is their involvement in mercenary activities. In conclusion, she argues that PMSCs per se are not a threat to human security, but their generally dubious activities pose a challenge to both human and state security.

Taking the discussion further, in Chapter 3, Sabelo Gumedze considers the regulatory approaches to PMSCs in Africa in the form of a mapping study. He traces the emergence of PMSCs and how states have responded to their use in various situations. He highlights the Montreux Document on Pertinent International Legal Obligations and Good Practices for States Relating to the Operations of Private Military and Security Companies during Armed Conflict, which seeks to recall existing legal obligations of states and PMSCs and their personnel and provides states with good practices in order to promote compliance with international law and human rights law during armed conflict.

Gumedze further discusses how the challenges posed by PMSCs have been addressed at the UN level. He then considers the general trends and challenges of PMSCs in Africa and concedes that the privatisation of security has not been adequately addressed in the African region. He then discusses some of the challenges relating to the discourse on PMSCs in Africa. Among other things, Gumedze identifies the limited number of studies that have been undertaken in Africa in an attempt to uncover the extent of PMSC activities in the continent.

He then discusses some of the pertinent policy and regulatory initiatives in Africa aimed at addressing the challenges posed by PMSCs.

Concluding the discussion, in Chapter 4, Lindy Heinecken and Michon Motzouris provide a perspective on how PMSCs affect the capacity and capability of national armed forces. They consider the question of what actually led to the privatisation of security, with reference to the South African experience, where many South African Defence Force personnel joined the now defunct Executive Outcomes. They make it clear that they are not against PMSCs, but only consider the impact they have on national armies as providers of public security, which is critical for any state.

When considering the effect of PMSCs on the future capacity and capability of national armies, Heinecken and Motzouris argue that the vacant posts in national armed forces left by those recruited by PMSCs cannot be readily filled, as it takes a considerable number of years to train new personnel. Lower standards within national armies thus become inevitable. They recommend that national armies should think strategically in order to retain army officers through the provision of better conditions of service. In conclusion, they suggest the need to find a balance between full-time military professionals and civilian specialists, reservists and contractors. In this way, not all the expertise taken by PMSCs from national armies will be lost.

This monograph does not attempt to provide profound solutions to all the challenges posed by PMSCs in Africa. Rather, it aims at making a modest contribution to the discourse on the subject by considering different perspectives from various disciplines as represented by the various authors. It is hoped that the various chapters featured in this monograph will enable both policymakers and scholars alike to think out of the box when considering how PMSCs can best be addressed in Africa, particularly in situations where they are involved in African conflicts, where they render diverse services.

1 Will global demand for private military services in major conflicts continue?¹

DEANE-PETER BAKER

INTRODUCTION

There are those who are of the opinion that the drawdown of US forces in Iraq portends the beginning of the end for the large-scale demand for private contractors in major conflicts. Certainly it was the Iraq conflict that largely led to the unprecedented (in modern times at least) explosion of demand for the services of what we now uneasily call private military and security companies (PMSCs). But those who contend that Iraq represents an anomalous surge in demand that will now die down or die away completely are, in my opinion, mistaken. Certainly, there may be some changes in the type and scale of the involvement of PMSCs in conflict zones (it is, and has always been, an adaptive industry), but it seems clear to me that demand for their services, and therefore also the supply of such services, is likely to continue into the foreseeable future. This, of course, makes it imperative that practical ways be found to ensure the accountability of private contractors operating in zones of conflict.

In this chapter I will outline what I consider to be the key factors that will ensure ongoing demand for the services of the private military industry in foreseeable future major conflicts, some of which will, in all likelihood, take place in Africa. This discussion is not intended to be exhaustive, but will, I hope,

provide adequate reasons for taking seriously the need for ongoing efforts to monitor and control the activities of these companies.

Before continuing, a brief note on what I mean by the term ‘private military company’ (PMC), as it will be used in the following discussion. I have deliberately avoided using the more widely accepted term ‘private military and security company’ as I am here focusing specifically on the supply of military (rather than security) services. I am aware that there is some blurring at the margins of the distinction between ‘military’ and ‘security’ services, but I cannot undertake a precise taxonomy here, and it seems to me that the distinction is clear enough for the purposes of this chapter. The most obvious companies who fit the description of PMCs are those that provide the services of what I call ‘contracted combatants’, namely those contractors whose primary role is to provide armed force in a conflict zone (I do not distinguish between ‘defensive’ and ‘offensive’ uses of armed force, as some do). I also use the term to refer to those companies that provide services to combatants that have traditionally been provided by military personnel, such as military training, military intelligence, operational planning and the like. Things get less clear when considering those companies (which account for the vast majority of contractors in conflict zones) that provide logistical and support services such as the construction of military and police bases, the supply of food to military personnel, the provision of medical services to the military and the like. For the purposes of this chapter, I wish to exclude the majority of the latter class of companies from the category of PMCs.

In what follows, I will firstly address the material factors and then the non-material factors that I believe will sustain the demand for PMCs in major conflicts for some time to come. I have here limited my focus to major conflicts (like those we have seen in recent years in Iraq and Afghanistan), because it is here that the use of PMCs is arguably the most controversial. I do not, however, intend to imply that PMCs and PMSCs will not continue to play a role in a wide range of other environments, from peacekeeping to anti-piracy work to internal security. On the contrary, they undoubtedly will, but this is relatively obvious and therefore need not be argued here.

MATERIAL FACTORS

It has become commonplace among analysts of all persuasions to insist that in recent years warfare has changed radically. Of course, change in warfare is

nothing new – like any human activity, it is subject to the powerful influences of societal and technological change. But this is different. The shifts that these analysts point to are, they insist, *radical*; that is to say, they contend that these changes represent a fundamental altering of the *nature* of warfare.

Depending on their particular disciplinary perspectives, the actual changes pointed to by these scholars differ. For some it is the genocidal practice and ethnic politics that are increasingly at the centre of today's armed conflicts that are the most important distinctives of these 'new wars'. For others it is the advent of information warfare and the rise of the computer-geek 'info-warrior' that represents the vanguard of the revolution. Others still point to the new-found focus on human rights in warfare, and with it the rise of the applicability of humanitarian grounds for military intervention and the consequent decline of the sanctity of the sovereign state. Yet others point to the growing involvement of non-state actors in warfare and argue that this portends a future in which states will no longer dominate armed conflicts. And finally (though not exhaustively) there are the proponents of the so-called Revolution in Military Affairs (RMA) who insist that recent technological advances (such as the development of precision-guided munitions, advanced C4ISR² capabilities, network-centric battlefield systems and so on) have irrevocably altered the nature of warfighting itself.

Certainly, it is clear that many of these changes, as well as others, are of crucial importance in understanding warfare today. For example, the fact that about 80 per cent of casualties in armed conflicts today are civilians (as opposed to around 10–15 per cent at the beginning of the 20th century)³ and the ever-decreasing likelihood of conventional conflicts between major national armies are examples of important changes that should (though, sadly, all too often do not) play an important role in defence planning.

In what follows I will consider what central trends are discernible in three of the key possible spheres of future armed conflict, namely mid- to high-level conventional land conflict, urban warfare and counterinsurgency. Again, these are not exhaustive, but they strike me as among the most important, the latter two because of the likelihood that they will dominate the future conflict environment and the first because of the fact that most military forces remain primarily designed to address conflict of this kind. The trends here are global and are if anything most relevant to the African context, given the sad fact that the majority of the world's armed conflicts continue to take place on African soil.

Mid- to high-level conventional land conflict

Stephen Biddle sets out in his important book *Military power: explaining victory and defeat in modern battle* to answer the questions, What causes victory and defeat in battle? and Why do the winners win and the losers lose?⁴ These are obviously big questions, so in order to make his investigation manageable, Biddle takes as his basic unit of analysis the operation – ‘a series of interconnected battles resulting from a single prior plan’⁵ – and focuses on continental conflicts, i.e. those that take place on or over major land masses.⁶ He also concentrates on warfare that falls in the mid- to high-level range, thereby excluding low-intensity conflicts, on the one hand, and global-scale conflicts involving weapons of mass destruction, on the other.

Historically, the main approaches to measuring military capability have been those of numerical preponderance, technology (the measure favoured by RMA believers) and (to a lesser degree) force employment. Biddle, however, believes that these capability measures, at least as usually applied, are of little value. Force employment, he argues, is usually only employed (and usually only by historians) as a subjective measure of military capability and offers little by way of predictive power. Numerical preponderance and technology as predictors of military success show little more utility. Indeed, Biddle contends that they are in fact ‘no better than coin flips at predicting real military outcomes.’⁷ This is not hyperbole on his part. He subjects these two central traditional measures of military capability to statistical testing by assessing their predictive power when measured against the data collected in the University of Michigan’s Correlates of War (COW) dataset, which provides statistical data relating to 16 actual wars that took place between 1900 and 1992. He concludes that, for both numerical preponderance and technology, applying these measures to the COW data produces predictions of victory that are *in fact* little better than a coin flip, and indeed sometimes perform even worse.

In Biddle’s view, the missing factor is the proper application of the idea of force employment, or, more specifically, what he calls the ‘modern system’ of force employment. This system, he contends, has been employed since at least 1918, but its importance has nonetheless slipped the attention of most military analysts. ‘The modern system is a tightly interrelated complex of cover, concealment, dispersion, suppression, small-unit independent manoeuvre, and combined arms at the tactical level, and depth, reserves, and differential

concentration at the operational level of war.⁸ Properly understood, this factor is the deciding one in predicting the outcome of military operations. Regarding numerical preponderance, Biddle contends that,

[s]uperior numbers can be decisive or almost irrelevant depending on the two sides' force employment. This in turn means that states' relative economic, demographic or industrial strength are poor indicators of real military power: gross resource advantages matter only if they can be exploited via modern-system force employment, and many states cannot do so.⁹

Similarly, Biddle argues, technology's value is relative to modern-system force employment: 'Taken together these techniques sharply reduce vulnerability to even twenty-first century weapons and sensors. Where fully implemented, the modern system damps the effects of technological change and insulates its users from the full lethality of their opponents' weapons.¹⁰

The modern system works by exploiting properties of military technology that have changed little since 1918 and are changing only slowly today. It thus damps the effect of technological change: modern-system militaries are far less exposed to the effects of increasing lethality, speed and sensory acuity than are non-modern-system forces. This in turn means that the modern system has actually grown more important over time: technological change is increasing the vulnerability of non-modern-system forces much faster than modern-system ones, yielding an ever-growing gap in real military capability between the two.¹¹

Thus, while important, technology is not decisive in the way that advocates of the RMA think it is, and it certainly does not negate 'traditional' approaches to warfare in the way they believe – indeed, the very opposite is true. Likewise, modern-system force employment is the decisive factor in making preponderance valuable: 'Modern weapons are so lethal that exposed, non-modern-system forces become cannon fodder. For numbers to tell requires modern-system force employment.'¹²

Urban operations

Probably the best recent analysis of the nature of urban warfare is Alice Hills' *Future war in cities: rethinking a liberal dilemma*. Hills' focus is on warfighting

on a particular type of terrain, namely operations on urban terrain. A central thesis of her work, however, is that it is not simply a matter of differing terrain that makes urban operations unique. For while it is true that fighting in urban areas offers unique physical challenges (such as the fact that '[c]ities represent a complex multidimensional blend of horizontal, vertical, interior and external forms, superimposed on natural relief' in which '[g]round manoeuvre becomes multidimensional'¹³), this is only one of the issues that mark out urban operations as deserving special attention. Among the other relevant features of war in cities and other urban areas are the following:

- Cities carry particular political significance
- Urban areas are heavily populated, multiplying the potential for so-called 'collateral damage'
- Issues of humanitarian aid and development are tied in with urban conflict in a uniquely close and complex manner
- Urban environments favour asymmetrical opponents
- Standoff-range combat is technically and morally difficult, increasing the need for close or dismounted combat, which is invariably attritional and results in higher casualties
- Logistics becomes both more difficult and more important in urban conflict, particularly in the light of the increased humanitarian demands placed on liberal participants in conflicts
- Local social, cultural, economic and demographic conditions are significantly more important factors in urban conflict than in other types of operations

Furthermore, we live in an increasingly urbanised world. As Hills points out, '[i]t has been estimated that in 2015 the world's population will be 7.2 billion; that is, 1.1 billion more than in 2000. Approximately 95 per cent of the increase will be in developing countries and almost all of it will occur in cities.'¹⁴ While it has been a common goal among Western and other liberal militaries to avoid fighting in urban environments as far as possible, Hills argues convincingly that it will become increasingly more difficult to do so as more adversaries recognise the asymmetric advantages cities offer them: 'Baghdad, Beirut, Belfast, Dili, Freetown, Gaza City, Grozny, Kabul, Mogadishu, Monrovia, Pristina and Sarajevo – all suggest that it will be as difficult to avoid operations in cities in the future as it was in the past.'¹⁵ Despite this, her analysis shows

that warfighting in urban areas has received relatively little focused attention. Indeed, she goes as far as to claim that '[t]here are no reliable or coherent theories of urban operations'.¹⁶

Not surprisingly, one of the proposed solutions to the quandaries of urban combat is to turn to transformational technology. Hills considers the potential of technological innovations such as precision-targeted munitions delivered by close air support, unmanned robotic weapons systems and netcentric warfare systems. While such innovations undoubtedly are of great assistance to the urban warrior, Hills concludes that '[t]here is as yet no evidence that technology has or can cause a fundamental shift in the nature or conduct of urban operations'¹⁷ and that, indeed, urban combat remains little changed in its essential nature from what took place in the 1940s in places like Stalingrad and Berlin.

A particular challenge is the vexing issue of controlling non-combatants and minimising 'collateral damage' during urban conflict. The quandary is summed up well by Hills when she writes that '[u]rban war traditionally destroys cities, yet it seems likely that military control of a city during policing, enforcement and post-conflict scenarios is easier if electricity, water and sewerage systems work; if public-health concerns are lower; if logistics are easier; and if populations are generally more compliant'.¹⁸ Compounding the problem is the historical point, as Hills observes, that,

the attacking force in almost every modern urban battle has begun operations with a strict set of ROE [rules of engagement] designed to limit collateral damage, but all have invariably been eased in the course of operations because minimising friendly casualties always takes precedence over the desire to avoid civilian casualties and collateral damage.¹⁹

The sombre message of *Future war in cities* is that urban operations are intractable. This is because urban warfare is inherently brutal and presents a range of analytic, strategic and moral challenges to which current thinking seems to offer no solution. How, for example, can liberal nations come to terms with the fact that the most effective weapons (such as flamethrowers or their contemporary equivalents, thermobaric munitions) and tactics (such as levelling buildings with artillery or bombs in order to neutralise snipers) for urban combat run contrary to central liberal moral commitments? How will liberal nations cope with the reality that urban operations seem inescapably to involve high casualty levels?

Counterinsurgency

Despite the reluctance of most Western militaries throughout the 1990s and early part of the new century, it has now become an accepted truth that counterinsurgency and similar missions (including peace enforcement operations and stabilisation operations) will be the most common operations that state military forces will find themselves embroiled in. The United States' painful process of learning (or rather relearning) the principles of counterinsurgency in Iraq and Afghanistan has led to the publication of an array of new analyses of this form of warfare, including John Nagl's *Learning to eat soup with a knife*,²⁰ David Kilcullen's *The accidental guerrilla*²¹ and the surprisingly good joint US Army–US Marine Corps *Counterinsurgency field manual*, FM 3-24.²²

In works like these a broad consensus is emerging on the nature of contemporary counterinsurgency operations. Among the key points are the following:

- Successful counterinsurgency operations are primarily population-centric (focused on securing civilians) rather than enemy-centric (focused on killing, detaining or disrupting insurgent forces). The population-centric approach requires troops to live with and among the population they are protecting and is extremely manpower intensive
- Denying insurgents access to safe havens in neighbouring countries is a central requirement for successful counterinsurgencies. This is demanding both technologically (requiring, for example, significant aerial surveillance and reconnaissance capabilities) and in terms of manpower
- Training and ensuring the credibility of local government police, soldiers and civilians are the only realistic exit strategies for foreign forces embroiled in a counterinsurgency
- Specialised capabilities not normally inherent in military forces are often important force enablers in counterinsurgency operations, e.g. governance specialists, translators and even anthropologists (such as those employed in US military 'human terrain teams')

Implications

What is clear from the above is that, for all the talk of radical transformation in contemporary warfare, future operations are far more likely to reflect past

lessons learned than anything revolutionary. In this section of the chapter I will consider the implications of this for the private military industry.

There is no revolution

The first point here – and it bears repeating – is that while technology will no doubt continue to increase the lethality of the emerging battlespace, it does not and will not (at least in the foreseeable future) change the essential nature of military operations. It is simply not true that the so-called ‘Afghan model’ – in which a handful of special operations soldiers backed by sophisticated airpower and artillery support take on and defeat traditional forces – will replace the need for traditional ‘boots on the ground’ operations.²³ The reality is that it still requires infantry to take and hold ground, and this places considerable manpower demands on military forces. As Hills’ analysis emphasises, this is particularly so for operations on urban terrain, and the same is true of counterinsurgency operations. In the post-Cold War era of discretionary operations in which large standing armies seem to most policymakers to be an unnecessary expense, it is increasingly likely that it will be necessary to turn to other sources – including PMCs – to make up the shortfall in trained military personnel.

Professionalism is crucial

The ‘modern system’ described by Biddle will continue to be the crucial factor in battlefield success. The implication of this is that the skills of the highly trained professional soldier will continue to be in demand. Gone are the days of Napoleon’s *levée en mass* in which the sheer weight of a huge conscript army could tip the scales in battle. We need only remember the fate of the numerically superior conscript forces of Argentina in the Falklands/Malvinas war of 1982 or that of the vast conscript forces of the Iraqi regime in 1991. Biddle’s analysis is uncompromisingly clear – it is force employment, rather than simple force of numbers, that counts on the battlefield. His analysis also makes it very clear, however, that the process of developing and maintaining military forces capable of operating the modern system is both difficult and expensive. For many states, particularly in the developing world, but also in an increasingly budget-conscious developed world, the cost of having an in-house modern-system-capable military will be adjudged to be too high. While some of this capability may be supplied by allies and regional organisations, the off-the-shelf and on-demand professional capability offered by PMCs staffed by highly trained former members of the world’s elite

armed forces will become an increasingly attractive alternative. At the other end of the spectrum, those PMSCs who supply low-quality guards provide a means to free up the highly trained professionals for high-intensity operations, as do those specialist firms that offer training, advisory and related services.

Warfare will be bloody and difficult

Biddle's analysis consciously focuses on conventional operations outside of urban areas and takes as its basis a conventional view of military victory. As mentioned above, this is defined in terms of military 'capability', which Biddle describes as follows:

[O]ffensive military capability [is] *the capacity to destroy the largest possible defensive force over the largest possible territory for the smallest attacker casualties in the least time*; defensive military capability is conversely the ability to preserve the largest possible defensive force over the largest possible territory with the greatest attacker casualties for the longest time.²⁴

This broadly Clausewitzian view of victory²⁵ remains relevant for conventional conflicts like the 1991 Iraq war, and in such conflicts it remains possible for vastly superior forces like those of the US military to inflict massive casualties on enemy forces while keeping their own casualties to a minimum. Unfortunately, Biddle's approach to military victory cannot be applied easily to urban conflict or counterinsurgency operations. As US forces in Iraq have discovered to their detriment, it is almost impossible to arrange a 'decisive battle' in this kind of conflict, and even the most capable and technologically advanced forces must still accept a significant and steady stream of casualties. But social conditions in the developed world make this sort of casualty rate increasingly unpalatable. It is increasingly likely, therefore, that policymakers seeking to project force beyond the borders of their nations will turn to proxy forces as a way to minimise risk. Such forces are increasingly likely to include highly professional and capable forces supplied by PMCs.

NON-MATERIAL FACTORS

The latest catchphrase to enter the English language as a result of military conflict is the term 'asymmetrical warfare'. At its broadest, asymmetrical warfare is

simply any conflict in which there is a significant qualitative²⁶ mismatch between opponents in any or all of the following: manpower, firepower, technology and tactics. There are, of course, complexities here, and asymmetries are not all of the same ilk, nor do they remain fixed, and certainly it is sometimes difficult to tell whether a conflict can properly be defined as asymmetrical. Nonetheless, the general concept is easily recognisable.

The conflict that brought the phrase into the public sphere was the so-called ‘War on Terror’, and in particular the post-9/11 US interventions in Afghanistan and Iraq. There, US and allied forces have almost daily faced attacks from lightly armed insurgents for whom suicide bombings, improvised explosive devices, shoot-and-scoot mortar attacks and sniper attacks are tactics of choice. Many of the technological advantages that the US armed forces in particular have are rendered largely ineffectual in the face of this kind of low-intensity conflict. In such situations, what good, for example, is the M1A2 Abrams tank’s much-vaunted ability to achieve a near 100 per cent kill rate against enemy armour at ranges of up to 4 000 metres at night and while on the move?

While the United States is the most high-profile nation to be facing asymmetrical opponents, asymmetrical warfare is a global phenomenon, and Africa is no exception. Arguably more important than the asymmetry in tactics and equipment is the moral asymmetry between the opposing forces. This asymmetry involves the nature of the moral understanding of the opposing parties. Ostensibly, at least, both sides believe themselves to be fighting for the good. What differs is how ‘fighting for the good’ is understood.

On the one hand, the military forces of respectable states are held to a moral code that adheres, for the most part, to the traditional Just War doctrine of *jus in bello*. Military forces must respect the human rights of the civilians caught up in conflict zones. Military operations must be conducted in such a way as to minimise what is clinically called ‘collateral damage’, i.e. the death of civilians and the destruction of non-military property. Rules of engagement forbid soldiers to fire on civilians unless they present a clear threat. And so the list continues. Of course, the presence of this code is no guarantee that it will be followed. Nonetheless, the widespread condemnation of those who fail to live up to this code provides further evidence of its existence.

On the other hand, asymmetrical opponents show little commitment to these ideals. While there may well be some sort of moral restraints on how these groups conduct their campaigns, these restraints, if they exist, are manifestly

not the same as those that guide the official conduct of state coalition forces. Torture, the killing of innocent bystanders, attacks on civilian targets, hostage taking and executions, manipulating the faithful into carrying out suicide bombings, and so on are not only commonplace, but are in fact among the main strategies being employed by the myriad groups that fall into this category.

This moral asymmetry strongly favours those who cast off the usual moral constraints. For where state and coalition forces are increasingly restricted in their operations by the restraints imposed on them by relatively squeamish international standards of decency, their opponents are free to participate in whatever 'evils' they deem effective in undermining their opponents.

The biggest question facing state and coalition forces is not that of whether or not they are capable of adjusting weapons and tactics to more effectively meet the attacks of their opponents. More fundamental is the question of whether or not the moral asymmetry between the combatants makes an ultimately effective response even *possible*. And if it is indeed possible, what principles should guide combat troops under these conditions? A range of different responses has been given to this tricky question.

In his treatment of this question, influential author Thomas Barnett argues that, while simple solutions are unlikely, nonetheless remedies may be discovered within a mix of decisive and strong leadership, greater commitment to consequentialist thinking in decision making regarding the use of force and the nature of the force used (including a willingness to 'reach outside international law and organizations for remedies'²⁷), and a clearly thought through and realistic set of guidelines for the use of force in a complex set of contexts. This will have the consequence, Barnett argues, of helping to 'illuminate the constraints on the use of force and to reduce their effects'.²⁸ Among the strategic force options that Barnett thinks could emerge from the implementation of this cluster of remedies is the use of what he refers to as 'mercenary forces'. He also recommends the sanctioned use of assassination as a means to bring a conflict to termination. In general, it is clear that Barnett is frustrated and impatient with many of the moral and legal constraints he delineates, and that he is convinced that some clear thinking on this issue will make it clear that 'many of the constraints are strictly fair weather phenomena: When the going gets tough, the constraints get going'.²⁹

Christopher Coker of the London School of Economics sees things differently.³⁰ He depicts the responsible nations of the world as faced with a seemingly

irresolvable paradox. On the one hand, the rise of respect for individual human rights provides impetus for military intervention in situations where these rights are severely trampled. Unique to our 'post-Westphalian' era is the conviction that humanitarianism trumps state sovereignty. On the other hand, the loss of faith in universal truth and the consequent 'ironic' approach to war has robbed us of the courage of that conviction. No longer can we expect, or even allow, soldiers to lay down their lives in the service of some ideal. Furthermore, it is also becoming less and less palatable to kill the enemy.

This paradox is not entirely disabling. Coker points to the rise of 'non-lethal weapons' and the increasing automation of the battlefield as ways that are being explored to circumvent this paradox. He does not view these measures, however, as sufficient to truly address the problem faced by the West with respect to the deployment of military force. His conclusions are sombre. We are likely, he argues, to 'pay a high price for continuing to find war "ironic".'³¹ Unlike Barnett, Coker believes that the asymmetry resulting from this paradox is unlikely to result in the fall of the West to the 'barbarians' at the gate ([t]he West remains more than powerful enough to fight its own corner'³²). Nonetheless, Coker thinks that a significant problem remains, namely that 'we may abandon much of the world to the forces of barbarism'.³³

Implications

It seems to me that some of the ways of avoiding the paradox gestured at by Coker and Barnett offer more hope than either of them seems to believe is possible. Coker is right that cruise missiles, unmanned aerial vehicles (like the highly successful Predator) and other such 'war robots' probably do not represent a complete answer to the partial paralysis induced by an ironic view of war. At the end of the day, Kosovo notwithstanding,³⁴ wars are only won by boots on the ground. However, combine these technological advances with Barnett's reluctant suggestion of the mandated use of 'mercenary forces' and a genuinely possible response emerges. While he does not make it explicit, it seems clear that Barnett is referring to PMCs when he makes use of the term 'mercenary' here. Certainly, the businesslike approach to war overtly taken by PMCs fits well with the emotionally neutral view of war (war without cruelty, war without hatred and so on) that Coker describes so well in his book. Given the general agreement that the social and moral conditions prevalent in the developed world

are such as to significantly restrict the likelihood of the deployment of national military forces on discretionary operations like humanitarian interventions, there seems a far greater likelihood that the general trend towards such operations will be conducted via proxy forces, including and perhaps primarily forces supplied by PMCs.

CONCLUSION

I began this chapter by considering the material conditions most likely to apply to the battlespace of the 21st century. Convincing analyses presented by Biddle and Hills show that while technology will undoubtedly continue to enhance the lethality of future weapons systems, these technological advances will not change the essential nature of armed conflict. Future battlefield success will still require well-trained and professional soldiers capable of using the 'modern system' of force employment. PMSCs, many of them staffed with former members of the world's elite military units, are a good source of such soldiers, particularly for developing world countries without the necessary resources to develop and maintain modern-system-capable forces of their own. Furthermore, the increasing likelihood of bloody, intractable and manpower-intensive urban and counterinsurgency conflicts increases the probability that states and regional organisations will turn to the private sector to provide additional forces and minimise risk to uniformed troops.

In the second part of the chapter we saw that the push towards the deployment of PMCs caused by material factors in the future battlespace are multiplied by the non-material factors that seem likely to apply. In particular we saw that leading analysts identify two conflicting social and moral trends in the developed world: firstly, a rising recognition of, and concern for, the global importance of universal human rights; and, secondly, an increasing intolerance for the casualties and other consequences that result from committing national military forces to distant conflicts in order to fight for those very same universal human rights. I argued that the private sector offers a means to address this paradox. The detached, 'socially responsible corporation' and risk-management approach presented by PMCs seems to fit well with the demands of both of these trends.

It seems, then, that both the material and non-material conditions of the future battlespace favour the employment and deployment of PMCs. But this

fact alone does not, of course, address the question of whether it is *legitimate* to use PMCs in this way. Here, a range of questions arise. Are contracted combatants somehow inherently immoral? Do mechanisms exist whereby states can ensure the accountability of PMCs? Do mechanisms exist whereby electorates can ensure that states remain accountable in their employment of PMCs? Does the employment of PMCs undermine the state's monopoly on force? This short chapter is not the place to attempt to address these challenging questions.³⁵ It does, however, rebut the idea that we need not bother with such issues, based on the thesis that demand for these services in major conflicts is likely to wither and die.

NOTES

- 1 This chapter draws in part on views previously expressed in Deane-Peter Baker, The future of warfighting, *Scientia Militaria* 34(1) (2006), 93–107; and Deane-Peter Baker, Moral asymmetry in contemporary warfare, *Theoria* 106 (2005), 128–140.
- 2 Command, control, communications, computers, intelligence, surveillance and reconnaissance.
- 3 See Mary Kaldor, *New and old wars: organised violence in a global era*, Cambridge: Polity Press, 1999, 100.
- 4 Stephen Biddle, *Military power: explaining victory and defeat in modern battle*, Princeton and Oxford: Princeton University Press, 2004, 1.
- 5 *Ibid.*, 6.
- 6 Conflicts that are fought primarily in the air or on the sea are therefore excluded from his analysis.
- 7 Biddle, *Military power*, 2.
- 8 *Ibid.*, 3.
- 9 *Ibid.*
- 10 *Ibid.*, 2–3.
- 11 *Ibid.*, 52.
- 12 *Ibid.*
- 13 Alice Hills, *Future war in cities: rethinking a liberal dilemma*, London: Frank Cass, 2004, 9.
- 14 *Ibid.*, 16.
- 15 *Ibid.*, 4.
- 16 *Ibid.*, 36.

- 17 Ibid, 84.
- 18 Ibid, 199.
- 19 Ibid, 209.
- 20 John Nagl, *Learning to eat soup with a knife: counterinsurgency lessons from Malaya and Vietnam*, Chicago: University of Chicago Press, 2002.
- 21 David Kilcullen, *The accidental guerrilla: fighting small wars in the midst of a big one*, New York: Oxford University Press, 2009.
- 22 US Army–US Marine Corps, *Counterinsurgency field manual*, FM 3-24, 2006, <http://www.fas.org/irp/doddir/army/fm3-24fd.pdf> (accessed 30 June 2009).
- 23 See Stephen Biddle's excellent analysis of the 'Afghan model' in his *Afghanistan and the future of warfare: implications for army and defense policy*, Strategic Studies Institute of the US Army War College, 2002, <http://www.strategicstudiesinstitute.army.mil/pubs/display.cfm?PubID=109> (accessed 18 July 2007).
- 24 Biddle, *Military power*, 6.
- 25 Perhaps it would be more accurate to describe this in terms of the standard US military reading of Clausewitz; see Andreas Herberg Rothe's very interesting analysis of Clausewitz in his *Clausewitz's puzzle: the political theory of war*, Oxford: Oxford University Press, 2007.
- 26 By which term I mean not differing degrees of quality, but rather differences in kind. Thus, simply having much better tanks than one's opponents (for example) would not qualify the conflict as asymmetrical. In this respect, the 'first' Gulf War probably does not qualify as an asymmetrical conflict, despite the one-sidedness of the campaign and the clear technological advantage of the coalition forces over Saddam Hussein's army.
- 27 Roger W. Barnett, *Asymmetrical warfare: today's challenge to U.S. military power*, Washington DC: Brasseys, 2003, 135.
- 28 Ibid, 146.
- 29 Ibid, 147.
- 30 Christopher Coker, *Humane warfare*, London: Routledge, 2001.
- 31 Ibid, 144.
- 32 Ibid.
- 33 Ibid, 144–145.
- 34 Kosovo is often pointed to as a clear case of the triumph of air power. However, as Stephen Biddle has pointed out to me (in conversation), the tide only turned in that conflict when a real threat of the use of ground forces was brought to bear on Serbia by NATO forces.
- 35 I address some of these issues in my forthcoming book *Just warriors, inc: armed contractors and the ethics of war*, London: Continuum, 2010.

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2 Human security and challenges related to private military and security companies in Africa

IRENE NDUNG'U

INTRODUCTION

The importance of private security providers cannot be gainsaid, nor can the increasing and visible role that private military and security companies (PMSCs) are playing in today's world. PMSCs have attracted intense and increasing scrutiny in the security discourse especially following the end of the Cold War, and more so since the Iraq conflict began. This has been informed largely by the increasing awareness that the activities of private security providers have implications and ramifications for security on many levels, from the individual and community levels to the national and international levels, not to mention the spillover effects arising from PMSC operations regionally.

In Africa, the involvement of private security providers is not a totally new phenomenon, and many scholars and researchers have written on this phenomenon particularly from a postmodernist approach, which considers that governments are no longer the primary referents of security, a view that challenges the idea of the state as the only effective and adequate provider of security for its people.

This chapter merely seeks to consider the operations and activities of PMSCs and the challenges they present insofar as human security in Africa is concerned. In so doing, it will first seek to unpack the concept of human security and PMSCs. Thereafter, when locating the nexus between human security and PMSCs in Africa, four important issues on which many PMSCs have had a huge impact will be considered: sovereignty, conflict, stability and resources. The chapter then concludes with a brief summary of the discussion provided.

HUMAN SECURITY

As stated earlier, security has traditionally been conceptualised with the state as the main referent. The transformation of the world after the end of the Cold War, however, ignited a paradigm shift in the international community's focus from this state-centric approach to an emphasis on the need to broaden and deepen the concept of security. This shift took into account the political context prevailing at the end of the Cold War and sought to move the main referent of security from that of the state to that of the people, contending that the state cannot be safe when its citizens are not secure. This people-centric approach to security is the essence of human security and its bedrock is the recognition and protection of human rights, social justice and human dignity.¹ Threats and challenges to human security are as such regarded as transcending national defence, law and order to encompass all political, economic and social factors that guarantee a life free from risk and fear² within the entity of the state.

Cilliers, in conceptualising human security, makes a vertical distinction among at least five levels of security, namely: personal/individual, local/community, national, regional and international security.³ For Cilliers, human security complements state security, enhances human rights and strengthens human development.⁴ On the other hand, the Commission on Human Security provides the following:

Human security means protecting fundamental freedoms – freedoms that are the essence of life. It means protecting people from critical (severe) and pervasive (widespread) threats and situations. It means using processes that build on people's strengths and aspirations. It means creating political, social, environmental, economic, military and cultural

systems that together give people the building blocks of survival, livelihood and dignity.⁵

Freedom from fear, freedom from want and freedom to live in dignity are therefore the interrelated blocks of human, and therefore national, security. The added value of the concept of human security as opposed to state security is therefore its focus on a broader range of violent threats facing people, including war and internal conflict, as well as communal conflicts and serious criminality. What advances the protection and empowerment of the individual at both the individual and community levels also advances human security, and what negates that protection and empowerment as such diminishes it. In other words, human security and state security are mutually reinforcing, and one cannot have one without the other. Therefore, proceeding from the view that there can be no guarantee of human security if state security is also not assured, this chapter argues that PMSCs are primarily a threat to state security, which in turn means that human security is also threatened by their use, whether at the individual/community, national or international levels.

PMSCs

The myriad of allegations levelled against PMSCs in Africa range from serious criminality like selling small arms to warlords, to human rights abuses. However, it cannot be denied that PMSCs have also provided important services such as mine clearance, logistics and training for multinational peacekeeping operations, and protection for humanitarian workers, among others.⁶ The Montreux Document,⁷ whose definition this paper adopts, defines PMSCs as private business entities that provide military and/or security services, irrespective of how they describe themselves.

The number of PMSCs is on the increase worldwide⁸ and so are the demands for their services. As Table 1 further indicates, PMSC activities range from combat and operational support to logistical support, with the main consumers of their services being governments, non-governmental organisations and multinational companies (MNCs). This range of activities illustrates the breadth and depth of the range of PMSCs’ reach and goes to show that their presence in all regions, including in Africa, ‘presents new challenges, especially since the world, and Africa in particular, has been taken unawares by its dynamism’.⁹

Table 1 Activities, examples and users of PMSCs¹⁰

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

Source: House of Commons, Private military companies: options for regulation, Green Paper (HCC 577 of 2002), London: HMSO, February 2002

The unprecedented growth of PMSCs in Africa has invariably presented challenges whose impact on human security are by no means exhaustive, and these are discussed below.

LOCATING THE NEXUS: HUMAN SECURITY AND PMSCs

In defining security, the Common African Defence and Security Policy recognises the multidimensional notion of security, which,

embraces such issues as human rights; the right to participate fully in the process of governance; the right to equal development as well as the right to have access to resources and the basic necessities of life; the right to protection against poverty; the right to conducive education and health conditions; the right to protection against marginalization on the basis

of gender; protection against natural disasters, as well as ecological and environmental degradation. At the national level, the aim would be to safeguard the security of individuals, families, communities, and the state/national life, in the economic, political and social dimensions.¹¹

The policy continues to outline common security threats deemed as posing a danger to the common defence and security interests of the African continent – threats that undermine ‘the maintenance and promotion of peace, security and stability on the continent’,¹² be they internal or external threats. In this regard, mercenarism is identified as a common external threat that endangers or has the potential to either ‘directly or indirectly ... constrain individual and collective efforts to achieve continental security goals’.¹³ In Africa, however, tackling the challenges to human security is hindered by inadequate regulatory frameworks dealing with PMSCs arising from a clear lack of accountability because of gaps existing in international and regional frameworks for the operations of PMSCs in Africa. One of these gaps is in the area of mercenarism.

Three international legal frameworks address the issue of mercenarism: the 1977 Amended Protocol I to the Geneva Conventions, the 1977 Convention of the OAU (Organisation of African Unity) for the Elimination of Mercenarism in Africa; and the 1989 United Nations Convention Against the Recruitment, Use, Financing and Training of Mercenaries. Challenges to implementing these agreements include ‘the cumulative character of these agreements which make categorisation difficult; emphasis on “participation in hostilities” that excludes a wide range of relevant actors; and a nationality requirement circumvented by individuals assuming local nationality to avoid being caught within the definition’.¹⁴ The UN Working Group on Mercenaries, which replaced the function of the special rapporteur in April 2005 on the decision of the UN Commission on Human Rights, seeks to map the use of PMSCs by UN bodies in order to ensure the appropriate application of international humanitarian law and human rights standards. It has also encouraged the adoption of appropriate legislation and registration in PMSC exporting and user states.

The absence particularly of a region-wide regulatory policy for PMSCs dealing with transparency, accountability and recruitment is as such an ongoing challenge. Furthermore, due to its inability to exert its influence, a contracting¹⁵ state that is weak and relies on a PMSC for its security may therefore find it difficult to hold such a security provider accountable.¹⁶ Furthermore, African

states are exposed to the risk of being overthrown due to the state of regulation policies that result in a lack of accountability of private security actors.¹⁷

Some countries in Africa such as South Africa have, however, put in place independent regulatory mechanisms that cater for private security providers. In South Africa, such regulation is provided for under the Private Security Industry Regulation Act no 56 of 2001 (PSIRA). The Act itself does not prevent a registered security service provider from performing a security service outside the country, but in terms of section 39 of the Act, any act constituting an offence or improper conduct that is committed outside the Republic of South Africa by a security provider is deemed to have been committed within the Republic.¹⁸ Challenges remain, however, with regard to the harmonisation of procedures or the establishment of a coordinating mechanism between the National Conventional Arms Control Committee, which is the body charged with the oversight and licensing of private security and private military services and traditionally had the oversight role of PMSCs that export military assistance, and the Private Security Industry Regulation Authority, which is tasked with oversight of private security companies in the domestic market, because many companies registered under

Table 2 PMSCs and their services in South Africa

| Services | PMSC |
|----------------------------------|---|
| Military advice and training | Frederick, Nicholas and Duncan (FND), Lanseria, Meteoric Tactical Solutions, Ronin Protective Services, Erinys, Executive Outcomes, Ibis Air, Lanseria, Omega Support Ltd, SA Bias Group, Southern Cross Security |
| Operational support | Erinys, Falconeer, FND, Ibis Air, Meteoric Tactical Solutions, Omega Support Ltd, SA Bias Group, Strategic Resources Corporation |
| Logistical support | Omega Risk, Parasec Corporate Dynamics, Ronin Protective Services, Shield Security, Stabilico, Safenet, Saracen International |
| Site/personal/personnel security | Shibata Security, Shield Security, Southern Cross Security, Stabilico, Coin Security, Empower Loss, Erinys, Executive Outcomes, Gray Security, KWZ, Lanseria, Lifeguard Security, Meteoric Tactical Solutions |
| Crime prevention/intelligence | Parasec Corporate Dynamics, Ronin Protective Services, Safenet, Saracen International, Shibata Security, Shield Security, Southern Cross Security, Stabilico |

Source: Raenette Taljaard 'Private and Public Security in South Africa' in Sabelo Gumede (ed), The private security sector in Africa: country series, ISS Monograph no 146, Pretoria/Tshwane: ISS, July 2008b, appendix A

the PSIRA may offer their security services for export as well.¹⁹ It is noteworthy, though, that only the United States and South Africa have national legislation covering the provision of PMSC services in other countries.²⁰

Besides the need for the tightening the regulatory framework that covers PMSCs such as the screening of security personnel, the improvement of training curricula and tighter provisions on the use of firearms, resources (funds and staff) have also been identified as challenges to the efficient functioning of the PMSC regulator in South Africa.²¹

STATE SOVEREIGNTY

The notion of state sovereignty has its origins in the 1648 Peace of Westphalia, which ended the Thirty-year War in Europe. Since Westphalia, the United Nations Charter, the AU Constitutive Act and the European Union Treaty on Integration, among others, recognise the special status of states in international relations, thus reinforcing the idea that states are sacrosanct. The inability by many African states to provide adequate security to their citizens has led to the infiltration of the continent by foreign private security companies.²² The modern state provides for the good life of its citizens, including their security (defence from external threats and maintenance of domestic law and order via the police and courts), their freedom (democratic institutions and a political order based on civil and political rights) and their welfare (through the resources produced in the national economy and the services provided by government). Nonetheless, at the national level the African state has in most instances failed to live up to this ideal. Some African states, such as Angola and the Democratic Republic of the Congo (DRC), have never enjoyed a complete monopoly of the use of violence due to the continuous and active presence of other non-state actors, such as rebels, on their territories, not to mention the fact that the governments of states themselves have resorted to mercenary services to keep them in power.²³

In Africa, decolonisation created a new type of quasi-state in the international system with fragile or ineffective political institutions that could claim little or no legitimacy from its citizens – the so-called ‘weak states’. Following the 11 September 2001 terrorist attacks in New York and Washington, DC, such weak states, particularly in Africa, were now regarded as security risks and as likely abodes of terrorist cells and zones of conflict. This debate on the ‘securitisation’ of Africa, as Ndlovu-Gatsheni argues, has, however, failed to capture the

apparent security threat that is posed by the presence of PMSCs in Africa. This weak African state, he continues, is a dangerous phenomenon in which the rulers are 'engaged in all sorts of complex survival techniques, including inviting into Africa those companies that sell military skills to the highest bidder'.²⁴

In the 1960s and 1970s mercenaries were a real threat to legitimacy and self-determination. They were often associated with attempts to preserve quasi-colonial structures and they took part in a number of attempted coups. The attempted coup in Equatorial Guinea to oust that country's president by the now defunct Executive Outcomes is a case in point.

A state is acknowledged as such if it is in control of its own territory; this is the essence of sovereignty. And, as Gumedze argues, 'if left uncontrolled, PSCs [private security companies] and PMCs [private military companies] are both capable of compromising state power and sovereignty'.²⁵ This lack of control also results from the fact that states are no longer in charge of the exclusive means of violence in their domestic jurisdictions and other actors such as PMSCs wield considerable power using legitimate weapons such as guns. Furthermore, the international system is now in an era in which the notion of the state as being the main actor is being challenged with the emergence of non-traditional actors such as the international PMSCs who have become significant players in the international arena. Some of the challenges occasioned by PMSCs' presence are as result of the state's abdication of its role as the sole wielder of the legitimate use of violence. Even outside the African continent, PMSCs are gaining in power and influence. In the United States, for instance, expenditure on private security forces is now more than double the amount the country spends on public police forces,²⁶ while in South Africa the number of staff employed by private security companies and the size of these companies' budgets both exceed those of public enforcement agents, with the ratio of private security employees to police officers being two to one.²⁷ Clearly, from the above discussion, PMSCs can and do indeed pose a challenge to state sovereignty, not just in Africa, but internationally.

CONFLICTS

The 1994 UNDP *Human development report* states that human security 'is concerned with how people live and breathe in a society, how freely they exercise their many choices, how much access they have to market and social

opportunities and whether they live in conflict or peace'.²⁸ Most of the world's armed conflicts now take place in sub-Saharan Africa. The 2005 *Human security report* states that at the turn of the 21st century, more people were being killed in Africa than in the rest of the world combined. The report continues that across the central belt of the continent, from Somalia in the north-east to Angola in the south-west, the continent remains trapped in a volatile mix of poverty, crime, unstable and inequitable political institutions, ethnic discrimination, low capacity, and bad neighbourhoods created by crisis-ridden states.²⁹

Due to the abundance of cheap weapons, weak administration, and the combination of pervasive conflicts and declining gross domestic products, conflicts in these countries are difficult to contain, avoid or end, as the case of Somalia continues to demonstrate. It is in such environments and conditions that PMSCs are operating in Africa. Many Western companies, and even governments, have been linked to wars aimed at maintaining control over resources, thus contributing to the seemingly perpetual cycle of conflict in the continent, the reason for their involvement being profit maximisation.³⁰ For instance, in an example from the early 1960s,

with the blessing of the Belgian government, the Katangese secessionists and the US Central Intelligence Agency (CIA), Western mercenaries fought against the Congolese armed forces and the UN peacekeeping force. Their involvement in the war was clearly related to the maintenance of control over the natural resources of Katanga by Western companies which found it difficult to accept the independent status of the Congo.³¹

Unlike national armies, some argue that PMCs have no interest in bringing conflict to an end, since they are paid only when there is a crisis to deal with, unlike national armies, who are paid in peacetime as well. For example, Nana Busia writes: '[T]he raison d'être and modus vivendi of mercenaries is instability and it is in their interest that a perpetual state of instability is maintained'.³² Ndlovu-Gatsheni, however, is critical of the approach that seeks to portray the weak African state as a victim of the First World, an approach that presents these states as 'victims of external manipulation while ignoring the dangerous agency of the leaders of these states, and in particular, how they invite private military forces to operate in Africa and engage in African conflicts'.³³ He continues as follows:

Weak states cannot be regarded merely as orphans of the Cold War who are falling prey to the machinations of PMCs and private security companies ... or as victims of powerful global forces that sap their strength deliberately and compromise their sovereignty and stability in order to exploit minerals and oil. ... If weak states were ever victims of powerful forces that compromised their sovereignty and stability, they must be understood as willing victims presided over by weak but cunning leaders who were able to operate within complex global commercial networks for personal interest, personal gain and regime security.³⁴

Ndlovu-Gatsheni adds that these complex global commercial networks include inviting PMSCs into Africa to prop up failing regimes, and in this way, 'weak states and their weak leaders are a major cause in the proliferation and growth of private military forces in Africa'.³⁵ The reason for the rapid growth of the private security sector, he adds, is because its members are used as a survival strategy by many leaders of weak states, thus providing another avenue to explain why the private security sector has grown so rapidly in Africa since the end of the Cold War. Therefore,

[t]he weak African state is not an innocent political formation that requires humanitarian rehabilitation. Conceptualised from a security perspective it is a dangerous phenomenon. The rulers of weak African states have engaged in all sorts of complex survival techniques, including inviting into Africa those companies that sell military skills to the highest bidder.³⁶

RESOURCES

Security is increasingly viewed as an all-encompassing condition in which people and communities live in freedom, peace and safety, participate in the governance of their countries, enjoy the protection of fundamental rights, have access to resources and basic necessities of life, and inhabit an environment which is not detrimental to their well being.³⁷

PMSCs could therefore be considered to be a threat to the economic security of African countries as a result of resources and economic exploitation. Many

observers have pointed to the stark feature that characterises African countries that are particularly rich in mineral resources such as Sierra Leone, the DRC and Angola, noting that most of them are associated with PMSC and mercenary activities. This striking feature appears against a backdrop of a continent in which the majority of its population live below the poverty line, surviving on less than a dollar a day. Corrupt governments and PMSCs have indeed colluded in squandering resources such as mineral wealth that should instead be used to liberate Africa's people from the vicious cycle of grinding poverty. Furthermore, this squandered wealth, such as the infamous 'blood diamonds', have been acquired through the blood and sweat of desperate people trying to survive. Poverty itself does not breed greed and corruption, but rather people that take advantage of these miserable and desperate situations for their own selfish interests. While acknowledging the fact that not all PMSCs have been exploitative of this situation, it is also true, however, that many of them, especially those that have resorted to mercenary activities, have indeed benefitted from ill-gotten wealth.

CORE PROBLEMS AND STABILITY IN AFRICA

Certain PMSCs' activities, even though they are important, are not the solution for and cannot deal with the underlying causes of conflict such as poor governance and abuse of the security sector in most African states.³⁸ Non-state actors such as PMSCs have indeed been identified as contributing to increasing or reducing human security, but are more often responsible for undermining it, especially when they take part in fighting. However, defining their roles, responsibilities and actions in a way that is compatible with the establishment of sound democratic governance principles, transparency, and the rule of law through security sector reform can alleviate some of the challenges they pose to human security.

The continuing onus therefore largely rests with individual governments in the African region to continue demonstrating their political will by ensuring the democratic oversight and overall democratic governance of all actors in the security sector, including PMSCs, and one avenue for doing this is by undertaking reforms of the security sector.

A well-managed security sector operating within a competent security system is therefore critical to effective and sustainable development, but this is only possible if it operates within an effective institutional framework defined by law.³⁹ Such frameworks are often lacking in most African countries. A country that

does have such a comprehensive framework, however, is South Africa, which has become a model and a point of reference for other countries in Africa seeking to put in place a regulatory framework for PMSCs. A democratically run, accountable, effective and efficient security sector helps to reduce the risk of conflict, while at the same time enhancing the security of the citizens of the country. A well-managed security sector ensures the preconditions for stable development, encourages investment and thereby contributes to the reduction of poverty, which is often at the core of societal instability.⁴⁰ However, whether or not development in a country like South Africa is due to the existence of such a comprehensive security framework is debatable, considering that even with the existence of such a framework it still has one of the highest crime rates in the world.

CONCLUSION

According to advocates of human security, it is indeed indubitable that the protection of the individual is the primary goal of human security. PMSCs per se are not a threat to human security; however, their activities definitely pose a challenge not just to individual human security, but indeed to the security of the state, especially the activities of dubious and unregulated PMSCs. It ought to be acknowledged, however, that security privatisation in all its guises is not going away. Effective responses such as putting in place the requisite regulatory frameworks to deal with complex security and development challenges such as PMSCs can therefore only be achieved if there is adequate coordination within and between an array of actors at all levels of governance.⁴¹ This will mitigate the negative impact of PMSC activities on the consolidation of human and, indeed, state security in Africa.

NOTES

- 1 According to the United Nations Development Programme, *Human development report 1994: new dimensions of human security*. Oxford: Oxford University Press, 1994, <http://hdr.undp.org/en/reports/global/hdr1994/>, human security is not a concern with weapons, but with human life and dignity.
- 2 Jakkie Cilliers, *Human security in Africa: a conceptual framework for review*, South Africa: African Human Security Initiative, 2004, 10.
- 3 Ibid.

- 4 It embraces more than the absence of conflict and includes human rights, good governance, access to education and health care, and ensuring that each individual has opportunities and choices to fulfil his or her potential.
- 5 Commission on Human Security, *Human security now*, New York: Commission on Human Security, 2003, 4.
- 6 Montreux Document on Pertinent International Legal Obligations and Good Practices for States Relating to the Operations of Private Military and Security Companies during Armed Conflict, 2008, http://www.un.org/ga/search/view_doc.asp?symbol=A/63/467 (accessed 23 May 2009).
- 7 Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; the maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel.
- 8 Sabelo Gumedze, 'The private security sector in Africa: the 21st century's major cause for concern?', ISS Paper no 133, Pretoria/Tshwane: ISS, February 2007, 1–2.
- 9 Ibid, 1.
- 10 House of Commons, *Private military companies: options for regulation*, Green Paper (HCC 577 of 2002), London: HMSO, February 2002, http://www.ssrnetwork.net/uploaded_files/3541.pdf; see also Sabelo Gumedze, 'The privatisation and regulation of security in Africa', in L le Roux (ed), *South African Army Vision 2020*, vol 2: *The South African army relevant and ready for future security challenges in Africa*, Pretoria/Tshwane: ISS, 2008a, 197.
- 11 African Union, Solemn Declaration on a Common African Defence and Security Policy, adopted by the Heads of State and Government Meeting, Second Extraordinary Session, Sirte, Libya, 28 February 2004, 4, <http://www.africa-union.org/.../Declaration%20on%20a%20Comm.AF%20D>.
- 12 Ibid.
- 13 Ibid, 5.
- 14 See Alan Bryden, 'Approaching the privatisation of security from a security governance perspective', in Alan Bryden and M Caparini (eds), *Private actors and security governance: LIT and DCAF*, New Brunswick: Transaction, 2006, 12.
- 15 See Montreux Document.
- 16 House of Commons, *Private military companies*.
- 17 Raenette Taljaard, 'Private and public security in South Africa', in Sabelo Gumedze (ed), *The private sector in Africa: country series*, ISS Monograph no 146, Pretoria: Tshwane, July 2008, 84–86.
- 18 Ibid.
- 19 Ibid.
- 20 Bryden, 'Approaching the privatisation of security from a security governance perspective', 11.

- 21 Taljaard, Private and public security in South Africa, 94.
- 22 Gumedze, The privatisation and regulation of security in Africa, 200.
- 23 Foaleng H. Mpako, Private military and security companies and the nexus between natural resources and civil wars in Africa, in Sabelo Gumedze (ed), *Private security in Africa: manifestation, challenges and regulation*, ISS Monograph no. 139, Pretoria/Tshwane: ISS, November 2007, 49.
- 24 J S Ndlovu-Gatsheni, Weak states and the growth of the private security sector in Africa: whither the African state?, in Sabelo Gumedze (ed), *Private security in Africa: manifestation, challenges and regulation*, ISS Monograph no 139, Pretoria/Tshwane: ISS, November 2007, 17.
- 25 Gumedze, The private security sector in Africa, 3.
- 26 *The Economist*, 19–25 April 1997, 21–23.
- 27 Gumedze, The privatisation and regulation of security in Africa, 204.
- 28 UN Development Programme, *Human development report*, 23.
- 29 Human Security Centre, *Human security report: war and peace in the 21st century*, Oxford: Oxford University Press, 2005, 4.
- 30 Gumedze, The private security sector in Africa, 1.
- 31 House of Commons, *Private military companies*.
- 32 Cited in *ibid*.
- 33 Ndlovu-Gatsheni, Weak states and the growth of the private security sector in Africa, 18.
- 34 *Ibid*.
- 35 *Ibid*, 19.
- 36 *Ibid*. See also Doug Brooks, 'Private military service providers: Africa's welcome pariahs', n.d., <http://www.hoosier84.com/02-00africaswelcomepariahs.pdf>.
- 37 Organisation for Economic Cooperation and Development, Development Assistance Committee, *Helping prevent violent conflict*, OECD DAC Guidelines, Paris: OECD, 2000, 38.
- 38 See Dutly Markus, The Swiss Initiative on private military and security companies, in S Gumedze (ed), *Private security in Africa: manifestation, challenges and regulation*, ISS Monograph Series no 139, Pretoria/Tshwane: ISS, November 2007, 171.
- 39 *Ibid*.
- 40 Department for International Development, 'Security sector reform policy brief', London: DfID, November 2003, 3.
- 41 Bryden, Approaching the privatisation of security from a security governance perspective, 18.

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3 Regulatory approaches (if any) to private military and security companies in Africa

Regional mapping study¹

SABELO GUMEDZE

INTRODUCTION

In June 1997 the United Nations (UN) Secretary-General at the time, Kofi Annan, was asked about the efficacy of utilising private military companies (PMCs) as part of a broader UN strategy to end the vicious civil war in Sierra Leone. Annan rejected the use of such companies, arguing that there was no distinction between a PMC and a mercenary organisation.² As the years went by, however, private military and security companies (PMSCs) gradually became part of various security arrangements. In contemporary times, it is not uncommon for PMSCs to be involved in conflicts, peacekeeping missions and even humanitarian assistance operations. They have become a burgeoning global industry with a variety of PMSCs selling different kinds of security and military services.³ Resulting from the somewhat persistent and sometimes disturbing involvement of PMSCs in armed conflicts, on 17 September 2008, 17 states from Africa and beyond came to an understanding on how to deal with such companies in specific circumstances through the Montreux Document on Pertinent International Legal Obligations and Good Practices for States related

to the Operations of Private Military and Security Companies during Armed Conflict (Montreux Document).⁴

The Montreux Document is an agreement among signature countries on obligations regarding private military and security companies in war zones. It was adopted in Montreux, Switzerland in September 2008. It is the product of an initiative known as the Swiss Initiative launched cooperatively by the Swiss government and the International Committee of the Red Cross. The Montreux Document was developed with the participation of governmental experts from Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, the United Kingdom, Ukraine and the United States in meetings convened in January and November 2006, November 2007, and April and September 2008. Representatives of civil society and of the private military and security industry were consulted as part of the Swiss Initiative.

The Montreux Document contains rules and good practices relating to PMSCs operating in armed conflict. This document is very important in the African region due to the latter's volatility and the consequent infiltration of PMSCs into many African countries. According to the Swiss Federal Department of Foreign Affairs, the Montreux Document is the first international document to describe international law as it applies to the activities of PMSCs whenever these are present in the context of an armed conflict.⁵ The question that could be posed here is what kinds of PMSC activities are lawful within the context of an armed conflict. Certainly, these cannot be mercenary activities, as mercenarism is already outlawed. The Montreux Document does not envisage an endorsement of the use of PMSCs in any particular circumstance,⁶ as it would be improper for the document to endorse the use of PMSCs especially in combat operations. Instead, the document 'seeks to recall legal obligations and to recommend good practices if the decision has been made to contract PMSCs'.⁷

Despite the fact that the Montreux Document does not have force of law,⁸ it is nonetheless very useful for three main reasons. Firstly, it 'recalls existing obligations of States and PMSCs and their personnel (Part One), and provides states with good practices to promote compliance with international law and human rights law during armed conflict (Part 2)'.⁹ Secondly, despite the fact that the document targets states, it also contains 'good practices that may be of value for other entities such as international organizations, NGOs and

companies that contract PMSCs as well as for PMSCs themselves'.¹⁰ Thirdly, and most significantly, the Montreux Document complements efforts undertaken by the UN through the Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-determination (UN Working Group).¹¹

Within the terms of its mandate and in order to encourage further protection of human rights against current and emergent threats from mercenaries, mercenary-related activities and the activities of PMSCs, the UN Working Group is entrusted with the responsibility of drawing up concrete proposals and advisory opinions on possible new standards, general guidelines and basic principles. It must be noted that one of the reasons why the UN Working Group was established in 2005 was the limited impact of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries,¹² which at the time ironically had the same number of ratifications as its African equivalent, the 1977 Convention of the OAU for the Elimination of Mercenarism in Africa (OAU Anti-Mercenary Convention).¹³ Having been established in 2005, the UN Working Group visits two African countries, namely Equatorial Guinea and South Africa.¹⁴

From the onset, perhaps, it would be useful to state that this chapter does not attempt to reflect a comprehensive picture of PMSC activities in every African state, but simply makes reference to their activities in some African states that have previously been studied. It therefore aims to provide a general overview of the extent to which Africa has responded to the phenomenon of the privatisation of security in contemporary times. The chapter also offers some comments on the Montreux Document, with a view to opening a discussion on its relevance (or otherwise) to Africa.

In a nutshell, the chapter seeks to undertake a regional mapping of the regulatory approaches to PMSCs in Africa with the aim of reinforcing the impact of the Montreux Document. In very broad terms, firstly it briefly discusses the UN General Assembly's approach to mercenaries and PMSCs. Secondly, it considers the general trends in the challenges faced by Africa insofar as PMSCs are concerned. Thirdly, policy and regulatory initiatives are mapped through a discussion of both global (UN) and regional (African Union, or AU¹⁵) approaches to PMSCs. Fourthly, the chapter discusses in more detail the South African approach to PMSCs, focusing on the internal and external dimensions of its regulatory framework.

UN GENERAL ASSEMBLY'S APPROACH TO MERCENARISM AND PMSCs

As was mentioned above, the Montreux Document complements the work of the UN in terms of addressing the use and misuse of PMSCs, especially in conflict situations. During its 62nd session, the UN General Assembly adopted Resolution 62/145 on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-determination.¹⁶ Among other things, Resolution 62/145 was adopted as a result of the fact that the General Assembly was '*[a]larmed and concerned* at the danger that mercenaries constitute to peace and security in developing countries, in particular in Africa and in small states'. Supporting this statement, Viljoen avers that '[p]erversely privatising state security, undemocratic leaders have bankrolled foreign forces to subvert democracy and good governance, thus securing their own survival and undermining their peoples' right to self-determination'.¹⁷ Privatising state security can take the form of using both PMSCs and mercenaries. The former South African minister of defence, Mosiuoa Lekota, recalls that '[m]ercenaries are a scourge of poor areas of the world, especially Africa. Anybody that has money can hire human beings and turn them into killing machines or cannon fodder'.¹⁸

Singer discusses the multiplicity of roles played by PMSCs in the Democratic Republic of the Congo (DRC) on behalf of all the parties that were involved in the conflict since the Mobutu Sese Seko regime.¹⁹ Singer alleges that when Mobutu's regime began to crumble in the mid-1990s, he began negotiations (which proved to be unsuccessful) with Military Professional Resources and Executive Outcomes to assist him against the rebellion led by Laurent Kabila. Eventually another company, Giolink, assisted the regime, but failed to prevent its collapse. The company Bechtel reportedly assisted Kabila, who eventually took power in the DRC. Kabila was faced with adversaries who included Mobutu's supporters, who had contracted with the firm Stabilco and the national armies of Rwanda and Uganda, who were assisted by another Johannesburg-based military intelligence firm, and Angolan UNITA²⁰ rebels, who were supported by mercenaries and private military forces of their own. It was for this reason that Kabila in turn hired Executive Outcomes, which supplied his regime with air combat support, electronic assistance and protection. The DRC's case reflects but one serious challenge faced by Africa where some African leaders, while denouncing the

use of PMSCs in combat operations or mercenary activities, nonetheless engage them in order to remain in power.

Viljoen recalls the involvement of mercenaries from Europe and South Africa who assisted the Katangese secessionist forces of Moïse Tshombe in the 1960s.²¹ He also refers to the examples of mercenaries being conscripted to oust African leaders, such as the coup d'état led by the French national Bob Denard in the Comoros and the attempted coup in Seychelles by mercenaries under the leadership of Mike Hoare.²² That mercenaries have for a considerable number of years participated in African conflicts is not in dispute. The best-known case of mercenary activities in Africa by South Africans outside South Africa's borders is that of Executive Outcomes in Sierra Leone and Ivory Coast, and in the recent alleged attempt to overthrow the government of Equatorial Guinea that involved a variety of former 32 Battalion soldiers from South Africa and high-profile British citizens such as Sir Mark Thatcher and Simon Mann. (Generally, the activities of Executive Outcomes had a significant influence in shaping the discourse on PMSCs today.) This has resulted in the very restrictive approach by the South African government to the export of security-related expertise. As we shall see in this study, South Africa has become an informative case study in addressing PMSC activities, especially within the African region.

In 2008 Simon Mann (now freed) was convicted by an Equatorial Guinean court and sentenced to more than 34 years in jail for leading the attempt to oust Equatorial Guinea President Teodoro Obiang Nguema.²³ Of interest is the fact that Mann confessed to involvement in the coup plot, stating that he was its 'manager, not the architect'. In his confession, he pointed out that others involved in the plot included the political opponent of the president of Equatorial Guinea, Severo Moto; Lebanese businessman Mohamed Salaam; and Nigerian-born British businessman Eli Calil. He also stated that South Africa, Spain and the United States each approved of the plot to topple Equatorial Guinea's president.²⁴ Without discussing the merits and demerits of the case against Mann, it suffices to say that the story surrounding his arrest, trial and conviction illustrates the challenges faced by Africa as a result of mercenary activities, which tend to involve a number of internal and external actors, including states.

According to Resolution 62/145, the General Assembly was also '[c]oncerned by the new modalities of mercenarism ... noting that the recruitment of former military personnel and ex-policemen by private military and private security companies to serve as "security guards" in zones of armed conflict seems to be

continuing'. The formal position taken by the General Assembly is that PMSCs are the 'new modalities of mercenarism'. This in itself presents the challenge of branding PMSCs with a 'mercenary' tag, mercenarism being outlawed and prohibited under international law. At the AU level, there is the OAU Anti-Mercenary Act,²⁵ the objective of which is to enable African states to take the necessary measures to eradicate all mercenary activities in Africa.²⁶

In Resolution 62/145, the General Assembly further '[c]ondemns mercenary activities in Africa and commends the Governments of Africa on their collaboration in thwarting those illegal actions, which have posed a threat to the integrity of and respect for the constitutional order of those countries and the exercise of the right of their peoples to self-determination'. In this context, Africa is seen as a fertile ground for mercenary activities (in which some PMSCs are involved), which undermine the continent's rare commodity: peace and security. Making reference to Sapone, Franklin could not have put it better by stating that mercenaries are perhaps more likely to commit human rights abuses, because they are not part of the hierarchical command structure of regular military forces, lack ethnic or cultural connection to the civilian populations, and were often discharged from prior military service because of disciplinary problems.²⁷

GENERAL TRENDS AND CHALLENGES REGARDING PMSCs IN AFRICA

From the onset, it must be stated that the privatisation of security has not been adequately addressed within the African region.²⁸ This is despite the fact that sub-Saharan Africa has particularly seen an increasing privatisation of predominantly domestic security services, such as policing.²⁹ In fact, it is an industry that has also been typically neglected in security sector reform (SSR) assessments and programmes.³⁰ The private security industry is one whose personnel and budget sizes both exceed those of public law enforcement agencies in Africa.³¹ The current statistics for South Africa, for example, show that for every police officer, there are two active registered security company officers.³²

The trends and challenges that the regulation of PMSCs in Africa faces should be understood in context. I have argued elsewhere as follows:

The private security/military industry is considered to be a deadly one as it arguably provides high returns at the expense of human lives. Further,

without any doubt, African conflict means business for PMSCs. The more hostile and inhospitable situations are in Africa, the more business PMSCs gain. While some see them as deadly, [PMSCs] can be useful and arguably provide excellent service while offering swift and needed aid to embattled regions It is therefore safe to conclude that while some PMSCs are indeed useful in Africa, there are also those whose objective is to destabilize states.³³

The above quote best summarises the perception that Africa has insofar as the involvement of PMSCs in Africa is concerned. This suggests that a lot needs to be done in terms of understanding the involvement of PMSCs within the African region.

Studies of PMSCs in Africa

The first challenge regarding PMSCs in Africa is that debate around the private security phenomenon has not been as robust as in other regions such as the Americas and Europe. The use and misuse of PMSCs in Africa has generally been understudied in Africa. One of the main reasons why PMSCs have attracted so much attention in Europe and the Americas is their use in Iraq and Afghanistan under the auspices of the so-called 'war on terror'. Today, the debate around PMSCs has taken another dimension resulting from their use of unmanned systems, whose growth has, according to Singer, 'taken place so rapidly that we often forget how far we have come in just a short time'.³⁴ The question that will confront the world in the next few decades is that of the extent to which PMSCs should make use of this new technology in the form of 'warbots'.³⁵ More particularly, this question will confront the African region, which has unfortunately lagged behind in this debate. Hence the need to engage African states on this issue is very critical if any meaningful debate is to take place in order to ensure that PMSCs operating in Africa are effectively controlled and regulated. Some studies undertaken on the African continent are inaccurate. For instance, making reference to Gillard (2008), Stoddard et al argue that '[o]nly two governments, Iraq and Sierra Leone, currently have regulations governing private security companies within their borders, and only one, South Africa, regulates companies based either in the country or abroad'.³⁶ As the present study will show, this is not entirely true of the African region.

Some of the studies that have been undertaken within the continent include a study that was undertaken by Waigaru et al entitled *Private security in Kenya*, which was published by the Security Research and Information Centre in 2004.³⁷ This research is a powerful exposition of the size, composition and impact of the private security industry in Kenya. Notwithstanding the fact that the industry has tremendously increased in size, it has, however, not been updated to reflect the contemporary situation, especially after the violence that resulted from the recently contested elections in Kenya. This study should be applauded for presenting a detailed, factual analysis of the relationship between the state's undisputed role in providing effective security to the people and the actual situation on the ground. The only shortcoming of the study is the fact that it is only focused on private security in Kenya, which is not necessarily a conflict area characterised by the heavy presence of PMSCs.

In 2007 a report was released entitled *Who protects the guards? The facts behind G4S in Southern Africa*, containing findings of a fact-finding team convened by UNI Property Services to investigate labour practices at Group 4 Securicor in Malawi, Mozambique and South Africa. While this report is important insofar as understanding the challenges that security guards employed by Group 4 Securicor face in these African countries, it is, however, limited in scope, as it focuses on one private security company (PSC).³⁸ Again, the considerations of the Montreux Document insofar as Group 4 Securicor is concerned are not useful as the latter's activities are generally outside areas of armed conflict, the area to which the Montreux Document confines itself.

Another very important study on the subject (comprising a series of reports) is by Abrahamsen and Williams of the Department of International Politics at the University of Wales, Aberystwyth. They undertook a research project entitled 'the Globalisation of Private Security', which examined the development and dynamics of the global private security sector and the impact of private security on security provision, social cohesion and stability, and political legitimacy in the developing world, focusing on Kenya, Nigeria, Sierra Leone and South Africa. The reports on these countries provide a comparative analysis of the PSCs operating in these African states.³⁹ One shortcoming of these reports is that they only analyse data from states that are not necessarily experiencing armed conflict where PMSCs based in states outside Africa are very active. However, there is a heavy presence of foreign PMSCs especially in Nigeria with sporadic violence, Sierra Leone is a passive conflict zone, and South Africa is a

post-conflict zone and one of the largest suppliers for the private security/military industry. Kenya's PSCs are largely domestic.

In 2008 SwissPeace (an action-oriented peace research institute with headquarters in Bern, Switzerland) published a working paper edited by Ulrike Joras and Adrian Schuster entitled *Private security companies and local populations: an exploratory study of Afghanistan and Angola*. The paper looks at how local populations in these countries perceive PSCs and what impact their activities may have on people's everyday lives. The study on Angola particularly focuses on the dynamics around the development of the private security sector vis-à-vis the commodities of oil and diamonds. It traces the emergence of PSCs during the 1990s and the expansion of domestic PSCs after the end of the civil war and the resultant drop in the number of foreign companies.⁴⁰ This study is more relevant to the implementation of the Montreux Document, as Angola in particular is a post-conflict zone, which has witnessed both the use of mercenaries and PMSCs, especially during its previous civil war.

One of the most glaring features in the studies mentioned above is the fact that the key challenges facing various African countries is that either PMSCs are unregulated and unsupervised, or where they are regulated and supervised, there is a pressing need to improve the regulations and supervision. As PMSCs remain diverse within the African region, perhaps it is important to understand the manner in which PMSCs are diversified in order to better regulate them within the region. Put differently, it is critical to appreciate the role played by PMSCs in different contexts within Africa. There is also a need to harmonise the regulatory frameworks so as to make PMSCs effective within the region. This could at best be undertaken at the AU at the continental level and by regional economic communities at the regional level, but these institutions have thus far not been active in the debates around PMSCs.

Definition conundrum and (mis)perceptions linked to PMSCs

The second challenge that has been linked to this debate is that of defining a PMSC. This is a significant challenge faced by Africa, as there is always a perception that PMSCs are simply mercenaries. This chapter does not intend to delve into the definitional debates as regards PMSCs. In 2007, a former South African defence minister, Mosiuoa Lekota, argued that '[p]rivate military or

security companies are able to intervene in conflicts, tilting the balance of power in favour of their paymasters [and] they have the potential to undermine legitimate constitutional democracies'.⁴¹ This perception generally makes all PMSCs 'conflict interveners' with the capability of undermining constitutional democracies. As a consequence, those African states that view PMSCs as such do not favour the involvement of these organisations during an armed conflict, regardless of their mandated roles. Coleman summarises this challenge as follows:

The private military assistance corporation presents a conundrum for international law, with both concrete and theoretical dimensions. On the concrete level, the private military corporation appears at first glance to be merely a full-service business presenting no threat to international security On a theoretical level, however, the problem posed by the modern mercenary appears to be nothing more than a symptom of a broader underlying disorder stemming from policy motivated by an intuition that a powerful state is free to disregard international law to whatever extent it can get away with.⁴²

The UN Working Group's mandate involves, among other things, studying, identifying and monitoring current and emerging issues, manifestations and trends in the activities of PMSCs that have an impact on human rights in general, including the right of peoples to self-determination. As its name suggests (see its full name, above), the UN Working Group deals with the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination and not necessarily PMSCs per se. The fact that the UN Working Group deals with the use of mercenaries, which are outlawed under international law, creates a complication.

The Montreux Document adopts a working definition for PMSCs, stating that they 'are private business entities that provide military and/or security services, irrespective of how they describe themselves'.⁴³ Accordingly, it considers both military and security services as including 'in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operations of weapons systems; prisoner detention; and advice to or training of local forces and security personnel'.⁴⁴ What is of interest in this definition is that it does not attempt to expressly include combat

operations as a military and/or security service. It is a known fact that some PMSCs are involved in such operations – PMSCs are not sometimes referred to as ‘dogs of war’ or ‘whores of war’ for nothing. The Montreux Document is carefully crafted so that it does not denounce the involvement of PMSCs in combat operations. Instead, ‘it recalls existing legal obligations of States, PMSCs and their personnel under international law whenever PMSCs – for whatever reason – are present during armed conflict’.⁴⁵ The words ‘PMSCs – for whatever reason ... are present during armed conflict’ can arguably be interpreted to mean that PMSCs can be involved in combat operations as long as they respect international law. The perception (or misperception) arising from this statement is that the use of PMSCs in armed conflict ‘for whatever reason’ is thus endorsed by the Montreux Document, contrary to the statement contained in it that it ‘should not be construed as endorsing the use of PMSCs in any particular circumstance’.⁴⁶ Thus far, no attempts have been made at the AU level to define PMSCs, and it is certain that the definition conundrum and (mis)perceptions linked to PMSCs will dominate the debate and the implementation of the Montreux Document for many years to come.

Threat to state sovereignty

The third challenge resulting from the activities of PMSCs in Africa is the threat they pose to state security. The use of PMSCs in the continent has in the past decade pointed to the serious threat they pose to state sovereignty. The inability by many African states to provide adequate security to their citizens has led to the infiltration of the continent by foreign PMSCs.⁴⁷ The international security system is now facing an era in which the notion of the state as the main actor in security-related matters is being challenged by the emergence of non-traditional actors such as PMSCs. It is for this reason that the UN Working Group focuses on the use of mercenaries as a means of impeding the right to self-determination. Mercenaries were often associated with attempts to preserve quasi-colonial structures and they took part in a number of attempted coups. The attempted coup in Equatorial Guinea to oust that country’s president by mercenaries is a case in point.

As is well known, Africa has been on the receiving end in terms of the use of PMSCs. That Africa generally remains a bloodbath as a result of a considerable number of protracted conflicts is also not in question. The current UN

peacekeeping missions in Africa include UNMIS (Sudan), UNOCI (Côte d’Ivoire), UNMIL (Liberia), MONUC (DRC), UNMEE (Ethiopia and Eritrea) and MINURSO (Western Sahara). Considerable use has been made of PMSCs during peacekeeping missions such as those in Sierra Leone, Liberia, Côte d’Ivoire and the DRC, where they were relied upon for logistical purposes. In the Darfur crisis in Sudan, challenges encountered by the AU and UN dictated that the use of PMSCs be considered. Africa has thus not been spared from the infiltrations of foreign PMSCs, which largely results from African states’ inability to provide adequate security for their citizens, especially in conflict situations. Sometimes peacekeeping efforts require the use of PMSCs in the provision of logistical support. PMSCs are also contracted in the training of security forces under the auspices of post-conflict reconstruction processes, e.g. as in Liberia and Sudan. While using PMSCs can be said to be critical, as shown above, it also poses a serious threat to the notion of state sovereignty, where the state concerned relies heavily on such organisations for its peace and security requirements.

PMSC involvement in the extractive industry

The fourth challenge that Africa faces is the involvement of PMSCs in the extractive industry, which leads to economic exploitation. According to Rimli, as the operational ground for a now defunct PMSC Angola was one of the first African states in the early 1990s ‘where the emergence of military corporate business entities with an apparent link to mineral interests was observed’.⁴⁸ As mineral resources fuel most African conflicts, the interest of outsiders (including foreign states and PMSCs) in Africa’s mineral resources has also resulted in the growth of foreign private security actors in the continent. Moreover, they have also played a role in fuelling African conflicts in their profit-maximisation drive. Sometimes the extractive industry has been used to pay for the services of the private security industry. In Sierra Leone, for instance, the government hired a now defunct PMSC, Executive Outcomes, to prevent the advance of rebel forces in exchange for diamond mining concessions and, later, an additional USD 35 million.⁴⁹ Having succeeded in its mission, Executive Outcomes proceeded to retake the diamond fields from the hands of the rebels in order to secure its own payment.⁵⁰ In one way or another, the involvement of PMSCs in Africa weakens the state’s sovereignty, independence and possibly legitimacy.⁵¹

The involvement of mineral resources in prolonging a conflict (in which the private security industry becomes involved) has not only been questioned by researchers, but also condemned by the international community. It is for this reason that the UN General Assembly unanimously adopted a resolution on the role of diamonds in fuelling conflict in an attempt to break the link between the illicit transaction of rough diamonds and armed conflict as a contribution to the prevention and settlement of conflicts.⁵² A number of commentators argue that it is wrong for governments to pay for security by mortgaging future returns from mineral exploitation.⁵³ Nevertheless, if a government is faced with the choice of mortgaging some of its mineral resources or leaving them entirely in the hands of rebels, it may be legitimate for them to take the former course. Other commentators have argued that the association of PMSCs with mineral extraction has a positive side.⁵⁴ Firstly, from the PMSCs' point of view, it may be one of the few ways they can be sure of getting paid. Secondly, an interest in mineral extraction will give PMSCs a vested interest in peace and stability.

De Goede has observed that in the DRC, where legislation on and the regulation of PMSCs is minimal, the private security industry is largely dominated by internationals.⁵⁵ For example, De Goede notes that the company Overseas Security Services, which specialises in security within the mining industry, stated that a state mining company known as Miba preferred using expatriates to address its security requirements.⁵⁶

The use of PMSCs pursuant to foreign states' vested interests

The fifth challenge posed by the use of PMSCs in Africa is that they largely pursue foreign states' interests, especially when they are contracted by those states to operate within the continent. Taljaard argues that freelance private sector involvement in Africa contextually started with mercenaries,⁵⁷ thus underscoring the involvement of vested interests, including those of foreign states. In attempting to address the challenges posed by PMSCs especially with regard to African conflicts, it is always questionable whether the use of PMSCs is meant to stabilise the conflict situation or to continue with the plundering of Africa's mineral resources, pursuant to foreign states' vested interests. Many Western PMSCs have been linked to African conflicts that are aimed at maintaining control over mineral resources, thus contributing to the seemingly

perpetual cycle of conflicts in the continent. The reason for their involvement is profit maximisation: as Shearer puts it, '[t]hey are foreign to a conflict, they are motivated chiefly by financial gain, and in some cases, have participated directly in combat'.⁵⁸ For instance, in the early 1960s,

with the blessing of the Belgian government, the Katangese secessionists and the US Central Intelligence Agency (CIA), Western mercenaries fought against the Congolese armed forces and the UN peacekeeping force. Their involvement in the war was clearly related to the maintenance of control over the natural resources of Katanga by Western companies which found it difficult to accept the independent status of the Congo.⁵⁹

Unlike national armies, some argue that PMSCs have no interest in bringing conflict to an end, unlike national armies who are paid in peacetime. For example, Nana Busia writes: 'the *raison d'être and modus vivendi* of mercenaries is instability and it is in their interest that a perpetual state of instability is maintained'.⁶⁰ Certainly, this is not what PMSCs would say about their role; in fact, a majority of PMSCs would argue that their interest is only in stabilising the peace at any given time. However, in some quarters this should be taken with a pinch of salt.

The use of PMSCs in DDR and the training of national armies and security forces

The sixth challenge posed by PMSCs is their use in disarmament, demobilisation and reintegration (DDR) and the training of national armies and security forces, which is no longer uncommon in Africa. Among the big names in the private military/security industry is DynCorp International.⁶¹ Over and above its presence in Iraq and Afghanistan, it is also operating in Nigeria, Liberia and Sudan through contracts awarded by the US government. The one thing that these African states have in common is that they are well endowed in terms of mineral resources. Nigeria is the largest US trading partner in sub-Saharan Africa, based mainly on the high level of petroleum imports from Nigeria.⁶² In 2006 total Nigerian oil production, including lease condensates, natural gas liquids and refinery gain, averaged 2.45 million barrels per day (bbl/d), of which 2.28 million bbl/d was crude oil.⁶³ Liberia has been notorious for the so-called blood diamonds that fuelled the

Liberian civil war for many years. In the past few years, oil deposits have been discovered in Sudan and this added a new twist to the north–south tension, with foreign elements becoming more and more involved. Among the many PMSCs operating in Africa, DynCorp seems to dominate the industry through contracts awarded by the US government for the ‘benefit’ of African states. Needless to say, DynCorp boasts of being ‘a trusted partner of the US Government of 60 years’⁶⁴ and of being a champion of African SSR.

DynCorp seems to have become one of the most reputable PMSCs, specialising in SSR in Africa with considerable US government support. Whether this kind of support is for the benefit of Africa or for advancing the US government’s interests in the continent remains a moot question. It must be recalled that in 2004 the US government awarded contracts worth more than USD 20 million to two companies, the PAE Group and DynCorp, the latter being a leading professional services and project management firm, to provide logistical support for 3 500 AU troops headed to Sudan’s troubled western region of Darfur. In 2005 DynCorp started helping the US government to demobilise and retire members of Liberia’s armed forces, and to train a new, modern army to serve Liberia’s future interests. Most recently, DynCorp was carrying out an SSR programme in Liberia. In 2007 the US State Department hired DynCorp to equip and provide logistical support to international peacekeepers in Somalia, giving the United States a significant role in this critical mission without assigning combat forces to it.

Recruitment of Africans by PMSCs

The seventh challenge posed by PMSCs is the generally unregulated recruitment of African citizens to serve in their ranks. A number of the PMSCs working in conflict zones, such as Iraq, recruit Africans to undertake various activities. While it is difficult to determine the exact number of Africans working in such place, it is nevertheless easy to get a sense of those that have died, as they are recorded on the Iraqi Coalition Casualty Count website.⁶⁵ Most of the African casualties are from South Africa, followed by Egypt, according to the website. This has implications for the debate around the need to regulate the recruitment of Africans by PMSCs in volatile situations such as those in Iraq and Afghanistan. Most of the arguments made on the need to regulate private actors are responses to the involvement of such actors from outside the African

continent. Hence the need to focus on the continent in order to inform and influence policymaking processes, at both the regional and domestic levels.

The recruitment of South Africa citizens by PMSCs refers specifically to members of the former notorious South African 32 Battalion (a specialised unit of the former South African Defence Force, or SADF), which disbanded in 1992 and whose members were recruited to work for PMSCs.⁶⁶ The recruitment of South Africans by PMSCs continues especially because of the expertise that former SADF members have in security/military-related matters. In most cases, this recruitment is in contravention of the South African Foreign Military Assistance Act of 1998, which requires that South Africans seeking to work for PMSCs abroad should obtain permission from the National Conventional Arms Control Committee (NCACC). According to a written statement submitted by Human Rights Advocates (HRA), to the Human Rights Council, the South African Ministry of Foreign Affairs estimates that 10,000 South Africans, mostly former police officers and soldiers, have been recruited to work in Iraq.⁶⁷ HRA argues that '[t]his alarming trend, combined with the alleged violations of international labour standards, raises the concern that the recruitment of third-party nationals by PMSCs may comprise human trafficking'.⁶⁸

Some former SADF members are very open that they would like to pursue their profession, but not necessarily by getting involved in mercenary activities, which are essentially outlawed and prohibited. To this end, an association known as Pan African Security Association (PASA) was established in 2008 in order to 'ensure that security and related contracts in Africa are solely discharged by legitimate companies complying with internationally accepted regulatory standards and the laws and regulations of African States'.⁶⁹ Resulting from the restrictive South African legislation, primarily the Prohibition of Mercenary Activities and Prohibition and Regulation of Certain Activities in Areas of Armed Conflict Act 27 of 2006 (SA Anti-Mercenary Act), PASA also endeavours to represent members in cases where government lobbying is required. Whether or not the South African government will recognise PASA remains to be seen, especially because it is particularly opposed to the SA Anti-Mercenary Act, which will in the not so distant future be in force in South Africa.

In Uganda, a study by Kirunda shows that the main player involved in the recruitment of Ugandans is Askar Security Service.⁷⁰ According to the company's website as at 11 March 2009, it had successfully recruited over 600 security personnel from Uganda for a US-based security company and around 600

third-country nationals were deployed at five camps in Iraq and performing security duties for the primary contractor under a contract with the US armed forces.⁷¹ Uganda does not have a specific regulatory framework for controlling the recruitment of its citizens for security-related services abroad. The country's regulatory framework for PMSCs comprises the Police Act of 1994 and the control of Private Security Organisations Regulations of 1997, but these only apply to PSCs registered in Uganda.⁷²

In Namibia, concerns around the abuse by PMSCs surfaced in 2007, when a firm called Special Operations Consulting-Security Management Group (SOC-SMG) announced a recruitment drive through advertisements in local newspapers.⁷³ It emerged that a local labour-hiring company known as APS concluded an agreement with SOC-SMG for the latter to facilitate the recruitment of Namibians with military, police or security experience to serve as security guards protecting US economic interests in war-torn countries where the United States has a presence. It is alleged that the Namibian Ministries of Labour, Trade and Industry, and Safety authorised this exercise.⁷⁴

These few examples are just a tip of an iceberg, as many Africans are being recruited by PMSCs without any clear regulatory and control mechanisms. In fact, the lack of such effective regulations contributes to the scanty statistics on how many Africans are now employed by PMSCs operating in areas of armed conflict. Resulting from the absence of effective regulations, there are no guarantees that Africans who are eventually recruited into PMSCs operating in conflict zones, and who as a result suffer from injuries, whether physical or psychological, are properly treated.

It must not be forgotten, however, that Africa is the least-developed region in the world. It has the highest number of so-called heavily indebted poor countries,⁷⁵ thus presenting economic challenges to the majority of its people. Ordinary Africans generally view any recruitment exercise by PMSCs as a great opportunity to increase their livelihoods. In his Uganda study, Kirunda notes that while the regulated salaries paid to private security employees within Uganda were very low, the recruitment of Ugandan citizens abroad, especially in Iraq, was 'double-edged because the personnel earn good sums of money, which greatly improves their livelihoods.'⁷⁶ Kirunda further states that this is due to the high pay offered by this industry, which enables employees to earn USD 1 000 per month, a large sum in Ugandan terms, so that the country's citizens are now competing for placements in Iraq, despite the security risks involved.⁷⁷

The absence of a PMSC regional regulatory framework

The eighth challenge posed by PMSCs in Africa is the lack of an effective regulatory framework for their operations. At the regional level, the AU has not laid down any norms and standards for the engagement of PMSCs in African conflicts, peacekeeping missions and humanitarian assistance operations.⁷⁸ The OAU Anti-Mercenary Convention has not been updated to address the current dynamics around the involvement of the private security industry within the African security architecture. As Coleman points out, ‘traditional definitions of mercenarism were not designed to encompass the private military [and security] corporations in which mercenary bands are embodied today’.⁷⁹ In contemporary times, it is apparent that PMSCs have generally become a necessary shield for mercenaries to hide behind, yet they are technically not covered in the legal instruments such as the OAU Anti-Mercenary Convention. According to the former UN special rapporteur on mercenarism,

[t]he international legal instruments that serve as a framework for the consideration of the question [of what constitutes a mercenary] are imperfect and contain gaps, inaccuracies, technical defects and obsolete terms that allow overly broad interpretations to be made. Thus for example, a person who is to all intents and purposes a mercenary agent could take advantage of some of the imprecise legal situations to avoid being classified as such.⁸⁰

Very few states have enacted legislation addressing such involvement. The most prominent African state that has, for obvious reasons (i.e. having ex-soldiers from the apartheid government as part of its population), sought to address this problem relating to the involvement of private security actors in conflicts, peacekeeping missions and humanitarian assistance operations is South Africa through the Foreign Military Assistance Act of 1998, which is to be replaced by the South African Anti-Mercenary Act.

The absence of a regional regulatory framework addressing the involvement of PMSCs in African conflicts, peacekeeping missions and humanitarian assistance operations in Africa poses serious challenges insofar as human security is concerned. As Africa remains a relatively conflict-ridden and conflict-prone environment whose volatility is compounded by the involvement of a plethora

of actors (both state and non-state), the regulation of private security/military actors should be a matter of priority, as they are generally unregulated and are only answerable to their clients. Their objective is not necessarily to ensure peace and security, but largely to earn profits. This therefore compromises their professionalism in terms of ensuring peace and security in Africa. The effective regulation of private security/military actors can only be informed by a thorough study on the private security industry in the three identified thematic areas.

POLICY AND REGULATORY INITIATIVES

The size of the PMSC industry in Africa

The extent of PMSCs in terms of their history, size and various activities (whether good or bad) should as a matter of principle inform the policy and regulatory initiatives undertaken. It must be noted that insofar as PMSCs are concerned, there is no 'one-size-fits-all' approach that can be implemented. Despite the fact that PMSCs have become a global phenomenon, it does not mean that the activities that they carry out in Iraq are the same as those carried out in Sudan, for example. It is also very difficult to determine the size of the PMSC industry in Africa in its entirety. Suffice it to say that some examples from a few African states give a rough idea of the extent of PMSC involvement and activities, which should consequently inform the different approaches to their regulation. What is clear is the fact that the PMSC industry in Africa is growing at a very rapid rate.

According to a recent study carried out in Uganda, the estimated employees registered with the Uganda Private Security Organisations Association is around 17 000 and there are 58 registered private security companies in the country.⁸¹ In the DRC, recent statistics show that there were approximately 35–45 registered private security companies, together providing employment to roughly 25 000 people.⁸² According to De Goede, the majority of these registered companies are not operational and, while they are registered, they lack clients and/or operational capacity.⁸³ What is of interest is the fact that, as De Goede notes, '[w]ithin the sector itself it is widely believed that most of ineffective companies are not in the least interested in private security as a business, but use their licences to gain access to state security forces and as a cover for other semi-legal business.'⁸⁴ According to recent statistics, South Africa has

307 343 active registered employee security officers and 4 898 active registered security businesses.⁸⁵ The South African regulatory approach will be discussed in more detail below.

In Angola, recent studies show that there are 307 security companies in total with an effective force of 35 715 personnel and 12 087 weapons.⁸⁶ Of interest are the frequent ownership of domestic PSCs by police and military officials, the large numbers of staff, and the geographical concentration of their operations.⁸⁷ Nigeria has approximately 1 200 PSCs with 100 000 employees and Kenya 1 200 PSCs with 48 000 employees.⁸⁸ These statistics highlight the need for African states to regulate the industry, which can easily become a law unto itself in the event that it is poorly regulated. This need is even stronger in the sense that some PMSC personnel are allowed to use firearms in carrying out their work in some states. This poses a great danger in terms of illegal arms proliferation in the continent.

The implementation of the Montreux Document

As mentioned above, this chapter seeks to undertake a regional mapping of the regulatory approaches to PMSCs in Africa with the aim of reinforcing the impact of the Montreux Document. This document is aimed at providing states with ‘good practices to promote compliance with international humanitarian law and human rights law during armed conflict’.⁸⁹ From a technical point of view, the term ‘armed conflict’ is not defined in the Montreux Document, thus presenting some implementation challenges. At the moment, therefore, this means that the implementation of the Montreux Document can only take place where there is an armed conflict, yet PMSCs operate during and after armed conflicts within the African region.

In terms of humanitarian law, a distinction is made between an international and non-international armed conflict. According to the International Committee of the Red Cross (ICRC), ‘international armed conflicts’ refer to ‘fighting between the armed forces of at least two states as well as wars of national liberation, while a non-international armed conflict is defined as fighting on the territory of a state between the regular armed forces and identifiable armed group(s), or between armed groups fighting one another’. In order to be considered a non-international armed conflict, the ICRC states that the fighting must reach a certain level of intensity and extend over a certain period of time.⁹⁰

At the AU level, there has been no initiative aimed at either regulating PMSCs in Africa or implementing the Montreux Document. This is because the debate on PMSCs has not reached a stage where AU member states view their activities as a cause for concern.⁹¹ It was as early as May 2004 that the AU convened a meeting of experts to review the organisation's legal instruments, including the 1977 OAU Anti-Mercenary Convention. This presented an opportunity for the AU to simultaneously address the challenges posed by PMSCs in the region. The process of revising the convention has not yielded any results in terms of infusing some of the salient features of the Montreux Document. In fact, no draft document has been produced in an endeavour to revise the convention.

The apparent failure by the AU to revise the now outdated OAU Anti-Mercenary Convention is despite the fact that the recommendations of the experts to review the organisation's legal instruments were approved by the executive council of the AU in June 2004. The meeting mandated the chairperson of the AU Commission (Alpha Oumar Konaré at the time) to undertake preliminary studies to determine the best way to implement the recommendations and authorised him to convene meetings of experts to examine the recommendations and develop the necessary legal instruments. Unfortunately, to date nothing concrete has happened, at least in the public domain, regarding the revision of the OAU Anti-Mercenary Convention. Nevertheless, the fact that the AU realised the need to review the convention is most welcome, as it is aimed at addressing contemporary African challenges.⁹²

Global and regional approaches

According to Creutz, '[t]he mixture of state and private actors within the field of security is here to stay and consequently the international community has to find a way, if not to embrace it, at least to cope with it'.⁹³ The establishment of the UN Working Group represents a global attempt to regulate PMSCs. As part of its mandate, the UN Working Group has since its establishment, among other things, monitored mercenaries and mercenary-related activities in all their forms and manifestations, and studied the effects of the activities of PMSCs on the enjoyment of human rights. Among other things, it undertakes country visits to various UN member states upon receiving an official invitation to carry out an assessment and investigation, whether regional, country specific or situational, from the concerned country.

Accordingly, the UN Working Group intends to visit countries with different relevance to conflict situations with a view to providing a comprehensive assessment of the phenomenon of PMSCs operating in violent, low-intensity and post-conflict situations.⁹⁴ Thus far, from the African region, out of the 54 African states, only seven have made requests for the UN Working Group's visitation. These are Central African Republic, Chad, Equatorial Guinea, Ghana, South Africa, Sudan and Zimbabwe. These requests indicate that these African states are willing to enter into dialogue on the issue of PMSCs with the UN Working Group. Some African states have also been represented in various forums where the issue of PMSCs has been one of the subjects of debate.⁹⁵

Within the African region, the only state that has made headway in terms of putting in place legislation and regulations relevant to PMSCs is South Africa. It is therefore important to discuss the South African approach to PMSCs in more detail.

THE SOUTH AFRICAN APPROACH TO PMSCs

South Africa has thus far been the only African state that has been commended on its efforts to implement and enforce international human rights standards on both human and juridical entities involved in mercenary activities⁹⁶ and the provision of military/security and related activities. South Africa regulates PMSCs through two important pieces of legislation. The first is the Private Security Industry Act 56 of 2001, which focuses on the internal dimension of the industry.⁹⁷ The second is the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act 27 of 2006 (SA Anti-Mercenary Act), which will in the not so distant future focus on the external dimension of the industry.⁹⁸ The latter is not yet operational, as the finalisation of its regulations is still pending.⁹⁹

Internal dimension

The Private Security Industry Regulation Act

Insofar as the internal dimension is concerned, the Private Security Industry Regulation Act 56 of 2001 is supplemented by regulations and other legislation,¹⁰⁰ including its own regulations; regulations relating to Appeals and Applications for Exemptions 2003; Amendments to Regulations Made under the

Security Officers Act 92 of 1987; Code of Conduct for Security Service Providers 2003; Improper Conducts Enquiries Regulations 2003; Training Regulations; Documentation to Kept in Terms of Regulation 10(7) Relating to Registration; and the Basic Conditions of Employment Act 75 of 1997. It must be noted that these legal instruments do not apply extra-territorially and no specific provision is made for their application during an armed conflict. While these instruments are essential for PMSCs operating within South Africa, they cannot be applied to those whose activities take place beyond the country's borders.

The Private Security Industry Regulation Act establishes the Private Security Industry Regulatory Authority (PSIRA), whose objective is to regulate the private security industry and exercise effective control over the practise of the occupation of private security providers in the public and national interest and in the interest of the private security industry itself. The Private Security Industry Regulation Act requires every person (natural/juridical) who wishes to render a security service for remuneration, reward, fee or benefit to register as a security service provider. According to the latest PSIRA annual report, the total registration fees for the year ended 31 March 2007 was ZAR 6 721 693 (approximately USD 657 046).¹⁰¹

The Private Security Industry Regulation Act gives a description of what security service entails and also the requirements for registration. Accordingly, 'security services' in terms of the Act include: protecting or safeguarding a person or property in any manner; giving advice on the protection or safeguarding of a person or property; providing a reactive or response service in connection with safeguarding; providing a service aimed at ensuring order and safety on premises; manufacturing, importing, distributing or advertising monitoring devices; performing the functions of a private investigator (*no consent required*); providing security training or instruction to a security provider; installing, servicing or repairing security equipment; and performing the functions of a locksmith.

The Act stipulates the requirements that an individual must satisfy in order to be eligible for registration as follows: he/she must be fit and proper to render a security service; be a South African citizen/permanent resident; comply with relevant training requirements;¹⁰² be clear of any criminal record; be clear of improper conduct in terms of the Private Security Industry Regulation Act; submit a prescribed clearance certificate; be mentally sound; pay a relevant fee; and must not be in the employ of South African Police Service, National

Intelligence Agency, South African National Defence Force, Directorate of Special Operations, South African Secret Service or Department of Correctional Services.

External dimension

That South Africans have died in Iraq while in the employ of PMSCs is not in dispute. For example, South Africans have died while in the employ of PMSCs such as Armor-Group, DynCorp International, Cochise Consultancy, Hart Security, Erinys Iraq, Olive Security, Omega Risk Solutions, British Security, Meteoric Tactical Solutions and SAS International.¹⁰³ These deaths have, among other things, been a cause for concern for the South African government. The exportation of military/security expertise by the country's citizens and permanent residents, especially to Iraq, has also resulted in the fear that ex-military personnel, especially those who served during the apartheid regime (including the SADF – particularly ex-32 Battalion members – SAPS elite Special Task Force and SAPS dog handlers), may return to South Africa for the purposes of toppling the current democratically elected South African government.

SA Anti-Mercenary Act

The basis for the SA Anti-Mercenary Act is the South African Constitution, which provides for the general principle governing national security in the following statement: 'The 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.'¹⁰⁴ This suggests that this section may not be enforced until legislation envisaged in the Constitution is enacted. The South African Foreign Military Assistance Act of 1998 and the SA Anti-Mercenary Act of 2006 comprise such legislation.

In terms of the SA Anti-Mercenary Act, 'person' means 'a person who is a citizen of, or is permanently resident in, the Republic, a juristic person registered or incorporated in the Republic, or any foreign citizen who contravenes this Act within the borders of the Republic'.¹⁰⁵ If one reconciles this definition with sections 2 and 3 of the SA Anti-Mercenary Act, which in part refer to '[n]o person ... within the Republic or elsewhere', it is apparent that the 'person' referred to is one who contravenes the Act within South Africa and beyond its borders (elsewhere). This therefore indicates that the Act is to apply extra-

judiciary. What is intriguing is that if the person is a 'foreign citizen' and contravenes the SA Anti-Mercenary Act 'within the Republic or elsewhere', the SA Anti-Mercenary Act will be applicable. This means that any foreign citizens that has contravened the provisions of the SA Anti-Mercenary Act elsewhere will be arrested as soon as he/she enters South Africa. This illustrates the strictness of the South African approach to PMSCs that engage in activities that are proscribed in the legislation.

In terms of section 2, the SA Anti-Mercenary Act specifically prohibits any person from being involved in mercenary activities, i.e.: any person who 'participates as a combatant for gain in an armed conflict',¹⁰⁶ any person who 'directly or indirectly recruits, uses, trains, supports or finances a combatant for private gain in an armed conflict',¹⁰⁷ any person who 'directly or indirectly participates in any manner in the initiation, causing or furthering of an armed conflict or *coup d'état* or rebellion against any government',¹⁰⁸ and any person who 'directly or indirectly performs any act aimed at overthrowing a government or undermining the constitutional order, sovereignty or territorial integrity of a state'.¹⁰⁹

The SA Anti-Mercenary Act provides under section 4(1) that no South African citizen or permanent resident may enlist with any foreign armed force of any state, unless the NCACC has authorised him/her to do so. If this provision is read together with section 2(1)(a) of the Act, which provides that 'no person may within the Republic or elsewhere participate for private gain in an armed conflict', it means that if the South African citizen or permanent resident enlists in any foreign armed force with the sole purpose of 'private gain in an armed conflict', then he/she will be deemed to have been engaged in a mercenary activity in terms of the Act. The Act further provides that no person may render or provide humanitarian assistance in an armed conflict, unless he/she has been 'granted authorization to render such assistance by the NCACC in terms of section s. 5(1)'. This provision tackles the involvement of PMSCs in humanitarian assistance operations. Thus, no South African PMSC or humanitarian organisation can render or provide humanitarian assistance in an armed conflict without such authorisation.

According to the SA Anti-Mercenary Act, other acts require special authorisation in terms of section 7 of the Act, as follows: 'negotiating or offering assistance (including rendering service) to an armed conflict or regulated country',¹¹⁰ 'providing any assistance or rendering any service to a party to an armed conflict or regulated area',¹¹¹ 'recruiting, using training, supporting or financing a

person to provide or render any service to a party to an armed conflict or regulated area unless such a person has been authorised to do so in terms of section 7 of the Act;¹¹² ‘recruiting, using training, supporting or financing a person to provide or render a service to a party to an armed conflict or in a regulated country, unless such a person is recruited, used, trained, supported or financed in accordance with an agreement or arrangement authorised in terms of section 7’;¹¹³ and ‘performing any other act that has the result of furthering the military interests of a party to an armed conflict or in a regulated country’.¹¹⁴

The question of what assistance or service is in terms of the Act is clearly answered. By ‘assistance or service’, the Act provides that it includes the following: ‘any form of military or military-related assistance, service or activity; ... any form of assistance, service or activity by means of advice or training; personnel, financial, logistical, intelligence or operational support; personnel recruitment; medical or para-medical services; procurement of equipment; or security services’.¹¹⁵ In order to address the meaning of ‘security services’, the Act states that it means one or more of the following: ‘protecting or safeguarding of an individual, personnel or property in any manner’; ‘giving advice on the protection or safeguarding of individuals or property’; ‘giving advice on the use of security equipment’; ‘providing a reactive or response service in connection with safeguarding of persons or property in any manner’; ‘providing security training or instruction to a security (or prospective) service provider’; ‘installing, servicing or repairing security equipment’; ‘monitoring signals or transmissions from security equipment’; ‘making a person available to render the above security services’; and ‘managing, controlling or supervising the rendering of the above security services’.¹¹⁶

According to section 2(b) of the Act, ‘[n]o person may within the republic or elsewhere, directly ... recruit, use, train, support or finance a combatant for private gain in an armed conflict’. Accordingly, this is considered a mercenary activity in terms of the Act and is thus prohibited. This means if any PMSC recruits a combatant for private gain in an armed conflict, whether in South Africa or beyond, that would be deemed to be a mercenary activity in terms of the Act. There is thus no room for any authorisation, as these acts are strictly prohibited by law. Where the rendering or provision of assistance or service by any person to a party to an armed conflict (as opposed to a combatant for private gain in an armed conflict) is involved, the approach is different. Section 3(b) of the Act provides that

[n]o person may within the republic or elsewhere ... recruit, use, train, support or finance any person to render or provide assistance or service to a party to an armed conflict, unless he [or] she ... has been granted authorisation in terms of section 7(2) ... in accordance with an agreement or arrangement allowed or approved under an authorisation granted in terms of section 7(2).

In other words, the rendering or provision of assistance or service by any person to a party to an armed conflict is allowed, provided it is so authorised. Technically, a 'combatant for private gain in an armed conflict' is not any person rendering or provision of assistance or service by any person to a party to an armed conflict. Thus, any person recruited by any PMSC for the purposes of engaging in combat operations for private gain is deemed to be a mercenary in terms of the Act.

An authorisation is refused in terms of section 9 of the Act if it would cause one or more of the following: 'be in conflict with the Republic's obligations in terms of international law'; 'result in the infringement of human rights and fundamental freedoms in the territory in which the assistance or service is to be rendered or the exemption granted'; 'endanger the peace by introducing destabilizing military capabilities or other negative consequences into the region or territory where the assistance or service, or humanitarian aid, is to be, or is likely to be, provided or rendered' or 'would otherwise contribute to regional instability or would negatively influence the balance of power in such region or territory'; 'in any manner support or encourage any terrorist activity or terrorist and related activities, as defined in section 1 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004';¹¹⁷ 'contribute to the escalation of regional conflicts or in any manner initiate, cause or further an armed conflict, or a coup, uprising or rebellion against a government'; 'prejudice the Republic's national or international interests'; or 'be undesirable or unacceptable for any other reason'.

While the South African approach is viewed as one of the best regulatory approaches to PMSCs, it nevertheless raises serious concerns around the following: the definition of a mercenary under section 2, which is much broader than that of the UN and AU Anti-Mercenary Conventions; the role of the NCACC defined under section 1, whose mandate, as the name suggests, is arguably to control conventional arms and not necessarily human beings; the proclamation

of an area of armed conflict under section 6, which is largely dependent on the government of the day to declare, and this right may be subjected to abuse by those in power; the authorisation process under section 7, which is likely to be very cumbersome, considering the different stages it proposes; the extra-territorial jurisdiction envisaged under section 11, which is likely to present serious difficulties in terms of the monitoring and control of activities beyond South Africa's borders; and the prohibition and regulation of humanitarian assistance under section 5, which is likely to delay humanitarian assistance to those in distress resulting from armed conflicts.

It is yet to be seen whether the Anti-Mercenary Act will pass the constitutional test, in light of the fact that it arguably seeks to 'prohibit' the right of persons to choose a trade, occupation or profession, which is guaranteed under section 7 of the South African Constitution. It may also be argued that the regulatory framework in the Act is in fact a 'prohibition' that is likely to limit the recruitment of South Africans to render security services beyond the borders of South Africa. Be that as it may, once the regulations are finalised and approved, it will be interesting to see how the Act will address, if at all, the challenges posed by PMSCs, particularly in Africa. Nonetheless, South Africa is the first African state to put in place a legislative framework that seeks to address serious concerns associated with mercenaries and PMSCs in one single instrument.

CONCLUSION

According to Malan and Cilliers, '[m]orally, there can be no doubt as to the repugnance of mercenary activity, or any form of private activity which makes a direct contribution to igniting or prolonging violent armed conflict'.¹¹⁸ The regulatory approaches to PMSCs in Africa have thus far generally not adequately addressed the repugnance of mercenary and PMSC activities that directly contribute to igniting or prolonging violent armed conflict within the continent. While the Montreux Document is an earnest attempt to address PMSCs within the context of armed conflict, it is wanting in terms of its scope and implementation. It is also not a text that is capable of universal acceptance due to the general (mis)perceptions that African states have of PMSCs. The fact that the Montreux Document fails to expressly denounce the use of PMSCs in direct combat operations presents a serious difficulty in terms of its acceptance, especially in the African context, where there is a large number of armed conflicts.

The fact that the UN Working Group's name suggests that it is solely focused on 'the use of mercenaries' also presents difficulties when it comes to addressing the questions of PMSCs. It is submitted that, technically, the only circumstance in which PMSCs could be considered by the UN Working Group is only when they are involved in mercenary activities, which is the only link that exists to the UN Working Group's name. While the work of the UN Working Group is thus far commendable, it nevertheless reflects a serious lack due to the fact that it has not had a consultative meeting with the African region and that it has not made any country visits to African states. It is very important that the UN Working Group considers the above issues, as the African continent is seriously lagging behind in engaging on the debate around PMSCs and addressing them through putting in place effective regulatory frameworks. Engaging the African region on this subject will also give an impetus to the AU and the various regional economic communities to debate and come up with a proper regulatory approach to PMSCs within the region and its sub-regions. As mentioned above, South Africa is way ahead in terms of putting in place a relatively effective regulatory system, and it is important that other African states follow suit and that the entire continent puts in place a harmonised regulatory framework that will effectively address the challenges posed by PMSCs within the continent, whether foreign or local.

Whether other states both in Africa and beyond adopt the South African approach depends on their individual contexts. As we have seen, any attempt to regulate PMSCs cannot follow a 'one-size-fits-all' approach, as different African states face different challenges on the use (or misuse) of PMSCs. Suffice it to say that based on the SA Anti-Mercenary Act, South Africa remains hostile to the recruitment of South African citizens and permanent residents with security/military skills abroad. Most South African citizens/permanent residents working abroad have not had their contracts renewed because of the Anti-Mercenary Act, since they would be prohibited (or discouraged) from exporting their skills abroad in the form of rendering security/military (and related) services. It is more likely that South African citizens/permanent residents serving in the British Army will be accorded British citizenship. The Anti-Mercenary Act will no doubt be challenged in the South African courts once it becomes operational.

Based on the few case studies that have been discussed above, there is an urgent need for African states to engage in the debate around PMSCs and not

to lag behind, as is the current situation. The fact that generally PMSCs are operating within the continent and also recruiting from the continent without any effective regulatory frameworks should be a serious cause for concern. It is very critical for Africa to also participate fully in the UN Working Group sessions that will in the long run develop an international regulatory framework in the form of a UN convention on the use of PMSCs. The Montreux Document provides a useful text that can assist African states to deliberate on the issue of PMSCs operating within and recruiting from the continent.

In summing up this discussion, it is appropriate to refer to the following observations by De Wolf:

... the status of PMSCs is not altogether unambiguous It is also clear that the privatization of military and security tasks and services is a controversial topic. However, this privatization is a trend that cannot be easily stopped Without sufficient and strict regulation and monitoring at the national and international level, the activities of PMSCs can lead to situations such as those that we have witnessed in Iraq ... under international law the state is fully responsible for the conduct of PMSCs that carry out state functions or tasks.¹¹⁹

Controversial as the topic of PMSCs may be, it is very clear that it has to be debated not only for the purpose of regulating and monitoring these companies, but also for ensuring that states' obligations under international law (particularly international humanitarian law and international human rights law) are fulfilled. This should be the ultimate guiding principle for any regulatory approach or approaches to PMSCs in Africa.

NOTES

- 1 This work was originally carried out by the author for the Geneva Centre for the Democratic Control of Armed Forces (DCAF) as part of its contribution to the Swiss Initiative process, which sought to reinforce the impact of the Montreux Document (for a discussion of which, see below). For more information on DCAF's work on the privatisation of security, see http://www.dcaf.ch/privatisation-security/_index.cfm.
- 2 D Shearer, Outsourcing war, *Foreign Policy* 112 (Fall 1998), 68. See also C Jones, Private military companies as 'epistemic Communities', *Civil Wars*, 8(3–4) (September–December 2006), 358.

- 3 K Creutz, *Transnational privatised security and the international protection of human rights*, Helsinki: Erik Castrén Institute of International Law and Human Rights, 2006, 17.
- 4 Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to the Operations of Private Military and Security Companies during Armed Conflicts, http://www.un.org/ga/search/view_doc.asp?symbol=A/63/467 (accessed 23 May 2009).
- 5 See Release of the Montreux Document, <http://www.dv.admin.ch/psc> (accessed 5 March 2009)
- 6 Montreux Document, Preface, 5, para 7.
- 7 Ibid.
- 8 Page 5, para 3 of the Preface to the Montreux Document clearly states that it is not a legally binding instrument and does not affect the obligations of states under customary international law or under international agreements to which they are parties, in particular their obligations under the UN Charter (especially its Articles 2(4) and 51).
- 9 Montreux Document, Preface, 5, para 2.
- 10 See *ibid*, para 8.
- 11 See the website of the Office of the High Commissioner for Human Rights, <http://www2.ohchr.org/english/issues/mercenaries/index.htm> (accessed 5 March 2009).
- 12 Adopted on 4 December 1989. As at 11 March 2009, there were 32 state parties to the convention.
- 13 See F Viljoen, *International human rights law in Africa*, Oxford: Oxford University Press, 2007, 297.
- 14 Other African countries that have requested the Working Group to visit include Central African Republic, Chad, Ghana, Sudan and Zimbabwe. Completed visits of the UN Working Group outside Africa include those to Chile, Fiji, Honduras, Ecuador, Peru and the United Kingdom, Afghanistan and the United States. On the UN Working Group visits completed to date, see <http://www2.ohchr.org/english/issues/mercenaries/wgvisits.htm> (accessed 11 November 2010).
- 15 The first summit of the AU marking its formal establishment after its name was changed from the OAU was held in South Africa in July 2002.
- 16 UN General Assembly, Resolution 62/145, 18 December 2007, A/RES/62/145.
- 17 Viljoen, *International human rights law in Africa*, 295.
- 18 Quoted in C Nullis, South Africa assembly OKs mercenary bill, *News and Observer*, 29 August 2006; see also <http://www.washingtonpost.com/wp-dyn/content/article/2006/08/29/AR2006082900825.html> (accessed 13 March 2009).
- 19 P W Singer, *Corporate warriors: the rise of the privatized military industry*, Ithaca: Cornell University Press, 2003, 10–11.

- 20 União Nacional para a Independência Total de Angola.
- 21 Viljoen, *International human rights law in Africa*, 295.
- 22 On the prosecution of mercenaries led by Hoare, see *S v Hoare* (1982) 4 SA 865 (N).
- 23 BBC News, Mann sentenced for E Guinea plot, 7 July 2008, <http://news.bbc.co.uk/1/hi/world/africa/7493717.stm> (accessed 13 March 2009).
- 24 Ibid.
- 25 The OAU became the AU in 2002.
- 26 See OAU Anti-Mercenary Act, art 6.
- 27 S Franklin, South African and international attempts to regulate mercenaries and private military companies, *Transnational Law and Contemporary Problems* 17(1) (2008), 244. See M Sapone, Have rifle with scope, will travel, *California Western International Law Journal* (Fall 1999), 33. See also C Lumina, Counting the cost: the impact of corporate warfare on the human rights of women and children in Africa, in S Gumedze (ed), *Elimination of mercenarism in Africa: a need for a new continental approach*, ISS Monograph, Pretoria/Tshwane: ISS, 2008, 101.
- 28 See S Gumedze, *Regulation of the private security sector in Africa*, ISS Policy Paper, Pretoria/Tshwane: ISS, 2008a, 22.
- 29 A Bearpark and S Schulz, The future of the market, in S Chesterman and C Lehnardt (eds), *From mercenaries to markets: the rise and regulation of private military companies*, Oxford: Oxford University Press, 2007, 239.
- 30 Organisation for Economic Cooperation and Development, Development Assistance Committee, *OECD DAC handbook on security systems reform: supporting security and justice*, Paris: OECD DAC, 2007, 211.
- 31 Ibid. See also case study 7.8.2 on Regulating private security and military companies in South Africa, *ibid*, 221–222.
- 32 The total number of South African Police Service officers (excluding civilians) is 139 975; see http://www.saps.gov.za/_dynamicModules/internetsite/buildingBlocks/basePage4/BP444.asp (accessed 12 March 2009). The total number of active registered security company officers stands at 307 345; see the Private Security Industry Regulatory Authority, *Annual report 2006/2007*, Pretoria: PSIRA, 2007, 40.
- 33 S Gumedze, Pouring old wine into new bottles? The debate around mercenaries and private military and security companies, in S Gumedze (ed), *Elimination of mercenarism in Africa: a need for a new continental approach*, ISS Monograph, Pretoria/Tshwane, ISS, 2008b, 24.
- 34 See P W Singer, Wired for war? Robots and military doctrine, *Joint Forces Quarterly* 52 (Winter 2009), 104–110.
- 35 See Noah Shachtman, Inside the rise of the warbots, <http://blog.wired.com/defense/2009/02/peter-singers-w.html> (accessed 6 March 2009).

- 36 A Stoddard, A Marmer and V DiDomenico, *The use of private security providers and services in humanitarian operations*. Humanitarian Policy Group Report 27, London: Overseas Development Institute, October 2008, 15.
- 37 F Waigaru et al, *Private security in Kenya*, Nairobi: Security Research and Information Centre, 2004.
- 38 UNI Property Services, *Who protects the guards? The facts behind G4S in Southern Africa*, <http://www.policing-crowds.org/fileadmin/PDF/Who-Protects-the-Guards-G4s-South-Africa.pdf> (accessed 6 March 2009).
- 39 The link for these country reports can be found at <http://users.aber.ac.uk/rbh/privatesecurity/index.html> (accessed 6 March 2009).
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- 41 M Lekota, quoted by SAPA, Cape Town, 27 March 2007; cited on the Institute of Security Services website, 11 April, http://www.iss.co.za/index.php?link_id=30&slink_id=4290&link_type=12&slink_type=12&tmpl_id=3 (accessed 12 March 2009).
- 42 J R Coleman, Constraining modern mercenarism, *Hastings Law Journal* 55, 1493–1494.
- 43 Montreux Document, Preface, para 9(a).
- 44 Ibid.
- 45 Ibid, Informal summary, 3, para 2.
- 46 Ibid, 5.
- 47 S Gumedze, The privatisation and regulation of security in Africa, in L le Roux (ed), *South African Army Vision 2020*, vol 2: *The South African army relevant and ready for future security challenges in Africa*, Pretoria/Tshwane: ISS, 2008c, 200.
- 48 Rimli, Case study Angola, 38.
- 49 Creutz, *Transnational privatised security and the international protection of human rights*, 39.
- 50 Ibid.
- 51 See generally, J Cilliers and P Mason (eds), *Peace, profit or plunder? The privatisation of security in war-torn African societies*, Pretoria: ISS, 1999.
- 52 UN General Assembly, The role of diamonds in fuelling conflict: breaking the link between the illicit transaction of rough diamonds and armed conflict as a contribution to prevention and settlement of conflicts, A/RES/55/561, December 2000.
- 53 E.g. D Francis, Mercenary intervention in Sierra Leone, *Third World Quarterly*, 20(2) (1999); AF Musah and J Fayemi (eds), *Mercenaries: an African security dilemma*, London: Pluto Press, 2000.

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- 56 Ibid; interview by M de Goede with Xavier Baudoux, managing director of Overseas Security Services Congo, Kinshasa, 16 March 2007.
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- 58 Shearer, Outsourcing war, 98.
- 59 Sabelo Gumedze, The private security sector in Africa: the 21st century's major cause for concern?, ISS Paper no 133, Pretoria/Tshwane: ISS, February 2007, 1.
- 60 House of Commons, *Private military companies: options for regulation*, Green Paper (HCC 577 of 2002), London: HMSO, February 2002.
- 61 For more information on DynCorp International, see <http://www.dyn-intl.com> (accessed 14 March 2009).
- 62 According to the US Department of State Bureau of African Affairs, June 2007, <http://www.state.gov/r/pa/ei/bgn/2836.htm> (accessed 14 March 2009).
- 63 See the Energy Information Administration's official energy statistics from the US government, <http://www.eia.doe.gov/emeu/cabs/Nigeria/Oil.html> (accessed 14 March 2009).
- 64 Displayed on DynCorp's website, <http://www.dyn-intl.com/index.aspx> (accessed 14 March 2009).
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- 66 R Taljaard, Implementing South Africa's Regulation of Foreign Military Assistance Act 12, in A Bryden and M Caparini (eds), *Private actors and security governance*, Zürich: Verlag Münster, 2006, 171–172.
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- 68 Salopek, Casualties of S. Africa's silent war in Iraq.

- 69 See the PASA website at <http://pasa-africa.org/default.aspx> (accessed 11 March 2009). PASA is the brainchild of Chris Greyling, who is the chairperson of the South African Special Forces League, and seeks to emulate the British Association of Private Security Companies, based in London, and the International Peace Operations Association, based in Washington, DC.
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- 71 See the Askar Security website at <http://askarsecurityservices.com/> (accessed 11 March 2009).
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- 74 See a contribution to *Informe*, Govt must protect citizens against mercenary activities, 15 October 2007, http://www.informante.web.na/index2.php?option=com_content&do_pdf=1&id=1334 (accessed 11 March 2009).
- 75 These include Benin, Rwanda, Madagascar, São Tomé and Príncipe, Burkina Faso, Malawi, Senegal, Burundi, Mali, Sierra Leone, Cameroon, Mauritania, Tanzania, Ethiopia, Mozambique, Uganda, The Gambia, Zambia, Ghana, Niger, the DRC, Central African Republic, Guinea, Liberia, Chad, Guinea-Bissau, Togo, Republic of Congo, Comoros, Sudan, Côte d’Ivoire, Eritrea and Somalia.
- 76 Kirunda, Private and public security in Uganda, 17.
- 77 Ibid.
- 78 On the absence of a regulatory framework for PMSCs at the AU level, see S Gumedze, Regulation of private security at the African Union level, in *Proceedings of the Bruges Colloquium on Private Military/Security Companies Operating in Situations of Armed Conflict, 7th Bruges Colloquium 19–20 October 2006*, Bruges: College of Europe, 2007, 91.
- 79 Coleman, Constraining modern mercenarism, 1507.
- 80 Enrique Bernales Ballesteros, *Report on the question of the use of mercenaries as a means of violating human rights and impeding the rights of peoples to self-determination*, UN Commission on Human Rights, 54th session, UN.DOC.E/CN.4/1998/31, 1998, 60.
- 81 See generally, Kirunda, Private and public security in Uganda, 6.
- 82 De Goede, Private and public security in post-war Democratic Republic of Congo, 42.
- 83 Ibid, 43.
- 84 Ibid.
- 85 See Private Security Industry Regulatory Authority, *Annual report 2006/2007*, 40.

- 86 Rimli, Case study Angola, 46. See also Rafael Marques de Morias, Private security companies and a parallel state in Angola, paper presented to the Anthropology Department, Goldsmiths, University of London, 11 December 2007. These statistics were taken from the National Police data as disclosed to the Portuguese news agency Lusa.
- 87 Rimli, Case study Angola, 46–50.
- 88 See R Abrahamsen and M C Williams, *The globalisation of privatised security: country report Nigeria*, Aberystwyth: Department of International Politics, University of Wales at Aberystwyth, 2005a; R Abrahamsen and M C Williams, *The globalisation of privatised security: country report Kenya*, Aberystwyth: Department of International Politics, University of Wales at Aberystwyth, 2005b.
- 89 See Montreux Document, Preface, para 2.
- 90 International Committee of the Red Cross, *International humanitarian law: answers and questions*, Geneva: International Committee of the Red Cross, 2002, 4.
- 91 See generally, S Gumedze, Towards the revision of the 1977 OAU/AU Convention on the Elimination of Mercenarism in Africa, *African Security Review* 16(4) (2007), 22.
- 92 Ibid.
- 93 Creutz, *Transnational privatised security and the international protection of human rights*, 9.
- 94 The UN Working Group will be visiting Afghanistan in April 2009 and the United States in July 2009.
- 95 See, for example, the list of participants in N Ahmadou and S Gumedze, *Conference report on the elimination of mercenarism in Africa*, Pretoria/Tshwane: ISS, 2008, 31–32, <http://www.issafrica.org> (accessed 12 March 2009).
- 96 See Human Rights Advocates, Written statement submitted during the 7th session of the Human Rights Council.
- 97 On the internal dimension, see S Gumedze, Regulating the private security sector in South Africa, *Social Justice* 34(3–4) (2007–08), 195. See also A Minnaar, Oversight and monitoring of non-state/private policing: the private security practitioners in South Africa, in S Gumedze (ed), *Private security in Africa: manifestation, challenges and regulation*, ISS Monograph no 139, Pretoria/Tshwane: ISS, 2007, 127.
- 98 On the external dimension, see Gumedze, The privatisation and regulation of security in Africa, 197. See also Franklin, South African and international attempts to regulate mercenarism and private military companies, 239.
- 99 See South Africa, Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act no 27 of 2006, sec 12.
- 100 These legal instruments are available on the Private Security Industry Regulatory Authority website, <http://www.psira.co.za/index.php> (accessed on 12 March 2009).

- 101 Private Security Industry Regulatory Authority, *Annual report 2006/2007*, 32.
- 102 The Safety and Security Sector Education and Training Authority is the sole quality-assurance body.
- 103 See the Iraqi Coalition Casualty Count.
- 104 South African Constitution, 1996, sec 198(b).
- 105 SA Anti-Mercenary Act, sec 1.
- 106 Ibid, sec 2(1)(a) of the SA Anti-Mercenary Act. This definition is likely to include PMSCs and, possibly, foreign armies when they engage their employees in combat operations. Very few PMSCs would openly admit that they are involved in combat operations.
- 107 Ibid, sec 2(1)(b).
- 108 Ibid, sec 2(1)(c).
- 109 Ibid, sec 2(1)(d).
- 110 Ibid, sec 3(1)(a).
- 111 Ibid, sec 3(1)(b).
- 112 Ibid, sec 3(1)(c).
- 113 Ibid, sec 3(1)(d).
- 114 Ibid, sec 3(1)(e).
- 115 Ibid, sec 1(1).
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4 The effect of private security on national armed forces' capacity and capabilities

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INTRODUCTION

Military establishments in the post-Cold War era have undergone tremendous organisational reform as a result of the changes in the security and political environment. Increasingly, they have needed to deal with a wide range of security tasks, ranging from high-intensity war fighting to low-intensity conflict and peacekeeping operations.¹ This has required armed forces to respond and react to shifting mission demands at short notice for sustained periods of time and far away from their home bases. Added to this, they have needed to perform this array of tasks within the context of a shrinking defence budget and 'a public more sceptical about the military establishment, seeking value for money from the defence sector'.²

The changes in the security environment, coupled with the inability to respond to the array of conflicts that sprang up across the globe (but mostly in Africa), left a vacuum of security in the global market. With astonishing speed, this was rapidly filled by the private sector, which not only provided direct combat services to weak governments, but came to play an increasing role in support of Western armed forces as a means to enhance their operational

capacity. Encouraging this trend was the global spread of free market values promoting competitive privatisation as a progressive step forward in terms of the delivery of public security. What few considered was how this would change power relations and the future of national armed forces.

The aim of this chapter is to show how the practice of outsourcing or privatising military work is affecting the relevance, capacity and capabilities of national armed forces. The intention is not to argue for or against private military and security companies (PMSCs), but merely to point out that the growth of this sector has a significant impact on national armed forces as providers of public security. As a starting point, a brief introduction to the changed security environment and the reasons that have given rise to the growth of the private security sector is provided. Thereafter, the consequences this holds for the armed forces are deliberated by examining the impact PMSCs are having on, firstly, the military profession and, secondly, the capacity and capabilities of national armed forces. The conclusion is that the future management of collective violence is shifting towards a greater partnership between the private and public sector, with the former gaining greater control, power and influence over how public security is delivered globally.

WHAT LED TO THE PRIVATISATION OF SECURITY?

The recent trend in security privatisation stems from the end of the Cold War. Since there was no immediate need to provide external security, this presented the ideal opportunity to cut back on wasteful defence expenditure and channel state resources to more pressing social and welfare needs. Worldwide, this resulted in the downsizing of armed forces, reducing personnel numbers by approximately a third in many cases. Globally, more than seven million service personnel were thrust into the employment market.³ Extensive cutbacks in defence budgets and military equipment followed. On the supply side, this meant that both military expertise and equipment were in surplus supply at relatively modest prices on the open market.⁴ However, just as armed forces were adjusting their force and organisational structures to the new security environment, a new wave of violence flared up in various parts of the world, posing new threats to global peace and security.

Although these new security concerns gave the armed forces a new-found legitimacy, many no longer possessed the capacity to deal with these complex

emergencies. There was also a political reluctance to become involved in these messy, low-intensity civil wars with their complicated ethnic agendas and blurred boundaries between combatants and civilians. This created a ready market for private military forces, which stepped in to fill the void with surprising speed and efficiency. The best-known example in the early 1990s was Executive Outcomes, which was largely staffed by former South African Defence Force (SADF) personnel.⁵ However, the market was only one factor contributing to the growth in the private security and military sector. The other was the government-driven imperative that armed forces need to downsize and restructure to become 'leaner and meaner'.

In essence, this meant cutting defence activities to the core, privatising peripheral functions and contracting in services where required. Driving this approach to defence management was the pressure from government on many Western armed forces to implement new public management (NPM) reforms, in line with the neo-capitalist agenda to reduce state expenditure. In essence, this entailed greater involvement of the private sector in the provision of public goods and services if it could be shown that the private sector could provide a service more economically, efficiently and effectively. Consequently, state departments (including the military) came under pressure to either privatise or outsource certain functions. This involved several options: privatising a specific function, or awarding a fixed-term contract to a company to buy in a specific service, or requiring in-house organisations to bid for services in the open market as service providers. In all cases, the key aim and guiding principle was economic efficiency rather than effectiveness.

For the armed forces, this meant that certain functions were no longer provided in-house.⁶ Typical examples of activities that were outsourced included catering, vehicle maintenance and other typical support structure/logistical needs that could readily be supplied by the private sector. These tasks were not unique to the military, and in most cases the military were only one of many clients of these service providers. However, as time progressed and the application of NPM principles expanded, so many traditional 'military-specific' tasks such as training, education, research, intelligence gathering and so forth were outsourced to the private sector. This is where one saw the explosive growth of private military companies.

These private companies now came to provide services more directly related to the support of the core business of the armed forces, such as tactical

military assistance (including actual combat services), which closely resembled military competencies. However, such services were in the minority and were used mainly by weak states whose national armed forces lacked the necessary capacity. This involved actual fighting, as either units or specialists, such as combat pilots, and bordered on what many claimed were mercenary activities. The second category of core support was consultancy firms, which came to play a strategically important role in decision-making and influence over defence policy. By far the majority of PMSCs came to supply support services, however, including logistics, intelligence, technical support, maintenance services and transport, both at home and in theatre.⁷ What one sees is that progressively there has been a blurring of military tasks, both in terms of the activities performed and who is carrying out these activities.

What followed was a subsequent restructuring of military employment along classic post-Fordist lines advocated by the neo-liberal ideals of Western governments. Military work was now divided between the public and private sectors. Borrowing from business practices, only a much smaller cadre of regular military professionals, educated and trained for the core function of the armed forces – war fighting – were retained. But even here, not all enjoyed the benefits of a long-term career. The emphasis was on having a flexible force to allow for greater adaptability and predictability in terms of numbers and capabilities. Consequently, the job for life was replaced by a contract system that was far more situational and allowed for the easy renewal of contracts and the dismissal of personnel. The employment of military personnel on short-, medium- and long-term contracts unconsciously promoted market sentiments among military personnel, and even among 'military professionals' holding altruistic values.

This segmentation of military employment was intensified by the externalisation of support functions that were once performed by civilian and military personnel employed by the military. This implied that a vast number of people who supplied the more technical administrative and support functions were now providing these services through service providers and were thus not directly employed by the military. The benefit of these work relations was that they enhanced the functional flexibility of the armed forces, since experts in specific fields could easily be brought in without the additional administrative, overhead and labour costs. However, on the down side, this now meant that armed forces lost in-house capacity and came to depend on the private sector in

the delivery of services and support in areas often critical to combat operations. Uttley claims that one of the problems in terms of the outsourcing of military tasks was that what constitutes ‘core functions’ was not adequately defined.⁸

As the demands on the armed forces increased, the ‘core’ came to face critical shortages and capacity deficits. This led to even greater dependence on the private security sector to provide military assistance. The initial expectation was that the ‘military’ reserve force would be able to meet personnel requirements, but this did not materialise, as the armed forces struggled to call up sufficient reserves to meet mission demands. With the decline in the size of the core component, the numbers of military personnel serving in the reserves declined and sufficient volunteers from civil society were not forthcoming. The ‘short warning times, limited peacetime training and ever more sophisticated equipment’ also affected their utility.⁹ As for volunteers, as these missions become more dangerous and remote, so the armed forces have battled to call up sufficient reserve personnel.

Hence, the decline in the number of full- and part-time military personnel, together with the civilianisation and outsourcing of military tasks, spurred on the dependency of the military on the private sector to provide not only logistical, but also combat support. The growth of this sector has been so extensive that some now refer to private contractors as the ‘fourth service’. In effect, the private sector has become the reserve army labour force fulfilling an ever-widening range of military tasks. In fact, civilian contractors, most of whom have previous military training, have effectively now become the new private military reserve of military professionals.

CONSEQUENCES FOR NATIONAL ARMED FORCES

Few considered the long-term consequences this division of military labour between the outside/inside, public/private and military/civilian would mean for the military profession and the future of national armed forces as providers of public security. Singer states that ‘the armed forces have long seen themselves as engaged in a unique profession, set apart from the rest of civilian society, which they are entrusted with securing’.¹⁰ Although there has always been some dependence on outside support, the armed forces were considered a total institution, with all those employed within the organisation geared towards a unified goal – national defence. However, with the military now performing an array

of tasks, often under unclear mandates, and with divergent objectives and role players, national armed forces no longer exercise sole control over the collective management of violence.

Adding to the erosion of the control of the armed forces over their profession was the emphasis placed on cost-effectiveness and efficiency, where professional concerns were considered subservient to those of market imperatives. In this regard, Dandeker succinctly points out how in the age of neo-liberal capitalism, the emphasis on the market in the provision of goods and services is affecting the traditional power base of professions, including the military profession.¹¹

The first reason for this pertains to the 'decline in monopoly power to provide a service to clients; for instance, the opening up of a sector to competition from other producer groups'.¹² Traditionally, the armed forces have exercised a monopoly over the provision of collective violence. Only those employed within the armed forces were assumed to be military professionals and to possess the skills required for the legitimate management and application of organised violence.¹³ As a bureaucratic profession, the institution determined the content and boundaries of the military profession. However, this jurisdiction is no longer clear-cut. As the boundaries between the tasks fulfilled by military professionals serving in the armed forces and civilians contracted in to provide military services become blurred, so this 'unique' expertise is shared among people serving within and outside the military.

This means that the armed forces no longer hold a monopoly over the management and application of violence. Monopoly by definition implies the 'exclusive possession or control of trade in a commodity or service'.¹⁴ Not only are PMSCs performing military-related tasks, they are also providing education and training for military personnel. Avant rightly points out that this has weakened the control of the armed forces over their own profession, as knowledge lies at the heart of any profession.¹⁵ The outsourcing of this core task has encouraged private rather than public expertise in the field. Those outside the military now contend that they are professionals and do 'a good military job' and can provide 'military services more efficiently, effectively and speedily'.¹⁶

Even though few firms advertise their roles as providers of combat services for offensive intent, they have the superb ability to carry out such a role. Many of those working in this sector are drawn from the elite special forces and have extensive military experience. Furthermore, the widespread use of such contractors in peace and stability operations has honed their skills and enhanced their potential.

Hence, national armed forces have come to compete with these ‘outsiders’ on the boundaries of their expertise. This competition will intensify as neo-liberal capitalist ideals spread and pressures to reduce the costs of military services from politicians increase, especially where the general public sentiment is to spend less on defence and where the private sector appears to be more efficient.

This emphasis on market principles in the provision of military services has not only reshaped military work and employment, but also ‘the distinctive culture and way of life of the profession’.¹⁷ The normative elements of tradition and selfless service as the prime drivers in the delivery of public service become eroded where efficiency in work is computed in terms of performance indicators and monetary rewards. While in the past many have come to see their employment in the military as ‘merely another job’, now military training and experience are seen as commodities that can be sold to the highest bidder on the labour market. As such, a dual frame of reference has emerged where personnel now remain in the military only if the pay and benefits are comparable. Where they are employed on term contracts, the option of renewal or not depends on ‘who offers the best deal’ – the public or private sector. This pertains not only to pay, but service conditions and a host of other issues. Where employees are motivated by purely material concerns, the question becomes one of how far such employees are prepared to go to provide security for the public good as part of their jobs, whether in uniform or not. What this indicates is that the service ethic (which lies at the heart of military culture) changes when monetary reward becomes the prime driver of service delivery.

Another major shift in terms of the loss of power and influence of armed forces within the security domain is what Dandeker terms ‘the assertion of client power over the professional group by the state and large business concerns’.¹⁸ This client power is often asserted with the aid of other professionals, or by specialists outside the organisation. What this implies is that armed forces no longer have the autonomy to make decisions affecting how a service is performed or delivered. If the client (government) prefers to have the private sector doing the work, there is little national armed forces can do to prevent this. This can cause considerable resentment, as seen in the case of Papua New Guinea in 1997, when the government hired the private company Sandline to restore order in Bougainville, and where the armed forces later staged a coup against the government.¹⁹ Similarly, if the client prefers to follow the advice of other professionals affecting the armed forces’ sphere of activity, the latter have little control over this.

The state (the primary client of the armed forces) now routinely hires private companies for risk assessment and policy analysis. As the military come to compete with these outside companies at the political level, so the former's jurisdiction is constrained by the private sector's input in security matters. This may affect decisions on staffing, equipment, training and even how the military conduct operations. One of the reasons why it is so difficult for the armed forces to assert their professional interests at the political level is because they are subject to civilian oversight and control. Although the military may exercise internal control over their profession, external control of the military organisation is enforced by the state. In recent times, imperatives of efficiency and cost-effectiveness have outweighed professional concerns when it comes to defence matters.²⁰

This has had a negative impact on the relations among the armed forces, the state and those serving in the military, as reflected in the findings of a survey conducted among military officers in the rank group major-colonel during 2005 in the United Kingdom, Canada, South African and Germany. In all these countries, officers claimed that they had suffered undue hardship due to cuts in the defence budget and that government was insensitive to the needs of the armed forces.²¹ Numerous scholars have cautioned that this should serve as a warning sign to governments concerning officers' future commitment to their work.²² In this regard, Caforio points out that 'the disappearance of some forms of government (or regime) that performed a guarantee function for the professional members of the armed forces was one of the causes that extended the push toward unionisation in Scandinavian countries'.²³

Unlike other professional groups that have exercised some legal power to maintain their professional autonomy or regulate new entrants into their professions, this has not been the case with the military. Even where so-called professional associations exist in the military, they have tended to focus on the material concerns of their members rather than on the protection of their professional jurisdiction. In an era where civil society and politicians understand less about the military and appear insensitive to the demands placed on the armed forces, the lack of such professional associations has meant that military personnel have been unable to articulate their concerns at the political level.

The private military sector has been much more vigilant in trying to regulate the terms, entry and ethical practice of its members.²⁴ Private military associations, such as the International Peace Operations Association (IPOA),

the British Association of Private Security Companies (BAPSC) and the Pan-African Security Association, have all developed in an attempt to self-regulate this fast-growing, lucrative industry. According to its website, 'IPOA is committed to raising the standards of the peace and stability operations industry to ensure sound and ethical professionalism and transparency in the conduct of peacekeeping and post-conflict reconstruction activities',²⁵ while BAPSC's objective, according to its website, is 'to raise the standards of operation of its members and this emergent industry and ensure compliance with the rules and principles of international humanitarian law and human rights standards'.²⁶

The motivation to organise into professional associations is not driven by purely ethical concerns, however, but by attempts at self-regulation to advance self-interest. Professional associations are able to serve as lobby groups for the private security industry, which places them in a strategically better position to negotiate with clients: 'As the need for security grows the BAPSC and its members recognise that their objectives will be best achieved through effective self-regulation in partnership with the UK Government and International Organisations.'²⁷

These associations have had a profound impact on the private military industry. They have played a highly influential role as 'middlemen' between policymakers and PMSCs during policy discussion. While no modern regulation policy has yet been introduced, associations are regulating member PMSCs according to their own codes of conduct in the interim to ensure accountability and oversight, and in an attempt to improve the notorious status of the private military sector in the eyes of the public: 'Enforcement of higher standards will also limit competition within the industry by squeezing out the lower-end operators and creating barriers to entry of new companies.'²⁸

As a result of all of the factors mentioned above, military personnel have experienced 'a relative social devaluation of a profession in the eyes of the public. The social base of the profession has been undermined by the development of neo-liberal capitalism'.²⁹ Where private military contractors are seen to be better paid, to have better equipment, are the preferred advisors to government and are seen as more capable, this inevitably causes a decline in career soldiers' sense of self-worth and status. Some reports suggest that where contractors are hired to do a job, the status of that job is immediately less valued and respected.³⁰ Externally, where members of the public perceive the private sector to be a more efficient provider of security, this devalues the status of the military profession among service employees.

EFFECT ON FUTURE CAPACITY AND CAPABILITIES

The effect of this on the recruitment, retention and management of human resources within national armed forces is enormous. Few considered what the consequences of the restructuring of military employment and the division of military work would be for national armed forces and their ability to function as effective providers of public security. Where serving in the military is no longer a high-status occupation, where the function of the armed forces is no longer clearly defined and their missions seem remote to public interest, so many Western armed forces have battled to call up sufficient recruits in terms of both quantity and quality. An assessment of military recruiting in the US Army revealed that personnel were not replaced on a one-to-one basis during the army downsizing process at the end of the Cold War. As a result, a gap has now emerged where the number of incoming recruits has dwindled to less than adequate levels and high-quality recruits are becoming more and more scarce. A recommendation made by the US National Defence Research Group 'was to reduce the requirement for high-quality male accessions without prior service. This can be done by recruiting more women, accepting more prior-service accessions, or by lowering quality goals'.³¹

In other countries such as South Africa, where employment in the military is seen as a good job, the problem is not quantity, but quality. Recruiting sufficient personnel who have taken mathematics and science as school subjects continues to pose a problem. Furthermore, the military budget does not allow the South African National Defence Force (SANDF) to recruit sufficient personnel to provide adequate future manpower supplies. According to the South African Department of Defence's *Annual report 2008*, recruitment in all scarce skills areas has proven difficult for a variety of reasons, including high attrition to the private sector, lack of available skills and lack of adequate funding for training.³² Many armed forces have faced retention problems of exactly those skills required for current military operations.

The greatest skills loss within armed forces is precisely in those occupational categories where the skills are most valued by the private military and security sector – special forces, medical personnel, military police, and those with combat expertise and experience. In these sectors, the armed forces are finding that personnel are ending their contracts earlier than expected, leading to a skills drain and loss of institutional memory. To fill the void, younger, less-experienced

members are being promoted to these positions.³³ A study assessing the problems with recruitment in the US military noted that although the army is reaching its desired recruitment targets, it is cutting corners in order to get there. According to this study, the army has raised its maximum recruitment age, drastically shortened the enlistment period and lowered the level of basic training: ‘While such measures have ensured that the Army achieved the quantity of recruits it needs, they have resulted in a decrease in the quality the nation demands.’³⁴

The skills loss is also in those positions where the armed forces experience the greatest need – in counterterrorism, combat operations, strategic reconnaissance and unconventional warfare training.³⁵ In many cases, personnel are being offered three times their normal duty pay to stem the tide of members resigning in critical posts.³⁶ In some countries such as South Africa, this issue of retention has been exacerbated by political imperatives such as affirmative action and HIV/AIDS, where the impact is most pertinent in the middle ranks.³⁷

Armed forces form the basis of a country’s defence and constitute the underpinning of stability both within states and between them. If they become debilitated by disease, national security is compromised. Foreign and domestic threats to a country’s national security are aggravated by the security vacuum left by weakened military forces.³⁸

For armed forces, this has meant that they have been obliged to review their employment practices to mitigate the skills loss or face institutional atrophy. This affects not only Western armed forces who can afford to pay higher wages to curtail attrition, but poorer nations whose personnel resign to join PMSCs due to the higher salaries they offer.

The Army has resorted to large cash bonuses and incentives in order to retain and lure new recruits ... the Army has offered as much as \$40,000 for high-demand military occupational speciality assignments; generally for special forces, as well as advanced linguistic and specific civilian skills It is also offering re-enlistment payments of up to \$15,000 to soldiers in 49% of its enlisted job categories – regardless of rank or where they are stationed; it is offering the same bonus to any soldier who agrees to re-enlist while serving in a combat zone.³⁹

Despite these large sums of money being offered as salaries and bonuses by mainly Western militaries, the offers coming in from the private sector are better.

In Iraq, some 70 500 country nationals and 81 000 third-country nationals work on contracts funded by the United States.⁴⁰ Gumedze claims that PMSCs

are actively recruiting from Africa (not just South Africa) to fulfil their mandates in conflict situations.⁴¹ Where the best military expertise now works for transnational private military or security corporations in support of foreign nations, one has to ask how this is affecting the provision of public security among poorer nations. This aspect of the PMSC debate has received scant attention, but clearly affects the capacity and status of national armed forces as efficient providers of public security. As previously mentioned, even where national armed forces have sufficient recruits, increased attrition means they have to train more personnel to retain future capacity: 'The difficulty in recruiting sufficient numbers is aggravated by the fact that many military personnel retire prior to the completion of their initial contracts ... it is not unusual that 30% or more of the enlisted recruits do not complete their first term.'⁴²

Unlike the private sector, which can poach skills from national armed forces, these posts cannot be readily filled. This has meant that armed forces have needed to increase their recruitment drives and offer salaries and working conditions more commensurate with the private sector. The longer the drain continues, the more difficult this problem becomes to manage for national armed forces, especially if they do not have the funds to keep training additional military personnel or where they fail to recruit suitable personnel in the first place. This has led to national armed forces having to lower standards to meet recruitment targets or attract foreign nationals into their own forces. However, these foreign nationals are most frequently from poorer nations, hence affecting the recruitment pools in these countries.

DISCUSSION

We have only touched on some of the consequences that the growth in PMSCs holds for national armed forces. Nonetheless, what is clear is that these armed forces are less capable of performing the array of tasks they are expected to if they do not have contractor support. This applies to both strong states that depend on this support to enhance their expeditionary capacity and weak states that lack the ability to provide their own security. In South Africa, '[t]oday, less than 50% of the 90 000-strong SANDF is considered combat ready. This is due to a variety of reasons, including insufficient training, illness and lack of equipment'.⁴³ PMSCs have the additional advantage in that they have the skills, expertise and flexibility across the entire spectrum of conflict – from

combat to humanitarian support. They proudly advertise that they 'maintain databases with thousands of individuals representing a wide array of skills and specialities that can be quickly hired to fulfil the changing needs of a mission'.⁴⁴ These resources give them the ability to put together teams with the required training, knowledge and equipment at short notice.⁴⁵ The same cannot be said for national armed forces, whose forces are often poorly trained, inexperienced, under-equipped and inadequately supported on military operations.

On speaking to a young South African platoon commander recently deployed as a peacekeeper in the Democratic Republic of Congo, he remarked that the equipment his unit used dated back to the war in Angola (pre-1990); that it had only three serviceable vehicles, where the requirement was 12; and that it was ill-prepared for the mission, did not know local customs, had no idea of how to negotiate with belligerent groups, could not rely on other national contingents for support and was generally left to muddle along. This confirms the sentiment expressed by others that 'units and equipment are neither deployable nor well suited for operations at the lower end of the spectrum of conflict'.⁴⁶ Armed forces are trained and equipped for war-fighting missions. Thus, while they may still have the advantage of actual firepower and combat ability for conventional warfare, this is not what is needed in current conflicts.

The dramatic increase in peacekeeping operations, coupled with the reluctance or inability of national armed forces to keep the peace, has raised the question of whether PMSCs are not more suited to this role. The big question now is who is going to do what most efficiently and effectively? The next is, to what extent can these private sector providers of public security use coercive force in the interests of their client? Then, which clients have the right to hire PMSC support for defensive and – if need be – offensive roles? In this regard, the United Nations is in a sticky situation, as some nations condone and others condemn the use of PMSCs. This becomes particularly difficult where nation states are unwilling to intervene, and thus abdicate their responsibility to international security.

A possible way for national armed forces to improve this situation is to offer more flexible service conditions. By allowing military personnel to gain operational experience in war zones such as Iraq and Afghanistan and then continue their employment in their national armed forces when they return home, knowledge and experience can be brought back to their home countries.⁴⁷ In an interview with a retired SADF and ex-Executive Outcomes employee, he explained how he had been working in Somalia for a PMSC and had gained the

knowledge and understanding of the area that would be vital to any peacekeeping mission: 'I can ... give them photos and street maps and operational reports of what is going on in Somalia ... now, which I still think could be valuable for a database for special forces.'⁴⁸ This, of course, implies that states must embrace a much more flexible employment structure to permit such employment flows into either the reserve or full-time component. Some, like South Africa, for instance, have refused to purchase services from PMSCs and have acted to make the export of such services illegal. A recent proposal was even made in parliament to enforce the loss of citizenship for any South African citizen who takes part in a conflict not supported by the government.⁴⁹ This has been a rather unfortunate and short-sighted approach, given that the South African armed forces have lost almost their entire counterinsurgency capacity over the years. Many South Africans currently serve in Iraq and Afghanistan and can bring back much-needed experience to the SANDF.

CONCLUDING REMARKS

Finding the correct balance between full-time military professionals and civilian specialists, reservists and contractors is imperative. While the private sector has drained national armed forces, the latter are also now in a position to gain from the experience of these civilian military operators in military operations. National armed forces need to make use of this expertise for public security and the public good, or run the risk of being rendered useless by a more cost-effective and economically viable private sector. How this private–public partnership will work in future will be influenced by many factors, including the nature and structure of national armed forces, the political and economic pressures they face, and security priorities. Whatever the direction this may take, it is clear that the growth and influence of PMSCs is fundamentally changing the face of the military profession, as well as the future governance of public security.

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